

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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R. Markley Dennis, Jr., Circuit Court Judge **SC Court of Appeals**

C.A. No.: 2013-CP-10-1400

Robert J. Burke Respondent,

v.

Republic Parking System, Inc. Appellant.

RECORD ON APPEAL

VOLUME II OF III (Pages 501 - 1000)

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INDEX

Orders

Order of December 18, 2013	1
Order of August 13, 2014	3
Order of January 29, 2015	5
Order of February 2, 2015	9

Pleadings

Summons and Complaint.....	10
Amended Summons and Amended Complaint.....	18
Answer to Amended Complaint and Third Party Complaint.....	27
Stipulation of Dismissal as to Clarence Melton, Jr. Only.....	35
Second Amended Complaint	39
Answer of Appellant to Second Amended Complaint.....	46
Appellant's Motion for Summary Judgment	50
Respondent's Motions in Limine.....	51
Appellant's Motion to Bifurcate Liability and Damages.....	54
Respondent's Partial Stipulation of Dismissal as To Appellant and 3 rd Party Plaintiff Indigo Realty Company and City of Charleston.....	57
Appellant's Motion to Strike Partial Stipulation of Dismissal	61
Respondent's Motion to Dismiss Jane B. Burke, Indigo Realty Company and the City of Charleston	63
Appellant's Motion in Limine	64
Appellant's Pre-Trial Brief	66

Appellant's Directed Verdict Motion	74
Appellant's Directed Verdict Motion – Phase 2	79
Appellant's Proposed Verdict Form	81
Appellant's Proposed Requests to Charge Phase One	83
Appellant's Proposed Requests to Charge Phase Two	98
Respondent's Requests to Charge	110
Trial Court's Written Charges – Phase 1	141
Trial Court's Written Charges – Phase 2	149
Appellant's Motion for Judgment Notwithstanding the Verdict or, In the Alternative, a New Trial	157
Respondent's Response to Appellant's Motion for Judgment Notwithstanding the Verdict and Motion for New Trial	170
Appellant's Memorandum in Support of Its Motion for Judgment Notwithstanding the Verdict, or, in the Alternative, a New Trial and Reply to Respondent's Response ..	191

Transcripts

Testimony

Robert J. Burke	
Direct	267
Cross	287
Redirect	298
Robert Cammer	
Direct	298
Cross	316
Coleen Carducci	
Direct	317
Cross	337
Redirect	361
Alan Campbell	
Direct	364
Julius "Buddy" Denny	
Direct	390

Cross	407
Redirect	420
Edward Anderson	
Direct	423
Cross	432
Kenneth Dwight Potter	
Direct	435
Cross	451
Jack Skelton	
Direct	462
Cross	465
Robert Burke	
Direct	584
Cross	619
Redirect	625
Ashlyn Burke	
Direct	637
Mike Capaccio	
Direct	657
Cross	668
Robert Burke, Jr.	
Direct	668
Dr. Marshall White	
Direct	691
Cross	716
Jane Burke	
Direct	740
Cross	760
Transcript of Post-Trial Motion hearing held January 29, 2015	800

Exhibits

Pl. Ex. 1	824
Pl. Ex. 2	825
Pl. Ex. 3	826
Pl. Ex. 4	827
Pl. Ex. 5	828
Pl. Ex. 6	829
Pl. Ex. 7 (Redacted Version & Unredacted Version)	830
Pl. Ex. 8	890
Pl. Ex. 9	891
Pl. Ex. 10	1004
Pl. Ex. 11	1014
Pl. Ex. 12	1018
Pl. Ex. 13	1019

Pl. Ex. 14.....	1020
Pl. Ex. 15.....	1021
Pl. Ex. 16.....	1022
Pl. Ex. 17.....	1045
Pl. Ex. 18.....	1047
Pl. Ex. 19.....	1052
Def. Ex. 1	1053
Def. Ex. 4	1054
Def. Ex. 5	1055
Def. Ex. 6	1056
Def. Ex. 27	1057
Def. Ex. 27 A	1058
Def. Ex. 28	1060
Def. Ex. 29	1061
Def. Ex. 30	1062
Def. Ex. 31	1063
Def. Ex. 32	1064
Def. Ex. 33	1065
Def. Ex. 34	1067
Def. Ex. 35	1068
Court's Ex. 2 (Entire Deposition of Jack Skelton and Deposition as Read in Court)	1069
Court's Ex. 7	1193
Court's Ex. 8	1202
Court's Ex. 10	1203
Court's Ex. 11 (Deposition of Todd Shuman)	1204
Court's Ex. 12 A (Transcript of Videotaped Deposition of Joseph Sakran) ¹	1298
Court's Ex. 13	1393
Court's Ex. 15	1402
Potential Expert Witnesses of the City of Charleston.....	1403
Respondent's First Supplemental Answers to Interrogatories.....	1405

¹ Court's Exhibits 12b – 12d are videos and submitted on an attached CD-ROM.

1 THE COURT: That "we just took
2 over for Charleston" and that "we were doing it
3 for Charleston."

4 MS. SPRUILL: They were.

5 THE COURT: Sure. Correct. So
6 you're Charleston operating the thing, from the
7 standpoint of who's negligent. But go right
8 ahead. I'll be happy to -- you have any
9 objection?

10 MR. MCCULLOUGH: I don't think it's
11 applicable and I think your position is accurate.

12 THE COURT: I'll look at that and
13 incorporate it. If I don't cover it enough, let
14 me know, okay?

15 MS. SPRUILL: Thank you, Your
16 Honor.

17 THE COURT: You bet. What else?

18 MR. MCCULLOUGH: If we may see the
19 verdict form, that's the only other ---

20 THE COURT: Yeah. Here's the
21 verdict form.

22 MR. MCCULLOUGH: Your Honor, is it
23 your expectation we're going to go ahead and argue
24 and charge now and then they order lunch in and
25 deliberate or how does that work?

1 THE COURT: As long as it takes.

2 MR. MCCULLOUGH: I was just asking
3 because we have a witness that may not be
4 available tomorrow and we were wondering if we
5 might possibly get him in this afternoon.

6 THE COURT: My charge is about thirty-
7 three pages. It'll probably take ---

8 MR. MCCULLOUGH: Sir?

9 THE COURT: To answer your
10 question, it's thirty-three pages double-spaced,
11 so it will probably take about thirty, forty
12 minutes.

13 MR. MCCULLOUGH: Okay.

14 THE COURT: Okay.

15 MR. MCCULLOUGH: We'll have him on
16 standby. Thank you, Judge.

17 THE COURT: Thank you. Y'all may
18 be extremely ambitious. I hope we're not here
19 six, seven, eight hours waiting on a decision.
20 I've been there before.

21 MR. MCCULLOUGH: Yes, sir.

22 THE COURT: In cases that you
23 think, 'well, this can't be that difficult.'

24 MR. MCCULLOUGH: Yes, sir. I just
25 wanted to bring it to your attention.

1 THE COURT: Okay. Thank you.

2 We're ready for them.

3 (JURY IN)

4 BAILIFF: All jurors are
5 present, Your Honor.

6 THE COURT: Thank you very much.
7 We now have your note, "Can we have our phones
8 back while we're waiting at lunch?" The answer to
9 that question is "no." But can you make a
10 telephone call during the lunch break, the answer
11 is yes. But you have to be, the bailiff will have
12 to present while you're making your conversation.
13 You will have been assigned the case at that
14 point. But thank you for the inquiry, I under-
15 stand that. Somebody may need to make calls and
16 I understand that as well.

17 We have now completed three of the four
18 --- Court's Exhibit 6?

19 COURT REPORTER: Yes, sir.

20 (SO ENTERED AS COURT'S EXHIBIT 6)

21 THE COURT: Court's Exhibit 6 is
22 the note I just read or responded to. Thank you.

23 We now move to the last portion of the
24 proceeding when it becomes my responsibility as
25 the judge of the law to give you the law, which

1 you, of course, will accept and apply fairly and
2 impartially those facts that you have determined
3 very shortly when you begin your deliberations.

4 As I mentioned to you when we started,
5 it's very proper for the plaintiff in this case to
6 make this claim under our law and bring this
7 matter to us for us to decide. You, the factual
8 issues; me, the legal issues.

9 And the law says while it's proper for
10 him to make the claim, as I told you he has, in
11 essence, in the claim itself three basic elements,
12 negligence or some degree thereof, damage and
13 proximate cause.

14 Now, as I told you when we started we
15 were going to bifurcate this. We're going to deal
16 with one issue first. And the issue first is
17 negligence. And in that regard, we are also
18 dealing with the comparative negligence, that
19 affirmative defense that I discussed with you that
20 the defendant has raised. So those are similar
21 insofar as what the burden of proof is, with the
22 exception of recklessness, which we'll talk about
23 in just a moment, which is not part of the
24 defendant's claim but part of the plaintiff's
25 claim. And that's the only thing we're going to

1 focus on.

2 But in proving, in bringing the case, the
3 plaintiff bears the burden of proof. And what do
4 I mean by that? Well, simply stated, and we'll
5 talk about this in greater detail in just a
6 moment. Obviously if the plaintiff doesn't prove
7 the defendant was careless, you don't have any
8 comparative negligence because by its nature, by
9 its term, you will have already concluded that the
10 defendant was negligent in some fashion. So
11 there's nothing you can compare if the defendant's
12 not negligent. So obviously, the plaintiff has
13 the first obstacle because the plaintiff has the
14 burden of proof in bringing the claim. And only
15 you can make a determination as to whether any
16 party has met his or its burden of proof. And one
17 does that by presenting witnesses and evidence for
18 your consideration.

19 You must evaluate the credibility and
20 believability of each witness and any exhibits
21 that have been introduced. I would instruct you
22 the fact the testimony in a case is not
23 contradicted directly, does not necessary render
24 it undisputed because there will always remain the
25 inherent probability, credibility, believability

1 of what one says. And that's where we apply that
2 commonsense, that sense of knowledge that we've
3 gained in our life. And you have to assess that.
4 And you will apply those methods that you've
5 employed in your life, when you've had to make
6 these calls. As I've stated, it's a commonsense
7 exercise.

8 There are many, many factors that we use
9 to assist us and consider in assisting us in
10 making this type of decision. I'm going to
11 discuss some of them with you now. But if I don't
12 mention a method or factor that you've used in
13 your life, and you've found it to be reliable,
14 please, when you're instructed to begin your
15 deliberation employ that method or that factor as
16 you analyze the evidence in this case.

17 Some of the factors that you may wish to
18 consider would be the appearance of the witness on
19 the stand. How did they appear to you, straight-
20 forward or hesitant in answering questions?

21 Was the testimony of the witness
22 consistent, was it inconsistent?

23 Was it strengthened or weakened by other
24 evidence in the case.

25 How did the witness come to know the

1 facts that he or she testified to?

2 What was the ability of that witness to
3 know those particular facts and circumstances?

4 Is there a reason for a witness to give
5 testimony which may be helpful to one side or the
6 other or detrimental to one side or the other? In
7 other words, was the witness biased or prejudiced
8 in any fashion?

9 In making these determinations you are
10 given very broad discretions. Now, please
11 remember something. In weighing the credibility
12 and believability -- we're not talking about
13 counting witnesses, we're not talking about
14 numbers, because -- and the reason for that is
15 simply this. You have the right to believe one
16 witness against many, many witnesses against one.
17 You have the right to believe all of a witness'
18 testimony, parts of a witness' testimony or none
19 of a witness' testimony. Now, you don't make
20 these decisions arbitrarily but if there's a
21 reason in the record of this case, that is, the
22 evidence in this case, in taking that position,
23 you have that prerogative because you're
24 objective. Since you raised your hands and took
25 the oath and we started this, it's been to

1 determine the truth regardless of the source of
2 the evidence.

3 Now, as I stated to you earlier today,
4 you don't enjoy the same with the law. You've
5 promised that you will accept the law as I give it
6 to you, notwithstanding your feelings or what the
7 law was or is or should be. You've promised to
8 take the law as I give it to you and apply that
9 law fairly and impartially to the facts that you
10 determine.

11 Please remember also that I have nothing
12 to do with the facts or decision, as I've stated
13 throughout. And the fact that I give you
14 instruction on a particular aspect of this case is
15 not to be considered by you as an indication or
16 statement of how you're to resolve the factual
17 issue because that, ladies and gentlemen, is your
18 sole prerogative.

19 The order of the instruction means
20 nothing. I had to put it in some order and don't
21 put any greater weight or emphasis on any one part
22 than you do another. Consider the charge as a
23 whole.

24 Because throughout this matter, you and I
25 have very well-defined responsibilities.

1 Typically, and you saw that -- we excused you on
2 several occasions to discuss matters of law, which
3 it's not anything private. It's just simply
4 humans being human. It's much easier to not
5 involve yourself with something that's going on if
6 you don't hear it, rather than to hear it and say,
7 'wait a minute, I shouldn't be thinking about
8 this.' That's why we do that.

9 There is one instance that occurs in
10 trial, that occurred during this trial several
11 times, and that's not uncommon. It's very proper.
12 It's very appropriate. As I mentioned to you, the
13 lawyers are officers of this court. They're
14 advocates for their clients. And they have a
15 responsibility to raise those matters of law for
16 me to consider. And most of the time my rulings
17 are out of your presence, except those ones which
18 typically deal with matters of rules of evidence.
19 We have rules of evidence that govern the
20 admissibility of evidence. And you heard me say,
21 I sustain the objection. You've heard me instruct
22 the witness, you know, the lawyer to move on.
23 Those are matters that I have to involve, take
24 care of because that's what I construe the rules
25 of evidence to provide my responsibility. The

1 fact that I did not shouldn't be considered by you
2 at all. You shouldn't --, that should never enter
3 your discussion. The fact that I wouldn't allow a
4 witness to answer a question, if you start
5 speculating -- 'well, I wonder why he did that or
6 wonder what the witness might have said.' If you
7 do that, you've kind of stepped over into my area
8 of responsibility.

9 But on the flip side, on the other side,
10 if I allowed the testimony, don't say, 'well, the
11 Judge allowed that and therefore, I guess I have
12 to believe that', because if you do, then you've
13 let me slip into your area of responsibility.

14 Quite honestly, I guess it's the best
15 example I can give to you -- as I said we work
16 together -- is at that moment I made a ruling as
17 a matter of law that I was going to permit the
18 witness to answer that question or the question to
19 be asked. But after that, it shifts to you. And
20 you have to decide whether or not you believe it,
21 and if so, how strongly. So that's what we are
22 doing.

23 You'll take the law as I give it to you,
24 apply it fairly and impartial to those facts and I
25 know that you will.

1 Now, the evidence, of course, which you
2 are to evaluate, as I've stated throughout,
3 consists of the testimony of the witnesses and
4 any exhibits that were introduced through their
5 testimony.

6 There were occasions, a couple of
7 occasions, I believe where documents were marked
8 for identification only. And please understand
9 something. That's for the purposes of the record.
10 If you heard me say the document is admitted
11 without objection typically is what you heard, I
12 don't think there were any admitted over objection
13 during the proceedings, so without objection, that
14 means that document will accompany you to your
15 jury room. If I didn't admit it, but the witness
16 referred to the document, it means that the
17 document itself won't accompany you to your jury
18 room. But you certainly consider the testimony
19 the witness gave concerning that document and
20 relative to that document. It's just that the
21 document itself, for it to accompany you, will --
22 only those exhibits that were admitted. And the
23 reason I go through that is through my years of
24 experience jurors have asked, could I see exhibit
25 -- this document that was referenced. And that is

1 my response. I said, you know, what? Why don't I
2 just start telling the jury about that so they'll
3 understand? Consider the testimony but the
4 document itself will not be accompanying you.

5 Now, the remarks of the attorneys, as I
6 told you are extremely important but their remarks
7 should never be considered evidence. And if their
8 remarks concerning what a witness said or didn't
9 say differs from your collective recollection,
10 you're instructed to disregard that remark in its
11 entirety because you are the sole judges of the
12 facts.

13 Likewise, if any of their remarks differ
14 from the law as I give it to you, you're
15 instructed to disregard those remarks as well,
16 because for the purposes of this proceeding today,
17 I'm the sole judge of the law in this proceeding.

18 Now, typically, ladies and gentlemen, you
19 heard from a number of witnesses. And ordinarily
20 witnesses are not allowed to render opinions
21 except in very limited areas under our rules of
22 evidence. But our rules do permit that certain
23 witnesses who we label as expert witnesses -- and
24 that's simply a witness who, by education and
25 experience, have become an expert in some art,

1 science or profession, that witness is permitted
2 to give an opinion as to the subject in which the
3 witness claims some expertise. And they also give
4 you the reasons for the opinion. You're
5 instructed to consider any expert opinion given by
6 a witness like any other evidence. You give it
7 the weight that you think it deserves. If you
8 decide that an expert witness's opinion is not
9 based on sufficient education and experience or
10 if you decide that the reasons given in support of
11 the opinion are not sound or that the opinion is
12 outweighed by other evidence, you may disregard
13 the opinion entirely. An expert witness's
14 testimony is to be given no greater weight than
15 any other witness simply because the witness
16 claims some expertise. And you do not have to
17 accept the opinion, even though it's un-
18 contradicted. An expert witness' testimony is not
19 given for the purpose of controlling your judgment
20 but merely for helping you to analyze and evaluate
21 the evidence in the case in deciding what you find
22 to be the true facts in dispute. And as I've
23 stated with every witness, you're entitled to
24 believe all the witnesses' testimony, parts of a
25 witness' testimony or none of a witness'

1 testimony.

2 Now, there are two types of evidence that
3 one uses to present a case. And our law
4 recognizes that they're each given the same value.
5 There's no distinction between the two in
6 evaluating or weighing the evidence. And quite
7 often is that you use both in proving your case.
8 One is direct evidence and the other is indirect
9 evidence, but the more popular name or common name
10 is circumstantial evidence.

11 Direct evidence is, as the term would
12 imply, typically deals with a sensory perception.
13 'I saw something. I heard something. I felt
14 something', or the like. And if you are satisfied
15 as to the credibility and believability of that
16 evidence, then that would establish that
17 particular fact or circumstance.

18 Circumstantial evidence is when you have
19 a number of circumstances that you find to be
20 credible and believable. And you link them,
21 either through your inductive or deductive
22 reasoning, it leads you to a logical conclusion
23 of another fact, of which you find to be
24 reasonable and credible and believable. Then
25 that's a way of also proving that particular fact.

1 And I will tell you the fact that there
2 may be many reasonable conclusions doesn't prevent
3 that evidence from being considered. You decide
4 which one that you find to be the most reasonable
5 and credible. And as I stated again, the type of
6 evidence is not a matter for your consideration.
7 You consider all the evidence in this case and
8 evaluate it and decide what you find to be
9 credible and believable and the true facts of the
10 dispute.

11 As I mentioned to you, the plaintiff has
12 the burden of proof. And the defendant has a
13 limited burden of proof, limited only to the
14 defense that it has raised through its response.
15 The burden of proof is the plaintiff's claim for
16 negligence and the burden of proof for the
17 defendant's claim for comparative negligence are
18 the same. It's called the preponderance or
19 greater weight of the evidence. I talked about
20 that when we started. And the preponderance or
21 greater weight of the evidence and to prove it to
22 that means simply to establish that he's done --
23 the party does not have to establish to an
24 absolute certainty. It rather means that the
25 party has to prove that something is more likely.

1 so than not. In other words, preponderance of the
2 evidence means when you consider all, when you
3 consider everything, the evidence for and the
4 evidence against, what it produces in your mind
5 the most likely or probable conclusion.

6 And in that regard, I will tell you that
7 it's simply stated differently as this. If you're
8 trying to determine, for instance, just for the
9 sake of discussion, whether or not the defendant
10 was careless by conduct. If you conclude that --
11 'well, you know, that might be the case. That
12 could be the case. That's possibly the case.'
13 You hear that when we talk. We all use that.
14 That's speculative. That doesn't rise to that
15 probability standard.

16 In conclusion, when you analyze it, it
17 has to be -- yes, based on the evidence, 'I think
18 that's most probably so.'

19 It doesn't have to be to an absolutely
20 certainty. If you've ever been involved in a
21 criminal trial or heard "proof beyond a reasonable
22 doubt", it doesn't have anything to do with that
23 either. It's simply what's most likely so, most
24 probable.

25 And I would instruct you that the

1 plaintiff has the burden of proving, in order to
2 even get to the comparative negligence, has the
3 burden of proving that the defendant was negligent
4 in some fashion and that the negligence caused
5 some injury to him. The defendant does not have
6 to prove that someone else was negligent. The
7 defendant had no burden whatsoever because the
8 plaintiff has to prove that the defendant was one
9 of the -- an incident, an injury can have many,
10 many contributors. And there may be many
11 participants in causing that. And there may be
12 even one or more persons involved that may be
13 careless. That doesn't matter. It's just that
14 the plaintiff has to prove -- one, their claim was
15 careless in some fashion and has to prove that.
16 And, again, by the preponderance or greater weight
17 of the evidence.

18 Let's talk about the term "negligence."
19 What does it mean generally? Because we're
20 talking here, this term and these terms that I'm
21 going to discuss with you -- I'm going to define
22 for you negligence and I'm going to define a
23 degree of negligence known as gross negligence,
24 recklessness, willfulness and wantonness.
25 Negligence is the basis for this action and

1 negligence means that a person did not use the
2 same amount of care -- and by the way this term
3 negligence is the same -- applies whether you're
4 applying it to the plaintiff's claim or the
5 defendant's claim of comparative negligence. Did
6 not use the same amount of care that a person of
7 ordinary reason and prudence would have exercised
8 in the same or similar circumstance. The party
9 claiming the injury as a result of the negligence
10 must establish a duty, which is generally defined
11 as an obligation to conform to a particular
12 standard of conduct toward another. The plaintiff
13 must also prove a breach of that duty, and that
14 some injury resulted as a result of the breach.

15 The word "careless" means the same thing.
16 You've heard me use that term interchangeably.
17 When we someone is careless that means that the
18 person was negligent.

19 It can be said that a negligent or
20 careless person has done something that a
21 reasonable person would not have done if faced
22 with the same situation or, on the other hand,
23 that they failed to do something that a reasonable
24 person would have done or it could be both.

25 In determining whether a particular act

1 is negligent or careless, you should compare that
2 act with the manner in which a person or entity of
3 ordinary reason and prudence, how would they have
4 acted in the same or similar circumstance? I
5 would further instruct you that when a business
6 adopts internal policies or self-imposed rules,
7 then violates those policies or rules, you may
8 consider such violations as evidence of negligence
9 if they proximately caused some injury or damage.

10 I would further instruct you in that
11 regard that the mere fact of an injury where some
12 damage has been sustained is not enough in and of
13 itself to establish negligence. The person has to
14 prove negligence by some actionable negligence.
15 That is, that the person failed to act as a
16 reasonable and prudent person would have acted
17 under the same or similar circumstances.

18 When you evaluate the facts and
19 circumstances shown, they're to be evaluated in
20 the light of ordinary experience and conclusions.
21 And the conclusion should be reached about these
22 facts and circumstances based on your common
23 sense.

24 Now, to prevail -- they discussed with
25 you and I'll discuss it with you as well, the

1 first question is was the defendant negligent?
2 In order for you to answer yes, the plaintiff has
3 to prove that by that standard that I just
4 mentioned, preponderance or greater weight of the
5 evidence. But as I also mentioned to you, there
6 are degrees of negligence.

7 And now I want to talk with you about
8 gross negligence, recklessness, willfulness and
9 wantonness. Because the plaintiff claims that not
10 only did the defendant act carelessly, but the
11 defendant acted willful, wanton, recklessly, and
12 grossly negligent. These words are used to
13 describe a conscious failure to use due care. It
14 can be said that he negligent person is one who
15 acts carelessly. But a person whose behavior is
16 willful, wanton, reckless, is not only careless in
17 his or its actions, but is also aware that he's
18 careless. Or conduct that's willful, wanton, or
19 reckless when he's committed -- and it can be
20 reckless, willful and wanton conduct when it's
21 committed with the deliberate intention under such
22 circumstances, that a person of ordinary reason
23 and prudence would be conscious of it as an
24 invasion of another's rights.

25 Now, this type of conduct, in order to

1 prevail and to answer the question, because you're.
2 going to have a question, if you not only find in
3 addition to being careless that he was reckless,
4 willful, wanton and grossly negligent.

5 The burden of proof that you'll be trying
6 is more than simple preponderance or greater
7 weight of the evidence. This standard is called
8 clear and convincing evidence. And it's defined
9 as that measure or degree of proof which would
10 produce in your mind a fact that -- a firm belief
11 or conviction as to the truth of the allegations,
12 which are sought to be established. Clear and
13 convincing is more than just a preponderance, it
14 requires proof -- it means that the evidence is
15 not ambiguous. It is not -- it leaves no
16 substantial doubt in your mind. It's not
17 equivocal or contradictory. Clear and convincing
18 proof established in your mind not on that a fact
19 is probable, but that it's highly probable.

20 Now, let's look at the law, because what
21 we're talking about in this case is negligence and
22 the application of negligence and the premise
23 liability; that's just the lumped area of where we
24 are. And I'd like to define for you the statutes
25 you'll be applying. It's known as an invitee. An

1 invitee is a person who enters upon the premises
2 of another, at the expressed or implied invitation
3 of the occupant for purpose for which the premises
4 are held open to the public or for a purpose
5 connected with the business of that particular
6 occupier that does or may result in their mutual
7 economic benefit.

8 The term "invitee" includes patrons upon
9 the premises of any business open to the public
10 and business visitors.

11 One who controls the use of property has
12 a duty of care not to harm others by its use.
13 Conversely, one who does not or has no control
14 owes no duty to persons using the premises.

15 The plaintiff claims that an unsafe
16 condition on the defendant's caused him some
17 injury or damage. In order to prevail, the
18 plaintiff must first prove by the preponderance
19 or greater weight of the evidence that an unsafe
20 condition existed on the defendant's premises.
21 Next, the plaintiff must show that the unsafe
22 condition was caused by the defendant or that the
23 defendant had actual or constructive notice of the
24 unsafe condition.

25 Constructive notice may be established by

1 showing that the unsafe condition had existed for
2 a long enough time for the defendant to have
3 discovered and fixed it.

4 Just because an unsafe condition existed,
5 this is not enough in and of itself, to show that
6 the defendant had notice of the unsafe condition.

7 In that regard, I charge you that a
8 principal is affected with constructive knowledge
9 of all material facts of which an agent receives
10 notice while acting within the scope of his
11 authority, his or her authority.

12 An occupier owes an invitee the duty of
13 exercising reasonable ordinary care for his safety
14 or the safety of -- his or her safety of those
15 using the premises and would be liable for any
16 injury resulting from a breach of that duty. The
17 degree of care must be commensurate with the
18 particular circumstances involved, including the
19 age and capacity of the invitee. This duty is an
20 active or affirmative duty and includes refraining
21 from any acts which makes the invitee's use of the
22 premises dangerous or results in an injury or
23 damage of some kind.

24 The occupier of premises further owes an
25 invitee the affirmative duty to use reasonable

1 care to discover any unreasonably dangerous
2 conditions on the premises. And then to either
3 put the premises in a reasonably safe condition
4 for use in a manner consistent with the purpose
5 of the invitation or to warn the invitee of that
6 danger.

7 The precise manner in which the injuries
8 might have occurred does not have to be fore-
9 seeable. It is sufficient if there is a greater
10 than ordinary danger of injury, which the occupier
11 knew or should have discovered by the use of
12 ordinary care.

13 The precise nature in which the injuries
14 are sustained does not -- excuse me. I just
15 repeated that.

16 There is a reasonably -- it is sufficient
17 if there is a reasonable generalized gambit or
18 greater than ordinary dangers of injury and that
19 the sustaining of the injury was within the range
20 of that gambit. In other words, the circumstances
21 shown to have existed.

22 An occupier owes an invitee the duty of
23 exercising reasonable care for his safety and he's
24 entitled to expect that the owner will take
25 reasonable care to know the actual condition

1 prevailing at the time the invitee is on the
2 premises, and to either to make those conditions
3 safe or to warn the person of that condition.

4 An occupier is not an insurer of safety
5 however of the invitees. The duty is only to
6 exercise reasonable care.

7 An occupier is not required to maintain
8 the premises in such condition that no accident
9 could happen to a patron using the premises.

10 Furthermore, the plaintiff has the burden
11 of proving that with the exercise of due care the
12 defendant could have discovered the defect and
13 remedied the situation. Therefore, if a
14 reasonable person would not have been aware of the
15 risk or if the risk was not unreasonable, there is
16 no liability.

17 An occupier is not liable to invitees for
18 the physical harm caused by any activity or
19 condition on the premises whose danger is known or
20 obvious to the invitee unless the owner should
21 anticipate the harm despite such knowledge or
22 obviousness.

23 An invitee is expected to use reasonable
24 care for his or her own safety and avoid obvious
25 dangers, but the owner may be liable for any

1 injuries to an invitee despite an open and obvious
2 defect if the owner should have anticipated that
3 invitee would nevertheless encounter the condition
4 or that invitee was likely to be distracted.

5 Now, as I mentioned to you this dealing
6 with -- we've dealt with the issues of negligence
7 and recklessness and willfulness concerning the
8 basic premises liability. Now, I want to discuss
9 with you the defense the defendant has raised
10 because first of all the defendant has stated it's
11 a defense only if you've established by your view
12 of the evidence that the plaintiff has met his
13 burden of proof. If the defendant says, 'well, if
14 you determine that, the plaintiff also was
15 careless.' In other words, you heard me say that
16 an invitee has to use ordinary care for the
17 protection of himself or herself.

18 In that regard, now it shifts insofar as
19 the burden of proof. Because the plaintiff
20 doesn't have to disprove that, has no obligation
21 whatsoever. The defendant has the burden of
22 proving that the plaintiff was careless in some
23 fashion, didn't do what a reasonably prudent
24 person would have done if faced with the same
25 situation.

1 If you find that both the plaintiff, that
2 the plaintiff has met his burden of proof, and the
3 defendant has met its burden of proof and has
4 established the plaintiff was careless in some
5 fashion, then the law says you have to compare it.
6 That's what the term "comparative negligence"
7 means.

8 There are a number of factors that you
9 will consider. And let me discuss those with you
10 now.

11 In making the allegation of fault, you
12 may consider whether the conduct was mere
13 inadvertence or whether the party was aware of the
14 danger involved or reasonably should have been
15 aware of the danger involved.

16 Two, the seriousness of the risk created
17 by the conduct, including the number of persons
18 endangered and the potential seriousness of
19 injury.

20 Three, the nature of the goal the party
21 was seeking to attain by the conduct and the need
22 to achieve the goal in that particular manner.

23 Four, a party's superior or inferior
24 attitude and capacity and the ability to realize
25 and eliminate the risk involved.

1 The particular circumstance which
2 confronted the party at the time the conduct
3 occurred.

4 Takes the relative closeness of the
5 causal relationship of the negligent conduct of
6 the defendant and the harm to the plaintiff.

7 And, seven, the conscious failure to
8 observe due care or the conscious indifference
9 with respect to the rights of others and safety
10 of others.

11 And then any other facts and
12 circumstances in this case which you find
13 appropriate in assessing or evaluating the
14 comparative fault.

15 Comparative negligence is a defense in
16 this respect. You have to -- if you find that,
17 and we'll discuss that in just a moment. The
18 verdict form will provide for you to have an
19 allocation. And obviously two -- there'll be two
20 parties, the plaintiff and defendant if you get to
21 this point. And the sum total is a hundred
22 percent.

23 If you find that the plaintiff is fifty
24 percent or less, it's not a defense. It affects
25 the recover, which is a matter of law not for you

1 to be concerned with, not for your concern. Yours
2 is only to determine if you find that they both
3 have met the burden of proof, you can find that
4 this is applicable, then you have to assess it.

5 If it's more than fifty percent, then the
6 defendant has prevailed on the defense raised and
7 the plaintiff may not recover.

8 Again, you will assess that and make that
9 determination based on your view of the evidence
10 in this case.

11 Again, the fact that I've given you
12 instruction on any of these is not to be
13 suggestive, a suggestion that you have to conclude
14 anything in particular. That's up to you to
15 decide.

16 You and I -- you were selected. They
17 didn't select me, the Chief Justice assigned me.
18 But we have the same responsibilities when we took
19 the job for this reason. You made a commitment
20 when you raised your hand and I made a commitment
21 when I raised my hand a few years ago to do what I
22 do, is that we would be fair and impartial because
23 we don't have any friends to reward, enemies to
24 punish.

25 But we have to do something, and I'll

1 confess to you right now -- I've been judging a
2 little bit longer than you have. But I will tell
3 you, it doesn't matter how many times you do it,
4 it's tough. We're human. And we all hear things
5 that causes us to be angry, feel compassion, and
6 we feel passionate about something. That's okay
7 in its proper setting. It has no basis here.
8 Because we promised that we're not going to, our
9 judging, our decision is not going to be
10 controlled by any human emotion. If it is, if it
11 slips in ladies and gentlemen, you've violated the
12 commitment that you made.

13 You promised them that you're going to
14 apply that common sense that you brought with you,
15 that sense of knowledge that logic, that reasoning
16 that you've used every day of your life.

17 And then shortly you're going to change
18 that open mind that you've been maintaining
19 throughout and you're going to evaluate this
20 evidence in a very careful and methodical fashion
21 and decide what you believe to believe to be the
22 true facts. And once you decide that, you take
23 the law as I've given it to you, apply it fairly,
24 and report that decision.

25 To assist you in reporting that, I've

1 prepared a verdict form and I'm going to be
2 sending it back with the exhibits. And you've
3 seen it, but there are basically, potentially four
4 questions. I want to go over it with you now.

5 The first one says, Do you find the plaintiff
6 -- the first one you notice is the caption.
7 That's simply to facilitate the file and that
8 means absolutely nothing.

9 Do you find the plaintiff has proven by
10 the preponderance of the evidence -- that's that
11 probability standard -- that the defendant was
12 negligent?

13 If the answer is yes, it says go to
14 question two.

15 If it's no, stop. That's it. As you
16 know, you don't need to go to comparative because
17 if you found no negligence.

18 Two says, Do you find that plaintiff has
19 proven by clear and convincing evidence, that's
20 that different standard that we talked about, that
21 the defendant's conduct was not only negligent but
22 also grossly negligent, willful, wanton, and
23 reckless.

24 If the answer to that question is yes, go
25 to question three. If it's no, just put 'no' but

1 still go to question three. Why? Because you've
2 already answer yes, as to the negligence of the
3 defendant.

4 Question three says, Do you find that the
5 defendant has proven by a preponderance of the
6 evidence that the plaintiff was negligent? Now,
7 that's that shift. You'll be looking at it from
8 the perspective of the defendant if they convince
9 you by that probability standard or did convince
10 you that the plaintiff was also careless.

11 If the answer is yes, go to question
12 four.

13 If the answer is no, stop and deliberate
14 no further in regard to question four because you
15 will have completed the form.

16 Just sign it where it says presiding
17 juror, knock on the door and we will return you.

18 If you get to question four, question
19 four says, If your answers to one and three are
20 both yes, that's after you found the plaintiff met
21 his burden, and the defendant met its burden, they
22 both are negligent, and you're assessing that.

23 Taking the negligence that proximately
24 caused the parties injuries is a hundred percent,
25 what percentage of negligence is attributable to

1 the plaintiff and what percent to the defendant?
2 That's that allocation of fault. And you simply
3 write in if you get to that, the numbers that you
4 determine.

5 When you've completed the form, sign it.
6 You'll return it. When I say you have decided,
7 you means each one of you. Your decision has to
8 be unanimous. Eleven to one won't work, ten to
9 two is not enough -- it's not a majority here.
10 It's a unanimous decision. You have to all agree
11 for it to be. Once you've completed it, knock on
12 the door, we'll return to receive the verdict.

13 I know you're anxious to get started and
14 you're almost there. Let me ask if any of the
15 first twelve feel that they will be unable to
16 continue? If so, raise your hand? (No response).
17 Thank you very much.

18 Madam alternate juror, thank you very
19 much. At this point when the jury is excused, I'm
20 going to ask that you not rejoin them in the jury
21 room. They'll take you to another room and I'll
22 be in in a few moments to discuss how much longer
23 you need to remain with us.

24 You're almost there. I need to talk
25 about my charge with the attorneys. It might be

1 necessary for me to bring you back and give you
2 some clarification or some correction or some
3 additional instruction. If so, we will return all
4 of you to the courtroom. But if there aren't any
5 additions, we will gather the exhibits and the
6 verdict form and deliver them to you.

7 When you receive those exhibits, then you
8 may begin your deliberations but not before.

9 Now, once the deliberations start, the
10 only restriction I place on the deliberations is
11 this: If any juror has to leave the table for any
12 reason, you must stop deliberating until all
13 twelve of you are together. Other than that, you
14 proceed as you deem fit and proper.

15 Now, in that regard, with respect to your
16 phone calls, I would suggest that -- I would
17 assume that you're going to go back and eat first.
18 I would think that would be logical. If you don't
19 want to do that, that's fine. I would ask that
20 you make your calls before you commence your
21 deliberations. Because once your deliberations
22 start, I don't want anybody talking on the phone
23 unless it's strictly supervised and you can under
24 -- I'm not suggesting that you would violate.
25 Don't take offense to that. I just simply would

1 avoid any appearance and problem.

2 So thank you for your attention. Please
3 retire to your jury room and await the exhibits
4 before you commence your deliberations.

5 JUROR: Sir?

6 THE COURT: Yes.

7 JUROR: May we take our notes?

8 THE COURT: Yes. Absolutely.

9 Thank you. Y'all, just one second. Thank you for
10 bringing that. I should have mentioned that to
11 you. Good catch. I apologize. It won't take
12 much longer. The notes that you took are your
13 notes. They're for your purpose. They certainly
14 don't control. They may make you argue a certain
15 way, one way or another should that ever come up.
16 But just remember if there's a difference, for
17 instance one person says 'I have the witness said
18 so and so.' If y'all can't agree, this lovely
19 lady (court reporter) can resolve that for you
20 real quick. We can play it for you.

21 If you have something, some concern or
22 difference in your notes about what I said is the
23 law, let me know and I can either send it to you
24 or you can come back and I can read, I can give
25 you the law again, okay?

1 Thank you very much. But thank you for
2 asking that.

3 (JURY OUT @ 2:12 P.M.)

4 THE COURT: Any exceptions or
5 additions from the plaintiff?

6 MR. MCCULLOUGH: No, sir.

7 THE COURT: From the defendant?

8 MS. SPRUILL: A couple of little
9 things I ---

10 THE COURT: Sure.

11 MS. SPRUILL: I would renew all my
12 charges and my form, and I would also raise -- I'm
13 not sure if there was a charge in there about
14 principal agent. I don't know if we had anything
15 pertinent to principal agent.

16 THE COURT: We had in a sense of
17 people who were employees are agents. So, I just
18 didn't use the term employee. I think I did use
19 the term employee once and then agent. I gave
20 that. If you want me to give a definition of what
21 a principal and agent is, I'll be happy to do
22 that.

23 MS. SPRUILL: No, that's okay.
24 I just wanted to note for the record that that
25 caught me a little by surprise.

1 THE COURT: Okay.

2 MS. SPRUILL: And the objection to
3 be noted, and there's no way to change it now, but
4 we would object to telling them that there's no
5 recovery for the plaintiff if the plaintiff is
6 found comparatively negligent in an amount greater
7 than fifty percent.

8 THE COURT: Why? That's the
9 truth.

10 MS. SPRUILL: Well, it's not
11 pertinent to what they're doing. That's a matter
12 of law for you.

13 THE COURT: But essentially, the
14 action is over. I thought it was necessary. It's
15 further necessary because Mr. McCullough said, 'if
16 you want to hear the rest of the story come back.'
17 And I told them. So ---

18 MS. SPRUILL: There's just no
19 point in it.

20 THE COURT: I appreciate that and
21 I just -- I understand what you're doing. I'm
22 trying to give so when they -- when you get up --
23 if you get up there, and I hope you don't. But if
24 you do, I want the Bench, the three or the five to
25 know why I did what I did. So that's my

1 reasoning. Of course, I'm not arguing with you.

2 Thank you.

3 MS. SPRUILL: Thank you, Your Honor.

4 THE COURT: Okay. Anything else?

5 MR. MCCULLOUGH: No, sir.

6 MS. SPRUILL: What are we going to do
7 with the alternate, you going to let her go? I'm
8 just curious.

9 THE COURT: The alternate. That's a
10 good question. How do I respond to that? We're
11 off the record.

12 (OFF RECORD DISCUSSION)

13 MS. SPRUILL: I was just wondering (about
14 alternate juror) due to the bifurcation.

15 THE COURT: Good point. I will keep
16 her but -- are y'all willing to go with less than
17 twelve, as few as eleven. Or if you don't, I can
18 let her sit in on the deliberation. That's
19 reversible error if she goes into the jury room,
20 into deliberations. So you tell me what you want
21 to do.

22 MR. MCCULLOUGH: We will do whatever
23 they want to do.

24 THE COURT: I will tell you this, I
25 have no problem framing that. There is no way in

1 the world -- I can understand in criminal cases,
2 but not civil cases. In magistrate court -- in
3 federal court they sit with eight. You tell me
4 what you want to do.

5 MS. SPRUILL: We wouldn't want to go
6 below eleven.

7 THE COURT: Well, as long as you don't
8 go below eleven, then that's fine.

9 MS. SPRUILL: I'll go as low as eleven.

10 THE COURT: But I was just saying
11 myself -- I was thinking I've never had that, but
12 I have had it in a number of cases. We keep the
13 alternates in death penalty cases. That's why I
14 don't understand the ruling, except for the fact
15 this is a civil case. It's a civil rule that says
16 you'll dismiss.

17 MS. SPRUILL: And I wasn't really
18 thinking about her going into the middle of the
19 deliberations today. I was just thinking about on
20 phase two. We will agree to go with eleven if
21 necessary.

22 THE COURT: Okay, I'll release the
23 alternate.

24 (COUNSEL APPROVAL OF EXHIBITS)

25 (JURY IN DELIBERATIONS @ 2:15 P.M.)

1 (COURT IN RECESS)

2 (NOTIFIED OF JURY QUESTION @ 3:17)

3 THE COURT: Okay, we have received
4 a question from the jury? We would feel more
5 comfortable having a copy of what you just read to
6 us as far as the specific law. Can you provide a
7 written copy of it?

8 I'm going to bring them in to verify
9 that. Y'all okay with doing it without your
10 client present?

11 MR. MCCULLOUGH: Yes, sir.

12 THE COURT: Let's get them in.
13 Bring in the jury.

14 BAILIFF: Okay.

15 THE COURT: Tell them to stop,
16 that I'm ready to respond to their question.

17 BAILIFF: All right.

18 (SO ENTERED AS COURT'S EXHIBIT 7)

19 (JURY IN @ 3:17 P.M.)

20 BAILIFF: All jurors present,
21 Your Honor.

22 THE COURT: Thank you very much.
23 Thank you ladies and gentlemen. I have what's now
24 Court's Exhibit 7, which says, "We would feel more
25 comfortable having a copy of what you just read to

1 us as far as the specific law. Can you provide a
2 written copy of it?"

3 I'm assuming that you want the entire
4 charge; is that correct? You'd like to have it?

5 MADAM FORELADY: Yes.

6 THE COURT: Okay. That's fine.
7 I will send back to you the entire charge. Please
8 know that some of the things that I've said were
9 explanations of that. And that's not contained
10 but the meat of the substance is there, okay?

11 If you need further instruction after
12 getting that, just let me know. I'll be -- I'm
13 in the process of getting that cleaned up, so to
14 speak so I can send it back to you. Because I had
15 my notes on it at the time as well, so it'll take
16 me a few moments but y'all continue to deliberate.
17 Thank you very much.

18 (JURY OUT @ 3:20 P.M.)

19 THE COURT: Any exceptions or
20 additions from the plaintiff?

21 MR. MCCULLOUGH: No, sir.

22 THE COURT: Any exceptions or
23 additions from the defendant?

24 MS. SPRUILL: No, Your Honor.

25 THE COURT: Thank you very much.

(COURT IN RECESS)

(NOTIFIED OF JURY QUESTION @ 8:05 P.M.)

THE COURT: We have another note.

Houston, we have a problem. "Can you clarify for us the definition of proving a preponderance of the evidence with regard to circumstantial evidence? We're struggling with knowing how much evidence is sufficient to reach a preponderance of the evidence."

COURT REPORTER: Court's Exhibit 8.

THE COURT: Ma'am?

COURT REPORTER: Court's Exhibit 8.

(SO ENTERED AS COURT'S EXHIBIT 8)

THE COURT: "See page three, first paragraph, based on inference we need clarification. Can we have a copy of Mr. Burke's testimony, please?" No. But you can listen to it. "We'd also like some pizza and soda pop. Order it, please." "Can we have a phone call?"

MS. SPRUILL: Have you imprisoned them, Your Honor?

THE COURT: Let me throw this out and this is up to y'all. I don't know why we don't go ahead and adopt the rule in this state that other states use, adjourn deliberations and have them

1 come back. I do it. I've done it numbers of
2 times in civil cases. I've also had lawyers that
3 said, no, don't want to do it. I've done it
4 occasionally in criminal cases. It's a little bit
5 different ballgame with a criminal case. But I
6 want to throw that out, first of all, to see what
7 y'all's position is, if you want to talk to your
8 client's about it. I'm going to bring them in
9 right now and try to explain the first part of
10 this. Y'all may want to talk about resolving this
11 dispute too, but that's up to y'all.

12 You didn't hear the first part of this,
13 "Judge, can you clarify for us the definition of
14 proving a preponderance of the evidence" -- I
15 haven't had this one before -- "...with regards to
16 circumstantial evidence. We're struggling with
17 knowing how much evidence is sufficient."

18 I will bring them in and tell them what
19 I've told them before. It's not in there, by the
20 way. So I'll give clarification about 'if your
21 conclusion is -- if you talk about it and your
22 personal conclusion is that's a possibility, that
23 might be the case, then that hasn't met the
24 burden.' If your conclusion is after listening to
25 it -- and I think that's probably what happened or

1 probably so, then they have met the burden. But,
2 I mean, otherwise, I don't know anything -- I
3 don't know anything about that, other than just
4 restate those, that aspect of it. Unless y'all
5 want to come up with some genius approach. And
6 then they want to rehear Mr. Burke's testimony.
7 So let's bring them in.

8 (JURY IN @ 8:20 P.M.)

9 BAILIFF: All jurors are
10 present, Your Honor.

11 THE COURT: All right. Thank you
12 very much. What's that, Court's 8?

13 COURT REPORTER: Yes, sir.

14 THE COURT: Court's Exhibit 8,
15 which is the last inquiry, the most recent
16 inquiry. I guess we'll start at the first -- we
17 have already placed the order for pizza, so that's
18 on the way. That part is good to go.

19 The phone calls, yes, we allow you the
20 phone calls. They'll have to be supervised of
21 course.

22 'Can we have a copy of Mr. Burke's
23 testimony?' There are some states where that's
24 being done and experimented with, but we are not
25 one. We can replay the testimony and be happy to

1 do that, if that would be helpful. And if you
2 want to replay the entire testimony that's fine.
3 If you want to replay -- what I have typically
4 done over the years is -- and I'll just tell you
5 this and then we'll -- because we'll have to make,
6 get it set up to do that. I don't know what
7 you're looking for or who needs to know what or
8 wants to hear. I will start -- we'll start from
9 the beginning. But at any point if the jury or
10 juror has heard what they are looking for, they
11 will make that known to you. Not 'this is what I
12 was looking for' but just "it can stop now." Then
13 we'll stop it if you raise your hand. If you
14 don't raise your hand, I'm going to assume that
15 you want to continue to hear the testimony.

16 I would remind you, however, and I don't
17 recall. There may have been with Mr. Burke. But
18 testimony, as you know, it's direct and then
19 there's cross. And then the person who called the
20 witness gets the opportunity to ask questions on
21 what we call redirect, and that's generally
22 limited to what's brought out on cross. And then
23 there's a possibility of recross in response to
24 redirect. So there's four parts. So I mention
25 that to you so you may not hear what you're

1 looking for in the direct or cross. It may be in
2 the redirect or recross. So I just remind you of
3 that. But we'll set that up to accomplish that.

4 The next one is, 'Can you clarify for us
5 the definition of proving a preponderance of the
6 evidence with regard to circumstantial evidence.'
7 You're struggling with knowing how much evidence
8 is sufficient to reach a preponderance of the
9 evidence.

10 I would love to be able to answer that
11 question and give you some definitive statement.
12 I can't really do it because it's a mental
13 process. And it's a mental process for each of
14 you, not just one person. It's not something that
15 you can go 'ah ha, yes, that's one, two, three,
16 that's it.' It really is a process that leaves it
17 to you that when you consider the evidence -- and
18 I would also remind you that you've limited --
19 you've said circumstantial evidence. And
20 certainly that's very proper to consider and very
21 proper to present a case with circumstantial
22 evidence. But there's no difference between the
23 direct and circumstantial evidence with respect to
24 the process of evaluating or relying on -- they
25 both are good. The law -- there's nothing -- no

1 greater proof required for circumstantial than
2 direct. The main part, of course, is that I told
3 you direct, of course, being that sensory
4 perception, generally sensory perception. And if
5 you're firmly convinced or if you believe that's
6 probably so, then that establishes that particular
7 fact. And circumstantial evidence is when you've
8 gone through that process and you have several
9 particular circumstances established that you
10 think are probably so and you link them. And then
11 they lead you to a conclusion, which you reach the
12 conclusion, I think that's probably so. Based on,
13 again, inductive or deductive reasoning. You
14 deduct it or you add to it and you say, oh, yes.
15 That's what that leads us to. But the conclusion
16 has to be, 'I think that's probably most likely
17 so.'

18 If it's anything less than that, such as
19 -- well, that's a possibility, 'might be.' Then
20 for you as an individual, it hasn't reached that
21 point. You have to reach that conclusion within
22 that says, 'yes, I think that's most probably so.
23 I think that's most probably the case.' And if
24 you reach that point, then you -- then the burden
25 has been met as to that particular issue. But

1 that's the best explanation I can give you. And
2 I'm going to ask you now to retire and we'll ---

3 COURT REPORTER: I have it ready.

4 THE COURT: You're ready? You
5 want to listen to the testimony now or do you want
6 to go back and talk about it?

7 Y'all discuss it and let us know. And if
8 it's a certain portion of the testimony, if you
9 could identify that, we'll try to locate that for
10 you and play it for you as well. Thank you very
11 much. Please return to jury room and continue
12 your deliberations. Thank you.

13 (JURY OUT @ 9:00 P.M.)

14 THE COURT: Exceptions or
15 additions from the plaintiff?

16 MR. MCCULLOUGH: No, sir.

17 THE COURT: Exceptions or
18 additions from defendant?

19 MS. SPRUILL: No, Your Honor.

20 THE COURT: Thank you. Y'all stay
21 close. We'll see what they say. Okay, they say
22 that they want to rehear Mr. Burke. And thank
23 y'all. Are you ready?

24 COURT REPORTER: Yes, sir.

25 THE COURT: Okay. All right.

1 COURT REPORTER: Ten.

2 (SO ENTERED AS COURT'S EXHIBIT 10)

3 THE COURT: Court's Exhibit 10.

4 Maybe y'all can explain this. Y'all have the
5 charge. I've looked at three and four, which
6 defines negligent circumstantial evidence.
7 That's what's contained on those pages.

8 MS. SPRUILL: So what are you ---

9 THE COURT: You need to pull it
10 out. I had to print my again. I don't know what
11 they're talking about. My concern is -- we're
12 getting close to participating in -- I'm fine with
13 let y'all help define negligence after you hear
14 this question if you can help resolve -- the
15 question is, "Judge, can we judge/deem
16 "negligence" after the incident/injury occurred as
17 described on page three and four of the charge you
18 gave us. There's nothing that says -- there's
19 nothing on page three and four that even
20 references that."

21 MS. RUPARELIA: Would you read it
22 again, Judge?

23 THE COURT: Well, you can come
24 read it. It makes no sense. I've looked at three
25 and four. I didn't number your copies. Do you

1 see it? Do you see anything about that?

2 Three deals with basically the burden of.
3 proof, the preponderance of the evidence. It
4 talks about an expert witness, direct and
5 circumstantial evidence. No, that's two. Excuse
6 me. Three, it was the end of that.

7 I said the plaintiff has to prove its
8 case by a preponderance of the evidence and the
9 last paragraph said -- defense, affirmative
10 defense, then it has the same burden to prove each
11 of the elements of that defense. That is, the
12 defendant proves those elements by the
13 preponderance of the evidence and the same
14 restriction as indicated above on the plaintiff's
15 part.

16 "Negligence" means -- and we talk about
17 that generic stuff.

18 "The mere fact that an injury was
19 sustained or an accident occurred is not in and of
20 itself sufficient to prove negligence."

21 MS. SPRUILL: But after the
22 injury, ---

23 THE COURT: Well, I don't know
24 what ---

25 MS. SPRUILL: Unless the -- I

1 don't know.

2 THE COURT: The only thing -- if
3 we were talking about damages, I could understand.
4 I could ask the question, but I'm getting real
5 close to -- I don't know what they're dealing
6 with on a factual situation. And it seems to me
7 they're asking about a factual determination.

8 MR. MCCULLOUGH: I've afraid that
9 we're about to open a door we can't close.

10 THE COURT: I agree with you.
11 Well, I'm going to bring them out and just tell
12 them, I'll be happy to recharge any law that they
13 need, but as to what they, how they're dealing
14 with evidence, I can't participate in that, okay?

15 MS. SPRUILL: That sounds good,
16 Your Honor.

17 THE COURT: All right. Let's
18 bring them in.

19 (JURY IN @ 12:10 A.M.)

20 BAILIFF: All jurors present,
21 Your Honor.

22 THE COURT: Thank you very much.
23 Thank you ladies and gentlemen. I have the
24 question and I've looked at pages three and four
25 of the charge and I can't find where that specific

1 situation appears, which leads me to where I'm
2 going. I'm not trying to be evasive. But one of
3 the things that we have is we're two judges. And
4 I can't comment on the facts. I can't give you
5 any help and assistance in analyzing the evidence
6 and the facts because that puts me invading your
7 province. So I having -- under our law, for
8 instance, there are some states and in federal
9 court the judge is permitted to charge on the
10 facts. And that means to give a direct charge as
11 to dealing with certain specific facts in the
12 case. But in this state, it's Constitutionally
13 prohibited. I can only give you the general law
14 and you have to take that law and apply it to the
15 facts that you have determined to be true. So
16 with respect to -- I have defined negligence for
17 you and the conduct, who has to prove what.
18 That's what I find on pages three and four. I
19 find three and four being basically the end of the
20 discussion about the types of evidence, direct and
21 circumstantial evidence. And then the general
22 definition of negligence, what the plaintiff has
23 to prove and what the defendant would have to
24 prove with respect to the alleged -- the
25 allegation of the affirmative defense of

1 comparative negligence. But to the extent -- and
2 then on page four there's a further definition
3 concerning, discussing the aspect of negligence,
4 recklessness, willfulness, wantonness. Your
5 question, I can't answer that one because that
6 would be commenting on the facts. So if there's
7 some additional instruction that you need,
8 clarification on the law, let me know what it is
9 and I'll try to see if I can assist you. But I've
10 given you the law that basically applies to this
11 case. So please retire and resume your
12 deliberations. Thank you.

13 (JURY OUT @ 12:14 A.M.)

14 THE COURT: Objections or
15 additions from the Plaintiff?

16 MR. MCCULLOUGH: No, sir.

17 THE COURT: Objections or
18 additions from Defendant?

19 MS. SPRUILL: None, Your Honor.

20 MS. RUPARELIA: No.

21 (OFF RECORD DISCUSSION)

22 THE COURT: Do y'all want me to
23 offer them the opportunity to adjourn and come
24 back tomorrow?

25 MR. MCCULLOUGH: Not really, but I

1 want -- I honestly think that group would take an
2 entire another day if given the opportunity.

3 THE COURT: Well, I think they'd
4 take until Christmas, most of them, possibly. I
5 just -- I understand both sides of that coin to
6 me, just -- to me, when you start getting into
7 forcing situations, then I begin to be concerned.
8 And we need to get what would be fair to both
9 sides by doing that.

10 MR. MCCULLOUGH: Sure.

11 THE COURT: I know how I -- I
12 don't know about you. Be that as it may, I'm not
13 -- as I stated earlier, the Rule speaks clearly
14 and I'm not going to put them in motels.

15 MR. MCCULLOUGH: Yes, sir.

16 THE COURT: Okay. Thank y'all.
17 I appreciate your patience and your endurance.

18 (COURT IN RECESS)

19 (JURY IN DELIBERATION)

20 (OFF RECORD DISCUSSIONS RE: SCHEDULE)

21 (JUDGE TO JURY ROOM TO INQUIRE OF JURORS IF
22 THEY WANTED TO CONTINUE OR RECESS)

23 THE COURT: They say they want to
24 continue.

25 (OFF RECORD DISCUSSIONS RE: UNRELATED CASES)

1 THE COURT: Let's go back on the
2 record. Mr. McCullough, you were saying?

3 MR. MCCULLOUGH: In retrospect it
4 was unfair to put us in the position because they
5 clearly, the way he fell and the way he injured
6 himself was clearly important to this jury.

7 THE COURT: Well, I understand
8 that.

9 MR. MCCULLOUGH: She objected and
10 we couldn't testify to that. And so for them now
11 -- I mean, we could've cleaned that up when they
12 were obviously asking questions about that. They
13 wanted to hear this testimony. And I think that
14 was because she did a good job in her closing
15 argument talking about slip versus trip. And so
16 the cure to that was to play the testimony. Not
17 to -- you know, and you charged what was in there.
18 I think now to later on botching the causation of
19 ---

20 THE COURT: It's not later on. As
21 you just pointed out, it's in there.

22 MR. MCCULLOUGH: And it's in there,
23 in writing, you handed it to them

24 THE COURT: Well, I understand
25 that, but I didn't address that. It's in there.

1 The injury, the damages, whichever way you look at
2 it, whether it's for him or for them, then it has
3 to be a proximate cause.

4 MR. MCCULLOUGH: And that's why the
5 entire second part of the case is going to be just
6 on that. They can only award damages that are
7 proximately caused ---

8 THE COURT: Well, I understand
9 that. And there's no question. But insofar as
10 they're hung up on some issue of negligence after
11 the injuries occurred, it doesn't have anything to
12 do with. It's not part of this. It may be a part
13 -- the only thing that could ever be a part is
14 that he did something carelessly to aggravate his
15 own injury.

16 MS. RUPALERIA: And we ---

17 THE COURT: I don't know that I
18 am. I would never charge specifically -- I'm not
19 going to charge -- you know, if you're talking
20 about their failure to report. I'm just going to
21 charge that the negligence -- in addressing that,
22 you have to remember the negligence that you're
23 dealing with has to have proximately caused some
24 injury or damage. And that's connection. They
25 haven't haven't asked about that. But that

1 clearly addresses what they're dealing with in my
2 opinion. But -- let's see where they go.

3 (COURT IN RECESS)

4 (ADVISED OF VERDICT @ 1:00 A.M.)

5 THE COURT: We're advised the jury
6 has reached a decision. Is the plaintiff ready to
7 receive the verdict?

8 MR. MCCULLOUGH: Yes, sir

9 THE COURT: Is the defense ready?

10 MS. RUPARELIA: Yes, Your Honor.

11 THE COURT: Okay. Let's bring
12 them in.

13 (JURY IN @ 1:05 A.M.)

14 BAILIFF: All jurors present,
15 Your Honor.

16 THE COURT: Thank you, ladies and
17 gentlemen. Madam, presiding juror, as I under-
18 stand, the jury has reached a verdict; is that
19 correct?

20 FORELADY: Yes.

21 THE COURT: Will you pass the
22 verdict form to the bailiff, please?

23 FORELADY: (Tenders)

24 BAILIFF: (Tenders verdict form to
25 judge.)

1 THE COURT: Thank you. (Upon
2 review), the verdict form has been properly
3 completed, consistent with the instruction of the
4 Court, (reading):

5 Case number 2013-CP-10-1400 Robert J.
6 Burke versus Republic Parking Systems, Inc.

7 Question one, Do you find the plaintiff
8 has proven by a preponderance of the evidence the
9 Defendant was negligent? The answer is "Yes."

10 Question two, Do you find the plaintiff
11 has proven by clear and convincing evidence that
12 the defendant's conduct was not only negligent but
13 also grossly negligent, willful, wanton or
14 reckless? The answer is, "No".

15 Question three, Do you find the defendant
16 has proven by a preponderance of the evidence that
17 the plaintiff was negligent? And the answer is,
18 "Yes."

19 Question four, If your answers to one and
20 three are both yes, then answer this question:
21 Taking the combined negligence that proximately
22 caused the party's injury as one hundred percent,
23 what percentage of that negligence is attributable
24 to the plaintiff and what percentage is
25 attributable to the defendant. Plaintiff, it has

1 been written twenty percent (20%), defendant
2 eighty percent (80%), total one hundred percent.

3 Signed by our presiding juror, dated
4 December 17th -- and with your permission, I'll go
5 ahead and change the date to the 18th, since you
6 started yesterday.

7 Ladies and gentlemen of the jury, if the
8 court has accurately published your verdict in
9 every respect please indicate that by raising your
10 right hand.

11 (ALL JURORS' RIGHT HAND WAS RAISED)

12 THE COURT: Thank you. You may put
13 your hands down. Let the record reflect that each
14 juror raised his or her right hand in response to
15 the court's inquiry.

16 Anything further from the panel with
17 regard to the verdict, from the plaintiff?

18 MR. MCCULLOUGH: No, sir.

19 THE COURT: Anything further from the
20 Defendant?

21 MS. RUPARELIA: None, Your Honor.

22 THE COURT: Ladies and gentlemen, thank
23 you very much. Good morning and good day. It is
24 a good day, and I will say, and I speak on behalf
25 of the parties, because we have commented about

1 it. And, as I say, I've been doing this almost
2 twenty-one years. You were a diligent jury and
3 asked so few questions it was amazing. So thank
4 you for that. And we appreciate your attention
5 and your conscientious effort towards this.

6 As you know, this is a bifurcated
7 proceeding. And based on this verdict we'll
8 rejoin today, a little bit later. I have some
9 matters that are scheduled. And I don't think
10 anybody's going to be objectionable to starting a
11 little bit later, I think, tomorrow/today. I
12 would ask you to be in your jury room, please by
13 quarter till 11:00.

14 I know you're anxious to probably discuss
15 this matter, but not tonight and not tomorrow. You
16 still are involved in deciding this case. There
17 still remains much left to be addressed and we'll
18 start that process tomorrow. Have a good evening.
19 Rest well and try to get a good night's rest.
20 And, again, thank you for your persistence today.
21 Thank you.

22 (JURY OUT @ 1:20 A.M.)

23 THE COURT: Anything from the
24 plaintiff at this point concerning the verdict?

25 MR. MCCULLOUGH: No, sir.

1 THE COURT: Anything from the
2 defendant?

3 MS. SPRUILL: Just because we're on
4 the record, we renew and we would have asked that
5 proximate cause have been charged after that
6 question, I think was Court's Exhibit 10.

7 THE COURT: Okay. Given the fact
8 that they found negligence on the part of both
9 parties, I don't think they, and to be honest with
10 you ---

11 MS. SPRUILL: I'm sorry, Your Honor?

12 THE COURT: To be honest with you
13 -- because I said I'm not sure about the failure
14 to report. The failure to report really and truly
15 could be a proximate cause. It wouldn't have been
16 after, and I'll tell you why. Because that would
17 mean that they are -- they alleged that it may
18 have failed to report numbers of times. And if
19 they had reported as they should have, it may have
20 been corrected long before it happened. So,
21 therefore, it would not necessarily have been
22 after. So I think we were all jumping to
23 conclusions in talking about it. But I had
24 mentioned to you that that would possibly be --
25 the failure to report. We were talking about what

1 they would possibly do.

2 MS. SPRUILL: Yes, Your Honor.

3 THE COURT: And you ---

4 MS. SPRUILL: Yes, Your Honor.

5 It's so late, I'm losing my mind.

6 THE COURT: Well ---

7 MS. SPRUILL: What the remedy is,
8 if I'm supposed to ask for a mistrial. I know
9 you're going to grant it.

10 THE COURT: Mistrial over what?
11 You're the one that ask for the bifurcation.

12 MS. SPRUILL: No, no, the question
13 and the failure to respond. I apologize, Your
14 Honor.

15 THE COURT: You didn't object.
16 You can ask for a mistrial but since you didn't
17 except to anything the Court said and the Court
18 really declined to engage in that, other than
19 discuss it with you, so I don't think there's been
20 anything. But for the purposes of the record and
21 protecting you, we can review his whole process.
22 It will be. And you've raised all those issues
23 before about duty, but I think the jury has spoken
24 on that issue.

25 MS. SPRUILL: And, Your Honor, I

1 have one more question.

2 THE COURT: Sure.

3 MS. SPRUILL: I know we've got
4 damages left? When are we going to do allocation?

5 THE COURT: Well, that's when we
6 -- this is now where you're going to bring up all
7 the evidence and you're going to put up the
8 questions that I cut you all off on asking who was
9 doing what. That comes in now.

10 MS. SPRUILL: The issues with the
11 City?

12 THE COURT: Yes.

13 MS. SPRUILL: Okay.

14 THE COURT: Listen, this is my
15 fourth one. And they haven't corrected the
16 problem. The problem is that we need to have that
17 as a separate, just as we do a capital murder
18 case. Okay, find them guilty. Then you go into
19 the penalty phase. Y'all have this, you set of
20 damages and then you go into the allocation where
21 you bring witnesses in to talk about who's at
22 fault.

23 MS. SPRUILL: Yes, sir.

24 THE COURT: But you call whoever
25 you want to.

1 MS. SPRUILL: We're going to do
2 that in the damages section?

3 THE COURT: Yes. That's what I've
4 said all along.

5 MS. SPRUILL: Okay.

6 THE COURT: I mean, you act like
7 that's some foreign statement. And I've been
8 talking about that for ---

9 MS. SPRUILL: It may be the hour.

10 THE COURT: Okay. Well, I think
11 it is. Because I think that's been clear all
12 along. And, frankly, having a chance to think --
13 and I'm tired too. We all are. I mean, if we're
14 not we're super human. But -- and this is a
15 stressful process, but by the same token, getting
16 into proximate cause and those damages -- the only
17 thing we wouldn't have asked them to do is set a
18 dollar figure. So we hadn't really accomplished
19 anything by doing that. He would have had to go
20 into all of his medical testimony. So there was
21 no way to do that, other than -- and I charged
22 proximate cause. I went back and read it. It's
23 in there. In fact, it talks about specifically
24 and generally. You've to prove a duty, breach of
25 the duty, and the breach caused injury or damage.

1 And we don't even use the term proximate cause.
2 That would be something a lay person could
3 understand. So clearly, I'm not concerned about
4 them misunderstanding or determining negligence of
5 either party based on not understanding proximate
6 cause. I think it was clearly set forth in the
7 charge. So that being said, y'all be prepared to
8 call or ask any questions you want. We are now in
9 the damages phase. But the damages phase, because
10 of the nature of the allocation, is where you have
11 to put in that evidence. And I assume you're
12 going to call some people about what they did or
13 didn't do in Charleston. So trying to say that
14 the majority of the blame should be on them. So
15 that's up to y'all.

16 MS. SPRUILL: Thank you, Your
17 Honor.

18 THE COURT: And as I stated
19 before, I've had people object. You can object,
20 but I don't -- I think that's the only time they
21 can put in the evidence. And it won't be in your
22 case, but they have a right to call people in
23 response to talk about what Charleston did or
24 didn't do, so okay?

25 MR. MCCULLOUGH: Yes, sir.

1 THE COURT: Thank y'all.

2 MR. MCCULLOUGH: Thank you, Judge.

3 THE COURT: We're off the record.

4 (OFF RECORD DISCUSSION)

5 (COURT IN RECESS @ 1:30 A.M.)

6

7 (COURT RECONVENES @10:45 A.M.)

8 DECEMBER 18, 2014 10:45 A.M.

9

10 THE COURT: Have y'all discussed
11 concerning the participants of other potential
12 tort feasons in this?

13 MS. SPRUILL: Well, Your Honor, that
14 was -- I talked to Clay about it. And he was
15 fine. But we can wait until Clay comes back, but
16 we were thinking about how to streamline this
17 because everybody's ready to move this along.

18 And what we were hoping is that you would
19 allow us just to argue the evidence they've
20 already heard ---

21 THE COURT: Oh, sure.

22 MS. SPRUILL: --- on that issue
23 without recalling anybody.

24 THE COURT: I have no problem.
25 I just wanted to make it clear that -- because I

1 stopped some testimony, questions that you wanted.
2 If you want to recall those persons -- while they
3 specifically don't have any evidentiary issue, at
4 the point we were going, I just wanted to say that
5 for this particular one.

6 MS. SPRUILL: Right, and we ---

7 THE COURT: Now, insofar as --
8 excuse me for interrupting you. Insofar as the
9 argument's concerned, here's what the statute say,
10 that once the sum is determined -- whatever that
11 sum is, because I'm going to direct a verdict.
12 I'm going to tell them they don't have to worry
13 about proximate cause. There was proximate cause
14 caused by the negligence of both sides. There's
15 no question about that.

16 MS. RUPARELIA: But there's the
17 issue of the proximate cause as it relates to ---

18 MS. SPRUILL: Where we put it in the
19 trial?

20 THE COURT: You let me finish.

21 MS. RUPARELIA: Yes, sir.

22 THE COURT: Thank you. I'm going
23 to charge proximate cause because that's always a
24 question. And I'm assuming in this case there
25 are, just from some of the -- I haven't heard

1 anything about the damages, other than what I can
2 glean from some conversation, that there may be
3 some disagreement as to whether a certain damage
4 was caused was a result of the injuries sustained,
5 was the natural -- or whether it was a worsening
6 of a condition. Because I've seen the "eggshell"
7 word, and I have that charge, and I'm going to
8 charge that obviously if that applies. And we
9 know that there's a part of that that says you're
10 not entitled to be compensated for anything that
11 existed at the time. You're entitled to the
12 increase in damage and assuming it's not the
13 worsening of it. If it's the worsening, you're
14 not entitled to compensation for that.

15 I understand proximate cause, but from
16 the standpoint of damages, there's no question
17 they're going to have to award some damage. I'm
18 going to direct a verdict of some amount of
19 damage, the amount to be determined by them.
20 You can argue against that if you want to?

21 MS. RUPARELIA: Well, I feel like
22 we're sort of in a gray area because during some
23 testimony we couldn't question, for instance, Mr.
24 Burke, on some impairments that he had, that could
25 have resulted in the fall.

1 THE COURT: Maybe I'm not making
2 myself clear. Sometimes when I say ---

3 MS. RUPARELIA: Okay. Yes, Your
4 Honor. And I apologize I offend ----

5 THE COURT: Well, that's what I
6 just said, but I'm not communicating very well. I
7 understand -- that's what I'm just saying ---

8 MS. RUPARELIA: Okay.

9 THE COURT: I see -- this isn't
10 new. This isn't my first rodeo with this type of
11 situation.

12 MS. RUPARELIA: Yes, sir. Sure.

13 THE COURT: There are tons of
14 these case. And typically, typically it is where.
15 It's probably -- if there's been anything that's
16 evolved in the twenty-one years that I've done
17 this -- my plaintiff's practice towards the end,
18 it was a good time because people -- that old
19 statement or part of the statement, "the defendant
20 takes the plaintiff as he finds him." Whether he
21 was in good health, bad health and somewhere in
22 between. And you had worsening conditions and for
23 some reason juries, at least where I was, that
24 seemed to be recognized as 'okay.' We're okay
25 with that.

1 As we have moved through society. It may
2 have something to do with medical care, may have
3 something to do with the knowledge that doctors
4 can glean through examination, all sorts of
5 things. But I find juries are not as inclined to
6 be as broad with that concept.

7 So, as a result, there's no question we
8 have to charge proximate cause. Because
9 obviously, if it worsened it, maybe there's some
10 degree of it, but it didn't make it the way it
11 was. There may be damages that, for instance --
12 let's use the classic case where I think juries do
13 -- I don't know what they do. But I charge
14 proximate cause where they keep going back to the
15 chiropractor. We don't have -- I'm not -- I don't
16 know whether -- we don't have any chiropractor in
17 this case, do we?

18 MR. MCCULLOUGH: No, sir.

19 THE COURT: I didn't think we did.
20 And the question the jurors ask, and I think it's
21 a pretty legitimate question. It makes common
22 sense -- kind of what an old chiropractor in a
23 case I tried in Beaufort years ago. Go in to a
24 chiropractor and an osteopath. The osteopath was
25 treating the subluxation at C-2, C-3. The

1 chiropractor was treating for subluxation of C-3,
2 C-4. Ah ha! We've got a common denominator here.
3 Nobody knew who was treating who. So go to the
4 osteopath, he adjusts C-3, C-4, they would change
5 the configuration of C-3, C-4. Go to the
6 chiropractor to adjust, they changed it. And they
7 were going back and forth. The insurance company
8 said, 'what's going on here?' So they sent this
9 guy -- I didn't even know they existed at the
10 time. But he was a chiropractor in 1953 in
11 Alabama, interesting fellow, because he testified
12 -- because they asked him, 'can you say that it
13 made a difference?' He said 'oh, sure, there's no
14 question about that. Physiologically, I can
15 explain why it helps. The only problem is, is
16 it's temporary. It's not a permanent fix.' And
17 he said, you can -- and he said 'let me put it to
18 you this way. He said you can come to me and get
19 an adjustment and pay me, then, twenty-five
20 dollars. Or you can go down to Walmart buy a
21 bottle of pills for three dollars and twenty-five
22 cents and you get the same relief.' So basically
23 same period of time, more money, which one you
24 want to choose? Obviously jurors today are very
25 conscious of that.

1 And when we charge, you know what the
2 term is and everybody argues it now. It just sort
3 of rolled off when I was practicing, "reasonable
4 and necessary medical expenses." The word
5 necessary is the key. It may be reasonable, but
6 is it necessary? And that's where the proximate
7 cause comes in. It didn't cause that, the person
8 chose that.

9 So there's no question it has. It has
10 nothing to do with the amount. It has nothing to
11 do with the challenge. You're going to be able to
12 challenge any injury you want but what you're not
13 going to be able to challenge is that he's
14 entitled to any money because I'm going to direct
15 that they are going to find some amount.

16 MS. SPRUILL: And, Your Honor, I
17 think we're clear on the record about the
18 proximate cause and that we thought it should have
19 been charged. And there might have been some
20 confusion, but we understand ---

21 THE COURT: Well, I did charge it.

22 MS. SPRUILL: Well, you charged the
23 word but not what it meant.

24 THE COURT: Well, you never asked
25 me to expand on proximate cause.

1 MS. SPRUILL: I submitted charges on
2 it.

3 THE COURT: I told you and I
4 charged it. I charged it in the context it needed
5 to be charged at this point. I'm going to charge
6 it again because now we get into damages.

7 MS. SPRUILL: I understand, Your
8 Honor.

9 THE COURT: Okay.

10 MS. SPRUILL: We're moving along.

11 THE COURT: Maybe.

12 MS. SPRUILL: Earlier we had a
13 motion in limine about Dr. Shuman, where it caused
14 a flack because it hadn't been in plaintiff's
15 written motion and we heard about it that morning.
16 All we want to do is proffer his deposition for
17 what he would have said. We understand he's
18 excluded. This is our medical expert.

19 THE COURT: Okay. That's fine,
20 but I don't need it. You can just file it.

21 MS. SPRUILL: Okay.

22 THE COURT: That's all we need.

23 MS. SPRUILL: Do I give it to the
24 court reporter or the clerk?

25 THE COURT: No, excuse me. Excuse

1 me. No, I beg your pardon. It will be Court's
2 Exhibit Number -- I'm sorry. -- Court's Exhibit?

3 COURT REPORTER: Number 11.

4 THE COURT: Eleven. Thank you.

5 You're right.

6 MS. SPRUILL: There's no objection
7 to the proffer, is there?

8 MR. MCCULLOUGH: None.

9 (SO ENTERED AS COURT'S EXHIBIT 11)

10 MS. SPRUILL: The next little
11 matter -- well, first, let me check with
12 plaintiff's counsel. I assume y'all are still
13 planning to present evidence on future damages?

14 MR. MCCULLOUGH: Yeah.

15 MS. SPRUILL: We would move to
16 exclude that on the basis they don't have any
17 means of bringing it back to present value, as is
18 required.

19 THE COURT: Well, I appreciate
20 that. That's noted and I -- of course, I haven't
21 heard it yet. We make that at the close. Thank
22 you very much, not before.

23 MS. SPRUILL: Thank you, Your Honor.

24 THE COURT: Okay. Because I don't
25 -- you're protected but you don't have to make it

1 before because I've got to rule on the evidence as
2 it comes in. And just for your edification, that
3 would be a wonderful thing if you want to make the
4 law that requires that; somebody's going to end up
5 paying for that, and we don't know who. But the
6 bottom line is I tell the jury that.

7 MS. SPRUILL: Sure.

8 THE COURT: And there are tons of
9 times when it's not there, but I don't find a case
10 that was -- have you got a case that says you have
11 to have an expert?

12 MS. SPRUILL: No, what I have is
13 very generally the most recent case on if you need
14 an expert. That you need an expert when it's
15 something that's not within the jurors' general

16 THE COURT: I appreciate that.
17 But, you know the way I look at that? You've got
18 to also do something else, too, if your position
19 makes any sense. That we charge improperly on
20 expert witnesses because based on what you're
21 arguing is the jury has to believe this expert,
22 can't believe anything else, because otherwise
23 then you say it's all controlled by an expert
24 witness. I don't think that's the case but you
25 can argue that up the road. Thank you.

1 MS. SPRUILL: Thank you, Your
2 Honor. I think that is my list for pretrial.

3 THE COURT: At least for the
4 moment.

5 MS. SPRUILL: I think that's all.

6 THE COURT: Well, if you think of
7 something, we've got plenty of time to do it.
8 That's not a problem.

9 MS. SPRUILL: Thank you, Your Honor.

10 THE COURT: Because as I stated,
11 we're going to -- let's have an understanding.
12 When we're talking about 'you can argue', that's
13 going to be after the verdict is returned on the
14 damages issue. Then we'll send the jury back and
15 we'll bring them back in and you can have further
16 argument about the apportionment.

17 MS. RUPARELIA: On the allocation?

18 THE COURT: Yes.

19 MS. SPRUILL: So you don't want
20 the allocation in the opening and closing then?

21 THE COURT: I don't want them now
22 because you can come back.

23 MS. SPRUILL: Okay.

24 THE COURT: Because the statute
25 says so. I mean, the statute says you can --

1 well, it's says it's optional. It doesn't say you
2 shall. It says may. And that's when I think it's
3 best suited.

4 MR. MCCULLOUGH: Yes, sir. And I
5 just want to make sure. It's our position under
6 all of the law in South Carolina up to this point
7 that a settling defendant would not appear on any
8 allocation. And in this instance, I've got not
9 only the Act itself but the Chester case, which
10 I'm sure you are familiar with.

11 THE COURT: Yeah. That's the one
12 that says you can pick and choose who you want to
13 sue.

14 MS. SPRUILL: Yes, Your Honor.

15 THE COURT: Yes, sir.

16 MR. MCCULLOUGH: And in Chester
17 they settle. And, Your Honor, Judge Harwell -- I
18 know these are federal district court cases.

19 THE COURT: Yeah.

20 MR. MCCULLOUGH: We've got two
21 federal district court judges who have reviewed
22 all of this. And my understanding ---

23 THE COURT: I'll be happy to read
24 that. I appreciate your position. I'll make a
25 determination. I'm just stating for the purposes

1 of this at this moment, I don't want to talk about
2 allocation because it hasn't been determined yet.

3 MR. MCCULLOUGH: Yes, sir.

4 THE COURT: As to whether or not
5 the amount of damages. For instance, for
6 instance, obviously we know the amounts paid are
7 a setoff; correct?

8 MR. MCCULLOUGH: Yes, sir.

9 THE COURT: If the verdict is
10 under the amounts paid, there's no reason for
11 allocation because it's done.

12 MS. SPRUILL: We agree with you
13 there, sir.

14 THE COURT: So, I mean, there's no
15 question it goes to it unless there was a sign-off
16 that says that this doesn't apply to anything. I
17 think the statute has some provision for that as
18 well. At least that's my thought. Yeah, I'll be
19 happy to receive those cases. So having said
20 that, there's no reason to argue, to make any
21 opening statements about it because it may not be
22 necessary.

23 MS. SPRUILL: We understand, Your
24 Honor.

25 THE COURT: Okay.

1 MS. SPRUILL: Thank you.

2 THE COURT: Uh-huh. But you can
3 make your opening statements concerning the
4 damages issue.

5 MR. MCCULLOUGH: Yes, sir.

6 MS. SPRUILL: Beg the court's
7 indulgence one second?

8 THE COURT: Sure. Absolutely. My
9 directed verdict is and I will tell the jury,
10 there will be an instruction that they have to
11 find some amount of damages in this case. And
12 we've talked about it and you can argue that
13 further at the appropriate stage. But I will tell
14 them that, as well.

15 MS. SPRUILL: And just for the record,
16 we renew our previous arguments.

17 THE COURT: Well, you've already done
18 that. Like I just said, I understand that.

19 MS. SPRUILL: Thank you, Your Honor.

20 THE COURT: Are we ready for the jury?

21 MR. MCCULLOUGH: Yes, sir.

22 THE COURT: Defense ready?

23 MS. RUPARELIA: Yes, Your Honor.

24 THE COURT: Bring in the jury.

25 (JURY IN @ 11:24 A.M.)

