

45
THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2015-001178

RECEIVED

JUL 14 2016

SC Court of Appeals

Cory Ross, ... Appellant,

v.

Carolina Adventure World, LLC,, ... Respondent .

RECORD ON APPEAL

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-20-319

Corey Ross
PLAINTIFF(S)

Carolina Adventure World, LLC
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

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

DISPOSITION TYPE (CHECK ONE)

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion for Directed Verdict is GRANTED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

May 28, 2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of May, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of May, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

S. Jahue Moore
P.O. Box 5709
West Columbia, SC 29171

Kenneth Ray Raynor
231 East Worthington Ave.
Charlotte, NC 28203

Christian Stegmaier
P.O. Box 12487
Columbia, SC 29211

Meghan Hazelwood Hall
1330 Lady Street, 6th Floor
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Betty J. Buckhan
CLERK OF COURT

Court Reporter: Shirley Broom

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

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

This case proceeded to a jury trial. At the conclusion of the plaintiff's case, the defendant made a motion for directed verdict. The defendant's Motion for Directed verdict is GRANTED.

COUNTY OF FAIRFIELD

Corey Ross,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP-20-319

2011 AUG 10 A 10:53

Plaintiff(s)

FAIRFIELD COUNTY
CLERK OF COURT
J. J. BECKHAM

Carolina Adventure Works, LLC

Defendant(s)

(Please Print)

Submitted By: S. Jahue Moore

Address: Post Office Box 5709
West Columbia, SC 29171

SC Bar #: 4063

Telephone #: 803-796-9160

Fax #: 803-791-8410

Other:

E-mail: jake@mttlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature:

Date: August 8, 2011

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

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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

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

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

Corey Ross,)
Plaintiff,)
vs.)
Carolina Adventure World, LLC,)
Defendant.)

C.A. No.: 2011-CP-20-319

SUMMONS
(Jury Trial)
(Personal Injury and Negligence)

2011 AUG 10 A 10:53
FAIRFIELD COUNTY
CLERK OF COURT
BETTY M. BECKMAN

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office, 1700 Sunset Boulevard, P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MOORE, TAYLOR & THOMAS, P.A.

BY:

S. Jahne Moore
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR PLAINTIFF

West Columbia, South Carolina
August 8, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

Corey Ross,

Plaintiff,

vs.

Carolina Adventure World, LLC,

Defendant.

C.A. No.: 2011-CP-20-319

COMPLAINT

2011 AUG 10 A 10:53
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Plaintiff above-named Complaining of the Defendant herein alleges that:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a resident and citizen of Lexington County, South Carolina. The Defendant is in the business of running a 4-wheeler track which is open to the general public.
2. The Plaintiff on or about December 27, 2008, went to the Defendant's place of business and paid an admission to use the 4-wheeler track.
3. The Plaintiff enjoyed the status of a business invitee and had every right to expect the track would be maintained in a normal and reasonable condition.
4. The Plaintiff began operating his vehicle for recreational purposes when the Plaintiff's vehicle struck an unsafe portion of the track and capsized.
5. The wreck in question was not the result of any improper driving on the part of the Plaintiff but, rather, was the result of the defective condition of the track.
6. The Defendant knew or should have known of the defective condition of the track. The track should not have been open to the public in the condition it was in and the Plaintiff should have been warned as to the dangerous and defective condition of the race track.

7. The Defendant was negligent and reckless in one or more of the following particulars:

- a. in opening the park under the conditions which existed;
- b. in failing to warn;
- c. in failing to maintain the track in an appropriate condition;
- d. in failing to inspect at all prior to opening the park; and
- e. in failing to eradicate the unsafe conditions of the track.

All of which were a direct and proximate cause of the injuries or damages set forth herein.

8. As a direct and proximate result of the aforementioned acts of negligence and recklessness, the Plaintiff has sustained great and serious personal injury; has and will incur bills for medical services; has been permanently injured; has lost the sight in one eye; has suffered great shock and emotional distress; has been permanently disfigured; has and will lose earning ability and income; and has been otherwise damaged all to his damage both actual and punitive.

9. Plaintiff is entitled to judgment against the Defendant for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION

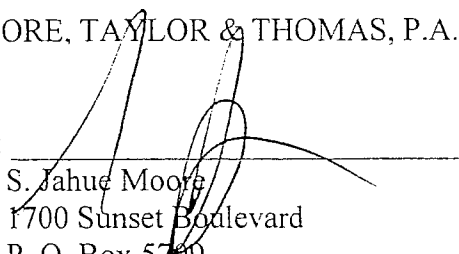
10. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

11. The track in question actually amounts to a product which was dangerously defective and in an inherently dangerous condition.

12. The Defendant is strictly liable for the damages set forth in the preceding cause of action.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages;
for punitive damages; and for such other and further relief as this Court might deem just and
proper.

MOORE, TAYLOR & THOMAS, P.A.

BY: 

S. Jahue Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR THE PLAINTIFF

West Columbia, South Carolina
August 8, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-20-0319

CORY ROSS)
vs.) TRANSCRIPT OF RECORD
CAROLINA ADVENTURE WORLD,) (Day 1 - Volume I)
LLC)

MAY 27, 2015
WINNSBORO, SOUTH CAROLINA

BEFORE THE HONORABLE BENJAMIN H. CULBERTSON

APPEARANCES:

S. JAHUE MOORE, ESQUIRE
WEST COLUMBIA, SOUTH CAROLINA

GREG CLOSE, ESQUIRE
WEST COLUMBIA, SOUTH CAROLINA

ATTORNEYS FOR THE PLAINTIFF

KENNETH RAY RAYNOR, ESQUIRE
CHARLOTTE, NORTH CAROLINA

CHRISTIAN STEGMAIER, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEYS FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I N D E X

WITNESSES	DIRECT	CROSS	RE-DIRECT	RE-CROSS
John Webster				
By Mr. Moore	96			
By Mr. Raynor		134		
William Ekholm				
By Mr. Moore	162			
By Mr. Raynor		174		
Cory Ross				
By Mr. Moore	180			
By Mr. Raynor		211		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
P-1	Photo	4	201
P-2	Photo	4	201
P-3	Photo	4	201
P-4	Photo	4	201
P-5	Photo	4	201
P-6	Photo	4	201
P-7	Photo	4	202
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P-15	Medicals	4	206
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D-6	Trail rating	51	143
D-7	Portion of map	51	
C-1	Foreman note	49	

1 (WHEREUPON, PLAINTIFF'S EXHIBITS 1 THROUGH 15
2 PRE-MARKED PRIOR TO TRIAL FOR IDENTIFICATION.)

