

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011-CP-10-9543

Joseph Barilotti,

Appellant,

v.

Ocean Course Golf Club,
LLC,

Respondent.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-9543

Joseph Barilotti

Ocean Course Golf Club, LLC,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court. This matter came before the Court on Plaintiff's Motion for a New Trial and to Alter/Amend the Order Granting Defendant's Motion for a Directed Verdict Pursuant to Rules 52(b), 59(a), 59(e), SCRPC. Plaintiff's Motion is hereby DENIED, see attached Order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge

2151
Judge Code

Date

SCRPC Form 4C (03/2013)

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOSEPH A. BARILOTTI,

Plaintiff,

v.

OCEAN COURSE GOLF CLUB, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2011-CP-10-9543

**ORDER DENYING PLAINTIFF'S
MOTION FOR A NEW TRIAL**

FILED
2013 AUG 16 PM 12:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER CAME BEFORE THE COURT on Plaintiff's Motion for a New Trial and to Alter or Amend the Order Granting Defendant's Motion for a Directed Verdict Pursuant to Rules 52(b), 59(a), and 59(e) of the South Carolina Rules of Civil Procedure dated June 11, 2013. At the close of Plaintiff's case, Defendant moved for a Directed Verdict which this Court granted on June 4, 2013, and dismissed Plaintiff's case.

This case resulted from Plaintiff's slip and fall on the property of Defendant Ocean Course Golf Club located on Kiawah Island, South Carolina. Plaintiff's accident occurred on the fourth hole of the golf course while playing golf the morning of October 31, 2010. Plaintiff slipped while walking across a wooden bridge and injured his leg. Plaintiff filed a cause of action against Defendant, which was heard before this Court beginning on June 3, 2013. Defendant made a timely motion for a Directed Verdict which this Court granted. Plaintiff's Motion for a New Trial and to Alter or Amend was subsequently filed.

When a motion for directed verdict is made, a trial court must "view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party

HLH
8/9/13

opposing the motion." *Smith v. Wal-Mart Stores, Inc.*, 314 S.C. 248, 250, 442 S.E.2d 606, 607 (1994). In South Carolina, a plaintiff may only overcome a motion for directed verdict in a slip and fall case by "presenting evidence from which a reasonable inference can be drawn that the [property owner] was responsible for creating the hazard which caused the fall or had actual or constructive knowledge of the existence of the hazard." *Id.*

Plaintiff argues the Court failed to take into consideration that sand was present on the bridge and Plaintiff's allegations that the sand was tracked there by the use of golf carts by Defendant's employees. Plaintiff alleges the Defendant constructed the course's cart paths using sand, which resulted in the presence of sand on the bridge. Plaintiff further argues the presence of sand created a dangerous condition. Defendant maintains the law requires the course grounds be kept in a reasonably safe condition. Defendant claims this does not necessitate the removal of sand from bridges and walkways located on the Course which is situated on a beach. Testimony was presented that Defendant's employees blow debris off bridges and walkways daily, but that sand is not considered debris. Witnesses testified it is not feasible to keep the bridges free of sand, dew and shells due to the location of the course and the naturally occurring sand. Furthermore, at trial Plaintiff testified he knew he had sand on his feet when he crossed the bridge. This Court finds no evidence was presented by Plaintiff that would support a finding that the presence of sand on the bridge created a dangerous condition.

Plaintiff maintains the Court erred in failing to take into account safety measures that Plaintiff claimed were reasonable and feasible. Plaintiff states a rubber mat on the bridge would be a reasonable safety measure and Defendant's failure to utilize a mat subjects the course to liability. Plaintiff also contends the Court erred by failing to consider the bridge was not constructed with a non-slip surface. There was no evidence put forth that Defendant should be

KCH
8/9/13

required to construct the bridges located on its course with non-slip surfaces or use a rubber mat, nor did evidence show failing to do so creates a dangerous condition that would subject Defendant to liability. In addition, witnesses testified the golf carts traversing the bridge would deteriorate or fray the mat, potentially creating a hazard. This Court finds no reasonable inference can be drawn that Plaintiff's injuries were the result of any act of negligence by the Defendant.

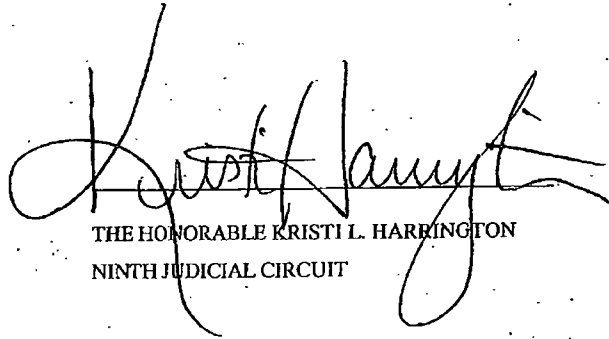
Plaintiff alleges that the Court failed to consider Defendant's testimony that the bridge may become slippery when wet and that Defendant failed to warn Plaintiff of the slippery condition of the bridge. Defendant contends it had no duty to warn Plaintiff of the morning dew because the dew was a naturally occurring event. Additionally, Defendant argues the dew was an open and obvious condition which any reasonable person could appreciate. Plaintiff testified during trial the wet condition was obvious and that sand and dew are natural conditions. Plaintiff also admitted to traversing six bridges prior to crossing the bridge in question and all the bridges were wet. Moreover, testimony given at trial showed Plaintiff's caddies, Steve Cipolla and Nate Ross, consistently warn golfers that the bridges can become slippery when dew is present.

Upon review of Plaintiff's Motion and the case record, this Court finds no reasonable inference that Plaintiff's accident was a result of Defendant's negligence. Thus, Plaintiff's Motion for a New Trial and to Alter or Amend the Order Granting Defendant's Motion for a Directed Verdict is respectfully DENIED.

HLH 8/9/13

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion for a New Trial is
DENIED.

IT IS SO ORDERED.



THE HONORABLE KRISTI L. HARRINGTON
NINTH JUDICIAL CIRCUIT

August 9, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-9543

Joseph Barilotti

Ocean Course Golf Club LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Directed Verdict is heard by the Court and is granted. This case is Ordered Dismissed with Prejudice.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

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

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

Circuit Court Judge

2151

Judge Code

Date

SCRPC Form 4C (10/2011)

Page 1 of 2

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-9543

JOSEPH BARILOTTI

OCEAN COURSE GOLF CLUB LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss was **DENIED**.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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		\$
		\$

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Circuit Court Judge

2134

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Anne Meyer

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Joseph Barilotti,)
Plaintiff,)
vs.)
Ocean Course Golf Club, LLC)
Defendant.)

In the Court of Common Pleas
For the Ninth Judicial Circuit
Case Number: 2011-CP-10-_____

Complaint

FILED
2011 DEC 28 PM 3:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Plaintiff, complaining of Defendant above-named, hereby allege and plead as follows:

1. Plaintiff is a citizen and resident of the state of Pennsylvania.
2. Defendant is a South Carolina corporation that transacts business in Charleston County, South Carolina.
3. At all relevant times hereto, the most substantial part of the acts and omissions committed by Defendant giving rise to this action occurred in Charleston County, South Carolina.
4. On or about October 31, 2010, Plaintiff was playing golf at The Ocean Course Golf Course at Kiawah Island Golf Resort located on Kiawah Island in Charleston County, South Carolina. As Plaintiff was walking across a bridge near the fourth hole of the course, he slipped and fell and was severely injured. At the time of the subject incident, Plaintiff was wearing golf spikes footwear and the subject bridge was unsafe and dangerous for persons wearing such footwear.

5. At all relevant times hereto, Plaintiff was properly and lawfully on the premises of the subject golf course.

6. At all relevant times hereto, Defendant owned and operated the subject golf course and all structures, including the subject bridge, upon said course.

7. The subject bridge was put in place and maintained by and at the direction of Defendant and its employees and constituted an unsafe and/or dangerous and/or defective condition.

8. At all relevant times hereto, Defendant and its employees owed a duty of care to users of the bridge, including Plaintiff, to discover risks and take safety precautions to warn of or eliminate unreasonable risks of harm to users of the bridge, including Plaintiff, and to act appropriately so as not to cause injury, harm, and damage to users of the bridge, including Plaintiff.

9. That at all times relevant hereto, Defendant and its employees owed a duty of care to users of the bridge, including Plaintiff, to conduct proper and thorough safety and other inspections of the bridge in order to determine whether the bridge was safe, discover and identify defective and dangerous conditions, take safety precautions to warn of or eliminate unreasonable risks of harm to users of the bridge, including Plaintiff, and/or to act appropriately so as not to cause injury and damage to users of the bridge, including Plaintiff.

10. That at all times relevant hereto, Defendant and its employees owed a duty of care to users of the bridge, including Plaintiff, to properly, safely, and reasonably maintain, repair, inspect, and service the bridge and in the event of the existence of an unsafe, and/or dangerous, and/or defective condition, Defendant and its employees owed a duty to users of the bridge,

including Plaintiff, to warn of such a dangerous and defective condition and to repair, and/or service, and/or eliminate such dangerous and defective condition.

11. Defendant and its employees were negligent, grossly negligent, careless, willful, wanton, and reckless and breached the duties owed to Plaintiff in one or more of the following ways:

- a. Creating an unsafe, dangerous, and defective condition;
- b. Overseeing the creation of an unsafe, dangerous, and defective condition;
- c. Failing to properly maintain, service, inspect, and/or repair the subject bridge;
- d. Failing to properly oversee the maintenance, service, inspection, and/or repair of the bridge in order to make it safe for all users of the bridge, including those persons wearing golf spikes footwear;
- e. Failing to properly safeguard against an unsafe and/or dangerous condition;
- f. Failing to properly maintain, service, inspect, and repair the subject bridge;
- g. Failing to warn users of the bridge, including Plaintiff, of the dangerous, unsafe, and defective condition of the bridge;
- h. Failing to properly hire, train, manage, supervise, manage, and retain Defendant's employees;
- i. Failing to properly identify and report dangerous and/or defective conditions;
- j. In failing to have, implement, maintain, and/or follow applicable corporate policies and standards;
- k. In failing to follow generally accepted standards of care applicable to the maintenance, servicing, inspecting, and repair of golf course bridges;
- l. In violating the industry standard of care for maintaining, servicing, inspecting, and repairing golf course bridges;

- m. In the training, hiring, retention, managing, and supervision of Defendant's employees and agents;
- n. In Defendant failing to train its employees and agents on the proper manner to maintain, service, inspect, and repair a bridge;
- o. In Defendant failing to adopt procedures for the safe and proper repair, maintenance, inspection, and servicing of bridges;
- p. In failing to use the degree of care and caution that a reasonably prudent person or entity would have used under the same or similar circumstances.

12. That Defendant's and its employees' negligent, grossly negligent, willful, wanton, and reckless conduct and breach of the duties owed to Plaintiff were the direct and proximate cause of the incident and fall described herein and the injuries and damages sustained by Plaintiff described herein.

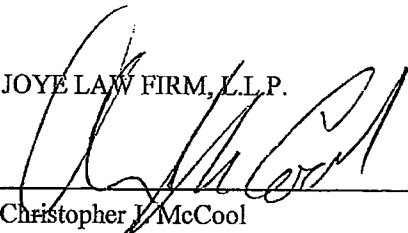
13. As a direct and proximate cause of Defendant's and its employees' negligent, grossly negligent, careless, willful, wanton, and reckless conduct and breach of the duties owed to Plaintiff, Plaintiff has suffered injuries and damages in the form of physical injury and harm, past and future medical expenses, past and future lost wages, loss of earning capacity, past and future physical and mental pain and suffering, permanent injuries/impairment and disfigurement to his body, mental, emotional, and psychological damage, and loss of enjoyment of life.

14. Defendant is liable to Plaintiff, including vicarious liability under the doctrines of *respondeat superior* and agency, for the negligent, grossly negligent, careless, reckless, willful, and wanton conduct of Defendant and its employees, such conduct consisting of one or more of the particulars described herein.

WHEREFORE, Plaintiff prays for judgment against Defendant for the injuries and damages sustained by Plaintiff described herein in an amount of actual and punitive damages to

be determined by the trier of fact, for the costs of this action, and for such other and further relief that this Court may deem just and proper.

JOYE LAW FIRM, L.L.P.

By: 

Christopher J. McCool
5861 Rivers Avenue, Suite 101
North Charleston, SC 29406
843-554-3100
Attorneys for Plaintiff

North Charleston, South Carolina
December 20, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Joseph Barilotti,	)	C/A No. 2011-CP-10-09543
	)	
Plaintiff,	)	DEFENDANT'S ANSWER TO
	)	PLAINTIFF'S COMPLAINT
Versus	)	
	)	
Ocean Course Golf Club, LLC,	)	
	)	
Defendant.	)	

FILED
JAN - 9 PM 3:46
CLERK OF COURT
JAMES A. ARMSTRONG

The Defendant, Ocean Course Golf Club, LLC (hereinafter "the Defendant"), subject to their Motion to Dismiss, answers the allegations of Plaintiff's Amended Complaint as follows:

1. The Defendant denies each and every allegation of the Plaintiff's Complaint which is not specifically admitted without qualification in this Answer.
2. The Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore denies the same.
3. The Defendant denies the allegations contained in Paragraph 2 of the Plaintiff's Complaint.
4. The allegations contained in Paragraph 3 of the Plaintiff's Complaint state conclusions to which no response is required. To the extent that a response is required, the allegations are denied as written.
5. As to the allegations contained in Paragraphs 4 and 5 of the Plaintiff's Complaint, the Defendant admits that the Plaintiff was at the Ocean Course Golf Course at Kiawah Island Golf Resort in Charleston County on October 31, 2010. All remaining and inconsistent allegations are denied.

6. The Defendant denies the allegations contained Paragraphs 6, 7, 8, 9, 10, 11, including subparts (a) through (p), 12, 13 and 14 of the Plaintiff's Complaint.

7. The Defendant denies Plaintiff's prayer for judgment, such being all the remaining allegations of the Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Improper Party)

8. The Plaintiff has filed suit against the wrong party and therefore this case should be dismissed.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(No Proximate Cause)

9. That, even if the Defendant was negligent, as alleged in Plaintiff's Complaint and which is specifically denied, the negligence of the Defendant is not the direct or proximate cause of any injury alleged by Plaintiff and, therefore, the Defendant is not liable for any damages allegedly sustained by Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.
THE DEFENDANT ALLEGES:
(Comparative Negligence)

10. Whatever injuries and damages, if any, that were sustained by the Plaintiff, were due to and caused by, and were the direct and proximate result of, the negligence of the Plaintiff, whose negligence was greater than the negligence of the Defendant, if any and which is specifically denied, contributing thereto as a proximate cause, without which the same would not have occurred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.
THE DEFENDANT ALLEGES:
(Sole Negligence)

11. That whatever injuries and damages, if any and the existence of which is denied, which may have been sustained by Plaintiff, as described in the

Complaint, were due solely to, caused wholly by, and were the direct and proximate result of the negligence, carelessness and recklessness of Plaintiff, such as to bar Plaintiff from recovery against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Natural Condition)

12. The Defendant alleges that the cause of action set forth in the Plaintiff's Complaint was due to no fault on the part of the Defendant, but to a natural condition, over which the Defendant had no control, such to bar Plaintiff from recovery against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Open and Obvious Danger)

13. That, even if the Defendant was negligent, as alleged in the Plaintiff's Complaint and which is specifically denied, the negligence of the Defendant constituted an open and obvious danger which the Plaintiff should have avoided. Therefore, the Plaintiff is barred from recovery against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Punitive Damages Unconstitutional)

14. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate the Defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Reservation and Non-waiver)

15. The Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course

of discovery, and thus reserves the right to amend its Answer to assert such defenses and does not waive any other defenses that may become available.

WHEREFORE, having fully answered the Plaintiff's Complaint, and having asserted these affirmative defenses, the Defendant, Ocean Course Golf Club, LLC prays that the Plaintiff's Complaint be dismissed with prejudice and that it be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com


Robert H. Hood (SC #2599)
James B. Hood (SC #70212)
Anne S. Reid (SC #78235)

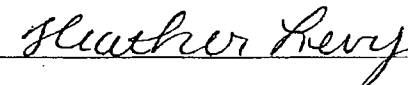
Attorneys for the Defendant
Ocean Course Golf Club, LLC

3/9, 2012
Charleston, South Carolina
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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 9 day of March, 2012.



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Joseph Barilotti,)
)
Plaintiff,)
)
)
)
vs.)
)
Ocean Course Golf Club, LLC,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-09543

**Plaintiff's Motion for a New Trial and to
Alter/Amend the Order Granting Defendant's
Motion for a Directed Verdict Pursuant to Rules
52(b), 59(a), 59(e), SCRPC**

FILED
2013 JUN 12 PM 2:32
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant Joseph Barilotti, by and through his undersigned counsel, hereby moves this Court pursuant to Rules 52(b), 59(a), and 59(e) of the South Carolina Rules of Civil Procedure for a new trial and an order altering or amending the Order Granting Defendant's Motion for a Directed Verdict. Plaintiff is entitled to a new trial and an alteration or amendment of the judgment on the following grounds:

1. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration testimony that Defendant's employees tracked sand onto the subject bridge with golf carts owned by Defendant and that Defendant created the dangerous condition.
2. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration that Defendant built and owned the subject bridge using wood that Defendant knew did not have a non-slip surface and that would become slippery and unsafe when wet and/or sandy.
3. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration that Defendant built the cart path with sand and shells that resulted in sand being

tracked onto the subject bridge by Defendant.

4. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration that Defendant admitted sand decreases traction on the subject bridge.

5. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration that Defendant admitted sand was debris which needed to be removed from the bridge prior to play each day.

6. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration testimony that Defendant admitted it was reasonable and feasible to use a mat like the mat on the bridge at Hole Number 2 on the subject bridge to provide traction for golfers walking on wooden surfaces and that said mat was a safety measure.

7. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration testimony that Defendant admitted it could not identify or locate an employee of Defendant who removed the sand from the subject bridge prior to the start of play as required by Defendant's testimony and that such removal is a safety measure.

8. In ruling on Defendant's Motion for Directed Verdict, the Court prevented the jury from deciding the factual issue of whether the bridge was safe.

9. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration Defendant's admission that the subject bridge becomes slippery when wet.

10. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration that no adequate warning was given to Plaintiff before crossing the subject bridge.

11. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration testimony that the subject bridge did not have a handrail.

12. In ruling during the examination of Roger Warren that Plaintiff was not allowed

to impeach the testimony of the witness despite the witness giving an inconsistent statement and other impeachable testimony during trial.

13. In ruling that photographs, never produced to Plaintiff during discovery, were admissible and/or permissible to be published to the jury during the course of the trial.

14. In wrongly interpreting Plaintiff's consent to Defendant's motion in limine to include any mention of an incident that occurred on a bridge near Hole 2 at the Ocean Course.

15. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration Defendant's destruction of the written statement of Nathan Ross.

16. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration Defendant's admission the subject bridge was a dangerous condition at the time of the Plaintiff's fall.

17. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration Defendant's admission that removal of sand from the subject bridge was for safety purposes.

18. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration Defendant's admission that Plaintiff did not cause or contribute to the fall.

19. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration Defendant's testimony that a non-slip additive or grip on walking surfaces of the course and other areas of the resort prevents falls.

20. In ruling on Defendant's Motion for Directed Verdict, the Court failed to take into consideration that more than one inference could be drawn from the evidence presented at trial.

[Signature on following page]

Respectfully submitted,

JOYE LAW FIRM, L.L.P.

By: Melissa A. Fried
Christopher J. McCool
Melissa A. Fried
Post Office 62888
5861 Rivers Avenue (29406)
N. Charleston, SC 29419-2888
Office: (843) 554-3100
Facsimile: (843) 529-9180
cmccool@joyelawfirm.com

Attorneys for the Plaintiff

North Charleston, South Carolina.
This 11th day of June, 2013.

CERTIFICATE OF SERVICE

I hereby certified that I have mailed a copy of the above and foregoing to
counsel of record in said proceeding to his/her office with sufficient postage attached
this 11th day of June, 2013.

Natli D. Apple

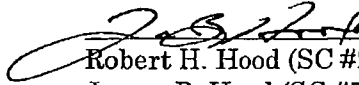
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Joseph Barilotti,	)	C/A No. 2011-CP-10-09543
	)	
Plaintiff,	)	NOTICE OF MOTION AND MOTION
	)	TO DISMISS
Versus	)	
	)	
Ocean Course Golf Club, LLC,	)	
	)	
Defendant.	)	

FILED
2012 MAR -9 PM 3:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: CHRISTOPHER J. MCCOOL, ATTORNEY FOR THE PLAINTIFF:

You will please take notice that the Defendant, Ocean Course Golf Club, LLC (hereinafter "Defendant"), pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, will move before the presiding judge for the Charleston County Court of Common Pleas at a time and place to be arranged with the Court and counsel involved, for an Order dismissing the Plaintiff's Complaint on the grounds the Plaintiff's Complaint fails to state a claim. Further, the Defendants pray for all other relief this Honorable Court deems just and proper. The South Carolina Rules of Civil Procedure and all applicable authority, including memoranda or affidavits, or other supporting documentation which the Defendants may file with the Court prior to the Court's hearing of this matter support this Motion.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
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Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com


Robert H. Hood (SC #2599)
James B. Hood (SC #70212)

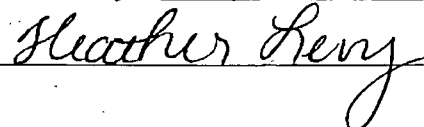
Attorneys for the Defendant
Ocean Course Golf Club, LLC

31 9, 2012
Charleston, South Carolina
J:\docs\220.009\MTD.doc

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 9 day of March, 2012.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Joseph Barilotti,	)	C/A No. 2011-CP-10-09543
	)	
Plaintiff,	)	DEFENDANT'S NOTICE OF
	)	MOTION AND MOTION FOR
Versus	)	SUMMARY JUDGMENT
	)	
Ocean Course Golf Club, LLC,	)	
	)	
Defendant.	)	

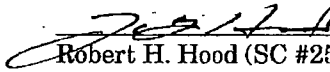
TO: CHRISTOPHER J. MCCOOL, ATTORNEY FOR THE PLAINTIFF:

The Defendant The Ocean Course Golf Club, LLC, (hereinafter "the Defendant"), hereby moves before this Honorable Court at a time and place to be set for an Order entering summary judgment in favor of the Defendant and dismissing the Plaintiff's claims against the Defendant with prejudice in the above captioned case. This Motion is based on the grounds that there is no genuine issue of material fact upon which relief may be granted. Therefore, the Defendant is entitled to judgment as a matter of law.

This Motion is supported by statutory and common law of the State of South Carolina and other applicable authority and may be supported by a memorandum of law and may be supplemented further with memoranda, affidavits, or other supporting material as permitted under the South Carolina Rules of Civil Procedure.

FILED
 2013 APR -2 PM 3:13
 JULIE J. ARNSTROM
 CLERK OF COURT
 BY *[Signature]*

HOOD LAW FIRM, LLC
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Email: Info@hoodlaw.com


Robert H. Hood (SC #2599)
James B. Hood (SC #70212)
Anne S. Reid (SC #78235)

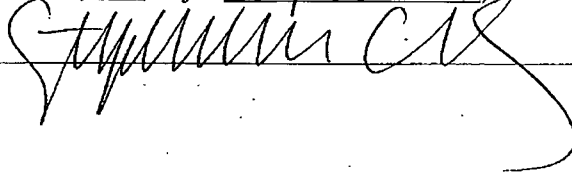
Attorneys for the Defendant
Ocean Course Golf Club, LLC

4/2, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 2 day of April, 2013.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Joseph Barilotti,	)	C/A No. 2011-CP-10-09543
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT'S MOTION FOR
Versus	)	SUMMARY JUDGMENT
	)	
Ocean Course Golf Club, LLC,	)	
	)	
Defendant.	)	

FILED
2013 MAY 30 PM 10:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Defendant, The Ocean Course Golf Club, LLC, (hereinafter "the Defendant"), respectfully submits the following Memorandum of Law in Support of its Motion for Summary Judgment.

STATEMENT OF FACTS

This case arises from an alleged slip and fall on the bridge on the fourth hole of The Ocean Course at Kiawah Island, on October 31, 2010. Attached as Exhibit A, Plaintiff's Complaint at ¶4. The accident occurred when the Plaintiff was playing golf early that morning and slipped while walking across a wooden bridge at hole number four, injuring his leg. Attached as Exhibit A, Plaintiff's Complaint at ¶ 4. The Plaintiff alleges that the subject bridge was unsafe and dangerous for persons wearing soft spiked golf shoes as the Plaintiff was that morning. Attached as Exhibit A, Plaintiff's Complaint at ¶ 4. Further, the Plaintiff alleges that the Defendant had knowledge of the alleged dangerous condition, imposing a duty on the Defendant to warn or otherwise protect him, as an invitee, which it negligently failed to do. Attached as Exhibit A, Plaintiff's Complaint at ¶ 4-12.

LEGAL STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), S.C.R.C.P.

“This Court has established that ‘[t]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.’” Hansson v. Scalise Builders of S.C. and Sam Scalise, 374 S.C. 352, 650 S.E.2d 68 (2007) (citing Baughman v. Amer. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)). A court cannot properly deny a defendant’s motion for summary judgment after only finding a genuine issue of material fact as to one element of the plaintiff’s claim. Id. Under Baughman, to withstand a motion for summary judgment, the court must determine that a genuine issue of material facts exists for each element of the plaintiff’s case. Id.

DISCUSSION

“To establish negligence in a premises liability action, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty.” Singleton v. Sherer, 377 S.C. 185, 200 659 S.E.2d 196, 204 (Ct. App. 2008).

Importantly, “[a] legal duty of care owed by the defendant to the plaintiff must exist to maintain an action for negligence.” Hubbard v. Taylor, 339 S.C. 582,

588 529 S.E.2d 549, 552 (Ct. App. 2000). Duty is generally defined as “the obligation to conform to a particular standard of conduct toward another.” *Id.* In South Carolina, “[i]f there is no duty, then the defendant in a negligence action is entitled to summary judgment as a matter of law.” *Singleton*, 377 S.C. at 200, 659 S.E.2d at 204. Moreover, determination of the existence of a duty is solely the responsibility of the court, not for the jury. *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47 (1996).

The law in South Carolina also provides that “[a] merchant is not an insurer of the safety of his customers but rather owes them the duty to exercise ordinary care to keep the premises in a reasonably safe condition.” *Denton v. Winn-Dixie Greenville, Inc.*, 312 S.C. 119, 120, 439 S.E.2d 292, 293 (Ct. App. 1993). The merchant “is not required to maintain the premises in such condition that *no accident* could happen to a patron using them.” *Id.* (emphasis added). In fact, South Carolina recognizes the proposition that “not every accident that occurs give rise to a cause of action upon which the party injured may recover damages from someone.” *Gosnell v. United States Postal Service*, 2007 WL 1034997 (D. S.C. March 30, 2007) (citing *Young v. Meeting Street Piggly Wiggly*, 288 S.C. 508, 510, 343 S.E.2d 636, 638 (Ct. App. 1986)). “A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge of obviousness.” *Richardson v. Piggly Wiggly Central, Inc.*, Appellate Case No. 2012-207446, Opinion No. 5134 (S.C. Ct. App. 2013) (citing *Callander v. Charleston Doughnut Corp.*, 305 S.C. 123, 126, 406 S.E.2d 361, 362 (1991)).

This memorandum will support the Defendant's contention that this court should grant summary judgment in this action because: A) the naturally occurring dewfall imposed no duty on the Defendant; and B) the dewfall was an open and obvious condition that the Defendant had no duty to warn about.

A. The Defendant owed Plaintiff no duty to warn or otherwise remedy the natural accumulation of dewfall on The Ocean Course

The South Carolina Supreme Court in Meadow v. Heritage Village Church and Missionary Fellowship, Inc., found that an invitee could not recover from the landowner in a premises liability action for a fall sustained when the Plaintiff, an invitee, slipped on rain-soaked grass. 305 S.C. 375, 378, 409 S.E.2d. 349, 351 (1991). The Court wrote that wet grass is a "natural condition, the peril of which was obvious. In contrast, a latent defect is one which an owner has, or should have, a knowledge of, and which an invitee is reasonably unaware." Id. Thus, whether or not the condition itself was dangerous was immaterial. What was clearly important to the court was that the conditions were created by forces beyond the control of man and the peril of the condition was not one that could reasonably be prevented by the landowner. In addition, the natural condition of rain soaked grass cannot be considered a latent defect; the premise being that naturally occurring conditions are known by all reasonable persons and thus there is no duty warn or to guard against them.

Similarly, the natural dewfall on The Ocean Course was created by forces beyond the control of man. The nature of the condition causing the claimant's fall in both the case at bar and in Meadows, is wetness. In both cases, the wetness of the surfaces was the result of a natural cause and this condition was readily apparent to the claimant before the accident. Any attempt to impose upon a

landowner the duty to remedy or warn about obvious conditions created by natural dewfall would impose an unreasonably high burden on landowners that this court should avoid by granting summary judgment.

Naturally occurring dewfall is simply not a condition created by landowners or their agents, and the law does not impose upon landowners a duty to protect against the same. Nor is dewfall a latent defect that the Plaintiff was unaware of and could not reasonably protect himself against; it is a naturally occurring condition that reasonable golfers are aware of and which landowners have no duty to protect against. Moreover, the Plaintiff admitted that he was aware that the entire bridge was wet with morning dew prior to him walking across that particular surface. Attached as Exhibit B, Barilotti Depo. ¶17:13 – 18:6. Thus, he was aware of the alleged “dangerous condition” of the bridge prior to his fall because it was an open and obvious condition. Because there was no duty, the Defendant could not have breached the same and be deemed the proximate cause of this accident. Therefore, Plaintiff is unable to prove all the elements of his negligence claim and summary judgment is appropriate.

B. The Defendant had no duty to warn Plaintiff about the dewfall because it was an open and obvious danger

In South Carolina, “the landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge.” Larimore v. Carolina Power & Light, 340 S.C. 438, 445, 531 S.E.2d. 535, 538 (Ct. App. 2001). “The entire basis of an invitor’s liability rests upon his superior knowledge of the danger that causes the invitee’s injuries.” Lanier Const. Co., Inc. v. Bailey & Yobs, Inc., 384 S.C. 275, 279, 681 S.E.2d. 909, 912 (Ct. App. 2009) (quoting Sides v. Greenville Hosp. Sys., 362 S.C. 250, 256-57, 607 S.E.2d. 362,

365 (Ct. App. 2004)). “If that superior knowledge is lacking, as when the danger is obvious, the invitor cannot be held liable.” Id.

Further, “[r]easonable care on the part of [a] possessor [of land] . . . does not ordinarily require precautions, or even warning, against dangers which are known to [a] visitor, or so obvious to him that he may be expected to discover them.” Padgett v. Colleton County, 383 S.C. 431, 436, 679 S.E.2d. 533, 536 (Ct. App. 2009) (quoting Restatement (Second) of Torts § 343A cmt. e (1965)).

Plaintiff’s argument is that the Defendant was negligent in failing to utilize its superior knowledge to protect Plaintiff from the natural dewfall on the golf course. However, there is no evidence that the Defendant had “superior knowledge” of the conditions on the golf course that morning which would impose upon it a duty to protect the Plaintiff. Dew on the ground during an early morning round of golf is an obvious, open, and natural condition apparent to all reasonable people. By its very nature, golf is an outdoor sport and such conditions are routine and obvious to any experienced participant. Plaintiff is an experienced golfer as he testified that he plays golf approximately two to three times a week and is a member of two country clubs. Attached as Exhibit B, Barilotti Depo. 13:8-24. Moreover, Plaintiff testified in his deposition that he recognized that the entire bridge was wet with dew. Attached as Exhibit B, Barilotti Depo. 17:13 – 18:6. Thus, the Plaintiff’s own testimony conclusively shows that he knew that the bridge was wet before he began to walk across it, thereby establishing that he was aware of the open and obvious state of the bridge.

Another critical point on this issue is that South Carolina has adopted Restatement (Second) of Torts § 343(A) 1965. Callander v. Charleston Doughnut

Corp., 305 S.C. 23, 126, 406 S.E.2d. 361, 362 (1991). It states that "[a] possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is not open or obvious to them, *unless the possessor should anticipate the harm despite such knowledge or obviousness.*" Id. (emphasis original).

Even if naturally occurring dewfall on a golf course is not considered an open and obvious condition, the Defendant had no reason to anticipate Plaintiff's harm. The Defendant acted reasonably in maintaining The Ocean Course and had no other knowledge that would impose a duty upon it to protect the Plaintiff from the condition complained of. There have been no other reported accidents on the bridge near hole number four since the Ocean Course was opened in 1991. Attached as Exhibit C, Gerard Depo. 46:23-47:6; 70:20-22. Thus, there was no way for the Defendant to utilize any superior knowledge to protect invitees or anticipate the harm, relieving it of liability.

Furthermore, comment (f) of the Restatement states that a landowner is not liable for open and obvious dangers unless the landowner "has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious . . . or fail to protect himself against it." Callander 305 S.C. at 126, 406 S.E.2d at 362 - 63 (1991). In Callander, the critical issue was whether the owner should have anticipated the harm in a situation where (1) the owner knew about the defect, (2) the owner had in fact placed a sign on the broken stool warning customers of the condition, (3) the store was crowded, and (4) the owner knew that his customers routinely backed up to the stools to sit down. Id. Thus, the owner had knowledge of circumstances that weighed against the fact that the broken stool was

an obvious defect. Id. This raised a jury question as to whether the harm should have been anticipated. Id.

There are no similar mitigating facts in the case at bar to show that the Defendant should have anticipated any harm to invitees. The bridge had no known defects to any party. Also, no facts indicate the Plaintiff encountered conditions sufficient to distract his attention away from where he was walking. Nor are there facts indicating that extraordinary circumstances existed on that particular hole at any prior time which would place the Defendant on notice of any potentially distracting conditions that would impose upon them a duty to warn invitees. Consequently, even in light of South Carolina's adoption of the Restatement in Callendar, the Defendant cannot reasonably be found liable for the open and obvious conditions in the case at bar, making summary judgment proper.

CONCLUSION

No genuine issue material fact exists that the Defendant was negligent in preventing Plaintiff's injuries because: 1) dew is a naturally occurring condition which imposes no duty on landowners to prevent or protect against; 2) the dew was an open and obvious condition; 3) there is no evidence to suggest that the Defendant had superior knowledge such to impose a duty to warn invitees of any danger related to the open and obvious condition then existing on the golf course; and 4) the Defendant had no reason to believe that golfers on the morning of this incident would be distracted to the degree that they would fail to pay attention to the open and obvious conditions.

For the foregoing reasons, the Defendant respectfully requests that the court grant this motion and dismiss Plaintiff's case with prejudice.

HOOD LAW FIRM, LLC
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Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com


Robert H. Hood (SC #2599)
James B. Hood (SC #70212)
Anne S. Reid (SC #78235)

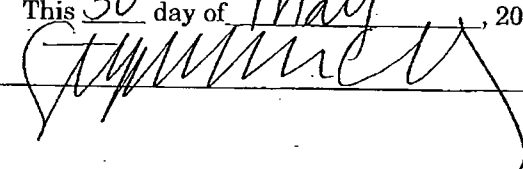
Attorneys for the Defendant
Ocean Course Golf Club, LLC

5/30, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing
was served on each party or counsel of record by ☒
mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in
the manner prescribed by the applicable Rule of Civil
Procedure.

This 30 day of May, 2013.



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Joseph Barilotti,

Plaintiff,

vs.

Ocean Course Golf Club, LLC

Defendant.

In the Court of Common Pleas
For the Ninth Judicial Circuit
Case Number: 2011-CP-10-9513

Complaint

FILED
2011 DEC 28 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Plaintiff, complaining of Defendant above-named, hereby allege and plead as follows:

1. Plaintiff is a citizen and resident of the state of Pennsylvania.
2. Defendant is a South Carolina corporation that transacts business in Charleston County, South Carolina.
3. At all relevant times hereto, the most substantial part of the acts and omissions committed by Defendant giving rise to this action occurred in Charleston County, South Carolina.
4. On or about October 31, 2010, Plaintiff was playing golf at The Ocean Course Golf Course at Kiawah Island Golf Resort located on Kiawah Island in Charleston County, South Carolina. As Plaintiff was walking across a bridge near the fourth hole of the course, he slipped and fell and was severely injured. At the time of the subject incident, Plaintiff was wearing golf spikes footwear and the subject bridge was unsafe and dangerous for persons wearing such footwear.

EXHIBIT

A

5. At all relevant times hereto, Plaintiff was properly and lawfully on the premises of the subject golf course.

6. At all relevant times hereto, Defendant owned and operated the subject golf course and all structures, including the subject bridge, upon said course.

7. The subject bridge was put in place and maintained by and at the direction of Defendant and its employees and constituted an unsafe and/or dangerous and/or defective condition.

8. At all relevant times hereto, Defendant and its employees owed a duty of care to users of the bridge, including Plaintiff, to discover risks and take safety precautions to warn of or eliminate unreasonable risks of harm to users of the bridge, including Plaintiff, and to act appropriately so as not to cause injury, harm, and damage to users of the bridge, including Plaintiff.

9. That at all times relevant hereto, Defendant and its employees owed a duty of care to users of the bridge, including Plaintiff, to conduct proper and thorough safety and other inspections of the bridge in order to determine whether the bridge was safe, discover and identify defective and dangerous conditions, take safety precautions to warn of or eliminate unreasonable risks of harm to users of the bridge, including Plaintiff, and/or to act appropriately so as not to cause injury and damage to users of the bridge, including Plaintiff.

10. That at all times relevant hereto, Defendant and its employees owed a duty of care to users of the bridge, including Plaintiff, to properly, safely, and reasonably maintain, repair, inspect, and service the bridge and in the event of the existence of an unsafe, and/or dangerous, and/or defective condition, Defendant and its employees owed a duty to users of the bridge,

including Plaintiff, to warn of such a dangerous and defective condition and to repair, and/or service, and/or eliminate such dangerous and defective condition.

11. Defendant and its employees were negligent, grossly negligent, careless, willful, wanton, and reckless and breached the duties owed to Plaintiff in one or more of the following ways:

- a. Creating an unsafe, dangerous, and defective condition;
- b. Overseeing the creation of an unsafe, dangerous, and defective condition;
- c. Failing to properly maintain, service, inspect, and/or repair the subject bridge;
- d. Failing to properly oversee the maintenance, service, inspection, and/or repair of the bridge in order to make it safe for all users of the bridge, including those persons wearing golf spikes footwear;
- e. Failing to properly safeguard against an unsafe and/or dangerous condition;
- f. Failing to properly maintain, service, inspect, and repair the subject bridge;
- g. Failing to warn users of the bridge, including Plaintiff, of the dangerous, unsafe, and defective condition of the bridge;
- h. Failing to properly hire, train, manage, supervise, manage, and retain Defendant's employees;
- i. Failing to properly identify and report dangerous and/or defective conditions;
- j. In failing to have, implement, maintain, and/or follow applicable corporate policies and standards;
- k. In failing to follow generally accepted standards of care applicable to the maintenance, servicing, inspecting, and repair of golf course bridges;
- l. In violating the industry standard of care for maintaining, servicing, inspecting, and repairing golf course bridges;

- m. In the training, hiring, retention, managing, and supervision of Defendant's employees and agents;
- n. In Defendant failing to train its employees and agents on the proper manner to maintain, service, inspect, and repair a bridge;
- o. In Defendant failing to adopt procedures for the safe and proper repair, maintenance, inspection, and servicing of bridges;
- p. In failing to use the degree of care and caution that a reasonably prudent person or entity would have used under the same or similar circumstances.

12. That Defendant's and its employees' negligent, grossly negligent, willful, wanton, and reckless conduct and breach of the duties owed to Plaintiff were the direct and proximate cause of the incident and fall described herein and the injuries and damages sustained by Plaintiff described herein.

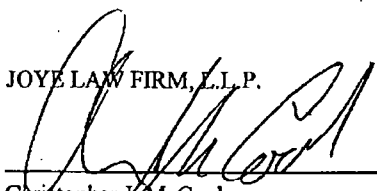
13. As a direct and proximate cause of Defendant's and its employees' negligent, grossly negligent, careless, willful, wanton, and reckless conduct and breach of the duties owed to Plaintiff, Plaintiff has suffered injuries and damages in the form of physical injury and harm, past and future medical expenses, past and future lost wages, loss of earning capacity, past and future physical and mental pain and suffering, permanent injuries/impairment and disfigurement to his body, mental, emotional, and psychological damage, and loss of enjoyment of life.

14. Defendant is liable to Plaintiff, including vicarious liability under the doctrines of *respondeat superior* and agency, for the negligent, grossly negligent, careless, reckless, willful, and wanton conduct of Defendant and its employees, such conduct consisting of one or more of the particulars described herein.

WHEREFORE, Plaintiff prays for judgment against Defendant for the injuries and damages sustained by Plaintiff described herein in an amount of actual and punitive damages to

be determined by the trier of fact, for the costs of this action, and for such other and further relief that this Court may deem just and proper.

JOYE LAW FIRM, L.L.P.

By: 

Christopher McCool
5861 Rivers Avenue, Suite 101
North Charleston, SC 29406
843-554-3100
Attorneys for Plaintiff

North Charleston, South Carolina
December 20, 2011

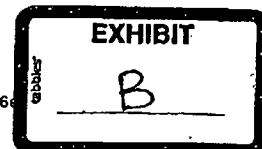
Transcript of Joseph A Berilotti

Page 10	Page 12
1 A. No. 2 Q. Was the other gentleman injured in that accident? 3 A. I believe he's claiming that he was. 4 Q. Okay. And approximately what was the date of this 5 accident? 6 A. I want to say Labor Day 2011. 7 Q. Okay. So where did you go to school, to college? 8 A. I didn't go to college. 9 Q. Where did you go to high school? 10 A. Monsignor Bonner. 11 Q. Is that in -- 12 A. Drexel Hill. 13 Q. Okay. 14 A. Pennsylvania. 15 Q. Did you do any -- did you receive any other sorts of 16 training? 17 A. I went into an apprenticeship program. 18 Q. What was the name of that program? 19 A. Bricklayers and Allied Craftworkers apprenticeship 20 and training. 21 Q. And was this apprenticeship to become a bricklayer? 22 A. Yes. 23 Q. How long was that apprenticeship? 24 A. Three years. 25 Q. And what did you do after finishing that	1 Q. Okay. And how long were you with Employing 2 Bricklayers? 3 A. 24 years. 4 Q. Great. And what did you do after the Employing 5 Bricklayers? 6 A. I went with Regional Real Estate Investment, Inc. 7 where I'm currently employed. 8 Q. Do you have any other certifications or licenses? 9 A. No. 10 Q. Okay. Have you ever been terminated from a 11 position? 12 A. Never. 13 Q. And how long have you been with Regional Real Estate 14 Investment? 15 A. Since March of 2008. 16 Q. What is your position with real estate investments? 17 A. I'm vice president of marketing. 18 Q. Okay. Have you ever filed an unemployment claim? 19 A. No. 20 Q. Have you ever filed a Workers' Compensation claim? 21 A. No. You know what? Let me go back to that first 22 question. Unemployment, I may have, and I believe in 1970. 23 Q. Okay. And -- 24 A. I thought you meant Workers' Comp. 25 Q. So have you ever filed a Workers' Comp claim?
Page 11	Page 13
1 apprenticeship? 2 A. I was a bricklayer. 3 Q. What company did you work for? 4 A. I worked for various companies. Anastasi Brothers, 5 A-N-A-S-T-A-S-I. 6 Q. How long did you work there? 7 A. About four years. 8 Q. Okay. And where did you work after Anastasi 9 Brothers? 10 A. John B. Kelly. Before that, I worked with a company 11 called Drexel West Brickwork. 12 Q. Okay. And how long did you work there? 13 A. About three years. 14 Q. After Drexel West? 15 A. John B. Kelly, Inc. 16 Q. How long were you with John B. Kelly? 17 A. About another three to four years. 18 Q. And what did you do after working for John B. Kelly? 19 A. I left there to become a cement salesman. 20 Q. And what company did you work for? 21 A. Whitehall Cement Company. 22 Q. How long were you with Whitehall? 23 A. About three years. 24 Q. Okay. And what did you do after Whitehall? 25 A. I went with the Employing Bricklayers Association.	1 A. No. 2 Q. Are you a member of any churches? 3 A. Yes. 4 Q. What's the name of your church? 5 A. St. Simon and Jude Roman Catholic Church. 6 Q. Are you a member of any civic organization or club? 7 A. You're not talking golf clubs? 8 Q. Sure. What's the name of the golf club you're 9 affiliated with? 10 A. Philadelphia Cricket Club. 11 Q. Is that a country club? 12 A. Yes. 13 Q. Okay. 14 A. Naples Grande Golf Club. 15 Q. Are both of these located in Philadelphia? 16 A. No. Naples Grande is in Naples, Florida. 17 Q. Oh, Naples. Okay. 18 A. Philadelphia Cricket Club is in Philadelphia. 19 Q. How long have you been a member of the Philly 20 Cricket Club? 21 A. Going on 13 years. 22 Q. And how long have you been a member of the Naples 23 Grande? 24 A. Eight years. 25 Q. Okay. Are you a member of any other organization or

4 (Pages 10 to 13)

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Transcript of Joseph A Berilotti

Page 14	Page 16
1 club? 2 A. No. 3 Q. Do you have a social media page, such as a Twitter 4 account or a Facebook page? 5 A. Not even LinkedIn. 6 Q. That's shocking nowadays, but that's a good thing, 7 probably. Do you have any medical training or knowledge? 8 A. No. 9 Q. Okay. And you said your wife is a nurse. Is anyone 10 else in your family in the medical field? 11 A. No. My sister Maria is a nurse. 12 Q. What did you do to prepare for your deposition today 13 other than meet with your attorney? 14 A. Nothing. 15 Q. Did you review any of your medical records? 16 A. No. 17 Q. Did you speak with any doctors or medical 18 professionals before your deposition? 19 A. No. 20 Q. Okay. All right. Now, moving to the time of the 21 accident, were you a guest at the Sanctuary at the time? 22 A. I was. 23 Q. Where were you staying? 24 A. Thomas Leonard's house. 25 Q. What was your purpose of the trip to Charleston?	1 Leonard and myself make seven. There were seven of us 2 Q. Okay. And that's the group that you played with all 3 three days? 4 A. Yes. 5 Q. Okay. So have you stayed at the Sanctuary or at 6 Kiawah Island on previous golf trips? 7 A. I've stayed at Tom's house on a previous trip. 8 Q. Have you played the Ocean Course prior to your 9 accident? 10 A. I have. 11 Q. How many times have you played the Ocean Course? 12 A. One time prior to the accident. 13 Q. Okay. And have you played at the Ocean Course after 14 your accident? 15 A. No. 16 Q. Okay. Now, on the day of the accident, can you give 17 me a brief timeline of what your day was like that morning. 18 A. I remember we had an early starting time. 19 Q. Do you remember what the time was? 20 A. Somewhere between 7:30 and 8:00 a.m. 21 Q. Okay. 22 A. We arrived. We were only seven, so we broke up in a 23 threesome and a foursome. I was in the first group. 24 Q. Did you all drink any alcohol before you started 25 playing that day?
Page 15	Page 17
1 A. We were taking a few potential investors down. 2 Q. For a golf trip or just a weekend? 3 A. Uh-huh. 4 Q. Okay. And when did you arrive in Charleston? 5 A. You know, I don't remember if it was Thursday night 6 or Friday morning. I believe it was Friday. 7 Q. Okay. And did you play golf when you arrived on 8 Friday? 9 A. Yes, we did. 10 Q. Okay. And did you play at the Ocean Course? 11 A. No, we played at the River Course. 12 Q. And was Saturday the day of the accident? 13 A. Sunday was the day of the accident. 14 Q. So did you play golf on Saturday? 15 A. We did. 16 Q. Where did you play? 17 A. At the Cassique Course. Cassique or vice versa. I 18 forget which, you know. 19 Q. Okay. That's good enough. Thank you. And then 20 Sunday you played at the Ocean Course? 21 A. The Ocean Course. 22 Q. Okay. Who else was staying at Thomas Leonard's 23 house? 24 A. George Maloney, Chuck Graham, Al Van Horn, Tim 25 Goins, G-O-I-N-S, George Murphy. Is that five? Because	1 A. Had not. 2 Q. Okay. Were you taking any medications that morning? 3 A. Just my Adderall. 4 Q. And were you all drinking the night before your 5 accident? 6 A. The others may have been. I haven't had a drink in 7 about 12 years. 8 Q. Okay. So can you give me a detailed account in your 9 words about how this accident occurred? 10 A. I believe we were -- I'm going to say we were on the 11 fourth hole, third, and I was preparing to hit my second 12 shot, and the sandy cart path and the bridge were on the 13 left-hand side of the fairway. As I was walking across the 14 bridge, it was wet. And prior to me exiting off the bridge, 15 I went down. 16 Q. Okay. And so based on what you just said, you had 17 almost finished crossing the bridge; is that correct? And 18 it was right at the tail end of the side you were exiting? 19 A. Yes. 20 Q. And you mentioned that the bridge was wet, correct? 21 A. Yes. 22 Q. Was the entire bridge wet or just a portion? 23 A. The whole bridge was wet. 24 Q. And did you notice that prior to crossing the 25 bridge?

