

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

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

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Felecia Dicks Wilson

Appellant

v.

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

Respondent.

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RECORD ON APPEAL

---

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**SC Court of Appeals**

## INDEX

|                                                                                                                                             |     |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Order of May 17, 2012.....                                                                                                                  | 1   |
| Jury Verdict Form .....                                                                                                                     | 3   |
| Complaint    2009-CP-46-03103 filed July 17, 2009.....                                                                                      | 4   |
| Answer        2009-CP-46-03103 filed August 20, 2009.....                                                                                   | 6   |
| Opening Argument of Joe Thoensen regarding the testimony of<br>Mr. Ed Bailey (court reporter original pages 33-34 of trial transcript)..... | 9   |
| Testimony                                                                                                                                   |     |
| Juanita Chaney (Direct Examination by Felecia Dicks Wilson).....<br>(Court reporter original pages 35-37 of trial transcript)               | 11  |
| Ed Bailey.....<br>(Court reporter original pages 129-130 of trial transcript)                                                               | 14  |
| Deposition Testimony of Felecia Dicks Wilson (pp.1, 4, 76 and 77)...                                                                        | 16  |
| Complete Trial Transcript (court reporter original numbering1-207).....                                                                     | 20  |
| Closing Argument of Appellant regarding Jury Charge.....<br>(Court reporter original pages 196-199 of trial transcript)                     | 227 |
| Jury Charge (Court reporter original pages 184-196 of trial transcript).....                                                                | 231 |
| Defendant's Exhibit 1 .....                                                                                                                 | 244 |
| Certificate of Appellant.....                                                                                                               | 245 |

FORM 4

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

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2012 MAY 17 AM 8:35

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2009CP4603103

|                      |                                                    |                                                                    |               |
|----------------------|----------------------------------------------------|--------------------------------------------------------------------|---------------|
| Felecia Dicks Wilson | DAVID HAMILTON<br>C.C.C.P. & GS<br>YORK COUNTY, SC | Cedar Fair<br>Entertainment Company<br>Carowinds Amusement<br>Park | Cedar Fair LP |
| PLAINTIFF(S)         |                                                    | DEFENDANT(S)                                                       |               |

|               |                                                                                                                                           |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);  
☐ Rule 43(k), SCRCP (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **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:

SEE ATTACHED VERDICT FORM

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

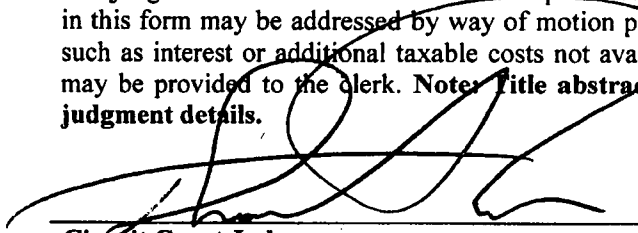
# INFORMATION FOR THE PUBLIC INDEX

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

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(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

2141

Judge Code

5/16/2012

Date

## For Clerk of Court Office Use Only

This judgment was entered on the 17<sup>th</sup> day of May, 2012, and a copy mailed first class or placed in the appropriate attorney's box on the 17<sup>th</sup> day of May, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Felecia Dicks Wilson  
PO Box 31562  
Augusta, GA 30903

Joseph E. Thoensen  
Richardson Plowden & Robinson PA  
1900 Barnwell Street  
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

**DAVID HAMILTON**

David Hamilton - Clerk of Court

Court Reporter: SHIRLEY BROOM

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
IN THE COURT OF COMMON PLEAS  
CASE NUMBER: 2011-CP-46-1081

FELICIA DICKS WILSON, )  
PLAINTIFF, )  
VS. )  
CEDAR FAIR )  
ENTERTAINMENT )  
COMPANY, )  
CEDAR FAIR, LP d/b/a )  
CAROWINDS )  
AMUSEMENT PARK, )  
DEFENDANT. )

**VERDICT FORM**

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2012 MAY 17 AM 8:35  
DAVID HAMILTON  
C.C.C.P. & GS  
YORK COUNTY, SC

**AS TO ACTUAL DAMAGES**  
**PERSONAL INJURY**

\_\_\_\_\_ We, the Jury, unanimously find that the negligence of the defendant proximately caused the Plaintiff's injuries and find for the Plaintiff, **FELICIA DICKS WILSON**, in the amount of \$\_\_\_\_\_ Dollars, actual damages.

**OR**

✓ \_\_\_\_\_ We, the Jury, unanimously find for the Defendant, **CEDAR FAIR ENTERTAINMENT COMPANY, CEDAR FAIR, LP d/b/a CAROWINDS AMUSEMENT PARK**

May 16, 2012  
DATE

  
JOAN G. GESELL FORELADY

7

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**STATE OF SOUTH CAROLINA  
COUNTY OF YORK**

**FELECIA DICKS WILSON  
Plaintiff,**

**vs.**

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

**IN THE COURT OF COMMON PLEAS**

**COMPLAINT**

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

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C.C.P. & GS  
YORK COUNTY, SC

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

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

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

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

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

7. The Plaintiff does demand a jury trial.

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

By 

July 17, 2009

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE COURT OF COMMON PLEAS  
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Felecia Dicks Wilson,

Plaintiff,

vs

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

Defendant.

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

ANSWER

FILED - RECEIVED  
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DAVID HAMILTON  
C.C.C.P. & GS  
YORK COUNTY, SC

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

**FOR A FIRST DEFENSE**

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

7

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

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

**FOR A SECOND DEFENSE**

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

**FOR A THIRD DEFENSE**

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

**FOR A FOURTH DEFENSE**

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

**FOR A FIFTH DEFENSE**

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

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

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

RICHARDSON PLOWDEN & ROBINSON, P.A.  
1900 Barnwell Street, Post Office Drawer 7788  
Columbia, South Carolina 29202  
(803) 771-4400

By: \_\_\_\_\_

Steven J. Pugh  
Joseph E. Thoensen

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

August 12, 2009

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1 Mr. Thoensen: Ladies and gentlemen, good afternoon. I introduced myself to you  
2 earlier. My name is Joe Thoensen. I'm an attorney from Columbia, South Carolina, right  
3 down the interstate. I'm with Richardson, Plowden and Robinson. I'm here representing  
4 Carowinds, the defendant in the case. Mr. Bailey is here with us. I introduced him to you  
5 earlier, as an employee of Carowinds. He's the manager of safety and security. I'm also  
6 joined by Ms. Kathy Hawkinson. Kathy is with Cedar Fair Entertainment Company. They're  
7 the parent company of Carowinds. Kathy's down from Sandusky, Ohio.

8 This is a very important case to Carowinds. They've give it a lot of attention. They're very  
9 serious about it. We have Ed, we have Kathy, as I said, all the way from Ohio, who's here.  
10 The plaintiff in this case alleges that she had an unpleasant experience at Carowinds.  
11 Something happened to her on the log flume ride while she was there. And certainly anytime  
12 a guest at Carowinds has any type of unpleasant experience we regret that. It's a place for  
13 families to come and enjoy themselves, have fun, have a good time. And so anytime  
14 anything happens that causes anyone any sort of unpleasantness we regret it. And obviously  
15 something happened to her that caused her to file a lawsuit and bring her case into court.

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

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

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

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

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

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

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

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

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

2 JUANITA CHANEY, duly sworn, testified as

3 follows:

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

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

6 A Juanita Chaney.

7 Q Your relationship to me?

8 A I am your daughter.

9 Q When were you born?

10 A June 7, 1988.

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

12 A Yes.

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

14 A About the incident?

15 Q From the incident, yes.

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

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

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

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

24 A I remember you looking for attendants.

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

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

2 Q After I was looking for one?

3 A Yeah.

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

6 A No, I don't remember exactly.

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

10 A No.

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

12 A No.

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

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

19 Q How long did that go on for?

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

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

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

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

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

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

3 The Court: Mr. Thoensen.

4 Mr. Thoensen: Thank you, Your Honor.

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

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

7 A Yes.

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

10 A Yeah, I heard her holler ow.

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

13 A Well, did I see anything? No.

14 Q Okay.

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

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

18 A No, I did not.

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

21 A No.

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

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

25 Q Okay.

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

3 A Understood.

4 The Court: Thank you, sir.

5 Q You're free to come around.

6 A Thank you.

7 (Whereupon witness exited witness stand for demonstration with Defendant's Exhibit

8 Number One)

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

11 (Whereupon video is played for the jury)

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

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

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

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

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

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

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

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

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

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

~~5~~ 10 The Court: Thank you, Mr. Bailey. You may return to your seat.

11 (Whereupon witness returns to witness stand)

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

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

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

16 A That's my understanding, yes.

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

18 The Court: Yes sir.

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

21 A Okay.

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

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

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



1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL CIRCUIT  
3  
4 Felecia Dicks-Wilson,  
5 Plaintiff,  
6 vs. CIVIL ACTION  
7 Cedar Fair Entertainment  
8 Company, Cedar Fair, LP  
9 d/b/a Carowinds Amusement  
10 Park,  
11 Defendant.

12 D E P O S I T I O N

13 WITNESS: FELECIA DICKS-WILSON  
14 DATE: TUESDAY, MARCH 8, 2011  
15 TIME: 10:36 A.M.  
16 LOCATION: HULL BARRETT LAW FIRM  
17 801 BROAD STREET  
AUGUSTA, GEORGIA  
18 REPORTED BY: JAN ALDERFER RUSSELL, CCR-B-2438

21 - - - - -

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1 FELECIA DICKS WILSON,  
2 having been first duly sworn, was examined and  
3 testified as follows:

4 EXAMINATION

5 BY MR. THOENSEN:

6 Q. Is it Ms. Wilson or Ms. Dicks?

7 A. It's actually Dicks now.

8 Q. Okay. Ms. Dicks, my name is Joe Thoensen.  
9 I'm an attorney from Columbia, South Carolina and I  
10 represent Cedar Fair Entertainment and Carowinds in  
11 the lawsuit that you have filed against them; do you  
12 understand that?

13 A. Yes, sir.

14 Q. We are here today for me to take your  
15 deposition, which is an opportunity for me to find  
16 out some information about your personal background,  
17 about the incident that led to the filing of the  
18 lawsuit, and some of the damages you're claiming.  
19 Do you understand that that's the purpose of why  
20 we're here today?

21 A. Yes, sir.

22 Q. Okay. I served you with a Notice of  
23 Deposition and I'm going to hand you a copy of that.  
24 Did you receive that notice?

25 A. Yes, sir, I did.

1 A. Exactly.

2 Q. So you don't know where he was, correct?

3 A. Exactly. And when I turned around, I know  
4 that he was not there, and that's why I said that it  
5 was not properly -- proper staffed to man the  
6 entering and the exiting, because if it was properly  
7 staffed, then he would have been there until I, at  
8 least, exited completely. He wouldn't have just  
9 been there for the period of time that I began  
10 exiting. He would have remained until I had safely  
11 exited.

12 Q. But you don't know what he did because you  
13 had your back to him, correct?

14 A. I know that he was not there, because when  
15 I was struck by the log, I turned and looked and he  
16 was way over on the other side. So he couldn't have  
17 just been translated from that spot to that spot. I  
18 know that it was no way he could have remained until  
19 I safely exited, because I had not safely exited and  
20 he was not there.

21 Q. Prior to that point, what had this young  
22 man been doing to assist you?

23 A. He just stabilized the log and was  
24 standing there. So I guess he was doing all that he  
25 could have at that point to assist me. I did not

1 ask him to take me out of the log.

2 Q. You also didn't ask him to remain in his  
3 position until you were out of the log, did you?

4 A. I didn't need to ask him to remain. That  
5 was his job to remain until I safely entered and  
6 exited.

7 Q. Have you seen the job qualifications or  
8 instruction training manuals for the log flume  
9 attendants at Carowinds?

10 A. No, I have not seen that.

11 Q. So you are speculating as to what his job  
12 duties might have been, correct?

13 A. I am speculating, but only in regards to  
14 what it says in their little pamphlet that if you  
15 ride a ride and you enter on the disabled side that  
16 they will assist you in entering and exiting and  
17 more time to get on and off. These are things that  
18 they say will occur for you. So if he was the one  
19 there doing it, I just assumed that he would do the  
20 job that it says it -- you know, he would be the one  
21 to enforce the provisions that they say they would  
22 have for you.

23 Q. And he did, in fact, assist you in exiting  
24 the log, didn't he?

25 A. Not completely, no.

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
 2 :  
 3 COUNTY OF YORK ) SIXTEENTH JUDICIAL CIRCUIT  
 4

5  
 6 FELICIA DICKS WILSON, )  
 7 :  
 8 PLAINTIFF, )  
 9 :

10 VERSUS )

11 :  
 12 CEDAR FAIR ENTERTAINMENT )  
 13 COMPANY, CEDAR FAIR LLC, :  
 14 DOING BUSINESS AS )  
 15 CAROWINDS AMUSEMENT PARK, :

16 :  
 17 DEFENDANTS. )  
 18 )

TRANSCRIPT OF RECORD  
 VOLUME I  
 09-CP-46-3103

MAY 15, 2012  
 YORK, SOUTH CAROLINA

19  
 20  
 21  
 22 B E F O R E:

23  
 24 THE HONORABLE THOMAS A. RUSSO, JUDGE, AND A JURY  
 25

26  
 27 A P P E A R A N C E S:

28  
 29 FELICIA DICKS-WILSON, PLAINTIFF, PRO SE  
 30

31 FOR THE DEFENDANT:

32  
 33 RICHARDSON PLOWDEN  
 34 BY: JOSEPH THOENSEN, ESQ.  
 35 MASON SUMMERS, ESQ.  
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PHYLLIS BARRETT  
 COURT REPORTER

**INDEX****WITNESSES****JUANITA CHANEY**

DIRECT EXAMINATION BY MS. DICKS WILSON – PAGE 35

CROSS EXAMINATION BY MR. THOENSEN – PAGE 37-38

**READING OF EXCERPTS OF DEPOSITION OF DOCTOR DOWNEY**

DIRECT EXAMINATION READING BY MS. CHANEY – PAGE 63

CROSS EXAMINATION READING BY MR. THOENSEN – PAGE 68

RE-DIRECT EXAMINATION READING BY MS. CHANEY – PAGE 77

**FELICIA DICKS WILSON**

NARRATIVE DIRECT TESTIMONY – PAGE 82

CROSS EXAMINATION BY MR. THOENSEN – PAGE 95

NARRATIVE RE-DIRECT TESTIMONY – PAGE 108-109

**EDWARD KEITH BAILEY**

DIRECT EXAMINATION BY MR. THOENSEN – PAGE 124

CROSS EXAMINATION BY MS. DICKS WILSON – PAGE 125

RE-DIRECT EXAMINATION BY MR. THOENSEN – PAGE 167-167

**CHARGE TO JURY – PAGE 184-196**

**VERDICT – PAGE 202**

**EXHIBITS**

| <b>NO.</b> | <b>DESCRIPTION</b>   | <b>ID. EV.</b> |
|------------|----------------------|----------------|
| D-01       | DVD                  | 129 129        |
| D-02       | Disabilities Guide   | 131 132        |
| D-03       | Training Guide       | 134 135        |
| D-04       | First Aid Report     | 140 141        |
| D-05       | Fun and Safety Guide | 144 145        |

WEDNESDAY, MAY 15, 2010

4 (Whereupon parties approach bench for conference, after which jury pool enters  
5 courtroom and addressed by the court)

13 Ladies and gentlemen, this is a case that involves an incident that arose somewhere  
14 back in July of 2006. I'm going to tell you just a little bit about it. I'm not going to go into  
15 details because I don't know anything about it other than what's here in the file. The parties  
16 will certainly fill you in on the facts.

22 But based on what I've shared with you at this point, is there any member of the jury panel  
23 who knows anything about this case based on the information that I've shared with you thus  
24 far? If so, please stand.

25 (no response) Thank you. There are none.

1 Ms. Wilson, I'm gong to ask you, if you would-- You can bring that up to me. And  
2 after you bring that up, I'm gong to ask you to introduce yourself to the members of the jury  
3 and then introduce your witness.

4 Ms. Wilson: Yes. I am Felicia Dicks Wilson. I am representing myself in this case.  
5 And the witness I have today is my daughter, Juanita Chaney.

6 The Court: All right. Thank you very much, ma'am. Ms. Chaney, could I get you  
7 just to stand and face the members of the jury for just a moment and let them get a look t  
8 you?

9 (Whereupon Juanita Chaney stands to face the jury)

10 Thank you. You can have a seat. Sometimes folks know people by the face as  
11 opposed to by name. So, I wanted to make sure that they could see you.

12 Ladies and gentlemen, let me ask, is there any member of the jury panel who is  
13 related by blood, connected by marriage or has any close, business or personal relationship  
14 with the plaintiff in this case, Ms. Felicia Dicks Wilson? If so, please stand.

15 (no response) Thank you. There are none.

16 Is there any member of the jury panel who is related by blood, connected by marriage  
17 or has any close, business or personal relationship with Ms. Juanita Chaney? If so, please  
18 stand.

19 (no response) Thank you. There are none.

20 Mr. Thoensen represents the defendant. I'm gong to ask him to stand and introduce  
21 himself and his witness.

22 Mr. Thoensen: Good afternoon. My name is Ted Thoensen. I'm an attorney with  
23 Richardson, Plowden and Robinson. They're a litigation firm in Columbia, South Carolina.  
24 We're here representing Carowinds Amusement Park today, the defendant in this case. My

1 witness in this case is Ed Bailey. Ed has been employed by Carowinds for a number of  
2 years. He's current position is manager of safety and security.

3 The Court: Thank you very much, gentlemen. Is there any member of the jury panel  
4 who is related by blood, connected by marriage or has any close, business or personal  
5 relationship with either Mr. Thoensen, or who has been represented by Mr. Thoensen, or any  
6 member of his law practice, that being Richardson, Plowden, and Robinson, out of Columbia.  
7 ? If so, please stand.

8 (no response) Thank you. There are none.

9 You've met Mr. Ed Bailey. Is there any member of the jury panel who is related by  
10 blood, connected by marriage or has any close, business or personal relationship with Mr. Ed  
11 Bailey? If so, please stand.

12 (no response) Thank you. There are none.

13 You've met Ms. Chaney, you've met Mr. Bailey. These are potential witnesses who  
14 may appear in this case, and of course, Ms. Wilson herself. There is another possible or  
15 potential witness in this case who is not present here today, but I am going to call out that  
16 name and ask about this individual. A Doctor John Downey is a possible or potential witness  
17 who may appear through deposition testimony in this case.

18 Is there any member of the jury panel who is related by blood, connected by marriage  
19 or has any close, business or personal relationship with Doctor John Downey, or who has  
20 been treated by Doctor Downey? If so, please stand.

21 (no response) Thank you. There are none.

22 Is there any member of the jury panel or member of your immediate family or close  
23 friend who has ever had a dispute with or filed a claim against the defendant, Carowinds  
24 Amusement Park? If so, please stand.

25 (no response) Thank you. There are none.

1 Is there any member of the jury panel or member of your immediate family who has  
2 been a party to a lawsuit or a claim alleging injuries as a result of visiting the defendant-park,  
3 Carowinds Amusement Park? If so, please stand.

4 (no response) Thank you. There are none.

5 Is any member of the jury panel or member of your immediate family or close friend who has  
6 ever been injury whether it's at Carowinds or at any other amusement park? If so, please  
7 stand.

8 (no response) Thank you. There are none.

9 Oh, I'm sorry, there is someone. Yes ma'am, can I get your name, please.

10 Juror: Kathryn Grier.

11 The Court: All right, Ms. Grier, just give me one second. I have my list here.

12 Clerk of Court: Juror number 74.

13 The Court: All right. Juror number 74. Now, Ms. Grier, was it yourself or a member  
14 of your family?

15 Juror: It was myself.

16 The Court: All right. The fact that you've had that experience at an amusement-- It  
17 wasn't this amusement park? Is that correct?

18 Juror: Yes.

19 The Court: It was?

20 Juror: I was employed there, yes sir.

21 The Court: All right. You were---

22 Juror: It's not documented.

23 The Court: I'm sorry? That's okay.

24 Juror: Okay.

1           The Court: I just want to make sure I'm understanding. You were an employee at  
2 Carowinds?

3           Juror: Yes sir, when I was sixteen.

4           The Court: And were injured during your time there?

5           Juror: Yes. I was \*

6           The Court: All right. Let me ask you this: the fact that you have had that  
7 experience, ma'am, would that in any way affect your ability to be fair and impartial, giving  
8 both the plaintiff and the defense a fair trial?

9           Juror: Absolutely not.

10          The Court: Thank you very much, ma'am. You may have a seat. That brings me to  
11 my next question. Is there any member of the jury panel or member of your immediate  
12 family who has ever been employed by the defendant in this case, Carowinds Amusement  
13 Park? If so, please stand.

14          (Whereupon jurors stand)

15          I'm gong to start with Ms. Grier here. Ms. Grier, the fact that-- Now, you're no  
16 longer employed there. Is that correct?

17          Juror: Yes, that's correct.

18          The Court: The fact that you've been employed by the defendant in this case, would  
19 that in any way affect your ability to be fair and impartial?

20          Juror: It would not.

21          The Court: Thank you very much, ma'am. You can have a seat.

22          Ma'am, could I get your name, please?

23          Juror: Juror number one, \*

24          The Court: Are you currently an employee or formerly an employee?

25          Juror: My niece is an employee.

1           The Court: Your niece is an employee. Currently?

2           Juror: Yes sir.

3           The Court: The fact that you have a member of your family who currently is  
4 employed with Carowinds, would that in any way, ma'am, affect your ability to be fair and  
5 impartial?

6           Juror: No sir.

7           The Court: Thank you very much. You may have a seat.

8 I'm going to start over here. Yes sir.

9           Juror: Juror number 200, Sherer\*

10          The Court: All right.

11          Juror: My brother was an investigations officer for Carowinds for the years 2009 and  
12 2010.

13          The Court: Mr. Sherer, the fact that you've had that relationship in your family in  
14 that connection with Carowinds, would that in any way affect your ability to be fair and  
15 impartial if you were on this panel?

16          Juror: No sir.

17          The Court: Thank you, sir. You may have a seat. Ma'am, your name, please?

18          Juror: Teresa Beaver, juror twelve.

19          The Court: All right, Ms. Beaver, yourself or a member of your family?

20          Juror: My son and daughter both worked in the summer of 2008 at Carowinds.

21          The Court: Ma'am, the fact that you've had that relationship with the defendant-park,  
22 would that in any way affect your ability to be fair and impartial?

23          Juror: No, it would not.

24          The Court: Thank you, ma'am. You may be seated. Sir, your name, please?

25          Juror: John Rhea, juror 175.

1           The Court: All right. Mr. Rhea, yourself or a member of your family?

2           Juror: Members of my family, my brother and two nephews.

3           The Court: Any of them currently employees there?

4           Juror: No sir.

5           The Court: Former employees?

6           Juror: Yes sir.

7           The Court: The fact that you've had that experience in your family in that connection  
8 with Carowinds, would that in any way affect your ability to be fair and impartial, giving  
9 both the plaintiff and the defense a fair trial?

10          Juror: No sir, it would not.

11          The Court: Thank you very much, sir. You may have a seat. Yes sir, your name,  
12 please?

13          Juror: Christopher Harris, number 81.

14          The Court: Mr. Harris, yourself or a member of your family?

15          Juror: Both.

16          The Court: Anyone currently employed there?

17          Juror: No sir.

18          The Court: Mr. Sherer, the fact that you've had that history with Carowinds, would  
19 that in any way affect your ability to be fair and impartial if you were on this panel?

20          Juror: No sir.

21          The Court: Thank you very much. You may have a seat. And ma'am, your name,  
22 please.

23          Juror: Miriam Sanders, \* I'm a former employee.

24          The Court: Yourself?

25          Juror: Yes sir.

1           The Court: Ma'am, would that in any way affect your ability to be fair and  
2 impartial?

3           Juror: No, it would not.

4           The Court: Thank you very much. You may have a seat.

5 Is there any member of the jury panel or a member of your immediate family who has ever  
6 been a party to a lawsuit involving a person injury, whether you were a plaintiff - in other  
7 words, the person bringing the action - or whether as a defendant, the person being sued? Is  
8 there any member of the jury panel who has been a party to a lawsuit involving personal  
9 injury? If so, please stand.

10           (Whereupon jurors stand)

11           The Court: Sir, your name?

12           Juror: Matthew Henrich, juror number 86.

13           The Court: Mr. Henrich, yourself or a member of your family?

14           Juror: My wife was injured in a car accident two years ago.

15           The Court: She was a plaintiff in that case?

16           Juror: Yes sir.

17           The Court: The fact that you have had that experience, would that in any way affect  
18 your ability to be fair and impartial?

19           Juror: No sir.

20           The Court: Thank you very much. You may have a seat. I think, Mr. Rhea, it is?

21           Juror: Yes sir.

22           The Court: All right, Mr. Rhea, juror 175. Yourself or a member of your family, sir?

23           Juror: Myself.

24           The Court: As a plaintiff or a defendant?

25           Juror: As a plaintiff.

1           The Court: I don't want to ask any details. My question to you is whether or not that  
2   experience, would that in any way affect your ability to be fair and impartial?

3           Juror: No sir.

4           The Court: Thank you very much, Mr. Rhea. Sir, your name, please?

5           Juror: Carlos Jarquin Rivas, juror 102.

6           The Court: All right. Yourself or a member of your family?

7           Juror: Myself, I was a plaintiff in a car accident injury.

8           The Court: The fact that you have had that experience, would that in any way affect  
9   your ability to be fair and impartial?

10          Juror: No sir.

11          The Court: Thank you very much, you may have a seat. Ladies and gentlemen, is  
12   there any member of the jury panel who has any particular knowledge about the operations or  
13   the loading and unloading procedures of the defendant Carowinds as it relates to this  
14   particular ride, which is called the Wild Thornberry River Adventure? If so, please stand.

15          (no response) Thank you. There are none.

16          If you haven't picked up on it by now, the reason for all these questions, ladies and  
17   gentlemen, is because what we want to do-- And this is our goal in every case we try here,  
18   whether it be a civil case such as this or whether it be a criminal case. The goal is to seat  
19   twelve citizens who can set aside anything that has occurred in their lives outside this  
20   courtroom and judge this case and base this case solely on the evidence that is presented here  
21   during the court of this trial. In other words, that you can be fair and impartial, giving both  
22   the plaintiff a fair trial and the defense a fair trial.

23          I can ask questions all afternoon trying to determine that level of fairness or  
24   impartiality, but maybe the best way to ask it is just simply to ask: Is there any member of  
25   the jury panel who knows of any reason why you would not be able to sit on this panel and

1 be fair both to the plaintiff and to the defense, giving each a fair and impartial trial? If so,  
2 please stand.

3 (Whereupon juror stands)

4 Sir, your name?

5 Juror: Michael Marshall

6 The Court: Juror number 253. Mr. Marshall, I'm going to get you to come on up here  
7 and respond to that for me, if you would.

8 Mr. Thoensen: Your Honor, may the parties approach?

9 The Court: Yes sir.

10 (Whereupon juror approaches bench area, questioned by the court, with parties in  
11 attendance, which conference was not placed on the record)

12 The Court: Juror 253 is excused from this trial.

13 Juror: Your Honor.

14 The Court: Yes ma'am.

15 Juror: I just wanted to-- I'm juror 68, Joan Gesell. I just want to say that my  
16 husband built a ride in the last couple of years at Carowinds.

17 The Court: He didn't work for Carowinds, ---

18 Juror: No.

19 The Court: ---but he worked for a company that built a ride there?

20 Juror: Yes.

21 The Court: Ms. Gesell, would that in any way affect your ability to be fair and  
22 impartial?

23 Juror: No.

24 The Court: Thank you very much. I appreciate your bringing that up.

1 Ladies and gentlemen, congratulations. You're all qualified to serve as jurors in this case.  
2 Now, you may be sitting there-- I hope you're not thinking this. But you may be sitting there  
3 thinking, how can that old fool tell me I'm qualified to be a juror when I've never been in a  
4 courtroom before; I don't have any legal training; I don't like being in courtrooms. How can  
5 he tell me that?

6 Well, if you're thinking those things, let me try to put your mind at ease and let you  
7 know that, ladies and gentlemen, as a juror, what you're asked to do is simply to sit and listen  
8 as testimony is presented, as evidence is presented. And you don't need any legal knowledge  
9 or any legal training to do that because what you're gonna be asked to do is use the good,  
10 common sense that God gave you, as you go through life, living, taking care of your family,  
11 raising your family. And you as the jury decide what the true facts of the case are based on  
12 the testimony and the evidence that is presented.

13 Any law that you need or any law that you need to apply to those facts I will give that  
14 to you at the close of the case and I'll give it to you in plain English that you can easily  
15 understand. And then it will be your duty to take that law and apply it to the facts as you find  
16 the facts to be from the evidence.

17 So, please believe me when I tell you that you're all very qualified to serve as jurors,  
18 and I want to thank you for your service.

19 Now, we're gonna go about-- Were you any of you out there were in the panel  
20 yesterday on the case that we drew?

21 (Whereupon jurors indicate by raising of hands)

22 Okay. I was just curious, just a few of you. Most of you weren't here. So, let me, if I  
23 can, go over with you and tell you briefly the process that we're about to go through so you'll  
24 understand what's happening. What's gong on right now is the clerks have a computer  
25 program on the computer that it'll take your names. The list of your names that I have is in

1 alphabetical order. What the computer does is it just randomly goes through that list of  
2 names and in any order, or no order, it doesn't do anything by order. It just randomly reaches  
3 in and plops out twenty names. And it takes it and it puts them over on another sheet or  
4 another list. And it just lists those names one through twenty. Then it'll reach over and grab  
5 three additional names and put them down at the bottom of that list and number those twenty-  
6 one, twenty-two and twenty-three.

7         The way we draw juries in civil court is each side, the plaintiff and the defense, get  
8 what we call four preemptory strikes. In other words, they get to eliminate four names off  
9 that list for whatever reason they want to use. They don't have to give a reason. They just  
10 get to eliminate four names off that list. I'm not a mathematical genius but I know enough  
11 math to know that if I start with twenty and I take away eight that leaves me with twelve.  
12 That's the jury. Okay?

13         And then of course we have three names for the alternates. Each side will get one  
14 strike on the alternate. And so that will leave us with one remaining person which will be  
15 our alternate.

16         And that's the process we go through in selecting a jury in civil court. It's a little bit  
17 different in criminal court. If you're someone that's a little shy or doesn't like being in front  
18 of people, then you can say a quick prayer and thank God that this isn't a term of criminal  
19 court. Because in criminal court if your name is called you're asked to come down to the  
20 front, stand right here in front of everybody, face the back of the room and then for a long,  
21 uncomfortable time just stand there while every body looks at you.

22         (laughter)

23         It's not comfortable, but that's the way we do it in criminal court and each side gets to  
24 decide in open court do we want them or we don't. And so, some people get offended if they  
25 get stricken. Some people are relieved. The civil process is more anonymous than that. you

1 won't even know if your name is on the list of twenty. It'll just be there. And when Madam  
2 Clerk gets ready to get the strikes from the parties she'll simply start with the plaintiff and  
3 she'll say, may I have your first strike and the plaintiff will strike, not using names, but will  
4 use those numbers one through twenty. So, it may be, plaintiff strikes number five. And  
5 then the defendant is next. Defendant strikes number eighteen. Then the plaintiff. Plaintiff  
6 strikes number twelve. Then the defendant strikes number fourteen. And that's the way it  
7 goes.

8 So, you don't know whether you're on the list or not. You don't know if you were  
9 stricken or not. But what you will know is if you're called because when we get to the end  
10 of it, she will call up the twelve names plus the alternate, and that crowd will make up our  
11 jury.

12 She has just printed out the strike sheet. We call it a strike sheet. She just printed out  
13 the strike sheets. She's gonna give Ms. Wilson one of those sheets. She's gonna give Mr.  
14 Thoensen one of those sheets. And then we're gonna take just a short break to let them look  
15 over the list.

16 Typically, I would ask that you remain in your seat while they do that. If someone  
17 needs to use the restroom or needs to go grab a sip of water or something, I'll allow that. but,  
18 please, if you do that, step out and step back in. I'm going to give them a few minutes to look  
19 over the list and then we're gonna get started.

20 While they're doing that, though, please feel free to talk amongst yourselves and you  
21 can kind of relax. Okay?

22 (Whereupon court is in recess for jury selection process)

23 The Court: Ladies and gentlemen, let's come to order. Plaintiff ready to proceed with  
24 jury strikes?

25 Ms. Wilson: Almost.

- 1 The Court: Let's get it wrapped up. Defense ready?
- 2 Mr. Thoensen: We're ready, yes sir.
- 3 (pause)
- 4 Ms. Wilson: I'm ready, Your Honor.
- 5 The Court: All right, Madam Clerk.
- 6 Clerk of Court: First strike for the Plaintiff.
- 7 Ms. Wilson: Number six.
- 8 Mr. Thoensen: Defense strikes number eight.
- 9 Ms. Wilson: Number five.
- 10 Mr. Thoensen: Defendant strikes number three.
- 11 Ms. Wilson: Number seven.
- 12 Mr. Thoensen: Defendant strikes number thirteen.
- 13 Ms. Wilson: Number eleven.
- 14 Mr. Thoensen: Defendant strikes number sixteen.
- 15 Clerk of Court: Alternate strike for Plaintiff.
- 16 Ms. Wilson: Number twenty-three.
- 17 Mr. Thoensen: Defendant strikes number twenty-one.
- 18 Clerk of Court: I'm gong to verify the strikes for each side. For the Plaintiff I've got the
- 19 following strikes: Number two, five, seven, eleven and as your alternate, number twenty-
- 20 three. Is this correct?
- 21 Ms. Wilson: Yes.
- 22 Clerk of Court: For the Defendant I have the following strikes: Number eight, three,
- 23 thirteen, sixteen, and as your alternate number twenty-one. Is this correct?
- 24 Mr. Thoenson: That's correct.
- 25 The Court: Any motions regarding jury selection from the plaintiff?