3 THE COURT - Please be seated. All right, ladies
4 and gentleman, please listen-up. I've got some questions
5 to go over with you now. All of you have been qualified to
6 serve as jurors for this term of Common Pleas Court,
7 however, I do have some questions at this time to go over
8 with you which is -- they're referred to as voir dire
9 questions and that is to determine whether or not you are
10 qualified to serve as jurors on this particular case, and
11 it also gives the attorneys some additional information
12 that assists them in the jury selection process. Now,
13 you're still under from your jury qualifications, so
14 everyone is still under oath to respond to these questions
15 truthfully, and listen-up, and when I direct you to do so,
16 if any of these questions are applicable to you, please
17 stand when I direct you to do so. Now, this first lawsuit
18 that we'll be dealing with is the case of Cory Ross vs.
19 Carolina Adventure World, LLC. Now, the allegations in
20 this case are that the Plaintiff, Cory Ross, was injured
21 while a patron at the defendant's business, which is a
22 four-wheeler track. Where is it located? Where did this
23 actually occur?

24 MR. MOORE - It's in Fairfield County, Your Honor.
25 The exact ---

1 MR. RAYNOR - Camp Welfare Road.

2 THE COURT - Camp Welfare Road. Here in
3 Winnsboro?

4 MR. MOORE - It's outside -- it's in rural
5 Fairfield County, Your Honor.

6 THE COURT - Okay, in rural Fairfield County. And
7 this allegedly occurred on December the 27th, 2008. Now, is
8 there any member of the jury panel that has heard anything,
9 read anything, discussed anything or knows anything about
10 this case? If so, please stand.

11 (NO RESPONSE)

12 THE COURT - All right, the plaintiff in this case
13 is Cory Ross. Is any member of the jury panel related by
14 blood or marriage, have a close personal relationship,
15 business relationship, social relationship or any other
16 type of relationship with the Plaintiff, Cory Ross?

17 (NO RESPONSE)

18 THE COURT - The defendant in this case is
19 Carolina Adventure World, LLC. Is there any member of the
20 jury panel that has any type of business relationship,
21 social relationship or any other type of relationship with
22 this business? If so, please stand.

23 (NO RESPONSE)

24 THE COURT - Has any member of the jury panel ever
25 visited Carolina Adventure World? If so, please stand.

1 (JURORS STAND)

2 THE COURT - All right, let's start over here on
3 left and we'll work this way and back. Sir, your name and
4 number?

5 JUROR - Dylan Cruz, number 35.

6 THE COURT - All right, and Mr. Cruz, when did you
7 visit Carolina Adventure World?

8 JUROR - Probably last in '08, sir. It's been a
9 while.

10 THE COURT - Okay. Now, would the -- I'm assuming
11 you visited it as a patron; is that correct?

12 JUROR - Yes, sir.

13 THE COURT - Okay. Would your visit there affect
14 your ability to give both the plaintiff and the defendants
15 in this case a fair and impartial trial?

16 JUROR - No, sir.

17 THE COURT - All right. Would you be able to
18 disregard your visit there in its entirety and base your
19 decision in this case exclusively on the testimony and
20 evidence in this case?

21 JUROR - Yes, sir.

22 THE COURT - All right. Thank you, Mr. Cruz, for
23 bringing that to our attention. All right, the lady to his
24 left, my right, your name and number?

25 JUROR - Deloris Jackson, 68.

1 THE COURT - All right, Ms. Jackson, how long ago
2 was it that you visited there?

3 JUROR - It's been a while.

4 THE COURT - As in months or years?

5 JUROR - Years.

6 THE COURT - Years?

7 JUROR - (Indicating yes)

8 THE COURT - And what was your reason for going
9 there?

10 JUROR - I went there for employment and to check
11 out the scenery and the facilities.

12 THE COURT - Okay, have you ever worked there?

13 JUROR - No.

14 THE COURT - Okay. Would your -- and how often
15 did you visit there?

16 JUROR - I didn't go back.

17 THE COURT - Okay. So it was that one occasion?

18 JUROR - Yes, sir.

19 THE COURT - Would that visit affect your ability
20 to give both the plaintiff and the defendants in this case
21 a fair and impartial trial?

22 JUROR - Yes, sir.

23 THE COURT - It would?

24 JUROR - Yes, sir.

25 MR. MOORE - I think she said she could be fair.

1 JUROR - I can be fair.

2 THE COURT - Oh, you can be fair. Okay. In other
3 words, would the fact that you go there affect you in any
4 way in this lawsuit?

5 JUROR - No, sir.

6 THE COURT - Okay. Would you be able to disregard
7 your visit to that business in its entirety and base your
8 decision in this case exclusively on the testimony and
9 evidence in this case?

10 JUROR - Yes, sir.

11 THE COURT - Okay. Thank you, Ms. Jackson, for
12 bringing that to our attention. All right, the gentlemen
13 right behind her, your name and number?

14 JUROR - Joe Plyler, 98.

15 THE COURT - All right, Mr. Plyler, how long ago
16 was it you visited there?

17 JUROR - Probably about December of last my year.
18 My son lives about three miles from there and we ride --
19 right around it.

20 THE COURT - Okay, how often do you visit there?

21 JUROR - Probably once or twice a year.

22 THE COURT - Okay. Would the fact that you visit
23 there -- would you say regularly?

24 JUROR - Maybe twice a year ---

25 COURT REPORTER - I'm having trouble hearing him.

1 THE COURT - I'm sorry, you're going to need to
2 speak up, please.

3 JUROR - We like to go down when it's muddy.

4 THE COURT - Okay. Would the fact that you have
5 visited there -- I'm assuming you go as a patron?

6 JUROR - Yes.

7 THE COURT - Would your visits or patronage of
8 that visits (sic) affect your ability to give both the
9 plaintiff and defendants in this case a fair and partial
10 trial?

11 JUROR - No, it ain't got nothing to do with that.

12 THE COURT - All right. Would you be able to
13 disregard your patronage there in its entirety and base
14 your decision in this case exclusively on the testimony and
15 evidence in this case?

16 JUROR - No.

17 THE COURT - Excuse me?

18 JUROR - I'll still go back.

19 THE COURT - Okay. But my question is, is would
20 that influence you in this case?

21 JUROR - Oh, no.

22 THE COURT - Would you be able to disregard all
23 the trips you've taken out there and base your decision in
24 this case exclusively on the testimony and evidence in this
25 case?

1 JUROR - Yes, sir.

2 THE COURT - Okay. Thank you, Mr. Plyler, for
3 bringing that to our attention. All right, the gentleman
4 next to him in the grey shirt, your name and number?

5 JUROR - Steve Manning, number 76.

6 THE COURT - All right, Mr. Manning, how long ago
7 was it that you visited there?

8 JUROR - Couple of months ago. We go out there
9 from time to time, first responder call ---

10 COURT REPORTER - I'm having trouble hearing him.

11 THE COURT - All right, hold for a second. Mr.
12 Manning, let me get you to come forward, please.

13 (JUROR APPROACHES)

14 THE COURT - All right, you go out there -- what
15 capacity do you go out there?

16 JUROR - I would go out there with the rescue
17 squad and the fire department down there for all the
18 patients and stuff on the trails and they have accidents
19 and wrecks.