5 (Pages 14 to 17)

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Transcript of Joseph A Berilotti

Page 18	Page 20
1 A. I did. 2 Q. And are you aware of why the bridge was wet? 3 A. It was very misty that morning, heavy mist. The 4 grass was wet; the bridge was wet. 5 Q. So was it foggy or was it more like dew? 6 A. Dew. It was dew. 7 Q. Okay. And were there any signs or warnings that 8 were up about the wet condition? 9 A. No. 10 Q. Okay. I guess you don't know how long the bridge 11 had been wet at that point when you had your accident? 12 A. I don't. 13 Q. And, let's see, did the caddies you were playing 14 with warn you that the bridge was wet? 15 A. Not to my knowledge. 16 Q. I think you said there was a sandy cart path. Is 17 that separate from the bridge? 18 A. Yeah, separate from the bridge. It would be like 19 the path carts would use rather than being on the fairway, 20 okay? They have designated areas where the carts can go, 21 and like a walkway that led up to the bridge. 22 Q. Okay. So you went from the cart path across the 23 bridge? 24 A. Yes. 25 Q. Okay. And is it your contention that the bridge was	1 Course, and they have rubber mats on them that you're able 2 to walk on. 3 Q. Is it also your opinion there needs to be handrails 4 on those bridges as well? 5 A. I think there should be a handrail on any bridge. 6 Anywhere there's an elevation, there should be. 7 Q. Another allegation in your complaint was the Ocean 8 Course failed to properly maintain the bridge. How did they 9 fail to do so? 10 A. By not putting the mats down. 11 Q. So it wasn't an issue of, you know, improper wood or 12 something of that nature, it was just, in your opinion -- 13 A. I'm not a wood expert, but in my experience, a lot 14 of courses today -- most courses today have the mats or at 15 least rough up the wood so it's not so slippery. 16 Q. What does that mean, "rough up the wood"? 17 A. Well, they're able to use like some sort of a 18 grinding wheel that will make the surface not so slick like 19 this. 20 Q. Did anyone else in your group fall that day? 21 A. No. 22 Q. Are you aware of any other falls that have occurred 23 on that bridge on that golf course? 24 A. I am not. 25 Q. So you haven't witnessed any other falls; is that
Page 19	Page 21
1 also sandy? 2 A. I didn't say that. 3 Q. Okay. And what kind of shoes were you wearing on 4 the day of the accident? 5 A. Golf shoes. 6 Q. Were those the soft spikes? 7 A. Soft spikes. 8 Q. Is that the required footwear? 9 A. Yes. Mandatory footwear. 10 Q. And is that mandatory for all golf courses or just 11 this -- 12 A. All golf courses today. If there are ones that 13 allow it, I'm not aware. 14 Q. You definitely play more golf than I do, so I'm a 15 little out of my league here. So one of the allegations in 16 your complaint was that the bridge was unsafe. Could you 17 describe in your words how the bridge was unsafe? 18 A. Well, it was wet, first of all, and there were no 19 handrails. 20 Q. And is it your opinion that the Ocean Course needs 21 to prevent morning dew from getting on a bridge? 22 A. It's hard to prevent morning dew, but there's other 23 actions that you can take. 24 Q. And what are those actions? 25 A. Well, we played the River Course and the Cassique	1 correct, on the Ocean Course? 2 A. I have not. 3 Q. And have you spoken with anyone else who sustained a 4 fall on the bridge that you fell on? 5 A. No. 6 Q. Would you agree that the majority of individuals 7 using that bridge on the Ocean Course are golfers? 8 MR. McCOOL: Objection. Speculation. 9 Q. You can still answer after he objects. 10 A. Ask the question again, please. 11 Q. I'm just asking whether you thought that -- would 12 you agree that the majority of people using the bridge on 13 the golf course would be golfers? 14 MR. McCOOL: Same objection. 15 A. Yes. 16 Q. And because it's a requirement to wear these soft 17 spiked golf shoes, they would also be wearing shoes similar 18 to yours? 19 A. Yes. 20 Q. Okay. And your complaint alleges that the bridge is 21 unsafe for people wearing those spiked golf shoes. What's 22 the basis for that statement? 23 A. Because it's like being on ice skates on a wet 24 surface, unless the surface is prepared in a way that it 25 wouldn't be so dangerous.

6 (Pages 18 to 21)

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Page 46 1 policy and procedure, photographs are to be obtained of 2 the area where the person was injured, correct? 3 A Correct. They call security, it's policy, 4 and security handles the investigation from there. 5 Q Right. But security is to go and take 6 photographs of the area where the person was injured in 7 the moments after EMS is summoned and in the moments 8 after they determine what level of injury they're 9 dealing with with respect to the person who is hurt on 10 the golf course, correct? 11 A Correct. 12 Q And the reason for that is so the 13 investigation accurately portrays the condition at the 14 time the person was injured, correct? 15 A Correct. 16 Q And the conversation you had with Mr. Stone, 17 how long did it last, the one where he told you that 18 the bridge looked fine? 19 A Trying to think back of the conversation that 20 we had. I know we talked about it and I know he said 21 the bridge looked fine. 22 Q Do you specifically remember that? 23 A Yes, because that bridge, we've never had an 24 incident on that bridge and I was surprised when the 25 report came through that someone had slipped on that	Page 48 1 A They were walking. 2 Q Why is that? 3 A We are walking only before noon. They would 4 have teed off at 8:10, 8:20, I believe. 5 Q And how do you know they would have teed off 6 at 8:10 or 8:20? 7 A It would be on our tee sheets that we have. 8 Q Do you have a tee -- did you review a tee 9 sheet for his round of golf? 10 A I've seen it, yes. 11 Q When is the last time you've seen it? 12 A I don't know when the last time I saw it was. 13 Q Do you review all tee sheets after a round of 14 golf? 15 A I -- no, not every day. 16 Q Why did you review Mr. Barilotti's tee sheet? 17 A Because we had an incident report. 18 Q Is the tee sheet part of the incident report? 19 A No. 20 Q Is the tee sheet part of the accident 21 investigation? 22 A No. 23 Q What was the purpose of you reviewing the tee 24 sheet following Mr. Barilotti's incident? 25 A There was an incident and I wanted to go back
Page 47 1 bridge. 2 Q When you say you never had an incident on 3 that bridge and that you were surprised there was an 4 incident on the bridge, you mean there was no reported 5 incidents? 6 A Correct. 7 Q I mean, other people might have slipped, they 8 just might not have been injured, correct? 9 A Correct. 10 Q Did you ever go and look at the bridge at the 11 fourth hole at The Ocean Course following 12 Mr. Barilotti's fall and injury? 13 A Yes, I would have been -- I would have been 14 out there that following week. 15 Q Did you actually go look at it? 16 A Uh-huh (affirmative). 17 Q And get off your golf cart? 18 A I can't answer if I got out of the golf cart 19 or not. 20 Q Is it permissible to ride a cart across that 21 bridge when playing a round of golf? 22 A Yes, it is. 23 Q Was the group Mr. Barilotti was in the 24 morning he was injured, were they using the golf carts, 25 or was it a walking round?	Page 49 1 and look and see who it was. 2 Q How many golfers were in Mr. Barilotti's 3 group that morning he was injured? 4 A I believe there was seven. 5 Q Are they all grouped together, or were they 6 divided in a foursome and a threesome? 7 A They would have been divided in a foursome 8 and threesome. 9 Q And was Mr. Barilotti part of the foursome or 10 the threesome? 11 A Do not know the answer to that. 12 Q Who was the caddy for the group that 13 Mr. Barilotti was in? 14 A It either would have been Steve Cipolla or 15 Nate Ross. 16 Q And how do you know that? 17 A I knew the caddy -- the reason I definitely 18 knew that was because they were at deposition. 19 Q So you haven't seen any papers or reviewed 20 any documents that indicated Steve Cipolla or Nate Ross 21 were the caddies for Mr. Barilotti's group? 22 A I'm not sure if that's on the incident report 23 or not. 24 Q Now, let's talk about the bridge at the 25 fourth hole of The Ocean Course. What is it made out

13 (Pages 46 to 49)

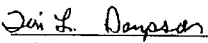
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EXHIBIT

C

	Page 70	
1	or alcohol dependency issues?	
2	A No.	
3	Q Have you ever had to seek treatment for any	
4	psychological or psychiatric issues?	
5	A No.	
6	MR. MCCOOL: That's all the questions I have.	
7	I appreciate it. Thank you.	
8	EXAMINATION	
9	BY MS. REID:	
10	Q I have a few questions. Is the bridge at	
11	Hole No. 4 flat or sloped?	
12	A Flat.	
13	Q Okay. And are portions of the greens sloped?	
14	A Yes.	
15	Q Okay. And do golfers walk on those greens?	
16	A Yes.	
17	Q Okay. And do the greens get wet in the	
18	morning?	
19	A Yes.	
20	Q Okay. And how many incidents have you had on	
21	the bridge at Hole No. 4?	
22	A To my knowledge, this is the only one.	
23	MS. REID: No further questions.	
24	MR. MCCOOL: Thank you. Have a good day.	
25	(Deposition concluded at 11:16 a.m.)	
	Page 71	
1	CERTIFICATE	
2	STATE OF SOUTH CAROLINA:	
3	COUNTY OF BERKELEY:	
4	I, TERI L. SAMPSON, Registered Professional	
5	Reporter, Notary Public and Certified Live Note	
6	Reporter, State of South Carolina at Large, certify	
7	that I was authorized to and did stenographically	
8	report the foregoing deposition; and that the	
9	transcript is a true record of the testimony given by	
10	the witness.	
11	I further certify that I am not a relative,	
12	employee, attorney or counsel of any of the parties,	
13	nor am I a relative or employee of any of the parties'	
14	attorney or counsel connected with the action, nor am I	
15	financially interested in the action.	
16	WITNESS MY HAND AND OFFICIAL SEAL this 28th day of	
17	April, 2013, in the Town of Hanahan, County of	
18	Berkeley, State of South Carolina.	
19		
20		
21		
22		
23	 Teri L. Sampson, RPR, Notary Public and Certified Live Note Reporter My commission expires:	
24		
25		

19 (Pages 70 to 71)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Joseph A. Barilotti,	)	C/A No. 2011-CP-10-09543
	)	
Plaintiff,	)	DEFENDANT'S MOTION IN LIMINE
	)	TO EXCLUDE TESTIMONY
Versus	)	REGARDING BRIDGES ON OTHER
	)	GOLF COURSES
Ocean Course Golf Club, LLC,	)	
	)	
Defendant.	)	

TO: CHRIS MCCOOL, ATTORNEY FOR PLAINTIFF:

The Defendant, Ocean Course Golf Club, LLC, (hereinafter "Defendant"), by and through its undersigned counsel, will move before the Honorable Judge Kristi Lea Harrington, for an Order in Limine to exclude testimony regarding bridges located on golf courses other than the Ocean Course.

Plaintiff, Joseph A. Barilotti, filed this premises liability action against the Defendant golf course arising out of his slip and fall accident at the Ocean Course on October 31, 2010. At that time, the Plaintiff alleges he was walking across the bridge at hole number four, which was wet with morning dew, when he slipped and fell, sustaining injuries. The Plaintiff alleges negligence and gross negligence against the Defendant. More specifically, the Plaintiff alleges that the subject bridge was unsafe and dangerous for persons wearing soft spiked golf shoes, as the Plaintiff was that morning. Further, the Plaintiff alleges that the Defendant had knowledge of the alleged dangerous condition, imposing a duty on the Defendant to warn or otherwise protect him, as an invitee.

Rule 401, South Carolina Rules of Evidence (SCRE) states, "[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less

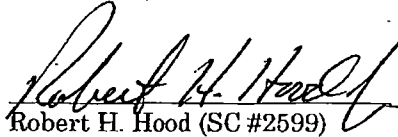
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JULIE J. ARMSTRONG
CLERK OF COURT

probable than it would be without the evidence." Further, "evidence which is not relevant is not admissible." Rule 402, SCRE. The Defendants submit that the condition of bridges on golf courses other than the Ocean Course is wholly irrelevant to the issue of whether the Defendant breached its duty owed to the Plaintiff, a golfer on the Ocean Course.

Moreover, should the Court find that the evidence is relevant to the issues in this case, the Defendant submits that the evidence should be excluded under Rule 403, SCRE, because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The evidence of the condition of bridges on golf courses other than the Ocean Course has no probative value as to whether this Defendant breached its duty to maintain the golf course in a reasonably safe condition. Also, the danger of unfair prejudice is high because the jury could view evidence of how other golf courses build and maintain their courses in different environments, and confuse it with what is required to maintain the Ocean Course in a reasonably safe manner. Introducing this evidence would only serve to mislead the jury, cause confusion of the issues, and draw unnecessary attention to a wholly unrelated matter.

WHEREFORE, the Defendant respectfully requests the Court to preclude the Plaintiff from introducing, arguing, and/or making reference to any evidence of the condition of bridges other than those located on the Ocean Course.

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Email: Info@hoodlaw.com


Robert H. Hood (SC #2599)

 James B. Hood (SC #70212)
Anne S. Reid (SC #78235)

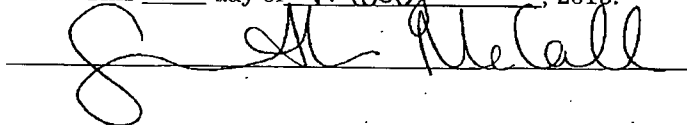
Attorneys for the Defendant
Ocean Course Golf Club, LLC

5/31, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 31 day of May, 2013.



- (j) Copies of all testing related to the expert's opinion;
 - (k) Copies of all documents which establish that the expert's opinion is generally accepted in expert's field of expertise;
 - (l) Copies of all documents indicating that the expert's opinions were subject to peer review;
 - (m) A complete copy of the expert's file for the subject action.
8. Produce copies of all statements, memoranda, reports, photographs, plats, diagrams, and materials of any type which in any way might relate to the subject action.
9. Produce copies of all documents and tangible things of whatever nature and description which Defendant intends to introduce into evidence or to use for impeachment purposes or as any type of evidence, real or demonstrative, at trial of this case.
10. Produce copies of all investigative reports, accident/incident reports, background investigations, and private investigator reports which relate to the subject incident or to any party or witness involved in the subject action.
11. Produce copies of all public records obtained by Defendant or its attorney which relate to any party, witness, or issue in the subject action.
12. Produce copies of any statute, regulation, ordinance, or other document which Defendant contends establish a legal duty or standard of care of any party in the subject action.
13. Produce a copy of Defendant's policies, procedures, and standards from October 31, 2005 to present regarding the maintenance and repair of wooden walking surfaces utilized by golfers.
14. Produce a copy of Defendant's policies, procedures, and standards from October 31, 2005 to present regarding the inspection of wooden walking surfaces utilized by golfers.

RESPONSE: Objection. The Defendant objects on grounds that this Request is overly broad and unduly burdensome. Further responding and without waiving this objection, the Defendant refers Plaintiff to the pleadings, the documents produced in discovery including but not limited to the Plaintiff's medical records and the documents labeled for production as *DEF RRFP 0002-0152*. The Defendant reserves the right to supplement this Response as discovery progresses and additional documents are obtained.

9. Produce copies of all documents and tangible things of whatever nature and description which Defendant intends to introduce into evidence or to use for impeachment purposes or as any type of evidence, real or demonstrative, at trial of this case.

RESPONSE: Objection. The Defendant objects on grounds that it is overly broad and unduly burdensome. Further responding and without waiving this objection, the Defendant has not determined which documents will be introduced into evidence at the trial of this case but the Defendant refers Plaintiff to Plaintiff's medical records and the documents labeled for production as *DEF RRFP 0002-0152*. The Defendant reserves the right to supplement this Response as discovery progresses.

10. Produce copies of all investigative reports, accident/incident reports, background investigations, and private investigator reports which relate to the subject incident or to any party or witness involved in the subject action.

RESPONSE: The Defendant refers Plaintiff to the documents labeled for production as *DEF RRFP 0002-0007*.

1 Q. And you would agree that it's important for
2 the managers and employees of the Ocean Course or who
3 work at the Ocean Course to follow those policies and
4 procedures in Exhibit No. 1; correct?

5 A. Yes, I would agree with that.

6 Q. And one of the reasons it is important for
7 the managers and employees of the Ocean Course to
8 follow the policies and procedures of Exhibit No. 1 is
9 that it promotes the safety and well-being of golfers
10 at the Ocean Course; correct?

11 A. You know, I can't answer that question
12 without going back and looking at this manual to see
13 what references there are to the safety of our guests
14 and how it's referenced in this document. In the short
15 time I've seen it, I can't tell you that it requires
16 that or has an expectation of that, so I really can't
17 answer that question.

18 Q. Have you ever read Exhibit No. 1 cover to
19 cover?

20 A. I don't recall.

21 Q. When is the last time you saw Exhibit No. 1?

22 A. I think it was maybe 2007 or 2008 was the
23 last time I saw it.

24 Q. Before Mr. Barilotti fell and was injured,
25 had you become aware of any other incidents involving

1 any wooden walking surfaces at the Ocean Course where a
2 golfer had slipped and fell?

3 A. Yes.

4 Q. Tell me about that.

5 A. There was a slip and fall on the pedestrian
6 bridge on number two at the Ocean Course.

7 Q. What was the cause of that fall on the
8 pedestrian bridge?

9 A. Dew on the bridge.

10 Q. Are there any sort of warning signs or
11 warning cones at the Ocean Course alerting golfers that
12 the wooden walking surfaces around the course may be
13 slippery when they're wet or when dew is present?

14 A. No.

15 Q. How about any of the courses at Kiawah
16 Island Golf Resort?

17 A. No.

18 Q. When did that incident on the pedestrian
19 bridge occur? Do you recall?

20 A. I don't recall. It was -- I believe it was
21 somewhere in 2008 or 2009. I'm not sure.

22 Q. And that's a wooden pedestrian bridge?

23 A. It is.

24 Q. And is the same type of wood used for the
25 bridge upon which Mr. Barilotti fell?

1 A. I have no way of knowing if it's the same
2 kind of wood.

3 Q. But both --

4 A. Both were wood.

5 Q. Both were wood?

6 Any other prior incidents that you're aware
7 of?

8 A. No.

9 Q. How about since Mr. Barilotti's fall, any
10 falls that you're aware of --

11 A. None.

12 Q. -- at the Ocean Course?

13 A. Sorry.

14 Q. Okay. Are you aware of any falls since
15 Mr. Barilotti has fallen at the Ocean Course involving
16 wooden walking surfaces?

17 A. No.

18 Q. How about at any of the other courses at
19 Kiawah Island Golf Resort; before Mr. Barilotti fell,
20 are you aware of any falls on wooden walking surfaces?

21 A. No.

22 Q. How about after Mr. Barilotti fell,
23 considering all the other courses, any other falls that
24 you're aware of involving wooden walking surfaces?

25 A. No.

JOSEPH BARILOTTI,)
)
Plaintiff,) TRANSCRIPT OF RECORD
)
-vs-) June 3, 2013
)
OCEAN COURSE GOLF CLUB, LLC,) Charleston, South Carolina
)
Defendant.)

The Honorable Kristi Lea Harrington, Judge, and a Jury.

Christopher Joseph McCool, Esquire
Melissa Fried, Esquire
Attorneys for the Plaintiff

James B. Hood, Esquire
Anne S. Reid, Esquire
Attorneys for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 start in the morning? What is your preference?

2 MR. McCOOL: We would like to get started
3 today because one of their witnesses is going to be
4 unavailable the rest of the week, so I was just going to
5 call him in my case.

6 MR. HOOD: We would like to get started as
7 soon as possible.

8 THE COURT: Well, I'm going to let them go to
9 lunch, so I'll have them back at 2:00. Will that give
10 y'all sufficient time and time to get the witness on and
11 off; is that correct?

12 MR. McCOOL: Yes, Your Honor.

13 THE COURT: We just need -- I have one
14 pretrial matter; is that correct, concerning the bridges
15 and other courses?

16 MR. HOOD: That's right, Your Honor. We had
17 a pending motion for summary judgment as well.

18 THE COURT: We're set for trial, so I'm not
19 going to address your motion for summary judgment unless
20 there is some reason I need to do that. Just if you want
21 to save the time and judicial economy -- my assumption is
22 if you're here, there is a scintilla of evidence,
23 correct?

24 MR. HOOD: I don't believe that there is, but
25 I respect -- I understand your position, Your Honor.

1 THE COURT: What is your position as to
2 excluding the testimony regarding bridges on other golf
3 courses? These are not other bridges, bridges on other
4 golf courses, correct?

5 MR. HOOD: That's right, Your Honor. There
6 was some testimony in the plaintiff's deposition where he
7 alluded to playing on some other golf courses that he
8 commented on the condition of those bridges, and I don't
9 think that that would be appropriate to determine whether
10 our bridge has a problem with it or not.

11 THE COURT: Mr. McCool, I would agree that it
12 would not be relevant. Is there some reason otherwise --

13 MR. MCCOOL: We going to consent to that
14 motion.

15 MR. HOOD: One issue came up in deposition
16 Friday that was in their opposition papers had to do with
17 a slip on a footbridge at the number two hole on the same
18 golf course, the Ocean Course, and that came up in Mr. --
19 not Young, but Roger Warren's testimony.

20 THE COURT: If I ever now call you Mr. Young,
21 you'll know why.

22 MR. HOOD: And I don't know that's
23 necessarily something we need to deal with before the
24 witnesses are called or what, but that was an issue that
25 had resulted in a fall that resulted in a lawsuit.

1 I tried it in front of Judge Dennis. We got
2 a directed verdict in that case, and in their opposition
3 papers, they did the motion for summary judgment. They
4 argued that that somehow created notice of a condition,
5 and to the extent that's going to be offered for that
6 reason, then we would have a problem with that and we
7 would like to deal with it before it comes in, because --

8 THE COURT: Do you plan on using --

9 MR. McCOOL: Yes, Your Honor. There would be
10 testimony regarding that.

11 THE COURT: Did it happen before or after?

12 MR. McCOOL: Before.

13 THE COURT: All right. Do you plan to use
14 that -- do you plan to make a reference to that in your
15 opening?

16 MR. McCOOL: No.

17 THE COURT: All right. Just when it becomes
18 an issue. How about the first witness that you plan to
19 call?

20 MR. McCOOL: Will not be.

21 THE COURT: Okay. Thank you. Let's bring in
22 the jury.

23 (In open court, jury present.)

24 MR. McCOOL: Your Honor, there was one issue
25 also of photographs that were identified as Defendant's

1 exhibits. They weren't produced -- they were produced at
2 the end of the day Friday after the completion of the
3 last deposition, and then this morning there was
4 additional photographs provided to me that weren't ever
5 produced until this morning, and I would object to those
6 photographs being utilized at trial.

7 THE COURT: All right. Mr. Hood?

8 MR. HOOD: The photographs -- there were
9 three photographs were produced Friday that I told
10 counsel that I don't intend to use, and if I intend to
11 use it, I'll bring it to the Court's attention, and we
12 can deal with it at that time.

13 The other photographs he's alluded to I've
14 marked for demonstrative reasons. They're Google Earth
15 images to give the jury an orientation to where hole four
16 is. You can't see the bridge in particular from there,
17 and if I may, I'll show you the exhibits.

18 THE COURT: I just need to bring the jury in.
19 All right? Sounds like that's an issue that has already
20 resolved itself, okay, so any attempts to use them,
21 please let me know, and we'll proceed appropriately.

22 (In open court, jury present.)

23 THE COURT: Thank you. Please be seated.

24 Ms. Oliver, you have been selected as the
25 foreperson in this case. Mr. Blandford, please have a

1 seat. Thank you. You are my alternate, Mr. Blandford.
2 Ms. Oliver, you are the jury spokesperson here in court.
3 You're also responsible for writing the verdict, but I'm
4 going to give you further instructions regarding that
5 matter later.

6 Ladies and gentlemen: If at any time you
7 need any additional breaks or have any questions or
8 concerns, if you will let your foreperson know and she
9 will alert the bailiffs and we'll handle that matter
10 immediately. That is your assigned seat, Ms. Oliver,
11 and, Mr. Blandford, that is your assigned seat. The rest
12 of you may sit wherever.

13 You may have noticed when you left the
14 courtroom and then when you returned the attorneys and
15 the parties involved in this case and the members of the
16 audience are standing. This is out of respect to your
17 new position of judges of the facts, so please come in,
18 have a seat quickly because they will remain standing
19 until all 13 of you are seated.

20 Ladies and gentlemen: We are going to take
21 our lunch break at this time. Please remember these are
22 my general admonitions to you, and you will need to
23 follow these throughout the progress of this trial. You
24 may not do any independent investigation regarding this
25 matter, either alone or as a group. You may not do any

1 independent investigation, use anything like Google Earth
2 to search any of the places that we've discussed, you may
3 not go to the scene where any of the incidents are
4 alleged to have taken place.

5 Most importantly, you may not discuss this
6 matter with anyone. That includes your fellow jurors,
7 your friends, your family members, or anyone else.
8 Ladies and gentlemen: Remember, this includes
9 face-to-face discussions, but it also includes
10 communications such as texting, blogging, tweeting,
11 anything of that nature. You may not make any entry on
12 Facebook or anything of that nature regarding this case
13 until I tell you you are at liberty to discuss this case.

14 So, ladies and gentlemen, we're going to
15 break for lunch, so you may not do any of those things
16 that I said you cannot do, so you can't investigate this
17 matter on your own. You can't discuss this case with
18 anyone. I'll give you further instructions about when
19 you can and can't do that later.

20 Please be back in the jury room. We'll begin
21 approximately at 2 p.m. Please remember we can't start
22 until all 13 of you are here, so please be respectful of
23 your other jurors' time. Please have a wonderful lunch.

24 Please rise for the jury.

25 (Recess taken.)

1 (In open court, jury not present.)

2 THE COURT: Thank you. Any motions or
3 matter?

4 MR. HOOD: No, ma'am.

5 THE COURT: All right. Please be there a
6 little before 2:00. If we have anything, we'll try to
7 address it at that time. Thank you.

8 (Recess taken.)

9 A F T E R N O O N S E S S I O N .

10 (In open court, jury not present.)

11 THE COURT: Anything before we bring in the
12 jury?

13 MR. McCOOL: Very quickly, I just wanted to
14 inform the Court the plaintiff will not be seeking claims
15 for lost wages either past or future, and also will not
16 be seeking the claim for loss of earning capacity.

17 THE COURT: Anything else?

18 MR. McCOOL: Nothing else, Your Honor.

19 THE COURT: Anything before we bring in the
20 jury?

21 MR. HOOD: Sounds good.

22 THE COURT: All right. Thank you.

23 (In open court, jury present.)

24 THE COURT: Please be seated. Good
25 afternoon. I hope everyone had a wonderful lunch.

1 We have passed out notepads, which means you
2 may take notes throughout the process of this trial.
3 Please remember some of us were much better note-takers
4 in school than others. Those are your notes. One
5 juror's notes are no more correct or accurate than
6 another juror's notes.

7 You will be allowed to take notebooks with
8 you during your deliberations. We will collect the
9 notepads during breaks and at the evening hours, lock
10 them up and then hand them back out.

11 Was there any juror who was unable to comply
12 with my instructions for whatever reason? If you
13 violated Court's instructions over the lunch hour, please
14 stand at this time. Thank you. All 13 jurors complied
15 with Court's instructions.

16 Ladies and gentlemen, I need you to now
17 stand. We will be administering an oath specific to this
18 trial.

19 (Jury duly sworn.)

20 THE COURT: What I now say is meant to serve
21 as an introduction to this case. These remarks are not a
22 charge on the law. I will instruct you on the law
23 applicable to this case throughout the trial and at the
24 end of trial, before you retire to consider this case. I
25 just wanted to take this opportunity to explain the

1 procedure so you'll better able understand what is
2 happening before you.

3 You have been selected as fair and impartial
4 jurors in this case. Your purpose is to find and
5 determine the facts. You are the sole judges of the
6 facts in this case. If at any time I make any comment
7 regarding the facts in this case you must disregard it.

8 You are to determine the facts from the
9 testimony you hear and any other evidence that is
10 presented. You should not be influenced by any opinions
11 or statements you may have heard outside of this
12 courtroom. It is especially important that you determine
13 the facts diligently and conscientiously because
14 ordinarily there is no way to correct an erroneous
15 determination of facts by the jury.

16 When you comply with your oath to impartially
17 determine the facts of this case, you will have fulfilled
18 your duty as jurors, and no one will have the right to
19 criticize your verdict. On the other hand, and with
20 equal emphasis, the same law that makes you the judges of
21 the facts makes me the judge of the law.

22 The law as given by this Court is the only
23 law that you may consider. You must accept it and follow
24 it even though you may disagree with it. I cannot tell
25 you what I think the facts are, and you cannot disagree

1 with me about what the law is or what the law ought to
2 be.

3 Your job is to take the law as I give it to
4 you, apply it to the facts as you find them from the
5 testimony of the witnesses and any other evidence that is
6 presented. After doing that, you will render your
7 verdict, a true and just verdict, under the solemn oath
8 that you just took as jurors. Until I advise you to
9 begin your deliberations, you must not discuss this case
10 with anyone. As I indicated to you earlier, that
11 includes your friends, your fellow jurors, family
12 members, or anyone else. Please remember that includes
13 face to face discussions as well as any electronic form
14 of communication.

15 During the trial you may not read, watch, or
16 listen to any news accounting regarding this case should
17 there be any, and you may not do any independent
18 investigation. In just a moment, the attorney for the
19 plaintiff will make what is called an opening statement.
20 The attorney will explain to you the issues in this case
21 or at least what the attorney thinks the issues are.

22 The attorney for defendant will also make an
23 opening statement. What the attorneys tell you during
24 their opening statements is not to be considered evidence
25 in this case. It is only their contention as to what the

1 evidence will show. The evidence in this case will be
2 presented to you by the testimony of sworn witnesses from
3 the witness stand as well as the exhibits that will be
4 made part of the record in this case.

5 From time to time you may hear one of the
6 attorneys say, Your Honor, we have a question of law, a
7 matter of law. I might find it necessary to excuse you
8 for a short while. If I have the attorneys approach the
9 bench, please do not try to read our lips to overhear us.
10 Please don't think we are trying to hide anything from
11 you. The reason for this is sometimes it is necessary
12 for me to make a comment regarding the facts of this case
13 in order for me to issue a ruling on the law, and so
14 because the law does not allow me to have an opinion
15 about the facts in this case, I may excuse you for a
16 short while so that I may issue my ruling on the law.

17 In determining what the true facts are in
18 this case, you must decide whether or not the testimony
19 of the witnesses is believable. It is my responsibility
20 to rule as a matter of law whether certain testimony is
21 admissible at all, but once the testimony is admitted,
22 whether or not you believe it is solely for you to
23 determine.

24 In deciding whether to believe a witness, you
25 have the right to consider whether a witness has an

1 interest in the outcome of the trial, whether the witness
2 is prejudiced toward either the plaintiff or the
3 defendant, the opportunity for that witness to have seen
4 the matters and things about which the witness may
5 testify, as well as the way the witness acts on the
6 witness stand.

7 You have a right to consider anything that is
8 in the record that will help you evaluate the testimony
9 of those witnesses. That means it is your duty to pay
10 close attention to the witnesses, to observe the
11 witnesses, to listen to the witnesses, to pay close
12 attention to the attorneys and to the Court.

13 Do not let your thoughts wander. Pay strict
14 attention so at the end of the trial you will be able to
15 determine what the true facts are, apply the law to those
16 facts, and render a true and just verdict.

17 Ladies and gentlemen: Please give your
18 attention to Mr. McCool.

19 MR. MCCOOL: Thank you, Your Honor. May it
20 please the Court: Good afternoon. I introduced myself
21 earlier this morning. I'm Chris McCool, and I'm an
22 attorney at the Joye Law Firm in Charleston. And you're
23 here as a jury, and you may be asking yourself what is a
24 jury? And you probably have made some conclusions and
25 come to some conclusions already regarding what is a

1 jury?

2 We do know that a jury is not a casual
3 gathering of lifelong friends. We also know that a jury
4 is not a voluntary process. You were told to come to
5 court this morning and you arrived in court this morning
6 and now you are selected as a juror.

7 We also know that your duties and
8 responsibilities as a juror individually and as a juror
9 collectively are not to be taken lightly. Judge
10 Jefferson this morning, when she was speaking to you
11 during the process, the selection process on the second
12 floor, she alluded to this, and that is that a juror and
13 a jury is not expected to bring any special skills or
14 expertise to doing this job.

15 The beauty of our litigation system is that
16 each of your everyday experiences makes you just as
17 qualified to sit on this jury as any other American
18 citizen. So what is a jury? A jury is a power. As part
19 of a jury, you are one of the most powerful groups that a
20 citizen can ever be a part of.

21 Think about that. A jury is one of the most
22 powerful groups that a citizen can be a part of. When
23 you vote in a national election, such as last year's
24 presidential election, your vote is one of tens of
25 millions. When you have an issue to decided at your

1 church or some other civic organization, your vote, your
2 voice, is one of maybe 100, 150, but here today, and
3 throughout the conclusion of this trial, your voice is
4 one of 12. That's very powerful, and it's by design in
5 our constitution of the United States.

6 In trials like this, you, the jury, make your
7 decision on the basis of whether my side, the plaintiff's
8 side, is more likely right than wrong. As Judge
9 Harrington will instruct you at the end of the case when
10 all the evidence is presented, you'll be required to make
11 all of your decisions on the basis of whether my side is
12 more likely right than wrong, and we expect to show far
13 more than that, but if there's an issue, if there's a
14 question or a fact and we show that we're more likely
15 right than wrong on that issue of fact, or question, it
16 is your duty and your obligation to find in our favor on
17 that issue, question, and fact.

18 Mr. Hood and Ms. REID, they agree you have to
19 base all your decisions on whether our side is more
20 likely right than wrong, and that is what is known as the
21 burden of proof. And at the end of the trial, Judge
22 Harrington will tell you that the more likely right than
23 wrong standard is tipping the scales of justice ever so
24 slightly and that that is the law of the case.

25 You, as the jury, you have certain rights.

1 You have the right to hear all the testimony so if
2 something happens where you can't hear that testimony,
3 speak up and say, Your Honor, you know, we can't hear it.
4 And, more importantly, or just as importantly, you have
5 the right to understand the law. At the end of the case,
6 Judge Harrington will give you the law to be applied to
7 the facts to the case that comes out through the
8 testimony.

9 You have the right to know that each and
10 every juror clearly understands the law, and you have the
11 right to know and expect of each other to apply the law
12 to the facts of the case.

13 So at the end of the case during
14 deliberations, if you don't understand the law, you can
15 ask for clarification of the law, but the law must be
16 applied to the facts in the case. That's one of your
17 obligations, one of your duties, and it comes with the
18 power of being a juror.

19 In society, there are rules we must follow,
20 and when we don't follow those rules, there are
21 consequences. When a corporation owns and operates a
22 golf course, it is inviting persons. It is inviting the
23 public to come to the course and be a patron or a guest
24 and play a round of golf.

25 When a corporation owns and operates a golf

1 course, the rule is that the corporation must not create
2 or oversee a dangerous condition, or unsafe condition,
3 that jeopardizes the safety and wellbeing of a person
4 playing a round of golf. The corporation must conduct
5 its business activities in a safe manner.

6 Now, how does a corporation act? It acts
7 through its employees, the people who conduct its
8 business, so the corporation, through its employees, must
9 not allow a dangerous condition to be created, or, if
10 there is one that is created, they must not allow it to
11 exist. They must take steps to correct it. They must
12 take steps to properly warn about it. That's the duty
13 and obligation when you invite people to come play a
14 round of golf.

15 If somebody is hurt because of a condition,
16 there are consequences that the owners and operators of
17 the golf course must face. If there is an unsafe or
18 dangerous condition and somebody is injured, there are
19 consequence. That's one of the rules of society, and
20 that's the rule that we have in lawsuits as well.

21 Now, let me tell you what happened in this
22 case. On the morning of October 31st, 2010,
23 Mr. Barilotti and a group of his friends and business
24 associates were playing the Ocean Course golf course at
25 Kiawah Island. They were playing one of the first rounds

1 of the morning that day. Mr. Barilotti -- he is now 61
2 years old. He's from Pennsylvania, and he and the
3 president of the company he works for who owns a home on
4 Kiawah Island, they came to Kiawah with business
5 associates as part of the business-type meeting. And as
6 Mr. Barilotti and his group were playing the round that
7 morning, unfortunately the round of golf did not turn out
8 well for Mr. Barilotti.

9 As he was walking across a wooden bridge, an
10 unpainted bridge on the fourth hole of the course, he
11 slipped and fell. The bridge was wet with morning dew,
12 which made the bridge slippery. The employees, who
13 you'll hear from in this trial, the employees of the
14 corporation who owned and operated the golf course, they
15 will tell you during the trial that the bridge, when wet
16 with dew, is slippery.

17 We'll also hear testimony from various
18 employees that there's another bridge at the same golf
19 course, at the second hole, made of wood, just like the
20 wood of the bridge where Mr. Barilotti fell, but there is
21 a black mat put down on that hole, and the purpose of
22 that black mat --

23 MS. REID: Objection.

24 THE COURT: You may approach.

25 (Discussion held at sidebar.)

1 MR. McCOOL: I wasn't going to talk about
2 that. I was talking about the --

3 THE COURT: Not this bridge.

4 MR. McCOOL: There is not a black mat on this
5 bridge.

6 THE COURT: But there is a black mat on some
7 other bridge.

8 MR. McCOOL: On the same course.

9 THE COURT: Where there was a previous fall?

10 MR. McCOOL: I don't know.

11 MR. HOOD: I specifically said there was
12 another bridge referred to where we got a directed
13 verdict.

14 THE COURT: All right.

15 MR. McCOOL: I'm talking about a bridge at
16 the same course. The motion was not to talk about any
17 other bridges on any other courses.

18 MR. HOOD: That was what the motion said, and
19 then we had this issue. On Friday another issue came up,
20 discussion of what the issue was. My understanding was
21 we weren't going to deal with this.

22 MR. McCOOL: I'm not talking about --

23 MR. HOOD: The other bridge, it's a whole
24 different situation. So it's not the same type of bridge
25 we're talking about. Similar.

1 MR. McCOOL: I'm not talking about a bridge
2 on the same course. There was a black mat that provides
3 traction on the bridges.

4 THE COURT: There is a whole host of issues.

5 MR. HOOD: I can't respond to this without
6 getting into the whole problem.

7 THE COURT: Okay. How much more are you
8 going to talk about the mat?

9 MR. McCOOL: Ten seconds. I was going to say
10 there is a mat that provides traction, and I was going to
11 move on. I wasn't going to talk about any fall or
12 anything like that.

13 THE COURT: Mr. Hood?

14 MR. HOOD: What I'd like to do is just let
15 him finish so we can go ahead.

16 THE COURT: All right.

17 (End of sidebar.)

18 Ladies and gentlemen: Please remember, as I
19 instructed you in my opening, that what is contained in
20 opening statements is not to be considered evidence. It
21 is merely the contention as to what the parties believe
22 the evidence will show.

23 Mr. McCool?

24 MR. McCOOL: Thank you, Your Honor, and with
25 respect to the mat on the other bridge, you'll hear

1 testimony from the employees that the purpose of that mat
2 is to provide traction for golfers walking across that
3 bridge.

4 Now, in addition to the bridge being wet with
5 dew at the time Mr. Barilotti was walking across it,
6 you'll also hear from witnesses at the golf course that
7 there was sand on the bridge at the time Mr. Barilotti
8 fell and that the sand decreased the traction on the
9 bridge making it more prone for someone to slip and be
10 injured.

11 Now, Mr. Barilotti, you'll hear from him, and
12 he will tell you about that walk on the bridge, and he
13 will tell you about his actions as he was falling, how he
14 reached for a handrail to stop his fall, but no handrail
15 was present. He was not able to stop himself from
16 falling. He fell to the ground during that fall, and
17 unfortunately he broke his ankle, his right ankle, and as
18 I mentioned, you'll hear from several witnesses in the
19 date, they'll include Mr. Barilotti, and he'll tell you
20 about all this after he fell, the medical treatment he
21 had to receive, how he had to have surgery on his ankle
22 and two pins had to be put in because of the nature and
23 severity of the fracture, and he'll also tell you about
24 the second surgery to remove those screws.

25 He'll tell you how that fracture, which

1 happened in October of 2010, affects him to this day. He
2 can always tell, morning, noon, and night, that he broke
3 his ankle. It's painful. It's a source of discomfort,
4 and it's altered and modified his lifestyle.

5 You'll hear from various employees of the
6 golf course, Yvonne Johnstone, head of safety and safety;
7 Brian Gerard, the director of golf; Steven Cipolla, who
8 was the caddy that day; and other individuals who have
9 knowledge and information about how the golf course is to
10 be maintained, how it's supposed to be presented to
11 golfers so that they're not injured while they're playing
12 a round of golf. They'll tell you about the standards of
13 safety owed to guests and patrons.

14 The bottom line with respect to that standard
15 is that it is never permissible at any time to jeopardize
16 the safety and wellbeing of a guest on a golf course, and
17 that's what the employees will tell you.

18 There is a defendant in this lawsuit, and
19 that's the Ocean Course Golf Club LLC. This is the
20 corporation that owns and operates the Ocean Course where
21 Mr. Barilotti fell. It is the defendant in this lawsuit
22 because it did not act in a way that looked out for the
23 safety and wellbeing of Mr. Barilotti. It is the
24 defendant because they did not satisfy the obligations
25 and duties a golf course owner operator owes to

1 Mr. Barilotti. The Ocean Course Golf Club, LLC did not
2 follow the rules.

3 Now in lawsuits like this, the plaintiff
4 seeks damages, and at the end of the trial, Judge
5 Harrington will discuss with you the type of damages that
6 are recoverable under the cause of South Carolina. These
7 damages include medical bills that Mr. Barilotti,
8 sustained and they'll tell that you those bills were
9 25,034.05. In other damages that are recoverable under
10 South Carolina law are pain and suffering, and
11 Mr. Barilotti will tell you about that.

12 He'll tell you about the loss of enjoyment of
13 life and how this injury, to this day, has modified the
14 things that he likes to do and that it's a source, every
15 day, of pain and discomfort.

16 The law of South Carolina also says that
17 recovery in a lawsuit is a monetary recovery. If we can
18 turn back time, that's what we would all do when
19 something bad happens, but the law recognizes we can't
20 turn back time, so the law states that the recovery is a
21 monetary recovery. There is no magic potion to undo a
22 wrong.

23 When you violate the rule and when you
24 violate a rule, the law in South Carolina says that the
25 injured person is awarded monetary damages, and that is

1 what Mr. Barilotti is seeking in this trial, for those
2 damages that I talked about earlier, the medical bills,
3 pain and suffering, modification of lifestyle, loss of
4 enjoyment of life.

5 You, the jury, will make your decision on the
6 basis of whether my side is more likely right than wrong.
7 Listen to what Mr. Barilotti tells you. Listen to what
8 the employees of the golf course say. Listen to what the
9 corporation is required to provide the guests from a
10 safety standpoint and how the corporation failed to meet
11 those requirements.

12 The defendant jeopardized the safety and
13 wellbeing of Mr. Barilotti. The defendant broke the
14 rules, and now it must pay the consequences. The
15 corporation is not above the law.

16 When all the evidence is presented, because
17 we will have shown that we're more likely right than
18 wrong, you'll be required by law to find in our favor, to
19 find in Mr. Barilotti's favor, and award monetary damages
20 to him, more likely right than wrong.

21 Thank you.

22 THE COURT: Ms. REID?

23 MS. REID: May it please the Court, Madame
24 foreperson, ladies and gentlemen: We are here today to
25 talk about an accident. Accidents, by definition, are

1 unpredictable and unintentional. Accidents happen all of
2 the time. Just because somebody has an accident does not
3 mean that someone else is responsible.

4 In this case, you are going to hear about the
5 accident that the plaintiff sustained on the Ocean Course
6 on October 31, 2010. The plaintiff was walking across a
7 flat, wooden bridge when he slipped and fell.
8 Unfortunately, the plaintiff was injured in this accident
9 and has subsequently brought this lawsuit.

10 Now, the plaintiff will have you believe that
11 the Ocean Course is somehow responsible for this
12 accident; however, this just simply is not the case. The
13 plaintiff accidentally slipped on a wooden surface that
14 was wet with morning dew. The Ocean Course did not cause
15 the morning dew to occur, and the Ocean Course is not
16 responsible for this action.

17 Don't get me wrong. There is not a person in
18 this courtroom who wanted this accident to happen or who
19 wasn't saddened by this event, but that does not mean
20 that the Ocean Course is liable. My name is Ann REID,
21 and I'm here along with Jamie Hood to represent the Ocean
22 Course in this case. The Ocean Course is located in
23 Kiawah Island, South Carolina, right down the road from
24 here, and many of you may be familiar with the Ocean
25 Course as it was the site of 2012 PGA golf tournament.

1 It's been in operation since 1991, and since
2 then, thousands of rounds of golf have been played there.

3 For instance, in 2010, the year of the
4 plaintiff's accident, approximately 23,000 rounds of golf
5 were played there, and last year, approximately 32,000
6 rounds of golf were played there. The Ocean Course is a
7 premiere golf course that is located right here in our
8 hometown, and everywhere people from around the world
9 come here to experience what the Ocean Course has to
10 offer.

11 Now, sitting at counsel with me is Roger
12 Warren, and Roger is the president of Kiawah Island Golf
13 Course. Some you may recognize as Roger as he is
14 sometimes the guy that hands out the trophies to the many
15 golfers hosted at Kiawah this year. In this case you're
16 going to hear testimony from employees of the Ocean
17 Course about the course itself and its popularity among
18 golfers. For instance, Golf Digest has rated the Ocean
19 Course the number one golf course in the State of South
20 Carolina, and it is also ranked the number four golf
21 course in the country.

