

RECORD NO: 2015-1216

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Thomas A. Russo, Circuit Court Judge

Case No.: 2015-001216

RECEIVED

DEC 18 2015

SC Court of Appeals

Bernice Britt, as Personal Representative
of the Estate of Lonnie William Britt and Bernice
Britt.....Appellant,

v.

Marshall's Marine,
Inc.,.....Respondent.

INITIAL BRIEF OF RESPONDENT

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DOCUMENTS PROVIDED BY RESPONDENT

- a. Summons and Complaint
- b. Answer
- c. Deposition transcript of Lonnie W. Britt
- d. Transcript of Record
- e. Letter to Judge Russo dated March 18, 2015
- f. Order Granting Motion for Summary Judgment filed April 28, 2015¹

¹ These items may normally be designated as matter to be included in the Record on Appeal pursuant to Rules 208 and 209, but as of this submission, the Appellant has not provided any Designation of Matter to be included in the Record on Appeal.

STATEMENT OF ISSUES ON APPEAL

Does the Respondent, a property owner who was granted summary judgment by the trial court, owe a duty to warn the Appellant invitee of an open and obvious outdoor condition (rain) when the Appellant alleges while in the rain and on the Respondent's property he fell due to possibly slipping from a rain wet condition?

STATEMENT OF THE CASE

On July 3, 2013, the Appellant Lonnie William Britt, a longtime friend and customer of Respondent Marshall's Marine, Inc. (Marshall's Marine) fell while at the Respondent's business as Mr. Britt and Marshall's Marine employees were outdoors and rain had begun to fall. Appellant Lonnie William Britt and Bernice Britt filed a negligence action February 24, 2014 in Florence County, South Carolina against Marshall's Marine. The Respondent's timely answered, and depositions of the parties were thereafter taken. Following the deposition testimony, the Respondent filed a Motion for Summary Judgment December 29, 2014.

The Honorable Thomas Russo conducted a Motion hearing March 18, 2015 and executed an Order Granting Summary Judgment in favor of the Respondent, Marshall's Marine, (filed on April 28, 2015). The Order held that the Appellants failed to identify any defective condition that caused the fall, and that there was no breach of any duty owed, as there was no duty owed by Respondent under the circumstances. Further, viewing the evidence and all inferences in the light most favorable to the Appellant, in the event falling rain may have resulted in the accident, the Respondent had no duty to warn the Appellant of

the rain, as it was an open and obvious condition, with the Appellant Lonnie William Britt standing outside as it was raining at the time of the incident.

On May 19, 2015, Appellant filed a Notice of Appeal and on October 22, 2015 Appellant filed an Initial Brief. The Appellant's Initial Brief did not include a Designation of Matter to be included in the Record on Appeal, as required by SCACR 208 and 209. This deficiency was communicated to Appellant October 28, 2015 from the South Carolina Court of Appeals Clerk, and ten (10) days provided to correct the deficiency. The ten (10) days having passed without the deficiency being corrected, counsel for Respondent requested an extension to file Respondent's Brief, such Brief now being due on or before December 23, 2015. Further, the Appellate Record failing to include the Appellant's Designation of Matter to be included in the Record on Appeal, counsel for the Respondent filed a Motion to Dismiss December 9, 2015.

The Respondent would contend that the Designation of Matter to be included in the Record on Appeal should include the Plaintiff/Appellant's Complaint, the Defendant/Respondent's Answer, the deposition transcript of Lonnie William Britt dated November 18, 2014, the transcript from the hearing before the Honorable Thomas Russo March 18, 2015, a letter provided to Judge Russo in clarification of testimony assertions maintained by counsel for the Appellant at the hearing, and the Order signed by the Honorable Thomas Russo and filed on April 28, 2015 (copies of such documents attached and to which reference is craved pending Appellant's compliance with Rules SCACR 208 and 209).

FACTS

In the summer of 2013, the Appellant Lonnie W. Britt took a fishing boat to Marshall's Marine, Inc., ("Marshall's Marine") to have it customized with a new steering wheel assembly and console (L.W. Britt depo. Pg. 52, Line 20; Pg. 59, Line 3; Pg. 62, Line 17 through Page 63, Line 3). On July 3, 2013, Mr. Britt and his brother Mackey Britt traveled approximately 60 miles to Marshall's Marine to get the boat in anticipation of the July 4th holiday (L.W. Britt depo. Pg. 52, Line 4; Pg. 118, Line 15). Appellant Lonnie W. Britt and Marshall's Marine had been doing business together for 25 years, and Mr. Britt thought highly of Marshall's Marine (L.W. Britt depo. Pg. 51, Lines 3-12).

After arriving at Marshall's Marine July 3rd to pick up his boat, Marshall Altman (an owner of Marshall's Marine) encouraged Mr. Britt to test drive the boat and although initially hesitant to do so, the Appellant Lonnie William Britt agreed to test drive the boat. As Mr. Britt testified, "well he did not grab me by the arm and lead me out there. He-I fully agreed and told him okay. And so we went and got in it...he didn't drag me out there or-whatever" (L.W. Britt depo. Pg. 106, Line 9-14).

The Appellant Lonnie William Britt was very pleased with the new steering controls and console fabricated by Mr. Altman, adding he was "tickled to death with it" (L.W. Britt depo. Pg. 62, Line 2) but after an approximate 10 minute test drive, a thunderstorm approached the area of the test lake at Marshall's Marine, thus they headed back to the dock, with Mr. Britt driving and docking the boat (L.W. Britt depo. Pg. 61, Lines 13-24; Pg. 64, Line 11-19). Mr. Britt testified he was an experienced boater, had gotten in and out of boats on numerous occasions in the past without difficulty, had driven a boat on the test lake at

Marshall's Marine before, and actually lives on the water with his own pier and dock (L.W. Britt depo. Pg. 63, Line 19; Pg. 65, Line 18; Pg. 66, Line 5).

Importantly, Mr. Britt testified that when he and Mr. Altman went out to the boat to take the test drive, Mr. Britt walked onto the dock without any problem, entered the boat on his own, required no assistance to board the boat, nor did he request any assistance at any point walking onto the dock or entering the boat from the dock (L.W. Britt depo. Pg. 60, Line 22- Pg. 61, Line 16). Similarly, upon reaching the dock after the test drive, Mr. Britt got out of the boat on his own, and acknowledged that he neither received nor requested assistance from his brother or anyone else, and that he did not need assistance (L.W. Britt depo. Pg. 72, Line 4; Pg. 128, Lines 2-19). After leaving the boat and getting onto the dock, Mr. Britt alleges his foot slipped (L.W. Britt depo. Pg. 68, Line 8) but he does not know which foot slipped (L.W. Britt depo. Pg. 75, Line 3). He acknowledges that there was a non-skid surface on the dock (L.W. Britt depo. Pg. 68, Lines 17-25), and he admits he had no problem walking on the dock up until that point, including walking out onto the dock initially (L.W. Britt depo. Pg. 72, Line 13).

Mr. Britt "guessed" the rain caused his fall, but acknowledged that he did not know what actually caused him to fall, stating "I got out of the boat. It was raining, thundering and lighting. And I got out of the boat, and when I got on that deck, my-I just slipped somehow. I don't know. I just slipped and I fell." (L.W. Britt depo. Pg. 66, Lines 19-25; Pg. 67, Line 12). Mr. Britt was transported by EMS to the hospital, and this lawsuit later followed alleging negligence as to Marshall's Marine. Summary Judgment was thereafter granted to Marshall's Marine, resulting in this current appeal.

ARGUMENT

As a preliminary matter, this Respondent would reiterate its Motion to Dismiss for failure of the Appellant to comply with SCACR Rules 208 and 209, as the Appeal is defective and improper without a proper submission of the Designation of Matter to be included in the Record on Appeal.

Further, consistent with SCACR Rule 220(c), this Respondent would request the Court to affirm the Trial Court Order for any and all grounds appearing in the Record on Appeal.

The Record on Appeal reflects that Summary Judgment was granted by the Honorable Thomas Russo in favor of the Respondent. Summary Judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a Judgment as a Matter of Law.” Rule 56(c) SCRCP. “An Appellate Court reviews the grant of Summary Judgment using the same standard employed by the Circuit Court.” Columbia/CSA-HS Greater Columbia Healthcare System, LP, v. South Carolina Medical Malpractice Joint Underwriting Association, 411 S.C. 557, 560, 769 S.E. 2d 847, 848 (2015). The parties seeking Summary Judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Bradley v. Doe, 374, S.C. 622, 649 S.E. 2d 153 (Ct. App. 2007); McCall v. State Farm Mutual Automobile Insurance Company, 359 S.C. 372, 597 S.E. 2d 181 (Ct. App. 2004). Here, the Respondent Marshall’s Marine clearly established the absence of any genuine issue of a material fact, as the Respondent relied completely upon the uncontested testimony of the Appellant Lonnie W. Britt, thus before the Court was the undisputed testimony of the account provided by Mr.

Britt. Once the Respondent met their burden of showing the absence of any evidentiary support for the Appellant's case, the Appellant cannot simply rest on mere allegations or denials contained within the pleadings, but must come forward with specific facts showing genuine issues for trial. Regions Bank v. Schmauch, 354, S.C. 648, 582 S.E. 2d 432 (Ct. App. 2003); Rife v. Hitachi, 363, S.C. 209, 214, 609 S.E. 2d 565, 568 (Ct. App. 2005).

The Appellant has failed to demonstrate the existence of any genuine issue of material fact, and sets forth only allegations in the pleadings in support of their position (Appellant Brief pages 5-6) which are unsubstantiated in the record and without reference to any testimony or other evidence contained within the record.

In Callander v. Charleston Donut Corporation, 305 S.C. 123, 126, 406 S.E. 2d 361, 362, (1991) our courts adopted Section 343(A) of the Restatement (Second) of Torts (1965) which reads as follows:

SECTION 343(A) KNOWN OR OBVIOUS DANGERS

(1) a possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge of obviousness.

(2) in determining whether the possessor should anticipate harm from a known or obvious danger, the fact that the invitee is entitled to make use of public land, or of the facilities of a public utility, as a factor of importance indicating the harm should be anticipated.

Comment E to Section 343(A) adds, "In the ordinary case, an invitee who enters land is entitled to nothing more than knowledge of the conditions and dangers he will encounter if he comes. If he knows the actual conditions, and the activities carried on, and the dangers involved in either, he is free to make an intelligent choice as to whether the advantage to be gained is sufficient to justify him and incurring the risk by entering or remaining on the land. The possessor of the land may reasonably assume that he will protect himself by the exercise of ordinary care, or that he will voluntarily assume the risk of harm if he does not succeed in doing so. Reasonable care on the part of the possessor therefore does not ordinarily require precautions, or even warning, against dangers which are known to the visitor, or so obvious to him that he may be expected to discover them."

The Restatement (Second) of Torts §343(A) and especially Comment E have particular application in this case.

The Record reflects that the Appellant Britt was aware of the rain at the time he stepped from the boat onto the dock, and that he likewise knew even before getting into the boat rain may be approaching, but on his own he chose to take the test drive. Mr. Britt testified that he was fully capable of making his own decisions, agreed to the test drive, and that taking the test drive would likely avoid later discovering a problem with the new steering controls and having to return the boat for further repair (L.W. Britt depo. Pg. 106, Line 9-15; Pg. 107, Line 2). In contravention of Appellant claims that "all parties knew that it had been raining and storming substantially in the 24 hour time period prior to this accident" (Appellant Brief, Pg. 6, Argument I), the actual testimony of Mr. Britt was that it had not rained earlier that day, and did not start raining until he and Marshall Altman were in the boat taking the test drive (L.W. Britt depo. Pg. 111, Line 11; Pg. 61, Lines 17-24).

Under Section 343(A) of the Restatement (Second) of Torts, the Respondent Marshall's Marine owes no duty to the Appellant/Invitee Britt to warn of a condition such as rain, which is known or obvious. The undisputed testimony is that Mr. Britt knew of the coming rain-that is why he cut his test drive of the boat short and headed back to the dock. Not only is there no duty owed by the Respondent to warn of such an open and obvious condition, the respondent cannot be responsible to his invitee in such a weather event, as doing so would render the Respondent of an insurer of the safety of his invitee, and that is not the law in the State of South Carolina. Rather, the duty owed is one of ordinary care to keep the premises in a reasonably safe condition. Felder v. K-Mart Corporation, 297, S.C. 446, 377, S.E. 2d 332 (1989). The Respondent Marshall's Marine, as a merchant, is not required to maintain the premises in such a condition that no accident could happen to a patron using them. Denton v. Winn Dixie Greenville, Inc., 312, S.C. 119, 439 S.E. 2d 292 (Ct. App. 1993) *Citing* Panoz v. Gulf and Bay Corporation, 208 So. 2d 297 (Fl. App.), cert. denied, 218 So. 2d 166 (Fl. App. 1968); Garvin vs. Bi-Lo, 343 S.C. 625, 629, 541 S.E. 2d 831, 833 (2001).

There is no duty owed by the Respondent to warn of rain, as the condition is equally known and obvious to the Appellant, nor can the Respondent be responsible for falling rain. In Meadows v. Heritage Village Church, 305 S.C. 375, 409, S.E. 2d 349 (1991) the Plaintiff slipped and fell on grass wet from rain. The Court opined that there was no duty to warn of the grass wet from rain, as "it was a natural condition, the peril of which was obvious." The Court reasoned that this was not a latent or hidden defect, but rather an open and obvious condition, with the Court likewise confirming adoption of the Restatement (Second) of Torts, Section 343(A). Numerous cases in both the State and Federal Courts have

determined that there is no duty owed in South Carolina to warn of rain or rain on floors. See Young v. Meeting Street Piggly Wiggly, 288, S.C. 508, 343 S.E. 2d 636 (Ct. App. 1986); Hackworth v. United States of America, 366 F.Supp. 326 (USDC 2005); Peterson v. Porter, 389 S.C. 148, 153, 697 S.E. 2d 362, 365 (Ct. App. 2010); Lucas v. Sysco Columbia, LLC, 2014WL4976509 (D.S.C.). These cases establish that, although a property owner may have a duty to warn of hidden or latent dangers, there is no duty to warn of open and obvious conditions, and in such situations the invitees have a duty themselves to discover and avoid any potential danger. Although the cases involve tracked in or wet entrances to businesses, it is clear no duty would be owed where one is actually outside, standing in the rain, such as the Appellant Britt.

As a final matter, importantly, the Appellant Lonnie W. Britt cannot say how, why or what caused him to fall. Although, he “guesses” it was due to rain, he likewise admitted he didn’t actually know, “I don’t know”. (L.W. Britt depo. Pg. 67, Lines 10-13). In this action, the Appellant has failed to demonstrate any defective condition separate and apart from alleging that rain possibly caused him to fall. Our Courts do not recognize Res Ipsa Loquitur. Fletcher v. Medical University of South Carolina, 390, S.C. 458, 463, 702 S.E. 2d 372, 374 (Ct. App. 2010). It is thus required that the Appellant come forward with proof of actual negligence due to a defective condition, and the record is devoid of such. In brief, he is unable to testify as to any condition which existed on the property of the Respondent, but guesses rain played a role, but ultimately does not know.

CONCLUSION

Summary Judgment as a matter of law, consistent with Rule 56 SCRPC, is proper in this action and should be affirmed. The Appellant alleges he fell in the rain after exiting a boat onto a dock, but does not know why he fell. The Appellant testified that he “guesses” the rain was a factor in the fall, but admits he doesn’t know how or why, testifying “I just slipped somehow. I don’t know. I just slipped and I fell.” (L.W. Britt depo. Pg. 66, Line 24). The Appellant cannot point to any defect on the premises creating the potential to fall other than the rain, which is a natural condition, the presence of which is neither hidden nor latent, and the existence of which was admittedly known by the Appellant Lonnie W. Britt.

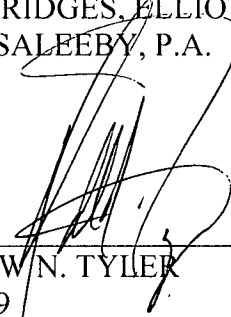
The Appellant Lonnie W. Britt, in a negligence claim such as this, must demonstrate that the Respondent owed him a duty of care, the Respondent breached that duty by a negligent act or omission, and the Appellant suffered damage as a proximate result of that breach. Bloom v. Ravoira, 339 S.C. 417, 422, 529, S.E. 2d 710, 712 (2000). If the Appellant fails to prove the Respondent owed him a legal duty of care, the Appellant fails to prove actionable negligence. Doe v. Greenville County School District, 375, S.C. 63, 72, 651, S.E. 2d 305, 309 (2007). The Appellant must identify a duty that the Defendant has, to protect him from a particular harm, to merit consideration of his claim by a jury. Steinke v. S.C. Dept. of Labor, Licensing and Regulation, 336, S.C. 373, 387, 520 S.E. 142, 149 (1999). Under our well settled law, there is no duty to warn of an open and obvious condition, nor is there any duty of the Respondent to warn of a natural condition such as rain.

There being no duty owed by Respondent to Appellant, there could be no breach of duty, thus Summary Judgment is proper pursuant to Rule 56 SCRPC. The record reflects

that the condition complained of was both obvious to, and known by, the Appellant Lonnie W. Britt thus pursuant to Section 343(A) Restatement (Second) of Torts, and other applicable case precedent, the Order Granting Summary Judgment should be affirmed.

Respectfully submitted,

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P.A.



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ATTORNEY FOR THE RESPONDENT

December 18, 2015

No. 2015-1216

DOCUMENTS PROVIDED BY RESPONDENT

- a. Summons and Complaint

COUNTY OF HORRY

FILED

Lonnie William Britt
Bernice Britt,

CIVIL ACTION COVERSHEET

2014 FEB 24 PM 4:13

CONNIE REED-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

vs.

Marshall's Marine, Inc.

Defendant(s)

Submitted By: A. Lori Jones, Esq.
Address: 600 Foxtail Drive, Longs, SC 29568SC Bar #: 78058
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

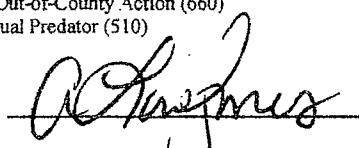
*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☒ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date:

2/20/14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

Lonnie William Britt,
Bernice Britt,

Plaintiff,

vs.

Marshall's Marine, Inc.

Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.

FILED
2014 FEB 24 PM 4:13
CONNIE REEL & SON, P.A.
CLERK OF COURT
FLORENCE COUNTY, S.C.

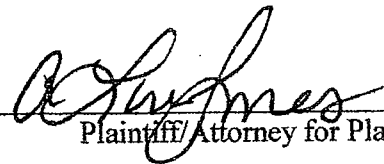
TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Longs, South Carolina

Dated:

2/20/14


Plaintiff/Attorney for Plaintiff

Address: 600 Foxtail Drive, Longs, SC 29568

FILED
2014 FEB 24 PM 4:13
CONNIE REEL & SON, P.A.
CLERK OF COURT
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Lonnie William Britt
Bernice Britt

Plaintiffs,

v.

Marshall's Marine, Inc.

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

C/A#

2014 CP 21

COMPLAINT
(Jury Trial Demanded)

2014 FEB 24 PM 4:13
CLERK OF COURT OF CS & GS
FLORENCE COUNTY, SC

FILED

Plaintiffs, Lonnie William Britt and Bernice Britt, by counsel, file this complaint against defendant, Marshall's Marine, Inc. In support of the complaint, the plaintiffs state the following:

PARTIES

1. Lonnie William Britt is a citizen of the county of Horry in South Carolina.
2. Bernice Britt is a citizen of the county of Horry in South Carolina.
3. On information and belief, Marshall's Marine, Inc. is a South Carolina corporation in good standing located within the county of Florence in South Carolina. The registered agent for Marshall's Marine, Inc. is Marshall Ray Altman. The registered address for Marshall's Marine, Inc. is 114 East Myrtle Beach Hwy.

JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court based on defendant's domicile being located within the county of Florence, South Carolina.
5. Venue is proper in the county of Florence, South Carolina pursuant to S.C. CODE ANN. § 15-7-30 (C)(2), due to Florence being the county in which the acts giving rise to this complaint occurred.

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT OF CS & GS
FLORENCE COUNTY, SC.

FACTS

6. The defendant corporation owns and operates Marshall's Marine as "Carolina's Boating Supermarket," along with the attendant parking lot, boat garage, repair shop, and boat ramp and docks located at its facility at 114 East Myrtle Beach Hwy in Lake City, the county of Florence, South Carolina.
7. The defendant's dock is a wooden walking area that extends out into the water along either side of the boat ramp located in the rear of defendant's property. This is, among other things, to provide access to the boats for operators and passengers while the boats are in the water.
8. On information and belief, the docks, ramp, and small lake area in the rear of defendant's property are all owned and maintained by defendant corporation and its agents.
9. On or about July 3rd, 2013, at approximately 2:00 p.m., plaintiff Lonnie William Britt attempted to use defendant's dock.
10. The plaintiff had received numerous requests to retrieve his boat from defendant's location where defendant and its agents had been performing repairs plaintiff's boat.
11. Plaintiff had refused prior requests to retrieve his boat at this time due to inclement weather conditions making it dangerous to retrieve the boat until weather subsided.
12. After adamant insistence by defendant's agents, plaintiff Lonnie Britt responded to defendant's location to retrieve his boat.
13. Defendant's agent requested plaintiff to perform a test drive of the watercraft before leaving, to ensure the accuracy of the repair.
14. Plaintiff performed the requested test drive of the boat in spite of the persistent inclement weather and his expressed objections.
15. Defendant failed to offer plaintiff any assistance or make any extra precautions for plaintiff while on the wet dock or while entering or exiting the boat, despite the poor weather conditions and plaintiff's already articulated safety concerns.

16. While exiting the boat, plaintiff slipped and fell on the wet dock, receiving substantial injuries.

FIRST CAUSE OF ACTION
(Negligence)

17. Plaintiff repeats and realleges paragraphs 1 through 16 as if fully set forth herein.
18. The defendant breached its duty of care at the time of the incident because, among other things, it did the following:
- a. Failed to take steps to keep property safe from harmful conditions;
 - b. Failed to warn of known dangers;
 - c. Failed to reasonably ensure the safety of an invitee on its property.
 - d. Failed to offer adequate assistance for the known hazardous condition;
 - e. Failed to provide any method of stability to assist plaintiff during entry and exit of the boat, or provide any additional safety features on its dock for such inclement weather conditions; and
 - f. Disregarded plaintiff's expressed concerns about the dangerous conditions and his apprehension in retrieving the boat during the inclement weather.
19. As a direct and proximate result of defendant's negligence, plaintiff Lonnie William Britt suffered injuries, including but not limited to the following:
- a. Broken bones in his hip requiring pins and rods to be placed in the hip for correction;
 - b. Injury to his neck requiring shunts for correction;
 - c. Congestive heart failure;
 - d. Lost wages from being unable to work as a result of the injuries sustained;
 - e. Incurred debt from medical expenses, and ordinary expenses that are unable to be paid as a result of being unable to work;

- f. Complete loss of business, customers, and going concern in a business owned and operated by plaintiff that has since been closed due to plaintiff being unable to operate it as a result of injuries sustained;
- g. Long term intense pain; and
- h. Mental anguish, suffering and loss of enjoyment of life.

SECOND CAUSE OF ACTION
(Loss of Consortium)

- 20. Plaintiff repeats and realleges paragraphs 1 through 16 as if fully set forth herein.
- 21. The defendant breached its duty of care at the time of the incident because, among other things, it did the following:
 - a. Failed to take steps to keep property safe from harmful conditions;
 - b. Failed to warn of known dangers;
 - c. Failed to reasonably ensure the safety of an invitee on its property.
 - d. Failed to offer adequate assistance for the known hazardous condition;
 - e. Failed to provide any method of stability to assist plaintiff Lonnie Britt during entry and exit of the boat, or provide any additional safety features on its dock for such inclement weather conditions; and
 - f. Disregarded plaintiff, Lonnie Britt's expressed concerns about the dangerous conditions and his apprehension in retrieving the boat during the inclement weather.
- 22. As a direct and proximate result of the defendant's negligence, plaintiff Bernice Britt suffered personal injuries including the loss of services, consortium, care and comfort of plaintiff Lonnie Britt
- 23. The plaintiffs, Lonnie William Britt and Bernice Britt, accordingly are entitled to recover compensatory damages from the defendant in an amount to be proven at trial.

WHEREAS, Plaintiffs Lonnie William Britt and Bernice Britt respectfully ask for a judgment in favor of Plaintiffs for actual and punitive damages, attorney fees and costs, and such other relief as this Court may deem just and proper.