20 THE COURT - Okay, while at the site?

21 JUROR - Yes, and we kind of affiliate with the
22 people out there, because we go out there quite often.

23 THE COURT - Okay, the fact that you -- are these
24 people that are injured on the site riding four-wheelers?

25 JUROR - Yes.

1 THE COURT - Okay. Would the fact that you attend
2 out there regularly to treat people who have been hurt on
3 the site, would it affect you ability to give the defendant
4 ---

5 JUROR - It shouldn't.

6 THE COURT - --- and the plaintiff -- and I
7 understand you say it shouldn't. What I have to be sure
8 about ---

9 JUROR - Right, right.

10 THE COURT - --- is that you are not influenced by
11 anything other than the testimony and evidence in the case.

12 JUROR - I understand that, but, yes, it shouldn't
13 affect that at all.

14 THE COURT - Okay. Would you be able to disregard
15 every visit you've ever made out there and base your
16 decision in this case exclusively on the testimony and
17 evidence in this case?

18 JUROR - Yes, sir.

19 THE COURT - Okay. Have you discussed any of your
20 visits or any of the occurrences of your visits with
21 anybody in the jury panel?

22 JUROR - No.

23 THE COURT - Okay. All right, make sure you
24 don't. Okay?

25 JUROR - (Indicating yes)

1 THE COURT - All right, thank you.

2 (JUROR RETAKES HIS SEAT)

3 THE COURT - All right, the gentleman in the green
4 shirt, your name and number?

5 JUROR - Kevin Adams, juror number 1.

6 THE COURT - All right, Mr. Adams, when was the
7 last time you went out there?

8 JUROR - About the summer of 2012.

9 THE COURT - Okay. And what was the reason for
10 your going out there?.

11 JUROR - We was out riding ATVs.

12 THE COURT - Okay. Would your patronage of that
13 business affect your ability to give both the plaintiff and
14 defendants in this case a fair and impartial trial?

15 JUROR - I'll give them a fair trial.

16 THE COURT - Okay. Would you be able to disregard
17 your visit out there in its entirety and base your decision
18 in this case exclusively on the testimony and evidence in
19 this case?

20 JUROR - I'll do so.

21 THE COURT - All right, well, thank you very much
22 for bringing that to our attention. All right, the
23 gentleman behind him, your name and number?

24 JUROR - William Scott, 117.

1 THE COURT - All right, Mr. Scott, how long ago
2 was it that you were out there?

3 JUROR - I go out there maybe three, four times a
4 year. They have a good disk golf course. I've never
5 ridden four-by-fours, but I go out there and I play golf.
6 I would have no problem dealing with them fairly.

7 THE COURT - All right, so your patronage, would
8 you be able to disregard all the times you go out there in
9 its entirety and base your decision in this case
10 exclusively on the testimony and evidence in this case?

11 JUROR - Yes, sir.

12 THE COURT - Okay, thank you very much for
13 bringing that to our attention, Mr. Scott. All right,
14 anyone else who has visited Carolina Adventure World? If
15 so, please stand.

16 (NO RESPONSE)

17 THE COURT - Any member of the jury panel who
18 either personally has a family member or close personal
19 friend employed by Carolina Adventure World, LLC? If so,
20 please stand.

21 (JUROR STANDS)

22 THE COURT - All right, and I apologize because
23 every time -- we've got to make a record, so every time you
24 stand, I'll need you to give me your name and jury number.

25 JUROR - Yes, sir, Dylan Cruz, number 35.

1 THE COURT - All right, Mr. Cruz, is this you, a
2 family member or a close personal friend?

3 JUROR - It's my brother's ex-fiance.

4 THE COURT - Your brother's ex-fiance.

5 JUROR - Yes, sir.

6 THE COURT - Is employed out there?

7 JUROR - Yes, sir.

8 THE COURT - All right. And what is your
9 brother's ex-fiance's name?

10 JUROR - Becca Peay.

11 THE COURT - Excuse me?

12 JUROR - Becca Peay, sir.

13 THE COURT - Becca Peay.

14 JUROR - Yes, sir.

15 THE COURT - Is that employee involved in this
16 lawsuit in anyway?

17 MR. RAYNOR - No, sir, Your Honor.

18 THE COURT - Okay. How often do you see her or --
19 do y'all socialize together or do you see her on a regular
20 basis, or when was the last time you saw her?

21 JUROR - They have a child, Your Honor. They're
22 not really together anymore, sir, so just through the
23 child. I see her when she drops him off at the house or
24 visa versa, when he goes to get her.

1 THE COURT - Okay. Would her employment there
2 affect your ability to give the plaintiff and defendant in
3 this case a fair and impartial trial?

4 JUROR - No, sir.

5 THE COURT - Okay. Would you be able to disregard
6 your association with her in its entirety and base your
7 decision in this case exclusively on the testimony and
8 evidence in this case?

9 JUROR - Yes, sir.

10 THE COURT - Excuse me?

11 JUROR - Yes, sir.

12 THE COURT - Okay. Thank you, Mr. Cruz, for
13 bringing that to our attention.

14 JUROR - Yes, sir.

15 THE COURT - Anyone else who personally has a
16 family member or close personal friend employed with
17 Carolina Adventure World, LLC? If so, please stand.

18 (NO RESPONSE)

19 THE COURT - Is there any member of the jury panel
20 who has a family member or close personal friend that
21 regularly visits Carolina Adventure World? If so, please
22 stand.

23 (NO RESPONSE)

1 THE COURT - All right, please listen carefully as
2 these are the possible witnesses who may testify in this
3 case. Plaintiff, Cory Ross, William -- is it Ekholm.

4 MR. EKHOLM - Ekholm.

5 THE COURT - Ekholm, E-k-h-o-l-m, Richard Paxton or
6 John Webster. Cory Ross, William Ekholm, Richard Paxton
7 and John Webster. Is there any member of the jury panel
8 related by blood or marriage, have a close personal
9 relationship, business relationship, social relationship or
10 any other type of relationship with any of these potential
11 witnesses? If so, please stand.

12 (NO RESPONSE)

13 THE COURT - All right, the plaintiff in this case
14 is represented by Attorney S. Jahue Moore, Jake Moore, of
15 the firm of Moore Taylor & Thomas in West Columbia, South
16 Carolina. The defendant in this case is represented by
17 Attorneys Christian Stegmaier and Megan Hazelwood Hall of
18 Collins and Lacy.