22 In addition, you're going to hear testimony
23 from these employees and the lengths that they go to
24 every day to make sure that Ocean Course is in top
25 condition. Finally, you're going to hear testimony from

1 these employees about the 2012 PGA Championship Golf
2 Tournament and how 140,000 spectators and tickets would
3 turn out and watch that tournament. Many of those
4 spectators and all of the golfers playing in that
5 tournament crossed the bridge at hole number four, and
6 there are no reported falls at the PGA.

7 In this case, the plaintiff gets to put up
8 his case first, and what that means is he gets to call
9 whatever witnesses he chooses to testify.

10 It's possible that the plaintiff could call
11 all of the Ocean Course employees in this portion of the
12 case, and if that happens, we will do everything we can
13 to fully cross-examination those witnesses at that time
14 so that you only have to hear from them once. In other
15 words, if the plaintiff calls all of our employees in his
16 portion of case, we may not call any witnesses at all.

17 Now, before I get too involved in the
18 evidence you're going to hear and the details of the
19 case, I would like to take a moment to thank you. Each
20 and every one of you have been selected to sit on this
21 jury, and each and every one of you have work and family
22 obligations, and we know that jury duty is not
23 convenient, but I sincerely want to thank you for your
24 time and commitment here this week, because without you,
25 we would not be able to resolve this lawsuit.

1 We have a system of justice here in America,
2 and that system works. That system works because of you.
3 That system works because cases are decided by you, the
4 jury. Your job here today is to be the deciders of the
5 facts, and it's your job here today to render justice.

6 Now, in this system we have in place, anybody
7 can sue anyone over anything. Just because someone has
8 to come to court to defend themselves does not mean that
9 they have done something wrong.

10 Rather, those people come to court to stand
11 tall and defend themselves against the allegations
12 brought against them. The Ocean Course and Roger Warren
13 are here today to stand tall and refute the allegations
14 the plaintiff has brought against it. The Ocean Course
15 knows it did nothing wrong.

16 Now, in this system we have in place here,
17 the system places the burden of proof on the party
18 bringing the lawsuit, the plaintiff. So to be -- because
19 the plaintiff can come here and get whatever allegations
20 he wants in front of you, to be victorious, the plaintiff
21 must prove to you by the greater weight of the evidence
22 that the defendant did everything the plaintiff says it
23 did. If the plaintiff cannot do this by the greater
24 weight of the evidence, then you must render a verdict
25 for the defense.

1 In other words, the plaintiff cannot merely
2 rest on his allegations, rather, he must prove to you
3 that they are true. Now, as I said earlier, we are here
4 today to talk about the accident that occurred on October
5 31, 2010, and to be successful in this case, the
6 plaintiff must prove to you that his accident was as a
7 result of some act of negligence by the Ocean Course.
8 And then plaintiff is going to attempt to do this by
9 showing that the Ocean Course should have somehow
10 foreseen his accident and done something to prevent it.

11 However, there have been no reported slip and
12 falls on this bridge other than this one. There are two
13 portions to this case: Liability and damages, and I
14 would like to first talk to you about liability.

15 To establish liability, the plaintiff must
16 prove to you either that the Ocean Course created a
17 dangerous condition or that it knew a dangerous condition
18 existed and failed to rectify it. The evidence does not
19 support either premise.

20 The Ocean Course is inspected and prepared
21 every day before the start of play, and if any issues are
22 found, they are immediately addressed. On October 31,
23 2010, the date of plaintiff's accident, the Ocean Course
24 was inspected and prepared and no issues were found. In
25 this case, you're going to hear from the Ocean Course and

1 the plaintiff, and I would like to point out to you some
2 things that the evidence will show, and, more
3 importantly, what the evidence will not show, and I would
4 like to talk to you about some facts that are not in
5 dispute: First, it is not in dispute that the plaintiff
6 slipped and fell at hole number four on the Ocean Course.

7 Second, it is not in dispute that this bridge
8 was wet with morning dew at the time, which is a
9 naturally occurring condition, but what is in dispute is
10 the matter of liability. The wetness of the bridge that
11 day was an open and obvious condition that was readily
12 apparent to the plaintiff before he stepped foot on that
13 bridge, and everyone knows that all surfaces are more
14 slippery when they are wet.

15 Out of the thousands of rounds that are
16 played on the Ocean Course every year, there have been no
17 other reported falls on this bridge. Now, as you know,
18 golf is a recreational sport that golfers choose to
19 play in a variety of conditions. Some golfers choose to
20 play golf in the scorching sun; others choose to play
21 golf in the bitter cold; some people choose to play golf
22 in gusty wind. Some people even choose to play golf in
23 the rain.

24 Here, the plaintiff chose to play golf one
25 October morning, and like thousands of golfers before

1 him, he chose to play golf on an outside course and take
2 the natural elements as they are. Unfortunately, the
3 plaintiff had an accident as a result of one of these
4 natural elements, and he's trying to blame the Ocean
5 Course for that, but the simple fact that he had an
6 incident does not automatically mean that the Ocean
7 Course is liable.

8 Moving on to damages, even though we contest
9 that damages are warranted in this case because we don't
10 think that the Ocean Course did anything wrong, I would
11 be remiss if I didn't discuss them with you because they
12 are an issue in this case.

13 Liability, the plaintiff must prove to you
14 that the damages he is seeking are warranted. You are
15 going to hear testimony from the plaintiff about these
16 damages, and he has to establish why those damages are
17 appropriate for this case and are not due to some other
18 preexisting condition..

19 Ladies and gentlemen: You are the deciders
20 of the facts, and you weigh the evidence. You will get
21 some help from our judge on the law and the rules of
22 evidence, but it is your job to weigh the credibility of
23 the witnesses. The judge will charge you on the standard
24 that applies for landowners in keeping appropriate
25 environment for their guests, and that standard is

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1 reasonableness. Do not be misled by questions that
2 insinuate a standard higher than reasonableness.

3 In considering this case, I ask you to bring
4 your real world experiences and your everyday common
5 sense in determining what sense in this case. Bring
6 those experiences in determining whether it makes sense
7 for the plaintiff to blame the Ocean Course for an
8 accidental slip and fall on a bridge wet with morning
9 dew. Bring these experiences in determining whether it
10 makes sense for the plaintiff to blame anyone at all.

11 I urge you to pay close attention to the
12 testimony given and the evidence presented, and I believe
13 that you will find the Ocean Course did not create a
14 dangerous condition and it did not cause the plaintiff's
15 fall, and for those reasons, I ask that you render a
16 verdict for the defense.

17 Thank you.

18 THE COURT: Call your first witness.

19 MR. MCCOOL: Thank you, Your Honor, at this
20 time, the plaintiff calls Mr. Stephen Youngner.

21 STEPHEN YOUNGNER,

22 having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MCCOOL:

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1 Q. I'm going to be asking you questions about your
2 employment at the golf course, what you do day in and day
3 out, and also about Mr. Barilotti's fall, and it's my
4 understanding you're the head professional at the Ocean
5 Course, is that right?

6 A. That's correct.

7 Q. And before you became the head professional, were
8 you hired in some capacity at Kiawah Golf Resort in 1996;
9 is that correct?

10 A. That's correct.

11 Q. And with respect to the head golf professional at
12 the course, that's been in place since the fall of 2006,
13 correct?

14 A. That's correct.

15 Q. And your rate of pay is \$76,000 per year plus
16 bonus?

17 MS. REID: Objection. Relevance.

18 THE COURT: Your objection is sustained.

19 Please strike that last response from your notes if you
20 wrote that down. Thank you.

21 BY MR. MCCOOL:

22 Q. And as the head golf pro at the Ocean Course, you
23 would agree it's never permissible to jeopardize of
24 safety of a guest at the Ocean Course?

25 A. Correct.

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1 Q. You would agree guest safety is of the utmost
2 importance at the Ocean Course, correct?

3 A. I do.

4 Q. And you would agree that the golf professionals at
5 all levels have to go to the Ocean Course because you're
6 the head golf pro and then there is assisting golf pros,
7 first assistant, and those sorts of things, correct?

8 A. That's correct.

9 Q. So you would agree that the golf professionals at
10 all levels at the Ocean Course, the maintenance personnel
11 and all others who work at the Ocean Course, that they
12 have a duty and responsibility to make sure there is a
13 safe environment for golfers on the golf course, correct?

14 A. I do.

15 Q. Now, regarding your training, you have no formal
16 training since being at Kiawah Island since -- what was
17 it, 1996?

18 A. That's correct.

19 Q. You have never received any training on how to
20 identify conditions that jeopardize the safety and
21 wellbeing of a golfer on the course, correct?

22 A. You mean formal training?

23 Q. No formal training, correct?

24 A. Specific to recognizing things on the golf course
25 that would be -- sorry. Can you repeat the question?

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1 Q. I can. You have no formal training regarding how
2 to identify conditions that jeopardize the safety and
3 wellbeing of a golfer on the course, correct?

4 A. That's correct.

5 Q. Right. And with respect to your time at the Ocean
6 Course, whether as head golf pro at the Ocean Course or
7 another capacity at another golf course, there was formal
8 training associated with your duties and responsibilities
9 during your employment, correct?

10 A. I'm sorry. Can you repeat it?

11 Q. You have gone through formal training in other
12 areas since being employed by Kiawah Island, correct?

13 A. That's correct.

14 Q. But none of that training has been with -- in the
15 area of identifying conditions that jeopardize the safety
16 and wellbeing of a golfer on the golf course, correct?

17 A. Not to that level of specificity.

18 Q. And since your employment at Kiawah, you have not
19 received any training in premises and property
20 inspections, correct?

21 A. No.

22 Q. I'm not correct, or I am correct?

23 A. You are correct.

24 Q. And you are not a member of a safety committee,
25 correct?

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1 A. I'm not.

2 Q. And since 1996, you have attended less than five
3 safety committee meetings, correct?

4 A. That's correct.

5 Q. And in terms of what was discussed at those safety
6 meetings, the topics were CPR training, the
7 defibrillator, the AED device, and hurricane
8 preparedness?

9 A. That's correct.

10 Q. In the bridge at the fourth hole where
11 Mr. Barilotti fell, you're familiar with that area,
12 correct?

13 A. I am, yes, sir.

14 Q. And that is made out of unpainted wood, correct?

15 A. That's correct.

16 Q. And on that bridge, there's no grip additive for
17 traction purposes, correct?

18 A. That's correct.

19 MR. MCCOOL: And, Your Honor, at this point,
20 may I approach?

21 THE COURT: You may.

22 (Discussion held at sidebar.)

23 BY MR. MCCOOL:

24 Q. Mr. Youngner, you as the golf pro, you're aware of
25 the Ocean Course golf course and where golfers walk and

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1 where they're guided by caddies and those sorts of
2 things, correct?

3 A. I am.

4 Q. And with respect to the hole, the bridge at hole
5 number four where Mr. Barilotti fell, you're familiar
6 with that bridge?

7 A. I am.

8 Q. And it was absolutely permissible for
9 Mr. Barilotti to walk on that bridge, correct?

10 A. It was.

11 Q. Yeah. He wasn't doing anything wrong by walking
12 on that bridge, was he?

13 A. No.

14 Q. And it's for golfers to walk on, correct?

15 A. It's for golfers to walk on and for carts as well.

16 Q. And it's the way for golfers walking the course to
17 traverse, to get to their ball, correct?

18 A. That is one route in that location. There is an
19 alternate route as well.

20 Q. And that bridge goes over a marsh, correct?

21 A. It does.

22 Q. And that marsh is, I guess what you would call,
23 some sort of hazard at the golf course, correct?

24 A. Correct, and --

25 Q. All right. And then with respect to wooden

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1 walking surfaces on the course, a wet bridge, a wet,
2 wooden bridge, is slippery; is that right?

3 A. I would say a wet bridge is slipperier than a dry
4 bridge.

5 Q. And there are measures that can be taken to
6 provide traction for a golfer as they traverse across a
7 wooden bridge, correct?

8 A. There are measures that could be taken.

9 Q. And those measures include putting down some sort
10 of decking to increase traction.

11 MS. REID: Objection. Leading.

12 THE COURT: Overruled.

13 BY MR. MCCOOL:

14 Q. Some sort of decking to increase traction,
15 correct?

16 A. I'm sorry --

17 Q. Some sort of additive, some sort of grip resistant
18 material?

19 A. That's correct.

20 Q. It could be in paint, the additive to the paint or
21 some sort of finish to the bridge, correct?

22 A. That's correct.

23 Q. And those steps are now taken with the bridge to
24 where Mr. Barilotti fell, correct?

25 A. That's correct.

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1 Q. And are you aware of any point in time where the
2 Ocean Course has utilized any sort of hovering or any
3 other sort of product to increase traction on a wooden
4 walking surface being utilized by a golfer?

5 A. I'm sorry. Could you repeat that question,
6 please.

7 Q. You've been at the Ocean Course a long time now,
8 correct?

9 A. I have.

10 Q. And are you aware of any situation where the Ocean
11 Course has put down a product on a wooden walking surface
12 used by golfers to increase the traction for the golfers?

13 A. I am.

14 Q. And what type of product was that?

15 A. There's is a mat, rubber matting on a small
16 footbridge on one of the holes of the golf course.

17 Q. And the purpose of that matting is to provide
18 traction for the golfer; is that correct?

19 A. That's correct. That bridge is different in
20 structure and nature. It's a step down bridge, and it's
21 not flat, so the golfers have to step down on to it, and
22 it's much more narrow.

23 Q. And that bridge is unfinished, it's bare wood,
24 correct?

25 A. I believe so.

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1 Q. And it's unpainted, correct?

2 A. I think so.

3 Q. And the bridge where Mr. Barilotti fell is
4 unfinished wood, unpainted wood, correct?

5 A. That is correct.

6 Q. Now, as the head golf pro, you're highly involved
7 with what happens at the Ocean Course, correct?

8 A. I am.

9 Q. And I think Ms. REID alluded to you promoted it as
10 premiere golf course?

11 A. That's correct.

12 Q. And you put literature and advertising in
13 magazines and TV and elsewhere saying, Come to the Ocean
14 Course?

15 A. That's correct.

16 Q. Play our course, correct?

17 A. Correct.

18 Q. I don't know. It's highly rated in South Carolina
19 and nationally, correct?

20 A. Correct.

21 Q. And to keep it that way, you're highly involved in
22 what is done on a day-to-day basis, or you try to be,
23 correct?

24 A. Correct.

25 Q. And in order to make the course ready for play

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1 each day, based on your oversight as the golf pro of the
2 Ocean Course, the bridges on the course should be
3 maintained every day by blowing what is like an
4 industrial leaf blower type arrangement. There is a
5 backpack version there at the Ocean Course, and there is
6 a version, I believe, on a golf cart, right, that blows
7 debris and that sort of thing? Are you familiar with
8 that?

9 A. What's the question? I'm sorry.

10 Q. Well, with respect to maintaining the course at
11 the Ocean Course, you have seen and you're familiar with
12 what is done to your course as the golf pro, correct?

13 A. I am.

14 Q. And that includes personnel using blowers, either
15 backpack versions or a version on a golf cart, correct?

16 A. That's correct.

17 Q. And part of your oversight is the bridges of the
18 Ocean Course should be maintained every day by blowing
19 debris on the bridges, correct?

20 A. That's not direct responsibility that I have in my
21 role as a professional, but that is done on a daily
22 basis.

23 Q. Should be done on a daily basis?

24 A. It should be done on a daily basis.

25 Q. And it should be done every day?

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1 A. Yes.

2 Q. And the reason it should be done every day is for
3 safety, correct?

4 A. That's part of it, and it's also for the
5 presentation and cleanliness of the overall golf course.

6 Q. And the blowing of the bridges with those air
7 blowers, it's to be done before play begins each day,
8 correct?

9 A. It is done before play each day.

10 Q. It should be done?

11 A. It should be done to not disturb the golfers or
12 other reasons.

13 Q. Because you don't want those leaf blowers and the
14 air blowers going when people are playing rounds of golf,
15 correct?

16 A. Correct.

17 Q. So it's important and highly critical that that
18 measure of getting debris and those sorts of things off
19 the bridge be done before playing begins each day,
20 correct?

21 A. That is the best time to do it.

22 Q. And one of the reasons that those leaf blowers,
23 air blowers are utilized before playing begins each day
24 is to get sand off the bridges including the -- including
25 the bridge where Mr. Barilotti fell, correct?

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1 A. That's correct.

2 Q. And the reason you want that sand removed from the
3 bridge is that it's more a safety standpoint, correct?

4 A. It's presentation, and I'm sure there's an element
5 of safety involved there as well.

6 Q. But there is a safety element and a safety
7 standpoint that it's important and critical that the
8 bridges at the golf course, including the hole, number
9 four bridge where Mr. Barilotti fell, that those leaf
10 blowers be implemented before play each day and the sand
11 be blown off those grids, correct, for safety?

12 A. For safety and presentation.

13 Q. Let me hand you what has been marked as
14 Plaintiff's Exhibit 19. And regarding Exhibit No. 19,
15 when there is an accident at the Ocean Course when
16 somebody is injured, pursuant to corporate policy and
17 procedure, there is an incident report prepared, correct?

18 A. Correct.

19 Q. And that form is prepared and maintained by the
20 corporation, pursuant to corporation policy and
21 procedure, correct?

22 A. Correct.

23 Q. And following Mr. Barilotti's fall, that
24 corporation policy and procedure was done, and an
25 incident form was prepared, correct?

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1 A. That's correct.

2 Q. And with respect to the incident form that was
3 prepared regarding Mr. Barilotti's fall and his injuries,
4 that is Plaintiff's Exhibit No. 19, correct?

5 A. It appears to be, yes.

6 MR. MCCOOL: Your Honor, at this time I move
7 to introduce Plaintiff's Exhibit 19 into evidence.

8 THE COURT: Any objection?

9 MS. REID: No objection.

10 THE COURT: Plaintiff's 19 into evidence
11 without objection.

12 (Plaintiff's Exhibit No. 19 was marked for
13 identification and admitted into evidence.)

14 BY MR. MCCOOL:

15 Q. And to Plaintiff's Exhibit 19, the page 0007. I
16 believe as part of the corporation policy and procedure
17 following the incident and accident at the Ocean Course,
18 written statements are obtained, correct?

19 A. Correct.

20 Q. And on the day that Mr. Barilotti was injured, he
21 was injured during a morning round of golf, correct?

22 A. That's correct.

23 Q. And he was injured, you know, between 8:00 and
24 9:00 time frame, correct?

25 A. That would most -- yeah. I think that's the case.

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1 Q. And the first round of golf is at 7:30 in the
2 morning, correct?

3 A. Correct. Well, the first available tee time is
4 7:30.

5 Q. First available tee time is 7:30 in the morning?

6 A. That is correct.

7 Q. Now, whether somebody takes it or not might not
8 happen, but somebody can golf as early as 7:30?

9 A. Correct.

10 Q. No earlier?

11 A. On occasion, there is an earlier tee time on that,
12 but not very often.

13 Q. Okay. And the day Mr. Barilotti was injured,
14 Steven Cipolla was his caddy, correct?

15 A. That's correct.

16 Q. And looking at Exhibit 19, page 0007, that is
17 Mr. Cipolla's written statement regarding the events that
18 occurred as he was the caddy and as Mr. Barilotti was
19 injured, correct?

20 A. Correct.

21 Q. And do you see on the written statement, this
22 official corporate incident form, where Mr. Cipolla wrote
23 that Mr. Barilotti, when he fell where the wood was both
24 wet and sandy.

25 A. I do see that.

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1 Q. And you have no basis whatsoever to dispute that
2 entry, do you?

3 A. I wasn't there.

4 Q. And Mr. Cipolla is a good caddy, still works at
5 the course, correct?

6 A. He does.

7 Q. Do you have any reason to dispute the accuracy of
8 sand being on the bridge where Mr. Barilotti fell on his
9 early morning round of golf?

10 A. The only reason I would have -- not necessarily a
11 reason to doubt actually that. I know that it also says
12 there is a down slope on that bridge in the statement,
13 and I don't believe that's the case, that the bridge is
14 actually flat.

15 Q. But it was wet and sandy.

16 A. That's what is in the reports.

17 Q. And you don't dispute that?

18 A. I wasn't there.

19 Q. But you don't dispute it?

20 A. I don't. I don't dispute it. I wasn't there.

21 Q. But you formed some level of investigation, people
22 reported to you at some point and that sort of thing,
23 correct?

24 A. I received the incident report.

25 Q. And you never raised your hand and said, Hey, I

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1 question whether it was wet and sandy? You never did
2 that, did you?

3 A. I don't recall.

4 Q. You don't recall?

5 A. No.

6 Q. And you never spoke to Mr. Barilotti after his
7 round of golf of after he was injured; is that correct?

8 A. I don't believe so.

9 Q. And you never spoke to Mr. Cipolla, the caddy to
10 Mr. Barilotti, about the incident, correct?

11 A. I don't believe so.

12 Q. And you never spoke with any members of
13 Mr. Barilotti's group that was golfing with him that day,
14 correct?

15 A. I don't think so.

16 Q. Let me hand you what has been marked as
17 Plaintiff's Exhibit No. 1, and do you know what Exhibit
18 No. 1 is?

19 A. It's the policy and procedure manual.

20 Q. The Kiawah Island Golf Resort golf operations and
21 policy and procedure manual, correct?

22 A. That's correct.

23 Q. And that policy and procedure manual, that is
24 Exhibit No. 1, that is the corporation policy of how to
25 carry out the golf operations at the golf courses,

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1 including the Ocean Courses, correct?

2 A. Correct.

3 Q. And those were implemented by the owners and
4 operators of the golf course, correct?

5 A. Correct.

6 MR. McCOOL: At this time I move to introduce
7 Plaintiff's Exhibit 1 into evidence.

8 MS. REID: No objection.

9 THE COURT: Plaintiff's 1 into evidence
10 without objection.

11 (Plaintiff's Exhibit No. 1 was marked for
12 identification and admitted into evidence.)

13 BY MR. McCOOL:

14 Q. And regarding Plaintiff's Exhibit No. 1, the
15 policies and procedures and standards in Exhibit No. 1
16 were applicable on October 31, 2010, correct?

17 A. They were.

18 Q. Now, in terms of carrying out the safety and
19 wellbeing of a person on a golf course, of a golfer on
20 the Ocean Course, it was never permissible to not follow
21 the policies and procedures in Exhibit No. 1, correct?

22 A. As relates to safety? That's correct.

23 Q. And if you would, turn to page 0010 of Exhibit No.
24 1, and do you see paragraph B, core values?

25 A. I do.

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1 Q. And under core values, there is various values
2 listed, including protection, correct?

3 A. That's correct.

4 Q. And the protection of the core values includes
5 protecting the guests of the Ocean Course, keeping them
6 safe, and looking out for the wellbeing at all times
7 while they're on the course, correct?

8 A. Correct.

9 Q. In your capacity as the head professional on the
10 Ocean Course, this incident with Mr. Barilotti was
11 reported to you, correct?

12 A. It was.

13 Q. And you reviewed the Exhibit No. 19, the incident
14 form that was prepared, correct?

15 A. I did.

16 Q. And during that process, after Mr. Barilotti's
17 fall, there was no reports and you never received any
18 reports that somebody with the Ocean Course, whether it
19 be your personnel, whether it be safety and security,
20 maintenance, anything, working there at the course in
21 those capacities, nobody ever told you that they
22 determined that Mr. Barilotti did something wrong or was
23 acting inappropriately that caused or contributed to the
24 fall, correct? There's no reports of that, right?

25 A. Could you repeat the questions?

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1 Q. Sure. In your capacity as head golf pro at the
2 Ocean Course, you learned of a fall and actually went out
3 at one point in time and looked at the bridge and that
4 sort of thing, but nobody ever reported to you or you
5 never made any determination and there was no
6 determination that Mr. Barilotti did anything wrong or
7 was acting inappropriately to cause this fall, correct?

8 A. Not that I'm aware of, no..

9 Q. And regarding the bridge at hole number four where
10 Mr. Barilotti fell, there was no signage or any sort of
11 cause of action sign alerting golfers to be careful as
12 they cross the bridge, correct?

13 A. That's correct.

14 Q. And regarding the maintenance and safety and
15 playing aspects of the Ocean Course now and in 2010, you
16 would agree with this statement, that all sidewalks,
17 walking surfaces, stairs, driveways, parking spaces, and
18 all similar areas should be kept in a proper state of
19 repair and maintained free from hazardous conditions,
20 correct?

21 A. That's correct.

22 MR. MCCOOL: Thank you. No further questions
23 at this time.

24 THE COURT: All right. You may leave your
25 notepads.

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1 We'll take about ten minutes. Please
2 remember all my admonitions. Do not begin deliberations
3 in this case.

4 Stay seated.

5 (Recess taken.)

6 THE COURT: Thank you. Be seated.

7 CROSS-EXAMINATION

8 BY MS. REID:

9 Q. Mr. Youngner, right before we took our break, you
10 were asked about golf course standards, correct?

11 A. That's correct.

12 Q. And on the date of plaintiff's accident, was the
13 bridge at hole number four maintained in a proper
14 condition?

15 A. I think so.

16 Q. And was it maintained in a safe condition?

17 MR. McCOOL: Objection, Your Honor.

18 THE COURT: What's the basis?

19 MR. McCOOL: That's a factual decision for
20 the jury. He doesn't have any -- there's been no
21 foundation --

22 THE COURT: Okay. Rephrase your question.

23 MS. REID: Okay.

24 BY MS. REID:

25 Q. Well, did you have any reason to believe that the

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1 bridge on the day of the plaintiff's accident was unsafe?

2 A. Did not.

3 Q. Okay. Did you notice or know of any problems at
4 all with the bridge?

5 A. No.

6 Q. All right. And you were also asked some questions
7 earlier about your knowledge of golfers' safety; is that
8 correct?

9 A. That's correct.

10 Q. Throughout your career in the sport of golf, have
11 you ever had to take a specific golfer safety class?

12 A. Not that I recall.

13 Q. How about the other golf courses where you worked?
14 Have you ever been required to take a golfer safety
15 class?

16 A. Not that I recall.

17 Q. But do you think you could identify potential
18 issues on the golf course that could impact a player's
19 safety?

20 A. I do.

21 Q. So, for instance, would a sinkhole on a golf
22 course present a safety issue for golfers?

23 MR. McCOOL: Objection, Your Honor. Leading.

24 THE COURT: It's cross-examination.

25 MR. McCOOL: But it's their --

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1 THE COURT: It's cross-examination.

2 Overruled.

3 THE WITNESS: I think a sinkhole would be a
4 danger, and we would report that.

5 BY MS. REID:

6 Q. Okay. And what specific training in safety did
7 you have to have to be able to identify that as a safety
8 issue?

9 A. I don't think I would need any training to
10 identify that.

11 Q. Okay. So how did you know that a sinkhole would
12 be a safety issue?

13 A. I think it's just common sense and instinctive.

14 Q. And how often do you go out on the Ocean Course?

15 A. I try to go out every day that I'm at work.

16 Q. And when you go out on the course each day, do you
17 look for potential safety issues or conditions on the
18 course?

19 A. We're looking for lots of things, and if we notice
20 something like akin to a sinkhole, that would be
21 something that we would report to the superintendent or,
22 you know, depending on the situation, the appropriate
23 person.

24 Q. Okay. And what do you do when you find a
25 potential safety issue on the course? I think you said

1 that you report that to the superintendent; is that
2 correct?

3 A. Yeah. Most of the time we would, again, it would
4 key depend on the actual issue.

5 Q. What does the superintendent do for the golf
6 course?

7 A. Maintains the playing surfaces of the golf course
8 and everything that is involved with that.

9 Q. Okay. Is there any type of prep that is done to
10 the golf course each day prior to the start of play?

11 A. Yes.

12 Q. And what is that prep?

13 A. Depends on the day, but essentially they are
14 preparing the golf course for golfers to play. It
15 depends on the day of the week and the time of the year,
16 but they prepare the fairways, the greens, they'll
17 prepare sandy areas that are part of playing areas of the
18 golf course, they will move tee boxes, all of those kinds
19 of things, just in preparation of play.

20 Q. And so every day before the start of play, it's
21 fair to say that the golf course is inspected and
22 prepared?

23 A. That's correct.

24 Q. And does the -- who performs the daily prep of the
25 golf course?

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1 A. The maintenance staff.

2 Q. And does the maintenance crew address any issues
3 they find when they do the preparation of the course?

4 A. They would.

5 Q. Okay. And you were also asked some questions
6 about the bridges being blown free of debris prior to the
7 start of play each day. Is that something that the
8 maintenance crew handles?

9 A. That's correct.

10 Q. And do you consider sand to be debris?

11 A. Sand is an integral part of the golf course
12 itself. The golf course is built on a beach,
13 essentially, so sand is everywhere on the golf course.
14 It would be next to impossible to have the bridge
15 completely clear of sand, in my opinion, so I don't know
16 if I would consider sand debris or not. To me, debris is
17 larger items.

18 Q. Okay. And isn't it true that the cart paths and
19 the foot paths on the Ocean Course are composed of sand
20 and shell?

21 A. They are.

22 Q. And so it's fair to say that sand is part of the
23 natural landscape out at the Ocean Course, correct?

24 A. It is.

25 Q. And you were also asked some questions about the

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1 incident report that was created after the plaintiff's
2 accident. Do you recall those questions?

3 A. I do.

4 Q. Were you even working on the day of the
5 plaintiff's accident?

6 A. I don't think I was, no.

7 Q. So -- but you did learn about it in the normal
8 course of business, correct?

9 A. I did.

10 Q. But you don't have any personal knowledge as to
11 the events that occurred that day or what the plaintiff
12 was doing prior to this accident, correct?

13 A. I don't, just from what I've read in the incident
14 report.

15 Q. All right. And you were also asked some questions
16 about a black mat on another bridge, correct?

17 A. Correct.

18 Q. And how is this other bridge different from the
19 bridge at hole number four where the plaintiff fell?

20 A. Well, one of the primary differences is carts do
21 not use that bridge, and also that bridge is not flat to
22 the surface. You actually have to step down on to that
23 bridge, and it is -- instead of 15 feet wide, like the
24 bridge on number four, it's just probably two or three
25 feet wide at the most, and its primary purpose is for

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1 people to walk, and there are no carts on it at all.

2 Q. So is it fair to characterize it as a small
3 footbridge that is a recessed bridge that people step
4 down onto?

5 A. That's fair.

6 Q. Whereas the bridge at hole number four is a large
7 golf cart bridge; is that correct?

8 A. Correct.

9 Q. And what are the actual consequences of putting a
10 mat down on a 50 foot golf cart bridge?

11 A. It would get worn out from carts on a regular
12 basis. It could certainly get snagged. There's
13 potential for someone to catch their foot, I suppose.
14 There's lots of possibilities.

15 Q. Okay. So it's fair to say that that mat could get
16 pretty torn up by the golf carts, correct?

17 A. It could.

18 Q. And then that in itself could cause a safety
19 problem, correct?

20 A. Potentially.

21 Q. All right. And have golfers walked across the
22 bridge at hole number four when it was wet?

23 A. They have.

24 Q. And this is thousands of golfers in the thousands
25 of rounds in golf played at the Ocean Course each year,

Stephen Youngner-Redirect Examination by Mr. McCool

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1 correct?

2 A. That's correct.

3 Q. And have these golfers walked across that bridge
4 when it's sandy?

5 A. I would assume so.

6 Q. And have there been any reported falls on the
7 bring at hole number four other than the plaintiff's?

8 A. Not that I'm aware of.

9 Q. Have you had any complaints by other golfers about
10 the condition at hole number four, the bridge there?

11 A. Not that I recall.

12 MS. REID: No further questions. Thank you.

13 THE COURT: Mr. McCool?

14 MR. MCCOOL: Your Honor, I have a few
15 questions.

16 REDIRECT EXAMINATION

17 BY MR. MCCOOL:

18 Q. Mr. Youngner, how much is a round of golf at the
19 Ocean Course?

20 A. It varies depending on season and who is actually
21 playing. There are different rate categories.

22 Q. On average.

23 A. The average rate this year?

24 Q. We'll take this year.

25 A. For the entire year it is in the \$245 range, I

Stephen Youngner-Redirect Examination by Mr. McCool

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1 would say, but that is really a guess. I would have to
2 look at the numbers to be sure.

3 Q. What is the most somebody would have to pay for a
4 round of golf, like in a peak season?

5 A. \$353.

6 Q. And what is the lowest rate at the non-peak
7 season?

8 A. Well, we have special rates that we offer to
9 certain categories of people. The lowest rate would be
10 zero. We have people that play for free that are guests
11 and different reasons for that.

12 Q. That's probably not very many of the how many
13 thousands of rounds of golf each year at the Ocean
14 Course.

15 A. It's not a large amount.

16 Q. Right.

17 A. No.

18 Q. Less than 100 probably?

19 A. For the year? It's more than 100 for a year.

20 Q. But not very many out of the grand total of the
21 rounds?

22 A. Beside employees that play.

23 Q. Very small percent?

24 A. Correct.

25 Q. So what is the average low rate for somebody --

Stephen Youngner-Redirect Examination by Mr. McCool

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1 like, during the low season, a paying customer.

2 A. Well, the low rate for a non-resort guest in the
3 winter is \$250.

4 Q. Okay.

5 A. That's the most that anyone would pay.

6 Q. And that's 2012 and similar pricing in 2010?

7 A. It was less in 2010.

8 Q. But similar. A little bit lower, but similar?

9 A. Lower by some percentage.

10 Q. Right, but the high in 2012, 353, we can agree
11 that the round in 2010 was \$300 or so?

12 A. I think that's fair.

13 Q. Right, right, and going any lower than the 2012
14 \$250, it would still be north of 200?

15 A. Yes.

16 Q. How many rounds of golf were played at the Ocean
17 Course in 2010?

18 A. I think we played approximately 23,000 rounds in
19 2010.

20 Q. And in 2012, 32,000?

21 A. Last year, 32,000.

22 Q. So it's generating millions of dollars in income?

23 A. It does.

24 Q. Multimillions, correct?

25 A. That's correct.

Stephen Youngner-Redirect Examination by Mr. McCool

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1 Q. Now, Ms. REID was asking you questions about your
2 learning and identifying hazards around the course
3 regarding the safety and wellbeing of golfers?

4 A. Correct.

5 Q. Mr. Barilotti was not injured by a sinkhole, was
6 he?

7 A. No, he was not.

8 Q. Okay. And a sinkhole did not cause
9 Mr. Barilotti's fall, right?

10 A. It did not.

11 Q. And before each round of play -- excuse me.
12 Before the first round of play each day, the course is to
13 be inspected. It should be inspected, correct?

14 A. It is inspected, yes.

15 Q. And it should be.

16 A. Correct.

17 Q. And with respect to the sand that's on bridges
18 that, is blown before the play each day, correct, for
19 safety reasons?

20 A. That's correct.

21 Q. Blown off the bridge for safety.

22 A. And presentation.

23 Q. And the black mat that Ms. REID mentioned, that
24 provides traction for golfers, correct?

25 A. It does.

1 Q. It makes it so their footing is better on the
2 unpainted bare wood surface, correct?

3 A. Correct.

4 Q. And the bridge where Mr. Barilotti fell was an
5 unpainted bare wooden bridge, correct?

6 A. It is.

7 Q. And with respect to Mr. Barilotti, the bridge at
8 hole number four where he fell, pedestrians use that
9 bridge?

10 A. They do.

11 Q. Golfers, correct?

12 A. Yes.

13 Q. But it's designed and built for pedestrians?

14 A. I don't know that.

15 Q. You allow -- you as the head golf pro, you allow
16 and say it's okay for golfers to walk across the bridge
17 where Mr. Barilotti fell?

18 A. Right.

19 Q. So it's for pedestrians, it's for golf?

20 A. It's for both.

21 Q. Yes. And golf carts are not allowed on the course
22 for play until noon each day, correct?

23 A. Correct.

24 Q. So if you're playing a round of golf before noon,
25 you're not in the golf cart, and that means you will be

Stephen Youngner-Redirect Examination by Mr. McCool

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1 walking across the bridge at hole number four as you play
2 your round of golf, correct?

3 A. You will be walking over bridges.

4 Q. Yes, including hole number four where
5 Mr. Barilotti fell?

6 A. You could. There is also a way to get across that
7 without using the bridge, to be accurate, but yes.

8 Q. But golfers use that bridge, the same bridge where
9 Mr. Barilotti fell, every day, walking across it?

10 A. They do.

11 Q. And at Kiawah Island Ocean Course, they don't say,
12 Don't walk across the bridge. In fact, it's promoted as
13 and told to golfers, use that bridge where Mr. Barilotti
14 fell. Go ahead, walk over it as you play your round of
15 golf, right?

16 A. I don't know if anybody has told someone to do
17 that, but it's assumed people are going to walk over the
18 bridge.

19 Q. You know that as the head golf pro?

20 A. Absolutely.

21 Q. And people have been walking across that bridge on
22 a daily basis for years and years and years?

23 A. Since the golf course opened would be my guess.

24 Q. And because there are no carts before noon each
25 day, it's a certainty that pedestrians golfers will be

Stephen Youngner-Recross Examination by Ms. Reid

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1 walking across the bridge when Mr. Barilotti fell,
2 correct?

3 A. That's correct.

4 MR. McCOOL: That's all the questions I have.
5 Thank you.

6 THE COURT: Ms. REID?

7 RECROSS-EXAMINATION

8 BY MS. REID:

9 Q. Would a black mat be appropriate for the bridge at
10 hole number four?

11 A. I don't think it would be necessary.

12 Q. Okay.

13 A. For hole number four.

14 MS. REID: All right. No further questions.
15 Thank you.

16 THE COURT: You may step down. Thank you.
17 Call your next witness.

18 MR. McCOOL: Thank you, Your Honor.

19 THE COURT: You need to leave all that
20 material -- right there is fine. Thank you.

21 MR. McCOOL: Your Honor, at this time, we
22 call Yvonne Johnstone as our next witness.

23 YVONNE JOHNSTONE,

24 having been first duly sworn,

25 was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. McCOOL:

3 Q. Good afternoon, Ms. Johnstone. We met April 18
4 when I took your deposition. I just want to ask you some
5 questions about your employment at Kiawah Island Golf
6 Resort, what you do day in and day out and that sort of
7 thing, and get into what you may or may not know about
8 Mr. Barilotti's incident. All right? And you are the
9 director of safety and security at the resort, correct?

10 A. Yes.

11 Q. And you've been the director of safety and
12 security for seven years, correct?

13 A. Yes.

14 Q. And you are a member of a safety committee?

15 A. That's correct.

16 Q. And that safety committee of which you are a
17 member deals with the safety of employees and not the
18 safety of guests, correct?

19 A. That's correct.

20 Q. Now, regarding Exhibit No. 1 --

21 MR. McCOOL: Your Honor, may I hand this to
22 the witness, please?

23 THE COURT: You may.

24 BY MR. McCOOL:

25 Q. Exhibit No. 1, that is the policy and procedure

1 manual, correct, for the operations of -- for the golf
2 operations, correct?

3 A. Yes.

4 Q. And that's for all the golf courses out there at
5 Kiawah Island Resort; is that correct?

6 A. Yes.

7 Q. And those policies and procedures contained in
8 Exhibit No. 1 apply to the Ocean Course, correct?

9 A. That's correct.

10 Q. And you are the director of safety and security,
11 right?

12 A. Correct.

13 Q. And sounds pretty self-explanatory. As the
14 director of safety and security, your duties and
15 obligations are for the safety of guests at the resort?

16 A. That's correct.

17 Q. And the security of guests at the resort?

18 A. That is correct.

19 Q. And the first time -- I believe the first time you
20 ever saw Exhibit No. 1, Kiawah Island Golf Resort golf
21 operations policy and procedure manual, was April 18th of
22 2013 when I took your deposition?

23 A. That is correct.

24 Q. And you are the director of safety and security?

25 A. Yes.

1 Q. And you were never provided with the policy and
2 procedure manual for Kiawah Island Golf Resort golf
3 operations, correct?

4 A. That's correct.

5 Q. And this policy and procedure manual contains
6 various things, including directives and mandates and
7 policies, procedures and standards, of how to carry out
8 activities that promote the safety and wellbeing of
9 golfers at the Ocean Course, correct?

10 A. Yes.

11 Q. And when were you hired to work at the Kiawah?

12 A. In 2000.

13 Q. In 2000. And I take it you have received some
14 manuals of some type since you've been employed since
15 2000, correct?

16 A. Yes.

17 Q. But you've never been tested on the contents of
18 those policies, procedures, and standards manuals,
19 correct?

20 A. Not written tests.

21 Q. Are you saying that you took a verbal test?

22 A. I think everybody is tested at a company that has
23 standard policies and procedures manuals based on
24 performance.

25 Q. Let me show you your deposition.

Yvonne Johnstone-Direct Examination by Mr. McCool

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1 MR. McCOOL: Your Honor, this is the original
2 transcript. May I open it?

3 THE COURT: You may. Hold up one second.
4 Ladies and gentlemen, testimony is now going to be
5 presented to you by a deposition. A deposition is a
6 document containing sworn testimony given by a witness
7 outside of court in presence of lawyers for each party
8 who may ask questions of that witness. If any objections
9 were made at the deposition, I will rule on them when the
10 deposition is read. This testimony is entitled to the
11 same consideration and is to be judged as to credibility
12 and to be weighed by you in the same way as if the
13 witness were present and gave the testimony about to be
14 read to you from the witness stand. It is for you to
15 determine the effect, value, and weight and the truth of
16 the testimony given in the deposition.

17 Mr. McCool?

18 MR. McCOOL: Thank you, Your Honor.

19 BY MR. McCOOL:

20 Q. Ms. Johnstone, here is your deposition that was
21 taken on April 18, 2013.

22 MR. McCOOL: And, Your Honor, would you like
23 a copy of the deposition?

24 THE COURT: Please.

25 BY MR. McCOOL:

1 Q. I would like you to turn to page 26, line 8 of
2 your deposition.

3 A. Line eight?

4 Q. Yes. Do you see where it says, And when you were
5 hired to work at?

6 A. Yes.

7 Q. When you were hired to work at Kiawah Island Golf
8 Resort, did you have to go through any sort of testing
9 process regarding policies, procedures, standards, and
10 those sorts of things?

11 And you asked, Like taking a written test?

12 And I asked you, A written test or a verbal test.

13 And you answered, No, sir, correct?

14 A. At my hire date, that is correct. I did not have
15 to take a test.

16 Q. Now, you would agree with me that the safety of
17 the guests on the golf course or guests staying -- there
18 is a nice hotel out there at the resort, the Sanctuary
19 hotel, but you would agree with me the guests at the
20 hotel, including the Ocean Course, that their safety is
21 of the utmost importance, correct?

22 A. Yes, sir.

23 Q. And you would agree that it is never permissible
24 for any reason for the safety and wellbeing of a guest at
25 the Ocean Course to be risked at any time, correct?

Yvonne Johnstone-Direct Examination by Mr. McCool

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1 A. Yes, sir.

2 Q. Now, you've gone through some training since being
3 hired to work out at the resort, correct?

4 A. Yes.

5 Q. And you would agree that the training you have in
6 the area of inspection of premises in order to identify
7 hazards that risk the safety and wellbeing of the guests
8 at the resort is limited to fire code requirements,
9 correct?

10 A. Yes, sir.

11 Q. I'm sorry?

12 A. Yes, sir.

13 Q. And you have never received any training regarding
14 how to prevent trips, slips, and falls on a golf course,
15 correct?

16 A. That's correct. I have no golf safety player
17 training.

18 Q. And you are the director of safety and security,
19 which includes the safety and security of the entire
20 resort?

21 A. Yes, sir.

22 Q. And the Ocean Course is on the resort?

23 A. Yes, sir.

24 Q. And you would agree that a wet surface or an
25 unclear surface or a sandy surface is a hazardous

1 condition that would contribute to a fall, correct?

2 A. It could, yes.

3 Q. That it would contribute to a fall.

4 A. It could, yes. I think a wet surface, any wet
5 surface, could contribute to a fall.

6 Q. And I'm talking about a sandy surface as well.
7 That would contribute to a fall, correct?

8 A. It's possible.

9 Q. And you would agree that it is important and
10 paramount that if there was a directive in a manual that
11 an employee has received regarding how to clean up, when
12 to clean up and take measures that maintain and promote
13 guest safety and wellbeing and steps to make sure people
14 don't trip, slip, and fall, that those measures shall be
15 taken that are outlined in the manual, correct?

16 A. I believe that policy and procedures should be
17 followed to the best of the ability, but I think there is
18 gray area in everything.

19 Q. But it's critical in order to promote, because you
20 just told us that it's never permissible to jeopardize
21 the safety and wellbeing of a guest at the Ocean Course,
22 correct?

23 A. I guess in any of our properties.

24 Q. Including the Ocean Course?

25 A. Yes.

1 Q. And so it's paramount then that if there are
2 directives that promote safety and wellbeing of a guest
3 that those directives -- it's paramount that they be
4 carried out, correct?

5 A. Absolutely.

6 Q. And let me hand you what's been marked as
7 Plaintiff's Exhibit No. 19, and you're familiar with
8 Exhibit 19?

9 A. Yes, sir.

10 Q. And that's the incident report form.

11 A. Yes, sir.

12 Q. And that you as the director of safety and
13 security, basically, you oversaw the creation of Exhibit
14 No. 19?

15 A. That's correct.

16 Q. And you actually signed off on Exhibit No. 19 and
17 approved of its contents, correct?

18 A. Correct.

19 Q. Now, Steven Cipolla was the caddy when
20 Mr. Barilotti fell, correct?

21 A. Yes.

22 Q. And you never spoke with Mr. Cipolla, correct?

23 A. No, sir.

24 Q. You never did, right?

25 A. No, sir.

1 Q. I'm right or I'm wrong?

2 A. I did not speak to Mr. Cipolla.

3 Q. And regarding Mr. Cipolla's written statement,
4 which is on page 0007 of Exhibit No. 19, you have never
5 taken issue with any of the contents of Mr. Cipolla's
6 written statement, correct?

7 A. No, sir.

8 Q. You haven't?

9 A. No, I haven't.

10 Q. And that statement was provided the day
11 Mr. Barilotti fell, October 31, 2010?

12 A. Correct.

13 Q. And the bridge at hole number four where
14 Mr. Barilotti fell, there is no non-slip grip or non-slip
15 decking on that bridge, correct?

16 A. No, sir.

17 Q. I'm correct, right?

18 A. You're correct.

19 Q. And with respect to walking surfaces, you are
20 familiar with walking surfaces throughout the resort,
21 correct?

22 A. Yes.

23 Q. Might be sidewalks made of concrete, might be
24 wooden steps and those sorts of things?

25 A. I'm familiar with most walkways.

1 Q. And on most walking surfaces, there's adhesive
2 tape or some sort of nonslip grip added to paint or added
3 to the surface so that the surface is not slippery,
4 correct?