Submitted by,

THE JONES LAW FIRM



A. Lori Jones, Esq.
SC Bar No.: 78058
The Jones Law Firm
600 Foxtail Drive
Longs, SC 29568
(843) 602-2340
(843) 206-0871 – fax
e-mail: lori@lorijoneslaw.com

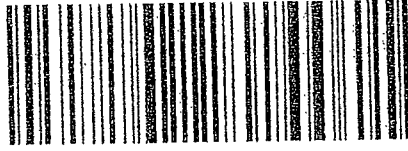
Longs, South Carolina

Dated: 2/20/14

Jones Law Firm
600 Foxtail Dr
Longs, SC 29568

RETURN RECEIPT
REQUESTED

CERTIFIED MAIL



7010 0780 0000 6608 9662



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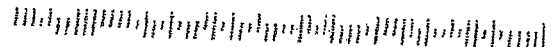
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Steve L. Altman
Marshall Marine, Inc.
114 East Myrtle Beach Hwy
Longs City, SC 29560

2956094504



No. 2015-1216

DOCUMENTS PROVIDED BY RESPONDENT

b. Answer

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Lonnie William Britt and Bernice Britt,

Plaintiff,

vs.

Marshall's Marine, Inc.,

Defendant.

FILED

IN THE COURT OF COMMON PLEAS

2014 APR -7 PM 12:17 C/A NO.: 2014-CP-21-441

CONNIE REEL-SHEARIN
CLERK & GS
FLORENCE COUNTY, SC

ANSWER

JURY TRIAL DEMANDED

The Defendant, Marshall's Marine, Inc., responds to the Complaint of the Plaintiffs, Lonnie William Britt and Bernice Britt as follows:

FOR A FIRST DEFENSE

1. Admits solely upon information and belief.
2. Admits solely upon information and belief.
3. Admits.
4. This Defendant would admit the Defendant being a business operation within Florence County, South Carolina. Any other allegations including jurisdiction require no response from this Defendant, with issues of jurisdiction and venue being within the sole province of the Court.
5. This Defendant would respond to Plaintiff's Paragraph 5 by stating that venue is a matter to be considered by the Court, pursuant to statute, thus no response from this Defendant is required.
6. Admits.

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

7. Admits.
8. Admits upon information and belief.
9. Admits.
10. Denied as stated with full and strict proof demanded thereof.
11. Denied as stated with full and strict proof demanded thereof.
12. Denied as stated with full and strict proof demanded thereof.
13. Denied as stated with full and strict proof demanded thereof.
14. This Defendant would admit that the Plaintiff operated his boat in a test lake area at the rear of the Defendant's business location. Any remaining allegations or any inconsistent therewith are denied in full with strict proof demanded thereof.
15. Denied as stated with full and strict proof demanded thereof.
16. This Defendant would admit that the Plaintiff fell on the dock July 3, 2013, and claims injuries as a result, and for which assistance was provided to the Plaintiff by agents of the Defendant in an effort to help Mr. Britt after his unfortunate fall.
17. All prior responses are restated and realleged as fully as if repeated verbatim.
18. All allegations, including subparts, are denied in full with strict proof demanded thereof.
19. This Defendant lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of the nature and extent of injuries claimed by the Plaintiff, thus the same may be denied in full with strict proof demanded thereof, and with this Defendant specifically denying any negligence as claimed.

20. All prior responses are restated and realleged as fully as if repeated verbatim herein.
21. These allegations, including subparts, are denied in full with strict proof demanded thereof.
22. Denied.
23. Denied.

FOR A SECOND DEFENSE

24. Paragraphs 1 – 23 are restated and realleged as fully as if repeated verbatim herein.
25. The Defendant further alleges that if any injuries and/or damages are sustained by the Plaintiff Lonnie William Britt a/k/a Bill Britt, the said injuries and/or damages are caused by the greater negligence and/or willfulness of the Plaintiff, which negligence and/or willfulness exceeds that of the Defendant, if any, without which greater negligence and/or willfulness on the part of the Plaintiff, the said alleged injury and/or damage would not have occurred or sustained and for that reason, the Plaintiff is totally barred from recovery. Should it be determined that the Plaintiff's negligence does not outweigh any negligence on the part of the Defendant, any award to the Plaintiff should be reduced in proportion to the amount of negligence on the Plaintiff's part.

FOR A THIRD DEFENSE

26. Paragraphs 1 – 25 are restated and realleged as fully as if repeated verbatim herein.

27. The Defendant further alleges that the accident described in the Plaintiff's Complaint and any injuries sustained by the Plaintiff were solely and proximately caused by the negligence, carelessness, recklessness, willfulness and wantonness of the Plaintiff and the Defendant pleads the sole negligence of the Plaintiff in bar of this action.

FOR A FOURTH DEFENSE

28. Paragraphs 1 – 27 are restated and realleged as fully as if repeated verbatim herein.
29. This Defendant would seek an Order of the Court dismissing this action pursuant to Rule 12(b)(6) for failure to state a claim for which relief can be granted. This Defendant thus pleads *SCRCP* Rule 12(b)(6) and preserves and reserves any and all rights and defenses pursuant to Rules 8 and 12 *SCRCP* which otherwise may be applicable.

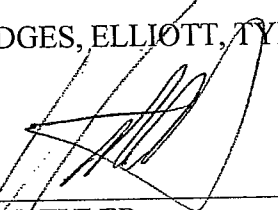
FOR A FIFTH DEFENSE

30. Paragraphs 1 – 29 are restated and realleged as fully as if repeated verbatim herein.
31. This Defendant alleges that an award of punitive damages in this case would violate the 5th, 6th and 14th amendments to the United States Constitution and Article One, Section 3 of the South Carolina Constitution in that:
- a) The unfettered power to award punitive damages in any manner is wholly devoid of a meaningful standard and is inconsistent with due process guarantees; and,

b) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed, with cost, as for such further relief as may be just and proper.

AIKEN, BRIDGES, ELLIOTT, TYLER & SALEEBY, P.A.



MATTHEW N. TYLER
SC BAR #12869, FED ID #5190
SUITE 409
181 EAST EVANS STREET
PO DRAWER 1931
FLORENCE, SC 29503
(843) 669-8787

Florence, South Carolina
April 3, 2014

ATTORNEY FOR THE DEFENDANT

No. 2015-1216

DOCUMENTS PROVIDED BY RESPONDENT

c. Deposition of Lonnie W. Britt

State of South Carolina

In Common Pleas Court

County of Florence

Lonnie William Britt and
Bernice Britt,

plaintiffs,

V.

2014-cp-21-441

Marshall's Marine, Inc.,
defendant.

Deposition of: Lonnie William Britt

Location: 181 East Evans Street, 4th Floor
Florence, South Carolina

Date: Tuesday, November 18, 2014

Time: 10:32 a.m. - 12:56 p.m.

Court Reporter: Roger Williamson

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the
South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans ST. (29501)
Florence, South Carolina
telephone: (843) 673-9845
e-mail: Info@qacourtreporting.com
visit: Www.qacourtreporting.com

APPEARANCES

For the Plaintiff:
The Jones Law Firm
600 Foxtail Drive
Longs, SC 29568
By: A. Lori Jones, Esq.

For the Defendant:
Aiken Bridges Law Firm
181 East Evans Street, 4th Floor
P.O. Drawer 1931
Florence, SC 29505
By: Matthew N. Tyler, Esq.

Also Present: Bernice Britt
Marshall Altman
Stewart Altman

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EXHIBITS

Pg/ln Ex. Description
42/14 1 - exhibit F to the complaint CAT filed
45/20 2 - complaint filed by CAT
45/22 3 - answer to complaint filed by CAT
84/21 4 - discharge report from hospital.
84/25 5 - exam date from June 17, 2008
89/04 6 - interval history visit with Dr. Boulion
93/17 7 - emergency room report May 5th of 2010

** uh-huh = affirmative
huh-uh = negative

A Yes, sir.

Q Okay. And you understand what that means?

A Oh, yes.

Q It's the same as putting your hand on the Bible in a court of law.

A Yes, sir.

Q Okay. I'm not here to try and trick you or make you say something you don't want to say. I'm here to get information from you. Toward that end, I'm going to be asking you questions and I expect that you will give me truthful and complete responses. But to do so, you've got to understand my question.

A Right.

Q So if I ask you something that you don't understand, will you tell me you didn't -- didn't understand it or didn't quite follow it and I'll be glad to rephrase it?

A Uh-huh.

Q Okay. I need to get a yes or no from you.

A Yes.

Q All right, sir. And that's important for purposes of today. Even though we've got a

STIPULATIONS

It is stipulated between Counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of the question, are reserved until the time of trial.

It is also stipulated between Counsel for the respective parties and the deponent that the deponent will waive the right to read and sign this transcript.

Thereupon,

Lonnie William Britt,
being first duly sworn by the Court Reporter, as hereinafter certified, testified as follows:

EXAMINATION

By Mr. Tyler:

Q Mr. Britt, good morning. My name is Matt Tyler. We met just a few moments ago. I'm sure that your attorney has explained to you why we're here. I am here defending Marshall's Marine in a lawsuit that you have filed in Florence County, South Carolina. I'm here to take your deposition, which is a means of asking you questions under oath. You understand you're under oath?

very qualified, skilled court reporter, we still need to get yes, sir's or no, sir's as opposed to head nods or saying huh-uh because sometimes that can be misinterpreted. Okay?

A Right.

Q All right. Very good. The last thing I need to point out to you, our supreme court has stated that in the event there is some question about what I'm asking you today --

A Yeah.

Q -- that you need to direct the clarification to me as opposed to your attorney. Okay?

A Uh-huh.

Q All right. Is that good?

A Yeah.

Q That's -- all right. Let me begin by getting your full legal name, please, sir.

A Lonnie William Britt.

Q All right. And Mr. Britt, where do you live?

A On highway 917 --

Q What's the actual --

A -- Nichols, 158 South Carolina.

Q What's the actual address?

1 A 10801 Nichols.
 2 Q 10801 highway --
 3 A Highway 917.
 4 Q And the zip is what?
 5 A 29581.
 6 Q How long have you lived there, sir?
 7 A There where I live now?
 8 Q Yes, sir.
 9 A Ever since 2000. Or before then.
 10 Ninety-seven.
 11 Q You moved there in 1997?
 12 A Yes, I built that house.
 13 Q Okay. Who lives there with you?
 14 A My wife.
 15 Q Okay. And that's your wife, Bernice
 16 Britt?
 17 A That's correct.
 18 Q She's seated to your left in this room
 19 with us today?
 20 A That's right.
 21 Q All right. How long have you and Mrs.
 22 Britt been married?
 23 A Forty-something years.
 24 Q Forty-something years?
 25 A Yeah.

1 months or a year sometimes.
 2 Q Okay. Have you raised a family other
 3 than in Horry County?
 4 A No.
 5 Q Do you have any relatives in Florence
 6 County?
 7 A Do I have any --
 8 Q Relatives in Florence County.
 9 A Not that I know of.
 10 Q Okay. Have you ever lived in Florence
 11 County?
 12 A No.
 13 Q How old are you?
 14 A I'm sixty-six.
 15 Q I've got your date of birth as July
 16 25th, 1943.
 17 A Yes.
 18 Q Is your social 247-86-9048?
 19 A Yes.
 20 Q Okay. Where were you born?
 21 A I was born in Marion County.
 22 Q What -- where did you grow up?
 23 A I grew up in Marion County.
 24 Q Okay. What part, though?
 25 A Oh, around Mullins.

1 Q Okay.
 2 Court Reporter: Is that a yes?
 3 The Deponent: Huh? Yes.
 4 By Mr. Tyler:
 5 Q Before you lived at the 10801 Highway
 6 917 address in Nichols, where did you live?
 7 A About five miles on down the road.
 8 Q Still on highway 917?
 9 A That's correct.
 10 Q Okay. Have you ever lived anywhere
 11 other than Horry County?
 12 A Well, I done -- I done construction
 13 work. But that was back in --
 14 Mr. Tyler: Ms. Britt, you'll have a
 15 chance to talk after awhile, but now I need to ask
 16 him questions.
 17 Ms. Britt: Yes, sir.
 18 The Deponent: Well, I used to have to
 19 travel around a lot doing our work. And I've
 20 lived in different states, you know, way -- way
 21 back yonder. This was like in the sixties.
 22 By Mr. Tyler:
 23 Q Okay. Did you actually take up
 24 residence there in different states?
 25 A Yeah, we would go there and stay six

1 Q Is this your first and only marriage?
 2 A No.
 3 Q Okay. How many times have you been
 4 married?
 5 A Twice.
 6 Q What happened in your first marriage?
 7 A Well, it just -- bad deal. That's all
 8 I can say.
 9 Q Okay. Did it end in divorce?
 10 A Oh, yeah.
 11 Q Okay. What year were you divorced?
 12 A In sixty--- around '68.
 13 Q Does your former wife live in Florence
 14 County?
 15 A No.
 16 Q Do you know where she lives?
 17 A Now?
 18 Q Yes, sir.
 19 A I think she lives in Dillon County. I
 20 ain't sure.
 21 Q All right. Mr. Britt, obviously
 22 you've got what appears to be oxygen with you
 23 today. Is that what it is?
 24 A Yes, sir.
 25 Q Okay. And you're wearing a nasal

1 cannula?
 2 A Yeah.
 3 Q How long have you been wearing that,
 4 sir?
 5 A Probably close to seven months.
 6 Q Okay.
 7 A I've been using oxygen at home. This
 8 thing here, it's got worse, so I had to get
 9 something like this. But I use one at home
 10 probably 80 percent.
 11 Q Okay. Who prescribed that for you?
 12 A Dr. Carol.
 13 Q Do you know Dr. Carol's first name?
 14 A James Carol Johnson.
 15 Q Okay. So his last -- it's actually
 16 Dr. Johnson. You just call him Dr. Carol?
 17 A Yeah. That's why -- well it's....
 18 Q Is his -- is his office -- where is
 19 his office?
 20 A In Nichols, South Carolina.
 21 Q Roughly, how long have you been a
 22 patient of Dr. Johnson?
 23 A Probably for 25 years.
 24 Q Are you on any medications today?
 25 A Yes.

1 Q Do you know what they are?
 2 A My wife would have to answer that. I
 3 mean, I have to take -- I've had two open heart
 4 surgeries.
 5 Q Yes, sir.
 6 A And I've had a stroke. And then,
 7 it's -- but she would have to name the medication.
 8 Q Okay. Any of your medications, do
 9 they affect your ability to understand questions?
 10 A No.
 11 Q All right, sir. Are you aware of any
 12 reason we shouldn't go forward with this
 13 deposition today?
 14 A No, not right now.
 15 Q All right. How many children do you
 16 have?
 17 A Three.
 18 Q What are their names?
 19 A Penny, Buddy and Wanda Kay.
 20 Q Is Penny married?
 21 A No.
 22 Q All right. So her last -- her name is
 23 Penny Britt?
 24 A No.
 25 Q What's her last name?

1 A Penny Black.
 2 Q Black?
 3 A Yeah.
 4 Q Was she married at one time?
 5 A Yeah.
 6 Q All right, sir. What does she do for
 7 a living?
 8 A She's a secretary for a company down
 9 in Conway.
 10 Q What company is that?
 11 A I don't really know.
 12 Q How long has she been with them,
 13 approximately?
 14 A I think a couple of years, maybe. I
 15 ain't sure.
 16 Q Okay. Does she live in Conway?
 17 A No.
 18 Q Where does she live?
 19 A She lives in Green Sea. Not Green
 20 Sea, but Bayboro. I'm sorry about that.
 21 Q Okay. Is Buddy married?
 22 A Yes.
 23 Q What's his wife's name?
 24 A Angela.
 25 Q What does Buddy do?

1 A He does construction work. And that's
 2 about all he's ever done.
 3 Q Who does he work with?
 4 A Well, he's working for Mr. Don Perry
 5 now.
 6 Q Does Mr. Don Perry have a business
 7 name?
 8 A Well, he owns Lakewood Campground.
 9 Q Is that where your son Buddy is
 10 working?
 11 A Yeah, working for him.
 12 Q Right. Is he working at the
 13 campground?
 14 A No, he's working over on his farm.
 15 Q How long has he been working with Mr.
 16 Perry?
 17 A Ever since I had to get out of
 18 business.
 19 Q How long has that been?
 20 A About -- let's see -- I believe about
 21 a year and a half.
 22 Q All right. Did Buddy work with you
 23 before then?
 24 A Yes, sir.
 25 Q What was his title?

1 A Well, he done a little bit of
2 everything. Helped me look after the workmen and
3 done anything that needed to be done, supervise
4 crews and whatever.
5 Q Did he operate machinery?
6 A Oh, yeah. He can operate machinery.
7 Q Is there anything that he couldn't
8 operate?
9 A No.
10 Q Okay. Angela works where?
11 A She works at Cool Springs at like a
12 station -- it's like a station, and they sell
13 sandwiches and stuff like that.
14 Q All right. What is Cool Spring?
15 A That's a little old settlement out in
16 the country. Cool Spring.
17 Q Okay. Does she work like in a
18 roadside stand that sells --
19 A No, sir. This is -- it's like a
20 country store, but it's got cooking -- they have
21 cooking.
22 Q Okay.
23 A And she does cooking.
24 Q Okay. All right. Did Angela ever
25 work for you?

1 A No.
2 Q How about -- what does Wanda Kay do?
3 A She's -- she's my daughter. She
4 works -- worked for me until I had to quit. She
5 still helps me a lot, but she was working, you
6 know, like full time when -- when we was in
7 business.
8 Q What was her role?
9 A She -- she was the secretary and
10 everything, doing the billing and all of that
11 stuff.
12 Q And I'm sorry. What does she do now?
13 A She just helps me a little bit. She
14 ain't doing very much.
15 Q All right. So does she have an
16 actual -- a job or employment now other than of
17 course helping you?
18 A Well, she -- she has to take care of
19 her stepdad.
20 Q Okay.
21 A He's in real bad shape.
22 Q What's his --
23 A Not her stepdad. I'm her stepdaddy.
24 But -- I'm sorry about that. But she looks after
25 her daddy.

1 Q Okay. What's his name?
2 A Charles Black.
3 Q Where does he live?
4 A He lives right in Bayboro.
5 Q All right. Where does Wanda Kay live?
6 A Bayboro.
7 Q And all of that's in Horry County?
8 A Correct.
9 Q Okay. Before your company stopped
10 operations, how long had Buddy worked with you?
11 A Several years, probably ten or twelve
12 years or more.
13 Q Okay. How about Wanda Kay?
14 A She's been working about the same.
15 Q All right. How far in school did you
16 go, Mr. Britt?
17 A Eighth grade.
18 Q Would that have been Marion County
19 schools?
20 A Yes.
21 Q Did you ever return to tech or any
22 other school supplementary education to take any
23 specialty courses, anything of that nature?
24 A No.
25 Q Have you ever received any psychiatric

1 or psychological or mental health training --
2 counseling?
3 A No.
4 Q Have you ever been treated for
5 depression?
6 A No.
7 Q I've seen some of your -- your medical
8 records and I want to ask you a little bit about
9 your health history now. Let's go back -- let's
10 say the past 15 years, what type of health issues
11 have you had in the past 15 years?
12 A Last 15 years?
13 Q Yes, sir.
14 A I've had open heart surgery.
15 Q Okay.
16 A I've had --
17 Q Let me interrupt you. You say you've
18 had open heart surgery twice?
19 A Yeah.
20 Q What is that beeping?
21 Ms. Britt: It's his oxygen machine.
22 Mr. Tyler: Okay.
23 Ms. Britt: If we could just take a
24 second.
25 (off the record.)

1 By Mr. Tyler:
2 Q Mr. Britt, we took a brief recess
3 while she took your oxygen cannula machine -- shut
4 down, took it off. As Ms. Jones mentioned to you,
5 if you need anything, you let me know. Okay?
6 A Okay.
7 Q And this is not a duration or
8 marathon. If you need to take a restroom break,
9 that's fine too. You just let me know.
10 A Okay.
11 Q All right? We're talking about your
12 health history. You've mentioned you've had open
13 heart surgery two times, I believe. Is that
14 correct?
15 A That's correct.
16 Q Okay. What else?
17 A I've had a stint put in this neck.
18 Q Okay. You're pointing to your left
19 side?
20 A Yeah.
21 Q All right.
22 A And I had a stroke back in -- it was
23 in ninety--- I just can't remember now.
24 Q Sometime in the early nineties?
25 A It was probably -- it was probably

1 Q Stenosis.
2 A If they did, I don't remember. I
3 can't --
4 Q I'll tell you, in layman's terms, it
5 basically means some blockages that accumulate
6 over time. Have they talked to you about that,
7 about having some blood flow blockages?
8 A Oh, yeah.
9 Q Okay.
10 A Yeah.
11 Q All right.
12 A I've had that problem -- that's why
13 come they put those stints and I had to have open
14 heart surgery.
15 Q Yes, sir. When did you have your
16 first open heart surgery?
17 A Eighty-se.
18 Q Okay. How about your second one?
19 A Ninety-seven.
20 Q Ninety-seven, ten years apart?
21 A Yeah.
22 Q Okay. Do you recall when they put the
23 stint in?
24 A They put -- can I ask her? Because I
25 can't remember them dates.

1 late nineties.
2 Q Okay. All right. Other things?
3 A Nothing.
4 Q Okay.
5 A That's plenty of..
6 Q The medical records indicate you've
7 been diagnosed with hyperlipidemia. Do you know
8 what that is?
9 A Sugar?
10 Q Well, I'm asking. Do you know? If
11 you don't know, that's fine.
12 A I don't know.
13 Q Okay. Do you recall being diagnosed
14 with hypertension?
15 A No.
16 Q All right, sir. Are you aware of a
17 diagnosis of peripheral vascular disease? Do you
18 know what that is?
19 A Yeah.
20 Q Okay. And you've been told you had
21 that?
22 A Oh, yeah.
23 Q Okay. How about did the doctors ever
24 describe to you what stenosis is?
25 A Stenosis?

1 Q No, that's fine. If you don't
2 remember, that's fine. You just tell me you don't
3 know.
4 A I don't know. I mean, I can't --
5 Q That's fine. Anything I ask of you
6 today --
7 A Uh-huh.
8 Q -- if you do not know the answer, you
9 tell me you don't know. Okay?
10 A Okay.
11 Q All right. Hopefully, most of the
12 things I ask you, you will know. Okay?
13 A Okay.
14 Q Like for example, I also understand
15 you've been diagnosed with diabetes.
16 A Right.
17 Q How long have you had that diagnosis?
18 A Probably ten, twelve years.
19 Q All right, sir. Was that something
20 Dr. Johnson first diagnosed?
21 A No. Doctor over here in Florence.
22 Some sugar doctor. I forgot his name.
23 Q Are you still seeing him?
24 A I see Dr. Bunn.
25 Q Where is Dr. Bunn?

1 A At Myrtle Beach.
 2 Q Okay. Do you know the name of Dr.
 3 Bunn's practice?
 4 A Not really, no. I mean, I know he was
 5 my sugar doctor before. That's all he does.
 6 Q Okay. How long have you been
 7 diagnosed with a heart disease?
 8 A Ever since '87.
 9 Q Okay. So since the first open -- and
 10 I'm not trying to put words in your mouth. I want
 11 to make sure I understand right. But when you had
 12 the first open heart surgery, is that when they
 13 first told you that you had heart disease?
 14 A Oh, yeah.
 15 Q Okay.
 16 A I had a little heart attack.
 17 Q Okay. You're obviously in a
 18 wheelchair today. What's your current status or
 19 situation?
 20 A Well, I can't walk. I got -- had to
 21 have this leg amputated. And then after that,
 22 that's when I fell.
 23 Q Okay.
 24 A And broke a leg and a hip.
 25 Q Now, you had a below the knee

1 heart surgery and my second open heart surgery.
 2 And then I had that stroke in between. Yeah, I've
 3 been in the hospital several times on account of
 4 that.
 5 Q Okay. Have you been in any other
 6 accidents?
 7 A Been in an accident?
 8 Q Any -- when I say accident, you know,
 9 accidents can be anything. They can be anything
 10 from falling off a ladder to tripping and falling
 11 to -- to getting in a car wreck. Have you been in
 12 any other accidents?
 13 A Yeah, I was in an accident in a truck.
 14 A man run in to me.
 15 Q When did that happen?
 16 A Happened to me in -- oh, I don't know.
 17 I guess it was around April. I ain't for sure of
 18 the date.
 19 Q April of 2014?
 20 A Let's see. Thirteen, I guess.
 21 Q Okay.
 22 A It's been -- it was before I fell this
 23 past July was a year ago. It was that April --
 24 about March or April of that year.
 25 Q Where did they treat you for that?