19 MR. RAYNOR - Also, Ken Raynor, Your Honor, ---

20 THE COURT - Ken Raynor.

21 MR. RAYNOR - --- of the Raynor law firm.

22 THE COURT - And where is the Raynor law firm?

23 MR. RAYNOR - Charlotte.

24 THE COURT - Is there any member of the jury panel
25 related by blood or marriage, have a close personal

1 relationship, business relationship, social relationship or
2 any other type of relationship with any of these attorneys?

3 If so, please stand.

4 (NO REPSONSE)

5 THE COURT - Any member of the jury panel ever
6 been represented by any of these attorneys? If so, please
7 stand.

8 (NO RESPONSE)

9 THE COURT - Has any member of the jury panel ever
10 been involved in any legal action in which any of these
11 attorneys represented another party to that action? If so,
12 please stand.

13 (NO RESPONSE)

14 THE COURT - Is there any member of the jury panel
15 either personally have a family member or close personal
16 friend employed with the law firm of Moore Taylor & Thomas,
17 which is in West Columbia, South Carolina, the law firm of
18 Collins & Lacy, which is in Columbia, South Carolina, or
19 the Raynor Law Firm which is in Charlotte, North Carolina?
20 If so, please stand.

21 (NO RESPONSE)

22 THE COURT - Has any member of the jury panel
23 formed or expressed an opinion about any issue or matter
24 involved in this case? If so, please stand.

25 (NO REPSONSE)

1 THE COURT - Is any member of the jury panel aware
2 of any bias or prejudice towards either the plaintiffs or
3 the defendants in this case? If so, please stand.

4 (NO RESPONSE)

5 THE COURT - Does any member of the jury panel own
6 an all terrain vehicle? If so, please stand.

7 (JURORS STAND)

8 THE COURT - All right, sir, your name and number?

9 JUROR - Dylan Cruz, number 35. We have several
10 Yamaha dirt bikes.

11 THE COURT - All right. And I'm assuming the
12 allegations in this case are that the plaintiff was injured
13 while riding one. Is that correct?

14 MR. MOORE - Yes, sir.

15 THE COURT - Okay. Would the fact that you own an
16 all terrain vehicle affect your ability to give both the
17 plaintiff and defendant in this case a fair and impartial
18 trial?

19 JUROR - No, sir.

20 THE COURT - Okay. Would you be able to disregard
21 your ownership of an all terrain vehicle and base your
22 decision in this case exclusively on the testimony and
23 evidence in this case?

24 JUROR - Yes, sir.

1 THE COURT - All right, thank you for bringing
2 that to our attention. Yes, ma'am, your name and number?

3 JUROR - Mary Jo Wilson, 143.

4 THE COURT - All right, Ms. Wilson, it's the
5 allegations in this case are that the plaintiff was injured
6 while riding an all terrain vehicle. Would the fact that
7 you own an all terrain vehicle affect your ability to give
8 both the plaintiff and the defendant in this case a fair
9 and impartial trial?

10 JUROR - No, sir.

11 THE COURT - Would you be able to disregard your
12 ownership of an all terrain vehicle in its entirety and
13 base your decision in this case exclusively on the
14 testimony and evidence in this case?

15 JUROR - Yes, sir.

16 THE COURT - All right, thank you for bringing
17 that to our attention. Gentleman in the red shirt, your
18 name and number?

19 JUROR - My name's Paul Allen. I have -- my
20 number is 3.

21 THE COURT - All right, Mr. Allen?

22 JUROR - I have two four-wheelers.

23 THE COURT - You have two what?

24 JUROR - ATVs.

1 THE COURT - Okay. Would the fact that this
2 lawsuit involves injuries that occurred while the plaintiff
3 was riding an all terrain vehicle and the fact that you own
4 all terrain vehicles affect your ability to give both the
5 plaintiff and defendant in this case a fair and impartial
6 trial?

7 JUROR - No.

8 THE COURT - Would you be able to disregard your
9 ownership of an all terrain vehicle in its entirety and
10 base your decision in this case exclusively on the
11 testimony and evidence in this case?

12 JUROR - Yes.

13 THE COURT - Thank you for bringing that to our
14 attention. Yes, sir, your name and number?

15 JUROR - Ray Twitty, 131.

16 THE COURT - All right, Mr. Twitty, how many do
17 you own?

18 JUROR - Just one dirt bike right now.

19 THE COURT - All right. Would your ownership of
20 that dirt bike affect your ability to give both the
21 plaintiff and defendant in this case a fair and impartial
22 trial?

23 JUROR - No, sir.

24 THE COURT - Would you be able to disregard your
25 ownership of a dirt bike in its entirety and base your

1 decision in this case exclusively on the testimony and
2 evidence in this case?

3 JUROR - Yes, sir.

4 THE COURT - Thank you, Mr. Twitty, for bringing
5 that to our attention. The gentleman in the green shirt,
6 your name and number?

7 JUROR - Kevin Allen, juror number 1.

8 THE COURT - All right, sir, and how many do you
9 own?

10 JUROR - Two.

11 THE COURT - All right, would your ownership of
12 those all terrain vehicles affect your ability to give both
13 the plaintiff and defendant in this case a fair and
14 impartial trial?

15 JUROR - No, sir.

16 THE COURT - Would you be able to disregard your
17 ownership of those vehicles in its entirety and base your
18 decision in this case exclusively on the testimony and
19 evidence in this case?

20 JUROR - Yes, Your Honor.

21 THE COURT - Thank you for bringing that to our
22 attention. So the gentleman in the white shirt, your name
23 and number?

24 JUROR - Michael Christian, number 29. I own one
25 ATV.

1 THE COURT - All right, Mr. Christian, would you
2 ownership of that vehicle affect your ability to give the
3 plaintiff and defendants a fair and impartial trial?

4 JUROR - None whatsoever.

5 THE COURT - Would you be able to disregard your
6 ownership of that vehicle in its entirety?

7 JUROR - Yes, I would.

8 THE COURT - Would you be able to base your
9 decision in this case exclusively on the testimony and
10 evidence in this case?

11 JUROR - Yes, I would.

12 THE COURT - Thank you for bringing that to our
13 attention. Does any member of the jury panel know of any
14 reason whatsoever why he or she should not serve as a juror
15 in this case with particular emphasis being placed on your
16 ability to be fair and impartial to both the plaintiff and
17 the defendant? If so, please stand.