1 Ms. Wilson: No.

2 The Court: Any from the defense?

3 Mr. Thoensen: None, Your Honor.

4 The Court: All right. Please call our jury forward.

5 Clerk of Court: Ladies and gentlemen, as your name is called, if you will, gather  
6 your personal belongings and come down and have a seat to my left in the jury box, at the  
7 direction of the plaintiff. Juror number 31, Stanley R. Charles. Juror number 93,  
8 Mohammed N. Hossain. Juror number 12, Teresa G. Beaver. Juror number 108, Deborah E.  
9 Kelly. Juror number 21, Jerry M. Brindle. Juror number 116, Carolyn Leake. Juror number  
10 6, John A. Ballard. Juror number 81, Christopher A. Harris. Juror number 215, Lindsey A.  
11 Egner. Juror number 68, Joan G. Gesell. Juror number 161, Bramlett R. Nichols. Juror  
12 number 74, Kathryn A. Grier. Serving as alternate is juror number 236, Julia B. Walters.

13 The Court: All right. Ladies and gentlemen, and those of you that are remaining in  
14 the panel, depending on how you view not being selected you may want to go out and buy a  
15 lottery ticket or don't.

16 (laughter)

17 It may be your lucky day, maybe it's not; I don't know. I want to thank you for your  
18 service today, and also let you know that your service has been concluded. I have never  
19 served on jury duty and so maybe I don't know from where I speak. I told the jury earlier  
20 today, I'm 57 years old and I've never even been summonsed for jury duty, ever, until about  
21 five or six years ago, and then it was a term of court that I was presiding over. So, I've never  
22 had the opportunity of those you who are excited about. Apparently, it isn't as pleasant as  
23 maybe I think it is. I realize that jury service can be inconvenient to everybody. All of you  
24 have somewhere else you either should be or need to be. But I will tell you that it is  
25 absolutely critical to this system of justice that we have in this country. I hope you have a

1 good feeling about our system of justice in this country. Based on the media, you probably  
2 don't because the media only reports cases that are offensive. They don't report case where  
3 probably ninety-nine percent of the time the jury gets it right.

4 So, I will tell you, though, not just because I work in it, but because I've watched it  
5 time and time again. It is the greatest system of justice on the planet and we're fortunate that  
6 we live in a country that decides our disputes in this fashion. But it doesn't work without  
7 you. And so, what you give to your community this week and what you've given has truly  
8 been a service. You'll understand that even more when you get your check for being here  
9 this week.

10 (laughter)

11 It's not very impressive. But, again, jury service is a valuable service that you give to  
12 your community and I want to thank you for the service you've given this week. Now, even  
13 though it's just Tuesday afternoon and you're done, you have earned that exemption that I  
14 think Judge Alford probably told you about today. In circuit court you're only required to  
15 serve on jury duty once every three calendar years. So, for the next few years if you get a  
16 summons for circuit court and you wish to exercise that exemption you certainly have earned  
17 that.

18 But I do tell people it is just an exemption. It doesn't mean you're not qualified to  
19 serve. So, if you get another notice for circuit court jury service and you want to waive that  
20 exemption and show up and serve, I would encourage you to do so.

21 So, thank you again. You are free to go. You don't have to call that number any  
22 more. You're done for the week.

23 (Whereupon the remaining jury panel exited the courtroom)

24 For the panel here today I'm going to in just a moment ask you to step back into the  
25 jury room. The bailiff will take you back there and show you where the jury room is. I'm

1 going to give you this instruction, and I'll be bringing you back out shortly and we'll get  
2 started. But this instruction will be with you throughout the course of this trial. Basically, if  
3 at any time that you're not here in the courtroom when you're outside this courtroom, you're  
4 to have no conversation with anybody about this case. And that includes amongst  
5 yourselves.

6 Sometimes people on jury duty will look at me a little funny and say, well, I thought  
7 that's what we're supposed to do. And you are supposed to deliberate about this case but only  
8 when it's appropriate. And it's not appropriate until you've heard from both sides and you've  
9 heard all the evidence. So, until that point it's very important that you have no conversation  
10 about the case.

11 When you're back in the jury room you can introduce yourself to each other and get  
12 to know each other, talk about anything in the world you'd like to talk about. But please do  
13 not talk about the case.

14 I have some matters that I need to take up with the parties before we get started. It  
15 won't take very long. But, if you will, go back there, and while you're back there, if you need  
16 anything, a soft drink, crackers or something to snack on, if you'll let the bailiff know we'll  
17 make that available to you. Okay?

18 So, if y'all would, go back into the jury room and I'll take up these matters and get  
19 you back out here and get started.

20 (Whereupon the selected jury exited the courtroom)

21 What I want to do is-- Well, first, let me ask of the parties, is there anything we need  
22 to take up? I know we need to take up the issue of the use of the deposition. But other than  
23 that deposition situation, is there anything we need to take up before we get started from the  
24 Plaintiff?

25 Ms. Wilson: None, Your Honor.

1 The Court: All right. Anything, Mr. Thoensen?

2 Mr. Thoensen: Not at this time, Your Honor.

3 The Court: Let's go ahead and at least put on the record. My understanding is that  
4 there was a deposition that was taken in this matter. Let me back up for a moment. At one  
5 point in the past, this case actually was called for trial, and that actually went through the  
6 process of jury selection, and actually through opening statements and start of the case.  
7 Correct?

8 Mr. Thoensen: Yes sir.

9 The Court: Okay.

10 Mr. Thoensen: And direct examination of the plaintiff was underway.

11 The Court: Okay. Then, apparently, during that process for whatever reason a  
12 mistrial was declared and the case was to be re-docketed. I think it was then maybe called in  
13 and there was a continuance request?

14 Mr. Thoensen: Yes sir.

15 The Court: And while the parties were in chambers with the judge there was a  
16 discussion regarding the taking of Doctor Downey's deposition. And it is my understanding,  
17 based on my conversations with the parties, that the judge did continue the case to allow that  
18 deposition to be taken. And at the time the discussion was, if I'm - and again, subject to  
19 being corrected - that Ms. Wilson wanted to take the deposition for use at trial of Doctor  
20 Downey. And that it was understood that at some point she would notice Doctor Downey's  
21 deposition for that purpose.

22 And then, at a later date, Mr. Thoensen, you did receive an email regarding that. is  
23 that correct?

24 Mr. Thoensen: Yes sir. I received an email from the plaintiff stating the deposition  
25 of Doctor Downey would taken and setting out the date and the time and the location.

1           The Court: And, again, if I'm stating it correctly, her email did not comply with Rule  
2   30, as far as notice.

3           Mr. Thoensen: That's our contention, yes sir.

4           The Court: All right. I heard much of this back in chambers when I had the parties  
5   back there for a pre-trial meeting, and at that time I indicated that I would note the objection  
6   to that deposition coming in by defense counsel. And certainly, I have decided that I'm  
7   gonna allow it is should the plaintiff choose to use it. I don't know if she's gonna use it or  
8   not. But I would allow it in should she choose to use it over defense's objections. And my  
9   reasoning for that is that although I do agree with Mr. Thoensen in that, that the notice for  
10   that deposition probably did not meet the technical requirement of the rule. But for the spirit  
11   of the rule and for all intents and purposes both parties were aware that the purpose of that  
12   deposition was that that be taken for use at trial. And both sides went in prepared and took  
13   that deposition in that manner.

14          So, although, I would concede that there's probably a technical shortcoming with  
15   regard to the rule, I think the spirit of the rule was in fact complied with and met. And so, I'll  
16   allow that deposition if you decide to use it. You're not required to, Mr. Wilson. And I want  
17   to note defense's exception and objection to that ruling.

18          Now, on that subject, having said that, if you decide to use that deposition, Ms.  
19   Wilson, what you need to understand is, the deposition itself does not come into evidence. In  
20   other words, you can't submit that transcript and that transcript goes to the jury. You have to  
21   present that testimony. In other words, there will need to be someone who take the stand and  
22   reads the doctor's part. Now, do you have the transcript of the deposition?

23          Ms. Wilson: Yes sir.

24          The Court: Do you have the sealed transcript?

1 Ms. Wilson: It's filed, the sealed one is with the court and I have my copy. It may be  
2 in the file because I had to bring it with me and file it.

3 The Court: Ma'am, I don't have a sealed transcript in here. Would it be somewhere  
4 else? When did you file it?

5 Ms. Wilson: I did it today.

6 Clerk of Court: It's in our office.

7 The Court: Well, we'll just need it if she decides to use it. And again, Ms. Wilson,  
8 I'm not making decisions for you.

9 Ms. Wilson: Yes sir.

10 The Court: You may decide not to use it. It's up to you. But just so you understand,  
11 the proper use of a deposition for use at trial-- Again, as I've already said, the deposition  
12 itself doesn't come into the record as far as the physical document. That doesn't go back to  
13 the jury room. It is presented to the jury. And I don't know if there were any objections  
14 throughout that deposition that we need to rule on.

15 Mr. Thoensen: I put on the record during the taking of that deposition the same  
16 objection that was presented to you today.

17 The Court: As far as the notice?

18 Mr. Thoensen: Yes sir. Other than that, I'm not aware of any other objections during  
19 the course of the deposition.

20 The Court: Okay.

21 Mr. Thoensen: I can review my copy of the transcript.

22 The Court: We'll deal with it, if there are. But, having said that, and if my law clerk  
23 was here, I would make him available to you, and he would read the doctor's part and let you  
24 read the questions. But I don't have a law clerk. So, you're gonna have to-- And it can be  
25 your daughter, it can be anyone. But you're gonna need to, if you decide to present that

1 testimony, you're gonna have to put someone on the stand to read. And typically, one of the,  
2 I think the easiest way for it to do is to have you read your questions and have the witness  
3 then read the response, the person who's reading, read the response. And whoever's doing  
4 the reading, whether it's yourself-- I mean, when you read your part, Mr. Thoensen reads his  
5 part, the witness reads the response. That has to be read verbatim. It can't, you know,  
6 paraphrase or anything like that. You've got to read it as it's written.

7 So, you'll need to consider that when we get to that part, if we get to that part. Okay?

8 Ms. Wilson: Yes sir.

9 Mr. Thoensen: May I ask one question, Your Honor?

10 The Court: Yes sir.

11 Mr. Thoensen: Would it appropriate if that deposition comes in and the plaintiff is  
12 presenting in her case in chief Doctor Downey by written deposition ---

13 The Court: Right.

14 Mr. Thoensen: ---the plaintiff is then asking questions from the transcript and the  
15 plaintiff has her witness who, for all intents and purposes, is portraying Doctor Downey---

16 The Court: Correct.

17 Mr. Thoensen: ---by reading the response. Would I also use that same witness on my  
18 cross from the transcript?

19 The Court: That's the way I've always done it. If you'd rather use someone else---

20 Mr. Thoensen: I---

21 The Court: I think it'd just be easier to let, "Doctor Downey" just be Doctor  
22 Downey.

23 Mr. Thoensen: I agree, thank you.

24 The Court: All right. And again, that's something that if you use it, if we get to it,  
25 then we'll do that. Are you ready to proceed then?

1 Ms. Wilson: Yes sir.

2 The Court: Is the defense ready?

3 Mr. Thoensen: Yes sir.

4 The Court: Before we bring the jury in, Ms. Wilson, we're gonna do opening  
5 statements, obviously. And at the close of those opening statements we'll proceed with your  
6 case. Do you intend to be the first witness yourself or your daughter?

7 Ms. Wilson: I will be the first witness, Your Honor.

8 The Court: I was just wondering because I don't know how long the testimony's  
9 gonna take, but it is a little after four. So, we may, I mean, clearly, we're gonna spill into  
10 tomorrow. I didn't know if I needed them to go down and get that deposition now, or we can  
11 wait and see where we're at.

12 Ms. Wilson: I think we can wait and see where we are. I know sometimes we go  
13 over five and sometimes before five.

14 The Court: I'm gonna try to keep it within the five o'clock timeframe. I'm not gonna  
15 interrupt-- I'm not gonna interrupt you in the middle of a witness' testimony. But we're  
16 probably gonna stick to that. I don't just know what order you intend to call. If you're gonna  
17 start with that deposition, then we need to go get it. If you're gonna use some other witness  
18 first, then we have time.

19 Ms. Wilson: I think we have time. If we do the deposition at the beginning, then it's  
20 gonna be a little more lengthy than----

21 The Court: All right. You can work on getting that. And let's bring the jury in.  
22 How many pages is that deposition? You got it there. Ma'am, do you have it there? How  
23 many pages is that deposition?

24 Ms. Wilson: Yes sir, I have it.

25 The Court: How many pages is it?

1 Ms. Wilson: Thirty-nine pages.

2 The Court: Okay.

3 Court Reporter: Judge, I'm asking you to instruct Ms. Wilson to speak up.

4 The Court: Okay. Keep in mind, this is a record and the only way she can take down  
5 a good quality record is that everybody speaks up loud and she hears you. Okay?

6 Ms. Wilson: Yes sir.

7 The Court: So, make sure you do that when you're addressing the jury as well as  
8 when you're on the witness stand.

9 Ms. Wilson: Yes sir.

10 (Whereupon the jury enters the courtroom)

11 The Court: Ladies and gentlemen, let me address you about when you come in and  
12 out. When you enter the jury box there is no assigned seating other than the alternate, Ms.  
13 Walker. Ms. Walker, you'll always sit in that chair. Okay? And then at some point you'll  
14 have to elect a foreperson and then whoever that person is, they'll sit in the first chair. Other  
15 than those two seats, there's really not assigned seats. So, you can sit wherever you're  
16 comfortable.

17 Also, speaking of comfort, it's important that the jury be comfortable. It's important  
18 to the court, and it's important to the lawyers. So, if at any time, it doesn't matter if we're in  
19 the middle of a witness' testimony, during the trial, if you need to be excused, if you need to  
20 use the restroom or you need to take a break, get my attention and I'll stop and we'll take a  
21 break. Okay? If you need to stop, we'll stop.

22 As far as the temperature in the courtroom, if it's too cold or too hot, let us know and  
23 we'll try to do something about that if we can. We want everybody to be comfortable.

24 Now, ladies and gentlemen, we are about to begin the trial of the case of Felicia Dicks  
25 Wilson versus Cedar Fair Entertainment Company, Cedar Fair LLC, doing business as

1 Carowinds Amusement Park. You may, ladies and gentlemen, hear the defendant referred to  
2 simply as Carowinds, but please understand at any time that the term, Carowinds, when we  
3 use that we're talking about Cedar Fair Entertainment Company doing business as  
4 Carowinds. Okay?

5 We are about to begin this trial and I want to tell you that those of you who have  
6 maybe never have sat in on a real jury trial, this may be very different from what you expect.  
7 Most people don't have an opportunity to sit in on an actual jury trial. Most people's  
8 experience as far as jury trials go is what they've seen on television or read in books, or seen  
9 in the movies. And of course, we all know those trials are full of intense action, riveting  
10 circumstances, high drama. And that's because that's because that's hustle.

11 Now, any number of those things may occur during the course of this trial. What it's  
12 important for you to understand and for you to keep in mind is that this trial is not for your  
13 entertainment. This trial is a fundamental part of our democracy. It is a search for the truth  
14 in an effort to make sure that justice is done between the court and the lawyers and the  
15 parties.

16 Searching for the truth and making sure that justice is done is oftentimes slow,  
17 sometimes repetitive and deliberative. In other words, very different from what you may  
18 have seen on television or in books or seen in the movies.

19 This courtroom is a place of honor that is dedicated to the conception and to the  
20 preservation of citizens' rights, to what many have called the greatest justice system ever  
21 created. The parties that appear before you and the lawyers that appear before you, they are  
22 advocates for their position, they are advocates for their side. But first and foremost, they are  
23 officers of the court, sworn to uphold the integrity and the fairness of our judicial system, and  
24 to help you in your search for the truth. You should expect them to be competent,  
25 professional and ethical in the performance of their duties

1 In just a moment, you're going to take an oath to try this case and to reach a fair and a  
2 just verdict. So, you, too, are expected to be professional, reasonable and ethical in the  
3 performance of your duties, which I have absolutely no doubt you will be.

4 Now, before I go any further, I am going to ask Madam Clerk to place you under your  
5 oath to serve and hear the case.

6 Clerk of Court: Please stand and raise your right hand.

7 (Whereupon all jurors stand with their right hand raised)

8 You shall well and truly try the issues joined in this case and issue a verdict according  
9 to the law and evidence, so help you, God. Please indicate by saying I will.

10 All Jurors: I will.

11 Clerk of Court: Thank you. You may be seated.

12 The Court: Now, ladies and gentlemen, what I'm going to share with you now is  
13 necessarily an introduction to the trial in this case. This is not an instruction on the law. I  
14 will in fact instruct you on the law when that time comes at the end of the trial. What I'm  
15 going to tell you now is basically a way to help you understand what's going on so you can  
16 better follow what's happening.

17 You have been selected as fair and impartial jurors whose purpose is to find and to  
18 determine the facts in this case. You are the sole judges of the facts in this case. If at any  
19 time I make any comment regarding the facts you must disregard my comments. You are to  
20 determine the facts from the testimony that you hear and any other evidence that is presented  
21 during the course of this trial. You should not be influenced by an opinions or statements  
22 you may have heard outside this courtroom. It is especially important to that you perform  
23 your duty of determining the facts diligently and conscientiously. Because, ordinarily, there's  
24 no way that we can correct an erroneously determination of facts by the jury.

1           When you comply with your oath to impartially determine the facts in this case and  
2   you apply the law to those facts in reaching your verdict you will have fulfilled your duty as  
3   jurors and no one will have any right to criticize your verdict, whatever it may be.

4           Now, on the other hand, but with equal emphasis, the same law that makes you the  
5   judge of the facts, makes me the judge of the law. The law that is given by the court is the  
6   only law that you may consider. You must accept and follow it even though you may  
7   disagree with it. I cannot tell you what the facts are in this case or anything about the facts in  
8   this case. And you, on the other hand, are not allowed to disagree with me about the law or  
9   what you feel the law should be. Your job is to take the law as I give it to you, apply it to the  
10   facts as you find those facts to be from the testimony of witnesses and any other exhibits, and  
11   render your verdict in this case.

12          Now, until I advise you to begin your deliberations you must not discuss this case  
13   with anyone, and that includes even amongst yourselves. It would be inappropriate to have  
14   any conversation with anybody about this case, prior to reaching your deliberations of the  
15   verdict.

16          Now, during the time that this case is being tried, ladies and gentlemen, you may hear  
17   one of the folks something like, Judge, we have a matter of law we need to take up with the  
18   court; or, Your Honor, may we approach the bench. During those times I may ask you to  
19   step out of the courtroom; but maybe not. It depends on how I can handle the issue. If I can  
20   handle the issue up here at the bench quietly, I'll do that. But if I ask you to step out of the  
21   courtroom the reason would simply be for this. As I told you earlier, I'm not to have any  
22   influence over you regarding the facts in this case. Sometimes when I'm dealing with the  
23   attorneys with regard to a matter of law, it requires me to make a comment about the facts in  
24   connection with a ruling that I'm required to make. So, to protect you from that, I may ask  
25   you to step into your jury room so that I can make that ruling, make those comments in

1 conjunction with that ruling without interfering with your role as the fact-finders. So, if I do  
2 ask you to do that, then that would be the reason I would be asking you.

3 In determining the true facts in this case you must decide whether or not the  
4 testimony of a witness is believable or not. It's gonna be my job to decide whether certain  
5 testimony is admissible into this case at all times. but once I allow testimony in, whether or  
6 not you believe it, ladies and gentlemen, is strictly and solely up to you to decide. In  
7 deciding whether to believe a witness' testimony you have the right to consider whether the  
8 witness has an interest in the result of a trial; whether the witness has a bias toward one side  
9 or the other; the opportunity for the witness to have seen the matter and the things about  
10 which that witness testifies; the way the witness acts on the witness stand.

11 You have the right, ladies and gentlemen, to consider anything that is in this record  
12 that will help you in evaluating the testimony of the witnesses. That means it is your duty to  
13 pay close attention to the witnesses, listen carefully to the witnesses as they present their  
14 testimony, listen to the attorneys and to the court, and pay close attention to everything that  
15 goes on, so that at the end of the case when the evidence is in and the parties have had an  
16 opportunity address you with their closing remarks and I've given you the law you will then  
17 be in a position to decide this case and make a verdict in this case which speaks the truth.

18 Now, in just a moment I'm going to recognize the parties for their opening remarks.  
19 What I want to tell you is what you hear from the parties in their opening remarks is not  
20 evidence. Evidence in this case will be presented to you through witnesses who are placed  
21 under oath and take the witness stand and testify. And any other evidence which may come  
22 in during the course of the trial.

23 But it is important that you listen carefully as they make their opening remarks. The  
24 opening statements are essentially what their contention is that the evidence is gonna show.  
25 It's their belief of what they think the evidence will show. So, it is important that you listen

1 carefully and give them your attention as they address you with their opening remarks. And  
2 then once they've concluded their opening remarks, we can then begin listening to testimony  
3 and evidence. Okay?

4 So, before I recognize the parties, let me first ask, are there any exceptions or  
5 objections to the court's opening statement to the jury by the plaintiff?

6 Ms. Wilson: None, Your Honor.

7 The Court: Anything from the defense?

8 Mr. Thoensen: No, Your Honor.

9 The Court: All right. Ladies and gentlemen, please listen carefully to the parties as  
10 they address you with their opening remarks. Ms. Wilson.

11 Ms. Wilson: Good afternoon, everyone. I'm Felicia Dicks Wilson and I'm  
12 representing myself in this case against Carowinds. I was injured at the theme park on a log  
13 ride. I was exiting a log ride and another log came along and hit it while I was getting out.

14 I just want to thank everyone for being here this afternoon. I realize it is a sacrifice  
15 for everyone to be here and to listen to everything that's going to be said during the course of  
16 the trial. I know that sometimes it's gonna get boring. And I know it's just hard for me to  
17 stay awake when things are really boring and people just keep talking and talking about  
18 something that may not really be of interest to me. But I really do thank you all for being  
19 here and willing to undergo that process with this trial.

20 And I thank God for being here with me as my attorney. I've had difficulties in  
21 dealing with attorneys in the past. Some have lied to me, some have laughed at me, some  
22 tried to help me. But as a result of everything that has transpired over the past few years that  
23 I've been dealing with this case I still find myself here, appearing pro se, without a physical  
24 attorney that you can see, standing here, she will be talking instead of me, or he will be  
25 talking instead of me.

1           So, I have made several mistakes in the course of getting everything done and getting  
2 everything presented properly. I don't advise anyone to take this type of thing on yourself.  
3 It's not easy at all and it's kind of scary along the way. But I'm here today and I thank the  
4 Lord for being able to be here and go through the due process of law, you know, as one judge  
5 told me, having my day in court.

6           And I really am grateful to our judicial system. Even though I am a resident of  
7 Georgia, I still am thankful for the judicial system here in South Carolina. I've learned a lot  
8 about South Carolina and I've learned about York. I never knew there was a York until this  
9 happened to me. But, you know, I thank God that there is, that I'm here today and I'm able to  
10 go forth with this trial.

11          So, please pardon me for anything that I may not do as excellent as the defense  
12 attorney or anyone else in the courtroom, for that matter, that's used to being in a courtroom.  
13 I have been in one many times for things other than this, for this trial. So, I thank you all for  
14 being here to hear the evidence that I present. Although it may not be a lot of it, it will show  
15 that I was injured at Carowinds, that they were negligent and not having the proper attendants  
16 at the rides.

17          Although it is only been five years-- Well, six years this year in July that I've had the  
18 injury, I'm still being treated for that same injury. So, it does have a degree of permanence \*  
19 that has been diagnosed.

20          So, I thank you very much for being here this afternoon. Thank you so much for  
21 listening to me.

22          The Court: Thank you, ma'am. Mr. Thoensen.

23          Mr. Thoensen: May it please the court, Your Honor.

24          The Court: Yes sir.

1           Mr. Thoensen: Ladies and gentlemen, good afternoon. I introduced myself to you  
2 earlier. My name is Joe Thoensen. I'm an attorney from Columbia, South Carolina, right  
3 down the interstate. I'm with Richardson, Plowden and Robinson. I'm here representing  
4 Carowinds, the defendant in the case. Mr. Bailey is here with us. I introduced him to you  
5 earlier, as an employee of Carowinds. He's the manager of safety and security. I'm also  
6 joined by Ms. Kathy Hawkinson. Kathy is with Cedar Fair Entertainment Company. They're  
7 the parent company of Carowinds. Kathy's down from Sandusky, Ohio.

8 This is a very important case to Carowinds. They've give it a lot of attention. They're very  
9 serious about it. We have Ed, we have Kathy, as I said, all the way from Ohio, who's here.  
10 The plaintiff in this case alleges that she had an unpleasant experience at Carowinds.  
11 Something happened to her on the log flume ride while she was there. And certainly anytime  
12 a guest at Carowinds has any type of unpleasant experience we regret that. It's a place for  
13 families to come and enjoy themselves, have fun, have a good time. And so anytime  
14 anything happens that causes anyone any sort of unpleasantness we regret it. And obviously  
15 something happened to her that caused her to file a lawsuit and bring her case into court.

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

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

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

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

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

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

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

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

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

2                                   **JUANITA CHANEY**, duly sworn, testified as  
3 follows:

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

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

6   A           Juanita Chaney.

7   Q           Your relationship to me?

8   A           I am your daughter.

9   Q           When were you born?

10  A           June 7, 1988.

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

12  A           Yes.

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

14  A           About the incident?

15  Q           From the incident, yes.

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

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

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

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

24  A           I remember you looking for attendants.

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

- 1 A I think it was just a few minutes, maybe three minutes after.
- 2 Q After I was looking for one?
- 3 A Yeah.
- 4 Q And after we got off the ride do you remember how long it was before
- 5 someone came to assist me with the injury?
- 6 A No, I don't remember exactly.
- 7 Q I wanted to ask you this: Have I done anything since that accident occurred to
- 8 coerce you or put words in your mouth or try to make you remember this incident
- 9 during this, during this time, preparing for court?
- 10 A No.
- 11 Q Okay. Did we discuss these things in detail?
- 12 A No.
- 13 Q And I don't know if you... What changes have you noticed in me physically
- 14 since the accident occurred?
- 15 A I noticed since then you have a lot of pain in your leg. You have a lot of pain
- 16 in your leg and you will say that your back is hurting so bad and your hip is hurting
- 17 so bad. \*And you and be cramping up so bad and I would have to get your medicine
- 18 or
- 19 Q How long did that go on for?
- 20 A Still. I remember being at home not too long ago and you were in the lawn
- 21 and couldn't get up. You sat down and said come here and give me my medicine and
- 22 bring some water.
- 23 Q Okay. And I call you May-May?
- 24 A Yes. May-May is my childhood name.
- 25 Q Have I ever as far as you can remember back asked you to lie for me?

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

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

3 The Court: Mr. Thoensen.

4 Mr. Thoensen: Thank you, Your Honor.

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

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

7 A Yes.

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

10 A Yeah, I heard her holler ow.

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

13 A Well, did I see anything? No.

14 Q Okay.

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

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

18 A No, I did not.

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

21 A No.

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

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

25 Q Okay.

1 A \*

2 Q You don't know how those attendants are trained to attend to riders on that  
3 ride, do you?

4 A No, I don't.

5 Q And you didn't see anything that to your mind---

6 A No.

7 Q --- that would indicate that your mother was hurt other than hearing her shout  
8 ow. Is that right?

9 A No, because my back was turned.

10 Q Okay. Thank you.

11 Mr. Thoensen: No further questions.

12 The Court: Any re-direct, Ms. Wilson?

13 Ms. Wilson: No, Your Honor.

14 The Court: Thank you.

15 (Whereupon witness exits witness stand)

16 Ms. Wilson, do want to call your next witness?

17 Ms. Wilson: Well, may I address the court? May I come forward?

18 The Court: Yes, come on up.

19 (Whereupon Ms. Wilson and opposing counsel approach bench for bench  
20 conference)

21 The Court: Ladies and gentlemen, what you'll be hearing next is the  
22 testimony by way of deposition. That deposition has been filed with the Clerk of  
23 Court's office, which is being brought back. While that is happening I'm going to get  
24 you to go back to your jury room because I've got some matters to deal with.

1           I need you to elect amongst you a foreperson of the jury. And I'll tell you a  
2           quick story. I used to appoint folks to do that. I used to get all the juror information  
3           and I'd go through it and I'd look at it. I don't know that there's any hard and fast rule  
4           on how to do it, but I just would study it, and I'd select someone who I thought would  
5           be a good foreperson. And I had a trial and I asked this young lady to serve as  
6           foreperson and she didn't want to do it. I said that's not a problem and I went to my  
7           backup, and I asked this gentleman about it, and he respectfully declined as well.

8           So, I didn't have a backup to that. So, I just went down the list and I said all  
9           right, how about you, Mr. John Doe? Well, he didn't want to do it. And I told the  
10          jury, you've got to have a foreperson. Go back there and elect one.

11          From that point forward I think it's probably better to let juries do it and let  
12          folks who want to serve as a foreperson serve, rather than to force somebody to do it.  
13          So, I don't appoint foremen or foreladies anymore. I appoint juries to do that.

14          Let me tell you a little bit about the job so that if you are somewhat  
15          intimidated by it that you won't be. It's really not a big deal. The foreperson is  
16          simply the communicator between the jury panel and the court. That's really the main  
17          role of the foreperson so that if while you are deliberating and while you are back in  
18          the jury room if you have any questions as a jury, the foreperson would write that  
19          question out on a piece of paper and pass it back to me. I'll look at the question and if  
20          I can answer it by writing my response back, I'll do that. If I need to bring you in as a  
21          jury panel I'll bring you back in and I'll answer the question, I'll respond to it. And  
22          that's really the main role of the foreperson, is to be a communicator between the  
23          panel and the court.

24          The other role that the foreperson engages in is that when you begin your  
25          deliberations many times you have twelve folks who are gonna be discussing the

1 case. It's important that you have one person who starts and stops the deliberations,  
2 and that would be the foreperson.

3 I'll tell you that when you are deliberating this case everybody has to be  
4 present for deliberations to get the benefit of the deliberations. So, if someone needs  
5 to excuse themselves to use the restroom or whatever, then the foreperson would say  
6 okay, let's stop the discussion and wait till they return. And upon their return, okay,  
7 let's go ahead and start back.

8 And the foreperson also would fill out the verdict once you have reached a  
9 verdict. So, that's kind of the role of the foreperson. I will tell you this: that your  
10 verdict in this case must be unanimous. All of you must agree on the verdict. So, the  
11 foreperson's vote carries no more weight and has no more authority than any one of  
12 you, because you're all twelve equal folks on the jury.

13 So, really the role of the foreperson is not as heavy a burden as some people  
14 may think. So, keeping that in mind I'm gonna ask you if you would to step back into  
15 the jury room. Please do not discuss this case, but do elect the foreperson. and then  
16 whoever that person is, if you'll write your name on a piece of paper, pass it out to the  
17 bailiff, he'll bring that to me so I'll have that information.

18 And then when you return, when you come back from the jury room, I'll ask  
19 that the foreperson occupy the first chair. So, go ahead and do that. The only person  
20 who is not eligible to be the foreperson would be the alternate.

21 (Whereupon the jury exits the courtroom)

22 Mr. Thoensen: May we approach, Your Honor?

23 The Court: Sure, come on up.

24 (Whereupon a bench conference with Mr. Thoensen and Ms. Wilson took  
25 place, after which court was in recess.

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**COURT IN SESSION**

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The Court: I have a piece of paper that tells me that the foreperson has been elected, and that is Joan Gesell, juror number 68. All right. Here's what I anticipate. Ms. Wilson, is your daughter going to read the deposition?

7

Ms. Wilson: Yes sir.

8

9

The Court: I'll explain to the jury what's going on and then we'll publish the deposition

10

11

and then that'll probably get us, it'll definitely get us to the end of the day, and then we'll recess and start back in the morning.

12

13

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Mr. Thoensen: I just have a quick question, Your Honor. I don't know exactly how Ms. Wilson's gonna proceed, but I don't intend to read into evidence the entirety of my cross examination. I intend to lead the witness to a particular point and then, you know, will you please turn to page 38. Is that...?

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The Court: That's not a problem. I should address that as well. Ms. Wilson, a deposition is - and I'll instruct the jury this - it is basically sworn testimony that is taken outside the confines of the courtroom, but it is treated as though the witness is here in court testifying. Okay? And so, any question that you have in here that you have asked, you can ask to publish that to the jury. But it may be that there's questions that you don't feel are necessary. So, in that case, you don't have to necessarily read those; you can direct the witness, in this case, Ms.... Is it...?

23

Ms. Wilson: Chaney.

24

25

The Court: Chaney, Ms. Chaney. You can direct Ms. Chaney. For example, and I haven't opened this yet. You may say turn to page 7, starting at line 12, and then you can

1 start there. In other words, you can read what portions of this into the record that you want to  
2 read. And then, of course, Mr. Thoensen will have that opportunity to read what selected  
3 questions he wants to ask. Okay?

4 Ms. Wilson: Okay.

5 The Court: You can read the whole thing from your part if you choose to do that, but  
6 I just want you to know that it's not necessary and you don't have to read the whole thing.  
7 Anything further?

8 Ms. Wilson: Well, I'd just like to say this: I thought that I had-- I thought that was a  
9 good idea, you know, to be able to not have to read the whole thing. But when I was looking  
10 through the law it said something about that I had to give you that, because the other  
11 attorneys told me so much as to what experts I was going to be using and---

12 The Court: Correct.

13 Ms. Wilson: ---all of this and so I didn't think I had that as an option, you know, to  
14 even---

15 The Court: Well, at some point defense can object to that.

16 Mr. Thoensen: I don't object to that. There were maybe two objections to the form of  
17 the question during Doctor Downey's deposition that were reserved until the time of trial.  
18 And so, it may be that Ms. Wilson and I can take a quick review and make sure that those  
19 answers are not coming in. Or if she wants to put them in maybe have me look at them. But  
20 it's the objections in the deposition.