1 amputation; is that right?
 2 A That's correct.
 3 Q When was that?
 4 A '05, I believe.
 5 Q Was that done in Myrtle Beach?
 6 A Done in Conway.
 7 Q They obviously admitted you to the
 8 hospital for that. Other than the amputation,
 9 your open heart surgeries, the stroke, the
 10 incident at Marshall's that we'll talk about, have
 11 you been admitted to the hospital for any other
 12 reason in the past 15 years?
 13 A No, sir. It's been heart and sugar.
 14 I mean, actually kidney stone one time. I don't
 15 remember what year that was.
 16 Q I'm sorry. Had some what?
 17 A Kidney stones.
 18 Q Kidney stones. Okay.
 19 A Yeah.
 20 Q All right. Other than the incident at
 21 Marshall's, have you had to go to the emergency
 22 room for any reason in the past 15 years?
 23 A Oh, yeah, when my -- with my heart.
 24 Q Okay.
 25 A Between the -- between my first open

1 A Mullins and Marion. Then I was
 2 transferred from there to -- to Grand Strand and
 3 Conway -- I mean, Myrtle Beach.
 4 Q Okay. So let me make sure I got this
 5 right. If you're in Mullins and an accident
 6 happens, is the closest hospital Marion County
 7 Medical Center?
 8 A That's correct.
 9 Q Okay.
 10 A Well, I was in three miles of that.
 11 Q Okay.
 12 A So they just carried me there.
 13 Q Did they take you there by ambulance?
 14 A Oh, yeah.
 15 Q What happened there? I don't want to
 16 spend a whole lot of time on it, but what happened
 17 in that wreck?
 18 A Well, a man run a red light and hit me
 19 head on.
 20 Q Okay. Did that happen in Mullins?
 21 A It happened between Mullins and
 22 Marion.
 23 Q Okay. Did you make a claim for that?
 24 A What do you mean, make a claim?
 25 Q A claim for money.

1 A Man, he had -- he didn't have but
2 25,000 dollars worth of insurance.
3 Q Okay. Did you get that?
4 A Got that. That ain't even paid the
5 hospital in Marion.
6 Q Okay. Did you have underinsured
7 coverage, your own coverage?
8 A Yeah.
9 Q Did you go after that?
10 A Well, they paid some.
11 Q Okay. And y'all settled the case?
12 A It didn't -- there ain't nothing to
13 settle.
14 Q I mean, did you have to file a
15 lawsuit?
16 A Yeah.
17 Q Okay. Did Ms. Jones represent you?
18 A Yes.
19 Q Okay. Well, did anybody depose you
20 like we're doing today?
21 A No.
22 Q Have you ever given a deposition
23 before today?
24 A No.
25 Q Other than that -- what was hurt, by

1 Q Think carefully about this, now. In
2 the past 15 years, have you had any other falls?
3 A No, I ain't never -- I mean, you know,
4 no more than just trip down and fall. But as far
5 as anything getting broke or upset that I couldn't
6 get up and go, I ain't.
7 Q You've not had any falls where you
8 received medical treatment?
9 A Nothing -- no -- no fall as I -- I can
10 remember of.
11 Q Okay.
12 A Not to go to no doctor or -- or
13 hospital, no.
14 Q Let me get a little bit more
15 background on you, Mr. Britt. Do you have any
16 military service?
17 A No, sir.
18 Q I understand that you've been about
19 the construction business. Is that correct?
20 A That's correct.
21 Q How long have you been in the
22 construction business?
23 A Ever since 1995.
24 Q Okay. In nineteen-seventy--- what
25 were you doing in 1974?

1 the way?
2 A There?
3 Q Yeah.
4 A Mostly it was the air bag come in
5 and -- and hit me in the chest and face and broke
6 this arm right here.
7 Q Your left arm?
8 A Yeah.
9 Q Okay.
10 A Broke the wrist. Not the arm, but the
11 wrist.
12 Q All right. Were there any other
13 injuries you were treated for?
14 A No.
15 Q All right, sir. And you said that was
16 in April of 2013. Have you been to any other
17 accidents?
18 A None except I fell.
19 Q Okay. When did you fall?
20 A July the 3rd.
21 Q Okay. You're talking about the
22 incident at Marshall's.
23 A That's correct.
24 Q Okay. Have you had any other falls?
25 A No.

1 A I was superintendent for Carl Fox from
2 Marion.
3 Q And what is Carl Fox?
4 A Carl Fox, he owned a construction
5 business.
6 Q Okay. So you were actually in the
7 construction business then?
8 A Yeah, I was superintendent for it.
9 Q Okay.
10 A Yeah.
11 Q Have you in your lifetime since you
12 finished eighth grade worked in any business other
13 than construction?
14 A Yeah, I worked for -- that's what I
15 told you earlier, that I had to go in states and
16 work for Sanders Construction Company out of
17 Memphis, Tennessee.
18 Q Well, I know --
19 A My --
20 Q -- but that's construction. Have you
21 worked in any business other than construction?
22 A No, I ain't never messed with nothing
23 but heavy equipment all -- ever since I was 18
24 years old.
25 Q Okay. What happened in 1975? Did you

1 start your own company?
 2 A That's correct.
 3 Q Okay. And what was -- what was the
 4 name of that company?
 5 A B & B Ditching.
 6 Q And does B & B stand for Bill and
 7 Bernice?
 8 A Well, I used to say it's -- well, it
 9 really did, but it's -- I always told everybody it
 10 was building the bank.
 11 Q In the past ten years, have you sold
 12 or transferred any business assets?
 13 A Yeah, 2005, I sold -- sold out.
 14 That's when I had the stroke with it. And I sold
 15 out and stayed quit for probably three years. And
 16 then I went back in it after that.
 17 Q Who did you sell to?
 18 A I sold it on the auction in
 19 Orangeburg, South Carolina.
 20 Q What was the name of the business that
 21 you were operating under up until 2005? B & B --
 22 A B & B Ditching.
 23 Q Okay. Now, when you sold out and had
 24 your auction, were there any creditors that were
 25 owed?

1 A No, sir.
 2 Q Okay.
 3 A Not nary one.
 4 Q All right. So was that because of
 5 your health that you -- that you sold your
 6 equipment?
 7 A Yeah. I've had -- I was having heart
 8 problems, and then at that time, I had that
 9 stroke. And I just got out of it.
 10 Q Okay.
 11 A After that, I got to doing better and
 12 decided to get back in.
 13 Q Okay. When did you get back in?
 14 A Probably in two-thousand--- let's see.
 15 Probably about 2012 -- or no, '11, somewhere. I
 16 ain't for exactly sure.
 17 Q All right.
 18 A I can't remember like I used to now.
 19 Q When you got back in to it, what did
 20 you call yourselves then?
 21 A B & B Site Prep. It was -- we -- we
 22 just done site prep work. Before, we done
 23 everything, grading, paving, ditching, all kinds
 24 of stuff, I mean, dump trucks, everything. But
 25 went back in it doing site prep work.

1 Q All right. Well, let me back up just
 2 a second. When you sold all of your equipment at
 3 the auction --
 4 A Yeah.
 5 Q -- back in 2005 --
 6 A Right.
 7 Q -- and you paid off everybody that you
 8 had to pay off, how much did you actually net?
 9 A What do you mean, net?
 10 Q How -- I imagine you were -- you
 11 were -- at that point, you were thinking you were
 12 going to close -- you were closing up shop
 13 forever; is that right?
 14 A Right.
 15 Q Okay. And -- and I'm sure you were
 16 thinking that you had to plan for the future. Is
 17 that fair to say?
 18 A Yeah.
 19 Q So how much did you actually net from
 20 the close of your business?
 21 A In other words, after everything was
 22 paid off, what I had left?
 23 Q Right.
 24 A It was close to half a million
 25 dollars.

1 Q All right. So we jump ahead to
 2 sometime around 2011. You started up B & B Site
 3 Prep?
 4 A That's correct.
 5 Q Okay. Who were the officers of B & B
 6 Site Prep?
 7 A Me.
 8 Q Okay. You didn't have any
 9 vice-president or secretary or anything --
 10 A No.
 11 Q Okay. You were -- you were it?
 12 A That's right.
 13 Q But you told me earlier that your son
 14 and your daughter had been working with you for
 15 about 10 or 12 years; is that right?
 16 A Yeah.
 17 Q All right.
 18 A She kept the office.
 19 Q Okay.
 20 A And the business and the building.
 21 Q So I --
 22 A And dealings of the -- you know, the
 23 customers.
 24 Q All right. So --
 25 A And my son, he was operator, plus he

1 helped me, you know, some in looking after some of
2 the crews at that time.
3 Q All right. Now, you would agree with
4 me that by 2011, you knew that your health was
5 questionable. Is that fair to say?
6 A You mean questionable?
7 Q Yeah. I mean, you had -- you had two
8 open heart surgeries.
9 A Oh, yeah.
10 Q You were having -- you had been
11 diagnosed with heart disease.
12 A Right.
13 Q I mean, so did you have your son
14 trained to -- to operate pretty much anything if
15 need be?
16 A Pretty much. I mean, he could.
17 Q Okay. Well, he didn't have any
18 ownership in the business?
19 A No, sir.
20 Q Your daughter didn't have any
21 ownership in the business?
22 A No.
23 Q Did you have stock?
24 A No.
25 Q Were y'all set up as an LLC?

1 A Correct.
2 Q Okay. And that's a limited liability
3 corporation? Is that what that is?
4 A You mean -- what you -- yeah, I guess.
5 I don't know. You explain to me what you meant by
6 that.
7 Q Okay. I will. We said -- you said it
8 was an LLC.
9 A That's correct.
10 Q Do you know what the LLC stands for?
11 A Yeah.
12 Q Okay. Who helped you -- did you have
13 a lawyer help you set that up?
14 A Yes.
15 Q Who was that?
16 A That was a lawyer down in Loris
17 called -- her name was Wanda. I don't --
18 Q Did they explain to you what LLC was?
19 A Well, in case something happened, you
20 go bankrupt or whatever, I guess, it helps you in
21 that pretty much.
22 Q And it was there for your protection.
23 A Right.
24 Q Okay. And has that LLC for B & B Site
25 Prep now been ended or dissolved?

1 A Yes.
2 Q Who did that for you? Did you have a
3 lawyer help you with that?
4 A Yeah, a lawyer helped me some with
5 that and -- and my daughter, you know, just -- you
6 know, it was just...
7 Q Do you know when -- when y'all
8 dissolved the LLC?
9 A It was right after I fell down there.
10 I had -- I just couldn't -- it's just the busted
11 hip and leg up and I couldn't wear this artificial
12 leg and took for months for that to ever get down
13 and swell. And so just had to eliminate it.
14 Q Mr. Britt, I've got -- from the
15 internet, I went to the secretary of state's site
16 for B & B Site Prep, LLC.
17 A Right.
18 Q And it shows a dissolution date of
19 July 16th of 2014. Did y'all dissolve it just
20 this past July?
21 A Yeah, I guess.
22 Q All right.
23 A I -- I -- you know, it -- it operated
24 for a little while until I seen it was -- you
25 know, couldn't -- couldn't go no further. In

1 other words, you've got -- you've got to stay in
2 behind a business this day and time the way
3 everything is.
4 Q Okay.
5 A And so at that time, I wasn't able to
6 get out in the field. I actually traded on the
7 work, different things like that, to look after it
8 like I always had done. And so I just had to
9 eliminate it.
10 Q Okay. So you filed the paperwork with
11 the secretary of state to dissolve the
12 corporation; is that right? Is that a yes?
13 A Yes.
14 Q Okay. You would have had to sign
15 something to do that. Do you remember signing
16 something to do that?
17 A Yeah. I -- I know I did. I mean, I
18 can't -- I can't just remember what date or
19 whatever it was, but yeah.
20 Q Okay. Do you have any reason to think
21 that the records from the secretary of state are
22 wrong?
23 A No.
24 Q And Wanda Kay, your daughter, was the
25 one that was keeping up the record and the books

1 for the company up until the point it was
2 dissolved?
3 A Correct.
4 Q Okay.
5 A It takes awhile to shut down a
6 business. In other words, you don't just close
7 the doors. You've got all that taxes and all that
8 kind of mess to -- to go through.
9 Q Okay.
10 A To shut it down.
11 Q Mr. Britt, during the course of your
12 medical care, when you would meet with -- with
13 doctors and nurses and medical professionals and
14 they would ask you questions, were you always
15 honest with them?
16 A Pretty much.
17 Q Okay. You said pretty much. Why --
18 why would you -- why would you not be honest with
19 them?
20 A Well, a lot of times I would be sicker
21 than what I was and I -- you know, I didn't want
22 to -- usually they stayed on my back, but I wanted
23 to work. I wanted -- that's all I've done all my
24 life.
25 Q Okay.

1 A And I mean, I'll be honest with you, I
2 usually shoot straight with them all the time.
3 Q Okay.
4 A I ain't telling a lie. I ain't going
5 to tell no lie.
6 Q Well, I mean, when they asked you
7 about how you were doing --
8 A Yeah.
9 Q -- or your symptoms or your work
10 history or your health history, things of that
11 nature, would you be honest with them?
12 A Oh, yeah.
13 Q Okay. Would you have had any reason
14 to lie about those things?
15 A No.
16 Q Okay.
17 A I wanted to know -- they knowed what
18 was wrong with me because I -- I want to be well
19 instead of sick.
20 Q Yes, sir. All right. The medical
21 records that I have seen that have been provided
22 to me in this case --
23 A Right.
24 Q -- they indicate that at the time of
25 this incident at Marshall's Marine, you had

1 already stopped working. When did you stop
2 working, sir?
3 A I hadn't stopped working then. I had
4 stopped, like I said, I believe it was 2005 when I
5 went out of business. And then I went back in
6 business, but I was working. In fact, I -- I --
7 the day that I -- that right the week before I
8 fell down there, you know, I -- I -- I didn't go
9 out on the job and sit, now, all day, or couldn't
10 run no equipment or nothing like that, but I was
11 still working up until that point to overseeing,
12 you know.
13 Q When you say oversee, you -- what did
14 you do? Did you drive a pickup truck?
15 A Well, a lot of times, I could. A lot
16 of times, I couldn't.
17 Q What would you do to oversee? Just go
18 to a site and make sure everything was done --
19 A That's correct. And see what the
20 production was on it and stuff like that.
21 Q Uh-huh.
22 A Sometimes my wife would have to drive
23 me.
24 Q As of July of 2013, did you still
25 maintain a driver's license?

1 A Yes.
2 Q Okay. Because of your prosthetic leg,
3 did you have to have a special driver's license?
4 A No.
5 Q Did you have handicap tags?
6 A Yeah, still got them.
7 Q Still got them. Do you have a
8 handicap placard to hang on your mirror?
9 A Yes.
10 Q Okay. How long have you had that?
11 A Ever since I had this leg amputation.
12 Q Okay.
13 A I can't -- you know, I can walk
14 real -- pretty good, but I still couldn't walk up
15 and down hills, you know, with it, because it just
16 offsets you.
17 Q Okay.
18 A To a certain extent.
19 Q And that's on your left side?
20 A Yes, sir.
21 Q We had talked a few minutes ago about
22 the -- the LLC, B & B Site Prep, LLC. And you are
23 aware that CAT Financial Commercial Account
24 Corporation has brought a lawsuit against B & B
25 Site Prep?

1 A No, not at this time. No.
 2 Q You're not aware of that?
 3 A No.
 4 Q Okay.
 5 A I sure ain't.
 6 Ms. Jones: May I -- could I have a
 7 second to refresh his memory?
 8 Mr. Tyler: Well, I'll be glad to show
 9 it to him.
 10 Ms. Jones: That's fine. He will
 11 understand what it is when he sees it.
 12 Mr. Tyler: Yeah.
 13 Ms. Jones: Yeah.
 14 (Defendant's exhibit number 1
 15 marked for identification.)
 16 By Mr. Tyler:
 17 Q Mr. Britt, I'm going to show you
 18 what's been identified to me as the summons and
 19 complaint filed in Horry County Common -- Horry
 20 County, South Carolina, the civil action number is
 21 14-CP-26-4352. Take a look at that and see if
 22 that rings a bell.
 23 A Can I borrow your glasses?
 24 Ms. Britt: Don't you scratch my
 25 glasses.

1 By Mr. Tyler:
 2 Q Mr. Britt, you've just had the
 3 opportunity to look over the CAT Financial
 4 Commercial Account Corporation action that was
 5 referenced earlier that's pending in Horry County.
 6 Does that refresh your memory?
 7 A Yeah.
 8 Q I mean, up until reading this a moment
 9 ago, were you aware the lawsuit was pending
 10 against B & B Site Prep by CAT?
 11 A Well, I know that -- I know they sent
 12 some papers out there. But I didn't know -- I
 13 didn't know -- really, I don't know.
 14 Q Well, what -- what's your position on
 15 this?
 16 A Explain what you mean by that.
 17 Q Okay. Obviously, you've got a lawyer
 18 and I don't want to know what you and your lawyer
 19 talked about. Okay?
 20 A Right.
 21 Q That's privileged communication.
 22 A Right.
 23 Q But I've read the response that your
 24 lawyer filed with the court.
 25 A Right.

1 Q Which in essence denies that this
 2 money is owed. Is that your position?
 3 A I know I owe them money.
 4 Q Okay. You owe them money?
 5 A Sure.
 6 Q When you say you, you mean B & B Site
 7 Prep does?
 8 A Yeah.
 9 Q Okay. Because in this document, which
 10 is known as an answer, that's filed on behalf of
 11 the defendants --
 12 A Yes, sir.
 13 Q -- it states -- and I'll just -- I'm
 14 going to read it. Okay?
 15 A Okay.
 16 Q Paragraph nine is denied. Defendant
 17 Bill Britt did not make a mistake in signing the
 18 guarantee. It was his understanding and intention
 19 that the debt would be held against B & B Site
 20 Prep, LLC only and that that this debt was not
 21 personally guaranteed. Is that correct?
 22 A I don't quite understand what you're
 23 trying to say.
 24 Q All right, sir. I'll show you what's
 25 been marked as exhibit number 1. And this is why

1 you might need your glasses. This document was
 2 attached as exhibit F to the complaint that CAT
 3 filed.
 4 A Yeah.
 5 Q And I might be able to save you some
 6 time. On the second page, it appears that B & B
 7 Site Prep is signed as the guarantor. Is that
 8 correct?
 9 A Yeah. Yeah.
 10 Q Okay. All right, sir. And the answer
 11 that was submitted on behalf of the defendants
 12 states that Mr. Britt, you, did not intend for the
 13 debt to be personally guaranteed. Is that
 14 correct?
 15 A Right.
 16 Q Okay.
 17 Mr. Tyler: Let's get this complaint
 18 marked as exhibit number 2 and the answer marked
 19 as exhibit 3, please.
 20 (Defendant's exhibit number 2
 21 marked for identification.)
 22 (Defendant's exhibit number 3
 23 marked for identification.)
 24 By Mr. Tyler:
 25 Q So just to go over this in brief, it

1 was your intention that any money owed would be
 2 owed by B & B Site Prep and not Mr. Britt?
 3 A Correct.
 4 Q Okay. And B & B Site Prep I believe
 5 we've established has -- is -- has dissolved and
 6 is no longer an operational business. Correct?
 7 A Correct.
 8 Q And that was a limited liability
 9 company to provide you with insulation when it was
 10 operational. Correct?
 11 A Yes.
 12 Mr. Tyler: Okay. Did y'all bring his
 13 tax records?
 14 Ms. Jones: I've got his tax records.
 15 Yeah. I thought I had already sent all that over
 16 to you.
 17 Mr. Tyler: I tell you what, we can
 18 take a break in a little while. I just want to
 19 see if I've got them here.
 20 Ms. Jones: He might need one now. Do
 21 you need a break, Mr. Britt?
 22 The Deponent: I could use some water.
 23 Mr. Tyler: Okay. How about do you
 24 need to use the restroom or anything?
 25 The Deponent: Not right now, I don't.

1 Mr. Tyler: Okay. Hold on just a
 2 second. Let me get him some water.
 3 (Off-the-record discussion.)
 4 Ms. Jones: Yeah, here's 2013, 2012.
 5 Which -- which ones exactly were you --
 6 Mr. Tyler: My request was from 2008
 7 through '13.
 8 Ms. Jones: '08 through '13. Wanda
 9 has not sent me the ones from 2008 to 2010.
 10 Mr. Tyler: Okay.
 11 Ms. Jones: But 2011 going forward, I
 12 think those copies have already been sent to me.
 13 Was that in the last discovery response?
 14 Mr. Tyler: No, I hadn't received
 15 those at all. I've gotten one set of tax returns,
 16 but that's when I sent that e-mail yesterday,
 17 saying, hey, can you send me -- you said she was
 18 working on getting them.
 19 Ms. Jones: Yeah, and I -- she still
 20 hadn't gotten them for me, so --
 21 Mr. Tyler: Okay. All right.
 22 Ms. Jones: Taking her deposition
 23 might be something that would be helpful to answer
 24 some of these business questions.
 25 Mr. Tyler: What I'll do is I'll

1 just -- when we get to the end, I'll adjourn it
 2 until those can be provided. And if we need to,
 3 we can reconvene.
 4 Ms. Jones: Okay. Okay.
 5 Mr. Tyler: We may not need to.
 6 Ms. Jones: That will be fine. I know
 7 I sent 2013 -- or at least I --
 8 Mr. Tyler: Yeah, that -- that's the
 9 ones I got.
 10 Ms. Jones: Okay.
 11 Mr. Tyler: I got -- I got one year,
 12 basically.
 13 Ms. Jones: Oh, because with the
 14 initial discovery responses, I sent 2011 through
 15 2012. So I can send them to you again.
 16 Mr. Tyler: Yeah, that would be good.
 17 Ms. Jones: I've got them here. We
 18 can copy them before I leave today.
 19 Mr. Tyler: Are you all right?
 20 The Deponent: Yeah.
 21 By Mr. Tyler:
 22 Q All right. Let's pick up and move on,
 23 then.
 24 A Okay.
 25 Q Mr. Britt, I want to talk to you about

1 this incident at Marshall's Marine. Do you recall
 2 what date it happened?
 3 A Yes.
 4 Q What was that?
 5 A That was on July the 3rd.
 6 Q Of what year?
 7 A This is '14.
 8 The Deponent: Was it '13?
 9 By Mr. Tyler:
 10 Q They can't help you now. It's up to
 11 you.
 12 A Well, this past July was a year, so
 13 it's been about a year and a half.
 14 Q All right. And do you remember -- do
 15 you remember what year?
 16 A Well, this is '14. It had to be -- I
 17 don't know if it was '12 or '13. Thirteen, I
 18 guess. Yeah.
 19 Q I notice your eye is red. Do you
 20 have -- do you have something wrong with your eye?
 21 A It got blood shot last night.
 22 Q All right. Did you pop a blood vessel
 23 in your eye?
 24 A I don't know. I guess so. Something
 25 happened.

1 Q All right. Do you remember anything
2 occurring? Did you have any kind of accident
3 where you hit your head or anything?
4 A No, no, no.
5 Q All right.
6 A No.
7 Q What time of day did the incident at
8 Marshall's Marine take place?
9 A I forget the time, I'll be honest with
10 you. I don't --
11 Q I want you to always be honest with
12 me.
13 A Well, I'm honest, but I -- as far as
14 telling you it was 10:00 or 11:00, I just can't do
15 it. I think it was somewhere around 10:00 or
16 11:00. I -- I'm not sure.
17 Q Okay. So would it be fair to say that
18 you recall it happening before noon?
19 A I think so, yeah. I think so. I
20 ain't -- like I say...
21 Q Well, I mean, are you able to say
22 whether it happened at 12:00 or 3:00 in the
23 afternoon?
24 A I think it was in the morning time.
25 Q Now, will you agree with me that

1 Marshall's Marine is in Lake City, South Carolina?
2 A That's correct.
3 Q Okay. How many times before this day,
4 July 3rd, had you been to Marshall's Marine?
5 A I've been doing business with these
6 fellows and their dad for probably 25 years.
7 Q Have you always had a good relation
8 with them?
9 A Oh, yeah. Still think the world of
10 them, to tell you the truth.
11 Q Okay. How far a drive is that from
12 your house to Marshall's in Lake City?
13 A About 60 miles.
14 Q Okay. And if I ask you how long it
15 takes you to get there, I guess it depends on how
16 fast you are going?
17 A About an hour, hour and 10, 15
18 minutes.
19 Q Okay. From -- from your home to
20 Marshall's, what -- would you take 378?
21 A You -- well, you leave my house on 917
22 and go up there and then cut across and go over to
23 41, run 41 down to 378 at the Hot Spot, they call
24 it.
25 Q Right.

1 A And go straight on in to Lake City.
2 Q I understand. Why were you going to
3 Marshall's July 3rd?
4 A I was going to pick my boat up.
5 Q Okay. Were you by yourself?
6 A No, sir.
7 Q Who was with you?
8 A My brother.
9 Q What's his name?
10 A Mackey Britt.
11 Q Where does Mackey live?
12 A Conway.
13 Q All right. Did you drive to Mackey's
14 house?
15 A No.
16 Q Was Mackey with you?
17 A Yes, sir.
18 Q Okay. Tell me -- I mean, how --
19 how -- what caused you to go to Marshall's?
20 A Well, I had carried my boat down there
21 to get -- they was mounting a steering wheel on it
22 and they called me and told me it was ready. And
23 so that Saturday morning -- no, it wasn't Saturday
24 morning. It was -- I forgot what day it was now.
25 But anyway, it was 3rd of July, and I went down

1 there to pick my boat up.
2 Q Okay. I know you want to tell me and
3 I want to ask you, but I want to kind of walk
4 through some details first.
5 A Right.
6 Q So you and Mackey, what were y'all
7 doing that day before you went to Marshall's?
8 A I called him and asked him would he
9 drive me down there.
10 Q Okay. Well, even before Marshall's
11 called you, had you -- had you been working that
12 day?
13 A Well, they had called me a day or two
14 before that.
15 Q They called you a day or two before
16 you went down there?
17 A Yeah.
18 Q All right. So -- so it's your
19 testimony that sometime around July 1st or 2nd,
20 you got a phone call?
21 A Yeah. I ain't exactly -- might have
22 been -- yeah.
23 Q Are you sure they didn't call you that
24 morning on July 3rd?
25 A No.