5 A. That the majority of our areas are covered with?
6 Is that what you're asking?

7 Q. That's not my question. There are areas
8 throughout the resort of, walking surfaces --

9 MR. HOOD: Your Honor, I would object to
10 walking surface. We're talking about a bridge.

11 THE COURT: This is your witness?

12 MR. HOOD: It is my witness.

13 THE COURT: All right. Sustained.

14 BY MR. MCCOOL:

15 Q. And you're familiar with the bridge at hole number
16 two at the golf course?

17 A. No, I'm not.

18 Q. But you're aware that there is a black mat --

19 A. I am today.

20 Q. Okay. And that black mat provides traction for
21 the golf course, correct?

22 MR. HOOD: Objection, Your Honor. Witness
23 lacks personal knowledge.

24 THE COURT: Sustained.

25 BY MR. MCCOOL:

Yvonne Johnstone-Direct Examination by Mr. McCool

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1 Q. And you would agree with me that if there is an
2 ability for the property, the resort, whether it be the
3 Ocean Course or elsewhere, if there is an ability to make
4 a walking surface such as the bridge where Mr. Barilotti
5 fell, if there is an ability to make that bridge have
6 traction when wet, you would agree that that's a
7 fundamental way and a fundamental procedure that can be
8 invoked to never jeopardize guest safety --

9 MR. HOOD: Objection, Your Honor --

10 THE COURT: Hold on. What is your basis?

11 MR. HOOD: He's asking for her opinion about
12 the bridge, about what was required.

13 THE COURT: Sustained.

14 BY MR. MCCOOL:

15 Q. Ms. Johnstone, if there is a way in which a
16 condition of -- you're the director of safety and
17 security. If there's a way for a condition to be
18 minimized or eliminated, you would agree that it is
19 paramount --

20 A. I think if you have --

21 MR. HOOD: I would object to the vagueness,
22 any condition, any improvement.

23 THE COURT: Overruled as to vagueness, but
24 please don't speak over each other.

25 So rephrase your question. Thank you.

Yvonne Johnstone-Cross Examination by Mr. Hood

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1 BY MR. McCOOL:

2 Q. Yes, Your Honor.

3 You would agree with me that if there is a way to
4 make a condition of, such as a slippery surface, not
5 slippery, that is paramount and important to take those
6 measures in order to promote guest safety and to never
7 jeopardize guest safety, correct?

8 A. I think if you have knowledge that there's reason
9 for something to be unsafe that you should take the
10 necessary measures.

11 Q. Thank you.

12 MR. McCOOL: That's all the questions I have.

13 THE COURT: Mr. Hood?

14 CROSS-EXAMINATION

15 BY MR. HOOD:

16 Q. Have you ever been on any courses how to prevent
17 dew from happening?

18 A. No, sir.

19 Q. Do you play golf?

20 A. No, sir.

21 Q. Are you a golfer?

22 A. No, sir.

23 Q. Are you in charge of the Ocean Course?

24 A. No, sir.

25 Q. Who is?

Yvonne Johnstone-Cross Examination by Mr. Hood

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1 A. Steven Youngner and the superintendent.

2 Q. You're the director the safety and security for
3 the Kiawah Island Golf Resort?

4 A. Yes.

5 Q. And as the director of safety, does that mean that
6 you go to the Ocean Course to see what the greens look
7 like or what the bunkers look like or the water or the
8 marsh or any of that?

9 A. No, sir.

10 Q. What about the bridges? Is that your job to
11 inspect the bridges?

12 A. No, sir.

13 Q. What is your job? Why don't you tell the jury a
14 little bit about you and what you do for a living and
15 specifically what you do at Kiawah, please.

16 A. I basically respond to guest services. We respond
17 to calls for guest service. I'm over employee safety.
18 We have close to 1,500 employees.

19 Q. How many?

20 A. 1,500. We have multiple departments. We're a 13
21 mile span island, and I cover everything that our resort
22 owns, basically.

23 Q. And if there is an incident, what do you do?

24 A. We respond to incidents.

25 Q. In this particular incident, Mr. Barilotti's fall,

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1 was that something you responded to?

2 A. No, sir, I did not.

3 Q. You mean you didn't even respond?

4 A. No, sir. I was not working that day.

5 Q. Oh, you weren't working?

6 A. No, sir. My team did.

7 Q. And who was that from your team that responded?

8 A. Dwight Lane.

9 Q. Mr. Lane?

10 A. Yes, sir.

11 Q. And he was the one that responded to the call to
12 security that there had been an incident?

13 A. Yes, sir.

14 Q. And is that what the other departments and other
15 groups at Kiawah are instructed to do in the event there
16 is an incident, to call security?

17 A. Yes, sir.

18 Q. And what then does security do?

19 A. We typically respond, and if it's a medical type
20 call, then we would supply first aid. We would do an
21 incident report, call 911; basically make sure the guest
22 is taken care of and has the proper medical treatment.

23 Q. Do you know if that's, in fact, what Mr. Lane did
24 in this?

25 A. Yes, sir.

1 Q. And was medical help summoned?

2 A. Yes.

3 Q. And did an ambulance come?

4 A. Yes, sir.

5 Q. How long have you been working out at Kiawah?

6 A. Since 2000.

7 Q. Since 2000, what have you done there?

8 A. I'm sorry, sir?

9 Q. What have you done there? What positions have you
10 held?

11 A. I was basically a security agent, which is the
12 first position that you would have, and I was promoted to
13 lead agent, which usually means you're the most senior
14 person on duty. Then I was the assistant director, and
15 then I became the security director.

16 Q. Now, you mentioned a safety committee. Tell the
17 jury a little bit about the safety committee that's now
18 been referenced so we get an understanding of what that
19 is, and what role does it play at Kiawah?

20 A. Our safety committee, we promote basically
21 employee safety and employee wellness, and we cover
22 everything from what our policies are to hurricane
23 evacuation to what employees should do personally if
24 there was an evacuation. We promote basically safety in
25 the workplace. A lot of the employees are involved in

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1 safety audits for different areas.

2 Basically every department or area sends a
3 representative, and it's their responsibility to talk
4 about what we discussed in safety committee meetings back
5 to the department that they work in.

6 Q. Does that safety committee ever talk about golfer
7 safety as they're approaching the bridge at number four
8 on the Ocean Course?

9 A. No, sir.

10 Q. Is content ever that specific get covered like
11 that?

12 A. No, sir. We do not cover guest accidents. It's
13 strictly an employee committee.

14 Q. So as it relates to the work, the issues in this
15 case, safety committee doesn't have any bearing on what
16 happened?

17 A. No, sir.

18 Q. All right. Now, let's talk then, if we can, about
19 the Ocean Course itself. You were asked some questions
20 about bridges, other structures at the Ocean Course. Are
21 you personally familiar with the Ocean Course itself and
22 the layout?

23 A. I have general knowledge.

24 Q. And your general knowledge, does that get beyond
25 your driving through it from time to time, or do you know

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1 the specifics about how many bunkers are on hole six?

2 A. No, sir, I don't. I can tell you that if I'm
3 facing the ocean, the first nine is to the right -- I'm
4 sorry, the first nine is to the left if I'm facing the
5 ocean, and the back nine is to the right.

6 Q. If you could take a look at Exhibit No. 19 that
7 was put in front of you earlier. Do you have that? Just
8 bear with me a second.

9 This document in front of you is entitled Kiawah
10 Island Golf Resort golf operations policy and procedure
11 manual; is that correct?

12 A. Correct.

13 Q. Are there other divisions or departments at Kiawah
14 Island that have similar policy and procedure manuals?

15 A. Each division.

16 Q. And are you in charge of the creation of this
17 document?

18 A. No, sir. That would be the training department.

19 Q. And what about the implementation and what's
20 contained in this document? Is that something you're
21 responsible for or someone else?

22 A. Someone else.

23 Q. And who would that be?

24 A. That would be the supervisors of that division.

25 Q. All right. So we can all see it. Okay. So this

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1 is page one of Plaintiff's Exhibit No. 1. If I could get
2 you to turn to page two, it contains the table of
3 contents. Do you see that?

4 A. Yes, sir.

5 Q. All right. It will just -- there we go. Now we
6 can all see it. Maybe. Okay.

7 So this manual that we've now been discussing
8 includes mission statement and goals, service standards,
9 core standards, and conditions, guest rates, guest and
10 member play, policy operations, personnel issues,
11 merchandise; all those things are contained in this,
12 right?

13 A. Yes, sir.

14 Q. Let's take a look at the mission statement and
15 goals. That's on the next page. Let's see if I can zoom
16 it in. All right.

17 Mission statement. We're committed to providing
18 our guests with caring, gracious service and traditions
19 of genuine southern hospitality.

20 Do you see that?

21 A. Yes, sir.

22 Q. And it goes on to state in the mission statement,
23 We will create an unparalleled experience in a unique and
24 natural setting that will position us as the premiere
25 resort in the world.

1 Do you see that?

2 A. Yes, sir.

3 Q. And one of those things is the natural setting of
4 the Ocean Course, correct?

5 A. Correct.

6 Q. And the natural setting of the Ocean Course is its
7 unique nature of being actually in the dunes itself?

8 A. That's correct.

9 Q. Meaning that the wind, the sand, the spray, all of
10 that is part of the natural setting, right?

11 A. Yes, sir.

12 Q. Now, the mission statement and goals continues on
13 with core values. Do you see that? The honesty and
14 respect, empowerment, anticipation, loyalty, teamwork,
15 cleanliness, protection, maintenance, and efficiency? Do
16 you see all that?

17 A. Yes, sir.

18 Q. And then the next section talks about golf goals,
19 and it talks about welcome -- guest welcome and
20 departure, maintenance, approaching guests on the sales
21 floor, policy flexibility, empowerment. Do you see all
22 that?

23 A. Yes, sir.

24 Q. And do you find these to be mission statements and
25 goals compatible with the missions and goals that you

1 understand embody the entire resort?

2 A. The mission statement and the core values are for
3 the entire Kiawah Island Golf Resort.

4 Q. Okay. Now, when we looked at page two, which
5 included the table of contents, it talked about course
6 standards and conditions, which is in section three,
7 okay? So I'll get you to flip to section three. I'm
8 sorry this is so cumbersome.

9 All right. It's on page 18 at the bottom
10 right-hand corner. Do you see that, Ms. Johnstone?

11 A. Yes, sir.

12 Q. Okay. I'm going to try to zoom it in, and then
13 we'll scroll through a little bit of the document. This
14 is talking about the golf course conditions, does it not?

15 A. Yes.

16 Q. It's talking about the greens. Do you see -- step
17 metering, do you even know what that is?

18 A. No, sir.

19 Q. Is that something that concerns you day-to-day?

20 A. No. That's pretty much foreign to me.

21 Q. All right. Moving farther up the document, it's
22 got a schedule of events for certain height, for cutting.
23 Do you see that?

24 A. Yes, sir.

25 Q. All right. And then the bottom of that same page,

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1 you see there where it says maintenance schedules?

2 A. Yes, sir.

3 Q. And then at the bottom it says clubhouse and
4 grounds conditions?

5 A. Yes, sir.

6 Q. All interior and exterior should be blown and
7 flown free of debris, trash receptacles should be emptied
8 daily and washed as necessary, bridges and walkways blown
9 and free of debris?

10 A. Yes, sir.

11 Q. Do you see that?

12 A. Yes, sir.

13 Q. Is part of your job to go and make sure this is to
14 be done on a daily basis?

15 A. No, sir.

16 Q. Who is responsible for that at the Ocean Course?
17 Would it be --

18 A. The superintendent.

19 Q. At the Ocean Course?

20 A. Yes, sir.

21 Q. As we talked about these policies and procedures,
22 Ms. Johnstone, is there anything about the policies and
23 procedures in place that made the condition at the bridge
24 at number four at the time of the incident unsafe?

25 A. No, sir.

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1 Q. From your review of the incident report -- and I
2 saw that you signed off on it; is that right?

3 A. Yes, sir.

4 Q. Meaning after Mr. Lane had completed the incident
5 report, he submitted it to you as the supervisor?

6 A. It's saved on a computer database, and then I
7 review all the reports after they're completed.

8 Q. And then you sign off on them?

9 A. Yes, sir.

10 Q. And did you see the description that the bridge
11 was wet?

12 A. Yes, sir.

13 Q. And you understood the wetness to be from dew?

14 A. Yes, sir?

15 Q. Do you know if anyone at the golf course did
16 anything intentional to make there be dew that day?

17 A. No, sir.

18 Q. What about the presence of sand? Did you see that
19 in the statement of the caddy that's attached?

20 A. I did.

21 Q. Do you understand from your general knowledge of
22 the golf course that all the footpaths and all of the
23 driving areas on the golf course are made of sand and
24 crushed shell?

25 A. Yes, sir.

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1 Q. Does it surprise that you it was reported to be on
2 the bridge?

3 A. No, sir.

4 Q. Is that part of the natural condition of the golf
5 course?

6 A. Yes, sir. It's on the beach.

7 Q. What is?

8 A. The Ocean Course.

9 Q. That's a good question. We've been talking about
10 this mysterious bridge, if you could pull this up.

11 MR. McCOOL: Your Honor, may I approach?

12 THE COURT: You may.

13 (Discussion held at sidebar.)

14 (Defendant's Exhibit Nos. 1-14 were marked
15 for identification and admitted into evidence.)

16 BY MR. HOOD:

17 Q. I'm going to ask you to take a look at what's been
18 marked for identification as Defendant's Exhibit 5. Do
19 you see that?

20 A. Yes, sir.

21 Q. Does that appear to be an aerial view of the
22 eastern end of Kiawah Island where the Ocean Course is
23 located?

24 A. Yes, sir.

25 Q. All right. And I'm going to hand to you what's

Yvonne Johnstone-Cross Examination by Mr. Hood

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1 been marked as Defendant's Exhibit No. 3. Does that
2 appear to be an aerial view of the hole number four in
3 the Ocean Course that we've been discussing?

4 A. I'm not familiar enough to put --

5 Q. Fair enough. I'll ask somebody else. You are
6 familiar with number five, though?

7 A. Yes, sir, I am.

8 Q. Let me pull five up. All right. Just to orient
9 the jury, Kiawah Island runs from east to west?

10 A. Correct.

11 Q. And so from where we're all sitting, west is on
12 the left side and east is on the right?

13 A. That's correct.

14 Q. And all the pretty green stuff down there, that's
15 the Ocean Course?

16 A. Yes.

17 MR. McCOOL: Your Honor, may I approach?

18 THE COURT: You may.

19 (The following discussion held at sidebar.)

20 MR. McCOOL: This was never produced.

21 MR. HOOD: I can show you. I believe it was
22 produced.

23 MR. McCOOL: It was not.

24 This was never produced.

25 THE COURT: Mr. Hood, do you have

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1 verification that is produced?

2 MR. HOOD: I'll deal with it at the break.

3 THE COURT: Thank you.

4 MR. HOOD: Sure.

5 (End of sidebar.)

6 BY MR. HOOD:

7 Q. All right. Let's look at the picture that's
8 attached to the incident report there in front of you,
9 Plaintiff's Exhibit? Do you see that? How many are
10 there?

11 A. Five.

12 Q. Five pictures. Okay. And what did the pictures
13 show?

14 A. Shows a close-up of the bridge. The top two look
15 like they're the same.

16 Q. Okay. I'll hand to you what we've marked as
17 Exhibit 9. Tell me if that's an accurate depiction of
18 what's seen in the top two pictures of Exhibit No. 1 that
19 you've been looking at.

20 A. Yes.

21 Q. All right. Put that back and see if I can use
22 this one.

23 Let's be clear. I'm going to hand you what's been
24 marked as Defendant's Exhibit 9. Does that appear to be
25 the same picture at the top corner of Plaintiff's Exhibit

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1 No. 1?

2 A. Yes, sir.

3 Q. All right. Could we pull Exhibit No. 9. All
4 right. So would this be -- why don't you just tell the
5 jury what this is.

6 A. It's the bridge that -- it's the cart bridge that
7 we've been talking about.

8 Q. And what are we looking at there?

9 A. The edge of the bridge essentially.

10 Q. And what is that surface that we see?

11 A. Wood.

12 Q. And approximately how wide is this bridge?

13 A. Twelve, fifteen feet.

14 Q. And how long is it, approximately?

15 A. Fifty feet.

16 Q. And what does the other side of bridge look like?

17 A. Pretty much the same. It's the same all the way
18 across.

19 Q. And what we're looking at there, is that wood?

20 A. Yes.

21 Q. Is it finished?

22 A. No, sir.

23 Q. Just natural?

24 A. Yes, sir.

25 Q. And then it's unbleached?

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1 A. Yes, sir.

2 Q. In connection with your investigation, was it
3 reported to you that there was any problem with this
4 bridge?

5 A. No, sir.

6 Q. Was there any screw, was there any nail or bolt
7 that was out of place?

8 A. No, sir.

9 Q. Was there any broken board?

10 A. No, sir.

11 Q. Was it reported to you a board was out of place?

12 A. No, sir.

13 Q. The only thing you heard there was dew and sand?

14 A. That's correct.

15 Q. Bear with me.

16 Ms. Johnstone, before I sit down, I do want
17 to ask you a few other questions. You have been asked
18 questions about specialized training and safety. Okay?
19 And is there some type of guest safety that you are
20 trained in?

21 A. I just have general safety knowledge. I keep up
22 with the OSHA standards, fire codes, that sort of thing.

23 Q. And when patrons come to the resort, are you
24 contacted by certain patrons who need -- have special
25 security needs?

Yvonne Johnstone-Cross Examination by Mr. Hood

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1 A. Yes, sir.

2 Q. I saw in the paper that vice president Biden was
3 down there.

4 A. Yes, sir.

5 Q. What happens once somebody like that comes to your
6 resort?

7 A. We have a lot of hoops to jump through. It's
8 pretty intensive when you have a visit like that.

9 Q. And who is the point person for that?

10 A. Me and the Secret Service, essentially.

11 Q. And do you find, given the background and
12 experience, that you're able to communicate the needs of
13 the resort and the guests with someone as sophisticated
14 as the Secret Service?

15 A. Absolutely.

16 Q. You were also asked a question about your
17 deposition testimony. I think you were asked
18 specifically whether you had taken any oral tests. You
19 mentioned in your testimony that you hadn't taken any
20 written test, and then you're shown your transcript?

21 A. Yes, sir. When it says here when I was hired, I
22 thought that meant when I was being screened for
23 employment. I didn't take any oral tests or written
24 tests for employment at Kiawah.

25 Q. What type of oral test, if any, do you feel like

1 you took?

2 A. I don't think I took any oral test.

3 Q. But now in the scope of your employment, you
4 mentioned, based on your performance --

5 A. Well, we have annual performance reviews, and I
6 was alluding to the fact that if we're following --
7 you're following policy, you know, that's part of your
8 annual performance review.

9 Q. Is whether you're complying with the policies?

10 A. Absolutely.

11 Q. And has that been an area in which you've had any
12 particular trouble while you've been there?

13 A. No, sir.

14 Q. Is that where you excel?

15 A. Absolutely.

16 MR. HOOD: Thank you, ma'am. That's all the
17 questions I have.

18 MR. MCCOOL: Your Honor, I do have some
19 questions.

20 THE COURT: Mr. McCool?

21 REDIRECT EXAMINATION

22 BY MR. MCCOOL:

23 Q. And, Ms. Johnstone, looking at Plaintiff's Exhibit
24 No. 1, that's the policy and procedure manual, correct?

25 A. Yes, sir.

Yvonne Johnstone-Redirect Examination by Mr. McCool

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1 Q. And I noticed when Mr. Hood used this man to
2 project the table of contents on to that screen, looking
3 at page 009, the second page, the table of contents
4 section 13, Roman numeral 13 XIII, do you see that?

5 A. Yes, sir.

6 Q. And it has safety and security procedures,
7 correct?

8 A. Yes, sir.

9 Q. There's a table of contents, and there is an
10 absolute section devoted in this golf operations manual
11 for safety and security, correct?

12 A. Yes, sir.

13 Q. And that's you. You are the director of safety
14 and security, correct?

15 A. Yes, sir.

16 Q. And you told us that you are responsible for all
17 properties that the resort owns, correct?

18 A. Correct.

19 Q. The resort owns the Ocean Course, correct?

20 A. Yes, sir.

21 Q. And if you turn to page 0057, which is the safety
22 and security procedures as outlined in the policy and
23 procedure manual -- which is your department, safety and
24 security, do you see that?

25 A. Yes, sir.

1 Q. Page 0057?

2 A. Yes, sir.

3 Q. And paragraph G provides, Notify head professional
4 or superintendent of unsafe situations in and around shop
5 or golf course, correct?

6 A. Correct.

7 Q. That's what safety and security division and
8 department because you oversee all properties owned by
9 the Ocean Course, that falls to you, safety and security.
10 That's your department, correct?

11 A. At the top it says safety and security procedures,
12 and then G says notify head professional or
13 superintendent of unsafe situations in or around shop or
14 golf courses.

15 Q. Right. And the Ocean Course is a golf course,
16 correct?

17 A. Correct.

18 Q. Owned by the resort, correct?

19 A. Correct.

20 Q. That you patrol and are responsible for, correct?

21 A. Correct.

22 Q. And so your safety and security in this manual
23 contains policies and procedures applicable to your
24 division, safety and security, correct?

25 A. Well, I mean, they follow the procedure by

Yvonne Johnstone-Redirect Examination by Mr. McCool

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1 notifying the golf professional and the superintendent.

2 Q. And you, as the director of safety and security,
3 you just admitted to us before that you have absolutely
4 no training in the areas of identifying unsafe situations
5 and conditions in and around the golf course, correct?

6 A. That's correct.

7 Q. And the bridge where Mr. Barilotti felt is made of
8 wood, correct?

9 A. Yes, sir.

10 Q. And you told us about your affiliation with the
11 safety committee.

12 A. Yes, sir.

13 Q. And that's, I think your words were, strictly an
14 employee committee.

15 A. Correct.

16 Q. And you would agree with me that there's no safety
17 committee at the resort that deals with guest safety?

18 A. That's correct.

19 Q. And you would agree that the way to remove the
20 sand each morning from that wooden bridge is for the leaf
21 blowing-type machines or the air-blowing machines to
22 remove the same?

23 A. That's what I learned today, yes.

24 Q. And you would agree that a wet surface or an
25 unclean surface or sandy surface, would you agree that a

1 sandy surface is a hazardous condition that would
2 contribute to a fall, correct?

3 A. I think anything that's wet is going to be more
4 slippery than a dry surface.

5 Q. I'm talking about a sandy surface.

6 A. It's tough to say.

7 Q. I'm sorry?

8 A. It's tough to say. It could contribute to an
9 unsafe condition, yes.

10 Q. What I would like for you to do -- do you still
11 have your deposition?

12 A. Yes, sir.

13 Q. Page 38, line 23. Do you see that?

14 A. Yes, sir.

15 Q. Page 23, line -- excuse me, page 38, line 28, I
16 began my question: So you would agree that a wet
17 surface, and you responded, would contribute to the fall.

18 A. Yes.

19 Q. So the wet surface would contribute to
20 Mr. Barilotti's fall.

21 A. Yes.

22 Q. All right. And then I asked the question, And
23 that would also go for an unclean or sandy surface,
24 correct?

25 A. Possibly.

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1 Q. Possibly. And the reason for that is the sand
2 reduces the traction for somebody walking across the
3 bridge, correct?

4 A. I mean, now that I think about it, I'm not sure
5 because I think they use sand in the paint to put on the
6 bridges or surfaces.

7 Q. This one is not painted.

8 A. Correct, but I think an additive that is used --

9 Q. But that's an adhesive that doesn't move, correct?

10 A. Correct.

11 Q. We're talking about sand that is to be blown off
12 each day pursuant to corporate policy and procedure,
13 correct?

14 A. Yes.

15 Q. And you don't disagree that that's for safety
16 purposes, correct?

17 A. That's correct.

18 MR. MCCOOL: No further questions.

19 THE COURT: Mr. Hood?

20 RE-CROSS-EXAMINATION

21 BY MR. HOOD:

22 Q. Let's look at the policy and procedure that you
23 were just shown, or read, so you can see it.

24 A. Will you refresh me with the page number?

25 Q. Yes, ma'am. It's page 57.

Yvonne Johnstone-Recross Examination by Mr. Hood

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1 MR. McCOOL: Your Honor, that's -- that's
2 not --

3 THE COURT: I don't need speaking objections.
4 What is your basis?

5 MR. McCOOL: That's not the document that's
6 in evidence.

7 THE COURT: Is that in the packet in 1 or 19?

8 MR. HOOD: This is page 57 of Plaintiff's
9 Exhibit No. --

10 THE COURT: 119.

11 MR. McCOOL: This is exhibit No. -- that's
12 Exhibit 1.

13 THE COURT: If that's Exhibit 1, it's been
14 admitted into evidence.

15 MR. McCOOL: But there is no highlight or
16 circle on the exhibit. That's showing a highlight or a
17 circle.

18 THE COURT: He just circled to draw attention
19 to it on his copy.

20 MR. McCOOL: Okay. I'm just objecting to it
21 because that's not how that appears, the actual exhibit.

22 THE COURT: All right. It's noted for the
23 record. You may continue.

24 BY MR. HOOD:

25 Q. Let me switch with you. I'm going to hand you

Yvonne Johnstone-Recross Examination by Mr. Hood

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1 Exhibit 19 for your convenience. I've circled the
2 section I would like to you look at, please.

3 MR. McCOOL: Actually, I believe it's Exhibit
4 No. 1 that we're talking about, is that --

5 THE COURT: All right. Mr. Hood, what
6 exhibit is in your hand?

7 MR. HOOD: Could I see this? We're referring
8 to Plaintiff's Exhibit No. 1, Your Honor.

9 MR. McCOOL: I'm sorry.

10 BY MR. HOOD:

11 Q. If you would please look at page 57 of Plaintiff's
12 Exhibit 1 and specifically the area that I circled, which
13 is G right here, do you see that?

14 A. Yes.

15 Q. Ms. Johnstone, this page is a single page
16 contained in this policy and procedure manual that
17 relates to safety and security procedures; is that right?

18 A. Yes.

19 Q. Let's run through it. It's just one page. It
20 says, this where the golf course -- main number for
21 security extension is identified there, do you see that?

22 A. Yes.

23 Q. Maintain the most recent edition of security
24 manual?

25 A. Yes.

Yvonne Johnstone-Recross Examination by Mr. Hood

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1 Q. Always complete incident reports?

2 A. Yes.

3 Q. Know the location and the proper operation of AED.

4 What is that?

5 A. Automated external defibrillator.

6 Q. Check the AED batteries monthly, right?

7 A. Yes, sir.

8 Q. During the building with alarm each night,

9 correct?

10 A. Yes, sir.

11 Q. Notify the head golf professional or

12 superintendent of unsafe situations in and around golf

13 shop?

14 A. Yes, sir.

15 Q. All right. See locator map for street access to

16 each hole on course.

17 A. Yes, sir.

18 Q. And that includes all of the exhibits that are

19 appended; is that correct?

20 A. Yes, sir, and those appendices I actually wrote P.

21 Q. You wrote them?

22 A. Yes, sir.

23 Q. Whose responsibility is it to check the AED

24 batteries monthly?

25 A. The golf shop.

Jeff Stone-Direct Examination by Mr. McCool

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1 Q. Whose responsibility is it to maintain the most
2 recent edition of the security manual?

3 A. Stephen Youngner, head professional.

4 Q. All of the things on here, ma'am, whose
5 responsibility are they?

6 A. They're the manager's responsibility.

7 Q. All right. And to your knowledge, has anyone
8 notified you as the director of safety of any unsafe
9 situation in or around any golf course, specifically
10 related to hole number four at Kiawah?

11 A. No, sir.

12 Q. Thank you, ma'am.

13 THE COURT: You may step down. Call your
14 next witness.

15 MR. MCCOOL: Yes, Your Honor. At this time,
16 plaintiff calls -- excuse me, I'm sorry. Mr. Jeff Stone.

17 JEFF STONE,

18 having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: My name is Jeff Stone,
22 S-t-o-n-e, golf course superintendent at the Ocean
23 Course.

24 BY MR. MCCOOL:

25 Q. Good afternoon, Mr. Stone. I am going to ask you

1 some questions about your position as the Ocean Course
2 superintendent for the Ocean Course about maintenance and
3 that sort of thing and upkeep of Ocean Course as well as
4 you what you may or may not know of Mr. Barilotti's fall.

5 You have been the golf course superintendent since
6 2003; is that correct?

7 A. That's correct.

8 Q. And as the golf course superintendent, one of your
9 duties and responsibilities is to prepare the golf course
10 for players to play each day, correct?

11 A. Correct.

12 Q. And certain measures are taken each morning before
13 the first golfer begins play to prepare the course for
14 play, correct?

15 A. That's correct.

16 Q. And that's to -- you know, for aesthetic reasons
17 and safety reasons as well, correct?

18 A. Very much so.

19 Q. And as the golf course superintendent for the
20 Ocean Course, you would agree with me that the safety and
21 wellbeing of a person playing a round of golf at the
22 course is of the utmost importance, correct?

23 A. Correct.

24 Q. And you would agree it's never permissible to
25 jeopardize the safety and wellbeing of a person playing a

1 round of golf at the Ocean Course?

2 A. That's correct.

3 Q. And you are not a member of any type of safety
4 committee at the Ocean Course or at Kiawah resort,
5 correct?

6 A. That's correct.

7 Q. And you have had no training in your professional
8 life that has provided you with information and knowledge
9 on how to identify conditions that jeopardize the safety
10 and wellbeing of a person playing a round of golf,
11 correct?

12 A. Correct.

13 Q. And the bridge at the fourth hole is made out
14 of -- what you described, I believe, as pressure treated
15 wood?

16 A. Pressure treated two-by-eight wood, yes.

17 Q. Unfinished, not painted, correct?

18 A. Correct.

19 Q. And on that bridge, there's no additive or any
20 sort of nonslip grip put on to that wood, correct?

21 A. That is correct.

22 Q. And no adhesive of any type that would promote or
23 increase traction for a person walking across the bridge,
24 correct?

25 A. Correct.

1 Q. And let me hand you what's been marked as
2 Plaintiff's Exhibit No. 1. That's the policy and
3 procedure manual for golf operations, correct?

4 A. Correct.

5 Q. And that includes the Ocean Course, correct?

6 A. Yes, it does.

7 Q. And turn to page 18, 0018. It's numbered on the
8 bottom right-hand corner of each page. And do you see
9 the bottom sentence under paragraph D, item number three,
10 all bridges and walkways blown and free of debris?

11 A. Yes, I do.

12 Q. And the purpose of that mandate is for safety,
13 correct?

14 A. For safety and aesthetics, yes.

15 Q. And at some point in time following
16 Mr. Barilotti's fall, you conducted a visual inspection
17 of the bridge and saw sand on the bridge, is that right?

18 A. Yes.

19 Q. And sand gets on the bridge from golf carts
20 tracking it onto the bridge from the path they're on,
21 right?

22 A. And walking players as well, that's correct.

23 Q. Let me hand you what's been -- excuse me. Let me
24 hand you your deposition.

25 MR. MCCOOL: Your Honor, this is the original

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1 transcript.

2 THE COURT: All right. You may open it.

3 BY MR. McCOOL:

4 Q. I have a copy for you if you like. May I
5 approach?

6 THE COURT: Thank you.

7 BY MR. McCOOL:

8 Q. All right. Mr. Stone, let me provide you with
9 your original deposition. All right. Like all
10 depositions, you were under oath at the taking of that
11 deposition; is that right?

12 A. That's correct.

13 Q. What I would like for you to do is turn to page 31
14 of your deposition and go to page -- excuse me, line 15.
15 Do you see that?

16 A. Yes, I do.

17 Q. And I asked you the question, while you're under
18 oath, tell me what you saw on the bridge when you did the
19 visual inspection following Mr. Barilotti's fall.

20 A. Line 15? I'm sorry.

21 Q. Yeah, do you see that? I asked you that question.

22 A. Yes.

23 Q. But when did you do that visual inspection?

24 A. It would have been that week, following the
25 accident.

1 Q. All right. And when I asked you the question,
2 Tell me what you saw on the bridge when you did your
3 visual inspection following Mr. Barilotti's fall, you
4 answered, Saw sand that had been tracked on to the bring
5 at the edges. The bridge appeared to be normal as
6 always.

7 And then I asked the question, When you say sand
8 tracked on to the edges, What do you mean by that? And
9 your answer was: It's part of where the bridge ties into
10 both land sides where the bridge ties into the land. All
11 our -- is that pronounced coquina?

12 A. That's correct.

13 Q. Coquina, so the cart tracks coquina onto the edges
14 of the bridge, and coquina is sand like?

15 A. It's a sand shell, yes.

16 Q. And so the cart tracks coquina onto the edges of
17 the bridges in their design to look natural like that.

18 So you didn't say anything about pedestrians
19 tracking the sand onto the bridge when you are under oath
20 at your deposition on April 19th, you said it was cart
21 traffic, golf cart traffic, correct?

22 A. That's correct.

23 Q. Now, at the Ocean Course, you as the golf course
24 superintendent and the employees you supervise, you and
25 those employees do not use utilize a check sheet or

1 checklist to document whether or not daily tasks have
2 been completed, correct?

3 A. Correct.

4 Q. And as part of what you do before the start of
5 play each day is there's persons who are supposed to blow
6 the sand off the bridges each morning, before play
7 begins, correct?

8 A. That is part of the assignment, yes.

9 Q. And that's part of the policy, procedure, and
10 standard, that that be done before the first golfer gets
11 on to the course, correct?

12 A. They blow the debris, yes, correct.

13 Q. And the first golf cart that gets onto the course,
14 that a person playing the course, is able to get onto the
15 course is 12 noon?

16 A. A person playing the golf course, yes, that would
17 be correct at 12 noon, but there are also caddies that
18 take water on to the golf course and they drive over the
19 bridges first thing in the morning.

20 Q. So those caddies and those employees that would be
21 driving over the bridge at hole number four, they would
22 be tracking sand on to the bridge?

23 A. Correct.

24 Q. So they would be creating that condition of sand
25 on the bridge, correct?

1 A. Correct.

2 Q. And you would agree that the golf operations
3 policy and procedure manual, Exhibit No. 1, it's
4 important to carry out what's identified in the manual so
5 that golfer safety is promoted and their safety is never
6 jeopardized, correct?

7 A. Correct.

8 Q. And you do not utilize a checklist or any sort of
9 checklist sheet to document what is being done at the
10 course as it's being prepped each day, correct?

11 A. Correct. We do not use a sheet to document it.

12 Q. And what I would like you to do is turn to page
13 0029 of Exhibit No. 1. All right? And so that's called
14 operations. That section is operations, correct?

15 A. Correct.

16 Q. And that was the operations section that we saw in
17 the table of contents when the table of contents manual
18 was put on the screen, correct?

19 A. Correct.

20 Q. And do you see paragraph B, open and closing
21 checklist?

22 A. Yes, I do.

23 Q. And that paragraph provides, Checklists are used
24 for opening and closing procedures so no steps are
25 omitted and to assure procedures are consistent course to

1 course, correct?

2 A. That's what it says, correct.

3 Q. So you admit that you don't use a checklist, and
4 the other employees you oversee who are preparing the
5 course for safety purposes each day don't use a
6 checklist, to make sure, or, as this manual says, to
7 assure procedures are correct and being done, correct?

8 A. Correct.

9 Q. And you would agree that on October 31st, 2010
10 that you were uncertain and it is unknown to you who
11 might have had the blower and used it on the bridge at
12 hole number four before play began, correct?

13 A. That's correct.

14 Q. And on the morning of October 31st at 2010, you
15 did not specifically recall inspecting the bridge at hole
16 number four before play began, correct?

17 A. I was not there, so that's correct.

18 Q. And there's no documentation, checklist or
19 otherwise, to establish that there was some level of
20 inspection done or that the blowing of sand for safety
21 purposes had taken place?

22 A. There is no written checklist, that's correct.

23 Q. And you're familiar with walking surfaces, wooden
24 surfaces, at the Ocean Course, correct?

25 A. Yes.

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1 Q. And you, in your rides in a golf cart, I take it,
2 you go out and you periodically see what's going on, how
3 the course is being maintained; is that right?

4 A. Every day that I'm there.

5 Q. And you would agree with me that there are steps
6 that can be taken for a wooden pedestrian bridge to
7 increase the traction for golfers when they use the
8 bridge, correct?

9 A. If deemed necessary, yes.

10 Q. Yes. And that would include some sort of mat that
11 we put on a bridge, correct, to increase traction?

12 A. There are several types of surfaces, yes.

13 Q. But not one on the bridge where Mr. Barilotti
14 fell, correct?

15 A. It's never been deemed necessary.

16 Q. So there's not one?

17 A. Correct.

18 Q. And you would agree that the wooden bridge and the
19 wooden walking surfaces at the Ocean Course, when wet or
20 damp, they're not slippery, they're slippery in that
21 condition, correct?

22 A. Correct.

23 Q. And you would agree with me that, harking back to
24 your deposition, an example you gave, that the only time
25 sand would provide traction for a pedestrian is on an ice

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1 surface, correct?

2 A. Correct. I did say that.

3 Q. And you've never been tested on the contents of
4 Exhibit No. 1, the golf operations manual, correct?

5 A. Actually, I've not been tested, but I was part of
6 the making of that operation manual.

7 Q. And regarding Exhibit No. 1 --

8 A. Uh-huh.

9 Q. The policy and procedure manual, you would agree
10 that it's never permissible to not follow the policies
11 and procedures in Exhibit 1, correct?

12 A. Correct.

13 Q. And that requirement to follow the policies and
14 procedures of Exhibit No. 1 not only applied to you but
15 all the workers and employees in the maintenance
16 department and throughout the resort, correct?

17 A. Correct.

18 MR. McCOOL: That's all the questions I have.
19 Thank you.

20 CROSS-EXAMINATION

21 BY MR. HOOD:

22 Q. Mr. Stone, is there a bridge on hole number four?

23 A. Yes.

24 Q. Is there a rubber mat on the bridge on hole number
25 four?

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1 A. No, there's not.

2 Q. Tell the jury why.

3 A. It's never been deemed necessary, and there has
4 never been an incident where we feel we would need a
5 rubber mat or an adhesive put on that bridge.

6 Q. When you say there has never been an incident,
7 what do you mean?

8 A. There has never been an accident, that I know of.

9 Q. Do you find sand on the bridge to be a dangerous
10 condition?

11 A. No, I do not.

12 Q. Do you find sand on the golf course to be a
13 dangerous condition?

14 A. No, I do not.

15 Q. Do you find dew, in general, to be offensive?

16 A. No, I do not.

17 Q. Do you find it to be a dangerous condition?

18 A. No, I do not.

19 Q. Do you find dew on the Ocean Course to be a
20 dangerous condition?

21 A. No, I do not.

22 Q. Do you find the combination of dew and sand on the
23 Ocean Course to be a dangerous condition?

24 A. No, I do not.

25 Q. Do you found the combination of dew and sand on

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1 the Ocean Course on the bridge at hole number four to be
2 a dangerous condition?

3 A. Never had a reason to believe it would be.

4 Q. And when you say that, why do you say that?

5 A. There has never been an accident that's pertained
6 to something like this.

7 Q. How long have you worked at Kiawah?

8 A. Since 1990.

9 Q. What have you done at Kiawah since 1990?

10 A. I was assistant golf course superintendent, which
11 is when I first graduated college. I then became the
12 golf course superintendent at Marsh Point in 1991. I was
13 then transferred to Turtle Point Golf Course in 1992
14 until the year 2003 where I was made the superintendent
15 of the Ocean Course at that time.

16 Q. All right. Tell the jury a little bit about
17 yourself. Where are you from?

18 A. Daytona Beach, Florida.

19 Q. And how long have you lived here?

20 A. Since 1990.

21 Q. All right. And what brought you to the Charleston
22 area?

23 A. The location, Kiawah Island.

24 Q. And since 1990, you've been at Kiawah and then
25 since 2003 you've been the superintendent out at the

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1 Ocean Course specifically?

2 A. Yes, that's correct.

3 Q. Could you just walk the jury through, you know,
4 your typical day on the job so we get an idea what you as
5 the superintendent out there do.

6 A. I'm very fortunate that I do what I love. I get
7 to get up at 5:30 in the morning. I get to the Ocean
8 Course right around quarter to 6:00 or 6:00. I then set
9 up our daily schedule for our staff, which they then go
10 to the golf course, which would include mowing greens as
11 you saw up on the board earlier, mowing greens, mowing
12 fairways, doing setup, which includes someone moving tee
13 markers change pin locations, blowing bridges, and things
14 of that nature. That crew goes out at 6 a.m. Myself and
15 one of my assistants follow behind that crew to make sure
16 that they do the job task that's been deemed for them
17 that day.

18 Q. And how many days a week do you walk the golf
19 course?

20 A. Walk it? Zero. I'll ride the golf course.

21 Q. So when you go back out there, you go back out
22 there and drive a golf cart?

23 A. That's correct.

24 Q. Now, you mentioned the guys that are moving the
25 pins, moving the holes. For all of us non-golfers, why

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1 don't you explain to us how many people this is, the type
2 of effort that it takes per hole, that kind of thing?

3 A. I have right around 15 guys that work for me.

4 That does not include my mechanic. We all basically go
5 out to hole number one at 6 a.m., which our first tee
6 time is generally 7:20 or 7:30, so it gives us an hour
7 and a half to get ahead of the first player of the golf
8 course. That usually gets us through the front nine,
9 making sure that the golf course is set up and ready for
10 the golfers to play.

11 We have gone to the back nine. That way the
12 golfers then tee off the front nine. We're pretty much
13 in business for them, for the most part of the day,
14 that's our goals, so their experience is -- we're not
15 involved in their experience. We're kind of out of the
16 way, so that's kind of what our job is.

17 Q. All right. I heard you mention debris, just
18 during your testimony earlier, and the blowing of debris
19 off bridges and paths and things of that nature. Do you
20 consider sand to be a debris?

21 A. I do not. We've got seven miles of cart pass.
22 That's all coquina and sand, so for me I don't see --
23 that's part of the golf course. We have copious amounts
24 of acres, and it's all sand areas waste areas, so I don't
25 consider sand debris. I consider grass clippings and

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1 leaves to be debris that I see on the golf course.

2 Q. And what, if anything, is the intention of sand as
3 it meets the edge of the golf course, or the bridge at
4 number four?

5 A. Pete Dye is the architect of the golf course, and
6 basically the way the sand washes up around the edges of
7 the grass and things like that, there's really not a
8 defined edge. It's kind of more a link style golf
9 course. That's what the architect was after. That's why
10 we have sand. We don't have any concrete cart pass.
11 That's the design of the golf course.

12 Q. Is there a big barrier? Do you try to keep the
13 sand off of the bridges, at number four, for example?

14 A. No, we do not.

15 Q. Like a threshold or a big piece of wood or
16 anything like that, like an edge?

17 A. No, sir. It's like the edge of a painting. There
18 is no defined edges out there.

19 Q. So it's designed that way?

20 A. That's correct.

21 Q. Now, you were asked some questions about your
22 deposition, and I would like to go back to that,
23 specifically whether you mentioned that feet track sand
24 onto wooden surfaces. If you would look at page 30 of
25 your deposition, sir, line one, question asked to you, it

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1 says -- the bottom sentence, with the last sentence from
2 page 18 of the policy and procedure manual that we talked
3 about reads, All bridges and walkways blown and free of
4 debris.

5 Your answer?

6 A. I'm sorry. What page is that again? This is my
7 deposition?

8 Q. Yes, sir. Go to page 31. See the pages?

9 A. Yes.

10 Q. Question was: All bridges and -- the bottom
11 sentence, or the last sentence of page 18 reads, All
12 bridges and walkways blown and free of debris.

13 Your answer: Correct.

14 Do you see that?

15 A. I'm sorry. I'm on page 31, but I don't see that.

16 Q. Line one, the line number is on the side. All
17 right? All bridges and walkways blown free of debris,
18 correct?

19 A. Correct.

20 Q. Next question: How was that applicable to
21 Mr. Barilotti's incident?

22 Your answer?

23 A. It's not.

24 Q. And why is it not?

25 A. Because there was no debris on the bridge.

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1 Q. Next question is, When you went out there?

2 A. Correct.

3 Q. And you've already testified, have you not, that
4 there was sand when you went out there?

5 A. Correct.

6 Q. Is it fair to say you don't consider sand to be
7 debris?

8 A. That's correct.

9 Q. Now, this issue of whether the sand on the
10 bridge -- well, look here at your description on the same
11 line of questions.

12 It says, When were you out there?

13 Your answer is, Correct.

14 Was there any debris on the bridge when
15 Mr. Barilotti fell.

16 What was your answer?

17 A. What line?

18 Q. 14?

19 A. I was not on property when he fell.

20 Q. Tell me what you saw on the bridge when you did
21 your visual inspection following Mr. Barilotti's fall?

22 A. Saw sand that had been tracked onto the bridge at
23 the edges. Bridge appeared to be normal as always.

24 Q. The bridge appeared to be normal as always; is
25 that right?

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1 A. That's correct.

2 Q. Did you see anything unusual about the bridge when
3 you inspected it?

4 A. No, I did not.

5 Q. Now, there was have been some questions, and
6 whether the sand gets on the bridge by golf cart or by
7 some other means, okay?

8 A. Uh-huh.

9 Q. Do golfers track sand, leaves and clippings and
10 anything else that's on the bottom of their shoe across
11 every surface they walk over?

12 A. Yes, they do.

13 Q. Does that mean that a golfer wearing golf shoes
14 that is walking in wet sand can track wet sand onto the
15 bridge?

16 A. Yes, they can.

17 Q. Does that mean they can also, like a child, track
18 mud into a house?

19 A. Yes, they can.

20 Q. All right. So the other options are you have the
21 crews out there working and people like you driving golf
22 carts across the bridges?

23 A. Yes, correct.

24 Q. And then you have golfers walking across
25 themselves?

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1 A. Yes.

2 Q. And then you got the wind that can blow sand?

3 A. Yes.

4 Q. No matter how the sand gets there, from the golf
5 course safety standpoint, does the presence of sand on
6 the bridge at number four create a hazard or a problem
7 for which you need to remedy it?

8 A. In my opinion, no, and it never has in the past.

9 Q. Now, you were asked some more questions about the
10 policy and procedure manual. Let me go back.

11 If you would look at Plaintiff's Exhibit No. 1, do
12 you have the policy and procedure manual?

13 A. Yes, I do.

14 Q. And I would like to refer back to page 29 of
15 Plaintiff's Exhibit No. 1 and the section that was read
16 to you. Do you see the portion that says opening and
17 closing checklist, sir?

18 A. Yes, I do.

19 Q. Does it also indicate that the opening -- the
20 third bullet point there, opening and closing checklist
21 appear in appendix C, this checklist is customized to
22 each golf shop.

23 Do you see that?

24 A. Yes, I do.

25 Q. All right. Let's just see what Exhibit -- or

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1 appendix C looks like. Take a look at page 72.

2 A. Okay.

3 Q. Does page 72 appear to be the opening and closing
4 checklist referenced that we just saw?

5 A. Yes.

6 Q. All right. Let's take a look at it. We can read
7 the whole thing at one time, so I'm just going to zoom in
8 the top and we'll move it along.

9 All right. So it's got an opening and closing
10 checklist for bag attendants. Who are those people?

11 A. Those would be the gentlemen that greet the guests
12 at the golf club.

13 Q. All right. The next group are bag attendant
14 closing procedures. Do you see that?

15 A. Yes, I do.

16 Q. All right. And the next page, number 73, the top
17 continues for bag attendant closing list, and then it
18 goes to pro shop opening procedure?

19 A. Correct.

20 Q. And it continues on to pro shop closing
21 procedures. Right?

22 A. Correct.

23 Q. And then the third and final page of this is the
24 conclusion of the pro shop closing procedures?

25 A. Correct.

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1 Q. Mr. Stone, there is no requirement to have a
2 written checklist that you have walked the golf course,
3 is there?