1 BAILIFF: All jurors are present,
2 Your Honor.

3 THE COURT: Thank you very much.
4 As a child I heard a friend of my father's say one
5 time -- they had hunted somewhere and they'd
6 stayed up late, imagine that. I didn't ask what
7 they were doing. I don't need to know. But the
8 comment made the next morning was "it didn't take
9 me long to spend last night." I think it didn't
10 us long to spend last night. I appreciate again,
11 thank you very much for doing something -- I
12 thought about it riding home last night and riding
13 in this morning. I told you how much I believe in
14 this system. And you all are shining examples of
15 why I do believe that, and I thank you for that.
16 That isn't something you wanted to do. Each of
17 you have lots of things that are going on right
18 now in your lives. And I understand that. But to
19 make the sacrifice for this process that you made
20 is incredible. And I just appreciate that. I
21 thought about it. And didn't expect otherwise,
22 but I have had situations where jurors didn't come
23 back the next day. Not necessarily in this
24 setting but they just didn't -- they went to work
25 or did something else because they misunderstood.

1 I'm sure. But you were here and you were here
2 timely. I hope you did get some rest. And I
3 thank you very much.

4 And now we've finished one part of this
5 process by your decision you made, your decision
6 has established certain parameters of going
7 forward.

8 I had just placed on the record that I am
9 going to be directing you in my charge at the
10 conclusion, and we know there are four parts, that
11 you must return some damage. Because I've found
12 that based on what the evidence has already
13 established and what's going to come forward that
14 the plaintiff suffered some injury or damage.

15 And if you recall, there were three
16 essential elements required of a plaintiff
17 bringing this case. They had to prove to that
18 standard that we know, the preponderance or
19 greater weight of the evidence. And the
20 negligence part, which you determined yesterday.
21 And the negligence is, the negligence is you heard
22 and saw in the charge it proximately caused some
23 injury or damage. And thirdly, that they suffered
24 some injury or damage.

25 Now, I will charge you about proximate

1 cause, because it's in part -- there are two
2 factors that you're going to be using in this
3 second phase is to determine what damage. And
4 I'll define those damages for you at the
5 conclusion of the trial, and whether or not that
6 damage was proximately caused by the negligence
7 that you found. Because that's -- in order to be
8 compensable, there has to be proximately caused by
9 the carelessness.

10 Now, you have found in this case
11 negligence on the part of both parties. That's
12 what you were instructed to do. You made that
13 allocation. And I will follow that allocation and
14 apply it.

15 I will tell you this again at the
16 conclusion. Don't let the fact that you assigned
17 any degree of negligence to anybody affect what we
18 will do in this proceeding because this proceeding
19 is to determine the amount of damages that the
20 plaintiff has suffered. I found that he's -- I'm
21 telling you in my opinion the evidence shows that
22 he suffered some damage. But what that damage is
23 and the amount will be left to your determination.

24 So we will be charging you at the
25 conclusion on the various elements of damages you

1 may consider.

2 I'll define for you proximate cause, but
3 I can tell you now that proximate cause is a
4 commonsense term. It's a legal term, proximate
5 cause. But it's a cause that without which there
6 would have been no damage or injury. And that's
7 the connection that has to be established by the
8 preponderance of the evidence.

9 You will be hearing testimony now.
10 Again, we'll go through that same process that we
11 did before. And at the conclusion, you'll hear
12 the arguments concerning the damage issue and then
13 I will give you the law. And, again, I thank you
14 for your attention throughout and I look forward
15 to working with you and to see this case to its
16 conclusion.

17 Please give your attention now the
18 attorneys as they give their opening statements.
19 Mr. McCullough.

20 MR. MCCULLOUGH: May it please the
21 Court.

22 THE COURT: Yes, sir.

23 OPENING STATEMENT

24 BY MR. MCCULLOUGH:

25 Good morning. I'm going to mirror what

1 MS. RUPARELIA: There's a lot
2 leading questions, Your Honor.

3 THE COURT: I'll allow some leeway
4 with that. Thank you very much. I overrule at
5 this point. Please renew it if you feel it
6 continues to excess.

7 MS. RUPARELIA: Thank you.

8 THE COURT: Thank you.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. KHAN:

11 Q. Bob, prior to January 24th, 2013 in the
12 condition that you say you were in, what were your
13 plans professionally at that time?

14 A. Well, the first reason why I went to help
15 my son was to see where I -- what I felt on the
16 court. Particularly, I think I could do it. And
17 after I realized I could do it and day after day I
18 got stronger and stronger, he, you know, I had
19 more and more say with the team, things like that.
20 He was at the junior college at that time. And
21 him being the head coach at the junior college,
22 you know, I was a volunteer coach.

23 Q. Were you preparing yourself to go back
24 into the workforce?

25 A. Oh, yeah. Yeah, I had tremendous hope

1 that that was going to happen.

2 Q. Who were you talking to at that time as
3 to various positions available?

4 A Well, in the NBA I have several friends.
5 And the NBA is about friends. It's not
6 necessarily always what you can do. But you've
7 got to make the right connections.

8 Q. Did you have those connections?

9 A. Well, yeah. I had good connections with
10 the people who were good friends of mine. They
11 know my capabilities.

12 Q. Were you speaking to them about
13 positions?

14 A. Oh, yeah. Oh, yeah.

15 Q. Who were you speaking with?

16 A. Nate McMillan who now is an assistant
17 coach at the Indiana Pacers. He's in his mid-
18 forties. He's prime-time age for another shot at
19 a head job.

20 Trey Vincent, early forties, with the New
21 Orleans Pelicans.

22 The reason I know them so well, they were
23 players of mine. I taught them how to play the
24 game. They've got great respect for me.

25 Pat Zinfield (phonetic), a well-respected

1 NBA scout throughout the NBA. And he has
2 aspirations of becoming a head coach.

3 There's different ways you become a head
4 coach. You can be Stevie Kerr and play with
5 Michael Jordan, been a TV Commentator. And he
6 says, well, you're a coach. Well, it looks like
7 he's a pretty good coach because his team's
8 winning. But give him a bad team and then we'll
9 see how much of a coach he is.

10 Q. In addition to working your contacts, did
11 you actually apply for a position as well?

12 A. Oh, yeah. I applied at several
13 universities.

14 Q. There's no hiding the fact that you've
15 got grey hair on your head; right?

16 A. That's correct.

17 Q. Why does a man like Bob Burke, at your
18 age with grey hair, have value on a collegiate or
19 professional level?

20 A. Well, I've seen about every aspect of the
21 business. And I've got many contacts. And
22 consequently the contacts, whether they be at the
23 college level or at the pro level, if you're in a
24 scouting position, you know all the college
25 coaches. You can get the real low-down on a young

1 man, because if you're going to give that guy
2 fifty, sixty, seventy million dollars, you don't
3 want to be throwing it away. You want to make
4 sure you're getting the right guy and you're
5 getting the right scoop on him.

6 Q. Have you personally evaluated and coached
7 players that went on to go into the NBA?

8 A. Yes.

9 Q. What was your special knack? Was that
10 your special knack?

11 A. You know, a musician, an artist, someone
12 that has great vision, I can't tell you but I was
13 born to become a coach. I was a coach when I was
14 six or seven, organizing basketball games and
15 telling the guys what park we were playing at and
16 where we would go.

17 Q. Do you have a knack for identifying
18 talent?

19 A. Yes.

20 Q. Obviously, you weren't forty at the time,
21 but how long did you plan to work?

22 A. If I got another job, that was a job that
23 I felt I could enjoy, I planned to work maybe
24 three to five more years.

25 Q. Monday you testified to your experience

1 coaching, correct?

2 A. Yes.

3 Q. Based on your experience on a collegiate
4 and professional level, do you know what you would
5 have expected to make on average in a position?

6 A. Well, they come in all different levels.
7 And your ability to negotiate, what your agent
8 negotiates a contract for you, and the needs of
9 that particular staff, if we're talking about Pro
10 level, anywhere from a hundred thousand to five
11 hundred fifty thousand (\$100,000 to \$500,000).

12 Q. Okay. Did you have ---

13 A. As an assistant coach.

14 Q. Okay. Did you have an average under-
15 standing of what you expected to make, the range
16 is one hundred to five hundred thousand?

17 A. That's the range in the NBA, yeah. It
18 might be even a little bit more for a couple of
19 guys. But, you know, that's not, that's not made
20 for public. It's all privately negotiated.

21 MS. RUPARELIA: Uh ---

22 THE COURT: Yes, ma'am.

23 MS. RUPARELIA: This is such
24 speculative testimony, Your Honor.

25 THE COURT: Thank you. I'm going

1 to allow the testimony. I would instruct the
2 jury, of course, they can't award speculative
3 damages.

4 MS. RUPARELIA: Okay.

5 THE COURT: Okay. Thank you.

6 Overruled. I'll allow an individual to testify to
7 his opinion because I think that's proper.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. KHAN:

10 Q. Mr. Burke, did you get the opportunity to
11 go back to work?

12 A. Get the opportunity to go back to work?

13 Q. That's right?

14 A. Before the incident or after?

15 Q. Right?

16 A. Before?

17 Q. Based on the incident, did you get the
18 opportunity to go back to work?

19 A. No.

20 Q. Could you do that job now?

21 A. I don't think I can do it right now.

22 It's in my heart and in my soul. It's in my brain
23 but, you know, I've got to face reality. Now, as
24 far as scouting, I could do that.

25 Q. Mr. Burke, how much money did you make

1 your last year at the, for the Trail Blazers?

2 A. I was paid by Nate McMillan, my last year
3 with the Trail Blazers. I started out at a salary
4 of a hundred thousand dollars (\$100,000) my first
5 year. My position changed because the team was so
6 doggone bad, we had to find some players. And I
7 went out and became a scout, still made a hundred
8 thousand dollars. That second year we worked on
9 our second GM in two years. The third year, we
10 got a third GM. So the first three years I'm
11 there we had three major bosses. They worked at
12 that juncture. Nate McMillan wanted me there and
13 he paid me privately.

14 Q. He paid you at the same rate?

15 A. Close to it.

16 Q. On Monday we talked a lot about the
17 incident at George Street. Correct?

18 A. At where?

19 Q. At George Street parking lot?

20 A. Yes.

21 Q. And the jury has now determined that
22 Republic was careless. We couldn't get into a
23 lot of your medical testimony and your injuries
24 at that time.

25 What I'd like to do briefly is take you

1 back to that night, from the point of you going in
2 the air and for you to tell the jury what you
3 felt, what you remember?

4 A. Well, after I tripped -- now, we're
5 talking a second or two. We're not talking about
6 a long period of time.

7 Q. I understand.

8 A. I fell forward. The sensation of blood
9 through my arms, I could feel it. However, I
10 couldn't get up because the blow that I took to my
11 midsection area and my upper legs was like, 'man,
12 what's going on?' And, you know, if any of you
13 guys played football or soccer or whatever, you
14 know, got hit below the belt. It was a whole lot
15 worse than that. So it was a terrible blow. You
16 know, I was trying to gather myself.

17 And the two gentlemen that were working
18 -- I don't know whether both of them were working,
19 they're rushing me along. 'Oh, yeah. He's all
20 right.' And they dust me off.

21 And, of course, a young man came by,
22 stopped and -- a good Samaritan.

23 Q. Where did it hurt on your body? Tell the
24 jury everywhere that you can remember it hurting.

25 A. My entire body hurt. And it got worse

1 and worse and worse. From getting into the EMT
2 truck, who was -- then I could see a little bit
3 because they cut my clothes off.

4 Q. What sensation were you feeling in your
5 arms?

6 A. Well, the sensation of blood.

7 Q. Did you see blood?

8 A. I couldn't stop bleeding for about five
9 or six days, if I understand. It's in the record,
10 I think.

11 Q. Did you see blood coming through my
12 clothes?

13 A. Through my clothes?

14 Q. Yes, sir?

15 A. Only when I got to my car, did I really
16 see the blood.

17 Q. Did you see blood dripping down your
18 hands?

19 A. Oh, yeah.

20 Q. When you hit the pavement, did you feel
21 any other sensations in your forearms?

22 A. In my forearms?

23 Q. Right?

24 A. Just the sensation that they were sore
25 and I felt the blood. I don't know whether, you

1 know, eventually within thirty minutes there was a
2 swelling within my whole body. But I didn't know
3 at that time my kidneys were shutting down.

4 Q. Did you hit your knee as well?

5 A. I hit my knee. I hit -- I hit both
6 knees.

7 Q. Okay.

8 A. I hit my chest.

9 Q. When you got back to your car -- we heard
10 all the testimony. You got back to your car with
11 Mr. Cammer's aid?

12 A. I got back to my car what?

13 Q. When you got back to your car with the
14 aid of Mr. Cammer that you testified to?

15 A. Right.

16 Q. And you got within the light of the
17 vehicle, could you see more blood at that point?

18 A. That's when I really saw the blood. It
19 was too dark to see anything else.

20 Q. What did EMS when they came, what did
21 they do to your clothes?

22 A. They put some flashlights on me. The guy
23 was -- I can't tell you what he was working on or
24 what he was looking for or anything like that, I
25 was somewhat in a daze. But he turned to his

1 partner. He said, 'we've got to get this guy to
2 the hospital.'

3 Q. Were you scared?

4 A. Was I scared?

5 Q. Yes?

6 A. When you don't know what's happening to
7 you but you know it's the worst pain you've ever
8 felt in your life, you're doggone right I'm
9 scared.

10 Q. Let me ask you a question. We've heard
11 some testimony this week about something called
12 Unna boots. Are these Unna boots?

13 A. No. They're a hundred and fifty dollar
14 Berlin Shoes.

15 Q. Did you have these on that night?

16 A. Yes.

17 Q. Okay. So these are the shoes you were
18 wearing?

19 A. Yes.

20 Q. What are Unna Boots as they've been
21 described? Are they really boots?

22 A. No, they're not boots. And we call it
23 and the people at Duke University call it the Duke
24 wrap. The wrap was invented at Duke. I can't
25 tell you who the doctor was that invented in the

1 '50s, early '60s, but it's -- the wrapping starts
2 a little bit below your ankle and it goes a little
3 bit above your shin, not quite to your knee. It's
4 almost like -- some people might put it on their
5 arms or elbows or whatnot.

6 Q. Okay. Like an Ace bandage?

7 A. Yeah. An Ace bandage because that's just
8 part of the process. It's much more tighter, and
9 the idea is to force the fluid up and out.

10 Q. Does it restrict your mobility in any
11 way?

12 A. No, it wasn't restricting my -- I coached
13 with it. I coached with them on.

14 Q. Did you have them on?

15 A. I danced with them on.

16 Q. Did you have them on that night?

17 A. Yeah.

18 Q. And you were still able to wear the
19 shoes?

20 A. Oh, yeah.

21 Q. We heard some either argument or
22 something to the point of -- that your legs were
23 numb that night. Were your legs numb that night?

24 A. No, I have a little tingling in my feet,
25 but they're not numb. I couldn't do the things

1 that I did if my feet were numb.

2 Q. What about eye issues. Did you have any
3 trouble seeing?

4 A. Well, I wear these (indicating glasses)
5 to read but, you know, I don't wear them to drive.

6 Q. Okay. Bob, you are on blood thinners;
7 right?

8 A. Correct.

9 Q. Have you ever fallen prior to this night
10 like that?

11 A. No. No.

12 Q. Which hospital did EMS take you to?

13 A. They took me to MUSC.

14 Q. Do you know if you went to the emergency
15 room?

16 A. I went to the emergency room first.

17 Q. Do you know if you went to some form of a
18 critical care unit?

19 A. Yes, I did, but I'm really, really out of
20 it by that time. I don't know what they're
21 putting in my arms or whatnot, because they're
22 worrying about stopping this blood.

23 Q. So you're feeling pretty bad at this
24 point?

25 A. Yeah. So I mean I -- I'm not taking

1 notes.

2 Q. I understand. I didn't expect you to.

3 Were you admitted to MUSC?

4 A. Yes.

5 Q. Do you know approximately how many days
6 you spent at MUSC?

7 A. Approximately about a month.

8 Q. Okay. Did you have any trouble eating?

9 A. Yes, I did.

10 Q. Do you know if you received blood
11 transfusions?

12 A. I think I did. But, again, when you're
13 out of it and a nurse says 'you need to take
14 this', my faith is in the nurse or the doctor.

15 Q. I understand. I'm not asking if you knew
16 it at that time. As you sit here today, do you
17 know if you received blood transfusions?

18 A. Yes.

19 Q. Do you know approximately how many units
20 of blood you received at MUSC?

21 A. Approximately twenty units of blood,
22 depending on which -- every medical person I talk
23 to, just in general conversation says, "Wow."

24 MS. RUPARELIA: Your Honor.

25 THE COURT: I sustain the

1 objection. It's hearsay. Thank you.

2 MS. RUPARELIA: Thank you, Your
3 Honor.

4 THE COURT: As to what anybody
5 told you.

6 WITNESS: That's a lot. Their
7 comments.

8 THE COURT: Excuse me, Mr. Burke.
9 I've sustained the objection. Wait for the next
10 question. Thank you, sir.

11 DIRECT EXAMINATION CONTINUED

12 BY MR. KHAN:

13 Q. Do you know if the medical professionals
14 were having trouble stopping your internal
15 bleeding?

16 MS. RUPARELIA: Your Honor,
17 there's a lot leading.

18 THE COURT: That's not leading.
19 Overrule the ---

20 MR. KHAN: Does he know?

21 THE COURT: Excuse me. I overrule
22 your objection to that question. It's a proper
23 question in my opinion.

24 WITNESS: There were struggling with the
25 overall situation.

DIRECT EXAMINATION CONTINUED

BY MR. KHAN:

Q. Did you know specifically if they were struggling to stop the blood?

A. The first six days I don't really know too much when I was in there. But I think they told me they finally got it stopped after the sixth day.

Q. Nothing else was going on in your life to have caused this; correct?

A. Nothing's going on in my life?

Q. Other than your incident at George Street, was anything else going on in your life to have caused this to you?

A. No.

Q. Tell us generally about the swelling of your body at MUSC, in general?

A. Well, I weighed about 235, 240, right in that range when I went in. They weighed me a couple days later, I was 295 pounds.

Q. Were your legs swelling?

A. They looked like tree trunks. As a matter of fact, my legs were way, way, over my head and I had a massage machine trying to pump the fluid out.

1 Q. Was your right knee swelling?

2 A. Yes, it was. It was as big as a water-
3 melon.

4 Q. What about your fingers, were they
5 swelling?

6 A. Twice the size of one.

7 Q. I know this next question may be a little
8 embarrassing. I know that there's a lot of folks
9 in here, but I think it's important. Was there
10 any other portion of your body that was swollen?

11 A. I don't mean to offend anybody, and the
12 male might understand this a little bit more, but
13 my testicles were as big as coconuts.

14 Q. Approximately how long did the swelling
15 you just described last?

16 A. A good part of it started going down at
17 Roper, which is one of the reasons why they
18 transferred me to Roper, because I got so where I
19 could move a little bit with a walker. And they
20 started trying to build my body back up.

21 Q. You testified earlier that you were at
22 MUSC for about a month; correct?

23 A. Yes.

24 Q. Describe the pain you were experiencing
25 at the hospital; MUSC?

1 A. Describe the pain at MUSC?

2 Q. Correct, that you were ---

3 A. And Roper?

4 Q. MUSC, describe the pain?

5 A. It's excruciating. I mean, when you're
6 sitting in the hospital and there ain't no one
7 there and it's two and three and four or five
8 o'clock in the morning, and you're thinking about
9 your life, the mental stress I had was as painful
10 as what my body felt. I've got a lovely family.
11 We built a beautiful family. I'm proud of my
12 family. All we try to do is the right thing. I
13 didn't want to leave that. I thought I was going
14 to die. I already was dead for seven minutes, six
15 years earlier.

16 Q. Your wife, Jane, did she spend time with
17 you at MUSC?

18 A. She was right there next to me when she
19 got down there.

20 Q. What about your daughter, Ashlyn?

21 A. Yes, she was living in Charleston at that
22 time.

23 Q. What about your son, Rob, was he there
24 with you at MUSC?

25 A. Yeah.

1 Q. As he testified?

2 A. Not as much as my -- neither one of my
3 children were there as much as my wife. My wife
4 just dropped everything and got down there.

5 Q. And you were in fear of dying?

6 A. Excuse me?

7 Q. You were in fear of dying?

8 A. I didn't know -- I couldn't move. I
9 couldn't scratch my head. I couldn't wiggle my
10 toes.

11 Q. When you tried to, was that painful?

12 A. Very painful. That's what made it that
13 much painful. You can't move so you're almost
14 like you're in a -- in a, uh, coffin.

15 Q. Do you know if you were on pain
16 medication?

17 A. On pain medication?

18 Q. Right?

19 A. Yeah. They gave me pain medication
20 constantly.

21 Q. Okay. After about a month you were
22 discharged from MUSC; correct?

23 A. Correct.

24 Q. Where were you next admitted.

25 A. About a block and a half away is Roper,

1 and that's where they took me.

2 Q. How long were you at Roper?

3 A. Approximately three to four weeks.

4 Q. What did you do at Roper?

5 A. Well, their task was to try, from the way
6 I understand it, was to get some of the fluid out.
7 The rehabilitation program that they had me set up
8 for, I worked twice, sometimes three times a day.
9 And as I said before, you know, you work on your
10 upper body strength, because you lose every bit of
11 the strength you have. Not that I'm Hercules or
12 anything, but I was a pretty strong guy at one
13 time.

14 Q. Was the rehab painful?

15 A. Was it -- rehab what?

16 Q. Painful?

17 A. Well, when you've got to push yourself,
18 yeah, it's painful. On top of the fact that the
19 internal bleeding hadn't gone away and I'm still
20 dealing with the kidney issue.

21 THE COURT: Need a break?

22 BAILIFF: (Affirmative nod).

23 THE COURT: Okay. Ladies and
24 gentlemen, at this point we'll take a recess.
25 Go to your jury room. Do not begin your

1 deliberations. Thank you.

2 (JURY OUT @ 12:20 P.M.)

3 THE COURT: All right. Anything
4 from the plaintiff before we recess?

5 MR. KHAN: No, sir.

6 THE COURT: Anything from the
7 Defendant?

8 MS. RUPARELIA: Nothing at all,
9 Your Honor.

10 THE COURT: At this point, we'll
11 take a break. I don't know what the problem was,
12 but we'll find out when the jury wants to come
13 back.

14 Mr. Burke, at this point, you're welcome
15 to stay there. If you need to come down, that's
16 fine. But please don't have any conversation with
17 any of the attorneys, please, sir?

18 WITNESS: Don't have any what?

19 THE COURT: Conversation with any
20 of the attorneys during this break.

21 WITNESS: My attorneys?

22 THE COURT: Yes, sir.

23 WITNESS: Oh, okay. I'll just
24 stay here.

25 THE COURT: That's good. Thank

1 you, sir.

2 How much longer do you think you're going
3 to be.

4 MR. KHAN: Your Honor, I'm going
5 to try to get through it.

6 THE COURT: No, no. I'm not
7 asking you to speed it up. I'm just ---

8 MR. KHAN: Probably fifteen
9 minutes.

10 THE COURT: So twenty.

11 MS. RUPARELIA: Are we going to
12 break early for lunch or ---

13 THE COURT: Well, not yet. You'll
14 help me ---

15 MS. RUPARELIA: And I appreciate
16 it so ---

17 THE COURT: I'll try to manage
18 this, if I'm getting out of line you holler at me
19 and just let me know.

20 MS. RUPARELIA: I appreciate that.
21 Sorry, Judge.

22 THE COURT: I'll run that part.
23 How long do you anticipate your cross-examination?

24 MS. RUPARELIA: Twenty minutes,
25 thirty, I may ---

1 THE COURT: That's fine, okay.

2 That's fine. That's good. Thank you. All
3 right. We'll be at-ease for a few minutes.

4 (BRIEF RECESS)

5 THE COURT: I don't worry about
6 that. It's okay. I promise you. Everybody deals
7 with them differently. I don't -- I let them
8 bring the problem if they're willing to share.
9 Thank you. I'm not going to inquire unless it's
10 necessary.

11 If I notice that she's not paying
12 attention, not following, I'll deal with that.
13 I think I'm -- at least as far as I know, I'm the
14 only one that dealt with a sleeping juror in a
15 wreck. It was in Columbia. And I made a comment.
16 And thank goodness I did. In ruling on it, they
17 moved to dismiss it. But it's her. And she did
18 -- what she did, she would do this. But every so
19 often, she'd pick up her notepad and write and
20 then go back down. I said, you know, it appears
21 -- well, she appears to be sleeping but she's
22 obviously listening because she's picking up and
23 writing down. The court that was fine. So it'll
24 be okay.

25 MS. SPRUILL: She's an eyes-closed

1 learner?

2 THE COURT: Well, she was really trying
3 to visualize it. Really trying to get it. Let's
4 talk about, this is my -- getting my mind around
5 today, what's left of today, you still have the
6 witness that has to come tomorrow; correct?

7 MR. MCCULLOUGH: Yes, sir.

8 THE COURT: And that's fine.

9 MR. MCCULLOUGH: Yes, sir.

10 THE COURT: That's not a problem
11 because that -- one thing I was going to assure
12 everybody that if we finished the testimony today,
13 we would come back tomorrow. So that was a given
14 anyway. Okay.

15 MS. SPRUILL: We understand, Your
16 Honor.

17 THE COURT: And it's not for us.
18 We can all have the fun and fellowship that we had
19 for ten hours in the courtroom yesterday, but it's
20 ---

21 MS. SPRUILL: I think it made us a
22 little punchy.

23 THE COURT: --- but it's for those
24 people that are locked down in the jury room that
25 I worry about.

1 MR. MCCULLOUGH: We should at least
2 have cable.

3 THE COURT: Yeah. You know, we
4 did that one time. We really did. I think it was
5 Robert came up and you can program it and you can
6 get it out and you can bring it in on this. It
7 has the capability, because I watched it one time.
8 We all did.

9 MR. KHAN: It's got to be a
10 football game.

11 THE COURT: Well, we could wait
12 and do a -- all right. Do you want to see if
13 they're ready? Let's bring them in.

14 MS. SPRUILL: I'm super ready.

15 THE COURT: Boy.

16 MR. MCCULLOUGH: Just so you know,
17 we have -- and if we've told you this, I
18 apologize. We have counter designated video depo.
19 And that's ready, Your Honor. I think it's about
20 forty and forty. So cumulative ---

21 THE COURT: About an hour and a
22 half.

23 MR. MCCULLOUGH: About an hour and
24 twenty minutes.

25 THE COURT: It's not a problem.

1 Well, just for your information, and your inquiry
2 also, and I appreciate that.

3 MS. RUPARELIA: Yes, sir.

4 THE COURT: I'm going to break
5 around, somewhere around 1:00. That was my game
6 plan today. And to take an hour and a half for
7 lunch. Give them a chance to break, relax, as
8 well. And I don't -- this is me. You tell me if
9 you want to start. I prefer if we're going to
10 break, especially in the plaintiff's case, or
11 anybody's really, before you start your cross-
12 examination. That way we don't have any problem
13 with -- I mean, there never would be but the
14 potential for some discussion about protecting
15 problems or correcting problems is removed.

16 MS. RUPARELIA: Yeah. That would
17 be our preference.

18 THE COURT: Okay. Well, I plan to
19 do that. So you can just know that you're going
20 to probably, you're going to probably do your
21 cross after lunch.

22 MS. RUPARELIA: Thank you.

23 THE COURT: Okay. All right.
24 Thanks. No, but I understand your concern. And
25 over the years that's just been my philosophy and

1 practice that I try to think of the situation.
2 I'm not -- and don't take that as an implication,
3 to imply that you'd do anything underhandedly?

4 MR. KHAN: No.

5 THE COURT: All right, bring them
6 in. Thank you.

7 (JURY IN @ 12:25 P.M.)

8 BAILIFF: All jurors are
9 present, Your Honor.

10 THE COURT: Thank you very much,
11 ladies and gentlemen. Thank you also again. And,
12 again, please know that at any time any juror
13 needs to take a break that's no problem what-
14 soever. I generally try to do it in an hour and a
15 half intervals, but sometimes -- and we'd been
16 there for that long this morning too. So I
17 appreciate that. But please feel free to do that
18 at any time. If anyone needs a break before the
19 hour and a half, I don't mind breaking at all.
20 All right.

21 Thank you very much for allowing the
22 interruption. You may resume your examination.

23 MR. KHAN: Thank you, Judge.

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION RESUMED

1 BY MR. KHAN:

2 Q. Bob, after Roper Rehab, where did you go
3 then? Did you go home?

4 A. I went home.

5 Q. Did you continue to have a need for
6 medical treatment and services at home?

7 A. Yes, I did. I had home care treatment.

8 Q. For about how long?

9 A. Five or six weeks.

10 Q. Well, just generally and briefly, what
11 did that entail?

12 A. Excuse me?

13 Q. Generally and briefly, what did that
14 entail?

15 A. A series of exercises. Eventually, I
16 started using a walker to go outside. At that
17 particular time, it was in -- if I'm not mistaken,
18 the weather was, you know -- I don't know whether
19 it was March or April but the weather was starting
20 to be pretty nice. And I live in a cul-de-sac,
21 and we try to walk -- it's an up-grade. So we
22 would try to walk fifty to sixty yards, turn
23 around, gradually, as each day went by, you know,
24 I got to the point where I could walk with a cane.
25 And then got a little better and got away from the

1 cane.

2 Q. Okay. So between MUSC, between Roper,
3 and between your home care, based on your
4 testimony, that was about a three-month time
5 period; correct?

6 A. Yeah. I'd say it. Maybe a little bit
7 more.

8 Q. If you had to describe that three months
9 in one or two words, how would you describe it?

10 A. What my world was going to be or where
11 was I going? For the first time in my life I
12 didn't feel in control. And consequently, you
13 know, some doubt start to rise in my mind. I knew
14 I could count on my family, but as far as where I
15 was going to get employment and things like that,
16 I don't know.

17 Q. Okay. Today, can you go to the bathroom
18 by yourself?

19 A. No.

20 Q. Can you get dressed yourself?

21 A. No.

22 Q. Can you bathe yourself?

23 A. I can get a little bird bath.

24 Q. Okay. Do you rely on your family to
25 assist you with those tasks?

1 A. Well, where I'm at now, no. Primarily,
2 I've got some caretakers.

3 Q. But when you're here in the courthouse
4 and things of that nature?

5 A. Yeah. I mean, they've got to do what --
6 they would take over then, yes.

7 Q. Are you able to drive today?

8 A. Today?

9 Q. Yes?

10 A. No.

11 Q. Okay. You talked about MUSC, Roper, home
12 health. Did you receive medical bills for those
13 services?

14 A. Yes.

15 Q. How much did your medical bills total
16 approximately?

17 A. I'd say approximately about three hundred
18 thousand dollars (\$300,000).

19 MR. KHAN: (Tenders document to
20 be marked as exhibit)

21 COURT REPORTER: Plaintiff's
22 Exhibit 16 for identification.

23 MR. KHAN: Okay. Thank you.

24 (SO MARKED AS PLAINTIFF'S EXHIBIT 16)

25 DIRECT EXAMINATION CONTINUED

1 BY MR. KHAN:

2 Q. Bob, I'm handing you what's been marked
3 as Exhibit 16, Plaintiff's Exhibit 16. Do you
4 recognize that document?

5 A. Yes, I do.

6 Q. What is it generally?

7 A. It's a totalization of, an accumulation
8 of the bills that I had.

9 Q. Okay. Can you flip to the last page and
10 tell us the total?

11 A. The last page. You want the total?

12 Q. Yes, sir?

13 A. Two hundred thousand, ninety-nine dollars
14 -- ninety-nine, four hundred sixty dollars and
15 ninety-three cents (\$299,460.93)

16 Q. I didn't really understand that. Can you
17 read it one more time?

18 A. Two hundred ninety-nine thousand four
19 hundred sixty and ninety-three cents
20 (\$299,460.93).

21 Q. Thank you. And what date does that say
22 that was through?

23 A. The last date down here it says 9/2/2014.

24 Q. Okay. Thank you. Are you cured? Are
25 you all better?

1 A. No.

2 Q. Are you still having medical treatments?

3 A. Yes, I am.

4 Q. There was a reference to diabetes. How
5 long have you had diabetes?

6 A. I've had diabetes back in my days at
7 coaching at Chowan. It runs in my family.

8 Q. Did it have any impact on your coaching
9 career?

10 A. No. And check my record, I was a pretty
11 good coach there at Chowan. No, it didn't have --
12 I was a one-man coaching staff at Chowan. I went
13 to Hawaii and continued to coach. As long as you
14 understand what you've got and you exercise, try
15 to eat right, you know, you can beat -- you can
16 stay ahead of diabetes. You ain't never going to
17 beat it.

18 Q. Okay. Kidneys, to your knowledge did you
19 have any kidney issues prior to January 24, 2013?

20 A. No.

21 Q. I want to talk to you about your knee for
22 a minute. Did you ever have any substantial knee
23 issues, prior to January 2013, January 24, 2013?

24 A. No. I had some aches and pains
25 occasionally if I only had a few hours' sleep or,

1 you know, a bad of running; other than that, no.

2 Q. After the incident of January 24th, 2013,
3 did you have a lot of knee pain?

4 A. Yes, I did.

5 Q. Was it substantial?

6 A. Yes, it was.

7 Q. Did you need to seek treatment for it?

8 A. Yes, I did.

9 Q. When you were back in Wilson, North
10 Carolina, how did you treatment?

11 A. Well, I took several shots intermittently
12 over six to eight weeks, cortisone.

13 Q. Never had to have those before; correct?

14 A. No, never had a cortisone shot.

15 Q. Did the pain continue?

16 A. It continued.

17 Q. Did you seek further treatment?

18 A. Yeah. I decided to try something that
19 some different people have told me about and I
20 have seen advertised, is a gel insert. It's a
21 series of six inserts along with some exercises.
22 And that gives you temporary relief. When I say
23 temporary, after about eight months, it was
24 locking up on me. They don't guarantee nothing,
25 you know, and they stipulate that. And I think

1 that's part of the catch to get people to come
2 there. But it made me manageable in terms of
3 walking here, there, and driving my car. So, I
4 got around. But then eventually, it locked up on
5 me.

6 Q. All right. So at a certain point, did
7 you and your doctor discuss a knee replacement?

8 A. Well, we went to Duke University and we
9 did some discussing with the doctors there. And,
10 you know, they said yes; then I had the knee
11 surgery.

12 Q. And you, together with your doctor's
13 consultation, decided to have the right knee
14 replacement?

15 A. That's correct.

16 Q. Approximately when did you have the right
17 knee replaced?

18 A. August 5th.

19 Q. Of what year?

20 A. Of '14.

21 Q. This year? Did you have complications
22 form that surgery?

23 A. Yes. Yes, I did.

24 Q. What was the complication?

25 A. I had several complications. In the

1 beginning, I didn't handle the drug medication
2 for the operation. My wife and children could
3 probably tell you how I acted. I wasn't the same
4 guy. After a while, with the right -- with the
5 medical, the medicine team, I should say, they
6 found the right balance to bring me back down to
7 earth. I think that was about a ten or twelve day
8 period. And then I got blood poisoning.

9 Q. Okay.

10 A. And I got several different kinds of
11 treatments in trying to see exactly where the
12 virus was. And one distinctive treatment that I
13 had was them sticking a camera all the ways down
14 to the back of my heart.

15 Q. Okay.

16 A. Not a very comfortable feeling.

17 Q. I can imagine. Prior to this incident of
18 January 24th, 2013, you didn't need any surgery;
19 correct?

20 A. That's right.

21 Q. And the treatments you sought prior to
22 the knee surgery would not satisfy the condition
23 that you were suffering from; correct?

24 A. No.

25 MR. KHAN: Your Honor, that's all

1 your name.

2 CROSS EXAMINATION CONTINUED

3 BY MS. RUPARELIA:

4 Q. You signed the tax returns?

5 A. Yeah.

6 Q. Okay.

7 MS. RUPARELIA: Your Honor, I
8 would move to introduce them as Defendant's
9 Exhibits 24, 25, and -- 23, 24, 25?

10 THE COURT: Any objection?

11 COURT REPORTER: 24, 25, 26.

12 MR. KHAN: At the proper time
13 if proper redaction were necessary.

14 MS. RUPARELIA: Sure. Sure.

15 THE COURT: Okay. It'll be
16 admitted without objection subject to the
17 redaction of certain information.

18 (SO ENTERED AS DEFENDANT'S EXHIBIT 24)

19 (SO ENTERED AS DEFENDANT'S EXHIBIT 25)

20 (SO ENTERED AS DEFENDANT'S EXHIBIT 26)

21 THE COURT: Which is critical
22 under our law today.

23 MS. RUPARELIA: Yes, sir. Your
24 Honor, it's 24, 25, and 26.

25 THE COURT: 24, 25, 26.

1 Defendant's 24, 25, and 26 are admitted.

2 And 24 is which?

3 MS. RUPARELIA: 24 is the 2009 tax
4 return.

5 THE COURT: Yes, ma'am. 2010 is
6 25?

7 MS. RUPARELIA: 25. And 2011 is
8 26.

9 THE COURT: Thank you.

10 CROSS EXAMINATION CONTINUED

11 BY MS. RUPARELIA:

12 Q. Let's look at your 2009 tax return, Mr.
13 Burke?

14 A. Uh-huh.

15 Q. And that was when you said that you were
16 essentially helping your son? And that was when
17 you were helping your daughter at Brunswick?

18 A. Well, which one is it?

19 Q. Your son, from 2009 to 2011, you said you
20 worked for two years and you helped your daughter?

21 A. Right.

22 Q. And during that time, do you see where
23 your tax returns show that you have any income at
24 all from any speaking engagements or anything at
25 all that you did during that time?

1 A. I didn't say I made a lot of money.

2 Q. Okay. All right. How about we flip to
3 2010. Same thing?

4 A. Okay.

5 Q. You see on both 2009 and 2010, that y'all
6 collected unemployment compensation. You see
7 that?

8 A. Yeah.

9 Q. Okay. And what was that for? Who was
10 collecting the unemployment?

11 A. I was collecting unemployment.

12 Q. Okay. The same thing in 2011?

13 A. Okay. What's your question?

14 Q. Were you collecting unemployment benefits
15 in 2011?

16 A. 2011, let's see. Where would that put
17 me?

18 Q. It's on the first page, sir?

19 A. I might have been. That might have been
20 the year that I had disability.

21 Q. You had disability?

22 A. Uh-huh, (affirmative nod).

23 Q. And why did you have disability?

24 A. I had disability because some of the
25 strain of my heart attack -- excuse me. It wasn't

1 a heart attack. It was A-fib.

2 Q. Yes, sir.

3 A. Let's get that clear because I had that
4 word used before. And I applied for disability.
5 It was close to the point of where I was going to
6 officially retire and collect my Social Security.
7 That was their decision. And it was the first
8 time -- I applied, and they granted it, which is,
9 from my understanding, rather unusual.

10 Q. Okay. Are you currently getting
11 disability benefits?

12 A. No, I'm not currently. I'm on Social
13 Security.

14 Q. That's right. Okay. And actually your
15 tax returns show Social Security benefits in 2011,
16 2009, and 2010 as well; correct?

17 A. My what?

18 Q. The tax returns show that either you or
19 your wife have been collecting Social Security
20 during the last -- the three years that you have
21 those tax returns for?

22 A. Where does that say that?

23 Q. If you look at ---

24 A. Twenty-eight?

25 Q. Yeah. Look at line 28.

1 A. Yeah. Okay.

2 Q. On all three of them?

3 A. Okay.

4 Q. So you do see Social Security benefits on
5 all three?

6 A. I had collected, I know, disability maybe
7 a year, year and a half, then I turned over into
8 the, uh, Social ---

9 Q. Social Security?

10 A. Social Security, (affirmative nod).

11 Q. Okay. I was just trying to figure out,
12 Mr. Burke, how much did you make for you speaking
13 engagements that you ---

14 A. I told you I didn't make much.

15 Q. Okay. And when you say not much, how
16 much is that?

17 A. To count room and expenses, less than
18 five hundred dollars (\$500).

19 Q. Less than how much?

20 A. Less than five hundred dollars (\$500).

21 Q. Okay. And just so the jury is clear, Mr.
22 Burke, on those tax returns, there is some
23 business income that I believe is attributed to
24 your wife; is that correct?

25 A. Yeah.

1 MR. KHAN: Your Honor, Plaintiff would
2 object to that record and any other medical
3 records pursuant to Rule 803(6), unless they can
4 be authenticated.

5 THE COURT: Okay.

6 MS. RUPARELIA: Your Honor, we're not
7 seeking to admit them.

8 THE COURT: Well, that's right.
9 They've got ID on them.

10 MS. RUPARELIA: Yes, sir. We're only
11 identifying.

12 THE COURT: I'd ask you not to publish
13 or have him publish any aspect of it, please.

14 MS. RUPARELIA: Okay. I'll just ask
15 him questions from it, Your Honor.

16 THE COURT: You can't publish it in
17 the record, either. If he wants to refresh his
18 recollection, that's fine.

19 MS. RUPARELIA: Yes, sir.

20 CROSS EXAMINATION CONTINUED

21 BY MS. RUPARELIA:

22 Q. If you would take a look at that.

23 MS. RUPARELIA: It's 26, right?
24 Ma'am?

25 COURT REPORTER: Number 27.

1 matters of law that I need to take up out of your
2 presence. Do not begin your deliberations.

3 (JURY OUT @ 3:40 P.M.)

4 THE COURT: All right. I have
5 stopped you concerning the medical records.
6 Objection was made for authentication. And your
7 objection is based on what, which Rule, again?

8 MR. KHAN: Your Honor, I had rule
9 -- sorry -- 803(6).

10 THE COURT: Well, I agree with
11 that. But the problem that I have is 803(4) has
12 a different connotation to it.

13 MR. KHAN: Right.

14 THE COURT: And the part that --
15 and I didn't see -- I didn't have the record. I
16 needed to look at it. Because clearly medical
17 history, for the purpose of diagnosis is accepted,
18 and I understand that.

19 The problem that I have is, for instance,
20 Exhibit 30 it's written in the sense of not --
21 this is what -- his having talked to him and then
22 it's his conclusions based on that conversation.
23 I don't quarrel that it may be from the standpoint
24 of a medical history. But I don't have that type
25 of setup. And I'm not going to allow, for

1 instance, Exhibit 30. Exhibit 29, ---

2 MS. RUPARELIA: What's the date on
3 that document, Judge?

4 THE COURT: Exhibit 30 is July 2010.

5 MS. RUPARELIA: Okay.

6 THE COURT: Exhibit 29 is a MUA rehab
7 services charting.

8 MS. RUPARELIA: Right. It's February
9 7, 2014.

10 THE COURT: Yes. That, I will allow
11 you to publish Exhibit 29. That is clearly
12 medical history for the purposes of diagnosis, and
13 obviously subject to the objection of counsel. So
14 Exhibit 29 you may admit if you choose to.
15 Exhibit 28 ---

16 MS. RUPARELIA: And the date on that,
17 Your Honor? THE COURT: Exhibit 29 is what
18 you told me. 2/7.

19 MS. RUPARELIA: Right. I got that
20 one. I got that one.

21 THE COURT: 2/7. All right. Just one
22 second. If you'll let me pause so I can read it
23 and then I can give you everything that you're
24 asking for, okay?

25 Yeah, I -- Exhibit 28 again falls into

1 the category and that is a letter from Dr. Hooper
2 dated July 1, 2011. That, again, is obviously a
3 conversation. But I don't know what was for the
4 purposes of medical diagnosis, rather than just
5 conversation. And that's improper. Because we
6 know that -- at least my interpretation, 803(4)
7 doesn't allow everything that's said. It is only
8 for the purposes of a medical diagnosis?

9 MS. RUPARELIA: Correct.

10 THE COURT: It talks about -- and
11 supports the veracity of the statement. So I
12 would not allow 28 for those reasons.

13 MS. RUPARELIA: Okay.

14 THE COURT: 27, 5/10/07, that is
15 apparently a note or report. It doesn't say. I'm
16 not sure which one that is, other than the fact --
17 It's Dr. Hooper apparently again.

18 MS. RUPARELIA: Yes, sir.

19 THE COURT: Portions of that
20 document would be, such as problems lists,
21 medications taken -- probably that paragraph that
22 his diabetic medications are being managed by an
23 endocrinologist. That clearly would be for
24 purposes of evaluation of what he needed to do.
25 Maybe the first page, really, in its entirety.

1 MS. SPRUILL: The first page is
2 okay?

3 THE COURT: Yeah. The first page
4 is okay. The second page is where he begins to
5 summarize his visit, and talking about what his
6 observations are. I don't quarrel that some of
7 those are, but it's not clear. So the first page
8 of 27, I will allow it as well, under 803(4).
9 Now, is there anything else you wanted to proffer?

10 MS. RUPARELIA: Were there more?
11 I think there were quite a few more. We started
12 at 25, I think.

13 COURT REPORTER: 25 were the tax
14 returns.

15 MS. RUPARELIA: Oh, I'm sorry.

16 THE COURT: Yeah. 27, 28 and 29
17 were the medical records.

18 MS. RUPARELIA: Okay. Okay.
19 Well, can redact.

20 THE COURT: Well, no, you just --
21 as I've stated, you can redact what you want. You
22 can ask him and publish that part of it, okay, for
23 purposes of redirect [sic].

24 COURT REPORTER: That's 27, 28, and
25 29.

1 THE COURT: Now, if you want to
2 proffer anything else, other than what I've just
3 alluded to, please feel free to do so while the
4 jury's out.

5 COURT REPORTER: Did we address
6 Number 30?

7 THE COURT: Let me see 30. Let me
8 see it again. I thought I did.

9 MS. SPRUILL: I think it was 30 and
10 28 were no. 29 was yes and 27, partial.

11 THE COURT: Yes, that's right.

12 COURT REPORTER: Okay. Yes.

13 THE COURT: 30 is -- that's that
14 summary page from the doctor.

15 MS. SPRUILL: Okay.

16 THE COURT: Thank you.

17 MR. KHAN: Is the highlighted
18 copy in or are you going to take that out?

19 MS. RUPARELIA: We can take that
20 out.

21 THE COURT: You can make a copy
22 and redact those portions, any portions of the
23 first page. As I said, the ones that are clearly
24 history, I don't have any problem with that under
25 the rules.

1 MS. RUPARELIA: So if we're --
2 okay.

3 THE COURT: And let me say the
4 reason I'm overruling the business record because
5 if we could establish as a business record then
6 sure it comes in under the rule that you cited.
7 But 803(4) allows us to have that portion that was
8 for the purposes of medical diagnosis.

9 MR. KHAN: We would agree to
10 that, Your Honor. We just didn't ---

11 THE COURT: I understand.

12 MR. KHAN: Thank you.

13 THE COURT: No problem.

14 MS. RUPARELIA: We have 27 is
15 okay, the first page. And 29 is ---

16 THE COURT: So you want to remove
17 the rest of it ---

18 MS. RUPARELIA: Yeah.

19 THE COURT: --- and that way the
20 record will be clear.

21 MS. RUPARELIA: Yeah, I'm just
22 going to ---

23 MS. SPRUILL: Was that ID?

24 THE COURT: Sure, if you want to.

25 MS. SPRUILL: Maybe a 27-A or.

1 something?

2 THE COURT: That's fine.

3 MS. RUPARELIA: Actually there's
4 two pages 27-A and -B.

5 COURT REPORTER: Just 27A. It's
6 the same document. So you're moving in which
7 ones?

8 MS. RUPARELIA: 27 and 29.

9 COURT REPORTER: Thank you.

10 MS. RUPARELIA: And the Judge
11 said, you know, and the 30 ---

12 COURT REPORTER: 30?

13 MS. RUPARELIA: These were just
14 for ID.

15 THE COURT: 28 is for ID, 30 is
16 for ID.

17 MS. RUPARELIA: 30's ID.

18 COURT REPORTER: Thank you.

19 MS. RUPARELIA: And there was
20 another one I was getting ready to do, Judge but
21 you wouldn't let me.

22 THE COURT: Well, let me see it
23 and I'll be happy to rule on it.

24 MR. KHAN: Okay.

25 MS. RUPARELIA: Yeah. She's just

1 going to mark them for ID purposes and ---

2 THE COURT: And let me hear so
3 that I can rule on the purposes of review if that
4 becomes necessary. What are your reasoning that
5 those I've excluded to come in if they can't come
6 in under records?

7 MR. KHAN: Because all we're
8 doing is we're asking to refresh his recollection.

9 THE COURT: And my problem with
10 that is, really and truly, that's an artful use.
11 And I'm all in favor of it, except for -- read
12 611(a). Costa Pleconis put me on 611(a). And
13 probably the only rule that I know in the Rules of
14 Evidence that -- it places a burden on me or any
15 trial judge to make sure that it's fair. What the
16 problem is, is the way it's presented you're
17 implying what's in that document is correct. And
18 when you say, 'can you refresh your recollection',
19 it's not his document. So he's refreshing a
20 recollection, asking him to remember something
21 that somebody else said. And so I'm not going to
22 allow it for that purpose. So thank you.

23 MS. RUPARELIA: If, Your Honor ---

24 THE COURT: All right. What else?

25 MS. RUPARELIA: Well, we would

1 disagree on 803(4) because those are statements
2 made for the purposes of medical treatments.

3 THE COURT: I appreciate that.
4 You show me where that, other than the fact that
5 it's contained in his recitation and obviously
6 would have had to have been given to him. But it
7 could have been in a conversation. I don't know
8 whether it was for a specific purpose for
9 diagnosis or not. And that's the problem.

10 And I think there are a number of cases
11 on that, that it doesn't expand to include
12 everything that's said to the doctor. It has to
13 be specifically for the purpose of diagnosis and
14 gives credence to the truthfulness of it. Because
15 nobody -- if they are there to be diagnosed for a
16 problem, they typically aren't lying.

17 MS. RUPARELIA: I've just got one
18 more to proffer, Your Honor.

19 THE COURT: Excuse me.

20 MS. RUPARELIA: I have one more to
21 proffer.

22 THE COURT: Sure. Let me -- well,
23 it's not a proffer. Let me see it and then we'll
24 see if it's a proffer.

25 COURT REPORTER: Defendant's

1 Exhibit Number 31 for identification.

2 (SO MARKED AS DEFENDANT'S EXHIBIT 31)

3 MR. KHAN: Is that five?

4 MS. RUPARELIA: That would be it.

5 MR. KHAN: Was that the five?

6 MS. RUPARELIA: Five.

7 MR. KHAN: Okay. That was after
8 litigation was commenced.

9 THE COURT: The date of this
10 3/27/14?

11 MS. RUPARELIA: Correct.

12 THE COURT: And the litigation was
13 filed when?

14 MR. KHAN: 3/8/2013.

15 MS. RUPARELIA: But it does
16 provide us some history, Judge.

17 THE COURT: Hold on. (Upon
18 review), I'm not going to allow that.

19 First of all, the -- first of all it's
20 really not -- he's talking about a right knee
21 pain, which he's already testified to. So I don't
22 know what you need that for. You can mark that.
23 It's cumulative, number one.

24 And 403, a 403 analysis says that
25 probative value is outweighed by the prejudice

1 because I don't know the truthfulness of this and
2 it's really not clear as to diagnosis. So I would
3 exclude it on that basis as well.

4 And, furthermore, it's after the fact.

5 And, you know, as I told you in sidebar,
6 there's a way to get all of this so the jury can
7 hear. It's called a deposition or presenting a
8 witness. So thank you.

9 For those reasons, I would exclude it --
10 and 611, 403 and 611.

11 All right.

12 MS. RUPARELIA: Yes, sir. I think
13 I just need to take the highlight off the center.

14 THE COURT: Well, we can make
15 another copy. We don't -- you're not going to
16 show it to the jury right now are you?

17 MS. RUPARELIA: No.

18 THE COURT: Okay. Well, we can
19 get all of that done because we've got to get the
20 tax returns cleaned up with all identifying
21 information having to be removed.

22 MS. SPRUILL: But she can publish
23 from the document now because it's going to be --

24 THE COURT: Those that I've
25 mentioned are admitted into evidence.

1 MS. SPRUILL: Thank you, Your Honor.

2 THE COURT: You bet, thank you.

3 Are you ready?

4 (SO ENTERED AS DEFENDANT'S EXHIBIT 27A)

5 (SO ENTERED AS DEFENDANT'S EXHIBIT 29)

6 THE COURT: Okay. Bring in our
7 jury. Do you need a break, Mr. Burke or you okay?

8 WITNESS: I'm sorry?

9 THE COURT: Do you need a break or
10 are you okay, Mr. Burke?

11 WITNESS: I'm okay. Thank you.

12 THE COURT: Yes, sir.

13 (JURY IN @ 3:50 P.M.)

14 BAILIFF: All jurors are
15 present, Your Honor.

16 THE COURT: Thank you very much
17 ladies and gentlemen. Now we've made some
18 decisions and, Ms. Ruparelia, do you wish to
19 recross?

20 MS. RUPARELIA: Yes, Your Honor.

21 THE COURT: You may proceed.

22 RECROSS-EXAMINATION

23 BY MS. RUPARELIA:

24 Q. Mr. Burke, I'm going to hand you the
25 Defendant's Exhibit Number 29 and I'm going to

1 Honor.

2 THE COURT: Yes, sir. All right.

3 They're going to -- they'll take you ---

4 WITNESS: I'm done?

5 THE COURT: Yes, sir. You are finished
6 for now.

7 (WITNESS STEPS DOWN)

8 THE COURT: Your next witness.

9 MR. MCCULLOUGH: Yes, sir, Ashlyn
10 Burke.

11 THE COURT: Okay.

12 (WITNESS TAKES STAND)

13 ASHLYN BURKE, having been previously
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCCULLOUGH:

17 Q. Okay. We had to hit pause in your
18 testimony?

19 A. Right.

20 Q. So let's go back to January 24, 2013;
21 okay?

22 A. Uh-huh.

23 Q. You have arrived at the scene and are in
24 the process of -- you got your father in the car,
25 okay?

1 A. (Affirmative nod).

2 Q. Describe for the jury your observations
3 of your father's physical condition on the night
4 of January 24, 2013, when you arrived at the
5 George Street Parking Lot.

6 A. Well, he was obviously just startled and
7 really excited. Just kind of in shock of all of
8 what had happened.

9 His car looked like a murder scene and that's
10 the best way I can describe it because there was
11 blood all over the seats. He had on a wool black
12 jacket, which blood was coming out profusely out
13 of that. So it was all over me, all over him.
14 Got him into the car.

15 Obviously, the EMS decided to take him, you
16 know, to the hospital.

17 But his pain was completely -- he was just
18 stiffening up. His whole body was stiffening up
19 and that's what he kept saying. I had a hard time
20 getting his legs even into the passenger side of
21 the car because they were so stiff.

22 Q. Now, could you actually -- I believe you
23 testified previously that when you grabbed his arm
24 that you could feel something. Just tell us ---

25 A. Oh, yeah. I mean, his whole -- if you

1 think about a wool black jacket, his whole jacket
2 was soaking wet. To the point where the paper
3 towels that my mom had in the car, you know, me
4 wrapping that around, it was not even worth doing
5 it.

6 Q. Right.

7 A. And my hands were completely covered in
8 blood from just grabbing him and just trying to
9 feel like where he was bleeding and what was kind
10 of going on because I really couldn't see
11 anything.

12 Q. Specifically -- well, first of all, did
13 he tell you what he was feeling at that time?
14 Did he tell you what hurt?

15 MS. RUPARELIA: Your Honor, ---

16 THE COURT: Excuse me.

17 MS. RUPARELIA: That's hearsay,
18 Your Honor.

19 THE COURT: No, I'll overrule the
20 objection at this point.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. MCCULLOUGH:

23 Q. You may continue.

24 A. He was telling me that his shoulder hurt,
25 his elbow hurt, his knee was killing him. He

1 said, you know, my stomach -- I feel like
2 somebody's knocked the wind out of me. And ---

3 Q. Okay. Go ahead, I'm sorry.

4 A. And just the excruciating pain that he
5 was in.

6 Q. And at one point were you trying to
7 assist him from the driver's side to the
8 passenger's side of his vehicle?

9 A. Yes. So I walked in -- when I first got
10 to the scene, he was there leaning against the
11 driver's side. So I walked him around to the
12 passenger's side so I could get him into the car
13 and try to get him to the emergency room. Because
14 I knew once I had touched his arm and he was -- I
15 mean, the whole jacket was drenched in blood.

16 Q. And did you observe, as you were trying
17 to move him -- you mentioned stiffness. Was some
18 of that stiffness in his lower body and right knee
19 area?

20 A. So when I was trying to get his legs into
21 the actual car. He sat down, because it was a car
22 seat. He sat down and to try to get his legs into
23 the car, they were just stiff. It was having to
24 almost push the seat all the way back, push his
25 leg up to try to get it into the car where your

1 feet would go, where the -- you know.

2 Q. And then the EMS came.

3 A. And the EMS came.

4 Q. Who made the decision to take him to the
5 emergency room?

6 A. EMS.

7 Q. All right. And did you follow in your
8 dad's vehicle?

9 A. I did. So EMS right there said, 'We've
10 got to take him to the hospital. We've got to get
11 him to the hospital now.' I said, 'I'll follow
12 you there.' And I drove my dad's car at that
13 point, pulled it into the parking spot at MUSC
14 Emergency.

15 Q. And did you tell -- you went into the
16 emergency room?

17 A. Oh, yes. I was with him the whole time.

18 Q. You were with him that night?

19 A. Yes.

20 Q. Describe your recollection of what
21 happened after you got to the ER, those first
22 couple of hours?

23 A. Well, once we got into the ER and they
24 got him onto a bed. He just kept, you know, "I
25 can't believe I fell." He was just like shaking,

1 shaking. And then as, you know, a couple twenty,
2 thirty minutes, I kept seeing things get worse and
3 worse and I kept noting to the nurse. When is
4 something -- you know, when you go into the ER,
5 'I'm like what's the next step. Where are we
6 going from here?' His arms started getting stiff.
7 Then he couldn't start -- he had started where he
8 couldn't move his arms. He kept complaining about
9 how bad he was hurting, how bad he was hurting.
10 And next thing I know, we're going to the ICU
11 Unit.

12 Q. That was my next question. At some point
13 late in the evening of January 24th, rolling into
14 early January 25, 2013, was your dad transferred
15 from the emergency room into the intensive care
16 unit?

17 A. Yes.

18 Q. And did you -- you were there when all of
19 this transpired?

20 A. Yes. So that night I had called my mom.
21 And I said, you know, 'Dad's taken a fall. I
22 don't want you to get on this road this late.'
23 It was already late. It's a four-hour drive. I
24 said, 'let me just see what's going on.'

25 By that time, they had -- by the time my mom

1 got there we were already in the intensive care
2 unit.

3 And when we got into the intensive, he was
4 out of it. I mean, by that time he had no clue
5 what was going on. All he was doing was when you
6 see -- imagine your father, a grown man crying in
7 excruciating pain, it's very hurtful.

8 Q. And I want to -- what did you observe?
9 What did you observe that was related to his
10 physical condition and his complaints of pain?

11 A. Just excruciating pain to the point where
12 he couldn't move. To the point where he just was
13 so out of it. The medication they were giving him
14 made him just completely zonked out.

15 You know, the pain -- I keep going back to
16 the pain because I've never seen my dad physically
17 break down and cry as a grown man. And that's
18 what was happening.

19 Q. And your brother arrived and your mother
20 came?

21 A. Yeah. So my brother arrived. He
22 actually -- I'd sent him a text and said, 'We're
23 not at the game. Dad's taken a fall. You've got
24 to come as soon as you can. We're in the
25 emergency room.' And eventually, later in the

1 morning is when my brother got there. And then my
2 mom came. You know, she was on the road early
3 that morning.

4 Q. And between the three of you was somebody
5 with your father pretty much throughout his stay
6 in the ICU?

7 A. We never left his side. If it wasn't
8 myself, my mom or my brother or all three of us;
9 no one ever left his side. He might not recall
10 that, but someone has been there with him 24/7.

11 Q. And during those -- and he was in the ICU
12 for days; correct?

13 A. Oh, yes. Oh, yeah. He was there, five,
14 six, seven days.

15 Q. And what was your observation of his
16 condition in the intensive care unit during that
17 time? What did you see?

18 A. Well, honestly you don't know if he's
19 going to make it. I mean, he's got -- they're
20 pumping blood into him. Then they're saying that
21 'this' is going on and 'this' is going on. Every
22 time you turned around it was like one thing
23 spiraling from this fall. And I didn't --
24 honestly did not know at one point if he was going
25 to make it because he was losing so much blood,

1 the pain, the non-movement, that he couldn't move.

2 Q. And during that time was the primary
3 focus, from your observations, their efforts to
4 stop the bleeding?

5 A. They were trying to stop the bleeding.
6 I mean, they were working diligently to stop the
7 bleeding.

8 Q. And during this time was he also
9 swelling?

10 A. Oh, gosh. He was huge. He was -- his
11 legs were -- his stomach, his legs, his hands,
12 everything on his body was swollen. I mean, he
13 looked twice the size of his normal size.

14 Q. At some point after -- sometime -- five,
15 six, seven days, did he stabilize and was
16 transferred from intensive care to, I guess, to a
17 regular floor?

18 A. He did. He got into a regular room. So
19 he got out of intensive care. And then he got
20 into a regular room but was there for weeks.

21 Q. During that time, was somebody with him,
22 either you, or your brother or your mother?

23 A. Yes. Because what would happen. When
24 you have, I think -- he got so scared and so, you
25 know, once he got into a regular room he kind of

1 came to. I mean, he thought he was going to die,
2 literally is what he thought. He was going to
3 die. So no one could leave him. I mean, if you
4 weren't -- if someone wasn't in that room with
5 him, whether it was my mom, myself or my brother,
6 the three of us spent every single night with him
7 in the hospital. We'd take turns. And that's
8 what we would do. And because he thought he was
9 going to die. You could not leave him.

10 Q. And this was for several weeks?

11 A. Oh, yeah.

12 Q. During that time -- we need to go through
13 this, though I don't want to belabor it, but
14 describe for the jury what it was like as to what
15 you saw your father going through physically for
16 those weeks on the MUSC patient floor?

17 A. Well, for me, you have to look at it from
18 the standpoint of taking my dad, who is burning up
19 the roads, left and right, going to this game,
20 going to that game, helping this person, helping
21 that person, coaching on the floor. People would
22 ask him to come speak. He would tell them to come
23 do drills, whatever. And to take, to see him in
24 that state, where he can't move and is dependent
25 on somebody else was just -- it was really hard to

1 watch. And just to watch him be in pain for so
2 long and to have him need us when that's never
3 been the case before. I mean, I've never had to
4 help my dad to the bathroom. I am having to help
5 my dad to the bathroom. As a daughter, helping
6 your dad to the bathroom is not the first thing I
7 really want to do on my list, if you know what I
8 mean. But that's something we had to do and are
9 continuing to do. And it's just something you
10 just -- you can't imagine.

11 Q. While he was those weeks at MUSC, did he
12 continue to suffer from stiffness and swelling and
13 pain?

14 A. Oh, yeah. I mean, every night it was
15 pain medication. Every day it was pain
16 medication.

17 You know, we were trying to get his legs
18 moving, whether it was us moving his legs in the
19 bed, just trying to get him not from being so
20 stiff or not being in so much pain. He could
21 never get comfortable. He couldn't get
22 comfortable in bed.

23 Trying to eat. I mean, that was a task in
24 itself.

25 Trying to get him to the bathroom, you know,

1 when you got to go, you got to go.

2 Just trying to get him comfortable where he's
3 not in pain and not uncomfortable is just -- it's
4 really -- it's hard.

5 Q. Was there a time when he became
6 stabilized enough physically to transfer and did
7 you participate in his transfer physically over to
8 Roper rehab?

9 A. Yes.

10 Q. And the same operation?

11 A. Yes. Same operation. We got to Roper
12 and, you know, still a lot of pain but the
13 physical therapy started.

14 And, you know, it was still every night, you
15 could not leave him. Every night someone had to
16 stay with him. They don't like you to do that
17 there at Roper, but he was insistent that someone
18 be with him. If they didn't allow you to stay,
19 spend the night, then we would be there until
20 12:00, 1:00, 2:00 in the morning, until he would
21 fall asleep; in order for us to get home and get
22 four or five hours of sleep until he was up the
23 next morning.

24 Q. And during that time, were his lower
25 extremities, right knee, did it continue to be

1 swollen, continue to be painful.

2 A. Yes. Everything was swollen, you know,
3 knee, legs, thighs, everything.

4 Q. Your father talked about a significant
5 increase in weight over a short period of time
6 from fluid retention. Did you observe that?

7 A. Oh, yes. He looked twice the size of his
8 normal size. That's how much fluid that was on
9 his body.

10 Q. You've talked about your father's
11 emotional state during that time. Do you recall
12 what happened on Super Bowl Sunday, 2013?

13 A. Yes. Mom was at the hospital with dad.
14 Rob and I, we were sitting on the porch watching
15 the Super Bowl, eating, drinking beer, just like
16 everyone else does. And next thing we know, we
17 get a phone call from my mom that says 'You guys
18 have to get up here. Your dad thinks he's going
19 to die. Your dad thinks he's going to die. You
20 guys have to get up here.'

21 So immediately, my brother and I, we got in
22 the car together, drove a couple of blocks to MUSC
23 and when we got in there, dad was just crying. He
24 was saying like he loved us and that he was proud
25 of us and -- (emotional).

1 Q. Was that tough to see?

2 A. (Emotional) -- yeah.

3 Q. Prior to January 2013, was your -- just
4 describe your father. Talking about him -- let's
5 talk November, December, early January the three
6 or four months before his fall. Describe his
7 physical condition to this jury?

8 A. Oh, it's basketball season. He's great.
9 He's going to Rob's games. He's, you know, going
10 to practice. He's taking me to lunch. He's going
11 down to 319 to go see his buddy to go shop. He's
12 walking King Street. You know, he's active. I
13 mean, he is active. He's great. He's in great
14 spirits. It's basketball season. He's ready to
15 go. And that, you know, before that fall, that's
16 where he's at.

17 I mean, he drove down the night of that
18 Citadel/Charleston game, four and a half hours.
19 That's nothing for him. It's nothing for him to,
20 before that, drive two and a half hours when he
21 was helping me coach to help me run practice. And
22 turn around and drive two and a half hours back
23 home. I mean, that was not a big deal for us at
24 all.

25 Q. So despite the picture that they might

1 try to paint of a broken down, sick individual ---

2 A. Oh, (negative gesture).

3 Q. --- is that how you saw your father?

4 A. Absolutely not. I mean, my dad's had
5 diabetes since I was born. We, I mean, half of
6 America battles diabetes. As long as you control
7 it, you eat right, you do what you're supposed to
8 do, I mean -- and that's what we do. And my mom
9 makes sure of that. My mom makes sure he has
10 proper meals. He might not always want, you know,
11 a piece of grilled chicken. But, you know, that's
12 what she's there for. She makes sure he eats
13 right. He knows his limitations and I never heard
14 him complain about it.

15 Q. Have you observed -- what have you
16 observed about the change in his lifestyle, his
17 quality of life before and after January 24th,
18 2013?

19 A. Well, after the fall, it's been
20 measurable. It's been measurable on all of us.
21 He -- one thing he loves to do is he loves to go
22 shagging with my mom and he loves to go shagging
23 with me. And we love to dance. My favorite
24 person I dance with is my dad. And that's
25 something we haven't been able to do.

1 He loves to go to the beach. He loves to sit
2 on the beach. He loves to suntan. He loves to
3 look at the girls. We haven't been able to do
4 that.

5 Just -- even going to a restaurant, going to
6 a nice restaurant that doesn't have some sort of
7 handicap accessible elevator or something, that he
8 can get up and down stairs.

9 And now, I mean, all week, you know, just --
10 you guys see him wheeling in here. He's
11 embarrassed about that.

12 You know, you take a man who's been very
13 independent his entire life and has been on the
14 road, coaching, recruiting, going here and going
15 there, to take that away from him and to put him
16 in an environment that he has to depend on others
17 to do everything for him, pretty much, it's hard.
18 And that's basically where we're at now.

19 Q. And what have you observed as far as you
20 having to help him get dressed and go to the
21 bathroom and things like that. What have you see
22 -- what has that done to your dad?

23 A. I mean, it's made him breakdown,
24 honestly. I mean, Tuesday morning -- well, it was
25 yesterday, Tuesday morning. I got up yesterday

1 morning at 4:00 a.m. I left. I got to my dad.
2 I got my dad dressed, put on his underwear, put on
3 his shirt, helped him get dressed, helped him do
4 this. Got him a little cereal, got him to
5 dialysis by ten to 6:00. Dropped him off at
6 dialysis. At 8:00, we go back. We pick him up,
7 we get him here to the courthouse.

8 Q. Before this fall was your dad physically
9 independent?

10 A. Yes.

11 Q. Before this fall, had you had your father
12 on the floor running up and down the court,
13 coaching your girls?

14 A. Yes.

15 Q. Before this fall, did your father have
16 problems that you saw, everyday, running up and
17 down that court?

18 A. No.

19 Q. Since this fall, have you seen a
20 continued problem that your father has suffered
21 from knee pains that lead to his surgery?

22 A. Yes.

23 Q. In his current condition have you
24 observed a continued series of problems your
25 father has had physically since January 24th, 2013?

1 A. Yes.

2 Q. Was your father scared to go back in to
3 have knee surgery?

4 A. Yeah. He had a really hard time. Like I
5 mentioned before, like when he was in the hospital
6 thinking he was going to die, he had a really hard
7 time going back in and having his knee
8 replacement. He thought he was going to die. He
9 wrote us letters. The night before, I remember,
10 like sitting our porch outside our house and
11 having a glass of wine and just really just trying
12 to be a cheerleader, like, 'Dad, it's going to be
13 good. You're going to be all right. You know, go
14 in there positive.' And all the cheerleading we
15 could do, he still didn't -- thought he was going
16 to go in and he was going to come out and never
17 see us again.

18 Q. And he had tried everything else
19 conservatively before he got that surgery?

20 A. Oh, yeah. He had tried PT, he had tried
21 that Hyalgan shots. It's like a gel that goes in
22 between or somewhere in your knee. He got
23 cortisone shots, but, I mean, sometimes that stuff
24 may last two weeks, sometimes it may last four
25 weeks. But it was not a permanent fix. It wasn't

1 going to, you know, help him to get where he
2 needed to be.

3 Q. And so the night before his surgery he
4 wrote everybody in his family a letter?

5 A. Yes.

6 Q. Have you got the letter?

7 A. I do.

8 Q. Would you read that to the jury, please?

9 A. Let me see if I can get through this. It
10 says, (reading):

11 "Ashlyn, words are hard to describe my
12 love for you. You have made me and your mother
13 very proud. When you born with that little mark
14 on that pretty face, I knew that you would become
15 a knockout. As a young girl, your imagination ran
16 the course and now as a young woman your
17 creativity hopefully will allow you to take a
18 success in your new business. Go for it, girl!
19 You have my support and my respect. I know your
20 job at Brunswick and at The Citadel. Your work
21 ethic was well-respected and your coaching job
22 allowed me to see my little girl grow into a
23 leader. You amaze me with your competitive
24 spirit. What a great job you did. It made me so
25 proud to be your dad. Your love that you show to

1 Marissa, makes me think you will be a great
2 mother, just like your own mother. I can't
3 explain everything on paper, but my greatest joy
4 is when you and I dance. Keep shagging. Stay
5 close to your mom. She is your biggest fan. Her
6 wisdom is unmatched. She will need you in the
7 tough times. When you marry, know that I will be
8 there with you going down the aisle. If God
9 blesses you with a child, tell that child all
10 about Pop. Thank you for being here this week. I
11 love you. Keep smiling and shag one for me. Love
12 you, Dad."

13 Q. Thank you.

14 THE COURT: Cross-examination?

15 MS. RUPARELIA: None, Your Honor.

16 THE COURT: Thank you. You may step
17 down, Ms. Burke.

18 (WITNESS STEPS DOWN)

19 THE COURT: Who's your next witness?

20 MR. KHAN: Mike Capaccio.

21 THE COURT: Deb, you need a break?

22 COURT REPORTER: Only if the jury does.

23 THE COURT: Ladies and gentlemen, do
24 y'all need a break at this point. Okay. Anybody
25 need a break. Okay. Why don't we do that. I'll

1 let you go to your jury room for about fifteen
2 minutes. Don't discuss the case. Don't begin
3 your deliberation. Thanks, Deb.

4 (JURY OUT @ 4:20 P.M.)

5 THE COURT: All right. We'll be at
6 ease for about ten or fifteen minutes.

7 (BRIEF RECESS)

8 (JURY IN)

9 THE COURT: Call your next
10 witness, please.

11 MR. KHAN: Thank you, Your Honor.
12 The plaintiff calls Mike Capaccio to the
13 stand.

14 (WITNESS TAKES STAND)

15 MIKE CAPACCIO, having been duly sworn to
16 tell the truth, and nothing but the truth,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. KHAN:

20 Q. Thank you, Mr. Capaccio. Thank you for
21 coming this afternoon?

22 A. I work at The Citadel. I'm vice-
23 president for athletic development. I work in the
24 foundation at The Citadel. I do fundraising for
25 The Citadel.

1 Q. And how long have you been over there?

2 A. Going on three years.

3 Q. Have you ever coached basketball?

4 A. Yes, I have coached basketball. I
5 coached college basketball from 1983 to 2011.

6 Q. And have you coached players that have
7 gone on to play the NBA?

8 A. We were very fortunate at one school. I
9 had five kids that -- excuse me -- seven young men
10 that went on in a five-year period of time to the
11 NBA that were either number one or number two
12 draft picks.

13 Q. Do you know Bob Burke?

14 A. Yes, sir, I do.

15 Q. Do you know the rest of his family that's
16 been here today?

17 A. Yes, I do, sir.

18 Q. Are you related to the family?

19 A. No, sir.

20 Q. Generally, how do you know Bob and his
21 family?

22 A. I think, being a coach, a coach is kind
23 of an interesting deal because a lot of paths
24 cross obviously. And I think I ran across Coach
25 when he was at Hawaii. Actually, we were dealing

1 with another assistant that was out there, Jackson
2 Wheeler, on a young man that was looking to
3 transfer possibly to the school that we were at.
4 So we had some communication then. Of course,
5 it's a small world. And his head coach at that
6 time, his brother, was a very good friend of mine,
7 which I didn't know, in Illinois that coached the
8 high school team that I used to recruit a lot of
9 kids from. So we kind of had a natural, you know,
10 knowledge of a lot of common things, I guess, is
11 the bottom line.

12 Q. I don't know if you said, but do you know
13 generally what year that was?

14 A. This was the mid-90s.

15 Q. What about the family?

16 A. I think I met first Ashlyn. Of course,
17 I knew Rob with the coaching. He's always been a
18 coach. And like I said, coaching's a fraternity.
19 So you feel like you know everybody. It's an easy
20 fraternity because you call them "Coach", even if
21 you forget their name, which is good, which has
22 been a big advantage for me. But Ashlyn was a
23 student assistant at UNCW when I was at UNC-
24 Wilmington in senior administration. And she
25 worked with our marketing department at that time.

1 Q. Do you know a lot about Bob's coaching
2 career?

3 A. Yes. He's had a very successful coaching
4 career at Chowan and, you know, out in Hawaii and
5 the Portland Trail Blazers. He's a legend in the
6 State of North Carolina. He's in the Hall of
7 Fame. You know, he's got a lengthy resume, was at
8 one time on the same level I was at, competed at
9 the national tournament. And so, you know, you
10 know that history. Yes, sir, he's been very
11 successful in his craft.

12 Q. Is it fair to say this man really does
13 love basketball?

14 A. Yes, (laughs), he does love basketball.
15 There's no question about that.

16 Q. All right. Leading up to January 2013,
17 did you have the occasion to observe Mr. Burke on
18 occasion?

19 A. When I was at Brunswick, I was CEO on the
20 foundation. The president came in and kind of
21 game me a new role to be vice president for
22 athletics as well, too. So I oversaw the athletic
23 program at that time. That's when Ashlyn was
24 hired as our basketball coach. We had just
25 started a new program. We'd built a brand new

1 gym, state of the art facility. And Coach was
2 working with her down there in that capacity. So
3 I observed him on the floor quite a few times
4 helping with the team. And, you know, they had an
5 interesting relationship.

6 Q. Of course, based on your testimony, you
7 had known him from years prior?

8 A. Oh, absolutely, yeah. He had -- you
9 know, everybody knows Coach Burke in North
10 Carolina. I started coming out here and
11 recruiting. I came to North Carolina in 1999, but
12 I knew him way before then obviously when I was at
13 Indian Hills, and at the national tournament games
14 and things like that, so.

15 Q. Were you ever present when he was
16 assisting Ashlyn with her coaching?

17 A. Yes. I used to go down and watch the
18 practices quite frequently. With new programs, we
19 had new coaches and we had new facilities. So I'd
20 stop in. I wanted to make sure things were going
21 well. I've been in that profession for a while,
22 so -- not that I had all the answers but, you
23 know, just wanted to oversee it and get it off on
24 the right foot.

25 Q. He wasn't in a wheelchair then, was he?

1 A. No, sir.

2 Q. Was he dressed out like in athletic gear?

3 A. Yes. Yes, sir.

4 Q. Was he actually out on the court?

5 A. Yes, sir.

6 Q. Was he doing drills?

7 A. Yes, sir. He did a lot of shooting

8 drills. Defense was his specialty. He'd help

9 Ashlyn. You know, we were in a financial crunch

10 down there, obviously when you start a program

11 like that, so, you know, he was donating his time.

12 Obviously, with his background and reputation and

13 credentials it was a pretty good opportunity for

14 us to have a gentleman like that in our fold.

15 Q. Did you notice any physical impairments
16 of Bob at that time?

17 A. No, sir, not at that time.

18 Q. Have you ever seen him dance?

19 A. Yes. Yes, I have.

20 Q. What kind of dancing, if you know?

21 A. A shag for number one. He's good. I

22 mean, I've been to -- I mean, a lot of times in

23 Wilmington we had a lot of social events. We have

24 a lot of common friends. I remember him dancing

25 at Ashlyn's birthday party. I've seen him down at

1 SOS up in Myrtle Beach dancing before, which I
2 make appearances to once in a while. So, yeah,
3 I've seen him dance quite a bit. And he's an
4 excellent dancer by the way.

5 Q. Did you ever have occasion to go to The
6 Citadel basketball game?

7 A. Yes. Yes, I do.

8 Q. What is Rob, does Rob ---

9 A. Rob is the assistance coach there. Like
10 I said, I do oversee the athletic fundraising
11 there, so I spend some time with the coaches,
12 probably a little bit more with the basketball
13 people, you know, so -- because I like the sport.
14 I go to practice every once in a while; not as
15 much as I did at Brunswick, of course. It was a
16 different level and a different thing, so...

17 Q. Prior to January 2013, did you ever see
18 Bob at The Citadel practices?

19 A. Yes.

20 Q. You do know that Bob was injured in
21 January 2013; correct?

22 A. Yes, I do. Yes, sir.

23 Q. Where were you on the night of January
24 24, 2013?

25 A. Like most of us, we were at the College

1 of Charleston basketball game who was playing The
2 Citadel. That's the in-town rivalry. Most of us
3 were there.

4 Q. Did you see Ashlyn there?

5 A. Yes, I did.

6 Q. Were you expecting to see Bob there?

7 A. Yes, I was.

8 Q. Did you ever see Bob there?

9 A. I did not. He usually runs with Coach
10 Cremins and a lot of these other old coaches that
11 are around, you know, they come to a lot of the
12 games. But, yes, I did not see him that night.

13 Q. Do you recall anything as to your
14 discussions with Ashlyn about him -- about that
15 night and being there?

16 A. Well, I had -- yeah, I had some tickets
17 for Ashlyn. As a matter of fact, I ran across her
18 when I walked in. And she said, "I have to
19 leave."

20 MS. SPRUILL: Your Honor, hearsay.

21 THE COURT: That's not necessarily
22 offered for the truth of the matter asserted. I
23 overrule the objection as to that question, but
24 confine it to what's material.

25 WITNESS: Yes, sir.

1 DIRECT EXAMINATION CONTINUED

2 BY MR. KHAN:

3 Q. She told you that she had to leave.

4 A. And she sent me a text and said, "I will
5 not be coming to the game. I'm on the way to the
6 hospital with my dad."

7 MS. SPRUILL: Same, Your Honor.

8 THE COURT: Sustain the objection.

9 MR. KHAN: That's fine.

10 THE COURT: Disregard the last
11 statement from the witness.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. KHAN:

14 Q. Have you seen Bob since that night?

15 A. Yes, but not very often. I went and saw
16 him a couple of times at the hospital. And I've
17 seen him around once in a while at Rob's house,
18 but not very often anymore -- as much.

19 Q. Is this the same man that you remember
20 seeing prior to January 24, 2013?

21 A. No.

22 Q. Okay. From a physical standpoint?

23 A. No. He had a lot of energy just because
24 he loved the game so much. You know, there's
25 people like that.

1 Q. Since the accident and injury, have you
2 seen him dance?

3 A. No.

4 Q. Have you seen him out on the court?

5 A. I have not. I saw him at the basketball
6 game in a wheelchair.

7 Q. Okay. You discussed your coaching career
8 briefly. To your knowledge, do you know if
9 there's a market for someone like Bob ---

10 MS. SPRUILL: Objection, Your Honor. May
11 I approach?

12 THE COURT: Yes.

13 (OFF RECORD BENCH CONFERENCE)

14 THE COURT: The objection is under 701.
15 I overrule the objection. 701 permits a person to
16 render opinions, which would be based on
17 observation. And I find that to be within that
18 purview of 701. Overruled. Thank you. His own
19 personal understanding and knowledge as he's
20 already demonstrated. Thank you.

21 MS. SPRUILL: Your Honor, one further ---

22 THE COURT: Ma'am? No, we're not going
23 to argue further. If you want to go on with it,
24 when we take the first break, if you want to
25 supplement, that's fine.

1 MS. SPRUILL: Certainly, Your Honor.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. KHAN:

4 Q. Mr. Capaccio, to your knowledge, is there
5 a market for someone that has the same credentials
6 and experience as Bob Burke does?