1 Q Sure -- no, you're not sure or no,
2 they didn't?
3 A I'm sure they didn't.
4 Q Okay.
5 A They didn't call me that day. I
6 just -- they told me before that.
7 Q Okay.
8 A And I went and called -- I called
9 Mackey and asked him would he drive me down there.
10 Q Okay.
11 A Yeah.
12 Q All right. Did Mackey have a truck?
13 A He drove my truck.
14 Q Okay. Pickup truck?
15 A Yes.
16 Q Okay. And I don't want to put words
17 in your mouth, but I just want to make sure I
18 understand you. Based upon what you had told me
19 earlier about your wife driving you some --
20 A Yeah.
21 Q -- and your prosthetic leg, is that
22 why you felt it was safe for Mackey to drive you?
23 A Well, yeah. I mean, you know, they
24 drive and I can't -- no pulling with this here
25 leg. You know, I -- I'm just limited to what

1 really I can do, you know, like that.
2 Q Okay.
3 A But...
4 Q When you were diagnosed initially -- I
5 know I'm getting off a little bit from talking
6 about Marshall's, but I want -- I want to talk
7 about your prosthetic leg for a second. When you
8 were diagnosed initially with your diabetes --
9 A Uh-huh.
10 Q -- you still had both legs?
11 A Yes.
12 Q Okay. Was it the diabetic condition
13 that resulted in the amputation?
14 A It led to that. Yes.
15 Q Okay.
16 A I had -- I had got in a wreck in 1969
17 and I lost an inch out of that leg.
18 Q All right, sir.
19 A Then I -- it lasted me 40 years.
20 Q Okay.
21 A And then I got sugar real bad and it
22 led to that.
23 Q To the need for the amputation?
24 A Yes.
25 Q Okay. Now, when you were diagnosed

1 with the diabetes or at the time that they did the
2 amputation, did they tell you that there would be
3 occasions where you would lose sensation in your
4 leg or both legs?
5 A No, not really.
6 Q Have you noticed in your -- and I'm
7 not talking about your amputated leg, but in your
8 right leg -- have there been occasions where you
9 would have numbness or tingling from the diabetes?
10 A I've had some tingling before, but
11 that didn't have nothing to do with this left leg.
12 Q Okay. I mean, the doctors have never
13 told you that the diabetes could result in a loss
14 of sensation?
15 A Well, any dietician or doctor -- sugar
16 doctor, he's going to tell you you have a -- it's
17 possible losing your eyesight. Your -- your
18 kidneys could go bad or you've got a lot of things
19 go bad on account of sugar.
20 Q Yes, sir.
21 Court Reporter: I'm sorry. I didn't
22 catch the first thing you said.
23 The Deponent: Do what?
24 Court Reporter: The thing you said
25 before your kidneys. Kidneys could go bad.

1 The Deponent: Well, your eyes can
2 go --
3 Court Reporter: Eyesight. Okay.
4 The Deponent: Eyesight can go bad or
5 whatever.
6 By Mr. Tyler:
7 Q All right. When you got the call that
8 your boat was ready --
9 A Uh-huh.
10 Q -- I'm sure you were glad to get that
11 call.
12 A Oh, yeah.
13 Q Okay. And was it Marshall Altman that
14 called you?
15 A I can't remember if it was him or Ray
16 or somebody. I don't -- I don't -- I can't
17 remember exactly who it -- which one had called.
18 Q Okay.
19 A And I just can't remember. But it was
20 some of their -- it might have been Marshall
21 there. I don't really -- can't remember. But --
22 or Ray or somebody. I don't -- I don't -- I can't
23 recall back there.
24 Q You know pretty much everybody down
25 there that worked?

1 A Oh, yeah.
 2 Q Okay.
 3 A Not everybody, but I mean, most --
 4 most of the family, you know.
 5 Q Yes, sir. So somebody called you and
 6 told you your boat was ready and you could come
 7 and pick it up?
 8 A Correct.
 9 Q Okay. Did -- was there ever more than
 10 one call? Did you ever call them back or did they
 11 ever call you back for any reason?
 12 A No. When I got -- when I got the
 13 message then that 3rd -- that 3rd, I went down
 14 there and I called my brother. He came and we
 15 went down there.
 16 Q Okay.
 17 A And --
 18 Q So your brother left where he lives in
 19 Conway, came over and picked you up in your truck?
 20 A Yes.
 21 Q And then y'all drove back to Lake
 22 City?
 23 A Right.
 24 Q Okay. And the work that was being
 25 done on your boat, they were putting a -- your

1 boat had -- formerly had stick steering?
 2 A Yeah.
 3 Q Okay. And they were converting that
 4 over in to a -- like a center console with a
 5 steering wheel?
 6 A That's correct. That's correct.
 7 Q Okay. What happened when you got to
 8 Marshall's that day? Kind of walk me through what
 9 took place.
 10 A Well, when I got down there, we --
 11 we -- I went inside and talked to them.
 12 Q Inside the main office?
 13 A Yeah.
 14 Q Okay.
 15 A Inside the place of business. And
 16 then we went out to the boat.
 17 Q Now --
 18 A And --
 19 Q I mean, I -- I'm sorry. I keep
 20 interrupting you, but -- but things are going to
 21 keep popping in my head. So --
 22 A Yeah.
 23 Q So I hope you don't think that's rude,
 24 but you say you went out to the boat. At this
 25 point, was the boat already in the water or was it

1 on a trailer?
 2 A It was already in the water, I
 3 believe.
 4 Q Okay. So y'all go out to where the
 5 boat's in the test lake?
 6 A That's correct.
 7 Q All right. And what took place?
 8 A Well, when we got out there, there was
 9 a cloud came up and Marshall wanted me to go drive
 10 the boat. And I told him, I said, let's just
 11 wait. And he said, let's drive it. I said two or
 12 three times, let's just wait a minute. And I
 13 said, if it ain't right, I'll bring it back. I
 14 believe that was the stat--- words I made. And --
 15 but you know, he -- he -- he was really proud of
 16 what he had done for me and everything. And so,
 17 well, I finally give in to him and I went ahead
 18 and got in the boat.
 19 Q All right. Now, let me stop you right
 20 there.
 21 A Okay.
 22 Q So you went out on your own to get in
 23 the boat. Is that correct?
 24 A Yeah.
 25 Q Okay. I mean, when you were going out

1 on the dock, did you have to have somebody help
 2 you? Was Mackey helping you?
 3 A No.
 4 Q Okay. And you --
 5 A Marshall helped me get in the -- after
 6 he got there, hold me, you know, steadied to kind
 7 of get in it.
 8 Q Was the boat tied up next to the dock?
 9 A Yeah, it was upside the dock.
 10 Q Okay. All right. So you and Marshall
 11 get in the boat?
 12 A Correct.
 13 Q Okay. You didn't have an incident at
 14 that point going out to the boat or getting in the
 15 boat. Correct?
 16 A No, sir.
 17 Q Okay. And what happened at that
 18 point?
 19 A Well, we got in and I took the boat
 20 and drove it around the lake there and all. And
 21 then I told them it handled good, you know, I
 22 really liked it. And then it started thundering
 23 and lightning and raining, so we headed back up to
 24 the dock.
 25 Q All right. Let me interrupt you. How

1 long were y'all out on the test lake?
 2 A I wouldn't say over about ten minutes.
 3 Q Okay.
 4 A At the most.
 5 Q And during this time, you were
 6 driving?
 7 A Yes, I drove the boat.
 8 Q Okay. Did it drive okay?
 9 A Oh, yeah.
 10 Q You were pleased with what they had
 11 done?
 12 A Oh, I was tickled to death with it.
 13 Q Okay. Now, up until that point, Mr.
 14 Britt, had it been a problem for you to operate
 15 the boat with the -- the stick steering that it
 16 had?
 17 A Well, I had a little problem. That's
 18 the reason I put the steering wheel on there.
 19 I -- I couldn't turn it. It was hard to turn.
 20 And -- and I couldn't -- I've had it -- we put a
 21 new stick in and all that, but it's always been
 22 hard. And so me and Marshall got to talking about
 23 it and he had come up with this design and he said
 24 he would love to try it out on my boat.
 25 Q Okay.

1 A And so I agreed with it and so he done
 2 it.
 3 Q Okay. So he was trying to help you
 4 out, putting a new kind of steering on it?
 5 A Oh, yeah. Oh, yeah.
 6 Q All right.
 7 A All that's -- yeah, he was trying to
 8 help me out.
 9 Q Okay. So y'all saw a cloud coming up
 10 and I -- did you have -- did you feel like you had
 11 adequate time, the ten minutes in that test lake,
 12 to run the boat?
 13 A Yeah. That -- that was -- that's what
 14 we were doing out there in the lake.
 15 Q Okay.
 16 A Test driving it.
 17 Q Had you driven a boat on that test
 18 lake before?
 19 A I believe I -- I drove my pontoon boat
 20 I bought from them on that -- out there on that
 21 pond.
 22 Q Okay. Do you remember at some point
 23 when they were building that pond?
 24 A Oh, yeah.
 25 Q Okay.

1 A Well, they had built the pond and then
 2 they added more on. Oh, yeah.
 3 Q Right. Matter of fact, they were
 4 actually talking to you at one point about trying
 5 to do some work on it.
 6 A That's correct. That's correct.
 7 Q Okay. And at that -- that was the
 8 point in time when you were getting out of the
 9 business. Right?
 10 A That's correct.
 11 Q Now, when y'all pulled back up to the
 12 dock after you had your test run --
 13 A Uh-huh.
 14 Q -- at that point, you were driving the
 15 boat?
 16 A Correct.
 17 Q Okay. Have you ever experienced
 18 docking a boat?
 19 A Oh, yeah.
 20 Q All right. Now, I'm just curious,
 21 now, the boat that y'all were test driving that
 22 day that Marshall had -- well, I shouldn't say
 23 Marshall -- that Marshall's Marine --
 24 A Yeah.
 25 Q -- had done the work on, was that a

1 fishing boat?
 2 A Yes.
 3 Q And you like to fish?
 4 A Oh, yeah.
 5 Q Okay. Do you do most of your fishing
 6 fresh water?
 7 A Yeah, I do do a little bit, but I
 8 ain't -- I wasn't able to go nary a time this
 9 year.
 10 Q Okay. Back in that timeframe, were
 11 you doing mostly fresh water fishing?
 12 A Yes.
 13 Q And when you went, did you go by
 14 yourself or did you have other people go with you?
 15 A I had other people to go most of the
 16 time.
 17 Q Okay. Were there occasions you --
 18 A Now, there -- I live right on the
 19 river and sometimes I would go and get in the boat
 20 by myself and go fishing.
 21 Q Okay.
 22 A But most of the time, I carried
 23 somebody with me, you know.
 24 Q All right.
 25 A It's always best to have a friend

1 around.
2 Q That's right. I mean, not only for
3 safety, but for company.
4 A Right.
5 Q Okay. Now, you said you live right on
6 the river. Do you have a pier or a dock at your
7 house?
8 A That's correct.
9 Q Had you ever fallen on any pier or
10 dock at your house?
11 A No.
12 Q Never have?
13 A No.
14 Q All right.
15 A No.
16 Q So when y'all pulled up and got to the
17 dock, what do you remember taking place? Walk me
18 through what happened.
19 A Well, pulled up beside the dock and,
20 the best I could remember, Marshall's holding on
21 to it and I went to get out of the boat. I got
22 out of the boat. It was raining, thundering and
23 lightning. And I got out of the boat, and when I
24 got on that deck, my -- I just slipped somehow. I
25 don't know. I just slipped and I fell.

1 Q All right.
2 A And that's when the -- when I hit --
3 hit, I fell so hard, it broke my leg and busted my
4 hip.
5 Q Okay. So it's your testimony that you
6 slipped and fell?
7 A Yes.
8 Q And is it your understanding that that
9 caused -- that was caused by water?
10 A Well, I -- you know, my call, it was
11 caused because it was raining and it was -- and
12 the deck was slick, I guess. I -- I don't know.
13 I just slipped.
14 Q Okay. And I -- I'm not trying to put
15 words in your mouth, but I mean, do you know it
16 was -- if it was because of the rain that caused
17 you to fall or was it something else?
18 A Well, I think the rain, you know, had
19 a big play in it, you know.
20 Q All right.
21 A Because that's what made it slick, I
22 guess.
23 Q And when you fell, did -- how did you
24 fall?
25 A I just fell when still -- I just fell

1 on my left side.
2 Q Okay.
3 A And --
4 Q Did you fall -- did you fall to your
5 left side or did you fall forward to your left
6 side or did you fall backwards?
7 A I fell to -- forward on my left side.
8 I was already out of the boat, up on the deck.
9 And then that's when my foot slipped.
10 Q Okay.
11 A And I went over, the best of my
12 knowledge. It all happened so fast, you know.
13 Q When you fell, did you skin your arms
14 up?
15 A I believe a little bit. Yeah. I had
16 some bruises, yeah.
17 Q Okay. Now, you're familiar with
18 the -- the texture on the dock there at
19 Marshall's?
20 A Uh-huh.
21 Q All right. And that's a yes?
22 A Yes.
23 Q All right. It's got like a -- I guess
24 a sandpaper type grip to it?
25 A Kind of. The best I can remember.

1 Q Okay. Were you -- and we had talked
2 about the construction work. Were you involved in
3 any way in building that dock?
4 A No, sir.
5 Q Okay. Did you ever talk to anybody
6 that was involved in the building or construction
7 of that dock?
8 A No, sir.
9 Q Do you know anything at all about
10 that -- that nonskid surface that was put there,
11 what type it is or who put it there?
12 A No, I ain't talked to nobody about
13 nothing like that.
14 Q Okay. After you fell --
15 A Yes.
16 Q -- do you remember Marshall coming to
17 you?
18 A Correct. He was right there.
19 Q Okay. Tell me what you can recall
20 about --
21 A Well, he -- he was really concerned,
22 you know. He went there and him and my brother
23 come there and was trying to get me up, you know.
24 And -- and I knowed that something was broke right
25 then because I was in so much pain. I couldn't

1 even put my weight on it. And so it was pouring
2 down rain. And so him and my brother and I don't
3 know who else, but they actually drug me over
4 there to a shed. And that's where I stayed until
5 the ambulance come.

6 Q Do you remember a golf cart being out
7 there?

8 A Yes.

9 Q What -- what do you remember about the
10 golf cart?

11 A I think -- I think we -- Marshall had
12 a golf cart and we rode it out there. I did --
13 you know, I can't remember all that good now, but
14 I -- but they -- they pretty much drug me or -- or
15 sat on the back. I don't -- I don't really know.
16 I'll be honest with you.

17 Q Well, that's fine.

18 A And they carried me over -- all I
19 know, that I couldn't stand putting no weight on
20 it. And I -- they drug me -- they drug me kind of
21 over -- and they didn't want to do that, but it
22 was pouring rain and lightning, and so --

23 Q And they were trying to get you out of
24 the storm?

25 A That's correct.

1 Q Okay. If you had -- had shouted to
2 him to come help you get out of the boat, would he
3 have come helped you?

4 A Oh, yes. Yeah.

5 Q All right. But you didn't ask him for
6 any help?

7 A No. Normally, you know, I get out of
8 it all right.

9 Q Okay. And when you walked out to the
10 dock, before y'all even went on the test drive,
11 you didn't have any problem with the dock walking
12 then, did you?

13 A No.

14 Q Okay. Now, once y'all -- they got you
15 out of the rain, do you recall there being some
16 talk about calling the ambulance to the scene?

17 A Yeah.

18 Q And what do you remember about that?

19 A I remember they calling the -- said
20 call the ambulance and -- and they wanted to carry
21 me up there to Lake City to the hospital up there.
22 But the conditions, you know, I've had, I know my
23 leg was broke and my hip -- or I didn't know my
24 leg was broke, but I know I felt like my hip was
25 broke. And -- and so all my medical care and -- I

1 Q Okay.

2 A Yeah, I mean, that's the way it went.

3 Q Okay. Do you feel like that storm
4 came up kind of quick on y'all?

5 A It did.

6 Q Okay.

7 A I mean, it was -- it was already
8 cloudy and stuff, but that thunder and lightning
9 came up right quick.

10 Q Right. And if you don't remember
11 this, that's fine, but do you recall them bringing
12 the golf cart out to you and putting you on the
13 golf cart and taking you back in?

14 A Well, it's possible. I can't remember
15 that.

16 Q Okay. Fair enough.

17 A I was hurting so bad then, I can't --
18 you know --

19 Q Yes, sir. Mr. Britt, when you were
20 getting out of the boat, was Mackey back off the
21 dock?

22 A Yeah, he weren't even on the dock.

23 Q Okay. If -- now, he -- is he your
24 older or younger brother?

25 A He's my oldest brother.

1 didn't know what all this was leading in to, and
2 so I requested for them to carry me straight on to
3 Grand Strand, which they did.

4 Q Do you recall at some point telling
5 Marshall and Stewart and the other people out
6 there that you didn't want an ambulance, you just
7 wanted them to help you get in the truck?

8 A Yeah. But I didn't realize how bad I
9 was hurt.

10 Q Okay.

11 A You know, I ain't -- these boys right
12 here, we've been friends all our life and -- not
13 all our life, but for a long, long -- and you
14 know, I -- at that time, I didn't even know what
15 kind of shape I really was in. But I knew I felt
16 like my hip was broke.

17 Q But you remember these guys and
18 Marshall's, they insisted on getting an ambulance
19 there. Do you remember that?

20 A Oh, yeah.

21 Q Okay.

22 A Oh, yeah. Yeah, they did.

23 Q Let's see. Mr. Britt, I don't believe
24 I asked you this earlier, but do you remember how
25 you were dressed that day?

1 A I think I just had on just regular --
 2 not no real dress clothes. Just casually whatever
 3 you say dressed, I guess.
 4 Q Like a pair of khakis?
 5 A Well, I don't -- what you call khakis?
 6 Like I've got on now?
 7 Q Well, yeah, pretty much.
 8 A Yeah.
 9 Q Okay. Were you wearing -- what kind
 10 of shoes were you wearing?
 11 A I believe I was wearing tennis shoes.
 12 Q Do you recall whether those were shoes
 13 that had recently been purchased?
 14 A I had them awhile.
 15 Q Okay. I guess maybe awhile might be
 16 different to some people. When you say awhile,
 17 how long do you think you had had them?
 18 A Probably six months.
 19 Q Okay. Were they the kind you tied up
 20 or did they have like a velcro strap to them?
 21 A Velcro strap.
 22 Q Okay. Describe your -- your
 23 prosthetic device at the time.
 24 A Yes.
 25 Q What -- did you have an artificial

1 leg?
 2 A Yes.
 3 Q All right. And are you able to say
 4 whether it was your left foot that slipped?
 5 A No, sir.
 6 Q Okay. You don't know which foot it
 7 was?
 8 A No. All I know, I slipped and I hit
 9 that there -- that there deck.
 10 Q And just to make sure I understand it,
 11 you slipped in the rain on the dock and you think
 12 you went forward and landed somewhat on your left
 13 side on your left hip?
 14 A Well, I definitely landed on my left
 15 side.
 16 Q All right. Is there anything else I
 17 said that was inaccurate?
 18 A No.
 19 Q Okay. The ambulance took you straight
 20 to Grand Strand?
 21 A Correct.
 22 Q Okay. And did Mackey ride with you?
 23 A No, sir.
 24 Q Okay.
 25 A He drove my truck back and brought the

1 boat with him.
 2 Q Okay. So -- so after the ambulance
 3 took you, the boat was loaded up on the trailer
 4 and Mackey pulled it back home?
 5 A Yes.
 6 Q Okay. This happened July 3rd. We've
 7 been talking about that. And -- and I'm going
 8 back up a little bit. Let's just say from May 1st
 9 until July 3rd, that timeframe of just a couple of
 10 months, had you had any changes at all done to
 11 your prosthetic device?
 12 A From May? No.
 13 Q Okay.
 14 A When I -- when I got that hip broke
 15 and all and in the hospital, it took them -- it
 16 took a month for this leg to even get down --
 17 before I could even get it back on.
 18 Q Yeah, talking about after the
 19 accident?
 20 A That's right.
 21 Q Right. And I'm talking about before
 22 the accident. Had you had any type of repairs or
 23 changes or anything done to your prosthetic device
 24 from a couple of months before to this accident?
 25 A Well, no, not a couple of months, but

1 anybody with a prosthetic leg, you have to keep
 2 changing the sock or -- or sometimes the way it
 3 fits, you know, your leg continuously shrinks.
 4 And when it gets shrunk, then you have to get them
 5 to make you another one. But I -- no, not no
 6 couple of months.
 7 Q All right. When is the last time you
 8 had had your prosthetic device modified or -- or
 9 refit before this happened --
 10 A Probably a year before this.
 11 Q Who did that work for you?
 12 A Warren.
 13 Q Who is Warren?
 14 A Warren -- Nick Warren. He's down
 15 there in Conway on Highway 44 (sic).
 16 Q Okay. Does he have a prosthetic shop?
 17 A That's what he does for a living.
 18 Q Okay. You say it's on Highway 544?
 19 A That's correct.
 20 Q So you go in there and he adjusts
 21 whatever needs to be done to your prosthetic --
 22 A Yeah. He will have to change the
 23 socks or sometimes he will have to put a little
 24 something in it to tighten it up or sometimes he
 25 has to make another one.

1 Q All right. Well, when you slipped, do
2 you know if it was due to your prosthetic device
3 or your shoes?
4 A I don't think -- I mean, it was just
5 an accident and it was raining and I think that I
6 just slipped. I -- you know, I don't think my
7 shoe had nothing to do with it or my leg had
8 nothing to do with it.
9 Q All right.
10 A I -- I was climbing up on bulldozers
11 and trackhoes with it, tractors, you know.
12 Q Do you know if anybody ever took any
13 pictures that day? Did you see anybody taking any
14 pictures?
15 A I can't remember.
16 Q All right.
17 A No, I don't.
18 Q Now, when you got to Grand Strand,
19 they ultimately told you that you had a left hip
20 fracture?
21 A Yes.
22 Q Okay. They admitted you to the
23 hospital. Right?
24 A Correct.
25 Q Okay. Other than the -- the left hip

1 fracture and you -- we had mentioned possibly your
2 arms getting skinned up -- did you have any other
3 injuries?
4 A Well, it broke my leg too.
5 Q Okay.
6 A It broke my leg right across there.
7 Q Okay. You're pointing to the top of
8 your left leg?
9 A It's above my knee. Yeah.
10 Q Okay. Did they put you some hardware
11 in your leg?
12 A Yes.
13 Q Is that still there?
14 A Yeah, it will be the rest of my life.
15 Q Okay. Now, the medical records
16 indicate that you made a -- what the doctors
17 termed an excellent recovery. Do you feel like
18 you made a good recovery?
19 A No, sir.
20 Q You do not?
21 A No, because it bothers me.
22 Q Okay.
23 A No.
24 Q What part bothers you?
25 A Well, this leg, this leg bothered me,

1 that hip.
2 Q When you say it bothers you, what does
3 it do?
4 A Pure throb sometimes.
5 Q Anything other than throb?
6 A Do what?
7 Q Anything other than throbbing?
8 A Throbbing.
9 Q You said it throbs sometimes?
10 A Yeah.
11 Q Anything other than that?
12 A No. I mean, it just hurts. Sometimes
13 it swells so I can't even get it on.
14 Q You say you can't even get it on.
15 You're talking about your prosthetic device?
16 A That's correct. Ever since then, it
17 does that.
18 Q How long have you been in a
19 wheelchair?
20 A Ever -- pretty much ever since that
21 happened.
22 Q Really?
23 A My fall. Yeah.
24 Q So since July of 2013?
25 A That's correct. Can't walk very much.

1 I -- if my life depended on it to walk out of this
2 place here out to my truck out there, I would just
3 have to die. That's the truth.
4 Q Okay. Mr. Britt, do you have a clear
5 recollection of -- of what happened that day and
6 of your medical care since then?
7 A Do I have what?
8 Q A clear recollection of what happened
9 in March of that day and of your medical care
10 since then.
11 A Yeah.
12 Q All right. Any physician ever told
13 you that you are unable to work?
14 A Now, I can't -- they tell me I ain't.
15 Q Who told you that?
16 A Well, my doctor -- heart doctor and --
17 and Dr. Carol.
18 Q So your heart doctor and your family
19 doctor?
20 A Yes.
21 Q And was that due to the heart disease?
22 A No, I was working -- I mean, he -- my
23 heart doctor told me I -- I could work, you know.
24 I couldn't go out there and do no hard labor work,
25 but I mean, just ordinary.