21 The Court: Okay. Well, listen, it doesn't matter if the jury's present for this. I'm  
22 going to go ahead and open and unseal it.

23 Mr. Thoensen: Yes sir.

24 The Court: And that way, if you need to rule on anything, I can do that.

25 (Whereupon deposition is unsealed)

1           Where is it in the transcript?

2           Mr. Thoensen: The first one is on page 32, and the question begins on line 6.

3           The Court: All right. And your objection is?

4           Mr. Thoensen: The objection after that particular question would be that it's vague,  
5   ambiguous, and it calls for the witness to speculate as to a response. And so, that basically is  
6   cured. Should we read the question onto the record?

7           The Court: Well, I'm just looking at it. All right. The question which starts on line 6  
8   says, "Okay, so, and then if we can say that asymptomatic arthritis is not very uncommon,  
9   could we also say, in your opinion, could you say-- I'm sorry. Not me, I don't have an  
10   opinion. But could you say based on your professional opinion are there those, are there a lot  
11   of people, or for you to give a type of percentage of people that may have degenerative  
12   arthritis or desecrated disk that are walking around with this and have not presented problems  
13   with it at all?" That's the question. Do you object to that? All right. And your objection  
14   again is what, now?

15          Mr. Thoensen: That the question is vague, ambiguous and calls for the witness to  
16   speculate in order to give any type of response. And basically that he cures that with his  
17   answers because he recognized the, for lack of a better term, the deficiencies of the question.  
18   I believe that I had to put the objection on the record.

19          The Court: I'm gong to note your objection. I'm going to overrule and let the answer  
20   be read because I think the answer basically says that you really can't put a percentage on it.

21          Mr. Thoensen: Right.

22          The Court: And so, I think the answer probably cured that. And the other one was  
23   down on page 33. Is that correct?

24          Mr. Thoensen: Yes sir.

25          The Court: Line 20?

1 Mr. Thoensen: Yes.

2 The Court: All right. And your objection to that?

3 Mr. Thoensen: The form of the question. It's an almost indecipherable, vague and  
4 ambiguous question. It causes the witness to speculate or even guess as to what's being  
5 asked. And there again, it may be that he cured that with the answer. But as you know, at  
6 the time of making objection, I don't know what his answer is going to be.

7 The Court: Sure, absolutely, no question. I mean, it's a good objection. Clearly, the  
8 doctor understood the question. I think he answered it very succinctly. I'm going to overrule  
9 and allow that as well. So, there....

10 Mr. Thoensen: There is---

11 The Court: There is another one on page 35?

12 Mr. Thoensen: Yes sir, and that's the last one.

13 The Court: All right. Yeah, the same basis.

14 Mr. Thoensen: It's the same basis. And then, Ms. Wilson did make an attempt as  
15 well to clarify the question. There was no objection to the follow-up question. And so, it  
16 may be that that problem has cured itself as well.

17 The Court: Ms. Wilson?

18 Ms. Wilson: Sir?

19 The Court: Do you want to be heard on it?

20 Ms. Wilson: I---

21 The Court: I think where you rephrased the question it's appropriate.

22 Ms. Wilson: That's what I thought also.

23 The Court: All right. Go ahead, Ms. Chaney, so you can note, both of you note on  
24 your copies that on page 35, lines 7 through 9, actually 7 through 11, that's out. And so, what

1 you'll do is after you read the response at line 6 you'll jump to line 12 where you'll have then,  
2 where you rephrase the question, Ms. Wilson.

3 Ms. Wilson: Yes sir.

4 The Court: Okay. All right. Now, having gone through this deposition, do we have  
5 basically a direct examination and then your cross and that was it?

6 Mr. Thoensen: Yes sir. And the only other thing that I would note is that beginning  
7 at page 36 and the continuing on through almost the end of the deposition, which is another  
8 three pages there, there is a discussion on the record between Ms. Wilson and me about  
9 certain documents and records being attached, whether or not they were at the deposition,  
10 who should introduce them, et cetera. From my perspective, I'm not sure that's helpful or  
11 relevant to the jury, but I just wanted to bring that up and see what you might think about it.

12 The Court: Well, a conversation between you and Ms. Wilson, that wouldn't be ....

13 Mr. Thoensen: Right. It does not involve any testimony from the witness.

14 (pause)

15 The Court: All right. All of that conversation would not be... So, it appears here  
16 that the deposition basically ends on page 36.

17 Mr. Thoensen: Yes sir.

18 Ms. Wilson: Your Honor?

19 The Court: Yes ma'am?

20 Ms. Wilson: That, the conversation between me and Mr. Thoensen, yes, I agree that  
21 shouldn't be there. But there was a portion on the last page where we talked about what we  
22 were using at the time to read from and what he was looking at during that time. And that  
23 has been attached as an exhibit that I would want him to, or my daughter to read, stating what  
24 he read from when he offered his answers. Or what he was referring to when he answered  
25 the question.

1           The Court: Well, I don't know whether I understand this. Let me look at the  
2   attachment.

3           Ms. Wilson: There are the curriculum vitae of the doctor.

4           The Court: Right.

5           Ms. Wilson: And then there's also the letter initially when I began to see Doctor  
6   Downey from the doctor that referred me to him. And also, a letter that---

7           The Court: The exhibit he is referring to is notes. Is that correct, referring to this, the  
8   Augusta Pain and Management?

9           Ms. Wilson: Yeah. Well, actually, it wasn't notes. It was things he actually printed  
10   that says this is what he was looking at when he was offering services. There were also his  
11   letters.

12          The Court: You're talking about exhibits two and three?

13          Ms. Wilson: Yes sir.

14          The Court: And what's your position on those, that they're admissible?

15          Ms. Wilson: Yes. That's what I was saying, that during that conversation I had said,  
16   where it's crossing out, it's in there where I had asked him to present those things so that we  
17   could have them with the deposition showing what he was referring to.

18          The Court: All right. I don't know. I'll have to hear from Mr. Thoensen. Because  
19   witnesses refer to documents all the time, but the documents themselves are not admissible.

20          Ms. Wilson: Okay.

21          The Court: I don't know if that's the case here. It appears that he was referring to the  
22   document to refresh his memory of his treatment.

23          Ms. Wilson: Yes sir.

24          The Court: Okay.

1           Mr. Thoensen: That was my understanding, that he was referring to these documents  
2   to refresh his own recollection of treating Ms. Wilson and that the documents were not being  
3   offered as evidence in the trial case. And I placed an objection on the record in the  
4   deposition without objecting to them coming in.

5           The Court: Right. And so, they wouldn't come in because they're-- I mean, he  
6   testified to them.

7           Ms. Wilson: Right.

8           The Court: And that would.... So, his testimony basically covers the information  
9   contained in these documents.

10          Ms. Wilson: I understand what you're saying.

11          The Court: So, the documents themselves cannot come in, but his testimony about  
12   the documents does come in.

13          Ms. Wilson: Okay.

14          Mr. Thoensen: Thank you.

15          The Court: I tell you what, I've kind of changed directions in my thought process.  
16   I'm thinking we're gonna adjourn. It'll give both sides an opportunity to read through this  
17   deposition and look at it and decide what parts-- Again, if you want it all in, that's fine. But  
18   if you don't want it all in, it gives you an opportunity to go over the parts that you want to  
19   cover. And then y'all can discuss it first thing in the morning, and if then there's any issues  
20   we can take that up.

21          But it's probably gonna take at least thirty minutes, if not longer, to get through this  
22   deposition and we're already at ten minutes after five. If we were pressed for time I'd say  
23   push on, we'll go till six o'clock, but we're not pressed for time. So, I'm not gonna keep the  
24   jury here any longer.

1           So, I'm gonna bring the jury out and excuse them for the balance of the day, give  
2   them their instruction about not having conversation and we'll pick up in the morning, Ms.  
3   Wilson, with the deposition.

4           Ms. Wilson: Yes, Your Honor.

5           The Court: Let's go ahead and bring in the jury in. I'm gonna go ahead and have this  
6   marked not as exhibit but mark it for identification.

7           Court Reporter: Do you want it marked as a court's exhibit?

8           The Court: Yes, let's mark it as a court's exhibit.

9           (Whereupon deposition was marked as Court's exhibit one.)

10          (Whereupon jury entered courtroom)

11          The Court: Ms. Gesell, thank you for your willingness to serve as the forelady of the  
12   jury. I've done a little recalculating, rethinking, and we're gonna do, we're gonna adjourn for  
13   the afternoon. I've gone through the transcript of the deposition and although I don't think it's  
14   terribly lengthy, we definitely aren't gonna finish the trial today. We got to come back  
15   tomorrow anyway. And so, I don't think it's gonna add any great length to tomorrow, and  
16   yet, we're here at 5:15. And so, rather than keep you late tonight, I think we're gonna just go  
17   ahead and excuse you and let you get on home to your families and we'll start back first think  
18   in the morning.

19          Now, ladies and gentlemen, it's get a little trickier when you leave here and go home  
20   because I would imagine if your family and loved ones are anything like mine, they're gonna  
21   be curious as to what you've been doing today. Did you get picked by a case, you know?  
22   And you can tell them that you have been selected and that you are sitting on the case. Of  
23   course, the next thing's gonna be, what kind of case is it, and what does it involve and all this  
24   stuff.

1           You can let them know that you are on a case, but that's as far as it needs to go. Any  
2 other questions you have to ask them to please respect the fact that you can't talk about it.  
3       Saying something as innocent or as simple as, well, it's a case involving Carowinds and  
4 something, that could elicit a response that would cause maybe to be compromised in your  
5 ability to be fair and impartial. So, it's important that you can let them know that you are  
6 sitting on a case and I can tell you this, based on what I've talked to the parties, and based on  
7 the testimony that's remaining and the witnesses that are remaining, you're gonna get this  
8 case at some point tomorrow and you'll decide this case tomorrow. So, you can tell them,  
9 your family if they'll be patient then probably by this time tomorrow night, or at some point  
10 tomorrow, you'll be able to tell them all they want to know about it because the trial at that  
11 time, I anticipate, will be over, and you will have an opportunity then, you can talk about it  
12 with no restrictions.

13           So, for purposes of this evening please ask anyone who may be curious to respect the  
14 fact that you're not allowed to talk about the case.

15           Also, I'm not of any belief that you would find anything anyway, but I always tell  
16 jurors this: Also, in this day and age with cell phone and internets and blogs and all the  
17 electronic gadgetry we've got, it's important you understand as a juror you are not an  
18 investigator. You are simply the jury and you are to hear the facts and you're to base this  
19 case solely on the facts and evidence as is presented during the trial.

20           And so, I say that to tell you that it would also be improper for you to do anything on  
21 your own to look into this case. For example, to get on the internet to search something  
22 about anything, you know? In other words, whatever injury Ms. Wilson is alleged to have  
23 suffered, if you start researching that injury. All that is very improper. I would just highly  
24 recommend you go home and enjoy your evening, relax, get a good meal, get a good night's  
25 rest. Jury service can be physically taxing, not from a muscular standpoint, but from a

1 mental standpoint. So, please try to go home and just put this out of your mind for this  
2 evening.

3 When you come back tomorrow-- I tell jurors this all the time. When you come back  
4 tomorrow, you should know nothing more about this case than you know right now. And if  
5 that's the case, then you've done well.

6 But, have no conversation, come back in the morning. I'm going to ask you to be back  
7 in your jury room at 9:30 once everyone reconvenes. I gave the jury yesterday a little story  
8 about my wife. My wife is a wonderful woman, but she has this thing and she thinks if we  
9 have to be somewhere at 7:00, and it's across town, she thinks if we leave the house at 7:00  
10 we're on time. I try to explain to her that this isn't Star trek and we can't just teleport  
11 ourselves over there, we've gotta drive. And I told that story and the jury laughed, thought it  
12 was funny, and then I showed up late this morning.

13 (laughter)

14 So, all I'm telling you is do the best you can and please try to be here by 9:30. Okay?  
15 I got up this morning and got on the phone with my children and there was all kind of drama  
16 going on there and I ended up being late myself. So, try to take into consideration traffic and  
17 getting here, parking and getting. But if you can be back in the jury room by 9:30 we'll get  
18 started as soon as everybody's reconvened. Okay?

19 So, everyone else please remain in the courtroom. Ladies and gentlemen, we'll see  
20 you back here tomorrow morning.

21 (Whereupon the jury exited the courtroom)

22 Is there anything else we need to take up before we adjourn?

23 Ms. Wilson: No sir, Your Honor.

24 Mr. Thoensen: I don't believe so.

1           The Court: If y'all don't mind meet me up here a little before 9:30 so we all can talk  
2 about it and see if there's anything we need to resolve on the deposition.

3           Ms. Wilson: Yes sir.

4           Mr. Thoensen: Yes sir.

5           The Court: Have a wonderful evening and I'll see everybody in the morning.

6           (Whereupon court was adjourned at 5:22 p.m.)

7                       **WEDNESDAY, MAY 15, 2012 - COURT IN SESSION - 10:00 A.M.**

8           The Court: Are we ready regarding the presentation of the deposition?

9           Mr. Thoensen: I believe we are, Your Honor.

10          Ms. Wilson: Excuse me, Your Honor.

11          The Court: Yes ma'am?

12          Ms. Wilson: I do have some questions regarding that.

13          The Court: All right.

14          Ms. Wilson: I was dealing with Mr. Thoensen this morning about the things he  
15 wanted to, the items that he wanted read throughout the deposition. And after he gave that to  
16 me, I made the comment, well, that's right in the middle of some things, you know, that I  
17 wanted read too in the deposition. I mean, read to the Court's hearing so it can be  
18 documented. And he told me at that point that I can't put any of the things that he had said  
19 into the record, that I'm not allowed to put in the record things that he-- His cross  
20 examination, I'm not allowed to what cross examination of his I want read into the record,  
21 that only he's allowed to do that. And I said, well, it was my understanding when I read the  
22 brief - please pardon my ignorance - but it was my understanding when I left yesterday  
23 evening that you had said I could have the entire deposition read into the record if that's what  
24 I wanted, that I did not have to take excerpts out of it.

1           And so, that left me with the understanding that whatever portion that I wanted to put  
2   in could be put in, and I don't know why that was misunderstood upon yesterday. But I  
3   thought that, you know, being able to take out excerpts was like, you know, well, this is the  
4   part that I want to put in, and this is the part that you want put in. So, to concise the matters  
5   we just go with what we both want, you know, in instead of reading the entire deposition into  
6   the record.

7           The Court: Right.

8           Mr. Thoensen: May I respond, Your Honor?

9           The Court: Yes sir.

10          Mr. Thoensen: Your Honor, all that I have suggested to Ms. Wilson is that the  
11   proceeding is going to go as though Doctor Downey were in the courtroom. And so, it would  
12   be improper for her to cross examine the doctor. She performs the direct examination, I  
13   perform the cross examination.

14          The Court: Correct.

15          Mr. Thoensen: I think that what she might be referring to is Rule 32-A-4, which talks  
16   about using depositions at trial. And if there's any part of a deposition that the adverse party  
17   thinks ought to be added to give a complete or a fair picture, she can make those arguments.  
18   And if she has excerpts from the cross examination that I have determined I don't intend to  
19   read in that she thinks ought to come in, in the interest of fairness, then perhaps she can put  
20   those in.

21          The Court: Right, okay.

22          Mr. Thoensen: Thank you, Your Honor.

23          The Court: Do you understand that, Ms. Wilson? In other words, you have the right  
24   to make a motion to have certain excerpts included if you feel that in order to make the  
25   record clear and to make the record complete, they need to be in there. Mr. Thoensen is just

1 going to read in his portion that he wants read. But if there are portions that you feel need to  
2 be read in to make the record clear and to make it complete, then you can let the court know,  
3 Judge, I think these things need to be read as well, and then I'll rule on that.

4 Ms. Wilson: I guess the statement that still just kind of like in my mind, along with  
5 everything-- Not that I don't understand what you're saying now. But the thing that I didn't  
6 understand, I can have the entire deposition read in the record if that's what I wanted to do.

7 The Court: No. Yeah, you can, but if there are parts of it that Mr. Thoensen chooses  
8 to leave out that he doesn't think are relevant or whatever, you can ask those to be read, but  
9 then I'll review those to see if in fact they do, in fact, make the record complete and clear.

10 Ms. Wilson: Okay. So, then it was-- I guess my understanding is that the parts that  
11 I put in---

12 The Court: Do you want the entire record read--- Do you want the entire deposition  
13 read?

14 Ms. Wilson: That's not what I-- That wasn't my argument actually, Your Honor. I'm  
15 really not trying to aggravate you.

16 The Court: You're not aggravating me. I'm good. I'm just trying to figure out what  
17 you want.

18 Ms. Wilson: Well, the thing is, that when he came over and gave me the information,  
19 I really didn't get an opportunity to read what parts he was talking about. I was just trying to  
20 make sure I knew where, you know, where he was starting and stopping, that kind of thing.

21 The Court: Right.

22 Ms. Wilson: And I really didn't get an opportunity to say, okay, well, what does this  
23 actually say.

24 The Court: I would have hoped that last night you would have read that from cover  
25 to cover.

1 Ms. Wilson: Oh, I did read it.

2 The Court: Well, then, you know what's in it.

3 Ms. Wilson: Well, what I mean is, I just kind of, just jotting down what he was  
4 saying, as far as, like, the numbers, the parts.

5 The Court: Did you give her the page numbers and the line numbers that you intend  
6 to read in?

7 Mr. Thoensen: Yes sir, I did.

8 The Court: Is that right?

9 Ms. Wilson: That's right, he did, Your Honor. I apologize.

10 The Court: You've got what he intends to read in. Correct?

11 Ms. Wilson: Yes. And that's why I want-- I don't know if I want more of it read in  
12 or not because I really didn't get a chance to look at those exact parts. I was just flipping the  
13 pages and marking.

14 The Court: Well, you need to look at that. You need to look at the parts that he has  
15 not planned to put in so you can determine whether or not that's something you're gonna  
16 make a request to put in.

17 Ms. Wilson: Exactly. And now that I know that that's part of the process. That's  
18 what I didn't know is that....

19 The Court: Well, you need to go ahead and do that now.

20 Ms. Wilson: Okay. Thank you.

21 (pause)

22 The Court: Let me know when you're ready.

23 Ms. Wilson: Let me find what I....

24 The Court: You should be familiar with that deposition if you've read it all. I don't  
25 know why it's taking you this long.

1 Ms. Wilson: I guess the thing is I'm not used to the lines and the numbers. I'm trying  
2 to make sure I get it exactly right where he stops and started. I'm familiar with the deposition  
3 and what was said, Your Honor.

4 The Court: All right.

5 (pause)

6 Ms. Wilson: I've marked what I would like to be read.

7 The Court: All right.

8 Ms. Wilson: Page 18, line 9. Okay. He wants to start here, what's being read into  
9 the record on page 18, line 9. I would like for it to begin at page 14, line... Page 13, line 24.  
10 And go through page 14, line-- I'm sorry. Page 15, line 1. And start-- I'm sorry. Do I keep  
11 proceeding or...?

12 The Court: No, let me look at that.

13 Ms. Wilson: Yes sir.

14 (pause to read)

15 The Court: All right. Mr. Thoensen?

16 Mr. Thoensen: Yes sir.

17 The Court: Any objection to that?

18 Mr. Thoensen: No specific objection, other than just the nature of that testimony and  
19 the---

20 The Court: Other than that, is it covered in direct?

21 Mr. Thoensen: It was covered not in such detail. The testimony that Ms. Wilson has  
22 just pointed out is a fairly detailed review of Doctor Downey's educational and professional  
23 background that was essentially for my discovery to use for a trial deposition. I had not  
24 deposed Doctor Downey before and was not familiar with his credentials. That information  
25 was covered in direct examination but just in not as much detail.

1 The Court: I'm going to allow that.

2 Mr. Thoensen: Sure.

3 The Court: So, if you would please mark for your notes that that portion will be  
4 covered. All right, what's next, Ms. Wilson?

5 Ms. Wilson: The next one is at page 15, starting at line 11, and ending at line 25.

6 The Court: (pause to read) Why do you want that in there? What does that tell us?  
7 It doesn't tell us anything.

8 Ms. Wilson: I think that it documents the actual answer to the question he did give  
9 him the paperwork that supported the answer.

10 The Court: Well, he's just talking about his curriculum vitae.

11 Ms. Wilson: Right.

12 The Court: He says, "Do you have a current curriculum vitae here in the office?"  
13 "Yes. We'll print it up and hand it to you directly." And that's it. What does that have to do  
14 with any issue in this case?

15 Ms. Wilson: I just thought that it established the fact that it was the actual document  
16 that he did have to present to him---

17 The Court: That's just a fancy word for resume'.

18 Ms. Wilson: Right, right, I know.

19 The Court: So, he gave it to him. I don't understand how that's relevant to this case.

20 Ms. Wilson: I think it's just-- Well, in my thinking--

21 The Court: All right. I'm going to note your exception. I'm going to overrule that.  
22 That's not necessary. All right, what's next?

23 Ms. Wilson: The next one is page 16, line 22 through page 17, line 3.

24 The Court: Did you not cover in your direct examination that he was licensed in  
25 Georgia, South Carolina and Pennsylvania?

1 Ms. Wilson: I didn't ask him that specifically, but the other part was the part about  
2 his license never being revoked for any reason. That was actually the main part that I was  
3 wanting.

4 The Court: All right, I'll allow that. Mr. Thoensen, make a note.

5 Mr. Thoensen: Yes sir.

6 Ms. Wilson: And line 17 on page 17 through line 6, page 18, page 18, line 6.

7 The Court: (pause to read) All right. I'll allow that. Note that, Mr. Thoensen.

8 Mr. Thoensen: Yes sir.

9 Ms. Wilson: Page 22, line 3 through 12. Correct, through 11.

10 The Court: (pause to read)

11 Mr. Thoensen: Your Honor, specifically as to that testimony, this is a paragraph of  
12 highly technical, medical vocabulary that Doctor Downey then in his next response sets  
13 forth in layman's terms, which I think is probably more appropriate for everyone in this  
14 courtroom. That is the reason for my excluding the technical vocabulary.

15 The Court: You said lines 3 through what? Page 22, line 3 through what?

16 Ms. Wilson: 3 through 11. You might to pick up on line 12.

17 The Court: Okay. Now, the next question is: "Can you go back and explain to us in  
18 layman's terms where those body parts are located?" And then he does that. Why would  
19 you want that little paragraph of all that medical jargon?

20 Ms. Wilson: Well, I just thought that-- Of course, it says can you go back and explain  
21 it to us in layman's terms where those body parts are located, well, what's the use in going  
22 back and explaining if you don't say what you just said in the beginning, to go back and  
23 explain it? Just start out can you go back and explain.

24 The Court: (pause to read) It flows. If you read the question at the top of page 22 -  
25 excuse me - the answer, it says, "I know of, yes, I do. I know where they are, most of them."

1 And then he says, "Okay. Can you go back and explain to us in layman's terms where on  
2 the body those parts are located?" That flows.

3 Ms. Wilson: Yes sir.

4 The Court: So, I'm gonna---

5 Ms. Wilson: Yes sir.

6 The Court: ---not allow 3 through 11. I think it flows fine. All right, what's next?

7 Ms. Wilson: Page 15, 1 through 21.

8 The Court: (pause to read)

9 Ms. Wilson: Your Honor, it's 1 through 15, page 21. I apologize.

10 The Court: (pause to read) Well, it's-- You said stop where?

11 Ms. Wilson: At 15.

12 The Court: Okay. That doesn't give all the picture. I think if you're gonna read that  
13 page, you're gonna read the entire page.

14 Ms. Wilson: That's fine.

15 Mr. Thoensen: My reason for not putting that is that specifically refers to a document  
16 that I believe Your Honor has already suggested would not be permissible because of the  
17 cumulative nature in conjunction with Doctor Downey's testimony.

18 The Court: Well, I've ruled it wasn't admissible because of the document that he used  
19 to recollect his memory to testify.

20 Mr. Thoensen: Right.

21 The Court: But if you exclude that testimony that changes it.

22 Mr. Thoensen: Understood. My thought was once you have a jury here, a witness  
23 reading from a document that's not anything that they can see.

24 The Court: And I understand where you're coming from. That happens all the time.

25 Mr. Thoensen: Sure.

1           The Court: Witnesses oftentimes refer to documentation that the jury never sees.  
2 They're allowed to refresh their memory.

3           Mr. Thoensen: Right.

4           The Court: So, I'll allow that, but it'll need to be all page 26.

5           Mr. Thoensen: Okay, thank you.

6           The Court: So, that'll be a complete picture.

7           Mr. Thoensen: Yes sir.

8           The Court: What else?

9           Ms. Wilson: Page 27, 1 through 18.

10          The Court: (pause to read) All right. Mr. Thoensen?

11          Mr. Thoensen: Yes sir. The rationale for that was the same I just described. He's  
12 reading from a document that the jury---

13          The Court: I'm gonna allow that, 1 through 18.

14          Mr. Thoensen: Yes sir.

15          The Court: Anything else?

16          Ms. Wilson: That's it.

17          The Court: Okay.

18          Ms. Wilson: Thank you.

19          The Court: All right. Then what I'll do is when the jury comes out, explain to them  
20 that the next witness is Doctor Downey and it's gonna be done by deposition and explain to  
21 them what that is, and then the items can come up and get them in.

22          Ms. Wilson: All right, sir.

23          The Court: Let's bring the jury in.

24          Ms. Wilson: First, Your Honor, can I go to the restroom?

1           The Court: Yes ma'am, go ahead, real quick. We've got the jury sitting back there  
2 getting impatient.

3           Mr. Thoensen: Your Honor.

4           The Court: Yes sir.

5           Mr. Thoensen: We discussed with them yesterday a brief instruction to them about  
6 the absence of Ms. Hawkinson.

7           The Court: Right, I'll do that.

8           Mr. Thoensen: Thank you, Your Honor.

9           Ms. Wilson: Your Honor, one more thing.

10          The Court: Yes ma'am.

11          Ms. Wilson: I was just reading over some information, the evidence that Mr.  
12 Thoensen intends to present, and I know about the brochure and the video, but I didn't know  
13 about the handbook and the instructions for the mandible. I didn't know anything about that.  
14 I'm trying to see exactly what it says.

15          Mr. Thoensen: Well, I have all that information here. Ms. Wilson has never served a  
16 request for production of documents in this case. So, I've never felt compelled to produce  
17 anything to her. I have everything right here. She's welcome to look at it.

18          The Court: All right. We'll have an opportunity to do that at the close of the  
19 plaintiff's case.

20          Mr. Thoensen: Yes sir.

21          The Court: Is your lady's name, Hawkinson?

22          Mr. Thoensen: Hawkinson.

23          The Court: Hawkinson, okay.

24          (pause)

25          (Whereupon the jury enters the courtroom)

1           The Court: Good morning, ladies and gentlemen. Welcome back this morning. We  
2    appreciate your patience. There are a couple of matters I'm going to go over with you before  
3    we get started.

4           First, you will notice that-- Well, yesterday you met Ms. Hawkinson, and you notice  
5    that she's not here today. The reason for that is Ms. Hawkinson had previously scheduled a  
6    mediation in Virginia for the company that she was required to be at. Their hope was that  
7    this would have been the first case that we heard this week and they'd be already done. But  
8    we had that other case prior to this one. So, unfortunately, she was not able to stay for the  
9    remainder of the trial. But she wanted the court to inform you the reason she's not here is  
10   not any reason other than she's required to be in court in Virginia for a mediation. So, that's  
11   the reason you don't see her here today.

12          The other thing that we've been going over is that the next witness Ms. Wilson is  
13   going to call is Doctor John Downey. Doctor Downey is not going to be present physically  
14   here, but his deposition was taken prior to this trial for use at trial.

15          Now, a deposition, ladies and gentlemen, is sworn testimony that is taken outside the  
16   court. It is conducted in very much the same fashion as a witness who takes the stand in  
17   court. At that deposition, the parties are present, there's a court reporter present, the witness  
18   is placed under oath, and then the questioning occurs just as it occurs here in the courtroom.  
19   The only difference is it's not here.

20          What I will tell you with regard to deposition testimony is that you are to treat this  
21   testimony as though Doctor Downey were in fact here testifying, and give it what ever  
22   weight, just like any other testimony. You give it what ever weight you feel it deserves.

23          Now, in an effort to streamline it and to make it flow better there are some excerpts of  
24   some areas of the deposition that are not necessarily relevant to the issues in this case. So,  
25   the parties have gone through the deposition and they have agreed on what portions of the

1 deposition will be presented to you, the portions that are relevant to the issues in this case.

2 And so, you'll hear that as they go through that.

3 And the way we're gonna do this, the way we typically will present a deposition is  
4 Ms. Chaney who you heard from earlier, she's been kind enough to agree to sit in the witness  
5 stand and basically be Doctor Downey. So, Ms. Wilson will read her-- And they'll read  
6 straight from the deposition. She will read her questions that she posed to Doctor Downey  
7 and Ms. Chaney will read those responses. And then when she concludes her examination,  
8 then Mr. Thoensen, who was present at the deposition, will read his portion, and of course,  
9 then Ms. Chaney will read Doctor Downey's response.

10 So, a little role playing here now. Ms. Chaney, if you will come up and bring your  
11 copy of the deposition. And for your purposes, ladies and gentlemen, this is Doctor Downey.  
12 She'll have a seat there, and Ms. Wilson, we'll begin with your direct examination.

13 And as I said, ladies and gentlemen, we will treat this testimony as though Doctor  
14 Downey were present and testifying himself and give it what ever weight you feel it should  
15 be given.

16 Now, Ms. Wilson, if you want, you can just sit there and read your questions from  
17 there and we'll go ahead and get started.

18 Ms. Wilson: Thank you, Your Honor.

19 The Court: Now, Mr. Thoensen and Ms. Wilson, you're gonna need to let Ms.  
20 Chaney know where you're at. So, as you begin, give her the page number and the line  
21 number. Then, as you go through, what she'll disclose. When you change to another page  
22 number or line number, make sure you reference it to her to all the changes all along.

23 Mr. Thoensen: Yes sir.

24 (Whereupon witness Chaney took the witness stand for the reading of the deposition)

25

1 Ms. Wilson: We'll start on page 4, line 12.

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

3 Q Doctor Downey, first, I'd like to apologize to you for not having the  
4 experience that I could have in doing a deposition and just ask that you bear with me  
5 as I do my best to get the information that I need to have.

6 A All right. Well, you just direct\* and do your thing.

7 Q Yes sir, okay. I want to first ask you for your full name.

8 A John Martin Downey.

9 Q Okay. And if I can ask you where do you practice?

10 A I own the office called the Royal Pain Center, 2922 Professional Parkway in  
11 Augusta, Georgia.

12 Q What is your educational background?

13 A I received a bachelor of science in physical therapy at the University of  
14 Pennsylvania in 1976. In 1979 through 1983, I attended the University of New  
15 England College of Osteopathic Medicine, where I received a degree of D.O., Doctor  
16 of Osteopathic Medicine, in 1983.

17 I was then admitted into the Army and performed my physical medicine and  
18 rehabilitation residency at Walter Reed Army Medical Center in Washington, DC  
19 from 1985 to 1988.

20 Q Right.

21 A I was then transferred to Fort Gordon, Georgia, Augusta, Georgia, where I  
22 took over the lab, electro-diagnosis lab at Fort Gordon Eisenhower Medical Center  
23 and started a pain practice at the Eisenhower Medical Center.

24 I'm board certified in physical medicine and rehabilitation, electro-diagnostic  
25 medicine, pain medicine and independent medical evaluation.

1 Q Thank you so much.

2 Ms. Wilson: We're going to page 6, line 1.

3 Q Okay, let's see. In your practice, what do you do to help people?

4 A My practice is involved with the evolution and treatment of people in pain.  
5 Specifically, what we do to help people is first of all make the diagnosis of what's  
6 causing the pain, educate the patient on what the diagnosis is, what's causing the pain,  
7 and then make efforts toward improving the pain condition by either reducing the  
8 symptoms of pain or, and/or improving the person's functions.

9 Q Okay. Now, I guess specifically to me, Felicia Dicks Wilson, in reviewing  
10 my medical history at an examination what did you find?

11 A Well, you were first seen by me May 16, 2007, referred by Robert Avenson,  
12 MD, a neurosurgeon here in Augusta, Georgia. And your-- Well, first of all, you  
13 presented with complaints of pain in the lower back, mostly into the right leg and  
14 down into the calf muscle. You related the onset of these symptoms to a twisting  
15 type of injury in July of 2006.

16 Your physical examination indicated weakness in the right leg following a  
17 particular nerve distribution. So, my impression on the initial office visit was that  
18 you had evidence of the medically term, lumbar radiculopathy. That's a fancy way of  
19 saying a pinched nerve in the lower back.

20 Q Okay. And what treatment did you give to me and over what period of time,  
21 the treatment?

22 A Well, since May 16, 2007, which was the initial office visit and the clinical  
23 evidence of the clinical diagnosis of lumbar radiculopathy you underwent diagnostic  
24 studies, including EMD, which is a nerve test of the nerves and muscles of the lower  
25 back and leg. You also underwent medication management for the pain condition

24

1 and underwent injections into the involved muscles around the nerve that was found  
2 to be pinched or irritated.

3 Q And what would you say my pain level is?

4 A The most recent office visit indicates a pain level of 7 to 8 on a scale of 10.  
5 The pain is localized over the lower back and radiates down into the right leg. So,  
6 therefore, you remain symptomatic with the pain associated with nerve irritation in  
7 the lower back and muscle spasms and arthritis in the lower back.

8 Q Okay, and what is my condition now, what would you say?

9 A You still carry the diagnosis of radiculopathy, which means irritated or  
10 pinched nerves in the back; nerve pain in the leg. And pre-existing and chronic  
11 history of diabetes.