4 A. That's correct.

5 Q. And what is in reference in this policy and
6 procedure manual is this checklist here in appendix C,
7 correct?

8 A. That's correct.

9 Q. How do you know that the golf course is walked
10 every day?

11 A. As far as our maintenance policy?

12 Q. Correct.

13 A. Because myself or one of my assistants goes every
14 day with our staff.

15 Q. And one of the members of the team, do they wear a
16 blower on their back and they walk around and they use a
17 blower as necessary?

18 A. Yes, they do.

19 Q. And that would be one of the tasks assigned to one
20 of the 15 men or women that work with you each day?

21 A. That's correct.

22 Q. We heard some testimony earlier about one of your
23 colleagues who indicated that if there were a problem on
24 the golf course reported to them they would call the
25 superintendent. Is that you?

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1 A. Yes.

2 Q. Tell the jury a little bit about the phone calls
3 you get from the head of golf or the head of the Ocean
4 Course about the conditions there.

5 A. Any time there's a condition of -- basically, we
6 talk about the golf course and the condition of the golf
7 course, are we meeting standards for the customer that's
8 coming out that day, or what issues we might arrive. And
9 especially if there is an issue or a safety hazard, that
10 is brought to my attention immediately and there is -- we
11 rectify that issue.

12 Q. Give us an example of some of those issues.

13 A. For example would be if we have a loose board on a
14 bridge, for example, I would be notified from the golf
15 shop or one of my staff. We would go out and take care
16 of that issue.

17 If there is a hole that might appear -- because we
18 are on the sand, and we do have irrigation and sometimes
19 holes do miraculously appear and we are made aware of
20 those. As soon as we are made aware of those, we go out
21 and either flag those areas off or we secure the area so
22 we can maintain it and get it prepared, you know, get it
23 back into play so no one does happen upon it.

24 Q. And is there anyone other than you that would
25 receive that phone call of any particular problem on the

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1 golf course?

2 A. Potentially the golf professional would be
3 notified or the director of golf would be notified.

4 Q. You mentioned that you walk the golf course
5 virtually every day. You obviously have days off. Who
6 was in charge of the golf course in days that you're not
7 working?

8 A. I have two assistants, a first assistant and
9 second assistant. Basically, rotate weekends so when one
10 of us is not on the property, there is also someone in
11 charge that follows up behind our staff to ensure
12 everything is being done properly.

13 Q. And this was -- you know the date?

14 A. October 31st, correct?

15 Q. Were you working that day?

16 A. No, I was not.

17 Q. And how did you come to learn about the incident?

18 A. I was informed that week that there had been an
19 incident, and I went out on my own to check to see the
20 area where the incident had happened and I reported back
21 to Brian Gerard.

22 Q. And he is who?

23 A. Director of golf.

24 Q. For --

25 A. The Kiawah Golf Resort.

1 Q. And at the time you went back, tell the jury
2 exactly what you found when you inspected the bridge.

3 A. When I went out to the bridge, it was later that
4 week. I went out to bridge looked at the bridge, and
5 there was nothing that had seemed out of place or not
6 normal that has always been there. So nothing looked out
7 of the ordinary to me.

8 Q. I'm going to hand to you what we've marked for
9 demonstrative purposes Defendant's Exhibit No. 3 and ask
10 you if you're familiar with that.

11 A. Yes, I am.

12 MR. McCOOL: Your Honor, may I just review
13 Exhibit 3, please?

14 BY MR. HOOD:

15 Q. We have the picture up on the screen behind you,
16 Mr. Stone, and just to orient us, can you explain to us
17 what we're looking at here.

18 A. Hole number four would be the hole to the top
19 right corner. That's going to be -- the tee will be
20 small green area just to the very top left corner. Then
21 you have the fairway, which continues on further down
22 with the three white spots. Those are the three top
23 bunkers that are in the fairway.

24 The walking bridge, or the riding bridge, is going
25 to be the left where you'll see a brown area that

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1 intersects the two green areas. To the far left is going
2 to be the cart bridge slash walking bridge.

3 Q. Is that where the curser is located?

4 A. That is correct. The second area to the right
5 will be a continuation of the hole and the green is on
6 the bottom right-hand corner.

7 Q. So you start on the top left-hand corner, and the
8 goal is to end up somewhere on the right-hand side?

9 A. That's correct.

10 Q. Hopefully in the hole.

11 A. If you're lucky.

12 Q. Okay. And the bridge that we're talking about is
13 right where the curser is, is it not?

14 A. Yes, sir.

15 Q. All right. So as we look at that bridge, what is
16 the brown stuff over which the bridge runs?

17 A. That is a tidal marsh.

18 Q. Can you walk through it?

19 A. Yes, you can. If you scroll down further down,
20 you can see a walking path that goes through the marsh.

21 Q. When is the walking path used versus the bridge?

22 A. Sometimes that's the path of least resistance and
23 they see that's a quicker way to get to the hole.

24 Q. Go back to the bridge, please. What's the
25 approximate size of this bridge?

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1 A. That bridge is 12 feet wide by 50 feet long.

2 Q. And do you know that as a best guess or do you
3 know that for sure?

4 A. I measured it.

5 Q. Have you done any work to the bridge since the
6 date of the incident?

7 A. No, I have not.

8 Q. Is the bridge today in the same condition it was
9 on October 31, 2010?

10 A. Yes, it is.

11 Q. Did the bridge change at all between the date of
12 the incident and the time you hosted the PGA
13 Championship?

14 A. No.

15 Q. Did the PGA require any modification to put paths
16 or bridges such as number four in order for them to come
17 to the golf course or Ocean Course?

18 A. No, they did not.

19 Q. Approximately how many pedestrians crossed that
20 bridge during the PGA championship, do you know?

21 A. Not definitively, but from what Mr. Younger said,
22 I think 130,000 that attended the event, so I don't know
23 how many crossed that bridge.

24 Q. And that bridge, was that open to the pedestrians
25 and golfers?

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1 A. Yes.

2 Q. And the PGA is the Professional Golf Association?

3 A. Yes, they are.

4 Q. The procedures that have been discussed include a
5 blowing going across the bridges in the morning, right?

6 A. Correct.

7 Q. And that would be after the other crews have come
8 through and done the blowing?

9 A. That's correct.

10 Q. So the blowers are the last people to come
11 through?

12 A. Yes, they are.

13 Q. So you sort of have the maintenance guys that go
14 to mess a mess to make it pretty, and then the blowers
15 come through to get rid of the mess?

16 A. That's correct.

17 Q. So any day there's always sand on the bridge at
18 number four?

19 A. Yes, correct.

20 Q. Has that ever presented a problem for you as the
21 superintendent of this golf course in making sure that
22 the patrons who use it can use it safely?

23 A. No, sir. It's never presented a problem.

24 Q. And in your role as superintendent of golf, have
25 you ever received any complains of the condition of

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1 bridge at number four?

2 A. No, sir.

3 MR. HOOD: Your Honor, may we approach for a
4 minute?

5 THE COURT: Yes.

6 (Sidebar discussion held.)

7 THE COURT: All right. Ladies and gentlemen:
8 This is an appropriate time for us to break for the
9 evening. Do not begin your deliberations. Do not
10 discuss this case amongst yourselves.

11 Ladies and gentlemen: If you'll be back in
12 the jury room at 9 a.m., we'll begin at 9:15, or once all
13 of you are here. Please remember, we can't get started
14 until all 12 of you are present, so please be respectful.

15 Thank you. Have a wonderful afternoon, and
16 please remember all of my warnings. Please take your
17 notebooks. We'll lock them up. Please rise for the
18 jury. Mr. Stone, stay seated.

19 (Jury recessed.)

20 THE COURT: Thank you. Be seated. All
21 right. Defense No. 8, there's been several discussions
22 at the bar concerning the production of Defendant's 8.
23 Mr. McCool, you're indicating you've never received that
24 photograph; is that correct?

25 MR. MCCOOL: That's correct, Your Honor.

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1 THE COURT: And that you requested
2 photographs -- copies of everything that the defense
3 intended to use even for demonstrative purposes; is that
4 correct?

5 Mr. Stone, you may step down, but you will be
6 need to be back at 9 a.m. in the morning. Please do not
7 discuss your testimony with anyone. Do you understand?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Any questions?

10 THE WITNESS: No, ma'am.

11 THE COURT: All right. Mr. McCool, if you
12 could provide -- we're going to break for the day. If
13 could you provide in the morning a copy of your discovery
14 requests in which you indicated demonstrative photographs
15 as well, we'll address that issue first thing in the
16 morning.

17 Thank you. We're at ease.

18 (Recess taken.)

19 (June 4, 2013.)

20 MR. MCCOOL: Your Honor, you had asked me to
21 provide you with a discovery request.

22 THE COURT: Yes.

23 MR. MCCOOL: And I went ahead and just tabbed
24 the request and the interrogatory.

25 THE COURT: All right. Mr. Hood, your

1 response?

2 MR. HOOD: Your Honor, what I'm asking to do
3 is to present for demonstrative purposes photographs to
4 orient the jury to something that all of the witnesses
5 are permitted to describe with words.

6 We're not trying to depict anything other
7 than what we're discussing for three days, and it's for
8 demonstrative purposes. The pictures don't show anything
9 other than what Mr. Barilotti will describe as being the
10 bridge, what my witnesses have described, and some of the
11 other cases talking about whether to allow such evidence
12 looks at this particular issue.

13 What I found last night was the case of
14 Holmes versus Black River Electric Cooperative, and it's
15 not specifically on point, but the discussion references
16 what prejudice can exist when you're allowed to describe
17 a picture in words and showing the picture. I'm not
18 asking to show a gruesome photograph, I'm not asking to
19 show something that would contradict any of the evidence
20 in this case. I don't believe there can be any prejudice
21 to any party to show a photograph of a bridge that is in
22 the same condition as it was at the time of the incident
23 that there have been no changes on it.

24 So for those reasons, to help the jury
25 comprehend and understand the issues in this case, we

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1 think it would be helpful for them to be able to see the
2 photographs that we've marked as exhibits, 3, 4, 5, 6, 7,
3 and 8.

4 THE COURT: Let me see those exhibits because
5 I thought it was just as to 8.

6 MR. HOOD: You had allowed us to use 3 and
7 5 already.

8 THE COURT: So, Mr. Hood, just so I
9 understand, Defendant's 3 and 5 had been --

10 MR. HOOD: We have shown those to the jury.
11 No. 3 was shown through Yvonne Johnstone, and No. 5
12 Mr. Stone discussed earlier.

13 THE COURT: And then 8, Mr. Stone indicated
14 that was the bridge and it's -- that there has been no
15 changes since the accident in 2010; is that correct?

16 MR. HOOD: Yes, ma'am, and I can lay a
17 foundation with the witness on the stand, if that's
18 necessary to establish that the picture shows the
19 condition of the bridge today the same as it was then and
20 no repairs or changes or modifications have been made
21 since the date of Mr. Barilotti's incident.

22 THE COURT: And the only ones still at issue
23 that I understand, Mr. McCool, are 4, 6, 7, and 8; is
24 that correct?

25 MR. MCCOOL: Well, I had objected to 3 and 4,

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1 Your Honor. Then the one that was brought to my
2 attention in terms of what they -- what Mr. Hood wanted
3 to introduce as demonstrative evidence yesterday I
4 believe was either 6 or 8, and I objected -- I would
5 object to 6, 7, and 8 and anything not produced, all
6 things not produced, because as the discovery request
7 states, produce copies of all documents and tangible
8 things of whatever nature and description which the
9 defendant intends to introduce into evidence or to use
10 for impeachment purposes or any type of evidence, real or
11 demonstrative at the trial of this case, and these were
12 never produced.

13 The first time they came to light and were
14 presented was yesterday morning after the jury was
15 selected.

16 THE COURT: But, Mr. McCool, you would agree
17 that they are all pictures of the subject bridge.

18 MR. MCCOOL: I would not agree, and the
19 reason for that is the only photographs that were
20 provided in discovery were the ones that are attached to
21 Exhibit No. 19, and those photographs that they're
22 attempting to utilize now are vastly different than 19.

23 My discovery was based on -- and the
24 questions I asked at depositions was based on the
25 photographs that were produced during the course of

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1 discovery if, Your Honor, I can provide those to you in
2 Exhibit No. 19.

3 THE COURT: Mr. Hood, just explain to me
4 again why these weren't produced in discovery.

5 MR. HOOD: Your Honor, as we were preparing
6 for trial, I wanted to see the pictures so we could talk
7 about the subject bridge. When I realized that there
8 were no pictures to orient the jury, I asked that we have
9 someone go out and take some photographs to orient them
10 about what the bridge looks like, and we also made use of
11 Google Earth to get some images of the golf course and
12 where it's situated.

13 Thursday I left to go to Atlanta. I had a
14 funeral in Atlanta, got home Friday evening. Office
15 asked if we needed to produce them. I said I'm not going
16 to use them for anything other than demonstrative
17 purposes. We're not going to try to offer them into
18 evidence, so we'll just give them to everybody on Monday
19 morning. That's what happened.

20 I mean, this is sort of like -- you get ready
21 and you start making demonstratives. Sometimes
22 demonstratives aren't even made until the middle of
23 trial.

24 THE COURT: Right.

25 MR. HOOD: Like the recent Court of Appeals

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1 case up in Greenville where the defendant used Power
2 Point slides of medical records, ad the Court of Appeals
3 said that that was appropriate.

4 THE COURT: Right. Based upon the testimony
5 that I've heard so far from Mr. Stone and the pictures
6 that are attached to the Plaintiff's Exhibit 19, which
7 has been admitted into evidence, based upon all of the
8 arguments that I have heard, the photographs in question
9 will be allowed to be used for demonstrative purposes
10 only. Note your exception to my ruling, Mr. McCool.

11 Anything else before we bring in the jury?

12 MR. HOOD: Your Honor, after testimony
13 yesterday about the black mat, which I didn't anticipate
14 we were using, I have asked for a photograph to be taken
15 yesterday of the black mat -- may I approach?

16 THE COURT: You may.

17 MR. HOOD: This photograph was not produced
18 in discovery. I didn't anticipate that it was related to
19 anything in this case. I didn't think we'd be talking
20 about the bridge at number two, but that has become a
21 prominent point, and I expect the plaintiff to continue
22 to discuss with each of my witnesses the bridge at number
23 two, and I would like to be able to use this for
24 demonstrative purposes as well to discuss.

25 THE COURT: All right. Let's mark this --

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1 one will be Defendant's 15.

2 (Defendant's Exhibit No. 15 was marked for
3 identification.)

4 MR. McCOOL: Yes, Your Honor. In terms of
5 whether the bridge at hole number two was an issue, that
6 was discussed throughout the deposition testimonies of
7 the witnesses who were testifying here at trial. The
8 black mat is not a new issue. It was -- in fact, we
9 learned of it at a deposition. Defendants brought it up
10 and said there is a black mat for traction purposes for
11 the wellbeing of golfers and those sorts of things, and,
12 again, for -- the discovery request specifically asked
13 for any type of evidence, real or demonstrative, both in
14 a request for production and an interrogatory, and they
15 referred us to a certain batch of documents, Defendant's
16 2 through 152, which includes none of these photographs
17 that are now being permitted -- or being offered for
18 demonstrative purposes, and I think in terms of -- there
19 is prejudice because in preparing the case, if there is
20 evidence, like these photographs of the bridge, the
21 subject bridge, for demonstrative purposes, those were
22 made well in advance and were never provided us to.
23 There was advance notice of the bridge at hole number
24 two, and for the defendants to say, Well, we didn't think
25 that would be an issue, that's not the situation that

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1 holds weight, considering it was discussed and brought up
2 by the employees during their depositions.

3 So in terms of this new photograph, like the
4 others, I object because of the late production and the
5 late identification.

6 THE COURT: There has been substantial
7 testimony regarding the black mat on that bridge. I am
8 allowing that photograph, Defendant's 15, to be used as
9 demonstrative evidence to aid the jury in understanding.
10 Note your exception to my ruling.

11 Mr. Hood, I'm assuming that there is going to
12 be someone that can lay the appropriate foundation.

13 MR. HOOD: Yes, ma'am.

14 THE COURT: All right. Anything before we
15 bring in the jury?

16 MR. McCOOL: Nothing, Your Honor. Thank you.

17 THE COURT: Anything else, Mr. Hood?

18 MR. HOOD: No, Your Honor.

19 THE COURT: Mr. Stone, I remind you that
20 you're still under oath. Did you comply with all of the
21 Court's instructions?

22 THE WITNESS: Yes, ma'am.

23 (In open court, jury present.)

24 THE COURT: Thank you. Please be seated.

25 Did every member of the jury panel comply

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1 with the Court's instructions? If you did not comply
2 with my instructions over the evening hours, please
3 stand. Thank you all. All jurors have complied with the
4 Court's instruction.

5 Mr. Hood?

6 MR. HOOD: Thank you, Your Honor.

7 BY MR. HOOD:

8 Q. Good morning, Mr. Stone?

9 A. Good morning.

10 Q. Again, you're the superintendent of the Ocean
11 Course?

12 A. That's correct.

13 Q. And that's the position you had since 2009?

14 A. Correct.

15 Q. And one of the things that you do is walk the
16 course daily with the maintenance crews?

17 A. That is correct.

18 Q. And you described the process maintenance crews
19 use to clean, to mow, to clean the course?

20 A. Yes, sir.

21 Q. One thing I wanted to ask you is after you do all
22 of that, who comes through and fills up the water bottles
23 or water coolers on the course?

24 A. The caddies or one of gentlemen from the
25 clubhouse.

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1 Q. And the trash cans are also emptied?

2 A. Yes, sir.

3 Q. And you have a beverage cart that comes out there
4 in the mornings as well?

5 A. Yes, sir.

6 Q. And all of that happens before the golfers start?

7 A. That is correct.

8 Q. And all those people are driving golf carts?

9 A. Yes, sir.

10 Q. And so whether the bridge is blown at 6:15 in the
11 morning, 7:15 or any time before the golfers start,
12 there's going to be sand on all the bridges on the golf
13 course, is there not?

14 A. Yes, sir.

15 Q. And it's not your intention or eliminate the sand
16 on bridges?

17 A. That's correct.

18 Q. And that's because you don't believe sand is a
19 hazard on any of your bridges?

20 A. Correct.

21 Q. I'd like to ask you to look at a few photographs,
22 if you don't mind. I'll hand them to you. They've been
23 marked, and we've already looked at this one. If you can
24 pull up Exhibit No. 3, please.

25 Mr. Stone, could you tell us what we're looking at

1 here?

2 A. Yes, sir. You're looking at golf hole number four
3 to the top. You're looking at golf hole number five
4 that's going to be the bottom right corner, and golf hole
5 number six is going to be going to the left.

6 Q. And we've already zoomed in and looked at the
7 bridge where the curser is now located. Do you see that
8 up there?

9 A. Yes, sir.

10 Q. And that's the subject bridge where
11 Mr. Barilotti's incident occurred?

12 A. That's correct.

13 Q. Before I pull up No. 4, on the screen, would you
14 look at what's been marked as Exhibit No. 4.

15 A. Yes.

16 Q. What is that a picture of?

17 A. That appears to be a picture of the tees at hole
18 number four.

19 Q. And does that picture accurately reflect the tees
20 at hole number four?

21 A. Yes, it does.

22 Q. If we could pull up number four, what is it at the
23 bottom the spanning water there that we see next to the
24 tee box?

25 A. It's the bridge.

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1 Q. Is it similar or different in relation to the
2 other bridges at Kiawah?

3 A. It's the same.

4 Q. How many bridges are there before the -- that a
5 golfer would cross before getting to the bridge where
6 Mr. Barilotti fell?

7 A. There would be six bridges that they would cross,
8 and that would not include the walking bridge. If they
9 decided to take a walking bridge, then there would be
10 five bridges they would cross.

11 Q. And all of the bridges are like the one at the
12 bridge at number four?

13 A. That's correct.

14 Q. If you would, please, take a look at Exhibit 5.
15 We mentioned this yesterday. If we could pull up No. 5,
16 and this is a photograph, I guess, of the holes one
17 through nine of Ocean Course?

18 A. That's correct.

19 Q. And the course starts from sort of the left and
20 works its way back around, comes along the oceanfront
21 toward the clubhouse?

22 A. Correct.

23 Q. And so the golfers start at the back and work
24 their way around?

25 A. Correct.

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1 Q. And that's the same route the maintenance men take
2 and the crew take in the morning?

3 A. Yes, sir.

4 Q. If you look at hole number four, could you just
5 point to it?

6 A. Hole number four would be the top right corner.
7 That would be green. That would hole number four there.

8 Q. Where the curser is?

9 A. Correct.

10 Q. And just to right of the curser is the subject
11 bridge; is that right?

12 A. Correct.

13 Q. Before we pull it up, I want you to look at
14 Exhibit No. 6 which has been marked for -- Defendant's
15 Exhibit 6. Can you tell us what that is.

16 A. That's the bridge where the apparent incident
17 happened.

18 Q. And that's the second bridge at hole number four.

19 A. Correct.

20 Q. Now, the photograph that you see here, this
21 picture, or this bridge, since Mr. Barilotti's incident
22 on Halloween of 2010, has there been any maintenance
23 work, modifications, changes, et cetera to the bridge?

24 A. No, sir.

25 Q. So the bridge is in the same condition it is today

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1 as it was at the time of the incident?

2 A. That's correct.

3 Q. So does this picture just give us a reasonable
4 depiction of the bridge that we're talking about?

5 A. Yes, sir.

6 Q. All right. If we could pull up No. 6, please.
7 Tell us what we're seeing here.

8 A. You're seeing a cart bridge that's 12 feet wide by
9 50 feet long.

10 Q. And as a golfer is approaching this, which
11 direction would he be moving? Would he be moving in the
12 direction of the golf cart we see in the picture or
13 toward the golf cart?

14 A. He would be moving toward the golf cart.

15 Q. And at the bottom before the bridge, what is that
16 material there?

17 A. That is coquina shell sand.

18 Q. And is that what all the golf course cart pads are
19 made of?

20 A. Yes, sir.

21 Q. When we look at the pictures back on the aerial
22 photographs back in 3, 4, and 5, we see sort of a brown
23 outline, all of that is coquina shell?

24 A. Yes, sir.

25 Q. All right. Take a look at No. 7, if you would,

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1 and tell us what we're seeing there, please.

2 A. You are seeing hole number four from which appears
3 to be almost an elevated shot from three green.

4 Q. All right. And does that accurately depict the
5 condition of hole number four?

6 A. Yes, it does.

7 Q. If we could pull that up, please, Exhibit No. 7.
8 The bridge that we see at the bottom left-hand corner,
9 which bridge is that?

10 A. That is the bridge there, four tees.

11 Q. So that's the first bridge that we looked at?

12 A. Correct..

13 Q. And that's not the one where Mr. Barilotti fell?

14 A. That's correct.

15 Q. How is that bridge constructed?

16 A. It's constructed with the same material with the
17 exception that it does versus cross members versus
18 running parallel to the bridge.

19 Q. And as we look, you know, straight into that
20 picture, are we seeing the tee box in the direction the
21 golfers would be playing?

22 A. That's correct.

23 Q. And the shell path along the path there?

24 A. Yes, sir.

25 Q. Take a look at Exhibit No. 8, please, sir. Do you

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1 see that?

2 A. Yes, sir.

3 Q. And that's another depiction of the bridge at hole
4 four?

5 A. Correct.

6 Q. And this is the second bridge where
7 Mr. Barilotti's incident occurred?

8 A. Yes, sir.

9 Q. If we could pull that up, and this view that we
10 have here, is this a view that the golfer would have as
11 they approach it or after they walk across it?

12 A. That would be a view after they've walked across
13 the bridge.

14 Q. And do you have an understanding of which end
15 Mr. Barilotti's incident occurred on?

16 A. No, I don't.

17 Q. Fair enough. All right. The last picture in
18 there is marked as Defendant's Exhibit 15. Do you
19 recognize that photograph?

20 A. Yes, sir, I do.

21 Q. Tell us what that is.

22 A. That is the walking bridge that spans a small
23 waste area or a hazard that is recessed that golfers will
24 sometimes take to get to second hole -- the third landing
25 area on hole number two.

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1 Q. So this is the foot path on hole number two that
2 we've been discussing?

3 A. Yes, sir.

4 Q. Does this picture depict the black mat that's been
5 referenced?

6 A. Yes, sir.

7 Q. Could we pull up Exhibit 15, please. I need to
8 use the ELMO. I'm sorry. Okay. Tell us what we're
9 looking at here, please.

10 A. You're looking at a recessed walking bridge that
11 spans the hazard that will connect to two fairways
12 basically, on hole number two.

13 Q. And the black mat that's there?

14 A. That's correct.

15 Q. As we zoom in towards this, either end, is there a
16 change in elevation as you go from here to here?

17 A. Yes, there is.

18 Q. Is that a step down?

19 A. Yes, it is.

20 Q. And then in the other end is a step up?

21 A. That's correct.

22 Q. What's the proximate width of that?

23 A. The guesstimation of that walking bridge would be
24 anywhere from 24 to 32 inches wide, and guesstimate
25 probably 16 feet long.

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1 Q. And then compare that to the photograph we saw in
2 Exhibit No. 8, please.

3 A. The difference being that between the two bridges
4 one is recessed where someone that was walking, stepping
5 down on to a surface versus that Exhibit 15, the walking
6 bridge. Exhibit 8 is basically a flat bridge, so that
7 there would be no incline or decline for anyone to walk
8 across.

9 Q. Mr. Stone, it's not feasible to keep sand off the
10 bridges or the golf course at the Ocean Course, is it?

11 A. That's correct.

12 Q. And it's not feasible to keep the dew off the
13 bridges at the Ocean Course?

14 A. That's correct.

15 Q. Is there anything that you can do to prevent sand
16 or dew or coquina crushed shell sand from being on the
17 bridges at the Ocean Course without covering the bridge
18 or --

19 A. You could position someone out there full time and
20 that would be their sole job is to clean the bridge, yes,
21 sir.

22 Q. But beyond something that extreme, is there any
23 reasonable measure you could take to prevent dew from
24 landing on your bridge or prevent sand from gathering on
25 your bridge?

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1 A. No, sir.

2 Q. And everybody who walks through sand to another
3 surface is going to have sand on their feet?

4 A. Yes, sir.

5 Q. And golf carts that have sand on their tires roll
6 up on the bridge is going to have sand on their tires?

7 A. Yes.

8 Q. And sand is going to be deposited on the bridge?

9 A. Yes.

10 Q. And that happens all day long?

11 A. Yes.

12 Q. Every day?

13 A. Correct.

14 Q. On the golf course?

15 A. Yes, sir.

16 Q. And it's never presented any problem except for
17 this once incident?

18 A. That's correct.

19 MR. HOOD: Thank you, sir. That's all the
20 questions I have.

21 THE COURT: Mr. McCool?

22 MR. MCCOOL: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MCCOOL:

25 Q. Mr. Stone, you would agree that the only

1 circumstance in which sand provides traction on the
2 surface is on an ice surface, correct?

3 A. On an ice surface or a surface that could be
4 slick, yes, correct.

5 Q. And in your deposition you would agree that you
6 were asked the question, What other circumstances does
7 sand act as traction on the surface?

8 You answered, Ice.

9 Is that it?

10 And you said, That would be it, right?

11 A. In my deposition, that is correct.

12 Q. And you were under oath to tell the truth at that
13 time; is that correct?

14 A. That's correct.

15 Q. And with respect to your deposition as well, one
16 of the -- well, before I get to that point, Mr. Hood
17 asked you the question, one of the first questions
18 yesterday, was do you find sand offensive, and you
19 responded no.

20 A. Correct.

21 Q. And before play each day, the crew takes blowers
22 and they blow the bridges clean, correct?

23 A. Yes. They do blow the bridges correct.

24 Q. So there is an offensive item, sand, being removed
25 from those bridges that are being blown, correct?

1 A. That would be one of the items that would be
2 blown, yes, correct.

3 Q. Right. And seeing as -- and it should be blown
4 off, correct, each day?

5 A. The bridges?

6 Q. Yes.

7 A. Right.

8 Q. And so when the -- when the workers, the crew, are
9 out there doing that task, that increases -- if the sand
10 is blown away, it increases the traction on the bridge,
11 correct?

12 A. Correct.

13 Q. And you would agree with me that if there is a
14 condition on a walking surface that decreases traction
15 and it's not removed, something bad is more likely to
16 happen than if it were removed, correct?

17 A. Correct.

18 Q. And regarding -- do you still have Defendant's
19 Exhibit No. 15 in front of you?

20 A. Yes.

21 Q. And that black mat, the purpose of that is to
22 provide traction, correct?

23 A. That's correct.

24 Q. And that black mat spans the entire distance of
25 that bridge, correct?

1 A. That is correct.

2 Q. Not just where a golfer might step down, but from
3 the beginning point to the end point, the black mat was
4 placed down, correct?

5 A. Correct.

6 Q. And that bridge goes over a tidal marsh?

7 A. Correct.

8 Q. Just as the bridge that Mr. Barilotti was crossing
9 when he was injured, correct?

10 A. Yes, sir.

11 Q. And you have not learned the identity of anybody
12 at the Ocean Course who informed you or stated that they
13 inspected the bridge on October 31 of 2010 before playing
14 the game, correct?

15 A. That's correct.

16 Q. And you have not been able to identify anybody
17 that says, I or we or my crew had the blowers out, and we
18 blew the bridge before play began that morning, correct?

19 A. Correct.

20 Q. And the bridge at hole number 15, where the black
21 mat is, that's made of wood, just like the wood at hole
22 number four where Mr. Barilotti fell, correct?

23 A. Yes, sir.

24 Q. And you said that the bridge, looking at
25 Defendant's Exhibit No. 6, where Mr. Barilotti fell --

1 A. Yes, sir.

2 Q. You said that bridge is 12 feet wide?

3 A. Yes, sir.

4 Q. And a golf cart is five, five and a half feet
5 wide?

6 A. I'm not sure.

7 Q. You're familiar -- you've ridden on a golf cart?

8 A. Yes.

9 Q. You ride on one every day?

10 A. Correct.

11 Q. And you gave us an approximation of some distances
12 on how wide the bridge at number two is, and it has the
13 black mat and that sort of thing.

14 A. Yes, sir.

15 Q. But if we look at the golf cart in Exhibit No. 6
16 that shows the bridge, do you see that?

17 A. Yes, sir.

18 Q. Two golf carts can go along that bridge at the
19 same time, correct?

20 A. Yes, sir.

21 Q. And that bridge is 12 feet wide?

22 A. Yes.

23 Q. So we know those golf carts are less than six feet
24 in width, correct?

25 A. Correct.

Jeff Stone-Redirect Examination by Mr. McCool

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1 Q. When was the black mat put down at hole number
2 two?

3 A. I'm not certain.

4 Q. And have you come to learn as to why it was put
5 down?

6 A. No, sir.

7 Q. And Mr. Hood asked you questions about whether
8 it's feasible to keep dew or sand off the bridge where
9 Mr. Barilotti fell, and you said it's not feasible,
10 unless you station somebody out there --

11 A. Would exceed feasibility, correct.

12 Q. There is feasibility, correct?

13 A. That's what I said, correct.

14 Q. To maintain that bridge free of sand and to keep
15 it safe for golfers to have traction to walk across?

16 A. If deemed necessary, yes, we could station someone
17 there.

18 Q. And with respect to the hole number two, it was
19 feasible and deemed necessary to put the black mat down,
20 correct?

21 A. Correct.

22 Q. And it was deemed feasible and necessary to put
23 the black mat down on the same surface of which
24 Mr. Barilotti fell, correct? It's wood.

25 A. Yes. You could do that, correct.

1 Q. And also it's feasible and reasonable to take this
2 black mat that's in hole number two, correct?

3 A. Correct.

4 Q. That is, you say, three feet wide, two-and-a-half,
5 three feet wide?

6 A. Correct.

7 Q. You could take that black mat and put it on the
8 left -- excuse me. You could put it on the left or right
9 of the bridge where Mr. Barilotti fell, because that mat
10 is only two or three feet wide?

11 A. Correct.

12 Q. And you're still going to have plenty of room for
13 a golf cart, correct?

14 A. If we can control the golf carts, that's right.

15 Q. Right. And so you would have a black mat on one
16 side of the bridge for pedestrians, and then you're going
17 to have at least nine feet for a golf cart, correct?

18 A. That's correct.

19 Q. So you would have a traction filled surface for a
20 golfer to walk across, hole number four, and still have
21 room for a golf cart, correct?

22 A. Correct.

23 Q. And it's absolutely feasible for you to do that,
24 correct?

25 A. Correct.

Jeff Stone-Recross Examination by Mr. Hood

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1 MR. McCOOL: That's all the questions I have.

2 Thank you.

3 RECROSS-EXAMINATION

4 BY MR. HOOD:

5 Q. And if you did that, there would be no way to know
6 whether golf carts would run across that black mat, would
7 there?

8 A. That's correct.

9 Q. And if you have the edge here and the black mat
10 here and someone rolls off that, that could present a
11 tripping hazard as well?

12 A. That's correct.

13 Q. The bottom line is you never had a problem on that
14 bridge from day one on number four where Mr. Barilotti
15 fell before this incident, did you?

16 A. That's why we have no mat there.

17 MR. HOOD: Thank you.

18 THE COURT: You may step down. Call your
19 next witness.

20 MR. McCOOL: We call Mr. Joseph Barilotti.

21 JOSEPH BARILOTTI,

22 having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. McCOOL:

Joseph Barilotti-Direct Examination by Mr. McCool

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1 Q. Thank you. May it please the Court.

2 Mr. Barilotti, where do you live?

3 A. I live in Newtown Square, Pennsylvania.

4 Q. And how long have you lived there?

5 A. About nine years.

6 Q. Okay. And how old are you now?

7 A. I'm 61.

8 Q. Are you married?

9 A. I am.

10 Q. And what is your wife's name?

11 A. My wife, Diane, is with me, and we've been married
12 for 42 years.

13 Q. Do you have children?

14 A. I have two, a 37-year-old son and a 33-year-old
15 daughter.

16 Q. What brought you to Kiawah Island at the end of
17 October 2010?

18 A. We came down on a small little golf outing with
19 our chairman and president along with some clients of
20 ours.

21 Q. And when you say our chairman and president, was
22 that for work?

23 A. Pretty much for work. He has a home here on
24 Kiawah Island.

25 Q. What is the name of your business or the company

Joseph Barilotti-Direct Examination by Mr. McCool

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1 you work for?

2 A. I'm with Regional Real Estate Investment, Inc.

3 Q. And how long have you worked for Regional Real
4 Estate Investment, Inc.?

5 A. A little more than five years.

6 Q. Where is that located?

7 A. It's in Plymouth Meeting, Pennsylvania.

8 Q. And before Regional Real Estate Investment, Inc.,
9 where did you work?

10 A. I worked for the Bricklayers' Association for 24
11 years.

12 Q. What did you do for them?

13 A. I was their executive director.

14 Q. As the executive director, tell us a little bit
15 about what you did day in and day out.

16 A. I handled all of the collective bargaining
17 agreements. It was a multi-employer association of
18 contractors, so we would negotiate all the labor
19 agreements for all the contractors, handle the
20 grievances, arbitrations, manage the pension and health
21 funds and safety programs as well.

22 Q. So let's turn our attention to that weekend in
23 October. Do you recall what day you fell?

24 A. Halloween. Sunday. It was Halloween day.

25 Q. And do you recall what time your tee time was that

Joseph Barilotti-Direct Examination by Mr. McCool

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1 day?

2 A. It was early, between 7:30 and 8:00, 8:15.

3 Q. And what day did you get to town?

4 A. We came in on Friday morning early.

5 Q. All right. And did you play any courses at that
6 time?

7 A. We played two other golf courses that day, that
8 weekend.

9 Q. All right. Not affiliated with Kiawah Island Golf
10 Resort?

11 A. I don't know if they are.

12 Q. Now, as you had that tee time on Sunday morning,
13 had you had anything to drink the night before or that
14 morning?

15 A. Not at all. I don't drink at all.

16 Q. Where did the fall occur? Did it occur on the
17 bridge that was identified as the Defendant's Exhibit
18 No. 8?

19 A. It did.

20 Q. Okay. And that was -- what bridge, do you recall
21 what hole was that near?

22 A. The fourth hole.

23 Q. And tell us how the fall occurred, what you were
24 doing.

25 A. We had two groups that day, and we split up, a

Joseph Barilotti-Direct Examination by Mr. McCool

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1 foursome and a threesome, and I was in the front group,
2 the threesome, and we were -- I was just walking across
3 the bridge. And I'm familiar with slippery bridges.
4 There was a few others earlier, and I was coming across
5 that one, and it just happened so fast. And as I went
6 down, I just tried to reach -- obviously, the first
7 instinct is to reach for something, like a rail or
8 something, and there was nothing, and I went down.

9 Q. So the fall occurred on the bridge. Had you made
10 it off the bridge?

11 A. Not yet.

12 Q. And was the entire bridge wet?

13 A. The whole bridge was wet, yes.

14 Q. Do you know what it was wet from?

15 A. It was the morning dew. It was very foggy that
16 morning. There was a lot of dew on the grass and the
17 bridge.

18 Q. As you approached that bridge or any bridge that
19 day, were there any warning signs alerting you to use
20 caution or that sort of thing?

21 A. There were not.

22 Q. Did any caddy warn you of the bridge being
23 slippery before you fell?

24 A. I don't think so.

25 Q. And as you were falling, tell us what you were

1 thinking and what you were trying to do.

2 A. I was just trying to break my fall as much as
3 possible. Obviously, like I said earlier, as I went
4 down, it happened so fast I just tried -- the instinct is
5 to reach for a rail.

6 Q. And was there a handrail?

7 A. There was not. I was fearful of falling into the
8 ditch, actually. I was ready to walk along the ditch
9 there, a hazard.

10 Q. After you fell, how were you feeling?

11 A. Well, I was kind of in shock, actually. I went
12 down. I didn't know how bad it was because the guys I
13 was with, they were able to see it, and they said don't
14 move.

15 Q. Were you able to get up?

16 A. Not without help. Three people helped -- two or
17 three people helped me up when I was able to get up.

18 Q. Were you in pain?

19 A. Absolutely.

20 Q. When you said you were lifted by three people, did
21 you get up and start walking, or what did you do at that
22 point?

23 A. No, they lifted me up. What happened was the
24 caddy was kind enough to call the clubhouse, and they
25 were able to get one of the visitor carts out they take

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1 visitors through, and they lifted me up, bodily, and put
2 me in the cart and took me up to the -- I guess the
3 staging area where you start to go out, and they had the
4 EMTs already called and waiting.

5 Q. So what happened when you got to the clubhouse on
6 the golf cart?

7 A. They were just preparing me to put me into the
8 gurney.

9 Q. How was that golf cart arrived, once they lifted
10 you off the ground and put you in the golf cart and you
11 made the trek back to the clubhouse?

12 A. The ground itself, going through some of the dunes
13 it's kind of bumpy, and obviously I was in a lot of pain
14 from the bumps and asked them to slow down. I don't
15 think he realized how fast he was going with it, but it
16 was pretty painful, just that ride alone.

17 Q. Were you taken to a hospital?

18 A. I was taken to St. Francis Hospital. I was
19 offered three hospitals. I took the closest one, I
20 guess, to the airport.

21 Q. How did you get to the hospital?

22 A. Ambulance.

23 Q. And what happened when you arrived at St. Francis?

24 A. They took me into the emergency room and took a
25 series of X-rays and determined that I had broken my

1 leg -- broken my ankle in two places.

2 Q. What was your reaction to that?

3 A. I was surprised. I thought it might have been
4 just a bad sprain, but they had asked -- they told me
5 that I would require surgery.

6 Q. Okay. And did you have surgery?

7 A. I didn't want to have it there, although the
8 treatment was great. People were nice. The hospital was
9 first class, but I thought if I had to be operated on, I
10 wanted to be home and around my family.

11 Q. All right. And when were you able to leave
12 Charleston?

13 A. Well, that's another whole story, but we had a
14 flight -- there was one flight out of Charleston that
15 night to Philadelphia, it was at 4:00, and it was
16 cancelled, so the USAir representative there went out of
17 her way to get us home, get me home, and the hospital
18 stabilized my leg. I had a hip -- I had a cast up to my
19 hip, and the girl at USAir was able to get me home from
20 Dulles on a plane and then from Dulles into Philadelphia.
21 By the time I got in, it was about 12:50 in the morning,
22 so it was a long day.

23 Q. From St. Francis to the airport, how did you
24 get --

25 A. Taxi. All the people I was with, they all offered

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1 to go to the hospital with me, and I didn't want to ruin
2 their stay. I'm a big boy. I don't need you to hold my
3 hand. Finish your round of golf. I'll see you at the
4 airport.

5 Q. Do you recall approximately when you received
6 surgery?

7 A. I fell on Sunday. I was -- went to Dr. Hornstein
8 on Monday and he operated on Friday.

9 Q. So who did your surgery?

10 A. Dr. Paul Hornstein.

11 Q. And do you know what type of surgery he is?

12 A. He's an orthopedic surgeon.

13 Q. Where was that surgery performed?

14 A. Roxborough Memorial Hospital, Philadelphia.

15 Q. What is your understanding of what type of surgery
16 that you had?

17 A. I'm not a medical person, but after the surgery,
18 he told me it was -- they had to put two screws in my
19 leg.

20 Q. All right.

21 A. In my ankle.

22 Q. Into your ankle. And following the surgery, were
23 there X-rays taken of your ankle?

24 A. There were.

25 Q. And did you have discussions with Dr. Hornstein

1 about those X-rays?

2 A. He came over to me and showed me the actual screws
3 that were in my ankle.

4 Q. Via an X-ray?

5 A. Via X-ray, after surgery.

6 Q. And you recall seeing that X-ray?

7 A. I do.

8 Q. Let me hand you what's been marked as Plaintiff's
9 Exhibit No. 2. And are you familiar with Exhibit No. 2?

10 A. I am.

11 Q. And what is Exhibit No. 2.

12 A. It's an X-ray of my right foot with the two screws
13 in it.

14 Q. And that's the same X-ray that you discussed with
15 Dr. Hornstein?

16 A. Yes.

17 Q. And your name appears on the X-ray?

18 A. It does.

19 MR. McCool: Your Honor, at this time I move
20 to introduce Plaintiff's Exhibit No. 2 into evidence.

21 MR. HOOD: No objection.

22 THE COURT: Plaintiff's 2 into evidence
23 without objection.

24 (Plaintiff's Exhibit No. 2 marked for
25 identification and admitted into evidence.)

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1 MR. MCCOOL: Judge, at this time I would like
2 to publish this to the jury.

3 THE COURT: You may.

4 BY MR. MCCOOL:

5 Q. Mr. Barilotti, did you stay overnight in the
6 hospital?

7 A. The day of the operation I did.

8 Q. How were you feeling after the operation in the
9 after and in the 24 hours after?

10 A. I was in a lot of pain.

11 Q. And did you -- was it a situation where simply
12 screws were put in and nothing else was done to your
13 ankle, or was there a brace or a cast?

14 A. Well, they put a cast on -- a removable cast
15 immediately, then I was in a boot up to my knee.

16 Q. And were you able to walk?

17 A. No. I wasn't able to put pressure on -- they gave
18 me crutches, and I wasn't able to put pressure on the
19 foot until the pins were removed.

20 Q. So was there a second surgery?

21 A. Yeah, there was. What happened is they wanted to
22 see how it was healing and if it was -- if it healed
23 okay, they were going to remove the pins. If not, they
24 wanted it to be stationary, permanent, but they did
25 remove the pins, and I remained in a boot with casual

1 weight gradually.

2 Q. Who performed the pin removal surgery?

3 A. Dr. Hornstein.

4 Q. The same doctor who put the screws in?

5 A. Yes.

6 Q. And when was the second surgery?

7 A. Around the middle of January.

8 Q. All right. And with respect to your recovery --
9 let me back up.

10 Between the time you had the first surgery and the
11 second surgery, were you weight bearing or not weight
12 bearing?

13 A. Not weight bearing.

14 Q. When were you able to become weight bearing again?

15 A. After the screws came out and they started me into
16 physical therapy and they started me into gradual weight
17 bearing.

18 Q. And how long did you go to physical therapy?

19 A. Well, they gave me a prescription for -- I think
20 about 12, but after two, I was feeling pretty good and
21 asked for some probably some apparatuses I can do at home
22 because I was pretty busy with my job and it was really
23 pretty cumbersome to take the time. I've got a
24 responsibility at work to do things.

25 Q. And did you do physical therapy exercises at home?

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1 A. I did.

2 Q. What sort of physical therapy did you do at home?

3 A. They gave me bands of different strengths to
4 practice and move my foot and give range of motion with
5 it.

6 Q. Were those the same exercises you were doing at
7 the physical therapy session?

8 A. Pretty much so.

9 Q. And were you taught how to continue to do those
10 exercises?

11 A. I was.

12 Q. Mr. Barilotti, let me hand you what's been marked
13 as Plaintiff's Exhibit No. 5. What is Exhibit No. 5?

14 A. My medical records.

15 Q. In terms of your medical records, the billing
16 records?

17 A. Yes.

18 Q. And do those bills in Exhibit No. 5 accurately
19 reflect the bills you incurred as a result of the
20 fracture and the treatment that you incurred?

21 A. Yes, sir.

22 MR. MCCOOL: At this time I move to introduce
23 Exhibit No. 5 into evidence.

24 MR. HOOD: No objection.

25 THE COURT: Plaintiff's 5 into evidence

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1 without objection.

2 (Plaintiff's Exhibit No. 5 was marked for
3 identification and admitted into.)

4 BY MR. McCOOL:

5 Q. Mr. Barilotti, let me show you what has been
6 marked as Plaintiff's Exhibit 4.

7 A. My medical bills.

8 Q. Is that a summary of your bills?

9 A. It is.

10 Q. And does Exhibit No. 4 accurately reflect the
11 summary of your bills?

12 A. Yes, it does.

13 Q. And what is the amount of your bills related to
14 the fracture that occurred on October 31 of 2010?

15 A. \$25,033.05.

16 MR. McCOOL: At this time I move to introduce
17 Exhibit No. 4 into evidence.

18 MR. HOOD: No objection.

19 THE COURT: Plaintiff's 4 into evidence
20 without objection.

21 (Plaintiff's Exhibit No. 4 was marked for
22 identification and admitted into evidence.)

23 BY MR. McCOOL:

24 Q. Now, did you lose any time from work?

25 A. I did not.

1 Q. And were you able to carry out of -- how were you
2 able to do that being in the cast and screws and those
3 sorts of things?

4 A. I had a boot on my right leg, and the day that my
5 son took me home from the hospital, my wife took me home
6 from the hospital, I immediately jumped in the car and
7 taught myself how to drive with my left foot and was able
8 to do that for about six months.

9 I got a responsibility to work. We were in the
10 process of closing a fund, and I was one of the key
11 people and I just couldn't take the time -- I couldn't be
12 out of work at that point, not that I can't be replaced,
13 but the timeline and the personnel we needed to do what
14 we had to do.

15 Q. All right. And have you returned to your
16 pre-injury level of physical abilities?

17 A. No way.

18 Q. Okay. And before this injury occurred, were you
19 an active person or not --

20 A. I -- obviously, I used to work out three to four
21 days a week. I played a lot of sports. I played golf
22 two to three days a week and walked it. I played
23 racquetball once or twice a week. I was in cross fit. I
24 did all the things to try to stay -- I prided myself to
25 try to stay pretty active for my age, but I can tell you

1 that, you know, my workout routine has been altered
2 around -- I still work out, but it's been totally altered
3 around that leg because I'm not able to -- I'm not able
4 to have any impact or any friction or anything on the
5 ankle.