1 Q So you -- your heart doctor told you
2 you could work?
3 A Yeah.
4 Q Okay.
5 A To -- to a certain extent.
6 Q Now, which -- which heart doctor is
7 this?
8 A That's Dr. Jacks--- William Jackson.
9 Q Since the day of this incident at
10 Marshall's, have you had any conversations with
11 Marshall Altman or Stewart Altman or anybody at
12 Marshall's Marine about what happened?
13 A No. Not as I -- no.
14 Q Okay.
15 A No.
16 Q Pardon me just a second.
17 Ms. Jones: Are you okay?
18 The Deponent: Well, I'm not -- you
19 can see my arm's starting to jump more.
20 Ms. Jones: Do you need a break?
21 The Deponent: Huh?
22 Ms. Jones: Do you need break?
23 Mr. Tyler: Do you want to take a
24 little -- about a five -- five or ten minute
25 break?

1 The Deponent: Well, let's go ahead
2 and try to get it over with.
3 By Mr. Tyler:
4 Q Okay. All right. That's fine. My
5 offer still stands, though. If you want to take a
6 break, you let me know. Okay?
7 A Okay.
8 Q All right. Fair enough. I'm going to
9 go through some things with you, Mr. Britt. And
10 pardon me just a second while I try to look -- I'm
11 trying to speed things up, believe it or not. Did
12 you ever tell any of your doctors that you
13 actually tripped and fell?
14 A Well, are you talking about during
15 this accident?
16 Q Yes, sir.
17 A Well, I could have said I tripped, but
18 I -- I said, you know, slipped. There ain't --
19 there ain't no telling what I said when they got
20 me down there in -- in -- and I was hurting so bad
21 and put -- you know, I just couldn't stand
22 nothing. I mean, I ain't saying I did or didn't.
23 I -- I don't know.
24 Q Well, I mean, under oath, are you able
25 to testify under oath whether you actually tripped

1 or slipped?
2 A Well, I think slipped.
3 Q Okay. And that's what I'm asking you.
4 Are you -- are you absolutely certain under
5 oath --
6 A Oh, yeah.
7 Q -- testifying, you did slip?
8 A Yes.
9 Q Okay. So if you told the physicians
10 that you tripped, then that would have been
11 inaccurate. Is that right?
12 A Well, I just took -- that would be the
13 same thing as slipped. You know, if you trip and
14 you slip --
15 Q But you understand there's a
16 difference?
17 A Well, yeah. To a certain extent,
18 yeah.
19 Mr. Tyler: Let's get that marked,
20 please.
21 (Defendant's exhibit number 4
22 marked for identification.)
23 Mr. Tyler: You might as well mark
24 that one too.
25 (Defendant's exhibit number 5

1 marked for identification.)
2 By Mr. Tyler:
3 Q Mr. Britt, I'm going to hand you a
4 document that's been provided to me in reference
5 to your medical care. It's been marked as
6 defendant's exhibit number 4, and I'll just ask if
7 you can identify that as the discharge report from
8 your hospital. And I'd ask you to turn to the
9 last page and tell me if that reflects your
10 signature, please.
11 A Turn to the last page?
12 Q Yes, sir. See -- see your signature
13 there?
14 A Down at the bottom?
15 Q Yes, sir.
16 A Yes.
17 Q Okay. And that's -- that's where you
18 signed when you were discharged from the hospital.
19 Is that right?
20 A Yes.
21 Q Okay. Look at the upper top right
22 corner and it says period ending July 10th at
23 1313, which is 1:13. Do you recall being
24 discharged from the hospital July 10th?
25 A I guess. I -- I mean, I...

1 Q On the first page of that document,
2 look about halfway on the first page. See where
3 it says activity? About half -- about middle of
4 the way.
5 A Yeah.
6 Q All right. Underneath that, it says
7 weight bear as tolerated. Left leg with
8 prosthesis when tolerated. Do you see that?
9 A Yes.
10 Q Did I read that correctly?
11 A That's correct.
12 Q All right, sir. In the records from
13 Grand Strand Regional Hospital, they also provided
14 me with this document. I'm going to show you
15 what's been marked as exhibit number 5. And if
16 you look about two inches from the top, it says
17 exam date, June 17, 2008. Do you see that on the
18 right side?
19 A Yeah.
20 Q Okay.
21 A On the left side?
22 Q Well, yeah, it can be on the --
23 A Exam.
24 Q Yeah. See where it says exam date?
25 A I see where it says exam -- the 12th,

1 31.
2 Q It's about two inches from the top.
3 A Yeah, I see it. Yeah, I see it.
4 Sixth month, 17th day of 2008.
5 Q Yes, sir. Do you recall going to the
6 hospital for x-rays back in June of 2008? Is that
7 a yes or a no?
8 A Well, I can't remember that. I
9 mean --
10 Q All right, sir. Well, you see up at
11 the top under the left side, close to the top,
12 it's got Lonnie W. Britt?
13 A Right.
14 Q It's got a date of birth, July 25th,
15 1948. That's your date of birth, isn't it?
16 A That's correct.
17 Q All right, sir. Underneath the exam
18 part where it says pertinent history, which is
19 about three inches from the top on the left side,
20 do you see where it says pertinent injury?
21 A Yeah.
22 Q Okay. It says back pain, coccyx pain,
23 status post fall on boat dock. Do you see that?
24 A Yeah.
25 Q All right, sir. Did you -- you fell

1 on a dock and had to go get x-rays?
2 A That was at my house.
3 Q All right. So you have fallen on a
4 dock before?
5 A Well, it weren't on a dock. It was --
6 that was a ladder -- I mean, going down to my boat
7 shed where I park my boats up under.
8 Q Okay.
9 A Yeah, I had -- yeah, it -- it was
10 all -- it was wet. I remember that now.
11 Q Okay. Who was with you then?
12 A I was by myself.
13 Q Who took you to the hospital?
14 A My wife.
15 Q Okay. So you do remember this?
16 A Oh, yeah.
17 Q Okay. Have there been any other falls
18 that you've had that you now may recall?
19 A No. That was -- that was the only
20 time.
21 Q Okay.
22 A I -- I remember that now, though. I
23 was going down to my boat shed. I believe that
24 was before I ever had my leg amputated.
25 Ms. Jones: Are you finished with

1 those, Matt?
2 Mr. Tyler: Yeah. Let's get that
3 marked, please.
4 (Defendant's exhibit number 1
5 marked for identification.)
6 By Mr. Tyler:
7 Q Mr. Britt, I'm going to show you
8 what's been marked as exhibit number 6 to your
9 deposition and ask you if you have been treated by
10 Dr. Boulion at Grand Strand Specialty Associates.
11 Do you remember seeing him?
12 A Say that again.
13 Q I said I'm going to show you what's
14 been marked as exhibit number 6 and ask you if you
15 have been treated by Dr. Christian Boulion at
16 Grand Strand Specialty Associates. You remember
17 seeing Dr. Boulion, don't you?
18 A Yes.
19 Q Okay. Now, we had talked a minute ago
20 about the fact that you had signed the discharge
21 summary on July 10th of 2013 where you got out of
22 Grand Strand hospital. Do you remember that? Do
23 you remember us talking about that a minute ago?
24 A Grand Strand?
25 Q Yes, sir. When you got out.

1 A When I left Grand Strand with this
2 accident, I had to go to Waccamaw.
3 Q Okay.
4 A I stayed in there.
5 Q I understand. But I'm saying you left
6 Grand Strand on July 10th. Right?
7 A I guess.
8 Q Okay.
9 A I --
10 Q This records from Dr. Boulion is dated
11 October the -- you see the date says October 17th,
12 2013? Do you see that on the top left?
13 A Yeah.
14 Q All right, sir. And under the
15 interval history, it indicates that you returned
16 back and you're walking with a cane. Do you
17 remember at this point walking with a cane?
18 A Yes.
19 Q And I'm going to read to you the last
20 two sentences of the interval history and you can
21 follow along with me if you like. Okay? Quote,
22 in regard to his left hip, he states that his pain
23 is completely improved from his last visit. He
24 denies any complaint of pain at this time. Did I
25 read that correctly?

1 A Yeah, but I -- I had -- I had pain
2 because I believe he went in there and he put
3 stints in --
4 The Deponent: Isn't he the one
5 putting stints in my right leg?
6 By Mr. Tyler:
7 Q She can't -- she can't talk to you
8 right now.
9 A Okay. All right.
10 Q So are you telling me his record is
11 inaccurate?
12 A No, I ain't saying his words is
13 inaccurate. I just ain't sure.
14 Q All right. Do you know of any reason
15 that Dr. Boulion would have put something in his
16 report that wasn't accurate?
17 A No. Not really.
18 Q All right. Flip over to the next
19 page. And the last paragraph, it says plan. Do
20 you see that?
21 A Yeah.
22 Q Okay. And follow along with me. It
23 says, quote, in regard to his left hip, he can
24 continue weight bearing as tolerated. End quote.
25 Do you see?

1 A Yes.
2 Q Okay. Did you continue weight bearing
3 as tolerated?
4 A What do you mean by tolerated?
5 Q Okay. You can put weight on it.
6 A Well, I can put weight on it.
7 Q Okay. Well -- in other words, he
8 didn't -- he didn't put you on any restriction or
9 limitation, did he?
10 A Well, he -- he knew I can't walk -- I
11 mean, hardly walk.
12 Q Why would that be?
13 A On account of my legs -- my leg.
14 Q Why?
15 A Because it starts paining. I mean, it
16 starts hurting.
17 Q But didn't we just talk about that you
18 had told him his record reflects no complaints of
19 pain at this time?
20 A Well, I might have -- I -- I don't --
21 I ain't saying I didn't say that because I -- but
22 I know I've had pain in it. And I -- that's
23 all -- I mean, I can't -- to this day, I can't put
24 a lot of pain on it for no time at all. I can't
25 hardly walk from the bathroom back in to my

1 recliner in the bedroom.
2 Q Okay.
3 A Or the house.
4 Q Any of your problems walking
5 associated with the spinal conditions you have?
6 A Spinal?
7 Q Yes, sir.
8 A No. I mean, I -- I mean, it hurts at
9 times, my back spine that I've had trouble with
10 several years ago.
11 Q You've had back pain, hip, leg pain
12 for a number of years, according to your medical
13 records. Is that correct?
14 A Yeah, I've had problems with it.
15 Mr. Tyler: Okay. Let's get this
16 marked, please.
17 (Defendant's exhibit number 7
18 marked for identification.)
19 By Mr. Tyler:
20 Q Mr. Britt, I'm going to show you
21 what's been marked as defendant's exhibit number
22 7. Do you remember earlier we were talking about
23 emergency room visits that you've had? I had
24 asked you about what times you had gone to the
25 emergency room. Do you remember that?

1 A For what?
 2 Q Well, I asked you about anything.
 3 A Well, I've been -- in what year or
 4 what -- everything, I've been to the emergency
 5 room several times with my heart back yonder.
 6 Q Right.
 7 A Yeah.
 8 Q Well, take a look at this emergency
 9 room report that appears to be dated May 5th of
 10 2010.
 11 A Ten?
 12 Q Yes, sir. Does that have your
 13 information on it, Lonnie W. Britt?
 14 A It's got Lonnie W.
 15 Q Okay. Do you see where it says
 16 history of present illness? Do you see that, sir?
 17 A Right.
 18 Q Okay. It's about four inches down on
 19 the left side.
 20 A Yeah. History. I've got it now.
 21 Q All right, sir. And then it says
 22 chief complaint, fall. Do you see that?
 23 A Yes.
 24 Q Do you remember going to the emergency
 25 room as a result of a fall in May of 2010?

1 A No.
 2 Q All right. See if this will help you.
 3 It says patient was at his cardiologist office and
 4 slipped and fell, struck his left shoulder. Pain
 5 has continued to worsen all day and now severe,
 6 unable to move left shoulder. Do you recall that?
 7 A No, not really, I don't.
 8 Q All right. Would Dr. Jackson have
 9 been your cardiologist at that time?
 10 A Yes.
 11 Q You just don't recall this at all?
 12 A No, sir.
 13 Q All right. And -- and just to make
 14 sure I understand, you're not telling me you deny
 15 it. You just don't remember it. Is that fair?
 16 A No, sir. That's fair enough.
 17 Q Okay.
 18 A I'm not denying it.
 19 Q Okay. You've also been diagnosed with
 20 chronic kidney disease?
 21 A No, not as I know of. Not -- every
 22 kidney doctor I've been to said I was -- was doing
 23 fine with my kidneys -- with my kidneys.
 24 Q Okay.
 25 A I don't remember no...

1 Q The -- the medical records indicate
 2 that when you had this accident back in April of
 3 2013, the car wreck, that your prosthetic device
 4 was damaged. Is that true?
 5 A Prospect?
 6 Q Yes, sir. Your artificial leg.
 7 A Was damaged?
 8 Q Yes, sir, in the auto accident in
 9 April of 2013.
 10 A Well, it -- it just -- it didn't
 11 damage my leg no way. It damaged my what you call
 12 the sock. It -- and they had to make me a new one
 13 of them.
 14 Q All right. So the gentleman off of
 15 Highway 544 would have been the one to do that
 16 work?
 17 A Correct.
 18 Q Okay. And I'm sorry. What did you
 19 tell me his name was?
 20 A Warren.
 21 Q Warren?
 22 A Yes, sir.
 23 Q So sometime between April twent---
 24 whatever it was, the day of the car wreck, and
 25 July 3rd, you had had your prosthetic device fixed

1 or repaired or -- or adjusted?
 2 A Yeah. I have to go regular to get it
 3 adjusted now. I mean, in fact, I just had him to
 4 make me another leg a couple of months at the
 5 most.
 6 Q Has your health worsened since January
 7 of this year?
 8 A I -- every day, every week to month go
 9 by, I get where I can't breathe. I get worse and
 10 worse as far as my breathing.
 11 Q What's the doctor told you as to the
 12 cause of your breathing problem?
 13 A Well, a lot of it now is on account of
 14 the heart problems I've had and congestion, what
 15 they call congestion, heart failure.
 16 Q Right. I saw the record. You had --
 17 you've been diagnosed with congestive heart
 18 failure for, what, at least a dozen years?
 19 A Yeah.
 20 Q Okay.
 21 A Yeah.
 22 Q And now it's starting to affect your
 23 lungs and your -- your breathing?
 24 A That's correct.
 25 Q Okay.

1 A And then when I -- well, yeah.
 2 Q Now, is -- is Dr. Jackson the one that
 3 treats you for all of that?
 4 A Yeah.
 5 Q Okay. The bills from the incident at
 6 Marshall's Marine, did you have Medicare at the
 7 time?
 8 A Yeah, but ain't -- it ain't -- it
 9 ain't paid -- a lot of bills ain't been paid
 10 there.
 11 Q Do you know how much is owed?
 12 A Not exactly.
 13 Q Okay.
 14 A I sure don't.
 15 Q Well, do you know how much was paid?
 16 A No. I -- I -- I'll be honest with
 17 you, I let Wanda and them, they've been handling
 18 that because I can't.
 19 Q I mean, if I asked you anything about
 20 your bills, do you have any personal knowledge of
 21 it?
 22 A No, sir.
 23 Q Fair enough. Do you know whether
 24 there's any kind of lien for your bills?
 25 A No.

1 Q Did you have private health insurance?
 2 A No.
 3 Q All right. And if I asked you how
 4 much your bills were, you're not able to tell me
 5 that?
 6 A No, sir.
 7 Q All right.
 8 A I don't know.
 9 Q Okay. It looks like from the medical
 10 records I saw, at one point, you were a smoker.
 11 Is that right?
 12 A I ain't smoked none since '87.
 13 Q Okay. We talked about the prior
 14 accident and the -- the auto accident. You told
 15 me that a way long time ago, I think in the
 16 sixties, maybe you had another auto accident where
 17 your leg got hurt. Is that right?
 18 A That's correct.
 19 Q Okay. We talked about the fall on the
 20 dock in your home in 2008.
 21 A Right.
 22 Q We talked about this other fall in
 23 2010 that you don't have any clear remembrance of
 24 at the cardiologist office.
 25 A Right.

1 Q The Marshall's incident. Are there
 2 any other auto accidents or falls or any type of
 3 injuries we have not talked about?
 4 A Seeing as I can't remember, no, sir.
 5 Q Have you ever made any kind of
 6 worker's compensation claim?
 7 A No, sir.
 8 Q Mr. Britt, have you ever had to
 9 testify in court for any reason?
 10 A Not as I know of.
 11 Q All right. Are you a member of any
 12 social groups or clubs in Horry County?
 13 A No, sir.
 14 Q How about in Florence County?
 15 A No, sir.
 16 Q Is there a church that you regularly
 17 attend?
 18 A Calvary Free Will Baptist Church.
 19 Q Okay. Who is the pastor there?
 20 A Mike Bent.
 21 Q Bent, B-E-N-T?
 22 A Yeah. Uh-huh.
 23 Q How long have you been a member there?
 24 A That church?
 25 Q Yes, sir.

1 A Forty something years.
 2 Q Have you ever occupied any positions
 3 in the church?
 4 A No, sir.
 5 Q Now, I don't mean to lose you. I'm
 6 going to back up, you know, to when you were
 7 treated for this incident that happened, the
 8 fall --
 9 A Yeah.
 10 Q Did you follow all of the doctors'
 11 instructions and recommendations?
 12 A Did I follow them?
 13 Q Yes, sir.
 14 A Yes.
 15 Q Okay. In other words, you did what
 16 the doctor told you to do?
 17 A That's correct.
 18 Q Okay.
 19 A Yeah.
 20 Q Do you feel like you have a good
 21 relationship with your doctors?
 22 A Oh, yeah. I've been using them a long
 23 time.
 24 Mr. Tyler: Do you have the E.M.S.
 25 records for this?

1 Ms. Jones: E.M.S. records. That was
2 from the Lake City E.M.S.? No, I haven't.
3 Mr. Tyler: Okay.
4 Ms. Jones: I've had some issues with
5 that office.
6 Mr. Tyler: Okay.
7 Ms. Jones: I've been trying to get
8 those. I can get them for you.
9 By Mr. Tyler:
10 Q I tell you what, Mr. Britt, why don't
11 you give me just a couple of minutes.
12 A Yes.
13 Q I think we're about done.
14 A Okay.
15 Mr. Tyler: All right. And let me --
16 let me see you guys out here for just a second.
17 (WHEREUPON, A BREAK WAS TAKEN
18 FROM THE PROCEEDINGS.)
19 By Mr. Tyler:
20 Q Just a couple of more questions for
21 you, sir. I'm looking at some of your medical
22 records. They indicate the medical conditions
23 that you've had, and I -- I want to make sure that
24 I'm understanding the duration of these. The
25 hyperlipidemia we talked about -- and I believe

1 Q Do you remember that?
2 A Yes.
3 Q And do you recall the doctors telling
4 you both before this accident at Marshall's and
5 after the accident at Marshall's that you've got
6 basically a 50 to 70 percent flow rate?
7 A Yes. That's in my neck.
8 Q Okay. So the -- the flow rate for the
9 past couple of years, the flow rate had remained
10 the same?
11 A Yeah.
12 Q Okay. Going back to that day out
13 there at Marshall's, when you picked the boat up,
14 the steering -- was it the steering and the
15 throttles controls that had been modified?
16 A You mean, the --
17 Q The gas --
18 A No. Well, he just remounted that, but
19 he used the same gas leverage --
20 Q Okay.
21 A -- and everything.
22 Q It had just been put up --
23 A The best of my knowledge -- yeah, he
24 made a bracket to get it up higher where it would
25 be easier to get.

1 you told me you're not quite sure what that is.
2 Is that correct?
3 A Uh-huh.
4 Q And consequently, you're not able to
5 tell me how long you've been diagnosed with that?
6 I mean, if you don't know what it is, you don't
7 know how long you've had it. Right?
8 A No.
9 Q Okay. Do you know how long you've
10 been diagnosed with hypertension?
11 A No, sir.
12 Q Okay. The diabetes was for how many
13 years back?
14 A Well, I think 10 or 12 years. I --
15 Q Okay.
16 A It's been a good while.
17 Q Okay. Cardiac disease, at least 10 or
18 12 years?
19 A Talking about heart problems?
20 Q Right.
21 A Ever since '87.
22 Q Eighty-seven. Okay. And they've
23 done -- it appears that they've done a number of
24 blood flow studies on you.
25 A Correct.

1 Q Okay. And closer to where the
2 steering wheel is?
3 A Yeah, where you can get it in gear in
4 forward and reverse, or whatever.
5 Q Okay. And when you got there,
6 considering everything had been changed, you
7 thought it was a good idea also to drive it to
8 make sure that everything worked correctly, didn't
9 you?
10 A Yeah, but I -- I told him that day
11 that -- he asked me about -- excuse me -- about
12 driving the boat. And I told him let's wait a
13 minute. I told him let's wait. And -- and we
14 kept right on talking and stuff, and I told him, I
15 said, if it ain't right, I'll bring it back. And
16 so anyway, he -- Marshall there, he -- he said,
17 well, let's just try it. So I give in and went on
18 out there and drove it and that's when the cloud
19 came up and it started raining and thundering,
20 lightning, whatever.
21 Q Okay. All right. But at the time,
22 you were, what, a 64, 65 year old man?
23 A Uh-huh.
24 Q Is that right?
25 A Uh-huh.

1 Q Okay.
 2 A Sixty-four, I guess.
 3 Q All right. I mean, you were capable
 4 of making your own decision, weren't you?
 5 A Correct.
 6 Q Okay. So when -- when he talked to
 7 you about driving it, you went to -- out on the
 8 dock on your own and got in the boat. Correct?
 9 A Well, he didn't grab me by the arm and
 10 lead me out there. He -- I finally agreed and
 11 told him okay. And so we went and got in it.
 12 Q Okay.
 13 A He didn't drag me out there or -- or
 14 whatever.
 15 Q Well -- and looking back on it, I
 16 know -- I mean, it would have been awful if you
 17 had taken your boat from Lake City and driven all
 18 the way back to your house, roughly an hour and
 19 ten minutes away, and put your boat in at the
 20 river and then something not been right.
 21 A I wouldn't have done it that day,
 22 though.
 23 Q Okay. Well, whenever you did it --
 24 A Yeah.
 25 Q -- you would -- then you would have

1 had to bring it back, wouldn't you?
 2 A That's correct.
 3 Q Okay.
 4 A I've done it a million times.
 5 Q Okay. But you didn't have any plans
 6 on coming back down to Marshall's, did you?
 7 A I didn't think so because, I mean,
 8 it -- I drove it -- test drove it out there and
 9 then everything was perfect on it.
 10 Q Okay. It was pretty much run just the
 11 way you had hoped it would run?
 12 A Yes, sir, a hundred percent.
 13 Q Okay. And have you been back to
 14 Marshall's at all since this incident?
 15 A No, sir.
 16 Q Okay.
 17 A I sure hadn't.
 18 Q Do you know whether your brother has?
 19 A Yeah, I think he's went back and
 20 bought a -- I don't know. He bought a motor from
 21 them and a boat trailer from them, I -- I think.
 22 Q Are you and your brother pretty close?
 23 A Oh, yeah. Real close.
 24 Q Okay.
 25 A Oh, yeah.

1 Q Mr. Britt, thank you for your time.
 2 We're going to adjourn this deposition. There's
 3 some -- there's some documents we're still waiting
 4 to get, but I -- I don't anticipate we'll need to
 5 reconvene, but if so, we'll -- we'll adjourn the
 6 deposition as opposed to concluding it. Okay?
 7 A Okay.
 8 Q All right. Have all of your answers
 9 been truthful to the best of your ability?
 10 A Yes, sir.
 11 Q Anything you feel like we need to go
 12 back and revisit or clarify?
 13 A No.
 14 Q Okay.
 15 A I mean...
 16 Mr. Tyler: Thank you, sir.
 17 Ms. Jones: I do want to ask him a few
 18 questions --
 19 Mr. Tyler: Sure.
 20 Ms. Jones: -- on cross just to
 21 clarify just a few issues, Mr. Britt, just so
 22 later on we might not remember it when we
 23 reconvene. Okay?
 24 EXAMINATION
 25 By Ms. Jones:

1 Q Now, when Marshall's called you about
 2 picking up the boat, how many telephone calls do
 3 you recall getting about your boat?
 4 A I can't remember but one.
 5 Q Did you take that call or did someone
 6 else take that call?
 7 A I took the call.
 8 Q Okay. No one left a message?
 9 A Yeah, the -- yeah, but I -- like I
 10 say, I can't remember if it was Marshall or -- or
 11 Ray. Ray down there runs the counter parts back
 12 there and a lot of that stuff from the back.
 13 Q All right.
 14 A And --
 15 Q All right.
 16 A It was -- it was somebody in the -- in
 17 the business. But as far as me saying, you know,
 18 under oath that it was Marshall who it was, I
 19 can't -- I can't remember that.
 20 Q Okay. So you remember speaking on the
 21 phone with somebody?
 22 A Oh, correct.
 23 Q Okay. Do you remember getting a
 24 message from anybody else that they had called?
 25 A Not as I can remember.