12 Q Okay. Is it your opinion that I will need further treatment and for how long  
13 do you think?

14 A Well, that's an excellent question. You remain symptomatic. Therefore, in  
15 my opinion, treatment remains important for you. There is a significant amount  
16 of pain and weakness in the leg.

17 Therefore, continued availability of symptom management. As far as how  
18 long that treatment would be necessary, it's been approximately two and a  
19 half years since initially undergoing evaluation here and the symptoms remain.  
20 Therefore, I would anticipate into the foreseeable future.

21 Q Okay. You said how long, since '07, my initial?

22 A 2007, yes. So, that would make-- Did I say two and a half. I would say more  
23 like five years.

24 Q Okay.

25 A Time's flying.

1 Q That's okay. I was just wondering. Okay. And what was the, what is the cost  
2 that you report to being a priority?

3 A Well, I don't have any finance stuff-- Pardon me, pardon my language. I  
4 don't have any finance records in my chart. I would have to defer to the business  
5 office of the practice to tell you about approximate cost and things like that.

6 Q Okay. And is it in your opinion that the care I would need would be  
7 reasonable and necessary to help me get better?

8 A Yes.

9 Q Okay. All right. And would you say that the-- I remember you did a letter  
10 for me describing the injuries and things like that and how the incident had caused the  
11 problems. And I just wanted to know if the condition that you treated for me was  
12 related to the incident at the end.

13 Q In my opinion, according to the history you presented and the diagnostic  
14 studies and medical records available to me, that the symptoms started at an injury in  
15 2006. As we discussed throughout the course of the past, quite a few office visits,  
16 there was pre-existing arthritis for asymptomatic, meaning arthritis in the lower back  
17 without back pain problems, without back pain symptoms that I'm aware of.

18 And therefore, it is my opinion that the pre-existing, or the arthritis that was  
19 there before the injury was asymptomatic, as you present and the trauma, the twisting  
20 type of injury that you, or the twisting type of motion that you experienced in my  
21 opinion aggravated that nerve because the pre-existing arthritis compromised or took  
22 up space that belonged to that nerve.

23 I'm not sure if I just answered your question or not, but to answer it, I think in  
24 my opinion what you've been treated for is related to your injury as you present the  
25 history to me.

1 Q Okay, great. And so, according with the injury that I sustained as a result of  
2 the accident that happened in July of 2006, at Carowinds, is that injury, the incident  
3 that we're talking about that caused the problem?

4 A As I understand the history, I have heard nothing to suggest that any other  
5 incident occurred that might be complicating this history. And I don't have any  
6 access or have been made aware of no record of pre-existing back problems that  
7 would make the injury less suspect in causing the condition for which you've been  
8 treated here.

9 Q Okay. And just to clarify, my medical records have been made available to  
10 you to look over if you needed to for anything like that.

11 A Yes.

12 Q And let's see, in your-- Back a little bit. Your practice, with the type of  
13 injuries that you deal with and the type of pain that you help people with, do you deal  
14 with a lot of back pain and back injuries?

15 A Yes. Back pain is possibly one of the most common, one of the more  
16 common diagnoses or one of the more common pain presentations that we see here.  
17 Back pain, neck pain are the most common pain presentations.

18 Q And this treatment has been going for, like, five years, would you say in your  
19 professional opinion that that was indicative of a permanent injury?

20 A Permanent is a tough word to define. It used to be defined that the condition  
21 is not likely to change more than a few percentage in twelve months. So, if you take  
22 that kind of very strict opinion of or definition of permanent, then the answer is yes.

23 Q Okay. All right. I think that's it for right now, but I would like to reserve the  
24 right to come back and ask some more questions when Mr. Thoensen is done.

25 Mr. Thoensen: May I use the podium, Your Honor?

1 The Court: Yes sir.

2 Mr. Thoensen: Thank you.

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

4 Q Doctor Downey, you went through a list of board certifications that you have.  
5 Do you recall that testimony?

6 A I'm sorry. What?

7 The Court: Give her the page.

8 Mr. Thoensen: Page 13, line 20.

9 A Yes.

10 Q Can you explain the requirements to receive board certification in each of  
11 those areas?

12 A Well, the primary board certification is physical medicine and rehabilitation  
13 recognized by the American Board of Medical \*. That required three years of  
14 residency training and then an examination after that three-year period. But electro-  
15 diagnostic board certification involves the performance of somewhere around - the  
16 number escapes me - 2000 electro-diagnostic tests to be admitted for the board  
17 examination, an examination which included a written, oral and a wave type\*  
18 examination. The pain medicine board examination required extra, required of me  
19 experience in pain medicine in either physical medicine and rehabilitation residency  
20 with the direction toward pain medicine or anesthesiology residency directed toward  
21 pain medicine.

22 Q Then you mentioned independent medical evaluations also. Is that a specific  
23 area in which you were board certified?

24 A Yes. That's the credential board exam that I took also. The preparation for  
25 that examination is-- It's been a little of time, but I think it was about a one-week or

1 three or four day course, and then an examination utilizing the AMA guide for the  
2 evolution of permanent impairment.

3 Mr. Thoensen: We're gonna go to page 16, and begin at line 22.

4 Q In what states are you licensed to practice medicine?

5 A I'm licensed in Georgia, South Carolina and Pennsylvania.

6 Q Have either of those licenses ever been suspended or revoked for any reason?

7 A No.

8 Mr. Thoensen: And we're gonna skip down to page 16 to line 17.

9 Q Did you have any contact with Ms. Wilson specifically for the purpose of  
10 preparing for this deposition?

11 A No. She was a patient.\*(end of B6-A)

12 Q \*deposition today?

13 A Well, I think the answer is no, except for there have been-- I was requested by  
14 Ms. Wilson to transcribe a letter, or, dictate a letter for her of the case summary, and  
15 that may have been a phone call request. I don't recall exactly.

16 Q I think I have a copy of that and I'm gonna get to that in just a few minutes.

17 Do you have an understanding of exactly what happened at Carowinds that Ms.  
18 Wilson is referring to as the incident?

19 A Well, for one exactly, it's a little tough to say yes. I have an idea but not  
20 necessarily an exact.

21 Q What is your idea of what the incident did?

22 A The way I, the way it's been described to me, and I put it in words as best I  
23 could, she described, Ms. Wilson described the situation where she was getting off an  
24 amusement ride. Upon stepping off on the dock another boat struck the boat she was  
25 exiting. This jarred her and caused to slip. She does not recall falling to the ground.

1           She felt immediate pain in the right buttock and hip region and then since that time  
2           has developed lower back and right leg pain. That's as much as I know about the  
3           incident.

4    Q           And that, you were just reading that from an office record. Correct?

5    A           That's correct.

6    Q           Okay. Are you familiar with the Carowinds amusement park?

7    A           No.

8    Q           Do you have any knowledge at all as to what particular attraction was  
9           involved in this incident?

10   A           No.

11   Q           Have you seen any photos of what might be the scene of the incident?

12   A           No.

13   Q           Have you reviewed any statements from any witnesses to the incident?

14   A           No.

15   A           No.

16   Q           And so, as far as what actually happened to Ms. Wilson at Carowinds in July  
17           of 2006, your information is solely based on what Ms. Wilson told you?

18   A           That's exactly right.

19   Q           Okay. Is it fair for me to assume that you don't intend to offer any opinions  
20           whatsoever as to whether or not Carowinds was negligent, acted recklessly or  
21           somehow caused Ms. Wilson to be injured? You don't have any opinion as to that, do  
22           you?

23   A           That's-- You're correct. I am not capable of rendering an opinion to that  
24           regard.

1 Q Okay. And I think you've already confirmed your first visit from Ms. Wilson  
2 in your office was May 16, 2007. Is that right?

3 A Yes.

4 Q And that was approximately ten months after this incident occurred. Correct?

5 A As I understand it, the incident occurred July 20, 2006, so, yes, approximately  
6 ten months after the incident.

7 Q And Ms. Wilson was referred to you by Doctor Abramson?

8 A Yes.

9 Q Were you aware of Ms. Wilson's long history of prescription pain medication  
10 before this incident and before she came to see you?

11 A No.

12 Q Are you aware of that now?

13 A No, not until you mentioned-- Not until you just said that sentence.

14 Q Okay. When Ms. Wilson first came to see you, were you aware of her  
15 diagnosis of fibromyalgia?

16 A Yes.

17 Q And is it your understanding that Ms. Wilson was diagnosed with  
18 fibromyalgia at some time before this incident at Carowinds?

19 A Yes.

20 Q Will you please describe your best understanding of as a practicing physician  
21 as to what fibromyalgia is?

22 A Fibromyalgia is a term used to described multiple site pain involving eleven of  
23 eighteen tender points throughout the human body. It is a condition that is basically a  
24 condition of exclusion. Other conditions need to be ruled out before the diagnosis of  
25 fibromyalgia is rendered.

1 Q Do you have an understanding that people who suffer from fibromyalgia often  
2 complain of whole body pain?

3 A Whole body pain is a little general. It's more like several points throughout  
4 the body.

5 Q Do you know what those-- You called them tender points. Correct?

6 A Yes.

7 Q Do you know what they are?

8 A I know of-- Yes, I do. I know where they are, most of them.

9 Mr. Thoensen: And we're gonna skip down to line 12 on that same page.

10 Q Can you go back and explain to us in layman's terms where on the body those  
11 points are located?

12 A Okay. They are symmetrical, pretty much, indicating that the points are right-  
13 sided and left-sided. The occipital tender points are where the neck meets the skull  
14 on each side. The levator scapula shoulder blade points are at the angle of the scapula  
15 where the, kind of behind the shoulder joint. The elbow points are on the outside of  
16 the elbow where people describe tennis elbow. The lower back points, posterior,  
17 superior iliex spine\* or petus i.s., are very near the tailbone joint. The \*trachanteric  
18 bursa points are the outside of each leg in the region of the hip where the bone kind of  
19 comes close to the surface on the outside. And then the \*patansuring bursa is the  
20 bursa or tender point on the inside of the knee, just below the knee joint.

21 Q And when Ms. Wilson first presented to you she complained of lower back  
22 pain. Correct?

23 A That's correct.

1 Q And I think you've already mentioned this, but I just want to clarify, your  
2 understanding is that when Ms. Wilson first presented to you she had a pre-existing  
3 condition of arthritis in the lower back. Correct?

4 A Yes.

5 Q And she also had a pre-existing condition of disk desiccation at L-5 S-1. Is  
6 that correct?

7 A Yes.

8 Q Will you explain in layman's terms if you can-- If you want me to break into  
9 two pieces I will. But the question is: what is disk desiccation and where is L-5 S-1?

10 A Disk desiccation is desiccation. Dessication means dry. A disk is a cushion  
11 between the bone. So if a cushion that's supposed to be a shock absorber is dry it  
12 loses its shock absorption, becomes hard like this table top instead of soft like this  
13 mouse pad. So, a desiccated disk is hard and no cushion.

14 The second part of your question is where is L-5 S-1. L-5 S-1 is-- L-5 means  
15 lumbar 5, and S-1, means sacrum or tailbone. So, L-5 S-1 is right where the lower  
16 back and the tailbone meet. That happens to be the point where the nerve test showed  
17 that the nerve is bothered, is at the L-5 S-1 space.

18 Q You said that your last visit with Ms. Wilson was this morning. Is that right?

19 A Yes.

20 Q Do you know when the next visit is scheduled for, or is one scheduled?

21 A I don't know. I don't know that there is one scheduled, but I would anticipate  
22 four to eight weeks at the usual time.

23 Q Have you placed any limitations on physical activities that you would or  
24 would not recommend for Ms. Wilson?

25 A I have not.

1 Q Are you aware that Ms. Wilson has been fully disabled as determined by the  
2 Social Security Administration since 1997?

3 A I know she-- As I understand it, she's not working. I was not aware that she  
4 was considered or proclaimed disabled, that I'm aware of.

5 Q Okay. And you've been treating Ms. Wilson now for almost five years?  
6 Correct?

7 A That's correct.

8 Q Would you deem Ms. Wilson to be disabled and unable to work?

9 A She has-- In my treatment of her she has lumbar radiculopathy, which means  
10 a pinched nerve in her lower back with muscles contributing to the pain associated  
11 with trying to protect that nerve. She has limitations based on lumbar radiculopathy,  
12 but these, recognizing those limitations does not, is not consistent with total  
13 disability.

14 Q Do you know why Ms. Wilson is not working?

15 A No.

16 Mr. Thoensen: We're gonna move to page 26, and the question begins at line  
17 1.

18 Q And can you tell us what that is?

19 A This is a dictation by me dated November 22, 2011. It is the narrative  
20 summary of my treatment of Ms. Wilson, summarizing the treatment and diagnostic  
21 studies that she underwent at this office.

22 Q And in the paragraph that starts "Ms. Wilson was initially referred to me", do  
23 you see that?

24 A Yes.

- 1 Q Go down to the third line up from the end of that paragraph, the first full
- 2 sentence there says this caused her to twist in an unusual fashion. Do you see that?
- 3 A Yes.
- 4 Q What was unusual about the way in which Ms. Wilson twisted?
- 5 A I did not see the twist.
- 6 Q And so?
- 7 A Therefore, I don't know how to describe that as unusual.
- 8 Q And again, as we've established, your understanding of the incident is based
- 9 entirely on what Ms. Wilson told you?
- 10 A That's correct.
- 11 Q Okay. We see if we go down towards the middle of that report there's a
- 12 paragraph that just consists of one sentence and that says, "Obviously this disk
- 13 desiccation was present prior to that injury of July, 2006." Do you see that?
- 14 A Yes, I do.
- 15 Q And that's just a few minutes ago what we discussed. Correct?
- 16 A Yes, that's correct.
- 17 Q Okay. And this report also makes reference to Ms. Wilson's pre-existing
- 18 arthritis in the lower back. Correct?
- 19 A That's correct.
- 20 Q The last full sentence on that first page says, "In my opinion she does not have
- 21 a surgical condition." That was as of November 22, 2011. Is that still your opinion
- 22 today?
- 23 A Yes.
- 24 Q Doctor Downey, based on your understanding of Ms. Wilson's medical
- 25 history and the results of the MRIs, the EMGs that you have seen, do you have an

1 opinion as to whether or not Ms. Wilson at some point would have developed lower  
2 back pain had she never had this incident at Carowinds in July of 2006?

3 A Yes, I have an opinion.

4 Q And what is that opinion?

5 A In my opinion, it is not necessarily a given that she would have developed  
6 lower back pain.

7 Q But can't be ruled out. Correct?

8 A That's correct. It cannot be ruled out.

9 Q And you described Ms. Wilson's lumbar arthritis prior to the incident as  
10 asymptomatic. Correct?

11 A Yes.

12 Q Meaning didn't present itself as any manifestations of pain or anything else?

13 A That's correct.

14 Q And so, it's impossible to know that had she never experienced this incident at  
15 Carowinds whether or not some point down the road that arthritis would have become  
16 symptomatic. We just don't know. Right?

17 A I would say that's correct.

18 Q But it's certainly possible that it could have become symptomatic, given the  
19 state of the muscles and nerves in her lower back.

20 A Yes. The key word is could have, yes.

21 Q Would it be possible for someone with this desiccation at L-5 S-1, and  
22 asymptomatic arthritis in the lower back to aggravate that condition by taking an  
23 awkward step out of the shower?

24 A Yes.

1 Q Would it be possible for someone in that state to aggravate that condition by  
2 taking an awkward step coming down the stairs?

3 A Yes.

4 Q Or even walking down the sidewalk?

5 A If she took an awkward step walking down the sidewalk, if something, some  
6 asymmetrical type of activity, sudden activity, would possibly be the aggravating  
7 factor.

8 Q So, it's fair to say that there are any number of ways that the condition we've  
9 described can go from asymptomatic to symptomatic. Correct?

10 A Yes.

11 Q And that could also occur for no particular reason, could it not?

12 A It's possible, yes.

13 Q No further questions at this time.

14 The Court: Re-direct.

15 Ms. Wilson: Yes. Page 30, line 8.

16 **RE-DIRECT EXAMINATION BY MS. WILSON:**

17 Q I'd just like to ask-- I'd just like to ask just a couple more things according to  
18 some things Mr. Thoensen brought out which I appreciate. And one thing he said  
19 was that anything could have caused this to happen.

20 A I hope I didn't word it quite like that. I didn't-- I don't think I said anything  
21 could cause it. But go ahead. I didn't mean....

22 Q That was kind of like a comment to what you had. You didn't say that  
23 anything could happen. He asked if someone stepped out of the shower, or if  
24 someone was just walking down the street, or if nothing really happen, this could just  
25 present itself at some time.

1     A           Well, in the strict sense of the question, when there is arthritis, some people  
2           with no history of problems just wake up and all of a sudden they have this condition.  
3           So, it's possible that nothing could happen and all of a sudden it, this arthritis becomes  
4           symptomatic. But it's also possible that a sudden twist or a wrong step down a  
5           stairway or a step off a curb or things like that can be the insult that starts the process.

6     Q           Okay. The other thing I wanted to ask you, are you just personally in your  
7           profession aware of anyone that has presented with that degenerative type of thing but  
8           is still asymptomatic. You know, you saw it some other way, like looking for  
9           something else and you noticed that it was there also.

10    A           Yes. That's not uncommon where we might be x-raying a person's hip, for  
11           example, and that x-ray might show some backbone, and they, they're not  
12           symptomatic at all of the backbone, but there's a lot of arthritis there. So, it doesn't  
13           necessarily present with symptoms when there is evident arthritis on x-rays, that type  
14           of thing.

15    Q           So, you say in your professional opinion that it is possible to have that type of  
16           thing, the disk desiccation - and I don't remember the way you worded it - the  
17           arthritis, the degenerative arthritis and never complain about it, never have a symptom  
18           of it, and never bothered a person, and it never bother a person, they just live with it  
19           being there.

20    A           It's not uncommon at all for people to have arthritis. In fact, arthritis is  
21           evident early in a person's life. Thirty years of age and they're not symptomatic. So,  
22           asymptomatic arthritis is not uncommon at all.

23    Q           Okay. So, and then if we can say that asymptomatic arthritis is not very  
24           common, could we also say in your opinion, could you say-- I'm sorry, not me, I  
25           don't have an opinion. But could you say, based on your professional opinion are

1           there those, are there a lot of people, or if you can give a type of percentage of people  
2           that may have degenerative arthritis or desiccated disk that are walking around with it  
3           and have not presented any problems in it at all?

4     A           It's tough to give a percentage on that. However, the studies show that  
5           arthritis starts developing, becoming apparent at thirty, thirty-two, thirty-five years of  
6           age on an x-ray. So, if you look at a hundred people at an airport and most of them,  
7           let's say, are thirty-five, are over thirty-five, they all have some sort of arthritis, and  
8           maybe only ten of them are limping or holding their back. So, that might not be a  
9           very good example.

10           I don't mean to imply ninety percent of the people are asymptomatic, but a lot  
11           of people are asymptomatic with arthritis.

12    Q           And could I ask you to describe exactly what arthritis is?

13    A           Well, osteo-arthritis is the wear and tear, the wear and tear, the degeneration  
14           of joint surfaces. It would be as if you took a block of wood and rubbed it on a, even  
15           a smooth surface for thirty-two years. Eventually that block of wood would become  
16           worn down. That's what arthritis is. That's the wear and tear degeneration just from  
17           use.

18    Q           So, in your professional opinion, would you say that everyone has some sort  
19           of arthritis?

20    A           Well, everyone-- I hate to say everyone because that means all, and all is  
21           tough to say. But the vast majority over thirty-five have arthritis, some sort of  
22           arthritis.

23    Q           So, arthritis isn't as, isn't as abnormal of a problem than we would think?

24    A           In fact, arthritis is not only not abnormal, it's normal. You know, as people  
25           get older we develop arthritis, so arthritis is normal after a certain age.

1 Q So, in your professional opinion, you would say that just basic arthritis would  
2 be considered like a basic and wear on the body type thing?

3 A Yes.

4 Q I mean, just in layman's terms?

5 A That's correct.

6 Q And would you also say that it wouldn't necessarily cause a problem other  
7 than-- How can I say? It doesn't necessarily have to cause a problem with the basic  
8 wear and tear?

9 A That's correct. There are a lot of people who have arthritis with no symptoms,  
10 no limitations, just cooking along, no muss, no fuss.

11 Q All right. One other question I have for you. Do you-- Most of your patients  
12 that you see, do you get them immediately following an injury?

13 A No. I would have to say most of the patients are at least 76, 72 pain which  
14 means it's been there for at least a few weeks for more often, chronic pain, which  
15 means it's been there greater than six months.

16 Q Okay. So, would you say that it's, most of your patients that come in are  
17 because they're in chronic pain. I'm just getting an understanding.

18 A Yes.

19 Q Which is greater than six months?

20 A Yes ma'am.

21 Q So, in your professional opinion, would you say, then, that my referral coming  
22 to you after ten months is not abnormal?

23 Mr. Thoensen: Your Honor, I have to object to that question. That was ruled  
24 out yesterday, and the next question and answer would be admissible.

25 The Court: What page are you on?

1 Mr. Thoensen: We're on page 35 at line 7. Yesterday you ruled that lines 7  
2 through 11 were out and pick up at line 12.

3 The Court: Correct.

4 Mr. Thoensen: Thank you.

5 Q Or, I would say is it not outside of the range of normal for your patients?

6 A No, it's not outside the range of normal.

7 Q Okay. And let's see, one last question. Would you say that a twisting injury  
8 as I described happening to me at Carowinds July 26 - I'm sorry - July 20, of '06,  
9 2006, could have caused the pain that my records indicate that you are treating me  
10 for?

11 A Yes. In my opinion, the twisting injury that you described could aggravate the  
12 underlying condition, aggravate the nerve and cause this chronic pain condition.

13 Q And just to reiterate the last time, that arthritis is just the normal wear and tear.  
14 Is that correct?

15 A Well, this type of osteo-arthritis, yes. Osteo-Arthritis is the degeneration wear  
16 and tear type condition.

17 Q Okay. I don't have any further questions.

18 The Court: Mr. Thoensen?

19 Mr. Thoensen: Nothing further, Your Honor.

20 The Court: Thank you, ma'am. You may step down.

21 (whereupon witness exits witness stand)

22 All right, Ms. Wilson, you may call your next witness.

23 Ms. Wilson: I call myself.

24 The Court: All right, come around and be sworn, please.

25 (whereupon the witness was sworn)

1 The Court: Obviously, Ms. Wilson, this is a little different.

2 Ms. Wilson: Yeah.

3 The Court: Since there's no one to question you, I'm going to allow you to  
4 present your testimony.

5 Ms. Wilson: Thank you, sir.

6 **FELICIA DICKS WILSON**, duly sworn, testified as follows  
7 in a narrative form:

8 I'm Felicia Dicks Wilson. I think everybody knows who I am by now. I'm still a  
9 little, I guess a little shaky. I've never done this before, so please bear with me. Being that  
10 there are no questions, like, for me to answer, it may come forth-- I don't know how it's  
11 gonna come out. I'm just gonna go ahead. I did just write my own notes down so I would  
12 remember some things that I wanted to make sure that I said so I wouldn't get up here and be  
13 nervous and not say everything I need to say. Okay. So, please bear with me.

14 I'm Felicia Dicks Wilson. I was born in Georgia, raised in California, and I moved  
15 back to Georgia after a divorce. Both of my parents had already-- Well, my dad had already  
16 moved back with my stepmother and my brothers. And my mom was in the process of  
17 retiring and getting ready to move back.

18 So, I decided that after I was getting a divorce that the best thing for me to do was to  
19 go where my parents were. Because if anything were to happen to them I certainly would  
20 have to go anyway. I'm my father's oldest child and my mother's only child.

21 And I have three children. You all know Juanita. She's twenty-three. I have two  
22 sons; Christopher, that's twenty-six, and Tyrell is thirty-one. And, let's see. I think that's  
23 enough for my background. Oh, and I'm fifty-two, born December 15, 1959.

24 And let's see. I'm giving you some background to try to bring you up to some things  
25 that I'm gonna discuss a little later about the incident and I think you need to know these

1 things about my background in order to understand how the accident affected my life  
2 currently.

3 My first job was an assistant bookkeeper at the YMCA in Richmond, California. And  
4 this was a voluntary position as well. I was in high school. And after that I became a tutor in  
5 an after-school program pretty much until I graduated high school.

6 And I worked for Pacific Barrel for about seventeen years. And that was where my  
7 disability began. I developed carpal tunnel, severe tendonitis throughout my hands and arms  
8 and I had about six different surgeries on my hands to try to correct the problem, but it did  
9 not. And that's how the disability issues began. That, and then later on I developed  
10 fibromyalgia and that caused me to be disabled. And as you heard in the deposition  
11 testimony, through Social Security, I receive Social Security disability, and have been  
12 receiving that for some time.

13 And I have tried to work at different times. When I did divorce and I moved to  
14 Georgia, I became a truck driver. And I attempted to drive trucks only because a truck-- If  
15 any of you know about a truck, an eighteen-wheeler really handles just like a car when you're  
16 driving. It's not a car to steer or anything like that. So, as long as I was just sitting there, I  
17 could do the driving. I didn't, you know, have a lot of pain or anything like that just sitting.

18 And I started off driving a team so that way if there was any difficulty as far as lifting  
19 or anything like that my team person that I was driving with had agreed to do that part. And  
20 I took more of the administration part, you know, making sure our paperwork and everything  
21 was always correct. And they did the other part, any lifting that needed to be done and things  
22 like that.

23 So, I did that for about a year, but I stopped because I couldn't find a company that  
24 would get me back home. My children were much younger then. And they all promised to  
25 get you home, but they just never do it, you just don't get home. So, I put that aside, and I

1 said when they're older that's something that I can go back to doing because I've always like  
2 to travel and always like to do different things. And being a truck driver really gets you  
3 around the country.

4 Anyway, I married Tommy Wilson here when I moved to Georgia and he was also--  
5 We both decided to drive trucks together, but then when it didn't work out, we both came  
6 back home. He went back to being a police officer and I became a homemaker once again.

7 And, let's see. I'm trying not to bore you all either. Okay. So, I raised my children  
8 through home school. Since I was home, I home-schooled them. And then in the course of  
9 all of that me and Mr. Wilson got divorced.

10 Anyway, I home-schooled my children for a while until they were both able to go  
11 into-- My oldest son went to school in California, but the two younger ones were here and I  
12 home-schooled them and I put them back in school at about the eleventh grade so they could  
13 get a regular high school diploma.

14 It's a little different now, you know. It's so much more recognized that you probably  
15 wouldn't have to go through what I did when I was home-schooling them. So, anyway, I  
16 home-schooled them, put them back in school.

17 And when Juanita was going to high school I took another job and I began to work at  
18 the Avenue. I work at the Avenue as a sales person for extra money to cover different little  
19 high school things or whatever that would come up.

20 And I say that because that's when the injury happened. In July of '06 I was still  
21 working at the Avenue. And after the injury occurred I had to stop working at the Avenue  
22 because of the injury. My doctor had sent me back to work and said it was okay but I needed  
23 to have breaks in between. And because of the nature of the job where you are having to be  
24 out on the sales floor for most of the time, it was no way that they could give me, like, a

1 fifteen-minute, sit-down break, or a ten-minute sit-down break for every hour that I worked.

2 So, I ended up resigning from that position.

3 And I've always tried to maintain something on the side. Just because I was  
4 diagnosed with severe disabilities that caused me to be legally disabled and to receive Social  
5 Security, it was never quite enough to raise three children on that amount. So, I always tried  
6 to do some other sort of work.

7 And I don't know if you know much about Social Security, but you are allowed to  
8 work part-time while you are receiving Social Security. So, I did as much as I could. I  
9 would try and work to, you know, supplement that income for my family.

10 And, let's see. Okay. I currently am working a part-time job at a truck stop. And I  
11 do that because it's at night and I get to go to work at night which is a lot easier. With the  
12 fibromyalgia diagnosis and the pinched nerve diagnosis, the mornings are extremely difficult  
13 when it comes to getting up and being ready for the morning. In the case of this morning I  
14 had to be here at 9:30. I had to start waking up at about 6:30 just so I could make sure that  
15 my body was in motion and I would get here on time. And I believe my daughter, when she  
16 testified she told you some of that in her testimony also.

17 So, working there. I do other secretarial work and finance work at my church, which  
18 is a small stipend there, but it's mainly volunteer, the work that I do there. And.. Okay.

19 Now, to the accident. July 20, 2006, our church was going on a youth outing, our  
20 youth group was going on an outing. We had selected to go to Carowinds. Because I had  
21 already been diagnosed with a disability, I would tend to take the smaller children into the  
22 little, the little kiddie rides, you know, the little rinky-dink rides that don't go too fast, up too  
23 high, or nothing like that. because they want somebody to ride with them, so I would just  
24 ride with the kids mostly.

1           So, we were over in the Wild Thornberry-- It's not called Wild Thornberry section.  
2   It's the Rugrats, that's what it was. Like, all the little Rugrat-type, little rides, little kiddie  
3   rides. And so, we were over there and we had gotten on the log ride. I had myself, my  
4   daughter and about four other, smaller children with us.

5           And on the-- When you're entering the ride, if you have a disability they give you  
6   this little booklet that you take with you to each ride to certify that you get to get on at the  
7   different loading points differently from the rest of the population. And in this case, the Wild  
8   Thornberry ride had its own entrance for disabled patrons. Normally, the entrance you would  
9   enter, like, you would exit of a ride or something like that. but they have their own little  
10   enter and exit point just for people with disabilities.

11          And we had gone to Carowinds and we were there and I guess this may have been  
12   about the second ride, or third ride that we were getting on. And I don't exactly remember  
13   which number ride it was. But we had gotten on the ride and the ride went fine. It was not a  
14   problem. We had gotten on there. The attendant was there. He helped us get on, you know,  
15   held the boat steady and made sure we were all on safely and everything, knowing that it  
16   took more time for a person with disabilities to be able to get on.

17          And so, I got on the boat and we went on the ride. The ride was uneventful, just fun,  
18   not a problem. And as we were coming in at the end of the ride it was time for us to  
19   disembark. Well, of course, I was getting off last. The children had the end to get off first.  
20   And my daughter was standing with them as they were, you know, they were getting off.  
21   She was there watching because they were like I said, smaller children.

22          And so, I was getting ready to get off. And as I was getting off the ride I had my  
23   hand securely on the rail and one foot on the deck and one foot in the ride.

24          And I'd like to demonstrate that, Your Honor, if I can, just so they can see the  
25   position I was in.

1 (whereupon witness exits witness stand for demonstration in front of jury)

2 I believe everybody can see me from here. It's a little higher than what this is here.

3 But I had taken hold of the rail. There's a rail that come down and then you're in the log ride  
4 and then there's the dock which you step up on. So, I had taken hold of the rail. I stood up in  
5 the log ride, and I had taken one foot and placed it on the dock and got a hold of the rail.

6 And I was holding the rail really firm.

7 So, I was kind of like in an awkward position as it was getting out. So, one foot was  
8 there in the seat, the other foot on the dock. So, I was holding on really tight. I'm a little girl.  
9 I've got a lot of weight to pull up out of this boat. So, I was holding on and as I was about to  
10 step out, another log came in and struck the log that I was getting out of.

11 When that happened, because I-- With me holding on so tight here and my leg in  
12 position there, the leg that was in the log, when the log was struck by the other log, just kind  
13 of shifted that way. And this part of my body was still straight. But that part of my body  
14 went with the log. And it was like a jarring or a twisting to my, to my back and my leg.

15 And after that, I looked for the attendant and he started coming back towards where I  
16 was. He was, like, -- The way the ride is situated, you have this disabled side over here and  
17 you have the logs coming down onto it. It's separate from the general population side which  
18 would be like over by that column. And those logs are coming down into that area and then  
19 they get in that rotation and the deck is moving. So, they have time to get out while it's going  
20 around. But they're totally separate from this disabled side.

21 So, when I was exiting the log and the accident had occurred, I looked up to see  
22 where the attendant was and he began to come back towards where I was. And I know that  
23 my daughter, she said that she just heard me yell and she turned around. And I know she  
24 probably didn't see the accident because she was tending to the children as I was getting off

1 and her back was turned. So, but when she turned around all she could see was me in that  
2 position and waiting for this attendant to come.

3 So, I pulled myself out of the log and the attendant came on over. And I told him, I  
4 guess I was a little heated because I was, like, why didn't you tell me that the other log was  
5 coming in? Why didn't you say something? And he just stood there, and I'm, like, you  
6 know, if you'd just said, if you had told me something I could have sat down, I could have,  
7 you know, anything other than just stay in that position, you know.

8 And so, this is where, where Mr. Thoensen had gotten up and he was saying was  
9 there any negligence of anything involved. Well, the attendant that was supposed to be there  
10 that assisted me when I was getting on was the same attendant that should have been there  
11 when I was getting off. Or, someone in that position.

12 I mean, I can't say that it had to be the same person. That person could have went on  
13 break or did whatever. But someone should have been there at the ride to assist with the  
14 existing, even if it was only to say, you know, there's danger, you know, there's another log  
15 coming in, sit down, or you're about to be struck. Because you can see the log coming from  
16 afar off.

17 And if you're there and you're monitoring the logs that are coming in then you can  
18 see if you look up, the flume, you can see that they're gonna come down and you know  
19 which one when you're in a disabled location. Because they have to send them off in certain  
20 order so, you know, you wouldn't have them just piling up on you. So, they would make you  
21 wait, then they'd send it off, wait, send it off, that type thing.

22 So, they saw-- If they were in the position they should have been, because I can't say  
23 they saw it if they weren't there. If they had have been in the position they should have been  
24 in, they would have seen that other log coming down, and that would have given them plenty  
25 of time to tell me, brace yourself or sit down, because this log might bump your log or it

1 might hit your log as it's coming in, because, you know, for whatever reason they wouldn't be  
2 able to stop it. I still don't know why they couldn't stop it, but I didn't know the function of  
3 the ride, so I don't know, you know, where the brakes are and all of that. I didn't know any of  
4 that.