7 A. There is always a market for somebody
8 that has that skill set. The gentleman I came to
9 work with at UNC-Wilmington is seventy years old,
10 sixty-nine years old. Last year was his last year
11 of coaching. He was an assistant coach. He was a
12 top assistant coach at Marquette University. They
13 brought him in, they combined him with younger
14 individuals that do a lot of the recruiting and
15 those things and they use these older gentlemen as
16 coaches. So they wouldn't get involved a lot with
17 the recruiting. They don't do all that stuff.
18 It's game plan. It's tape, it's film, it's things
19 like that. And a lot of the younger coaches now
20 are tapping into a lot of these individuals. If
21 you look at it, they're all over the place.

22 Q. Thank you, Mr. Capaccio.

23 MR. KHAN: That's all the questions I
24 have, Your Honor.

25 THE COURT: Any cross-examine?

1 MS. SPRUILL: Yes, Your Honor, very,
2 very briefly.

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MS. SPRUILL:

6 Q. Do you know anything specific about
7 employment prospects Mr. Burke may have had?

8 A. No, I do not, not specifically.

9 Q. And do you know anything specific about
10 Mr. Burke's medical history?

11 A. Not really. No. I knew he had diabetes,
12 but that was about it, yes.

13 Q. Thank you.

14 MS. SPRUILL: Nothing further.

15 THE COURT: Redirect.

16 MR. KHAN: No thank you, Your Honor.

17 THE COURT: Thank you. You may come
18 down.

19 WITNESS: Thank you.

20 (WITNESS STEPS DOWN)

21 MR. KHAN: We call Rob Burke.

22 (WITNESS TAKES STAND)

23 ROBERT JOSEPH BURKE, JR., having been
24 duly sworn to tell the truth, and nothing but
25 the truth, testified as follows:

DIRECT EXAMINATION

BY MR. MCCULLOUGH:

Q. Rob?

A. Yes.

Q. Introduce yourself to the jury?

A. My name's Rob Burke. I'm the Assistant Basketball Coach at The Citadel here in Charleston, South Carolina.

Q. And your relationship to Mr. Burke?

A. That's my dad, and my coach and my best friend.

Q. Briefly, tell the jury -- well, let me ask you this.

A. Yes.

Q. Did you spend time with your father in 2011, 2012 and early January of 2013?

A. Yes.

Q. Doing what?

A. Recruiting together, coaching, strategizing, socializing and being together a lot.

Q. Did you have an observation or an opportunity to observe his physical capacity and capabilities during that time?

A. Yes.

Q. What was he like?

1 A. He was normal. He was as normal as
2 anybody in this courtroom right now besides
3 himself.

4 He could walk. I had previously worked with
5 him on the floor at Spartanburg Methodist. I saw
6 my dad jog when he was my assistant coach from
7 half-court to baseline. And that was something --
8 when we changed drills, he jogged.

9 I saw him dance. I saw him dance with my mom
10 and my sister. An exuberant amount of energy to
11 the point where my dad at his age could go out and
12 stay out later than I could. I couldn't go out
13 like he could. I had to go to sleep. My dad
14 could go. He can go. He had an exuberant amount
15 of energy and a sharp, sharp mind.

16 Q. And let's really focus on the couple of
17 months before January?

18 A. Sure.

19 Q. Was he limping?

20 A. No.

21 Q. Did he complain of right knee pain? Was
22 he in a condition similar to today?

23 A. No, not even close. In July, before that
24 January, we had gone on a weekend recruiting trip
25 from Thursday to Sunday where we traveled from gym

1 to gym recruiting, evaluating talent, seeing
2 different players play. And we were moving around
3 like two assistant coaches would move around. And
4 I was using him to evaluate the talent that I
5 needed to see, that was going to be successful at
6 The Citadel.

7 Q. And did he have the, not only the
8 physical stamina or the energy level to keep up
9 with you?

10 A. Yes. Easily. Easily.

11 Q. And do you have children?

12 A. Yes.

13 Q. And was he involved in your life?

14 A. Just about every day he was around them.
15 I have an older daughter, Nina Nicole and I have a
16 younger daughter, Marissa. He was highly
17 energetic with them, playful. He could pick
18 Marissa up. I've seen him pick Marissa up, before
19 the fall.

20 Q. How did you hear about your father's
21 accident?

22 A. Like Ashlyn said, she sent me a text
23 message. So I -- I knew he wasn't at the game and
24 I knew something was up when the game was over
25 with, because he wasn't going to miss that game.

1 I read the text message. I immediately called
2 her, traveled back to campus and made my way to
3 the hospital.

4 Q. What did you observe as to his condition
5 when you got there?

6 A. A shaken -- a shaken person. I've been
7 around my dad a lot, day in and day out. By his
8 words and what he said to me -- excuse my French.
9 He said in the hallway of the emergency room on
10 the gurney, "I'm fucked up." And I said, what
11 happened? And I knew when he pulled his arms up,
12 he showed me his arms, how badly he had fallen.

13 Q. What did his arms look like? What did
14 you see?

15 A. At the time I saw bandages, but I was
16 there when they changed the bandages because the
17 bleeding wouldn't stop. And it looked like sheets
18 of paper of skin they were pulling off. It was
19 the worst I'd ever seen. You know, I'd seen
20 before where he might have a scrape or something,
21 but nothing like that.

22 Q. And we heard your sister testify. Were
23 you around a lot while he was in the ICU and MUSC
24 and Roper?

25 A. Every day. Every day at some point in

1 time.

2 Q. And did you have an opportunity to
3 observe those treatments to his arms and his legs
4 and the actual ---

5 A. The first seven days when I would watch
6 them change the dressing, I knew it was extremely,
7 extremely serious because they could not control
8 the bleeding. They couldn't keep enough bandages
9 on him. The bandages were his skin at the time.

10 Q. And did you observe -- and they were
11 changing the bandages ---

12 A. Yes.

13 Q. --- they would ---

14 A. I watched it. I mean, I saw it. It's
15 excruciating to have something go on, start to
16 clot, but you know you've got to change it and
17 then they pull it off. I knew he was in serious
18 pain just by his facial reactions, the moans and
19 groans that he gave.

20 Q. And he was heavily medicated during this
21 time?

22 A. Highly medicated, yes. The pain
23 medicines -- and he was calling for pain medicine.
24 And I said to the point where -- I said to one
25 time, 'you don't need all of that, Dad.' And he

1 said, he quite bluntly told me, 'you don't know
2 what I need.'

3 Q. Is he a pretty guy?

4 A. Yes, extremely tough.

5 Q. High ---

6 A. Hard-nosed, physical. A warrior, I would
7 say, yeah.

8 Q. Had you ever seen him like that before?

9 A. Never.. The emotional state, his
10 insecurity of what was going to happen the next
11 several days after he had fallen. I'd never seen
12 him shaken like that before.

13 Q. You were here during his testimony;
14 right?

15 A. Yes.

16 Q. When he testified that's "the first time
17 I couldn't rely on myself"?

18 A. Correct.

19 Q. Did he talk about things like that?

20 A. Yes, he did. I mean, he talked about --
21 as that process went on, and it was a lengthy
22 process, there were different levels of how --
23 'What's the next step. How am I going to do this?
24 How am I going to bathe? How long is it going to
25 take me?' That was the biggest question, 'How

1 long is it going to take me to recover from this?'

2 Q. During the time in the ICU did you
3 observe a continuous bleed both externally and
4 swelling from internal bleeding?

5 A. The swelling is what I observed the most
6 because they kept him pretty well bandaged up.
7 And they knew when they changed it, when you would
8 come in and see it bandaged. But the swelling was
9 something -- it's hard to describe. When you can
10 press someone's skin with two or three fingers and
11 then indent into the skin and leave it there, and
12 the indentation stayed. That's how swollen and how
13 much fluid was in his hips, his thighs, his knees
14 and in his feet. I would do it to his feet
15 because his feet would be at the end of the bed
16 and I would pinch them and it would just leave an
17 indentation.

18 Q. And he said that they were tree trunks.
19 Is that a fair description?

20 A. Yeah. A little more graphic than that,
21 but yeah, fair. Fair.

22 Q. All right. He testified that his right
23 knee was swollen like a watermelon?

24 A. Correct. It's the biggest I've -- it's
25 the biggest knee I've ever seen and I've had four

1 ACL operations.

2 Q. Did you know him to have right knee
3 issues of any significance before this?

4 A. No more than any other sixty-four year
5 old man in America that's been on a basketball
6 court for forty years.

7 I mean, I practiced last night and I'm
8 thirty-nine years old, and I don't feel good
9 today. My butt hurts. My thighs hurt and I was
10 down in a defensive stance. My feet hurt. I
11 mean, it was nothing -- it's just the regular
12 soreness on being on a hardwood floor 94 x 15 for
13 forty years.

14 Q. Had you ever seen his knee look like it
15 did at ---

16 A. Never. I'd never seen -- I'd never seen
17 my knee look like that and, as I said, I've had
18 four operations.

19 Q. At some point, he stabilized enough to go
20 to the regular floor?

21 A. Correct, yes, sir.

22 Q. And we've already heard testimony. I
23 don't want to belabor ---

24 A. Yeah.

25 Q. But I don't want gloss over the fact that

1 y'all were there for weeks; right?

2 A. Weeks. Every single night -- and I
3 mostly did nights, because I worked -- you know, I
4 get up in the morning, I'm at the gym. We do our
5 practice. We're traveling. But when I could stay
6 with him, I stayed every night I could stay. The
7 emotional state was the most distressful thing I
8 saw from my dad. I saw a crack in his armor and
9 he had never had a crack in his armor before this.

10 Q. And how could you tell?

11 A. The things he talked about, living and
12 dying. His main thing was, 'I want you to have my
13 Hall of Fame ring if I don't make it.' He said
14 that to me multiple times. And I said, I said,
15 'I want to get into the Hall of Fame on my own
16 account dad, not on yours.' I would say that
17 multiple times because we talked about that.

18 Q. Was there a time -- let me ask this?

19 A. Yeah.

20 Q. Has this take a toll emotionally on all
21 of you?

22 A. That's my coach over there -- (emotional)
23 -- and that's my dad. And we've been through a
24 lot of wars together. As him being my assistant
25 coach, as me playing for him. We've been in a lot

1 of high-pressure situations, emotional situations.
2 Yeah, it's been extremely emotional to see the
3 crack in my dad's armor, that he can't get back to
4 where he was at when he was my assistant coach at
5 Spartanburg Methodist. When I would see him break
6 from drill to drill, be jogging up and down the
7 floor. When I would see him at Citadel Basketball
8 Games before the fall, go up and down a six
9 thousand seat arena, yes, it's an extremely
10 emotional toll.

11 Q. You participated in his stay in the ICU
12 and his stay at MUSC?

13 A. Yes.

14 Q. And you participated in his stay, meaning
15 you were there and you helped ---

16 A. Yes.

17 Q. --- while he was at Roper Rehab?

18 A. Yes.

19 Q. And throughout those weeks and those
20 months, was his condition such as we've described
21 so far? Pain, very emotional, swollen, things of
22 that nature?

23 A. He said to me on multiple accounts, "you
24 have no idea how painful this is." And I would
25 try to, you know, -- my mom says I don't have

1 great bedside manner but I would try to motivate
2 him through that. But I knew there was a crack in
3 the armor. It was excruciating to move his legs
4 with the swelling that he had, to get him to stand
5 up and get his balance and get stood up. And the
6 pain that that would incur to try to get him to
7 the bathroom and keep him moving in the rehab.

8 Q. And let's talk about that. Have you --
9 has there been a dynamic period of time in before
10 this fall and now, that that has changed?

11 A. Yes. I've had to wash my dad. I've had
12 to clean my dad. I had to clean him in that
13 bathroom the other day out there. That's a
14 different man than when he worked with me at
15 Spartanburg Methodist before that fall --
16 (emotional). That's a different man. When I have
17 to spend my nights with in some old folks home
18 over here in Mt. Pleasant. That's a different
19 man.

20 Q. And since this fall, has he had a series
21 of ongoing physical setbacks?

22 A. If my dad doesn't fall that night, my dad
23 doesn't get his knee replaced. My dad doesn't get
24 a blood poisoning. Bottom line.

25 Q. They have tried to paint a picture of

1 somebody with a host of physical problems ---

2 A. Correct.

3 Q. --- on January 23rd, 2013?

4 A. Yes.

5 Q. Is that true?

6 A. On March 3rd, 4th or 5th, we played in a
7 Region X, Conference Championship at Cape Fear
8 Community College, first round of the tournament.
9 My dad was nine rows across from me, ten rows
10 straight across from me. I watched him go up,
11 give me the calls back and forth across the bench.
12 I watched him come down the bleachers. And at
13 half-time my dad was as adamant about something
14 that we were doing in the game as he's ever been
15 with me when he coached me or when I've been
16 around him. From that point, that is not the same
17 basketball coach since that fall.

18 Q. What about just -- I know it's hard to
19 separate the basketball from the human being.

20 A. Yeah, I know. It is.

21 Q. But, I mean, since that fall January 24,
22 2013, have you seen a continued spiraling downhill
23 physical problems?

24 A. Every single day. His life has changed
25 for the worst from that point of his fall, through

1 that stay at MUSC. The first time, his weakening
2 of his muscles to help himself get up and down,
3 then the rehab, then the knee operation. The
4 emotional decline in my dad as this tough hard-
5 nosed man that I know him as is gone.

6 When he -- when my sister spoke about it
7 earlier when you go to leave him, he does not want
8 you to leave because he's -- he's been in too many
9 situations where he's not going to make it out and
10 it's an emotional strain on all of us. And it is
11 extremely painful to see him go through that.

12 Physically -- but to me, more emotionally to
13 see his mindset because I know how tough and hard-
14 nosed he really is. Because I've known him since
15 I was a boy and I've watched him coach. I watched
16 him raise me as a young man. I've watched him
17 teach me how to teach my children.

18 The physical side of it, it's just been a
19 daily decline over and over and over again, just
20 piece by piece by piece by piece.

21 Q. Thank you.

22 THE COURT: Any cross-examine?

23 MS. RUPARELIA: None, Your Honor.

24 THE COURT: Thank you. You may step
25 down.

1 Thanks.

2 (JURY OUT @ 5:01 P.M.)

3 THE COURT: All right. Anything
4 from the plaintiff before we recess?

5 MR. MCCULLOUGH: No, sir.

6 THE COURT: Ms. Spruill, you
7 wanted to supplement your position I think ---

8 MS. SPRUILL: Yes, sir. Just one
9 tiny note. Mr. Capaccio was designated to talk
10 about Mr. Burke's physical condition prior to the
11 incident and after the incident and the change in
12 his physical and mental health. And the testimony
13 about basketball career prospects was outside the
14 scope of that.

15 THE COURT: Thank you and I don't
16 consider it -- well, I appreciate it. But the
17 reason I allowed it under 701 -- I don't think
18 it's an expert opinion because it wasn't
19 specifically as to him. And you qualified --
20 you basically secured that with your cross-
21 examination.

22 MS. SPRUILL: Yes, Your Honor.

23 THE COURT: It was simply a
24 general observation of his dealing in the
25 profession. For what it's worth and the

1 significance of it, that'll be up to the jury.

2 Thank you very much. It's noted. Thank you. All
3 right. Anything else from the defendants before
4 we recess?

5 MS. SPRUILL: No, Your Honor.

6 THE COURT: At this point you
7 still do not anticipate calling any additional
8 witnesses; is that correct?

9 MS. RUPARELIA: We've some
10 designations we're working on.

11 THE COURT: Okay. But I mean
12 calling a live witness?

13 MS. RUPARELIA: No, sir.

14 COURT REPORTER: Your Honor, they
15 have some tax returns and other documents they
16 have agreed to redact.

17 THE COURT: Okay. Thank you.
18 Okay. What we will do, -- thank you very much.
19 As to the tax returns and any other documents that
20 have to be redacted, we'll just -- we'll have to
21 agree to just substitute those. Does everybody
22 agree with that? The document that has been used
23 and marked will be removed and you will substitute
24 that and it will become the exhibit. Is that okay
25 for you?

1 MS. RUPARELIA: Yes.

2 THE COURT: All right. Thank you.

3 MS. SPRUILL: We were just
4 asking for clarification. If and when we go to
5 talk about allocation, we'll do that after, right?

6 THE COURT: We have to get a
7 verdict.

8 MS. SPRUILL: Yeah.

9 THE COURT: Maybe y'all read the
10 statute different ---

11 MS. SPRUILL: No, no, no.

12 THE COURT: I read the statute,
13 you have to have a decision before we talk about
14 allocation.

15 MS. SPRUILL: Yeah. And all Roopal
16 wanted to know, we're going to designate some
17 deposition testimony, that would come in this
18 case.

19 THE COURT: Yes, that is too.

20 MS. SPRUILL: Then we will put that
21 in.

22 THE COURT: And the reason for
23 that is -- I've read your opinions that you've
24 given me, I think Harwell talks about the
25 ambiguity that the statute creates. I think it's

1 a little worse than an ambiguity.

2 MS. SPRUILL: Can I have a look at
3 the file?

4 THE COURT: Yeah. Please. But
5 clearly to me, it says that there will not be any
6 additional evidence -- there will be additional
7 arguments but not additional evidence. So,
8 therefore, I -- and I appreciate all these judges
9 talking about it. None of these judges have to
10 deal with the stuff that I have to deal with. You
11 don't have to worry about a separation of powers
12 issue.

13 MR. MCCULLOUGH: Yes, sir.

14 MS. SPRUILL: Yes, Your Honor.

15 MR. MCCULLOUGH: So, it's my
16 understanding. We can close, they proffer that --
17 they argue, charge. If we get a verdict, we argue
18 about allocation.

19 THE COURT: That's correct. But
20 you'll just simply have it for the record to
21 support your arguments on allocation if that
22 becomes necessary. I noticed something today that
23 I haven't noted. That's -- we're off the record.

24 (COURT IN RECESS)

25 (TRANSCRIPT CONTINUED NEXT PAGE)

1 to you. Happy Friday. I think I will be safe in
2 saying to you that -- I know it will be upsetting
3 to you. You probably will not have to come back
4 tomorrow. And you won't have to go through
5 routine on Monday. I think we'll be giving you
6 this case probably sometime early afternoon.

7 So, of course, it'll be up to you all
8 from that point as you all have already
9 experienced. But you will be receiving the case
10 today.

11 So thank you again for your attention
12 this week. Thank you for all your hard work.

13 We're now moving into the -- the next
14 witness that will be appearing will be appearing
15 by video. The original transcript of the
16 deposition of Joseph B. Sakran, M.D. was taken on
17 June the 11th, 2014. The transcript is Court's
18 Exhibit 12A. The original disk from the video is
19 12B.

20 (SO ENTERED AS COURT'S EXHIBIT 12A)

21 (SO ENTERED AS COURT'S EXHIBIT 12B)

22 THE COURT: And each side --
23 depositions, by their very nature, they're called
24 discovery deposition, meaning you can ask
25 questions. The lawyer is permitted to ask

1 THE COURT: I think it's an hour and
2 twenty minutes. If at any point during this
3 deposition you cannot see it or hear it, raise
4 your hand. We'll stop it. Or if you need a
5 break, raise your hand and we'll stop it and we'll
6 take a break. Thank you so much. Okay.

7 (COURT'S EXHIBIT 12C

8 DEPOSITION OF JOSEPH SAKRAN, M.D.

9 PUBLISHED/PAUSED DUE TO

10 VIDEO TECHNICAL FAILURE)

11 THE COURT: Let's do this. We'll get
12 it on the screen, on the monitor, then we'll bring
13 you in. We'll pause it and we'll start it. Thank
14 you very much. Please go to your jury room.

15 (JURY OUT @ 10:12 A.M.)

16 THE COURT: Are we ready now?

17 MR. MCCULLOUGH: Yes, sir. Thank you,
18 Your Honor.

19 (JURY IN @ 10:25 A.M.)

20 BAILIFF: All jurors are present,
21 Your Honor.

22 THE COURT: Thank you very much. I'm
23 like y'all. I love it, don't know what I'd do
24 without my computer today. And think how in the
25 world did we get around without them, and Google

1 and all the other things that we have access to
2 today. But it's one instrument that you can love
3 and hate in the same day. So it's just a problem
4 sometime, but I think it's set now. I think the
5 volume is sufficient but if when they -- as he's
6 introducing the witness and swearing him, if
7 anybody needs it raised, just raise your hand.
8 Okay? If you'd play it for us.

9 (COURT'S EXHIBIT 12C - DEPOSITION OF JOSEPH
10 SAKRAN, M.D. PUBLISHED)

11 MR. MCCULLOUGH: Your Honor, at
12 this time we would move Exhibits 1, 2, and 3 from
13 that deposition, which are marked as Plaintiff's
14 Exhibit 17, 18, and 19.

15 THE COURT: They're admitted.
16 I've heard no objection raised.

17 MS. RUPARELIA: None.

18 THE COURT: Very well. Thank you.

19 (SO ENTERED AS PLAINTIFF'S EXHIBIT 17)

20 (SO ENTERED AS PLAINTIFF'S EXHIBIT 18)

21 (SO ENTERED AS PLAINTIFF'S EXHIBIT 19)

22 THE COURT: You want them
23 collectively as one Plaintiff's Exhibit?

24 MR. MCCULLOUGH: She marked them
25 individually.

1 THE COURT: Individually?

2 COURT REPORTER: Yes, sir.

3 THE COURT: All right.

4 MR. MCCULLOUGH: And those are our
5 designations and these are ---

6 THE COURT: This is Court's
7 Exhibit 12D now that's being published to the
8 jury.

9 (COURT'S EXHIBIT 12D PUBLISHED)

10 THE COURT: All right. Ladies and
11 gentlemen, that concludes this witness. Let's
12 take a recess. I'll let you go to your jury room.
13 Don't begin your deliberations. We'll be with you
14 in about ten or fifteen minutes. Thank you.

15 (JURY OUT @ 11:40 A.M.)

16 THE COURT: All right. Anything from
17 the plaintiff before we recess?

18 MR. MCCULLOUGH: No, sir.

19 THE COURT: Anything from the
20 Defendant?

21 MS RUPARELIA. No, Your Honor.

22 THE COURT: We'll be in recess about
23 ten minutes then.

24 (BRIEF RECESS)

25 THE COURT: What was your issue?

1 MS. RUPARELIA: He's a neurologist
2 and pain management guy. He's a neurologist and
3 pain ---

4 THE COURT: That's all right. We're
5 going to -- this is just really pre-med. Have you
6 got a question?

7 MS. RUPARELIA: He's a neurologist and
8 pain management guy, but he'll provide causation
9 testimony as to the knee replacement.

10 THE COURT: Well, I mean, I don't know
11 what his qualifications are at this juncture.

12 MS. RUPARELIA: That's why we were
13 thinking maybe we would voir dire him on some of
14 the questions.

15 THE COURT: Oh, no, no, no. Any voir
16 dire -- you can ask him any questions you want.
17 That's why I say before I say he can render
18 opinion, you can bring out anything you want to.

19 MS. RUPARELIA: All right. We can do
20 that.

21 THE COURT: Okay. I mean, I don't have
22 any problem with that, the I can make my call,
23 okay?

24 MS. RUPARELIA: Thank you, Your Honor.

25 THE COURT: That's the way I do it. I

1 don't know how everybody else does it, but that's
2 the way I do it. Okay. Let's bring in our jury.

3 (JURY IN @ 12:00 P.M.)

4 BAILIFF: All jurors present, Your
5 Honor.

6 THE COURT: Thank you so much. Thank
7 you ladies and gentlemen. You may call your next
8 witness, Mr. McCullough.

9 MR. MCCULLOUGH: Thank you, Your Honor.
10 We call Dr. Marshall White.

11 (WITNESS TAKES STAND)

12 MARSHALL WHITE, having been duly sworn to
13 tell the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCCULLOUGH:

17 Q. Dr. White, please introduce yourself to
18 the jury and tell them a little bit about your-
19 self.

20 A. My name is Marshall White. I'm a Board-
21 certified Neurologist.

22 I attended The Citadel here in Charles-ton,
23 graduated in 1982.

24 I attended the University of South Carolina
25 School of Medicine graduating in 1986. I did a

1 year of psychiatry at the William S. Hall
2 Psychiatric Institute followed by an internship in
3 internal medicine at MUSC here in Charleston,
4 followed by a residency in neurology. I've
5 been in private practice for twenty-four years in
6 general neurology with an interest in algology,
7 which is pain management.

8 And I'm Board-certified by the American
9 Board of Psychiatry and Neurology in neurology.

10 Q. And generally, what is neurology?

11 A. Neurology is a specialty which deals with
12 diseases of the peripheral nervous system, muscle
13 and brain and spinal cord.

14 Q. And what does that encompass? Is it
15 bodywide?

16 A. It's bodywide, yes.

17 Q. And what were you asked to do in this
18 case?

19 A. I was asked to perform an independent
20 medical evaluation of Mr. Burke with respect to
21 his injuries and the consequences of those
22 injuries.

23 Q. And have you reviewed his medical
24 records?

25 A. Yes, sir.

1 Q. Have you performed several examinations
2 and conversations with Mr. Burke?

3 A. Yes, sir.

4 Q. And, again, you're Board-certified in
5 what areas?

6 A. In neurology.

7 MR. MCCULLOUGH: And, Your Honor,
8 at this time, we would move to have Dr. White
9 admitted as an expert in the fields of neurology
10 and a subcategory of pain management.

11 THE COURT: Okay. Do you care to
12 examine him as to his qualifications?

13 MS. RUPARELIA: One moment, Your
14 Honor. I do, Your Honor.

15 THE COURT: Yes, ma'am.

16 VOIR DIRE EXAMINATION

17 BY MS. RUPARELIA:

18 Q. Dr. White, you testified that
19 neurology is essentially a field that deals with
20 the diseases and disorders of the nerves?

21 A. And muscles.

22 Q. Nerves and nervous system including
23 the brain and spinal cord?

24 A. Yes, ma'am.

25 Q. Okay. And orthopedics would be, you

1 know, a field where you would be worrying about
2 diagnosis and treating and managing the musculo-
3 skeletal system; is that correct?

4 A. Yes, ma'am.

5 Q. Okay. And do you have any training
6 in the field of orthopedics?

7 A. No.

8 Q. Okay. Do you have any certifica-
9 tions in the field of orthopedics?

10 A. No.

11 Q. Have you ever performed any kind of
12 orthopedic surgery?

13 A. No.

14 Q. Have you ever performed any knee
15 replacement surgery?

16 A. No.

17 MS. RUPARELIA: Your Honor, we
18 would move ---

19 THE COURT: Whoa, whoa, whoa.

20 MS. RUPARELIA: Sorry.

21 THE COURT: At this point he
22 hasn't rendered any opinions. And so you've asked
23 those questions. That's fine. He'll be permitted
24 to render opinions in the areas that you've
25 specified. Thank you.

1 MR. MCCULLOUGH: Thank you, Your
2 Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. MCCULLOUGH:

5 Q. Doctor, in your chosen field do you deal
6 and treat patients that are on Coumadin?

7 A. Yes, sir.

8 Q. Explain that. What is Coumadin?

9 A. Coumadin is warfarin. It's a blood
10 thinner.

11 Q. All right. How do you interact with
12 folks on Coumadin?

13 A. Well, as the doctor previously testified,
14 the reason for placing patients with atrial
15 fibrillation on warfarin is to prevent stroke.
16 And neurologists are the primary physicians that
17 take care of stroke patients.

18 Q. Will you speak up just a little bit?

19 A. I'm sorry. I said that neurologists
20 treat patients with warfarin because atrial
21 fibrillation patients are at-risk for stroke. And
22 neurologists are the ones that treat patients with
23 stroke and try to prevent patients from having
24 strokes. So it's a drug that we use quite
25 frequently.

1 Q. All right. How did the -- in your
2 opinion, how did the Coumadin and the fact that
3 Mr. Burke was on Coumadin, impact his injuries?

4 A. Well, as a doctor, I agree with the other
5 doctor that it made the bleeding more significant.

6 Q. Did it increase his bleeding?

7 A. It would have tended to increase
8 bleeding, yes.

9 Q. And are you familiar with Bob's
10 hospitalizations?

11 A. Yes.

12 Q. And have you reviewed the medical records
13 from MUSC and Roper?

14 A. I have.

15 Q. And you've just viewed that video of Dr.
16 Sakran?

17 A. Yes, sir.

18 Q. Based on your examinations of Mr. Burke
19 and review of the medical records, do you have an
20 opinion to a reasonable degree of medical
21 certainty, most probably, as to the cause of Bob's
22 injuries that caused him to be hospitalized
23 subsequent to January 24th, 2013?

24 A. It was the fall in the parking lot. The
25 trauma associated with that fall.

1 Q. And so his stay and the injuries suffered
2 and what put him in the ICU -- in your opinion,
3 what caused him to be there?

4 A. Yes.

5 Q. The fall?

6 A. The fall.

7 Q. Same for the question of his stay at
8 MUSC?

9 A. Yes, sir.

10 Q. Roper Rehabilitation?

11 A. Yes, sir.

12 Q. Inpatient health care after he went home?

13 A. Yes, sir.

14 Q. All tied directly to his fall?

15 A. Yes, sir.

16 Q. Dr. Sakran described him as being in
17 critical condition. Would you agree with that?

18 A. Yes, sir.

19 Q. We heard, I believe, for the first time
20 something referenced as an IMR level. What is
21 that?

22 A. It's a measure of the degree of thinning
23 of the blood associated with the use of warfarin.

24 Q. I believe there's some variation about
25 that. The documents describe Mr. Burke as having

1 an IMR level when arrived at the hospital as
2 either 3.25 or, in one instance, I think it said
3 3.35. What is your reaction to that IMR level?

4 A. It's within the therapeutic range. The
5 surgeon described it as being super maximal, but
6 the fact of the matter is, depending on the
7 particular patient, we'll accept levels up to 3.5
8 to even 4.0. There's some European cardiology
9 studies that show that levels as high as 5 are
10 acceptable. So anything up to 5 from a worldwide
11 standpoint is considered to be therapeutic.

12 Q. I believe Dr. Sakran testified that they
13 were slightly above the norm. Would you agree
14 with that?

15 MS. RUPARELIA: Your Honor.

16 THE COURT: Yes?

17 MS. RUPARELIA: To the extent he's
18 testifying again beyond the field of neurology and
19 pain management ---

20 THE COURT: I appreciate your
21 objection. It's noted and overruled. Thank you.

22 Based on his overall qualifications and
23 his experience, I'm going to allow him to render
24 opinions in those areas. He's a physician, been
25 treating people twenty-four, twenty-five years.

1 Thank you.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. MCCULLOUGH:

4 Q. Continue.

5 A. There's a journal of circulation, which
6 is a peer-reviewed journal. It's put out by the
7 American Heart Association. There's a position
8 paper in that journal by the American Heart
9 Association and the American Cardiologists that
10 verifies everything I'm telling you right now.

11 Q. So as a physician, you're not concerned
12 or you don't think the fact that it was 3.25, in
13 and of itself, created any significant condition?

14 A. It increases the propensity to bleed.
15 But within the therapeutic range, there hasn't
16 been shown a tremendous difference unless the
17 level gets above 4.0. So, you know, it's elevated
18 but it's elevated for therapeutic purposes.

19 Q. And you have reviewed the medical records
20 from MUSC; correct?

21 A. Yes, sir.

22 Q. And did they contain the immediate and
23 continued complaints by Mr. Burke of right knee
24 pain?

25 A. Yes, sir.

1 Q. And you heard Dr. Sakran?

2 A. Yes, sir.

3 Q. He listed the right knee injury as one of
4 the diagnosis caused by the fall. Did you hear
5 that?

6 A. Yes, sir.

7 Q. In your practice, do you deal with
8 patients that suffer from pain and more
9 specifically knee pain?

10 A. Yes, sir.

11 Q. In what ways?

12 A. Well, I do a great deal of pain
13 management in my practice and I treat patients
14 with osteo- and rheumatoid arthritis, treat them
15 with a variety of pain medications from anti-
16 inflammatories to what are typically classified as
17 antidepressant-class drugs, which are approved for
18 the treatment of osteoarthritis that maybe some
19 other physicians are not comfortable using. I'm
20 referred patients from orthopedic surgeons for the
21 treatment of joint pain. So this is part of my
22 everyday practice.

23 Q. There's testimony from Mr. Burke in the
24 record has established that his right knee was
25 swollen the size of a watermelon. And the

1 testimony from the primary treating surgeon at
2 MUSC was that he had extensive injuries to his
3 right side and the lower right portions of his
4 body. In your opinion, is that consistent, would
5 a right knee injury be consistent with the fact,
6 with a trip and fall as described by that witness,
7 those witnesses?

8 A. Yes, sir.

9 Q. And you have discussed with Mr. Burke his
10 right knee pain?

11 A. Yes, sir.

12 Q. And you visited with Mr. Burke before his
13 knee surgery?

14 A. That's correct.

15 Q. And you have visited with Mr. Burke since
16 his knee surgery?

17 A. That's correct.

18 Q. You have not only watched Dr. Sakran's
19 video deposition, read his deposition, and
20 reviewed his medical records?

21 A. Yes, sir.

22 Q. Based on all of that and your examination
23 and your evaluation, do you have an opinion to a
24 reasonable degree of medical certainty, most
25 probably, as to the cause of Bob Burke's right

1 knee pain that subsequently lead to right knee
2 surgery?

3 MS. RUPARELIA: Your Honor.

4 THE COURT: Yes?

5 MS. RUPARELIA: Again, the same
6 objection.

7 THE COURT: Well, thank you. But all
8 he's asked is do you have an opinion as to the
9 cause. I haven't heard -- as to the cause of the
10 pain, that's all he's said. And now you object to
11 that. I overrule the objection. I think he's
12 qualified ---

13 MS. RUPARELIA: He said the subsequent
14 surgery.

15 THE COURT: Listen to the question.
16 You objected to the question that was asked. I
17 overruled that question. He's extremely qualified
18 to render an opinion as to that particular
19 question. Thank you.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. MCCULLOUGH:

22 Q. Sir?

23 A. It was the parking lot fall.

24 Q. Now, I am sure you will be asked about
25 medical records and documentation from 2007, 2008,

1 about complaints of aches and pains and right knee
2 pain prior to this fall. Does that change your
3 opinion in any way?

4 A. No, sir.

5 Q. Is it usual for a man in his sixties to
6 have muscle pain and joint pain and knee pain?

7 A. (Negative gesture), even men in their
8 fifties.

9 Q. Okay.

10 A. Yes, sir.

11 Q. So to be clear in your opinion based on
12 your examination in this case, what was the cause
13 of Bob Burke's right knee issues?

14 A. The fall.

15 Q. And did that fall lead to him having to
16 have surgery in your opinion?

17 THE COURT: All right.

18 MS. RUPARELIA: Your Honor, ---

19 THE COURT: You object. I overrule the
20 objection and will allow the answer. Thank you.
21 He's qualified.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. MCCULLOUGH:

24 A. Yes, sir.

25 Q. As to a reasonable degree of medical

1 certainty, most probably?

2 A. Yes, sir.

3 Q. Now, you've talked to Bob and to Jane
4 about what happened right after that surgery;
5 right?

6 A. I have.

7 Q. What happened?

8 A. Unfortunately, he developed a series of
9 infections. The first infection was an entero-
10 coccal infection where he became septic and he
11 nearly died. This is a bacteria that's commonly
12 found in fecal matter. And -- he was quite sick.
13 And this series of infections caused his renal
14 problem to re-exacerbate. He has subsequently
15 been hospitalized or in rehabilitation since the
16 August surgery.

17 Q. Since the August 2014 knee surgery, as
18 you've testified, he was in that hospital because
19 of this fall on January 24, 2013; right?

20 A. That's correct.

21 Q. And would he have gotten that, in your
22 opinion, blood poisoning if he hadn't been in that
23 hospital for his knee surgery?

24 A. No, sir.

25 Q. And since August of 2014, and he had that

1 knee surgery, has it been an ongoing health battle
2 for Bob Burke?

3 A. Yes.

4 Q. And do you have an opinion as to those
5 ongoing issues? What was the cause of those
6 issues? What started that chain reaction?

7 A. Mr. Burke was in reasonably good health
8 for someone his age with chronic medical problems.
9 But the fall triggered a sequence of events that
10 lead to a catastrophic domino effect and
11 deterioration in his health.

12 Q. And you mentioned something, and let's
13 look. He had diabetes for years and years; right?

14 A. Yes.

15 Q. And he had a V-Fib (sic) incident in
16 California while he was giving a speech?

17 A. 2006.

18 Q. And he had some skin issues from being in
19 the sun on his lower legs?

20 A. Yes, sir.

21 Q. All right. And other things that I'm
22 sure they're going to ask you about.

23 A. Right.

24 Q. Did that put him in the hospital on
25 January of 2013?

1 A. No, sir.

2 Q. Did that put him in the hospital on
3 August of 2014?

4 A. No, sir.

5 Q. And does that put him in the condition
6 that he's in here today, those prior problems?

7 A. The prior problems, no, sir.

8 Q. What put him in the condition he's in
9 today?

10 A. The fall.

11 Q. Now, you touched on it. First of all the
12 doctor testified about a chronic renal
13 insufficiency. What is that?

14 A. Chronic renal insufficiency can arise out
15 of certain disease states, diabetes is certainly
16 one. People certainly live with chronic renal
17 problems and they just have to manage it. It
18 doesn't necessarily lead to dialysis.

19 Q. And you bring up a good point. You have
20 met and conferred with both Jane and Bob Burke;
21 right?

22 A. Yes, sir.

23 Q. Would you agree with me that they were
24 diligent in Bob's health care?

25 A. Most definitely.

1 Q. And they did deal with the diabetes?

2 A. Yes, sir.

3 Q. And they reported to you that they did
4 deal with regular checkups.

5 A. Yes, sir.

6 Q. And they did deal with Bob's health
7 issues from start to finish?

8 A. Yes, sir.

9 Q. Now, what's the difference in a renal
10 insufficiency and an acute kidney injury?

11 A. Well, in this particular case, the acute
12 kidney injury occurred as a result of hypovolemia,
13 due to the bleeding. In other words, he didn't
14 have enough blood circulating through his kidney.
15 But there's also another factor that likely came
16 in to play, which is rhabdomyolysis.

17 As a doctor that takes care of patients with
18 muscle injuries, rhabdomyolysis occurs when
19 there's inordinate amounts of pressure on muscles,
20 like you would have when you bleed into your
21 thigh. The doctor testified that his thigh was
22 tense and tight. Well that causes ischemia or
23 death to the muscle cells and it litters the
24 proteins in the muscle into the blood. Those
25 proteins clog up the kidney.

1 Q. If you have a pre-existing kidney issue,
2 what happens to that pre-existing kidney issue
3 when you have a traumatic event that triggers a
4 tremendous of bleeding?

5 A. It exacerbates or gets worse.

6 Q. And what happened when it becomes
7 exacerbated?

8 A. You end up on dialysis if it's bad
9 enough.

10 Q. And is that what happened here?

11 A. Yes.

12 Q. With the Court's permission, I'm going to
13 ask you to come down and explain to the jury
14 what's on Bob's arm?

15 A. Okay.

16 THE COURT: Keep your voice elevated
17 up.

18 WITNESS: Yes, sir, I'm sorry.

19 THE COURT: No, there's no problem.

20 Thank you.

21 (WITNESS STEPS DOWN)

22 DIRECT EXAMINATION CONTINUED

23 BY MR. MCCULLOUGH:

24 Q. What is that?

25 A. What we've got here is a fistula. And a

1 fistula is what's used to access his blood stream
2 for dialysis. And what the surgeons do is they
3 open an artery up and they tie it into a vein.
4 And what that does is it creates a dilatation of
5 the vein so they can stick a big needle in there
6 and dialyze him three times a week. And he's
7 currently receiving dialysis.

8 Q. And so tell us what -- I mean, they
9 basically they stick a needle in an external port
10 that was created by tying a vein and artery
11 together?

12 A. That's correct.

13 Q. Okay. That's -- thank you. Please be
14 seated.

15 A. (Resumes witness stand).

16 Q. Is that a simple procedure or is that a
17 complicated medical procedure?

18 A. I guess it depends on who's performing
19 it. It's a routine procedure for patients
20 receiving dialysis.

21 Q. Does everybody that needs dialysis have
22 this procedure?

23 A. No, sir. Patients who are expected to
24 chronically receive dialysis have these types of
25 fistulas placed.

1 Q. What do you think going to happen with
2 Bob as far as his future dialysis needs?

3 A. It's been told to them that he will
4 likely remain dialysis chronically. Although
5 there's some hope that maybe he can have some
6 respite from it. Obviously, they wouldn't have
7 put the fistula in if they hadn't expected a
8 chronic situation where he would remain on
9 dialysis.

10 Q. Is permanent another word for chronic?

11 A. Permanently, right.

12 Q. And just so I'm clear, in a normal
13 prescribed dosage of dialysis, how often is that
14 prescribed per week?

15 A. Three times per week is typical.

16 Q. And that's normally four hours per
17 session?

18 A. That's correct.

19 Q. And explain -- what is dialysis? What
20 does that mean? What happens when they stick the
21 catheter in Bob?

22 A. Basically, what they do is they draw the
23 blood out of your body and run it through a big
24 filter and that takes all the toxins and poisons
25 out of the body.

1 Q. And, again, if we haven't covered this,
2 Dr. Sakran testified about an acute kidney issue
3 and raised creatinine levels while in MUSC. Did
4 you hear that?

5 A. Yes, sir.

6 Q. And so did he suffer kidney issues while
7 at MUSC?

8 A. He did.

9 Q. And you've testified that he was at the
10 hospital for his knee surgery in August of 2014 as
11 a result of his trip and fall?

12 A. That's correct.

13 Q. Got blood poisoning?

14 A. Yes.

15 Q. Has continued to worsen?

16 A. Correct.

17 Q. What has caused him to have these
18 currently kidney issues? What is going on?

19 A. You know, when you're infected to the
20 degree that he was, it causes something called
21 sepsis, which can interfere with ---

22 MS. RUPARELIA: Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. RUPARELIA: Again, continuing
25 objection. Now, he's in the field of urology.

1 THE COURT: I would sustain the
2 objection as to him testifying as to what the
3 blood poisoning would do. Thank you. You can ask
4 him another -- you can rephrase your question.
5 Really, you've already it, most of this.

6 MR. MCCULLOUGH: Yes, sir.

7 THE COURT: Just rehashing.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. MCCULLOUGH:

10 Q. Would you expect that a patient with a
11 history of trauma subsequent to blood poisoning
12 and pre-existing kidney issues, could that
13 exacerbate those kidney issues?

14 A. Yes.

15 Q. Doctor, based on his current condition,
16 have you evaluated his future healthcare needs?

17 A. I did at one point, yes, before this
18 surgery I had done that.

19 Q. Yes, sir. And have you done that for the
20 purposes of today? Did you meet with them again
21 on Friday and talk about his current condition?

22 A. I did.

23 Q. And are you prepared to offer opinions as
24 to what he can expect in the future as to needs in
25 some limited areas?

1 A. Yes, sir.

2 Q. Is his family currently doing a
3 tremendous amount to allow Bob to sustain some
4 manner of living?

5 A. Well, at this point in time he's
6 essentially in fulltime assisted living and rehab.
7 So if he were at home, it would require herculean
8 effort on their part.

9 Q. In your practice in pain management and
10 neurology, do you deal with patients that are in
11 assisted living facilities?

12 A. Yes, sir.

13 Q. In your expert opinion, do you believe
14 Mr. Burke is going to require some level of
15 assisted living going forward?

16 A. I do.

17 Q. Why?

18 A. Well, he's requiring it now and he has
19 such debilitating issues that ---

20 MS. RUPARELIA: Your Honor.

21 THE COURT: What's the objection.

22 MS. RUPARELIA: May we approach?

23 THE COURT: What's the objection,
24 please, and then you can approach.

25 MS. RUPARELIA: It's beyond the scope

1 of anything ---

2 THE COURT: Thank you. I overrule the
3 objection. But you can approach.

4 (OFF RECORD BENCH CONFERENCE)

5 THE COURT: I overrule your
6 objection. Thank you.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. MCCULLOUGH:

9 Q. You can answer the question. Do you
10 remember the question?

11 A. Yes, sir.

12 Q. Answer the question?

13 A. He requires assistance with activities of
14 daily living such that he's going to need
15 attendance.

16 Q. Toileting?

17 A. Toileting.

18 Q. Bathing?

19 A. Bathing.

20 Q. Mobility?

21 A. Mobility.

22 Q. And this is something that you deal with
23 in your practice?

24 A. Yes, sir.

25 Q. And Doctor, is it true that the average

1 monthly charge for assisted living is three
2 thousand twenty-two dollars per month (\$3,022) per
3 month?

4 A. I'm aware of that.

5 Q. Do you agree with that opinion as to --
6 do you agree with that fact, that that's an
7 average cost expectation -- expected costs for
8 assisted living?

9 A. Yes, sir. That's factually accurate.

10 Q. And, again, it's your expectation that
11 Bob will continue -- there's hope, but he will
12 continue to need dialysis going forward?

13 A. Yes.

14 Q. And to button it up, all of the opinions
15 that you've offered here today to a reasonable
16 degree of medical certainty and most probably,
17 have they been offered in that opinion?

18 A. Yes, sir.

19 Q. And all the current conditions that Mr.
20 Burke has suffered from as you have described,
21 what caused it?

22 A. The fall. They are all traced to the
23 fall.

24 Q. Thank you.

25 MR. MCCULLOUGH: No further questions,

1 Your Honor.

2 THE COURT: All right. You may cross-
3 examine.

4 MS. RUPARELIA: If I may just have a
5 moment, Your Honor.

6 THE COURT: Sure. Absolutely.

7 (OFF RECORD BENCH CONFERENCE)

8 MS. RUPARELIA: May I move the podium
9 over?

10 THE COURT: Wherever you'd like.

11 CROSS-EXAMINATION

12 BY MS. RUPARELIA:

13 Q. Dr. White, you were hired by Mr.
14 McCullough; is that correct?

15 A. I believe so, yes, ma'am.

16 Q. And he's paying you to be here today?

17 A. Yes, ma'am.

18 Q. And you are not Mr. Burke's, what we
19 call, treating doctor; is that correct?

20 A. No, ma'am.

21 Q. You've seen him twice?

22 A. Yes, ma'am.

23 Q. But you've never prescribed him any
24 medications?

25 A. No, ma'am.

1 Q. You've never prescribed any course of
2 treatment for him?

3 A. No, ma'am.

4 Q. And during your two visits with him, did
5 you ever examine him?

6 A. Yes, ma'am.

7 Q. And what all did you examine before?

8 A. I examined his whole body.

9 Q. Okay. What were you looking for?

10 A. I was looking for anything abnormal.

11 Q. Okay. Did you perform any tests on him?

12 A. No, ma'am.

13 Q. And I believe when you saw him the first
14 time in November of 2013, about ten months after
15 the fall, he was not in that wheelchair; is that
16 correct?

17 A. No, ma'am, he was not.

18 Q. And at that time, he was actually still
19 treating; is that correct?

20 A. Yes, ma'am.

21 Q. And he was still getting better from this
22 fall?

23 A. I don't recall that he felt that he was
24 getting much better, no. He was still having
25 significant problems with his knee. There was ---

1 Q. The first time -- I'm sorry.

2 A. There was a recommendation that he
3 receive surgery, but there was a concern that he
4 may develop health issues as a result and so they
5 were delaying it.

6 Q. The first time that you met with him, how
7 long did you meet with him?

8 A. We were together probably two hours.

9 Q. You did not perform, you said, any tests
10 on him. You talked to him mostly and you said you
11 examined his body?

12 A. Yes, ma'am.

13 Q. And was that the extent of your work with
14 him that particular day?

15 A. Yes, ma'am.

16 Q. You did not perform any psychiatric or
17 any kind of psychological tests or any of those?

18 A. I observed his psychological condition
19 and functioning, yes, ma'am.

20 Q. Before we move on, you have testified
21 quite a bit today about Mr. Burke's kidney issues
22 and his current dialysis and so forth. This is
23 something that you have decided to give an opinion
24 on as of last Friday?

25 A. No, ma'am. I'm just speaking about his

1 problems. I'm not deciding what those problems
2 are. Those problems are his problems. And I'm
3 just trying to provide some illumination.

4 Q. And when you were hired back in November
5 of 2013, you did not address any of those issues;
6 is that correct?

7 A. Well, he wasn't on dialysis at that time.

8 Q. And you ---

9 A. The dialysis began again in earnest and
10 the fistula was placed after the surgery and the
11 subsequent two infections with sepsis.

12 Q. And the surgery was in August of 2014?

13 A. That's correct.

14 Q. The fall was January 2013?

15 A. That's correct.

16 Q. And you have not seen him up until --
17 from the November of 2013 up until last Friday?

18 A. That's correct.

19 Q. You would agree with me that Mr. Burke
20 was in poor health before his accident?

21 A. No, ma'am.

22 Q. And would you base your opinion on his
23 prior health conditions based on what he told you?

24 A. I reviewed his pre-fall medical record
25 from his family physician. And I've reviewed all

1 of the medical records subsequently, records from
2 Duke University, from the University of North
3 Carolina, his orthopedic doctor there. Dr.
4 Hooper, his family doctor. And while he had some
5 health issues they were being managed with
6 medications.

7 Q. What health issues are you aware of pre-
8 fall?

9 A. I'm aware of all of them. He had, as
10 you've already mentioned, he had long-standing
11 diabetes and hypertension. He had an incident of
12 arrhythmia in 2006 where he became unconscious.
13 And he had atrial fibrillation.

14 Q. He had chronic renal insufficiency as
15 well?

16 A. Yes, ma'am.

17 Q. And you would agree with me that Mr.
18 Burke also had significant ongoing leg swelling
19 issues?

20 A. Yes, ma'am.

21 Q. He was, in fact, on a prescription of
22 Lasix, which is a diuretic that helps reduce
23 swelling; is that correct?

24 A. It can reduce blood pressure as well.
25 Yes, ma'am.

1 Q. I think you indicated that you reviewed
2 the records of Dr. Hooper?

3 A. Yes, ma'am.

4 Q. That's his family doctor or internist; is
5 that right?

6 A. That's correct.

7 Q. And did you review his records where he
8 said that Mr. Burke had complained of right knee
9 pain as far back as May of 2010?

10 A. I'm aware of that.

11 Q. You're aware of the records where Dr.
12 Hooper spent forty-five minutes talking to them
13 where Mr. Burke had complained of arthritic
14 problems and was worried about disability
15 planning?

16 A. I don't recall that specific record.
17 But, yes, he does and did have arthritis.

18 Q. Are you aware that back in 2010 is he was
19 considering a disability claim?

20 A. I wasn't aware of -- I don't have a clear
21 recollection of that, no, ma'am.

22 Q. Okay. To refresh your recollection ---

23 THE COURT: Show him that and ask him
24 if he reviewed that particular record so he can
25 formulate his opinion.

1 MS. RUPARELIA: Mark that as an
2 exhibit, please.

3 COURT REPORTER: Defendant's 32 for
4 identification.

5 (SO MARKED AS DEFENDANT'S EXHIBIT 32)

6 THE COURT: What's the number?

7 COURT REPORTER: 32.

8 THE COURT: 32?

9 COURT REPORTER: Yes, sir.

10 THE COURT: Thanks.

11 CROSS-EXAMINATION CONTINUED

12 BY MS. RUPERALIA:

13 Q. (Tenders Defendant's Exhibit 32 to
14 witness).

15 A. (Upon review), Yes, ma'am. I'm fairly
16 certain I reviewed this record.

17 Q. Okay. You read the record where he said
18 that he's trying to decide what to do as far as
19 disability planning as a result of his arthritic
20 problems?

21 A. The sentence reads, he has had some
22 arthritic problems with his knee and trying to
23 decide what to do as far as moving forward with
24 disability planning.

25 In my extensive experience with disability

1 claims, you don't get disability just because you
2 have arthritis in your knee. You've got to have
3 more problems. So I would read it to say and --
4 that they're two separate issues, that they're not
5 conjoined. That he's got a knee problem, he's got
6 knee problems, arthritic problems. And he's
7 trying to decide what to do as far as a moving
8 forward with disability planning.

9 That's the way I would interpret. But,
10 again, I'm not Dr. Hooper so I can't testify to
11 that.

12 Q. Are you able to look at x-rays and
13 radiology reports and give opinions on those?

14 A. Yes, ma'am.

15 MS. RUPARELIA: Madam Court Reporter
16 would you please ID this one.

17 COURT REPORTER: Defendant's 33 for
18 identification.

19 MS. RUPARELIA: Yes, ma'am.

20 COURT REPORTER: Thank you.

21 (SO MARKED AS DEFENDANT'S EXHIBIT 33)

22 MS. RUPARELIA: I'm going to hand you
23 this one too. I'm sorry. One more, Madam Court
24 Reporter.

25 COURT REPORTER: Defendant's Exhibit

1 Number 34 for identification.

2 (SO MARKED AS DEFENDANT'S EXHIBIT 34)

3 CROSS-EXAMINATION CONTINUED

4 BY MS. RUPARELIA:

5 Q. If you'd look at Number 33, please?

6 MR. MCCULLOUGH: Your Honor, for the
7 record we have the same objection we had yesterday
8 with regards to those ---

9 THE COURT: I'm going to need to excuse
10 the jury at this time. We're going to have to
11 place this on the record, I anticipate.

12 Ladies and gentlemen, I'll let you go to
13 your jury room. Do not begin your deliberations.
14 Don't discuss the case.

15 (JURY OUT @ 12:40 P.M.)

16 THE COURT: May I see those two
17 exhibits that you have handed him -- (review).

18 First of all, the documents that have been
19 handed we know that under the rules the witness
20 can review any document, rely on anything, even
21 hearsay testimony. You can't publish it unless
22 required by counsel or by the Court.

23 The first thing you're going to have to do,
24 Ms. Ruparelia, is find out whether he's reviewed
25 these for purposes of his opinion today. Because

1 if he hasn't, it's improper to hand them to him.

2 MS. RUPARELIA: Yes, sir.

3 THE COURT: Okay. Because you can't
4 publish anything about it until he first tells
5 you, yes, I've read this. And I've reviewed it.
6 Just as he did with Dr. Hooper's.

7 MS. RUPARELIA: Yes, sir.

8 THE COURT: So once he does that, if he
9 says, 'I've reviewed it and relied on it', then I
10 note your objection but I'll overrule it under
11 705.

12 MS. RUPARELIA: 703.

13 THE COURT: Or 703, I think it is.

14 MS. RUPARELIA: 703.

15 THE COURT: Yeah. 703. But clearly,
16 that has to be done first. So as long as we do
17 that, before you ask him or make any reference of
18 what it contains ---

19 MS. RUPARELIA: He's not familiar with
20 it.

21 THE COURT: --- then you can't have it.

22 MS. RUPARELIA: But is of a type
23 reasonably relied upon by experts

24 THE COURT: That might be a type.
25 That's just a qualifying of whether or not it's

1 something that is customarily relied on. But that
2 does mean that he does, because he hasn't relied
3 on it for his opinion. So you can't do it. Do
4 you want to -- if you don't think he's seen it,
5 then let's go ahead and proffer it now, then I can
6 make a determination.

7 MS. RUPARELIA: I don't know if he has
8 or not.

9 THE COURT: Well, then I guess we've
10 got to go through the proffer. So you can ask him
11 the questions and I'll make the determination and
12 that way we've got the proffer preserved for the
13 record.

14 MS. RUPARELIA: All right. So we're
15 calling the jury back, or not?

16 THE COURT: No, no. I want to hear the
17 proffer now so that I can find out whether or not
18 I'm even going to allow it.

19 MS. RUPARELIA: Oh, okay. All right.
20 Okay.

21 THE COURT: I mean, that's the -- we
22 just -- that way, we're killing two birds with one
23 stone. We're giving you your proffer for purposes
24 of the review if necessary and I can determine
25 whether or not the jury going to hear it.

1 MS. RUPARELIA: Well, I have several
2 more, so may I can just give them to him.

3 THE COURT: Well, just go ahead and ---

4 MS. RUPARELIA: I know.

5 THE COURT: Just go ahead and do it.
6 Get all of them marked that you want to do. Why
7 don't you show them to him? Because we can
8 expedite this thing really quickly.

9 MS. RUPARELIA: All right. Well, here
10 you go, (tenders to witness).

11 THE COURT: Because if he hasn't seen
12 them, they are what they are. And we don't need
13 him to say. Just let him look at it. If he
14 didn't use it then it's not coming in. And you
15 can put them in the -- mark them for ID only.

16 WITNESS: (Upon review), yes.

17 MS. RUPARELIA: One more, (tendering).

18 WITNESS: (Upon review), yes.

19 MS. RUPARELIA: And that one,
20 (tendering to witness).

21 WITNESS: (Upon review), yes.

22 MS. RUPARELIA: And, (tendering).

23 WITNESS: I have not seen that one.

24 MS. RUPARELIA: (Tendering).

25 WITNESS: (Upon review), nor that

1 one.

2 MS. RUPARELIA: So you have only seen
3 one more?

4 WITNESS: That one.

5 MS. RUPARELIA: This is the same copy.

6 WITNESS: I have not seen this.

7 THE COURT: Are we ready?

8 MS. RUPARELIA: Almost -- (tenders
9 documents to be marked as exhibits). I will just
10 get this one marked also.

11 (SO MARKED AS DEFENDANT'S EXHIBIT 34)

12 (SO MARKED AS DEFENDANT'S EXHIBIT 35)

13 THE COURT: Let's bring in our jury
14 please, thank you.

15 Have you viewed all of the documents, Dr.
16 White?

17 WITNESS: Yes, sir.

18 THE COURT: Very good. Thank you. Not
19 a problem. I thought you might have.

20 (JURY IN AT 12:46 P.M.)

21 BAILIFF: All jurors are present,
22 Your Honor.

23 THE COURT: Thank you very much. Okay.
24 You may proceed.

25 MS. RUPARELIA: Thank you, Your Honor.

CROSS-EXAMINATION CONTINUED

BY MS. RUPERALIA:

Q. Dr. White, you told the jury earlier today that you had reviewed the pre-fall records of Mr. Burke; is that correct?

A. Yes, ma'am.

Q. Okay. And can you tell us what all records you looked at, at were pre-fall?

A. Just the records of Dr. Hooper.

Q. And the post-fall records you looked at were from where?

A. University of North Carolina,
Duke University,
Carolina Orthopedics,
Dr. Hooper,
Roper Hospital,
Roper Rehab.

That's a pretty complete list, I think.

Q. Earlier, I'd shown you some records and I think you indicated that some of them you had not seen; is that correct?

A. The records that I indicated that I hadn't seen were from April of 2014.

Q. Okay. But they were Duke medicine records; is that correct?

1 THE COURT: I'm going to stop you from
2 doing that. That's improper. That's not
3 consistent with my instruction. That goes beyond
4 that. So you go on and ask the questions that we
5 talked about in-camera. Thank you.

6 MS. RUPARELIA: Yes, Your Honor.
7 I apologize.

8 CROSS-EXAMINATION CONTINUED

9 BY MS. RUPARELIA:

10 Q. All right. If you could please look at
11 Defendant's Exhibit 34 for ID purposes?

12 A. Yes, ma'am.

13 Q. I think you indicated that you'd already
14 seen that record before?

15 A. Yes, ma'am.

16 Q. And tell the jury what that is?

17 A. This is a knee x-ray from Roper Hospital.

18 Q. Okay. Can you tell the jury the date of
19 the x-ray?

20 A. The x-ray was done on February the 20th,
21 2013.

22 Q. That would have been about twenty-six
23 days or so after Mr. Burke's fall?

24 A. Yes, ma'am.

25 Q. And what were the findings of the x-ray?

1 A. (Reading): *Impression: Degenerative*
2 *changes negative for fractures or aggressive*
3 *lesion.*

4 Q. What were the findings?

5 A. (Reading): *Findings: Peripheral*
6 *vascular habitation (sic) present. No discrete*
7 *effusion or lipohaemarthrosis. There is strike*
8 *compartmental degenerative change with minor*
9 *osteophytes. There is complete joint space lost*
10 *medial compartment.*

11 Q. Okay. And what is peripheral vascular
12 cavitation present mean?

13 A. I'm not familiar with that terminology.

14 Q. You're not?

15 A. No.

16 Q. And it says no discrete effusion?

17 A. That means that there's no fluid.

18 Basically, what this report says is that at this
19 time there was no fluid or blood in the joint.

20 Q. Okay. So about twenty-six days after the
21 fall, he didn't have fluid or blood in the joint?

22 A. That's what this report says, yes, ma'am.

23 Q. And then it also says there's strike
24 compartmental degenerative change with minor
25 osteophytes. What does that mean?

1 A. It just means that he's got arthritis in
2 his knee.

3 Q. Okay. And then it says there is complete
4 joint space loss, medial compartment. What does
5 that mean?

6 A. That means that the -- we've got spaces
7 in your joints ---

8 Q. Right.

9 A. --- where there's fluid. And that space
10 has been diminished greatly.

11 Q. And you gestured with your hands. And
12 what is the top hand and what's the bottom hand?

13 A. Well, the knee joint -- I'm trying to
14 demonstrate the distal femur and the tibia
15 plateau.

16 Q. Okay. The bone on top and the bone on
17 bottom?

18 A. Yes, ma'am.

19 Q. Okay. And you're saying that there is no
20 space, it's bone on bone; is that correct?

21 A. That's what they're saying in the medial
22 compartment. There's loss of joint space.
23 They're not saying it's bone on bone. They don't
24 comment on the condition of the cartilages.

25 Q. Okay. It says there is complete joint

1 space loss, medial compartment. And your gesture
2 was the top bone and the bottom bone, right there,
3 rubbing against each other; is that correct?

4 A. No, ma'am. That's not what it says.

5 Q. Okay. Dr. White, how does one get
6 complete joint space loss in the medial
7 compartment?

8 A. Well, there obviously is diminution of
9 the fluid in the knee.

10 Q. Well, beyond that, isn't it true that
11 complete joint -- the losing of the space in the
12 joint is essentially over a long period of time;
13 is that correct? It's chronic?

14 A. It could be. Yes, ma'am.

15 Q. Okay. If you would flip to Defendant's
16 Exhibit Number 35 for ID purposes. That's the
17 Duke Medicine record?

18 A. Yes, ma'am.

19 Q. And it's a record from -- let's see.
20 What's the date on this?

21 A. 4/2/13.

22 Q. Okay. So that would be about ---

23 A. Three months.

24 Q. --- three months after the fall?

25 A. (Affirmative nod).

1 Q. And what is the assessment and the plan
2 at the bottom of that particular record?

3 A. The "history and examination are
4 consistent with right end-stage knee
5 osteoarthritis. The findings and pathology are
6 discussed with the patient."

7 Q. And ---

8 A. The "initial approach includes the use of
9 analgesics, anti-inflammatories, weight control,
10 avoidance of impact exercise and a strengthening
11 program."

12 Q. And, Dr. White, what do you understand
13 the meaning of right end-stage osteoarthritis to
14 mean?

15 A. It means that he may be coming for a
16 joint replacement at some point in the future.

17 Q. And isn't it true, Dr. White, that end-
18 stage joint arthritis is not something that you
19 can develop in three months?

20 A. No, ma'am.

21 Q. And it's certainly not something you can
22 develop from trauma to the knee; is that correct?

23 A. Yes, ma'am. It can be exacerbated by
24 trauma for sure.

25 Q. But right end-stage knee osteoarthritis

1 is something that has been occurring and
2 developing over time until it gets to the end; is
3 that correct?

4 A. Yes, ma'am.

5 Q. When were you asked to give an opinion
6 with respect to Mr. Burke's future medical care as
7 it pertains to the assisted living facility?

8 A. I wasn't asked to give an opinion. I
9 rendered that opinion based upon my visit with him
10 on 12/12/14.

11 Q. And that was last Friday?

12 A. Yes, ma'am. I think so.

13 Q. Now, Dr. White, have you ever spoken with
14 any of Mr. Burke's doctors?

15 A. No, ma'am.

16 Q. Have you talked to Dr. Hooper?

17 A. No, ma'am.

18 Q. Did you talk to his orthopedic surgeon?

19 A. No, ma'am.

20 Q. Did you talk to any of his doctors that
21 manage any of his chronic conditions?

22 A. No, ma'am.

23 Q. Never spoke to his endocrinologist?

24 A. No, ma'am.

25 Q. And let me ask you this. Dr. White, how

1 many times have you worked for Mr. McCullough in
2 litigation?

3 A. This is the only time.

4 Q. This is the only time?

5 A. Yes, ma'am.

6 Q. And you typically do a lot of consulting
7 work for attorneys; is that correct?

8 A. Yes, ma'am.

9 Q. And what percentage of your practice is
10 involved in doing legal testimony?

11 A. From a patient point of view, I would say
12 that I -- maybe five percent of the patients that
13 I see are related to legal testimony.

14 Q. And how much time have you spent on this
15 case?

16 A. I would say at least eight hours.

17 Q. Okay. And let's talk about those eight
18 hours. You met with him for two hours the first
19 time?

20 A. Right.

21 Q. And I think you said you met with him the
22 last Friday for how long?

23 A. I was with him for about an hour.

24 Q. Okay. And the other five hours, what did
25 you do?

1 A. I reviewed the record. I dictated a
2 report and I did some literature search on various
3 topics including INR.

4 Q. Why did you need to do research on the
5 INR?

6 A. Because I knew you'd be asking me
7 questions about it and I wanted to have an
8 authoritative treaties to cite for you.

9 Q. Okay. And what treaties would that be?

10 A. I think I've already cited it. It's
11 Journal Circulation. There's an article by
12 Hirsch. And it's the position paper from the
13 American College of Cardiology regarding warfarin
14 therapy.

15 Q. Okay. You don't treat people, you don't
16 manage peoples' warfarin therapy; is that correct?

17 A. No, that's incorrect.

18 Q. Do you manage peoples' Coumadin levels
19 with prescription medication?

20 A. Yes, I do.

21 Q. That you prescribe Coumadin to patients?

22 A. Yes.

23 Q. You do?

24 A. Yes.

25 Q. Okay. And so you had to go look it up in

1 a treatise so that you can come give a deposition
2 or testimony today?

3 A. No, I didn't have to.

4 Q. But you didn't know ---

5 A. I figured you wouldn't take my word for
6 it.

7 Q. Oh, okay. So you figured you might want
8 to get some real authority, huh?

9 THE COURT: That's argumentative.
10 Rephrase your question if you want him to answer
11 it.

12 MS. RUPARELIA: Yes, sir.

13 CROSS EXAMINATION CONTINUED

14 BY MS. RUPARELIA:

15 Q. You're telling this jury, Dr. White, that
16 based upon eight hours of work on this case, two
17 hours of meeting with him, taking his history, and
18 examining his body, not conducting any kind of
19 testing whatsoever on Mr. Burke, meeting with him
20 for one hour last Friday, that you are prepared to
21 tell the jury that Mr. Burke is going to need
22 assisted living for the rest of his life?

23 A. Yes, ma'am.

24 Q. Okay. And you're essentially doing that
25 based on that amount of work?

1 A. Yes, ma'am.

2 Q. And how much are you being paid, Dr.
3 White?

4 A. For what?

5 Q. To be here today?

6 A. It depends on how much time. My time
7 in court is based upon three thousand dollars
8 (\$3,000) a day. And I would imagine that I've
9 been here a half a day, so half that amount.

10 Q. So fifteen hundred dollars (\$1,500)?

11 A. Yes, ma'am.

12 Q. And for the other eight hours of work,
13 how much have you charged Mr. McCullough?

14 A. I don't know. I'd have to ask. My
15 typical ---

16 Q. What is your -- go ahead.

17 A. My typical fee is between fifteen hundred
18 and two thousand dollars (\$1,500 and \$2,000).

19 Q. It's not hourly rate?

20 A. No, ma'am.

21 Q. All right. Thank you, Dr. White.

22 THE COURT: Redirect.

23 MR. MCCULLOUGH: Very briefly, Your
24 Honor.

25 THE COURT: Sure.

1 and gentlemen, and the food was good. I'm
2 somewhat envious. I dined in my office at my desk
3 but I understand that's my fault not yours. And I
4 thank you again for your attention. We now have,
5 as I understand, one witness remaining.

6 MR. MCCULLOUGH: Yes, sir.

7 THE COURT: And if you'll give
8 your attention to that witness, please.

9 MR. MCCULLOUGH: We call Jane
10 Burke, Your Honor.

11 (WITNESS TAKES STAND)

12 JANE BURKE, having been duly sworn to
13 tell the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MCCULLOUGH:

17 Q. Jane, introduce yourself to the jury,
18 please?

19 A. Hello. My name is Jane Burke. Again,
20 thank you for the time you've spent this week.
21 We do appreciate it.

22 Q. Are you nervous?

23 A. No. Okay, I'm a little nervous.

24 Q. And have you been ready to talk to this
25 jury since we started on Monday?

1 A. I have been wanting to talk to this jury.

2 I sure have.

3 Q. We're going to get through a lot of
4 evidence very quickly.

5 A. Okay..

6 Q. It's been a long trial.

7 A. Sure.

8 Q. Tell the jury just a little bit about
9 yourself okay?

10 A. I graduated from Campbell University. I
11 was a physical education major.

12 I did my Master's at UNC Chapel Hill in
13 Education Administration.

14 I was a principal at a middle school,
15 elementary, high school level. My last ten years
16 of education, I was a Superintendent of Schools in
17 two different school districts.

18 Q. You've been an educator your whole life?

19 A. I have been an educator my whole life.

20 Q. And are you married?

21 A. I am married.

22 Q. And I believe he described himself as a
23 handsome man earlier?

24 A. Oh, he did. He always describes himself
25 as a handsome man -- and he is.

1 Q. And do you have any children?

2 A. Yes. Rob and Ashlyn.

3 Q. What are their names and ages?

4 A. Rob is thirty-nine (39) and Ashlyn is
5 thirty-three (33).

6 Q. I think we heard from both of those folks
7 earlier.

8 A. (Affirmative nod).

9 Q. Do you have grandkids?

10 A. Yes, I do. We do.

11 Q. We're going to jump right to it, okay?

12 A. Okay.

13 Q. Tell the jury about your life in late
14 2012, early 2013 before Bob fell, okay?

15 A. Okay. 2012, late 2012, Bob and I were
16 doing whatever we chose to do.

17 November 2012, we actually came to Charleston
18 and went on a cruise to the Bahamas. Had a great
19 time. We danced. It was seven -- ten-day cruise.

20 And so in 2012, all the way through 2012 and
21 early 2013, we were doing whatever we chose to do.

22 I consult. I work with high school
23 principals now.

24 He constantly is working with college coaches
25 or high school coaches, so he would go do his

1 thing, and I would go do thing, and then we would
2 do our thing. And that's pretty much how we had
3 been throughout our marriage.

4 And throughout our marriage there were times
5 that, you know, sometimes Bob would say, 'hey,
6 Jane, take off the superintendent hat.' And there
7 were sometimes I'd say, 'hey, Bob, I'm not one of
8 your players.' So that's sort of how we did.

9 Q. So when Bob was coaching, especially with
10 the Trail Blazers, there would be time when he was
11 on the road a good bit?

12 A. Oh, wow, yes. When he was coaching with
13 the Trail Blazers, he was on the road, honestly,
14 all the time. It was really -- even with home
15 games, they'd have a home game and then gosh, get
16 on a plane and fly out and might be gone another
17 five days; so, that period of time, yes, he was
18 really, really active.

19 Q. And in 2012, we've heard from both of
20 your kids that in those years ---

21 A. Right.

22 Q. --- Bob was helping them coach and
23 running up and down the court, playing with
24 grandkids? Were you folks active?

25 A. We were really active. In 2012, and even

1 November 2012, December 2012, Bob was constantly
2 going to other coaches. They were constantly
3 calling him and asking him to come evaluate their
4 practices, or he has this particular offense that
5 he uses and they wanted to see that offense. He
6 was having a lot of contact with South Carolina
7 coaches coming to implement that offense with
8 their players.

9 We were doing anything we chose to do. Our
10 neighbors always wondered 'Where are the Burkes?
11 Where are the Burkes? We want to be like the
12 Burkes because they're always gone, they're always
13 doing stuff.' And so ---

14 Q. You've been in Hawaii and you've been in
15 Portland ---

16 A. Yes.

17 Q. --- but y'all would come back?

18 A. Yes.

19 Q. Jane, what is this?

20 A. This is a picture of Bob and I on the
21 cruise in November of 2012.

22 MR. MCCULLOUGH: Your Honor, I don't
23 want to move this into evidence because I'd like
24 her to keep the picture, but can I publish this to
25 the jury?

1 THE COURT: Any objection?

2 MS. RUPARELIA: No objections.

3 THE COURT: You may do so.

4 MR. MCCULLOUGH: Thank you, Your Honor.

5 THE COURT: I will not accompany you to
6 your jury room, ladies and gentlemen, understand
7 that.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. MCCULLOUGH:

10 Q. Jane, was that an active time in your
11 life?

12 A. It was a very active time in our lives.

13 Q. Did y'all dance on that cruise?

14 A. We absolutely did. Met lots of friends
15 on that cruise.

16 Q. Did y'all get off the boat and go around?

17 A. Yes. We got off the boat. We did a
18 couple of tours. We walked the beach. We had a
19 great time.

20 Q. That's two months before the fall?

21 A. That was two months before Bob's fall.

22 Q. Republic has asked a series of witnesses
23 questions about Bob's health issue at the time
24 that photograph was taken. So let's talk about
25 it.

1 A. Okay.

2 Q. Did Bob have diabetes?

3 A. Yes, he did.

4 Q. And was Bob on blood thinners?

5 A. Yes, he was.

6 Q. Did y'all monitor that?

7 A. Yes.

8 Q. Where y'all careful about it?

9 A. Absolutely. You always monitor that.

10 You know to monitor that, and we did. We
11 monitored it on a regular basis. And, you know,
12 you don't have to do it every week. It's a month
13 -- a month can go by and there'll be times that
14 you'll go in and it's fine. And the next month
15 you go in and you have to adjust the medicine. It
16 just fluctuates sometimes.

17 Q. As long as y'all were careful and were
18 healthy, ate right and did the things that all of
19 us were supposed to do ---

20 A. Right.

21 Q. --- did it impact y'all's lifestyle?

22 A. No, it did not impact our lives or our
23 lifestyle in what we did.

24 Q. What about Bob's right knee? What was
25 his right knee -- while you were on that cruise,

1 what was his condition?

2 A. I mean, he was fine. We danced. We
3 walked. He climbed stairs. You know, we did
4 whatever. There would be -- hey, sometimes of a
5 morning we'd get up and he might say, 'oh, this
6 morning I'm having a hard time getting started
7 this morning' but other than that, nothing. He
8 did not complain about that knee on a regular
9 basis. That knee did not impact what we did or
10 what he did.

11 Q. Tell the jury how you first learned that
12 Bob had fallen in January 2013?

13 A. I got a call from Ashlyn. It was a
14 little late. So she didn't call me right away.
15 She wanted to find out what was going on with her
16 dad. And so she called and she said, 'Mom', you
17 know, 'Daddy has fallen.' And she told me that he
18 was in the emergency room and that he was being
19 taken care of. It was probably 11:00 at night,
20 maybe 11:15, and I was going to go. I said, I'm
21 coming. She says, 'no, you can't get on the road
22 by yourself at 11:00 at night.' So I got up a
23 4:30 and left about 5:00 the next morning.

24 Q. Had you seen Bob before he left?

25 A. Oh, yeah. I'd seen him that morning.

1 He'd left that morning. I was home when he left.
2 He was excited because Bob gets always excited
3 about seeing Rob coach and about being a part of
4 what he was. And then he and Ashlyn -- he was
5 going to meet Ashlyn. They were going to have
6 dinner afterwards. And he was really excited
7 about going. I was going to come on Saturday
8 because the Citadel had a game on Saturday. So
9 I was going to work that Friday, work with a
10 principal on Friday, and then come Friday
11 afternoon.

12 Q. There were some questions earlier, was
13 he in some sort of weakened condition or was he
14 limping around or dizzy or ---

15 A. No, he was not. Bob has a little
16 convertible and he got in his little convertible
17 and he took off, and he was excited. No, he was
18 not in any weakened condition.

19 Q. Tell me about the first time you saw Bob,
20 what was his condition? What did he look like, on
21 January 25, 2013?

22 A. When I saw Bob, he just -- they have the
23 bandages, but even with the bandages, the blood
24 constantly was seeping out of those bandages. He
25 was -- even within that period of time he was

1 swollen. His knee was really swollen and his legs
2 were beginning to swell. And he was really,
3 really in excruciating pain. And, you know, he
4 was anxious. He was nervous. You know, -- and
5 he looked horrible. He looked horrible.

6 Q. Your kids described that he was in
7 extreme pain?

8 A. He was in extreme pain. I think I'd said
9 that. His whole body -- he was in extreme pain,
10 his whole body. And he would say to me, you know,
11 'I can't move my arm' or 'I can't turn this way or
12 I can't...' -- now, when I first saw him, he didn't
13 say a lot to me in the beginning at all. He
14 moaned and he groaned and he said, you know, 'I'm
15 in pain', but did he have a general conversation
16 with me, no, he did not. I could see what was
17 going on but no, he was not laying in that bed
18 talking. He was in pain.

19 Q. We saw a video a little while ago. Was
20 that your primary treating physician, Dr. Sakran?

21 A. Yes. Dr. Sakran stayed with us the
22 entire time.

23 Q. You've heard the testimony and I don't
24 want to belabor this, but just briefly describe
25 for the jury those days in the ICU, the intensive

1 care unit at MUSC. Just what were those like?

2 A. Well, they were -- it was a constant
3 worry because of the bleeding and because of the
4 drop in his blood count and not really knowing,
5 knowing that he had the internal bleeding. It was
6 a constant 'what does it look like this morning?'
7 I mean, 'what do the counts look like this
8 morning?' Changing those bandages constantly,
9 within an hour -- I mean they'd put that bandage
10 on and within an hour you took it off. They took
11 it off. Those nurses took it off. And watching
12 that knee just expand and expand. And I knew Bob
13 was really, really sick.

14 Q. He described tree trunks and some private
15 areas and his knee. Are those all accurate?

16 A. Absolutely. Absolutely, and bothered him
17 -- even through Roper. When Bob came home from
18 Roper, he did not -- he still had swelling all
19 over his body.

20 Q. And I want to ask, were you a significant
21 participant in his healthcare during that time
22 period? Meaning, you had conversations with
23 physicians, meeting with the healthcare providers
24 and actually at the hospital almost 24/7?

25 A. In the last two years, starting at MUSC,

1 I have been with Bob the entire time. At MUSC, I
2 spent the night as -- I spent almost every night
3 in that hospital and slept in that hospital chair.

4 And what happens over a long period of time
5 is that your role changes. Your role changes, you
6 know. You're still a wife but your role changes
7 to a healthcare provider. And that -- it's
8 different from being just a wife. And so it --
9 there are things you have to do, decisions that
10 you have to make that are hard. And, yes. And
11 you do. You have to ask questions. You have to
12 take notes. You have to make sure you understand
13 what's going on because anytime anybody's in the
14 hospital, when a loved-one is in the hospital, you
15 need to -- I knew I had to be his advocate. And I
16 was his advocate.

17 Q. Did it take days at MUSC in the intensive
18 care unit to actually get the bleeding under
19 control?

20 A. Yes, it did.

21 Q. And as a result of that bleeding, was Bob
22 suffering kidney issues at MUSC?

23 A. Yes, he was. He was suffering from
24 kidney issues at MUSC. And that was a scary
25 thing. The scary thing was by the time they got

1 Bob to a regular room -- it was the first night he
2 been transferred to, as I heard Dr. Sakran say,
3 the ward, but that's when the kidneys -- that's
4 when we had the conversation about the creatinine
5 levels and the BUN levels and the heightening of
6 those numbers. And that's when they started
7 talking about the dialysis. Bob had been on the
8 catheter before then. So until that point -- but
9 once catheter came out, then he had to urinate.
10 In order for him to not have dialysis, he had to
11 produce urine and he had to secrete urine and that
12 was a major issue. And that emotionally was a
13 strain for Bob, to even think that he was going to
14 have to have dialysis.

15 Q. Now, you talked about no prior knee
16 issues. Had he had a prior kidney issue?

17 A. No. I mean, no. We'd never talked about
18 the kidneys. He'd never had any kidney issues.
19 Even at -- when his heart went into defib in
20 California, his creatinine -- none of his numbers
21 went up. There was no conversation about kidney
22 issues. And when we left that scenario -- and
23 that was trauma. But when we left, we flew home.
24 Bob didn't come home on a walker. He didn't come
25 home in a wheelchair. He came in. He walked in

1 our door and he really progressed. This was so
2 different. This trauma to his body was so
3 different.

4 Q. And, again, I want to accelerate this
5 because it's getting late. Your kids described a
6 Super Bowl Sunday phone call. And Rob testified
7 that there was a crack in the armor. We've talked
8 about the physical but tell the jury what those
9 two months in the hospital -- what did they do to
10 Bob emotionally?

11 A. And the Super Bowl Sunday was described.
12 But that was typically where we were. It was his
13 really being scared. When we went home, Bob
14 really had a difficult time sleeping. So we were
15 up many, many nights. There were nights we'd be
16 back on our patio and it was like -- he had
17 anxiety attacks. He was having anxiety attacks.
18 And even though -- see, I knew -- I'm like -- I
19 knew, 'you're going to make it', you know. But he
20 didn't know that. And I couldn't convince him of
21 that. It was what he felt and it was what was
22 going through his mind and in his heart. That was
23 a really difficult time.

24 Q. And that continued both at MUSC, at Roper
25 and once he got home?

1 A. Absolutely.

2 Q. And we've heard testimony about his
3 physical condition at MUSC and at Roper. What was
4 he like when he left the hospital and went home?

5 A. Bob has never been the same. He has not
6 been the same. And we went through the process of
7 the knee, of doing the cortisone, of doing the
8 Hyalgan just because he was scared to death to
9 have surgery. He was scared to death to have
10 surgery. And so we were trying everything in the
11 world that we could, that would help him manage
12 and help him get by, because that's what we were
13 doing. We were getting by. We weren't doing
14 anything. We were not -- I mean, would we go to a
15 restaurant? Yeah, we'd go to a restaurant. Would
16 we go anywhere significant? No, we would not.
17 Would we decide to go to the beach and get up the
18 next morning and Bob say, 'I just can't go'? Yes,
19 that happened a lot. That happened a lot.