6 Q. You mentioned racquetball before you were injured.
7 Do you play racquetball now?

8 A. No.

9 Q. Why is that?

10 A. I just cannot put any quick movements or --
11 sometimes my foot gives out just walking.

12 Q. And you mentioned cross fit. Do you do cross fit?

13 A. No.

14 Q. At in any point in time after your injury, did you
15 try to play golf again?

16 A. I started -- I tried to -- yeah, about six months
17 after the injury, I started to walk gradually to see how
18 much I could do, just to be able to try to transfer my
19 weight into playing golf.

20 Q. Are you able to play a full round now?

21 A. Now I am, but, I mean, it took a while.

22 Q. When you say a while, what do you mean by a while?

23 A. It was probably over a year and a half before I
24 was able to walk 18 holes of golf without either stopping
25 or just getting up.

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1 Q. And before the fall on October 31st of 2010, were
2 you fully able and capable to walk around and golf 18
3 holes?

4 A. Absolutely. My wife will tell you, I walk 36
5 holes sometimes, especially in some of the competitions.

6 Q. Are you receiving any ongoing medical treatment?

7 A. I am not.

8 Q. And when was the last time you saw Dr. Hornstein,
9 the surgeon?

10 A. It was around the middle of October, just about a
11 year after the accident.

12 Q. And how were you feeling at that time?

13 A. I was still feeling a lot of pain, and he went in
14 and gave me a shot of cortisone and lidocaine and
15 basically said you just got the onslaught of advanced
16 arthritis in it.

17 Q. Are you able to function physically and actively
18 as you could before your injury on October 31 of 2010?

19 A. I can. I mean, I don't look at -- I don't let
20 anything stop me, if possible, but I had to alter my
21 whole lifestyle, my whole activities, whether it be work.
22 I used to like to travel a lot with my job. I had to
23 alter that. You know, I'm reminded of it every day. I
24 mean, the first time -- for the first time in my life I
25 feel my age because of the arthritis and the pain that I

1 am having. I never did.

2 Q. And do you have scarring from the surgery?

3 A. I do.

4 Q. And how about the appearance of your foot and the
5 position of your foot? Is it the same now as before you
6 were injured?

7 A. My foot is skewed out, kind of drastic.

8 Q. Was it skewed out before?

9 A. It was not.

10 Q. And does that concern seem to be improving?

11 A. It wasn't perfect.

12 Q. Are you able to simply walk before you were
13 injured?

14 A. No. I have a very minor limp. Weather, weather
15 affects it, rain, cold weather. In the north when it's
16 cold or damp, it's ongoing.

17 Q. Tell us, in the morning and that sort of thing and
18 throughout the day, how it feels.

19 A. Arthritis, the advanced arthritis, how that works
20 is, you know, when you are mobile and you're doing
21 things, you're not in a lot of pain. It's when you're
22 immobile and relaxed, like in the morning when you first
23 get up. It takes a while just to get moving, and in some
24 cases it takes half hour, just to be able to start
25 walking.

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1 You get down the step. I cannot lead with that
2 foot down the steps. I can lead with that foot up the
3 step. It's been an adjustment. I deal with it. I've
4 adjusted to it, and I move forward.

5 Q. Did you have any problems like that beforehand
6 waking up in the morning --

7 A. No, no.

8 Q. -- with pain? In terms of stability, how is the
9 stability of your ankle?

10 A. It's very unstable. Sometimes it will just give
11 out.

12 Q. Did it do that before you were injured?

13 A. No.

14 Q. Any problems with your ankle before you were
15 injured on October 31 of 2010?

16 A. Nothing at all. I would love to go back to that
17 day and have my ankle back so I would be able to be back
18 as I was.

19 Q. And do you wear a brace or any sort of special
20 shoe?

21 A. No. I don't wear any special shoe, but I have to
22 wear a shoe. I cannot walk barefoot anymore. I cannot
23 walk in flip flops or Docksidors. I can't walk with
24 anything that doesn't have an arch support.

25 Q. And is there some level of pain or discomfort

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1 every day associated with your ankle?

2 A. Every day. There is not a day that goes by that I
3 don't know that's there, just walk up the steps.

4 Q. How often does that occur?

5 A. Every day.

6 MR. McCOOL: That's all the questions I have.
7 Thank you, sir.

8 MR. HOOD: Mr. Hood?

9 CROSS-EXAMINATION

10 BY MR. HOOD:

11 Q. Good morning.

12 A. Good morning.

13 Q. So the week of October 31st, 2010, you came, took
14 the direct flight from Philly down to Charleston?

15 A. Yeah.

16 Q. And you and your boss were meeting five customers
17 slash friends for sort of a men's golf weekend?

18 A. Yes, sir.

19 Q. Those guys were George Maloney, Chuck Ram, Al
20 Bamore, Tim Goings, and George Murphy?

21 A. Yes, sir.

22 Q. Y'all played golf on Friday and then again on
23 Saturday and then the Ocean Course on Sunday?

24 A. Yes.

25 Q. You had actually played the Ocean Course before,

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1 hadn't you?

2 A. Yeah, about eight or ten years ago.

3 Q. And that what your only other time playing that
4 course?

5 A. Yes.

6 Q. So then you had seven guys, seven men, going to
7 play, a threesome and a foursome. Your group was a
8 threesome?

9 A. Yes.

10 Q. And y'all went out first?

11 A. Yes.

12 Q. And your tee time was sometime early that morning?

13 A. Uh-huh.

14 Q. You played holes one, two, and three without
15 incident?

16 A. Right.

17 Q. You walk around, presumably -- you're a pretty
18 good golfer?

19 A. I'm a two handicap.

20 Q. What does that mean?

21 A. It's pretty good.

22 Q. All right. So in a golf tournament, if someone
23 shoots a zero, it's even, that means they're shooting par
24 for the course, right?

25 A. Scratch golfer would mean they would shoot par.

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1 Q. So two over means you would have two shots over
2 par?

3 A. Doesn't mean that I always shoot -- you know, I
4 don't mean I always play my handicap.

5 Q. You're not too shabby?

6 A. I've played a lot.

7 Q. How much have you played? Before this incident,
8 were you playing golf, what, two to four times a week?

9 A. Two to three, sometimes four.

10 Q. Yeah. And do you remember a golf course, the
11 Cricket Club up in Philadelphia and another golf club
12 down in Naples?

13 A. Uh-huh.

14 Q. Is that a yes?

15 A. Yes, sir.

16 Q. And you played golf down there and other courses
17 with friends?

18 A. Yes, sir.

19 Q. And y'all go on trips and travel and play golf?

20 A. I did, yeah.

21 Q. You're talking about this three times a week
22 for -- you're talking about 150 rounds a year?

23 A. Maybe not that many, maybe not that many, but 80
24 to 100.

25 Q. Well, 100 would be two times a week, and if it's

Joseph Barilotti-Cross Examination by Mr. Hood

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1 two to four, so say 100 rounds a week, or year?

2 A. We don't play 12 months up there.

3 Q. You got to move down here. We play golf all the
4 time.

5 So how many years has it been that you're playing
6 golf 80, 100 times a year?

7 A. Fifteen.

8 Q. Fifteen years, average about, what, four hours a
9 day on the golf course to hit 18 holes?

10 A. Yes.

11 Q. So you're spending somewhere between 400, 500
12 hours a year on the golf course, not counting the time at
13 the driving range, not including putting the balls, all
14 that kind of stuff?

15 A. Yeah.

16 Q. And you came down here. You were with your
17 buddies. You play golf. You tee off on the first hole,
18 first thing in the morning, heavy, misty hair, right?

19 A. Yes.

20 Q. Shoes are wet from walk around?

21 A. Yes.

22 Q. You knew the ground was wet, no question about
23 that?

24 A. No question.

25 Q. You walk up to hit your ball the second time.

Joseph Barilotti-Cross Examination by Mr. Hood

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1 It's soaking wet from rolling in the wet grass, right?

2 A.. Right.

3 Q. The only reason I keep saying that is I got to get
4 you to answer for the court reporter. So you approach
5 the third hole, or -- excuse me, the fourth hole. By
6 that point, you remember going across about six bridges
7 like the one that you were on at the time you fell?

8 A. I don't remember, but prior to testimony,
9 obviously I did.

10 Q. Okay. And you mentioned earlier your testimony I
11 think that you had walked across a few other slippery
12 bridges; is that what you're alluding to?

13 A. Yes.

14 Q. And when you walked across those bridges, did you
15 think they were slippery?

16 A. Yes.

17 Q. Did common sense tell you if something is wet it's
18 slippery?

19 A. Right.

20 Q. There is no doubt that any surface that is wet is
21 going to be a slipperier than a dry surface?

22 A. Yes.

23 Q. Common sense tells you that, right?

24 A. Absolutely.

25 Q. You don't knee a warning sign to tell you that?

Joseph Barilotti-Cross Examination by Mr. Hood

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1 A. I know they are slippery before I get to that.

2 Q. So you don't need a warning sign to tell you that,
3 correct?

4 A. Not necessarily.

5 Q. So as you approached the bridge at number four,
6 you noticed that it was wet, right?

7 A. Yes.

8 Q. And you walked across the bridge, right?

9 A. Yes.

10 Q. And you fell at the other end of the bridge?

11 A. I was just about off the bridge.

12 Q. Still on the bridge, but you had traversed the
13 first --

14 A. Yes.

15 Q. -- say 40 or so feet of it?

16 A. Yes.

17 Q. And during that process, did you notice that the
18 bridge was slippery?

19 A. It was slippery all the way across, and I was
20 being as cautious as possible.

21 Q. Did you ask for a hand?

22 A. No.

23 Q. Did you -- was it so slippery from the other
24 experiences that you thought you needed to ask the caddy
25 to help you get across the bridges?

1 A. No.

2 Q. So you slip, you fall, you land on the ground.

3 Where did you land, on your bottom or your side?

4 A. I landed forward.

5 Q. So your foot slipped out. You went face first
6 down?

7 A. Yes.

8 Q. I'm sorry. When you went face first down, was
9 your face still on the bridge or was it in the sand?

10 A. My face was face down on the bridge.

11 Q. So your feet were on the bridge, your torso and
12 your body was on the bridge, your head?

13 A. Yes.

14 Q. What happened? You roll over?

15 A. No. I stayed that way on my elbows and my knees.
16 I was going to try to get up, and I didn't recognize that
17 my right foot was just sticking out sideways. I didn't
18 know that, and when I said I was going to try to get up,
19 two people with me said, Don't move.

20 Q. And so you stayed put, right?

21 A. I did.

22 Q. When you're face down on the bridge, did you think
23 that the bridge was covered in sand?

24 A. Did I think it was covered in sand?

25 Q. Did you see sand on your face?

Joseph Barilotti-Cross Examination by Mr. Hood

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1 A. It was all over. It was on my elbows; it was on
2 my knees.

3 Q. Was it your contention that the bridge was sandy?

4 A. Yes.

5 Q. Let's look at your deposition, please.

6 MR. HOOD: Your Honor, with your permission
7 I'll open the original.

8 THE COURT: You may.

9 BY MR. HOOD:

10 Q. This looks like it's sealed up pretty well. I'm
11 going to tear this thing open, eventually.

12 That's your deposition. You remember you gave a
13 deposition? Do you recall giving a deposition?

14 A. I do, sir.

15 Q. Okay. Let me get you to look to page 19. Do you
16 see that?

17 A. Page 19? Yes.

18 Q. Just -- okay. It's actually -- the question
19 begins on page -- 18, line 25.

20 A. The question was --

21 Q. Is it your contention that the bridge was also
22 sandy?

23 What was your answer?

24 A. I didn't say that.

25 Q. Did you say it today?

Joseph Barilotti-Cross Examination by Mr. Hood

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1 A. After reading the incident report.

2 Q. After reading the incident report, you came to the
3 conclusion it was sandy?

4 A. That was the part of the cause of the fall, was
5 the sand and the dew.

6 Q. But that wasn't your contention when you gave a
7 deposition?

8 A. That's -- when I thought I fell, I fell on the
9 dew, and I go to realize after the fact there was sand on
10 the bridge.

11 Q. I thought you said you were covered in sand.

12 A. When I was down on was on my elbow. I didn't
13 think that was the cause of the fall at the time.

14 Q. At the time of your deposition, your contention
15 was --

16 A. I mean, you could be on any surface, and if you're
17 on your elbows and your knees, you're going to feel the
18 grit or grounds of anything. I didn't believe the sand
19 was the cause of my fall until after. I thought it was
20 just the dew, and I was walking cautiously because of the
21 dew..

22 Q. Was there sand on other bridges that you noticed
23 or did you pay attention?

24 A. I didn't pay attention.

25 Q. And in this case, despite laying in the sand,

Joseph Barilotti-Cross Examination by Mr. Hood

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1 being covered in sand, you didn't think the sand
2 contributed to your fall until after reading the incident
3 report, is that your testimony?

4 A. I didn't realize that the sand was the cause of
5 the fall.

6 Q. And the only thing that suggested to you that it
7 was was reading the incident report?

8 A. I went down on a wet bridge. I was walking as if
9 it was just wet, not knowing it was as sandy as it was
10 and caused me to go down.

11 Q. How sandy was it then or do you really even now?

12 A. It's been over two years.

13 Q. So you don't know.

14 A. I can't answer that honestly.

15 Q. And at the time of your deposition, you didn't
16 think anything other than the dew contributed to your --

17 A. I thought it was just the dew.

18 Q. That was despite being on the bridge, laying down,
19 waiting for help to arrive, right?

20 A. Yes.

21 Q. Help did arrive, correct?

22 A. Came out with a cart for me.

23 Q. They loaded you into the cart, drove you back into
24 the clubhouse?

25 A. Yes.

Joseph Barilotti-Cross Examination by Mr. Hood

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1 Q. You mentioned the bumps. Did the gentleman who
2 was driving, did he slow down?

3 A. Yes.

4 Q. Was it staff there who came to help you? Were
5 they professional?

6 A. Yes, they were.

7 Q. And were they trying to accommodate you?

8 A. To the best of their ability.

9 Q. Did they get you medical treatment promptly?

10 A. They did.

11 Q. You're all the way out at the far end of North
12 America by the time help got there --

13 A. I couldn't -- I'm not complaining about the staff
14 and their help. It was expedient.

15 Q. To be clear, before you stepped foot on the
16 bridge, you knew that it was wet?

17 A. Yes.

18 Q. And before you stepped foot on the bridge, you
19 knew that you were walking in sand?

20 A. No.

21 Q. You didn't not know --

22 A. Before I set foot on the bridge, I knew I was
23 walking in sand?

24 Q. Correct, walking through sand on the foot path.

25 A. Those bridges were so wet, when you're walking

Joseph Barilotti-Cross Examination by Mr. Hood

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1 across the bridge, it's almost like you're lifting your
2 feet up. You're not walking -- that you would normally
3 walk on the cart path on grass paths or sand paths you
4 don't walk the same -- in the same response like your
5 normal walk.

6 With the soft spikes, you have to lift your feet
7 up and walk gently, and that's what I was doing.

8 Q. Okay. So you gently walked, lifting your feet up
9 like that. You were walking through the sand on the cart
10 path before you got on the bridge?

11 A. I was walking on the dew on the cart path, and
12 there was sand underneath the dew.

13 Q. Okay. Do you think your foot is coming into
14 contact with the sand under the dew when you stepped
15 down?

16 A. Absolutely.

17 Q. And you knew your feet were coming into contact
18 with the sand?

19 A. Absolutely.

20 Q. And you knew that, that the sand was on the bottom
21 of your feet as you walked on to that bridge?

22 A. Absolutely.

23 Q. The wet condition of the bridge was obvious. The
24 whole golf course was wet, right?

25 A. Yes.

Joseph Barilotti-Cross Examination by Mr. Hood

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1 Q. And when you approached the bridge, you saw there
2 was no handrail, correct?

3 A. I did.

4 Q. That was obvious, right?

5 A. Yes.

6 Q. You saw there was no mat, correct?

7 A. I did.

8 Q. That was obvious.

9 A. It was obvious because all the other courses we
10 played that week had mats on them.

11 MR. HOOD: Objection, Your Honor. Move to
12 strike.

13 THE COURT: Sustained. Ladies and gentlemen:
14 Please disregard that last statement by the witness.

15 BY MR. HOOD:

16 Q. There's no dispute, is there, that the bridge was
17 wet with dew, is there?

18 A. No.

19 Q. And there is no dispute that there was sand all
20 over this golf course?

21 A. Not at all.

22 Q. And there is no dispute that sand and dew are both
23 natural conditions and part of the golfing environment?

24 A. Pretty much so.

25 Q. And there is no dispute that you play golf when

Joseph Barilotti-Cross Examination by Mr. Hood

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1 it's sunny, when it's raining, when it's windy, when it's
2 hot, when it's cold; the weather and nature are part of
3 the elements of golf, correct?

4 A. Yes.

5 Q. And that's part of what you decide to do and how
6 you decide to spend your free time and recreation?

7 A. Yes.

8 Q. You testified a little bit about damages. I want
9 to shift gears now.

10 You're currently not under the care of any
11 physicians, correct?

12 A. Yes, that's correct.

13 Q. You're not taking any pain medications.

14 A. That's correct.

15 Q. The problems you alluded to with the stiffness in
16 the morning and difficulties with your foot being skewed
17 out, those aren't difficulties you've actually brought to
18 the attention of your physician, have you?

19 A. When I went and had my cortisone shot in October I
20 did.

21 Q. 2011?

22 A. And when I -- I wanted to further explore why it
23 still bothered me. He said it's just the arthritis.

24 Q. And that was October of 2011?

25 A. My sister-in-law works for that firm, and when I

Joseph Barilotti-Cross Examination by Mr. Hood

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1 called her, I said I'm still having problems with my leg.

2 Q. I want to interrupt and object to you telling the
3 Court what your sister told you.

4 A. No, my sister-in-law who was the X-ray technician,
5 at the doctor's office, she translated to the doctor and
6 he got back to me.

7 Q. And that was -- when was the date of that?

8 A. That's been even after that. I got the shot in
9 October of --

10 Q. That's what I'm asking. When was that, the shot?

11 A. The shot was in '11.

12 Q. October of '11, so the anniversary of the fall?

13 A. Right.

14 Q. About six months after the accident you were able
15 to start playing golf again; is that right?

16 A. On a gradual, tried to. I couldn't play for a
17 period of time.

18 Q. And it was about a year before you could play 18
19 holes of golf?

20 A. Yeah, about that, a little longer.

21 Q. So today you're playing golf one or two times a
22 week, weather permitting?

23 A. Yes.

24 Q. During the course of your recovery and up through
25 today, you're able to play golf and now today you're able

Joseph Barilotti-Redirect Examination by Mr. McCool

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1 to play at the level of one to two times a week?

2 A. Yeah, pretty much so.

3 Q. What's your handicap?

4 A. Two.

5 MR. HOOD: Thank you.

6 THE COURT: Mr. McCool?

7 MR. MCCOOL: Yes, I have a few questions.

8 Thank you.

9 REDIRECT EXAMINATION

10 BY MR. MCCOOL:

11 Q. Mr. Barilotti, while you were on the ground after
12 your fall, were you concerned about your fractured ankle
13 sticking out to the side or what might possibly have
14 caused your fall?

15 A. I was pretty much in shock. I didn't know that my
16 ankle was sticking out to the side. I was told by the
17 guys that picked me up I was actually shocked that I was
18 on the ground.

19 Q. And you were in tremendous pain at that point?

20 A. A lot of pain.

21 Q. And regarding playing golf or trying to resolve
22 playing golf after six months, was that part of your own
23 personal, like, physical therapy type of process?

24 A. Repeat the question again, please.

25 Q. Sure. When you started trying to play golf again

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1 six months after your injury, was that kind of like your
2 personal physical therapy, let's see what I can do
3 process?

4 A. Absolutely.

5 Q. And then are you a throw in the towel type of guy?

6 A. I wouldn't quit anything. I just keep plugging
7 along.

8 Q. Thank you.

9 THE COURT: Mr. Hood?

10 MR. HOOD: No further questions, Your Honor.

11 THE COURT: You may step down. Thank you.

12 Are you ready for a break? All right.

13 You may leave your notepads in the chair. Do
14 not begin your deliberations. Do not discuss this case
15 amongst yourself. Please let the bailiffs know when all
16 of you have had an appropriate comfort break. Please
17 rise for the jury.

18 (Recess taken.)

19 THE COURT: Call your next witness.

20 MR. MCCOOL: Plaintiff calls Steven Cipolla.

21 STEVEN CIPOLLA,

22 having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MCCOOL:

Steven Cipolla-Direct Examination by Mr. McCool

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1 Q. You are a caddy at the Ocean Course score,
2 correct?

3 A. I am, sir.

4 Q. Have you been a caddy at the Ocean Course since
5 March 2005?

6 A. That's correct.

7 Q. And you were the caddy for Mr. Barilotti when he
8 fell and was injured on October 31 of 2010, correct?

9 A. Yes.

10 Q. And you heard Mr. Barilotti fall, but you didn't
11 actually see him fall, is that right?

12 A. That is correct. He was to my left.

13 Q. But even though you didn't see him fall,
14 Mr. Barilotti, he was not violating any rules of the
15 course by walking across the bridge at the fourth hole,
16 correct?

17 A. No, sir.

18 Q. And when you saw Mr. Barilotti, you heard the fall
19 and that's when you went over to him, correct?

20 A. Yes, sir.

21 Q. And you saw him on the ground, correct?

22 A. I did.

23 Q. And you could see that his ankle was broken,
24 right?

25 A. I'm not qualified to say it was broken, but there

1 was definitely an injury. There was swelling at the
2 ankles.

3 Q. And with respect to the severity of the injury --
4 you have a military background; is that right?

5 A. I do.

6 Q. And you've seen broken legs before in the
7 military?

8 A. I have.

9 Q. And based on that information and that background,
10 you knew Mr. Barilotti, based on the appearance of the
11 leg, that it was broken, correct?

12 A. There was a fair chance that yes, it was broken.

13 Q. So it was a bad injury?

14 A. Yes.

15 Q. And when you saw Mr. Barilotti on the ground and
16 when he was being lifted on to the golf cart and that
17 sort of thing, he was on pain, correct?

18 A. I would assume he was in pain. He made the
19 appearance that he wasn't that much in pain because he
20 was talking to his buddies, his golf partners, excuse me,
21 to continue to play, and he held normal conversation. He
22 actually even tried to get up on his own initially.

23 Q. But to you, he appeared to be in pain, correct?

24 A. I can't say that, sir. I don't know what he's
25 feeling.

Steven Cipolla-Direct Examination by Mr. McCool

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1 Q. I'm talking about appearance.

2 A. The leg was swollen.

3 Q. Yes, and he appeared to be in pain?

4 A. He wasn't indicating that verbally, sir.

5 Q. I'm talking about appearance.

6 A. His leg was swollen, yes.

7 MR. McCOOL: Your Honor, this is the original
8 transcript of Mr. Cipolla I would like to present to him.

9 THE COURT: All right.

10 MR. McCOOL: May I open it?

11 THE COURT: You may.

12 BY MR. McCOOL:

13 Q. Mr. Cipolla -- and, Mr. Cipolla, I took your
14 deposition not too long ago when you were placed under
15 oath to tell the truth. Do you recall that?

16 A. Yes, sir.

17 Q. And what I would like for you to do is turn to
18 page 21 of your deposition, line 20.

19 A. Yes, sir.

20 Q. And I asked you the question beginning at line 20,
21 Did Mr. Barilotti appear to be in pain when you saw him?

22 And you responded with yes, right?

23 A. Yes, sir.

24 Q. And Mr. Barilotti, at no point in time before he
25 was injured, he was not acting inappropriately or doing

Steven Cipolla-Direct Examination by Mr. McCool

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1 anything wrong before he fell and was injured, correct?

2 A. No, sir.

3 Q. I am correct?

4 A. You are correct.

5 Q. And you're not aware of anything -- you being the
6 caddy, you being there at the time of the fall -- you're
7 not aware of anything Mr. Barilotti did wrong that caused
8 or contributed to his fall or injury, correct?

9 A. No, sir.

10 Q. I am correct?

11 A. You are correct.

12 Q. When is it permissible for a person playing a
13 round of golf at the Ocean Course for their safety and
14 wellbeing to be compromised?

15 A. It's never permissible, sir.

16 Q. And you've heard discussions about the small --
17 the bridge at hole number two and the black mat, correct?

18 A. Yes.

19 Q. And that black mat provides traction for people
20 walking across what would have been a bare wooden bridge,
21 correct?

22 A. Yes, sir.

23 Q. And let me show you what's been marked as
24 Plaintiff's Exhibit No. 19. If you would turn to the
25 last page of Exhibit No. 19, you prepared a written

Steven Cipolla-Direct Examination by Mr. McCool

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1 statement, correct?

2 A. Yes, that day.

3 Q. And you prepared it soon after the injury
4 occurred, correct?

5 A. When we finished the round, yes, sir.

6 Q. When the other players finished their round?

7 A. Yes, sir.

8 Q. And looking at Exhibit No. 19, you have your
9 signature on there, correct? That's your signature?

10 A. It is.

11 Q. And you signed it without any duress or anybody
12 forcing you to prepare the statement, correct?

13 A. Just to fill it out. Standard procedure is to
14 fill out an incident report, yes.

15 Q. Right. And in your statement, you noted that the
16 wood on the bridge was, quote, was both wet and sandy,
17 correct?

18 A. Yes, sir, uh-huh.

19 Q. And you found that to be significant when you
20 prepared your statement, correct?

21 A. Yes.

22 Q. And as Mr. Barilotti's caddy, you can't say
23 whether you told him or his group that the bridge was
24 slippery, correct?

25 A. Say that question again, sir, please?

Steven Cipolla-Cross Examination by Mr. Hood

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1 Q. Yes. Regarding the bridge at hole number four
2 where Mr. Barilotti fell, you can't say that you informed
3 the group, his group, that the bridge was slippery,
4 correct?

5 A. Not on number four. On the first bridge we come
6 across I had.

7 Q. But after that, nothing was said?

8 A. Not on each bridge, no, sir, just on the initial
9 bridge we crossed.

10 Q. And regarding the bridge at hole two that has the
11 black mat, the purpose of that mat is to provide more
12 traction and grip instead of just having bare wooden
13 surface, correct?

14 A. I believe that's why that's in there, yes, sir.

15 MR. McCOOL: That's all the questions I have.
16 Thank you.

17 THE COURT: Mr. Hood?

18 CROSS-EXAMINATION

19 BY MR. HOOD:

20 Q. Mr. Cipolla, where did you grow up?

21 A. New York, sir.

22 Q. What part of New York?

23 A. Long Island.

24 Q. And after growing up in New York, tell us -- you
25 mentioned military. What did you do?

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1 A. I was a fire control officer, spent many years at
2 sea, 11 and a half living on destroyers and USS Aisle.

3 Q. And when did that service end?

4 A. In '03, sir.

5 Q. And then what did you start doing in 2003?

6 A. Well, I skipped a year, did some building on my
7 home, and then worked at the Ocean Course, moved from
8 Washington state where I retired back to South Carolina
9 where we had a home.

10 Q. And you began working on the Ocean Course back in
11 2004?

12 A. That's correct.

13 Q. And you've been working there since?

14 A. Yes, sir.

15 Q. And you've been working there in what capacity?

16 A. As a caddy.

17 Q. And tell us, if you would, just briefly, what a
18 caddy does with a group when you first meet them.

19 A. We greet them, we anticipate any of their needs
20 ahead of time. Someone needs a cart possibly because
21 they're handicapped or anything like that, but we greet
22 them. We ask them what their expectations are. We tell
23 them -- basic caddies, rules on the course, what we do as
24 far as yardages to the holes, describe the holes, part --
25 best friend while we're out there, helping them get

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1 through rough times, you know. Anything they need. Part
2 naturalist. Some people from New York have never seen an
3 alligator, so point those out. Ospreys, fishing, hitting
4 the water, taking a fish out of water. It's pretty
5 inspiring to a lot of people that never seen it just to
6 point things out to kind of forget about the golf thing.

7 Q. And specifically as it relates to the physical
8 conditions on the golf course, what, if anything, do you
9 typically do with your groups?

10 A. Can you restate the question?

11 Q. Sure. You talked about being a naturalist,
12 talking about the natural environment, physical
13 conditions on the golf course. Do you talk about the
14 physical conditions on a particular day with the people
15 that you're caring for?

16 A. Yes, I do.

17 Q. What do you tell them?

18 A. If the grass is wet, if the greens are at this
19 speed; just a plethora of information that we give them.
20 You know, being careful around steep areas because there
21 are drop-offs things like that, just to be -- steep hills
22 with grass that can be wet, crossing bridges. I always
23 tell people if you see in the morning that it's wet,
24 being careful going down these bridges. It can be
25 slippery.

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1 Q. Do you repeat that warning at each bridge?

2 A. No, sir.

3 Q. And what you testified earlier was on the first
4 bridge that you come to?

5 A. Yeah.

6 Q. Is it the same type bridge that we're talking
7 about here, number four, the first bridge you come to?

8 A. It's constructed of the same material. It's
9 actually the first bridge you come to, you have an up,
10 flat, and then downhill, so it's -- the bridge at number
11 four is completely flat.

12 Q. And no doubt in your mind that that admonition or
13 warning was given that morning?

14 A. I have no doubt, sir.

15 Q. Now, tell us when you heard -- did you hear
16 something?

17 A. Yeah.

18 Q. What did you hear?

19 A. I'm not sure if I heard the defendant actually say
20 something or --

21 Q. We're the defendant. He's the plaintiff.

22 A. The plaintiff, excuse me. The plaintiff actually
23 say something or someone in the group initially, you
24 know, yells something, and that's when I turned and saw
25 the plaintiff, you know, on the ground, and I ran to his

1 assistance.

2 Q. And tell us what you saw when you got there.

3 A. I saw him laying on the ground, and actually at
4 that time initially right away he was trying to get up.
5 I believe he was -- like, in a doggy position trying to
6 get up, and I was, like, Be careful, because it looked
7 like he tripped.

8 And I said, Lie down. Check it out, and his
9 friends were also there at the time. He was -- you know,
10 he grabbed for his ankle and he looked and it looked
11 swollen, so I told him to stay down, and we immediately
12 called the pro shop to render assistance and they did.

13 Q. And did you stay with him until assistance
14 arrived?

15 A. Yes.

16 Q. Did you do anything once assistance arrived, or
17 did you --

18 A. After he was in the cart and headed out, the rest
19 of the group continued to play golf.

20 Q. Did you help get him into the cart?

21 A. Yes.

22 Q. And did you continued on to that round?

23 A. Yes.

24 Q. So I guess your group then had just two people in
25 it at that point?

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1 A. Yes.

2 Q. After the round was complete, that's when you met
3 back at the clubhouse and gave the statement you
4 discussed earlier?

5 A. I did.

6 Q. Let me ask you, when you went over there to check
7 on Mr. Barilotti who had fallen, did you see any -- was
8 the bridge covered in grass clippings or have any debris,
9 anything of that nature?

10 A. Just what I stated on my statement, that it was,
11 you know, a little wet from dew and some sand on there,
12 which was totally normal.

13 Q. You don't consider sand to be debris, do you, sir?

14 A. No. Debris would be branches and rocks.

15 Q. All right. And in the bridges at the Ocean Course
16 there at Kiawah, they abut sand paths on either end?

17 A. That's true, yes.

18 Q. And they're covered in sand on a daily basis?

19 A. Yes.

20 Q. And as you have caddied groups in the past, the
21 bridge at hole number four, had you ever had anyone fall
22 on that bridge?

23 A. Negative, no, sir.

24 MR. HOOD: Thank you, sir.

25 MR. McCOOL: No further questions, Your

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1 Honor.

2 THE COURT: You may step down. Thank you.

3 MR. MCCOOL: Plaintiff calls Brian Gerard.

4 BRIAN GERARD,

5 having been first duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MCCOOL:

9 Q. Mr. Gerard, you are the director of golf and
10 activity at Kiawah Island, correct?

11 A. Yes, sir, that's correct.

12 Q. And you've worked at Kiawah Island Resort for 27
13 years?

14 A. Correct.

15 Q. And you've been the director of golf and
16 activities since 2006, correct?

17 A. That is correct.

18 Q. And based on that capacity as the director of golf
19 and activities at the resort, you would agree it's never
20 permissible for the owners or operators or managers or
21 other personnel of the course, the Ocean Course, or the
22 resort, to jeopardize the safety and wellbeing of a
23 golfer, correct?

24 A. Correct.

25 Q. And you've been with the resort for 27 years

1 working at Kiawah Island, right?

2 A. Yes, correct.

3 Q. During that time frame you have only attended one
4 type of safety committee meeting, correct?

5 A. That would be correct.

6 Q. And no others in that 27 years, correct?

7 A. At the resort, no.

8 Q. I'm sorry?

9 A. No.

10 Q. I'm not correct or you are correct?

11 A. You are correct.

12 Q. And regarding Mr. Barilotti's round of golf, cost
13 of that round of golf was \$307, correct?

14 A. That is correct.

15 Q. And regarding -- you're familiar with the bridge
16 at hole number two, correct?

17 A. Yes.

18 Q. And it has the black mat?

19 A. Correct.

20 Q. And that black mat, it was very feasible for the
21 golf course, the Ocean Course, to put the black mat down
22 to provide traction for golfers, correct?

23 A. Correct.

24 Q. And it was reasonable for them to do that,
25 correct, to prevent injuries?

1 A. Correct.

2 Q. And it would be feasible and it's an option to put
3 that black mat on hole number four where Mr. Barilotti
4 fell. You could put that mat on one side, and there
5 would still be plenty of room for a golf cart to be on
6 the bridge as well, correct?

7 A. That would be correct. The only addition to that
8 would be the maintenance we equipment that we do have,
9 fairway units, greens, mowers that are wider than golf
10 carts to have possibly --

11 Q. They're not wider than nine feet?

12 A. The fairway unit -- I don't know the exact
13 measurement.

14 Q. Its less than nine.

15 A. I don't know that.

16 Q. And then so have you a situation where it's
17 feasible to put the black mat on a walking surface to
18 increase traction for pedestrians walking across the
19 bridge, correct?

20 A. Correct.

21 Q. And in your capacity and nobody else at the Ocean
22 Course has elected to do that for that bridge, correct,
23 for the bridge where Mr. Barilotti fell, correct?

24 A. That would be correct. We felt there wasn't a
25 need to do that.

1 Q. Well, you know that a wet and sandy bridge is a
2 condition that's conducive for somebody slipping,
3 correct?

4 A. Yes. I know --

5 Q. So there's a need --

6 MR. HOOD: Just a minute, Your Honor if the
7 witness could finish his answer.

8 THE COURT: Please let him finish his
9 response.

10 THE WITNESS: A wet condition, I would agree
11 with. Anything that is wetter would be -- you would
12 be -- it will be more slippery. Now, when you add sand
13 to that, I don't necessarily agree that it becomes more
14 slippery.

15 BY MR. MCCOOL:

16 Q. It stays the same?

17 A. I would say it does not become more slippery.

18 Q. Does loose sand provide any level of traction on
19 the bridge?

20 A. I don't know if it provides traction, but I don't
21 think that it provides -- makes it more slippery than if
22 the sand wasn't there.

23 Q. What I'm asking you, that sand on the bridge does
24 not provide traction, correct?

25 A. I wouldn't answer that yes or no.

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1 Q. And the bridge at hole number two of the black
2 mat, made out of wood, correct?

3 A. Correct.

4 Q. Unfinished, bare wood that there's no grip
5 additive to it until the black mat was put down, correct?

6 A. That's correct.

7 Q. And the absolute purpose of that black mat is to
8 provide traction on a wood surface, and that wood surface
9 is also the wood surface on the bridge where
10 Mr. Barilotti fell, correct?

11 A. I'm sorry?

12 Q. The wood is the same type of wood where
13 Mr. Barilotti fell?

14 A. Correct.

15 MR. McCOOL: That's all the questions I have.
16 Thank you.

17 THE COURT: Ms. Reid?

18 CROSS-EXAMINATION

19 BY MS. REID:

20 Q. Mr. Gerard, where are you from?

21 A. I'm from a small town, Eureka, Illinois.

22 Q. How long have you lived in Charleston?

23 A. I've been here since 1986.

24 Q. And I think you testified earlier about how long
25 you've been at Kiawah Golf Resort. How long was that?

1 A. Twenty-seven years this past February.

2 Q. And you are the director of golf, correct?

3 A. Yes, ma'am.

4 Q. What does that position entail?

5 A. I oversee all five golf courses, the golf learning
6 center, and our recreation and tennis partners.

7 Q. And how long have you been the director of golf?

8 A. I got -- was promoted to that position in 2006.

9 Q. All right. So you were obviously the director of
10 golf in 2010 when the plaintiff's accident occurred,
11 correct?

12 A. Yes, ma'am, I was.

13 Q. And prior to becoming the director of golf, what
14 did do you at Kiawah Island golf course?

15 A. I was the head professional at the Ocean Course
16 from '95 until 2006.

17 Q. And what did that position entail?

18 A. Basically doing the day-to-day operations of the
19 facility, taking care of the guests, retail; all the
20 basic general management responsibilities of running a
21 golf course.

22 Q. So you're pretty familiar with the Ocean Course;
23 is that correct?

24 A. Yes, I am.

25 Q. And it's -- the Ocean Course is considered a

Brian Gerard-Cross Examination by Mr. Hood

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1 pretty popular course among golfers, correct?

2 A. Correct. It's very highly ranked by two major
3 publications. Golf Digest, we're ranked number four, and
4 Golf Magazine, we're ranked number five in public golf
5 courses that you can --

6 Q. And isn't it true that the Ocean Course is ranked
7 as the number one golf course in South Carolina?

8 A. By Golf Digest, yes, it is.

9 Q. And it's true there have been some pretty big
10 tournaments held at the Ocean Course, correct?

11 A. Correct.

12 Q. What are those tournaments?

13 A. We've had a number of events, but the big event
14 would be --

15 MR. McCOOL: Your Honor, I object.

16 THE COURT: What's the basis?

17 MR. McCOOL: Relevance.

18 THE COURT: Overruled.

19 THE WITNESS: Would be the 2005 Club Pro
20 Championship we hosted at the Ocean Course. We hosted
21 the 2006 Senior PGA Championship, and this past August,
22 in 2012, we hosted the PGA Championship.

23 BY MS. REID:

24 Q. And during these golf tournaments, have there been
25 any slip and falls on the bridge at hole number four?

1 A. Not that I'm aware of.

2 Q. And we've heard a lot of testimony about this
3 black mat on the bridge at hole number two. There is not
4 a need for a black mat to be placed on the bridge at hole
5 number four, is there?

6 A. No.

7 Q. And there are potential safety consequences of
8 putting a black mat on a bridge the size of the bridge at
9 number four, correct?

10 A. I would think, yes.

11 Q. What kind of consequences could those be?

12 A. Just the mat being torn up and having to -- if
13 someone were to slip off the mat, if you didn't cover the
14 entire bridge with the map, like it is on number two, I
15 know that cart traffic, the cart isn't wide enough, you
16 could drive the cart on one side and the mat would be on
17 the right side, but you could still have people that
18 drive that cart over that mat. We wouldn't have the
19 ability to know that everybody that was in a golf cart
20 would not drive on that mat.

21 Q. And you're not out there to control where people
22 walk on that bridge, correct?

23 A. Correct.

24 Q. So even if you put a black mat along one side,
25 that doesn't necessarily mean that all walkers are going

1 to cross that portion of the bridge, correct?

2 A. Correct.

3 Q. And the golf carts that go over that bridge on a
4 regular basis could possibly tear up that mat and that
5 could present another safety issue, correct?

6 A. It could possibly, yes.

7 Q. And how many golfers played golf at the Ocean
8 Course in 2012?

9 A. 32,000.

10 Q. How about 2010, the year of the plaintiff's
11 accident? How many people played that year?

12 A. 23,500.

13 Q. And, Mr. Gerard, you were involved with the PGA
14 Championship Golf Tournament hosted there last year,
15 correct?

16 A. Yes, I was.

17 Q. How many spectators turned out to watch the PGA at
18 the Ocean Course?

19 A. There were over 140,000 scans through the front
20 gate.

21 Q. And all the golfers participating in that
22 tournament would have had to cross the gate at hole
23 number four where Mr. Barilotti fell, correct?

24 A. Correct.

25 Q. Is it safe to assume that at least some portion of

Brian Gerard-Cross Examination by Mr. Hood

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1 the spectators would walk across that bridge as well?

2 A. Yes.

3 Q. What about the vendors working at the tournament?

4 Would some vendors also have to cross over that bridge?

5 A. They would.

6 Q. And were there any reported falls on the bridge at
7 hole number four during the PGA Golf Tournament?

8 A. Not that I'm aware of.

9 Q. And there haven't been any modifications made to
10 the bridge since the time of Mr. Barilotti's fall,
11 correct?

12 A. Correct.

13 Q. So it's in the same condition it was at the time
14 of Mr. Barilotti's fall?

15 A. Number four?

16 Q. Yes.

17 A. Yes.

18 Q. And prior to the PGA coming out to host this large
19 tournament at the Ocean Course, did they ask you to make
20 any changes to the bridge at hole number four?

21 A. No, they did not.

22 Q. And did they ask you to put up any warning signs
23 warning golfers or spectators that the bridge could be
24 wet and therefore slippery when wet?

25 A. No, they did not.

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1 MS. REID: No further questions.

2 THE COURT: Mr. McCool?

3 MR. MCCOOL: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. MCCOOL:

6 Q. Mr. Gerard, the black mat that provides traction
7 on a wooden surface --

8 A. Yes.

9 Q. -- that was placed there by the Ocean Course
10 personnel, correct?

11 A. It was, yes.

12 Q. All right. Thank you.

13 MR. MCCOOL: That's all the question I have.

14 THE COURT: Ms. Reid?

15 RECROSS EXAMINATION

16 BY MS. REID:

17 Q. Mr. Gerard, was the safety and wellbeing of the
18 plaintiff jeopardized on October 31, 2010?

19 A. No.

20 MS. REID: No further questions. Thank you.

21 THE COURT: You may step down. You are
22 excused.

23 Call your next witness.

24 MS. FRIED: Your Honor, we call Dwight Lane.

25

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1 DWIGHT LANE,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. FRIED:

6 Q. Good morning, Mr. Lane.

7 A. Good morning.

8 Q. You are a security agent at Kiawah Island Golf
9 Resort, correct?

10 A. Correct.

11 Q. And who we heard from yesterday, Ms. Yvonne
12 Johnstone, she's the head of safety and security, and
13 she's your supervisor, correct?

14 A. She's the director, yes.

15 Q. And she's your supervisor?

16 A. MacArthur Forrest is the manager, and he's
17 basically my supervisor, but, yes, you could say Yvonne
18 Johnstone is my supervisor.

19 Q. Okay. Mr. Lane, it is never permissible for the
20 safety and wellbeing of a person playing a round of golf
21 at the Ocean Course to be jeopardized, correct?

22 A. That's correct.

23 Q. And you've not received any training in the area
24 of inspecting the property that would allow you to
25 identify conditions that would jeopardize the safety and

1 wellbeing of golfers, correct?

2 A. That's correct. I have nothing to do with
3 maintenance, ma'am.

4 Q. You prepared the incident report for this fall,
5 correct?

6 A. That's correct.

7 MS. FRIED: Permission to approach the
8 witness?

9 THE COURT: You may.

10 BY MS. FRIED:

11 Q. Mr. Lane, I'm handing you Exhibit 19. Is that the
12 incident report you prepared?

13 A. This is the incident report that I prepared when I
14 went to the Ocean Course.

15 Q. When you were dispatched for the fall and you
16 investigated it, you then prepared Exhibit 19, the
17 incident report, correct?

18 A. No. I was doing it as I was there and I did some
19 touch-ups when I got back to my office, yes.

20 Q. Okay. But the first time that you actually saw
21 Mr. Barilotti was at the clubhouse when he was receiving
22 treatment from EMS, correct?

23 A. No, that's not correct. I saw Mr. Barilotti in
24 the cart with his right foot propped up in the
25 roundabout. He was never in the clubhouse when I saw

Dwight Lane-Direct Examination by Ms. Fried

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1 him, and he had his foot propped up, and that's when I
2 saw him.

3 Q. But you saw him when he was coming to the
4 clubhouse. You never saw him actually on the course?

5 A. No, I did not.

6 Q. And you never witnessed the actual fall?

7 A. No, I did not.

8 Q. And you didn't speak to anyone in Mr. Barilotti's
9 group, correct?

10 A. Did I?

11 Q. Yes, sir.

12 A. No, I did not.

13 Q. And you never spoke with the caddy, Mr. Cipolla,
14 correct?

15 A. I did speak with him after he came back from the
16 rest of the group playing golf around 1:00 because that's
17 when I went back up there, and I asked Mr. Gregory could
18 I be back up after Mr. Cipolla finished his statement.

19 Q. But you never actually spoke to Mr. Cipolla when
20 you -- when he filled out this statement, regarding --

21 A. I can't recall.

22 MS. FRIED: That's all the questions I have.

23 THE COURT: Ms. Reid?

24 MS. REID: No questions.

25 THE COURT: You may step down. You are

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1 excused. Call your next witness.

2 MR. MCCOOL: Yes, Your Honor. Our next
3 witness is MacArthur Forrest.

4 MacARTHUR FORREST,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MCCOOL:

9 Q. Mr. Forrest, you are the assistant safety and
10 security manager at Kiawah Resort, correct?

11 A. That's correct.

12 Q. Safety and security, it seems somewhat explanatory
13 but you're part of safety and security, correct?

14 A. Yes.

15 Q. And safety, meaning safety of persons who visit
16 the resort, meaning whether it be at one of the hotels or
17 one of the restaurants or one of the golf courses,
18 correct?

19 A. That's correct, sir, but may I continue?

20 Q. Yeah.

21 A. Yeah, that's correct, but my staff and I hardly
22 ever go out on the golf course itself.

23 Q. I'm not talking about the golf course. I'm
24 talking about with respect to your duties and
25 obligations, because you work for the safety and security

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1 department, correct?

2 A. Correct.

3 Q. And you are the assistant safety and security
4 manager?

5 A. Correct.

6 Q. For the property, correct?

7 A. Right.

8 Q. And that safety and security management position
9 includes whether it be a hotel or a shop or the Ocean
10 Course, correct?

11 A. Correct.

12 Q. And it's never permissible for you in your
13 capacity to ever allow or permit a guest to have their
14 safety or wellbeing jeopardized, correct?

15 A. That's correct, sir.

16 Q. And you would agree if there is debris on a
17 structure or a floor or a walking surface that that
18 debris needs to be removed, correct?

19 A. Yes, sir, I agree.

20 Q. And that debris comes in many forms and includes
21 sand, correct?

22 A. I disagree with that, sir, the sand part. I don't
23 consider sand to be debris.

24 MR. MCCOOL: Your Honor, this is the original
25 transcript of MacArthur Forrest's deposition.

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1 THE COURT: You may approach.

2 BY MR. McCOOL:

3 Q. Do you remember when I took your deposition on
4 April 13, 2013, correct?

5 A. I do.

6 Q. Not even two months ago?

7 A. Yes, sir.

8 Q. And you were placed under oath to tell the truth,
9 correct?

10 A. Yes, sir.

11 Q. And it's the same oath you were explained at the
12 deposition, it was the same oath for that deposition as
13 it would be at trial, correct?