5 So, I could only testify to you to what I did know and that is when I got on I had  
6 assistance to get on the ride. When I got off there was no one there. And he came over after  
7 I called for him. And I think my daughter mentioned that in her testimony, that she saw me  
8 calling for the attendant. And I don't know if she seen him walk over to me or not. I don't  
9 remember that part, if she said it or not.

10 But he finally came over and I told him that I wanted to file an accident report. I  
11 went in-- Got off the ride, walked down the stairs and sat down at a little cement, like, it's  
12 like a little cement, look like they had flowers \*(end of B6B) a border or whatever, and I  
13 went and sat on that. And it took a long time for them to come and help me. We were there  
14 for about, oh, I don't know, maybe about twenty minutes or so. And it was so much so that I  
15 had to use my cell phone to call back into the park to tell them that I had been injured at the  
16 park and where I was. Because I don't know why the people at the ride itself-- I guess they  
17 didn't call or anything.

18 So, they did respond once I called back into the park. They did send a security-- I  
19 believe a security person came over first and then the first aid people came over and at that  
20 time they offered me-- They offered me to go to the hospital and I told them no, because I  
21 really didn't think that it was gonna be that bad. I really just thought, you know, maybe I just  
22 jarred my hip some, no need of ruining everybody else's fun. Because, you know, we're here,  
23 if I go to the hospital it's gonna be ruined. That's all I cold think of.

24 So, I'm, like, okay, no need in ruining everything. You guys give me the ice pack, I'll  
25 put the ice pack. So, they gave me several ice packs. They gave me several packs of, not

1     Advil, but ibuprofen, and told me I could get more, just come over to the first aid place if I  
2     needed more ice, or another ice pack, or more ibuprofen or whatever, just come over and get  
3     it and it wouldn't be a problem. And they also gave me a motorized seat to ride in through  
4     the rest of the day, through the park. So, I was able to continue throughout the park.

5             I did stay at the park and I rode around. I took the Motrin or the ibuprofen and used  
6     the ice packs, and I rode around in the little cart.

7             The next day when I got home, that night I was still in some pain. The next day I got  
8     up and I went to the emergency room. And I saw the doctor at the emergency room. He  
9     gave me some pain medication and muscle relaxers and said for me to go to my regular  
10    doctor, which I did. I went to my regular doctor who then referred to some physical therapy  
11    because all the time we're still thinking it's my hip because that's where the pain was  
12    localized at that time, was in the hip and in the thigh.

13            And so, I went from-- My doctor, referred me to physical therapy. Then after some  
14    physical therapy, in the midst of the therapy it began to hurt more. And I was, like, wait a  
15    minute, we don't need to move this anymore. Then he referred me to the orthopedic doctor.  
16    And I told him where the pain was and he put me in some of those kind of moves that the  
17    therapy to, I guess, to test for different things. And he determined by those tests this is not a  
18    hip problem, this is a nerve problem. It's your back, it's a neurological problem.

19            And that's when I was referred to Doctor Abramson's office, who also did some  
20    therapy and then determined that this was going to be a chronic problem and referred me to  
21    pain management, and Doctor Downey, whose testimony we just read in.

22            Mr. Thoensen had said that none of my doctors would be here or anything like that.  
23    And, well, Doctor Downey was here in spirit and letter and word, but not in person. And  
24    honestly, the reason that he wasn't here in person, the reason I wanted to deal with him  
25    specifically is, one, he had the records of everyone else, and he's the person that's been

1 treating me for over five years. So, he's the one that's really seeing me for this particular  
2 condition.

3 I continued to see my regular doctor for the fibromyalgia and other conditions that  
4 were going on with me. But Doctor Downey was basically treating for the pinched nerve in  
5 the back and that's what related to this particular case, and that's why I chose to have the  
6 deposition of Doctor Downey. And just to let you know, for him to testify, it was something  
7 like \$20,000. Because if he had to close his office he was entitled to any monies that he  
8 would have made by having to be in court. At least that's what I was told when I was asking.  
9 And even the deposition was, like, \$1200 to do that, just to sit there and ask questions.

10 So, it's a lot of expense involved. And once again, you know, I have a income from  
11 Social Security disability and then a little on the side with a part-time job. So, I had to  
12 consider what I felt was the most important to my case, and that would have been the doctor  
13 who had been treating me the longest for the injury, and that was Doctor Downey.

14 And about the arthritis. Doctor Downey had said that there was some pre-existing  
15 arthritis. Well, at first, when I heard that I thought that something additionally was wrong  
16 with me. You know, something else had happened, like, where did I get arthritis from. And  
17 so, when I found out, though, through his deposition and through my visits with him that  
18 arthritis was a normal thing, that just about everyone over thirty has some arthritis. And I  
19 didn't know that. So, it wasn't like it was something special for me to have this wear and tear  
20 going on. We all have this wear and tear in our bodies. So, that wasn't anything that was so  
21 abnormal to my case as far as my injury goes.

22 And a couple of times different people from Carowinds and things like that, that I  
23 have spoken with, have had, like, I should say, kind of insinuated---

24 Mr. Thoensen: Objection to hearsay evidence, Your Honor, to what anyone else told  
25 her that's not here."

1 Ms. Wilson: I can't---

2 The Court: Sustained. You can't testify to what someone else told you who's not  
3 present.

4 Ms. Wilson: Okay, okay. Can I say I heard?

5 The Court: No ma'am.

6 Ms. Wilson: Okay. Well, I'll just say it like this: It's-- You've heard that I have been  
7 diagnosed with fibromyalgia, and there's pain all over the body with fibromyalgia. And then  
8 I have this pain that it's associated with the pinched nerve in my back, which occurred at  
9 Carowinds. And so, there is a difference in-- The only I can....

10 It's like if you have headache. If I were to have a migraine headache and I'm in  
11 serious pain, and then someone came up to me and hit me aside my head with a brick, I will  
12 still know the difference in between what occurred with the brick and what was already  
13 going on with the migraine. And the only way I can kind of describe having something  
14 already going on in my body physically that deals with a lot of pain and then having an  
15 additional injury come in that puts pain in somewhat similar areas, it's still a difference. And  
16 so, I wanted to bring that point out.

17 Let's see. Okay. I had requested a large sum of money from Carowinds when we  
18 were in the beginning negotiations.

19 Mr. Thoensen: I object to any statement that compromises the settlement, Your  
20 Honor. It's inappropriate.

21 The Court: Sustained.

22 Mr. Thoensen: Thank you.

23 The Court: I can't allow anything regarding negotiations.

24 Ms. Wilson: I wasn't gong to say anything about our negotiations.

1           The Court: Well, you started to talk about your-- Go ahead. You can discuss your  
2 demands.

3           Ms. Wilson: That's what I was gonna say.

4           The Court: All right. You can do that.

5           Ms. Wilson: Okay. And I had wrote a letter requesting a large sum of money from  
6 them regarding the injury. And the reason I had asked for such an exuberant amount-- I  
7 mean, it was a very large amount. And it was almost like a million dollars. And I told them, I  
8 said, well, the thing that's gong on is that if I hadn't had this injury I could go and drive trucks  
9 now that my children are grown, after my daughter had graduated from high school. I could  
10 go drive trucks then. She graduated in '06.

11           I could have easily said, well, okay, she's gonna go off to school or whatever the case  
12 may be, and I could have gone back into that profession. But because of the injury, I can't go  
13 into that profession. Even though I still have a license I can't sit in the truck. It's, like,  
14 constant vibration. So, they took that away from me in this injury. That was taken away  
15 from me, the ability to do that.

16           And then with the sales, if I wanted to have a full-time in retail that's no longer  
17 available to me. Because I have to stand to do retail work. I can't stand for hours like that  
18 any more. You know, prolonged sitting, even. You know, I can't. I can only do it for any  
19 position for a short period of time and then I have to move. And that's why I--

20           Your Honor, I don't mean any disrespect, but I can't stand up right now. We had  
21 gotten into a point, you know, where when you ask a question, you have to stand up. So, it  
22 felt like I was doing some kind of exercise for a moment. And I was, like, Your Honor, can I  
23 just please sit down. I don't mean any disrespect. And I appreciate him allowing me to do  
24 that.

1           And, anyway, so that was why I brought up the things about being a truck driver and  
2   the other jobs that I held because part of the reason I asked them for such an exuberant  
3   amount because I felt these things had been taken away from me. And this was, like, the loss  
4   of life, the loss of the ability to do things that were going on in my life. I could no longer do  
5   them, you know. I could no longer do anything that required prolonged any position.

6           You know, I can't even sleep for a long period of time. I have to move. I have to get  
7   up. I can't lay in that one position for too long. You know, then you have to move.

8           And, let's see. I guess that's everything. Do I get the opportunity re-direct myself?

9           The Court: No.

10          Ms. Wilson: Okay.

11          The Court: You'll have the opportunity to cross examine.

12          Ms. Wilson: Yes sir. Right. I just wanted to find out do I get to come back and say  
13   anything else.

14          The Court: Let's get there and see what happens.

15          Ms. Wilson: Okay.

16          The Court: All right.

17          Ms. Wilson: And, let me see.

18          The Court: Are you ready for Mr. Thoensen?

19          Ms. Wilson: I believe so.

20          The Court: Mr. Thoensen.

21          Mr. Thoensen: Thank you, Your Honor. May it please the court?

22          The Court: Yes sir.

23

24

25

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

2   Q           Ms. Wilson, good morning.

3   A           Good morning.

4   Q           Let me ask you this first: Before the incident at Carowinds in the summer of  
5           2006, when's the last time you tried to get a job as a truck driver?

6   A           I don't remember the exact date. Remember, I had said that I had stopped  
7           working as a truck driver until my children were older and I was gonna do it once  
8           they had gotten older. And my daughter was graduating in '06, so she would have  
9           been the last one, you know, to be out of school, that I would go ahead and even  
10          attempt to go back to that work.

11  Q           So, it had been several years. Correct?

12  A           Certainly.

13  Q           Okay. We heard the testimony of Doctor Downey and he described the  
14          arthritis you had in the lower back before the incident. Correct?

15  A           Yes sir.

16  Q           And he also described a condition known as disk desiccation in your lower  
17          back.

18  A           Uh-huh.

19  Q           Do you recall that testimony?

20  A           Certainly.

21  Q           And that is certainly a condition in addition to the arthritis. It wasn't just the  
22          arthritis. Correct? You also had a disk problem?

23  A           No.

24  Q           Is that right?

25  A           No.

1 Q You think arthritis and disk desiccation is the same thing?

2 A I think that they went together. And my explanation from the way he  
3 described it to me, it was that that was a degenerative thing that went along with that,  
4 yes.

5 Q And both of those conditions were present in your lower back before the  
6 incident occurred. That's correct?

7 A As far as I know.

8 Q And your primary complaint resulting from the incident at Carowinds is pain  
9 in your lower back? Correct?

10 A No. It's the pinched nerve in my lower back.

11 Q Does that cause you pain?

12 A And that causes the pain the lower back. And it's not just my lower back. It's  
13 also my thigh on down into my leg, just, you know, not going quite all the way into  
14 my foot.

15 Q Okay. And you heard Doctor Downey's testimony that as your treating  
16 physician he has not placed any limitation on any physical activities that he would or  
17 would not recommend you to do. Correct?

18 A Yes. But that's only because we had already discussed the things that I was  
19 doing. So, it was not on me to limit things that I was not doing any longer.

20 Q And so, Doctor Downey didn't recommend any limitations on those. Correct?

21 A He didn't have to limit things that I wasn't doing already. We had discussed  
22 that I were already doing because I wasn't referred to him until, like, ten months after  
23 I had had the treatment with other physicians. So, by the time I got to Doctor  
24 Downey he was treating the pain. I didn't have to be limited in anything because I  
25 already knew what my limitations were.

1 Q Let me just ask you to respond to this question, please.

2 A Okay.

3 Q Has Doctor Downey placed any limitations on any activities that you should  
4 or should not do, as your treating physician?

5 A Yes.

6 Q Do you recall his testimony that he gave under oath where he said he has not?

7 A Well, he hadn't then because we had discussed them in the beginning and we  
8 knew what they were. So, he didn't have to-- In other words,-- I don't understand.  
9 You're trying to get me to say that Doctor Downey didn't place limitations on me. but  
10 the thing is, is that Doctor Downey didn't have to place the limitations on something  
11 that was already limited.

12 That's just like saying is Doctor Downey going to boil the water, did he boil  
13 the water for you, and the water's already boiling.

14 Mr. Thoensen: Your Honor, would you instruct the witness to answer the  
15 question, please?

16 The Court: Answer his question directly and then you can explain.

17 A Yes sir.

18 Q I'm not trying to get you to say anything. Doctor Downey himself said it  
19 under oath, didn't he?

20 A Yes.

21 Q Okay. Now, you had ridden this Wild Thornberry River Adventure log flume  
22 ride before you had this incident. Correct?

23 A What do you mean?

24 Q You'd been on this ride before. On the date of your incident, that was not the  
25 first time you had ever ridden this. Correct?

1 A I don't remember. I have ridden a log flume ride before. But I don't  
2 remember if it was the Wild Thornberry ride.

3 Q Do you recall-- when I took your deposition in March of last year, do you re  
4 recall testifying that you had ridden this exact ride on several occasions in the past?

5 A Oh, it had not been several occasions. I've only been to Carowinds twice in  
6 my life. So, it has been several occasions. So, no, I wouldn't have said that back in  
7 March.

8 Q Okay.

9 A Huh-uh.

10 Q Okay.

11 Mr. Thoensen: Your Honor, I may need to present the original transcript of  
12 the deposition.

13 The Court: Yes sir.

14 Mr. Thoensen: Okay. Is your practice to open it?

15 The Court: You can do it.

16 Mr. Thoensen: (opening deposition)

17 Q Ms. Wilson, I'm handing you the original sealed transcript---

18 A Sure.

19 Q ---of your deposition---

20 A Uh-huh.

21 Q ---in March of last year.

22 A Yes sir.

23 Q If you will please turn to page 73 of the transcript.

24 A (witness turns to page 73)

25 Q On line 20.

- 1 A (witness looking at page 73)
- 2 Q Are you there?
- 3 A Uh-huh.
- 4 Q Okay. The question on page 73, line 20 is:
- 5 "Q Thank you. Had you ridden on this particular ride before. this log
- 6 flume ride?"
- 7 Please read the answer.
- 8 A "I believe I had."
- 9 Q Okay, thank you.
- 10 A But I wasn't sure, even then. That's why I said I believe I had.
- 11 Q Thank you.
- 12 A Uh-huh.
- 13 Q And you understood this was not a kiddie ride. Correct?
- 14 A No. But it was over the in the little, kiddie area. I knew it wasn't a wild thrill
- 15 ride. You had other rides in Carowinds park that were much more, you know, as far
- 16 as like being a thrill, big thrill and all that.
- 17 Q And so, having been on this ride before, and having observed the rides in the
- 18 park, you understood that you would experience changes in speed, changes in
- 19 elevation, changes in direction on this ride before you got on it. Correct?
- 20 A Sure.
- 21 Q Okay. And you had observed the boats or logs coming into the loading and
- 22 unloading station before. Correct? You'd seen that?
- 23 A Yeah, in my life.
- 24 Q Okay.
- 25 A I wasn't there observing them that day.

- 1 Q Sure. But you'd seen that before. July 20, 2006 was not the first time you'd  
2 seen that.
- 3 A At Carowinds.
- 4 Q Right.
- 5 A Okay.
- 6 Q Now, the attendant on this ride at the time of your incident, ---
- 7 A Uh-huh.
- 8 Q ---he was holding your log steady as you exited the ride. Correct?
- 9 A No. He wasn't there.
- 10 Q I'll ask you again to turn to your deposition. If you will turn to page 76,  
11 please. At line 21. Do you see that?
- 12 A Yes.
- 13 Q Okay. I'm gonna read the question on page 76, line 21.  
14 "Prior to that point, what had this young man been doing to assist you??  
15 Please read the answer.
- 16 Ms. Dicks Wilson: Your Honor, may I approach?
- 17 The Court: Yes ma'am. I'll excuse the jury. Please go back to the jury room  
18 and do not discuss the case. If you need anything, let the bailiff know.
- 19 (whereupon the jury exited the courtroom)
- 20 Go ahead, Ms. Wilson.
- 21 Ms. Dicks Wilson: In this deposition, which you don't have.
- 22 Mr. Thoensen: I'll hand you a copy.
- 23 Court Reporter: Turn around so I can see you.
- 24 The Court: Speak up, now.

1 Ms. Dicks Wilson: I'm sorry. Okay. The part that he wanted me to read, he  
2 said can I read line 21. And it says, "Prior to that point, what had this young man  
3 been doing to assist you?"

4 No, no. He wants me to read line 23. I'm sorry. And it says, "He just  
5 stabilized the log and was standing there. So, I guess he was doing all that he could  
6 have at that point to assist me. I did not ask him to take me out of the log."

7 And he says, right here I told him, just right before that in seven, it says, the  
8 question is: "Okay. In subsection A, you allege that Carowinds failed to properly  
9 staff, to man the entering and exiting of the ride. However, you just testified a few  
10 moments ago, that entering and exiting of the ride in fact was staffed by a young man  
11 while you were there. Correct?" I said yes.

12 "So, the allegation is not true. Isn't that right?

13 "No, that's not right."

14 "Explain to me how the allegation is true in the context of your previous  
15 testimony."

16 "Okay. The young man was there to help like I said, to get on the ride.  
17 However, at the point of my exiting and being struck by the other log, he was not  
18 there."

19 And so, it's like he wants me to just read certain parts---

20 The Court: Hold on.

21 Ms. Dicks Wilson: I'm sorry.

22 Mr. Thoensen: I think the way this initially came about was I asked Ms.  
23 Wilson a specific question about what the ride attendant was doing as she was exiting  
24 the boat.

25 The Court: Correct.

1           Mr. Thoensen: Her testimony on that specific point on the witness stand in  
2           the trial of this case was contradictory to her testimony in her deposition on that same  
3           specific point.

4           The Court: All right.

5           Mr. Thoensen: That was the only issue I was trying to get at, without  
6           expanding this to some issue of completeness or fairness. That wasn't my intention  
7           but that would be up to you.

8           The Court: One other reason is that's what's appropriate. I mean, you don't  
9           carve out something that helps you and leave out something that hurts you.

10          Mr. Thoensen: I---

11          The Court: I'm not saying this hurts you or helps you. I'm just saying that  
12          you don't do in an effort to make it complete. Of course, that would be something  
13          that a lawyer would do on redirect.

14          Mr. Thoensen: So, here's the thing, Ms. Wilson.

15          Ms. Dicks Wilson: Yes sir.

16          The Court: He can ask you the question he asked you, and---

17          Ms. Dicks Wilson: All right.

18          The Court: ---ask you to respond, to read that response.

19          Ms. Dicks Wilson: Uh-huh.

20          The Court: And you have to read that.

21          Ms. Dicks Wilson: Okay.

22          The Court: Then, on redirect, which you will have a chance to do, you can  
23          then say well,--- Is that question, is that leading up to or after the response?

24          Mr. Thoensen: The portion she read was before.

1           The Court: Well, you can say, prior to him asking me that question, this is  
2           what he asked me and this is how I responded.

3           Ms. Dicks Wilson: Okay. Will I be able to use this---

4           The Court: Yes.

5           Ms. Dicks Wilson: So, it'll be entered in.

6           The Court: No, let's not enter it in.

7           Ms. Dicks Wilson: I mean, use it to-- He was talking from this, is what I'm  
8           getting at.

9           The Court: Yes ma'am.

10          Ms. Dicks Wilson: And I didn't know if I had the opportunity to redirect.  
11          That what I was asking earlier.

12          The Court: Yes ma'am.

13          Ms. Dicks Wilson: Okay. I'm okay.

14          The Court: But here's the thing: He does get to pick out parts to ask you  
15          regarding the issues.

16          Ms. Dicks Wilson: Yes sir.

17          The Court: And then you can redirect. Let's go ahead and get these ground  
18          rules in order.

19          Ms. Dicks Wilson: Yes sir.

20          The Court: You're not reading this entire deposition.

21          Ms. Dicks Wilson: Yes sir.

22          The Court: He asked you that question. You have this response that was prior  
23          to that question he asked.

24          Ms. Dicks Wilson: Yes sir.

4 The Court: You can address---

6 The Court: ---that on your redirect. You can address the issues that he raised.

8 Mr. Thoensen: And, again, it came about on specific---

9 The Court: Yes, you are absolutely in line with asking your question and it's  
10 appropriate.

11 Mr. Thoensen: Okay.

12 The Court: No doubt about it, absolutely appropriate. But, yes, she does have  
13 the opportunity to redirect, put in that portion prior to that. All right.

14 While the jury's out, does anybody else need a break?

15 Court Reporter: Yes sir.

16 The Court: Okay, we'll take a short recess.

17 (whereupon court was in recess)

18 COURT IN SESSION

19 The Court: Bring the jury in, please.

20 (whereupon the jury entered the courtroom)

21 All right, ladies and gentlemen, we are ready to resume our testimony. As  
22 you will recall, Mr. Thoensen was cross-examining Ms. Wilson.

23                    You may resume, Mr. Thoensen.

24 Mr. Thoensen: Thank you, Your Honor.

1           **RESUMPTION OF CROSS EXAMINATION BY MR. THOENSEN:**

2       Q           Ms. Wilson, when we left off a few minutes ago I had asked you if the ride  
3           attendant on this log flume ride at the time you were getting off the ride---

4       A           Uh-huh.

5       Q           ---if he was present and holding your log steady as you got off, and you  
6           testified that he was not.

7       A           Yes.

8       Q           I then directed your attention to page 76 of your deposition that was taken last  
9           March. Do you recall that?

10      A           Yes sir.

11      Q           So, I'd like to pick up there on page 76, at line 21. Are you there?

12      A           Yes sir.

13      Q           The question asked was:

14                   "Prior to that point what had this young man been doing to assist you?"

15                   Please read the answer.

16      A           "He just stabilized the log and was standing there. So, I guess he was doing  
17           all that he could have at that point to assist me. I did ask him to take me out of the  
18           log.

19      Q           Thank you. Now, you were actually getting off the log you had your back  
20           turned to the attendant. Correct?

21      A           I would say yes. I don't know where he was. So, I would say that my back  
22           was turned to everyone---

23      Q           So, you couldn't see---

24      A           ---operating the ride.

25      Q           You couldn't see where he was or what he was doing, could you?

1 A Well, I knew he wasn't there. I mean, I did look back. It's not like—My back  
2 was turned but I did look. So, he was no longer there.

3 Q With your back to him you don't know what he was doing. Right?

4 A I know that he was no longer there. I don't know what he was doing.

5 Q Thank you.

6 A Uh-huh.

7 Q Have you seen any job qualifications, any training manuals that attendants  
8 from this ride have to review when they're being trained how to operate the ride?

9 A No.

10 Q So, you can't testify today that any of the attendants on that ride were doing  
11 anything in violation of any of their training materials because you haven't seen them.  
12 Right?

13 A I have not seen the training materials, but---

14 Q Okay.

15 A ---I did see the information that was given to me as a disabled patron. And it  
16 had instructions in it as to what the attendants were to be doing.

17 Q Okay.

18 A Uh-huh.

19 Q Do you have any knowledge or information that this ride somehow  
20 malfunctioned at the time of your incident?

21 A No, I don't.

22 Q Okay. Your testimony was that the incident was a matter of you shifting  
23 forward or shift positions. Correct?

1 A Well, I don't know if I'd describe it like that. It kind of twisted my body, sort  
2 of, because of the stabilized foot that was in the log that was struck by the other log,  
3 and it moved while the rest of my body did not move.

4 Q You didn't fall down, did you?

5 A No. I was holding on too tight.

6 Q And you didn't hit the railing or hit the deck or anything like that?

7 A No. I was holding on really right because, as I said, I'm not a little person.  
8 So, I was prepared to pull my weight up out of the log.

9 Q Would you agree with me that as the boats enter the unloading station that  
10 they're moving pretty slowly?

11 A I'm not really sure.

12 Q More slowly than they move during the course of the ride.

13 A Certainly.

14 Q And you didn't ask anyone for assistance in helping you out of the boat, did  
15 you?

16 A He was already....

17 Q Did you ask anyone for assisting in helping you out of the boat?

18 A There was no one to ask.

19 Q Did you---

20 A I'll put it that way.

21 Q Did you try to find anybody?

22 A No.

23 Q So, at some point after his happened you reported the incident to Carowinds.  
24 Correct?

25 A Immediately after it happened.

1 Q And they gave you some over-the-counter pain reliever, some ice packs, and a  
2 scooter. Right?

3 A Uh-huh.

4 Q And you---

5 A Correct.

6 Q And you stayed in the part the rest of the day. Right?

7 A Correct.

8 Q I don't have any further questions for you at this time. Thank you.

9 The Court: You may address the issues raised on cross on redirect.

10 Ms. Dicks Wilson: Okay.

11 **REDIRECT EXAMINATION IN NARRATIVE FORM:**

12 One of the things -- and I hope I'm doing this right -- Mr. Thoensen had me  
13 read from my deposition was about the attendant being there and I think that it was  
14 necessary to hear the whole part of that conversation. And it was... Let's see... On  
15 page 76, he had me read from. And... The Judge has already directed me not to be  
16 too lengthy with this. I'm just trying to see where.... It says...

17 I'm gonna just at line 12. I know you guys are no gonna read from the same  
18 material that he had given me to answer from. And it says: "But you don't know  
19 what he did because you had your back to him. Correct? And my answer was: "I  
20 know that he was not there because when I was struck by the log I turned and looked  
21 and he was way over on the other side. So he couldn't have just been translated from  
22 that spot to that spot. I know that it was no way he could have remained until I safely  
23 exited because I had not safely exited and he was not there."

24 And then it goes: "Prior to this point had this young, what had this young  
25 man been doing to assist you?" "He just stabilized the log and was standing there.

1           So, I guess he was doing all that he could have at that point to assist, at that point to  
2           assist me. I did not ask him to take me out of the log.”

3           “You also did not ask him to remain in his position until you were out of the  
4           log, did you?” And I said, “I didn’t need to ask him to remain. That was his job to  
5           remain until I safe entered and exited.”

6           “Have you seen the job qualifications or instruction training manual for a log  
7           flume attendant at Carowinds?” “No, I have not seen that.”

8           “So, you are speculating as to what his job duties might have been. Correct?”  
9           And it says, “I am speculating but only in regards to what it says in their little  
10          pamphlet, that if you ride a ride and you enter on the disabled side, that they will  
11          assist you in entering and exiting and more times to get on and off. These are thing  
12          that they will—These are things that they say will occur for you. So, if he was the  
13          one that was doing it, I just assumed he would do the job, that it says, you know, he  
14          would be the one to enforce the provision that they say would have for you.”

15          “And he did in fact assist you in exiting the log, didn’t he?” And my answer  
16          was: “Not completely, no.”

17          And that’s it.

18          The Court: All right. Thank you very much. Anything further?

19          Ms. Dicks Wilson: Uh---

20          The Court: In response to cross?

21          Ms. Dicks Wilson: Well, I don’t know what I can say, before I can say about  
22          the negotiations. Right?

23          The Court: You can tell the jury what you think they need to know.

24          Ms. Dicks Wilson: Okay.

1                   And due to – and I'll just tell you – due to my ignorance of this process I was  
2                   not able to enter my medical bills that you would see that I could bring in as evidence.  
3                   So, I'm gonna---

4                   Mr. Thoensen: Your Honor, I'm going to note an objection that this is not in  
5                   the proffer of anything that was brought out on cross examination.

6                   The Court: I'll sustain that. You can testify as to what your medical bills  
7                   were. You can testify as to the damages. You don't need to editorialize or talk about  
8                   your inexperience with the system.

9                   Ms. Dicks Wilson: Yes sir.

10                  The Court: Just testify as to what those are.

11                  Ms. Dicks Wilson: Yes sir.

12                  The Court: All right?

13                  Ms. Dicks Wilson: Yes sir.

14                  My damages as far as my medical bills are concerned were, are approximately  
15                  \$20,000. And they're ongoing. I'm still currently in treatment with Doctor Downey  
16                  for pain management.

17                  And as far as other damages, life and things that I had to change and adapt to,  
18                  I believe that the monetary amount for that would be \$150,000.

19                  The Court: Thank you very much.

20                  **(end of narrative cross examination)**

21                  The Court: Do you have any further witnesses or any further testimony, Ms.  
22                  Wilson?

23                  Ms. Dicks Wilson: No sir.

24                  The Court: So, I assume the plaintiff rests. Is that correct?

25                  Ms. Dicks Wilson: Yes, Your Honor.

1           The Court: Thank you, ma'am. All right. Ladies and gentlemen, Ms. Wilson  
2           has rested her case. So, at this point, I'm required to take up matters of law with the  
3           attorneys. It's about twenty-three minutes after twelve. So, I'm going to break at this  
4           time for lunch and excuse you to go to lunch. Then upon your return, we'll resume.

5           Now, ladies and gentlemen, as you leave-- Just as you left last night, when  
6           you leave the courthouse, enjoy your lunch, put this out of your mind. Don't allow  
7           anyone to talk with you about the case. Don't talk with anyone about the case. Just  
8           enjoy your lunch break. And then when you get back, we'll resume the case.

9           Let's see, if I could get you to get back here at a quarter to two. Okay? That  
10          gives you a little over an hour for lunch. If you will be back at a quarter to two, we'll  
11          get started and reconvene. Okay? Be back in your jury room at a quarter to two.

12          Everyone else remain in the courtroom while the jury exits.

13          (whereupon the jury exited the court for the lunch recess)

14          All right. At this time I'll take up any motions.

15          Mr. Thoensen: Thank you, Your Honor. At this time the defense would  
16          move for a directed verdict as to the plaintiff's sole claim of negligence that she's  
17          alleged against Carowinds. The basis for the motion is that there has not been any  
18          evidence introduced in this case that any Carowinds employee or representative acted  
19          in violation of any policy or procedure or regulation.

20          In fact, no policy, procedure or regulation regarding the conduct and the duty  
21          of Carowinds employees has even been introduced. And so, certainly, there hasn't  
22          been any evidence introduced that any of those folks were in violation of any of those  
23          policies.

1 And so, that goes specifically to the breach element on the claim of  
2 negligence. There simply hasn't been evidence introduced that Carowinds breached  
3 any duty to the plaintiff.

4 Additionally, there has not been any evidence introduced specifically as to  
5 what the plaintiff's damages are. There's not been a single medical bill that's been  
6 introduced into evidence. The plaintiff just told the jury that she had \$20,000 in  
7 medical bills. However, there has not been any evidence, either by testimony or by  
8 reference that would allow this jury to link those damages in that amount to this  
9 injury.

10 There has not been any causable testimony from any treating physician.  
11 There's been not a single bill introduced into evidence. So, in order for this jury on  
12 this record to award anything, let alone what the plaintiff herself has asked them to  
13 award, they would have to speculate. That would be completely conjecture and that's  
14 no appropriate.

15 The evidence has not been submitted that would support any finding of  
16 negligence and any causation of plaintiff's damages on the part of Carowinds.

17 The Court: Well, as far as the negligence issue, that's, you know, ... This is  
18 difficult, Ms. Wilson, because there's so much more that could and should have been  
19 done. But, there was testimony by Ms. Wilson regarding-- I can't remember what  
20 she said, there was a sign or whether it was made known that on the area where  
21 people are stable, there would be somebody there to help them on and off. And even  
22 though, it may be conflicting, she told you that there was a fellow there and she  
23 mentioned-- Earlier she said there was no one there.

24 So, there is some testimony, depending on how the jury would view it, as to  
25 whether or not there was negligence on the part of the defendant-employee by not

1 being there, not being available to assist her. It's a weight issue and it will have to go  
2 to jury, the existence or non-existence of that issue.

3 I was also concerned regarding the medical issues, the medical bills. Ms.  
4 Wilson again testified that the, about her medical costs. And even though I think  
5 there's ample case law to let that go to the jury and see how the jury would treat that  
6 and whether the jury would require something more than that for her to carry her  
7 burden of proof. Again, I think it's a weight issue and needs to go to the jury.

8 As you well aware, in a directed verdict situation, the court is not concerned  
9 with the weight of the evidence, just with the existence of it. And I don't agree. It's  
10 slight here, but there evidence in the record, depending on what weight the jury  
11 should give it. So, I'm going to deny your motion.

12 Mr. Thoensen: Thank you, Your Honor.

13 The Court: Now, let's see... You have Mr. Bailey.

14 Mr. Thoensen: Yes, Your Honor.

15 The Court: And you have what you need?

16 Mr. Thoensen: Yes sir.

17 The Court: All right. Ms. Wilson, I mentioned earlier about defense's  
18 exhibits, what they're intending to use, and you had not seen those, or whatever. This  
19 will be a break that you can review those items.

20 Ms. Dicks Wilson: Yes sir, thank you.

21 The Court: And I know that y'all need to have lunch. So, I'm not gonna say  
22 that you need to stay here and do that. You can go to lunch, but try to get back a little  
23 early so you can do that.

24 Ms. Dicks Wilson: No, I'm gonna stay in for that.

1           The Court: Okay. Anyway, that will give you an opportunity to look that  
2           over. We have no talked about the jury charge. I don't know that you have any  
3           requests, specific requests to charge. I doubt you'd have any experience with that at  
4           all.

5           Ms. Dicks Wilson: No sir.

6           The Court: Mr. Thoensen, do you have any requests?

7           Mr. Thoensen: I have. I don't think they've been handed up yet, but I do  
8           have some.

9           The Court: I'd like to get those from you so I can review those---

10          Mr. Thoensen: Sure.

11          The Court: ---so, I can review those, ---

12          Mr. Thoensen: Sure.

13          The Court: ---look at those. What I have done, not necessarily for you, Mr.  
14          Wilson. But what I have pulled from my charges are the typical charges that are  
15          associated with negligence actions. So, I've incorporated those charges into my  
16          charges to the jury, defining what negligence is, what proximate cause is, and those  
17          things. And I'll give you a copy of that.