20 Q. Was the decision to have that right knee
21 surgery, was that a tough one for y'all to make?

22 A. Well, you read the letter. Or Ashlyn
23 read the letter. That was a tough decision. But
24 here's where we were. It was, 'okay, you either
25 have the surgery and work toward really getting

1 better and not live a life of just functioning or
2 you don't ever know when this knee is going out.
3 You don't ever know when you're not going to walk.
4 You don't ever know...' -- I mean, so it limits what
5 you can do. So if you decide to go to Myrtle
6 Beach and you don't take the wheelchair and your
7 knee locks, you're -- that's what we lived with.
8 Those kinds of decisions is what we have been
9 living with for the last two years.

10 Q. And despite his grave concern because of
11 the pain, he went forward with the surgery?

12 A. Yes, he went forward with the surgery.

13 Q. And did he get blood poisoning as a
14 result of it?

15 A. Yes, he did. He got blood poisoning.
16 It went downhill from there. It just -- it's just
17 gone downhill from August 5th.

18 Q. You've been around him the most. Why do
19 you think he had to have knee surgery?

20 A. Well, he had to have knee surgery because
21 he could not function. He was managing but it was
22 not any kind of a life that he wanted.

23 Q. What caused his injury?

24 A. The fall. I mean, the fall. He did not
25 have these issues with that knee before this fall.

1 Q. Did he have a problem with arthritis?

2 A. Not these kind of problems, no. He
3 wouldn't have had these kinds of problems with
4 arthritis.

5 Q. Tell the jury about having to deal with
6 dialysis?

7 A. Dialysis is really tough. You are -- you
8 have dialysis three days a week. Each session is
9 a four-hour session. It's extremely cold. Our
10 granddaughter actually gave Bob a blanket, one of
11 her blankets to use in dialysis. So you sit in a
12 chair for -- when Bob was at MUSC, it started on
13 October 19th. He was in the bed then. And they'd
14 roll the bed down to the dialysis center. And
15 then he's been in Dialysis at the East Cooper
16 Center. So you sit in a chair. You've got four
17 hours. It's really, really cold. And you try to
18 entertain yourself during that time.

19 But the hard thing is how do you function?
20 You're worried about, 'How am I going to have a
21 normal life when I know that three days a week I
22 have got to take my four hours and I have to do
23 dialysis. How do I do anything? Where can I go?
24 How can I travel?' I mean, it's very, very -- and
25 it wipes him out. Absolutely wipes him out.

1 Q. Had the doctors talked to you before they
2 did the vein and -- fistula surgery?

3 A. Yes, they did. And they don't do the
4 fistula unless they are sure that you're going to
5 pretty much be on dialysis the rest of your life.
6 It is not something they do just to do. They --
7 and they waited -- they did not do that fistula
8 until the 16th of November. And they waited that
9 long just trying to see if Bob's kidneys would
10 recover. And at that time they had not recovered
11 and Dr. Ploth said this is what we need to do.

12 Q. Again, these types of kidney issues first
13 reared their head at MUSC after the fall?

14 A. Yes.

15 Q. And became permanent as a result of the
16 blood poisoning after the knee surgery?

17 A. Yes.

18 Q. Are there other things that stress you
19 out about having to get Bob to dialysis three days
20 a week the rest of his life?

21 A. Your costs. I mean, you know, I'm
22 worried -- and that's a different role. As you
23 become a caregiver, you also have to worry about
24 the finances and everything that you're going to
25 have to do. So you worry about what is this going

1 to cost? You know, in just talking with some
2 individuals, I think it -- as I've average it out,
3 it's about six hundred dollars (\$600) a session.
4 But you also worry about how do you maintain your
5 health? What kind of diet do you need? And I
6 know that a high protein diet is important. So,
7 you know, yeah, there are just so many things that
8 you have to worry about and I'm just in the
9 beginning stages of worrying about these things.

10 Q. This is going to be your last opportunity
11 to talk to this jury. I'm going to sit down.
12 You've testified how this has impacted you and
13 your daily life. I just want you to tell them in
14 your own words -- how long have y'all been
15 married?

16 A. Forty-five years on January the 11th.

17 Q. I want to know, I want you to tell them
18 the difference in that man from the morning you
19 saw him getting in his convertible driving to go
20 meet his daughter, to watch his son coach, and the
21 man who's sitting here today?

22 A. Bob is not the same person. On the stand
23 -- I mean, he's not the same person. It has
24 impacted him physically. It's impacted him
25 emotionally and it has impacted him mentally to an

1 extent of the slowness in response. As Rob said,
2 a crack in the armor. Bob was this 6'2", 245,
3 active, vivacious, constantly involved. And his
4 brain was constantly thinking about things and
5 doing things. And that is not the same. He
6 cannot do what he was doing. He feels like he is
7 out of the loop with coaches. He feels like he is
8 out of the loop with his grandchildren and his
9 children because he cannot do the things -- he has
10 not seen Nina play a volleyball game -- she's a
11 senior -- in the last two years. She plays
12 Volleyball at James Island High School, getting
13 ready to go to college. Hopefully playing
14 volleyball in college. He has not seen -- did he
15 see her play before? Absolutely. Marissa who is
16 seven, just turned eight. Was he involved when he
17 had the accident 2013 in January? Marissa was
18 five -- six at that time in January. And played
19 in a little basketball league. Oh, my goodness.
20 We had gone to see her play in December. He's not
21 seen her play basketball since then. And so it's
22 really -- he's not the same person. The dialysis
23 physically, emotionally, wipes him out. So this
24 vibrant individual has become dependent on his
25 wife and his children and other people to take

1 care of him. And the independence -- you take
2 away an individual's independence and that is hard
3 and stressful for him, for who he is and was.

4 THE COURT: Cross-examine.

5 CROSS-EXAMINATION

6 BY MS RUPERALIA:

7 Q. Ms. Burke, you need to take a break?

8 A. No. I'm fine.

9 Q. Okay. Ms. Burke, you talk about
10 accompanying Mr. Burke to all of his doctors
11 appointments?

12 A. After the fall, yes.

13 Q. Yes, ma'am. But you've accompanied him
14 to a lot of appointments before the fall, have you
15 not?

16 A. No. I'll tell you when I did accompany
17 him to his appointments. I would accompany him
18 when we came back from California. In the
19 beginning, yes, I did accompany him with his
20 appointments.. After that, you know, he was
21 driving. He was doing things. No, I did not go
22 with Bob to all of his doctor's appointments. I
23 did not.

24 Q. Yes, ma'am.

25 A. Even his cardiologist, I just -- in the

1 well?

2 A. Family physician.

3 Q. Thank you, Ms. Burke.

4 THE COURT: Redirect?

5 MR. MCCULLOUGH: No, sir.

6 THE COURT: You may come down. Thank
7 you, ma'am.

8 WITNESS: Thank you.

9 (WITNESS STEPS DOWN)

10 THE COURT: Any additional witnesses?

11 MR. MCCULLOUGH: No, sir. The
12 plaintiff rests.

13 THE COURT: Does the defendant intend
14 to call any witnesses?

15 MS SPRUILL: No, Your Honor, but we have
16 a brief Motion.

17 THE COURT: I understand that. Ladies
18 and gentlemen, I'm going to let you to go your
19 jury room. When we return you won't hear any
20 additional evidence. There's some matters of law
21 that I need to take up out of your presence.

22 But when we come back, we'll move into
23 the third and fourth stages again, where you'll
24 hear the closing arguments and receive the charge
25 on the law. While you will not hear any evidence,

1 of course it still would be inappropriate to begin
2 your deliberations.

3 We'll be with you as quickly as we can.
4 Thank you.

5 (JURY OUT @ 3:15 P.M.)

6 THE COURT: All right. I assume
7 you -- I've already indicated that I'm finding
8 actual damages, but that's just confirmatory,
9 based on my view of what the determination that
10 there was negligence. And clearly there was some
11 injury or damage. He had a right to be taken to
12 the hospital just to be checked out. So I find
13 that the fall, which they have determined to be
14 negligent on the part of both parties, proximately
15 caused some damage. And the amount, of course is
16 left for the jury. But I'll be happy to hear from
17 you now. You don't have any further witnesses?

18 MR. MCCULLOUGH: No, sir.

19 MS SPRUILL: Your Honor, very, very
20 briefly we renew our earlier motion. And I wrote
21 this down and it's got one -- and I thought of one
22 while I was sitting here.

23 THE COURT: Sure.

24 MS SPRUILL: So this will be very short.
25 There's just one this time.

1 THE COURT: No, no, take as long as you
2 need.

3 MS. RUPARELIA: The first of which ---

4 THE COURT: This is on the damages
5 element?

6 MS SPRUILL: Yes, Your Honor. The first
7 is on the -- you can see my little handwritten
8 note. The first is on the issue we've already
9 discussed about future damages, present value.
10 We haven't heard expert or any testimony that
11 would let the jury discount that.

12 THE COURT: Yeah.

13 MS SPRUILL: And the second is simply
14 that with respect to these most recent damages,
15 stemming from this most recent surgery, that that
16 simply breaks the causal chain. That goes beyond
17 the bounds of foreseeability. That's the *Palsgraf*
18 scenario from law school we all remember.

19 THE COURT: Yep.

20 MS SPRUILL: Thank you, Your Honor. And
21 just the directed verdict ---

22 THE COURT: And I will be candid with
23 you. There have been -- over my twenty-one years
24 on the bench a number of times that I really,
25 really, really wanted to take it from the jury

1 because there was no way the damages, in my
2 opinion, could possibly have been caused by the
3 negligence. Seriously, I've had a number of
4 cases. The problem I have is as much as I wanted
5 to do that, I have never found a case -- I've
6 looked. I assure you, I've looked, especially on
7 summary judgments. Because I thought, you know,
8 'We can shorten this thing. This is crazy.'
9 Every single one of them said proximate cause is a
10 fact issue. And therein lies the problem. So I
11 agree with you.

12 I'm going to charge foreseeability and they
13 have to make that determination. And somehow
14 some way they do it day in and day out.

15 But I appreciate it. Thank you very much.
16 It's noted it and I deny your motions. Thank you.

17 MS SPRUILL: Thank you, Your Honor.

18 THE COURT: Okay. Y'all get ready and
19 let me know when -- give me a high sign when
20 you're ready. But thank you, Ms. Spruill,
21 appreciate it.

22 MS SPRUILL: Yes, Your Honor.

23 THE COURT: And the Motion it's been
24 filed and that filed Motion is also incorporated
25 in your remarks.

1 just look at it and decide in your hearts what is
2 right. Thank you so much.

3 THE COURT: Ladies and gentlemen,
4 if I could have your attention now. It is my
5 responsibility to give the law. And you've been
6 through this and I'm going to talk about some of
7 the parts of the charges that certainly you've
8 already heard. And at your request, I will be
9 sending it back to you. It will look familiar
10 because it's obviously the same applies.

11 You have to evaluate the credibility and
12 believability of each witness as I stated. The
13 fact that some testimony is not contradicted
14 directly doesn't render it undisputed. You have
15 to decide whether you believe it and whether it's
16 credible, believable, probable and you make that
17 determination by applying your common sense and
18 sense of logic and reason.

19 And as you know, there are many factors.
20 And you've already done this. You've been this
21 process of applying your common sense and deciding
22 what you find to be credible and you do it again
23 now in analyzing this evidence and decide what you
24 find to be credible and believable.

25 As you recall, I said you can consider,

1 in making this determination, the manner and
2 appearance of the witness.

3 How did they appear to you,
4 straightforward or hesitant in answering
5 questions?

6 Was their testimony consistent or
7 inconsistent, was it strengthened or weakened by
8 other evidence in the case?

9 How did that witness know the facts that
10 he or she came and testified to?

11 What was the ability of that witness to
12 know those particular facts?

13 Is there a reason for a witness to give
14 testimony which may be helpful, detrimental or
15 whether the witnesses had any bias or prejudice?

16 A you know, you're entitled to believe
17 one witness against many, many witnesses against
18 one. You don't count the numbers but you simply
19 evaluate the credibility and believability of each
20 witness because you can believe all the witnesses
21 testimony, parts of the witness's testimony or
22 none of it.

23 Now these decisions on credibility and
24 believability, you don't make arbitrarily. But if
25 there's a basis or reason in the evidence in the

1 case that you will analyze when taking that
2 position, you have the prerogative because your
3 objective from the start and we've already gone
4 through one part of it, is to determine the truth
5 regardless of the source of the evidence.

6 Now, the evidence you know and what you
7 will analyze is the testimony of the witnesses and
8 the exhibits that will be sent back. And in that
9 regard, we will not be sending back all of the
10 exhibits because you've already decided parts of
11 this case. But, if in your deliberations you
12 should need any exhibits introduced during the
13 first phase, just let us know and we'll be happy
14 to provide that exhibit to you. But what we will
15 be sending back are the exhibits that were
16 introduced in this phase because this phase is
17 focused. It's focused on the issue of damages and
18 that's what you will analyze and determine.

19 You know, and as I reiterate it and each
20 of them stated it in their remarks, their closing
21 arguments, opening statements, not evidence. My
22 remarks, not evidence.

23 The evidence consists of the testimony of
24 the witnesses and you're instructed to disregard
25 any remark that they make that differs from your

1 recollection of the evidence. And disregard any
2 statement that they may about the law that differs
3 from the instruction that I give you because
4 you're the sole judge of the facts and I'm the
5 sole judge of the law.

6 As you recall, I told you that our rules
7 of evidence generally don't permit a witness to
8 render an opinion, except in very limited areas.
9 But some witnesses who, because of their
10 background, training, education and experience
11 have developed some expertise in some art, science
12 or profession, they're permitted to render opinion
13 in the subject in which they claim some expertise.
14 But I would instruct you to consider any expert
15 opinion like any other evidence, give it the
16 weight that you think that it's entitled.

17 And if you decide that the expert's
18 opinion is not based on sufficient education and
19 experience, if you decide that the reasons given
20 in support are not sound, or that the opinion is
21 outweighed by other evidence, then you're
22 certainly entitled to disregard the opinion in its
23 entirety.

24 An expert's opinion is given no greater
25 weight because it's simply called an expert, and

1 they're not given to control your judgment because
2 the purpose of the testimony is to assist you in
3 evaluating the evidence and deciding what you
4 believe to be the true facts. And you do not have
5 to accept an expert's opinion even though it's not
6 contradicted directly.

7 Now, the burden of proof of damages is
8 just the same as it was in the negligence claim
9 and the comparative negligence. We talked about
10 that burden that preponderance of the evidence,
11 which you wrestled with and I think understand
12 fully. You made your decision now. And it's that
13 same, it's that, is it most likely, most probable.

14 As you recall when you came back and
15 asked for some clarification -- and it's an
16 individual conclusion. Each juror has to come to
17 this conclusion as to the elements of damage. You
18 have to come -- it can't be 'well, this might be,
19 this could be, it's possible', because that, while
20 we use that term in our lives, that speculative.
21 I mean, when you hear the word speculative, that's
22 what I mean. Possible, might be's, could be's.
23 Probable, most likely, is that preponderance. Is
24 it most probably so? Is that most likely the
25 case? Did this most likely happen because of the

1 negligence? That's how you have to analyze it and
2 that's the conclusion you have to reach in order
3 for the plaintiff to meet the burden of proof that
4 he has. And the plaintiff alone has the burden of
5 proving his damages.

6 Now, the damages that you're to assess
7 are those damages which are proximately caused --
8 that's the legal term -- by the negligence that
9 you've determined.

10 A plaintiff must establish by the
11 preponderance of the evidence that the negligence
12 of the defendant was a proximate cause of the
13 injuries that he sustained.

14 Because a given injury may result from
15 multiple causes and it is enough if the negligent
16 act is at least one of the causes without which
17 the injury would not have occurred. The law
18 defines a proximate cause of an injury to be
19 something that produces a natural chain of events,
20 which in the end brings about the injury or
21 damage. In other words, proximate cause is the
22 direct cause, without which the injury or damage
23 would not have occurred.

24 Proof of proximate cause requires proof
25 that the injury or damage would not have occurred

1 but for the defendant's negligence and that the
2 consequence was foreseeable, which is determined
3 by looking to the natural and probable
4 consequences of the act of which the plaintiff
5 complains.

6 I further charge you that the fore-
7 seeability of some injury from a negligent act or
8 omission is a prerequisite to it's being a
9 proximate cause of the injury for which recover is
10 sought. The law requires in this regard only
11 reasonable foresight.

12 When the injury complained is not
13 reasonably foreseeable in the exercise of due
14 care, there wouldn't be any liability. One is not
15 charged with foreseeing that which is
16 unpredictable or which would not be expected to
17 happen as a natural and probable consequence of
18 the Defendant's negligent act. Foreseeability is
19 to be judge from the perspective of the Defendant
20 at the time of the negligent act and not after the
21 injury has occurred.

22 However, in order to establish liability,
23 it is not necessary that the party charged with
24 negligence should have contemplated the particular
25 event that did occur. It is sufficient that the

1 defendant should have foreseen that its negligence
2 would probably result in an injury of some kind to
3 someone.

4 Now, the damage, which you are dealing
5 with, is actual damage. And actual damages are
6 also called compensatory damages, meaning to
7 compensate, to make the injured party whole, to
8 put him in the same position he was in prior to
9 the damage being sustained insofar as that is
10 possible. In other words, actual damages would be
11 the actual losses and expenses, which a person has
12 suffered because of another's carelessness.

13 In determining the amount of compensation
14 for injuries suffered by the plaintiff as a result
15 of the defendant's negligence, it's proper to
16 consider the following:

17 Expenses incurred for all necessary and
18 reasonable medical treatment.

19 The character of the injury with regard
20 to how is the injury impaired one's health or
21 physical condition and the amount that would be
22 necessary to make the injured person whole.

23 Pain, suffering, mental anguish,
24 emotional stress, those are recognized by our
25 courts as material elements for which a damage

1 recovery may be obtained.

2 Pain and suffering have no market price.
3 They're not capable of being exactly and
4 accurately determined. And there's no fixed rule
5 or standard whereby damages for them can be
6 measured. The amount is left to you as to what
7 amount of money is necessary to compensate him for
8 the pain, suffering, mental anguish and emotional
9 stress that the evidence convinces you that he
10 most probably has suffered and is most likely to
11 suffer in the future.

12 An award of actual damage may also
13 include any proven loss of enjoyment of life.
14 Loss of enjoyment of life is essentially an
15 assessment of the plaintiff's injury and how it
16 impairs or interferes with such things in one's
17 daily life as recreational activities, family
18 activities, hobbies, social activities and the
19 like. As with pain and suffering emotional
20 distress and mental anguish, this type of damage
21 also has no fixed rule or standard for measuring
22 this type. It's left to your judgment as to what
23 amount is necessary to compensate him for that
24 damage that you're convinced from the evidence he
25 most probably has suffered and will likely suffer

1 in the future.

2 Actual damages would include also any
3 reduced earning capacity. In determining the
4 amount of compensation due to the plaintiff for
5 loss or impairment of earning capacity, you shall
6 consider the following:

7 Loss of future earning power, which
8 requires the consideration of all matters that
9 relate to the issue of any impairment.

10 The effect which the impairment will have
11 on the plaintiff's ability to work.

12 The extent to which the impairment will
13 impair the plaintiff's earning capacity.

14 The evidence of what the plaintiff had
15 previously earned when employed in the past is a
16 factor from which to base any loss or impairment
17 of earning capacity.

18 In awarding damages for loss or impair-
19 ment to earning capacity, the law provides that a
20 person who is injured may recover for the loss or
21 diminution of his earning capacity during his
22 entire expectancy of life and is entitled to such
23 amount as will compensate him for such loss,
24 assuming -- and you will hear this later --
25 assuming that you have determined that the

1 injuries or damages that affected his earning
2 capacity are most likely permanent.

3 I further charge you that it is the law
4 of this state that one negligently inflicts a
5 personal injury on another is responsible for all
6 ill effects, which considering the condition of
7 the health in which the plaintiff was when he
8 received the injury, naturally and necessarily
9 follow such injury.

10 In other words, a negligent defendant who
11 causes an injury takes the plaintiff as he finds
12 the plaintiff, whether the plaintiff is in perfect
13 health or in poor health or somewhere in between.

14 Hence, the defendant's liability is in no
15 way lessened or effected by reason of the fact
16 that the injury would not have resulted or would
17 not have been as serious or severe had the
18 plaintiff been in good health or that the injury
19 or injuries were aggravated and rendered more
20 difficult to cure by reason of the fact that he
21 was not in good health.

22 If the presence of a condition or pre-
23 existing injury aggravates and prolongs the injury
24 and correspondingly increases the damage and that
25 has been established by the preponderance of the

1 evidence, then the plaintiff should be compensated
2 for such increase or added damage. Let me restate
3 that, for such increase or added damage.

4 I charge you that a person with a pre-
5 existing injury or condition is not, however,
6 entitled to any compensation for the existence of
7 that pre-existing condition.

8 Also, if the problems are the result of
9 the natural progression of or the worsening of the
10 pre-existing injury or condition, the plaintiff
11 likewise would not be entitled to compensation for
12 such condition. It has to be established by the
13 preponderance of the evidence to be entitled to
14 recovery, that the pre-existing condition was
15 aggravated and it's that difference, the
16 difference between the existence and what the
17 aggravation resulted in, you must determine by the
18 preponderance of the evidence. And if you find
19 that, then he's entitled to the additional added
20 damage.

21 You're further instructed that a pre-
22 existing infirmity does not excuse the negligent
23 defendant because it causes the plaintiff to be
24 more susceptible to injury nor does such pre-
25 existing condition resulting in a greater

1 susceptibility to injury diminish the plaintiff's
2 entitlement to a just and fair compensation for
3 his injuries.

4 The plaintiff is entitled to recover all
5 damages that he has established by the
6 preponderance of the evidence proximately resulted
7 from the negligent acts of the defendant, which
8 would include the aggravation of his pre-existing
9 condition, if any.

10 Ladies and gentlemen, your verdict for
11 actual damages should also include all damages
12 which have been sustained, which are naturally the
13 proximate consequence of the negligence. And that
14 should also include as it pertains to future or
15 prospective damages, if any, as the evidence
16 renders is reasonably certain to most probably
17 occur in the future.

18 The standard is most probably and not
19 simply possible because as I stated, that would be
20 speculative, possibility.

21 Future damages are those which the
22 evidence convinces you that the plaintiff will
23 most likely suffer. And these future damages must
24 be the result from the defendant's negligence and
25 the damages must be most probably permanent.

1 If you do find the plaintiff is entitled
2 to future or prospective damage, you may consider
3 the increased cost of living or the diminished
4 purchasing power of money.

5 "Reasonable compensation" means
6 compensation in value. The value of money lies
7 in not of what it is but what it will acquire or
8 purchase. You're expected to use common sense and
9 good judgment in this regard.

10 Also, if your award includes such
11 damages, future damages, they must be reduced to
12 their present-day value.

13 To aid you in this determination and that
14 is considering if you should decide to award
15 future damages, you may consider as evidence a
16 statute enacted by our State Legislature commonly
17 called the mortuary table. It's Section 19-1-150
18 of our Code of Laws. According to this table, a
19 male who is the age of the plaintiff today has a
20 life expectancy of 13.99 years. This fact, of
21 which the Court now takes judicial notice, is now
22 in evidence to be considered by you in arriving at
23 the amount of damages to be awarded in the event
24 that you find that the plaintiff is entitled to a
25 verdict -- excuse me -- in determining the verdict

1 amount that you will award.

2 Also, before considering the mortality
3 table, you must first have concluded that the
4 plaintiff has established, as I've stated earlier,
5 by the preponderance of the evidence that he
6 sustained an injury or damages as a proximate
7 result of the defendant's negligence, and that
8 such injuries was most probably permanent. If the
9 plaintiff has failed to prove this by the
10 preponderance of the evidence, then you must
11 disregard the mortality table in its entirety.

12 Now, the life expectancy as shown by this
13 table is merely an estimate of the probable
14 average length of life of all persons in this
15 state of a given age. And that estimate is based
16 not on a complete, but a very limited record of
17 experience. So the inference, which may be drawn
18 from the life expectancy shown by the table, must
19 be considered with all other facts and
20 circumstances in evidence, which would bear on the
21 life expectancy of the plaintiff including his
22 occupation, habits, and state of health.

23 Now, the plaintiff is not entitled, as I
24 stated throughout, to conjecture or speculative
25 damages. That's that might be, could be,

1 possible. But he is entitled to a verdict for
2 actual damages, which includes all damages, which
3 have been sustained, which are naturally the
4 proximate consequence of the negligent act.

5 As with all other aspects of this case,
6 the plaintiff has had to prove his actual damages
7 by the greater weight of the evidence, but that
8 does not mean that he has to prove them to a
9 mathematical certainty or produce evidence of the
10 precise amount of damage that he suffered.
11 Rather, the evidence put forth should be such as
12 to enable you to determine what amount of damage
13 is fair, just and reasonable based on the
14 preponderance and greater weight of the evidence.

15 Now, as you know, your verdict is to do
16 one thing, it is to speak the truth of this
17 controversy. And this is the last aspect of it in
18 that regard. As I stated earlier, you nor I have
19 any friends to reward, we not here to punish any
20 enemies, we aren't here again -- now, we've heard
21 some other testimony. And sometimes that one of
22 the reasons we bifurcate. Because we can -- and
23 certainly our hearts go out to both sides, but one
24 thing is for sure, sympathy, passion, anger have
25 no place in this process. Nothing to do with what

1 you have to do and I have to do. Now we have to
2 apply our common senses our sense of logic and
3 reason, to be as fair as we know how to be. And
4 you decide what you believe to be the true facts.
5 Once you decide that, you write that figure in
6 this paper. And once you've done that, you will
7 have honored in every perspective the oath that
8 you took when you raised your hand. And we'll
9 thank you for that.

10 To assist you in reporting your verdict,
11 I've prepared another verdict form. And you know
12 the caption, that's just to facilitate the filing.
13 And the form says thusly, "We, the jury in the
14 above entitled action, unanimously find..." -- and
15 you know what that means, twelve to zero, "for the
16 plaintiff in the amount of blank dollars." You
17 see a line and then parenthesis and a dollar sign,
18 first write it in words and then in numbers.

19 Once you've completed that if you'll sign
20 it, knock on the door. We will return you to the
21 courtroom to receive your verdict.

22 As you know, it has to be all of you must
23 agree on that figure before you can write it in
24 there. You're almost there. As you know, I have
25 to talk about my charge with the attorneys. And

1 it may be necessary to bring you back in to
2 clarify something or give you some additional, but
3 if there aren't any additions, we'll gather the
4 exhibits, the verdict form and when you get them,
5 you'll go back to doing what you did the other
6 night, you'll start your deliberations.

7 And, again, if you have to leave the
8 table for any reason, you must stop until all
9 twelve of you are present.

10 Again, and I mean this sincerely, I can't
11 thank you enough for your attention throughout
12 this week and your attention to the remarks today.
13 I now ask you to retire to your jury room and wait
14 until you receive your exhibits to undertake the
15 last responsibility of deciding the truth
16 concerning the amount of damages. Thank you.

17 (JURY OUT @ 4:50 P.M.)

18 THE COURT: Any exceptions or
19 additions from the plaintiff?

20 MR. MCCULLOUGH: No, sir.

21 THE COURT: Excuse me for turning
22 my back on you.

23 MR. MCCULLOUGH: No. No, sir.

24 THE COURT: I'm trying to find
25 that part I took out of -- any other exceptions or

1 additions from the defendant, other than the
2 language which was in the personal injury on your
3 request to charge concerning actual damages and
4 duty to mitigate?

5 MS SPRUILL: Your Honor, in
6 addition to renewing those, I would add -- there
7 wasn't an affirmative charge that the defendant
8 didn't have any burden in this portion of the
9 case.

10 THE COURT: I didn't say the
11 defendant didn't have any burden. I said the
12 plaintiff alone has the burden of proof for
13 damages.

14 MS SPRUILL: Your Honor, just note
15 my objection.

16 THE COURT: Thank you. Uh-huh.

17 MS SPRUILL: And, Your Honor, one
18 additional objection. In the pre-existing injury
19 charge, you charged aggravation three times and
20 only mentioned natural progression once.

21 THE COURT: Okay. That's noted.
22 Thank you very much. Because that's the charge we
23 read. Most of it is given over and over. We'll
24 find out whether we have to change that. Thank
25 you.

1 MS SPRUILL: Thank you, Your Honor.

2 THE COURT: Uh-huh.

3 MR. MCCULLOUGH: Just the new ones
4 go back?

5 THE COURT: That's correct.

6 MR. MCCULLOUGH: Okay.

7 THE COURT: Court's Exhibit 14
8 will be additional exceptions, those in addition
9 to those stated by Ms. Spruill.

10 (SO ENTERED AS COURT'S EXHIBIT 14)

11 (COUNSEL APPROVAL OF EXHIBITS)

12 (JURY IN DELIBERATIONS @ 5:00 P.M.)

13 THE COURT: All right. We'll be at
14 ease. We're just sending back the new exhibits,
15 entered in this phase.

16 All right. I'm sending the charge back.
17 Everybody -- I know y'all have agreed but ---

18 MR. MCCULLOUGH: At 1:30 we'll talk
19 about it.

20 THE COURT: This time, the note I think
21 it will help me because it's really in --
22 precisely what law says in her opinion she wrote.

23 MR. MCCULLOUGH: Yes, sir.

24 THE COURT: Because they stated
25 the whole charge. Thank you. I think that one

1 makes it even more attuned.

2 (COURT IN RECESS)

3 (NOTIFIED OF JURY QUESTION @ 5:40 P.M.)

4 THE COURT: We have a note from the
5 jury requesting a calculator, so that will be
6 provided to them. That's Court's ---

7 COURT REPORTER: --- Exhibit 15.

8 (SO ENTERED AS COURT'S EXHIBIT 15)

9 (COURT IN RECESS)

10 (JURY NOTIFICATION @ 7:20 P.M.)

11 THE COURT: All right. Is the
12 plaintiff ready to receive the verdict?

13 MR. MCCULLOUGH: Yes, sir.

14 THE COURT: Is the defendant ready?

15 MS. RUPARELIA: Yes, Your Honor.

16 THE COURT: Okay. Let's bring them in,
17 please?

18 (JURY IN @ 7:25 P.M.)

19 BAILIFF: All jurors are present,
20 Your Honor.

21 THE COURT: Thank you, sir. All right.
22 Presiding juror, as I understand the jury has
23 reached a verdict?

24 FORELADY: We have.

25 THE COURT: If you would pass the

1 verdict form to the bailiff.

2 FORELADY: (Tenders)

3 BAILIFF: (Tenders verdict form to
4 the judge).

5 THE COURT: (Upon review), the verdict
6 form has been properly completed.

7 State of South Carolina, County of
8 Charleston, Civil Action Number 2013-CP-10-1400,
9 Robert Burke, Plaintiff, versus Republic Parking
10 Systems, Inc. *"We, the jury in the above entitled*
11 *action, unanimously find for the plaintiff in the*
12 *amount of Four million five thousand one hundred*
13 *twenty-five dollars (\$4,005,125) actual damage."*
14 Signed by Ms. Bronklutz, Juror Number 28, dated
15 December the 19th, 2014.

16 Ladies and gentlemen of the jury, if the
17 Court has accurately published your verdict please
18 indicate that by raising your right hand.

19 (ALL JURORS' RIGHT HAND WAS RAISED)

20 THE COURT: The record should reflect
21 that each juror raised his or her right hand in
22 response to the Court's inquiry.

23 Anything further at this point from the
24 jury from the plaintiff?

25 MR. MCCULLOUGH: No, sir.

1 THE COURT: Anything further from the
2 defendant?

3 MS. RUPARELIA: Nothing, Your Honor.

4 THE COURT: I need for you to go back
5 to your jury room. There are some matters I need
6 to take up now and I'll be with you quickly as I
7 can. Thank you very much.

8 (JURY OUT @ 7:32 P.M.)

9 THE COURT: Are there any Motions or
10 matters from the plaintiff?

11 MR. MCCULLOUGH: No, sir.

12 THE COURT: From the Defendant?

13 MS SPRUILL: Your Honor, we'd raise the
14 allocation issue and would ask for ten days for
15 post-trial motions.

16 THE COURT: Okay. Well, we can deal
17 with the setoff. Let's deal first with the
18 allocation issues, then we can deal with the set-
19 off. The allocation issue, quite honestly, and
20 I'm glad I had the time to do the reading and
21 research. Maybe y'all can explain to me why --
22 because it hit me when I went and got my little
23 notebook from the presentation that we had. I
24 remembered something about -- the City of
25 Charleston, it was the firefighter case, but that

1 one, my ruling was based on the fact that it was
2 an exclusive remedy and, therefore, Charleston
3 could not be a joint tort feasor. Because you
4 can't be limited to comp and be a tort feasor,
5 it's one or the other.

6 But there's another very critical aspect
7 of this, when we talk about what the legislature
8 intended, and it's 15-38-65, Code of Laws. And it
9 says, (reading): *"No payment shall be made from
10 State appropriated funds or other public funds to
11 satisfy claims or judgments against governmental
12 entities or governmental employees acting within
13 the scope of their official duties arising out of
14 the uniform contribution among tort feasons act.
15 The South Carolina Tort Claims Act is the
16 exclusive and sole remedy for any tort committed
17 by an employee of a governmental entity while
18 acting within the scope of his official duty."*

19 And this is the critical sentence, (reading):
20 *"The uniform contribution among tort feasons' Act
21 shall not apply to governmental entities."* It
22 doesn't apply. It doesn't even apply in the first
23 place.

24 But let's just assume that the Court
25 said, 'no, that's not what we intended.' There's

1 a fantastic -- I appreciate the cases y'all have
2 given. And, frankly, I don't know whether Judge
3 Hall read his, but it tracks a tremendous Law
4 Review article that really goes through in length
5 about the legislative history and what the
6 legislature intended. And I think it's clear when
7 you take that with the *Chester* decision that came
8 out after the Act was passed, where this issue
9 really and truly, not directly, but it was raised,
10 because Judge Williams dismissed the action,
11 which, the Court said he couldn't do, because he
12 couldn't -- because the party they wanted to join
13 had settled. Just like what we have, really.
14 Just the only difference is I did what Judge Hall
15 would do and some other judges have done. I've
16 allowed them to be dismissed and settle. And it
17 goes to the language of what *Chester* says.
18 *Chester* says, and that's something that's very
19 critical and I think the legislature had to
20 consider it because they tried twice to have it
21 included; the first proposal had it, the second
22 proposal had it. The legislature didn't pass it.
23 They passed this one that has this ambiguity, but
24 clearly -- first of all, we don't have, and I
25 understand about the paragraph (d), talks about

1 unnamed, and I can understand that. But the first
2 thing we don't have, is we don't have a joint
3 defense. I mean, that's clearly the problem. And
4 I understand you wanted it to be ---

5 MS SPRUILL: Well, that -- I was going
6 to say ---

7 THE COURT: Well, you don't have to say
8 it.

9 MS SPRUILL: --- that's why we tried, we
10 opposed the dismissal.

11 THE COURT: But that's why you get
12 right squarely in the teeth of Judge Williamson's
13 decision in the Chester decision. The Court said
14 they have the right to choose who they want to
15 sue. And you don't.

16 MS SPRUILL: And that's correct. But in
17 that case they didn't name them. Here they did
18 and they dismissed them on the eve of trial.

19 THE COURT: Listen, you've got --
20 you're protected.

21 MS SPRUILL: I understand, Your Honor.

22 THE COURT: You and I can argue ---

23 MS SPRUILL: I understand.

24 THE COURT: --- and you love to do that
25 and I do too. We don't need to argue ---

1 MS SPRUILL: I understand, Your Honor.

2 THE COURT: --- because I'm comfortable
3 with my ruling. I do not find that -- then,
4 furthermore, furthermore -- and just to throw this
5 in as well, paragraph 7.2 of the agreement --
6 Indemnification. How in the world can you get a
7 contribution then you've got to pay them right
8 back? Because there's a contractual
9 indemnification that you've got, all of those
10 things factor in. I deny the allocation, okay?

11 MS SPRUILL: Your Honor, we would ---

12 THE COURT: Listen, you don't need to
13 say a word unless you want to supplement some law.
14 I'm ruling against you, okay?

15 MS SPRUILL: Thank you, Your Honor.

16 THE COURT: You bet. You're not going
17 to change my mind and I'm comfortable with the
18 decision.

19 MS SPRUILL: May we have ten days for
20 post-trial motions?

21 THE COURT: Oh, sure. You can have ten
22 days for post-trial motions. I'll be happy to
23 give you that. No question about it. I've got a
24 feeling I know what they'll say, but you've got
25 them. No problem. And I cut you off. What else

1 did you want to say concerning the ruling?

2 MS SPRUILL: Well, I wanted to point out
3 that I was -- I don't know if you looked closely
4 at the Judge Harwell decision. I was one of the
5 lawyers. I was the one fighting for the
6 allocation. In addition to the USC Law Review
7 article, he cites, there is a -- it is interesting
8 that the track such different points of view.
9 There's a competing Charleston School of Law
10 article. And I would point out that there is
11 allocation under the Tort Claims Act as well, and
12 15-78-100.

13 THE COURT: Listen, I appreciate your
14 position. And I think either the legislature
15 and/or the court will have to deal with this and
16 address it. But I think they've already said so.
17 And I think the Supreme Court said it, too, in
18 their decision in Chester. Because all they had
19 to do was reverse and say, 'You're right. You've
20 got a right to have these people.' They didn't.
21 Instead they said, we concur in settlement.
22 That's a public policy decision. And it's
23 consistent with what I interpret the legislative
24 intent.

25 I'm not ignoring (d). For instance, if

1 we had where we didn't have -- if we had two
2 people, I think you'd be entitled to put someone
3 else in there if there are two people. But not if
4 -- not if the person coming in is a governmental
5 entity. I think you've got a problem with that.
6 The first hurdle you've got to deal with is you
7 can't, it doesn't apply. It just simply doesn't
8 apply when you're talking about Charleston.

9 But be that as it may, the Chester case,
10 I read it to say, 'nope.' And you can't make them
11 do that. And that's what -- basically, that's my
12 paraphrasing Chester, But I appreciate. And I did
13 read them. You're right.

14 MS SPRUILL: I know what you're telling
15 us, Judge.

16 THE COURT: They're competing opinions.
17 There's no question about it.

18 MS SPRUILL: Thank you.

19 THE COURT: And that's why I say I'm
20 comfortable with mine. I understand that you
21 differ with it and I respect your right to differ
22 with it. And if the Supreme Court wants to
23 clarify it, I'll be the first person to say
24 hallelujah because it helps us all when trying to
25 apply this law, which is -- I hope the legislature

1 will go back and maybe tweak some things. I think
2 it's a grand -- I approve of what they're doing.
3 That's a super idea. It's really fundamentally
4 fair. But they've got to do something else and
5 the Court chose not to do it. So my feeling is,
6 thank you very much, but insofar as the setoff --
7 I know there's three hundred and fifty thousand
8 (\$350,000). There's also some money that was paid
9 to her, which ---

10 MR. MCCULLOUGH: Cumulative it was
11 three hundred and ten thousand (\$310,000).

12 THE COURT: Three hundred and ten
13 (\$310,000)?

14 MR. MCCULLOUGH: Yes, sir. And the
15 allocation is two hundred and ninety thousand
16 (\$290,000) to her and twenty (\$20,000) to Mr.
17 Burke. And if the Court would like, there was
18 actually a fair amount of -- we put a fair amount
19 of ---

20 THE COURT: I think we need -- if you
21 want to put some more ---

22 MS SPRUILL: We can -- we'd be happy to
23 talk about that when we handle post-trial motions
24 if Your Honor would like.

25 MR. MCCULLOUGH: I can do it by --

1 actually a lot of it was financial and work she
2 wasn't doing. And there's a lot of stuff.

3 THE COURT: If y'all don't want to have
4 cross-examination of her then that's fine.

5 MS SPRUILL: I don't waive it just yet,
6 but we ----

7 THE COURT: All right. Well, we'll
8 come back another day on that.

9 MR. MCCULLOUGH: She's about to go back
10 to Wilson but, of course, she'll come back. So
11 just give us the ten days.

12 THE COURT: That's fine.

13 MR. MCCULLOUGH: We'll certainly deal
14 with that.

15 MS SPRUILL: I don't think that has to
16 be done right now.

17 THE COURT: Well, the concern that I
18 have is -- of course, you've got ten days. We'll
19 do the -- because we can't register, we can't file
20 the Form 4 with -- which would begin the judgment
21 running until the Motions are heard, I think.

22 MR. MCCULLOUGH: If it's ten, does it
23 count when the court's closed. And I know they're
24 closed Wednesday, Thursday, Friday, and then --
25 does that give us more time?

1 THE COURT: You know what, you're
2 asking me a question -- I think holidays are
3 exempted from the count in determining what they
4 are. I don't know whether -- I don't believe it
5 exempts weekends, but I think holidays. I could
6 be wrong.

7 MR. MCCULLOUGH: We'll get her back
8 down here. Whenever we need to, we'll get her
9 back down here.

10 THE COURT: Well, that's fine.

11 MS SPRUILL: If the last day is a
12 Saturday, Sunday or a state or federal holiday, it
13 doesn't count.

14 THE COURT: But it counts otherwise?

15 MS SPRUILL: Well, I was trying to
16 remember if it was -- if you were under a week or
17 ten days?

18 THE COURT: Yeah. I think that's what
19 it is. If the end day is that, you get until the
20 next business day is what I understand, okay?

21 MR. MCCULLOUGH: Okay.

22 THE COURT: So we will not register the
23 judgment until we've heard the Motions. Everybody
24 comfortable with that?

25 MS SPRUILL: Yes, Your Honor.

1 THE COURT: I don't think it's fair
2 until we've done that, because the Motion has got
3 to deal with -- I mean, the judgment has got to
4 deal with whatever I determine to be the offset.
5 So ---

6 MS SPRUILL: And of the comparative
7 negligence.

8 THE COURT: And then we've got to
9 reduce it. Of course, there's no question, and
10 we'll put that in the form, this will be reduced
11 by twenty percent.

12 MR. MCCULLOUGH: Yes, sir.

13 THE COURT: And you understand that?

14 MR. MCCULLOUGH: Yes, sir, I just want
15 to make sure, the only open issue at this point
16 are post-trial motions to be filed, and her
17 testimony ---

18 THE COURT: And determining what amount
19 is to be attributed to the settlement.

20 MR. MCCULLOUGH: Okay.

21 THE COURT: And then once we determine
22 that, then we'll apply the twenty percent. That's
23 just a mathematical ---

24 MR. MCCULLOUGH: Yes, sir. Yes, Your
25 Honor.

1 THE COURT: --- computation as I see
2 it.

3 MR. MCCULLOUGH: Thank you.

4 MS SPRUILL: Thank you, Your Honor.

5 MR. KHAN: Judge, could you tell us
6 the verdict again? We have competing numbers.

7 THE COURT: Y'all are welcome to review
8 it.

9 MS SPRUILL: I have a series of numbers
10 that don't add up to ---

11 THE COURT: It's four million five
12 thousand one hundred twenty-five dollars and zero
13 cents (\$1,005,125).

14 MR. KHAN: Thank you.

15 THE COURT: Thank you. Thank you all.
16 Sarah, thank you for your patience. I appreciate
17 it.

18 MS SPRUILL: Thank you, Your Honor.

19 MS. RUPARELIA: Thank you, Your Honor.

20 THE COURT: And Roopal, thank you as
21 well.

22 MS. RUPARELIA: Thank you, Judge.

23 THE COURT: You bet.

24 MR. MCCULLOUGH: Thank you, Judge.

25 THE COURT: Thank y'all. Good luck to

1 you Mr. & Mrs. Burke, God bless.

2 MS. BURKE: Thank you very much.

3 (JURY DISMISSED)

4 (TRANSCRIPT CONCLUDED)

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Robert J. Burke and Jane B. Burke,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 13-CP-10-1400
	)	
Indigo Realty Co., L.L.C.,	)	
Republic Parking System, Inc., and	)	
City of Charleston,	)	
	)	
Defendants.	)	

CORRECTED AS TO DATE OF HEARING
TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held January 29, 2015, before The Honorable R. Markley Dennis in Courtroom 4C of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Clayton B. McCullough, Esq.
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 Appearing for Defendant Republic Parking System, Inc.

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

1 THE COURT: Thank you very much.
2 And thank you all for your briefs, very
3 thorough briefing of this issue and I
4 appreciate it. I've had the opportunity to
5 review all briefs and they're incorporated
6 fully for purposes of review.

7 Having said that, I understand the
8 significance of what this case is and the
9 issues involved, so feel free to argue any
10 points that you wish to expound on. You have
11 unlimited -- you can argue as long as you
12 want and I'm prepared to listen to your
13 arguments and welcome that, okay? Be happy
14 to hear from you.

15 MS. SPRUILL: Well, Your Honor,
16 first I'd like to ask if you want to hear
17 from Ms. Burke first or do you want to hear
18 post-trial motion first?

19 THE COURT: What would I be
20 hearing from Ms. Burke? Maybe I'm missing
21 something.

22 MS. SPRUILL: So the two issues
23 we've got to talk about today are ---

24 THE COURT Well, first, let's

1 hear the post-trial motions.

2 MS. SPRUILL: Okay.

3 THE COURT Because I'm with you.
4 Obviously, if I grant a new trial then all
5 the offset becomes moot.

6 MS. SPRUILL: Certainly. And,
7 Your Honor, as you've stated, we've briefed
8 it. We've given you all our grounds. I
9 submitted yesterday afternoon a reply to the
10 plaintiff's thorough briefing. I would defer
11 to what the Court would like to hear about.

12 THE COURT That's fine.

13 MS. SPRUILL: You've got all of
14 the arguments in front of you so I am at your
15 disposal.

16 THE COURT One thing that you
17 raised in your memorandum that was submitted
18 in response in the allocation, you make a
19 statement that there's no question of
20 discussion.

21 There's no question at times in this
22 case I thought there would be allocation, but
23 after thoroughly reviewing it and realizing
24 that that was not the case, but I -- I still
25 afforded the defendant the opportunity

1 notwithstanding the allocation, because even
2 if there isn't an allocation, there will
3 always be what's been a discussion we had
4 recently.

5 And oddly enough, they talk about
6 your case, the federal case in one of the
7 judge's, Judge Harwell's decision. I think
8 it was furnished to Judge Keesley who was
9 dealing with an issue recently. But I think
10 Judge Cooper from Camden made the comment,
11 'what about the empty char?'

12 Well, there's always going to be the
13 empty chair and that was clear in this case.
14 It was clearly an effort to lay the fault
15 primarily on the City of Charleston.

16 So I just want to know what you
17 said. You made some strategic decisions
18 based on my suggestion that I was going to
19 allocate. What were those strategic
20 decisions?

21 MS. SPRUILL: I'll let Ms. Ruparelia
22 speak to that since it ---

23 THE COURT All right.

24 MS. RUPARELIA: Yes, Your Honor.
25 We were -- we had designated portions of the

1 deposition of the City of Charleston's
2 witness, Ed Anderson. And what we were
3 planning on doing was to use his designations
4 per the Court's instruction in the damages
5 part of our case before it went to the jury
6 on the issue of the jury hearing evidence
7 with respect to the city's responsibilities
8 with respect to the parking lot. And my
9 understanding was that we were going to put
10 that up in the defense of our case. And
11 given that we were just talking about the
12 damages of the case, we decided since we are
13 going to get a closing argument at the end of
14 the trial, that we will just let this be a
15 damage part of the case and we will not argue
16 that issue because we didn't want the jury to
17 think 'why are they bringing this up in the
18 damages?'

19 THE COURT Well, I would think
20 that's a legitimate question. Why wouldn't
21 you bring it up in the case in chief? But be
22 that as it may, do you wish to respond to
23 that?

24 MS. RUPARELIA: Your Honor, ---

25 THE COURT Hold on a second. I'm

1 sorry. Yeah.

2 MS. RUPARELIA: Because the issue
3 was with respect to subsequent measures is
4 what it was, which the Court had indicated
5 that it would not be inclined to permit,
6 until we are talking about allocation.

7 THE COURT The remedial
8 measurements? I don't ever remember
9 indicating I would even allow remedial. I
10 said you were free to talk about why you were
11 less than fifty percent responsible and the
12 City was more than fifty percent responsible.
13 Clearly you did that.

14 MS. RUPARELIA: Right.

15 THE COURT So clearly you did all
16 of that. And then you talked about Mr.
17 Burke's own negligence and all of that was
18 argued. So about -- I'm not grasping what
19 strategic decision you made -- of course you
20 wouldn't put up evidence about what they did
21 in a damages portion, which you asked for.

22 I would also note that you're the
23 one that wanted a bifurcated approach, not --
24 I honored your request over -- in fact, over
25 the objection of the plaintiff. So I don't

1 know what aspect -- I'm missing the point.

2 MS. RUPARELIA: Okay. Your Honor,
3 Mr. Anderson was going to talk about the
4 changes the City of Charleston had made to
5 that parking lot after Mr. Burke's fall. And
6 the fact that they had gone in there and
7 revamped the lighting unilaterally, had not
8 talked to Republic Parking about that but
9 just went in and did it, once they learned
10 about the lawsuit.

11 THE COURT Which they had the
12 right to do, didn't they, under the contract?

13 MS. RUPARELIA: Correct. And
14 that's sort of what we were arguing because I
15 tried to get that in during the evidence of
16 the case, and we were not permitted to let
17 him present that testimony.

18 THE COURT That didn't have
19 anything to do with allocation.

20 MS. RUPARELIA: I think
21 because Your Honor indicated that we were
22 going to let that come in towards the end of
23 the case?

24 THE COURT No, I never said
25 -- if you heard me say that -- I don't

1 believe I ever said that, but the record will
2 speak for itself. I have never -- because
3 first of all, that couldn't -- I don't see
4 how that comes in, ever, what they did after
5 the fact. The fact that they went in --
6 look, you all -- that's fine. If you think
7 that my statements stopped you from trying to
8 offer that, you never proffered it number
9 one. I never denied you to proffer that
10 information, did I? I'm just asking ---

11 MS. RUPARELIA: We just assumed
12 that ---

13 THE COURT Ma'am, I'm asking you
14 just for the sole purpose of -- and then you
15 can go ahead and tell me strategically, did
16 you ever proffer that information?

17 MS. RUPARELIA: Your Honor, we
18 asked the question during the evidence
19 section. It was clear what we were asking.

20 THE COURT Ms. Ruparelia, I'm
21 asking you a simple question. The record
22 will speak for itself as to what you did.

23 MS. RUPARELIA: Yes, sir.

24 THE COURT Did you ever proffer
25 that part of the deposition, which you are

1 discussing?

2 MS. RUPARELIA: No, Your Honor.

3 THE COURT Thank you.

4 MS. RUPARELIA: And if I may?

5 THE COURT Okay.

6 MS. RUPARELIA: If I may, Your
7 Honor?

8 THE COURT Uh-huh.

9 MS. RUPARELIA: From the
10 questioning of the witness we were not
11 permitted to let the witness answer those
12 questions. Those questions were asked. And
13 then we went ahead and used his designations
14 of his deposition intending to come in at the
15 end and just -- we had already exchanged ---

16 THE COURT Intending to come in
17 where and how? You keep using that?

18 MS. RUPARELIA: In the damages
19 section or the -- what we believed was not
20 going to be during the liability phase of the
21 trial, but when the defense put up ---

22 THE COURT I think you're, I
23 think you are muddling something here.
24 You're muddling by saying that 'before the
25 jury we would be able to put it into

1 evidence', because that's not -- we know
2 that's not the case.

3 MS. RUPARELIA: It wasn't ---

4 THE COURT Well, there's nothing
5 that stopped you from doing that in your
6 damages, except for a decision that, 'well,
7 we're not going to bring in all this other
8 stuff now because the jury's already made a
9 determination here that we're eighty percent
10 responsible.' So, you know, that was a
11 strategic move on your part. I don't quarrel
12 with that.

13 MS. RUPARELIA: Yes, Your Honor.
14 And that was because we expected to get a
15 closing argument at the end of the jury
16 verdict to come back on all the issue of
17 allocation.

18 THE COURT What's that got to do
19 with the evidence? Again?

20 MS. RUPARELIA: We decided to do
21 it in closing.

22 THE COURT Thank you, ma'am.
23 Maybe they'll be able to -- what's the
24 plaintiff's position concerning this?

25 MR. MCCULLOUGH: Very briefly. Mr.

1 Anderson testified. The objection related to
2 things that occurred after Republic was
3 already on site. That was totally different.
4 I just wanted to make, I'm not sure it was on
5 the record. We actually discussed what was
6 going to happen Thursday. That's when we
7 handed up those other cases.

8 And on Friday, counsel for Republic
9 was contemplating recalling the City
10 witnesses or submitting the designations and
11 chose not to.

12 And so, as you say, there's maybe an
13 argument but there's never additional
14 evidence, and for whatever reason they chose
15 not to submit additional evidence during that
16 phase, and so now -- they just chose not to
17 do it. And so the case was closed.

18 Now they're arguing they should have
19 had an opportunity to do it when they chose
20 not to.

21 THE COURT: I'm not hearing that
22 they should have had an opportunity, I'm
23 hearing that they, that they wanted to do it
24 and I wouldn't let them. But I sustained an
25 objection on that issue.

1 MR. MCCULLOUGH: You sustained the
2 objection when Mr. Anderson was testifying.
3 What I believe they're talking about is the
4 submittal of designations that they clearly
5 had the opportunity to do, they just chose
6 not to do it.

7 MS. SPRUILL: The strategic decision
8 was made based on the Court's earlier
9 indications that there would be a closing on
10 allocation and an allocation verdict after
11 the damages. And when that didn't happen we
12 lost that opportunity.

13 THE COURT: Okay, but -- yeah, you
14 lost the opportunity but the closing had
15 nothing to do with a strategic move because
16 you would always, always have been bound by
17 the evidence that was introduced in your
18 closing on allocation. You made a decision
19 not to make that part of the evidence. So
20 that's your choice. That's fine.

21 MS. SPRUILL: Well, except that I
22 would add one additional argument. Mr.
23 Anderson's original testimony during the
24 liability phase of the case, the question
25 came up, and of course the transcript will

1 speak for itself. But in my memory, which
2 admittedly may not be perfect, but in my
3 memory, the question came up about what
4 happened in that lot afterwards. And the
5 issue was who had control, whose
6 responsibility was this. And what Your Honor
7 said is essentially was 'it's not the time
8 for this now, we'll get to it later on the
9 allocation issue.'

10 THE COURT: I don't -- well, the
11 record will speak for itself. I don't ever
12 remember making that the reason for my
13 denying that because it would have been -- if
14 I'd said that, I'd have been totally wrong
15 because there wasn't the reason for it. The
16 reason for it, it was a subsequent remedial
17 measure that had nothing to do with it.
18 You're again -- you keep jumbling that with
19 level of responsibility. You tried to lay
20 all the blame on the City.

21 In fact, I think it's interesting that
22 you even make this argument when your own
23 witness -- I was astounded by this statement.
24 When confronted about what their agreement
25 specifically provide, and we all talk about

1 that throughout this trial, about their
2 obligations to be alert, to be -- and I'm
3 paraphrasing -- to be aware of what's there
4 and any dangerous things and bring that to
5 the attention of the City. And when asked
6 about that, and I'm not going to be able to
7 quote him, but the record will speak for
8 itself. He said, 'yes, that's in there but
9 we all knew that we weren't supposed to do
10 that.' That doesn't make any sense, not from
11 a lawyer. That guy was a lawyer.

12 And so I -- listen you can talk -- the
13 record will cover it. I appreciate your
14 position.

15 I don't think I misled you in anything.
16 I think anything that a judge says before it
17 comes up to a ruling is, as I say in Motions
18 *in limine*, I've changed my mind so many times
19 over the years on Motions *in limine* because
20 the bottom line is, until I hear it, I can't
21 make a decision on something. And in this
22 case, I really was focusing on the fact that
23 the issue that keeps coming up in our
24 discussions, can you have on an allocation
25 for a person who's not a party? I think the

1 statute says you can. I think it's a
2 cumbersome statute. I think it needs to be
3 revised and I hope they will do it.

4 But from the standpoint that that never
5 has been a problem for me, I said in the
6 Charleston case. I even said, in fact, one
7 of the things that we were talking about even
8 after I kicked them out, I said, 'well, you
9 still will have the opportunity.' But then I
10 started reading the law and studying the law
11 and found out, well, not only can you not
12 allocate them because they aren't a joint
13 tort feisor. And in this case -- and I
14 talked to several of my brothers and sisters
15 on the bench concerning this issue. And I'm
16 glad you raised your issue about it when I
17 ruled and included that in my ruling. And
18 thank goodness that'll be framed now to be
19 addressed.

20 What in the world is the statute that
21 they -- the section that they added after the
22 original act was passed? It said, this does
23 not apply to governmental entities. I don't
24 know how much clearer it could be. And I
25 just simply had not looked at that section.

1 But when preparing for the ultimate end
2 -- and then the fact that when I was looking
3 at it, it says, it says you allocate among
4 defendants. You've got to have defendants,
5 in the plural. And that's where we came into
6 that case.

7 And that's what you argued -- I think
8 that was the essence of that in your -- and,
9 of course, you're protected on that, as to
10 whether or not Charleston should have
11 remained in there. It still would have been
12 probably, from my standpoint, the same
13 decision if they had been.

14 Now, if Indigo had still been in,
15 probably not because then we're getting into
16 a situation where there are multiple
17 defendants. I don't know what -- but there's
18 no evidence that Indigo did anything, so
19 there would never have been a possibility to
20 them, I don't think, having that.

21 But be that as it may, I hear you. I
22 understand that you, as you said, you briefed
23 it. You made your statement, we've discussed
24 it. I'm comfortable with it and I'm not
25 going to grant a new trial based on that.

1 Okay.

2 MS. SPRUILL: Thank you, Your Honor.

3 THE COURT: You bet.

4 MS. SPRUILL: We appreciate that.

5 THE COURT: Sure.

6 MS. SPRUILL: Are there other
7 issues?

8 THE COURT: No, that was the one
9 issue that leaped out at me and I said,
10 'well, I want to find out about that.'

11 MS. SPRUILL: Ms. Ruparelia ---

12 THE COURT: Ms. Ruparelia?

13 MS. RUPARELIA: If I may just add
14 for ---

15 THE COURT: Sure.

16 MS. RUPARELIA: --- the record,
17 Your Honor. The confusion, and I'm not
18 trying to add, I probably need to be more
19 clear, is the issue of not using the depo
20 designations is because we believed there
21 would be a closing argument and we were going
22 to use the evidence by the maintenance
23 supervisor, the contract, all of that in the
24 closing, which was all in evidence.

25 THE COURT: Sure.

1 MS. RUPARELIA: Had we known that
2 the Court was going to change that ruling
3 with respect to giving us an allocation, we
4 probably would have submitted those
5 designations and let the jury be confused on
6 why we're providing evidence on the issue of
7 the City's control, which is what the
8 designations were, so ---

9 THE COURT: So you wanted to try
10 to do it through confusion with deposition
11 designations. Did I understand you to say
12 you wanted the jury to be confused?

13 MS. RUPARELIA: No, I mean, that's
14 just ---

15 THE COURT: 'I'm going to put in
16 this evidence so the jury will be confused
17 and not be focused on what they're supposed
18 to do'?

19 MS. RUPARELIA: Well ---

20 THE COURT: Because there's no
21 question -- and I agree with your statement.
22 One of the reasons that we had this problem,
23 and I think it needs to have a separate, as a
24 bifurcation for punitive damages, where you
25 reserve certain evidence solely for that. I

1 think the legislature should have that. And
2 I've made that statement. It is confusing.
3 Why is this evidence coming in that really
4 doesn't have anything that's germane or
5 pertinent to the actions they're supposed to
6 decide. But did I understand you to say we
7 put it in in the damages -- maybe you would
8 have gone ahead and put it in in the damages
9 so they'd be confused?

10 MS. RUPARELIA: Well, in the sense
11 that they would have to ---

12 THE COURT: Okay. Thank you.

13 MS. RUPARELIA: --- they would
14 have to listen to why -- in the sense of the
15 corporate field. Okay, well, they've already
16 heard evidence on the issue of -- in the
17 damages section on the issue of the City's
18 control of the parking lot. I wonder if the
19 Court would have then changed their mind
20 about the closing argument and allocation at
21 the end? And that's ---

22 THE COURT: No, the Court would
23 not have changed its mind. Basically,
24 primarily because there wasn't but one
25 defendant. And more importantly, the statute

1 says you can't allocate among the City, so I
2 don't know what else there is to say on that
3 issue.

4 MS. RUPARELIA: There was just --
5 you know, part of it was because we were not
6 allowed to put some of that evidence.

7 THE COURT: Well, we've argued
8 that.

9 MS. RUPARELIA: Yes, sir.

10 THE COURT: So we know that and
11 that's what Rules are for. And I interpret
12 them to the best of my ability. And I think
13 that's the fairest ruling I can make. So if
14 the court said, that's happened and this
15 happened, so be it. Okay.

16 All right. Anything else on the
17 issue of the new trial?

18 MS. SPRUILL: Unless the Court
19 wants to discuss something further.

20 THE COURT: I'm comfortable with
21 the decision. You've had time to reflect on
22 it and I'm glad the Motion -- I'm glad we've
23 had the time because I wanted to reflect on
24 it. It's a significant sum. However, I
25 don't think it's totally out of touch with

1 reality. And because we have mediation
2 mandatory in this circuit, because this case
3 was mediated twice, and the sums, as I
4 understand all were significant, it's further
5 indicative of the fact that it doesn't shock
6 the Court.

7 But more importantly and most
8 importantly, I just had a situation to deal
9 with, with the Doe cases in dealing with the
10 value of, what is the value of -- and, of
11 course, unfortunately, the parent can't have
12 a value right now. That will change. I've
13 said that over and over in ruling. I think
14 Justice Pleicones got it right in *Doe* but the
15 four others didn't. And so we'll see where
16 it goes. But it caused me to revisit --
17 which was a case, I sat on that case. And it
18 was a death of a child. And what is the
19 value of a child's life? And in this case,
20 if you have to look at it in the standpoint
21 of the individual, Mr. Burke, what was the
22 value of what he lost? What he changed --
23 what happened? And I'm not even talking
24 about the loss of society, that's a different
25 ballgame. That's his wife's claim, her

1 companionship, that she lost her companion.
2 I thought the testimony about 'my role
3 changed from being a spouse to being a
4 companion to being a caregiver' was
5 revealing. But what's that worth to an
6 individual who had been as active and
7 involved as this man had been his entire
8 life? I would say the same thing.

9 I'm not going to touch it. The
10 amount does not shock me.

11 MS. SPRUILL: We would only note,
12 briefly for the record, Your Honor, that the
13 bulk of the damages testified to at trial,
14 the dialysis, the assisted living, those were
15 never disclosed in mediations prior to trial.

16 THE COURT: Well, that's good.
17 And you know what ---

18 MS. SPRUILL: Those were wholly
19 new claims ---

20 THE COURT: --- that's even more
21 reason it would be more.

22 MS. SPRUILL: Just so Your Honor
23 understands ---

24 THE COURT: Ms. Spruill, all I'm
25 saying to you is, the fact when you get

1 multi-million dollar figures on something
2 that's basically not manageable, other than
3 the fact that we had over three hundred
4 thousand dollars of medical expenses incurred
5 to keep him alive. And then on-going medical
6 expenses. But I'm comfortable with that.

7 I'm also comfortable with the
8 charge. That's the charge that is given in
9 so many cases concerning reducing it to
10 present day value. You say, 'well, there's
11 nothing to indicate that they reduced it to
12 present-day value.' I don't know that. But
13 they could come back and said, you know, it's
14 worth ten million dollars and we'll reduce it
15 to the present day value. So that's the
16 beauty of the jury.

17 If the Court wants to get into
18 mathematical, I'm sure Oliver Wood and those
19 that do put the figures will love that. It
20 will open the door for some to probably join
21 in establishing economic values to a
22 mathematical certainty. But that's clearly
23 what my charge -- the last part of every
24 charge I've ever given on a damages says the
25 plaintiff is not required to reduce the

1 precise amount of damages or put it to a
2 mathematical certainty. That's left to their
3 judgment. So I think the charge covered it
4 and so I would deny it on that as well. So
5 overall I deny the motion for a new trial.

6 Now we deal with the offset, okay?

7 MS. SPRUILL: And Your Honor, may
8 I just ask one quick question?

9 THE COURT: Sure. Uh-huh.

10 MS. SPRUILL: Is your ruling from
11 the bench complete or can we expect a written
12 Order.

13 THE COURT: It's complete.

14 MS. SPRUILL: Okay. Thank you, Your
15 Honor.

16 THE COURT: I don't see the need
17 unless y'all think there's a need for it.
18 Y'all have the record now.

19 MS. SPRUILL: I was just asking for
20 my calendar, that's all.

21 THE COURT: No, we're going to do
22 a form Order that says the Motion for a new
23 trial, basically your Motion, the styling in
24 your Motion, it's denied.

25 MS. SPRUILL: Thank you, Your Honor.



Legend

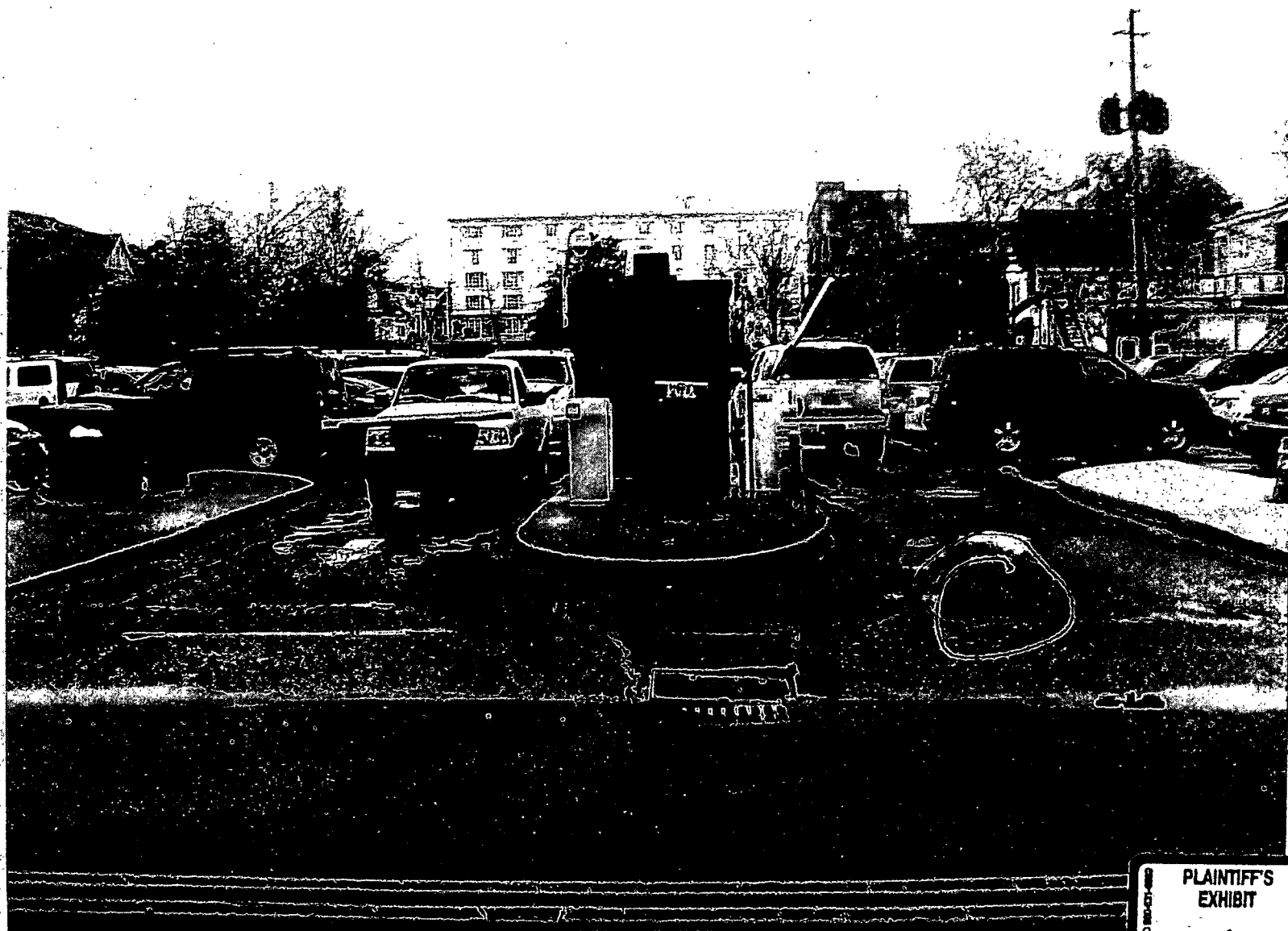
- Township Boundaries
- Tax District Boundaries
- Municipal Boundaries
- Building 201
- Parcel Boundaries

Water Features

- Water Features
- Marsh

THIS MAP WAS DERIVED FROM AERIAL PHOTOGRAPHY AND IS NOT A LEGAL DOCUMENT. IT IS INTENDED FOR INFORMATIONAL PURPOSES ONLY. THE MAP IS BASED ON THE LATEST AVAILABLE DATA AND IS SUBJECT TO CHANGE WITHOUT NOTICE. THE MAP IS NOT A WARRANTY OF ANY KIND AND DOES NOT CONSTITUTE AN OFFER OF INSURANCE OR ANY OTHER FINANCIAL PRODUCT. THE MAP IS NOT A SUBSTITUTE FOR PROFESSIONAL ADVICE AND SHOULD NOT BE USED AS SUCH. THE MAP IS NOT A REPRESENTATION OF THE ACTUAL CONDITION OF ANY PROPERTY AND SHOULD NOT BE USED AS SUCH.





PLAINTIFF'S
EXHIBIT
NO. 2
0041-2
13 1400



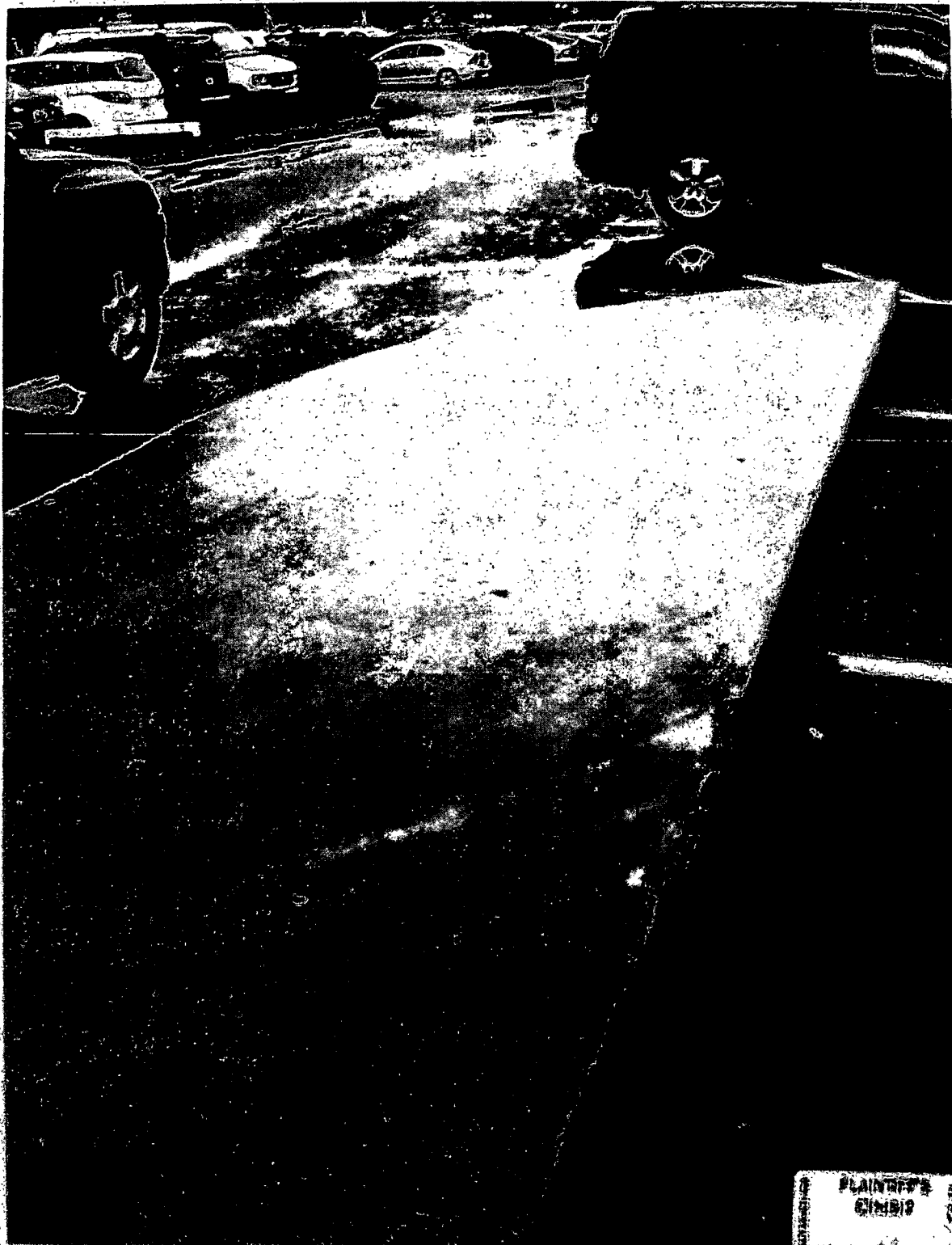






PLATE
COUNT
NO. 6

CITY OF CHARLESTON

PARKING GARAGE MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement"), dated as of May 1, 2008 and effective from the time of execution and delivery hereto, by and between the CITY OF CHARLESTON (the "City"), and Republic Parking System, Inc., a duly organized and existing corporation under the laws of the State of Tennessee ("Republic").

RECITALS

WHEREAS, the City owns, controls and regulates off-street parking facilities ("parking facilities") owned by the City; and

WHEREAS, the City owns, leases or manages certain parking facilities as listed in Exhibit "A" attached hereto (the "Parking Facilities"); and

WHEREAS, the City has selected Republic to operate these Parking Facilities for the benefit of the City.

NOW, THEREFORE, THE CITY OF CHARLESTON and REPUBLIC, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

Certain terms are defined in the headings and the recitals hereto. In addition to those definitions, as used in this Agreement, unless the context or use clearly indicates another or different meaning or intent, the following definitions shall apply:

(a) "Applicable Law" means any law, regulation, requirement or order of any federal, state or local agency, court or other governmental body, applicable from time to time to the acquisition, design, construction, equipping, financing, ownership or operation of the parking facilities or the performance of any obligations under any agreement entered into in connection herewith.

(b) "City Expenses" shall be all capital expenses as may be necessary at the sole determination of the City, all capital improvements and replacements to the Parking Facilities and related equipment; striping and restriping of parking space boundaries; all signs; and only the following operating costs:

(i) Electricity, water, wastewater and similar utility charges (excluding telephone);

- (ii) [REDACTED]
- (iii) taxes payable to the City (if applicable);
- (iv) snow removal;
- (v) annual financial audits;
- (vi) such other expenses as are unforeseen, unexpected or are caused by usual operations and activities conducted at the Parking Facilities, and in any event are approved by the City as satisfying such criteria.

(c) "Code" means the Internal Revenue Code of 1954, as amended, or the Internal Revenue Code of 1986, as amended, and as applicable.

(d) "Commencement Date" means May 1, 2008, at 12:01 a.m.

(e) "Fiscal year" means the 12-month period commencing on January 1 and ending on December 31, of the calendar year.

(f) "Gross Revenues" shall include all revenues received from the parking of vehicles in the Parking Facilities as well as free and discounted parking revenue, and all other income of any kind, with the exception that tips or gratuities for any services rendered shall not be included in Gross Revenues.

(g) [REDACTED]

(h) "Management Expenses" means those indirect expenses associated specifically with the management of the Parking Facilities and paid for directly by Republic from its Management Fee, to include the following:

- (i) Performance bond fees.
- (ii) Senior Management Personnel (not on-site in Charleston).
- (iii) Non-business related long distance telephone, fax and modem charges.
- (iv) Counterfeit money losses and cash shortages.
- (v) Returned check charges.
- (vi) Annual Republic CPA audit.

(vii) Corporate office overhead.

(viii) Senior management salaries and travel expenses.

(i) "Management Fee" means the agreed to base or incentive fee the City pays Republic for managing the parking facilities.

(j) "Net Revenue" means that amount equal to Gross Revenues less Operating Expenses, not including free or discounted parking.

(k) "Operating Advance" shall mean the City payment of approved quarterly Operating Expenses to be paid by the City to Republic by the 10th day of each month listed in Section 8.2, below, as set out in the quarterly Operating Budget approved by the City.

(l) "Operating Surplus" means the difference between the Budgeted Operating Advance and actual Quarterly Expenses.

(m) "Republic Operating Expenses" shall include all operating costs paid from the Operating Advance, and not included as City Expenses, including by way of example only and not as a limitation, maintaining, cleaning, repairing and restocking all revenue control equipment; maintaining all books and records; bookkeeping, legal, accounting and office expenses; personnel salaries, fringe benefits and employment related taxes; telephone; uniforms; trash removal; rents; claims and expenses [REDACTED]; [REDACTED]

[REDACTED] Re-allocation of expense responsibilities between the "City" and "Republic" may be accomplished by an amendment letter signed by both the "City" and "Republic."

1.2 Miscellaneous Definitions.

Words of any gender shall be deemed and construed to include correlative words of each other gender. Unless the context shall otherwise indicate, words importing the singular number include the plural number and vice versa, and words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

ARTICLE II

REPRESENTATIONS

2.1 Representations by the City.

The City makes the following affirmative representations as the basis for the undertakings on Republic's part herein contained:

(a) The City is a political subdivision of the State of South Carolina and a body politic and corporate, duly organized and validly existing under the constitution and laws of the State of South Carolina, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The City has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the City.

2.2 Representations by Republic.

Republic makes the following affirmative representations as the basis for the undertakings on the City's part herein contained:

(a) (i) Republic is a corporation duly formed under the laws of the State of Tennessee, and is authorized to engage in business in the State of South Carolina; (ii) Republic has the full legal capacity to operate and manage the Parking Facilities and has all necessary right and lawful authority to enter into this Agreement for the full term hereof, and (iii) Republic has been duly authorized by all proper and necessary action of each officer thereof whose action is required, to execute and deliver this Agreement.

(b) This Agreement, when executed and delivered on behalf of Republic, shall constitute the legal, valid and binding obligation of Republic, enforceable in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights, or, to the extent that certain remedies hereunder required or may require enforcement by a court of equity, such principles of equity as the court having jurisdiction may apply.

(c) The execution, delivery and performance by Republic of this Agreement shall not violate any provision of Applicable Law, rule or regulation pertaining to Republic's ability to enter into this Agreement, or any judgment, order or decree binding upon it, the violation of which might have a materially adverse affect upon Republic, the Parking Facilities or the operation thereof.

(d) There are no actions, suits, or proceedings pending against Republic or, to the knowledge of Republic; threatened against Republic before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a material adverse affect on the authority or ability of Republic to perform its obligations under this Agreement, or which question the legality, validity or enforceability hereof or thereof.

(e) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement, do not conflict with or result in a breach of any of the terms, conditions or provisions of any partnership restriction or any agreement or instrument to which Republic is now a party or by which it is bound, or constitutes a default under the terms of any of the foregoing.

ARTICLE III

MANAGEMENT RELATIONSHIP

3.1 Appointment of Republic as Manager.

The City hereby designates and employs Republic as the Manager of the Parking Facilities which are described in Exhibit A.

3.2 Term of Agreement and Extension.

(a) The initial term of the Agreement shall begin on the Commencement Date and shall continue until April 30, 2011, (the "Initial Term"). In addition, either party shall be entitled to two consecutive one (1) year renewal terms (each, a "Renewal Term"), which Renewal Terms shall automatically come into effect at the end of the then current Term unless either party notifies the other, in writing, on or before the day that is one hundred eighty (180) days prior to the expiration of the then current Term that it does not wish for a Renewal Term to take effect; and further provided, however, that the City may opt, in its sole and absolute discretion, to terminate the Agreement, upon thirty (30) days written notice issued at any time. If the City terminates the Agreement pursuant to this provision, Republic shall relinquish all interest and control in and to the Operating Advance and shall only be entitled to receive payment of its management fee to the date of termination and any payments due in accordance with Section 5.4 herein. Republic shall not be entitled to termination expenses or damages. As used herein, "Term" shall refer to the Initial Term, together with any applicable Renewal Term(s).

(b) The City may also terminate this Agreement for its own convenience in its sole discretion, upon thirty (30) days written notice to Republic. If the City terminates the Agreement pursuant to this provision, Republic shall relinquish all interest and control in and to the Operating Advance and shall only be entitled to receive payment of its management fee to the date of termination and any payments due in accordance with Section 5.4 herein. Republic shall not be entitled to termination expenses or damages.

(c) The City may also terminate this Agreement, upon thirty (30) days written notice to Republic, should the City fail to budget, appropriate or otherwise make available sufficient funds to maintain this Agreement. If the City terminates the Agreement pursuant to this provision, Republic shall relinquish all interest and control in and to the Operating Advance and shall only be entitled to receive payment of its management fee to the date of termination and any payment pursuant to Section 5.4 herein. Republic shall not be entitled to termination expenses or damages.

3.3 Commencement Date.

This Agreement shall commence at 12:01 a.m. on the Commencement Date, and Republic shall commence operations pursuant to the terms of this Agreement at that time.

3.4 Use.

The Parking Facilities shall be operated by Republic as public parking under the terms and conditions of this Agreement. Additionally, Republic may offer amenities and services such as assisting in auto repair and maintenance services for customers provided Republic and the City have a prior written agreement related to such amenities and services.