14 A. Yes, sir.

15 Q. What I would like for you to do is turn to page 55
16 of your deposition, and when I took your deposition, you
17 were being deposed in the capacity that you have now, and
18 that's as the assistant safety and security manager,
19 correct?

20 A. Yes, sir.

21 Q. You were the assistant safety and security manager
22 back on April 18, 2013, same position you hold now,
23 correct?

24 A. Yes, sir.

25 Q. And turn to page 55. Are you there?

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1 A. Yes, sir.

2 Q. Page 55, line 22. All right? And I asked you the
3 question, when you're under oath, If there is debris on a
4 structure or on a floor or on a walking surface, that
5 debris needs to be removed, correct?

6 And your answer was yes?

7 A. Yes.

8 Q. And then continuing on to page 56, line 1, I asked
9 you the question, And that debris comes in many forms, it
10 includes spills, includes liquids, paper, and even sand,
11 correct? And your response was yes.

12 A. That's correct, sir.

13 Q. Right? So you would agree with me, then, that
14 debris includes sand.

15 A. I would agree, sir, and maybe -- I'm sorry, maybe
16 I misunderstood you when you were doing the deposition.
17 I was referring to sand being on the floor in a building,
18 and I didn't realize you was talking about a bridge on
19 the golf course the second time.

20 Q. I was talking about walking surfaces at the
21 property, correct?

22 A. Yes.

23 Q. And you said at that point in time that debris
24 included sand, correct?

25 A. Yes, I did, sir.

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1 Q. And throughout your deposition, we talked about
2 the bridge --

3 MR. HOOD: Objection, Your Honor. Improper
4 use of a deposition.

5 BY MR. McCOOL:

6 Q. And you have --

7 THE COURT: Mr. McCool, I need to rule.
8 Rephrase your question.

9 MR. McCOOL: Certainly.

10 THE COURT: Thank you.

11 BY MR. McCOOL:

12 Q. And with respect to debris, including sand, that
13 was your testimony on April 18 of 2013, correct?

14 A. Yes, it was.

15 Q. And regarding Mr. Barilotti's fall, okay, you
16 recall that day; is that right?

17 A. Yes, sir, I do.

18 Q. And you did some level of follow-up to contact
19 Mr. Barilotti, right?

20 A. I did, sir.

21 Q. You telephoned him and you were informed that the
22 leg was broken and that he would be needing surgery,
23 correct?

24 A. No. It's incorrect. I phoned Mr. Barilotti. At
25 the time he told me that he was at his doctor's office

MacArthur Forrest-Direct Examination by Mr. McCool

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1 having his ankle looked at.

2 Q. And that his leg was broken?

3 A. Yes, sir.

4 Q. And regarding training that has been provided to
5 you, you have taken no classes and have undergone no
6 training regarding the identifications of situations and
7 conditions that are hazardous or jeopardize the safety
8 and wellbeing of a guest, correct?

9 A. Yes, we have, but not related to the golf course.

10 Q. And -- but you have received no training in terms
11 of preventive maintenance, correct?

12 A. Have not, sir.

13 Q. Right. And you're part of the safety and security
14 of the entire resort, correct?

15 A. Yes, sir.

16 Q. And the entire resort includes the golf courses,
17 correct?

18 A. Yes, sir.

19 Q. And your duties and responsibilities for patrons
20 and guests of the resort include golfers, correct?

21 A. Yes, sir.

22 Q. And you're part of the safety and security
23 department, correct?

24 A. Yes, sir.

25 Q. So you are absolutely obligated to look out for

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1 and have the duty to look out for the safety of guests
2 including golfers, correct?

3 A. Correct, sir.

4 MR. McCOOL: That's all the questions I have.
5 Thank you.

6 THE COURT: Mr. Hood?

7 CROSS-EXAMINATION

8 BY MR. HOOD:

9 Q. Mac, where are you from?

10 A. Hollywood, South Carolina.

11 Q. What do you do for a living?

12 A. Right now I work at Kiawah Gold Resort as security
13 assistant manager.

14 Q. How long have you done that?

15 A. I've been at Kiawah since 2003. I been in the
16 security department maybe since 2005.

17 Q. What did you do before coming to work at Kiawah?

18 A. Got out of high school. I went to the U.S. Army,
19 spent three years in active duty, did a tour in Vietnam,
20 got out in 1972, started working at warehouse, you know,
21 construction, jobs like that. Then in '76 I joined the
22 National Guard and which I remained in the National Guard
23 till 2005, actually.

24 In the meantime, I also worked from 1983 until the
25 year 2000 in the supply department for the U.S. Navy, and

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1 I worked for that until 1995. Went to Jacksonville
2 Florida, back and forth to Charleston for a five-year
3 period. They allowed me to do an early retirement, so I
4 retired in 2000, and then came home and just relaxed for
5 a minute.

6 9/11 happened. I went back on active duty for a
7 year, Fort Gordon, Georgia. Altogether, Army, I got like
8 about 32 years associated with the U.S. Army, and in 2003
9 my brother decided that if I stay home I get too fat. He
10 asked me to come out here, get a job at Kiawah. Fell in
11 love with. Kiawah I'm still here.

12 Q. Do you find that it's necessary for you to have
13 specific training on how to identify hazards for golfers
14 in golf courses in order to perform your job?

15 A. Not on the golf course, not at all, sir.

16 Q. When was the last time you played golf at the
17 Ocean Course?

18 A. Never in my life played golf.

19 Q. When was last time you picked up a golf club?

20 A. Never.

21 Q. Does the golf course take care of maintaining the
22 golf course?

23 A. The golf course personnel does that.

24 Q. And there are different golf courses on property,
25 aren't there?

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1 A. Yes, sir.

2 Q. And each course, they are in charge of their own
3 course, correct?

4 A. Absolutely, sir.

5 Q. From a safety and security standpoint, what is it
6 that you do related to the golf courses?

7 A. Related to the golf courses, it's nothing. I do
8 patrol the clubhouses at night to make sure that the
9 doors are locked, you know, things like that, protecting
10 the property, actually, but on the golf course itself, we
11 never go on the golf course itself to do anything.

12 We go to the clubhouses. Like I said, we respond
13 to alarms, the burglar alarm. We built some kind of
14 motion detector. We have to go and check up the property
15 and we set the alarm, but on the golf course itself,
16 never.

17 Q. Mac, you were shown some of your deposition about
18 debris including spills, liquids, even sand, paper, some
19 other things. Do you find that in your job it's
20 necessary to utilize your common sense and everyday
21 experience in order to identify what is and is not
22 debris?

23 A. Common sense, yes, sir.

24 Q. All right. Let me ask you, if you walked to the
25 beach path and there was sand on the beach path, do you

MacArthur Forrest-Cross Examination by Mr. Hood

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1 consider that to be debris that needs to be cleaned up?

2 A. I would not.

3 Q. What if there was a spill of water around the pool
4 where a little kid had just jumped out of the baby pool
5 and run into the big pool, is that a debris that needs to
6 cleaned up?

7 A. Water?

8 Q. Correct, by the swimming pool?

9 A. Water, I would not consider to be cleaned up.

10 Q. But if you saw water in the middle of a lobby of
11 hotel, is that something that needs to be cleaned up?

12 A. I would call somebody to clean it up and put a wet
13 floor sign there.

14 Q. What if you found sand in the middle of a hotel
15 floor? Would it need to be cleaned up there?

16 A. Yes.

17 Q. Does it stand to reason that sand on a golf course
18 in the middle of the beach needs to be cleaned up?

19 A. No.

20 Q. You talked about the report, which is Plaintiff's
21 Exhibit 19, and if I could just get you to turn to page
22 number four on the back of Exhibit 19, this one right
23 here. It's that last sentence that is your involvement,
24 is it not?

25 A. That's my involvement, sir.

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1 Q. So the sum total of your involvement in this has
2 brought you here today to testify under subpoena was
3 followup with Mr. Barilotti on 11/01/2010 at 1120 hours.
4 Mr. Barilotti informed me that he was at the surgeon's
5 office having his broken leg examined.

6 A. That's correct.

7 Q. That's it?

8 A. That's it.

9 Q. And that phone call was customer service checking
10 in on somebody who was injured?

11 A. We want our customers to feel like we care about
12 them, and we want them to come back, actually.

13 MR. HOOD: Thank you, Mr. Forrest.

14 REDIRECT EXAMINATION

15 BY MR. MCCOOL:

16 Q. Mr. Forrest, regarding the example of water on the
17 floor of a hotel --

18 A. Yes, sir.

19 Q. The reason you do something about it is it has the
20 potential to injure somebody, and it's feasible to remedy
21 that situation and make it go away, correct?

22 A. Yes, sir.

23 Q. All right.

24 MR. MCCOOL: That's all the questions I have.

25 Thank you.

Thomas Kyle Gregory-Direct Examination by Ms. Fried

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1 RECROSS-EXAMINATION

2 BY MR. HOOD:

3 Q. Can you remedy sand on a golf course on the ocean?

4 A. No, sir, cannot.

5 MR. HOOD: Thank you, Mac.

6 THE COURT: Thank you. You may step down.

7 Call your next witness.

8 MS. FRIED: Your Honor, we call Thomas Kyle
9 Gregory.

10 THOMAS KYLE GREGORY,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FRIED:

15 Q. Good morning, Mr. Gregory.

16 A. Good morning.

17 Q. Mr. Gregory, you worked at the Ocean Course from
18 2007 to 2011, correct?

19 A. That's correct.

20 Q. And when you left the Ocean Course in 2011, you
21 were the first assistant golf professional, correct?

22 A. Correct.

23 Q. And when you learned of Mr. Barilotti's fall, you
24 learned of it via notification from the golf course,
25 correct?

1 A. Correct.

2 Q. But you don't remember who informed you, though.

3 A. I do not.

4 Q. And when you did learn of Mr. Barilotti's fall and
5 injury, you went out to the bridge at hole number four,
6 correct?

7 A. That's correct, after security had been notified.

8 Q. And when you went out to the bridge at hole number
9 four, you saw Mr. Barilotti on the rounds, correct?

10 A. That's correct.

11 Q. And you have had no discussions at any point in
12 time with anyone regarding how that fall occurred,
13 correct?

14 A. Not the specifics of the incidents, no, ma'am.

15 Q. No discussions regarding the fall?

16 A. No.

17 Q. And you would agree with me that it's never
18 permissible for the safety and wellbeing of a golfer to
19 be jeopardized, correct?

20 A. It is not.

21 Q. And regarding the training that you received in
22 the area of recognizing conditions that would jeopardize
23 the safety and wellbeing of golfers, your training is
24 limited to AED and severe weather training, correct?

25 A. Correct.

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1 Q. And while working at the Ocean Course, you were
2 never a member of any safety committee, correct?

3 A. No, I was not.

4 MS. FRIED: That's all the questions I have.

5 THE COURT: Ms. Reid?

6 CROSS-EXAMINATION

7 BY MS. REID:

8 Q. Mr. Gregory, where are you from?

9 A. Columbia, South Carolina.

10 Q. And where are you currently employed?

11 A. Orangeburg Country Club.

12 Q. But you worked at Kiawah -- or, excuse me, Ocean
13 Course specifically from 2007 to 2011; is that correct?

14 A. Correct, yeah. June 2007 to August of '11.

15 Q. And your position there at that time was first
16 assistant golf professional?

17 A. That's correct.

18 Q. What are your door daily duties entail?

19 A. That would be the basic operation of the
20 day-to-day operations of the golf course, the checking in
21 of guests the -- I was responsible for payroll,
22 merchandising.

23 Q. Okay.

24 A. Just an overall day-to-day operation along with
25 the head professional.

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1 Q. And so where were you working on the day of the
2 plaintiff's accident?

3 A. I was in the golf shop at the Ocean Course.

4 Q. So you were at the pro shop?

5 A. Correct.

6 Q. And you testified you learned about the accident
7 from one of the caddies; is that correct?

8 A. I'm not exactly sure who it was, but I did become
9 aware of the situation, yes.

10 Q. And in response to getting this information, you
11 first called security and then you activated EMS,
12 correct?

13 A. That's correct.

14 Q. And that's pursuant to Kiawah's protocol and
15 procedure as to how to respond to a guest accident,
16 correct?

17 A. Correct.

18 Q. And the idea there is to get the guest immediate
19 assistance and medical care if needed, correct?

20 A. Yes.

21 Q. And so after you activated EMS and security, you
22 went out to the golf course that day, right?

23 A. Yes.

24 Q. And was this the first time you went out on the
25 Ocean Course for the day?

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1 A. For the day, yes.

2 Q. And then when you were riding out to the bridge at
3 hole number four, did you notice that the course was wet
4 with morning dew?

5 A. Yes. It was very foggy that morning.

6 Q. Could you tell when you were arriving out there
7 that maintenance had done their walkthrough to prepare
8 the course for that day?

9 A. Yes.

10 Q. And how could you tell?

11 A. They're visible. It's clear that the bunkers had
12 been raked and that everything was -- had been prepared
13 as it is every day.

14 Q. Okay. And when you got to the bridge at hole
15 number four, were there any grass clippings or branches
16 on that bridge?

17 A. There was none.

18 Q. So presumably the maintenance crew had come
19 through and blown off all that debris?

20 A. Yes.

21 Q. And did you notice any dirt or sand on the bridge?

22 A. There was -- there will be sand on the bridge.

23 The golf courses is on the ocean. It's at the beach.

24 There's sand all over the place.

25 Q. So it's fair to say that didn't -- the presence of

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1 sand on the bridge didn't raise any red flags to you as a
2 safety concern, correct?

3 A. No.

4 Q. Did you see anything out of the ordinary with the
5 bridge when you got there immediately after the
6 plaintiff's accident?

7 A. No.

8 Q. Did the bridge appear to be unsafe in any way?

9 A. No.

10 Q. And have you played golf at the Ocean Course?

11 A. Yes.

12 Q. Approximately how many times have you played out
13 there, numerous?

14 A. Numerous, yes. I couldn't give you -- at least
15 more than probably 15, 20, 25 times over the course of a
16 period of time. Could be more, but, yeah, significant.

17 Q. And under what weather conditions have you played
18 the Ocean Course?

19 A. Various types. I've been out there in the rain,
20 hot, windy, dry, cold, every possible condition for the
21 most part.

22 Q. So you've walked across the bridge at hole number
23 four when it was wet at some point, correct?

24 A. Yes.

25 Q. And there was presumably sand on the bridge at

1 that time?

2 A. Yes.

3 Q. Because there is sand everywhere?

4 A. Yes.

5 Q. And did you experience the bridge at hole number
6 four to be slippery despite the weather conditions you
7 were playing in?

8 A. Not really.

9 Q. And did you have a fall on the bridge at hole
10 number four on any of the occasions you played golf out
11 there?

12 A. No.

13 Q. Have you ever had a golfer complain to you about
14 the condition of the bridge at hole number four?

15 A. No.

16 MS. REID: That's all the questions. Thank
17 you.

18 THE COURT: Ms. Fried?

19 MS. FRIED: Permission to approach the
20 witness, Your Honor?

21 THE COURT: You may.

22 REDIRECT EXAMINATION

23 BY MS. FRIED:

24 Q. I'm showing you Defendant's Exhibit No. 15.

25 MR. HOOD: Objection. This is beyond the

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1 scope.

2 THE COURT: All right. Approach.

3 (Discussion held at sidebar.)

4 BY MS. FRIED:

5 Q. Mr. Gregory, that black mat on that bridge, that
6 provides traction for walkers, correct?

7 A. Yes.

8 MS. FRIED: That's all the questions I have,
9 Your Honor.

10 THE COURT: Ms. Reid?

11 MS. REID: No questions. Thank you.

12 THE COURT: You may step down. You are
13 excused. Thank you.

14 Call your next witness.

15 MR. McCOOL: Yes, Your Honor. Our next
16 witness is Brandon Woods.

17 BRANDON WOODS,

18 having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. McCOOL:

22 Q. Mr. Woods, you're the caddy manager at the Ocean
23 Course, correct?

24 A. That's correct.

25 Q. And you worked at the resort since January of

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1 2000, correct?

2 A. That's true.

3 Q. And regarding golfers who are playing the Ocean
4 Course, their safety and wellbeing is of the utmost
5 importance, correct?

6 A. Yes, sir.

7 Q. And you interact with those golfers as they
8 prepare to play the rounds of golf, correct?

9 A. On the driving range I did.

10 Q. And your job entails looking out for their safety
11 and wellbeing, correct?

12 A. That would be part of it, yes.

13 Q. And you have not received any training in any
14 point in time during your professional career in property
15 safety or premises safety, correct?

16 A. That's correct.

17 Q. And you received no training at any point in time
18 in property safety measures and those sorts of things,
19 correct?

20 A. Correct.

21 Q. And regarding the bridge at hole number two,
22 you're familiar with that bridge, correct?

23 A. I am.

24 Q. And you've been out on the Ocean Course before?

25 A. I have.

1 Q. And the reason that that black mat was put down
2 was to provide traction for people walking across that
3 bridge because it was a bare wooden bridge, correct?

4 A. That and the fact there was a step down.

5 Q. Right. And then that black mat goes from the
6 step --

7 A. Right.

8 Q. -- all the way to the other side?

9 A. To where you step up.

10 Q. Right. So it encompasses the flat part of the
11 bridge that provides traction?

12 A. That entire bridge.

13 Q. Yes. And that black mat provides traction,
14 correct?

15 A. It does.

16 Q. And it was a very feasible and a very reasonable
17 thing to do in terms of putting the Ocean Course down to
18 do that to look out for the safety and wellbeing of
19 golfers on the golf course, correct?

20 A. On that particular bridge.

21 Q. On that -- before it was just a bare wooden bridge
22 like the bridge at hole number four where Mr. Barilotti
23 fell, correct?

24 A. I believe so.

25 Q. And that's a feasible thing to do, to make sure

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1 that the safety and wellbeing of a golfer is not
2 jeopardized, right?

3 A. It is.

4 MR. McCOOL: That's all the questions I have.
5 Thank you.

6 THE COURT: Ms. Reid?

7 CROSS-EXAMINATION.

8 BY MS. REID:

9 Q. Mr. Woods, was the safety and wellbeing of
10 Mr. Barilotti jeopardized on the date of his accident?

11 A. It was not.

12 Q. And that's despite the fact that there was no mat
13 on the bridge at hole number four?

14 A. That's correct.

15 Q. And where are you from?

16 A. Grand Rapids, Michigan.

17 Q. How long have you lived in Charleston?

18 A. Thirteen years.

19 Q. What brought you to Charleston?

20 A. The warm climate and the job at the resort.

21 Q. Hard to beat, huh?

22 A. That's true.

23 Q. And you've been working at the Kiawah Island Golf
24 Resort since 2008, correct?

25 A. Correct.

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1 Q. And you're the caddy manager?

2 A. I am.

3 Q. Could you tell me one more time what your duties
4 entail as the caddy manager.

5 A. I handle hiring, oversee training, scheduling,
6 staff of 100 caddies, and most of my days are spent on
7 the range, introducing guests to their caddies.

8 Q. Okay. So your duties involve things like the bag
9 drop and the cart prepping area and the range, not on the
10 course itself, correct?

11 A. Correct.

12 Q. But you do go out on the course from time to time,
13 correct?

14 A. From time to time.

15 Q. And would you agree with me that the bridge at
16 hole number four is a 12 feet by 50 feet bridge?

17 A. I would agree with that.

18 Q. And that is substantially different than the
19 recessed foot bridge at hole number two, correct?

20 A. It is.

21 Q. And there isn't a need for a mat at hole number
22 four, correct?

23 A. I don't believe so.

24 MS. REID: No further questions. Thank you.

25 REDIRECT EXAMINATION

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1 BY MR. McCOOL:

2 Q. There was a need for the black mat on hole number
3 two because it was bare wood, and the golfers who are
4 traversing that bare wood needed traction, correct, so
5 they wouldn't fall, correct?

6 A. On that bridge? Correct.

7 MR. McCOOL: That's all the questions I have.
8 Thank you.

9 MS. REID: No questions. Thank you.

10 THE COURT: You may step down. You are
11 excused.

12 Call your next witness.

13 MR. McCOOL: Plaintiff calls Roger Warren.

14 ROGER WARREN,
15 having been first duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. McCOOL:

19 Q. Are you the president of the Kiawah Island Golf
20 Resort?

21 A. I am.

22 Q. And that includes the Ocean Course, correct?

23 A. It does.

24 Q. And the Ocean Course is a property that golfers
25 have expectations that they're going to have a nice

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1 course to play in, or play on, and have a safe
2 environment to do so, correct?

3 A. That's correct.

4 Q. And that's what you're presenting and you want to
5 present. That's the standard for you as the president,
6 is to have a golf course that is safe for the golfers,
7 correct?

8 A. That's correct.

9 Q. And you're aware of the measures taken at hole
10 number two to carry out that duty and responsibility, to
11 provide a safe environment, and that's the black mat that
12 was put on that hole, correct?

13 A. That's correct.

14 Q. And that black mat provides traction for golfers,
15 correct?

16 A. It does.

17 Q. And that was a feasible and very reasonable thing
18 to do, wasn't it, in order to carry out that duty and
19 obligation to go an environment that doesn't jeopardize
20 the safety and wellbeing of a golfer, correct?

21 A. It was on that hole, yes.

22 Q. And you would agree with me that the bare wood, if
23 we take the black mat off of hole number two, you have
24 bare wood, and then there's less traction, correct?

25 A. I would assume there is bare wood under that.

1 Q. All right. And you've heard the testimony. Do
2 you disagree with any of the testimony?

3 A. I have no reason to disagree with that.

4 Q. So we have bare wood under the black mat, and the
5 black mat was put on there because your organization
6 deems it was feasible and reasonable to do so in order to
7 promote traction and increase traction and keep the
8 golfer safe, correct?

9 A. I would agree with that.

10 Q. And that black mat provides traction and gives
11 golfers a safer and better and more conducive environment
12 to walk across it so they won't be injured in sandy and
13 dewy conditions, correct?

14 A. I think the assumption is it will provide a safer
15 environment.

16 Q. That's what you want, if there is an opportunity
17 for you as president and people you oversee to have a
18 feasible way to making is safer, it's incumbent upon the
19 course to do that?

20 A. Where it's necessary, that's correct.

21 Q. But it's incumbent upon the course when there is
22 an opportunity to making is safer and there is a feasible
23 and reasonable way to do it to go ahead and take those
24 steps, correct?

25 A. If it's not safe, correct.

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1 Q. And so you deemed this bridge to be unsafe, and
2 that's why the black mat was put on it?

3 A. I assume that's why the black mat was put there.

4 Q. Because it was unsafe?

5 A. I think someone assumed it was unsafe, correct.

6 Q. And by putting the black mat down, the person made
7 the right assumption and made it safe?

8 A. I think he hoped that would be the case.

9 MR. HOOD: Objection. I think counsel is
10 testifying now.

11 THE COURT: Wait a second, Mr. McCool. I do
12 have to rule.

13 Sustained as to testifying. Please ask
14 questions. Thank you.

15 BY MR. McCOOL:

16 Q. And that assumption that person made you would
17 agree made that bridge safe.

18 MR. HOOD: Objection, Your Honor. That's
19 speculating about someone else's decision. It's an
20 assumption.

21 THE COURT: Sustained. Rephrase your
22 question.

23 BY MR. McCOOL:

24 Q. You would agree with me that black mat made that
25 bridge safe?

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1 A. I would agree with you that the mat was put down
2 there with the intention to make it safe.

3 Q. And it did.

4 A. I don't know that for a fact.

5 Q. It hasn't been removed, correct?

6 A. That's correct.

7 Q. Still there now?

8 A. Correct.

9 Q. And you, as president of the resort, you have not
10 become aware of anything that Mr. Barilotti did wrong or
11 any actions that Mr. Barilotti did that caused or
12 contributed to his fall or injuries, correct?

13 A. He nor anyone else involved with this case.

14 Q. I'm sorry?

15 A. I said he nor anyone else involved with this case
16 has done anything wrong.

17 Q. But Mr. Barilotti, you would agree with me, he did
18 not do anything wrong that caused or contributed to his
19 fall or injuries?

20 A. Would you define wrong?

21 Q. Well, let me ask you this. Let's get your
22 deposition.

23 MR. MCCOOL: Your Honor, I have the original.

24 THE COURT: All right. You may open it. You
25 may approach.

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1 MR. McCOOL: Would you like a copy of this?

2 THE COURT: Yes, please. Thank you.

3 BY MR. McCOOL:

4 Q. If you would, turn to page 28 of your deposition.

5 A. Okay.

6 Q. And you recall your deposition we took on May 31
7 of 2013?

8 A. I was there.

9 Q. Last Friday.

10 A. Yes.

11 Q. All right. And you were under oath to tell the
12 truth, correct?

13 A. Correct.

14 Q. And beginning on page 28, at line 9, I asked you
15 the question: Are you aware of anything that
16 Mr. Barilotti did wrong or any actions that Mr. Barilotti
17 did that caused or contributed to his fall or injuries?
18 And your answer was no.

19 A. During the deposition, that's correct.

20 Q. Right. And you're not changing that today, are
21 you? You're under oath to tell the truth now.

22 A. Yes, to tell the truth today. I would ask the
23 question, what does wrong mean?

24 Q. Any action that would cause or contribute to his
25 injury and damages.

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1 A. And I would say I don't know of anything that he
2 had done that was wrong, nor anyone else involved with
3 this case.

4 Q. And regarding the black mat at hole number two
5 that increases traction and provides traction and
6 provides a safe environment for golfers, there's been
7 absolutely no discussion that you're aware of to remove
8 that mat, and it continues to be there to this day,
9 correct?

10 A. That's correct.

11 Q. And that was the feasible approach to make it safe
12 on hole number two and a reasonable approach, correct?

13 A. I think that's correct.

14 Q. And your total compensation --

15 MR. HOOD: Objection, Your Honor. Asking
16 about his compensation. Relevance.

17 MR. McCOOL: The relevance --

18 THE COURT: Sustained.

19 BY MR. McCOOL:

20 Q. And you have never attended any type of safety
21 committee meeting?

22 A. No, I've never been to the safety committee.

23 MR. McCOOL: That's all the question I have.

24 Thank you.

25 THE COURT: Mr. Hood?

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1 CROSS-EXAMINATION

2 BY MR. HOOD:

3 Q. Mr. Warren, the safety committee, are you invited
4 to those meetings?

5 A. I can attend any meeting on the resort that I
6 choose to.

7 Q. Who goes to the safe committee meetings?

8 A. There are representatives from each of the
9 departments on the committee. That's chaired by Yvonne
10 Johnstone who is the director of safety security on the
11 island, and the purpose of committee is to help our
12 employees recognize those conditions that they need to be
13 aware of for their safety as they're doing their job.

14 Q. And as we discussed earlier, the resort is
15 structured in a way that there are different departments
16 that operate independently from each other and sort of
17 report up the line to management?

18 A. Yes. I have an executive committee. I think it's
19 eight people who all head various departments of the
20 resort, and they report to me directly.

21 Q. So the only people that would attend the safety
22 committee meetings that we heard about for last two days
23 would be the department heads on a regular basis?

24 A. Those department heads or their designees.

25 Q. And for the golf side of things, who would that

Roger Warren-Cross Examination by Mr. Hood

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1 be?

2 A. The designee -- the director of golf is Brian
3 Gerard, and he would designate somebody or anyone to be
4 on the safety committee from the golf department.

5 Q. And that would be the only person there at the
6 safety committee meetings for the golf department?

7 A. Yes.

8 Q. All right. Now, the purpose of this is to
9 collaborate between these departments to ensure that
10 successful and unsuccessful things are either added or
11 removed across the sort of synergistic idea, correct?

12 A. It is that, correct, and it's also the opportunity
13 for fresh ideas and fresh issues to be brought to the
14 group so they can discuss it and find ways to solve
15 problems.

16 Q. Okay. Tell us a little bit about yourself. Where
17 are you from?

18 A. I was born in Peoria, Illinois, grew up in the
19 mid-part of Illinois my life, lived in Illinois until
20 2003 when I moved here to Charleston and to Kiawah to
21 accept the position as director of golf at the Kiawah
22 Golf Resort.

23 Q. And that's the position that Mr. Gerard holds now?

24 A. It is.

25 Q. How long did you hold that position?

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1 A. I was there from April 1 of 2003 to September of
2 2005.

3 Q. And after that, what position did you --

4 A. I was promoted to president of the resort.

5 Q. Now, the front page of paper today had a big
6 article about Kiawah. Is that the Kiawah we have been
7 talking about all way?

8 A. No. The group that was on the front page of the
9 paper was the developer who owned all the real estate
10 that's being developed on the island, and that was Kiawah
11 Development Partners that was just bought out by another
12 company.

13 Q. That's not your company?

14 A. It's completely separate entity.

15 Q. And you're president of the resort that includes
16 the hotel and golf courses and some other amenities out
17 there?

18 A. I oversee the 255 room hotel. We manage 530
19 villas and homes. We have the five golf courses, twenty
20 tennis courts, twelve restaurants. It is a large
21 operation with over 100 distinct individual businesses
22 that I have the responsibility to the board of directors
23 of the company to assure that those units perform at the
24 standards they have established.

25 Q. And we heard a figure, 1,500 employees. Is that

1 approximately how many employees are working out at the
2 resort?

3 A. Between 1,500 and 1,800 employees when we're in
4 peak season. Because we're seasonal in nature, that
5 number can go down as low as 900.

6 Q. Now, there have been some questions about the
7 bridge at number two, and I want to ask you, did the golf
8 course decide not to put a mat down on number four
9 because it was not affordable?

10 A. No. It had -- the decision to not put anything on
11 the other bridges was based on the fact that it was not
12 deemed necessary, based on the experience that we've had
13 since 1991 with the safety of those bridges. We've had
14 no incidents on those bridges at any time since 1991, and
15 my personal experience, playing the golf course and
16 walking on the golf course tells me that those bridges
17 are safe.

18 Q. Was this episode where corporate profits trump
19 safety?

20 A. Mr. Hood, one of the reasons this resort has
21 reached the esteem that it has is because of commitment
22 of the owner and the board of directors, myself and the
23 staff at the resort, to commit not only to an
24 experiential situation, where you come and have a great
25 experience, but it's a commitment to the highest standard

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1 in every area, which includes safety, and I think we work
2 very hard at that. We care a lot about the people that
3 come.

4 We are very sorry Mr. Barilotti injured himself at
5 the golf course, but we feel a responsibility to all our
6 guests to keep them safe.

7 Q. Now, when you were -- or headed golf at Kiawah,
8 that included overseeing the Ocean Course?

9 A. It did.

10 Q. How frequently would you walk the course or ride
11 the course, things of that nature?

12 A. As a director of golf, I made an effort at least
13 one time a week to drive every golf course. I went
14 out -- many times, I was out there multiple times and I
15 would go to clubhouses, golf courses, as a
16 PGA professional and became a member of the PGA of
17 America in 1990, so I'm a member of PGA America.

18 As a PGA member and a love of the game, I came
19 into this business through golf, so my real interest was
20 into golf and making sure that we had the finest golf
21 experience we had on the golf course. So I spent a lot
22 of time out there. I don't get to spend as much time out
23 there because of all the other duties I have.

24 Q. Tell us what the PGA is.

25 A. The PGA of America is the Professional Golfers

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1 Association of America. It's an organization of 27,000
2 working golf professionals, men and women around the
3 country, who every day their job is to run golf courses,
4 teach golf, help people learn about the game, get excited
5 about the game, and basically manage the business of
6 golf.

7 Q. And you're a member of that?

8 A. I'm a member of that organization since 1990.

9 Q. And what, if anything, is that just mail in a
10 check and you become a member?

11 A. No. There is a strenuous process that you go
12 through to earn your way to membership. That process has
13 changed since 1990 when I went through it.

14 Q. Tell us what you went through.

15 A. I went through a program at that time that you had
16 to be working in the golf business for someone. You had
17 to work at least 36 months in the business. It's an
18 apprenticeship.

19 After a period of time, you would go to a school
20 called business school one. You would attend that
21 school. They would test you on the material that they
22 gave you, and you had to have a passing score to move on
23 to the next level. Between business school one and
24 business school two, you had to take the playability test
25 to establish your ability to play the game at the high

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1 standard that PGA of America establishes.

2 Once you pass the playability test, you had to go
3 on to business school two, another school that was
4 strenuous, and at the end of the week you took a test.
5 You had to pass that. Once you passed that test, you had
6 to go back to the -- your home section, there are 41
7 geographic sections of the PGA of America, and you had to
8 go back to your home section, and a committee of fellow
9 golf professionals in that section would then grill you
10 on 20 questions, which was the hardest thing you did, and
11 they would approve you or disapprove you for membership.

12 So it was a strenuous process that in the end you
13 feel very proud to be part of the organization because of
14 the high standards they set for its members.

15 Q. What kind of handicap do you have to have to meet
16 the playability standard?

17 A. I think the handicap is about four. When you get
18 down to the scoring and everything, it would be about a
19 four or a five.

20 Q. You play the golf course, the Ocean Course, in
21 virtually every condition; sunny, cloudy, rainy, hot,
22 cold, windy, still?

23 A. Have I?

24 Q. Correct.

25 A. I have.

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1 Q. And when you play the golf course, even you as the
2 president, walk across the wooden, natural bridge at
3 number four, correct?

4 A. Many of the rounds that I play, I play with my
5 wife, and we walk and carry our bag and we both walk
6 across that bridge.

7 Q. And is it safe enough for your wife?

8 A. Yes. It's very safe.

9 Q. If you thought it was dangerous, would you change
10 it?

11 A. I would.

12 Q. What about when Bill Clinton plays the Ocean
13 Course? Is it safe enough for Bill Clinton?

14 A. When he is walking with a caddy, he walks across
15 that bridge.

16 Q. What about Joe Biden?

17 A. Very same.

18 Q. No changes have been made for any of those
19 gentlemen or your wife or anyone else on that bridge?

20 A. No.

21 Q. As a member of the PGA, did you -- tell the jury
22 about the levels that you achieved there within the
23 association.

24 A. I was fortunate in the association to get involved
25 with Illinois, in the Illinois section, in the local

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1 section government, and I was elected to the board of
2 directors for the Illinois section. I was then elected
3 secretary, was secretary for two years, elected
4 vice-president, elected president, and then served a
5 two-year term as honorary president.

6 Following my term of office in Illinois, I was
7 encouraged to run for national office, so in the year
8 2000, I was the first PGA professional in the history of
9 the PGA of America to be elected unanimously, the office
10 of secretary of the PGA of America. I went through the
11 chairs and became president of the PGA of America 2005
12 and 2006.

13 Q. And as president of the PGA, what were your
14 functions at that point?

15 A. It's a volunteer position, but the responsibility
16 is to be chairman of the board and oversee all of the
17 activities of the 27,000 member association, over \$140
18 million budget, oversee the PGA championship, the senior
19 PGA Championship, the Ryder Cup, the grand slam of golf,
20 and then all the programs that are put together to serve
21 the members of the PGA of America.

22 Q. In all of that experience, have you become
23 familiar with any code, regulation, standard or
24 otherwise, that requires placement of mats or any
25 adhesive on any bridges like the one in number four?

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1 A. I have never seen anything that was standard, nor
2 have I seen one where it's required. I have been
3 involved in discussions in the past with people who have
4 in some cases tried to mitigate it and what they put down
5 turned out to be a bigger problem than what they thought
6 they were mitigating, so there is a mixed bag of
7 information about what's appropriate, if, in fact, the
8 bridge is deemed to be necessary to have some type of
9 mitigation.

10 Q. How about the bridge at number four? Does it need
11 anything?

12 A. I believe it does not.

13 Q. And at the time of the PGA senior championship,
14 what year was that?

15 A. That was 2007.

16 Q. So in 2007, the senior championship was at Ocean
17 Course?

18 A. It was.

19 Q. And then 2012, the PGA championship was there?

20 A. It was.

21 Q. And prior to either of those tournaments, did the
22 PGA or the board or the president at the time require any
23 changes or modifications be made to the bridge at number
24 four?

25 A. They did not.

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1 Q. Is there a way to keep sand off the course at the
2 Ocean Course?

3 A. Not that I've been able to figure out. The
4 wind -- we describe the golf course, and Pete Dye, the
5 architect of the course, would describe it this way: The
6 Ocean Course is a living, breathing entity. Because of
7 the fact that it's so close to the beach, and with the
8 high velocity of wind we have, that golf course moves,
9 the sand moves. It forms new dunes. It's always moving.
10 The cart paths are made of sand and coquina, but in dry
11 conditions with wind, the sand is what blows and the
12 coquina shell part of it stays where it is, so the sand
13 is constantly moving.

14 It is impossible to be able to protect one
15 specific area, if not all the areas, from sand collected
16 on that at any point on any day.

17 Q. On the golf course, I heard you mentioned eyes on
18 the golf course. Can you just tell me how you understand
19 the team at Ocean Course or monitoring the situation, the
20 conditions in the Ocean Course and how they communicate
21 amongst themselves to make the course is in good safe
22 condition?

23 A. I will take it back to a little bit of some of the
24 previous testimony that talks about the handbook, and it
25 talked about our mission, our vision, our core values.

1 Every year I take the opportunity to speak to all of the
2 employees at a meeting, and we do separate meetings to
3 try to get them all there, in which I consistently
4 reinforce what our vision is, our mission is, and what
5 our core values are, and one of those core values is
6 empowerment, and we empower every one of our employees to
7 have the ability in any circumstance, any situation, to
8 try to solve a problem that has an impact on our guests.

9 And because of that, all of our employees are
10 consistently taking that approach and taking that
11 initiative. On the Ocean Course, you have the caddies
12 who are out there, you have the beverage cart people, you
13 have player assisted personnel that are out on the golf
14 course. So you have all of these people who, as a
15 group -- and you can have on a golf course at any given
16 time on a day 40 to 50 caddies that are walking that golf
17 course, all those people are empowered to help us be sure
18 we provide our guests with the best experience, so I feel
19 very comfortable that if a situation arises that is
20 threatening or dangerous to our guests, their safety,
21 their experience, our employees will let us know about it
22 and we will fix it. We are in the business of doing
23 that.

24 Q. And has any such request been made as it relates
25 to bridge number four, sir?

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1 A. Never to my knowledge.

2 MR. HOOD: Thank you, Mr. Warren.

3 THE COURT: Mr. McCool?

4 REDIRECT EXAMINATION

5 BY MR. McCOOL:

6 Q. Yes, thank you, Your Honor.

7 Mr. Warren, so there was some empowerment action
8 taken on bridge number two to make it safe by putting
9 that mat down; is that correct?

10 A. Yes, that's correct.

11 Q. And that was generated by an incident where
12 somebody was injured, correct?

13 MR. HOOD: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. McCOOL:

16 Q. Correct?

17 MR. HOOD: Objection, Your Honor.

18 THE COURT: I sustained it.

19 MR. McCOOL: I'm sorry.

20 BY MR. McCOOL:

21 Q. With respect to the mat being put down, you had
22 testified that you didn't deem it necessary, and you
23 haven't deemed it necessary, to have a mat or some sort
24 of grip additive put down at hole number four, correct?

25 A. I believe that's what I said, yes.

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1 Q. And with respect to hole number two and the black
2 mat, what was that in response to?

3 A. I don't know. I didn't make the decision to put
4 the mat down at number two.

5 Q. Was there an incident at hole number two that
6 you're aware of?

7 MR. HOOD: Objection, Your Honor.

8 THE COURT: Sustained.

9 MR. HOOD: Could we approach, please?

10 THE COURT: You may.

11 (Discussion held ad sidebar.)

12 THE COURT: This is an appropriate time for
13 us to take our lunch break. Everybody is nodding. I'm
14 glad you agree.

15 Do not begin deliberations. Do not discuss
16 this case among yourselves. Please be back in the jury
17 room at 1:30.

18 (Jury recessed.)

19 Mr. Warren, you may step down. Please
20 remember now that we're breaking for lunch you cannot
21 discuss this case with anyone. Thank you.

22 THE COURT: All right. We had extensive
23 conversations at bar regarding what I understood to be
24 the motion in limine that was filed, consented to
25 regarding testimony regarding bridges. It was filed as

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1 regarding bridges on the other golf courses and was
2 expanded, based upon the deposition that was taken on
3 Friday.

4 Mr. McCool wants -- as I understand it,
5 Mr. McCool, you wish to inquire of Mr. Warren as to the
6 bridge on hole number two because you believe that
7 Mr. Hood opened the door, correct?

8 MR. MCCOOL: I didn't hear the last part.

9 THE COURT: Because you believe Mr. Hood has
10 opened the door to that testimony.

11 MR. MCCOOL: It's two things. In my opening,
12 I said, before the trial, I would not mention a prior
13 incident that happened at that subject hole, and I did
14 not.

15 And then what the agreement was, was that at
16 a point in time when that incident would come into play,
17 we would approach the bench and the issue would be
18 decided at that time.

19 What I consented to was I would not talk
20 about bridges at other courses. That's what the motion
21 in limine was about, and that was the center and focus of
22 the motion in limine, but regarding the incident at hole
23 number two, I agreed I would not talk about the incident
24 at hole number two in my opening, but the agreement was
25 that if questions were going to be asked of a witness

1 about an incident at hole number two, that we would take
2 it up with the Court at that point in time. So that's
3 the first aspect of it.

4 And then the second aspect of it is that
5 Mr. Warren was talking about at bridge number four we
6 haven't deemed it necessary to have a mat because we
7 don't know of an incident at hole number four, but we
8 have a bridge at the same course, by the same architect,
9 the same type of wood, and there was an incident
10 involving dew that caused a golfer to fall, and that
11 incident was in the 2008 or 2009 time frame before
12 Mr. Barilotti fell, so that incident is relevant.

13 It put the defendant on notice that measures
14 needed to be taken because the wood is unsafe when there
15 is dew and that there's a feasible and reasonable measure
16 to be taken in response to their knowledge that they know
17 a bridge made of wood like the one at number two is
18 unsafe.

19 THE COURT: Mr. Hood?

20 MR. HOOD: First of all, the plaintiff agreed
21 not to mention other bridges in other golf courses and
22 that was an agreement pointing on him and his client.
23 His client voluntarily interjected during his direct
24 examination by -- or on cross-examination by me, rather,
25 that he had seen mats on other bridges on other golf

1 courses in violation requiring me to move to strike the
2 testimony which was granted, in response to number one.

3 Second is the plaintiff acknowledged that he
4 would approach the bench before bringing this up, which
5 was not done here. He brought it up, not once, not
6 twice, but three times without approaching the bench
7 forcing me to object to something that he agreed before
8 to bring to the Court's attention.

9 Third, as it relates to other similar
10 incidents, the plaintiff, one, has not established that
11 this is a, quote, other similar incident. The plaintiff
12 has not established that the footbridge at number two is
13 substantially similar to the footbridge slash golf cart
14 bridge at hole number four.

15 One includes the change in elevation down
16 with a 30 to 24 inch wide path and about 10 feet long to
17 change an elevation up. The other is a perfectly flat,
18 level 12 foot wide 50 foot golf cart bridge. The
19 pictures are Exhibits 8 and 15 for the defendants.

20 These are two substantially similar bridges.
21 There has been no basis to testify that the other
22 incident was related to a condition present at the bridge
23 at number two that is substantially similar to what has
24 occurred in this case. In fact, the plaintiff has
25 articulated his belief that it's not just wetness but

1 sand that has contributed to his cause and his fall.

2 Much time has been spent on the discussion of
3 sand, and when counsel approached the bench, he said that
4 the fall on two, based on whatever knowledge he has
5 acquired, was based on wetness and dew on that bridge and
6 has no mention of sand. So I think without laying a
7 foundation to establish similarities between an incident
8 on number two which did occur and an incident on number
9 four, which occurred in this case, the plaintiff should
10 be prohibited from going into it.

11 And, finally, as it relates to the
12 prejudicial nature of it, I think it's unduly prejudicial
13 that we're having a trial at this point in time over the
14 condition of a bridge at number two and trying to
15 extrapolate that as it applies to number four. The
16 plaintiff has not identified any building code regulation
17 or building code that requires implementation of this.
18 The plaintiff does not have an expert witness to say one
19 provides more traction than another, and so he's just
20 surmising and offering pure conjecture that this traction
21 as provided here would somehow prevented the fall on the
22 bridge at number four.

23 Again, we're talking about two totally
24 separate issues, and I don't think it's appropriate to
25 get into it, and the final point is that the other

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1 incident he was alluding to was a lawsuit, and it
2 resulted in a directed verdict where the Court concluded
3 that wetness on the golf course on the wooden bridge, the
4 same as what we're dealing with here, is a naturally
5 occurring condition for which the defendant is not
6 legally responsible.

7 And so you have a judicial determination that
8 it's a naturally occurring condition, yet he wants to
9 extrapolate from the fact a suit was filed and someone
10 was injured that somehow that means there's a problem
11 with the condition on another bridge.

12 THE COURT: What was that case name?

13 MR. HOOD: I'll find out.

14 THE COURT: All right. Mr. McCool, let me
15 hear you from.

16 MR. McCOOL: Yes, Your Honor.

17 During Mr. Warren's testimony, he stated that
18 there have been no incidents on both bridges regarding
19 falls and that sort of thing. That's when Mr. Hood was
20 asking him questions. Mr. Warren, he is the one who
21 volunteered that information. Mr. Hood --

22 THE COURT: Mr. Hood, what about that?
23 Mr. Warren did make the statement that there had been no
24 other slip and falls since he had been there on any of
25 the Ocean Course bridges.

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1 MR. HOOD: That's not what he said, and I
2 think --

3 THE COURT: I disagree, because I took notes
4 because I anticipated that this was going to happen.

5 MR. HOOD: Okay. Well, then I would ask we
6 look at the transcript.

7 THE COURT: We can do that over the lunch
8 hour, assuming that he did say that.

9 MR. HOOD: Was that in response to my
10 question?

11 THE COURT: Yes.

12 MR. HOOD: What you wrote down was that no
13 other incident had ever occurred on any bridge out there?

14 THE COURT: Yes.

15 MR. HOOD: That's not in the list of
16 questions I had proposed to ask, and, you know, I have
17 been specific to refer to the bridge at number four for
18 incidents throughout the entire cases since I brought it
19 up to the Court's attention.

20 THE COURT: All right. Let's go ahead and
21 take our lunch break. Please be back at 1:25. Thank
22 you.

23 I'm just checking with the court reporter to
24 make sure she has enough time for lunch, so 1:30. Thank
25 you.

1 (Recess taken.)

2 A F T E R N O O N S E S S I O N

3 (In open court, jury not present.)

4 THE COURT: All right. Mr. McCool, anything
5 before we get started?

6 MR. MCCOOL: I didn't know if you wanted to
7 have me respond to Mr. Hood's motion.

8 THE COURT: All right. Mr. Hood, it was one
9 of those lovely things where we're all right. All right?
10 We're all right. Your question was -- and thank you to
11 the court reporter for working so diligently over lunch.

12 There have been some questions about the
13 bridge at number two, and I want to ask you, did the golf
14 course decide not to put a mat down on number four
15 because it was not affordable?

16 The answer was, No. The decision to not put
17 anything on the other bridges was based on the fact that
18 it was not deemed necessary, based on the experience that
19 we've had since 1991 with the safety of those bridges.

20 What I heard him say, and what Mr. Warren did
21 say, was, We've had no incidents on those bridges at any
22 time since 1991, and my personal experience, playing the
23 golf course and walking on the golf course, tells me
24 those bridges are safe.