18          Mr. Thoensen: May I approach, Your Honor?

19          The Court: Yes.

20          Mr. Thoensen: And I'm handing Ms. Wilson a copy of defendant's request to  
21          charge also.

22          The Court: All right. Thank you.

23          Mr. Thoensen: And Your Honor, on those, typically what I do just to keep up  
24          with the way I was trained -- and this is a fairly simple negligence case -- I've also  
25          included two request questions. Essentially, a suggested verdict form.

1 The Court: Okay.

2 Mr. Thoensen: And as to all the requests to charge, those obviously would be  
3 up to your discretion. But those are included.

4 The Court: All right. Now, Ms. Wilson, let me clarify the situation. I don't  
5 want you to be offended by anything that was said. When Mr. Thoensen said this is a  
6 rather simple negligence case, he didn't mean that it's not important. It's just in  
7 terms of legal issues it's a fairly straightforward case.

8 Ms. Dicks Wilson: Yes sir.

9 The Court: Obviously, it's important to all parties. But you can look over  
10 those charges that he's requested. I can just tell you very quickly, I do have a charge  
11 regarding that a corporation is entitled to the same fair trial. It's not worded exactly  
12 what you have in here, but it's basically supports that premise.

13 Mr. Thoensen: Okay.

14 The Court: You have the language regarding that the case cannot be based on  
15 sympathy, passion and other items that are not found in the evidence. The damages  
16 are not left to conjecture. Mitigation language is, I think appropriate.

17 Ms. Dicks Wilson: I have a question about the defendant's request for  
18 instructions, Number 8, the assumption of risk.

19 The Court: All right.. That is a defense that's been alleged. What is your  
20 question?

21 Ms. Dicks Wilson: I'm just wondering, does this go in because he wants it in  
22 there, he wants to say this?

23 The Court: No. If it goes in at all, it's because the facts support it; support  
24 the charge, not support, not-- In other words, assumption of risk, there's four  
25 elements in establishing assumption of risk. Plaintiff must have knowledge of the

1 facts constituting the dangerous condition. Plaintiff must know the condition is  
2 dangerous. Plaintiff must appreciate the nature and the extent of the danger.  
3 Plaintiff's responsibility in exposing himself to the danger.

4 I'm trying to see the language I've got. Their position basically, Ms. Wilson,  
5 is this: And that is, that you've seen log flume rides in the past and you've testified  
6 that you've been on them. You understand how they operate and what risks there are  
7 in getting on a log flume ride.

8 Ms. Dicks Wilson: Yes sir.

9 The Court: Okay? And understanding that, you assume those risks and you  
10 rode the ride. And that's what they're saying. It's up to a jury to decide whether or  
11 not this rises to the level of absolving them of any negligent conduct. It's a jury  
12 question, it's a jury issue.

13 Ms. Dicks Wilson: Okay.

14 The Court: Okay?

15 Ms. Dicks Wilson: So, it's something that they will hear?

16 The Court: They'll hear, they'll have to consider---

17 Ms. Dicks Wilson: I understand.

18 The Court: ---based on the evidence that has been presented, they'll have to  
19 consider whether or not that rises to the level of absolving them of any---

20 Ms. Dicks Wilson: Okay.

21 The Court: ---due care.

22 Ms. Dicks Wilson: Okay.

23 The Court: I'm trying to look and see whether.... Anyway, we'll go over that  
24 in detail when we get back. I was just trying to give you some idea as I went through,  
25 at least through Number 4, is it appropriate, and I already have that in my charge.

1 Mr. Thoensen: Okay.

2 The Court: And I'll look at the others. Of course, the elements of negligence,  
3 I've got those, they're in there, Number 6.

4 Mr. Thoensen: Yes sir.

5 The Court: Proximate cause, I've got a charge on proximate cause, which is  
6 all negligence cases. Let me ask you, Mr. Thoensen, could you contact your offices  
7 and have them email these to me?

8 Mr. Thoensen: Yes sir, I could.

9 The Court: And the reason I ask, most of them I've got. And I would  
10 probably use mine that I've already got in there.

11 Mr. Thoensen: Sure.

12 The Court: But a couple of them, if I don't have it, I would use your  
13 language---

14 Mr. Thoensen: Okay.

15 The Court: ---if I find it to be appropriate.

16 Mr. Thoensen: Yes sir.

17 The Court: And it would be a lot easier, since I'm not a typist, ---

18 Mr. Thoensen: Right.

19 The Court: ---to cut and paste rather than, rather than me having to type it.

20 Mr. Thoensen: And you'd like those emailed---

21 The Court: Yes.

22 Mr. Thoensen: ---in Word, Microsoft Word format?

23 The Court: In Word format.

24 Mr. Thoensen: Okay.

25 The Court: And I'll give you my... Here's my email address.

1 Mr. Thoensen: No problem.

2 The Court: Now, here's what I'm gonna do during the lunch break. I'm  
3 gonna come up with a charge and I'm gonna provide a copy for the two of you to  
4 look at. And then again, we can discuss it in greater length at that time. And I'll also  
5 prepare a verdict form and give you and we will discuss that as well. We'll have  
6 those discussions in more detail in the closing of the case.

7 So, during the lunch break, take a lunch break, and look over whatever you  
8 want to look over, Ms. Wilson. And I'll be working on the charge, at least what I  
9 believe to be a final form, but it won't be a final form until we have chance to review  
10 it and talk about it. Okay?

11 Mr. Thoensen: Thank you.

12 The Court: All right.

13 (whereupon court was in lunch recess)

14 **COURT IN SESSION**

15 The Court: Anything before we get started?

16 Ms. Dicks Wilson: Yes sir. With the information that I was given to look  
17 over that the defense wants to enter into evidence, there was a page on the back of the  
18 incident report that I don't remember seeing. And I-- As far as the person's  
19 statement. So, I didn't know if I can object to that being entered as far as what the  
20 statement says. There's no way to contest it, what was said.

21 The Court: Well, what---

22 Ms. Dicks Wilson: And it certainly doesn't look like the person, the same  
23 person wrote it. So, ...

24 Mr. Thoensen: Your Honor, it's a first aid report that documented the  
25 instrument. And attached to it and as a part of the report, there's a statement from a

1 Carowinds employee explaining what happened and what action she took. And, you  
2 know, it-- When I attempt to enter that into evidence, if she has an objection to that--

3 What I'm gonna try to do is lay a foundation for the document through Mr.  
4 Bailey. That's the entire incident report and all the attachments are records that are  
5 ordinarily kept in the business of Carowinds and that Mr. Bailey is a custodian of  
6 such records including that specific record and then have him discuss it.

7 If this is sort of an informal proffer that's what it would be.

8 The Court: Okay. Well, let me go ahead-- While the jury's out, let me go  
9 ahead and treat Ms. Wilson's question as an objection.

10 Mr. Thoensen: Yes sir.

11 The Court: She's asking that she go ahead and object.

12 Mr. Thoensen: Sure.

13 The Court: And I'm assuming you're gonna object to that---

14 Ms. Dicks Wilson: Yes sir.

15 The Court: ---as hearsay?

16 Ms. Dicks Wilson: Yes sir.

17 The Court: All right.

18 Mr. Thoensen: Would the court like to see the document?

19 The Court: I need it, yes. If you would, please just let me look at the exhibit  
20 you intend to try to enter.

21 Ms. Dicks Wilson: May I approach?

22 The Court: Well, I'll just look at it, and---

23 Ms. Dicks Wilson: All right.

24 The Court: ---any questions I'll ask and I'm sure y'all can verify it.

25 (pause for court to review document)

1           The Court: All right. I've reviewed the document. Go ahead.

2           Mr. Thoensen: Yes sir. The argument in favor of this document's  
3           admissibility would be that it is an exception to the hearsay rule and falls under Rule  
4           8036 of the South Carolina Rules of Evidence, which allows for the admission of a  
5           memorandum, report, record, or data compilation in any form made at or near the  
6           time by or for information transmitted by a person with knowledge if kept in the court  
7           of a regularly conducted business activity, and if it was the regular practice of that  
8           business activity to make the memorandum, report, record, or data compilation.

9           And as the foundation for that document's coming in as an exception to the  
10          hearsay rule under 8036, Mr. Bailey would testify that he is in fact the custodian of  
11          that record; that records like that, including that specific record, are ordinarily kept in  
12          the business of the park; and that the document was prepared by someone with  
13          knowledge of the situation and he can identify people who prepared them and what  
14          their role is. And then, as the custodian of that record he can then talk about its  
15          content.

16          So, in short, it's a business record exception and Mr. Bailey is the custodian of  
17          that record.

18          The Court: And the testimony that you anticipate is this individual who gave  
19          this statement was a employee of Carowinds---

20          Mr. Thoensen: Yes sir.

21          The Court: Works at the park there, and their function is records custodian of  
22          the incidents at the park?

23          Mr. Thoensen: Yes sir. And Mr. Bailey can identify the person who prepared  
24          that, what he role is, and attest to the fact that she is the person who would normally  
25          create such a report in the course of her business on behalf of the park.

1 The Court: Ms. Wilson?

2 Ms. Dicks Wilson: Yes sir.

3 The Court: I'll be happy to hear from you.

4 Ms. Dicks Wilson: Yes sir.

5 The Court: It is an exception to the hearsay rule under the business records  
6 exception. It is hearsay, in other words.

7 Ms. Dicks Wilson: Yes sir.

8 The Court: But it does fall under the business records exception under Rule  
9 8036. Is there any other-- Do you know of any other reason why it would not be  
10 admissible other than hearsay?

11 Ms. Dicks Wilson: Yes sir. I wasn't planning on objecting to the document.  
12 I'm not objecting to the incident report itself. I'm objecting to that statement that was  
13 attached at the end of it because there is nothing in the document to say that there is a  
14 continuation of the statement that was attached.

15 Before my computer and things were stolen after I was at court last time, the  
16 report, the part of the report that I had did not have the statement, as I recall, on the  
17 end of it that said those things. And just now when I was looking at it, I noticed that  
18 the handwriting was different, and even down to the signature being different, even  
19 the initials being different, where Ms., I think it was Ms. Seitz was her name. She  
20 initialed in certain places, RMS, and then RS.

21 Then if you look on the attached document to the incident report the  
22 handwriting is different than the handwriting she began with on the front of the report  
23 and the signatures are different.

24 I'm not an expert. I can't say that two different people did this. I'm just  
25 saying that that particular document was not on my accident report that I recall

1 receiving. And I don't remember seeing it when we were in court before when I  
2 looked at it. I could have looked at it quickly, looked at the front and assumed it was  
3 something else.

4 But because I did get an opportunity to look at it in depth today, the part that  
5 I'm really objecting to is that additional piece of information that looked like it may  
6 have been added and I don't have any knowledge of that.

7 The Court: Well, I'm gonna allow Mr. Thoensen to examine the witness as to  
8 the document and if a proper foundation is laid, then I am gonna allow it in. As far as  
9 the issues you raised about it, you can certainly cross examine the witness as to that  
10 and, you know, if he-- And this is the way it is with witnesses: I'm assuming Mr.  
11 Bailey is the witness who will testify, and if Mr. Bailey testifies he's the keeper of  
12 these records and that this is kept in the normal course of business and that this is the  
13 record and here's a complete record, the thing whether or not you got a copy of it or  
14 whether or not you content the signatures and such, those are questions of fact for a  
15 jury to decide.

16 You can question Mr. Bailey and cross examine him. That's the whole reason  
17 for cross examination. It doesn't go necessarily to the admissibility. The jury can  
18 give whatever weight they think it deserves.

19 So, I've not heard anything that would cause me to believe that it's not  
20 admissible. It does appear, assuming that they lay the proper foundation, it does  
21 appear that it will fit under the business exception rule, Rule 8036.

22 So, if the proper foundation is laid, and Mr. Bailey jumps through the hoops,  
23 so to speak, then I will allow it.

24 Mr. Thoensen: Thank you, Your Honor.

25 The Court: Anything else before we bring in the jury?

1 Ms. Dicks Wilson: No sir.

2 The Court: Let me hand each one of you-- If you would, Mr. Hinson, hand  
3 each of them a copy.

4 Bailiff Hinson: Yes, Your Honor.

5 The Court: This is a proposed charge. This is not a final charge. Okay?  
6 We'll talk about the final charge-- I mean, we'll talk about the charge at the close of  
7 the evidence. This is just something that I've got, that I have prepared for you to look  
8 through and we'll talk about it in more detail at the close of the case. Okay?

9 Mr. Thoensen: Thank you.

10 The Court: Anything else before we get started?

11 Mr. Thoensen: No sir.

12 Ms. Dicks Wilson: No sir.

13 The Court: All right. Let's bring the jury out.

14 (whereupon the jury entered the courtroom)

15 All right, ladies and gentlemen. I want to thank you all very much for being  
16 so patient with us while we took care of some matter.

17 If you will recall, when we took the break for lunch, Ms. Wilson had rested  
18 the plaintiff's case, and I took up matters of law that I am required to take up at the  
19 close of the plaintiff's case. So, now, we will look to Mr. Thoensen on behalf of the  
20 defense and allow them to put up whatever case they can put up.

21 Mr. Thoensen.

22 Mr. Thoensen: Thank you, Your Honor. The defense will call Ed Bailey.

23 The Court: Mr. Bailey, please come up and be sworn.

24

25

EDWARD KEITH BAILEY, duly sworn,

testified as follows:

**DIRECT EXAMINATION BY MR. THOENSEN:**

Q Mr. Bailey, can you introduce yourself to the jury and give them a little bit of background about yourself?

A Sure. My name is Edward Keith Bailey. I've worked at Carowinds for, this is my twenty-first operating season with the park. Sixteen of those years have been full-time. The others were seasonal. I worked into the security department, moved into the safety department. Working there, I've been in the safety department now for about seventeen years and just recently was promoted and received, got the security department back. So, I'm in the process of learning a new department again.

Q And so, what's your current title at the park?

A My current title is the Safety and Security Manager.

Q As briefly as you can, will you described your day-to-day duties and activities in that role?

A Sure. An operating day, basically it's managing the first aid department. Also managing our safety inspectors, the security staff. Pretty much moving around the park performing inspections audits, addressing safety issues with the appropriate person, department, or guest.

And then also I perform investigations as part of my work with the first aid department as well.

Q So, part of your job would be to investigate claims of injuries that occur in the park?

A Yes sir. I manage both workers' comp and general liability claims.

1 Q Can you give us an overview of how you go about investigating an injury,  
2 how it is documented, what are the steps?

3 A Okay. It initiates with, contact with our first aid department. Our first aid  
4 department will document the incident on a first aid report. There is a notification  
5 process where we notify the departments who are involved or where the area of the  
6 incident occurred.

7 And then generally, upon notification, we'll go out to the site and do a site  
8 visit, take a look at any particular evidence that we may be able to still have in place.  
9 As you can imagine, sometimes with moving vehicles and things like that, the  
10 evidence may have moved on.

11 But then, also, we go back through the documentation of the actual checkout  
12 sheet and things like that for, if it's a ride event, so that we can make sure that  
13 everything is, was appropriate and operating the way that it's supposed to be doing.

14 We also get our ride operations team to come out and observe the ride,  
15 because they are in charge of the ride as far as the operation goes and we allow them  
16 to give us their determination as to whether or not they feel the ride is operating as it  
17 was designed to .

18 Q Thank you. Are you familiar with the Wild Thornberry's River Adventure as  
19 it existed in the summer of 2006?

20 A Yes sir.

21 Q And let me just, so the jury understands this now: That ride isn't in the park  
22 anymore, is it?

23 A No, it was removed.

24 Q Explain to the jury why it was taken out.

1 A It was removed for a new product to be installed in 2009, which is a  
2 partnership with Dale Earnhardt Enterprises, called the Intimidator. It's a-- The  
3 Intimidator is a rollercoaster that takes a little over a mile of track. So, we needed all  
4 the space that we could get and, unfortunately, the log flume was retired.

5 Q Can you describe for members of the jury that maybe haven't seen or maybe  
6 haven't been on this ride, generally, what type of ride it is.

7 A Okay. It's a log flume ride. It's a medium speed type of ride. Basically, you  
8 will-- Four people to five people will enter the car. It's obviously themed like a log  
9 flume. And they'll enter the car in a station at the load stand section. And then the  
10 log will float to a lift. It will go up a lift.

11 Then it kind of meanders around to what we call the spillway area where  
12 there's a break. And then there's a little drop. And then it meanders around to the lift  
13 two. And at the end of lift two, once you get up to the top, that's where the big splash  
14 happens at the bottom of the hill.

15 From there it runs out and back into the unload portion of the station.

16 Q Can a rider on this ride, would they expect to encounter changes in speed  
17 throughout the course of the ride?

18 A Yes sir, they would. Anytime it goes up a lift and comes off of that lift, it  
19 would speed up. It would also, depending on the curves of the track itself, would  
20 change speed. I would probably classify that as a fast walking speed to a medium  
21 walking speed, except for where it's on the downhill run.

22 Q And through some of the turns would the boat or the log tend to change  
23 directions rapidly at times?

24 A Sure. Part of the thrill of the ride is when it's going through the froth it's  
25 gonna make contact with the froth because it's not like a roller coaster on a guide

1 system that would convey it along. So, it would be, you would get-- The front of the  
2 boat may bump and, in a turn, things like that.

3 Q Is it fair to say that a rider on this ride could expect to be jostled around or  
4 skewed somewhat?

5 A Yeah, you would. When the boat makes contact, obviously you would go  
6 from side to side. And obviously, when you're in a situation where the boat's going  
7 down a hill, would splash at the bottom of the hill, there would be a forward motion.  
8 And then obviously, they could go back and then the boat comes back and planes out.

9 Q As a guest enters this ride, either on the disabled side or the non-disabled side,  
10 is the guest able to observe this ride as they're approaching it before they get on?

11 A In both locations, yes sir.

12 Q And is a guest able to observe the loading and unloading process at that time?

13 A The plaintiff in this case claims that her injury occurred when another log  
14 came in behind hers at the unload station and made contact with hers. Do you  
15 remember that testimony?

16 A Yes sir.

17 Q Is contact between the boats in that unload area, is that uncommon?

18 A It's not uncommon for log flume boats to bump at different staging points  
19 throughout the ride.

20 Q Can you estimate the speed of the boats once the ride is completed, as they're  
21 drifting in to the unload area?

22 A At that point in time it is slower. It is much slower than a walking pace.

23 Q Are these ride attendants, specifically on this ride, are they instructed or  
24 trained in any way with regard to boats making contact?

1 A We do train the associates not to attempt to stop the boat. The boat is actually  
2 stopped in a break and then the boat that comes behind would bump into the next  
3 boat. For the safety of the associate, for them not to be thrown into the trough, or to  
4 be injured, they are not to run up and stop the boat, or stop the boat from bumping.

5 Q Mr. Bailey, in preparation for your testimony today, did you create a video of  
6 this ride?

7 A Yes sir. We searched U-tube and found some footage that appears to be from  
8 the same time frame.

9 Q Did you bring that video with you today?

10 A Yes sir, it is here today.

11 Q To the best of your knowledge, is this DVD the video that you created?

12 A Yes sir.

13 Mr. Thoensen: Your Honor, at this time, what I ask is that this video be  
14 admitted as Defendant's Exhibit Number One. And my intention is to show it to the  
15 jury and have Mr. Bailey explain it, subject to any objections the plaintiff may have.

16 The Court: Any objection?

17 Ms. Dicks Wilson: No objection.

18 The Court: All right. Without objection, it'll be in evidence.

19 (Whereupon Defendant's Exhibit Number One was admitted into evidence without  
20 objection)

21 Do you intend to show that now?

22 Mr. Thoensen: Yes sir.

23 The Court: All right. Mr. Bailey, I would just ask, sir-- You're certainly free  
24 to go down and answer any questions or make any commentary. But please, if you

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

3 A Understood.

4 The Court: Thank you, sir.

5 Q You're free to come around.

6 A Thank you.

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

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

11 (Whereupon video is played for the jury)

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

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

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

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

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

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

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

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

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

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

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

11 (Whereupon witness returns to witness stand)

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

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

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

16 A That's my understanding, yes.

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

18 The Court: Yes sir.

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

21 A Okay.

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

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

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

1 A Down in the lower left-hand corner it is. It appears to be 2006.

2 Q So, to the best of your knowledge, would this disability guide have been the  
3 guide that was in use at the time of the plaintiff's incident?

4 A Yes sir.

5 Mr. Thoensen: Your Honor, at this time we would move the Carowinds'  
6 Guide For Guests With Disabilities be admitted as Defendant's Exhibit Number Two.

7 The Court: Any objection?

8 Ms. Dicks Wilson: No sir.

9 The Court: All right. Without objection.

10 (Whereupon Defendant's Exhibit Number Two was admitted into evidence without  
11 objection)

12 Q Mr. Bailey, if you will hand that to the court reporter she will mark it and give  
13 it right back to you.

14 (Whereupon Defendant's Exhibit Number One was marked by the court  
15 reporter and returned to the witness)

16 Q Mr. Bailey, what kind of information generally can a guest with disabilities  
17 learn from this guide?

18 A Basically, the information that's contained in here describes every ride in the  
19 park. It gives you kind of a basic outline of what the ride is and the type of  
20 movement and speeds that you can expect.

21 We have a ride rating system that's also reflected in this guide. And that  
22 system starts off with one and goes all the way to a four, to give the guests an  
23 opportunity to kind of determine what types of rides that they want.

24 Children's rides would typically be a one, maybe a two if there are certain  
25 types of changes in direction, elevation, transit.

1           The medium-speed thrill rides and rollercoasters would obviously be three,  
2           four, and now with The Intimidator, five.

3    Q           Okay. If you'll look at page two of this guide, is that where a guest with  
4           disabilities can find some of the general information they need to know about the  
5           park?

6    A           Yes, it does outline that information.

7    Q           And specifically, if you'll look at number four at the bottom of that page,  
8           would you please read that for the jury?

9    A           Number Four: Ride operators will assist by providing instructions on how to  
10           board the ride. For everyone's safety Paramount Carowinds personnel are not  
11           allowed to physically help guests from wheelchairs to the ride vehicle. As a result,  
12           guests with disabilities should plan to visit the park with someone who can assist  
13           them when necessary.

14   Q           So, is it your understanding that guests with disabilities are given instructions  
15           and information that they'll need to go about the park?

16   A           Yes.

17   Q           What does this guide tell us about the Wild Thornberrys River Adventure,  
18           which is on page nineteen?

19   A           Basically it describes the ride, describes the medical restrictions, which come  
20           from the ride manufacturer and also the rating of the ride; where does it exit; and  
21           what the height requirements are and what type of body control is required.

22   Q           As far as the rating you described, how is this ride rated?

23   A           This ride is rated as a three.

24   Q           And what's your understanding of what a three means?

1 A Three, again, I think it's a medium speed. There may be some side to side  
2 action. There may be changes in speed, changes in direction. And also it would  
3 require upper body control, which they would have to be able to maintain their safety  
4 in the ride.

5 Q And that's essentially what it says here on the ride description. Correct?

6 A Yes sir.

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

8 The Court: Yes sir.

9 Q Mr. Bailey, I'm now handing you another document. Would you please  
10 identify that for us and tell us what it is?

11 A Yes. The title of the document is Paramount Carowinds Wild Thornberrys  
12 Ride Training Manual. It lists Park Operations Division, Rides Department, 2006;  
13 last revision date is listed as March 21, 2006.

14 Q How are you familiar with this document?

15 A All our rides from our Ride Operations Department, all of our rides have a  
16 ride training manual which they use to both train and to certify their ride attendants  
17 on the  
18 ride.

19 Q So, this type of document would be kept in the ordinary course of the park's  
20 business and it's specifically something that you would encounter in your job.  
21 Correct?

22 A It is. It's also generated from the ride manufacturer for recommendations and  
23 requirements as well.

24 Q And does this particular ride training manual have a date of publication on it?

25 A March 21, 2006.

1 Q So, to the best of your knowledge, would this have been the training manual  
2 that was applicable to the Wild Thornberrys Ride at the time of the plaintiff's  
3 incident?

4 A Yes sir, it is.

5 Mr. Thoensen: Your Honor, at this time I would move the Paramount  
6 Carowinds Wild Thornberrys Ride Training Manual be admitted into evidence as  
7 Defendant's Exhibit Number Three.

8 The Court: Any objection?

9 Ms. Dicks Wilson: No sir.

10 The Court: All right. Without objection.

11 (Whereupon Defendant's Exhibit Number Three was admitted into evidence without  
12 objection)

13 Q Mr. Bailey, please turn to page ten of that document.

14 A Okay.

15 Q What kind of information do you find on page ten?

16 A Page ten is the Unloader and Co-Dispatch Operator and Handler Information  
17 basically instruction for people who are acting as unloaders.

18 Q Is this a guide on the basic duties and responsibilities of attendants with regard  
19 to loading and unloading?

20 A It is.

21 Q Do you see the heading there that says Operational Procedure?

22 A Yes.

23 Q If you will look down to Number Two under that heading and please read that  
24 to the jury.

1 A "Number Two: When the boat has safely stopped on the unloading brake  
2 assist the guests out of the boat and direct them to the exit up the stairs and to their  
3 left."

4 Q What does it mean to assist the guests out of the boat?

5 A They give them verbal directions.

6 Q And you've already told us that they're specifically instructed not to touch a  
7 guest. Correct?

8 A They're not to touch a guest.

9 Q So, the assistance out of the boat would be, the ride is over, please move  
10 towards the exit?

11 A Yes sir.

12 Ms. Dicks Wilson: I object, Your Honor?

13 The Court: What?

14 Ms. Dicks Wilson: He's asking a question that's that's his definition of  
15 what's meant by assist in the training manual. And there's nothing here to say that  
16 it's his definition of assist.

17 The Court: He can ask him what his understanding is. You can cross  
18 examine him on that.

19 Ms. Dicks Wilson: Yes sir.

20 The Court: Overruled.

21 Q Mr. Bailey, in your role at the park would you have the opportunity to review  
22 training materials for the defendant?

23 A Yes sir.

24 Q And would you in the ordinary course of your work become familiar with  
25 those manuals?

- 1 A Yes sir.
- 2 Q And so, is it fair to say that you would have an understanding as to what is  
3 meant by the instruction in the manual?
- 4 A Yes sir.
- 5 Mr. Thoensen: May I approach the witness, Your Honor?
- 6 The Court: Yes sir.
- 7 Q The same process here, Mr. Bailey.
- 8 A Okay.
- 9 Q I'm handing you another document. Please tell us what that is.
- 10 A This is the Ride Operator's Daily Check List. The second page is the Daily  
11 Inspection Check List, which is done by our maintenance team.
- 12 Q Is this a document which is ordinarily kept in the business of operating the  
13 park?
- 14 A Yes, it is.
- 15 Q And is it a document that you would have reason to review or become  
16 familiar with in your role?
- 17 A Yes sir.
- 18 Q Can you tell us specifically what ride and for what dates this check list is  
19 applicable?
- 20 A Yes sir. It's the Wild Thornberrys River Adventure, and that's listed on both  
21 sheets.
- 22 Q Is there a date on this report?
- 23 A Yes sir, there is, 7/20/2006.
- 24 Q To the best of your knowledge, that's the date of the plaintiff's incident.  
25 Correct?

1 A That's correct.

2 Mr. Thoensen: Your Honor, at this time, I would move that the Ride  
3 Operations Daily Operator's Check List be admitted into evidence as Defendant's  
4 Exhibit Four.

5 The Court: Any objection?

6 Ms. Dicks Wilson: No sir.

7 The Court: All right. Without objection.

8 (Whereupon Defendant's Exhibit Number Four was admitted into evidence without  
9 objection)

10 Q Mr. Bailey, please give the jury a basic overview of what information is  
11 found in this report.

12 A Okay. I'm going to start with the maintenance because that's what we do first  
13 in the morning.

14 Q And is that the second page?

15 A That is the second page.

16 Q All right.

17 A Basically, every day the rides are inspected. Generally, they actually do an  
18 inspection three times. The first time is a mechanical inspection. They go through  
19 and inspect the boats. They inspect the operations. They actually walk the ride in a  
20 dry form. And then in addition to the mechanic who will come in and do that, our  
21 electricians will also come in and test and verify all the ride controls.

22 And then they'll basically plug the system, or turn the pumps on. And then  
23 they'll test run the ride. That's what this sheet basically reflects, in addition to the  
24 inspections on the boats and which boats were actually on the course during the day.

1 Q On the second page of that report that you were just talking about, that's what  
2 you're calling the maintenance inspection?

3 A Yes sir.

4 Q Is there anything indicated in that report that would suggest that anything was  
5 unusual or out of order with the ride on the date of the incident?

6 A No sir, there isn't.

7 Q And will you please explain to the jury what's reflected on the first page?

8 A Sure. The first portion of the inspection is actually the ride operator's. And  
9 they come and where they may not necessarily walk the trough in a dry form, we  
10 don't allow them to perform that type of hazardous work.

11 But we do have them go through and check the rides, the visual for  
12 cleanliness. Also to make sure that they're operating, they'll do-- They'll actually  
13 repeat a number of the safety testing. In this situation block, testing, they'll verify  
14 fire extinguishers are there.

15 Very generally, they're trying to make sure that the ride is up and ready to  
16 operate safely.

17 Q With regard to the first page of this report is there anything on this page that  
18 suggests anything unusual or out of order with the ride?

19 A No sir.

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

21 The Court: Yes sir.

22 Q Mr. Bailey, please take a look at that document and tell us what it is.

23 A This is a First Aid Report. It has multiple pages. The second page is incident  
24 information. The third page is a medical\* form. The fourth page is a basic  
25 continuation of the third.

1 Q Just generally speaking, is a document like this something that is ordinarily  
2 kept in the course of Carowinds business?

3 A Yes sir, it is.

4 Q Are you the person at the park that would have primary responsibility for  
5 keeping these documents and reviewing them?

6 A Yes, I do.

7 Q To the best of your knowledge, does this particular report reflect an  
8 investigation into the incident that the plaintiff has complained of?

9 A Yes.

10 Mr. Thoensen: Your Honor, at this time, I would move that the First Aid  
11 Report be admitted into evidence as Defendant's Number Five.

12 The Court: Ms. Wilson had an objection earlier, and I overruled it at that  
13 time, and that ruling will stand.  
14 (Whereupon Defendant's Exhibit Number Five was admitted into evidence without  
15 objection)

16 Q I'll ask you, Mr. Bailey, if you will allow the court reporter to mark that and  
17 she will hand that right back to you.

18 (whereupon Defendant's Exhibit Number Five was marked by the court  
19 reporter)

20 So, just give us a general idea on the first page here, what kind of information  
21 can we get from this report?

22 A Basically the name and address and contact information for the guest. Their  
23 date of birth, their height, their weight. Basically, the incident, the information about  
24 what they say occurred that resulted in their injury. The physically or observed

1 findings of the first aid associate. And then the description of services. There's also  
2 medical history information.

3 Q In the section on the first page where it says Incident Information, what does  
4 that say there?

5 A Patient states when she was getting out of the boat it was struck from behind  
6 by another boat, causing her body to turn.

7 Q Then under the section, Nature of Injury, what does it say down there?

8 A Pain to the right hip, groin area, positive for capillary refills, negative for  
9 deformities, negative for bruising. The MSC is the abbreviation for muscle sensory  
10 function.

11 Q And that's all indicated as positive?

12 A Yes.

13 Q Is there any indication in this report of any back pain at all?

14 A No sir, there is not.

15 Q If you'll turn to the second page of this report. What additional information  
16 do we find on that page?

17 A Basically, this is some incident information that we request our first aid folks  
18 to gather any time that there's a complaint, particularly on a ride.

19 Q And what specifically about this incident do we find documented here on the  
20 second page?

21 A Basically the information regarding the initial person who investigated, what  
22 occurred, and a notification of the ride operations group to go and check the boat or  
23 check the operation. Also, some rider information regarding the ride, the number of  
24 times the patient has ridden the ride, the last date of the last ride, and their  
25 recollection of safety instructions.

1 Q What does this report indicate specifically with regard to Ms. Wilson as to  
2 those categories?

3 A The number of times the patient has ridden the ride, was a few. Date of last  
4 ride, last year. Patient's recollection of safety instruction are uncertain.

5 Q And we turn to the next page which is the first aid refusal form. Explain to us  
6 generally what that is.

7 A Basically, Carowinds first aid is truly that; it is a first aid service. We ask all  
8 guests if they want further treatment, such as calling an ambulance for them to be  
9 transported to a facility.

10 In this situation, our medical controller has given us a document that basically  
11 he wants us to cover the information there and ask all the questions to verify that the  
12 person is alert and oriented to time, place and themselves. And then they're asked to  
13 sign the information.

14 Q There's no indication on this form that the plaintiff requested an ambulance.  
15 Is that correct?

16 A That's correct.

17 Q Okay. This first aid refusal form is signed by someone named Rhonda Seitz.  
18 Do you know who that is?

19 A Yes sir. Rhonda Seitz was the first aid supervisor on duty on the date of  
20 7/20/2006.

21 Q Would it be the normal course of her business to create the report like this?

22 A Yes.

23 Q And as we turn to the last page of this incident report does that appear to be a  
24 statement about this incident prepared by Ms. Seitz?

25 A Yes, it does.

1 Q Would it be in the ordinary course of her business to prepare a written  
2 statement in connection with the incident report and the first aid report?

3 A Yes, it is.

4 Q And in your role as safety manager, would you be the person responsible for  
5 reviewing, keeping and storing documents like this?

6 A Yes sir, I am.

7 Q Tell us generally what this written statement reflects about the incident.

8 A The statement reflects that there was-- At the time of the injury there was an  
9 associate by the name of Wyatt that was standing next to her. Basically after the boat  
10 struck the boat she was in she requested first aid be notified. And then it goes on to  
11 say that the guest says that she waited at least thirty minutes. When no one had  
12 arrived, she called the park on her cell phone and notified first aid herself.