1 Q Okay. Now, Mackey drove you down that
2 day?
3 A That's correct.
4 Q Did he go to help you actually load
5 the boat?
6 A No, he -- he --
7 Q Or did he go to help you to drive?
8 A He -- he just went along with me for
9 company and to drive.
10 Q Okay. You mentioned something, you
11 couldn't pull anything, that he went with you
12 because you have trouble pulling.
13 A Yeah.
14 Q What were you needing to pull?
15 A Well, I mean, hook up the boat, which
16 they most of the time do that anyway for you.
17 Q Okay. But you brought Mackey in case?
18 A More or less just to have somebody to
19 go, you know.
20 Q Okay. All right.
21 A That was more or less.
22 Q Now, the day of the accident, you
23 mentioned it started raining once you went out on
24 the boat. Do you recall if it had rained any time
25 either during that day?

1 A I don't think so.
2 Q Okay. Do you remember if it had
3 rained prior to that day, like the day before?
4 A No, I can't answer that.
5 Q Okay. When you went out on the
6 dock --
7 A Uh-huh.
8 Q -- to actually get out and go on the
9 boat, do you remember if the dock was wet or damp
10 or if it had been raining at all earlier that day?
11 A That's my -- to the best of my memory,
12 it wasn't wet at that time.
13 Q Okay. Now, could you see a thunder
14 cloud in the -- in the --
15 A Oh, yeah. It -- it was coming.
16 Q You could tell that a storm was
17 coming?
18 A Oh, yeah.
19 Q Okay. Was that a concern for you
20 about getting --
21 A Well, that was one reason I didn't
22 want to get out there, to tell you the truth.
23 Q Okay. How many times did you object?
24 Mr. Tyler: Object to the form.
25 The Deponent: I believe to the best

1 of my knowledge, two or three times.
2 By Ms. Jones:
3 Q Okay. And what -- what were you
4 actually telling Marshall about going out on the
5 boat?
6 A Well, I just told him let's wait, you
7 know, and -- and -- and just not go.
8 Q Were you told you couldn't take the
9 boat?
10 A No, I told him -- no, we -- we -- I
11 would carry the boat on home. The best of my
12 knowledge of what I said, I would carry the boat
13 on home. If it won't ride, I'd bring it back.
14 Q Okay.
15 A But -- but we -- we would carry it on
16 a test drive.
17 Q Okay. Now, when you went to the
18 emergency room after the accident, E.M.S. took
19 you, you made a statement about that you tripped.
20 Do you remember we went through that medical
21 record --
22 A Oh, yeah.
23 Q -- a few minutes ago? What was your
24 pain level when you were at the emergency room?
25 A Oh, lord. About as bad as you can

1 get.
2 Q Okay.
3 A I mean, that was a pain I'll never
4 forget as long as I live.
5 Q Okay. Do you believe that you would
6 have been in a frame of mind at that point in time
7 to give a complete and accurate account of what
8 happened that day?
9 A Well, I was hurting and -- and so bad,
10 and when I got there is when he -- after they
11 examined me a little bit, the first thing they did
12 then was give me something to relieve the pain.
13 And from there on out, I was -- that was it,
14 pretty much. I can't remember nothing.
15 Q Okay. All right. Now, I wanted to go
16 back just a little bit as well. You mentioned
17 something earlier about when you all went to get
18 in the boat.
19 A Uh-huh.
20 Q You mentioned that Marshall helped --
21 helped you in the boat, helped keep you steady as
22 you got in the boat. Was that correct?
23 A I can't remember.
24 A Okay. Do you remember getting any
25 assistance at all getting in the boat?

1 A I think -- I think he held the boat
2 against the deck and I grabbed the steering
3 wheel -- wheel that he mounted in it and got --
4 got on in.
5 Q Okay.
6 A And he might've -- he might've drove a
7 little bit his self to start with. I can't
8 remember.
9 Q But do you remember anybody holding on
10 to you or anything as you're getting in to the
11 boat?
12 A Not really. I can't remember that.
13 Q All right. Now, as you were getting
14 out of the boat, what were -- what was Marshall
15 doing?
16 A He was behind me. And like I say, we
17 was right at the center of the deck. We pulled up
18 beside the deck and he held on to the deck --
19 Q Uh-huh.
20 A -- the best of my knowledge, to hold
21 it against the boat, the deck, the boat.
22 Q Uh-huh.
23 A And I went -- went to get out.
24 Q Okay.
25 A And then --

1 Q What did you use to help yourself get
2 out of the boat?
3 A Well, that particular day, I used the
4 steering wheel, you know, to get -- put my right
5 foot --
6 Q Did the dock --
7 A Yeah.
8 Q Did the dock have a handle or a ladder
9 or --
10 A No, it didn't have no real --
11 Q -- anything to grab on to?
12 A No, it didn't have no...
13 Q Were there any -- were there any like
14 slip strips or anything that you can recall that
15 were right there as you get out of the boat?
16 A I don't know.
17 Q Okay. So what did you hold on to to
18 get out of the boat?
19 A I was holding on I think to the
20 steering wheel until I got this right leg up on
21 the -- on the deck. And then I stepped on the
22 deck. And that's when I slipped.
23 Q Okay. Had you ever had any trouble
24 getting in and out of the boat as many times as
25 you've been to Marshall's? Have you ever had any

1 trouble getting in and out before?
2 A No, I hadn't ever got in and out of
3 it, not that particular boat.
4 Q How many times in your lifetime would
5 you think you've gotten in and out of the boat at
6 Marshall's?
7 A No more than two or three times, the
8 best I can remember, that boat. I bought a
9 pontoon boat down there and I --
10 Q Did you have any trouble getting in
11 and out of that boat?
12 A Oh, no. No.
13 Q Okay. Now, one of the medical records
14 that was exhibited mentioned weight bearing as
15 tolerated. Okay? Weight bearing. Remember
16 reading a document --
17 A Uh-huh.
18 Q Do you need to look at it again?
19 A Yeah.
20 Q The weight -- weight bearing as
21 tolerated. So what -- what is your understanding
22 of the word tolerated?
23 A That means when you put weight on it,
24 how much pain or pressure it puts on your leg.
25 Q Okay. So what -- what would you say

1 is your tolerance level for weight bearing --
2 A Then?
3 Q -- on the leg? Uh-huh. Then and now.
4 A Well, I was walking pretty good on it.
5 Q Okay.
6 A I mean, I was walking pretty good.
7 Q So when did it get worse?
8 A Oh, it got worse after I fell and
9 broke that leg and that hip.
10 Q Okay. The medical record that we were
11 talking about was actually after you broke that
12 hip and leg.
13 A Yeah.
14 Q And it said weight bearing as
15 tolerated.
16 A Yeah.
17 Q So at that point in time, how long
18 would you say that you could tolerate being on
19 your leg?
20 Mr. Tyler: Object to the form.
21 The Deponent: Say that again.
22 By Ms. Jones:
23 Q Let me rephrase it. What is your
24 tolerance level for pain when walking on your
25 prosthetic leg since the accident?

1 A Well, at times, it don't bother me,
2 and then again, it bothers me real bad.
3 Q Okay. So you have -- you have water
4 at home to test your boat?
5 A I have a river.
6 Q Okay. So when you wanted to pick up
7 your boat, you were okay with going home to test
8 it?
9 A I -- yeah, if -- if the weather hadn't
10 gotten like it was, yeah, we would have -- if I
11 hadn't got hurt, I would have went home and -- and
12 tested it. The biggest reason I went and got it
13 that day was on account of my children.
14 Q Okay.
15 A It was the 4th of July the next day
16 and they wanted to use the boat to -- out on the
17 river. And that was the biggest reason I went to
18 get it that day.
19 Q Okay. I'm going to back up to the
20 business just a little bit with B & B Prep.
21 A Uh-huh.
22 Q After that accident, can you remember
23 when the last time you received any monies from B
24 & B Prep?
25 A The company?

1 Q Uh-huh. Like for work that was being
2 completed.
3 A I can't remember the dates, no. But
4 we had money out. Yeah. And it -- work was being
5 done during that time.
6 Q Okay.
7 A That I -- that we received, the
8 company did.
9 Q Do you remember having to file any
10 kind of lawsuit in order to collect some of the
11 outstanding invoices that were out there?
12 A That's correct. I did.
13 Q Okay. And who was that against?
14 A That was against...
15 Q Do you remember a company named
16 Justice Family Farms?
17 A Yeah, Justice Farms.
18 Q Okay. And that you had to file a
19 lawsuit to collect that? Is that correct? Do you
20 remember?
21 A Yeah.
22 Q Did it take several months to get --
23 A It took a year.
24 Q Okay. So could it be that the
25 claim -- that Wanda decided to dissolve the

1 company in July of this year because we were still
2 collecting those outstanding invoices?
3 Mr. Tyler: Object to the form.
4 The Deponent: Yes.
5 By Ms. Jones:
6 Q Okay. Do you have any recollection of
7 any new work that was completed after this
8 accident?
9 A Huh-uh.
10 Court Reporter: Is that a no?
11 The Deponent: Huh?
12 By Ms. Jones:
13 Q Say yes or no.
14 A No.
15 Q Okay. What would you say is your
16 greatest health concern since the accident?
17 A My great?
18 Q No, biggest health concern you have at
19 this point since the accident.
20 A Well, this leg. And -- and my
21 breathing is getting -- it's -- it's starts real,
22 real bad. But my leg bothers me. I have to take
23 it off all the time. It -- it -- it swells. And
24 I just have problems with it.
25 Q Okay. What -- did you feel pretty

1 good up until the point of July 3rd, 2013? You
2 were planning to take the kids out on the boat?
3 A Yeah. Oh, yeah. I was going out on
4 the boat. I was fishing.
5 Q Okay.
6 A Yeah.
7 Q And since that accident, have you gone
8 fishing at all?
9 A Been twice.
10 Q Since the accident?
11 A Yeah.
12 Q Okay.
13 A And then they had to take me out of
14 the boat. And I didn't stand -- I've been fishing
15 twice.
16 Q All right. And any other hobbies or
17 activities that you enjoyed doing since the
18 accident?
19 A No. No.
20 Q Okay. Who helps take care of you?
21 A Do what?
22 Q Who helps to take care of you?
23 A My wife.
24 Q Okay. Are you able to dress yourself?
25 A No.

1 Q When did you have to start getting
2 help dressing yourself?
3 A Probably about six months ago. These
4 hands has got so bad --
5 Q Okay.
6 A -- and stuff, I can't even hardly
7 unbutton my shirt.
8 Q Okay. What else does Ms. Britt help
9 you with?
10 A Well, she's -- she's had to help me
11 change my clothes. I mean, when I got -- come
12 home from my -- out of rehab and all, she would
13 have to change me and wash me and -- because you
14 just couldn't get up and go to the bathroom at
15 that particular time of recovery.
16 Q Okay. And what about now?
17 A Well, I can do -- do a lot of it by
18 now, but some she still has to -- like help me get
19 dressed. Sometimes I can't -- I can't even zip my
20 britches up and down.
21 Q Are you able to cook?
22 A No. I can't even hold a pot. I can
23 be eating. And see that finger there -- hand? I
24 can be eating with a fork and -- and all of a
25 sudden it will drop out of my hand into the plate

1 or on the floor and I won't even know it until
2 it's gone.
3 Q Could you do those things before this
4 accident?
5 A Oh, yeah. But -- yeah.
6 Q How has life changed for you since
7 this accident?
8 A Well, it's changed a lot. I mean, I
9 can't do nothing no more. I can't have no
10 activity. I can't enjoy doing nothing as far as
11 activity.
12 Ms. Jones: Okay. Mr. Britt, I think
13 that's all the questions I have. And if there's
14 any when we reconvene, I'll ask them at that point
15 in time and let -- answer any questions Mr. Tyler
16 might have to clarify.
17 FURTHER EXAMINATION
18 By Mr. Tyler:
19 Q Mr. Britt, I want to make sure I
20 understand. I'm only going to mention that
21 eating, for example, you might drop the fork
22 because of your hands.
23 A Yes, sir.
24 Q Is this a circulation problem?
25 A Well, I don't know. I'm seeing a

1 doctor now for it.
2 Q Okay.
3 A Yeah.
4 Q I mean, do you -- do you know what is
5 causing the problem of you not having finger or
6 hand control?
7 A Well, they think it's nerves.
8 Q Okay.
9 A Nerves.
10 Q Has any doctor told you that that's
11 related to your -- your cardiovascular condition
12 or your heart disease?
13 A Oh, yeah.
14 Q Okay. Who is the one that -- that
15 you're seeing for that? Is that Dr. Jackson
16 again?
17 A That's right. William Jackson.
18 Q Okay.
19 A Yeah.
20 Q Has he ever told you that it has
21 anything to do with your -- your left hip
22 fracture?
23 A Did it have anything to do with it?
24 Q Yeah. Has he ever told you that it
25 has anything to do with your left hip fracture?

1 A No.
2 Q Okay. I mean, you've been having
3 heart problems you told me for years. Right?
4 A Right.
5 Q Okay. You were asked a moment ago
6 about the telling the doctors that you tripped
7 instead of slipped. And I believe the point was
8 that you were under the influence of some pain
9 medications or either in pain. Would either pain
10 medications or being in pain cause you to tell a
11 story?
12 A No, I weren't taking no pain medicine
13 at that time.
14 Q Okay.
15 A It weren't bothering me like, you
16 know, it's been since then. I wasn't taking no
17 medication for pain.
18 Q I mean, you -- would you have had any
19 reason to tell somebody something that was
20 inaccurate?
21 A No.
22 Q And you said that you picked the boat
23 up July 3rd because you wanted your family to be
24 able to use it the next day. Right?
25 A That's correct.

1 Q All right. So wouldn't it have been a
2 good idea to go ahead and -- and make sure that
3 there was no problems with it before you drove it
4 back?
5 A Well, it -- it could have been, but I
6 mean, I had done drove it. I drove it out on a
7 lake. The boat worked perfect.
8 Q I understand that. I'm just saying,
9 before you even got in the boat, you were saying
10 there was some conversation between you and -- you
11 and Marshall --
12 A Well, which was a cloud.
13 Q Right. I understand. But what I'm
14 saying is, otherwise, you would have gotten -- if
15 you hadn't test driven it, you may have driven it
16 back home and there would be some -- some problem
17 and the family wouldn't have been able to use it.
18 Is that right?
19 A That's correct.
20 Q When you -- before any of this
21 happened, okay, was the plan for the boat to be
22 put on the trailer and Mackey drive it back to
23 your house?
24 A Yeah, drove me down there.
25 Q Okay. So he was going to drive you

1 A Oh, yeah.
2 Q Okay. And you had gotten in and out
3 of that boat many times?
4 A Yes, sir.
5 Q Okay. And you never had had -- you
6 never had to have any assistance getting in and
7 out of the boat, did you?
8 A No. I could pull it up beside my boat
9 deck.
10 Q Okay.
11 A I've got a shed built over it. I
12 could pull it up under it. I could tie it off and
13 get right there. And I had a rope there I could
14 get to and get right out of it.
15 Q Okay.
16 A And get right in it.
17 Q And if you needed help, would you ask
18 for help to get in and out of the boat?
19 A If I need it, I would have.
20 Q Okay.
21 A But I didn't need it.
22 Mr. Tyler: Okay. Thank you, sir.
23 (Deponent excused.)
24 (Whereupon, at 12:56 p.m.,
25 the taking of the foregoing

1 back?
2 A Yeah.
3 Q And he still picked the boat up and
4 drove it back?
5 A Yeah, we carried the boat home. I
6 told him I wanted to carry it home.
7 Q Okay. And did they use it without any
8 problem?
9 A We -- we didn't use it.
10 Q Okay. Do you still have it?
11 A Yes, sir.
12 Q All right.
13 A It's been used twice, just a little
14 bit.
15 Q Okay.
16 A Since then.
17 Q How -- how long had you had that boat
18 before the work was done on it?
19 A For the steering wheel?
20 Q Yes, sir.
21 A I -- I think the best of my knowledge,
22 I bought that boat in '05, somewhere around '05,
23 '06 one.
24 Q Okay. So you had it for -- for seven
25 or eight years?

1 deposition was concluded.)
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1 CERTIFICATE OF REPORTER
2 State of South Carolina
3 County of Florence
4

5 I, Roger Williamson, Court Reporter and
6 Notary Public for the State of South Carolina, do
7 hereby certify that the deponent in the foregoing
8 deposition was, by me, first duly sworn to testify
9 to the truth, the whole truth and nothing but the
10 truth; that said deposition transcript contains a
11 true record of the deposition of said deponent.

12 I further certify that I am neither attorney
13 nor Counsel for, nor related to or employed by any
14 of the parties connected to the action, nor am I
15 financially interested in the action.

16 Witness my hand at Florence, South Carolina,
17 this the 11th day of December, 2014.
18

19 Roger Williamson
20 MY COMMISSION EXPIRES:
21 March 18, 2022
22
23
24
25

No. 2015-1216

DOCUMENTS PROVIDED BY RESPONDENT

d. Transcript of Record

State of South Carolina)
County of Florence)

In The Court of Common Pleas
Twelfth Judicial Circuit
2014-CP-21-0441

Lonnie William Britt,)

Plaintiff,)

vs.)

Marshall's Marine, Inc.,)

Defendant.)

Transcript of Record

March 18, 2015
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

A. Lori Jones, Esquire
Attorney for the Plaintiff

Matthew N. Tyler, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

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Certificate Page	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

1 THE COURT: The first matter we got is *Britt vs.*
2 *Marshall's Marine*. Is that right?

3 MR. TYLER: Yes, sir, Your Honor.

4 THE COURT: Okay, and it's a motion, motion for
5 summary judgement?

6 MR. TYLER: Yes, sir, Your Honor.

7 THE COURT: All right. All right, Mr. Tyler if you're
8 ready to proceed, we'll ---

9 MR. TYLER: Yes, sir, Your Honor, I am and, Your
10 Honor, with the court's permission, I'd like to hand up --
11 here's some cases I'll be referring to just in case you
12 need them.

13 THE COURT: Okay. Well, thank you.

14 MR. TYLER: And also, Your Honor, here is a copy of
15 the plaintiff's deposition transcript that I will be
16 referring to.

17 THE COURT: All right. Thank you.

18 MR. TYLER: Thank you. Your Honor, this is the
19 defendant's motion for summary judgment pursuant to Rule 56
20 of the South Carolina Rules of Civil Procedure. This is a
21 premises liability case.

22 The plaintiff, Lonnie William Britt, sued Marshall's
23 Marine after a fall July 3, 2013. Mr. Britt was a
24 long-time customer of Marshall's Marine. He had driven
25 boats on their test lake on a number of occasions before;

1 he had been to their business numerous times before over,
2 over the course of about twenty-five years.

3 At the time of this accident, Mr. Britt was sixty-nine
4 years old. Unbeknownst to the individuals at Marshall's
5 Marine, Mr. Britt had a number of health conditions. He,
6 he had vascular disease. He had severe diabetes, and that
7 resulted in a below-the-knee amputation with a prosthetic
8 leg that the individuals at Marshall's testified they knew
9 nothing about. He also had some heart problems that had
10 been ongoing for years.

11 Marshall and Stewart Altman, who are the principals of
12 Marshall's Marine, indicated in their testimony, testified
13 that they knew that he had had some heart problems in the
14 past, but that was extent of their knowledge of his medical
15 condition. That was just in talking when he would come
16 visit with them at the dealership.

17 As to the subject accident, this motion is based upon
18 there being no genuine issue of material fact because I am
19 proceeding based solely on Mr. Britt's testimony, what he
20 said happened. I'm giving him the benefit of the doubt.
21 What he says happened is what we're going on today.

22 THE COURT: Okay.

23 MR. TYLER: Your Honor, his testimony reflects that he
24 went to Marshall's Marine and approached them about
25 fabricating a center console for his boat. He had a

1 stick-steering type fishing boat he was uncomfortable with.
2 He asked them if they could build a center console with a
3 steering wheel and a regular throttle like a normal boat
4 has, and they said of course we can. So, he left the boat
5 with them for several weeks.

6 The complaint that was filed by Mr. Britt alleges that
7 Marshall's adamantly insisted that once the boat was ready,
8 he come get it, but he refused due to weather conditions
9 making it dangerous. Actually, his testimony differed from
10 that.

11 His testimony was -- and this is on page 109 of his,
12 of his deposition transcript. He said he received one call
13 from Marshall's. He was told the boat was ready. He was
14 excited about going in and getting it. This was just
15 before the 4th of July holiday. He wanted to get the boat
16 for he and his family and his grandchildren to enjoy. He
17 had his brother Mackey drive him down to Marshall's Marine
18 to pick the boat up.

19 So, on July 3rd, Mr. Britt shows up at Marshall's. He
20 speaks with Marshall Altman in his office. They go out to
21 the test lake. Marshall's has a small test lake in the
22 back to, to test the boats out, and the boat was already in
23 the water waiting on them.

24 Now considering the type of work done, the steering
25 controls and whatnot, Mr. Altman asked Mr. Britt to test

1 drive the boat. Mr. Britt initially was apprehensive; he
2 said there was a dark cloud coming up, but he relented. He
3 testified that he ultimately agreed to a test drive.
4 That's on page 60 of his deposition.

5 And as to this last point, there's two things I want
6 to mention to Your Honor. Mr. Britt testified that at his
7 age, at sixty-nine years old, you know, he's a grown man.
8 He said he, he went out to the boat voluntarily. It was
9 his decision to do it; no one forced him to do it.

10 Secondly, he acknowledged that if he had left the
11 dealership without test driving the boat, then obviously he
12 would have taken it 60-plus miles back home. And if there
13 had been a problem, then that would have been a problem for
14 his family to use the next day. So, it was a good idea to
15 do the test drive.

16 Now be that as it may, he and Mr. Altman walk out on
17 the dock. They get in the boat, and importantly, Your
18 Honor, Mr. Britt walks out on the dock without any problem
19 unassisted. He gets into the boat without any problem
20 unassisted. He says Mr. Altman was holding the boat
21 against the dock so he could climb in. They climb in the
22 boat. He jumps in, and he is actually driving. So, he, he
23 drives the boat out to the test lake.

24 They're out on the test lake for approximately ten
25 minutes. Mr. Britt's testimony was that he felt that that

1 was adequate time to test the boat, and his testimony was
2 that he was tickled with it; he was extremely happy with
3 the way this has all turned out.

4 They hear thunder in the distance, so they decided to
5 come in. They, they pull up to the dock. As they approach
6 the dock, Mr. Altman again holds onto the dock. Mr. Britt
7 climbs out, again unassisted. It was his testimony that he
8 has done this many times. He did not require assistance.
9 That's page 128 of his deposition transcript.

10 By this time, of course, the rain has started. Mr.
11 Britt docks, docks the boat. He climbs out. He says he
12 was very experienced climbing -- excuse me, docking the
13 boat and again testified he didn't need any help getting
14 out of the boat. He gets out of the boat. Once he gets
15 out of the boat, he stands up on the dock and when he
16 stands up on the dock, he falls.

17 His testimony was that he does not know why he fell.
18 He guesses it was because of the rain. He guesses the dock
19 was made slick because of the rain, but he does not --
20 again he says that was, that was a guess, and that's
21 repeated in his deposition and testimony. And I could
22 highlight it for you, but that was the context of his
23 testimony was it was slick, I guess.

24 Mr. Britt admitted that the dock had a sandpaper-type
25 texture to it, a nonskid surface. Mr. Britt states that he

1 does not know what caused the fall other than possibly
2 rain, and he did not know which foot of his would have been
3 the one that slipped. All he knows is that he fell, and he
4 fell on his left side. He had some orthopedic injuries
5 and, of course, ultimately the EMS was called, and they
6 took him to the hospital and that type thing, and we're
7 discussing liability today.

8 So, there's no problem going out on the dock. There's
9 no problem getting into the boat on his own, no problem
10 driving the boat, no problem getting out of the boat on his
11 own. But upon getting out and standing on the dock, he
12 falls for reasons that he can't explain other than to say
13 that it was possibly the rain: that it made the dock slick.
14 That caused him to fall.

15 Now, Judge, this action was filed against Marshall's
16 alleging negligence, failure to warn of a hazardous
17 condition, and a resulting breach of a duty owed. Under
18 the law in the state of South Carolina, it's quite clear,
19 and based upon the testimony of Mr. Britt, that summary
20 judgment is proper. And that the South Carolina law is
21 that an invitee such as Mr. Britt is owed only the duty of
22 ordinary care to keep the premises in a reasonably safe
23 condition. And there are a host of cases that talk about
24 that: *Milligan vs. Winn-Dixie*, 254 S.E. 2d 798; *Young vs.*
25 *Meeting Street Piggly Wiggly*, 343 S.E. 2d 636.