3.5 Basic Terms.

Attached as Exhibit B and incorporated herein by reference is the scope of services of this Agreement, which is hereby agreed to by the parties. In addition, Republic shall provide a report, when submitting proposed quarterly operating budgets making recommendations for the improvement of services and the enhancement of Net Revenues at the Parking Facilities. Republic shall also prepare the Operating Budget under Section 6.3, and to make recommendations to the City, prior to the Commencement Date and regularly thereafter, as to marketing and promotion of the Parking Facilities.

ARTICLE IV

MAINTENANCE AND REPAIRS OF THE PARKING FACILITY

4.1 Maintenance of the Parking Facility.

(a) General Upkeep

- (1) Republic shall, as part of the Operating Advance, perform the following:**
 - a) Make regular and frequent inspections to determine whether maintenance, repair and/or replacement of the Parking Facilities is required.**
 - b) Keep the Parking Facilities in a properly maintained state, free from hazardous condition and deterioration, normal wear and tear excepted.**
 - c) Maintain the Parking Facilities in a clean and neat fashion, ensuring that all trash, bottles and papers and other dirt and debris are routinely removed and disposed of in a legal manner, empty all waste receptacles for off-site disposal; and perform all other tasks as defined and directed by the City.**
 - d) Be responsible for all reasonable improvements in cleaning and/or maintenance methods as deemed necessary to meet the requirements of the City and all of the contractual obligations contained in this Agreement.**
 - e) Furnish the supplies and housekeeping equipment needed to operate, clean and maintain the Parking Facilities, including but not limited to, spare parts for the parking control equipment.**
 - f) Perform minor repairs to the Parking Facilities, including, but not limited to, relamping and minor electrical repairs, which its staff is capable of performing in a safe and efficient manner.**

- g) Maintain all garage parcels and surface lot landscaping and hardscaped areas associated with the Parking Facilities to City specifications.
- (2) The City shall make periodic and routine inspection of the Parking Facilities and equipment to determine that they are being maintained in a neat, orderly and operable manner. The City reserves the right to alter the frequency of maintenance required to maintain the optimal condition of the Parking Facilities.

(b) Facilities

- (1) The physical facilities provided to Republic for the term of the Agreement shall become the responsibility of Republic and shall be returned to the City upon the termination of this Agreement in the same condition in which they were provided to Republic, except for normal wear and tear. Such equipment includes elevators, signage, electrical systems and HVAC systems. The City may assist in matters related to the maintenance, repair or replacement of Garage equipment or structural elements of the Parking Facilities. Therefore, under this provision, Republic shall:
 - a) Be responsible for preventative maintenance and repair of all of the Parking Facilities under this Agreement, which cost shall be reimbursed by the City.
 - b) Promptly inform the City of the need for major repairs, replacements, elevator repair, painting or patching for the Parking Facilities.
 - c) Negotiate and/or oversee contracts using qualified or certified (if required) personnel for landscaping, repairs, painting or patching for the Parking Facilities, if requested by the City to do so.
 - d) Under no circumstances shall the City pay for repairs to the Parking Facilities that have been necessitated by negligence or abuse on the part of Republic, its employees, agents or independent contractors.

The City may, at its sole discretion, direct the City's personnel to make the necessary repairs or provide the necessary replacements or upgrades to the Parking Facilities at the City's expense, or authorize an independent contractor to make the necessary repairs or provide the necessary replacements or upgrades at the City's expense.

(c) Equipment

- (1) Republic shall have the right to use the City's existing equipment, furnishings and fixtures that may be permanently installed in the Parking Facilities according to, but not limited to, the following conditions:
- (2) Republic, as part of the Operating Advance:
 - a) Shall, prior to the Republic's management of the Parking Facilities, conduct a joint inventory of equipment on hand at the Parking Facilities including office equipment, revenue control equipment and other cleaning and operating equipment. Items listed on the joint inventory list shall remain the property of the City entrusted to Republic for use, maintenance and care pursuant to this Agreement.
 - b) Shall be responsible for the maintenance of all equipment required to properly operate the Parking Facilities, including but not limited to: operating equipment, such as automatic gate arms, card readers, ticket dispensers, fee computers, counters, and other equipment for the Parking Facilities, such as fixtures, furnishings or elevators, except as otherwise herein provided.
 - c) Shall maintain said equipment, furnishings and fixtures during the term of this Agreement.
 - d) Shall be responsible for the repair or replacement of any of the aforesaid items in the event these items are lost, stolen or damaged other than for normal wear and tear.
 - e) Shall replace all equipment, materials and supplies worn out or expended in the operation or maintenance of the Parking Facilities.
- (3) Upon the expiration of this Agreement, all equipment listed on the joint inventory list required per (2) (a) above shall be reconciled and the City shall be reimbursed the full and complete replacement costs for all items missing or damaged beyond normal wear and tear. Republic agrees not to modify and/or alter any equipment, area, space or structural component of any Parking Facility without prior written approval of the City. The operation of the Parking Facilities by Republic shall be conclusive evidence that Republic has examined the Parking Facilities and their equipment and has found them to be in good condition and operating.

order, except as otherwise specified in writing signed by Republic and the City.

(d) **Maintenance Agreements.**

- (1) Republic shall, as part of the Operating Advance, unless otherwise directed by the City, continue all maintenance contracts (within approved budget guidelines and except for the ability to repair in-house) on the parking equipment, including but not limited to, automatic gate arms, card readers, ticket dispensers, fee computers, counters, and other equipment for the Parking Facilities.
- (2) Republic shall not negotiate or enter into service contracts in connection with the operation of the Parking Facilities without the prior written approval of the City.

4.2 Other Duties.

Republic shall perform all other reasonable duties and responsibilities in connection with the Parking Facilities at the written request of the City.

ARTICLE V

GENERAL TERMS AND CONDITIONS

5.1 Staffing.

- (1) Republic shall provide a staffing pattern or plan that details the number and qualifications, past experience, personnel recruitment, selection, training and retention policies and procedures of the personnel who shall be employed in its operations. Republic shall also include employee quality control measures, such as what types of background checks, shall be used to screen employment applicants and employees. .
- (2) Republic shall employ, train, schedule, and assign garage operation personnel sufficient and competent to perform daily management, supervision, facility patrol, cashiering, custodial, maintenance, marketing, accounting and record keeping, and other duties associated with the efficient and effective operation of the Parking Facilities. All personnel shall be trained to provide excellent customer service (proper, safe, efficient and exceedingly courteous service on an adequate, fair, equitable and impartial basis to those authorized to use the Parking Facilities). All such personnel shall be selected and assigned based upon the highest level of competency, honesty, and courteous service available to Republic through diligent recruiting, selection and training. All employees must exhibit an ability to readily and accurately compute lapsed time and parking charges in dollars and cents.

- (3) Republic shall ensure that all personnel responsible for cashiering and other duties requiring the accounting of revenues are, at all times, covered by an Employee Fidelity Bond.

(a) Labor Relations

- (1) Republic shall use its best efforts to maintain harmonious labor relations with respect to its operation of the Parking Facilities. Republic shall indemnify and hold the City harmless from any damages or liabilities incurred as a result of any dispute with respect to Republic's hiring practices.

(b) Uniforms, Identification and Trade Signage

- (1) Republic shall provide uniforms with identification for all of its personnel on duty in the Parking Facilities. The uniforms shall be reviewed and approved by the City. Republic's employees shall at all times be neatly and cleanly uniformed.
- (2) Any trade signage shall be approved by the City.

5.2 Advertising and Signs.

- (1) Republic shall provide or replace, from the Operating Advance, all required signs in the Parking Facilities or in parking rights of way. All advertising, signage and postings must be approved by the appropriate City official, and must comply with all applicable laws.
- (2) No signs or other form of advertisement shall be installed or displayed on the Parking Facilities without the prior written approval of the appropriate City official.

5.3 Handling of Money.

Republic shall supervise and control the handling of all money received in the operation of the Parking Facilities and shall establish an adequate system of internal controls satisfactory to the City, covering the receipt and expenditure of money in the maintenance and operation of the Parking Facilities, and shall prepare all operating and financial reports and statements, including reports and statements to the City that are necessary or appropriate under other provisions of this Agreement or other third-party parking lot lease agreements. All bills and invoices shall be paid on a timely basis, consistent with normal business practices.

5.4 Capital Equipment.

With the prior written consent of the City, Republic shall purchase or rent such equipment for the City, as may be reasonably needed for the efficient maintenance and operation of the Parking Facilities in a business like manner. All purchases or rentals by Republic shall be

made utilizing any discounts available to Republic or the City. Ownership of all equipment shall remain in the City at all times.

Should the City terminate this Agreement prior to the amortization of capital equipment purchases by Republic, the City shall reimburse Republic for any unamortized capital equipment purchases within 120 days of termination.

5.5 Inspections.

The City, through its officers, employees, consultants and other authorized representatives, shall have free and unobstructed access at all reasonable times and at reasonable intervals to the Parking Facilities for purposes of reasonable inspection.

5.6 Compliance With Applicable Requirements.

[REDACTED]

5.7 Restrictions on Leases and Contracts.

Republic shall not lease as lessor or sublease as sublessor any part of the Parking Facilities or contract with a third party for the operation of the Parking Facilities or any part thereof, without having obtained in each case the consent in writing of the City.

5.8 No Encumbrance of Parking Facilities or Receipts.

Republic shall not sell, transfer, assign, dispose of, mortgage, grant a security interest in, or encumber in any manner whatsoever, nor allow any lien to remain against the Parking Facilities or the Gross Revenues.

5.9 Limitations on Alteration of Parking Facilities.

- (a) No alteration, addition, demolition, removal or improvement to the Parking Facilities shall be made until the plans are approved in writing by the City, which approval shall not be unreasonably withheld or delayed.
- (b) Nothing set forth above shall preclude Republic from making repairs or alterations of an emergency nature, or in order to protect from or prevent an immediate threat to safety or property, provided that prompt notice is given to the City of the nature of such repairs and alterations. Republic shall supplement such notice to the extent reasonably requested by the City.

5.10 Surrender in Proper Condition.

Upon the occurrence of any Event of Default and the exercise by the City of its remedies hereunder, or upon a termination of this Agreement, Republic, subject to Applicable Law, shall give the City possession of the Parking Facilities in proper condition consistent with Section 4.1,

leaving in place all supplies on hand or on order, including but not limited to tickets, light bulbs, ballasts, office supplies, spare parts, cleaning materials and equipment, etc.

5.11 Non Discrimination.

No covenant, agreement, lease, conveyance or other instrument shall be effected or executed by Republic, or any of its successors or assigns, whereby the Parking Facilities or any portion thereof is restricted by Republic, or any successor in interest, upon the basis of race, color, religion, sex or national origin, in the use or occupancy thereof. Republic shall comply with all applicable federal, state and local laws in effect from time to time which prohibit discrimination by reason of race, color, religion, sex or national origin in the operation of the Parking Facilities.

5.12 Permitted Uses.

The only use permitted of the Parking Facilities is the parking and storage of wheeled vehicles and an office used for the management of the parking business conducted in the Parking Facilities. Notwithstanding any other provisions of this Agreement, the Parking Facilities shall be operated and maintained under this Agreement at all times as public facilities serving the general public and shall be available on a regular basis for the general public's use.

ARTICLE VI

FINANCE AND AUDIT REVIEW

6.1 Charges.

Republic shall offer, make and keep the Parking Facilities available for use by the general public and shall charge and collect the rates, rents, fees and charges for the services rendered by and for the use of the parking spaces of the Parking Facilities in conformity and only in accordance with those rates approved by the City.

Republic shall make rate recommendations in writing to the authorized City representative, who shall thereafter respond in writing to such recommendations.

6.2 Compliance With the Code.

Republic covenants with the City that:

- (a) It shall refrain from taking or omitting any act under its control which could adversely affect the tax-exemption of the interest on the revenue obligations under the Code; and
- (b) It shall operate the Parking Facilities or cause the same to be operated as "Parking Facilities" in accordance with Section I03(b)(4) of the Code and the regulations thereunder. The City shall regularly advise Republic regarding those requirements.

6.3 Operating Advance.

(a) Bank Accounts

(1) Operating Account

- a) The City shall submit to Republic by the tenth (10th) day of the month, a check or electronic funds transfer in the amount of that quarter's approved budgeted expenses (Operating Advance), from which Republic shall pay the on-going expenses of the Parking Facilities. By the twentieth (20th) day after the end of each quarter, this Operating Advance shall be reconciled by Republic against the actual quarterly Operating Expenses for the prior quarter, with any Operating Surplus being refunded to the City, with the quarterly report, and any Operating Deficit being paid by the City to Republic within ten (10) days of submission of an invoice for such Operating Deficit.
- b) Republic shall pay all personnel and Operating Expenses, [REDACTED] supplies and materials necessary for the operation and maintenance of the Parking Facilities from the Operating Advance. No performance bond fees shall be paid from this account. Performance Bond fees shall be paid from Republic's Management Fee.
- c) No payroll or payroll related expenses for Republic's Management and Supervisory Personnel, other than full time, on-site resident management accounting and supervisory personnel, shall be paid from this account.
- d) Under no circumstances shall the City be responsible for non-parking facility related telephone or telephone related charges (including Fax transmissions) during the term of the Agreement.
- e) The City shall directly pay electricity, water, wastewater and similar utility charges associated with the Parking Facilities. However, the City welcomes suggestions from Republic for the reduction of utility usage, including incentives to Republic for such reduction, as may be hereafter agreed upon by the parties.

(2) Revenue Account

- a) Republic shall compute and collect all fees or monies associated with the operation of the Parking Facilities, including parking fees/ permits, hourly parking receipts

and other collections, and deposit same in the City's designated bank account on all normal days of banking operations.

- b) Republic shall deposit all money collected on a daily basis in a Bank or other Financial Institution or Depository designated by the City in a Designated Special Off-Street Parking Revenue Account maintained by the City of Charleston in the name of the City of Charleston.
- c) Copies of all deposits made to the City's banking institution shall be retained by Republic and made available to the City upon request. The purpose of this requirement is to monitor and ensure that all cash is accurately counted and accounted for and that all deposits are made on a timely basis. There shall be a penalty of 5% for late or delinquent deposits made later than one banking business day after parking revenues are received, together with simple interest accruing to the City at the highest rate allowable by law per annum, calculated from the date when the deposit is due until the date the deposit is made.
- d) Republic shall provide and install a safe and secure system in the on-site management office for storing overnight and weekend Parking Facility revenues and receipts.

(b) Budgets.

(1) Annual Budget.

- a) Prior to the Commencement Date, and thereafter, not less than ninety (90) days prior to each applicable Fiscal Year, Republic shall prepare and cause to be delivered to the City for its review and consideration, a Draft Operating Budget in connection with the operation of the Parking Facilities, which Draft Operating Budget shall contain an estimate for each Fiscal Year on a monthly basis of Gross Revenues, Operating Expenses (including estimated City Expenses) and capital expenditures.
- b) Upon review of the Draft Operating Budget prepared by Republic and such other reviews and considerations as the City determines are reasonable and necessary, the City shall adopt an Operating Budget for the Parking Facilities and shall, prior to the start of the Fiscal Year, cause the Operating Budget to be delivered to Republic.

(2) Quarterly Budget.

- a) In addition, Republic shall prepare and submit to the City at quarterly intervals through the term of this Agreement, budgets of the personnel, operating and maintenance costs of the Parking Facilities that are to be paid by Republic from the Operating Advance. The Budget shall be submitted at least fifteen (15) days before the start of a quarter to permit the City to review and approve the Budget and authorize disbursement from the Operating Advance before the start of the next quarter.

(3) Monthly Budget Performance Report

- a) Republic shall submit to the City on a monthly basis a detailed Budget Performance Report, comparing actual revenues versus budgeted revenues and expenses, with receipts and other supporting evidence to account for all expenses paid from the Operating Advance, and detailing monthly revenue receipts.

(c) Revenue Management and Control

- (1) Republic shall have detailed written policies and procedures for handling cash.
- (2) Republic shall manage and operate the City's Parking Facilities in accordance with policies and technical procedures to be set forth by Republic and as approved by the City. This includes, but is not limited to, fee structure of permits, user fees, a parking rate structure and surcharges to be applied by Republic. Republic shall have the right to make appropriate recommendations to the City with respect to revising such policies and technical procedures. The final decision on implementing said revised policies shall remain with the City.
- (3) Republic shall use and maintain computer tapes, where provided, in all operations at which cash and payments are received for proper control and accounting of revenue. Such computer records and controls must have the prior written approval of the City's authorized representative.
- (4) Republic shall be responsible for all losses due to counterfeit bills accepted in its management of the Parking Facilities. In addition, Republic shall be responsible for the cautious and expeditious handling of cash, including loss due to robbery or negligent processing and securing of monies received from the sale of the permits or individual entry receipts.

- (5) All monthly cash shortages and/or losses, regardless of the reason, are to be absorbed by Republic and are not to be deducted from gross receipts. The City shall not be responsible for any loss of revenues resulting from Republic's negligence.
- (6) The City assumes no responsibility for the collection of bad debt associated with the Parking Facilities. However, since all deposits are made to a City of Charleston revenue account, any costs incurred by the City resulting from bad debt, returned checks and charges for returned checks shall be deducted from Republic's Management Fee in the quarter after the cost is incurred by the City. Similarly, Republic shall be credited for any bad debt recovered.

(d) Accounting Procedures

- (1) Copies of all proposed accounting documentation shall be incorporated into this Agreement.
- (2) Republic shall maintain a system of accounting, bookkeeping and controls that shall accurately reflect all income received and disbursements made in connection with the operation and maintenance of the Parking Facilities. Such books and records shall be maintained and kept in a mutually acceptable location in the City of Charleston and/or the City of Chattanooga, Tennessee and shall be available for inspection by the City at any time. The accounting, bookkeeping and control system must include, but is not limited to, the following features:
 - i. All posting, billing, and collection of Account Receivables that shall consist primarily of charges to monthly parkers. All bills to monthly parkers shall be prepared and mailed or distributed before the twenty-fifth (25th) day of each calendar month to cover charges for the next succeeding month. All charges and collections shall be posted in the proper ledger not later than the fifth day of the month covered by the billing, and follow-up on uncollected bills shall begin on the next day.
 - ii. Maintenance of Account Payables records and supplies inventory control.
 - iii. Control of payroll costs, including use of time clocks or timesheets, and other expenditures
 - iv. Making up of payroll, filing Social Security, withholding tax, Workers' Compensation, and Sales Tax returns.
 - v. Reconciling "Operating Account" bank account.

vi. Maintaining continuous audit control of revenue and parking tickets, including numerical accountability of pre-numbered parking tickets and parking cards on a daily basis.

vii. Ensuring the safekeeping of pre-numbered tickets and parking cards.

viii. Preparing and submitting to the City the necessary records and reports for the Parking Facilities as detailed.

- (3) Republic shall ensure that the form of all books of account, reports, records and types of operating controls are subject to the written approval of the City's auditor. Written recommendation by the auditor for changes, additions or deletions in accounting practices, reporting or controls shall be complied with by Republic when requested.
- (4) Republic shall be responsible for exercising proper care and accuracy in the preparation of the required reports and records. Republic's records for the operation of the Parking Facilities may be audited at any time by the City, its authorized representative, or by a private auditing firm at the request of and at the sole discretion of the City.
- (5) The City shall also make periodic cash audits. The City reserves the right to audit the books and procedures at any time, and to have immediate access to the books and records of Republic related to the operation of the Parking Facilities. This access includes, but is not limited to, the City's internal audit staff, external audit staff, and other outside consultants for the purpose of audit and review of the books and operation of Republic.
- (6) Republic shall permit the auditors of the City during the term of this Agreement plus one year after the termination of this Agreement, during normal business hours and upon reasonable notice, to audit and examine Republic's books of account, reports and records. The auditors shall use their best efforts to not unnecessarily interrupt the business operations of Republic.

(e) Reports

- (1) Republic shall prepare true and complete records and accounts of all gross receipts for each year in accordance with generally accepted accounting principles.
- (2) Copies of all proposed report format should be included as part of this Agreement. Republic shall be responsible for the following reports:

a) A daily cash flow statement in the form of weekly and monthly reports (detailed below) using an audit trail to be determined by Republic and subject to the approval of the City, as well as the beginning and ending number of parking tickets issued during the given reporting period.

b) A weekly report of daily operating activity for each Parking Facility, due on the following Tuesday which shall show such information as:

- the number of vehicles entering and leaving the Parking Facility,
- number of permits sold and a list of card numbers currently activated;
- transient fees collected;
- monthly lease receipts;
- number of parking tickets issued, tickets missing, and tickets voided;
- deposits into City's bank account, reason for discrepancy (if applicable) from the amount received for that month, including copies of documentation as needed to reconcile the bank statement;
- Aged account receivables report for all validation, monthly, valet and semester accounts.

c) Payroll summary sheets showing names of employees, hours worked, hourly rate or salary, and gross pay for the period; these summaries shall be submitted monthly with the financial reports.

d) Monthly and Quarterly Summaries showing the monthly and quarterly totals for all data provided in a) and b) above and Monthly and Quarterly Profit and Loss Statements and Balance Sheets, to be submitted not later than the twentieth (20th) day of the following month. The City may change the format of the report at any time in its sole discretion.

e) Deliver to the City by January 31st of each year, an Annual Performance Summary in a form approved by the City. The City may direct Republic to change the format of the report at any time. A copy of the Annual Performance Summary shall be on site at the Parking Facilities for the duration of this Agreement. The Annual Performance Summary shall reflect the financial

performance of the previous calendar year and shall contain, at a minimum:

- Listing of Republic contracts to maintain the Parking Facilities;
- Listing of any contract awarded to minority or female business enterprises;
- Accomplishments for the year;
- Listing of any desired objectives for current year;
- Average number of transient parkers on a monthly basis.

f) Notify the City of any serious or unusual conditions or circumstances that may develop in the operation of the Parking Facilities.

g) An annual CPA or Republic's Chief Financial Officer's certified statement of gross receipts to the City. Such certified statement shall include an opinion as to the accuracy of Republic's gross receipts and expenses as defined by the Agreement. The period covered by the statement of gross receipts and revenues shall coincide with the City's fiscal year and shall be submitted to the City within sixty (60) days after the end of each Fiscal Year during the term of this Agreement.

(3) Copies of all reports required herein shall be submitted in duplicate, with a copy to the City's Finance Division and a copy to the City's Real Estate Management Division.

6.4 Use of Funds and Accounts.

(a) As needed, requisitions shall be submitted for proposed disbursements for repairs and improvements. Such requisitions shall be supported and documented to the reasonable satisfaction of the City.

(b) Requisitions for disbursements from the Operating Account which are consistent with the approved Operating Budget shall be processed promptly. Any Operating Expenses or capital improvements or expenditures beyond the Operating Budget must be documented and supported to the reasonable satisfaction of the City. Prior requisitions and payments from the Operating Account shall be supported and substantiated, if requested by the City. Otherwise, such disbursements shall be subject only to an annual audit.

(c) The Operating Advance is to be used by Republic to pay daily or regular Operating Expenses which are consistent with the Operating Budget and are approved by the City including such City Expenses as the City requires Republic to pay directly.

6.5 Acquisition of Equipment and Supplies.

All supplies for the operation of the Parking Facilities shall be provided by Republic using funds from the Operating Advance.

ARTICLE VII

[illegible]

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[REDACTED]

ARTICLE VIII

REIMBURSEMENT OF AND COMPENSATION FOR THE OPERATOR

8.1 Financial Statements of Republic.

(a) Republic shall keep full and adequate books of account and other records, reasonably satisfactory to the City, reflecting the results of operation of the Parking Facilities in accordance with generally accepted accounting principles. The records maintained by Republic shall include, without limitation, all daily reports tickets, vouchers, receipts, invoices, bills, agreements, checks, canceled checks, check stubs and all other books, records, papers and documents relevant to the management and operation of the Parking Facilities; and the records so maintained shall be held, and returned to the City at the termination of the Agreement or until such time that the City instructs Republic in writing to dispose of them. City shall provide Republic with adequate storage space for storage of records.

(b) Whenever requested by the City, Republic shall provide and certify, or cause to be provided and certified by an Authorized Officer of Republic at Republic's expense, such information concerning the Parking Facilities, Republic, its finances and business affairs as the City reasonably considers necessary to enable it to keep informed of financial and any other matters pertaining to Republic or the Parking Facilities, to enable Counsel to the City to render its opinions and otherwise advise the City, and to enable the City to make any reports required by Applicable Law. The inability of Republic to certify any information required shall not be a default hereunder unless the circumstances giving rise to such inability are a violation of some other provision of this Agreement. Any reports requested by the City that do not pertain to the normal ongoing operation of the Parking Facilities shall be provided by Republic after mutual agreement between both parties at a cost agreed upon by both parties. The cost of said reports to be an expense of the City.

(c) The loss of or damage to books and records required to be maintained under this Section 8. 2 due to unavoidable casualty shall not be a default or breach hereunder.

8.2 Republic's Fee and Payments.

(a) Pursuant to the terms detailed in Section 6.3, the City covenants and agrees to forward by check or electronic funds transfer to Republic by the tenth (10th) day of the month when due, an Operating Advance equal to the approved Quarterly Operating Budget for the following quarter, for payment of all expenses associated with the operation of the Parking Facilities.

(b) For and in consideration of all the services that shall be performed by Republic pursuant to this Agreement in the operation, repair, maintenance and management of the Parking Facilities, the City covenants and agrees to pay Republic in each fiscal year of the City, from the Commencement Date to the end of the term of this Agreement, a fee (herein called the Management Fee). This fee shall be paid in quarterly installments as part of the quarterly Operating Advance.

(c) The Management Fee shall be paid according to the following schedule:

May 10, 2008	\$26,666.67
July 10, 2008	\$40,000.00
October 10, 2008	\$40,000.00
January 10, 2009	\$40,000.00
April 10, 2009	\$40,000.00
July 10, 2009	\$41,200.00
October 10, 2009	\$41,200.00
January 10, 2010	\$41,200.00
April 10, 2010	\$41,200.00

July 10, 2010	\$42,436.00	
October 10, 2010	\$42,436.00	
January 10, 2011	\$42,436.00	
April 10, 2011	\$42,436.00	(\$14,145 if Renewal Term 1 not Exercised)
May 1, 2011 Renewal Term 1		
July 10, 2011	\$43,709.08	
October 10, 2011	\$43,709.08	
January 10, 2012	\$43,709.08	
April 10, 2012	\$43,709.08	(\$14,569.69 if Renewal Term 2 not exercised)
May 1, 2013 Renewal Term 2		
July 10, 2012	\$45,020.35	
October 10, 2012	\$45,020.35	
January 10, 2013	\$45,020.35	
April 10, 2013	\$45,020.35	

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default.

The following shall be "Events of Default" under this Agreement, and the term "Event of Default" whenever used in this Agreement shall mean any one or more of the following events:

- (a) Failure by Republic to pay to the City when required any payment required to be paid under this Agreement, and such default is not rectified within five (5) business days after written notice thereof from the City to Republic.
- (b) Failure by Republic to perform, observe or comply with any other of the terms, covenants, conditions or provisions contained in this Agreement (other than as referred to in paragraph (a) of this Section), which failure shall continue for a period of fifteen (15) days in the ordinary course of business, then such period shall be increased to such extent as shall be necessary to enable Republic to complete such curative action through the exercise of due diligence.

(c) If Republic shall file a voluntary petition seeking an "Order For Relief" within the meaning of the United States Bankruptcy Code, or if any such "Order For Relief" shall be entered with respect to Republic, or if Republic shall be adjudicated bankrupt or insolvent, or shall file any petition or other pleading seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Republic, or of substantially all of the assets of Republic, shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due or

(d) If a petition or other pleading shall be filed against the operator seeking an "Order For Relief" within the meaning of the United States Bankruptcy Code, reorganization, composition, readjustment, liquidation or similar relief under any present or future law or regulation, and shall remain undismissed or unstayed for an aggregate period of sixty (60) days (whether or not consecutive).

9.2 Termination.

(a) If an Event of Default occurs, as described in (a) through (d) above, the City shall notify Republic in writing, at which time Republic shall have fifteen (15) days to cure the default condition. If Republic does not cure such default within the specified period, in addition to any other remedy available at law or in equity, the City may terminate this Agreement by written notice thereof to Republic, and in that event, this Agreement shall be of no further force and effect, the City shall have no further obligation to Republic hereunder, and the City shall be entitled to immediate possession of the Parking Facilities, all sums on deposit with Republic, less any amounts due Republic, and all supplies on hand or on order.

9.3 No Waiver of Rights.

No failure or delay by the City in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by the City in exercising any right, remedy, power or privilege under or in respect of this Agreement shall affect the rights, remedies, powers or privileges of the City hereunder or shall operate as a waiver thereof.

9.4 Remedies Cumulative.

All rights, remedies, powers and privileges herein given or granted to the City are cumulative, non-exclusive and in addition to any and all rights, remedies, powers and privileges that the City may have or be given by reason of any law, statute, ordinance or otherwise at law or in equity.

In the event the City is required to incur legal expenses and/or court costs due to an Event of Default by Republic, Republic agrees to reimburse the City for all legal expenses and/or court costs incurred as a result thereof.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Third Party Beneficiary.

Nothing contained in this Agreement shall be construed to confer upon any other party, the rights of a third party beneficiary, except as may be otherwise specifically provided for herein.

10.2 Representations.

Any representation, warranty, covenant or agreement made herein shall be deemed to be material and to have been relied upon by the party to whom it is made.

10.3 City's Liability Limited.

No recourse shall be available to Republic for any claims based on this Agreement against any officer, employee or agent of the City, all such liability, if any, being expressly waived by Republic by Republic's acceptance of this Agreement.

In the exercise of the rights, remedies, powers and privileges of the City and its officers, employees and agents under this Agreement, the City shall not be accountable to Republic for any action taken or omitted by it or its officers, employees and agents in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred, except for those provisions outlined in this Agreement. The City and its officers employees or agents shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

10.4 Giving of Notice.

Except as otherwise provided herein, all notices required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail postage prepaid or by commercial messenger to:

In the Case of the City:

Mayor
City of Charleston
P.O. Box 304
Charleston, SC 29402

In the Case of Republic:

President
Republic Parking System, Inc.
Suite 2000, Republic Centre
Chattanooga, TN 37450

With Copies to:

Director of Purchasing
City of Charleston
P.O. Box 304
Charleston, SC 29402

Corporation Counsel
City of Charleston
P.O. Box 304
Charleston, SC 29402

With Copies to:

Regional Vice President
Republic Parking System, Inc.
Suite 2000, Republic Centre
Chattanooga, TN 37450

The City and Republic, by notice given hereunder, may designate any further or different persons or addresses to which subsequent notices shall be sent.

10.5 Severability.

If any clause, provision or section of this Agreement is deemed to be illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein. If any agreement or obligation contained in this Agreement is deemed to be in violation of law, then such agreement or obligation shall be determined to be the agreement or obligation of the City or Republic, as the case may be, to the full extent permitted by law.

10.6 South Carolina Law.

The laws of the State of South Carolina shall govern the construction of this Agreement.

10.7 Status of Republic.

Republic shall perform its duties and obligations hereunder for the City in the capacity of an independent contractor. The performance by Republic of any function, duty or responsibility as an agent of the City shall not in any manner affect the status of Republic as an independent contractor under this Agreement.

10.8 No Partnership.

Nothing contained in this Agreement is intended or shall be construed to create a partnership or joint venture between the City, including any successors or assigns of the City, and Republic, including any successors or assigns of Republic.

10.9 Approvals of the City.

Any approvals required from the City shall be deemed given if provided by the Mayor or his designated City representative.

10.10 Assignment.

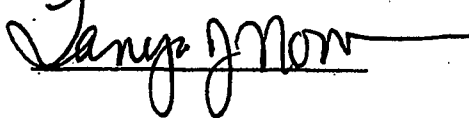
The City may at its sole discretion, sell, convey, lease, or otherwise transfer the Parking Facilities to another public entity for the purposes of carrying out the responsibilities of the City under this Agreement. In such event, and upon thirty (30) days prior written notice to Republic, said entity shall assume all rights and responsibilities of the City under this Agreement. This Agreement shall not be assigned by Republic without the written consent of the City, which may be withheld in the City's sole and absolute discretion.

10.11 Incorporation of terms of Submittal.

Anything contained herein to the contrary notwithstanding, Republic agrees that throughout the term of this Agreement, it shall be bound by all terms and conditions contained in its Submittal dated December 17, 2007 (the "Submittal"), provided, however, that in the event there is a conflict between the terms of this Agreement and the Submittal, this Agreement shall control.

IN WITNESS WHEREOF, authorized representative, duly executed, sealed and first written above. the parties hereto, by their have caused this Agreement to be delivered as of the day and year first written above.

Witnesses

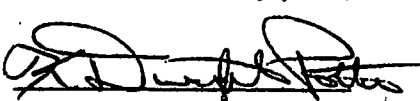



City of Charleston

By:


Joseph P. Riley, Jr.
Mayor, City of Charleston

Witnesses

REPUBLIC PARKING SYSTEM, INC.

By:

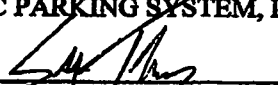

Scott Titmus
Executive Vice President
Republic Parking Systems, Inc.

EXHIBIT "A"
PARKING FACILITIES

Parking Garages and Non-Metered Parking Lots	# Parking Spaces	Addresses
St. Philip Garage	598	(24) St. Philip Street
Marion Square Garage	308	399 King
Camden Garage	308	47 John
Wentworth Garage	518	81 Wentworth
Concord Garage	624	1 Cumberland
Gaillard Garage	596	32 Alexander
Aquarium Garage	1093	24 Calhoun
East Bay Garage	339	25 Prioleau
Charleston Place Gge	404	85 Hassell
VRTC Garage	723	63 Mary
Majestic Garage	477	211 King
King & Queen Garage	315	93 Queen
TOTAL Garage Spaces	6303	

Parking Passes Controlled in non-City Garage	Number of Passes
Cumberland Garage	339

Non-Metered Parking Lots	Number of Spaces	
First Baptist Lot	65	At Church & Market
John Street Lot	31	Between Meeting & King
George/Society Lot	146	31 George
Morris/St. Philip Lot	65	At Morris & St. Philip
Market/Horiback Lot	118	131 Market
Concord/Inspection Lot	40	
Visitor Center Lot	62	375 Meeting
Fishburne/Hagood JRP stadium area lots	1558	At Fishburne & Hagood
101 Broad St.	22	
TOTAL Spaces	2127	

Metered Parking Lots	Number of Meters	
4 Auditorium Lots*	89	
*on George and Alexander Streets		
Beaufain/Archdale/Market St Lot	18	
Concord/Cumberland Lot	24	
East Bay Lot	10	
Exchange Lot	18	
Garden Theater Lot	40*	Pay and Display station
* Pay and Display machine		
Market / Canterbury Lot	36	
John Street Lot	3	
TOTAL Number of Machines	198	

On-Street Parking Meters	
Number of Meters	1591
Number of Streets	68

The City reserves the right to add or remove facilities at a cost to be agreed upon by Republic and the City.

EXHIBIT "B"

Scope of Services

Republic accepts the appointment as Parking Facilities Operator to operate, manage and maintain the City of Charleston's Parking Facilities and collect Parking Meter Revenue, wherein efficient, economical, and professional delivery of services is a primary consideration. The Parking Facilities shall be operated as a first-class commercial public parking facility with energy, fidelity, and diligence, respectful of the culture it serves, and in full compliance with all terms and conditions contained in this Agreement. Service to the consumer is paramount and a clear understanding of the sensitive nature of parking in the City of Charleston is required. In summary, the principle objective of this Agreement is the overall excellence of the City's total parking services program. The City of Charleston is responsible for the maintenance, repair and installation of all parking meters; this function is not within the scope of this Agreement.

Anything contained in the Agreement to the contrary notwithstanding, Republic shall be responsible for the collection of parking meter revenue. The budgeted and approved expenses associated with this operation shall be reimbursed by the City. The revenues shall be deposited into the City of Charleston's account and the budgeted operating expenses shall be advanced to Republic quarterly. All terms of the Agreement concerning cash controls, bonding, performance and any other applicable terms shall also apply to the parking meter collections function.

CITY OF CHARLESTON

PARKING GARAGE MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement"), dated as of May 1, 2008 and effective from the time of execution and delivery hereto, by and between the CITY OF CHARLESTON (the "City"), and Republic Parking System, Inc., a duly organized and existing corporation under the laws of the State of Tennessee ("Republic").

RECITALS

WHEREAS, the City owns, controls and regulates off-street parking facilities ("parking facilities") owned by the City; and

WHEREAS, the City owns, leases or manages certain parking facilities as listed in Exhibit "A" attached hereto (the "Parking Facilities"); and

WHEREAS, the City has selected Republic to operate these Parking Facilities for the benefit of the City.

NOW, THEREFORE, THE CITY OF CHARLESTON and REPUBLIC, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, **DO HEREBY AGREE** as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

Certain terms are defined in the headings and the recitals hereto. In addition to those definitions, as used in this Agreement, unless the context or use clearly indicates another or different meaning or intent, the following definitions shall apply:

(a) "Applicable Law" means any law, regulation, requirement or order of any federal, state or local agency, court or other governmental body, applicable from time to time to the acquisition, design, construction, equipping, financing, ownership or operation of the parking facilities or the performance of any obligations under any agreement entered into in connection herewith.

(b) "City Expenses" shall be all capital expenses as may be necessary at the sole determination of the City, all capital improvements and replacements to the Parking Facilities and related equipment; striping and restriping of parking space boundaries; all signs; and only the following operating costs:

(i) Electricity, water, wastewater and similar utility charges (excluding telephone);

- (ii) fire and extended casualty insurance on parking facility buildings and contents, and claims above policy limits;
- (iii) taxes payable to the City (if applicable);
- (iv) snow removal;
- (v) annual financial audits;
- (vi) such other expenses as are unforeseen, unexpected or are caused by usual operations and activities conducted at the Parking Facilities, and in any event are approved by the City as satisfying such criteria.

(c) "Code" means the Internal Revenue Code of 1954, as amended, or the Internal Revenue Code of 1986, as amended, and as applicable.

(d) "Commencement Date" means May 1, 2008, at 12:01 a.m.

(e) "Fiscal year" means the 12-month period commencing on January 1 and ending on December 31, of the calendar year.

(f) "Gross Revenues" shall include all revenues received from the parking of vehicles in the Parking Facilities as well as free and discounted parking revenue, and all other income of any kind, with the exception that tips or gratuities for any services rendered shall not be included in Gross Revenues.

(g) "Insurance Requirements" means the applicable provisions of any casualty or liability insurance policy carried by the City or Republic covering the Parking Facilities; all requirements of the issuer of any such policy; and the applicable regulations and other requirements of the National Board of Fire Underwriters, any applicable local board of fire underwriters, and any other body exercising a similar function.

(h) "Management Expenses" means those indirect expenses associated specifically with the management of the Parking Facilities and paid for directly by Republic from its Management Fee, to include the following:

- (i) Performance bond fees.
- (ii) Senior Management Personnel (not on-site in Charleston).
- (iii) Non-business related long distance telephone, fax and modem charges.
- (iv) Counterfeit money losses and cash shortages.
- (v) Returned check charges.
- (vi) Annual Republic CPA audit.

(vii) Corporate office overhead.

(viii) Senior management salaries and travel expenses.

(i) "Management Fee" means the agreed to base or incentive fee the City pays Republic for managing the parking facilities.

(j) "Net Revenue" means that amount equal to Gross Revenues less Operating Expenses, not including free or discounted parking.

(k) "Operating Advance" shall mean the City payment of approved quarterly Operating Expenses to be paid by the City to Republic by the 10th day of each month listed in Section 8.2, below, as set out in the quarterly Operating Budget approved by the City.

(l) "Operating Surplus" means the difference between the Budgeted Operating Advance and actual Quarterly Expenses.

(m) "Republic Operating Expenses" shall include all operating costs paid from the Operating Advance, and not included as City Expenses, including by way of example only and not as a limitation, maintaining, cleaning, repairing and restocking all revenue control equipment; maintaining all books and records; bookkeeping, legal, accounting and office expenses; personnel salaries, fringe benefits and employment related taxes; telephone; uniforms; trash removal; rents; claims and expenses (including deductibles under applicable policies); and all premiums for liability insurance, fidelity bonds and other insurance or bonds required hereunder. Re-allocation of expense responsibilities between the "City" and "Republic" may be accomplished by an amendment letter signed by both the "City" and "Republic."

1.2 Miscellaneous Definitions.

Words of any gender shall be deemed and construed to include correlative words of each other gender. Unless the context shall otherwise indicate, words importing the singular number include the plural number and vice versa, and words importing persons include any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

ARTICLE II

REPRESENTATIONS

2.1 Representations by the City.

The City makes the following affirmative representations as the basis for the undertakings on Republic's part herein contained:

(a) The City is a political subdivision of the State of South Carolina and a body politic and corporate, duly organized and validly existing under the constitution and laws of the State of South Carolina, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The City has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the City.

2.2 Representations by Republic.

Republic makes the following affirmative representations as the basis for the undertakings on the City's part herein contained:

(a) (i) Republic is a corporation duly formed under the laws of the State of Tennessee, and is authorized to engage in business in the State of South Carolina; (ii) Republic has the full legal capacity to operate and manage the Parking Facilities and has all necessary right and lawful authority to enter into this Agreement for the full term hereof, and (iii) Republic has been duly authorized by all proper and necessary action of each officer thereof whose action is required, to execute and deliver this Agreement.

(b) This Agreement, when executed and delivered on behalf of Republic, shall constitute the legal, valid and binding obligation of Republic, enforceable in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights, or, to the extent that certain remedies hereunder required or may require enforcement by a court of equity, such principles of equity as the court having jurisdiction may apply.

(c) The execution, delivery and performance by Republic of this Agreement shall not violate any provision of Applicable Law, rule or regulation pertaining to Republic's ability to enter into this Agreement, or any judgment, order or decree binding upon it, the violation of which might have a materially adverse affect upon Republic, the Parking Facilities or the operation thereof.

(d) There are no actions, suits, or proceedings pending against Republic or, to the knowledge of Republic; threatened against Republic before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a material adverse affect on the authority or ability of Republic to perform its obligations under this Agreement, or which question the legality, validity or enforceability hereof or thereof.

(e) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement, do not conflict with or result in a breach of any of the terms, conditions or provisions of any partnership restriction or any agreement or instrument to which Republic is now a party or by which it is bound, or constitutes a default under the terms of any of the foregoing.

ARTICLE III

MANAGEMENT RELATIONSHIP

3.1 Appointment of Republic as Manager.

The City hereby designates and employs Republic as the Manager of the Parking Facilities which are described in Exhibit A.

3.2 Term of Agreement and Extension.

(a) The initial term of the Agreement shall begin on the Commencement Date and shall continue until April 30, 2011, (the "Initial Term"). In addition, either party shall be entitled to two consecutive one (1) year renewal terms (each, a "Renewal Term"), which Renewal Terms shall automatically come into effect at the end of the then current Term unless either party notifies the other, in writing, on or before the day that is one hundred eighty (180) days prior to the expiration of the then current Term that it does not wish for a Renewal Term to take effect; and further provided, however, that the City may opt, in its sole and absolute discretion, to terminate the Agreement, upon thirty (30) days written notice issued at any time. If the City terminates the Agreement pursuant to this provision, Republic shall relinquish all interest and control in and to the Operating Advance and shall only be entitled to receive payment of its management fee to the date of termination and any payments due in accordance with Section 5.4 herein. Republic shall not be entitled to termination expenses or damages. As used herein, "Term" shall refer to the Initial Term, together with any applicable Renewal Term(s).

(b) The City may also terminate this Agreement for its own convenience in its sole discretion, upon thirty (30) days written notice to Republic. If the City terminates the Agreement pursuant to this provision, Republic shall relinquish all interest and control in and to the Operating Advance and shall only be entitled to receive payment of its management fee to the date of termination and any payments due in accordance with Section 5.4 herein. Republic shall not be entitled to termination expenses or damages.

(c) The City may also terminate this Agreement, upon thirty (30) days written notice to Republic, should the City fail to budget, appropriate or otherwise make available sufficient funds to maintain this Agreement. If the City terminates the Agreement pursuant to this provision, Republic shall relinquish all interest and control in and to the Operating Advance and shall only be entitled to receive payment of its management fee to the date of termination and any payment pursuant to Section 5.4 herein. Republic shall not be entitled to termination expenses or damages.

3.3 Commencement Date.

This Agreement shall commence at 12:01 a.m. on the Commencement Date, and Republic shall commence operations pursuant to the terms of this Agreement at that time.

3.4 Use.

The Parking Facilities shall be operated by Republic as public parking under the terms and conditions of this Agreement. Additionally, Republic may offer amenities and services such as assisting in auto repair and maintenance services for customers provided Republic and the City have a prior written agreement related to such amenities and services.

3.5 Basic Terms.

Attached as Exhibit B and incorporated herein by reference is the scope of services of this Agreement, which is hereby agreed to by the parties. In addition, Republic shall provide a report, when submitting proposed quarterly operating budgets making recommendations for the improvement of services and the enhancement of Net Revenues at the Parking Facilities. Republic shall also prepare the Operating Budget under Section 6.3, and to make recommendations to the City, prior to the Commencement Date and regularly thereafter, as to marketing and promotion of the Parking Facilities.

ARTICLE IV

MAINTENANCE AND REPAIRS OF THE PARKING FACILITY

4.1 Maintenance of the Parking Facility.

(a) General Upkeep

- (1) Republic shall, as part of the Operating Advance, perform the following:
 - a) Make regular and frequent inspections to determine whether maintenance, repair and/or replacement of the Parking Facilities is required.
 - b) Keep the Parking Facilities in a properly maintained state, free from hazardous condition and deterioration, normal wear and tear excepted.
 - c) Maintain the Parking Facilities in a clean and neat fashion, ensuring that all trash, bottles and papers and other dirt and debris are routinely removed and disposed of in a legal manner, empty all waste receptacles for off-site disposal; and perform all other tasks as defined and directed by the City.
 - d) Be responsible for all reasonable improvements in cleaning and/or maintenance methods as deemed necessary to meet the requirements of the City and all of the contractual obligations contained in this Agreement.
 - e) Furnish the supplies and housekeeping equipment needed to operate, clean and maintain the Parking Facilities, including but not limited to, spare parts for the parking control equipment.
 - f) Perform minor repairs to the Parking Facilities, including, but not limited to, relamping and minor electrical repairs, which its staff is capable of performing in a safe and efficient manner.

- g) Maintain all garage parcels and surface lot landscaping and hardscaped areas associated with the Parking Facilities to City specifications.

- (2) The City shall make periodic and routine inspection of the Parking Facilities and equipment to determine that they are being maintained in a neat, orderly and operable manner. The City reserves the right to alter the frequency of maintenance required to maintain the optimal condition of the Parking Facilities.

(b) Facilities

- (1) The physical facilities provided to Republic for the term of the Agreement shall become the responsibility of Republic and shall be returned to the City upon the termination of this Agreement in the same condition in which they were provided to Republic, except for normal wear and tear. Such equipment includes elevators, signage, electrical systems and HVAC systems. The City may assist in matters related to the maintenance, repair or replacement of Garage equipment or structural elements of the Parking Facilities. Therefore, under this provision, Republic shall:

- a) Be responsible for preventative maintenance and repair of all of the Parking Facilities under this Agreement, which cost shall be reimbursed by the City.
- b) Promptly inform the City of the need for major repairs, replacements, elevator repair, painting or patching for the Parking Facilities.
- c) Negotiate and/or oversee contracts using qualified or certified (if required) personnel for landscaping, repairs, painting or patching for the Parking Facilities, if requested by the City to do so.
- d) Under no circumstances shall the City pay for repairs to the Parking Facilities that have been necessitated by negligence or abuse on the part of Republic, its employees, agents or independent contractors.

The City may, at its sole discretion, direct the City's personnel to make the necessary repairs or provide the necessary replacements or upgrades to the Parking Facilities at the City's expense, or authorize an independent contractor to make the necessary repairs or provide the necessary replacements or upgrades at the City's expense.

(c) Equipment

- (1) Republic shall have the right to use the City's existing equipment, furnishings and fixtures that may be permanently installed in the Parking Facilities according to, but not limited to, the following conditions:
- (2) Republic, as part of the Operating Advance:
 - a) Shall, prior to the Republic's management of the Parking Facilities, conduct a joint inventory of equipment on hand at the Parking Facilities including office equipment, revenue control equipment and other cleaning and operating equipment. Items listed on the joint inventory list shall remain the property of the City entrusted to Republic for use, maintenance and care pursuant to this Agreement.
 - b) Shall be responsible for the maintenance of all equipment required to properly operate the Parking Facilities, including but not limited to: operating equipment, such as automatic gate arms, card readers, ticket dispensers, fee computers, counters, and other equipment for the Parking Facilities, such as fixtures, furnishings or elevators, except as otherwise herein provided.
 - c) Shall maintain said equipment, furnishings and fixtures during the term of this Agreement.
 - d) Shall be responsible for the repair or replacement of any of the aforesaid items in the event these items are lost, stolen or damaged other than for normal wear and tear. The cost of such replacement or repair shall be an operating cost provided a police report is filed and the replacement is not covered by any insurance policy; provided, under no circumstances shall the City assume costs for the repair or replacement of equipment or fixtures caused by negligence or abuse on the part of Republic, its employees, agents or independent contractors.
 - e) Shall replace all equipment, materials and supplies worn out or expended in the operation or maintenance of the Parking Facilities.
- (3) Upon the expiration of this Agreement, all equipment listed on the joint inventory list required per (2) (a) above shall be reconciled and the City shall be reimbursed the full and complete replacement costs for all items missing or damaged beyond normal wear and tear. Republic agrees not to modify and/or alter any equipment, area, space or structural component of any Parking Facility without prior written approval of the City. The operation of the Parking Facilities by Republic shall be conclusive evidence that Republic has examined the Parking Facilities and their equipment and has found them to be in good condition and operating.

order, except as otherwise specified in writing signed by Republic and the City.

(d) **Maintenance Agreements.**

- (1) Republic shall, as part of the Operating Advance, unless otherwise directed by the City, continue all maintenance contracts (within approved budget guidelines and except for the ability to repair in-house) on the parking equipment, including but not limited to, automatic gate arms, card readers, ticket dispensers, fee computers, counters, and other equipment for the Parking Facilities.
- (2) Republic shall not negotiate or enter into service contracts in connection with the operation of the Parking Facilities without the prior written approval of the City.

4.2 **Other Duties.**

Republic shall perform all other reasonable duties and responsibilities in connection with the Parking Facilities at the written request of the City.

ARTICLE V

GENERAL TERMS AND CONDITIONS

5.1 **Staffing.**

- (1) Republic shall provide a staffing pattern or plan that details the number and qualifications, past experience, personnel recruitment, selection, training and retention policies and procedures of the personnel who shall be employed in its operations. Republic shall also include employee quality control measures, such as what types of background checks, shall be used to screen employment applicants and employees. .
- (2) Republic shall employ, train, schedule, and assign garage operation personnel sufficient and competent to perform daily management, supervision, facility patrol, cashiering, custodial, maintenance, marketing, accounting and record keeping, and other duties associated with the efficient and effective operation of the Parking Facilities. All personnel shall be trained to provide excellent customer service (proper, safe, efficient and exceedingly courteous service on an adequate, fair, equitable and impartial basis to those authorized to use the Parking Facilities). All such personnel shall be selected and assigned based upon the highest level of competency, honesty, and courteous service available to Republic through diligent recruiting, selection and training. All employees must exhibit an ability to readily and accurately compute lapsed time and parking charges in dollars and cents.

- (3) Republic shall ensure that all personnel responsible for cashiering and other duties requiring the accounting of revenues are, at all times, covered by an Employee Fidelity Bond.

(a) Labor Relations

- (1) Republic shall use its best efforts to maintain harmonious labor relations with respect to its operation of the Parking Facilities. Republic shall indemnify and hold the City harmless from any damages or liabilities incurred as a result of any dispute with respect to Republic's hiring practices.

(b) Uniforms, Identification and Trade Signage

- (1) Republic shall provide uniforms with identification for all of its personnel on duty in the Parking Facilities. The uniforms shall be reviewed and approved by the City. Republic's employees shall at all times be neatly and cleanly uniformed.
- (2) Any trade signage shall be approved by the City.

5.2 Advertising and Signs.

- (1) Republic shall provide or replace, from the Operating Advance, all required signs in the Parking Facilities or in parking rights of way. All advertising, signage and postings must be approved by the appropriate City official, and must comply with all applicable laws.
- (2) No signs or other form of advertisement shall be installed or displayed on the Parking Facilities without the prior written approval of the appropriate City official.

5.3 Handling of Money.

Republic shall supervise and control the handling of all money received in the operation of the Parking Facilities and shall establish an adequate system of internal controls satisfactory to the City, covering the receipt and expenditure of money in the maintenance and operation of the Parking Facilities, and shall prepare all operating and financial reports and statements, including reports and statements to the City that are necessary or appropriate under other provisions of this Agreement or other third-party parking lot lease agreements. All bills and invoices shall be paid on a timely basis, consistent with normal business practices.

5.4 Capital Equipment.

With the prior written consent of the City, Republic shall purchase or rent such equipment for the City, as may be reasonably needed for the efficient maintenance and operation of the Parking Facilities in a business like manner. All purchases or rentals by Republic shall be

made utilizing any discounts available to Republic or the City. Ownership of all equipment shall remain in the City at all times.

Should the City terminate this Agreement prior to the amortization of capital equipment purchases by Republic, the City shall reimburse Republic for any unamortized capital equipment purchases within 120 days of termination.

5.5 Inspections.

The City, through its officers, employees, consultants and other authorized representatives, shall have free and unobstructed access at all reasonable times and at reasonable intervals to the Parking Facilities for purposes of reasonable inspection.

5.6 Compliance With Applicable Requirements.

Republic shall at all times comply with all Applicable Laws and Insurance Requirements.

5.7 Restrictions on Leases and Contracts.

Republic shall not lease as lessor or sublease as sublessor any part of the Parking Facilities or contract with a third party for the operation of the Parking Facilities or any part thereof, without having obtained in each case the consent in writing of the City.

5.8 No Encumbrance of Parking Facilities or Receipts.

Republic shall not sell, transfer, assign, dispose of, mortgage, grant a security interest in, or encumber in any manner whatsoever, nor allow any lien to remain against the Parking Facilities or the Gross Revenues.

5.9 Limitations on Alteration of Parking Facilities.

- (a) No alteration, addition, demolition, removal or improvement to the Parking Facilities shall be made until the plans are approved in writing by the City, which approval shall not be unreasonably withheld or delayed.
- (b) Nothing set forth above shall preclude Republic from making repairs or alterations of an emergency nature, or in order to protect from or prevent an immediate threat to safety or property, provided that prompt notice is given to the City of the nature of such repairs and alterations. Republic shall supplement such notice to the extent reasonably requested by the City.

5.10 Surrender in Proper Condition.

Upon the occurrence of any Event of Default and the exercise by the City of its remedies hereunder, or upon a termination of this Agreement, Republic, subject to Applicable Law, shall give the City possession of the Parking Facilities in proper condition consistent with Section 4.1,

leaving in place all supplies on hand or on order, including but not limited to tickets, light bulbs, ballasts, office supplies, spare parts, cleaning materials and equipment, etc.

5.11 Non Discrimination.

No covenant, agreement, lease, conveyance or other instrument shall be effected or executed by Republic, or any of its successors or assigns, whereby the Parking Facilities or any portion thereof is restricted by Republic, or any successor in interest, upon the basis of race, color, religion, sex or national origin, in the use or occupancy thereof. Republic shall comply with all applicable federal, state and local laws in effect from time to time which prohibit discrimination by reason of race, color, religion, sex or national origin in the operation of the Parking Facilities.

5.12 Permitted Uses.

The only use permitted of the Parking Facilities is the parking and storage of wheeled vehicles and an office used for the management of the parking business conducted in the Parking Facilities. Notwithstanding any other provisions of this Agreement, the Parking Facilities shall be operated and maintained under this Agreement at all times as public facilities serving the general public and shall be available on a regular basis for the general public's use.

ARTICLE VI

FINANCE AND AUDIT REVIEW

6.1 Charges.

Republic shall offer, make and keep the Parking Facilities available for use by the general public and shall charge and collect the rates, rents, fees and charges for the services rendered by and for the use of the parking spaces of the Parking Facilities in conformity and only in accordance with those rates approved by the City.

Republic shall make rate recommendations in writing to the authorized City representative, who shall thereafter respond in writing to such recommendations.

6.2 Compliance With the Code.

Republic covenants with the City that:

- (a) It shall refrain from taking or omitting any act under its control which could adversely affect the tax-exemption of the interest on the revenue obligations under the Code; and
- (b) It shall operate the Parking Facilities or cause the same to be operated as "Parking Facilities" in accordance with Section I03(b)(4) of the Code and the regulations thereunder. The City shall regularly advise Republic regarding those requirements.

6.3 Operating Advance.

(a) Bank Accounts

(1) Operating Account

- a) The City shall submit to Republic by the tenth (10th) day of the month, a check or electronic funds transfer in the amount of that quarter's approved budgeted expenses (Operating Advance), from which Republic shall pay the on-going expenses of the Parking Facilities. By the twentieth (20th) day after the end of each quarter, this Operating Advance shall be reconciled by Republic against the actual quarterly Operating Expenses for the prior quarter, with any Operating Surplus being refunded to the City, with the quarterly report, and any Operating Deficit being paid by the City to Republic within ten (10) days of submission of an invoice for such Operating Deficit.
- b) Republic shall pay all personnel and Operating Expenses, including insurance premiums, supplies and materials necessary for the operation and maintenance of the Parking Facilities from the Operating Advance. No performance bond fees shall be paid from this account. Performance Bond fees shall be paid from Republic's Management Fee.
- c) No payroll or payroll related expenses for Republic's Management and Supervisory Personnel, other than full time, on-site resident management accounting and supervisory personnel, shall be paid from this account.
- d) Under no circumstances shall the City be responsible for non-parking facility related telephone or telephone related charges (including Fax transmissions) during the term of the Agreement.
- e) The City shall directly pay electricity, water, wastewater and similar utility charges associated with the Parking Facilities. However, the City welcomes suggestions from Republic for the reduction of utility usage, including incentives to Republic for such reduction, as may be hereafter agreed upon by the parties.

(2) Revenue Account

- a) Republic shall compute and collect all fees or monies associated with the operation of the Parking Facilities, including parking fees/ permits, hourly parking receipts

and other collections, and deposit same in the City's designated bank account on all normal days of banking operations.

- b) Republic shall deposit all money collected on a daily basis in a Bank or other Financial Institution or Depository designated by the City in a Designated Special Off-Street Parking Revenue Account maintained by the City of Charleston in the name of the City of Charleston.
- c) Copies of all deposits made to the City's banking institution shall be retained by Republic and made available to the City upon request. The purpose of this requirement is to monitor and ensure that all cash is accurately counted and accounted for and that all deposits are made on a timely basis. There shall be a penalty of 5% for late or delinquent deposits made later than one banking business day after parking revenues are received, together with simple interest accruing to the City at the highest rate allowable by law per annum, calculated from the date when the deposit is due until the date the deposit is made.
- d) Republic shall provide and install a safe and secure system in the on-site management office for storing overnight and weekend Parking Facility revenues and receipts.

(b) Budgets.

(1) Annual Budget.

- a) Prior to the Commencement Date, and thereafter, not less than ninety (90) days prior to each applicable Fiscal Year, Republic shall prepare and cause to be delivered to the City for its review and consideration, a Draft Operating Budget in connection with the operation of the Parking Facilities, which Draft Operating Budget shall contain an estimate for each Fiscal Year on a monthly basis of Gross Revenues, Operating Expenses (including estimated City Expenses) and capital expenditures.
- b) Upon review of the Draft Operating Budget prepared by Republic and such other reviews and considerations as the City determines are reasonable and necessary, the City shall adopt an Operating Budget for the Parking Facilities and shall, prior to the start of the Fiscal Year, cause the Operating Budget to be delivered to Republic.

(2) Quarterly Budget.

- a) In addition, Republic shall prepare and submit to the City at quarterly intervals through the term of this Agreement, budgets of the personnel, operating and maintenance costs of the Parking Facilities that are to be paid by Republic from the Operating Advance. The Budget shall be submitted at least fifteen (15) days before the start of a quarter to permit the City to review and approve the Budget and authorize disbursement from the Operating Advance before the start of the next quarter.

(3) Monthly Budget Performance Report

- a) Republic shall submit to the City on a monthly basis a detailed Budget Performance Report, comparing actual revenues versus budgeted revenues and expenses, with receipts and other supporting evidence to account for all expenses paid from the Operating Advance, and detailing monthly revenue receipts.

(c) Revenue Management and Control

- (1) Republic shall have detailed written policies and procedures for handling cash.
- (2) Republic shall manage and operate the City's Parking Facilities in accordance with policies and technical procedures to be set forth by Republic and as approved by the City. This includes, but is not limited to, fee structure of permits, user fees, a parking rate structure and surcharges to be applied by Republic. Republic shall have the right to make appropriate recommendations to the City with respect to revising such policies and technical procedures. The final decision on implementing said revised policies shall remain with the City.
- (3) Republic shall use and maintain computer tapes, where provided, in all operations at which cash and payments are received for proper control and accounting of revenue. Such computer records and controls must have the prior written approval of the City's authorized representative.
- (4) Republic shall be responsible for all losses due to counterfeit bills accepted in its management of the Parking Facilities. In addition, Republic shall be responsible for the cautious and expeditious handling of cash, including loss due to robbery or negligent processing and securing of monies received from the sale of the permits or individual entry receipts.

- (5) All monthly cash shortages and/or losses, regardless of the reason, are to be absorbed by Republic and are not to be deducted from gross receipts. The City shall not be responsible for any loss of revenues resulting from Republic's negligence.
- (6) The City assumes no responsibility for the collection of bad debt associated with the Parking Facilities. However, since all deposits are made to a City of Charleston revenue account, any costs incurred by the City resulting from bad debt, returned checks and charges for returned checks shall be deducted from Republic's Management Fee in the quarter after the cost is incurred by the City. Similarly, Republic shall be credited for any bad debt recovered.

(d) Accounting Procedures

- (1) Copies of all proposed accounting documentation shall be incorporated into this Agreement.
- (2) Republic shall maintain a system of accounting, bookkeeping and controls that shall accurately reflect all income received and disbursements made in connection with the operation and maintenance of the Parking Facilities. Such books and records shall be maintained and kept in a mutually acceptable location in the City of Charleston and/or the City of Chattanooga, Tennessee and shall be available for inspection by the City at any time. The accounting, bookkeeping and control system must include, but is not limited to, the following features:
 - i. All posting, billing, and collection of Account Receivables that shall consist primarily of charges to monthly parkers. All bills to monthly parkers shall be prepared and mailed or distributed before the twenty-fifth (25th) day of each calendar month to cover charges for the next succeeding month. All charges and collections shall be posted in the proper ledger not later than the fifth day of the month covered by the billing, and follow-up on uncollected bills shall begin on the next day.
 - ii. Maintenance of Account Payables records and supplies inventory control.
 - iii. Control of payroll costs, including use of time clocks or timesheets, and other expenditures
 - iv. Making up of payroll, filing Social Security, withholding tax, Workers' Compensation, and Sales Tax returns.
 - v. Reconciling "Operating Account" bank account.

- vi. Maintaining continuous audit control of revenue and parking tickets, including numerical accountability of pre-numbered parking tickets and parking cards on a daily basis.
 - vii. Ensuring the safekeeping of pre-numbered tickets and parking cards.
 - viii. Preparing and submitting to the City the necessary records and reports for the Parking Facilities as detailed.
- (3) Republic shall ensure that the form of all books of account, reports, records and types of operating controls are subject to the written approval of the City's auditor. Written recommendation by the auditor for changes, additions or deletions in accounting practices, reporting or controls shall be complied with by Republic when requested.
 - (4) Republic shall be responsible for exercising proper care and accuracy in the preparation of the required reports and records. Republic's records for the operation of the Parking Facilities may be audited at any time by the City, its authorized representative, or by a private auditing firm at the request of and at the sole discretion of the City.
 - (5) The City shall also make periodic cash audits. The City reserves the right to audit the books and procedures at any time, and to have immediate access to the books and records of Republic related to the operation of the Parking Facilities. This access includes, but is not limited to, the City's internal audit staff, external audit staff, and other outside consultants for the purpose of audit and review of the books and operation of Republic.
 - (6) Republic shall permit the auditors of the City during the term of this Agreement plus one year after the termination of this Agreement, during normal business hours and upon reasonable notice, to audit and examine Republic's books of account, reports and records. The auditors shall use their best efforts to not unnecessarily interrupt the business operations of Republic.

(e) Reports

- (1) Republic shall prepare true and complete records and accounts of all gross receipts for each year in accordance with generally accepted accounting principles.
- (2) Copies of all proposed report format should be included as part of this Agreement. Republic shall be responsible for the following reports:

- a) A daily cash flow statement in the form of weekly and monthly reports (detailed below) using an audit trail to be determined by Republic and subject to the approval of the City, as well as the beginning and ending number of parking tickets issued during the given reporting period.
- b) A weekly report of daily operating activity for each Parking Facility, due on the following Tuesday which shall show such information as:
- the number of vehicles entering and leaving the Parking Facility,
 - number of permits sold and a list of card numbers currently activated;
 - transient fees collected;
 - monthly lease receipts;
 - number of parking tickets issued, tickets missing, and tickets voided;
 - deposits into City's bank account, reason for discrepancy (if applicable) from the amount received for that month, including copies of documentation as needed to reconcile the bank statement;
 - Aged account receivables report for all validation, monthly, valet and semester accounts.
- c) Payroll summary sheets showing names of employees, hours worked, hourly rate or salary, and gross pay for the period; these summaries shall be submitted monthly with the financial reports.
- d) Monthly and Quarterly Summaries showing the monthly and quarterly totals for all data provided in a) and b) above and Monthly and Quarterly Profit and Loss Statements and Balance Sheets, to be submitted not later than the twentieth (20th) day of the following month. The City may change the format of the report at any time in its sole discretion.
- e) Deliver to the City by January 31st of each year, an Annual Performance Summary in a form approved by the City. The City may direct Republic to change the format of the report at any time. A copy of the Annual Performance Summary shall be on site at the Parking Facilities for the duration of this Agreement. The Annual Performance Summary shall reflect the financial

performance of the previous calendar year and shall contain, at a minimum:

- Listing of Republic contracts to maintain the Parking Facilities;
- Listing of any contract awarded to minority or female business enterprises;
- Accomplishments for the year;
- Listing of any desired objectives for current year;
- Average number of transient parkers on a monthly basis.

f) Notify the City of any serious or unusual conditions or circumstances that may develop in the operation of the Parking Facilities.

g) An annual CPA or Republic's Chief Financial Officer's certified statement of gross receipts to the City. Such certified statement shall include an opinion as to the accuracy of Republic's gross receipts and expenses as defined by the Agreement. The period covered by the statement of gross receipts and revenues shall coincide with the City's fiscal year and shall be submitted to the City within sixty (60) days after the end of each Fiscal Year during the term of this Agreement.

(3) Copies of all reports required herein shall be submitted in duplicate, with a copy to the City's Finance Division and a copy to the City's Real Estate Management Division.

6.4 Use of Funds and Accounts.

(a) As needed, requisitions shall be submitted for proposed disbursements for repairs and improvements. Such requisitions shall be supported and documented to the reasonable satisfaction of the City.

(b) Requisitions for disbursements from the Operating Account which are consistent with the approved Operating Budget shall be processed promptly. Any Operating Expenses or capital improvements or expenditures beyond the Operating Budget must be documented and supported to the reasonable satisfaction of the City. Prior requisitions and payments from the Operating Account shall be supported and substantiated, if requested by the City. Otherwise, such disbursements shall be subject only to an annual audit.

(c) The Operating Advance is to be used by Republic to pay daily or regular Operating Expenses which are consistent with the Operating Budget and are approved by the City including such City Expenses as the City requires Republic to pay directly.

6.5 Acquisition of Equipment and Supplies.

All supplies for the operation of the Parking Facilities shall be provided by Republic using funds from the Operating Advance.

ARTICLE VII

INSURANCE

7.1 Insurance and Bonds.

Republic shall carry public liability insurance in such minimum amounts as shown below, and pay all the premiums thereon when due, and cause such insurance policies to name the City as an additional insured thereunder. Said insurance policies shall be with companies authorized to do business in the State of South Carolina acceptable to the City, and all policies shall be approved by the City.

(a) With respect to all persons employed by Republic at the Parking Facilities, a Blanket Position Bond in the amount of \$25,000.00 for each employee with a deductible amount for each employee not in excess of \$1,000.00 shall be required.

(b) Workers' Compensation insurance in statutory limits with respect to all persons employed at the Parking Facilities shall be required.

(c) Public Liability and Property Damage insurance in an amount and of a type sufficient to protect against any claims, liabilities, losses or suits shall be required. Such insurance shall be in amounts not less than:

(i) either (A) Bodily Injury: \$1,000,000 for each person and \$3,000,000 for each occurrence; and Property Damage of \$5,000,000 for each occurrence; or (8) \$3,000,000 combined single on both Bodily Injury and Property Damage; and

(ii) Excess Liability: \$2,000,000 for each occurrence.

(d) Parking Facility Keepers Legal Liability insurance, with a \$2,000 deductible, in an amount sufficient to protect against any claims, liabilities, losses or suits. Such insurance shall cover the following exposures:

(i) Fire and explosion;

(ii) Theft of an entire car; and

(iii) Riot and civil commotion and malicious mischief and vandalism.

(e) Hold-up and Robbery insurance, including without limitation, safe burglary coverage, in the amount of \$10,000 for each occurrence, which shall include coverage in like amount for inside and outside messengers with a deductible amount not in excess of \$1,000.00.

Premiums with respect to such policies shall be paid by Republic from the Operating Advance. Deductible amounts shall constitute Operating Expenses and shall be paid by Republic from the Operating Advance. Any losses above the policy limits as required by sub-paragraphs (a) to (e) above shall constitute City Expenses.

(f) In connection with any restoration or repair of the Parking Facilities, Republic shall require each contractor to agree in writing to carry such Workers' Compensation or employers' liability insurance, as may be required by Applicable Laws and such public liability and property damage insurance, including provisions (to the extent available on commercially reasonable terms) to indemnify and save the City and Republic harmless.

(g) Each insurance policy, required herein:

(i) shall be by an insurer(s) which is financially responsible, qualified to do business in the State of South Carolina and of recognized standing,

(ii) shall be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved,

(iii) shall waive subrogation against Republic, and

(iv) shall prohibit cancellation or substantial modification by the insurer(s) without at least thirty (30) days prior written notice to the City. Republic shall furnish the City with copies of each such policy or appropriate certifications as to the insurance policies in force.

(v) Shall name the City as an additional insured thereon.

7.2 Indemnification.

(a) Republic shall indemnify, defend and hold harmless the City from and against all claims and actions, and all expenses incidental to such claims or actions, based upon or arising out of damage to the Parking Facilities or injuries to persons in the course of its performance under this Agreement, provided Republic's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the sole negligence of the City.

(b) Republic hereby expressly agrees that it shall defend, indemnify and hold the City of Charleston harmless from any and all claims made or asserted by Republic's agents, servants or employees arising out of Republic's activities under this Agreement. For this purpose, Republic hereby expressly waives any and all immunity it may have under the South Carolina Workers' Compensation Act with regard to such claims made or asserted by Republic's agents, servants or employees.

(c) Except with regard to matters resulting from the act or omission of the City, Republic confirms that the City, its agents and employees, shall not be liable to Republic for:

(i) any damage to property of Republic either entrusted to persons employed to provide services for or stored in or at the Parking Facilities; or

(ii) any injury or damage to persons, property, or to the business of Republic, resulting from any latent or apparent defect or change of condition in the Parking Facilities, crime, accident, natural disaster, equipment disorders or malfunctions, water, damage by other persons in the Parking Facilities, interference with the lighting or other incorporeal hereditaments, operations in the construction of any public or quasi-public work, or for any other cause not the result of the act or omission of the City, except as provided for under this Agreement.

(d) Pursuant to the provisions of this Agreement, Republic or its insurers or underwriters shall promptly pay any and all costs, expenses and judgments which may be incurred by, or rendered against, the City or any of its officers, employees or agents at any time or times during the term of this Agreement which under said preceding paragraphs Republic is obligated to pay. To the extent that the City shall recover insurance payments for any such costs, expenses and judgments paid by Republic under this Article, the City shall reimburse Republic.

7.3 Performance Bond

(a) Republic shall post a Performance Bond, Irrevocable Letter of Credit, or in the alternative, a cash deposit in the amount of Five Hundred Thousand (\$500,000.00) Dollars, to cover estimated costs to the City for non-fulfillment of the terms of the Agreement by Republic.

(b) The Performance Bond shall be issued by a surety company authorized to do business in the State of South Carolina and shall be refundable at the termination of this Agreement, if all terms and conditions of this Agreement have been satisfied.

(c) If the Performance Bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City, thirty (30) days prior to the termination date of the then-current Performance Bond.

ARTICLE VIII

REIMBURSEMENT OF AND COMPENSATION FOR THE OPERATOR

8.1 Financial Statements of Republic.

(a) Republic shall keep full and adequate books of account and other records, reasonably satisfactory to the City, reflecting the results of operation of the Parking Facilities in accordance with generally accepted accounting principles. The records maintained by Republic shall include, without limitation, all daily reports tickets, vouchers, receipts, invoices, bills, agreements, checks, canceled checks, check stubs and all other books, records, papers and documents relevant to the management and operation of the Parking Facilities; and the records so maintained shall be held, and returned to the City at the termination of the Agreement or until such time that the City instructs Republic in writing to dispose of them. City shall provide Republic with adequate storage space for storage of records.

(b) Whenever requested by the City, Republic shall provide and certify, or cause to be provided and certified by an Authorized Officer of Republic at Republic's expense, such information concerning the Parking Facilities, Republic, its finances and business affairs as the City reasonably considers necessary to enable it to keep informed of financial and any other matters pertaining to Republic or the Parking Facilities, to enable Counsel to the City to render its opinions and otherwise advise the City, and to enable the City to make any reports required by Applicable Law. The inability of Republic to certify any information required shall not be a default hereunder unless the circumstances giving rise to such inability are a violation of some other provision of this Agreement. Any reports requested by the City that do not pertain to the normal ongoing operation of the Parking Facilities shall be provided by Republic after mutual agreement between both parties at a cost agreed upon by both parties. The cost of said reports to be an expense of the City.

(c) The loss of or damage to books and records required to be maintained under this Section 8.2 due to unavoidable casualty shall not be a default or breach hereunder.

8.2 Republic's Fee and Payments.

(a) Pursuant to the terms detailed in Section 6.3, the City covenants and agrees to forward by check or electronic funds transfer to Republic by the tenth (10th) day of the month when due, an Operating Advance equal to the approved Quarterly Operating Budget for the following quarter, for payment of all expenses associated with the operation of the Parking Facilities.

(b) For and in consideration of all the services that shall be performed by Republic pursuant to this Agreement in the operation, repair, maintenance and management of the Parking Facilities, the City covenants and agrees to pay Republic in each fiscal year of the City, from the Commencement Date to the end of the term of this Agreement, a fee (herein called the Management Fee). This fee shall be paid in quarterly installments as part of the quarterly Operating Advance.

(c) The Management Fee shall be paid according to the following schedule:

May 10, 2008	\$26,666.67
July 10, 2008	\$40,000.00
October 10, 2008	\$40,000.00
January 10, 2009	\$40,000.00
April 10, 2009	\$40,000.00
July 10, 2009	\$41,200.00
October 10, 2009	\$41,200.00
January 10, 2010	\$41,200.00
April 10, 2010	\$41,200.00

July 10, 2010	\$42,436.00	
October 10, 2010	\$42,436.00	
January 10, 2011	\$42,436.00	
April 10, 2011	\$42,436.00	(\$14,145 if Renewal Term 1 not Exercised)
May 1, 2011 Renewal Term 1		
July 10, 2011	\$43,709.08	
October 10, 2011	\$43,709.08	
January 10, 2012	\$43,709.08	
April 10, 2012	\$43,709.08	(\$14,569.69 if Renewal Term 2 not exercised)
May 1, 2013 Renewal Term 2		
July 10, 2012	\$45,020.35	
October 10, 2012	\$45,020.35	
January 10, 2013	\$45,020.35	
April 10, 2013	\$45,020.35	

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

9.1 Events of Default.

The following shall be "Events of Default" under this Agreement, and the term "Event of Default" whenever used in this Agreement shall mean any one or more of the following events:

- (a) Failure by Republic to pay to the City when required any payment required to be paid under this Agreement, and such default is not rectified within five (5) business days after written notice thereof from the City to Republic.
- (b) Failure by Republic to perform, observe or comply with any other of the terms, covenants, conditions or provisions contained in this Agreement (other than as referred to in paragraph (a) of this Section), which failure shall continue for a period of fifteen (15) days in the ordinary course of business, then such period shall be increased to such extent as shall be necessary to enable Republic to complete such curative action through the exercise of due diligence.

(c) If Republic shall file a voluntary petition seeking an "Order For Relief" within the meaning of the United States Bankruptcy Code, or if any such "Order For Relief" shall be entered with respect to Republic, or if Republic shall be adjudicated bankrupt or insolvent, or shall file any petition or other pleading seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Republic, or of substantially all of the assets of Republic, shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due or

(d) If a petition or other pleading shall be filed against the operator seeking an "Order For Relief" within the meaning of the United States Bankruptcy Code, reorganization, composition, readjustment, liquidation or similar relief under any present or future law or regulation, and shall remain undismissed or unstayed for an aggregate period of sixty (60) days (whether or not consecutive).

9.2 Termination.

(a) If an Event of Default occurs, as described in (a) through (d) above, the City shall notify Republic in writing, at which time Republic shall have fifteen (15) days to cure the default condition. If Republic does not cure such default within the specified period, in addition to any other remedy available at law or in equity, the City may terminate this Agreement by written notice thereof to Republic, and in that event, this Agreement shall be of no further force and effect, the City shall have no further obligation to Republic hereunder, and the City shall be entitled to immediate possession of the Parking Facilities, all sums on deposit with Republic, less any amounts due Republic, and all supplies on hand or on order.

9.3 No Waiver of Rights.

No failure or delay by the City in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by the City in exercising any right, remedy, power or privilege under or in respect of this Agreement shall affect the rights, remedies, powers or privileges of the City hereunder or shall operate as a waiver thereof.

9.4 Remedies Cumulative.

All rights, remedies, powers and privileges herein given or granted to the City are cumulative, non-exclusive and in addition to any and all rights, remedies, powers and privileges that the City may have or be given by reason of any law, statute, ordinance or otherwise at law or in equity.

In the event the City is required to incur legal expenses and/or court costs due to an Event of Default by Republic, Republic agrees to reimburse the City for all legal expenses and/or court costs incurred as a result thereof.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Third Party Beneficiary.

Nothing contained in this Agreement shall be construed to confer upon any other party, the rights of a third party beneficiary, except as may be otherwise specifically provided for herein.

10.2 Representations.

Any representation, warranty, covenant or agreement made herein shall be deemed to be material and to have been relied upon by the party to whom it is made.

10.3 City's Liability Limited.

No recourse shall be available to Republic for any claims based on this Agreement against any officer, employee or agent of the City, all such liability, if any, being expressly waived by Republic by Republic's acceptance of this Agreement.

In the exercise of the rights, remedies, powers and privileges of the City and its officers, employees and agents under this Agreement, the City shall not be accountable to Republic for any action taken or omitted by it or its officers, employees and agents in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred, except for those provisions outlined in this Agreement. The City and its officers employees or agents shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

10.4 Giving of Notice.

Except as otherwise provided herein, all notices required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail postage prepaid or by commercial messenger to:

In the Case of the City:

Mayor
City of Charleston
P.O. Box 304
Charleston, SC 29402

In the Case of Republic:

President
Republic Parking System, Inc.
Suite 2000, Republic Centre
Chattanooga, TN 37450

With Copies to:

Director of Purchasing
City of Charleston
P.O. Box 304
Charleston, SC 29402

Corporation Counsel
City of Charleston
P.O. Box 304
Charleston, SC 29402

With Copies to:

Regional Vice President
Republic Parking System, Inc.
Suite 2000, Republic Centre
Chattanooga, TN 37450

The City and Republic, by notice given hereunder, may designate any further or different persons or addresses to which subsequent notices shall be sent.

10.5 Severability.

If any clause, provision or section of this Agreement is deemed to be illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein. If any agreement or obligation contained in this Agreement is deemed to be in violation of law, then such agreement or obligation shall be determined to be the agreement or obligation of the City or Republic, as the case may be, to the full extent permitted by law.

10.6 South Carolina Law.

The laws of the State of South Carolina shall govern the construction of this Agreement.

10.7 Status of Republic.

Republic shall perform its duties and obligations hereunder for the City in the capacity of an independent contractor. The performance by Republic of any function, duty or responsibility as an agent of the City shall not in any manner affect the status of Republic as an independent contractor under this Agreement.

10.8 No Partnership.

Nothing contained in this Agreement is intended or shall be construed to create a partnership or joint venture between the City, including any successors or assigns of the City, and Republic, including any successors or assigns of Republic.

10.9 Approvals of the City.

Any approvals required from the City shall be deemed given if provided by the Mayor or his designated City representative.

10.10 Assignment.

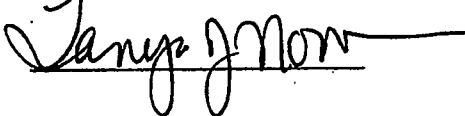
The City may at its sole discretion, sell, convey, lease, or otherwise transfer the Parking Facilities to another public entity for the purposes of carrying out the responsibilities of the City under this Agreement. In such event, and upon thirty (30) days prior written notice to Republic, said entity shall assume all rights and responsibilities of the City under this Agreement. This Agreement shall not be assigned by Republic without the written consent of the City, which may be withheld in the City's sole and absolute discretion.