13 First aid received the call from the guest and then they, I'm sorry, but was not  
14 found.

15 Q And the last paragraph of that statement, would you just please read that?

16 A Can I correct something?

17 Q Yes.

18 A But was not notified by anyone else was the last statement.

19 Q Okay.

20 A The last paragraph: Guest also states she heard the associate say something  
21 before the boat struck but was unable to hear or understand what he said.

22 Q So, this report indicates that an attendant was present at the time of the  
23 incident and did try to communicate something to the plaintiff. Is that right?

24 A Yes sir.

1 Q And it indicates that the plaintiff may not have heard or understood what he  
2 said. Correct?

3 A Correct.

4 Q And I do have one more document.

5 Mr. Thoensen: Approach the witness, Your Honor?

6 The Court: Yes sir.

7 Q Mr. Bailey, please identify that for us if you can.

8 A Okay. These are examples of the information that are depicted on the Wild  
9 Thornberrys River Adventure fun and safety signs, fun and safety guide, which is the  
10 information that parallels the guests with disabilities guide that's placed-- There's  
11 one sign placed on the entrance of the park, or the entrance of the ride. And then  
12 there's a separate location for guests with disabilities to enter, for instance, up the  
13 exit. A second sign would be placed at the exit and that's a smaller sign.

14 Q So, is this document a representation of signage that the guests would see as  
15 they either enter or exit this ride?

16 A As they enter, yes sir.

17 Q As they enter the ride.

18 A Yes sir.

19 Q Is this type of information stuff that you would have responsibility for  
20 reviewing and keeping in your role as safety manager?

21 A I do review the information.

22 Q To the best of your knowledge, is this specific information applicable to the  
23 Wild Thornberry River Adventure?

24 A Yes sir.

1 Mr. Thoensen: Your Honor, at this time I would ask that the River Adventure  
2 Fun and Safety Guide be entered into evidence as Defendant's Exhibit Six.

3 The Court: Any objection?

4 Ms. Dicks Wilson: No objection.

5 The Court: All right. Without objection, it'll be in evidence.

6 (Whereupon Defendant's Exhibit Number Six was admitted into evidence without  
7 objection)

8 Q So, Mr. Bailey, give us a general overview of what we've learned about the  
9 ride from this signage information.

10 A Okay. There is a description of the ride in text. There is also riding  
11 instructions for the riders. Again, the classification of one to four, and now one to  
12 five classification of thrill rides. This is a three. The rider requirements. Those are  
13 generally defined by the manufacturer themselves. Any medical recommendations  
14 under industry practices and the manufacturer themselves. And then any additional  
15 information that we would request that we would want our riders to know may also  
16 be put there.

17 Q Does a sign like this tell us anything about guests who might require  
18 assistance with the ride?

19 A Yes. In the ride requirements section, guests who require assistance must be  
20 accompanied by a responsible person who is able to provide that assistance.

21 Q And so, this information would be displayed for the guests to see and review  
22 upon entering the ride. Correct?

23 A That would be at the front of the flume ride.

24 Q Mr. Bailey, you have heard the plaintiff's testimony and you have an  
25 understanding of how this incident occurred. Correct?

1 A Yes.

2 Q And tell us again how long you've been working at Carowinds.

3 A This is my twenty-first operating year.

4 Q Have you ever seen or heard of another incident on this ride resulting in an  
5 injury in the way plaintiff claims she was injured?

6 A No sir.

7 Q I don't have anything further for you right now. Thank you very much.

8 Please answer anything Ms. Wilson might have for you.

9 Mr. Thoensen: Your Honor, permission to publish those exhibits at this time  
10 to the jury.

11 The Court: Yes sir.

12 Mr. Thoensen: Thank you.

13 (whereupon exhibits were published to the jury.

14 The Court: Cross examination.

15 Ms. Dicks Wilson: Thank you, Your Honor.

16 **CROSS EXAMINATION BY MS. DICKS WILSON:**

17 Q I have a few questions for you.

18 A Okay.

19 Q Mr. Bailey, what was your position in 2006?

20 A In 2006 I was the safety manager.

21 Q You were the safety manager.

22 A Yes ma'am.

23 Q And what's your position now?

24 A I'm the safety and security manager.

25 Q Safety and security manager?

- 1 A Yes ma'am.
- 2 Q So, then you were just over safety?
- 3 A Yes ma'am.
- 4 Q Were you over the first aid at that time?
- 5 A Yes ma'am.
- 6 Q Were you working the day of the accident, July 20, 2006?
- 7 A I am unsure about that particular date.
- 8 Q My questions may be a little out of order. So, just bear with me.
- 9 When was the log flume retired?
- 10 A The summer of 2008.
- 11 Q Okay. So, it was retired two years before the other ride was to go in?
- 12 A No. The other ride went in in 2009.
- 13 Q Oh, 2009. I thought you said 2010. I apologize.
- 14 And in looking at the video that you were explaining, I know that Mr.
- 15 Thoensen said that you might encounter unexpected movement and fast changes and
- 16 things like that. I note that it was a little girl that was in the video.
- 17 Did you notice when we were looking at the video that her body made a lot of
- 18 sudden changes or, you know, anything like that?
- 19 A When the boat made contact I did see her body move.
- 20 Q Did her body move in a real forceful manner, in your opinion, or did it just
- 21 kind of move because it kind of bumped gently against the side?
- 22 A In the bump segment that I recall it was, she was pretty much stationary, and
- 23 she moved over to the side. I don't recall that as forceful.
- 24 Q So, it was a slight movement? Would you say that it was just a slight
- 25 movement?

1 A It was more of a slight movement. It was a noticeable movement.

2 Q It was a noticeable movement?

3 A Yes ma'am.

4 Q I know that you're not a doctor or anything like that, but I just wanted to ask  
5 you did you think that that noticeable movement caused that young girl any harm?

6 Mr. Thoensen: Objection. That calls for speculation.

7 The Court: Sustained.

8 Q Mr. Thoensen said that there had not been any accidents of this nature  
9 reported on that ride until I made the particular report of an accident. Were there any  
10 other accidents on the flume ride that you know of, of any type?

11 A There were other injuries that were alleged that were not related to a load.

12 Q That were not, what?

13 A That were not related to a load or unload.

14 Q Can you tell me about those other injuries that were alleged?

15 A I'm aware of a fractured iron that resulted at the bottom of lift two. When the  
16 boat contacted the water the child was braced against the intermediary support of the  
17 hand rail, and a heavier person behind her came forward, causing the arm to go  
18 forward, and it basically fractured the arm.

19 Q Is that the only other accident that you've been aware of in your twenty-one  
20 years?

21 A There have been others of what I would consider to be of similar nature.  
22 There was one-- I'm trying to think. I'm sorry.

23 Q That's okay.

24 A Not that I recall. Actually the arm is the only one.

25 Q All right. Thank you for that. Are there cameras on those rides?

1 A There is. And I'm not aware if it was there at the time or not, but there is a  
2 souvenir camera that takes your picture while you're in the middle of coming down  
3 the ride.

4 Q Is there any other device that's filming any other activity in the park?

5 A I'm sorry?

6 Q Specifically on that ride.

7 A There may be an observation camera at the top of lift one which was not  
8 staffed, which the ride operator would be watching. It's for them to make sure they  
9 can address the guest, if for some reason the guest would try to stand up or something  
10 like that.

11 As far as anything else taking pictures of that particular ride, no, I'm not  
12 aware of anything else.

13 Q The attendants that are stationed on the rides, are they just at the bottom of the  
14 ride at the loading and unloading?

15 A No ma'am. During the video there was an attendant at the top of the spillway.  
16 There was an attendant also at the top of lift two.

17 Q And what are the duties of those attendants at the top of the spillway?

18 A Basically monitoring the boats to make sure that nobody tries to stand up or  
19 exit the boat or that there isn't, if they have moved out of improper ride position, that  
20 they are sitting down in the proper ride.

21 Q Are they also monitoring the activity of the boats as they're coming through  
22 the ride to make sure that they're not striking one another or bumping while they're  
23 riding?

24 A The nature of the ride, the boats will bump during the ride. The boats can  
25 bump during the ride.

- 1 Q Maybe I should clarify what I'm saying. Bump each other, not bump the  
2 sides. I'm talking about the logs bumping one another.
- 3 A The boats may bump at the spillway where there is a break, and also the lift  
4 two, at the bottom of lift two where there's a break and also coming into the station  
5 where there's a break.
- 6 Q But the riders are told to remain seated---
- 7 A Yes ma'am.
- 8 Q ---at all times during these bumps? Is that correct?
- 9 A That's because it's on the course itself.
- 10 Q Okay. You just said also that as they're coming into the loading or unloading  
11 station.
- 12 A There's a brake outside of that switch gate that I was talking about. That's the  
13 gate I was talking about. I'm sorry if I wasn't clear.
- 14 Q That's okay. So, there is a brake that would also stop the boats from coming  
15 in and hitting one another once they're in that area?
- 16 A They're-- Once they're inside-- Please clarify your question, ma'am. I'm  
17 confused.
- 18 Q Okay, I'm sorry. I was asking could the boats bump one another in the course  
19 of the ride.
- 20 A Okay.
- 21 Q And you said at the different spillways and also when they're coming into the  
22 loading and unloading zone.
- 23 A Just before the station, yes ma'am.
- 24 Q Just before the station?
- 25 A Just before the station where that gate is.

- 1 Q Okay. So, once the log has entered the station where people are getting on  
2 and off, there's shouldn't be any more bumping. Is that what you're saying?
- 3 A No. The boats may bump actually in the unloading station as well.
- 4 Q So, they will bump past that gate?
- 5 A They may bump past that gate.
- 6 Q But it's not normal that they will bump past that gate?
- 7 A I can't speak to that. Every log ride is designed that very same way.
- 8 Q I'm sorry?
- 9 A Every log ride I'm aware of is designed the same way. The boats may bump  
10 when they come to a stop.
- 11 Q So, you're saying that it's the nature of the ride that the boats may bump in the  
12 loading and unloading area?
- 13 A They could, yes.
- 14 Q And what are the attendants instructed to do during this time of loading and  
15 unloading?
- 16 A Initially as the boat's coming into the break, once it's in the break, they will  
17 put their foot up to stabilize as you described. Once it appears that everybody's  
18 getting out of the boat they may at that point in time have to move to assist other  
19 guests.
- 20 Q I'd like to go the ride training manual and just ask you a couple of questions  
21 about some of the things in here. He brought up a couple of things in here and I just  
22 want to ask you about one.
- 23 Mr. Thoensen: Your Honor, may I approach to allow the witness to review a  
24 copy while she asks the questions?
- 25 The Court: Sure.

1 Mr. Thoensen: Thank you.

2 Q Okay. Now, Mr. Bailey, you just said that once they stop the boat and people  
3 have begin to disembark that they may go to other things. Is that correct?

4 A I didn't hear.

5 Q Helping another employee, or something you said to that effect. I don't  
6 remember exactly.

7 A They may go assist another boat.

8 Q All right. Can we go to page ten. And right at the top, could you read that for  
9 me, down to where it says, number three? Well, yeah, number three. I'm sorry. And  
10 the note following number three.

11 A Okay. May I ask where I'm starting?

12 Q At the beginning, where it says unloader co-dispatch operator.

13 A I understand.

14 Q Uh-huh.

15 A Unloader co-dispatch operators, level four, positioned on each side of the  
16 dock beside the unloading brake. General Responsibilities: The loader co-dispatch  
17 operators will respond to the safe and efficient loading of all guests from each boat,  
18 stopping the boat by the unload dock, assuring the guests exit to the right properly,  
19 making eye contact with each guest as they ride the ride, directing guests to the exit,  
20 dispatching the boats to the loading area and observing the ride operations at all  
21 times.

22 Operational Procedures: Number One: As the boat approaches the dock  
23 assure that the raise brake button has been pressed and the unloading brake is in the  
24 up position.

1           Note: As the boats approach the unloading area assure that guests do not rock  
2           their boats by placing their hands-- Excuse me. Do not rock their boats, place their  
3           hands in the water, etc. Use the P.A. system to inform guests of correct riding  
4           procedures if necessary.

5           Number Two: When the boat is safely stopped in the unloading break, assist  
6           the guests out of the boat and direct them to the exit up the stairs to their left.

7           Three: As soon as the boat is empty advance it to the loading area by pressing  
8           the lower brake button. Repeat this process with every boat.

9           Note: If you have a guest that comes up the exit with the guest disability  
10          book, operation the separation gate and allow the boat to enter.

11          Operator in front loader can start the loading and unloading process.

12    Q           I want to go back to Number Two where it says assist the guest out of the  
13          boat. You had said earlier that this meant giving them verbal information as they're  
14          exiting?

15    A           Yes.

16    Q           Also, in the very beginning, the loader co-dispatch operators will respond to  
17          the safe and efficient loading of all guests from each boat, stopping the boat by the  
18          unload dock, assuring the guests exit to the right properly, making eye contact with  
19          each guest as they ride the ride, directing guests to the exit, dispatching the boats to  
20          the loading area and observing the ride operations at all times.

21                So, just a few moments ago you said that a person that was working in that  
22          position could stabilize the boat and see the people starting to get off and then go on  
23          and help someone else, or assist someone else on another boat or something.

24    A           He's watching the entire operation, the entire unload operation.

1 Q Is it possible for that attendant, once he stops the boat and started people to  
2 getting off, is it possible for him to go and assist another boat with riders, with  
3 unloading, or whatever the case may be that he's assisting them with, and still  
4 maintain eye contact with the people that are getting off of the other boat, that he will  
5 then direct to the exit once they're done.

6 Mr. Thoensen: I'm going to object to the compound and ambiguous nature of  
7 the question. I'm not sure I follow it.

8 The Court: Sustained. You need to rephrase that question.

9 Ms. Dicks Wilson: Okay.

10 Q Is it possible for the operator to go and assist others in another boat and  
11 maintain eye contact with the people that he had began to assist, as you said?

12 A He would turn from them at some point, yes.

13 Q So, he would not be able to maintain eye contact with all the people until they  
14 were safely out of the boats?

15 A He's watching for the people who start to exit the boat, and then he would go  
16 to the other person at that point in time. I have to assume that he would look at the  
17 ones leaving.

18 Q Maybe I'm not being specific enough. What I'm trying to get at: is he able to  
19 maintain eye contact with people as they're exiting the boat?

20 A (inaudible)

21 Q When you began your employment at Carowinds, what was the first job that  
22 you held there?

23 A A security position.

24 Q A security position. Was it a security officer or a...?

25 A A Palladium security officer.

1 Q I'm sorry?

2 A It was a Palladium security officer.

3 Q Thank you. I have a question about the guide for guests with disabilities that  
4 you read some things from. And---

5 Mr. Thoensen: Your Honor, permission to approach and furnish the witness  
6 with the document.

7 The Court: All right.  
8 (whereupon witness is given document)

9 Q I apologize. I thought you had the documents there with you.  
10 Okay. On page two, can you read the paragraph here that starts with special access  
11 accommodation?

12 A The one that starts with for special access?

13 Q Uh-huh.

14 A Okay. For special access accommodations, guests with disabilities should  
15 stop by guest services to pick up a guidebook for guests with disabilities. This free  
16 guide explains the ride entry guidelines and procedures, provides specific information  
17 related to each attraction and includes an attraction boarding pass that is required for  
18 the special access accommodations on certain attractions.

19 One guide for guests with disabilities/attraction boarding pass is required for  
20 each guest with a disability and will cover his or her accompanying friend and family,  
21 friends and members, and that's up to a maximum of three.

22 Please note that the guidebook can be used one specific day only. Guests  
23 should pick up a new guidebook at guest services at the beginning of each visit.

1 Q Now, I note that this was entered into evidence as the guidebook for guests  
2 with disabilities for 2006. And you had verified that it was the 2006 document. Is  
3 that correct?

4 A I believe it to be the 2006 document.

5 Q Okay. The paragraph that I had you read said that I should, that a person, a  
6 guest with disabilities should stop by and get the guidebook for guests with  
7 disabilities.

8 So, I just wanted you, if you could look through for me and tell me is this the  
9 guest guidebook for disabilities?

10 A Yes.

11 Q It has the cover of it, but it doesn't have the inside, does it?

12 A No, I believe this to be the information, the correct information.

13 Q Well, I wonder why it would tell me to go get one if this was it. Okay.

14 (pause)

15 On the first aid report-- Do you have that?

16 Mr. Thoensen: What I did was publish the marked exhibit to the jury and  
17 that's what Mr. Bailey initially used. I'm happy to furnish him with a copy.

18 Ms. Dicks Wilson: Thank you.

19 Mr. Thoensen: Your Honor, if I may?

20 The Court: Sure.

21 (whereupon witness is given exhibit)

22 Q Alrighty. Was there a nature of the injury or illness?

23 A Yes, it is.

24 Q And the pain to right, hip groin area and... I don't know what that says.

25 What is that, refill?

1 A Capillary. Capillary refill.

2 Q Okay. And no deformity and no bruising. When they're instructed to take  
3 these reports and they determine what to write here, do they do an examination, or do  
4 they just glance at you? What are they trained to do when they take these reports?

5 A They are EMTs by training and certification. And that information is what  
6 they typically will see, and it can be based off the information that the guest has given  
7 them.

8 Q So, when it says no deformities or no bruising, this is just basically what they  
9 can see right then, not anything else? They're just going by what they can see right  
10 there. Is that what you're saying to me?

11 A Yes.

12 Q Okay, okay. Because I know that I didn't do any examination or anything.  
13 And Mr. Thoensen had asked if there was any, anything that suggested a back injury  
14 or back pain on here and you told him no.

15 And I guess my question is did you know all the symptoms or do you know all  
16 the symptoms of a back injury to know that if someone expressed pain in their hip  
17 area it could not be related to their back?

18 Mr. Thoensen: Objection, Your Honor.

19 The Court: Mr. Thoensen asked him if in reviewing that form if there was any  
20 information on there where the plaintiff was complaining of back pain or back injury.  
21 And his response was in reviewing that form, no.

22 Ms. Dicks Wilson: I understand.

23 The Court: So, that's what he's referring to.

24 Ms. Dicks Wilson: Okay.

1 Q And on the next page it says it says witnesses to the incident, associates  
2 working in the area or attraction. It says uncertain.

3 A Uh-huh.

4 Q So, you all-- Even though it says uncertain was there someone there that was  
5 an employee that witnessed this incident?

6 A On that page, very specifically, it does not say. It says it's uncertain.

7 Q All right.

8 A I can only assume at that point in time they had not determined that.

9 Q All right. All of this report, is it done at the same time.

10 A No. It may be a continuation over time that day.

11 Q All right. So that, on the last page of this statement continuation it says that  
12 an associate by the name of Wyatt was standing next to me after the boat struck the  
13 boat I was exiting.

14 So, as I have stated in my testimony that the attendant did come once I said  
15 something was wrong, that an attendant did come. And I guess, I don't know, maybe  
16 his name was Wyatt.

17 But if it was, if the report was done around the same time why does it still say  
18 uncertain? Why wasn't Wyatt placed on the form?

19 A I can't answer that.

20 Q All right. I guess what I need to ask is it your procedure when an accident  
21 happens to collect information from possible witnesses or employees that may have  
22 viewed the accident?

23 A They do research that, yes.

1 Q And would you say that because there's no name there of an attendant that  
2 would have been there as a Carowinds employee, that they weren't there or didn't  
3 witness the incident?

4 Mr. Thoensen: Objection, Your Honor. Speculation and it's a hypothetical  
5 question.

6 The Court: Let me understand what the question was. You asked him if this  
7 report there all at one time and he told you no, it's a process.

8 Ms. Dicks Wilson: That's right.

9 The Court: But then you seem to be questioning, and I think this is right, if  
10 something wasn't there at the time it was first known, that it did occur. I think his  
11 testimony was this report is prepared as an incident is investigated; so it's over a  
12 period of time.

13 Ms. Dicks Wilson: Yes sir.

14 The Court: And you're asking him to speculate as to why that was not filled  
15 in. You can ask him if he knows and if he doesn't know, he doesn't know.

16 Ms. Dicks Wilson: I guess I was wrong in the way I was phrasing it.

17 Q What I'm trying to ask is after the time of the investigation if a witness or an  
18 employee who had witnessed, or someone who had witnessed this accident happen,  
19 their name should have been added at some point in the report. Do you follow me?

20 A No.

21 Q I'll phrase it again. The report is added to at times of investigation. Is that  
22 correct?

23 A Yes.

1 Q If there was a witness, an attendant who attended me at the time when I was  
2 exiting the boat that would have been a witness, wouldn't their name have been added  
3 to the incident report once it was found out?

4 A They were uncertain. They're not to list anything until they have information.  
5 So, at the time the first document was prepared I can only assume that they didn't  
6 have that information and they were in the process of generating it.

7 When it got to the stage of continuation, obviously, the supervisor who filed  
8 out the document had gotten that information and referred to that associate.

9 Q I only spoke with one person that day that was taking the report. This page  
10 says that this was the information that I gave her at the initial time that I gave this  
11 report. It wasn't that I came back later and gave any more additional information.

12 Mr. Thoensen: Objection to the narrative. I'm not sure there's a question  
13 there.

14 The Court: No, you've got to have a question.

15 Ms. Dicks Wilson: All right.

16 The Court: Sustained.

17 Q What information was used to formulate the statement of continuation?

18 Mr. Thoensen: Object again. That's speculation. It hasn't been established  
19 that he knows exactly what information.

20 The Court: Of course, she can ask the question. If he doesn't know, he can  
21 say he doesn't know. Overruled.

22 A Can you repeat the question, please?

23 Q What information was used to fill out this statement of continuation?

24 A I can only assume that it was the information from the actual, or that had been  
25 generated as a result of the investigation itself. I don't know the process.

1 Q You said that the date of the incident was 7/20/06, and that the date of the  
2 EMT's signature was 7/20. It looks like they make a correction or something. But  
3 it's '06. And at the beginning of the first page it says 7/20/06.

4 So, do you know if they would have gotten the information at a later date and  
5 then dated it 7/20/06?

6 A No ma'am.

7 Q So, according to the procedures that you all have in security and first aid, the  
8 information that they use to formulate this form would have been gotten on 7/20/06.  
9 Is that correct?

10 A That's correct.

11 Q And at the end of the-- I just want you to-- Can you read that last statement  
12 for me, where she writes it and then signs it, but then there's an additional amount,  
13 there's an additional something added on here. Can you read that additional part?

14 A Yes ma'am, I'll read it again. Guest also states that she heard the associate  
15 say something before the boat struck, but was unable to hear or understand what she  
16 said.

17 Q Okay. So, it states that I heard it but didn't hear it. That's what it's saying.  
18 Right?

19 A I would disagree.

20 Q Okay. It says, guest also states that she heard the associate say something  
21 when the boat struck but was unable to hear or understand what he said.

22 Mr. Thoensen: Objection. That's not the question. And the document speaks  
23 for itself. He's read that paragraph twice.

24 The Court: Is there a question there, Ms. Wilson? You certainly may ask a  
25 question.

1 (no response)

2 Q Can I ask you to look at the first aid refusal form, please, sir?

3 A (witness refers to form)

4 Q And would you look at the signature of Rhonda Seitz?

5 A (witness reviews form)

6 Q Mr. Bailey, do you remember right after this accident happened in '06, and  
7 speaking with me on several different occasions? I don't remember the exact date,  
8 but do you remember speaking with me after the accident happened?

9 A Yes ma'am.

10 Q You do. Do you remember offering to pay my medical---

11 Mr. Thoensen: Objection, Your Honor. This was covered in the pre-trial  
12 conference.

13 The Court: Sustained.

14 Ms. Dicks Wilson: I wasn't gonna mention any amount or anything.

15 The Court: You can't ask about that.

16 Ms. Dicks Wilson: Okay.

17 Q Do you remember any of the conversations that we had?

18 A Not verbatim, no.

19 Q Okay. Do you remember why you determined that Ms. Hawkinson would be  
20 the person I spoke with after a few months?

21 A I didn't feel like I was making progress with resolving the claim. And it also,  
22 based on what you were saying, as ongoing treatment, I felt like it was outside the  
23 scope of what I could handle in my capacity.

24 The Court: I will ask the members of the jury to step back into the jury room.  
25 Have no conversation about the case. If you need anything, let the bailiff know.

1 (whereupon the jury exited the courtroom)

2 The Court: Ms. Wilson, I'm not trying to hamper your efforts or anything like  
3 that. I'm not doing that at all. I'm just trying to inform you, and this is what you  
4 need to understand, it's important: It is not appropriate to get into settlement  
5 negotiations, to get into conversations about what you offered to pay, what I didn't  
6 take and all that. That's just completely inappropriate.

7 What you're-- I don't know that it's your intention. I don't think it's your  
8 intention. But what's occurring here is you're formulating it's apparent that you got  
9 hurt at the defendant's park, and they basically turned their nose up at you and said  
10 we're not paying you a dime. And that's just not true.

11 Ms. Dicks Wilson: No.

12 The Court: Okay. But when you bring in these conversations about you  
13 offered me or settlement negotiations it makes it appear that they're not treating you  
14 fairly in the negotiations. And you may think they're not, but the point is, that's the  
15 reason why in this case, in any civil case it is inappropriate to go into money as far as  
16 what was offered, what was paid in these cases.

17 And also, it's never appropriate to mention insurance. There's a reason for  
18 that. There's rules in the rules of procedure and the purpose and the reason for those  
19 rules is that so this can be fair and impartial. And that the jury bases its decision not  
20 on those types of factors but on were you injured, was your injury proximately a  
21 result.

22 Were you injured? Yes. Was the defendant negligent? They have to decide  
23 that. Was the defendant's negligence the proximate cause of your injury? Those are  
24 the questions the jury has to answer. If they answer those questions and if you're  
25 carried your burden of proof and they've reached the point in their deliberations

1 where they have to decide how much money to award you, that's when they have to  
2 then look at the evidence that's in the record based on your damages and what you've  
3 proven is your damages.

4 So, the reason I stopped you here is you've already asked about you offered to  
5 pay my medicals. That was an inappropriate question. That's okay. You didn't  
6 know. That's not a problem. But they objected, Mr. Thoensen objected and I  
7 sustained the objection.

8 And now you're going into Ms. Hawkinson. I don't know Ms. Hawkinson. I  
9 met her for the first time when I met you, but I believe she has something to do, as an  
10 adjuster she's adjusting these cases for their hearings.

11 Mr. Thoensen: Yes sir.

12 The Court: Okay. She's not in this case.

13 Ms. Dicks Wilson: No.

14 The Court: No ma'am. She's not in this case. She has no reason to have her  
15 name brought before the jury. As a matter of fact, I wasn't going to say anything, but  
16 Mr. Thoensen, I think you screwed up when you introduced her to the jury. They  
17 don't need to know who she is.

18 Mr. Thoensen: Right.

19 The Court: They don't need to know her.

20 Mr. Thoensen: Right.

21 The Court: Because she's not in this case.

22 Ms. Dicks Wilson: Uh-huh.

23 The Court: As far as the jury's concerned. She's in this case obviously as far  
24 as you're concerned because you've been dealing with her. And that's fine if that's

1 appropriate. But once the case gets to trial all of that information is completely  
2 irrelevant.

3 And if I may suggest to you, and I'll suggest to you the same as to any lawyer  
4 because I've seen lawyers do the same thing. You want this jury to stay focused on  
5 your injury and their negligence that contributed to that injury. But you're going off  
6 down these rabbit trails on all this other stuff and you're losing the jury.

7 Now, I'm gonna need for you to look at your notes and focus. You're taking  
8 forever on this cross examination. And I've been lenient and I've not said anything.  
9 But you're trying to shotgun it, and you don't have any purpose, you're just asking a  
10 lot of questions. And that's dangerous, dangerous for your case.

11 If you have relevant questions left for this witness, then I'll certainly let you  
12 ask that, or ask him anything that's relevant. But you've got to start focusing and stay  
13 away from the areas that are not issues in this case. And those would be things such  
14 as settlement negotiations, discussions with Mr. Hawkinson. Those aren't, they're  
15 not relevant to the issue as to negligence and liability and damages.

16 That's what a trial is about. All of that stuff is all well and good prior to  
17 coming to court. Once you get into court it's not used. It would be the same thing if  
18 Mr. Thoensen tried to raise anything like that. It would be like Mr. Thoensen getting  
19 up and saying now, Mr. Bailey, isn't it true that y'all offered to pay her \$16,000.  
20 That's so inappropriate, that's wrong. I wouldn't let him do that.

21 And so, it's just wrong for both sides because the jury, if they decide to make  
22 award to you they do have to decide how much it's going to be. That will have to be  
23 based solely on the evidence in this case and not on past negotiations. Okay?

24 Ms. Dicks Wilson: Okay.

25 The Court: Anyone need to take a break while the jury is out?

1 (negative response)

2 The Court: Bring the jury back in.

3 (whereupon the jury entered the courtroom)

4 Ms. Wilson, you may resume.

5 Q Mr. Bailey, I'm going to try to finish up pretty quick. The question about the  
6 operator checklist.

7 Mr. Thoensen: May I approach the witness, Your Honor, to furnish him the  
8 document?

9 The Court: Sure.

10 (whereupon witness is furnished document.

11 Q If you will look on the second page. Can you read for me the sentence right  
12 before the signature at the bottom?

13 A Before passengers may ride this sheet must be signed by the inspector  
14 identifying it ready to operate.

15 Q Can you read for me the inspector's name? I can't make it out.

16 A Kim Coleman.

17 Q Thank you. If you look at the initials under the inspection of the different  
18 items, I see a Keith, I see L. Who is SG, do you know?

19 A No, I'm not sure.

20 Q In your job as being the safety person would his name have been required for  
21 this form also?

22 A This is a maintenance document and my understanding it allows the person  
23 who is the senior to do the signature.

24 Q Even though he may not have been the only one doing the inspection.

25 A The ride is inspected by a crew of individuals.

- 1 Q Did you ever speak with any attendant or ride operator that said they were  
2 present at the time of the incident?
- 3 A Yes.
- 4 Q And who was that person?
- 5 A I spoke with Wyatt.
- 6 Q Okay. Do you know of any reason why Wyatt wouldn't be here today?
- 7 Mr. Thoensen: Objection to the relevance of that question. That's improper  
8 as well, to ask this question of this witness.
- 9 The Court: Overruled. You may answer the question, if you know.
- 10 A Basically, we employ ride operators, people who are in high school and  
11 college. And I can't answer why he's not here today. We were not able to contact  
12 him.
- 13 Q Were you able to obtain a statement from him regarding this incident?
- 14 A We obtained a statement and it was-- At the time we were able to catch based  
15 on the schedule it was a week or so later.
- 16 Q Is there some reason why his full name and that statement wasn't added to the  
17 incident report?
- 18 A No ma'am.
- 19 Q And you did tell me that while the investigation was going on and information  
20 was found out it is added to the incident report?
- 21 A We update the document, yes.
- 22 Q Well, Mr. Bailey, thank you very much. That's all the questions I have.
- 23 A Thank you, ma'am.
- 24 Mr. Thoensen: I have a few questions on re-direct, Your Honor.
- 25 The Court: All right.

1 **RE-DIRECT EXAMINATION BY MR. THOENSEN:**

2 Q Mr. Bailey, you're familiar with the training materials---

3 A Yes.

4 Q ---the attendants on each ride are shown and they're instructed?

5 A Yes.

6 Q Correct?

7 A Yes.

8 Q And you've investigated this case in preparation for trial, haven't you?

9 A Yes.

10 Q And you've been here and you've heard all the testimony over the last day and  
11 a half or so. Correct?

12 A Yes sir.

13 Q Have you seen or heard anything in this case that would suggest to you that a  
14 Carowinds attendant deviated from their training or procedure in any way?

15 A No.

16 Q Thank you.

17 Ms. Dicks Wilson: No questions, Your Honor.

18 The Court: Thank you.

19 Mr. Thoensen: Your Honor, with that, the defense rests.

20 The Court: All right. Ladies and gentlemen of the jury, you've heard the  
21 evidence presented in both the plaintiff's and the defendant's cases. At this point I  
22 have to take up matters of law with the attorneys. They also have to do their  
23 preparation for their closing statements.

24 So, I will ask you to step back into your jury room. No conversation about the  
25 case. We'll get you back in here shortly.

1 (Whereupon the jury exited the courtroom)

2 The Court: Any motions at the close of all the evidence? Anything from the  
3 plaintiff?

4 Ms. Dicks Wilson: No, Your Honor.

5 The Court: On behalf of the defendant?

6 Mr. Thoensen: Your Honor, all the evidence having been presented we would  
7 move for a directed verdict on behalf of the defendant. It continues to be the case that  
8 there has been no evidence presented of any negligence on the part of Carowinds that  
9 caused the plaintiff's damages. And there continues to be a complete lack of  
10 evidence presented as to what plaintiff's damages are.

11 The evidence that was heard in defendant's case in chief was specifically that  
12 nothing in the record, nothing in this case at all suggesting deviation by any  
13 Carowinds employee from any training instruction, any manual, any procedures that  
14 they're supposed to follow.

15 And so, I understand that this case is a matter of the existence of evidence, not  
16 the weight of evidence, but I respectfully renew the motion on the same grounds I  
17 made earlier and make note of the evidence that has not come to light.

18 The Court: All right. I respectfully deny your motion. The strength of the  
19 weight of the evidence is not for the court to determine but is the job for the jury.  
20 And as I stated earlier I rule on the evidence and it is up to the jury to give whatever  
21 weight, if any, to such evidence.

22 I'm going to give y'all a few minutes to look over the charge that I have  
23 presented to you. But before you do that, let me make some comments, if I can,  
24 which might help you.

25 With regards to your requested charge on number four, mitigation.

1 Mr. Thoensen: Yes sir.

2 The Court: I don't see that, based on everything that's been presented. I  
3 don't see that as an issue. What mitigation would you be referring to?