1 The *Young* case is very often cited, and the *Young*
2 case goes on to quote 20 AR 4-438 for the proposition that
3 a business owner's liability may not be based solely upon
4 the presence of moisture such as claimed here.

5 Additionally under the uncontested facts, according to Mr.
6 Britt's own testimony, there is no duty owed, and I will
7 explain in more detail.

8 The case of *Meadows vs. Heritage Village Church* -- I
9 handed a copy of that up, 409 S.E. 2d 349, Your Honor --
10 that's a 1991 Supreme Court decision. It's often known as
11 the PTL case. In that case, our South Carolina Supreme
12 Court confirmed adoption of the restatement (second) of
13 torts section 343(a). And that provides, and I'll quote
14 from the case. Quote:

15 Which provides that a possessor of land is not
16 liable to his invitees for physical harm to them
17 by any activity or condition of the land whose
18 danger is known or obvious to them.

19 Additionally, Your Honor, in *Meadows* the plaintiff
20 slipped and fell on wet grass. In viewing the question of
21 whether there was any duty to warn or alleged duty to warn,
22 the court held, and I'll quote this for you. Quote:

23 The question is whether PTL owed Meadows a duty
24 to warn her of the danger presented by wet grass.
25 We hold that PTL had no duty to warn Meadows, its

1 invitee, about the wet grass because it was a
2 natural condition, the peril of which was
3 obvious. In contract, a latent defect is one
4 which an owner has or should have knowledge of
5 and of which an invitee is reasonably unaware.
6 It is one which a reasonably careful inspection
7 would not reveal.

8 Court went on to hold:

9 We find that the only inference to be drawn from
10 the evidence is that PTL did not owe Meadows a
11 duty to warn.

12 Now, Judge, in *Meadows*, the grass was wet from rain,
13 and the grass was made slick from the rain, and that's what
14 we've got here. We've got Mr. Britt alleging the dock was
15 wet from the rain, and the dock was made slick from the
16 rain, but of course the rain was, was a natural condition.
17 Pursuant to the *Meadows* decision, that's not only a natural
18 condition. It's open and obvious. There's no duty to warn
19 and obviously if there's no duty to warn, there can be no
20 breach of any duty to warn.

21 More recently other cases have, have been issued. I
22 will site to you one in which the plaintiff slipped and
23 fell in a post office lobby that had no warnings. It was
24 raining, and the lady walked into the post office and
25 slipped and fell. The court in *Hackworth vs. USA*, 366 F.

1 Supp. 326, a 2005 decision. Included in the opinion, the
2 language, quote:

3 The floor's slippery condition was obvious and
4 easily discoverable by the plaintiff.

5 The *Young* case I quoted earlier, the following was
6 included in the opinion, Judge, and if you'll indulge me
7 for just a moment, and I'm quoting from the *Young*
8 decision:

9 Everybody knows that when people are entering any
10 building when it is raining, they will carry some
11 moisture on their feet which will render the
12 floor near the door of the inside to be damp to
13 some extent, and everyone knows that a damp floor
14 is likely to be a little more slippery than a dry
15 floor. It is not the duty of persons in control
16 of such buildings to keep a large force of
17 moppers to mop up the rain as fast as it falls,
18 or blows in, or is carried in by wet feet or
19 clothing or umbrellas for several very good
20 reasons, all so obvious it is wholly unnecessary
21 to mention them here in detail. Not every
22 accident that occurs gives rise to a cause of
23 action upon which the party injured may recover
24 damages from someone. Thousands of accidents
25 occur every day for which no one is liable in

1 damages and often no one is to blame, not even
2 the ones who were injured.

3 Last October in a U.S. district court opinion, Judge
4 Joseph Anderson in the case of *Lucas vs. Sysco Columbia*
5 granted summary judgment in a slip and fall case involving
6 rain. He cited the *Hackworth* case, which again was another
7 summary judgement case involving slipping and falling in
8 rainwater. Judge Anderson wrote in his opinion, and I
9 think this is very telling for this case, Your Honor,
10 quote:

11 Ordinarily, a property owner has a duty to warn
12 an invitee only of latent or hidden dangers of
13 which the property has or should have knowledge.

14 He cites some case law and goes on to write:

15 However, under South Carolina law, an exception
16 to this duty exists. The owner of property owes
17 no duty to use reasonable care to take
18 precautions against or to warn guests of open and
19 obvious dangers. In such situations, the guests
20 themselves have a duty to discover and avoid the
21 danger.

22 Your Honor, in all of these cases, the floor was slick
23 from being -- from tracked-in water coming from outside in,
24 and people were saying that they were not notified.

25 Obviously, the duty of the plaintiff to discover and avoid

1 danger is magnified if they are actually outside when the
2 rain is falling such as the case with Mr. Britt on the
3 dock.

4 The well-settled case law is that the defendant is not
5 an insurer of the safety of its invitees. Numerous cases
6 in South Carolina hold that, yet Mr. Britt alleges
7 negligence against Marshall's, testifying that the rain
8 possibly made the dock slick.

9 So, assuming the rain was involved, summary judgment
10 would be appropriate as the presence of the rain and
11 moisture is not negligence under South Carolina law. And
12 under the state and federal decisions, that's a natural
13 condition. It's presence is obvious. That there is no
14 duty to warn, and based upon the testimony of Mr. Britt and
15 the case law, summary judgment is proper. Thank you.

16 THE COURT: All right. Thank you, Mr. Tyler.

17 MS. JONES: All right, Your Honor. If I can approach?

18 THE COURT: Yes, ma'am.

19 MS. JONES: Thank you, Judge. My memorandum, and the
20 cases are attached.

21 THE COURT: Okay.

22 MS. JONES: Along with the deposition excerpts.

23 THE COURT: All right. Thank you, ma'am.

24 MS. JONES: In a motion for summary judgment, we have
25 to look at whether or not there are disputed facts that

1 need to go in front of the jury, whether or not more than
2 one inference can be made from the facts that are given in
3 this case. I wanted to go back to what defense counsel
4 discussed about the second restatement of torts that
5 adopted *Calendar vs. Charleston Donut Corporation* in other
6 case law.

7 He, he stated the first portion of that, but there was
8 a portion of that that was left off. So, for the record,
9 I'm going to read the entire thing. The second restatement
10 of torts section 343(s) -- excuse me -- states that:

11 A possessor of land is not liable to his invitees
12 for physical harm caused to them by any activity
13 or condition on the land whose danger is known or
14 obvious to them unless the possessor should
15 anticipate the harm despite such knowledge or
16 obviousness.

17 And that last statement was left off by defense
18 counsel.

19 In this particular case, this -- the facts are
20 different from the other cases that were mentioned because
21 the possessor of the property actually took the customer
22 out there despite the objection of the customer. Said no,
23 you need to test drive the boat. Mr. Britt saying no,
24 let's wait. His deposition testimony indicated let's wait.
25 Let's not going do that. There's a cloud coming up; I

1 don't want to go out there right now.

2 A twenty-five year relationship, these men trusted
3 each other. There was a level of trust and understanding.
4 They have done business for years. He understood that Mr.
5 Britt wasn't going to make a problem with the boat that
6 didn't exist. Mr. Britt wanted to just pick up his boat,
7 get the boat home. He didn't see any need in going out and
8 test driving the boat. But as you can tell from the
9 deposition testimony of Mr. Altman, that they were proud,
10 and I will read from Stewart Altman's deposition testimony.
11 It's Exhibit B.

12 THE COURT: Exhibit D?

13 MS. JONES: B as in boy.

14 THE COURT: Okay. I'm sorry.

15 MS. JONES: Stewart Altman says:

16 We probably did recommend because I'm going to be
17 honest with you. I think Marshall was extremely
18 proud. I know I was in the fabrication job of
19 the steering for Bill. I mean proud.

20 And he goes on to say:

21 Marshall had fabricated something for Mr. Bill
22 and Mr.'s Bill -- Mr. Bill's benefit would, would
23 solve his problem, and I'm sure he was, he was
24 proud of that and wanted to show Bill that. This
25 is, this is it. I mean, I was proud of what they

1 had done, my fabrication department and Marshall,
2 when I saw it.

3 And up in -- I'm sorry. That was Exhibit C. In
4 Exhibit B, Mr. Britt indicated that he didn't want to get
5 in the boat. He said:

6 We got out of here. There was a cloud came up.
7 Marshall wanted me to go drive the boat. I told
8 him, I said let's just wait. He said let's drive
9 it. I said two or three times let's just wait a
10 minute. I said if it ain't right, I'll bring it
11 right back. I believe that was the state -- the
12 words I made. And -- but, you know, he was
13 really proud of what he had done for me and
14 everything. So, well, I finally give in to him,
15 and I went in and got in the boat.

16 This wasn't in a situation where they saw a puddle of
17 water and saw that it was wet and said heck, I'll go ahead
18 and do it anyway. This was a situation where he felt like
19 he couldn't get his boat unless he went and test drove the
20 boat. And in order to please his friend and let him show
21 him what he did, he gave in to him.

22 Now, whether or not he kind of pursued, you know, the
23 action in regard of it in this particular case, I argue
24 that they had a duty of care to prevent him from being out
25 there, knowing that there had been that much rain, knowing

1 it was a thundercloud coming, getting in an aluminum boat,
2 which creates a dangerous condition. And once they even
3 got in the boat, the thundercloud, of course it starts
4 lightening. They rushed the boat back to the dock, created
5 an urgent situation, and a man with a prosthetic leg had to
6 get out of the boat with no assistance and subsequently
7 slipped and fell.

8 In a summary, in a summary judgment situation,
9 whenever there is more than one inference that can be made
10 from the evidence in the file, it should go to the jury.
11 In, in *Hughes* -- let me, let me back up.

12 In a claim for negligence, the plaintiff has to show
13 that that duty of care was breached. And the second
14 restatement indicated if they could anticipate that harm
15 despite the knowledge of that -- its obviousness -- they
16 are liable. And the plaintiff has to show the duty of care
17 was breached, and the degree of care that's required of the
18 premises owner is commensurate with the particular
19 circumstance involved, including the age and the capacity
20 of the invitee. That's *Anderson vs. St. Francis Community*
21 *Hospital*, 303 S.E. -- I'm sorry, 399 S.E. 2d 767.

22 And then it goes on further. The case law indicates
23 that those injuries don't have to be foreseeable. That's
24 *Hughes vs. Children's Clinic, P.A.*, 296 S.C. 389 and that's
25 also *Garvin vs. Bi-Lo*, 337 S.C. 436. In the *Hughes* case,

1 they went further to say that:

2 It's sufficient that there is a reasonable,
3 generalized gamut of greater than ordinary
4 dangers of injury, and that the sustaining of the
5 injury was within that range. It was, therefore,
6 a jury question whether defendant had reasonably
7 provided safe premises for the use of the
8 invitee.

9 In *Graham vs. Whitaker*, 321 S.E. 2d 40, they say it's
10 a question for the jury whether it's issues of negligence,
11 contributory negligence, and proximate cause, and if more
12 than one reasonable inference can be drawn from the
13 evidence, the trial judge is required to submit those
14 issues to the jury.

15 In this particular situation, it's not whether or not
16 just the dock was wet. Everybody agrees the dock was wet,
17 but was there something different about the behavior: that
18 the defendant created a dangerous condition and put his
19 customer in that condition. For some reason, Mr. Altman
20 went against his normal business procedures, according to
21 his own deposition testimony, and this is Exhibit E,
22 Exhibit D and E.

23 Mr. Altman testified that normally it's Wade Altman,
24 someone else in their office, that calls them up and tells
25 them that their boat's ready. Come pick it up. But in

1 this particular situation, on Exhibit E -- well, I'll go
2 back to Exhibit D. Mr. Altman says that in this particular
3 situation, he didn't know who contacted Mr. Britt. But
4 then later on in his deposition, Exhibit E, he said he was
5 the one that called Mr. Britt and called him from his
6 personal cell phone. So, for some reason Mr. Altman went
7 against his normal business protocol, called Mr. Britt,
8 wanting him to come get this boat.

9 Mr. Britt was happy to go get the boat. It was July
10 4th weekend. He wanted to go get it, but he did not want
11 to test drive that boat. He wanted to pick it up and take
12 it home and, in my opinion, that created a dangerous
13 condition that is different from all the other cases of
14 just knowing there's a puddle and walking into it anyway.

15 This is a situation where they owed a duty of care to
16 take somebody that they testified in their deposition
17 testimony they knew he walked funny. They knew he had a
18 funny gait. They knew that he had health issues, but they
19 wanted to get him out there because they were so proud of
20 what they had done with the boat. They wanted to show it
21 off. So, regardless of what the weather was doing or
22 regardless of all that, their zealousness kind of overrode
23 their sense of care for their customer. And because more
24 than one inference can be taken from the evidence in this,
25 it needs to be presented to the jury. And according to the

1 case law and the *Graham* case that says -- back to *Graham*
2 vs. *Whitaker*, it says:

3 Obviously with such divergent versions of the
4 occurrence of the incident, the issue of
5 contributory negligence was a factual matter for
6 the jury, not a question of law for the court.

7 And it also says:

8 If more than one reasonable inference can be
9 drawn from the evidence, the trial judge is
10 required to submit these issues to the jury.

11 So, despite what Mr. Britt may have done, they owed a
12 duty of care to even stop. And, in my opinion, the duty of
13 care was there because they could have anticipated he would
14 have been hurt going out in the middle of a rainstorm,
15 going out in the middle of a wet dock, going out on an
16 aluminum boat when it looked like lightening was coming up.
17 That they had a duty of care to prevent him from being in
18 that situation. And because more than one reasonable
19 inference can be taken from all that evidence, it is our
20 opinion that summary judgment is not proper.

21 THE COURT: Thank you, ma'am.

22 MR. TYLER: May I, Your Honor?

23 THE COURT: Yes, sir.

24 MR. TYLER: Judge, if I can, I'll bring your attention
25 to page 106 of Mr. Britt's deposition testimony. And I

1 won't go through it line by line, but I'll just ask the
2 court if you will, if you will read that.

3 What Mr. Britt is saying there is that no one forced
4 him to get in that boat. That when he went there that day,
5 that he voluntarily went and got in the boat. I asked him.
6 I said:

7 You're a grown man? Yes, I am. You make
8 decisions on your own? Yes, I do.

9 So, he says no one, no one forced him to get in that
10 boat.

11 If I understand the theory that's being advanced --
12 I'm not sure. It's almost like a Pall's graph-type
13 analysis. It'd be like, for example, Mr. Britt should not
14 have gotten in the boat. He was forced to get in the boat,
15 and because he got into the boat, then when he climbed into
16 the boat on his own without any assistance, saying he
17 didn't need any assistance, when he climbed out of the boat
18 on his own without needing any assistance and saying I
19 don't need any assistance and then stood up and fell for
20 whatever reason, then Marshall's is liable because they
21 encouraged him to get in the boat for the test drive to
22 begin with.

23 And, Judge, my point in bringing all that up is that
24 our Supreme Court on a number of occasions has said that a
25 business owner is not the insurer of the safety of their

1 customers. So, to say that you should not have gotten in
2 the boat because there could have been a storm that came up
3 and he may have rushed back to the dock -- by the way. He
4 was driving the boat when they rushed back to the dock. He
5 was the one driving it, and he's the one that docked it.
6 So, any rushing would have been him.

7 But be that as it may, that goes strictly against the
8 law of the state of South Carolina because you then make
9 the person who is claiming an injury the individual who was
10 guaranteed safety by the merchant, and that's not what the
11 law is. The law is the property owner is not the, the
12 guarantor of safety for its customers. I mean, I'm got the
13 case of *Winterseen vs. Food Lion*, which is 542 S.E. 2d 728.
14 The court went into detail about that and basically says we
15 declined to broaden our slip and fall analysis. In that
16 case, what happened was some grapes kept falling, and Food
17 Lion was sued because it was foreseeable that these grapes
18 could fall on the floor, and the court said no. The mere
19 possibility that that might happen in any given set of
20 circumstances is not enough. If we were to say that they
21 were irresponsible simply because it could happen, then
22 that makes them the guarantor of safety, and that's not the
23 law.

24 THE COURT: So, you're saying even if Marshall's
25 Marine employees -- and I understand when I say forced or

1 encouraged him to go, I understand that they didn't
2 actually pull him out there and stuff. But even if they,
3 after several objections -- I don't want to do it. I don't
4 want to do it. Well, we think you should. If you take it
5 and there's something wrong, you got to bring it all the
6 way back. You're here. You need to drive it. Whatever
7 was said, even that encouragement, in light of the fact
8 that he didn't initially want to do it, you're saying in
9 spite of that, that that would make them a guarantor or an
10 insurer of his safety to go do it, and that he had
11 knowledge of the facts and situations around him and could
12 have maintained his denial to go?

13 MR. TYLER: Yes. As a matter of fact, the testimony
14 was, and this was not mentioned, but the testimony was that
15 Mr. Stewart Altman said we do that all the time. If people
16 are in a hurry, people, people anxious to get to the lake
17 -- people are anxious to get to the beach. They want their
18 boat. They don't have time for a test. All they've got to
19 do is tell us that and they can go. That's fine. We
20 encourage it because it helps us knock out any potential
21 problem and we have to bring the boat back later on. So,
22 that's why we encourage people to do it.

23 In this particular circumstance, Mr. Britt, he had
24 substantial work done to the boat, and I digress on all
25 that. There's really -- the issue, and I think we've

1 somewhat gotten away from it, unfortunately, but I think
2 the issue was what caused him to fall. He can't say what
3 caused him to fall. He knows he fell, and he guesses that
4 it was a slick condition on the dock, and the number of
5 cases that I've set forth say that's not enough. You know,
6 if you're outside and you slip in the rain, you are
7 responsible for your own safety because that is an open
8 condition. That's the definition of an open condition, and
9 it's certainly obvious, and under the *Meadows* case it is a
10 natural condition.

11 MS. JONES: Yeah, and I understand his arguments, and
12 in front of the jury those might be good arguments. They
13 may not. What we have to decide is whether or not there is
14 inferences that, that could potentially be disputed that
15 need to go to a jury to make those decisions. And the case
16 law indicates that a situation like this should go to the
17 jury.

18 The South Carolina courts have held in *Garvin vs.*
19 *Bi-Lo* -- that's 343 S.E. 6, or S.C. 625 -- that:

20 A cognizable claim for recovery of damages for
21 injuries caused by a dangerous or defective
22 condition on a storekeeper's premises requires
23 that a plaintiff show either that the injury was
24 caused by a specific act of the defendant which
25 created the dangerous condition, or that the

1 defendant had actual or constructive knowledge of
2 the dangerous condition and failed to remedy it.

3 In this particular situation, he couldn't -- they
4 would not -- they, they said in their testimony they were
5 proud of their stuff. Even though Mr. Britt didn't want to
6 go out there -- he stated he didn't want to go out there --
7 they were proud of what they had done, and they wanted him
8 to see what they had done. And even though this back and
9 forth occurred, Mr. Britt gave in because he just wanted to
10 pick up his boat, and they were not releasing the boat. He
11 wanted to get his boat and get it home. It was pouring
12 down rain.

13 So, again this particular situation, I don't think
14 that this applies. It applies when you're making the
15 question in front of the jury about whether or not there's
16 damages or an element has been made. But as far as summary
17 judgment is concerned, there is enough here to dispute the
18 inferences of the evidence that's going on, and it should
19 go to the jury.

20 MR. TYLER: Judge, everything I submitted to you was
21 from the plaintiff's own account. There is no issue of
22 fact. If they want to create facts, that's fine. What
23 I've told you, what I reported to the court was straight
24 from the mouth of Mr. Britt, his own testimony. He's got
25 the burden of proof as to what happened.

1 He says he went out on his own. He says that he stood
2 up. He says that he did not request assistance, that he
3 didn't need assistance. That he's gotten out of that
4 numerous times without a problem.

5 THE COURT: I'm good on all that.

6 MR. TYLER: Yes, sir.

7 THE COURT: And would agree with you on all that. The
8 concern that I have as to whether or not summary judgment
9 would be appropriate is that issue about it's raining.
10 They insist he test drive it. He doesn't want to. They
11 continued to insist.

12 MR. TYLER: All right, let me ---

13 THE COURT: That's the issue that I think I'm having
14 to address.

15 MS. JONES: Well, and, Your Honor.

16 THE COURT: With all due respect, I think all the
17 other things, Mr. Tyler is dead on point with the law.

18 MR. TYLER: Let me -- and one thing I need to clarify,
19 Your Honor, is when they went out, it was not raining.
20 When they went out and got in the boat ---

21 THE COURT: I had the understanding it was raining.

22 MR. TYLER: No, sir. It had not -- it started raining
23 as they were out on the water, and that's when they decided
24 to come in, and that's when Mr. Britt testified it had been
25 about ten minutes, and I felt that that was sufficient time

1 for the test.

2 MS. JONES: And, Your Honor, that's, that's, that's a
3 little bit disputed, too. There was quite a bit of rain
4 that fell within that whole twenty-four hour period. It
5 was on and off constantly the entire day.

6 THE COURT: All right, it doesn't matter if the dock
7 was wet when they got there. That, I mean...

8 MR. TYLER: I'm going by Mr. Britt's testimony it
9 started raining as they were in the boat. That's actually
10 what Mr. Altman testified. Mr. Altman was a little
11 different. He said it started drizzling, and then by the
12 time they got to the dock, it had become a more steady
13 rain.

14 MS. JONES: And, Your Honor, I put, I put some, some
15 documents in there for you to look at about the rain totals
16 those days. But getting aside from that, when more than
17 one inference can be taken from the evidence, the case law
18 is clear that the trial judge needs to submit those issues
19 to the jury.

20 THE COURT: What's the more than one inference that
21 you're referring to?

22 MS. JONES: The more than one inference is whether or
23 not a dangerous condition was created by the actions of the
24 defendant. That's what is case law ---

25 THE COURT: Meaning the insisting that he test drive

1 the boat?

2 MS. JONES: Did that, did that create a dangerous
3 condition with the knowledge that there was -- that if they
4 could anticipate the harm due to the open and obvious,
5 known condition, then they are liable under that situation.
6 So, there is an inference there that there could
7 potentially be some liability.

8 THE COURT: That seems to fly in the face of they're
9 not a guarantor ---

10 MR. TYLER: Exactly, Your Honor.

11 THE COURT: --- for a person's safety.

12 MS. JONES: Under any circumstances? So, if, if, if a
13 defendant actually takes somebody and puts them in that
14 dangerous condition ---

15 THE COURT: Well, that, that's not the testimony.

16 MS. JONES: --- I don't think the court intends to go
17 that far.

18 THE COURT: That, that's not the facts here now. They
19 encouraged him to do the test drive.

20 MS. JONES: They did a little more ---

21 THE COURT: He ---

22 MS. JONES: --- than encourage. They, they call him
23 on a personal cell phone saying please come get your boat.

24 THE COURT: Well, first of all, it doesn't matter what
25 telephone they call him on. They called the man to tell

1 him his boat's ready. Whether he did it on the phone
2 inside the office, or whether he was out on the property
3 and called on the cell phone, that, that's not an issue.
4 You think that's an issue?

5 MS. JONES: I think it's an issue that they went ---

6 THE COURT: Why?

7 MS. JONES: --- against protocol because ---

8 THE COURT: What's protocol?

9 MS. JONES: Well.

10 THE COURT: To call a customer and say your boat's
11 ready?

12 MS. JONES: Why did they do it differently? Why were
13 they so proud about ---

14 THE COURT: You mean on a cell phone?

15 MS. JONES: --- this particular situation?

16 THE COURT: --- instead of a business phone?

17 MS. JONES: The deposition testimony, I didn't bring
18 it with me today because I didn't think that particular
19 issue was going to be a problem. But Bernice Britt, not
20 the -- his wife actually indicted there were several
21 telephone calls that were made.

22 MR. TYLER: Mr. Britt says he got one call.

23 MS. JONES: To him. There were several calls made to
24 the home. Mr. Britt actually only talked to him one time
25 on the phone, but the situation was Mr. Britt just wanted

1 to get the boat. They had a twenty-five year relationship.
2 He trust -- they trusted each other. He just wanted to get
3 the boat. Why were they insisting on him getting that
4 boat?

5 THE COURT: I can tell you why.

6 MS. JONES: They were proud.

7 THE COURT: If you bring your car to me and I'm a
8 mechanic, we do work on it -- and a boat's even more so --
9 I'd like you to test drive it to make sure you have no
10 problems and before you take it home. That, I mean,
11 that's, that's industry standard.

12 MS. JONES: But does a property -- does a premises
13 owner have the duty to actually pay attention to what's
14 going on on the property and say you know what? This might
15 not be the best time for a test drive. Getting in an
16 aluminum boat in a lightening storm, this might not be the
17 best time for a test drive.