18 (NO RESPONSE)

19 THE COURT - Any additional questions from the
20 plaintiff?

21 MR. MOORE - No, sir, Your Honor. Thank you.

22 THE COURT - Any from the defense?

23 MR. RAYNOR - We're fine, Your Honor.

24 THE COURT - All right, ladies and gentlemen, what
25 happens in civil cases now is those -- and I do find all

1 you to be qualified to serve as jurors in this particular
2 case. Your names will be generated on a list, fed into a
3 computer and will be produced at random in random order.
4 Unlike criminal cases, if this was a General Sessions case,
5 your names would be called out one at a time and you'd have
6 to come and stand in front of the lawyers and look at the
7 lawyers while one looked at his notes and talked to his
8 witnesses and looked back at you; then the other one would
9 look at you and look at his notes and talk to his witnesses
10 and look back at you, and you'd have to stand there in
11 front of them until they decided whether or not they wanted
12 you as a jury. Well, we don't have to do that in civil
13 cases. In Common Pleas cases your names are produced on a
14 list at random, and the attorneys will just go down that
15 list and strike a certain number of jurors until we get our
16 12 jurors and our two alternates, and so you won't even
17 know if you're on the list. Number two, you're assigned
18 new numbers on this list, so if you happen to be juror
19 number 5 and you hear somebody strike juror number 5,
20 that's not even you, because you've been assigned a new
21 number, so you don't know if you're on the list, number
22 one, and, number two, you don't know your number, so you
23 don't know if you're there or if you get struck or not, but
24 if we can sit tight for just a minute while we produce this

1 list, and then the attorneys -- how long do y'all need to
2 take a look at the list?

3 MR. MOORE - I would think no more than 15
4 minutes, Your Honor.

5 THE COURT - Okay.

6 MR. RAYNOR - I think about the same, Your Honor.

7 THE COURT - Okay. All right, and so if everybody
8 would sit tight while we go through this process, and once
9 we get the list produced, they'll take about 15 minutes to
10 look at it and then we'll be back and start the jury
11 selection process.

12 (WHEREUPON, BRIEF PAUSE IS TAKEN)

13 THE COURT - All right, ladies and gentlemen,
14 we're going to take about a 15 minutes break, giving the
15 attorneys an opportunity to take a look at this list. If
16 you want to stretch your legs, check your phone messages,
17 whatever the case may be, you'll be able to do that, but
18 please, let's be back in your seats at about 25 til;
19 that'll give you about 15 or 20 minutes.

20 (WHEREUPON, RECESS TAKEN)

21 THE COURT - All right, please be seated. All
22 right, gentlemen, have you had an opportunity to look over
23 the list?

24 MR. RAYNOR - We have, Your Honor.

25 MR. MOORE - Yes, sir, Your Honor.

1 THE COURT - All right, we will -- using the
2 numbers to the left of the names, 1 through 20, plaintiff
3 will strike four, defense will strike four and alternate,
4 then 21, 22 and 23, plaintiff will strike one, defense will
5 strike one for the first alternate; 24, 25 and 26 plaintiff
6 will strike one and defense will strike one for the second
7 alternate. Ladies and gentlemen, we're getting ready to
8 start the selection process, so if we can have order while
9 we go through, we'll begin with the plaintiff striking by
10 the numbers to the left of the name..

11 MR. MOORE - Plaintiff strikes number 13.

12 THE COURT - All right.

13 DEPUTY CLERK - Defense?

14 MR. RAYNOR - Defendant strikes number 20, Your
15 Honor.

16 MR. MOORE - Plaintiff strikes number 1.

17 MR. RAYNOR - The defendant strikes number 24,
18 Your Honor.

19 THE COURT - No, no, 1 through 20.

20 MR. RAYNOR - Oh, I'm sorry. Number 17, Your
21 Honor.

22 THE COURT - All right, defense strikes number 17.
23 All right, plaintiff?

24 MR. MOORE - Plaintiff strikes number 9.

25 THE COURT - Plaintiff 9.

1 MR. RAYNOR - Number 11, Your Honor, for the
2 defendant.

3 THE COURT - Defense strikes number 11.

4 MR. MOORE - Plaintiff strikes number 8.

5 THE COURT - Plaintiff strikes 8.

6 MR. RAYNOR - Number 14 for the defendant, Your
7 Honor.

8 THE COURT - All right, defendant strikes 14. All
9 right, now 21, 22 and 23. Plaintiff strikes one and
10 defense strikes one.

11 MR. MOORE - Plaintiff strikes number 22.

12 THE COURT - Plaintiff strikes 22.

13 MR. RAYNOR - 21, Your Honor, for the defendant.

14 THE COURT - Defendant strikes 21. All right,
15 number 24, 25 and 26, plaintiff strikes one, defense
16 strikes one.

17 MR. MOORE - Plaintiff strikes number 25.

18 THE COURT - Plaintiff strikes 25.

19 MR. RAYNOR - And the defendant strikes number 24,
20 Your Honor.

21 THE COURT - Defendant strikes 24. All right, let
22 me review these with you. I've got that the plaintiff
23 strikes 1, 8, 9, 13, 22 and 25.

24 MR. MOORE - That's correct, Your Honor. Thank
25 you.

1 THE COURT - All right, and I've got the defendant
2 strikes 11, 14, 17, 20, 21 and 24.

3 MR. RAYNOR - Yes, Your Honor.

4 THE COURT - All right, ladies and gentlemen,
5 please listen-up. If your name is called by the clerk of
6 court, please come forward, bring with you any coats,
7 pocket-books, whatever you might have. The bailiff will
8 direct you where to sit in the jury seats. So please
9 listen-up for your names.

10 DEPUTY CLERK - Michael Sims, Jacqueline Norris,
11 Telicia Bonds, Cynthia Roach, Tyson Gibson, -- can they
12 come up -- go ahead and come up and have a seat?

13 THE COURT - Yes, let's let them go ahead and come
14 on up.

15 DEPUTY CLERK - Harold Jackson, Austin Gladney,
16 Darissa Stone, Franklyn Harrison, Tinijah Roseboro, Michael
17 Christian, Brian Thompson, and our alternates will be Kayla
18 Feaster and Raymond Twitty.

19 (WHEREUPON, JURORS ARE SEATED)

20 THE COURT - All right, ladies and gentlemen, you
21 will be the jury that will preside over this first case,
22 and I'm going to excuse you back to the jury room for just
23 a few minutes while I release the jury panel. And if I
24 could get you to do me a favor, and that would be to select
25 a foreperson for this jury. Now, you may not know

1 everyone, and if you're unable to select a foreperson,
2 don't worry about it; I can pick someone to serve as
3 foreperson. Many Judges pick their own foreperson, but I
4 like to give the jury the opportunity to select one on
5 their own accord if you're able to do so, and if you can
6 select a foreperson, just write his or her name on a sheet
7 of paper with the jury number and then bring them back into
8 the -- and then give that to the bailiff and we'll bring
9 you back into the courtroom at that time. Now, the
10 foreperson has absolutely no more authority, no more
11 influence, no more importance than any other juror. The
12 sole function of the foreperson is to act as a liaison
13 between the Court and the jury. If the jury has a need,
14 the foreperson let's the Court know; if the jury has a
15 question, the foreperson let's the Court know. When it's
16 time to deliberate, the foreperson will preside over the
17 deliberations, but other than that, the foreperson has no
18 more influence, no more authority, no more importance than
19 any other juror. Now the only restriction would be --
20 let's see it'd be Ms. -- is it Feaster? Okay, Ms. Feaster
21 and Mr. Twitty. As alternates you would not be able to
22 serve as foreperson on this jury, because you are.
23 alternates at this point in time, but anyone else can serve
24 as foreperson. Now, when you come back into the courtroom,
25 the foreperson will always occupy the first seat on the