4 Mr. Thoensen: Your Honor,---

5 The Court: I know you've got the assumption of risk.

6 Mr. Thoensen: Yes sir.

7 The Court: And I guess somebody could say, well, she could have minimized  
8 it by not getting on the ride. But that's, I don't think that's mitigation. Mitigation is  
9 once you've been injured you have a duty to minimize those damages.

10 Mr. Thoensen: Right. And Your Honor, I think the point I was getting may  
11 been to assume by the assumption of risk charge. You hit that exactly right. That  
12 was what I was trying to set forth, the dangers you're about to encounter and failing  
13 to not encounter them.

14 The Court: Okay. And I think that's covered in the assumption of risk that I  
15 put in there.

16 Mr. Thoensen: Okay.

17 The Court: So, as you go through there you will notice that I did not charge  
18 your mitigation charge.

19 Mr. Thoensen: Okay.

20 The Court: I think everything else you requested was appropriate and I think I  
21 can charge that. Now, let me get back to another matter and that is I don't know that  
22 this case is a comparative negligence case, which you're requests in one and two  
23 would be appropriate if it was a comparative negligence case. I don't think there's  
24 any allegation that Mr. Wilson made, other than-- I mean, I realize that you're taking

1 the position that she knew about this ride, she had seen it before, she had been on it  
2 before.

3 Mr. Thoensen: Right.

4 The Court: She knew the risks involved and she took those risks anyway. So,  
5 that's the assumption of risk that she plead. But I don't know that there's been any  
6 evidence, other than her getting on the ride---

7 Mr. Thoensen: Right.

8 The Court: --that she would mention.

9 Mr. Thoensen: Right.

10 The Court: So, I don't see it as a comparative negligence case, and---

11 Mr. Thoensen: Well, Your Honor,---

12 The Court: ---that's what those percentages would go for.

13 Mr. Thoensen: Right. And so, I think my rationale again would be her  
14 negligence when she gets on the ride and taking her time getting off the ride, not  
15 paying any attention to what might be coming in behind her, et cetera. And perhaps  
16 that is coupled with assumption of risk also.

17 The Court: I think so, Mr. Thoensen. But here's my suggestion. And Ms.  
18 Wilson, I didn't print a copy of this for y'all but I will. But this is-- I can tell you  
19 what I've got here, as well as my verdict form. Again, keep in mind that I keep  
20 things as simple as I can.

21 For the verdict form I basically have the two possible forms of verdict. One  
22 would be we the jury unanimously find that the negligence of the defendant  
23 proximately caused the plaintiff's injuries and find for the plaintiff, Felicia Dicks  
24 Wilson in the amount of blank as to damages. Or we the jury find unanimously for

1 the defendant in this case. Those would be the two options. One finds for the  
2 plaintiff and one finds for the defendant.

3 Mr. Thoensen: I don't have any objection to that.

4 Ms. Dicks Wilson: I don't have any objection.

5 The Court: All right. I've got that in place, then. So, do me a favor, then, if  
6 you would, I just want to iron out any issues. Look over that jury charge and let me  
7 know if there is anything we need to do different or change.

8 And let me say, Ms. Wilson, now, you understand that the way it works in a  
9 civil case is that you will have an opportunity to address the jury with your closing  
10 remarks.

11 Ms. Dicks Wilson: Okay.

12 The Court: And you're required-- Under the procedure you're required to  
13 close in full. And what that means is you're required to give a full closing statement.  
14 You're going to have to address them a second time. Okay?

15 Ms. Dicks Wilson: Okay.

16 The Court: But the law requires that you open in full; that any issues you  
17 wish to raise in your closing argument, you do that when you first get up to address  
18 the jury.

19 Ms. Dicks Wilson: Okay.

20 The Court: And when you're done, Mr. Thoensen will have an opportunity to  
21 address the jury with his closing remarks. And then you'll have an opportunity after  
22 he sits down to address the jury once again, if you choose to. You're not required to.  
23 If you choose to. That second opportunity, if you take it, you're to be very brief and  
24 to just hit on any issue that he may have raised.

25 Ms. Dicks Wilson: I understand.

1           The Court: You understand?

2           Ms. Dicks Wilson: Yes.

3           The Court: Now, this is not a lengthy case. I'm not gonna allow a hour  
4 closing argument. So, I don't typically interfere with people's closing arguments, but  
5 I do ask that you keep it concise. Cover everything you want to cover, and then sit  
6 down.

7           And as I said, Ms. Wilson, you'll have an opportunity to open in full or close  
8 in full. And then after Mr. Thoensen sits down then you'll have an opportunity to  
9 stand back up and make some final remarks.

10          Then I'll charge the jury on the law. Okay?

11          Ms. Dicks Wilson: Okay.

12          The Court: So, we'll give you a chance to look over the jury charge, and  
13 we'll be at ease while you do that.

14          Ms. Dicks Wilson: Just so I don't make a mistake. When we had  
15 approached on the incident report and I had said something about the differences that  
16 I've noticed, I can bring them up in my closing statement?

17          The Court: Well, yeah. I mean, I'm not gonna make your closing-- I'm not  
18 gonna try to tell you what to say, but I'll just give you an example.

19          If you want to say, for instance, ladies and gentlemen, you've got this form;  
20 you know, it's up to y'all to decide when you look at this form. I looked at this form  
21 and I see the signature on the statement and then I go back into the form and I see this  
22 signature, and I, you know, it doesn't appear to be the same signature to me. You  
23 decide. You look at it and make a decision. You can address that.

24          Ms. Dicks Wilson: I just didn't want to be out of order bringing it up.

25          The Court: No ma'am. It's in evidence. You can certainly bring it up.

1 Ms. Dicks Wilson: Thank you.

2 The Court: All right. We'll be at ease.

3 (Whereupon court was in recess)

4 **COURT IN SESSION**

5 The Court: Have you had a chance to review the jury charge, ma'am?

6 Ms. Dicks Wilson: Yes sir.

7 The Court: Have you had a chance to review it, Mr. Thoensen?

8 Mr. Thoensen: I have.

9 The Court: Any changes or additions or corrections or anything?

10 Ms. Thoensen: The only thing that I would note is that, I don't know if  
11 there's been evidence presented as to mental anguish or anxiety. And I understand  
12 that's a general charge with damages as a whole. But I don't think there's been any  
13 testimony offered which physically addresses that element standard. And so, I would  
14 suggest that that charge might not be appropriate for this case.

15 The Court: Ms. Wilson, have you got any thoughts on that, if that should be  
16 left in?

17 Ms. Dicks Wilson: I don't think so.

18 The Court: I think there is testimony as to that. She made reference to the  
19 fact that prior to this she had her CDL, truck driver, and that once her children were  
20 back in school, even if she wanted to go back to that, that's not something she could  
21 go back to. So, I think it's fair.

22 Mr. Thoensen: Thank you, Your Honor.

23 The Court: Anything, Ms. Wilson?

24 Ms. Dicks Wilson: No sir.

25 The Court: Regarding the court's charge?

1 Ms. Dicks Wilson: No sir.

2 The Court: Let me get y'all to step up real quick. I've had the clerk print out  
3 the form, and want y'all to take a look.

4 (whereupon parties approach bench and subsequently return to their places)

5 Bring the jury in.

6 (whereupon the jury entered the courtroom)

7 The Court: Ladies and gentlemen, you have heard all the evidence in this  
8 case, and now it's time to hear from the parties with regards to their closing remarks,  
9 or what we commonly refer to as closing arguments.

10 As I told you when we started this case, what the parties tell you in their  
11 closing, in their remarks, in their opening statements and in their closing arguments, it  
12 is not evidence. The evidence in this case came from the witnesses that testified and  
13 from any exhibits that came in during the course of the trial. So the evidence in this  
14 case is closed.

15 However, it's important that you listen carefully because this is their  
16 opportunity to argue to you what they believe the evidence to show. The way we do  
17 it in civil court is since the plaintiff has the burden of proof she goes first. She will  
18 present a closing argument. Then she finishes, and the defense will have their closing  
19 argument. And then if the plaintiff wishes to, she can come before you again and  
20 give one more argument, basically a wrap-up.

21 Once the parties have gone over their closing remarks for you, or with you,  
22 then I am going to give you the charge that's on the law. And then you'll be finally  
23 ready to deliberate and talk about the case.

24 So, please, if you would, give them your undivided attention as they address  
25 you with their closing arguments.

1 The Court: Ms. Wilson

2 Ms. Dicks Wilson: Good afternoon again, ladies and gentlemen. I'd like to  
3 thank you first of all for just being here and sitting through thing, and paying attention  
4 to me as I just kind of rambled on sometimes, without knowing what to do and asking  
5 wrong questions, and all that kind of thing. I really do appreciate it.

6 When I entered the amusement park at Carowinds I anticipated an uneventful  
7 day. When I entered the log ride I intended to do just what the little girl on the film  
8 did, go up and down a couple of times, get wet and get off.

9 I had been observing the ride, and as I have stated, I've been on log rides  
10 before in several different amusement parks, and have never had any problem. I  
11 didn't expect to have a problem on this particular log ride.

12 Like I said, just like the little girl, up and down with a smile, not a problem.  
13 And I didn't have a problem until I got to the end of the ride and I was beginning to  
14 get off. And that's where I had the accident. And as I have testified to regarding this  
15 accident, hands on the rail, one foot on the dock, and when the boat came in and  
16 struck the boat that I was exiting from.

17 The attendant was not there to make sure that I got off safely. And he  
18 certainly didn't continue to make eye contact with me until he was to direct me to the  
19 exiting portion of the ride, to the complete exit of the ride.

20 And I believe that that clearly shows negligence on the part of Carowinds.  
21 Even in using their own employee handbook it stated, just the little excerpt that we  
22 read from that during the testifying of their witness, that they were to stay with the  
23 log, that the people or the boat that people were getting out of, and maintain eye  
24 contact with those patrons until they were directed to the exiting area.

1           And I know that sometimes, you know, it doesn't always happen that people  
2       follow rule books exactly. It just happened in this particular case because I incurred  
3       injury. And the injury that I incurred has been with me for several years and doesn't  
4       look like it's gonna anywhere any time soon.

5           When I first brought this case to trial in my complaint the things that I accused  
6       them of was in failing to have proper staff to man the entering and exiting of the ride.  
7       If proper staff would have been there it would never have been a reason for the person  
8       that was assisting me to go away from me and assist somebody else. It says they're  
9       supposed to stay with the exiting patient until they're clear of the ride.

10           And failing to advise of any present danger. I should have been given the  
11       opportunity to at least sit back down until the boat hit the one I was getting out of so  
12       that I wouldn't have an injury.

13           And failing to assist with the exiting of the ride. And of course, that's exactly  
14       what I have been saying.

15           And failure to keep a proper outlook. I noticed that even in the video that we  
16       watched, if you were on the deck of where the rides were coming in, you could look  
17       up and see if the boats were coming down. Like I noticed the as the girl was going  
18       down, you could see the loading and the unloading of the deck.

19           So, that let me know that the attendants, if they're keeping an eye on the full  
20       operation of the ride the entire time, then they know when the boat has to enter and  
21       our exiting the loading and unloading areas.

22           And in this, I also have in here that in failing to keep the operation of the ride  
23       under proper control. If they were maintaining the ride properly they would have  
24       known that another log was coming in too soon and it was going to hit the ride that I  
25       was exiting from.

1 In creating a perilous situation. And once again, because of no notice to me or  
2 not even being given an opportunity to sit back down that created a perilous situation  
3 for me. It was one in which the accident had occurred.

4 And in failing to act as a reasonable and prudent person would under the  
5 circumstances then and there existing. And I think that they have been dealing with  
6 me according to the matter at hand and not trying to say that it wasn't their fault. But  
7 I understand that they are a corporation and they don't admit fault. I understand that.

8 According to everything that's been presented in court, all of the evidence  
9 that's been presented the one thing that they have failed to present is the attendant  
10 who was supposed to be there to help me during the time of entering and exiting.

11 I told them in the incident report that there was an attendant that was there  
12 after the accident had occurred. And I did wait for an attendant to come after the  
13 accident had occurred, because my daughter even testified to the fact that I was  
14 waiting for an attendant to come. And I told them about the one that did come. But  
15 Wyatt is not here.

16 When I asked for a, in my request for discovery, asking about people that may  
17 have witnessed it, there was never a mention of the name, Wyatt. There was never  
18 mention of an attendant. Even today in the report that we had, and I just want to  
19 bring your attention to that incident, to the accident report that was filed into  
20 evidence.

21 I remember giving this when I, the accident had happened. Shortly after I did  
22 get a copy of this information. And the sheet that was attached on the end, I don't  
23 remember seeing that. And if you remember, that's why I was asking so many  
24 questions about it, because I just, I never remembered seeing it.

1           And I looked at it and I'd like for you all to look at it when you go back to  
2       discuss the verdict. If you will look at the signatures on it, the first portions of the  
3       page, the first page that has a signature on it. And then look at the signature just on  
4       that next page that was added. It's not, it didn't look the same to me. And I don't  
5       remember saying that-- She has a few signatures on the first three pages and initials,  
6       that all was the same. But I mean, that page, those initials and signatures, they don't  
7       look like the same person. And I wanted to bring your attention to that.

8           And while you're resolving everything and going through everything and  
9       looking over all the evidence-- I know that there has a big amount of evidence  
10      presented. And I also know, though, that there was an accident, and that's been  
11      presented here today. We know that there was an accident. Even Carowinds has the  
12      accident report.

13          We know that there was an incident. We know that based on the evidence that  
14      was produced that no attendant was there to warn of anything. And I'm not gonna  
15      just ramble on and on.

16          Even though my medical bills have not been, I couldn't put them into record  
17      because of something that I didn't know that was a mistake that I made. I think all of  
18      us know if you have any idea about going to the doctor that regular doctors cost quite  
19      a bit. You can imagine that specialty doctors cost even more. And a pain  
20      management doctor is more expensive than your regular family physician.

21          So, as I stated before in my testimony, the medical bills are \$20,000 and more  
22      evolving. I'm still seeing the medical-- I'm sorry. I'm still seeing that pain medicine  
23      doctor. I have an appointment when I get back home next week to see him again and  
24      continue treatment.

1           And I think that \$150,000 is moderate. When I think of the things that I can  
2           no longer do, the life that I can no longer enjoy. And also the time that has already  
3           been taken away from me. I've already dealt with this, plus this year. This has been  
4           since July 20, 2006. In a couple of months it will be July 20, 2012. And like I said,  
5           I'm still having treatment and it hasn't gone away.

6           So, I'm asking you, the ladies and gentlemen of this jury, to bring back a  
7           verdict in my favor. I know that money can't replace anything that I've lost, but it  
8           can make going forth a little easier; well, a good bit easier, you know. Because it  
9           hasn't already been easy, you know.

10          During the time that the accident happened my children were still in school.  
11          My daughter, she-- Well, she was the last one in school when the accident happened,  
12          and did later graduate and go forth.

13          So, I was really-- It hit me just at that time when, you know, how your kids  
14          are grown and you can start living again and doing things, things that you might want  
15          to do. And I wasn't given that opportunity those last years. And so,--

16          That's all I have. Thank you very much.

17          The Court: Thank you, Ms. Wilson. Mr. Thoensen.

18          Mr. Thoensen: Thank you, Your Honor.

19          Ladies and gentlemen, good afternoon. I appreciate your time, appreciate  
20          your patience over the last day and a half or so. All of you have other responsibilities  
21          at home and other places that you need to get to. I'm gonna try to get you out of here  
22          as quick as we can.

23          Something happened to the plaintiff at Carowinds in July of 2012. I think  
24          that's been pretty well established. And that's unfortunate. The Park certainly

1 regrets that. She claims something happened to her that resulted in her being injured  
2 and causing her damages. That's unfortunate, no question about it.

3 But this is a case of negligence and the plaintiff has the burden of proving her  
4 case to you by the preponderance of the evidence. That means a little bit more than  
5 none. So, it's not a huge burden to meet, but she has to prove her case.

6 This is not a system where someone comes into court and says, I got hurt, I  
7 have suffered. It doesn't work that way. There are certain elements that she has to  
8 meet.

9 So, let's think for a minute about the evidence that we have seen and try to  
10 determine where the negligence is on the part of Carowinds. The plaintiff's own  
11 testimony on the witness stand and in her deposition that was taken last year was that  
12 the ride attendant was standing right there next to her, put her on the boat, stabilized  
13 the boat, assisted her out of the boat. That's the evidence that we have heard.

14 The incident report contains a statement that indicates not only that the  
15 attendant standing there assisting her, but that he tried to verbally alert her to the fact  
16 that another boat was coming in. She didn't hear him, she didn't understand him.  
17 We're not sure exactly what happened there. Not only was he there; he was trying to  
18 alert her.

19 I'm not sure if I understood, frankly, what Ms. Wilson was driving at in her  
20 closing argument, but she seemed to suggest that perhaps the incident report was a  
21 forgery, manufactured in some way. I don't think there's any evidence of that. And  
22 think about why would she want you to have some question about that document?  
23 Because that's the piece of evidence that says we did everything we could do here,  
24 and the incident happened anyway.

1           You heard from Mr. Bailey that it's not uncommon at all for these boats to  
2 bump into each other during the load and unload station. Nothing unusual about that.

3           The documents that have been introduced into evidence show that there was  
4 nothing wrong with this ride on the date of the incident. No malfunction, no disorder,  
5 nothing wrong with the ride.

6           You heard from Mr. Bailey who has spent over twenty years working in this  
7 park. He's familiar with these ride attendants, how they're trained, the manuals, what  
8 they're supposed to do. He has heard nothing, he has seen nothing in this case to  
9 indicate that any Carowinds employee deviated from any training material, any  
10 manual, anything like that.

11           So, I want you to consider that when you review the evidence and you think  
12 about the testimony you've heard. Where is the evidence. Now, like I said,  
13 something happened. It's unfortunate. Sometimes things do happen. But it's not  
14 always someone else's fault. Sometimes things just happen. And unfortunately this  
15 was a situation where policies were followed, procedures were followed, and  
16 something happened. We can't always insure one hundred percent of the time that  
17 something won't happen.

18           When you think about the plaintiff's damages in this case, I want you to  
19 consider the evidence that you've heard of her preexisting back pain. She had  
20 arthritis. She had a desiccated disk. Those are painful conditions. Those were  
21 already there before she came to the park. Her own physician has not placed any  
22 limitations on any of her activities.

23           And I think it's important when you start thinking about damages, too,  
24 remember, you have not been presented with a single medical record. You've not  
25 been presented with a single medical bill.

1           So, I think that once you deliberate and once you consider the documents that  
2           we've entered and the testimony you've heard from the witness stand, you will have  
3           to conclude that while something may have happened, the plaintiff has not met her  
4           burden of proof in this case. She has not proved by a preponderance of the evidence  
5           that Carowinds was negligent or reckless and caused her to become injured.

6           There's a complete failure of proof on that issue. I think that's very  
7           important. So, keep that in mind. I appreciate your time. And I ask you to return a  
8           verdict in favor of Carowinds. Thank you.

9           The Court: Thank you, Mr. Thoensen. Ms. Wilson.

10          Ms. Dicks Wilson: Ladies and gentlemen, again, and I guess this'll be the last  
11          time. I appreciate you once again.

12          Mr. Thoensen just brought up something about Mr. Bailey saying that there  
13          was no evidence of anything being broken and the procedure, and the employee  
14          handbook, or the way they were trained. And it was very clear that this was one of  
15          the procedures that were broken, was the one that said that the attendant, or the  
16          operator has to maintain eye contact with the person that is getting off of the ride until  
17          they are off and they direct them toward the exit. And I have to reiterate that that was  
18          not done.

19          As far as the accident report, I want you to look at it, and look at it thoroughly.  
20          And you may get the same thing I got, those signatures just don't look the same. I  
21          didn't object to the information that was in there because there was an attendant there  
22          after the accident occurred because I stood there and waited for a long period of time.  
23          So, if his name was Wyatt certainly I would have remembered it more than I  
24          remember it now. And I did not remember his name today. But if that was his name,

1 that was his name. But certainly there was one there at the end of the accident who  
2 did come over.

3 And as far as the medical information, there was witness, or deposition  
4 testimony of Doctor Downey who brought in the fact that he had been treating me,  
5 and the difference in this is what he was treating me for. And he also, he didn't  
6 mention cost, but he didn't mention the length of time that he's been treating me, for  
7 over five years. And we know that there is definitely some cost involved.

8 And also, Mr. Thoensen brought about up about the preexisting condition. As  
9 Doctor Downey has stated in his deposition, most people over the age of thirty-five  
10 have osteoarthritis to some degree. They have this and it's considered normal wear  
11 and tear.

12 Prior to this incident I was, as my doctor stated, asymptomatic, which means I  
13 did not have that pain at that time. I did not suffer with anything going on in my  
14 back. I didn't know about anything as far as arthritis is concerned until I went to the  
15 doctor to find out about what was going on with me and they told me that there was  
16 some arthritis. Then, of course, I found out that that was just normal wear and tear.

17 I'm fifty-two years old. At the time of the accident I was forty-six. So, that  
18 was just-- Well, wait, forty-five, forty-six, yeah. And at the time of the accident I  
19 was forty-five. And so I had been living for a little bit of time and I was active. So,  
20 I've had some normal wear and tear and the medical profession calls it arthritis. And  
21 it was there. He saw it. It was definitely there, but it was not hurting me at that time.  
22 And I just wanted to bring that forth to you.

23 About the preponderance of the evidence, that just means superior. That's  
24 what preponderance means, superior. It just means that I have a little more-- It can  
25 be, like, a fraction of a percent more than what they have, is that it's what I'm saying

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

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

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

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

15          The Court: Thank you, ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (Whereupon the jury exited the courtroom)

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

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

19 The Court: Yes ma'am.

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

25 The Court: Yes ma'am.

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

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

11 Ms. Dicks Wilson: Okay.

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

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

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

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

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

3 It's like---

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

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

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

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

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

16 The Court: Correct.

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

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

22 Ms. Dicks Wilson: Uh-huh.

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

25 Ms. Dicks Wilson: Uh-huh.

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

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

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

17          Anything from the defendant regarding the charge?

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

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

22          (whereupon parties reconciled exhibits)

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

25          Have you got everything?

1 Mr. Thoensen: Yes sir. And if they want to watch the video again, that's up  
2 to you, I guess.

3 The Court: The video needs to go back and if they want to watch it they can  
4 ask to do so.

5 Mr. Thoensen: Yes sir.

6 The Court: And we'll bring them back in here to do that.

7 Mr. Thoensen: Yes sir.

8 (whereupon notebook containing charge and verdict forms, along with  
9 exhibits were taken to the jury and deliberations began at 5:15 p.m.)

10 The Court: We'll be at ease and if you need to go anywhere or do thing, if  
11 you will leave me a cell phone number where I can reach you, in case there's a  
12 question about anything, or the verdict. I need to make sure I can reach you.

13 Mr. Thoensen: Yes sir. I don't think I'll go further than the sidewalk outside,  
14 Your Honor.

15 The Court: Okay. If you'll bring in the alternate, so I can excuse her.

16 (whereupon the alternate juror was brought into the courtroom)

17 Ms. Walters, I want to thank you. Fortunately, everyone was healthy and able  
18 to go through the deliberations. And unfortunately, you're like that football player,  
19 you've practiced all week, you've sweated, you've worked hard, and now you don't  
20 get to play.

21 (laughter)

22 And not only can you not sit on the bench, you can't even come and play.

23 Ms. Walters: That's all right.

24 The Court: But it is important that you were here. And if something had  
25 occurred, you would have had to fill in. I had a case where I had a horrible tragedy in

1 Columbia. I had a juror who got a call just as we were getting ready to send them out  
2 that her husband died. And it was an accident, a tragic accident.

3 Anyway, any number of things can happen and I have to excuse a juror. And  
4 if that would have occurred, obviously you would have stepped into place, and you  
5 would have had to have been exposed to everything.

6 Ms. Walters: Right.

7 The Court: The good news for you is that service is complete and you are free  
8 to go for the balance of this year and two more years. Thank you again, you are free  
9 to go.

10 (whereupon alternate juror is excused)

11 We'll be at ease while the jury is deliberating.

12 (whereupon court was in recess)

13 **COURT IN SESSION – 6:50 P.M.**

14 The Court: Is the plaintiff ready to receive the verdict?

15 Ms. Dicks Wilson: I'm sorry?

16 The Court: Is the plaintiff ready to receive the verdict?

17 Ms. Dicks Wilson: Yes, Your Honor.

18 The Court: Is the defense ready?

19 Mr. Thoensen: Yes sir.

20 The Court: Ask the members of the jury to join us.

21 (whereupon the jury entered the courtroom)

22 Madam forelady, has the jury reached a unanimous verdict?

23 Jury forelady: We have, Your Honor.

24 The Court: All right. If you would, pass that up.

25 (whereupon the jury verdict was handed to the court)

1           The Court: Madam Clerk, if you would publish the jury verdict.

2           Clerk of Court: State of South Carolina, County of York, Court of Common  
3           Pleas, in the case of Felicia Dicks Wilson versus Cedar Fair Entertainment Company,  
4           Cedar Fair, LT, doing business as Carowinds Amusement Park, case number 2011-  
5           CP-46-1081, as to actual damages, personal injury, we the jury unanimously find for  
6           the defendant, Cedar Fair Entertainment Company, Cedar Fair LT, dba Carowinds  
7           Amusement Park, signed this day, May 16, 2012, by forelady, Joan G. Gesell.

8           Ladies and gentlemen of the jury, if this is your verdict, please indicate by  
9           raising your right hand.

10          (whereupon all jurors raised their right hand)

11          Thank you.

12          The Court: All right. Ladies and gentlemen, I want to thank you for your  
13          service this week. You've had an opportunity to do what not very many people have  
14          a chance to do, and that is sit in on an actual jury trial.

15          So, I want to thank you. I know that it's not easy. I've never had the  
16          opportunity to do what you do, but I've always respected the jury, and I understand  
17          how difficult the job can be.

18          But I do want to thank you all because during the course of the trial, as I  
19          looked out, I could tell that everyone was paying attention. And believe it or not, that  
20          doesn't always happen. I really do appreciate your attention to the case and your  
21          efforts in this matter.

22          That will conclude your service this week. We don't have anything left on the  
23          trial roster. And so, you have completed your service. If you need a work excuse you  
24          can get that from the Clerk, if you need that.

1 I think I've already shared with your or maybe apologized for your check  
2 that you're going to get today.

3 (laughter)

4 But it's again, it's jury service and it's a service you give to your community  
5 and it's not a paying gig, or we'd have a lot of people lining up to do it, instead of  
6 people lining up to avoid it.

7 I want you to know that it's just, it's important, what goes on in our judicial  
8 system that we have good folks such as yourselves who give of your time. And  
9 there's no doubt about it.

10 Obviously, the parties had an interest and needed to be here, but I'm confident  
11 every one of you had somewhere else that you either would rather be or needed to be.  
12 But you gave of your time and you gave of your efforts, and I truly appreciate that.

13 You've earned an exemption for the balance of this year and for the next two  
14 years. If you receive a summons for circuit court you can exercise that exemption  
15 and be excused.

16 I tell juries all the time, it is just an exemption. It doesn't mean you're not  
17 qualified. So, if you do receive another summons for circuit court and you want to  
18 serve, I would encourage you to do so. But if you do want to exercise that exemption  
19 you certainly have that right.

20 If everyone else will remain, ladies and gentlemen, that concludes your service  
21 and you are free to go. Thank you very much.

22 (whereupon the jury exited the courtroom)

23 The Court: At this time, I'll take up any-- Ms. Wilson, do you have any  
24 motions? I don't know if you're familiar with what motions are available, if any, at  
25 this stage. I'm going to for the record note that you're certainly going to make a

1 motion for a new trial. I wouldn't do this if someone were represented by a lawyer,  
2 but you don't have an attorney.

3 I don't know if Mr. Thoensen would have an objection or not. But I am going  
4 to consider that you've made a motion for a new trial based on that the jury's verdict  
5 is not reflective of the evidence in this case and is contrary to the evidence in the case.

6 I don't know what your plans are regarding this suit. But if you don't make a  
7 motion for a new trial and you decided to appeal the jury's decision you basically  
8 wouldn't have any appellate rights, so I'm making that motion.

9 So, I'm going to respectfully deny that motion because as I said earlier when  
10 Mr. Thoensen made his motion for a directed verdict and things of that nature, you  
11 know, I just basically for the same reason that I would deny the motion for a new  
12 trial.

13 This was a case that basically was fact-driven, and depending on how the  
14 jury received those facts and evidence-- It was a case that the jury had to decide.  
15 And based on what weight they gave the evidence, I not of the belief that there is  
16 anything in the record that would support the granting of a motion for a new trial. So,  
17 I would respectfully deny that.

18 If there are any objections that you made during the course of the trial I  
19 would consider at this time that you've renewed those objections, and respectfully  
20 deny the motion for a new trial.

21 I want to thank everybody for their courtesies during this week that you've  
22 shown to the court in being prompt and being on time, and all the courtesies that you  
23 have been to the court. I appreciate that.

24 If there's nothing else, then that will conclude this case.

25 Ms. Dicks Wilson: Thank you, Your Honor.

1 The Court: Thank you very much.

2 Mr. Thoensen: Thank you, Your Honor.

3 Ms. Dicks Wilson: Judge?

4 The Court: Yes ma'am.

5 Ms. Dicks Wilson: Do I have to let you know that I am making a request for  
6 appeal?

7 The Court: That's not made to me.

8 Ms. Dicks Wilson: Okay.

9 The Court: What you would do-- I'm not allowed to give legal advice. Just  
10 talk to somebody. And if you do wish to file an appeal, you would file that with the  
11 Court of Appeals, I think it's ten days or is it thirty/

12 Mr. Thoensen: My understanding that it's ten days that actually from the  
13 date of this trial, a motion---

14 The Court: Okay.

15 Mr. Thoensen: ---that you denied. So, that starts running her time to appeal.  
16 Is that right?

17 The Court: Right, yeah.

18 Mr. Thoensen: I'm happy to-- I mean, I don't want to---

19 The Court: I don't want to give you bad advice.

20 Ms. Dicks Wilson: I understand.

21 The Court: I've always believed to understand that you have ten days to file  
22 your notice of intent to appeal. You don't have to actually file your appeal in ten  
23 days, but the notice of intent---

24 Ms. Dicks Wilson: Okay.

25 The Court: ---starts that ball rolling.

1 Ms. Dicks Wilson: Okay.

2 The Court: I'll tell you this. Let me give you this suggestion: If you want to  
3 consider that, it would be, probably the best information I could give would be a call  
4 to the South Carolina Court of Appeals and ask one of their staff attorneys, and they  
5 will help you.

6 Ms. Dicks Wilson: Yes sir.

7 The Court: Okay?

8 Ms. Dicks Wilson: Thank you.

9 The Court: Okay. We are adjourned.

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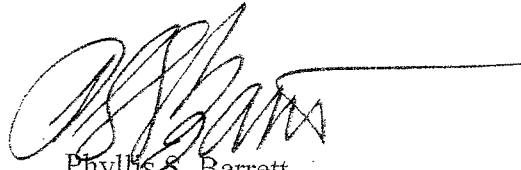
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## Certificate

I, the undersigned Phyllis S. Barrett, Court Reporter, do certify that the foregoing is a true, accurate and complete transcript of the trial had in the captioned case, relative to appeal, in the Court of Common Pleas for the Sixteenth Judicial Circuit, York County, South Carolina on May 15 through 16, 2012.

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



Phyllis S. Barrett

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

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

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

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

15 (Whereupon the jury exited the courtroom)

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

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

19 The Court: Yes ma'am.

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

25 The Court: Yes ma'am.

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

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

11 Ms. Dicks Wilson: Okay.

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

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

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

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

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

3 It's like---

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

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

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

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

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

16 The Court: Correct.

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

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

22 Ms. Dicks Wilson: Uh-huh.

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

25 Ms. Dicks Wilson: Uh-huh.

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

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

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

17          Anything from the defendant regarding the charge?

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

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

22          (whereupon parties reconciled exhibits)

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

25          Have you got everything?

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

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

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

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

15 The Court: Thank you, ma'am.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (Whereupon the jury exited the courtroom)

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

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

19 The Court: Yes ma'am.

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

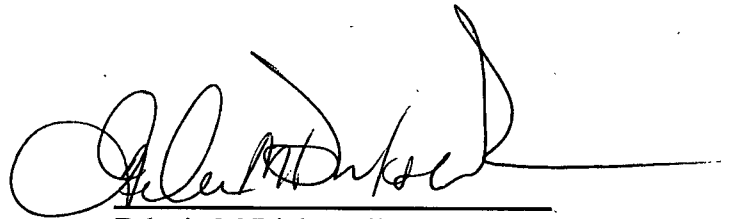
25 The Court: Yes ma'am.

**Certificate of Counsel**

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

March 28, 2014

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

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**RECEIVED**

MAR 31 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

MAR 31 2014

APPEAL FROM YORK COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Thomas A. Russo, Circuit Court Judge

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

Felecia Dicks Wilson

Appellant

v.

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

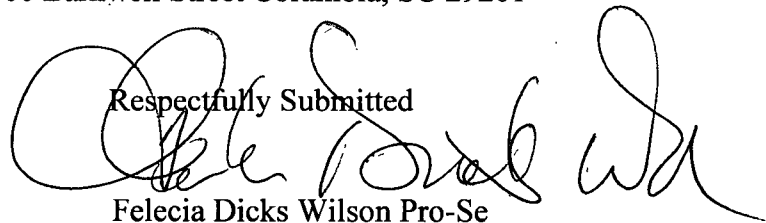
Respondent.

PROOF OF SERVICE

I certify that I have served my Record on Appeal and Final Brief on Cedar Fair Entertainment Co. Cedar Fair, LP d/b/a Carowinds Amusement Park by depositing a copy of it in the United States Mail, postage prepaid, on March 31, 2014, addressed to the Respondent's Attorney of record Joseph E. Thoensen Richardson Plowden & Robinson PA 1900 Barnwell Street Columbia, SC 29201

March 31, 2014

Respectfully Submitted



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