10.11 Incorporation of terms of Submittal.

Anything contained herein to the contrary notwithstanding, Republic agrees that throughout the term of this Agreement, it shall be bound by all terms and conditions contained in its Submittal dated December 17, 2007 (the "Submittal"), provided, however, that in the event there is a conflict between the terms of this Agreement and the Submittal, this Agreement shall control.

IN WITNESS WHEREOF, authorized representative, duly executed, sealed and first written above. the parties hereto, by their have caused this Agreement to be delivered as of the day and year first written above.

Witnesses

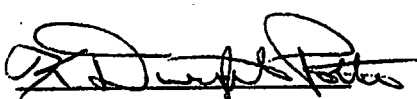



City of Charleston

By:


Joseph P. Riley, Jr.
Mayor, City of Charleston

Witnesses

REPUBLIC PARKING SYSTEM, INC.

By:

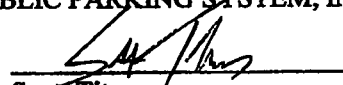

Scott Titmus
Executive Vice President
Republic Parking Systems, Inc.

EXHIBIT "A"
PARKING FACILITIES

Parking Garages and Non-Metered Parking Lots	# Parking Spaces	Addresses
St. Philip Garage	598	(24) St. Philip Street
Marion Square Garage	308	399 King
Camden Garage	308	47 John
Wentworth Garage	518	81 Wentworth
Concord Garage	624	1 Cumberland
Gaillard Garage	596	32 Alexander
Aquarium Garage	1093	24 Calhoun
East Bay Garage	339	25 Prioleau
Charleston Place Gge	404	85 Hassell
VRTC Garage	723	63 Mary
Majestic Garage	477	211 King
King & Queen Garage	315	93 Queen
TOTAL Garage Spaces	6303	

Parking Passes Controlled in non-City Garage	Number of Passes
Cumberland Garage	339

Non-Metered Parking Lots	Number of Spaces	
First Baptist Lot	85	At Church & Market
John Street Lot	31	Between Meeting & King
George/Society Lot	146	31 George
Morris/St. Philip Lot	65	At Morris & St. Philip
Market/Horiback Lot	118	131 Market
Concord/Inspection Lot	40	
Visitor Center Lot	62	375 Meeting
Fishburne/Hagood JRP stadium area lots	1558	At Fishburne & Hagood
101 Broad St.	22	
TOTAL Spaces	2127	

Metered Parking Lots	Number of Meters	
4 Auditorium Lots*	89	
*on George and Alexander Streets		
Beaufain/Archdale/Market St Lot	18	
Concord/Cumberland Lot	24	
East Bay Lot	10	
Exchange Lot	18	
Garden Theater Lot	40*	Pay and Display station
* Pay and Display machine		
Market / Canterbury Lot	36	
John Street Lot	3	
TOTAL Number of Machines	198	

On-Street Parking Meters	
Number of Meters	1691
Number of Streets	58

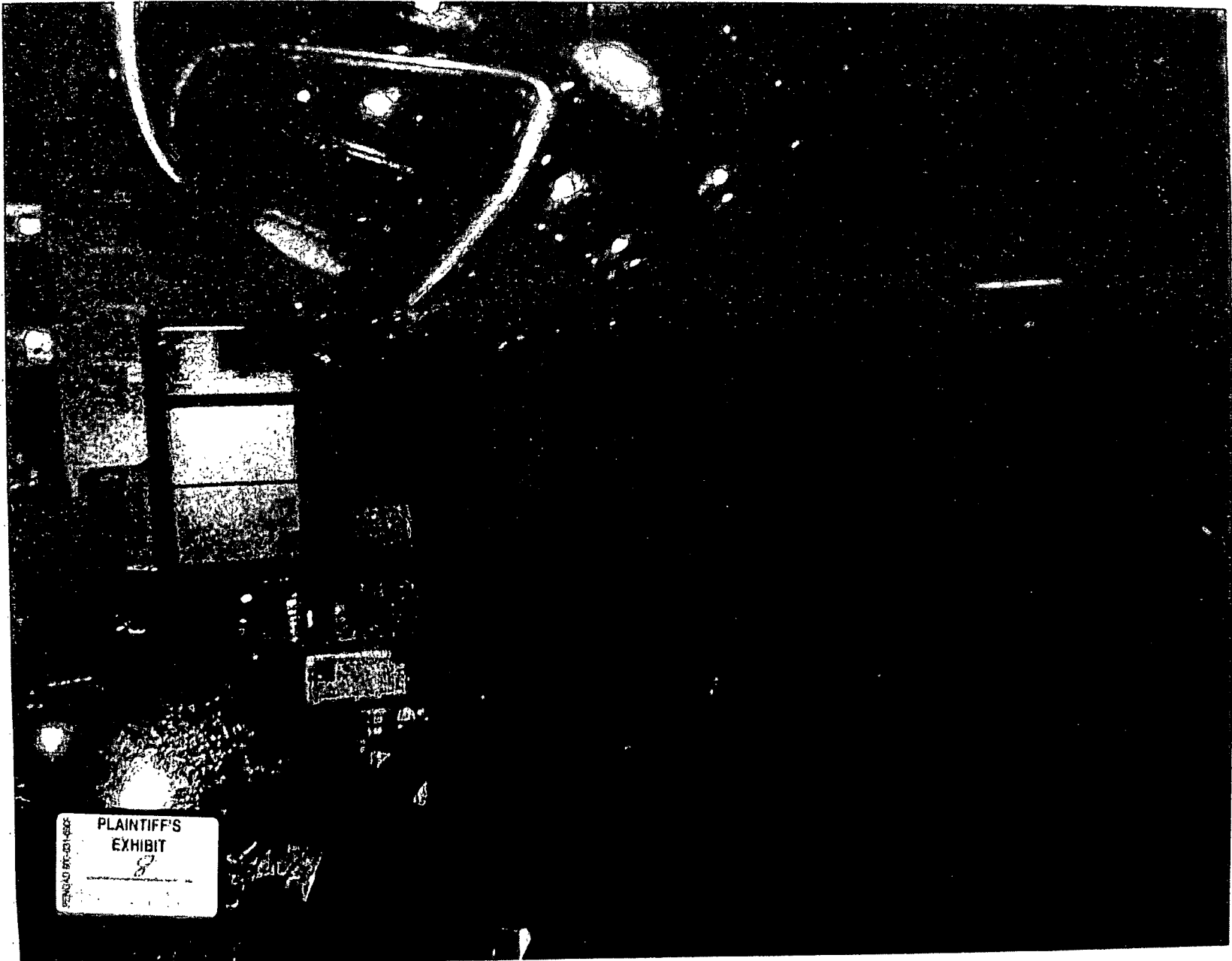
The City reserves the right to add or remove facilities at a cost to be agreed upon by Republic and the City.

EXHIBIT "B"

Scope of Services

Republic accepts the appointment as Parking Facilities Operator to operate, manage and maintain the City of Charleston's Parking Facilities and collect Parking Meter Revenue, wherein efficient, economical, and professional delivery of services is a primary consideration. The Parking Facilities shall be operated as a first-class commercial public parking facility with energy, fidelity, and diligence, respectful of the culture it serves, and in full compliance with all terms and conditions contained in this Agreement. Service to the consumer is paramount and a clear understanding of the sensitive nature of parking in the City of Charleston is required. In summary, the principle objective of this Agreement is the overall excellence of the City's total parking services program. The City of Charleston is responsible for the maintenance, repair and installation of all parking meters; this function is not within the scope of this Agreement.

Anything contained in the Agreement to the contrary notwithstanding, Republic shall be responsible for the collection of parking meter revenue. The budgeted and approved expenses associated with this operation shall be reimbursed by the City. The revenues shall be deposited into the City of Charleston's account and the budgeted operating expenses shall be advanced to Republic quarterly. All terms of the Agreement concerning cash controls, bonding, performance and any other applicable terms shall also apply to the parking meter collections function.





RFP #07-P032C
MANAGEMENT OF THE CITY OF CHARLESTON
PARKING GARAGES AND LOTS AND
THE COLLECTION OF PARKING METER REVENUE
SUBMITTAL DATE: DECEMBER 17, 2007 2:00 PM

Attention:

City of Charleston
Procurement Division
116 Meeting Street
Charleston, SC 29401
843-724-7314 (P)
843-720-3872 (F)

From:

Dwight Potter
General Manager
Republic Parking System
401 King Street
Charleston, SC 29403
843-805-3232 (P)
842-805-3234 (F)
dpotter@republicparking.com
www.republicparking.com



TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
I. ORGANIZATIONAL EXPERIENCE AND CAPABILITIES	4
A. COVER LETTER	4
Company Information	5
Company History.....	6
Operating Philosophy	6
Operating Experience	7
Key Statistics	9
Management Organization	10
Support Services	13
Contract Terminations.....	17
Pending Litigation	17
C. REFERENCES.....	18
Municipal Parking References	18
Recent Case Studies – Actual, Proven Results	21
D. PERSONNEL.....	36
Equal Opportunity Plan.....	36
Employee Selection Process	45
Pre-employment Screening.....	45
CAPP / CPFM Management Certification	46
Personnel & Wage Rates.....	46
Employee Benefits	46
Employee Health Insurance.....	48
Incentive Programs.....	50
Training & Development.....	52
II. MANAGEMENT APPROACH AND ABILITY TO FULFILL.....	62
A. MANAGEMENT ISSUES	62
Event Experience	62
Credit Card Acceptance.....	63
Community Involvement	64
Operating Costs Statement of Assurance.....	65
Staffing Plan	66
B. CUSTOMER SERVICE PLAN	71
Customer Service – Employee Programs	71
Customer Communication	73
Customer Complaint Resolution	76
C. IMPLEMENTATION PLAN	80
III. FINANCIAL	81
A. CURRENT FINANCIAL STATEMENTS.....	81
B. TICKET SECURITY AND REVENUE CONTROL.....	81



Cashier Shift Reports.....	83
Ticket Audit.....	84
Daily Master Reports.....	87
Daily Revenue Summary.....	88
Monthly Revenue Summary.....	89
Non-Resettable Counters / Transaction Control.....	90
Daily Report	93
Monthly Report	95
Cover Letter	95
Profit & Loss Statements.....	95
A/P Distribution Journal.....	96
Balance Sheets	96
Variance Report.....	96
Payroll Distribution.....	97
Operational Reports.....	97
C. OPERATING BUDGET	98
Proposed Management Fee.....	98
Operating Budgets	99
Summary	99
Parking Garages - Budget.....	100
Parking Lots - Budget.....	100
Meter Collection	101
Capital Expense Budget.....	102
IV. MAINTENANCE PLAN	104
Maintenance Overview.....	104
Maintenance Program.....	104
Operational Audits.....	107
Self Inspection Checklist	109
Work Orders.....	112
EXHIBITS	113
Exhibit 1 - Certificate of Familiarity.....	113
Exhibit 2 - Certificate of Insurance.....	113
Exhibit 3 - Full Monthly Budget Package	113
Exhibit 4 - Republic Parking System's Financials.....	113
Exhibit 5 - Letters of Recommendation.....	113
Exhibit 6 - City of Charleston Ambassador Guide	113
Exhibit 7 - Mystery Parker Report Summary	113
Exhibit 8 - 2008 Parker Mix Report.....	113
Exhibit 9 - Signage Review Report.....	113
Exhibit 10 - 2007 Rate survey.....	113
Exhibit 11 - Repair Projects Report.....	113
Exhibit 12 - Project Improvement Report	113
Exhibit 13 - Client Services Portfolio.....	113
Exhibit 14 - Operating Standards Guide.....	113



I. ORGANIZATIONAL EXPERIENCE AND CAPABILITIES

A. COVER LETTER

1. Include a one-page cover letter indicating the offeror's interest and ability to perform and a statement that the Offeror is willing to perform and enter into a contract with the City of Charleston. Provide the name, address and phone number of the firm submitting the proposal. Include the name of a person who is authorized to answer questions regarding the firm's proposal. An individual authorized to bind the Offeror must sign the cover letter and Proposal submittal.

December 17, 2007

Dear Mr. Cooper;

Republic Parking System appreciates the opportunity to submit the enclosed proposal for the professional management and operation of your parking facilities. We are willing to perform the duties requested in RFP 07-P032C and enter into a contract with the City of Charleston.

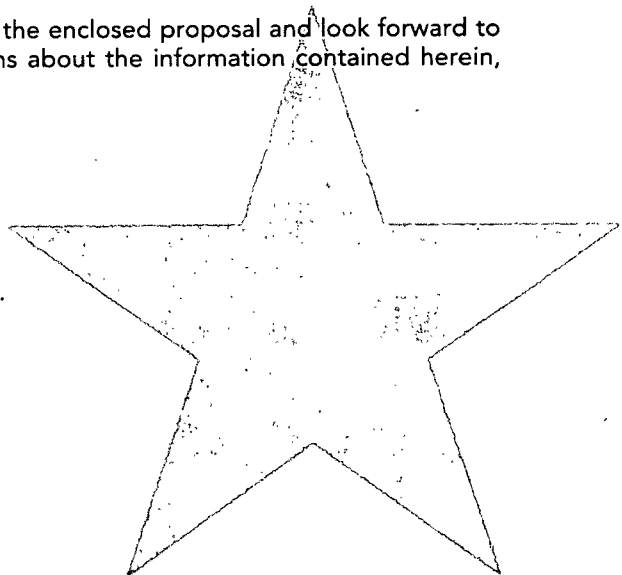
As the current parking operator by continuing to work with Republic Parking System, the City of Charleston can be assured of the following:

- The continued attention and analysis of a highly experienced, senior management team with a proven track record of delivering significant increases in parking income and high quality parking operations.
- The maximization of revenue collections and the monitoring and control of expenditures.
- The continued training of employees that will ensure all patrons using the facilities receive first class customer service.

Again, we appreciate the opportunity to submit the enclosed proposal and look forward to the opportunity. Should you have any questions about the information contained herein, please feel free to contact me.

Respectfully,

Scott Titmus
Executive Vice President
Republic Parking System
Suite 2000 Republic Centre
Chattanooga, TN 37450
423-756-2771





B. Company History

1. Provide a detailed description of your organization's background including the year the firm was established and former names of the firm, if applicable, the city in which the firm is incorporated (if applicable), the names of the principals in the firm along with a brief biography of each highlighting their parking experience and qualifications. Provide information on relevant experience, including the number of parking facility operations firm has managed and is currently managing, giving a general description of the facilities, location, size, etc. or other information believed to demonstrate qualifications.

COMPANY INFORMATION

Address

Republic Parking System, Inc.
Suite 2000 Republic Centre
Chattanooga, TN 37450
423.756.2771
423.265.5728 (FAX)

Principals & Officers

James C. Berry – Owner – President & C.E.O.
Ben Wolfley – Chief Financial Officer
Carlydia Berry – Company Secretary
Scott Titmus – Executive Vice President/Urban Division
Michael Shille – Vice President

Year of Incorporation

Republic Parking System was established in 1966 as Air Terminal Parking. The name was changed to Republic Parking System in 1986.

State of Incorporation

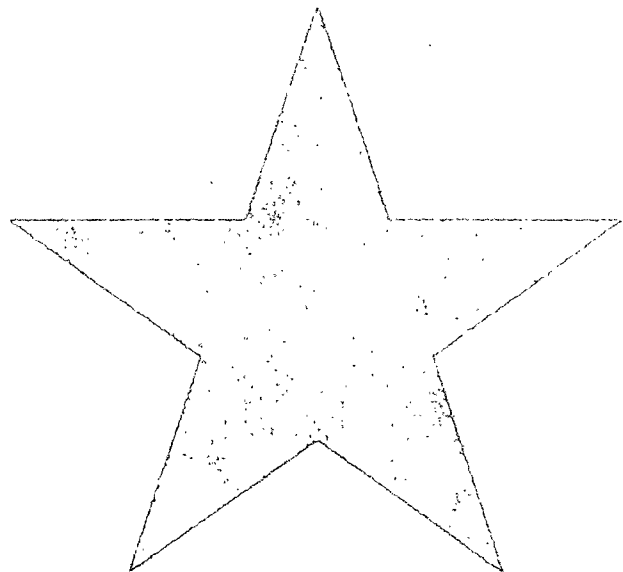
Republic Parking System is a Tennessee Corporation.

Federal Tax ID Number

59-1162686

Authorized Negotiator

Scott Titmus
Executive Vice President
Republic Parking System
Suite 2000 Republic Centre
Chattanooga, TN 37450
423-756-2771





COMPANY HISTORY

Since its inception in 1966, Republic Parking System has continued to monitor the changes within the transportation industry and is committed to keeping pace with the ever-changing demands of its clients and their customers. Republic Parking System is constantly evolving to meet the complex transportation needs of its clients.

From its humble beginning, Republic Parking System has served its clients honestly, eagerly and professionally for the past thirty years. A privately held corporation, Republic Parking System presently has over 600 parking locations under management totaling in excess of 240,000 parking spaces.

From one associate and first year revenues of \$50,000, the Corporation today employs over 2,400 professionals in 87 US Cities and has seen revenues increase to \$345,000,000.

The controlled growth of Republic Parking System very closely mirrors the evolvement of the transportation needs of its clients. Republic Parking System's core business of airport parking management expanded rapidly throughout the 1960's - 70's to where it is presently the largest single operator of airport parking programs in the United States.

The 1980's saw Republic Parking System applying its tested and proven high volume cash management, accounting, auditing and human resource programs to office, retail, hospital, hotel and special event applications with tremendous success.

The 1990's have brought Republic Parking System operations in taxi starter, shuttle bus, park and ride and transportation management organizations. Today and into the future, Republic Parking System will be working closely with clients to assist them in solving transportation issues relating to on-street parking, toll road management, car pooling and light transit rail programs.

For the past forty years, Republic Parking System has been building on its experience and evolving to meet the ever-changing requirements of its clients. The commitment, talent and financial resources are still in place to see it well into the twenty-first century. We would like to meet tomorrow's challenges with you.

The Company maintains its headquarters at Republic Centre in Chattanooga, Tennessee, which is owned and operated by an affiliate company.

OPERATING PHILOSOPHY

Republic Parking System is one of the largest privately owned providers of parking management services across the United States. We have spent the past forty years working to provide the highest levels of client and customer service. With many of our competitors actively and aggressively pursuing growth by acquiring or merging with other parking management firms, Republic Parking System has opted to remain independent and to stay focused on serving our clients and customers. Hard work, dedication to each of our clients and customers, and a commitment to employee development and training has allowed us to be recognized as one of the best parking management companies in the industry.



The foundation of our business has been built on our approach of "Focusing on the Fundamentals" of parking management. The installation and proper use of high quality revenue control equipment, non-resettable counters, proper accounting and auditing controls, detailed facility maintenance plans, competent management and office personnel, pro-active senior management, and the ongoing training of staff at all levels are all aspects of the business delivered by Republic Parking System.

The Vision of Republic Parking System is to provide the best possible financial return to our clients by delivering superior parking management services and unequaled value to our clients, as well as quality customer service to our parking customers. This vision is attributable to our founder and current Chairman and Chief Executive Officer, James C. Berry.

Our operating experience has expanded through the years as a direct result of our ongoing ability to satisfy the ever-changing transportation related needs of our clients and their customers. Republic's management experience encompasses the management of large mixed use parking garages, surface parking lots, fringe and remote parking facilities such as Park and Ride parking operations, shuttle bus operations, taxi starter services and parking meter collection services.

We have provided references on the following pages which include facilities similar in size and scope to the City of Charleston parking facilities. We encourage you to contact the clients for whom we work to obtain an indication of the levels of service we provide.

On a day in and day out basis, Republic Parking System provides the highest levels of service to both our clients and their customers. This can be verified by the fact that Republic has been successful in maintaining a large number of parking contracts for many years, even through repeated re-bids.

OPERATING EXPERIENCE

Over the years Republic Parking System has enjoyed tremendous success in taking properties from our primary competitors. Pursuing our philosophy of "Focused on the Fundamentals", we have achieved parking revenue yields far in excess of our competitors at every facility taken over.

The business arrangement and strategic fit we have with our current clients are very apparent. Our firm could explain the many ways in which we work with our clients as a team and partner, but we felt, in this circumstance, that it would be more beneficial to have our clients reveal these facts in their own words.

Please read our reference letters and feel free to contact our other clients with similar facilities. We strongly encourage you to call these contacts to learn more about Republic Parking System's unique approach and outstanding results.



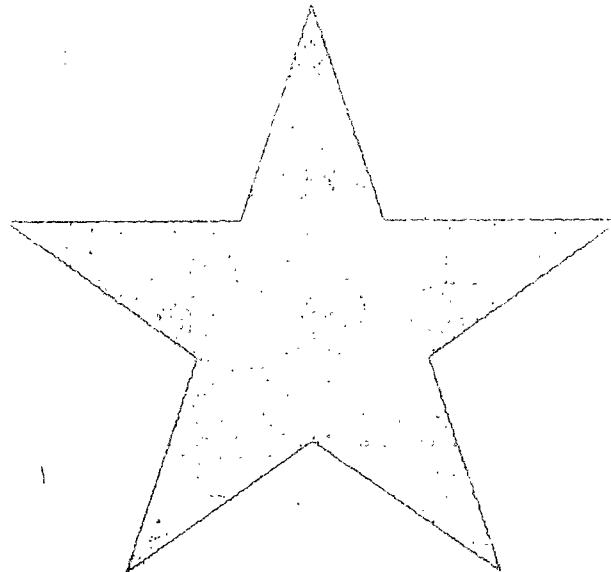
Municipal Clients



• City of Charleston, SC	Mr. Steve Bedard	843.579.7502
• City of Houston, TX	Mr. Lannie Leshner	713.224.9904
• City of Ann Arbor, MI	Mr. Joe Morehouse	734.997.1309
• City of Oklahoma City, OK	Mr. Rick Cain	405.297.3492
• City of Rochester, MN	Mr. Tony Knauer	507.287.1976
• City of Lincoln, NE	Mr. Ken Smith	402.441.6097

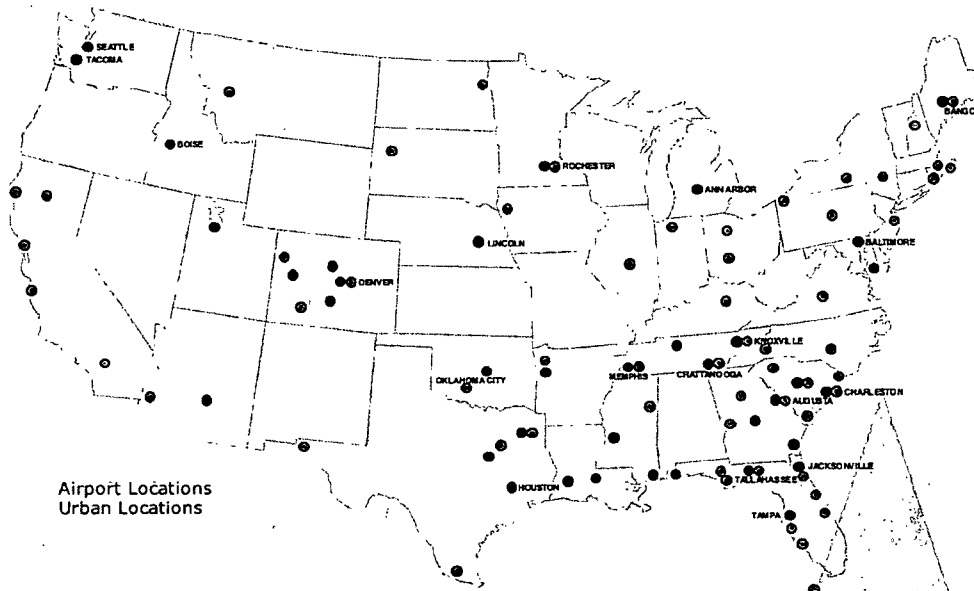
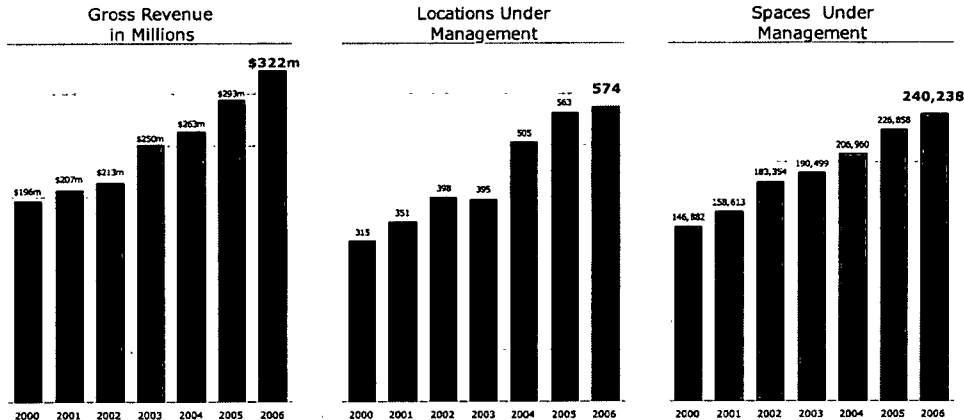
In all of these cities our management has resulted in increased profits levels and improved customer service. During the past ten years while our competitors have been focused on Wall Street, playing the growth by mergers and acquisitions game, Republic has been focused on Main Street USA, adding one contract at a time and serving the needs of our clients and customers.

In the over 40 year history of Republic Parking System, the Company has never been in breach of its fiduciary obligations to clients for monies for which it has been entrusted. On a day in and day out basis, Republic Parking System provides the highest levels of service to both our clients and their customers. This can be verified by the fact that Republic has been successful in maintaining several parking contracts for many years, even through repeated re-bids.





KEY STATISTICS



Multi Location Municipal Clients

Ann Arbor, MI	Baton Rouge, LA
Bangor, ME	Boise, ID
Boulder, CO	Baltimore, MD
Charleston, SC	Chattanooga, TN
Daytona Beach, FL	Denver, CO
Houston, TX	Lincoln, NE
Oklahoma City, OK	Rochester, MN
Tallahassee, FL	Tampa, FL
Knoxville, TN	

Multi Location Urban Clients

City Center Garage / Valet - Parkway Properties
 First TN Plaza - Parkway Properties
 Toyota Plaza - Parkway Properties
 Denver Financial Center - Transwestern Properties
 1999 Building - Transwestern Properties
 Crystal Building - Luken Holdings
 Tallan Garage - Luken Holdings
 CARTA North, CARTA South - CARTA - Chattanooga



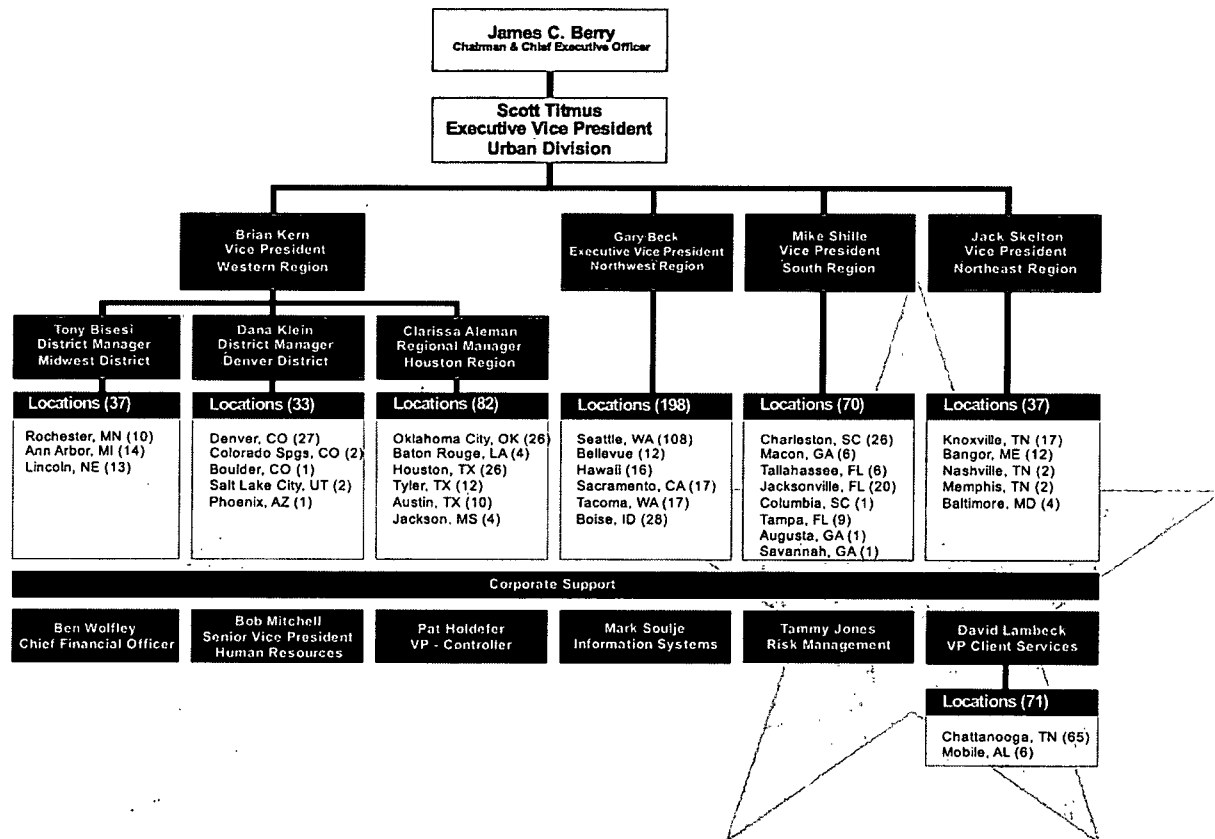
MANAGEMENT ORGANIZATION

2. Provide an overview of the management structure of the firm (an organizational chart may be submitted) listing the general responsibilities of all levels of management, the total number of employees, names of key personnel who will have everyday responsibility of providing parking management for these facilities.

Republic Parking System prides itself on its hands-on approach to transportation management. Executives on all levels are involved in the daily management of the Company's operations. From profit and loss statements, to revenue summaries to uniform programs, Republic's senior management provides that critical eye to local management, providing the direction and the benefit of years of hands-on management experience. This ensures that every operation is exceeding both client and Company expectations.

The management team directly responsible for the management and corporate oversight of the parking facilities would be Scott Titmus, Executive Vice President; Mike Shille, Regional Vice President; and David Lambeck, Vice President of Marketing & Client Services. Each of these executives would be involved in working with Dwight Potter, Charleston General Manager and the local staff on a day-to-day basis to implement the controls and procedures that have been developed and implemented so successfully for other urban clients.

Corporate Management Team





James C. Berry, Chairman & CEO



Mr. Berry is the owner of Republic Parking System, Inc. He started in the parking business in 1949 with a major United States parking company. He was promoted to the Executive Officer and Director level. Mr. Berry left that company in 1965 and soon after formed what is now known as Republic Parking System. Since then, Mr. Berry has been a leader in the Airport Parking Industry, growing Republic Parking System to one of the leaders in the parking management industry.

Scott Titmus, Senior Vice President



Mr. Titmus has 19 years of experience in the parking and transportation management industry. After graduating from college with a BSBA degree, Mr. Titmus held various positions of increasing responsibility with a large, full service parking management firm.

During this time, Mr. Titmus gained first hand knowledge of all aspects of the parking and transportation management business including applications relating to office, hotel, retail, airport and hospital parking. Scott is currently responsible for all Urban operations.

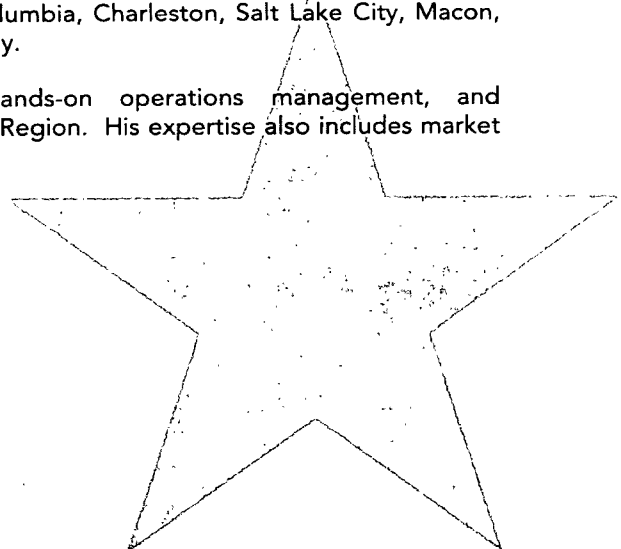
Michael Shille, Vice President



Mr. Shille has over 18 years of parking management experience. He is a graduate of Florida State University, where he holds degrees in both International Relations and Business Administration.

Mr. Shille started his parking career in Jacksonville, Florida in 1990. Since that time he has worked in parking management in Tampa, Ft. Lauderdale, Miami, St. Petersburg, Tallahassee, Cincinnati, Cleveland, Oklahoma City, St. Louis, Columbia, Charleston, Salt Lake City, Macon, Augusta, Savannah and Albany.

Mr. Shille's responsibilities include the hands-on operations management, and client/customer service aspects of the Southern Region. His expertise also includes market expansion and consulting.





David Lambeck, Vice President of Marketing and Client Services



Mr. Lambeck has over 18 years of experience in all aspects of operations and business development in the parking industry. Two years after graduating with a BSBA in Finance from Southern Illinois University he left the retail sales business and entered the parking industry. He has held positions in the industry starting at the project manager level and advancing to his current position.

He joined Republic Parking System in mid 1994 as a Regional Vice President in the Texas region. He currently provides client services and marketing support to the entire organization.

Mr. Lambeck has been involved in obtaining and management of both on and off-street parking contracts in the USA, Europe and Central and South America.

Benjamin D. Wolfley – Chief Financial Officer



Mr. Wolfley has more than 8 years experience in the parking industry and over twenty (20) years experience in accounting and finance. His experience includes 9 years in public accounting with Price Waterhouse and eleven (11) years in several positions as a principal financial executive. As a senior financial executive, Mr. Wolfley engineered public offerings, financing, private debt and equity placements ranging from \$1 million to \$400 million. Mr. Wolfley holds a Bachelor of Science degree in Accounting from the University of Utah, and is a certified public accountant.

Robert Mitchell, Senior Vice President of Human Resources



Mr. Mitchell has over 20 years experience in the parking industry and more than 28 years in Human Resources. As the top H.R. Officer he has helped build a 24-store retail chain into a Fortune 500 company with more than 300 locations and 5 subsidiary companies in only 12 years. Accustomed to fast-track, high-growth organizations, Mr. Mitchell spends much of his time in the area of honing the skills of line personnel by conducting customer service, OSHA, basic supervision and management development workshops. He visits many major clients as often as four times per year to help recruit and train qualified employees.

Experienced in Personnel, Training, Administration and Operations, Mr. Mitchell holds a BSBA and attended Vanderbilt's Owen Graduate School of Management on an Executive MBA program. Currently, Mr. Mitchell is responsible for all aspects of Human Resources including Republic University, benefits, liability insurance and workers' compensation.



Pat Holdefer-Vice President-Controller



Ms. Holdefer joined Republic Parking System over 25 years ago. She began her career at Republic as an accountant and through dedication and hard work has risen to her current position of Vice President-Controller. With Pat's leadership, the Accounting Division maintains data and essential information for all of Republic Parking System's locations.

SUPPORT SERVICES

Republic Parking System supports all field operations from its Corporate Office in Chattanooga, Tennessee. The Corporate Office makes decisions on procedures, business development and accounting and auditing standards that are to be maintained throughout the Company. Once the standards have been set, it is the responsibility of the local management teams to implement and maintain the consistency and quality of the Company's operations. This responsibility, vested in local management, allows the local management the freedom to make timely decisions that effect their operations.

The Company's field management has access to Corporate Office support departments to use in providing a first class operation at the most economical cost.

Human Resources

The Human Resource Department continually develops and distributes to the field on-going programs to assist in the hiring, training and motivating of staff at all levels. From management training programs, to cashier procedures, to dress and grooming policies to customer service courses, Republic Parking System's Human Resource Department strives to produce the training materials that will allow for the provision of the highest levels of customer service and employee retention.

The Department is currently reviewing ADA legislation, the Company's drug policy, criminal and credit pre-employment background check procedures and Employee Handbook.

Recently prepared training materials include a customer service training video, a cashier-training manual, a valet driver-training manual and a series of management training manuals.

Republic Parking System is an Equal Opportunity Employer.

Accounting and Audit

A full service Accounting and Auditing Department is based in Chattanooga, Tennessee and serves as the collection point for information gathered from the field. Each city is assigned a staff accountant to assist in the review, audit and preparation of monthly financial reports. Additionally, the staff accountants assist the field staff by performing bank reconciliation's, random audit verifications, payment of invoices, processing of



bimonthly payroll and maintenance of the locations general ledger and monthly billing trial balances.

The Accounting Department staff has compiled Republic Parking System's comprehensive reporting procedures into a condensed "Bookkeeping Guide".

The Audit Division within the Accounting Department is responsible for performing random field audits at Republic Parking System's operating locations. These unannounced audits are conducted over a three to five day period and review, in-depth, the compliance with Corporate accounting policies.

Risk Management



The staff of the Risk Management Department monitors the correspondence received from all Federal and State agencies relating to changes in the unemployment and worker's compensation tax rates. By carefully monitoring these rate changes and inputting them into the payroll system, Republic Parking System ensures clients that they pay the lowest possible tax rates on all payroll expenses.

Republic Parking System provides comprehensive general liability, automobile liability, garage keepers legal liability, property, workers compensation, theft and crime insurance coverage. Republic Parking System uses the insurance brokerage services of Killebrew, Lyman & Woodworth, who, in turn, competitively bids Republic Parking System's insurance program on an annual basis. Republic Parking System places its insurance coverage with some of the world's most reputable and stable insurance institutions such as Lloyds of London, Chubb, Aetna and The Hartford.

Working closely with the Company's liability and employee health benefit insurers, our Insurance Department is able to provide clients with superior insurance products at an economical price.

Liability and employment claims are monitored and administered by this department in a timely and professional manner.

Client Services Division

The Client Services Division, headed up by David Lambeck in the Corporate Office, offers many value added services.

- Detailed Marketing Materials
- Brochures, Fliers, Posters
- Garage Theme Design
- Information Services
- World Wide Web Page Design

- Informational Graphic Design
- Financial and Statistical Analysis
- Long Term Budgeting & Planning
- Feasibility Analysis



Utilization Analysis

The Client Services Division provides utilization analysis services to our clients for facilities that need to optimize the parking mix and rate structures. These analyses include detailed diversity ratios, oversell factors and space use analysis information.

Business Planning

The Client Services Division provides business-planning services for clients who wish to take a longer view to the development of their parking programs. It can include statistical analysis, equipment recommendations, rate increase strategies, marketing planning and long-term budgeting.

Marketing Planning

The Client Services Division provides marketing-planning services for those locations that need additional parking customers or a specific optimization of parker mix.

Web Site Design

The Client Services Division provides web site design for our clients who wish to publish their parking information on the World Wide Web. The sites can be listed under their own web domain or included in the client's existing sites.

Functional Design and Facility Layout

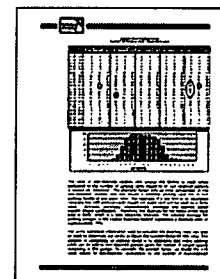
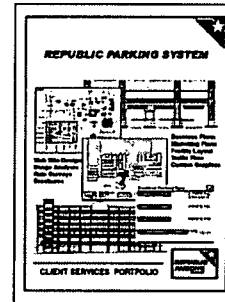
The Client Services Division provides functional design and facility layout services that includes parking space layout, traffic flow, pedestrian flow and related design recommendations. The layout process is done in conjunction with the project's approved Architect to ensure all operating issues are addressed during the design process.

Informational Brochures

Information brochures, fliers and posters may be prepared for locations that have a need to provide location information for tenants, visitors or outside agencies that provide parking information.

Custom Graphics

The Client Services Division provides custom graphic design services including facility branding, facility graphics packages, and custom signage.





Rate Surveys

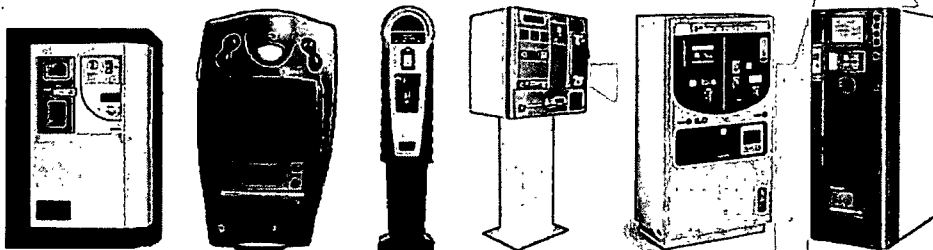
Rate surveys are provided, where needed, as part of the marketing planning process.

As your parking operator, Republic Parking System would provide these design and consulting services and charge only for out of pocket expenses that are associated with the work.

Parking Equipment Evaluation & Selection

Over the last 10 years, Republic Parking System has evaluated and installed approximately 75 access control systems in parking facilities of all types. Some recent equipment installations include:

- Chattanooga, TN (River Pier Garage) – We have installed a **Federal APD** automated pay-on-foot and pay-in-lane machines that operate as a totally automated facility. This heavily utilized garage processes 100% of all transactions (even events) through the revenue control system using value cards, credit cards and cash.
- Rochester, MN (Citywide Parking System) - We evaluated, recommended and installed a **Skidata** revenue control system in the city garages.
- Knoxville, TN (First TN Plaza) - We have installed a pay-in-lane **AMANO** AGP 6800 Automated machine in place of the Cashier at the exit. The installation of this machine has lead to an increase of 40% in transient revenue.
- Baltimore, MD (Arena Garage) – We operate a fully automated **Sheidt-Bachman** revenue control system in the Arena Garage. The system operates 24 Hours per day with over 300 events per year with no cashiers at the exit plaza and no transactions processed outside the system (no event mode).
- Chattanooga, TN (Tallan Garage) – We have installed a **Federal APD** automated pay-in-lane machine in place of the Cashier at the exit. This garage has very few transient transactions and has allowed us to trim payroll and operate more efficiently.
- Chattanooga, TN (CARTA) – Recently the Chattanooga Area Regional Transportation Authority has taken over the parking administration duties for the City of Chattanooga. With Republic's input they have approved the purchase and installation of 22 on-street and 14 off-street **Digital Payment Technologies** multi-space parking meters.





Design and Consulting

The Client Services Division works closely with clients and any appointed architectural firm providing timely input relating to the design of the parking facility. Republic Parking System provides parking and transportation consulting services that include, but are not limited to:

Conceptual Parking Design

Providing drawings illustrating or otherwise describing all parking levels, basic, necessary and critical dimensions, preliminary car capacity, elevator and stair locations, entrance and exit locations, floor and ramp elevations and grades.

Detailed Functional Design

Providing additional drawings illustrating or otherwise describing actual car capacity, stall geometry, floor finish, graphics, equipment location and conduit specifications, lighting requirements, general garage specifications and operational requirements.

Site Feasibility and Analysis

Providing study as to the feasibility of site(s) for the design of parking and analyze site(s) for the size and type of construction of parking.

Parking Operation Analysis

Providing study to existing parking operations to ensure the most efficient control of revenue, labor and expenses.

In most cases, the design and consulting services we provide allow our clients to realize increased parking revenues either through the creation of additional parking spaces, changes in the method of operation, reduction in payroll expenses due to equipment enhancement or modifications to the level of parking charges.

As your parking operator, Republic Parking System would provide these design and consulting services and charge only for out of pocket expenses that are associated with the work.

CONTRACT TERMINATIONS

3. Indicate if your company has had any contracts terminated for reasons other than end of term or convenience.

Republic Parking System has not had any contracts terminated for reasons other than the end of term or for convenience.

PENDING LITIGATION

4. Indicate if there is any pending litigation against your company.

Republic Parking System has no pending litigation.



C. REFERENCES

1. Provide a list of five (5) references, three (3) where the Offeror has operated since 1998, and is currently managing parking facilities, preferably similar in size and customer mix to the City of Charleston. References should include name and address of facility, number of parking spaces, dates of service, and contact person's name (with authority over the parking facilities operations) and telephone number.

MUNICIPAL PARKING REFERENCES

City of Tallahassee, FL

Dates of Service: 6/85 - Present
Locations 3
Spaces 1,871
Revenue \$1,570,000

Mark Beaudoin
Real Estate Administrator
City of Tallahassee
City Hall
300 S. Adams Street
Tallahassee FL 32301
850-891-8711
beaudoinm@talgov.com

City of Bangor, ME

Dates of Service: 11/96 - Present
Locations 12
Spaces 2,047
Revenue \$2,000,000

Ms. Sally Bates
Development Coordinator
City of Bangor
Bangor, Maine 04401
207.945.4400
sally.bates@bgrme.org

CARTA Parking Facilities Chattanooga, TN

Dates of Service: 1/97 - Present
Locations 9
Spaces 1,143
Revenue \$1,400,000

Tom Dugan, Executive Director
Hamilton County
1617 Wilcox Boulevard
Chattanooga, TN 37406
423-629-1411
tom.dugan@gocarta.org

City of Rochester, MN

Dates of Service: 4/99 - Present
Locations 10
Spaces 3,168
Revenue \$2,200,000

Tony Knauer
Transportation Director
Dept. of Public Works
City of Rochester
Rochester, MN 55904
507.287.1976
tknauer@ci.rochester.mn.us



City of Ann Arbor , MI

Dates of Service: 2/01 - Present
Locations: 14
Spaces: 7,053
Revenue: \$13,000,000

Joe Morehouse
Downtown Development Authority
City of Ann Arbor
P.O. Box 8647
100 N. Fifth Avenue
Ann Arbor, MI 48107-8647
734. 997.1309
jmorehouse@a2dda.org

Memphis Center City Commission

Dates of Service: 8/00 - Present
Locations: 1
Spaces: 1,600
Revenue: \$450,000

Ms. Janet Pfaff
Vice President of Operations
The Crump Building
114 North Main Street
Memphis, TN 38103
901.575.0590
pfaff@downtownmemphis.com

City of Lincoln, Nebraska

Dates of Service: 11/02 - Present
Locations: 10
Spaces: 4,515
Revenue: \$4,500,000

Ken Smith
Parking Manager for Public Works
555 South 10th St Suite 203,
Lincoln, NE 68508
402-441-6097
Kdsmith@lincoln.ne.gov

City of Oklahoma City, OK

Dates of Service: 7/00 - Present
Locations: 9
Spaces: 7,377
Revenue: \$4,500,000

Mr. Rick Cain
COTPA
300 S.W. 7th St.
Oklahoma City, OK 73109
405.297.3492
rick.cain@okc.gov

City of Houston, TX

Dates of Service: 3/00 - Present
Locations: 13
Spaces: 5,430
Revenue: \$8,000,000

Mr. Lannie Leshner
Manager
Conv. And Entert. Facilities
City of Houston
Houston, TX
713.236.5760
lannie.lesher@cityofhouston.net



City of Chattanooga, TN

Dates of Service: 1/00 – Present
Locations: 2
Spaces: 1,402
Revenue: \$556,733

Daisy W. Madison, CPA, CGFM
Administrator & City Financial Officer
City of Chattanooga
100 East 11th Street
Chattanooga, TN 37402
423.757.5232
423.757.0681 (FAX)
Madison_d@mail.chattanooga.gov

City of Baltimore, MD

Dates of Service: 12/03 – Present
Locations: 3
Spaces: 2,238
Revenue: \$4,675,000

Mr. Petè Collier
Chief of Operations
Baltimore City Parking Authority
200 West Lombard Street Suite B
Baltimore, Maryland 21202
Peter.collier@baltimorecity.gov

State of Louisiana

Dates of Service: 7/00 – Present
Locations: 4
Spaces: 5,498

Mr. William J. Wilson
Superintendent
Office of State Buildings
1928 North Third Street
Baton Rouge, Louisiana 70804-4001
Bwilson@doa.state.la.us

**Public Building Authority
Knoxville TN**

Dates of Service: 4/99 - Present
Locations: 12
Spaces: 5,623
Revenue: \$2,600,000

Mr. Stephen Cheatham
Manager of Parking Services
City/County Building
400 Main Street; Suite M-22
Knoxville, TN 37902
865-215-2696.

Port of Tampa Authority

Dates of Service: 5/04 - Present
Locations: 11
Spaces: 3,165
Revenue: \$5,600,000

Steven L. Fidler
Senior Director of Operations
Tampa Port Authority
1101 Channelside Drive
Tampa, FL 33602
813-241-1800
slf@tampaport.com



RECENT CASE STUDIES – ACTUAL, PROVEN RESULTS

City of Charleston, South Carolina



Contract Details

Commencement Date:

January 1, 1998

Type of Operation:

Self Park

Size of Facility:

10,805 parking spaces spread across twelve (12) garages and ten (10) surface parking lots

Access Control System:

Federal APD

Client Contact:

Mr. Steve Bedard, the Chief Financial Officer of the City of Charleston Finance Department has asked us to have any of our potential clients contact him for a reference on Republic's services.

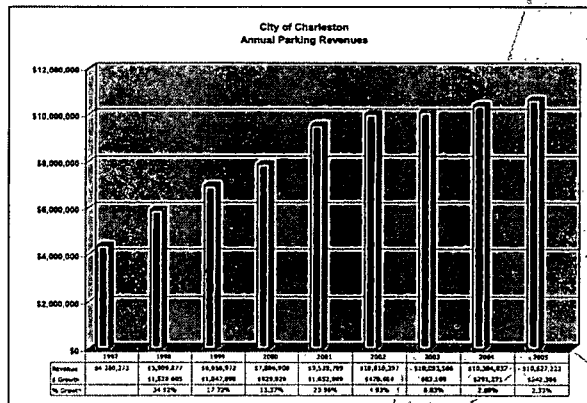
Stephen Bedard
Chief Financial Officer
Department of Budget, Finance &
Revenue Collections
116 Meeting Street
Charleston, SC 29401
Phone (843)579-7529
Fax (843)720-3901
bedards@ci.charleston.sc.us

The City of Charleston, South Carolina Parking System comprises 10,805 parking spaces spread across twelve (12) garages and ten (10) surface parking lots. These twenty-two (22) parking facilities serve a diverse mix of users and their customers. Three hotels, a ballpark, numerous downtown retail shops, area merchants, and companies all vie for parking space within the Charleston parking system. Additionally, we serve the visitors to the South Carolina Aquarium.

In Republic's first full year of operation, parking revenues increased across the parking system by over \$1,000,000.00 without a rate increase and operating expenses were reduced by \$100,000.00. Almost all of the former City employees working for the parking system were retained and re-trained and now attend regular job training and customer service seminars that are conducted by Robert Mitchell, Republic's Vice President of Human Resources.

Each year since Republic's involvement, the annual budget approved by the City Council has been aggressive and has been achieved. The gross revenue budget for the current year exceeds \$10,000,000.00

Working closely with the City of Charleston, Republic Parking System has made numerous recommendations in relation to revenue control equipment upgrades, changes in the method of operation, as well as changes to the hours of operations, all of which were approved by the City and have resulted in an increase in the bottom line.





Channelside, Tampa Port Authority – Tampa, Florida



TAMPA PORT AUTHORITY

Contract Details

Commencement Date:

May 14, 2004

Type of Operation:

Self Park/Valet

Size of Facility:

Retail Garage	1,275
Cruise Garage	725
Channelside Lot	115
Terminal Two Valet	
Terminal Three Valet	
Terminal Six Lot	300
Pork Chop Lot	400
Overflow Lot	30
RV Lot	20
Port Building	200
Wilson Miller Lot	100

TOTAL 3,165

Access Control System:

Federal APD

Client Contact:

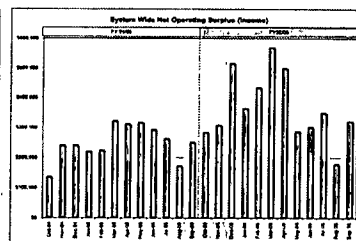
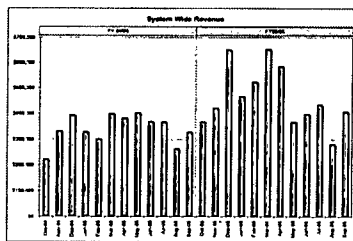
Mr. Fidler the Senior Director of Operations for Tampa Port Authority has asked us to have any of our potential clients contact him for a reference on Republic's services.

Steven L. Fidler
Senior Director of Operations
Tampa Port Authority
1101 Channelside Drive
Tampa, FL 33602
813.905.5040

Republic Parking System began managing the Tampa Port Authority's 3,100 plus space parking system in May of 2004. This parking system included eleven (11) facilities; one (1) garage which is divided into two profit centers, seven (7) surface lots, and two (2) valet operations. These parking facilities are owned by Tampa Port Authority, which were developed to serve two major purposes; provide parking to customers vacationing on the Cruise Ships and to service the Channelside Mall.

Republic Parking System was awarded the three-year contract with Tampa Port Authority to manage the parking portfolio based on our superior reputation in providing outstanding customer service, strong revenue control procedures, maintenance plan and positive relationships developed with current clients.

Over the past two and half years revenues increased drastically while keeping expenses well in line with the revenues. In the most recent 2005/2006 fiscal year parking revenues increased by over 36% with no rate increases. Due to flat expense growth the Net Operating Surplus increased by over 47% adding over \$1.45m in additional parking income to the Port of Tampa.



This increase in revenues was due to the establishment of several Republic Parking System recommendations, including the establishment of a special event parking rate, removal of employee discounts, a marketing effort to increase monthly parkers, the introduction of stringent cash controls and the installation of a monthly access control system.



Meridian – Columbia, South Carolina



Contract Details

Commencement Date:

March 1, 2004

Type of Operation:

Parking Garage

Size of Facility:

Parking Garage 904 Spaces

Access Control System:

Amano / McGann

Client Contact:

Cheryl Love
Director of Property
Management
Meridian
1320 Main Street
Columbia, SC 29201
803-753-5808

M E R I D I A N

Republic Parking System began managing the Class "A" Meridian Office Tower's 904 space parking garage in March of 2004.

This parking facility is owned by Holder Properties, Inc., which was developed to serve two major purposes; provide parking for tenants in the 17 story Meridian Office Tower and also provide public parking to large companies outside the building such as Scana, Pete Cannon Group and Biowatch.

The Meridian garage is an eight level parking facility located in one of downtown Columbia's hottest real estate areas.

Columbia's primary residential, business and retail thoroughfare, Main Street, has gone through a total renovation from landscaping to lighting. Many companies are investing in upscale condominiums and many new restaurants and businesses are arriving each year.

Republic Parking System has been awarded a ten (10) year contract extension this past year with Holder Properties, Inc. to manage this facility. This contract extension exemplifies the confidence our clients have in our management. Holder Properties expects strict attention to detail, outstanding customer service and strong revenue control procedures.

Since Republic Parking System opened the facility we have increased profits each year. In 2004 the profits were \$390,476.97, in 2005 profits were \$638,386 and in 2006 we expect to increase profits to \$838,720.21.

Republic Parking System's marketing strategy concentrated on both monthly and transient business. Our recommendations included roof-top monthly parking specials, discounted group rates for monthly parkers, "Early Bird" daily parking specials and special event rates for the Nelson Mullins Law Firm.



Modis Building Complex, Eola Capital – Jacksonville FL



Contract Details

Commencement Date:

November 2002

Type of Operation:

Self Park Parking Garage

Size of Facility:

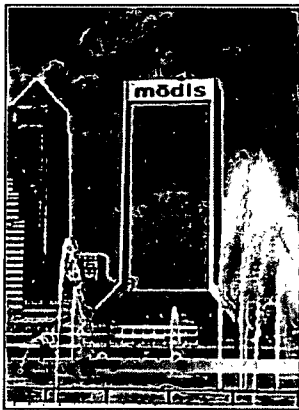
Modis Bld.	282
JAX Center	1,023
Annex Garage	561
TOTAL	1,866

Access Control System:

Federal APD

Client Contact:

*
Henry Pratt III
Vice President
Capital Partners, Inc.
1 Independent Dr., Ste. 114
Jacksonville, FL 32202
904.356.1978



In November 2002, Republic Parking System was chosen to manage the Capital Partner's parking portfolio in Jacksonville, Florida. The portfolio includes the Modis Garage, the Annex Garage and the Jacksonville Center Garage. The facilities provide monthly, transient, validation and special event parking for tenants of the Modis Building and the general public. Republic Parking System planned diligently for the transition of the parking management companies and successfully completed the plan on time and on budget.

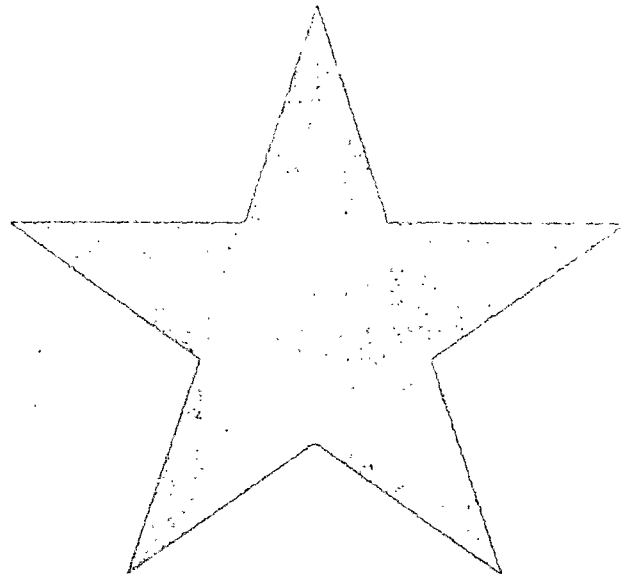
To ensure the Florida vs. Georgia parking frenzy was well managed; Republic Parking System flew in our Vice President of Client Services, David Lambeck. He and our Regional Manager, Michael Shille, General Manager, Brenda Mateer and the Senior Project Manager, Marcus Roberts worked the entire event periods on Friday, Saturday and Sunday. The management staff worked over 50 hours each, over those three days.

Due to the anticipated increased demand on Saturday we raised our Event Rate to \$10.00. This proved very wise, as the competing parking lot across the street was full and sold out at a \$5.00 rate. For the weekend, Republic Parking System collected \$22,604.00. That equates to more than the entire special event budget for the whole year. The prior year the previous operator collected only \$6,000, almost a 400% increase! The yearly event revenues for these locations are:

2004 \$22,604

2005 \$39,953

2006 \$50,032





Commerce Center Garage, The Mathews Company – Nashville, TN

The Mathews Company

Contract Details

Commencement Date:

August 2000

Type of Operation:

Self Park Parking Garage

Size of Facility:

456 Spaces

Access Control System:

Federal APD

Client Contact:

Bert Mathews
President
The Mathews Company
300 Broadway
Nashville, TN 37201
615.244.2130
315.225.3431 (FAX)



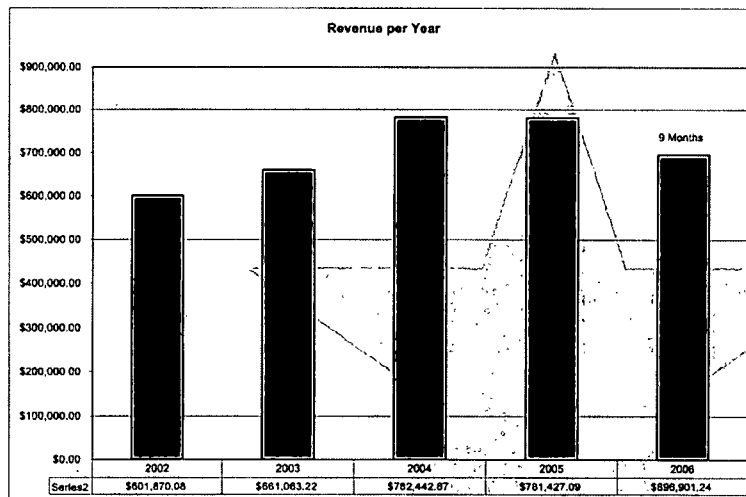
In August of 2000 Republic Parking System took over the operation of the Commerce Center Parking Garage. The owner was unhappy with the previous operator because of a conflict of interest and lack of marketing efforts.

Republic Parking System was focused on marketing events, monthly parking and controlling expenses. The garage was also in poor aesthetic condition (dirty) despite only being only 1½ years old.

Republic Parking System immediately embarked on an accelerated maintenance project to bring the garage up to Republic Parking System standards. This included changing the signage, painting the entire garage, changing the layout. We also performed a card audit and utilization analysis so we could fill the garage with a better (more profitable) parking mix.

By controlling costs, adding monthly parkers and aggressively marketing for event parking, Republic Parking System was able to increase the Net Operating Surplus of over \$175,000 (a 78% increase) in the first operating year (Aug – July).

Over the years, we have been able to maintain the growth of the revenue in this small garage.





MD Anderson Cancer Center Valet Parking Services

THE UNIVERSITY OF TEXAS
**MD ANDERSON
CANCER CENTER**
Making Cancer History

Contract Details

Commencement Date:

November 1, 2003

Type of Operation:

Hospital Valet

Size of Facility:

1,500 Valet Cars per Day

Key Statistics:

Valet Stations	6
Daily Traffic	1,500
Revenue	\$2,820,000
Employees	130

Duties:

Valet Parking
Lobby Attendant
Employee Shuttle

Client Contact:

Mr. Neil Hart
Director
Parking & Transportation
The University of Texas
M. D. Anderson Cancer Center
1515 Holcombe Blvd.
Houston, TX 77030
713-563-1137

In November 2003, Republic Parking System was awarded the parking management contract to operate the valet parking services for the University of Texas M.D. Anderson Cancer Center, located in the immense Texas Medical Center in Houston, Texas. The Cancer Center is one of the world's most respected centers devoted exclusively to cancer patient care, research, education and prevention.

The parking operation at MD Anderson consists of six separate valet stations, a dedicated surface lot for the storage of the vehicles, a staff of approximately 90 drivers and the operation of one shuttle van for the transport of drivers. The valet stations service the different departments and centers, for example the Rotary House Hotel, the Volunteers and the Radiation Treatment Center, within the hospital. Collectively, these valet stations see approximately 1,500 vehicles per day. In January 2005 we added an additional valet site to our MD Anderson portfolio, the newly constructed Ambulatory Clinical Building.

Given the nature of the facility, one of the primary goals was to make the transition to Republic Parking as smooth as possible. Prior to our takeover, our Project, Operations and District Managers spent time at the locations understanding the operation, meeting with key contacts and recruiting staff. Our District Manager also conducted several orientation classes and distributed information to the new employees. The due diligence resulted in a seamless transition.

Since the beginning of our contract we have remained focused on maintaining a high level of customer service and to ensure the auditing integrity of the operation. Throughout our tenure we have also remained cooperative and flexible to accommodating the needs of the client and the patients of the Cancer Center. After our second month of operation, the main valet station, which accounted for 50% of the business, closed for renovations. Since then, different areas of the Cancer Center have undergone construction projects which have required the relocation and even temporary closing of some of the valet stations. In these instances we work in conjunction with security and the client, adjusting our staffing and making any changes necessary to maintain the level of service.



Oklahoma University Medical Center, Oklahoma City, OK



Contract Details

Commencement Date:

December 1, 2004

Type of Operation:

Hospital Parking Garages & Lots

Size of Facility:

2,444 + Parking Spaces

Key Statistics:

Parking Garages	3
Surface Lots	4
Revenue	\$250,000
Employees	16

Duties:

Visitor & Patient Parking
Employee Parking
Doctor's Parking

Client Contact:

Mr. James Watson
Sr. V.P. and CFO
OU Medical Center
1200 Everett Dr
Executive Offices
Oklahoma City, OK 73104
(405) 271-5911
(405) 271-6032 Fax
jim.watson@hcahealthcare.com

In December 2004, Republic Parking System was awarded the parking management contract to operate the parking garages and surface lots for the OU Medical Center, located in Oklahoma City Oklahoma.

The parking operation at OU Medical Center consists of three parking garages and six surface lots. The parking garage services the visitors and patients to the Presbyterian Hospital, OU Women's Clinic, Out Patient Surgery, and the Physicians parking. The surface lots accommodate the Children's Hospital Emergency room, Presbyterian Hospital Emergency room and Diagnostic Center and the Center for Healthy Living visitor and patients.

Given the nature of the facility, one of the primary goals was to make the transition to Republic Parking as smooth as possible. Prior to our takeover, our Project and Operations Managers spent time at the locations understanding the operation, meeting with hospital employees, Executives and key contacts associated with the hospital operations. The due diligence resulted in a seamless transition.

Since the beginning of our contract we have remained focused on maintaining a high level of customer service and to ensure the auditing integrity of the operation. Throughout our tenure we have also remained cooperative and flexible to accommodating the needs of the client, the patients, and employees of OU Medical Center. During the first year of operation, we have succeeded in increasing the daily revenue, implement a detailed maintenance program, and update all employees parking information within the current access system. At the end of our first year, we worked diligently with the parking committee in the closure of one of the parking garages and reassignment of employees, visitors, and patient parking. With the second year beginning, we continue to work with the client and the parking committee on the next phase of a new parking garage and the consolidation of two hospitals at the end of 2006.

Mr. James Watson, Sr. Vice President and Chief Financial Officer for OU Medical Center would be able to discuss our performance with you. Mr. Watson can be reached at (405) 271-5911.



Seton Healthcare Network, Austin, Texas



Contract Details

Commencement Date:

September 1, 1999

Type of Operation:

Self Park & Valet

Size of Facility:

2,800 parking spaces spread across eleven (4) garages.

Access Control System:

Federal APD

Client Contact:

Rod Locke
Seton/Brackenridge
Medical Ctr.
Austin, Texas
512-324-7069

In September 1999 we awarded the parking contract to operate several of the Seton Healthcare Network Garages in Austin, Texas. The Seton Healthcare Network is the leading provider of healthcare services in Central Texas, serving an 11 county area with a population of 1.4 million people.

The contract initially encompassed 2,500 parking spaces in 3 garages, Brackenridge Hospital, South and Austin Medical Plaza Garages, as well as 2 valet operations. The most visible and most immediate need was to improve on the level of cleanliness in these garages. This issue was addressed within the first 90 days with the allocation of appropriate resources. Other issues that needed to be addressed were the customer service levels and improvement of the audit integrity of the operation. The audit issue was addressed through better use of the existing equipment (implementing features in the existing system such as passback) as well as a slight investment in additional equipment. The customer service issues were addressed by allocating the resources for better training of the staff.

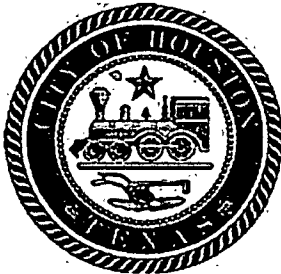
The construction of the Network's Children's Hospital of Austin and its 312 space garage ended in May 2000. During this time we worked closely with the client orchestration the installation of the garage equipment and the startup of the garage. In October 2003, the Children's Hospital added valet services as a service to their patients.

In 2003 the hospital decided to lease land off campus for employee parking and "open" spaces in the existing facilities for the patients and their visitors. In December 2003 we started operating a four shuttle bus operation for the Seton Network. These 23 passenger buses shuttle hospital employees from an off-site lot to the Seton campus. At this time the shuttle operation has been suspended due to the opening of the new Dell Children's Hospital. Shuttle operations should resume in the summer of 2008.

Our client contact, Rod Locke, would be able to discuss our performance with you. Mr. Locke may be contacted at 512.324.1685.



City of Houston Theatre District & Convention Center



Contract Details

Commencement Date:

March 1, 2000

Type of Operation:

Self Park

Size of Facility:

Civic Center	1,676
Large Tranquility	1,166
Small Tranquility	527
City Hall Annex	551
Lot "C"	176
Lot "H"	403
Municipal Courts	258
HPD Lot	98
HCA Lot	83
George Brown Lots	492
TOTAL	5,430

Access Control System:

Federal APD

Client Contact:

Mr. Lannie Leshar, with the City of Houston's Convention & Entertainment Facilities Department, has asked us to have any of our potential clients contact him for a reference on Republic's services.

Mr. Lannie Leshar
Special Projects Manager
Conventions and Entertainment
Facilities
City of Houston
Houston, TX
713.224.9904
lannie.lesher@cityofhouston.net

The City of Houston, Texas Parking System has 5,430 parking spaces divided among thirteen (13) parking facilities, four (4) garages and nine (9) surface parking lots. These parking facilities are owned by the City of Houston and administered by the City's Convention & Entertainment Facilities Department. The garages serve the parking needs of area businesses and retail shops during the day and the millions of patrons who visit the Houston Theatre District each year. Republic Parking System also operates the parking facilities surrounding the George R. Brown Convention Center that hosts numerous exhibitions and conventions each year, as well as parkers visiting nearby Minute Maid Field, the home of the Houston Astros. Under this contract, Republic Parking System manages the operation of a shuttle bus fleet as well.

Republic Parking System was successful in being awarded this parking management contract after the City of Houston held formal presentations with three short listed firms. With the award of the new management contract, the City of Houston was looking for a parking operator who would enhance the level of customer service, improve the cleanliness of the parking facilities, and provide higher standards of accounting and auditing controls. The City was also looking for a firm that would dedicate senior management time toward overseeing the administration of the contract and a firm who had a commitment to employee training and development.

Since our contract began in March 2000 Republic Parking System's Human Resource Department has conducted numerous employee training workshops in Houston. Our senior management team, working with our local management staff, has developed and implemented a detailed facility repair and maintenance program, and has installed additional pieces of parking revenue control equipment that has improved the accounting and auditing controls. Immediately after Republic's involvement, the level of parking revenues increased. This increase is solely attributable to our implementing the policies and procedures outlined in our Accounting Manual, which is included as part of our Operating Plan. Prior to our involvement, the Convention Center operation generated a maximum of \$43,000 in monthly parking revenue. Within the first six months of our management, monthly revenue averaged \$85,000 per month, an annualized increase of over \$500,000.



City of Ann Arbor



Contract Details

Commencement Date:

February 1, 2001

Type of Operation:

Self Park

Size of Facility:

First & Washington	199
Fourth & William	886
Fourth & Washington	277
Ann & Ashley	837
Maynard	789
Liberty Square	590
Forest Avenue	860
First & Huron	165
South Ashley	144
South Fifth Ave	213
TOTAL	4,960

Access Control System:

Federal APD

Client Contact:

Mr. Joseph Morehouse, the Deputy Director of the Ann Arbor Downtown Development Authority has asked us to have any of our potential clients contact him for a reference on Republic's services.

Joe Morehouse
Downtown Dev. Authority
City of Ann Arbor
P.O. Box 8647
100 N. Fifth Avenue
Ann Arbor, MI 48107-8647
734-997-1309
jmorehouse@a2dda.org

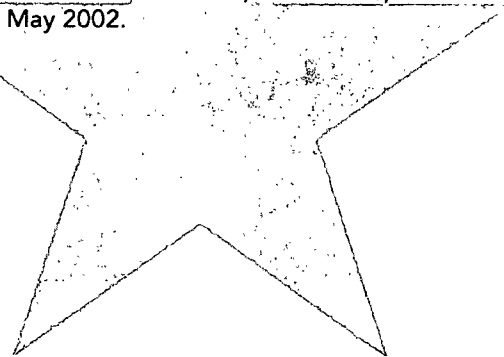
The City of Ann Arbor, Michigan Parking System has 4,960 parking spaces divided among ten (10) parking facilities, seven (7) garages and three (3) surface parking lots. These facilities are owned by the City of Ann Arbor and administered by the Downtown Development Authority. These facilities serve downtown residents, retail and area businesses as well as the students from the University of Michigan.

On February 1, 2001, Republic Parking System assumed the management responsibilities for the City of Ann Arbor Parking System. Republic Parking was awarded the management contract after a formal bid process that included five bidders.

The Downtown Development Authority wanted to find a parking operator who could provide better leadership from the management ranks, provide better accounting controls and improve the overall cleanliness of the facilities.

Besides the Management Training Program that each manager has been required to complete, we supplemented this program with a series of on-site workshops designed to address the unique situations we are confronted within parking management. A few of the programs that have been completed are Employee Counseling, Basic Supervision, OSHA Training, Problem Analysis and Decision Making. Along with these, customer service seminars are conducted for all the field employees on a semi-annual basis.

Republic Parking System also implemented the policies and procedures that were outlined in the Financial Responsibility section of the proposal. Because of our proven accounting and auditing controls, parking revenues increased 24% the first year. The parking revenues derived from these locations is \$8m annually. Due to our success in raising revenues and decreasing expenses, the DDA turned over the entire On-Street parking operation, which consists of over 1,800 meters, to Republic Parking System in May 2002.





City of Oklahoma City



Contract Details

Commencement Date:

July 2000

Type of Operation:

Self Park

Size of Facility:

Sheridan/Walker	1,116
Galleria	1,356
Century Center	805
Broadway/Kerr	931
Santa Fe	1,722
Cox Convention Center	947
I-40 Surface Lots	500
TOTAL	7,377

Access Control System:

Federal APD

Client Contact:

Mr. Rick Cain, the Metro Administrator of the COTPA Parking Division has asked us to have any of our potential clients contact him for a reference on Republic's services.

Mr. Rick Cain
COTPA
300 S.W. 7th St.
Oklahoma City, OK 73109
405.297.3492
Rick.cain@okc.gov

Republic Parking System assumed the management of the 7,000 space Oklahoma City parking system operated by the Central Oklahoma Transportation and Parking Authority (COTPA) in July 2000. During the first twelve months, revenues jumped over \$450,000 per year and averaged about \$40,000 more per month than our predecessor. These numbers do not include an additional \$415,000 earned with a RPS recommended rate increase.

This staggering increase was due to our focus on the fundamentals of parking. One example of this focus is tight auditing controls at the local level, supplemented by oversight at the regional and corporate level. Republic Parking began diligent monthly parking card audits soon after beginning work. Over the next few weeks, it was discovered that literally hundreds of persons had active access cards for the clients' garages but were not paying rent to the garage owners; some had been parking for free for years.

Currently, a card audit with back up information is presented to the client each month along with the management report to ensure that that each person who uses the facilities is billed accordingly.

The City of Oklahoma City holds an annual "Arts Festival" to celebrate the performing, culinary, and visual arts. This festival attracts well known and respected artists from around the country and is held over a 6 day period each April. In the year 2000, our predecessors collected \$49,000.00 from the two primary garages used during the festival. Revenue numbers were not turned in from the other facilities in the system as the previous operators stated they were not used for festival parking. Total attendance that year was 700,000.

During the 2001 festival, approximately 750,000 people attended and total parking revenue collected amounted to more than \$112,000.00 from all 8 properties in the system. The two primary facilities accounted for over \$77,000.

Looking solely at the two facilities which our predecessors reported revenue from in 2000, Republic Parking System earned 57% more revenue than they did with a corresponding 7% increase in attendance.



The City of Rochester, Minnesota



Contract Details

Commencement Date:

April 1999

Type of Operation:

Self Park

Size of Facility:

Zumbro Lot	65
Civic Center South	360
Civic Center North	140
Civic Center Ramp	600
First Street Ramp	485
Second Street Ramp	435
Center Street Ramp	393
TOTAL	2,478

Access Control System:

Federal APD

Client Contact:

Mr. Tony Knauer, the Transportation Planner of the City of Rochester Transportation Department has asked us to have any of our potential clients contact him for a reference on Republic's services.

Tony Knauer
Transportation Director
Dept. of Public Works
201 4th St. SE, Room 108
City of Rochester
Rochester, MN 55904-3740
507.287.1976
tknauer@ci.rochester.mn.us

The City of Rochester, Minnesota Parking System totals 2,478 parking spaces spread across four (4) garages and three (3) surface parking lots. These seven (7) parking facilities serve downtown retail and area businesses as well as patients and visitors to the World famous Mayo Medical Clinic. As you would imagine, customer service and facility cleanliness are of utmost importance.

On April 1, 1999, Republic Parking System assumed the management responsibilities for the Rochester Parking System. Republic was awarded the management contract after a bid process that included nine bidders.

During the City's selection process they were interested in finding a parking management company that was small enough to provide senior management involvement on a regular basis, had the experience to provide pro-active business advice, was committed to staff training, possessed high standards of housekeeping, and demonstrated the proven ability to deliver a quality service in tandem with achieving the profit objectives of the City.

After the formal presentation process, two members of the City of Rochester's Department of Public Works visited the Corporate Offices of Republic Parking System in Chattanooga, Tennessee to tour the administrative and accounting offices and to meet the Executive Management Team.

Since commencing operations in Rochester on April 1, 1999, a member of Republic's Executive Management Team travels to Rochester each month to meet with the client to review the previous month's operating reports, discuss pending projects and to begin dialogue on new projects. During this trip inspections are made of all the parking facilities and to ensure compliance with the Company's policies.

At the end of Republic's first year of operation, parking revenues exceeded the budget approved by the Rochester City Council and the parking facilities are maintained to a much higher level of cleanliness. In addition, employee-training workshops are conducted by Republic's Human Resource Department on a regular basis.



City of Baltimore Parking Authority



PARKING FOR BALTIMORE CITY AUTHORITY

Contract Details

Commencement Date:

December 2003

Type of Operation:

Pay-on-Foot (both facilities)

Size of Facility:

Market Center Garage	606
Arena Garage	888
TOTAL	1,494

Access Control System:

Amano McGann (Market Center)
Scheidt & Bachman (Arena)

Client Contact:

Mr. Pete Collier, the Operations Manager of the Parking Authority for Baltimore City has asked us to have any of our potential clients contact him for a reference on Republic's services.

Pete Collier
Chief of Operations
Parking Authority for Baltimore City
200 West Lombard Street Suite B
Baltimore, Maryland 21202
443-573-2800
410-685-1557 (FAX)
Peter.collier@baltimorecity.gov

Republic Parking System assumed the management of the 606 space Market Center garage located next to the historic Lexington Market in downtown Baltimore on December 1, 2003.

The Market Center garage is controlled by the Parking Authority for Baltimore City, and supports patrons and employees of the Lexington Market, VA Maryland Health Care System and Municipal Employees Credit Union.

Upon assuming the management of the facility on December 1, 2003, Republic Parking System's first challenge was the implementation of the Amano Pay-on-Foot system, which had been previously installed at the facility, but was not working. While we encountered several technical problems with the system, we were able to successfully implement the pay-on-foot system by December 19, with 97% of the daily transient transactions being processed through the pay-on-foot machines on the first day.

We attribute the high percentage of participation to proactive communication with our parkers through flyers we had distributed explaining the pending change and a quality sign program.

With the assistance and direction of the PABC during the first 60 days of operation at the Market Center garage Republic Parking System has made tremendous aesthetic and operational improvements to the garage. These included painting of the garage office, entry/exit lanes and ramp area, islands, equipment and elevator cabs; installation of metal halide light fixtures; window tinting of the garage office windows and elevator landing windows; scrubbing and sweeping the garage, stairwells and elevator landings; installation of the pay-on-foot and directional signage.

The impact of the improvements has been remarkable and customer complaints have been replaced with compliments.

The garage has gone from an eyesore to the standard by which other facilities in the city should be judged, in less than 60 days.



City of Lincoln Nebraska



Contract Details

Commencement Date:

November 2002

Type of Operation:

7 self-parking garages and 3 self-park surface lots.

Size of Facility:

Carriage Park Garage	704
Center Park Garage	1,061
Cornhusker Sq. Garage	394
Haymarket Garage	409
Market Place Garage	385
Que Place Garage	809
University Sq. Garage	437
Iron Horse Lot	159
Lincoln Station South Lot	93
Lumberworks Lot	64

TOTAL 4,515

Access Control System:

AMANO/McGann

Client Contact:

Mr. Ken Smith, Parking Manager for the City of Lincoln Public Works Department has asked us to have any of our potential clients contact him for a reference on Republic's services.

Ken Smith
Parking Mgr. for Public Works
555 South 10th St Suite 203,
Lincoln, NE 68508
402-441-6097
Kdsmith@lincoln.ne.gov

Republic Parking System took over the management of the City of Lincoln parking system on September 1, 2004. The parking system is comprised of 4,515 spaces spread across seven (7) parking garages and three (3) surface lots. These ten (10) parking facilities serve a diverse mix of users and their customers. Two hotels, two near by colleges, numerous downtown retail shops, residents, restaurants, and companies all vie for parking spaces within the City of Lincoln Parking System.

In Republic Parking System's first year of operation, the waiting lists for the City Garages were reduced from 761 spaces requested (dating back to 1997) to 226 (dating back to 2005).

At the request of the City of Lincoln almost all of the former City employees working for the previous parking management company were retained and were required to attend regular job training and customer service seminars that are conducted by Robert Mitchell, Republic's Vice President of Human Resources. This transition process allowed the change in management companies to be done with minimal impact to the parking customers and general public.

After we took over the parking management duties, Republic Parking System set out to work closely with the City of Lincoln to improve the overall operational efficiencies, customer service improvements and garage utilization. Republic Parking System conducted multiple parking utilization studies during various key parts of the year. As a result of our analysis we were able to increase the occupancy for the parking facilities from 75% up to 89% during the first year of Republic Parking System's management.

In addition, we have been able to implement many customer service amenity programs for all the parkers that utilize the City of Lincoln parking facilities. Some of these programs include the "Park It" prepaid debit card; Manager Meet and Greets, where we hand out Free Car Wash Coupons, drink holders, air-fresheners and parking surveys; flowers on Mother's Day, Golf Tees on Father's Day, and steel keys chains during the winter holidays.



Augusta/Richmond County Government Augusta, Georgia



Contract Details

Commencement Date:

February 1, 2003

Type of Operation:

Self Park

Size of Facility:

Retail Garage 713 Spaces

Access Control System:

Amano

Client Contact:

Mr. Rick Acree,
Assistant Director
Public Services Department
Facilities Management Division
501 Greene Street, Suite 301,
Augusta, GA 30901
706-821-2426



Republic Parking System began managing the Augusta/Richmond County's 713 space Riverwalk Parking Garage in February of 2003. This parking system consists of an upper and lower deck covered garage and 1 surface lot. This parking facility was developed to serve two major purposes; provide parking to customers of the then Radisson and now Marriott Hotel and to service the downtown business community.