18 THE COURT: Well, Ms. Jones, you're making it out to
19 be Hurricane Hugo as they were getting to the boat.

20 MS. JONES: Your Honor, if you look at the weather
21 reports, over 8 inches of rain fell in a twenty-four hour
22 period.

23 MR. TYLER: Judge.

24 THE COURT: I don't, I don't deny that a bit, but
25 according to Mr. -- your client's testimony, when the -- at

1 the time they went out to do the test drive, he was
2 concerned that there was a cloud, but it wasn't raining at
3 that time.

4 MS. JONES: Mr. Britt's testimony didn't say it wasn't
5 raining.

6 MR. TYLER: He said it started raining as they were in
7 the boat.

8 MS. JONES: He didn't say it wasn't raining at the
9 time he got there; tat's not in the testimony.

10 THE COURT: I'm just going to tell you. I know you
11 see it completely different, and I'm going to take it under
12 advisement and look, and I'll just be candid. I was
13 inclined to grant summary judgment, but I think -- and I'm
14 going to look at it. You may have raised an issue that may
15 save you from summary judgment on the insisting --
16 insistence of the defendant that he go out there when it's
17 not something he wanted to do. That, that may be an issue
18 of fact, but I need to look at the law a little closer on
19 that.

20 MS. JONES: Okay.

21 THE COURT: All the other stuff you're mentioning, at
22 least for this individual, that, that calling him on a
23 personal cell phone instead of the business phone, if I was
24 on a jury, I'd laugh at that if you thought that was
25 important. That's just one guy's thought on that.

1 MS. JONES: The only thing I would just ask is if you
2 can -- if you think there's more than one inference that
3 can be taken, just, I would just ask that you just follow
4 the law and let it go to the jury.

5 THE COURT: Well, I'm going to follow the law.

6 MS. JONES: Oh, I know. I know you will. I'm just
7 saying if you would just -- if there is more than one
8 inference, that's my main argument if we are to survive.

9 MR. TYLER: Judge, very briefly two things. First
10 off, the weather data she attached, I told Ms. Jones
11 respectfully I object to that. I have no idea when that
12 snapshot was taken.

13 THE COURT: Yeah.

14 MR. TYLER: If that was taken at the time of this. I
15 think it's more of a twenty-four loop type that shows over
16 the course of twenty-four hours here is the rain that fell
17 across South Carolina.

18 THE COURT: But here's the thing. The reason that's
19 irrelevant to me is I don't care if Hugo had just come
20 through.

21 MR. TYLER: Yes, sir.

22 THE COURT: If he -- it's an open and obvious
23 situation and he goes out there and decides to do it, then
24 he can't sit here and say it's their fault I did it. So,
25 that, that doesn't wash with me.

1 MR. TYLER: Yes, sir, and the second thing, Judge, I
2 understand the court's going to take this under advisement,
3 and our position is simply that irrespective of the
4 arguments that have been raised, there's not been any duty
5 that has been breached under the law, and that's it. Thank
6 you, Your Honor.

7 THE COURT: All right.

8 MS. JONES: Okay.

9 THE COURT: All right. Thank you. Thank you very
10 much.

11 MS. JONES: Your Honor, one last little piece ---

12 THE COURT: Yeah.

13 MS. JONES: --- of housekeeping. Mr. Britt passed
14 away in January.

15 THE COURT: Yes, ma'am.

16 MS. JONES: I do have a motion for substitution, and I
17 didn't know if you wanted to wait until you've made your
18 decision on the motion for summary judgment, or I have that
19 prepared with the proposed order to put the estate in.

20 THE COURT: Do you have any objection to that?

21 MR. TYLER: I don't. No, sir. I told her I would, I
22 would agree to that, you know.

23 THE COURT: We can do that and if, if I grant Mr.
24 Tyler's motion, then it's moot, but if, but if I don't,
25 then it's done.

1 MR. TYLER: Yes, sir.

2 MS. JONES: Okay.

3 THE COURT: And you won't have to do it at a later
4 date.

5 MS. JONES: Do you want me to hand that up to you?

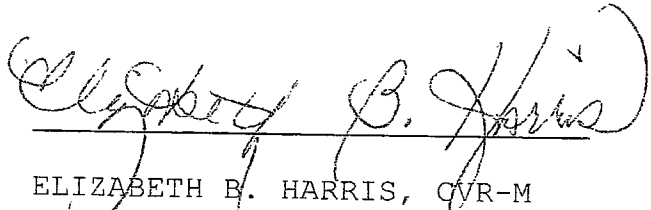
6 THE COURT: Yeah. That's fine.

7 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR FLORENCE COUNTY, SOUTH CAROLINA, ON
THE 18TH DAY OF MARCH, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 21ST, 2015

No. 2015-1216

DOCUMENTS PROVIDED BY RESPONDENT

- e. Letter to Judge Russo dated March 18, 2015

J. Boone Aiken, III •
Saunders M. Bridges, Jr. •+
E. Glenn Elliott •
Matthew N. Tyler •
James M. Saleeby, Jr.
J. David Banner
Samuel F. Arthur, III
Jay R. Lee
Preston B. Dawkins
Carrie A. Fox
J. Rufus Bratton, III
John G. Hoffer, III

Aiken Bridges Attorneys at Law

MNT@AIKENBRIDGES.COM
843-669-8787, ext. 305
Facsimile: 843-664-0097

Alvin A. Coleman (1930-1995)

March 18, 2015

•Certified Mediator/Arbitrator
+Also Admitted District of Columbia

VIA EMAIL & FIRST CLASS U.S. MAIL

trussoj@sccourts.org

The Honorable Thomas A. Russo, Sr.
South Carolina Circuit Court
180 N. Irby Street
MSC-0
Florence, SC 29501-3456

RE: *Lonnie William Britt and Bernice Britt vs. Marshall's Marine, Inc.*
C/A No.: 14-CP-21-441
Claim No.: CL75G032914-802
Date of Loss: 07/03/13
AB File No.: 30426

Dear Judge Russo:

I recognize that there was some question by the court, raised at the summary judgment hearing, as to whether Mr. Britt elected to test drive the boat at Marshall's Marine in inclement weather or whether the weather came upon them as they were already in the process of testing the boat on the lake. The significance of this, as you noted, is that a business owner is not the insurer of the safety of its invitees under S.C. law.

I am enclosing page 61 of Mr. Britt's deposition testimony wherein he confirms they got in the boat, drove it, he really liked it, and then the rain began, at which point they returned to the dock with Mr. Britt driving. As you know from the hearing, once they got back to the dock, Mr. Britt climbed off the boat and onto the dock, and moments later he fell due to what he guessed was the dock being wet from rain.

I am also enclosing page 26 of Marshall Altman's deposition which confirms that Mr. Altman did not know when it was going to rain, first saw lightening after they were in the boat, and by the time they returned to the dock it was raining (drizzling).

Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.

181 East Evans St. Suite 409
Florence, South Carolina 29506

www.aikenbridges.com

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Florence, South Carolina 29503

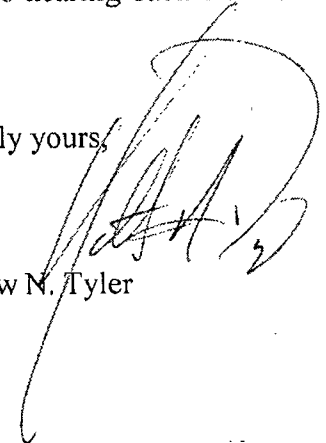
**Aiken
Bridges**
Attorneys at Law

March 18, 2015

Page 2

The testimony confirms there is no dispute but that the rain did not begin until after Mr. Britt was test driving his boat. I will look forward to hearing back from the court on this, and with best wishes, I am

Sincerely yours,



Matthew N. Tyler

MNT/thd

cc:

A. Lori Jones, Esq.
600 Foxtail Drive
Longs, SC 29568

1 on the dock, did you have to have somebody help
2 you? Was Mackey helping you?

3 A No. .

4 Q Okay. And you --

5 A Marshall helped me get in the -- after
6 he got there, hold me, you know, steadied to kind
7 of get in it.

8 Q Was the boat tied up next to the dock?

9 A Yeah, it was upside the dock.

10 Q Okay. All right. So you and Marshall
11 get in the boat?

12 A Correct.

13 Q Okay. You didn't have an incident at
14 that point going out to the boat or getting in the
15 boat. Correct?

16 A No, sir. .

17 Q Okay. And what happened at that
18 point?

19 A Well, we got in and I took the boat
20 and drove it around the lake there and all. And
21 then I told them it handled good, you know, I
22 really liked it. And then it started thundering
23 and lightning and raining, so we headed back up to
24 the dock.

25 Q All right. Let me interrupt you. How

1 of the thunder clouds or the rain clouds? Did you
2 see any of those prior to getting into the boat?

3 A I do not recall thunder clouds prior'
4 to getting in the boat. No.

5 Q Did you have any concern that it was
6 beginning to rain?

7 A There was a threat of rain, but I
8 didn't know when it was going to rain.

9 Q Okay. Did you see any lightning
10 whatsoever?

11 A Yes.

12 Q And when did the lightning start?

13 A After we were in the boat.

14 Q Okay. Was there raining when you
15 stopped the boat?

16 A Repeat the question.

17 Q Was it raining when you stopped the
18 boat at the dock?

19 A It was drizzling. Yes.

20 Q Okay. Was there any indication that
21 you needed to move quickly to get out of the boat,
22 given you were on the water in lightning?

23 A None of urgency.

24 Q Is it normally your practice not to be
25 on the water when it's lightning?

No. 2015-1216

DOCUMENTS PROVIDED BY RESPONDENT

- f. Order Granting Summary Judgment to Defendant filed April 28, 2015

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
Lonnie William Britt and Bernice Britt,
Plaintiffs,
vs.
Marshall's Marine, Inc.,
Defendant.

IN THE COURT OF COMMON PLEAS
C/A NO.: 14-CP-21-441

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANT**

FILED
2015 APR 28 PM 3:00
CONNIE REEL-SPEARIN
CLERK OF COURT C.P. &
FLORENCE COUNTY, S.C.

This matter comes before the court upon the Defendant's motion, pursuant to Rule 56, South Carolina Rules of Civil Procedure, for summary judgment. Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, *Pittman v. Grand Strand Entertainment, Inc.* 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); Rule 56, SCRPC. The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *McCall v. State Farm Mutual Automobile Insurance Company*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The non-moving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Company, Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

FACTS

In determining whether any triable issues of fact exist, the evidence and all inferences that can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519, 642 S.E.2d 751 (2007). Recognizing this standard, counsel for the Defendant submitted to the court the deposition of the Plaintiff Lonnie W. Britt, to which reference was craved outlining all facts from the Plaintiff's perspective. This testimony revealed that Mr. Britt, a former heavy equipment operator from Nichols, South Carolina, had done business with the Defendant Marshall's Marine for twenty-five years, and he had taken a boat to Marshall's for customization. Specifically, a center console with steering wheel and throttle functions were being made and installed in Mr. Britt's boat for his ease and convenience. On or about July 3rd Mr. Britt was informed by Marshall's Marine that the boat was ready for pickup. After receiving this call, he contacted his brother and asked that his brother take him to the Defendant's place of business, to pick the boat up so the family would have it for the holiday (4th of July).

Upon arrival at the Defendant's business, approximately sixty (60) miles from his home, the Plaintiff was greeted by Marshall Altman, one of the owners of Marshall's Marine. Marshall's Marine had a test lake, and the boat was in the water, thus Mr. Britt and Mr. Altman went to the boat where Mr. Altman invited Mr. Britt to take a test drive. Mr. Britt initially declined because "a cloud came up," but ultimately agreed to the test drive. The two of them then went out on the dock of the test lake and climbed in the boat. The Plaintiff acknowledged in his testimony that he walked on the dock without any problem, and unassisted, and entered the boat without any problem, again unassisted. He entered the boat on his own, and testified that he had done this many times before, and did not require assistance.

Mr. Britt and Mr. Altman then began the test drive with Mr. Britt driving. They had been on the test lake for approximately ten (10) minutes when they heard thunder and saw lightning, and it began raining. They headed back to the dock, with the Plaintiff testifying he had driven the boat enough time to adequately test it, and that he was extremely pleased with the work that had been done. The Plaintiff docked the boat, his testimony being that he was very experienced in docking the boat. The Plaintiff then stepped out of the boat, confirming that he requested no help, did not need help getting out of the boat, and again had done this many times without assistance. After getting out of the boat and standing on the dock, the Plaintiff slipped and fell. His testimony was "I just slipped somehow. I don't know. I just slipped and I fell." (Britt deposition, page 66 line 24). He speculates it was due to rain and the dock was slick, but acknowledged that he did not know, and "just slipped." He further acknowledged that the deck had a sandpaper type non-skid surface. The Plaintiff further stated that he was unaware of which foot slipped. As a result of the fall, the Plaintiff received injury, and ultimately he was taken by ambulance to the hospital for treatment. This lawsuit followed.

ANALYSIS

The Plaintiff contends that the Defendant was negligent in failing to provide reasonably safe premises and creating a dangerous condition and/or the Defendant breached their duty of care to the Plaintiff while he was on their premises. Both parties recognize that the Plaintiff occupied the status of an invitee. Generally, the owner of property owes an invitee the duty of exercising reasonable or ordinary care for his safety and is liable for injuries resulting from the breach of such duty. *Larimore v. Carolina Power and Light*, 340 S.C. 438, 444, 531 S.E.2d 535, 538 (Ct. App. 2000). However, in addressing premises liability as it relates to an invitee, in *Callander v. Charleston Doughnut Corporation*, 305 S.C. 123, 126, 406 S.E.2d 361, 362 (1991)

our South Carolina Supreme Court adopted §343A of the Restatement (Second) of Torts (1965).

§343A reads as follows:

§343A. Known or obvious dangers.

1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

2. In determining whether the possessor should anticipate harm from a known or obvious danger, the fact that the invitee is entitled to make use of public land, or of the facilities of a public utility, as a factor of importance indicating that the harm should be anticipated.

Importantly, comment e. to §343 reads “In the ordinary case, an invitee who enters land is entitled to nothing more than knowledge of the conditions and dangers he will encounter if he comes. If he knows the actual conditions, and the activities carried on, and the dangers involved in either, he is free to make an intelligent choice as to whether the advantage to be gained is sufficient to justify him in incurring the risk by entering or remaining on the land. The possessor of the land may reasonably assume that he will protect himself by the exercise of ordinary care, or that he will voluntarily assume the risk of harm if he does not succeed in doing so. Reasonable care on the part of the possessor therefore does not ordinarily require precautions, or even warning, against dangers which are known to the visitor, or so obvious to him that he may be expected to discover them.”

In the case sub judice, the Plaintiff now argues that the Defendant should not have invited him to take a test drive due to weather conditions. The Plaintiff further argues that the weather conditions included rain, which rendered the dock slick.

As to the first point, it was the testimony of the Plaintiff Britt, that, at his age, he was fully capable of making his own decisions and voluntarily walked to, entered and test drove the boat, testifying “well, he didn’t grab me by the arm and lead me out there. He – I finally agreed and told him okay. And so we went and got in it...he didn’t drag me out there or – or whatever” (Britt deposition P106, lines 9 – 14). He likewise acknowledged that the purpose for the test drive was to avoid later discovery of a problem requiring him to return the boat for further repair (Britt deposition, page 106, line 15 - page 107, line 12). It is apparent from the Plaintiff’s own testimony that him walking to, entering, driving, docking and departing from the boat were all voluntary decisions agreed upon and performed by Mr. Britt, testifying that he neither asked for assistance nor did he need any (and that it likely would have been provided if he had asked for it), and that he had gotten in and out of the boat on his own many times without assistance (page 72, lines 1 through 8; page 128, lines 2 through 21). Further, the testimony of the Plaintiff (consistent with Mr. Altman, the only other witness to this accident) is that the rain began to fall upon them after they were already on the water, taking the test drive: “well, we got in and I took the boat and drove it around the lake there and all. And then I told them it handled good, you know, I really liked it. And then it started thundering and lightning and raining, so we headed back up to the dock.” (Britt deposition page 61, lines 19 through 24).

As noted in comment e. to §343A, reasonable care on the part of the defendant does not require precautions or warning against dangers, such as a rain storm, which are known to the plaintiff and/or so obvious to the plaintiff that he may be expected to discover them. Here, the

testimony of the Plaintiff himself confirms that he was aware of the weather conditions that came upon them as he and Mr. Altman were on the lake. In this circumstance, the Defendant cannot be responsible for such a weather condition, as this would make the Defendant an insurer of the safety of the Plaintiff, and this is not the law in the state of South Carolina. Under our law, a merchant is not an insurer of the safety of his customers, but rather owes the customer only the duty to exercise ordinary care to keep the premises in a reasonably safe condition. Felder v. K-Mart Corporation, 297 S.C. 446, 377 S.E.2d 332 (1989). A merchant, such as the Defendant, is not required to maintain the premises in such a condition that no accident could happen to a patron using them. Denton v. Winn Dixie Greenville, Inc., 312 S.C. 119, 439 S.E.2d 292 (Ct. App. 1993) citing Panoz v. Gulf and Bay Corporation, 208 So.2d 297 (Fla. App.), cert. denied, 218 So.2d 166 (Fla. 1968); Garvin v. Bi-Lo, 8343 S.C. 625, 629, 541 S.E.2d 831, 833 (2001). This court finds that, as a matter of law, the Restatement Second of Torts 343A, when read in conjunction with the Plaintiff's own testimony, makes it obvious that the Plaintiff was aware of the conditions and exercised his freedom to make an intelligent choice by remaining on the Defendant's property and engaging in the acts now complained of. Similarly, although the Plaintiff alleges negligence on behalf of the Defendant due to the Plaintiff's slip after standing on the dock (in the rain), the record, and specifically the deposition testimony of the Plaintiff, reflects that the Plaintiff himself was unsure as to how or why he slipped stating "....it was caused because it was raining and it was – and the deck was slick, I guess. I – I don't know. I just slipped." (Britt deposition page 67, lines 10 - 13, "that's (the rain) what made it slick, I guess." (Britt deposition page 67, lines 21, 22), "and I got out of the boat, and when I got on that deck, my – I just slipped somehow. I don't know. I just slipped and I fell." (Britt deposition page 66, lines 23 – 25).

It is apparent that, other than the rain being a possible factor, the Plaintiff is unable to identify any other possible alleged defective condition that would have resulted in this fall.

South Carolina does not recognize the doctrine of *res ipsa loquitur*. Fletcher v. Medical University of South Carolina, 390 S.C. 458, 463, 702 S.E.2d 372, 374 (Ct. App. 2010). Recognizing that this court is to view the evidence and reasonable inferences in the light most favorable to the Plaintiff, it will be inferred that the slip was what caused the fall¹, and this was due to rain.

In Meadows v. Heritage Village Church, 305 S.C. 375, 409 S.E.2d 349 (1991) our Supreme Court confirmed adoption of Restatement Second of Torts §343A, and held that there was no duty to warn an invitee, the Plaintiff, who had slipped and fallen on grass wet from rain, “because it was a natural condition, the peril of which was obvious.” The Meadows decision further noted that “the only conclusion which could have been reached is that the wet grass constituted an open and obvious danger rather than a latent or concealed one.” Numerous cases have likewise held that, in conditions related to rain or rain soaked floors, there is no duty to warn invitees. See Young v. Meeting Street Piggly Wiggly, 288 S.C. 508, 343 S.E.2d 636 (Ct. App. 1986) (citing SS Kresge Company v. Fader, 116 Ohio St. 718, 158 N.E. 174 (1927)):

“Everybody knows that, when people are entering any building when it is raining, they will carry some moisture on their feet, which will render the floor near the door on the inside damp to some extent, and everyone knows that a damp floor is likely to be a little more slippery than a dry floor....it is not the duty of

¹ The Plaintiff conceded in his testimony that the dock had a sandpaper type grip (Britt deposition, page 68, lines 23 – 25) and further admitted that he did not know which foot slipped (Britt deposition page 75, lines 3 through 9).

persons in control of such buildings to keep a large force of moppers to mop up the rain as fast as it falls or blows in, or is carried in by wet feet or clothing or umbrellas, for several very good reasons, all so obvious that is wholly unnecessary to mention them here in detail.”

In Hackworth v. United States of America, 366 F. Supp. 2d 326 (USDC 2005) summary judgment was granted to the Defendant after the Plaintiff slipped and fell on a wet floor in a convenience store, the floor being wet from rain. Citing Neil v. Byrum, 288 S.C. 472, 343 S.E.2d 615, 616 (S.C. 1986), the court found there was no duty to use reasonable care to take precautions against, or to warn guests of open and obvious dangers. “In such situations, the guest themselves have a duty to discover and avoid the danger.” (Citing Hackworth, supra) In Lucas v. Sysco Columbia, LLC, 2014 WL 4976509 (D.S.C.) (Citing Hackworth, supra) the court opined that ordinarily a “property owner has a duty to warn an invitee only of latent or hidden dangers of which the property owner has or should have knowledge.” Peterson v. Porter, 389 S.C. 148, 153, 697 S.E.2d 656, 658 (Ct. App. 2010) (citing, Sides v. Greenville Hospital System, 362 S.E.2d 250, 256, 607 S.E.2d 362, 365 (Ct. App. 2004)). However, under South Carolina law, an exception to this duty exists. “The owner of property owes no duty to use reasonable care to take precautions against or to warn guests of open and obvious dangers. In such situations, the guest themselves have a duty to discover and avoid the danger.” These cases involve tracked-in, or rain-wet entrances. It is thus clear no duty would be owed when one is actually outside, standing in the rain.

The plaintiff in a negligence claim must demonstrate the defendant owed him a duty of care, the defendant breached that duty by a negligent act or omission, and the plaintiff suffered damage as a proximate result of that breach. Bloom v. Ravoira, 339 S.C. 417, 422, 529 S.E.2d

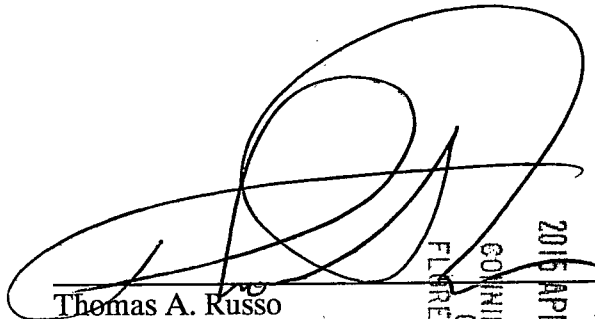
710, 712 (2000). If the plaintiff fails to prove the defendant owed him a legal duty of care, the plaintiff fails to prove actionable negligence. Doe v. Greenville County School District, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007). Further, a plaintiff must identify a duty that the defendant has, to protect him from a particular harm, to merit consideration of his claim by a jury. Steinke v. South Carolina Department of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999).

CONCLUSION

It is clear, based upon the Plaintiff's own testimony, that any dangers to which he was exposed, if any, were known or obvious to him, and, thus, the Defendant is not liable under §343A of the Restatement (Second) of Torts (1965) which has been adopted by our courts and is the law in South Carolina. Thus, since the Plaintiff is owed no duty under our law to warn him of open and obvious dangers, I find that there has been no breach of any duty owed to the Plaintiff. All evidence indicates that any conditions complained of were known or obvious to the Plaintiff as established through his own testimony. Accordingly, summary judgment, pursuant to Rule 56 SCRCF, is hereby granted to the Defendant.

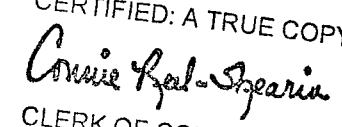
IT IS SO ORDERED.

April ²~~24~~, 2015
Florence, South Carolina


Thomas A. Russo
Presiding Circuit Court Judge
Twelfth Judicial Circuit

2015 APR 28 PM 3:02
GOINIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Thomas A. Russo, Circuit Court Judge

Case No.: 2015-001216

RECEIVED

DEC 18 2015

SC Court of Appeals

Bernice Britt, as Personal Representative
of the Estate of Lonnie William Britt and Bernice
Britt.....Appellant,

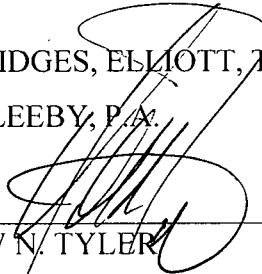
v.

Marshall's Marine,
Inc.,.....Respondent.

PROOF OF SERVICE

I certify that I have served one copy of the **INITIAL BRIEF OF
RESPONDENT** on the Appellant by depositing a copy in the United States Mail,
postage prepaid, on December 18, 2015, addressed to their attorney of record, A.
Lori Jones, P.O. Box 71207, Myrtle Beach, SC 29572.

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P.A.



MATTHEW N. TYLER
SUITE 409
181 EAST EVANS STREET
PO DRAWER 1931
FLORENCE, SC 29503
(843) 669-8787

Florence, South Carolina
December 18, 2015

ATTORNEY FOR THE RESPONDENT