1 front row, on the front row, the first seat. The
2 alternates will always occupy the two seats where you now
3 sit unless you become a part of the regular jury. The rest
4 of you are at liberty to sit in whatever seat you like. If
5 you want to sit in the same seat throughout the trial of
6 the case, you can do that. If you want to alternate seats,
7 you can do that. The only restrictions is that the
8 foreperson sits in the first seat on the front row and the
9 alternates always occupy the alternate seats unless and
10 until they become a part of the jury. So I'm going to
11 excuse you back to the jury room for just a few minutes.
12 If you can select a foreperson, just write his or her name
13 on a sheet of paper, give it to the bailiff and we'll bring
14 you back in at that time. Okay? Thank you very much.

15 (WHEREUPON, JURY EXITS THE COURTROOM)

16 THE COURT - All right, any challenges to the
17 selection or composition of the jury by the plaintiff?

18 MR. MOORE - None, Your Honor.

19 THE COURT - Any by the defense?

20 MR. RAYNOR - None, Your Honor.

21 THE COURT - All right. Ladies and gentlemen,
22 those of you who are in the jury panel, we do have our jury
23 for this first case, and so I'm going to excuse you for the
24 remainder of the day. You'll need to call that number back
25 that you were given after 6:00 p.m. today to the clerk of

1 court and that'll give you some further directions as to
2 whether or not you need to call back at a later time or
3 when you need to return, if you need to return. I do want
4 to thank you for being here yesterday and for being here
5 today. And as I told you yesterday, even if you do not get
6 selected on a jury, please do not leave here thinking you
7 have not fulfilled your duty as jurors, because you have.
8 The fact that you're here ready and willing to serve has
9 brought about a resolution to a great number of cases
10 simply because we have a jury panel ready to hear the case.
11 As I told you yesterday, you've got attorneys, parties,
12 witnesses, re-evaluating the strengths and weaknesses of
13 their cases, and there are a number of cases that have been
14 settled as a result of your sitting in the seats where you
15 are right now, and I want to thank you for that service.
16 So you're free to go for the remainder of the day, and
17 please call that number at 6:00 p.m. today. Thank you very
18 much.

19 (WHEREUPON, REMAINING JURY PANEL EXITS THE
20 COURTROOM)

21 THE COURT - All right, I understand we've got
22 some pre-trial matters we need to address?

23 MR. RAYNOR - Yes, Your Honor, I have three
24 motions in limine and two of them are related in some
25 respects. I'd like to address those first, if I could.

1 THE COURT - All right.

2 MR. RAYNOR - I've given Mr. Moore copies of
3 these, Your Honor.

4 THE COURT - All right.

5 MR. RAYNOR - I have a copy for you and -- I'm
6 sorry, I need one of those back. Sorry.

7 THE COURT - All right, sir.

8 MR. RAYNOR - Your Honor, the -- I would start
9 with what I've labeled as motion in limine number 1, ---

10 THE COURT - All right.

11 MR. RAYNOR - --- which is the exclusion of the
12 testimony of Mr. Ekholm. This witness was identified by
13 the plaintiff as an expert witness, and, Your Honor, the --
14 this witness really has no basis to testify as an expert
15 witness. He has had no qualifications. His experience --
16 I'm sorry -- the witness gave two opinions in his
17 deposition, and I have the original of his deposition if
18 you'd like to have it, Your Honor, but he gave two
19 opinions; one listed, -- quote, the defendant, being
20 Carolina Adventure World, had a lack of concern with
21 safety, and then two, the defendant lacked knowledge of the
22 industry. And so, you know, to test his qualifications to
23 make those statements, I asked him about his prior
24 experience. The witness is -- heavy equipment operator by
25 training and education. I think he has a certificate to be

1 a heavy equipment operator. He has never worked for any
2 other facility such as Carolina Adventure World except
3 Carolina Adventure World. He has only visited one facility
4 like Carolina Adventure World. I don't even think he rode
5 a four-wheeler there. His experience before he came to
6 Carolina Adventure World was out in the Midwest he had
7 built some oval racetracks in pretty flat land. He was
8 self-taught how to do that I guess. He just went out and
9 leveled the land off. At his employment with Carolina
10 Adventure World, I think he said 80 percent of what he did
11 was to clear land for the storage units, you know, to be
12 built upon. The rest of the work he did was trail grading,
13 I believe, and maintenance. The -- when I asked him if he
14 had any knowledge of industry -- industry standards, he was
15 not able to identify any industry standards that, you know,
16 would apply. In fact, he wasn't even able to tell me where
17 I would go to get those standards. And so, Your Honor, I
18 do not think he qualifies as an expert witness at all. And
19 then to the extent that the um -- you know, he's trying to
20 give opinion testimony I would contend to the Court that
21 those would be improper if he's allowed to give opinion
22 testimony at -- when he's only a lay witness, and I cite
23 the case In Re: Thomas for that proposition. And, Your
24 Honor, this kind of brings me to my next point, and that is
25 the motion in limine number, -- I believe number three, and

1 that's to exclude testimony by a number of the plaintiff's
2 witnesses and witnesses (sic). For example, the plaintiff
3 wants to testify about, you know, whether the trail
4 should've been closed, whether this was a dangerous
5 condition and things of that nature. And again, absent
6 some basis for those type of statements, they can't just,
7 you know, throw out what their personal beliefs are or
8 preferences, and that seems like what Mr. Ekholm is doing
9 when he says they weren't concerned enough with safety,
10 that kind of thing, same way with the plaintiff talking
11 about that rock was dangerous. Again, that may be
12 ultimately something the jury decides, but it's not
13 something that any of the witnesses decide, and so, Your
14 Honor, I don't have an objection if a witness wants to say,
15 you know, the rock -- I'm sorry, Your Honor, -- this
16 accident happened when the plaintiff struck a rock that was
17 in the trail he was riding, and I don't have any problem if
18 the witness wants to testify about the trail was this wide
19 and the rock was this tall sticking out of the ground and
20 it was, as he said -- you know, I think he said four to
21 five feet wide. Those things he can testify about, but
22 what none of the witnesses who are lay witnesses can say
23 is, you know, that's a dangerous condition because ---

1 THE COURT - What kind of expert would be able to
2 give that testimony as to whether or not a rock was
3 dangerous or not?

4 MR. RAYNOR - I would agree, Your Honor, but
5 certainly if an expert can't, a lay witness can't either,
6 and so that's the point. They need to stick to, you know,
7 -- to the extent they're lay witnesses, they need to stick
8 to facts and observations, not their own personal opinions
9 and preferences, and I would argue that Mr. Ekholm has not
10 qualified as an expert, and so he falls in that count.