Republic Parking System was awarded the three-year contract with County Government to manage the parking portfolio based on our superior reputation in providing outstanding customer service, strong revenue control procedures, maintenance plan and positive relationships developed with current clients. Republic Parking System met and exceeded all of the County Government's expectations.

Our success in providing superior management services has led to a second contract period beginning in February of 2006.

"We had high expectations that Republic Parking would be able to correct some shortfalls in both operational efficiencies and revenue control experienced by the previous management firm and at a minimum break even. I am pleased to say these expectations have been fully addressed since you have been assigned at the facility."

Rick Acree, Assistant Director, Public Services Department,

Over the past three years revenues increased drastically while keeping expenses well in line with the revenues.

This increase in revenues was due to the establishment of several Republic Parking System recommendations which included the establishment of a special event parking rate, removal of an employee discounts, a marketing effort to increase monthly parkers, the introduction of stringent cash controls and the installation of a monthly access control system.



D. PERSONNEL

EQUAL OPPORTUNITY PLAN

1. Outline the firm's Equal Opportunity Plan, participation of minorities and females in operation of the facilities, and salary scale and benefits for employees.

MBE/WBE/DBE

Republic Parking System is dedicated to the employment of all persons without regard to race, color, religion, sex, or national origin. Our dedication extends to contracting individuals and businesses. Therefore, we have adopted and use the following policies:

Hours of work and/or training all employees and contractors shall be uniformly the same.

The working environment will be free of harassment, intimidation, and coercion where employees or contractors are assigned.

All supervisors and management staff shall be aware of and carry out all EEO and affirmative action policies of the Company.

The Company will maintain a current list of minority, female, veterans, and handicapped recruitment sources and notify them of anticipated job openings. All responses to this notification will also be maintained.

A file of all applicants for jobs will be maintained, including walk-in applicants. These files will indicate if the applicant is a minority, female, veteran, or handicapped. Reasons for non-employment will be recorded on each application.

All notices of anticipated job openings and formal training programs will be posted at the Company's office in a place conspicuous to all employees.

All advertisements for anticipated job openings shall include the statement "Equal Opportunity Employer".

A statement regarding our EEO and Affirmative Action policies is included in our Employee's Manual and any future planned manuals.

These policies will be reviewed with all employees. Written documentation of our reviews will be maintained.

Current minority and female, veteran, and handicapped employees will be encouraged to recruit other minority, female, veteran, and handicapped applicants.

Each employee will be evaluated on their work performance at least annually and encouraged to seek promotional opportunities which may occur. This encouragement may include, but not be limited to, seeking additional training and/or education.

A continued monitoring of all personnel actions will be conducted by management to



ensure that job assignments, responsibilities, promotions, and other actions are not discriminatory.

No facilities or activities operated by the Company will be segregated.

Records will be maintained of all solicitations or offers by or to a minority or female owned business.

Annual evaluations of all supervisors shall include their knowledge and adherence to these policies.

The manager of each division of Republic Parking System shall be responsible for maintaining all records required by these policies and submitting any reports required by these policies.

AFFIRMATIVE ACTION PLAN

I. PURPOSE AND POLICY

This document represents the Affirmative Action Plan for Republic Parking System. The purpose of this plan is to describe Republic Parking System policies and procedures designed and applied to assure the right of all persons to work and advance in the workforce based on ability. The plan has been developed to ensure:

- The fair and equal treatment of minorities and women in Republic Parking System's work environment.
- Compliance with federal, state, and local equal employment laws and regulations.

It is the policy of Republic Parking System to provide equal opportunity for all qualified applicants and employees; to prohibit discrimination in employment because of race, color, religion, national origin, sex, age, or physical handicap or any other basis prohibited by law; to promote the full realization of equal employment through a continuing program of affirmative action.

It is the policy of Republic Parking System to:

- Recruit, hire, train, and promote persons in all job categories at all levels of the workforce without regard to race, color, religion, age, sex, national origin, physical handicap, or status as a disabled Vietnam veteran.
- Ensure that all personnel actions such as compensation, employee benefits, transfers, layoffs, training, and career development and social and recreational programs will be administered without regard to race, color, religion, age, sex, national origin, physical handicap, or status as a disabled or Vietnam veteran.
- Eliminate unreasonable procedural and physical barriers to employment of disabled persons and that reasonable accommodations are made for persons with a physical handicap, and persons with particular religious beliefs and practices.



- Ensure that all employees may work in an environment free from sexual harassment.
- Ensure that no retaliatory action is taken against any individual for reporting or opposing employment practices that are prohibited by this Affirmative Action Plan or the federal, state, or local equal employment laws and regulations.

This policy shall be an integral part of every aspect of personnel policy and practices in the employment, development, advancement, and treatment of all employees. It will be disseminated periodically to the attention of all supervisory and management personnel who shall administer the policy with a positive attitude.

The President and all officers of Republic Parking System will affirmatively implement the Affirmative Action Plan.

Overall day-to-day responsibility for the successful implementation of the Affirmative Action Plan of Republic Parking System is assigned to each Location Manager who shall serve as the Equal Opportunity Coordinator available to all applicants, employees, and independent contractors to assist them in all aspects regarding this policy. The Location Manager shall act as the Equal Opportunity Representative bearing any complaint regarding unfair labor practices or discrimination based on race, color, sex, religion, age, national origin, disability, or Vietnam veteran status.

Nothing contained within this Affirmative Action Plan nor any language used herein, shall be construed as an admission by Republic Parking System that it has violated or presently is violating any federal, state, or local laws regarding equal employment opportunity. Republic Parking System has maintained personnel practices and procedures that seek to ensure equal employment for all individuals. It is anticipated that the adoption and implementation of this Affirmative Action Plan will ensure the continued equal employment opportunity for all persons without regard to race, color, sex, religion, national origin, age, handicap, or status as a disabled or Vietnam Era veteran. This voluntary Affirmative Action Plan is intended to demonstrate the commitment of Republic Parking System to ensuring equal employment opportunity for all applicants and employees of Republic Parking System and to comply fully with the applicable federal, state, and local equal employment opportunity laws.

Proprietor _____ Date _____

II. BASIS:

The Affirmative Action Plan of Republic Parking System was developed in consideration of major federal laws:

- Title VII of the Civil Rights Act prohibits discrimination in employment because of race, color, sex, religion, national origin. It covers all terms, conditions, and privileges of employment.
- Title VI of the Civil Rights Act prohibits discrimination based on race, color, sex, religion, or national origin in all programs or activities which receive federal financial aid.



- The Equal Pay Act of 1963 requires all employers subject to the Fair Labor Standards Act to provide equal pay for men and women performing similar work.
- The Age Discrimination in Employment Act prohibits discrimination against any persons 40 to 70 years of age in any area of employment because of age.
- The Rehabilitation Act prohibits discrimination against any qualified employee or applicant because of physical or mental handicap.
- The Vietnam Era Veterans Readjustment Assistance Act of 1974 requires contractors or subcontractors to take affirmative action to employ and advance qualified disabled veterans and veterans of the Vietnam Era.
- Executive Order 11246 requires affirmative action programs by all federal contractors and subcontractors with contracts over \$50,000 and 50 or more employees develop and implement written affirmative action programs.
- Americans with Disabilities Act.

III. DISSEMINATION OF THE PLAN AND POLICIES

To assure full integration of this Affirmative Action Plan through Republic Parking System, the company will disseminate this policy throughout the organization. Management, employees, and prospective applicants will be made aware of the commitment of Republic Parking System as an EEO employer through the following procedures.

A. Internal

The Equal Opportunity Coordinator will distribute copies of the Affirmative Action Plan to all managers, to be made available upon request to all employees, and for use is discussing this use with employees.

Republic Parking System will post posters regarding this policy and equal employment opportunities at all job sites in a conspicuous place, and in locations appropriate and accessible to prospective applicants for employment.

Republic Parking System will include the EEO policy in all handbooks and policy manuals and as appropriate in all employee orientation or training.

B. External

Notify recruiting sources and encourage them to refer qualified applicants without regard to race, color, sex, religion, age, national origin, handicap, or status as a disabled or Vietnam Era veteran.

Republic Parking System will advertise in local publications to reach the community of protected classes in order to seek qualified minorities for job placement.

Republic Parking System will identify itself as an equal employment opportunity employer in all recruitment advertisements.

Republic Parking System will disseminate notice of its EEO policy to all unions with which it has some relationship and request assistance in meeting its EEO obligations.



Republic Parking System will include EEO policy in annual reports and company publications as appropriate.

Republic Parking System will incorporate equal employment opportunity clauses in all purchase orders, leases, and contracts covered by Executive Order 11246. Additionally, the company will provide written notification of our equal employment opportunity policy to all subcontractors, vendors, and suppliers, and indicate the necessity for them to be equal employment opportunity employers as well.

IV. RESPONSIBILITY FOR DELEGATION

The President of Republic Parking System has designated each Location Manager as the Equal Opportunity Representative who shall have responsibility for the overall development and administration of the Republic Parking System Affirmative Action Plan and Program. The Location Manager has the authority necessary to implement the Affirmative Action Plan and Program of Republic Parking System. In carrying out this responsibility, the Location Manager shall manage and supervise the activities of the Equal Opportunity Coordinator who shall be responsible for:

- Providing guidance to assistant managers and supervisors in conducting equal opportunity efforts.
- Maintain a continuing review of all aspects of the Republic Parking System personnel process to detect barriers to the employment of minorities, women, handicapped, disabled, or Vietnam era veterans and recommend solutions to eliminate any identified barriers.
- Prepare statistical data and conduct evaluations to measure the success of the Affirmative Action Program, to identify problems and areas of under-utilization.
- Council with employees and applicants regarding the EEO policy of Republic Parking System.
- Disseminate any changes in the Affirmative Action Plan to all levels of management and to employees as appropriate, and service as a resource to management regarding implementation.
- Develop and maintaining procedures that will enable Republic Parking System to fulfill federal, state, and local requirements related to minority and women business enterprise participation in its contract and procurement program.
- Establishing and maintaining a positive participation program for the inclusion of minority or women owned business enterprises in the contracting and procurement activities of Republic Parking System.
- Be responsible for technical compliance with all federal, state, and local regulations.

In addition to managing the Equal Opportunity Coordinator, the Location Manager shall be responsible for:

Serving as the liaison between Republic Parking System and all relevant entities concerned with the enforcement of EEO laws and the regulations promulgated thereunder including but not limited to the EEOC.



Directing a periodic audit of hiring and promotion patterns to discern any impediments to the goals and timetables set forth as a part of the Affirmative Action Plan. Maintaining a complaint system to assure that allegations of unfair labor practices or discrimination will receive prompt, fair, and impartial consideration and disposition with appropriate corrective action as needed.

Report to the President on all actions and programs relative to the prohibition of discrimination and the implementation of Affirmative Action in Republic Parking System.

V. UTILIZATION AND WORK FORCE ANALYSIS

A. Utilization Analysis

Republic Parking System will identify job classifications within the Company's work force in which minorities and women are being underutilized. The utilization analysis will include and examination of the work force and a comparison of the availability of minorities, women, and handicapped persons in the job classification and the geographic areas where Republic Parking System can recruit.

In determining if minorities and women are underutilized in any of the Company's job classifications, the Equal Opportunity Coordinator shall evaluate the following factors:

- The minority and women populations of the area surrounding Republic Parking System and their proportions to the total.
- The size of the minority and women unemployment force in the area surrounding Republic Parking System.
- The general availability of minorities and women having requisite skills in an area in which Republic Parking System can recruit.
- The minorities and women employed by Republic Parking System with the requisite skills for the job classifications involved.
- The number and percentage of minorities and women applying for employment.

The Equal Opportunity Coordinator will develop an analysis of job titles and job positions by classification held by minorities and women which shall include a listing of each job title including the wage rate or salary range, as it appears on Company payroll records, ranked from the lowest paid to the highest paid within organizational unit the total number of incumbents by sex and minority group in each job title.

The Equal Opportunity Coordinator will be responsible for the periodic analysis of the entire employment process in order to identify problem areas.

VI. GOALS AND TIMETABLES

Upon completion of the utilization and work-force analysis, Republic Parking System will formulate goals and timetables for employment of minorities and women. Republic Parking System will use the following process in establishing goals and timetables:

A goal will be established when the percentage of total minorities and women in a job



classification within Republic Parking System is lower than the total percentage of minorities available in that job classification within the surrounding labor market area.

The goal will be stated as a percentage of the total employees in the job classification and will be equal to the percentage of minorities and women available for work in the job classification in the surrounding labor market area.

For each job classification with a goal, a specific timetable will be established for reaching the goal in the minimum feasible time period.

VII. PLAN OF ACTION

The ultimate success of the Affirmative Action Program will largely result from good faith efforts detailed in this plan of action. Republic Parking System will actively and aggressively implement the following:

1. Recruitment - Republic Parking System will actively seek minorities, women, handicapped, disabled or Vietnam era veterans for employment. The following techniques will be employed to improve recruitment:

- Republic Parking System will analyze and review recruitment procedures to identify and eliminate discriminatory barriers.
- Republic Parking System will establish a system and objective measures to monitor the recruitment process including maintaining applicant records which detail for each applicant: name, race, sex, handicap status, disability or veterans' status, referral source, date of application, position applied for, whether a job offer was made.
- Republic Parking System will develop and maintain a list of recruitment sources to ensure that Republic Parking System notifies the widest range of applicants and in particular reaches potential minority and female applicants.
- Republic Parking System will place emphasis on aggressive recruitment efforts whenever the workforce analysis suggests an under-utilization of a protected class.
- Republic Parking System will maintain continuing contact with referral agencies and organizations serving minorities, women, handicapped, disabled or Vietnam era veterans.
- Republic Parking System will maintain a current file of names, addresses, and telephone numbers of minority and female applicants, the recruitment source or referral agency and the action taken on each such applicant.

2. Selection Process - Republic Parking System will review job descriptions and specifications and remove all criteria which may be artificial and unnecessary and assure that all required qualifications are free from bias and requirements not directly related to an applicant's ability to perform the job. The Company will validate all tests where such validation is required.

3. Training - Republic Parking System will take positive steps to ensure the full utilization of minorities, women, handicapped, disabled or Vietnam era veterans in its training programs. All employees will be encouraged to participate in the Company's training and



career development programs. Republic Parking System will maintain records of employees attendance in development training courses by minority groups and sex for purposes of monitoring that protected classes are given equal access to training opportunities, apprenticeship, and upgrading programs.

The Equal Opportunity Coordinator will periodically conduct EEO seminars in order to facilitate understanding and compliance with the Affirmative Action Plan.

4. Promotion and Transfer - Republic Parking System will assure that any employee applying for a promotion or transfer to another job shall be given equal consideration with all other applicants.

5. Discharge, Termination, Layoff, Disciplinary Action, Demotion - The standards for deciding when an employee will be discharged, terminated, laid off, or demoted will be the same for all employees. Republic Parking System will keep a record of all terminations, layoffs, or demotions and for each affected employee, shall record name, date, and reason for personnel transaction.

6. Employee Evaluation - The evaluation of the managerial and supervisory personnel of Republic Parking System shall include the assessment of affirmative action efforts to be appraised with other criteria necessary for acceptable management and supervisory job performance.

7. Pay Practices and Benefits - Republic Parking System shall not make any differences in pay rates for substantially similar work done by minority and non-minority, female and male employees. The Company will continue to make compensation and benefits available to all employees without regard to race, color, religion, age, national origin, handicap, or status as a disabled or Vietnam era veteran.

8. Facilities - Republic Parking System will continue to maintain its facilities on a non-discriminatory basis and to ensure that all facilities and work areas are accessible insofar as this may be done without reducing safety or efficiency or incurring undue financial burdens.

9. Reasonable Accommodation to Disabilities of Handicapped, Disabled Veterans, and Religious Beliefs - Republic Parking System will evaluate the qualifications of handicapped persons and disabled veterans with due consideration towards whether such employees or applicants are qualified if their disabilities can be reasonably accommodated. Reasonable accommodations may be extended to the point that no undue hardship will be imposed on Republic Parking System.

10. Age - Any employment decision relative to a person between 40 and 70 years of age shall be based on the individual's ability or capacity to perform the work required. Age will be considered only when it is a bona fide occupational qualification, reasonably necessary to the normal performance of the job.

11. Sexual Harassment - Sexual harassment is a form of employee misconduct which will not be tolerated. It is a prohibited practice when it results in discrimination on the basis of conduct not related to job performance. Republic Parking System will maintain an environment free from sexual overtures, intimidation, or coercion. Disciplinary action will be taken against any employee engaging in such behavior.



Audits and Reports - Republic Parking System will maintain personnel records and reports to assure equal opportunity to all employees and to ensure compliance with goals and timetables.

Republic Parking System will develop and implement reporting procedures which will provide for the continued auditing, monitoring, and evaluation of the Company policies, practices, and procedures and the progress of the affirmative action plan. Republic Parking System will annually conduct a review of the Company's compliance with the EEO policy.

The following reports will be made available:

- Survey of current workforce by race, national origin, sex, job classification, salary.
- Analysis of internal and external workforce availability by race, national origin, and sex, handicap or disabled status or status as a Vietnam era veteran.
- Identification of areas of under-utilization and the establishment of hiring and promotion goals and timetables.
- Records on application flow and each step of the selection process.
- Sources of referrals and hires by race, national origin, sex, handicap, or disabled status or status as a Vietnam era veteran.
- Terminations, layoffs, discharges, or demotions by race, national origin, sex, handicap, disabled status, or status as a Vietnam era veteran.
- Progress toward goals.
- Republic Parking System will annually conduct a review of the Company's compliance with the EEO policy. The Affirmative Action Plan will be reviewed annually in light of program results, and modifications will be made to improve the program as appropriate.

VIII. SUBCONTRACTORS, CONSULTANTS, AND SUPPLIERS

Republic Parking System will include its Equal Opportunity Policy in every subcontract or purchase order so that such provisions will be binding on each subcontractor or vendor. Republic Parking System will assure the enforcement of such provisions, including sanctions for non-compliance.

Further, it is the policy of Republic Parking System that minority and women business enterprises will have the maximum practical opportunity to participate in its contracting and procurement activities. Accordingly, Republic Parking System will:

Establish policies and procedures, which encourage and facilitate the consideration of minority/women business enterprises as subcontractors and suppliers.

Develop and implement policies and procedures to recruit minority/women business enterprises as subcontractors, consultants, or suppliers.

Develop a listing of minority/women business enterprises that provide services and



products for which Republic Parking System normally contracts.

Periodically review and monitor the use of subcontractors, consultants, and suppliers to assure fair recruitment consideration, use and treatment of minority/women business enterprises.

Use good faith efforts to utilize minority/women business firms as subcontractors, consultants, or suppliers.

Maintain records relevant to contracting opportunities, solicitation of offers or quotes, and selection of subcontractors, consultants and suppliers sufficient to allow periodic evaluation of the inclusion of minority/women business firms in contracting procurement activities.

EMPLOYEE SELECTION PROCESS

2. Outline the employee selection process to be used by the firm in hiring workers for the Garages and Lots.

Employee candidates are found by reference or ads placed in local papers, job boards, the South Carolina Employment Service or Career Builder. These potential candidates are then to fill out an application on site that included an aptitude test. The test measures basic math and problem solving skills.

careerbuilder.com

Only applications in which applicants that have passed the aptitude section are selected. The candidates are then scheduled for interviews.

PRE-EMPLOYMENT SCREENING

The success of any parking program begins with the recruitment and hiring of the proper caliber of staff. To enable Republic Parking System to select the best possible staff for employment, several pre-employment procedures will be undertaken.

For all potential applicants two telephone reference checks are conducted by the manager in charge. Republic Parking System tries to contact the applicant's two most recent employers. Additionally, motor vehicle checks are performed, and where clients allow, drug and alcohol screening.

All management, bookkeeping and cash handling personnel are further screened for past criminal and credit problems.

To ensure compliance with the Company's pre-employment practices, checks and balances are in place ensuring that no payroll checks are issued to "new" employees until all the pre-employment testing showing satisfactory compliance with Company standards is on file at the Company's central payroll office in Chattanooga.

Republic Parking System conducts it's criminal and credit background checks using the services of South Carolina Law Enforcement Division (SLED).



CAPP / CPFM MANAGEMENT CERTIFICATION

3. Provide names of any employees of the firm who have earned the title "Certified Administrator of Public Parking (CAPP)" or "Certified Parking Facility Manager (CPFM)" and whether such employee will be assigned to manage the Garages and Lots.

Republic Parking System has no managers in the Charleston system with these certifications. All of our management personnel are trained specifically in the Republic Parking System training program.

PERSONNEL & WAGE RATES

4. List the titles of employees to be assigned to the Garages and Lots along with their associated salary range information in annual terms.

Position	Number	Salary Range		Per
		From	To	
General Manager	1	\$67,000	\$69,000	Annual
Senior Operations Manager	1	\$47,000	\$52,000	Annual
Office Manager	1	\$47,000	\$50,000	Annual
Facility Manager	16	\$21,000	\$38,000	Annual
Night Manager	1	\$42,500	\$45,000	Annual
Weekend Manager	1	\$38,000	\$40,000	Annual
Receptionist	1	\$22,000	\$25,000	Annual
Bookkeeping Clerk	1	\$30,000	\$32,000	Annual
Cashier	75	\$6.00	\$11.06	Hour
Maintenance	15	\$7.00	\$9.43	Hour
Meter Collectors	2	\$8.00	\$10.35	Hour

EMPLOYEE BENEFITS

5. List the benefits provided to employees of the firm who will be assigned to the Garages and Lots. What is the annual cost of supplying those benefits to an employee of the firm? If the benefits vary with the title of the employee, list the minimum and the maximum benefits along with their annualized cost. Note any payment required of the employee to receive a benefit.

Sick Pay

After 90 days of employment, employees accrue one half (1/2) day of sick pay for every month they are with the company. The maximum number of days any one employee can accrue is six (6).

Holiday Pay

After 90 days of employment, employees are entitled to six paid holidays per year. The recognized holidays are New Years Day, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas. Part-Time employees are only entitled to the number of hours they normally work.



Vacation Pay

After one year of employment, employees receive one week of paid vacation time.

401K Program



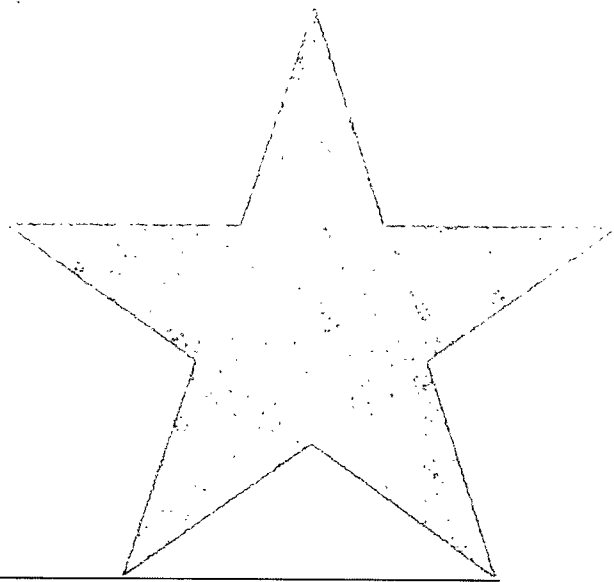
Sun Life Financial®

All employees who have completed one (1) year of employment and are over the age of 21 are entitled to participate in Republic Parking System's 401K Plan.

The employee is allowed to have up to 15% of their compensation (up to \$10,000) deferred from their pay and held in the plan. The amounts deferred are not subject to income tax until it is actually distributed to the employee. The deferred amount is subject to Social Security Taxes.

The employee has an option to invest in the following mutual funds:

- ALLIANCEBER INTNL VALUE FUND-R
- AMERICAN FUNDS GROWTH FUND-R2
- DWS EQUITY 500 INDEX FUND-S
- FRANKLIN SMALL CAP VALUE FUND-R
- FRANKLIN STRATEGIC INCOME FUND-R
- MFS BOND FUND-R2
- MFS CONSERVATIVE ALLOCATION-R2
- MFS MODERATE ALLOCATION FUND-R2
- MFS GROWTH ALLOCATION FUND-R2
- MFS AGGRESS GROWTH ALLOCATION-R2
- MFS LIFETIME RETIREMT INCOME-R2
- MFS LIFETIME 2010 FUND-R2
- MFS LIFETIME 2020 FUND-R2
- MFS LIFETIME 2030 FUND-R2
- MFS LIFETIME 2040 FUND-R2
- MFS CASH RESERVE FUND-R2
- DELAWARE VALUE FUND-R





EMPLOYEE HEALTH INSURANCE

Health Insurance

Republic Parking System provides qualified employees a Preferred Provider Organization (PPO) health insurance plan on a 60% - 40% split basis.

Benefits-at-a-Glance

	PPO	NON-PPO
Deductibles Per Year	Individual - \$200 Family - \$600	Individual - \$200 Family - \$600
Emergency Room Deductible	\$500 (waived for accidents or other conditions if admitted to hospital or if life threatening)	
Physician Services	HealthNet Physician 100% after \$20 Individual Copayment per office visit up to \$350, over \$350 and other PPO Physician Services 80%, after deductible.	60% after deductible
Plan Co-Payment Rate	80% after deductible	60% after deductible
Out-of-Pocket Maximum per year	Individual - \$51,000 Family - \$52,000	
Outpatient Surgery	80%, after deductible	60%, after deductible
Chiropractic Care	80%, after deductible to \$1,000 annual maximum	60%, after deductible to \$1,000 annual maximum
Mental / Nervous Benefit and Drug & Alcohol Abuse	Inpatient - maximum 30 days per year @ 80% after deductible Outpatient - maximum 50 visits per year @ 80%, after deductible	Inpatient - maximum 30 days per year @ 60% after deductible Outpatient - maximum 50 visits per year @ 60%, after deductible
Routine Care (Employee and Spouse only)	100%, after \$20 Individual co-payment to \$350 per year; over \$350, 80%, after deductible	No coverage provided
Routine Pediatric Care	Covered to age 6; under physician office visit co-pay	Covered to age 6, 60% after deductible
Prescription Drug Co- Payments	Retail (34 day supply) Generic - \$10; Preferred Brand - 30% of retail cost (max \$200); Innovator - 50% of retail cost; (35-90 day supply) Generic - \$20; Brand - 30% of retail cost (max \$200); Innovator 50% of retail cost; Mail Order (90 day supply) Generic - \$20; Brand - 20% of retail cost (max \$400); Innovator - 50% of retail cost.	



Legacy Employees

CHARLESTON, SC INSURANCE PREMIUM DEDUCTIONS BASED UPON 24 PAY PERIODS

EMPLOYEE	SS#	LOCATION	DATE	HEALTH	DENTAL	TOTAL
BROWN, HARVEY	248-35-2267	480	4/4/99	\$91.95	\$12.56	\$104.51
CAMPBELL, PAUL	086-68-4239	480	4/4/99	\$17.68	\$2.41	\$20.09
DAVIS, BETTY	215-68-6958	455	4/4/99	\$17.68		\$17.68
DAVIS, SHEILA	248-04-6742	485	10/4/99	\$56.32		\$56.32
ELLIS, CYNTHIA	248-98-8811	495	4/4/99	\$56.32		\$56.32
FABERS, SHARON	248-25-0792	443	10/4/99	\$17.68	\$2.41	\$20.09
FISHBURNE, MERITA	251-11-0636	440	4/4/99	\$56.32		\$56.32
GRANT, KEVIN	250-69-4979	495	10/4/98	\$17.68		\$17.68
HAMILTON, ANNETTE	247-11-0633	498	10/4/99	\$56.32	\$2.41	\$58.73
JACKSON, CYNTHIA	250-39-5998	487	4/4/99	\$17.68		\$17.68
KHALEDI, AMIR	009-50-9580	430	10/4/99	\$76.23		\$76.23
KING, KAREN	105-50-8344	430	4/4/99	\$91.95		\$91.95
POLITE, ANGELA	248-47-6212	480	4/5/99	\$56.32		\$56.32
PRUITT, KEVIN	248-51-0056	484	10/4/99	\$17.68		\$17.68
RIVERS, FREDRICKA	249-25-5091	465	10/4/99	\$56.32		\$56.32
SIMMONS, TERRY	247-11-2185	495	10/4/99	\$17.68		\$17.68
WILLIAMS, CHERYL	247-23-5860	482	10/4/99	\$17.68	\$2.41	\$20.09
WILLIAMS, WANDA	247-31-9529	498	4/4/99	\$17.68	\$2.41	\$20.09
TOTALS PER PAY PERIOD				\$757.17	\$24.61	\$781.78
PER MONTH				\$1,514.34	\$49.22	\$1,563.56
PER YEAR				\$18,172.08	\$590.64	\$18,762.72

TABLE OF CHARGES

REPUBLIC PLAN	CITY EQUIVALENT	MEDICAL	DENTAL
SINGLE	SINGLE	\$17.68	\$2.41
FAMILY COVERAGE	EMPLOYEE AND CHILD	\$56.32	\$7.68
FAMILY COVERAGE	EMPLOYEE AND SPOUSE	\$76.23	\$10.41
FAMILY COVERAGE	FAMILY	\$91.95	\$12.56

Prescription Coverage

Plan participants pay \$10.00 for generic prescriptions; 30% with a maximum of \$200.00 for brand name; and 50% with no maximum for innovator (generic is available but employee chooses brand name).

Waiting Period

The waiting period for all new employees to be covered by the health plan is 90 days.

Medical Leave of Absence

Our Company policy is compatible with the Family Medical Leave Act and allows 12 weeks.



Health Insurance Rates

\$500 deductible per person up to 3 with a maximum deductible of \$1,500 per family

Family: \$1,110.00 / month

Employee & Spouse: \$775-00 / month

Employee plus one: \$775-00 / month

Employee only: \$425.00 / month

Company pays 60% and Employee pays 40%.

INCENTIVE PROGRAMS

6. Briefly describe any incentive programs provided to your employees.

Where approved by the clients Republic Parking System has used the following incentive plans.

Employee of the Month Program

Each month the Project and General Managers will choose an employee who has demonstrated exceptional standards for the month. The standards measured will include Customer Service, Attendance, Cash Handling, Initiative and Client Feedback. The "Employee of the Month" will be awarded a \$50 bonus on the following pay cycle.

Event Incentive Program

Republic Parking System proposes to provide incentives to the event staff based on the successful running of each individual event night. The proposed \$15.00 per person event bonus will be paid to each event team member providing the all of the following criteria are met.

Meet Target Number of Event Cars

Each event will have a target number of cars based on historical information; the size of the event, the weather and/or any other factors that the garage management team decides is relevant. Meeting this target number will require the flaggers (traffic directors) to work hard to attract and direct cars to the entrance and it will motivate the event cashiers to quickly process the prepaid event transactions.

Proper "Cash Up"

Finally, the cash up process must be completed properly, in the allotted time without error. This will motivate the cashiers to close out the process by fully accounting for all the event tickets issued and collected and all cash receipts are counted and deposited.



Suggestion Awards Program

A suggestion which results in a minor modification to an existing policy or procedure, or results in a verifiable savings or profit improvement of at least \$100.00, but less than \$250.00, will receive a \$10.00 award.

A suggestion which creates a new policy or procedure, or results in a verifiable savings or profit improvement of at least \$250.00, but less than \$500.00, will receive an award of \$25.00.

A suggestion which results in verifiable savings or earnings of at least \$500.00, but less than \$750.00, will receive an award of \$50.00.

A suggestion which results in verifiable savings or earnings of at least \$750.00 but less than \$1,000.00, will receive an award of \$75.00.

A suggestion which results in a verifiable savings or earnings of \$1,000.00 or more will receive an award of \$100.00.

Job Performance Incentive

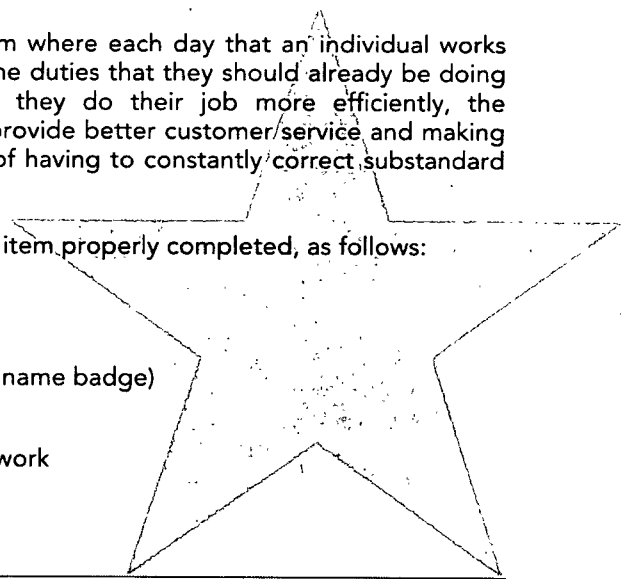
Over the years, Republic Parking System has worked with several incentive programs designed to increase performance in operations. Each of these programs has pluses and minuses. The ones that work the best are the ones that the employees like the most. This stands to reason, but is often forgotten in the design of these types of programs.

Employees do not like programs that are based on non-subjective criteria. They do not mind being graded on their performance, but they do not respond well to "popularity contests". A program is needed to reward those who produce excellent work. It must be simple to administer, non-discriminatory in grading, and pay often enough to attract and hold the attention of all employees.

Our program contains a positive grading system where each day that an individual works they can receive points, based on performing the duties that they should already be doing anyway. The point of doing this is that if they do their job more efficiently, the management can spend their time working to provide better customer service and making other improvements to the operation, instead of having to constantly correct substandard behavior.

For each working day, award one point for each item properly completed, as follows:

- Arriving for work on time
- Leaving for/returning from breaks on time
- Being in full and complete uniform (including name badge)
- Keeping work area clean and neat at all times
- Properly and accurately completing all paperwork
- Keeping Over/Short under \$2.00 per month.





There are no gray areas to any of these criteria. The clock tells us if they are on time for the first three items. If they are not in uniform the supervisor will point it out to them on the spot. The same would hold true for cleanliness. The paperwork, in their handwriting, would show whether or not it was accurate. Since these are all standard duties, each person should have no problem complying with these items - there are no second chances. The item is either correct (given a point) or it is not (not given a point).

The grades would be posted each day on a chart for all to see at any time. At the end of each pay period each person who has accumulated at least 90% of their possible points would receive an incentive of \$0.25 for each hour worked in the pay period. NOTE: This is not a raise, nor is it subjective to overtime. It is separate from those calculations.

By paying this incentive every pay period it affords each employee the opportunity to get back in the program right away if they have missed it one time. Everybody can have a bad spell from time to time. We are only human. If someone has a bad spell and misses an incentive, they only miss for one two week period. If they lost out for longer, they might lose all interest in the program. An incentive that does not keep the interest of the employees because it is too hard to earn, or too long in coming, becomes useless to everybody.

The grading is based on "possible points" so that it is fair to all, full time and part time alike. We must not lose sight of the fact that if we did not need part time people to do just as good a job, we would not hire them in the first place. If someone is scheduled to work 20 days, they could earn 120 points. To receive the incentive, they must earn at least 108 points. If someone is scheduled to work 5 days, they could earn 30 points. To receive the incentive, they must earn at least 27 points.

If every person received the maximum points needed every pay day, the program could cost as much as \$43.50 per full time employee per month. The benefit from accomplishing these tasks more efficiently is hard to quantify. However, so is the extra benefit derived from a work force that feels appreciated for doing their job correctly the first time.

TRAINING & DEVELOPMENT

7. Outline training and development programs for employees in the firm, particularly entry-level employees as well as promotional opportunities.

Ever since we were awarded the contract for the City of Charleston, South Carolina, Bob Mitchell, our Vice President of Human Resources, has provided customer service training to our employees and has conducted regular workshops for our managers to enhance their management skills. The customer service workshops provide positive examples of how we want our customers treated, and they serve to remind the participants (managers and hourly paid associates) on a regular basis the customer service standard we expect every day. A summary of the workshops is attached along with copies of the handouts and other related materials.

We also conducted a series of six "Welfare to Work" workshops in Charleston. Working with Anthony Moore, Program Manager Empowerment Programs, for the City of Charleston, workshops were conducted at the Public Library for individuals who wanted to



develop minimum marketable work skills. Local business representatives attended every workshop and explained the job requirements and opportunities in each respective business.

Through our training efforts, we have made our operation in the City of Charleston more professional, and we have provided a higher level of service as a result.

Charleston Training History

1998 – 2007

First Quarter, March 21 - 22, 2007

Give 'M The Pickle - Give 'M The Pickle is a fun, highly interactive customer service program built around a video narrated by Bob Farrell, founder of Farrell's Old Time Restaurants and Ice cream parlors. Pickles are symbols of special customer service items that can be delivered to our customers that will delight and surprise them. Participants are given pickle pins to wear on their uniforms and pickle cards that summarize the topics and principles taught in the workshop.

Second Quarter, May 30 - 31, 2007

Customer Service ALERT -- Teaches participants a system for dealing with difficult customers:

"A" is for Acknowledge, acknowledge the customer has a problem. "L" is for Listen, actively listen to the customer, let them vent. "E" is for Empathy, let them know you understand how they feel. "R" is for Resolve, resolve the problem or Refer it to a supervisor. "T" is for Thank, thank them and invite them back program includes a video, participant booklets and role playing exercises

Third Quarter, June 25 - 26; July 2 - 3; 9 - 10; 16 - 17; 23 - 24; 30 - 31 2007

Republic Parking System's FIRST STEPS, a welfare to work program - The program teaches the fundamental principles of how to prepare for a job interview by learning how to dress appropriately, how to complete an application for employment, how to answer questions asked by the interviewer, questions the applicant should ask, how to slant answers to questions to put the applicant in the best light, expectations of employers, contingency plans for transportation, day-care, positive attitude, how to respond to a reprimand, how to be a second miler, doing more than expected, what to do when you make a mistake, mastering the job you have, looking up the ladder at the next rung, preparing for the next promotion, asking the boss for advice on how to move up, being dependable, and helping out in a pinch.

Guest speakers from service industries such as Holiday Inn, Stein-mart, State Employment Security Office, Bank of America and others explained career opportunities and let participants shadow employees in real job situations



First Quarter, March 29 - 30, 2006

Johnny The Bagger - Johnny The Bagger is based on a true story about a young man who was born with down syndrome. He is slow, awkward and has difficulty speaking clearly. He attends a customer service workshop wherein the speaker explains that everyone can make a difference in customer service. Johnny doesn't think he can make a difference. He is just a "bagger." He finally decides to publish "Johnny's Thought for the Day" and places wise and happy sayings in the customer's bags. The customers love it, and business picks up as a result. Johnny gets the credit, and he inspires other employees to find ways to make a difference. Participants break into groups and discuss the numerous ways that they can make a difference, and each team presents their list to the other participants. They realize that they can make a difference in customer service.

Third Quarter, July 12 -13, 2006

What Do You Say - What Do You Say is a program that teaches participants how to respond politely and correctly to some of the comments and questions that difficult customers ask. The first video demonstrates difficult customers, their comments and/or questions, and how they should be handled.

The second video is a series of vignettes that establishes difficult customer situations. The video is stopped, and participants must come up with the appropriate response to the situation. The training gives them experience and feedback and they develop useful, professional skills in dealing with real sensitive situations. Handouts are provided for future reference and review, and response cards are used in role-playing situations. Participants become proficient in using skills and techniques that will make them more effective in dealing with difficult situations at work and in social situations.

Successful Terminations - Managers and supervisors participated in a three-hour workshop in which they learned the correct way to counsel and document unacceptable performance. The video, Successful Termination, was used as the base on which the structure of learning exercises was built. Using real life performance situations, participants used their newly learned skills to simulate real counseling and disciplinary situations. The progressive discipline policy was adhered to, and special emphasis was given to ensuring that the documentation served our legal requirements and that correct forms and witness were a part of the counseling process. Successful terminations occur when the manager or supervisor has taken the time and trouble to try to upgrade the performance of a subordinate by counseling the employee by pointing out what is expected, what the employee did not do well, what needs to happen to bring performance up to an acceptable level, and documentation that will prove the manager has been a responsible employer and attempted to help the employee improve his/her performance. This is fair treatment of the employee, gives the employee the opportunity to improve, and it protects the manager and the company from charges of discrimination and frivolous wrongful discharge suits.



Second Quarter, April 20 - 21, 2005

The Guest - Customer service in a restaurant, gas station, retail store and hotel demonstrate positive and negative examples of customer service. Participants are forced to answer questions relating to the scenarios depicted in the video. Participants learn the basics of good customer service by participating in role-playing sessions. They are taught:

- Welcoming Customers
- Using Customer's Names
- Taking Care of Customers' Needs
- Thanking Customers
- Inviting Customers Back

Fourth Quarter, October 26 - 27, 2005

If it Weren't For Customers - An out of touch bank president knows that his bank is losing depositors, and he attempts to increase revenues by implementing a customer service program called, "You Won't Believe Our Service." He is also counting on winning a big new account from a large business that is coming to town. The president of that business visits the bank and is given a red carpet tour. Meanwhile, his family members: wife, daughter and mother visit the bank and receive terrible customer service. The bank does not get the account because the family discusses the service at the dinner table. Group discussions about each scenario that occurs emphasizes the importance of good customer service, and each group presents the correct solutions to the problems.

The Practical Coach - Managers and supervisors participated in a four-hour workshop that taught them that coaching is all about inspiring, encouraging and challenging their team. It is as simple as letting their team know how they are doing. The program is a practical guide to understanding what kind of people are on your team and how, on a daily basis, to notice their work and best present them with both rewards and challenges.

Participants have to identify an important coach in their life, what the coach did to make a difference in their performance, the methods, skills and techniques the coach used to motivate them, and how they can apply those principles and skills to motivate and develop the talents in each

Second Quarter, April 21 - 22, 2004

A Gift From Mrs. Timm - A benefactor leaves a large fortune of cash to the first employee at the hospital, where he had worked, to provide good customer service to Mrs. Timm, the bearer of a large sack filled with money. Mrs. Timm approaches two nurses who are intensely engaged in conversation, and both ignore her. After waiting a few minutes, she approaches a receptionist who is on the telephone and who continues to ignore her. She continues her search for good customer service, and she is passed from employee to employee, and no one will take the time to listen to her and help her solve her problem. She finally decides to keep the money, and she returns home disappointed. Facilitated



discussion groups help the participants to apply the principles to the parking business and to their own jobs.

Fourth Quarter, October 20 - 21, 2004

Just Incredible - Two friends set out to run errands on a Saturday Morning. One has a positive attitude and thinks he can complete his errands in time to watch a football game. Both have to go to the bank, post office, doctor's office to get a prescription, hardware store and other destinations. The friend with the positive attitude runs into customer service representatives who are discourteous, and unprofessional. When he arrives back home, he is in a terrible mood; the ball game is half over, and his neighbor is in a great mood because he received such great customer service. He arrived home early and got to see the start of the ball game. Facilitated discussion groups respond to a number of customer service questions, and each group must do a presentation to the other participants. The customer service message is repeated throughout the presentation sessions.

Counseling Employees - Most managers and supervisors fail to counsel subordinates because they don't know how. They feel uncomfortable, so they put it off, do a poor job, or don't provide counseling at all. This workshop teaches managers to use a structured checklist so they will prepare for a productive session with a subordinate who needs guidance. The preparation portion of the workshop focuses on: Describing the Performance Concern, Stating what you expect, Exploring probable causes, and Developing tentative solutions. Conducting the counseling interview emphasizes: Describing the performance concern, Stating the expected standard, Explaining why the standard is important, Expressing your concern, Determining the cause of the situation, Asking for solutions, Discussing the solutions, and Agreeing on specific action for follow-up.

Role playing exercises are conducted using real employee case studies to develop the managers' skills and comfort level in conducting counseling sessions.

Second Quarter, April 2 - 3, 2003

Safety Lotto - Tantamount to good customer service is providing safe, clean, well-lit facilities for our customers and employees. In the video, Mario, an employee, takes a short cut through a high power electrical station that is clearly signed "Danger," and he is electrocuted. Cynthia attempts to repair a broken copier with the power on, and she ends up with her hand mangled. Cecil, a warehouse worker who left his hard hat on top of a merchandise rack talks a fork lift operator into hoisting him up to get his hat. Cecil falls and is seriously injured. Corrine, a pregnant office worker, climbs on a chair to adjust an air conditioning vent, and she falls and is injured. These scenarios and others are topics for group analysis. Each group has to define the cause of the injury and what should have happened to prevent the accidents.

Fourth Quarter, October 21 - 22, 2003

The Difficult Guest - Our employees frequently encounter difficult customers. They must be trained to deal with them in a professional manner. This video teaches that there are three



types of difficult customers: The Distracted Customer, The Disappointed Customer, and the Disruptive Customer. Participants are taught the L.A.S.T System to deal with difficult customers. The LAST system is:

- Listen; actively listen to the customer; let them vent
- Apologize; you are sorry that the customer is upset; not an admission of guilt.
- Solve; solve the problem or call a supervisor.
- Thank; thank the customer and invite him/her back.

Time Management - Managers and supervisors attended a four-hour seminar using materials supplied by the International Training Consultants, Inc. Using two videos, participants learned to use a time log to document how they spend their time. They were required to analyze their logs and determine where the time-wasters were and how they can eliminate them or at least control them. They learned how to prioritize tasks and projects. They then set some short term, achievable goals. Next, they learned how to set longer term objectives and how to structure a Management By Objectives program.

At the end of the workshop, participants mastered the concepts and theories of time management, set realistic short term goals, learned to establish task lists in priority order and work the list always focusing on the most important task or item on the list, and to use a sophisticated Management By Objectives program.

Second Quarter, April 17 - 18, 2002

If Looks Could Kill - A forty-five minute video is used to set the stage for customer service analysis after a series of group exercises has established who our customers are, what they expect in terms of service, and how to use body language to communicate more effectively with them. Participants are given a word to "act out" without speaking. The group has to guess the word the participant is projecting non-verbally. The story line of the video has a Scotland Yard detective investigating a suicide to determine what caused the distressed customer to take his own life. The investigator queries every customer service person the customer encountered in the twenty-four hours prior to jumping into the lake. The conclusion is that the customer service representatives are not criminals; they just failed to provide good customer service. The victim was not dead after all; he was an undercover plant that investigated customer service violations.

Third Quarter, September 18 - 19, 2002

The Cost of Intolerance - This poignant program teaches employees to:

- Recognize lost business opportunities as a result of intolerance toward diverse customers.
- Understand how attitudes, biases, and assumptions toward customers impact the level of service they receive.
- Recognize the behaviors associated with intolerance toward customers.
- Explore today's challenges when serving a diverse marketplace.
- To win with diverse customers by having a trained, workforce.



Group exercises help employees understand the problems and solutions in dealing with a diverse marketplace.

Motivating Employees - A workshop entitled Motivating Employees was conducted for managers and supervisors. The program covered such topics as: Foundational Theories of Motivation, The Leaders Attitude, The Employee's Needs, The Employee's Job, Building on the Foundation, Application of the Principles, The Power of Positive Feedback, Describe the Positive Situation in Detail, Tell Why the Positive Effort is Important, State That You Have Confidence in His or Her Ability, Ask What You Can Do, Emphasize Your Appreciation. This program takes the participants step by step through the motivation process using a Leader's Checklist to ensure every step is taken and in the correct sequence. Participants then role play to develop skills and confidence in using the techniques and skills they were taught in the workshop.

Second Quarter, April 4 - 5, 2001

The Safety Deck - OSHA requires employers to meet certain safety standards in thirteen identifiable areas. In our workshop we cover:

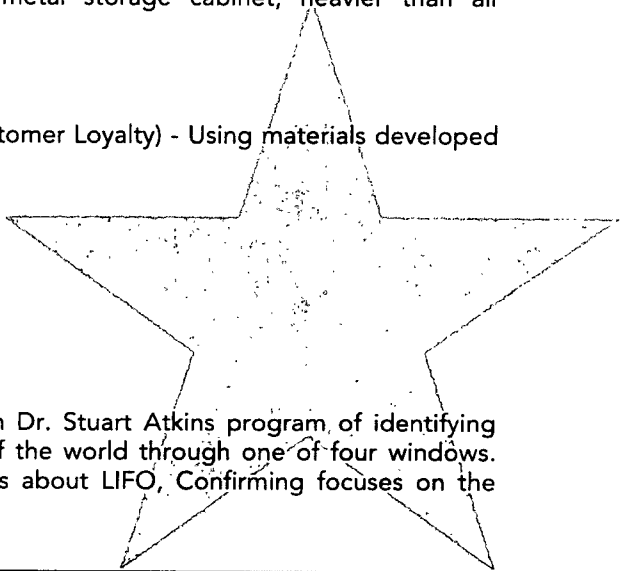
- Right to Know chemical conditions that are dangerous
- Airborne Pathogens, bacteria, viruses, exposure to people or conditions
- Blood borne pathogens, exposure to needles or body fluids of contaminated person
- Hepatitis A, food and or water contaminated with fecal matter, waiter, cook, contaminated, highly contagious, community dishes
- Hepatitis C, fatigue, quality of life, eventually liver cancer
- Material Safety Data Sheets, mandatory information that must be kept on file
- Asbestos Awareness, found in old buildings, around heat ducts, tile, insulation, between furnaces, etc.
- Flammable Materials, must be stored in metal storage cabinet, heavier than air properties make it extremely dangerous

Third Quarter, September 26 - 27, 2001

Outstanding Customer Service (The Key To Customer Loyalty) - Using materials developed by American Media, participants learn to:

- Build a Strong Customer Service Foundation
- Communicate Effectively With Customers
- Successfully Manage the Customer Encounter
- Handle Complaints and Conflicts
- Continuously Improve Customer Service

LIFO -Managers and supervisors participated in Dr. Stuart Atkins program of identifying four personality types based upon their view of the world through one of four windows. The Introduction provides answers to questions about LIFO, Confirming focuses on the





strengths of the four styles, Moderating provides a quantitative look at the four styles, Extending provides reactions to the least preferred styles, and Bridging demonstrates how to communicate with a personality style using that person's preferred method. Each participant completes a forced choice test that identifies his/her particular communication style.

First Quarter, March 22 - 23, 2000

A Gift From Mrs. Timm - A benefactor leaves a large fortune of cash to the first employee at the hospital, where he had worked, to provide good customer service to Mrs. Timm, the bearer of a large sack filled with money. Mrs. Timm approaches two nurses who are intensely engaged in conversation, and both ignore her. After waiting a few minutes, she approaches a receptionist who is on the telephone and who continues to ignore her. She continues her search for good customer service, and she is passed from employee to employee, and no one will take the time to listen to her and help her solve her problem. She finally decides to keep the money, and she returns home disappointed. Facilitated discussion groups help the participants to apply the principles to the parking business and to their own jobs.

Second Quarter, April 26 - 27, 2000

Just Incredible - Two friends set out to run errands on a Saturday Morning. One has a positive attitude and thinks he can complete his errands in time to watch a football game. Both have to go to the bank, post office, doctor's office to get a prescription, hardware store and other destinations. The friend with the positive attitude runs into customer service representatives who are discourteous, and unprofessional. When he arrives back home, he is in a terrible mood; the ball game is half over, and his neighbor is in a great mood because he received such great customer service. He arrived home early and got to see the start of the ball game. Facilitated discussion groups respond to a number of customer service questions, and each group must do a presentation to the other participants. The customer service message is repeated throughout the presentation sessions.

How to Connect in Business in 90 Seconds - Managers and supervisors participated in a four hour seminar that taught them how to connect with another person or group in 90 seconds. The program taught them to Choose an Attractive Attitude. Our attitude is given away by our body language. But the good news is that we can choose our attitude. They should leave a negative attitude at the door and wisely select an attitude that is welcoming, enthusiastic, curious or resourceful. Managers should send the right signals. What you do or don't do speaks louder than your words. Choose body language that shows you are open, honest and trustworthy. You should look people in the eye, point your heart toward them; synchronize your body posture and pace of your speech. Get them talking and keep them talking. Make a short statement, then ask open questions and give feedback with your whole being. It is amazing how much you can accomplish in just 90 seconds.



Second Quarter, April 14 - 15, 1999

If Looks Could Kill - A forty-five minute video is used to set the stage for customer service analysis after a series of group exercises has established who our customers are, what they expect in terms of service, and how to use body language to communicate more effectively with them. Participants are given a word to "act out" without speaking. The group has to guess the word the participant is projecting non-verbally. The story line of the video has a Scotland Yard detective investigating a suicide to determine what caused the distressed customer to take his own life. The investigator queries every customer service person the customer encountered in the twenty-four hours prior to jumping into the lake. The conclusion is that the customer service representatives are not criminals; they just failed to provide good customer service. The victim was not dead after all; he was an undercover plant that investigated customer service violations.

Fourth Quarter, October 20 - 21, 1999

The Cost of Intolerance - This poignant program teaches employees to:

- Recognize lost business opportunities as a result of intolerance toward diverse customers.
- Understand how attitudes, biases, and assumptions toward customers impact the level of service they receive.
- Recognize the behaviors associated with intolerance toward customers.
- Explore today's challenges when serving a diverse marketplace.
- To win with diverse customers by having a trained workforce.

Group exercises help employees understand the problems and solutions in dealing with a diverse marketplace.

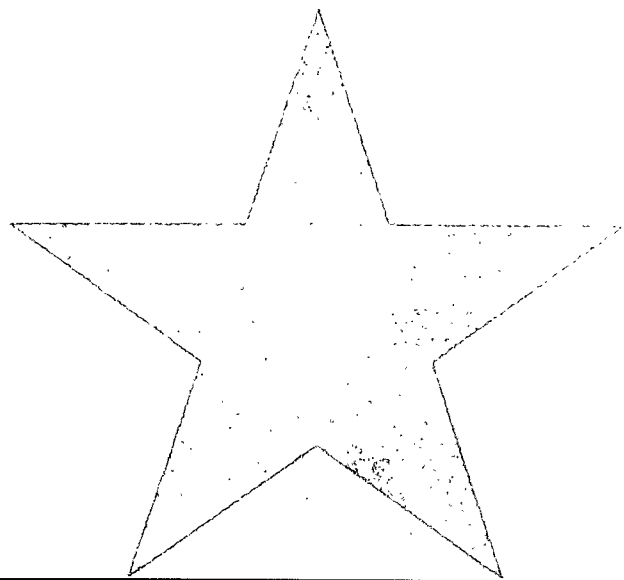
Motivating Employees - A workshop entitled Motivating Employees was conducted for managers and supervisors. The program covered such topics as: Foundational Theories of Motivation, The Leaders Attitude, The Employee's Needs, The Employee's Job, Building on the Foundation, Application of the Principles, The Power of Positive Feedback, Describe the Positive Situation in Detail, Tell Why the Positive Effort is Important, State That You Have Confidence in His or Her Ability, Ask What You Can Do, Emphasize Your Appreciation. This program takes the participants step by step through the motivation process using a Leader's Checklist to ensure every step is taken and in the correct sequence. Participants then role play to develop skills and confidence in using the techniques and skills they were taught in the workshop.

Fourth Quarter, December 16 - 17, 1998

If it Weren't For Customers - An out of touch bank president knows that his bank is losing depositors, and he attempts to increase revenues by implementing a customer service program called, "You Won't Believe Our Service." He is also counting on winning a big new account from a large business that is coming to town. The president of that business visits the bank and is given a red carpet tour. Meanwhile, his family members: wife, daughter and



mother visit the bank and receive terrible customer service. The bank does not get the account because the family discusses the service at the dinner table. Group discussions about each scenario that occurs emphasizes the importance of good customer service, and each group presents the correct solutions to the problems.

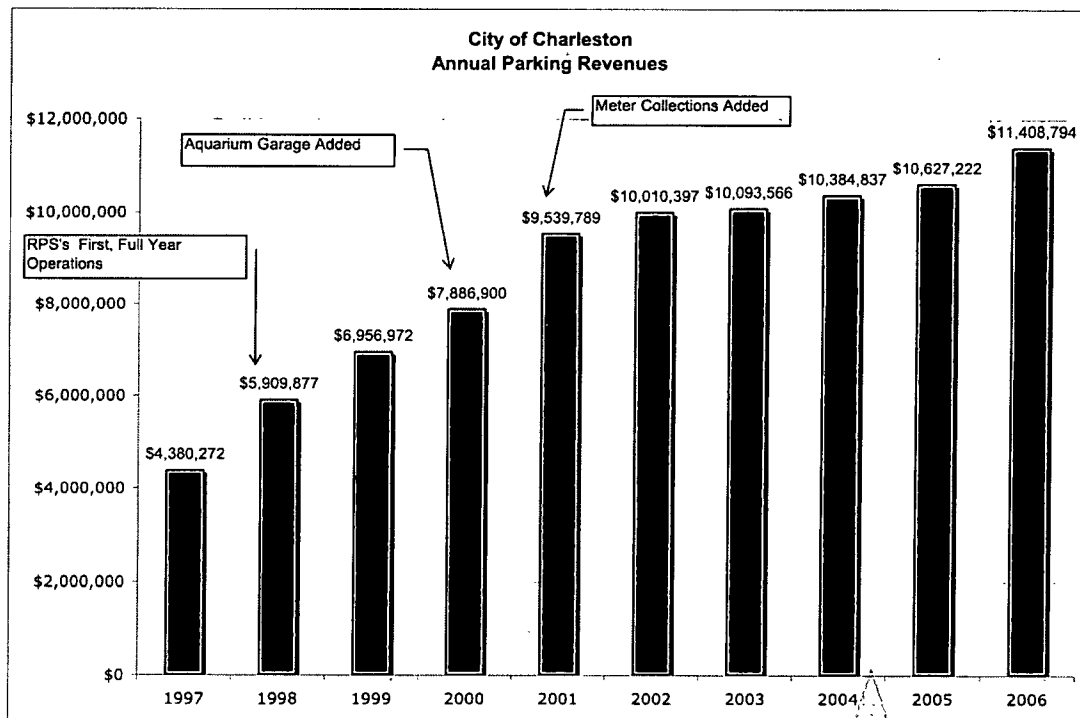




II. MANAGEMENT APPROACH AND ABILITY TO FULFILL

A. MANAGEMENT ISSUES

1. List any experience that would make the firm uniquely qualified to manage the garages and Lots on behalf of the City.



EVENT EXPERIENCE

Republic Parking System has extensive experience in operating parking facilities for all types of special events. Below are some examples of events at various facilities we currently manage:

City of Houston Theater District

The City of Houston Theatre District parking garages with over 3,500 parking spaces serve the downtown entertainment district, with theatres, operas, ballets performing nightly. The complex also includes a movie theater, restaurants and nightclubs. A large number of festivals, celebrations and parades also add to the event parking mix. We operate these garages on a pre-pay system issuing parking tickets through the ticket dispensers and



verifying revenue through ticket counts and lane counts. We have budgeted a total of 12,600 event cashing hours for the year.

George R. Brown Convention Center



The George R. Brown Convention Center (GRBCC) utilizes twelve surface parking lots with over 1,175 parking spaces. The GRBCC hosts a multitude of types of conventions during the year. These lots are also some of the primary parking lots for Minute Maid Park and the Houston Astros professional baseball team. We operate these lots on a pre-pay system issuing tickets by hand and verifying revenue through ticket counts and spot audits. We are in the process of installing lane counters on these lots and will use these counts to reconcile our revenue. We have budgeted a total of 9,200 event-cashiering hours for the year.

City of Charleston

The City of Charleston, South Carolina, hosts SPOLETO one of the world's best-known art festival. The two-week annual festival brings in over 500,000 visitors to the City who of course need parking. During the two weeks SPOLETO generates approximately \$75,000 in event parking revenue at \$3 per vehicle. We operate the parking facilities with a mix of pay on entrance and pay on exit.

In, 2000 the South Carolina Aquarium opened in Charleston. Republic Parking System was selected to manage the 1,093 space parking garage serving this tourist attraction. The South Carolina Aquarium attracts over 2,000,000 visitors annually.

World Arena

The World Arena in Colorado Springs, Colorado, is a 9,000 seat indoor arena. The primary event is hockey with a major college hockey team playing 30 games a year. Music concerts, the circus, wrestling and other events fill out the schedule. We operate the parking lots with hand issued tickets verifying revenue from ticket counts and spot audits.

CREDIT CARD ACCEPTANCE



Another possible addition to the revenue control system is a credit card payment option. The benefits of accepting credit card payments are that you drastically reduce "No Funds" transactions and that your contract parkers can make payment automatically and more importantly on time each month. Most "No Funds" transactions are from people who can afford to pay, but do not have enough cash in their wallet to cover their parking fee. As our society turns more and more to an electronic one, we see our clients and customers shift their preferences to credit and debit card payment systems.



The cons to a credit card payment system are the up-front capital costs for the necessary equipment to process the transactions and the processing fees that are normally four percent of the total transaction. We propose to evaluate this alternative further if we are selected as the operator.

COMMUNITY INVOLVEMENT

As a member of the team, Republic Parking System strives to work with city agencies in the communities where we do business. We pride ourselves on our accomplishments.

This involvement leads to higher levels of customer service as well as increased demand for the parking facilities we operate.

Chattanooga, TN



Republic Parking System has taken a leadership role in the Downtown Council to promote the increased utilization of parking in the Central Business District. Working with city planners, city government, developers, and business leaders, we have helped the City of Chattanooga revitalize the core area from a smoke stack environment into a tourist and entertainment center that attracts millions of visitors each year to the Tennessee Aquarium, the IMAX Theater, the Children's Discovery Museum, and the newly constructed downtown ballpark. Because of its compact, well-planned entertainment area, and user the friendly parking operations, Chattanooga was voted the third most pleasant city to enjoy on foot in the nation.

Republic Parking System developed a training program, First Steps, to help disadvantaged workers develop skills that enable them to obtain gainful employment and, in many cases, to move up to a supervisory position. Working with the Westside Community Development Corporation, the program was developed to help improve the lives of unemployed and underemployed persons in the Chattanooga area. Every step of employment is covered in work simulating situations from completing the employment application to preparing for a promotion. Fifty-seven percent of the participants who completed the program are still employed a year after graduating.

Rochester, MN

Working with the Public Works Division of the City of Rochester, Minnesota, Republic Parking System planned and administered the interviewing, hiring, orientation, and training of staff to operate the City's garages and surface lots. In addition, the client requested specific OSHA training to comply with the requirements for the City. Customer Service workshops were conducted and OSHA training was also provided in separate workshops. The City was invited to send employees from its workforce, in addition to the employees of Republic Parking System. The workshops were a tremendous success and the program is ongoing. Additional workshops have already been scheduled.

Republic Parking System in conjunction with our client is in the process of developing a comprehensive five-year business plan for the Rochester Parking System.



Bangor, ME

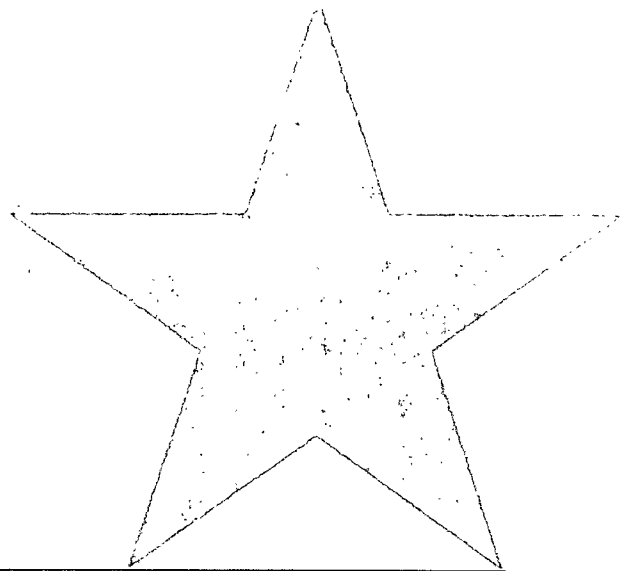


When Republic Parking System took over the parking operation for the City of Bangor, the garages and lots were under utilized, dirty, and the equipment was not functioning much of the time. Proper staffing, training, and maintenance quickly brought the parking operations up to Republic Parking System standards. Working with the Downtown Bangor Economic Development Group, Republic Parking System developed a marketing plan to bring more customers into the central business district. Today, there is 100% utilization, the parking equipment is functioning, revenue has increased, and customer service is at a level that generates praise letters and complimentary calls from patrons.

OPERATING COSTS STATEMENT OF ASSURANCE

2. Provide a statement of assurance that all operating costs, including personnel costs, charged to the City will reflect actual costs charged to Operator and will not be subject to mark-ups or multipliers.

All operating costs, including personnel costs charged to the City of Charleston will reflect actual costs charged by Republic Parking System and are not marked-up.

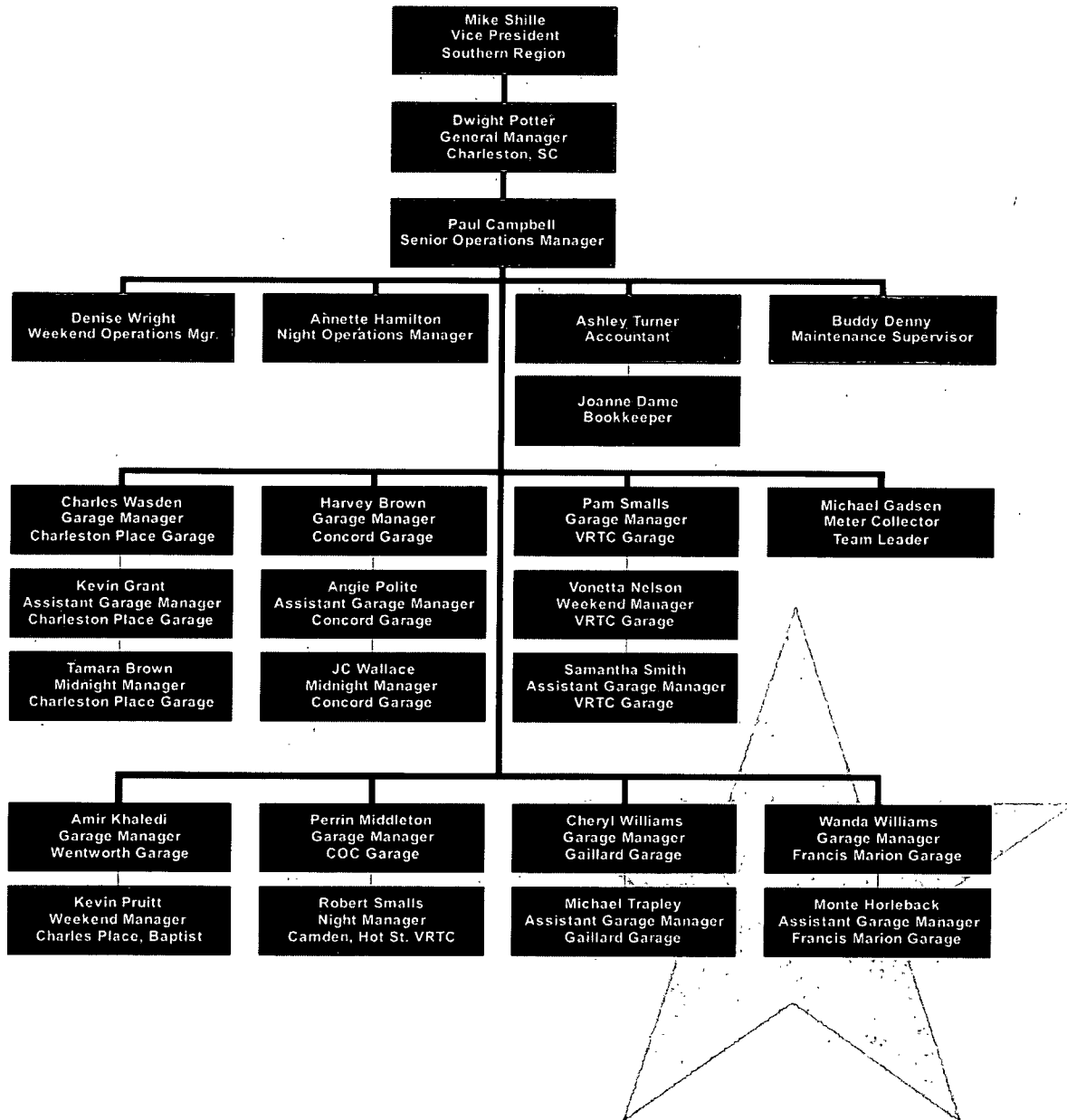




STAFFING PLAN

3. Provide a description of a recommended staffing plan for the Garages and Lots. The plan should be able to provide minimum service level for customer service, cleaning, maintenance, and management as outlined in this document. Include any intended enhancement to the minimum level of service, including operating and staffing special events and peak exit periods.

Local Management Team





The current local management team has been in place for nine years and has learned to work in conjunction with the City of Charleston under their guidelines and parameters. Republic Parking System prides itself on developing management strategies to fit each individual client rather than a "one size fits all" approach. The local management team works very closely with the City of Charleston's staff to address the needs and concerns of the City first rather than following a "nationalized approach" that does not address the uniqueness of the City of Charleston.

Dwight Potter, General Manager

Mr. Dwight Potter has over 14 years of experience in the parking management industry. He received his BA Degree in Sociology from Morehead State University and has been directly involved with various types of parking applications such as office, retail, hotel, valet, and medical facilities.

Mr. Potter's current responsibilities as General Manager, includes full profit and loss responsibility for 12 garages and 6 surface lots, as well as the collection of revenue for 1,750 parking meters through out the downtown area for the City of Charleston. He is directly responsible for 18 managers and over 150 full and part time employees in this operation.

Paul Campbell, Senior Operations Manager

Mr. Campbell has over 16 years of experience in the parking industry in Charleston, South Carolina. He received a BA Degree in Political Science from Morehouse College in Atlanta, Georgia. He began his parking career as a full time cashier with the City of Charleston and has worked his way up to the position of Senior Operations Manager with Republic Parking System.

Mr. Campbell has proven himself to be a very valuable asset to the local management team as he is responsible for the daily operations of all of our locations. He is responsible for the hiring and training of employees, monitoring staffing levels at all locations, protecting the integrity of our revenue control system, and insuring good customer service.

Annette Hamilton, Night Operations Manager

Mrs. Annette Hamilton has over 21 years of experience in the parking industry and all of it has been in Charleston, South Carolina. She began her parking career with the City of Charleston as a cashier and worked her way up to the Night Operations Manager for Republic Parking System. She received her degree in Office Management from Trident Technical College.

Mrs. Hamilton is responsible for all night operations from 3pm until midnight Monday through Friday. She is responsible for all staffing, training, and handling of customer complaints/concerns during her shift. Mrs. Hamilton's Special Event experience has proven invaluable as she coordinates all activities at Gaillard Auditorium and the Riverdogs baseball games.



Denise Wright, Weekend Operations Manager

Ms. Denise Wright has over 12 years in the parking industry as she began her parking career as a part time employee for the City of Charleston. She started her career with Republic Parking System as a midnight cashier and worked her way up to her current position of Weekend Operations Manager.

Ms. Wright is responsible for all weekend operations from Friday night through Monday morning. She is responsible for 10 managers and over 60 full and part time employees that work on the weekend shifts. She has demonstrated that through hard work and a sincere willingness to learn that her opportunities with Republic Parking System have no limit.

Event Procedures

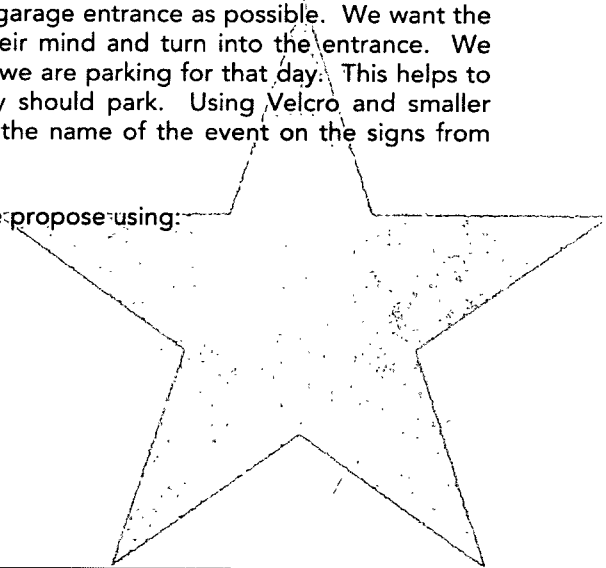
Proper procedures and planning of special event parking is crucial to its success. Parking facilities like the City of Charleston are heavily used with a large base of weekday contract parkers. An event that occurs during a weeknight must be well planned out in order to avoid traffic flow problems and the proper allocation of spaces for event parkers versus contract parkers. Republic Parking System knows the ingress and egress patterns of its normal parker base which is a huge advantage in order to properly manage a special event.

The other issue with special event parking is attracting parkers to your garages. Often event goers are not familiar with the downtown area and the available parking. The keys to attracting special event parkers are clearly stated language on large visible signage and the use of street flaggers.

Event Signage

Event signage must tell the customer two things: 1) That it is all right to park in this garage, and 2) How much it will cost them to park. We typically use A-Frame style signs for events with a large face, 3 feet by 2 feet. We position the A-Frames on the sidewalk in a place where they can be seen as far in advance of the garage entrance as possible. We want the customer to have plenty of time to make up their mind and turn into the entrance. We have also found it effective to state which event we are parking for that day. This helps to avoid any customer confusion as to where they should park. Using Velcro and smaller plastic signs we can easily change the rate and the name of the event on the signs from event to event.

Below is an example of an A-Frame event sign we propose using:





Traffic Directors

In addition to a good signage plan, the proper use of traffic directors (flaggers) is a key to attracting event parkers to your parking facilities. By positioning flaggers wearing bright orange vests at the entrance you can pull a drivers attention to your parking facility. We call them flaggers because they typically use orange hand held flags to wave customers into the entrance. At night we would provide the flaggers with orange tipped flashlights. In some ways event parking is similar to moving cattle, once you get the first car turning into your parking facility the others will follow.

Event Procedures

Typically, events are handled on a pre-pay basis. Customers are asked to pay at the entrance instead of the exit. This is done for two reasons, reduced payroll and traffic flow. By pre-collecting your cashiers only have to stay on duty until the event has begun, and not sit around until the event ends and all of the vehicles have exited the facility. For a normal event you will save approximately six hours of payroll per facility by pre-collecting versus collecting at the exit. The other important reason to pre-collect is the traffic flow at the exit when the event ends. Typically, all of your parkers will be exiting during a thirty to forty-five minute timeframe after an event ends. If you try to collect at the exit for 500 vehicles with two exit lanes at a half a minute transaction time per customer, you will have customers waiting up to an hour to exit.

Our cashiers will be stationed at the entrance gates where they will collect the parking fee and issue a parking ticket to the customer. A two part parking ticket will be used with one portion placed on the customer's dashboard serving as a receipt and used by our supervisors to visually audit the facility. The second part of the ticket is kept by the cashier for reconciliation with the cash collected. The cashiers will be audited by their ticket and deposit reconciled against their lane counts.

The size of an event is the primary factor in determining the proper staffing for an event. Using the projected number of vehicles and the number of entrance and exit lanes of the facility we will determine our cashier staffing. Our goal is to prevent a long back-up at the



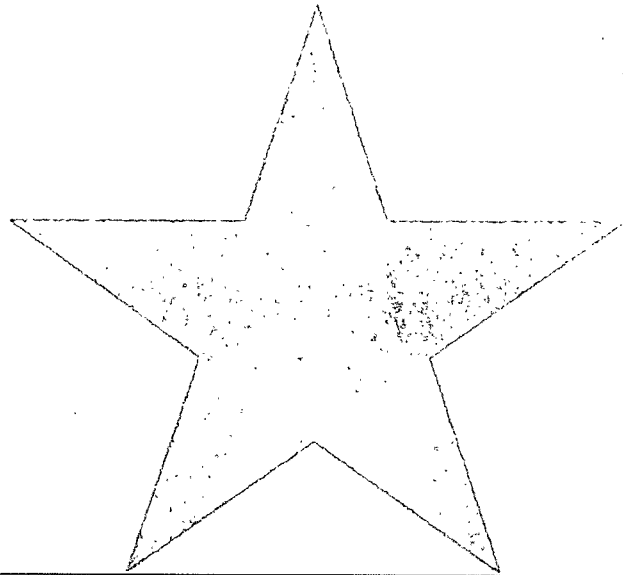
entrances. For large events we may need to put two cashiers in each entrance lane to speed up the entrance process. Managers and supervisors will be on duty to ensure a smooth process and the proper use of our staff.

Event Staffing

In addition to the number of vehicles parked, you must also consider the nature of the event, or more specifically is it a "set load" or a "continual load" event. A set load event is one where the vehicles will enter in a small window of time and exit in a small window of time. A typical set load event is a sporting event, where there is a definite start and stop time. A continual load event is one where vehicles enter and exit over the course of the event. A good example of a continual load event would be a trade show or convention.

Event Logs

One of Republic Parking System's proven management tools has been to create a history log for the larger facilities that we manage. We ask our General Manager's to record the staffing, vehicle counts, revenue and operational issues from that developed during repetitive events. This information, along with recommended changes, will be used to plan to the same event in the following years. The log will become a part of the facility Operating Plan so that in the event of management turnover we will continue to benefit from our operating experience.





B. CUSTOMER SERVICE PLAN

1. Briefly describe your company's customer service philosophy.

The caliber of service Republic Parking System provides customers depends on three things: (1) the quality of the training materials we have developed which empathize the value we place on serving our customers, (2) the on-going commitment we place on sharing this information with our employees on a regular basis, and (3) our follow up and reward style management to ensure these commitments to customer service continue.

Republic Parking System is dedicated to customer service from the corporate level down to the line employee position. Our commitment is reflected in the creation of "Republic University" the structured training program established to provide our staff with the most comprehensive training in the industry.

This section provides information on the types of employee training materials and programs Republic Parking System has developed to enhance the professionalism of our staff. These programs are administered and monitored by our Corporate Human Resources Department.

To further the level of customer service we provide, Republic Parking System makes it a priority to get involved with local agencies and groups promoting customer service in the markets we do business.

CUSTOMER SERVICE – EMPLOYEE PROGRAMS

Republic Parking System's commitment to customer service sets us apart in the parking industry. We go above and beyond what is normally expected by our clients. Every employee goes through a structured, comprehensive orientation program in which customer service is emphasized. The emphasis is reinforced in the training manuals which all stress the importance of customer service and provide structured exercises and written tests to ensure the employees know how to conduct routine transactions in a friendly, courteous and professional manner.

We reinforce good customer service by awarding "Customer Service Pens" and "Certificates of Appreciation" to those employees who receive customer compliment letters or telephone calls. Awards are made during customer service meeting to provide plaudits and accolades to deserving employees and to serve as an incentive to motivate others who are present during the award ceremony.

Should you elect to participate in our customer service workshop program, the Vice President of Human Resources will personally come at least twice per year to conduct Customer Service Workshops for the employees of your parking operation to ensure the level of customer service we deliver exceeds that of your current operation.

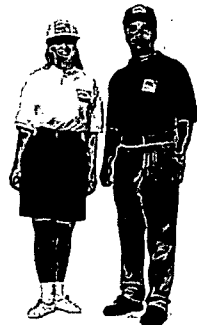
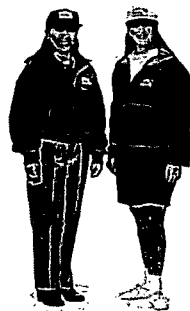


Customer Service Training

Customer Service Training is implemented in a number of ways. It is an important part of the cashier, maintenance, and valet training manuals and videotapes. Customer Service Training is an invisible thread that runs through all the training materials and programs. It is emphasized in the orientation, and reiterated in the customer service workshop where participants are required to solve customer service case studies using communication skills. Incident reporting enables management to monitor and evaluate customer service and to reward outstanding performance.

Uniform Policy

Each employee is issued; at the start of his or her employ a client approved uniform. The standard employee uniform is illustrated in the Uniform Brochure.



Republic Parking System requires the employee to purchase and wear his or her own brown or black shoes.

Employees must sign a uniform agreement at the time of issue that lists the quantity of uniforms issued the type and the sizes. If an employee were to leave our employ they would be required to return all pieces of the uniform they were issued.



At the time of issue Republic Parking System employees are instructed how to care for uniforms in a manner that is necessary to maintain the high standards that Republic Parking System and our clients expect.

CUSTOMER COMMUNICATION

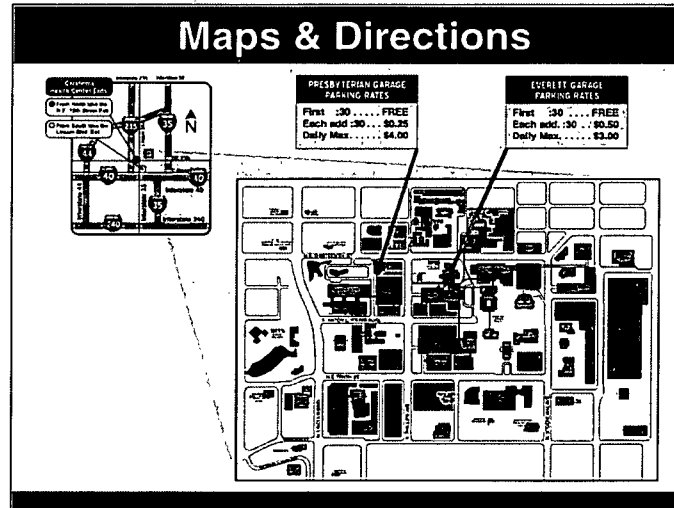
Republic Parking System can make a variety of customer amenity programs available to the parking customers. The purpose of these programs is to provide the customer with more than just a parking space but an experience and we want that experience to be as enjoyable and hassle free as possible. The programs can be divided into two categories, informational programs and amenity programs, both of which are aimed at enhancing the parking experience.

The following programs are designed to improve communications to our clients, customers and managers to ensure full utilization of the parking facilities and to enhance customer knowledge of the parking options available.

Information Brochure

With your approval, Republic Parking System can prepare a comprehensive pamphlet, which details the policies and procedures of the parking facility. This pamphlet will include useful information such as the facility's location (for visitors), hours of operation, parking rates, validation procedures, billing information and amenity programs. The pamphlet would be distributed to new employees, visitors, building tenants, and vendors to help acclimate them to the parking facility.