25 So I heard that. I was correct, and that's

1 what I heard, but what you needed to do was based upon
2 your question, so the question -- in context, you are
3 correct, Mr. Hood. Your question merely tailored it to
4 the question at number two, putting the mat down on
5 number four, and that is what those bridges referred to.

6 So based upon that, Mr. McCool, I am
7 sustaining Mr. Hood's objection. There's not to be any
8 further testimony regarding the putting the mat down
9 on -- your request to talk about the mat on number two
10 and the -- not the mat, I'm sorry -- the similar incident
11 on bridge number two.

12 MR. MCCOOL: I'm sorry. I thought he said
13 we've had no incidents on those bridges since 1991.

14 THE COURT: The statement was, and this is
15 what I wrote down, is we've had no incidents on those
16 bridges at any time since 1991, but what those bridges
17 was referring to was the number four bridge.

18 MR. MCCOOL: But he's talking about plural.
19 He didn't say --

20 THE COURT: There are two bridges at -- on
21 number four. There's the little bridge and the big
22 bridge, for lack of a better --

23 MR. HOOD: There is the one -- the tee box is
24 the first one -- you remember in the photograph I showed
25 there's -- I think if you look at Defendant's Exhibit 4,

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1 that shows the first bridge on number four, which is not
2 where the incident occurred, and Defendant's 6 shows the
3 second bridge at number four where the incident occurred.

4 MR. MCCOOL: And the question was asked
5 regarding bridge number two?

6 THE COURT: There have been some questions
7 about the bridge at number two, and I want to ask you,
8 did the golf course decide to not to put a mat down at
9 number four because it was not affordable?

10 The decision to not put anything on the other
11 bridges was based on the fact that it was not deemed
12 necessary. We've had no incidents on those bridges at
13 any time since 1991.

14 So what I understand, Mr. McCool, is you want
15 to get into the previous lawsuit, the incident that
16 occurred at hole number two, bridge number two, correct?

17 MR. MCCOOL: That's right.

18 THE COURT: And the question was tailored to
19 not talk about the incidents anywhere else but -- not the
20 incident there. That's how I read the question and the
21 response.

22 MR. MCCOOL: All right. My position is, Your
23 Honor, that they have opened the door in talking about
24 those bridges, meaning the bridges in the context of
25 number two and number four, and that based on that

1 testimony, I should be allowed to ask him about the very
2 incident in 2008 or 2009 where a golfer fell on a bridge,
3 a wooden bridge, because it had dew on it.

4 THE COURT: Mr. Hood?

5 MR. HOOD: I understand your ruling, and I
6 understand he doesn't agree with it.

7 THE COURT: All right. Then it's noted for
8 the record. All right.

9 Where is your client?

10 MR. HOOD: Right here.

11 THE COURT: Did you comply with all of the
12 court's instructions?

13 THE WITNESS: I did.

14 THE COURT: Let's bring in the jury.

15 (In open court, jury present.)

16 THE COURT: Thank you. Please be seated.

17 Did every member of the jury panel comply with the
18 Court's instructions? If you did comply, please raise
19 your right hand. If you complied with the Court's
20 instructions, please raise your right hand.

21 I try to change it up. All right. Let's try
22 this one more time. So I can indicate on the record if
23 you complied with the Court's instructions, please raise
24 your right hand.

25 Let the record reflect that all 13 of the

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1 jurors have complied with the Court's instructions. All
2 right.

3 Mr. McCool?

4 MR. MCCOOL: Yes, Your Honor. May it please
5 the Court:

6 BY MR. MCCOOL:

7 Q. Mr. Warren, the bridge where Mr. Barilotti fell,
8 this was built by the owners and operators of the Ocean
9 Course, correct?

10 A. Yes.

11 Q. And the paths that lead up to that bridge were
12 built by the owners and operators of the Ocean Course,
13 correct?

14 A. Yes.

15 Q. And the actual paths and the materials used were
16 placed there, the sand and coquina shells as part of the
17 building of that course, correct, the layout of the
18 paths -- they weren't just existing. They were actually
19 built, correct?

20 A. Yes. And to be accurate, in 1991 when the golf
21 course was constructed, the path on number four and some
22 other paths on the golf course didn't exist at that time.
23 They have been added since 1991.

24 Q. At the direction of the Ocean Course?

25 A. Correct.

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1 Q. The owners and operators?

2 A. Correct.

3 MR. MCCOOL: Thank you. That's all the
4 questions I have.

5 MR. HOOD: No further questions.

6 THE COURT: Thank you. You may step down.
7 Call your next witness.

8 MR. MCCOOL: Yes, Your Honor. The plaintiffs
9 call Mr. Nathan Ross.

10 NATHAN ROSS,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCCOOL:

15 Q. Mr. Ross, are you a caddy at the Ocean Course?

16 A. Yes, I am.

17 Q. You've been a caddy at the Ocean Course since the
18 year 2000?

19 A. That's correct.

20 Q. And you were a caddy and part of the group that
21 Mr. Barilotti was a part of; is that correct?

22 A. Yes, sir.

23 Q. And regarding the tee times at the Ocean Course,
24 those tee sometimes begin at 7:30 in the morning; is that
25 right?

1 A. Yes, that's correct.

2 Q. And the tee times are every ten minutes after
3 that?

4 A. Yes.

5 Q. And regarding Mr. Barilotti's fall, afterwards you
6 spoke to him, and he was out on the ground and saw him on
7 the ground; is that right?

8 A. Yes, that's right.

9 Q. And eventually representatives from safety and
10 security came out, the safety and security department?

11 A. Yes, after they were called. They called the pro
12 shop, and then they called the security and then safety
13 and security department.

14 Q. You gave a written statement to them; is that
15 correct?

16 A. I did, after the round was over, correct.

17 Q. Right. So Mr. Barilotti's group, taking away
18 Mr. Barilotti from that group because he was taken by
19 ambulance to the hospital, but the remaining persons in
20 the group finished the round of golf?

21 A. Correct. It was his group, and I believe there
22 was a group behind him as well.

23 Q. Okay. And after that round finished, you gave a
24 written statement to safety and security for Kiawah Golf
25 Resort, correct?

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1 A. Yes, sir, yes.

2 Q. And that would have been on October 31st of 2010?

3 A. Correct.

4 Q. That round of golf finished up, the 1 o'clock time
5 frame or so?

6 A. I don't remember the exact time, but it takes
7 four-and-a-half to five-and-a-half hours, so that would
8 be about right.

9 Q. Do you recall what time the tee time was that
10 morning?

11 A. No, sir.

12 Q. All right. And you provided the statement to
13 Kiawah Island Golf safety and security, is that right?

14 A. Correct.

15 Q. A written statement on a form, a Kiawah Island
16 Resort safety and security form; is that correct?

17 A. I would imagine. I don't remember the form, but I
18 remember writing the statement out, yes.

19 Q. And then you signed that statement?

20 A. Correct.

21 Q. And then you provided that statement to Kiawah
22 Island safety and security, correct?

23 A. Yes, sir.

24 Q. And that's Ms. Yvonne Johnstone's group. Do you
25 know her from safety and security?

1 A. I do not know her.

2 Q. All right.. Let me show you what has been marked,
3 if we can, as Plaintiff's Exhibit No. 19. In Plaintiff's
4 Exhibit No. 19 is the Kiawah Island Golf Resort safety
5 and security incident form. In the last page of that
6 Exhibit No. 19, there's a statement of Steven Cipolla,
7 correct?

8 A. Yes, that's what it appears.

9 Q. Do you know why the decision was made to exclude
10 your written statement from the final Kiawah Island Golf
11 Resort safety and security incident form?

12 A. No, sir.

13 Q. Do you know why it's not contained, your
14 statement, in what Kiawah Island has produced and the
15 safety and security department has said is their official
16 investigation into Mr. Barilotti's fall?

17 A. I have no idea.

18 Q. Has anybody ever told you why they did not include
19 anybody --

20 A. No.

21 Q. Why your statement was not included?

22 A. Nobody ever told me anything about my statement
23 after I handed over the piece of paper, so no. To answer
24 your question, no.

25 MR. MCCOOL: That's all the questions I have.

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1 Thank you.

2 CROSS-EXAMINATION

3 BY MR. HOOD:

4 Q. Mr. Hood, do you remember the incident?

5 A. Yes. Parts of it, yes.

6 Q. Tell us what you remember.

7 A. I remember walking across, or walking up, the
8 fourth hole and Mr. Barilotti, and I don't remember who
9 else, as he walked across the bridge. When the bridges
10 are wet in the mornings -- I am a bit of an OCD human,
11 and I tell everybody, Be careful. It might be wet when
12 it's slippery.

13 And the next thing I heard -- I didn't see him
14 fall. I heard Mr. Barilotti fall, and then Steve came
15 over, and we told him, you know, Don't move. Let's see
16 what's going on.

17 And Steve had his cell phone. I did not. That's
18 Steve Cipolla. He called the pro shop and everybody
19 knows what happened after that. Security came out, as
20 did the assistant pro, and transported him back to the
21 clubhouse area.

22 Q. And you have seen the report filled out with a
23 statement by Mr. Cipolla?

24 A. Yes.

25 Q. And your recollection is consistent with what was

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1 referenced there by Mr. Cipolla?

2 A. Completely, yes.

3 Q. And if you were looking at your report, would it
4 sound like what you referred to us here today?

5 A. Absolutely.

6 MR. HOOD: Thank you, sir.

7 REDIRECT EXAMINATION

8 BY MR. McCOOL:

9 Q. I have a few questions.

10 Regarding the incident, you don't remember if
11 you were carrying Mr. Barilotti's bag as a caddy or
12 somebody else's bag?

13 A. I do not, but by sitting here earlier today when
14 Steve said he was carrying it, obviously he was.

15 Q. You don't remember that?

16 A. I don't remember that I wasn't or was, no, sir,
17 and to be perfectly clear, with three bags, we alternate
18 every hole. One guy takes two in one hole, one guy takes
19 one on one hole, and we flip it. So I don't know who
20 started with two and who would have one bag.

21 Q. About you don't remember where Mr. Cipolla was
22 when Mr. Barilotti fell, correct?

23 A. I do from what I heard today --

24 Q. Independent recollection, you don't remember that?

25 A. No, sir.

1 Q. And you don't remember what time the round began
2 that day?

3 A. I just remember it was in the morning and it was
4 foggy and misty.

5 Q. And you don't remember who your supervisor was in
6 October of 2010, correct?

7 A. I assumed it was Brandon Woods because he is now
8 and I don't think there has been any changes, but I
9 remember when you asked me the question I thought it was
10 Brandon Woods in the deposition, but I wasn't 100 percent
11 sure.

12 Q. So you don't remember for 2010, correct?

13 A. No. I say I wasn't 100 percent sure.

14 Q. You didn't say I don't remember.

15 MR. HOOD: Your Honor, this is beyond the
16 scope of my cross-examination of this witness.

17 MR. McCOOL: This goes --

18 THE COURT: I do not want speaking
19 objections. Sustained. Move on.

20 BY MR. McCOOL:

21 Q. Do you remember the names of any persons in
22 Mr. Barilotti's group?

23 A. No, sir.

24 Q. And do you remember the name of who from the
25 clubhouse came out in response to the call?

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1 A. The assistant professional came out. I don't
2 remember who it was.

3 Q. And regarding -- and you caddied a round of golf
4 on May -- it would be the 15th of 2013, correct?

5 A. I have no idea. I don't know the date I worked
6 each day.

7 Q. All right. Do you remember me taking your
8 deposition on May 20th?

9 A. Yes.

10 MR. HOOD: Your Honor, I would object on the
11 basis of beyond the scope of cross-examination.

12 THE COURT: I'm going to give him a little
13 latitude. He answered yes.

14 BY MR. McCOOL:

15 Q. So you remembered the deposition, correct?

16 A. Yes.

17 Q. In that deposition, the prior time you had caddied
18 was that -- the deposition, that was on a Monday, right,
19 and you had caddied that prior Wednesday, correct?

20 A. If you say so, yes.

21 Q. And regarding that Monday backward to Wednesday,
22 you don't remember what time that round of golf started,
23 do you?

24 A. No, sir. I've been caddying out there for 14
25 years; each day, a different time, and I do not remember

1 the time that particular day started, you are correct.

2 Q. So we go back basically a Monday to a Wednesday,
3 five days, and that was the last time you caddied. You
4 hadn't caddied from that Wednesday to that Monday before
5 when I took that deposition, right?

6 A. If that's what I said, yes, sir.

7 Q. And during that time frame, you don't remember
8 what time that round started, do you?

9 A. No, I do not.

10 Q. And you don't remember how many people were in
11 that group?

12 A. After 14 years it becomes a blur. Specifically,
13 you are correct, I do not.

14 Q. I'm not talking 14 years' worth. I'm talking
15 about you being deposed on a Monday and going back to
16 that Wednesday --

17 MR. HOOD: Objection. Argumentative.

18 THE COURT: Let him finish his question.

19 BY MR. McCOOL:

20 Q. I'm not talking about 14 years' worth of caddying
21 opportunity and caddying, I'm talking about the last time
22 you caddied, which was five days prior to you being
23 deposed, correct?

24 A. Yes, sir.

25 MR. HOOD: Same objection.

Nathan Ross-Redirect Examination by Mr. Hood

Page 303

1 THE COURT: Overruled.

2 BY MR. McCOOL:

3 Q. There was another caddy with you that day prior to
4 you being deposed, that Wednesday before?

5 A. Yes, there was.

6 Q. And you do not remember who that caddy was, do
7 you?

8 A. That's correct.

9 Q. And you don't know if they were from out of town?
10 You don't remember if they were from out of town, those
11 golfers, or if they were from the Charleston area,
12 correct?

13 A. That's what I told you during the deposition, yes,
14 sir.

15 MR. McCOOL: That's all the questions I have.
16 Thank you.

17 MR. HOOD: No further questions.

18 THE COURT: You may step down. You are free
19 to leave. Call your next witness.

20 MR. McCOOL: Your Honor, at this time
21 plaintiff has no further witnesses.

22 THE COURT: Ladies and gentlemen: That
23 indicates to the Court there is a matter of law that I
24 must take up outside of your presence.

25 Do not begin deliberations. Do not discuss

1 this case among yourselves. You may leave your notepads
2 right where they are. Please rise for the jury.

3 (Jury recessed.)

4 (In open court, jury not present.)

5 THE COURT: Any further matters for the
6 plaintiff?

7 MR. McCOOL: I was just -- based on what the
8 defendant had said, I don't know if they were going to
9 call any witnesses or not, so I'll just reserve my motion
10 as to whether or not they'll be calling any witnesses.

11 THE COURT: Any motions or matters?

12 MR. HOOD: Yes, Your Honor. On behalf of the
13 defendant, pursuant to Rule 50 of the South Carolina
14 Rules of Civil Procedure, we would respectfully move for
15 a directed verdict as to all of the allegations -- or all
16 the causes of action set forth in the complaint
17 plaintiff's complaint. The essence of this case is that
18 the plaintiff slipped and fell on naturally occurring
19 conditions, and there is no obligation or responsibility
20 of property owners to make efforts to protect people from
21 naturally occurring conditions. I find the Meadows case
22 to be very much instructive on this matter, and that was
23 a situation where an invitee had slipped and fallen on
24 wet grass, and the Court of Appeals describes the
25 difference between a latent defect and a defect from --

1 or a condition as a result of a naturally occurring
2 condition, which is obvious to all people.

3 The consequence of potential liability, or
4 asking the jury to make this determination, is pretty
5 expansive because it would mean that in every
6 circumstance where there is any walking surface that is
7 ever wet, that is ever owned by someone and someone falls
8 upon it without any defect in the condition of that
9 surface, other than it being wet from a naturally
10 occurring condition, would render it a question of fact
11 for a jury to determine, and I think when we have case
12 law on point, I think it's appropriate for the Court to
13 examine the evidence when there is only one reasonable
14 conclusion that can be drawn to grant a directed verdict
15 as in this case.

16 Additionally, we would move for -- or
17 alternatively, I would also move for a directed verdict
18 as to the defendant's affirmative defense of comparative
19 negligence.

20 The defendant raised an affirmative defense,
21 and through the testimony of the plaintiff, he
22 acknowledged that he recognized the wetness. He
23 recognized the hazard. He approached the hazard,
24 encountered it willfully and intentionally, and was
25 therefore comparatively negligent if the Court decides

1 that this is an issue for the jury to decide in lieu of a
2 directed verdict, and at that point, we would ask that
3 the issue of comparative fault only be an allocation of
4 percentages based upon the uncontroverted evidence in
5 this case.

6 I think the plaintiff in their summons and
7 complaint included a prayer for punitive damages. We
8 would also --

9 THE COURT: Are you going forward on punitive
10 damages at this time?

11 MR. McCOOL: Your Honor, we will not.

12 THE COURT: Are you withdrawing punitive at
13 this time?

14 MR. McCOOL: Yes.

15 MR. HOOD: So what that leaves us with is
16 essentially a premises liability case, or a negligence
17 standard, and I think that based upon all of the evidence
18 presented to the Court, there has been no identification
19 of a problem with a particular bridge other than it was
20 wet and sandy, which are naturally occurring conditions,
21 and those are conditions that the property owner is not
22 legally liable for, is our position.

23 The plaintiff has suggested that there was
24 some breach of a policy to blow the bridge. I don't
25 believe the law obligates the defendant to remove sand

1 from a golf course on the beach, nor do I think that's
2 sufficient to overcome the burdens appropriate at the
3 directed verdict stage, nor do I think there's sufficient
4 evidence to draw that conclusion, or enough evidence to
5 make a reasonable inference of that conclusion, so based
6 on those things, Your Honor, we would respectfully ask
7 the Court to grant the defendant's motion for directed
8 verdict here at the close of plaintiff's case.

9 THE COURT: I'll be happy to hear from you.

10 MR. McCOOL: Thank you, Your Honor. And,
11 regarding the directed verdict standard under Rule 50,
12 that requires that -- the standard is that the evidence
13 must be viewed in the light most favorable to the non
14 proving party, which would be the plaintiff, and that a
15 directed verdict under that standard is only to be
16 granted when only one reasonable inference can be drawn
17 from the evidence.

18 And we have a situation here where the
19 defendant admits that they built the cart path that leads
20 up to bridge number four and they built bridge number
21 four. Those two items are not naturally occurring. The
22 defendant put down the coquina shells in the sand that
23 make up the path that leads to bridge number four, and we
24 have testimony from the defendants that the carts used by
25 the defendant each morning tracks sand on to the bridge.

1 The only persons that day who were using
2 carts -- because it's without question that tee time was
3 before noon, and carts are only allowed by players at
4 noon or beyond, so we have employees who are tracking the
5 sand on to the bridge.

6 Further, we have testimony from various
7 employees that sand needs to be removed. Sand is debris,
8 and sand, loose sand, decreases traction, and one of the
9 witnesses even said that the only time sand will increase
10 traction, provide traction, is when there's ice, and we
11 don't have ice in this situation.

12 So there is absolutely more than one
13 reasonable inference to be drawn from the evidence, and
14 that reasonable inference includes that the defendants
15 created the defect by having their carts, that their
16 employees were operating, track, their words, the sand on
17 to the bridge.

18 Furthermore, the testimony is that the sand
19 is a safety issue, and it's to be blown off the bridge
20 every morning before play begins. In this situation, the
21 person in charge of the maintenance to be done before
22 each round of golf, he admitted he wasn't there that day.
23 He also admitted that he was not able to identify anybody
24 who got the blowers out and removed the sand from the
25 bridge.

1 Mr. Hood says, Well, the law doesn't require
2 us to remove the sand from the bridge. The law requires
3 them to be reasonable, and their own standards is that
4 it's reasonable for us to get the bridge ready for play
5 each day by removing sand that poses a hazard to the
6 safety and wellbeing of golfers on the course.

7 And also the law provides that -- this is
8 Creech versus South Carolina Wildlife Marine Resources
9 Department. It's a 1997 case at 328 S.C., page 24, and
10 that is with respect to any argument about open and
11 obvious and those sorts of things, that if a defendant
12 should have anticipated the harm, despite the knowledge
13 that something might be open or obvious, that the trial
14 Court in that situation is to deny the directed verdict
15 motion.

16 We have a factual scenario by numerous
17 witnesses of the defendant who don't dispute the fact
18 that this bridge and the wooden surfaces when they're
19 sandy, there's not as much traction for the safety and
20 wellbeing of the guests and the golfers or that the
21 traction is reduced and that there is a way to improve
22 traction. And we heard a couple different ways, through
23 the black mat at hole number two. Ms. Johnstone, the
24 head of safety and security, she said that, you know,
25 there is an additive that can be put on there, some sort

1 of grit additive that is basically -- that makes the sand
2 stationary that you put on there, and those are all
3 opportunities available to the plaintiff and they simply
4 did not do it, and they were aware of the condition in
5 terms of sand not being proper on the bridge.

6 That's why they remove it each day, for
7 safety. Their testimony was that the bridge -- blow the
8 sand off it and do that activity before each round of
9 golf for safety each day.

10 For those reasons, plaintiff moves that the
11 motion for directed verdict be denied.

12 THE COURT: What about the comparative
13 negligence issue?

14 MR. McCOOL: I was actually going to move
15 directed verdict on that because there is no testimony
16 and the question was directly asked of each witness in
17 this category of questions, Did Mr. Barilotti do anything
18 wrong in causing or contributing to this fall?

19 And the answer was no, and to take that even
20 further, Was Mr. Barilotti permitted to be on the bridge
21 he was using?

22 Yes.

23 Pedestrians, golfers use that every day the
24 course is open, so there is no evidence he did anything
25 wrong. There was a investigation done that revealed he

1 didn't do anything wrong. The persons there watching
2 him, the round of golf, the employees of the defendant,
3 they testified they weren't aware of him doing anything
4 wrong, so in terms of comparative negligence, that motion
5 should be denied as well.

6 THE COURT: All right. Pursuant to Rule 58,
7 the South Carolina rules of civil procedure, ruling on a
8 motion for directed verdict, I must view the evidence and
9 all reasonable inferences in the light most favorable to
10 the nonmoving party. In this case it is the plaintiff,
11 Mr. Barilotti.

12 I am concerned only with the existence or
13 nonexistence of the evidence. The plaintiff in this case
14 must prove by a preponderance of the evidence that a duty
15 of care was owed by the defendant to the plaintiff, a
16 breach of that duty by a negligent act or omission, and
17 damages proximately resulting from the breach.

18 In a premise liability action, an invitee
19 enters the premises with an express or implied permission
20 for a purpose benefitting the owner or occupier. A
21 defendant owes an invitee a duty of due care to discover
22 risks and take safety precautions to warn of or eliminate
23 unreasonable risks within the area of invitation.

24 Mr. Youngner testified that the bridge at the
25 fourth hole on the Ocean Course was intended for golf

1 carts and for pedestrians. While the Ocean Course has
2 put rubber matting to increase traction, at other places
3 he has testified a black mat would not be appropriate at
4 hole number four.

5 Ms. Johnstone testified that if she has
6 knowledge of something that is unsafe measures would be
7 taken to make it safe. No unsafe conditions brought to
8 her attention on the day of the incident. Mr. Stone
9 testified that all bridges and walkways were blown free
10 of debris daily.

11 Mr. Stone stated that sand and dew are not
12 deemed to be dangerous conditions, and the golf course
13 did not try to keep sand off the bridge. He further
14 testified that sand on the bridges of the golf course is
15 not considered debris. When he inspected the bridge
16 during the week of the incident, nothing on the bridge
17 seemed out of place, and there was nothing on the bridge
18 that had not been there before.

19 He further testified that he had never
20 received a complaint about the bridge at hole number
21 four, further indicated that it is not feasible to keep
22 the bridge free of sand and dew and coquina shells.

23 Plaintiff testified that on October 31, 2010,
24 the bridge at the fourth hole was wet and slippery from
25 morning dew and that part of the cause of his fall was

1 sand on the bridge. He further testified that the wet
2 condition was obvious and that sand and dew are natural
3 conditions. He stated he walked six bridges prior to the
4 bridge at the fourth hole, and they were slippery all the
5 way across. He stated, You don't knee a warning sign to
6 tell you it was slippery.

7 Mr. Cipolla testified that he warns golfers
8 that the bridges can be slippery before crossing the
9 first bridge of the course. Mr. Gerard indicated it was
10 reasonable to put a mat on the bridge on hole number two
11 to prevent injury, but there was no need for a mat on
12 number four. He stated no slip or falls occurred on the
13 bridge at hole number four on all of the tournaments held
14 on the Ocean Course that he was aware of.

15 Mr. Forrest testified that it was part of
16 common sense to exercise what debris is and that sand on
17 a golf course on the beach would not need to be cleaned
18 up.

19 Mr. Gregory testified on the day of the
20 incident it was clear. The bunkers had been raked, and
21 no grass clippings or branches appeared on the course.
22 Further, he stated the sand in the course did not raise a
23 red flag, and nothing appeared out of the ordinary or
24 unsafe in any way.

25 Mr. Warren testified that it not deemed

1 necessary to put a mat at the bridge at the hole number
2 four because no incidents have occurred since 1991. He
3 also stated that the Ocean Course is a living, breathing
4 entity. Sand dunes constantly, and it's impossible to
5 prevent sand from collecting in any area on the course.

6 Based upon the testimony presented and viewed
7 in the light most favorable to the plaintiff, the
8 defendant's motion for directed verdict is granted.
9 Naturally occurring dew fall imposed no duty on
10 defendant, and the dew fall and sand were open and
11 obvious conditions that the defendant had no duty to warn
12 about.

13 Mr. Barilotti, I have granted a motion for
14 directed verdict, so that ends this case at this time. I
15 wish you the best of luck, and thank you for your
16 courtesy and your professionalism, and I'm sorry. I know
17 this is not how you wished for this to end. Thank you.

18 Mr. McCool, Ms. Fried, thank you for your
19 professionalism through this trial. Ms. Reid and
20 Mr. Hood, thank you, and thank you, Mr. Warren.

21 This matter is -- we're done. All right.

22 - - -

23 (Whereupon, the proceedings were concluded.)

24 - - -

25



2010-00600

KIAWAH ISLAND GOLF RESORT
SAFETY AND SECURITY INCIDENT FORM

Name:	<u>Barilotti</u>	Last	MI	<u>Joe</u>	First
D.O.B.	<u>12/12/51</u>				
Name of Parent/Guardian (if minor or child)	<u>N/A</u>				
Sex:	<u>M</u>	Height:	<u>5'11"</u>	Weight:	<u>195</u>
		Hair:	<u>Gray</u>	Eyes:	
Home Address	<u>29 Longview Lane</u> <u>Northtown Square PA 19093</u>				
Home Phone:	Alternate Phone: <u>610-640-4400 cell</u>				
Guest Information	<u>Staying with Thomas Leonard C. Resident</u> <u>109 Flyway Dr.</u>				
Room or Villa Number					
Check In Date:			Check Out Date:		
Item Information					
Description	<u>Lost/Damaged/Stolen</u>				
Estimated Value:			Time Last Seen		
Miscellaneous					
Date	<u>10/21/10</u>	Time Reported:	<u>0855</u>	Medical Attention:	<u>Y</u>
H.R. Notified:	<u>Y/N</u>	Time Arrived:	<u>0918</u>	Medical Refusal:	<u>N</u>
O.C.S.O. Report:	<u>Y/N</u>	Time Cleared:	<u>0955</u>	Urinalysis Required:	<u>—</u>
Weather:	<u>Clear/Cloudy/Raining</u>	Agent:	<u>Lance</u>		
Notes:	<u>Walking over bridge near the 4th green</u> <u>and at the end of the bridge, his legs</u> <u>went from underneath him, and injured his (R)</u> <u>foot/leg. EMS was activated along with ST. J.</u> <u>EMS arrived @ 0918 ST. J. was on scene. EMS</u> <u>arrived @ 0942 and transported him to</u> <u>St. Francis Hosp. with @ 0955 hrs. See report #</u> <u>2010-00600 for further info.</u>				

DEF RRFP 0002

KIAWAH ISLAND GOLF RESORT

12 KIAWAH BEACH DRIVE KIAWAH ISLAND, SC 29455

Case #:

FALL ACCIDENTAL Disposition: MEDICAL		MEDICAL NON-GUEST
NON-GUEST		
LANE AGENT LANE	10/31/2010 0840 to 10/31/2010 0830	10/31/2010 0855
KIAWAH ISLAND GOLF RESORT		
OCEAN COURSE	4TH HOLE	
FORREST	YES	N/A

CONTACT: 1-800-620-4600			
BARILOTTI/JOE		(610)620-4600 Cell	
29 LONGVIEW LANE	12/02/1951	58 M W	5'11" 195 GRV
NEWTOWN SQUARE, PA 19073		NO	NO

FOOT	
BARILOTTI/JOE	
☐ Slurred Speech ☐ Staggered Gait ☐ Odor of Alcoholic Beverage ☐ Bloodshot Eyes ☐ Contacts ☐ Glasses	
GOLF	
☒ Medical Treatment Was Offered ☐ Treatment Was Refused	
☒ Physician Referral Was Issued If No Referral, Explain:	

AGENT LANE	10/31/2010 at 10:31:18	DIRECTOR JOHNSTONE
		11/02/2010

Printed At: 02/07/2012 11:57:43AM

Page 1 of 2

Report Exeo o(2012)

DEF RRF 0003

2010-00600

Incident Narrative
Kyle/Ocean Course called the Security office to report Mr. BARILOTTI had injured his foot. LANE responded and arrived at 0918hrs. BMS and St. Johns PD were activated. When LANE arrived Mr. BARILOTTI was still on the course and was on the way to the clubhouse, St Johns PD was on scene and Mr. BARILOTTI was on a cart with his right foot propped up. LANE placed an ice pack on his foot and asked him if he could move his toes and foot and Mr. BARILOTTI said yes. He did not seem to be in much distress from the injury. Mr. BARILOTTI told LANE he was walking over the bridge at the 4th hole when his legs went from underneath him because the bridge was slippery and twisted his right ankle. Mr. BARILOTTI is staying with Mr. Thomas LEONARD, a resident, at 129 Flyway Drive, EMS arrived at 0943hrs; and he was taken to St. Francis Hospital West Ashley for further examination.

At 1306hrs: Kyle/Ocean Course called to report that Mr. BARILOTTI'S group and caddie had returned to the clubhouse. LANE was dispatched to get a statement from Steven CIPOLLA, Mr. BARILOTTI'S group caddie. LANE also took pictures of the bridge where the incident occurred.

Follow-up with Mr. BariIotti on 11/01/2010 at 11:20 hrs; Mr. BariIotti informed Agent Forrest that he was at the surgeon's office having his broken leg examined.

Report Exec c(2012)

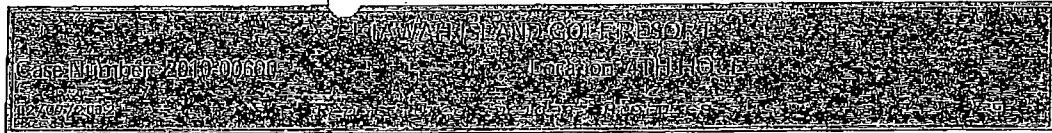


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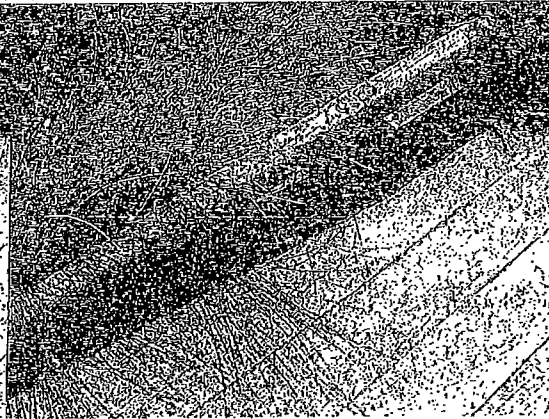
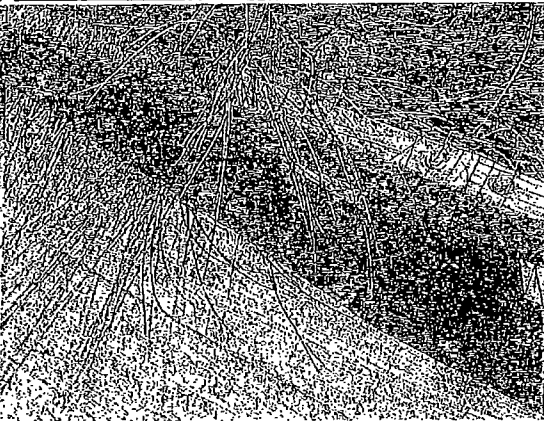


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DEF RRFP 0005

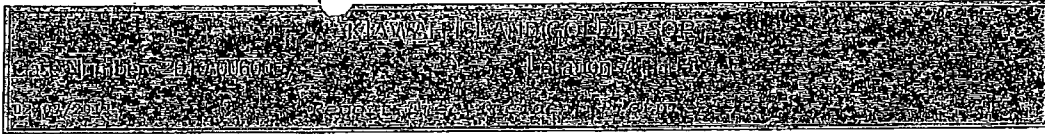
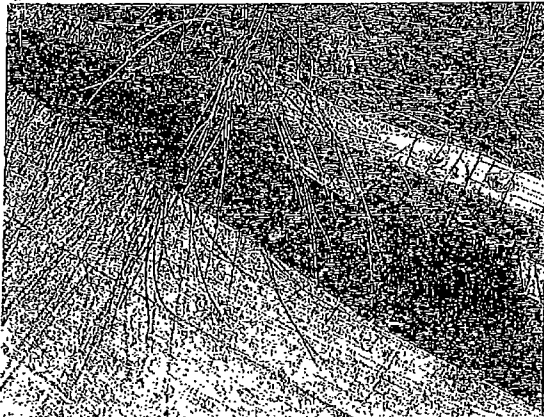


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DEF RRFP 0006

Kinwah Island Resort Safety & Security
Statement

Page: 1 of 1

Name: STEVEN CIPOLLA

Date: 31 OCT 10

Address: 313 HOBBS ROAD

Time Statement Began: 1:30 P.M.

Begin statement: AT APPROX. 9:00 A.M. WHILE PLAYING
THE FOURTH HOLE AT THE OCEAN COURSE
MY GUEST WAS WALKING ACROSS THE BRIDGE
ON THE LEFT SIDE OF THE FAIRWAY
ABOUT 130 YARDS FROM THE GREEN WHEN
HE FELL (SLIPPED) ON THE DOWN SLOPE
WHERE THE WOOD WAS BOTH WET
AND SANDY. HE COMMENTED IMMEDIATELY
THAT HE FELT AS IF HE HAD BROKEN
HIS LEG. MYSELF AND NATE ROSS THE
OTHER CADDY PROVIDED ASSISTANCE AND
CALLED FOR HELP FROM E.M.T.'S
AFTER ARRIVAL OF THE E.M.T.'S WE
CONTINUED WITH THE REST OF THE
GROUP.

I, STEVEN CIPOLLA, acknowledge that the above statement is completely true to
the best of my knowledge.

Time Statement Completed: 1:35

Signature: [Signature]
(Please correct and initial all errors in statement.)

Date: 31 OCT 10

Witness signature: [Signature]

Date: 31 Oct 10

DEF RRFP 0007

352

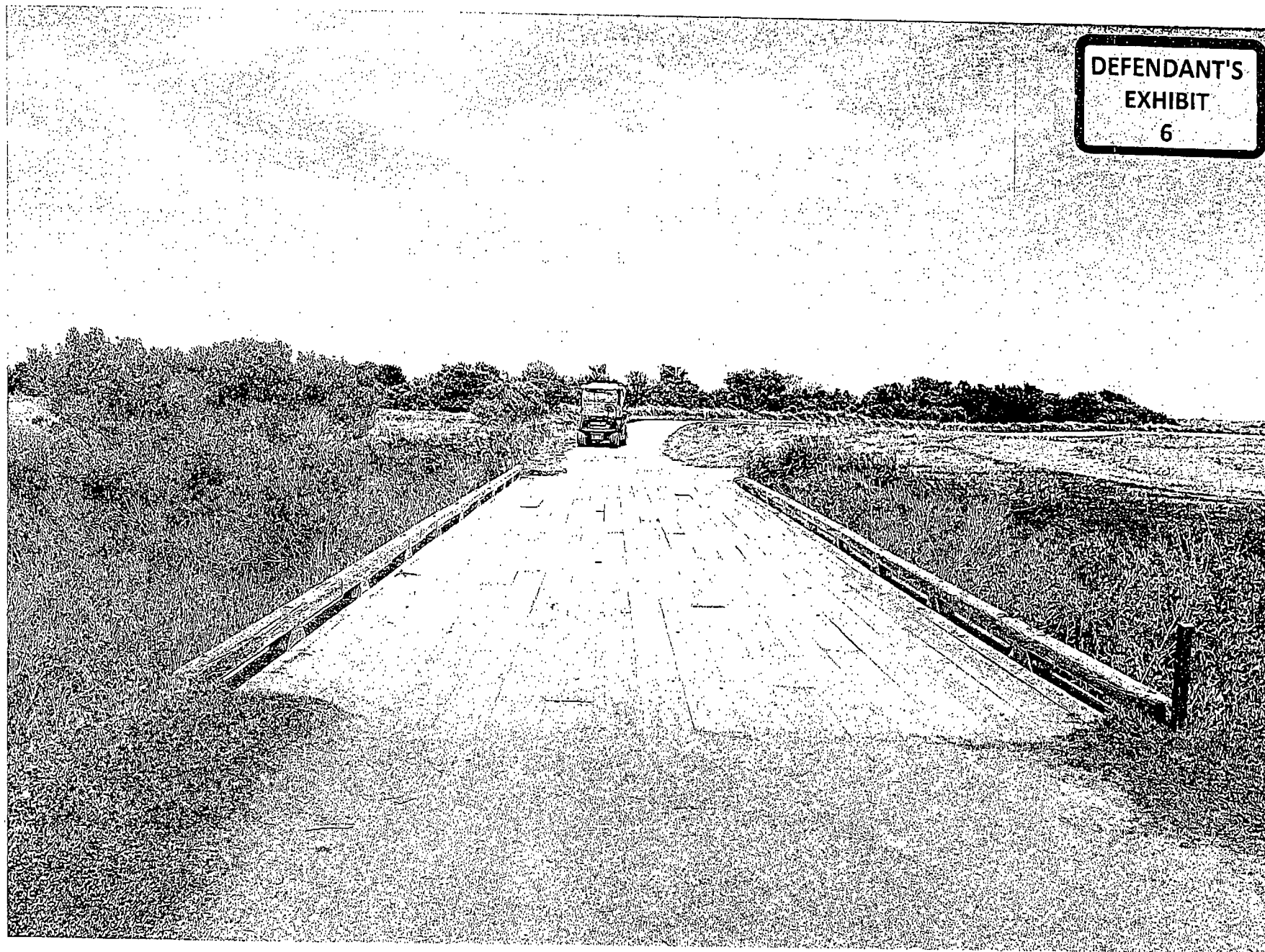


DEFENDANT'S
EXHIBIT
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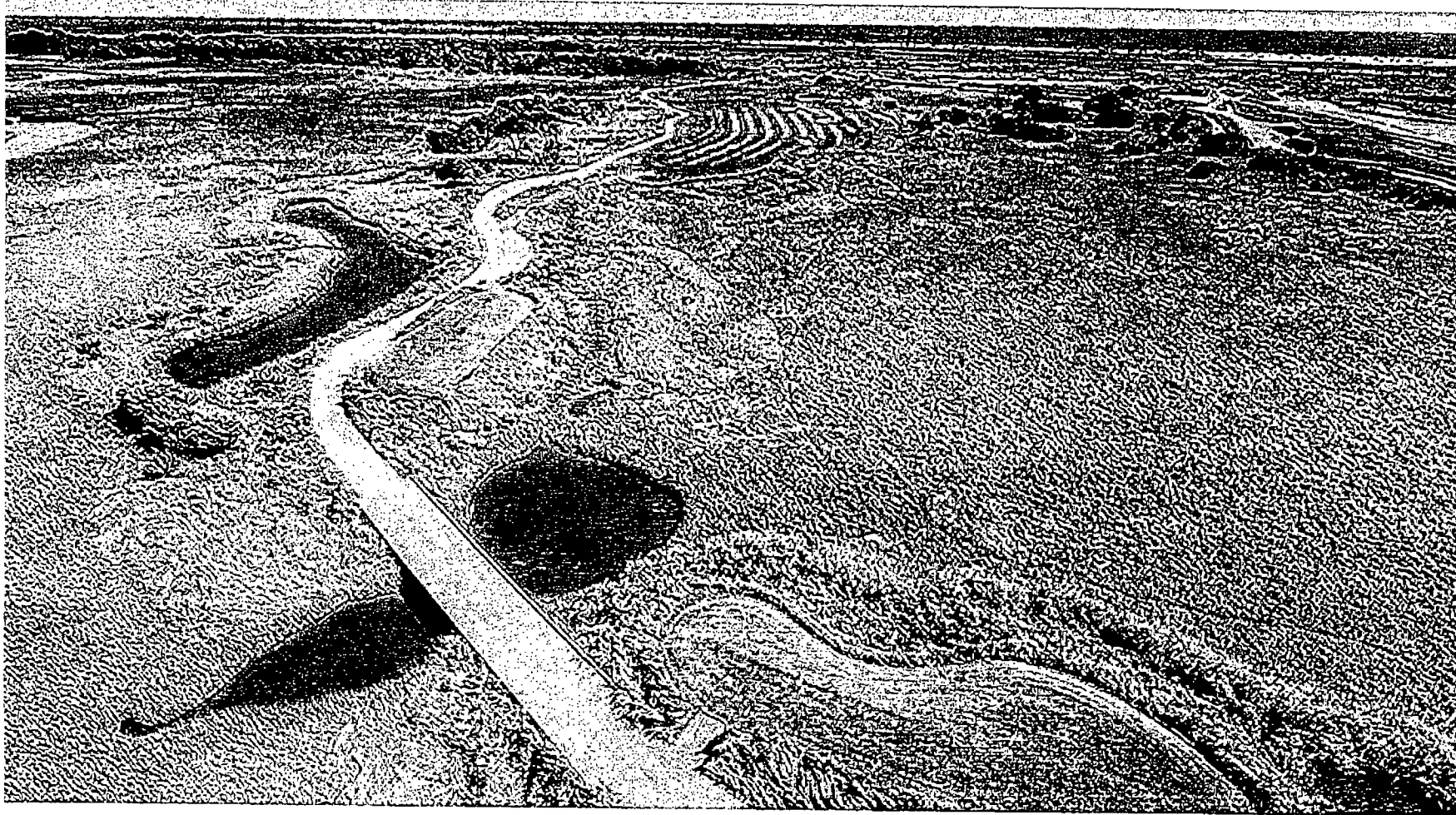
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EXHIBIT
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DEFENDANT'S
EXHIBIT
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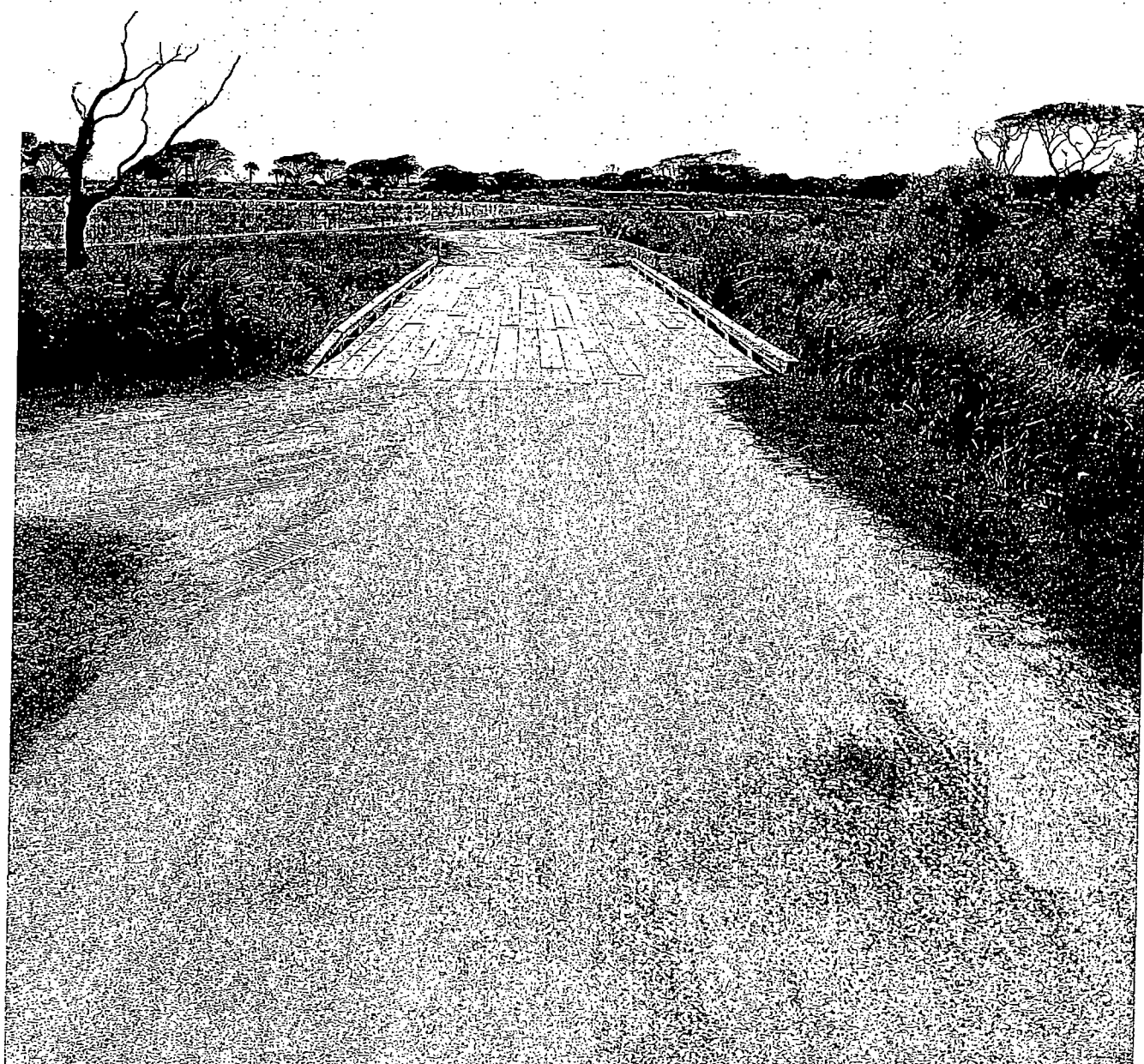
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DEFENDANT'S
EXHIBIT
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DEFENDANT'S
EXHIBIT

8



358



DEFENDANT'S
EXHIBIT
15
6/4/13 olt

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011-CP-10-9543

Joseph Barilotti,

Appellant,

v.

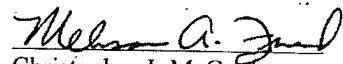
Ocean Course Golf Club,
LLC,

Respondent.

CERTIFICATE OF COUNSEL

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

December 18, 2013



Christopher J. McCool

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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011-CP-10-9543

Joseph Barilotti,

Appellant,

v.

Ocean Course Golf Club,
LLC,

Respondent.

RECEIVED
DEC 27 2013
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Record on Appeal, by depositing a copy of it in the United States Mail, postage prepaid, on December 20, 2013, addressed to its attorneys of record, Robert H. Hood, James B. Hood, Deborah H. Sheffield, and Anne S. Reid, Hood Law Firm, LLC, Post Office Box 1508, Charleston, South Carolina 29402.

December 20, 2013



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