11 THE COURT - All right. Mr. Moore?

12 MR. MOORE - May it please, Your Honor, I would
13 like to just talk about Mr. Ekholm. He clearly does
14 qualify as an expert witness. Mr. Ekholm is 43 years old.
15 He has been riding ATVs since he was two years old. By
16 trade he is a certified heavy equipment operator, but he
17 also is a designer of trails and tracks. He actually has a
18 business where he holds himself out to the public as being
19 a designer of trails and tracks. That's what ---

20 THE COURT - But I mean what are you -- what are
21 you qualified him as an expert, in what field?

22 MR. MOORE - Your Honor, if the Court would --
23 would let me finish this train of thought, I can explain
24 the answer to the question.

25 THE COURT - Okay.

1 MR. MOORE - He was hired -- he was hired by
2 Carolina Adventure World to come in for his expertise as
3 the manager of the facility. He was hired to basically be
4 the track manager and to help them design and manage the
5 track. He was actually asked to come here from Oklahoma
6 because of his expertise, and he moved his family here from
7 Oklahoma and lived on this site for over a year where he
8 functioned in the design and maintenance of this particular
9 course. He was hired to help design and maintain this
10 particular course. A portion of the course was already
11 constructed when he arrived; a portion of it wasn't. He
12 was hired by Carolina Adventure World for his expertise in
13 construction and maintenance of tracks and trails. Now, he
14 was paid by them as an expert in the construction and
15 maintenance of tracks and trails related to motorbikes,
16 off-road motorbikes and ATVs, so they paid him and he
17 actually managed this course for 13 or 14 months living on
18 the course as the person who was primarily there. He left
19 because so many people were being injured and because, he
20 would testify, that the owners of Carolina Adventure World
21 refused to do anything to properly maintain the course or
22 to provide for safety of the patrons. He will testify that
23 there is no book one might go to as to how to maintain an
24 off-road course, but there are generally accepted practices
25 in the industry in which he works, has worked and actually

1 is held out and recognized as an expert in track designs.
2 He has a webpage where he advertises his services on track
3 maintenance and design. He has been involved in the
4 construction of a -- construction and maintenance of a
5 number of tracks and trails. He will testify that is not
6 the only thing he does for a living, but as part of his
7 living he designs and constructs tracks and trails, and he
8 can testify as to the ordinary practices as to how these
9 tracks and trails are supposed to be maintained. He will
10 also testify that it was the practice of these folks to do
11 nothing in regard to maintenance or safety, that they had
12 an actual policy in place while he was there to do nothing
13 in regard to safety.

14 THE COURT - But I mean is his testimony going to
15 be that it is a practice in the trade for them to make
16 certain maintenance repairs ---

17 MR. MOORE - Yes, sir.

18 THE COURT - --- and that that is a general
19 accepted practice of the profession?

20 MR. MOORE - Yes, sir. That is what he will say,
21 that in his profession in the construction and maintenance
22 of these sorts of tracks, that there are several things
23 that are generally accepted should be done. While there
24 are no written standards, there are cer -- these things are
25 generally accepted.

1 THE COURT - But I mean are they common knowledge
2 -- these are to the jury or does it require some
3 specialized expert opinion to educate a jury in a field
4 that the jury would not otherwise be educated in?

5 MR. MOORE - Well, Your Honor, here is -- here is
6 my problem. I don't know what the jury knows or doesn't
7 know, but what Rule 701 basically provides, just in regard
8 to opinion testimony by lay witnesses, it says, if the
9 witness is not testifying as an expert, the witness's
10 testimony in the form of opinions or inferences are limited
11 -- is limited to those opinions in every -- which are
12 rationally based on the perception of the witness, are
13 helpful to a clear understanding of the witness's testimony
14 and do not require special knowledge, skill or expertise or
15 training, however, this gentlemen does have special
16 knowledge, skill and expertise by virtue of the fact that
17 he's worked in this area his whole life.

18 THE COURT - Yes, but is this an acknowledged area
19 where Courts have qualified him as an expert in the past or
20 the Courts have generally recognized his area of expertise
21 as an area requiring an expert testimony?

22 MR. MOORE - Your Honor, as I understand the law
23 in South Carolina, the South Carolina rules in regard to
24 witnesses are -- is -- we do not follow the federal rule of
25 Daubert. What South Carolina has basically said, that in

1 any field where a person has accepted -- has specialized
2 information and knowledge that is not something that is
3 available to the general public, that the Court can
4 recognize a person having special expertise in a particular
5 field and can qualify that person as an expert witness in
6 that field. I mean this is not a lawyer or an accountant
7 or a doctor.

8 THE COURT - But I mean what is his specialized
9 knowledge that is not common knowledge to the jury or to
10 that lay person?

11 MR. MOORE - He knows how -- his specialized
12 knowledge is this. He knows how in this industry it is
13 generally accepted practice as to how a track should be
14 maintained. He is an expert in the field of track and
15 trail maintenance. That's what he does for -- partially
16 does for a living and what he has done. He is an expert in
17 how these particular motorized tracks should be properly
18 maintained, and he can tell us that. He knows that. And
19 he does have special training and special expertise on the
20 job as to how he has developed that knowledge, and he
21 clearly is qualified. If -- he has that information, Your
22 Honor, and it is something that a jury wouldn't -- I
23 wouldn't know, for instance, that there are certain times
24 that you need to go up and grade these things. I wouldn't
25 know what do you do when they're ruts; I wouldn't know,

1 what do you do if there are boulders in the road; what do
2 you do if they're stumps in the road; what do you do ---

3 THE COURT - I'm assuming you remove them.

4 MR. MOORE - Well, I would assume the same thing.

5 THE COURT - But you're saying that's not the
6 case, because all of that seems like common knowledge to
7 me, that you'd fill in ruts, you remove stumps and rocks,
8 but if you're telling me that that is not the case and that
9 there is a specialized area ---

10 MR. MOORE - There is. That's -- you know, here's
11 what they're going to basically be arguing. All right,
12 they're going to be arguing, well, gee, these sorts of
13 impediments in the roadway are just part of the fun; you
14 know, there's supposed to be limbs and trees and rocks in
15 the road. Now, the witness is going to say no, here's the
16 deal; an SUV can hurt you. And people who maintain these
17 tracks understand that an SUV can hurt you. If a four-
18 wheeler is driven properly, it will not hurt you, but if
19 there are certain types of impediments in the roadway that
20 one would come into contact with, like stumps and boulders
21 and so forth, they'll cause a wreck and they will hurt you.
22 Those things are not just ordinary trail-riding; those
23 things have to be removed, and in safety you have to
24 inspect for them; you have to look for them, and when you
25 find them, you have to remove them. Because the argument

1 is going to be, well, gee, what do you expect, you ran into
2 a boulder. It's just one of those things. And he's going
3 to say, no, no, no. You may have a rock on the road, but a
4 boulder imbedded into the dirt is the kind of thing you
5 have to inspect for and you have to basically remove. And
6 not to inspect for them and not to remove them is dangerous
7 and violates generally accepted safety practices for the
8 industry, and as a result that's what he's prepared to
9 testify to.