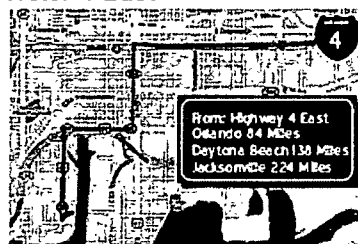
Parking Information Monthly Parking Monthly Parking is available on a first come, first served basis. Currently there is a waiting list for monthly permit parking. Please call our business office to get placed on the list. We will call you when a space becomes available. Daily Parking Daily Parking is available any time there is an empty space on the lot or garage close to your destination. Just put in, take a ticket and pay the cashier when you exit. Be sure to ask your doctor's office or department you are visiting if they validate. Physicians Parking Physicians parking is provided throughout the campus to ensure a speedy arrival for all Doctors. Please observe all Physicians parking signs! Validation Parking Want to pay for your patient's parking? Please contact our office for information regarding validated parking.	 Republic Parking System OU MEDICAL CENTER 1200 Everett Drive Oklahoma City, OK 73104	 Parking Information 



Directional Cards

Directions to nearby major highways and landmarks can be pre-printed on an index card sized handout. We would give these to customers who are in need of directions as they exit the facility. An example of a directional card is shown on the next page.

From 4 East



Take exit #1 to (SR-585) 22nd St/21st St - go 0.2 mi
Continue on E 14th Ave - go 0.1 mi
Turn left at N 21st St - go 0.7 mi
Turn right at Adams Dr - go 0.6 mi
Turn left at Channelside Dr - go 0.7 mi

From 275 North (75 North)



At exit 45A, turn RIGHT onto Ramp - go 0.6 mi
Take Jefferson St / Downtown-East
Keep left to stay on Ramp - go 0.1 mi
Turn left (East) from E Scott St - go 0.4 mi
Turn right at N Nebraska Ave - go 0.4 mi
Turn left at E John F Kennedy Blvd - go 0.3 mi
Turn right at Channelside Dr - go 0.4 mi

Newsletter

Each quarter we could distribute an informational newsletter, regarding the garage and the surrounding areas, to all our parkers. Monthly parkers would have one included with their invoice and our daily parkers would be handed one as they enter the facility. The purpose of the newsletter is to inform the customers of any issues, enhancements, changes, etc... in the garage as well as any events and/or road closures in the surrounding areas. In other facilities this has been used as a marketing tool by business in the area.



Surveys

An important part of Republic Parking System's customer service focus is the use of Parking Customer Surveys. The surveys provide us with two types of information: (1) What are the services and dimensions of parking that are most important to them, and (2) How do they rate our performance in those important areas. This methodology helps Republic Parking System to concentrate its management efforts to emphasize excellence in those areas that are most important to our customers and clients.

Republic Parking System could provide stamped post card surveys to customers as they are exiting the parking ramps. These surveys give the customer a chance to evaluate the service, which in turn then helps us improve the quality of the service.

Just recently at MD Anderson Cancer Center, we gave away Republic Parking pens to all who participated and completed our surveys.

Tell Us How We are Doing!	
We care about the service we provide for you. Please let us know how we are doing in providing you the best possible parking experience.	
Date: _____	Our Performance
Time: _____	
Location: _____	
☐ Ease of Finding a Space	☐ ☐ ☐ ☐ ☐
☐ Cleanliness of Facility	☐ ☐ ☐ ☐ ☐
☐ Courtesy of Staff	☐ ☐ ☐ ☐ ☐
☐ Sense of Safety	☐ ☐ ☐ ☐ ☐
☐ Value for Money	☐ ☐ ☐ ☐ ☐
☐ Operation of Equipment	☐ ☐ ☐ ☐ ☐
☐ Speed and Ease of Exiting	☐ ☐ ☐ ☐ ☐
☐ Operation of Elevators	☐ ☐ ☐ ☐ ☐
☐ Adequacy of Lighting	☐ ☐ ☐ ☐ ☐
☐ Overall Impressions	☐ ☐ ☐ ☐ ☐
Are you a contract parking customer?	Yes ☐ No ☐
Do you work for a tenant of the building?	Yes ☐ No ☐
Comments: _____	

Name and Address: _____	

THANK YOU FOR YOUR PARTICIPATION, AND THANK YOU FOR YOUR BUSINESS!	

STAMP

Republic Parking System
Suite 2000 Republic Centre
Chattanooga, TN 37450

Custom Website

With Client approval and the associated budget Republic Parking System proposes to produce a custom web site that will provide a valuable tool for the management and operation of the facility.

The objectives for the site are to...

- provide a comprehensive directory of Charleston parking options.
- provide electronic communication medium for our customers.
- provide parking related information to customers.
- enhance the marketing process for vacant parking spaces.
- provide an additional method to attract and retain employees.

We would also propose to link the parking webpage with that of your website.



Vehicle Problem Policy

Republic Parking System can offer the patrons of the parking facility assistance with minor vehicle problems that arise during normal working hours. Several services Republic Parking can provide are:

Dead Battery Jump Starts

Republic Parking System recommends the purchase of a "Jump-N-Carry" that would be stored at the Garage and available for patrons needing a jump start. This is a portable unit that is extremely versatile and easy to use.

Inflating Flat Tires

Republic Parking System recommends the purchase of a portable air compressor to help patrons with flat tires. Air compressors are easy to use and usually will fill a car tire in minutes. Normally, Republic Parking System prohibits employees from changing tires due to liability reasons.

Locksmith Service

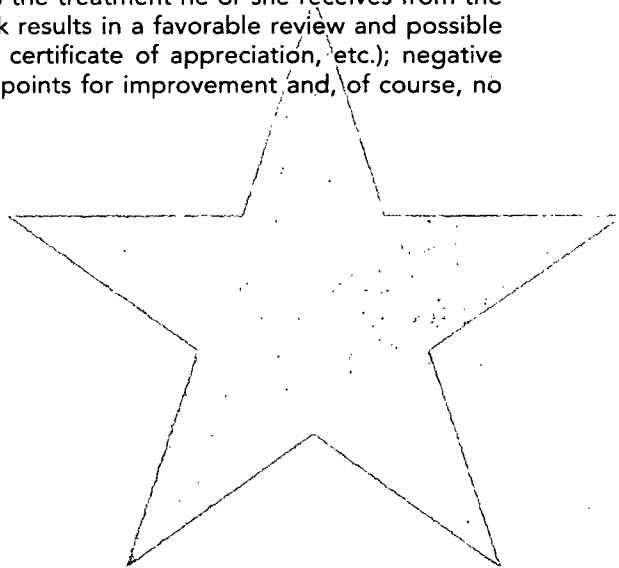
Republic Parking System will assist customers in contacting a locksmith should the need arise.

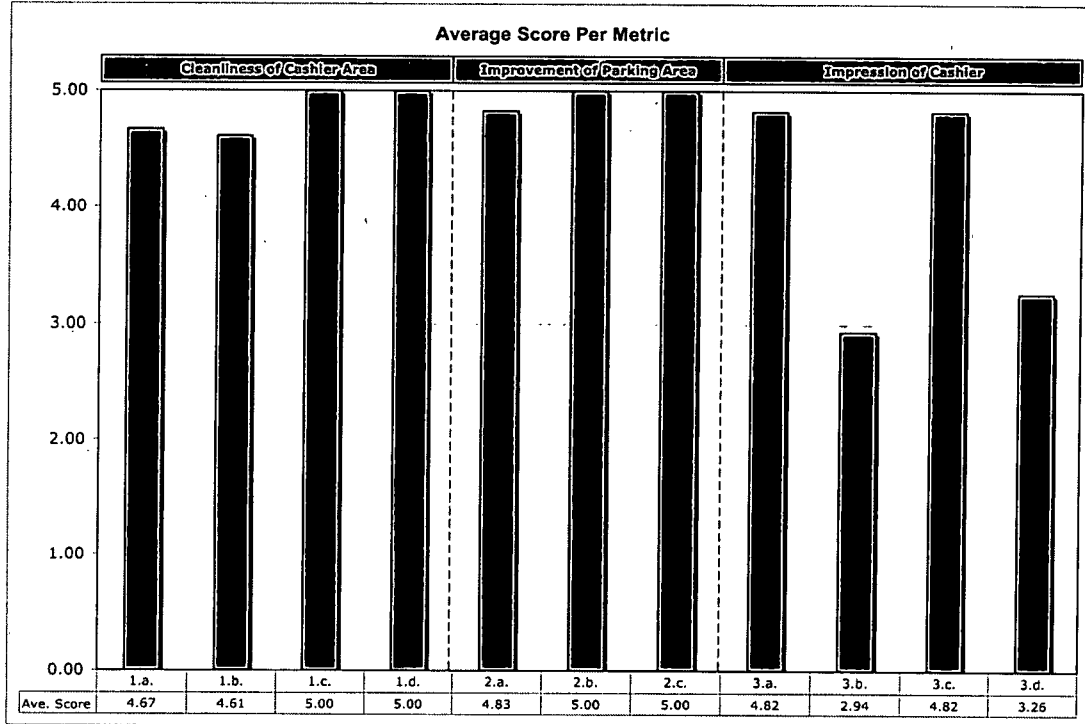
CUSTOMER COMPLAINT RESOLUTION

2. Describe your customer complaint resolution plan.

Mystery Parker Program

In the "Mystery Parker" Program an outside company is utilized to hire an individual to pose as a normal patron and anonymously rates the treatment he or she receives from the Republic Parking System staff. Positive feedback results in a favorable review and possible reward (dinner for two, theater or film tickets, certificate of appreciation, etc.); negative feedback leads to constructive criticism, target points for improvement and, of course, no reward.





Every quarter Republic Parking System has a mystery parker secretly park at all of our locations in Charleston. They are given a list of specific metrics to grade and questions to ask. With the score of "1" being the worst and "5" being the best. The summary of the results over the past few years are listed above. A more detailed summary is included as an exhibit to this proposal.

**REPUBLIC PARKING SYSTEM
MYSTERY PARKER REPORT**

NAME OF MYSTERY PARKER: _____

Telephone No. of Mystery Parker: _____ Employee Name: _____

Location: _____ Date: _____

Time/Date In: _____ Time/Date Out: _____ Ticket No: _____

1. How clean is the cashier area? (1 = very bad 5 = very good)

a. Booth neat and clean	1	2	3	4	5
b. Windows clean	1	2	3	4	5
c. Safe area neat and clean	1	2	3	4	5
d. 8' x 4' lot and surrounding area	1	2	3	4	5

Comments: _____

2. Impression of cashier

a. Cleanliness of cashier	1	2	3	4	5
b. Friendly greeting, smile	1	2	3	4	5
c. Well presented	1	2	3	4	5
d. Pleasant attitude	1	2	3	4	5
e. Employee seems to be happy	Yes	No			

Comments: _____

3. Transaction process

a. Did the employee tell you the fee for the day you stayed?	Yes	No
b. Did the employee count the change out loud?	Yes	No
c. Did the employee ask the fee the company?	Yes	No
d. Did the employee offer you a receipt?	Yes	No

Comments: _____

4. Special situation

a. Ask the cashier if customer parking is available in the garage, how much is a per month, and how you would go about arranging to contract park.

b. Ask the cashier if they have other security services.

Cashier response to special situation: _____

Mystery Parker Signature: _____

RPS Manager Signature: _____

(Use reverse side for additional comments)

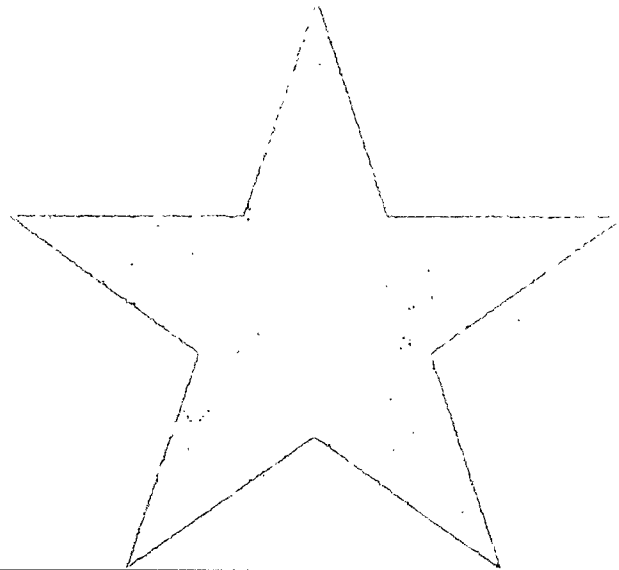
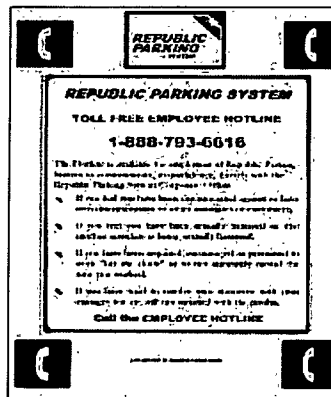


Customer Relations Policy

We strive to provide the highest levels of customer service and satisfaction. All customer inquiries will be answered in a professional, timely manner.

Employee Hotline

A dedicated phone line is established and answered 24 hours per day. Signs are mounted at facilities so answered will know that if they do not receive satisfaction with the service they can call any time to make comments or suggestions. This number will also be included in our marketing information.





Republic Parking System uses a documented procedure to monitor, track and respond to all customer inquiries. Inquiries range from requests for information, compliments, suggestions and on occasion, complaints. These inquiries are logged on a Parking Comment Form and copied to the City Manager. When the Manager responds to the inquiry he is required to inform the City Manager of the action he took and the results. If a customer is still not satisfied the City Manager will get involved directly to give the customer satisfaction.

DATE: _____

Revised: June 9, 2004



Damage Claim Processing

3. Provide a description of your firm's procedure for handling damage claims at the City.

In all of the self-park garages and lots in the City of Charleston, Republic Parking System and the City are not responsible for customers damage claims unless the incident involves negligence on our part. However, in the case where we do pay the claim the following procedures are followed.

In the event of an automobile accident, we never indicate to a customer that we are responsible. The location Manager is notified, who will notify the General Manager who will notify the City of Charleston's contact and Republic Parking System's Regional Manager.

When an accident is reported the Automobile Damage Report is filled out. This report must be fully completed. A hand written diagram to show what happened should also be included. Also it is imperative that pictures are taken of the area and or damage. The customer should be required to obtain three estimates and submit them to the General Manager. The estimates and the report then go to our Risk Management Department for further processing. Then it is passed on to our insurance carrier. If the claim is approved for payment, a letter and a check will be written to the owner of the vehicle. The check has a disclaimer on the reverse side stating that by cashing the check it releases Republic Parking System and the City of Charleston from any further action.

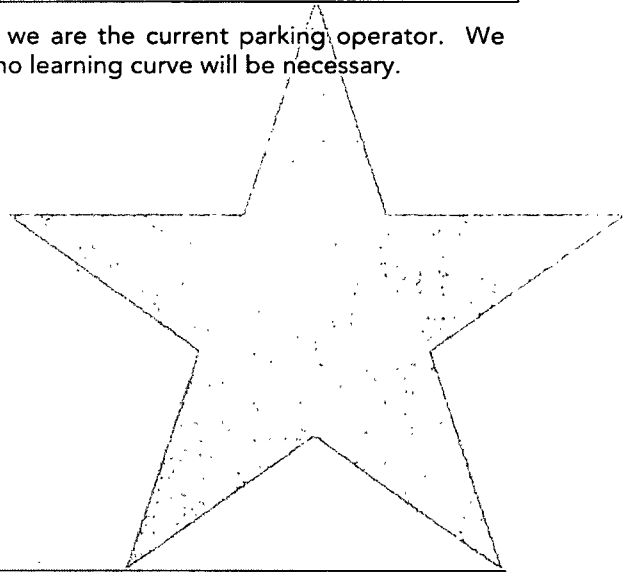
C. IMPLEMENTATION PLAN

1. State how quickly after contract award you can begin work.

Republic Parking System is able to start immediately as we are the current parking management company for the City of Charleston.

2. Provide an outline of start-up procedures and the anticipated schedule for the start-up.

An implementation plan will not be needed as we are the current parking operator. We have the current staff and resources in place so no learning curve will be necessary.





III. FINANCIAL

A. CURRENT FINANCIAL STATEMENTS

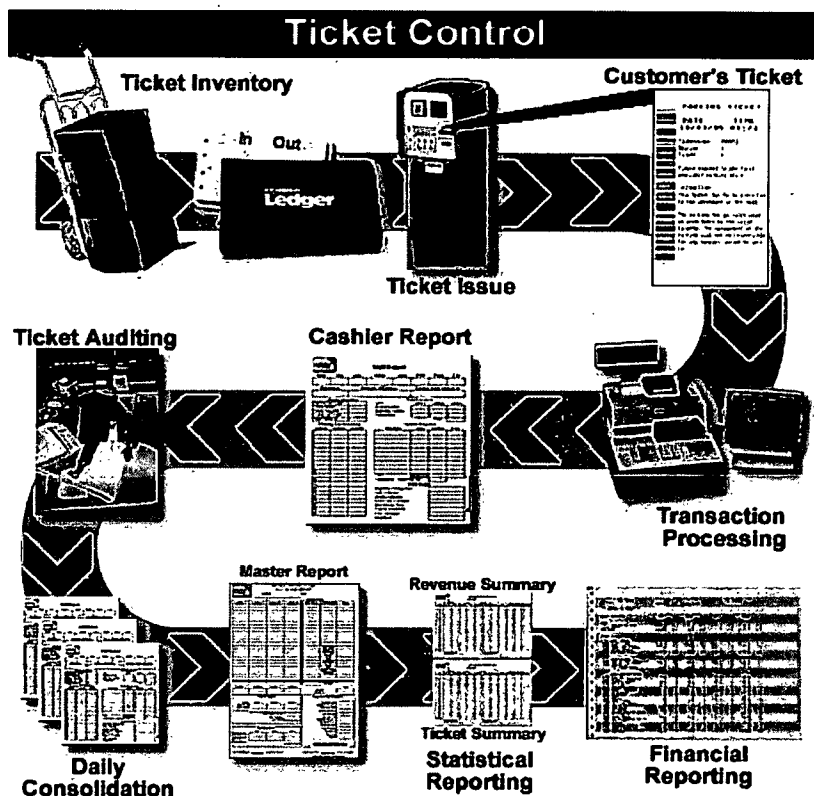
1. Audited financial statements for the last three (3) years.

Republic Parking System has included a copy of our audited financial statements as an exhibit to this proposal.

B. TICKET SECURITY AND REVENUE CONTROL

1. Provide an outline of the Operator's procedures for ensuring security of parking tickets.

Ticket Security / Control



The basis for a sound revenue control system is the control of the inventory item. In parking, our inventory is the parking space but the control item is the ticket. All tickets are tracked from the time they are ordered. All tickets are entered "in" to the Ticket Inventory directly from the invoice. When a machine needs tickets the next group of sequentially



numbered tickets are distributed to the machine and noted as "out" in the Ticket Inventory Log.

Tickets are always issued in sequential order. The date and time of issue is imprinted on each ticket at the time the ticket is issued either by a ticket machine or manually stamped on a time clock by the cashier. The customer takes the ticket as proof of his entry time and as acceptance of the terms and conditions under which the customer parks the vehicle.

When the customer wishes to exit the facility, he presents the ticket to the cashier for processing. The time of entry is keyed into the computer, or read by a bar code reader. The Fee Computer calculates the correct fee and displays the fee on the customer fee display. The cashier will then collect the fee and place the money in the cash drawer.

All transactions must be processed through the fee computer or stamped on the time clock. Every ticket issued must be collected and accounted for on the cashier shift report. Every shift report is audited to ensure all tickets are returned and all revenue is deposited to the bank.

The audited shift reports are consolidated on the daily master report and reported to the corporate office. Revenue information and statistical ticket information is tracked for management purposes.

The corporate accounting department compiles and distributes the financial statements based on the source documents (master reports, bank accounts etc.) to support the field offices.

The financial statements are then used to compile the client reports.

Equipment

In a properly controlled parking facility every parking ticket is processed through the fee computer so that a permanent paper trail is created. All transactions are audited and reconciled with non-resettable vehicle counters, which should be appropriately positioned in the exit lane.

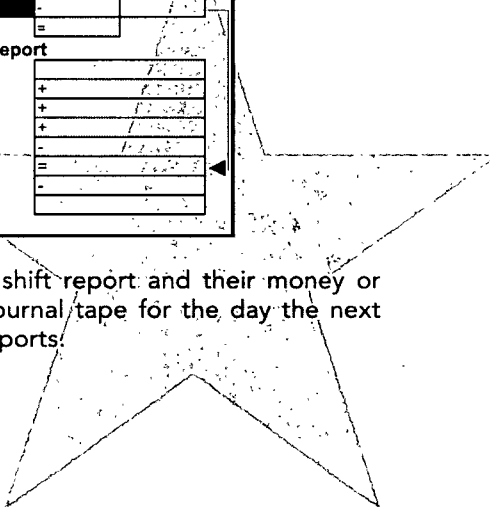
Republic Parking System's auditing system requires that non-resettable counters be installed that will count all vehicles, monthly contract or daily. These counters are wired into the "exit loop" (electronic wire buried in the concrete that detects vehicles). A second non-resettable counter should be wired into the exit card reader in the cashier lane. The second counter will account for all monthly contract customers who exit through the cashier lane. After subtracting the "contract" exits from the number of "total" exits, the manager can immediately identify the number of daily exits. The bookkeeper then cross-references this with the number of daily transactions processed through the fee computer and any variances are noted and dealt with immediately. Using this method the manager can identify if any "slippage" is taking place.

The manager incorporates this process into his/her daily auditing procedures to be assured all the daily revenue is collected and accounted for.



The cashier must complete the Cashier Shift Report after the completion of each shift. In locations with fee computers the fee computer compiles the Cashier Shift Report. In locations without a fee computer the cashier must manually complete the Cashier Shift Report.

Other relevant information is also noted and used at the source document.



shift report and their money or journal tape for the day the next ports.

Page 83 of 113



The manager, ticket auditor, another cashier, or bookkeeper will then audit these documents. Under no circumstances is the cashier to audit their own tickets. **Separation of duties must be maintained at all times.**

TICKET AUDIT

The means used to verify the business activity that took place during the shift is the ticket audit. Every cashier should be audited every day for accuracy to ensure that all the policies and procedures set up for a location are being followed.

Particular attention should be paid to the proper completion of lost ticket forms, full signatures on employee tickets, correct entry and exit times and dates, and reconciling exit counter information to daily tickets. Any deviation from established procedures for that location are to be recorded on the Cashier Audit Report form. The audit is then discussed with the cashier so that the cashier is praised for properly following procedures or counseled on the correct procedure so no repetition shall occur.

 Cashier Audit Report					
Cashier Name _____			Date _____		
Auditor's Name _____			Date of Audit _____		
Total Tickets to Account For _____					
Total Tickets Accounted For _____					
Number of Missing Tickets _____					
Ticket Number	Time In	Time Out	Amount Charged	Correct Charge	Comments

Auditor Comments: _____

Cashier Comments: _____

Action Taken: _____

Cashier Signature: _____ Date: _____

Supervisor Signature: _____ Date: _____

Attach a copy of the Cashier Shift Report

The ticket audit verifies the following:

- All vehicles are issued a ticket
- All tickets are issued in sequential order



- All tickets are returned and accounted for
- The appropriate fee is collected for each ticket
- All tickets are categorized correctly based on length of stay and thus the fee collected
- All cash is accounted for
- Cash is deposited to the bank (or safe as the case may be)

Audit Procedures

Cashier Audits need not to be done in secret. We want the cashier to know they are being audited and that we care about their performance. Our first duty is to prevent them from being tempted to steal. When we do not audit we are sending a signal that we do not care. Cashiers interpret this as if it is OK to steal. We must send the message that theft and sub-standard work will not be tolerated. If this message is properly conveyed, the manager will not have to spend an inordinate amount of time trying to catch people stealing.

To perform an audit the ticket auditor will need the following source documents:

The Daily Total Tape (Z tape or X tape)

The Shift Event Log

The Journal Tape (every transaction)

Cashier Audit Form

All Tickets with Shift Reports

Deposit Slips or Money Counting Slips

Verify Vehicle Counters

The non-resettable counters reviewed in the ticket control section are the main mechanisms used to verify that all vehicles are issued a ticket. The counters should be connected to the exit loops so that every vehicle that exits the facility will be counted. If the exit count does not match the number of transactions performed and tickets returned then further investigation is necessary (see audit control graphic in the Equipment Section).

Tickets Issued = Transient Exits = Tickets Returned = Cash Transactions

(Total Exits –
Card Exits)

(Tickets Issued –
Vehicles in Inventory)

If you suspect vehicles are exiting in some other fashion than the exit lane (i.e. driving out the entrance lane, emergency lane or hopping the curb) then you must take action to force all vehicles to exit in the proper area. Tell tale signs of this happening are excessive lost tickets while the transaction counter and vehicle counters are very close.

Review Journal Tape

Has the cashier had unusual activity that shows up on the tape? Has the cashier been "playing" with the fee computer? These activities will show up on the journal tape as repeated log off and log on activity. Look for log off and log on times to match their shift



times. Look for strange transactions that were started, but changed before the transaction was complete. IBM fee computers have a separate report for this activity.

Review Cleared Tickets (IBM Fee Computer Only)

Cleared Tickets are transactions that have been started only to be terminated before the transaction was complete. Excessive clears may mean the cashier is changing the transaction after they have received the cash from the customer.

Review All Tickets

If all tickets are issued in sequence it only stands to reason that the times must not be out of order. If ticket 001 was issued at 10:00am then ticket 002 must have been issued after 10:00 am. Review the sequence of the times to make sure this is true.

Likewise review the transaction times for the same time sequence. For this reason all tickets should be kept in transaction order so the ticket auditor can quickly determine all tickets have been correctly processed. Short-timing tickets is a favorite trick used to cheat the system and/or steal money.

Review Exception and No Charge Tickets

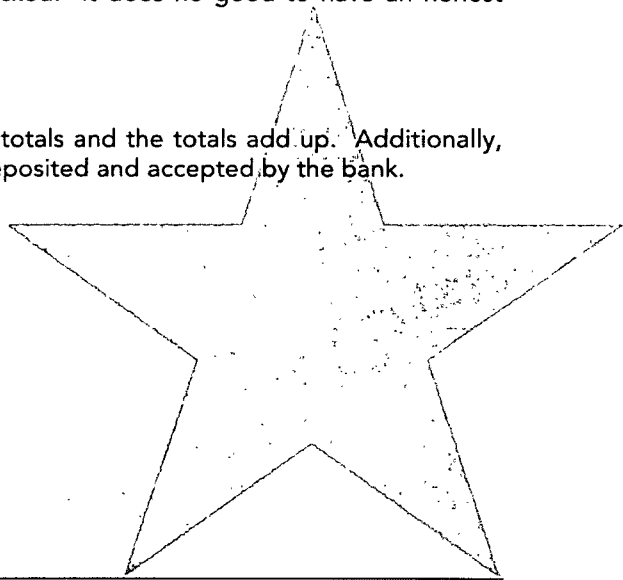
All transactions that are other than normal and all no charge tickets must be verified as valid. Excessive exception tickets and unauthorized no charge tickets are grounds for immediate disciplinary action. If you are not checking these transactions there is no telling what your cashiers are doing.

Review Rate Calculation

In cases where a machine-readable fee computer system is not used (most locations) the accuracy of the fee collected must also be checked. It does no good to have an honest cashier if they can not calculate time!

Proof Math

Check that all the tickets are returned, the sub totals and the totals add up. Additionally, check the revenue declared has actually been deposited and accepted by the bank.







DAILY REVENUE SUMMARY

The Daily Summary Report summarizes the revenues by location and is faxed, transmitted or sent to Corporate Accounting and the City Manager.



Daily Summary Report

Date: _____

City: _____

Location	Transient		Monthly		Validation		Event	Other	Total Revenue	Over/Short	Deposit
	Revenue	Cars	Revenue	Cars	Revenue	Cars					
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											
20											
21											
22											
23											
24											
25											
26											
27											
28											
29											
30											
31											
Total											

The daily summary report is reconciled every day to the validated deposit slips from the bank. Every discrepancy should be tied back to the daily master report for the location involved.

The information from the daily summary report is then "fed" to the respective revenue summary and ticket summary sheets for each location.

The daily summary information is entered into the AS400 G/L System as the source document for all revenue accounts.



MONTHLY REVENUE SUMMARY

A Revenue Summary is essential for the daily tracking and recording of all the revenues associated with a specific location. The Revenue Summary is sub-divided into the categories unique to the location. The Revenue Summary is the summary document that ties back to the Revenue section of the monthly Income Statement.



Revenue Summary

Month: _____

Location: _____

Date	Transient		Monthly		Validation		Event	Other	Total Revenue	Over/Short	Deposit
	Revenue	Cars	Revenue	Cars	Revenue	Cars					
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
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30											
31											
Total											

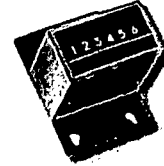
Current Month
Average Ticket Price _____
Average Revenue per Space _____

Previous Month
Average Ticket Price _____
Average Revenue per Space _____



NON-RESETTABLE COUNTERS / TRANSACTION CONTROL

Republic Parking System's auditing system requires that non-resettable counters be installed in every lane at every garage that will count all vehicles entering and exiting the facilities whether they be tenant or visitor. These counters are wired into the "entry and exit loop" (electronic wire buried in concrete that detects vehicles). Additional non-resettable counters are wired into the exit card readers in the cashier lane that tabulates the number of contract parkers exiting the facility.

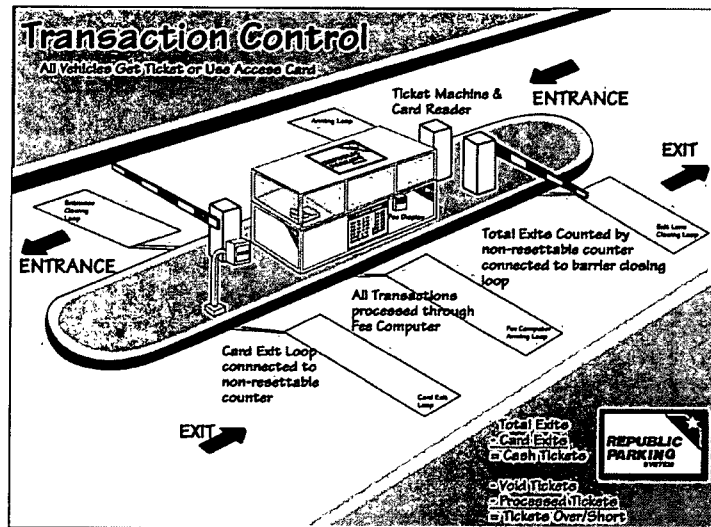


After subtracting the "contract" exits from the number of "total" exits, the manager can immediately identify the number of visitor exits. He/she then cross-references this with the number of daily transactions processed through the fee computer noting and researching any variances. Using this method, Republic's managers are able to detect if any slippage is taking place.

Example

Total Exits	639
Contract Exits	<u>427</u>
Daily Exits	212

A conceptual drawing of the recommended equipment configuration for a cashied lane follows:



This configuration provides for an almost unbeatable revenue control system. Interestingly a non-resettable counter costs only \$150, yet most parking facilities do not have them installed. For minimal cost each of your garage exit lanes can be outfitted with these non-resettable counters.

Utilization Analysis

A prelude to effectively enhancing revenues is a thorough analysis of the facility to determine the exact trends and activity levels associated with each customer group. The



Utilization Analysis will reveal an abundance of information such as oversell factors pertaining to the non-reserved contract customers at the facility, optimal reserved parking rates, numerous daily parking trends including the exact number of daily customers in the facility by the hour and the maximum number of spaces occupied by daily customers at the facility's peak hour of activity. Upon completion of the analysis, a utilization table similar to the one below will be developed for the facility from which recommendations can be made to regarding the most profitable utilization of parking spaces.

Example Utilization Table

ABC FACILITY

Total Spaces	2,700
Less Reserved Spaces	(444)
Less Handicap	(45)
Less Visitor Spaces Occupied at Peak	(164)
Spaces Available for Non-Reserved Customers	2,047
Non-Reserved Parking Cards Sold	(1,802)
Non-Reserved Diversity Factor 68%	(1,225)
Empty Spaces at Peak	822

In our example at the peak operating hour, there are 822 unoccupied or empty spaces which can be sold to contract or daily customers. In the above example the number of reserved, handicap and visitor spaces have been subtracted from the total to reflect the fact that these spaces are exclusive spaces and cannot be used by non-reserved contract customers. In addition, we have determined how many of the non-reserved contract customers in the example facility scenario (1,802 cardholders) are actually occupying a space in the facility at the peak hour (1,225 cars). Although 1,802 parking cards have been sold to non-reserved contract customers, and the parking revenues collected, only 1,225 non-reserved contract customers are in the facility at any one time. This scenario is known as the diversity factor of parking and results from non-reserved contract customers either being on vacation, sick leave, business travel, attending a local meeting or visiting a doctor or dentist. In the above example, for every 100 non-reserved contract parking contracts sold only 68 customers will use the facility at any peak time. Because every facility's diversity factor is different, each facility needs to be individually analyzed to determine its specific diversity factor.

Once the diversity factor is known, Republic Parking System can sell additional non-reserved parking contracts and daily parking to increase the level of revenue received. When a facility is being operated efficiently, the number of non-reserved parking contracts sold will exceed the actual number of parking spaces available for non-reserved customers. In the above example, 1,802, allowing for increased parking revenues and realizing that the diversity factor will ensure adequate parking availability at peak times.

The second piece of the puzzle is the maximum number of daily customers in the facility at the peak time of activity. In the above example, it can be determined that at any one time, to totally satisfy daily customer demand, 164 parking spaces need to be available. The report also shows that the peak activity time for daily customers in the facility is 10:45 - 11:00.



By breaking the report into 15-minute segments, the report can be very specific in providing information useful in managing parking space availability.

The above report supports the claim of 164 daily customers being in the facility at peak, as reflected in the Utilization Analysis.

Space Use Report / Parking Mix Report

Space use is very important when evaluating rate changes, large contract parking accounts, selling additional contract parking etc.

Most parking revenue control systems allows accurate tracking of vehicles both contract parkers and transient. From the reports we can pick out the maximum number of daily cars and contract cars at the peak period.

You must always analyze space usage based on peak periods so you do not oversell the facility. By comparing the total number of cars for the day with the maximum number of spaces used, you can determine the maximum spaces you need to set aside for the each category of Parker.

The report details the total number of contract parkers and the diversity related to the contract-parking portion of the revenue mix. Additionally, the report measures the total number of transient parkers, the number of spaces they require at peak and the number of turns of each space.

The Parking Mix Report can provide you with valuable information in managing your location and to help the client lease additional space. Proper use of the Space Use Report will provide the necessary information to compete this report.

PARKING MIX / USAGE ANALYSIS									
Day		Transient (Visitor) Parking			Monthly Parking			Parking Mix	
		Spaces at			Spaces at			Empty at Peak	
		Tickets Issued	Peak	Turns	Card Issued	Peak	Diversity	Visitor	Contract
1					801	0.00	RDV(0)	0.00%	0.00%
2					801	0.00	RDV(0)	0.00%	0.00%
3	39	26	1.46		801	411	0.68	5.03%	78.50%
4	30	24	1.25		801	417	0.68	4.64%	80.68%
5	130	100	1.30		801	417	0.68	19.54%	82.68%
6	28	19	1.47		801	414	0.68	3.68%	80.08%
7	24	24	1.00		801	290	0.65	4.64%	78.64%
8					801	0.00	RDV(0)	0.00%	0.00%
9					801	0.00	RDV(0)	0.00%	0.00%
10	38	23	1.65		801	397	0.66	4.45%	76.79%
11	49	24	2.04		801	428	0.71	4.64%	82.40%
12	49	24	2.04		801	418	0.68	4.64%	80.72%
13	36	28	1.28		801	400	0.67	6.42%	77.78%
14	29	22	1.34		801	383	0.65	4.20%	76.02%
15					801	0.00	RDV(0)	0.00%	0.00%
16					801	0.00	RDV(0)	0.00%	0.00%
17	39	31	1.26		801	401	0.67	6.00%	77.50%
18	11	12	1.59		801	401	0.67	6.19%	77.50%
19	56	29	1.93		801	388	0.66	6.81%	77.18%
20	40	29	1.69		801	411	0.68	4.84%	79.50%
21	36	24	1.50		801	411	0.68	4.84%	79.50%
22					801	0.00	RDV(0)	0.00%	0.00%
23	24	26	1.31		801	418	0.68	0.00%	0.00%
24	32	25	1.28		801	428	0.71	5.03%	80.68%
25	39	29	1.34		801	410	0.68	5.81%	79.30%
26	49	34	1.44		801	388	0.66	6.81%	77.18%
27	34	26	1.31		801	397	0.66	6.00%	77.50%
28					801	0.00	RDV(0)	0.00%	0.00%
29					801	0.00	RDV(0)	0.00%	0.00%
30					801	0.00	RDV(0)	0.00%	0.00%
31	33	28	1.27		801	427	0.71	5.03%	80.68%
Average	41	30	1.45		801	408	0.68	3.87%	83.54%
Peak	130	100	1.30		801	427	0.71	19.54%	82.68%

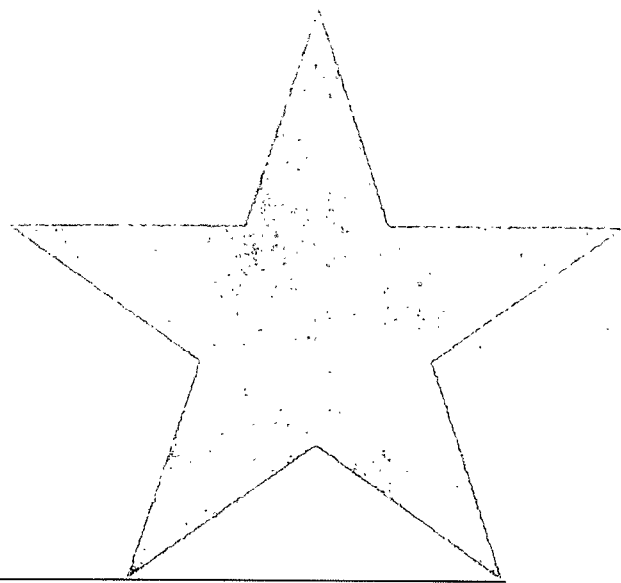
Spaces at Peak = Maximum number of spaces occupied at any one time (Set number from Nonreservable Count Report)
Diversity = The percent of parkers who are in the facility at the peak period of the day
Overall = The number of cards that can be sold per space available



DAILY REPORT

2. Provide an example of a Daily Report and Revenue Control Report that includes the following:
 - i. The number of tickets issued during the specified period
 - ii. Number and extended value of tickets collected
 - iii. Value and source of other revenue including deposits
 - iv. Total gross revenue
 - v. Any validations
 - vi. Reconciliation of tickets and revenue
 - vii. Any counter readings as requested by the City
 - viii. Number of unaccounted tickets
 - ix. Number of voided tickets with reasons for voiding
 - x. Fee computer totals including amount of all transactions
 - xi. Amount deposited to the bank
 - xii. Signatures of Preparer and Manager

The various reports are detailed on the following pages.





Cashier Shift Report

DAILY CASHIER SHIFT REPORT		
LOCATION: _____		DATE: _____
NUMBER	TYPE	VALUE
	\$0.75	
	\$1.50	
	\$2.00	
	\$2.50	
	\$3.00	
	\$3.50	
	\$4.50	
	\$5.50	
	\$6.50	
	\$7.50	
	\$8.50	
	\$9.50	
	\$10.00	
	\$20.00	
	\$30.00	
	\$40.00	
	OTHER CASH	
	STAMPS()	
	FREE	
	VOIDS	
	L BAD CARD	
	X CITY EMPL.	
	C CHURCH	
	P PASS	
	E RPS EMPL.	
	H HANDICAP	
	D DELIVERY	
	V VALET	
	Z SPECIAL	
	TOTALS	
DEPOSIT		
OVER/SHORT		
ERRORS/COMMENTS:		
START PASS # _____		
STOP PASS # _____		
TOTAL		
CASHIER: _____		
SHIFT: _____		
SPITTER #1 SPITTER #2		
STOP TICKET		
START TICKET		
TOTAL ISSUED		
EXIT COUNTERS		
TOTAL EXITS MONTHLY EXITS		
STOP		
START		
TOTAL		
TRANSIENT/VARIANCE EXIT COUNTS		
TOTAL EXITS: _____		
(-) MONTHLY EXITS: _____		
(=) TRANSIENT EXITS: _____		
(-) TOTAL TICKETS (-)VOIDS: _____		
(=) VARIANCE: _____		
STARTING CASH: _____		
OTHER CASH TICKETS		
NUMBER VALUE TOTAL		
TOTALS		
DEPOSITS		
AMOUNT BAG NUMBER		



MONTHLY REPORT

Republic Parking System will submit the monthly operating report on the 20th of each month to the property manager. The report will consist of the following reports.

COVER LETTER

A cover letter will be inserted in the management report that will provide a summary explanation of all issues related to the parking facility. This letter will act as the formal communication mechanism to the client. All things of significance that happened during the month should be documented here.

PROFIT & LOSS STATEMENTS

The Income Statement is a summary of the Profit and Loss for each location in the company for each month. The monthly statement is compared to the same period from the previous year and/or the approved budget.

GL250 USER PH		GENERAL LEDGER		DATE: 11/07/05		PAGE: 29	
MSID: 03TRN00M		INCOME STATEMENT		TIME: 20:59:27			
		PER LOT					
		PERIOD 10 - 10/31/05					
129	URBAN						
59	EST *MS						
		--THIS YEAR CURRENT--		--LAST YEAR CURRENT--		--THIS YEAR Y-T-D----	
		AMOUNT	%	AMOUNT	%	AMOUNT	%



A/P DISTRIBUTION JOURNAL

The Accounts Payable Distribution Report provides the detail for the revenues and expenses that are summarized on the Income Statement. Each revenue and expense category is broken down by Company and Lot Number.

CLIPS	USER: FR	GENERAL LEDGER	DATE: 11/07/05	PAGE: 5	
	WTD: PETERSON	LAMARCO REGIONAL EXPENSE	THRU: 11/01/05		
		PERIOD 10 - 10/31/05			
129		CREAM			
51					
ACCOUNT NUMBER	VENDOR NAME	TRANSACTION SOURCE	TRANSACTION DATE	CHECK NUMBER	EXPENSE AMOUNT
ACCOUNT DESC.	SECURITY				
61600	SAFETY & SECURITY SERVICES INC	AP	10/11/05	0155705	1,524.17
61605	SAFETY & SECURITY SERVICES INC	AP	10/24/05	0156851	1,649.81
ACCOUNT 61605 TOTAL SECURITY					3,173.98 **
ACCOUNT DESC.	OFFICE SUPPLIES				
61620	SHIRTS ELECTION & MESSING, INC.	AP	10/28/05	0156881	33.28
61625	STANLEY CREDIT PLAN	AP	10/21/05	0155514	90.15
61625	SAW'S CLUB/CLUB	AP	10/29/05	0156822	11.38
ACCOUNT 61625 TOTAL OFFICE SUPPLIES					134.81 **
ACCOUNT DESC.	EMPLOYEE INVENTORIES				
61625	SAW'S CLUB/CLUB	AP	10/29/05	0156822	8.66
ACCOUNT 61625 TOTAL EMPLOYEE INVENTORIES					8.66 **
ACCOUNT DESC.	OFFICE SUPPLIES LEASE/SUPPLIES				
61625	CITYVIEW VENDOR SERVICES, INC.	AP	10/21/05	0156601	268.00
61625	SHIRTS BUSINESS SYSTEMS, INC.	AP	10/11/05	0156600	75.29
61625	SHIRTS BUSINESS SYSTEMS, INC.	AP	10/21/05	0156602	75.29
ACCOUNT 61625 TOTAL OFFICE SUPPLIES LEASE/SUPPLIES					418.58 **
ACCOUNT DESC.	GENERAL SERVICES				
61630	HOME DEPOT CREDIT SERVICES	AP	10/11/05	0156600	86.23
61630	HOME DEPOT CREDIT SERVICES	AP	10/11/05	0156600	86.05
61630	SHIRTS-BILLING CO.	AP	10/29/05	0156614	34.42
61630	SHIRTS-BILLING CO.	AP	10/29/05	0156614	24.83
61630	SHIRTS-BILLING CO.	AP	10/11/05	0155218	12.00
61630	SHIRTS-BILLING CO.	AP	10/21/05	0156611	290.70
61630	HOME DEPOT CREDIT SERVICES	AP	10/11/05	0156600	86.65
61630	SHIRTS-BILLING CO.	AP	10/11/05	0156600	32.00
61630	SHIRTS-BILLING CO.	AP	10/11/05	0156600	114.75
61630	SAW'S CLUB/CLUB	AP	10/29/05	0156822	3.00
61630	HOME DEPOT CREDIT SERVICES	AP	10/11/05	0156600	86.10
61630	SHIRTS-BILLING CO.	AP	10/11/05	0156600	4.81
61630	SAW'S CLUB/CLUB	AP	10/29/05	0156822	40.54
ACCOUNT 61630 TOTAL GENERAL SERVICES					847.01 **
ACCOUNT DESC.	EQUIPMENT RENTAL				
61630	HOME DEPOT CREDIT SERVICES	AP	10/11/05	0156600	32.45
ACCOUNT 61630 TOTAL EQUIPMENT RENTAL					32.45 **
ACCOUNT DESC.	RAMP SERVICE CHARGE				
61630	FRANCIS CHAS RAMP, S.A.	AP	10/29/05	0156614	10.47
ACCOUNT 61630 TOTAL RAMP SERVICE CHARGE					10.47 **
ACCOUNT DESC.	REPAIRS - ELECTRICAL				
61630	JACKSON ELECTRIC	AP	10/11/05	0156600	210.00
ACCOUNT 61630 TOTAL REPAIRS - ELECTRICAL					210.00 **
ACCOUNT DESC.	TRASH REMOVAL				
61630	WASTE MANAGEMENT, INC OF OK	AP	10/11/05	0156677	73.00
61630	WASTE MANAGEMENT, INC OF OK	AP	10/11/05	0156677	73.82
ACCOUNT 61630 TOTAL TRASH REMOVAL					146.82 **
TOTAL					10,689.10 **

BALANCE SHEETS

Balance Sheets are available upon request if approved by the Regional Manager or Vice President.

VARIANCE REPORT

This is the section that you will comment on all expense categories, including all budget variances. It is important you point out the amount of the variance, the percent of the variance and the full explanation.



PAYROLL DISTRIBUTION

The Labor Distribution Detail report generated from the Republic Parking System G/L system will be included in each management report.

OPERATIONAL REPORTS

In addition to the financial and statistical reports, operational information is also passed on to the client, if the client so desires. These reports may include.

Mystery Parker Reports

Republic Parking System has contracted with a third party to conduct monthly mystery parkers at the Parkway locations. The results of these mystery parker results are included in the monthly report.

Incident Reports

Every incident that occurs in the facility is documented on an incident report. Pictures are taken and statements are taken from witnesses to facilitate a quick and accurate settlement of all incidents. These incident reports are available for inspection at all times and can be provided on a monthly basis.

Maintenance

All maintenance items are scheduled on a monthly basis. If a client desires we can provide the completed maintenance schedule along with an explanation for any unusual activity or upcoming projects.

Customer Feedback

At locations where our clients wish to survey customers we can provide full survey results as well as analysis of customer comments.

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST CLASS MAIL PERMIT NO. 74 CHATTANOOGA, TN
POSTAGE WILL BE PAID BY ADDRESSEE

REPUBLIC PARKING SYSTEM, INC.
633 CHESTNUT ST STE 2000
CHATTANOOGA, TN 37450-9900

Customer Comment Card

Republic Parking System
8400 Parkway Center
Chattanooga, TN 37608
423-766-2271 (Office)
888-750-0616 (Parking)

What is the purpose of your visit?

What was the date of your visit?

Approximately how often do you visit the facility?
_____ per week
_____ per month
_____ per year

Have your parking requirements met during your visit?
Yes _____ No _____

If no, where did we fail to meet your needs?

Do you feel there are any improvements necessary in the parking facilities?
Yes _____ No _____

If yes, what would you suggest?

What would encourage you to park here more often?

Contact Information (optional)
Name _____
Address _____
City _____
State _____
Zip _____
Phone _____



C. OPERATING BUDGET

PROPOSED MANAGEMENT FEE

Base Management Fees

<u>Garages</u>	<u>Spaces</u>	<u>% of costs</u>	<u>Management Fee</u>
Concord	624	9.887%	10,530.19
Wentworth	518	8.208%	8,741.40
Aquarium	1,093	17.319%	18,444.70
St. Philip/ (2007-King & Queen)	323	5.118%	5,450.72
East Bay	339	5.372%	5,720.73
Gaillard	596	9.444%	10,057.68
Francis Marion	308	4.880%	5,197.59
Camden	308	4.880%	5,197.59
Visitor's Center	723	11.456%	12,200.84
Charleston Place	404	6.402%	6,817.62
Queen Street Garage	598	9.476%	10,091.43
Majestic Square	477	7.558%	8,049.52
	6,311	100.00%	<u>106,500.00</u>
<u>Lots</u>			
First Baptist	85	12.50%	4,437.50
Market/Horlbeck	118	12.50%	4,437.50
Visitors Center	62	12.50%	4,437.50
JPR Ballpark	1,558	12.50%	4,437.50
George St. Lot	146	12.50%	4,437.50
Morris St. Philip Lot	53	12.50%	4,437.50
John Street Lot	108	12.50%	4,437.50
101 Broad St. Lot	22	12.50%	4,437.50
	2,152		<u>35,500.00</u>
	8,463		142,000.00

The above chart details the proposed management fee for each parking location. In addition to the parking facility fees we are proposing a management fee of \$18,000 for the operation of the meter program.

We propose an annual increase in the management fee of 3% per year.

The budget detail follows.



OPERATING BUDGETS

1. Submit Operating Budget for all garages and lots as specified.

SUMMARY

BUDGET SUMMARY

Revenue	Meters	Garages	Lots	Total
Total Revenue	\$1,087,000	\$10,743,732	\$1,827,366	\$13,658,098
Expenses				
Personnel Expenses				
Admin.	\$15,000	\$259,608	\$49,868	\$324,476
Managers		\$325,923	\$105,996	\$431,919
Attendant	\$42,180	\$1,153,920	\$233,184	\$1,429,284
Special Event				
Custodial				
Payroll Taxes (FICA, SUTA, FUTA)	\$6,747	\$220,929	\$43,122	\$270,799
Workers Comp (5.6%)	\$3,202	\$95,292	\$20,204	\$118,698
Employee Health Care		\$101,568	\$8,640	\$110,208
Total Personnel Expenses	\$67,129	\$2,157,240	\$461,014	\$2,685,384
Operating Expenses				
Office Supplies		\$28,150	\$2,100	\$30,250
Sweeping/Window Cleaning		\$12,200	\$12,384	\$24,584
Tickets, Licenses, Permits		\$51,200	\$8,450	\$59,650
Postage		\$4,380		\$4,380
Fuel Expenses	\$1,920	\$8,760	\$180	\$10,860
Vehicle Repairs	\$500	\$5,400	\$1,200	\$7,100
Telephone	\$180	\$20,100	\$1,560	\$21,840
Equipment R&M	\$1,000	\$89,400	\$21,600	\$112,000
General R&M		\$140,400	\$14,400	\$154,800
Uniforms		\$12,900	\$2,220	\$15,120
Insurance		\$69,408	\$14,508	\$83,916
Employee Incentive		\$1,325	\$325	\$1,650
Capital Expense		\$422,354	\$39,626	\$461,980
Equip.Rental/ Prof. Services	\$10,870	\$46,400	\$1,400	\$58,670
Taxes Acct.	\$29,500	\$31,975	\$67,519	\$128,994
City Property Insurance				
Elevator Maintenance/ Inspection		\$94,800		\$94,800
Employee Fidelity Bond	\$5,600			\$5,600
Rent Payments	\$17,420	\$2,134,176	\$519,547	\$2,671,143
Total Operating Expenses	\$66,990	\$3,173,328	\$707,019	\$3,947,337
Grand Total Expenses	\$134,119	\$5,330,568	\$1,168,033	\$6,632,721
Net Operating Surplus	\$952,881	\$5,413,164	\$659,333	\$7,025,377
Other Expenses				
Management Fees	\$18,000	\$106,500	\$35,500	\$160,000
Data Processing	\$900	\$20,502	\$6,834	\$28,236
Health Care Subsidy		\$65,832	\$6,864	\$72,696
Net to Owner	\$933,981	\$5,220,330	\$610,135	\$6,764,445



PARKING GARAGES - BUDGET

EXHIBIT C - PARKING GARAGES BUDGET

	Francis Marion Garage	Camden Garage	Cumberland Garage	Westworth St Garage	Concord St Garage	Gallatin Garage	Aquarium Garage	East Bay Garage	Majestic Square	Charleston Place Garage	Visitor Ctr. Garage	Queen St Garage	St. Philip Garage
Revenue													
Transient	\$798,000	\$327,500		\$619,000	\$789,500	\$44,300	\$596,500	\$243,000	\$287,500	\$485,000	\$434,500	\$209,244	\$875,520
Contract Bidding	\$115,250	\$95,600	\$331,200	\$143,880	\$159,020	\$183,920	\$131,440	\$463,980	\$641,528	\$67,320	\$84,180	\$167,820	\$347,325
Validation Bidding	\$168,600	\$139,700		\$106,250	\$139,800	\$139,800	\$9,885	\$21,350	\$52,615	\$494,900	\$840		
Stamp Income	\$2,620	\$1,190		\$13,400	\$27,250	\$7,340	\$21,600	\$21,600	\$11,200	\$4,880	\$6,320	\$14,600	\$14,400
Event Revenue	\$3,010			\$1,500	\$1,500	\$86,130	\$8,300	\$7,420					\$66,758
Other (doc)		\$22,250		\$5,870			\$326,600	\$3,595			\$143,704		
Total Revenue	\$688,230	\$600,240	\$331,200	\$768,750	\$1,449,670	\$461,400	\$1,272,065	\$760,925	\$993,843	\$1,032,100	\$668,944	\$391,664	\$1,304,001
Expenses													
Personnel Expenses													
Admin.	\$12,669	\$12,669		\$21,309	\$25,668	\$24,518	\$44,962	\$13,940	\$19,621	\$16,620	\$29,741	\$13,285	\$24,600
Managers	\$46,668	\$20,953		\$15,440	\$30,720	\$26,580	\$13,684	\$26,320	\$25,704	\$23,520	\$23,784	\$7,766	\$32,784
Attendant	\$259,452	\$72,684		\$94,584	\$101,644	\$66,660	\$68,256	\$57,108	\$76,800	\$116,268	\$64,516	\$70,644	\$85,384
Special Event Custodial													
Payroll Taxes (FICA, SUTA, FUTA)	\$37,617	\$12,544		\$16,477	\$18,650	\$11,002	\$17,334	\$11,726	\$14,411	\$18,456	\$16,289	\$29,387	\$16,835
Workers Comp (5.6%)	\$17,852	\$5,953		\$7,915	\$8,831	\$5,221	\$8,227	\$5,565	\$6,879	\$8,799	\$7,730	\$4,391	\$7,999
Employee Health Care	\$32,736	\$3,060		\$7,992	\$19,044	\$8,640	\$11,052	\$5,565	\$6,879	\$11,052	\$7,992		
Total Personnel Expenses	\$406,994	\$127,863		\$173,917	\$204,597	\$142,622	\$183,515	\$116,665	\$143,375	\$194,675	\$170,052	\$125,473	\$167,492
Operating Expenses													
Office Supplies	\$18,000	\$300	\$150	\$1,800	\$2,400	\$500	\$1,200	\$400	\$900	\$300	\$500	\$600	\$900
Sweeping/Window Cleaning	\$200	\$2,000		\$200	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400	\$2,400
Tickets, Licenses, Permits	\$3,400	\$3,600		\$5,600	\$5,200	\$3,600	\$5,000	\$4,200	\$2,600	\$7,000	\$6,400	\$1,600	\$3,000
Postage	\$2,100	\$300		\$180	\$180	\$360	\$180	\$180	\$180	\$180	\$180	\$180	\$180
Fuel Expenses	\$4,200	\$360		\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600
Vehicle Repairs	\$300	\$650		\$400	\$500	\$500	\$400	\$300	\$300	\$500	\$500	\$500	\$500
Telephone	\$4,400	\$600		\$600	\$1,200	\$2,160	\$2,400	\$300	\$300	\$600	\$3,600	\$1,740	\$1,800
Equipment R/M	\$14,400	\$5,400		\$8,400	\$12,000	\$7,800	\$10,800	\$5,400	\$5,400	\$4,200	\$11,200	\$1,600	\$1,600
General R/M	\$42,000	\$12,000		\$14,400	\$12,000	\$9,000	\$13,000	\$6,600	\$10,200	\$6,600	\$12,000	\$1,800	\$1,800
Uniforms	\$2,400	\$900		\$400	\$2,400	\$2,400	\$900	\$900	\$900	\$900	\$900	\$900	\$900
Insurance	\$3,396	\$3,396		\$5,700	\$6,864	\$6,864	\$12,012	\$3,744	\$5,184	\$4,452	\$7,956	\$3,564	\$6,576
Employee Incentive	\$150	\$150		\$125	\$125	\$125	\$150	\$125	\$125	\$125	\$125		
Capital Expense	\$135,861	\$300		\$600	\$11,263	\$600	\$23,189	\$300	\$109,176	\$600	\$600	\$57,637	\$74,208
Equip./Rent/Prof. Services	\$17,400	\$4,500		\$2,400	\$2,160	\$1,440	\$3,600	\$3,000	\$500	\$1,200	\$4,200	\$1,800	\$4,200
Taxes Acc.	\$16,800	\$775		\$100	\$825		\$450	\$750		\$775	\$11,300		
City Property Insurance													
Elevator Maintenance/ Inspection	\$28,800	\$3,000			\$1,800	\$4,200	\$12,000	\$4,200	\$7,800	\$10,800	\$11,400	\$5,400	\$5,400
Rent Payments									\$1,154,184				\$979,992
Total Operating Expenses	\$294,007	\$38,231	\$150	\$41,505	\$59,617	\$39,379	\$97,281	\$30,899	\$1,206,449	\$45,132	\$67,461	\$77,701	\$1,081,516
Grand Total Expenses	\$701,001	\$166,094	\$150	\$215,422	\$264,214	\$182,001	\$280,796	\$147,584	\$1,443,824	\$239,807	\$237,513	\$203,174	\$1,249,008
Net Operating Surplus	-\$112,771	\$434,146	\$331,050	\$553,328	\$1,185,456	\$279,399	\$991,269	\$613,341	-\$449,981	\$892,293	\$431,431	\$188,490	\$54,993
Other Expenses													
Management Fee	\$5,198	\$5,198		\$8,741	\$10,520	\$10,058	\$18,445	\$5,721	\$8,050	\$6,818	\$12,201	\$10,091	\$5,451
Data Processing	\$1,083	\$1,083		\$1,683	\$2,027	\$1,936	\$3,531	\$1,101	\$1,550	\$1,312	\$2,340	\$1,943	\$1,049
Health Care Subsidy	\$13,794	\$2,640		\$5,784	\$11,568	\$6,864	\$8,424			\$11,264	\$5,784		
Net to Owner	(\$30,573)	\$425,308	\$331,050	\$537,120	\$1,161,331	\$260,541	\$960,850	\$606,539	(\$459,580)	\$793,059	\$411,697	\$176,456	\$48,493

PARKING LOTS - BUDGET

EXHIBIT C - PARKING LOTS BUDGET

	First Baptist Parking Lot	John Street Parking Lot	JP Riley Baseball Parking Lot	Concord Street Lot	George Street Lot	Market Horlbeck Lot	VRTC Parking Lot	Harris St Lot	334 Meeting Street Lot	101 Broad Street Lot
Revenue										
Transient	\$490,000		\$146,000		\$433,500	\$150,000	\$128,500			
Contract Bidding		\$4,000	\$268,836		\$74,532	\$78,000		\$12,000		
Validation Bidding					\$1,450	\$18,718				
Stamp Income					\$20,560					
Event Revenue					\$3,840					
Other (doc)				Closed				\$10,230	Closed Aug 1	
Total Revenue	\$490,000	\$4,000	\$414,836		\$524,082	\$246,718	\$128,500	\$22,230		
Expenses										
Personnel Expenses										
Admin.	\$7,124		\$7,124		\$7,124	\$7,124	\$7,124	\$7,124		\$7,124
Managers	\$27,516		\$8,844		\$23,640	\$23,916	\$19,848	\$11,116		\$1,116
Attendant	\$55,812		\$10,140		\$70,224	\$60,156	\$36,452			
Special Event Custodial										
Payroll Taxes (FICA, SUTA, FUTA)	\$10,673		\$3,081		\$11,075	\$10,761	\$7,531			
Workers Comp (5.6%)	\$5,065		\$1,201		\$5,256	\$5,107	\$3,574			
Employee Health Care					\$3,060		\$5,580			
Total Personnel Expenses	\$106,191		\$30,350		\$120,380	\$107,064	\$60,509	\$8,240		\$8,240
Operating Expenses										
Office Supplies	\$1,000				\$300	\$300	\$500			
Sweeping/Window Cleaning	\$2,100				\$5,840	\$4,584				
Tickets, Licenses, Permits	\$600				\$2,500	\$2,200	\$3,000	\$150		
Postage					\$180					
Fuel Expenses										
Vehicle Repairs	\$400		\$500			\$300	\$420			
Telephone	\$540				\$300	\$300	\$420			
Equipment R/M	\$1,800				\$13,200	\$4,200	\$2,400			
General R/M	\$2,400				\$6,000	\$4,200	\$1,800			
Uniforms	\$600				\$720	\$800	\$300			
Insurance	\$960	\$348	\$8,548		\$1,620	\$1,320	\$960	\$732		\$264
Employee Incentive					\$125	\$75	\$125			
Capital Expense	\$300				\$17,200	\$11,063	\$11,063			
Equip./Rent/Prof. Services					\$200	\$200	\$200			
Taxes Acc.					\$37,000	\$21,000	\$675	\$12,844		
City Property Insurance										
Elevator Maintenance/ Inspection										
Rent Payments	\$256,013				\$188,160	\$68,874		\$6,500		
Total Operating Expenses	\$266,773	\$348	\$9,048		\$269,145	\$119,316	\$21,870	\$20,226		\$264
Grand Total Expenses	\$322,964	\$348	\$39,458		\$389,525	\$226,380	\$82,379	\$38,456		\$10,504
Net Operating Surplus	\$167,036	\$3,652	\$375,378		\$134,557	\$120,338	\$46,121	-\$16,226		(\$5,004)
Other Expenses										
Management Fee	\$4,438	\$4,438	\$4,438		\$4,438	\$4,438	\$4,438	\$4,438		\$4,438
Data Processing	\$854	\$854	\$854		\$854	\$854	\$854	\$854		\$854
Health Care Subsidy					\$2,640		\$4,224			
Net to Owner	\$111,745	(\$1,440)	\$367,087		\$126,625	\$15,046	\$16,596	(\$11,528)		(\$13,798)



METER COLLECTION

2. Submit Operating Budget for Parking Meter Revenue Collections.

EXHIBIT B - METER BUDGET

Revenue	Yearly Income
Route A	\$434,800
Route B	\$163,050
Route C	\$141,310
Route D	\$195,660
Exchange Lot	\$11,957
Market Lot	\$14,131
Auditorium Lot	\$23,914
BAM Lot	\$18,479
Concord Lot	\$20,653
Maritime Lot	\$10,870
Garden Theatre Lot	\$52,176
Market Lot	
Total Revenue	\$1,087,000
Expenses	
Personnel Expenses	
Admin.	\$15,000
Managers	
Collectors	\$42,180
Subtotal	
Custodial	
Payroll Taxes (FICA, SUTA, FUTA)	\$6,747
Workers Comp 5.6%	\$3,202
Health Care	
Total Personnel Expenses	\$67,129
Operating Expenses	
Office Supplies	
Sweeping	
Tickets, Licenses, Permits	
Postage	
Gas Oil Lubricants	\$1,920
Vehicle Repairs	\$500
Telephone	\$180
Equipment R&M	\$1,000
General R&M	
Uniforms	
Insurance	
Capital Expense	
Equip.Rental/ Prof. Services (1%)	\$10,870
Health Care Subsidy	
Taxes Acct.	\$29,500
City Property Insurance	
Employee Fidelity Bond	\$5,600
Rent Payments	\$17,420
Total Operating Expenses	\$66,990
Grand Total Expenses	\$134,119
Net Operating Surplus	\$952,881
Management Fee	\$18,000
Data Processing	\$900
Employee Incentive	
Net to Owner	\$933,981



CAPITAL EXPENSE BUDGET

<u>LOCATION</u>	<u>IMPROVEMENT</u>	<u>EXPENSE</u>
Credit Card Capability	All locations (except Queen Street Garage) 24 @ \$367/each	\$8,808.00
Francis Marion Garage	New Revenue Control Equipment	\$133,453.00
Majestic Square Garage	New Revenue Control Equipment	\$108,876.00
Upgrade to 6 units Amano Fee Computers:	6 units @ \$10,763.13/unit 484 - 3 units, 480 - 1 unit, 497 - 1 unit, and 465 - 1 unit	\$64,578.78
34 St. Phillip Street Garage	Security Camera System	\$71,708.00
93 Queen Street Garage	Security Camera System	\$57,657.00
George Street Lot	Reseal and Restripe	\$16,900.00
Total:		\$461,980.78

Credit Card Capability

We have proposed adding credit card capability to all facilities except for the Queen Street Garage which was opened with credit card capability. Credit card capability would benefit us in two ways: Improved customer service and reduce the amount of currency kept at each location during a shift. Charleston has a very large year round tourist population and we are frequently asked by our customers why we do not offer credit/debit card capabilities. Credit card capability would significantly reduce the amount of cash kept at a location and therefore reduce our exposure to theft.

Francis Marion Garage Equipment Replacement

The equipment is obsolete and the vendor can no longer guarantee replacement parts.

Majestic Square Garage Equipment Replacement

The equipment is obsolete and can no longer be guaranteed replacement parts. Both locations represent the last two locations to have their equipment updated since Republic Parking System began operating the parking facilities for the City of Charleston.



Upgrade to 6 units of Amano Equipment

Republic Parking System has been informed by the equipment vendor (Carolina Time) on August 1, 2007 that the fee computers in several locations were no longer serviceable. The manufacturer informed the vendor on March 7, 2006 that on June 30, 2006 service to the Phase 1 Fee Computer would be discontinued. Apparently, he had known even earlier as the letter referenced an existing trade in program that began in April 2004 and would also be ending on June 30, 2006. The effected garages were:

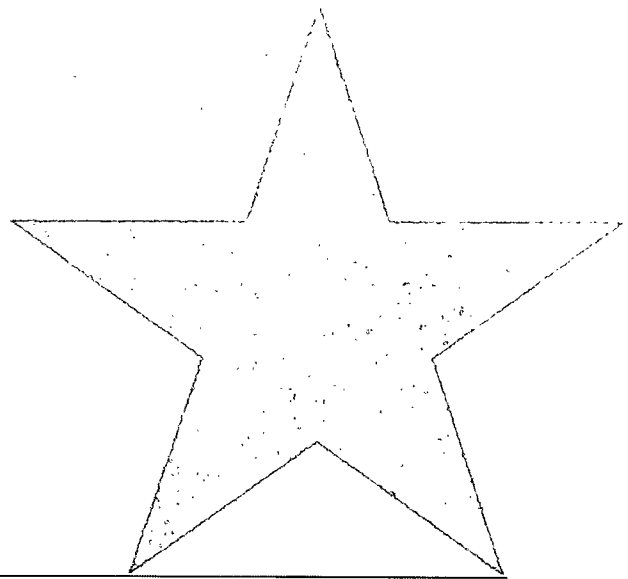
Aquarium Garage – 3 units, Concord Garage – 1 unit, and Market/Horlbeck Lot – 1 unit. Both the Francis Marion and Majestic Square Garage had equipment that was even older than those units listed that would need upgrades.

93 Queen Street Garage

We have proposed installing a security camera system. The garage is in a remote area as compared to nighttime traffic trends in the downtown area and should be considered a safety risk, as this location typically will not run 24 hours/day 7 days/week.

George Street Lot

We proposed to reseal and restripe the lot. Burnette Mendleson on behalf of the other owners has asked that the lot be resealed and restriped. The last bid taken for this work this year was for \$16,900.00. The lot is in need of a reseal and restripe.





IV. MAINTENANCE PLAN

1. Provide your firm's recommendation or plan for regular maintenance of the garage facility and equipment indicating each task and the frequency of each task to be performed including cleaning, mechanical, electrical, HVAC, painting, line striping, power washing, security systems, revenue control, plumbing and landscaping.

Republic Parking System believes that a well thought out and executed maintenance plan allows us to attract more parkers due to the aesthetics and sense of professionalism shown in the management of the parking facility. Additionally, reactions to parking rate increases have less resistance at parking facilities that are well maintained.

MAINTENANCE OVERVIEW

The term "maintenance" involves several components when applied to parking facilities, including sweeping, cleaning windows, plowing snow, servicing equipment such as elevators and fans, structural repair and preventive maintenance, repainting stall markings, and repair of asphalt pavement in parking lots. These and other maintenance tasks are needed for a variety of reasons, such as appearance, safety, and the fact that "an ounce of prevention is worth a pound of cure." Preventive maintenance, however, often goes ignored, particularly in regard to the basic concrete or steel structural system in multilevel parking facilities.

The service environment of a parking garage is more severe than that for most other buildings and more nearly approximates the service environment of highway bridges. In some areas of the country, extensive winter-time use of deicing salt often contaminates the concrete with chlorides, resulting in corrosion of reinforcing and structural steel and damage to the concrete. In all regions, exposure to temperature changes, coastal salt spray, and moisture poses a more severe service environment for parking garages than for other buildings.

Delayed repairs are usually more costly than preventive maintenance. Much of a good preventive maintenance program for structural elements starts with proper design of the facility to minimize later problems. However, all aspects of maintenance are important to the continued well-being of a parking facility.

MAINTENANCE PROGRAM

Every parking facility requires a comprehensive, regular maintenance program. A good maintenance program not only protects the investment in the parking facility but also makes the facility attractive and easy to use. The maintenance requirements for some elements of a parking garage, such as elevators and ventilation equipment, are similar to those for their counterparts in other building types. However, the frequency of maintenance may differ because of variations in climate and the garage's exposure to weather conditions.

A comprehensive maintenance program includes the following three basic elements:



- a schedule of what needs to be done and how often, supplemented by how it should be done;
- a budget to cover the costs of the program;
- and control or follow-up procedures by management to verify that the program is functioning.

A typical maintenance program might be divided into three categories:

- housekeeping;
- equipment maintenance; and
- maintenance of the structural system.

Housekeeping

Cleaning and other housekeeping activities maintain the facility's appearance and protect the structure's elements from damage. For example, if dirt and debris are not removed from the parking floors, they can clog floor drains and result in water ponding, which in turn creates a hazard if the water freezes. Ponded water can also cause damage to the structural system over a period of time.

Users of a parking facility prefer a bright, clean, well kept facility. And patrons tend to litter less in a clean facility. Housekeeping tasks include but are not limited to the following:

Sweeping and washing floors in the pedestrian and vehicular areas; washing windows; cleaning stairs, including handrails; cleaning elevator cabs; emptying trash cans; picking up trash; cleaning floor drains; cleaning signs; removing grease drippings or snow and ice; replacing burned-out light bulbs; removing graffiti; and repainting stall stripes and other pavement markings.

The frequency of these tasks varies with the situation. Heavily used public areas require more frequent attention than little-used areas. Picking up trash on floors without sweeping also has some benefit. Floors should be washed at least once a year. In areas where salt is used to melt snow and ice or is present in the air, all floors should be washed down in early spring.

Equipment Maintenance

A parking facility might include many different types of equipment, all of which must function properly to ensure the safe, smooth operation of the facility. The maintenance program should require inspection of all equipment to verify that it is functioning properly. Equipment with moving parts usually needs to be inspected and lubricated at regular intervals.

It is desirable to maintain a file containing the manufacturer's manual for operation and maintenance of each piece of equipment, as well as a log of the maintenance and repair work performed on that equipment. The manufacturer's recommendations for operation



and preventive maintenance should be followed. When an inspection indicates that a piece of equipment is not functioning properly, the equipment should be repaired or replaced immediately.

Equipment in a parking facility that requires regular inspections, lubrication, or other preventive maintenance includes but is not limited to the following:

- parking and revenue control equipment; elevators;
- electrical equipment, including lights and emergency lights;
- doors, including hinges, closers, and latch sets; mechanically operated doors;
- security systems;
- heating, ventilation, and air-conditioning equipment; carbon monoxide monitors;
- sanitary facilities, sump pumps;
- fire protection system; and floor and roof drainage system.

Some of these elements, such as carbon monoxide monitors, should be checked daily for proper operation. Other equipment may need less frequent inspection or attention. Some of the equipment, such as elevators and parking control equipment, should probably be maintained under a service contract that calls for regular inspection, lubrication, and other routine service as well as for emergency repair service.

Nearly all of the equipment listed above is subject to corrosion, which can shorten the life of the equipment. All inspections should include observations for corrosion. Where corrosion is observed, the element should be cleaned and properly painted to maintain its appearance and integrity.

Maintenance of the Structural System

The structural system is one of the most frequently neglected elements in a parking garage. From the time a facility first opens, it requires regular inspection, preventive maintenance, and repair. The results of neglect may not show up for many years. In the extreme, partial collapse of the structure can occur. Delayed repair and catch-up maintenance expenditures can be costly and mean lost revenue while repairs are underway.

The most common causes of deterioration in a parking structure are salt-induced corrosion of internal reinforcing, freezing and thawing, corrosion of exposed metals, and movement of the structure due to changes in temperature and other factors. These several causes can interact and compound the rate of deterioration. Water is a causative agent in both freeze/thaw and corrosion damage. Cracks caused by movement of the structure often leak water that damage the structure as well as annoy users.

The maintenance program for the structural elements of a parking garage should start with an annual inspection of the entire facility. The inspection should note areas of deterioration, water leakage, or corrosion of exposed metals. The following elements require special attention:



Top surfaces of all floors and bottoms of parking floors; columns; beams; guardrails and handrails (to verify that they are rigid and safe); stairways; walls; connections and bearing pads in a precast concrete system; and wheel-stops.

A qualified engineer experienced in parking should perform the inspection and provide the necessary consultation if the concrete portion of a structure is found to be cracked or deteriorated. The cause of the problem must be identified as a prerequisite to selecting the proper repair method. For example, a crack that is going to continue to undergo movement should be filled with a flexible rather than rigid material.

OPERATIONAL AUDITS

Republic Parking System proposes to conduct an internal operational audit every quarter by the Regional Manager. These audits will be designed to completely review the operation to ensure that all contractual requirements are being met and that the operation is running as efficient as possible.

The operational audit process requires the following:

- establishing standards of operation
- measuring performance against standards
- examining and analyzing deviations
- taking corrective actions
- reappraising standards based on experience

The main audit concerns are compliance with policies, plans, procedures, laws, regulations, accomplishment of established objectives and economical and efficient use of resources.

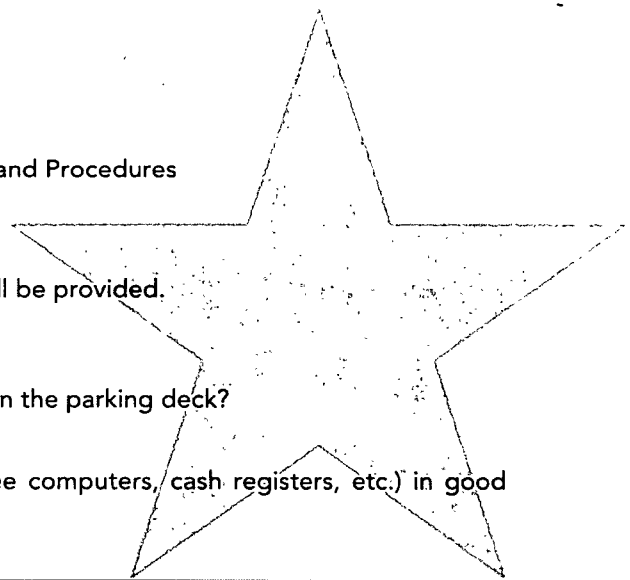
The audit will analyze and report on the following areas.

- Physical Condition of Garage
- Integrity of Revenue Control System
- Efficiency and Effectiveness of Operation
- Quality of Service
- Completeness and Compliance with Policies and Procedures
- Safety and Liability Review

The following sections detail the reviews that will be provided.

Structural / Equipment Review

- Are there signs of spalling, cracks and wear on the parking deck?
- Are all the light fixtures working properly?
- Are all equipment pieces (gates, spitters, fee computers, cash registers, etc.) in good condition and properly positioned.





- Are the heating and air conditioning working properly?
- Are cabinets, shelves, etc. easily accessible?
- Does the cashier booth have 360 degree visibility?
- Is the booth free of debris and trash?
- Emergency phone numbers (doctor, ambulance, fire department) available?
- Are attendants trained in emergency procedures (fire, medical, robbery, etc)?
- Emergency lighting system provided which will automatically activate in the event of power failure?
- Glass entryways provided with decals or otherwise conspicuously marked?
- Stairways with four or more steps provided with handrails? Handrails secure and in good condition?
- Stairways and landings free of water, ice, debris, and trash?
- All shrubs and trees trimmed to eliminate hiding places for felons?
- Outside doors secured to present unauthorized persons from entering garage?
- GFCI's provided in lavatories on electrical outlets?
- Fire protection systems (extinguishers, alarms, sprinklers) in good shape and inspected regularly?
- Elevators in good shape with current inspection certificates?
- Panic pedestrian push bars and safety or tempered glass installed on all glass doors?
- Stairway steps in good condition and equipped with non-slip tread surfaces?
- Emergency exits adequate in number properly marked, illuminated and kept clear at all times?
- Are concrete sidewalks and curbs in good condition and curbs clearly painted/marked?
- Security is adequate to address exposures?
- Electrical wiring, lighting, and outlets in good condition?
- Security cameras provided where needed and properly monitored? Videos are maintained for 30 days?
- Signs posted prohibiting use of ramps for egress and access by customers and employees?
- Is there adequate fresh air to control carbon monoxide from vehicles? Warning signs
- Revenue Control System Review
- Are the ticket, validation and access card logs accurate?
- Are there any uncontrolled areas?
- Is the ticket loss percentage over .5%?
- Is there a clear separation of duties?
- Are the non-resettable counters working properly?
- Is the revenue control management system being used correctly?



Efficiency Review

- Is employee overtime excessive?
- Are there any periods of long inactivity?

Service Review

- Is the Garage ADA compliant?
- Is the complaint response procedure being used?

SOP Review

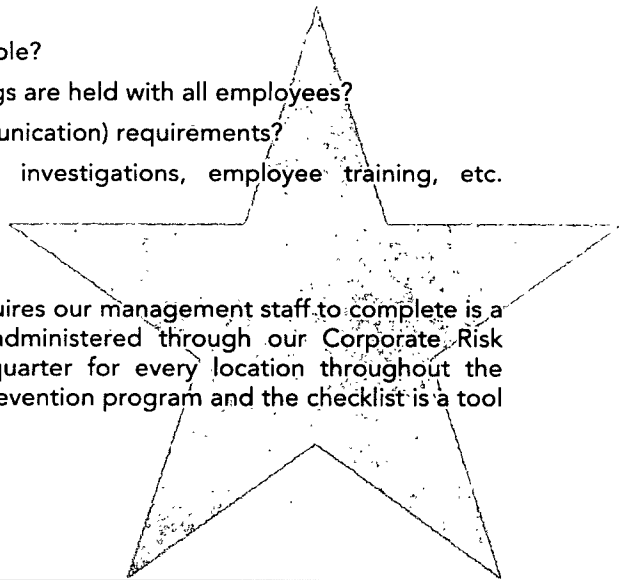
- Review existing written Standard Operating Procedure Manuals to determine their adequacy, appropriateness and completeness. Determine the frequency of updating when changes are made.
- Determine how emergency and/or interim changes to procedures are disseminated, the methods used to insure that all personnel have received and acknowledged such changes.

Safety Review

- Documented orientation and training for all new hires?
- Safety inspections completed monthly or quarterly?
- Written rules regarding work practices and personal protective equipment?
- Universal precautions/first aid kit provided and employees trained in its use?
- Thorough employee and customer accident investigations conducted and corrective actions are documented?
- Emergency action plans developed, posted, and reviewed with all employees?
- Safety committee meets monthly or quarterly in compliance with State or Corporate requirements?
- A current chemical list and MSDS's are available?
- Regular (monthly or more frequently) meetings are held with all employees?
- Employees trained in chemical (hazard communication) requirements?
- Responsibilities for inspections, meetings, investigations, employee training, etc. assigned to management individual?

SELF INSPECTION CHECKLIST

One program that Republic Parking System requires our management staff to complete is a Self Inspection Checklist. This program is administered through our Corporate Risk Department and must be completed every quarter for every location throughout the company. This is an essential part of our loss prevention program and the checklist is a tool that reminds us of areas that need attention.





Summary

Maintenance of parking facilities is a multifaceted problem. A detailed maintenance program is required for each parking garage and parking lot. To implement the program requires an ongoing budget and the interest of management. Much of a maintenance program consists of regular observations to verify that all elements are clean and in proper working order. Any problems receive immediate attention. Preventive maintenance is generally more cost-effective than reactive maintenance.

The service environment of a parking garage is more severe than most other buildings and is more nearly like that of highway bridges. The exposure to temperature changes and moisture poses a more severe service environment for parking garages than for other buildings. While the maintenance requirements of many parking garage elements are similar to their counterparts in other building types, the frequency of required attention may be different due to more severe exposure conditions.