10 THE COURT - All right, thank you. Anything in
11 reply?

12 MR. RAYNOR - Just briefly to, first of all, this
13 witness isn't talking about any specific rock, because he
14 doesn't -- according to his deposition, he didn't even know
15 where the accident occurred. He's just throwing out a
16 broad rush, you know, this should've been done, we
17 should've been more safe, we should've followed doing
18 something about maintaining these trails, but, Your Honor,
19 the -- just to -- if you look at his qualifications -- I
20 disagree with Mr. Moore. First of all, he only -- at the
21 time I deposed him, he only had built motor cross tracks,
22 which are different than trails through the woods for ATVs.
23 That's a whole different concept. That's not trails for
24 off -- recreational ATV riding. That's a different thing.
25 That's a track where they actually have speed races around.

1 That's his experience before he got to A-T -- to Carolina
2 Adventure World. He gets to Carolina Adventure World, and
3 he was hired to design a motor cross track which the -- you
4 know, that's different than design to trails. He wasn't
5 hired to do that. And, in fact, Your Honor, he's testified
6 before he came to work at Carolina Adventure World, he had
7 no experience working at a similar facility, none. And at
8 the time I deposed him -- maybe he's gotten some since then
9 -- he had no such experience other than working at Carolina
10 Adventure World. And, again, Your Honor, 80 percent of his
11 job wasn't involved with track maintenance; it was
12 something else. And then, Your Honor, I asked him, I said,
13 do you know of any industry standards regarding
14 maintenance. You know, that's the key question. It is our
15 standard; do you know it. And the answer is he does not.
16 I asked him if knew anything of any group that had the
17 standards; he did not. I asked him, do you know of any
18 specific standards that applies to a facility like Carolina
19 Adventure World, the question you were asking earlier, and
20 the answer was, no. And so, Your Honor, he can't just pull
21 out, you know, his personal preference and say, you know,
22 because I've done this so long -- or I've done some of it,
23 that I can now testify, and it's not enough because he's,
24 you know, had this business or he's designed motor cross
25 trails to now start giving these standards that apply to

1 the maintenance of an ATV trail out at a facility like
2 Carolina Adventure World. And, Your Honor, I would cite
3 the case of the Ford Motor -- Watson vs. Ford Motor case,
4 389 South Carolina 434 699 Southeast 2nd 169, it's a 2010
5 case where um -- you know, the person in that case had some
6 expertise, but, you know, what he tried ---

7 THE COURT - I think what he was is he worked on
8 an assembly line, and they wanted him to give opinion
9 testimony as to the brake system or something of that
10 nature.

11 MR. RAYNOR - Yes, sir, exactly. And so they went
12 out and did some studying and they said that wasn't enough,
13 you're not an expert, so ---

14 THE COURT - Well, this is a motion in limine. I
15 don't know what the witness's qualifications are; I don't
16 know what his expertise is. I don't know if it's a
17 recognized field, so I'm going to deny your motion in
18 limine. They're going to certainly have to put him up;
19 they're going to have to qualify him as an expert. You
20 will be allowed to challenge him as to his expertise.
21 You've got his deposition, so if he gives a prior
22 inconsistent statement or whatever, you can cross examine
23 him on this, and then I'll decide then is he an expert
24 qualified to render an opinion or is he not, because at
25 this point in time you're saying he's not qualified; the

1 plaintiff is saying he is, and I don't know. They've put
2 him up; that's a chance they're taking if I strike him down
3 and say he's not, but I'm not going to rule that as a
4 matter of law in a motion in limine that he cannot testify.
5 I will need to wait and hear him testify as to what his
6 qualifications are and what they're offering him as an
7 expert in. It's going to have to be a recognized area of
8 expertise, so we'll address it at that time.

9 MR. RAYNOR - Then, Your Honor, on the lay
10 witnesses giving personal opinions ---

11 THE COURT - I'm going to deny your motion in
12 limine, because I don't know what the question is.
13 Certainly, you know, like in a car wreck, were they driving
14 dangerously; well, yeah, they were driving dangerously,
15 that's an opinion, but it's kind of a common type question
16 that you can ask a lay witness, particularly a plaintiff
17 who has filed the lawsuit, because that's why he filed the
18 lawsuit. He certainly wouldn't have filed it if in his
19 opinion the person wasn't acting negligently or was not
20 acting dangerously or was not acting willfully. So I'm
21 going to deny your motion. If they ask the question, it's
22 out of line, raise your objection then, and then I'll deal
23 with it. I don't want to rule that as a matter of law they
24 can't respond to a question in a certain way without

1 knowing what that question is and how out-of-bounds it is
2 as far as giving an opinion. Okay?

3 MR. RAYNOR - Thank you, Your Honor. Then the
4 last motion in limine, Your Honor, is -- just has to do
5 with some hearsay objections that I see coming up, because
6 this -- deposing the plaintiff he's -- in his deposition he
7 talked about his work status changing and why that was
8 decided by his employer. He also talked about some
9 statements by his treating physicians, and obviously, those
10 would be out-of-court statements that would be hearsay.
11 For example, if he's trying to say his employer moved him
12 from one position to another because of his productivity,
13 that would be something the employer would have to testify
14 to. So ---

15 THE COURT - Mr. Moore, let me hear from you on
16 that?

17 MR. MOORE - Your Honor, I -- I don't -- my
18 problem is it's very difficult for me to understand exactly
19 what is being objected to. I certainly don't intend to ask
20 my client what did the -- what is -- what did the doctor -
21 what's the doctor's -- I don't intend to ask that. Now, I
22 certainly think I can ask my client, did you have your eye
23 knocked out, can you see anymore, is your eye gone. I mean
24 I think he knows his eye is gone and that his face was
25 broken, but I don't intend to ask for medical opinions from

1 a client except the fact that his eye got knocked out and
2 his face got broken. In regard to what his employer did or
3 why, I'm not going to ask him, why did your employer do
4 something. I am going to say, were you able to do your
5 job, and I think he is -- I think I know what his answer
6 will be, is no, I couldn't see because my eye got knocked
7 out and I stay dizzy all the time now, and why did you
8 leave your employment, I couldn't do my job. I don't think
9 that's -- I think the fact that -- he knows that he left
10 the employment because he couldn't do the work anymore,
11 because his eye got knocked out. I'm not sure -- I'm not
12 sure -- I know -- I haven't asked a question that's
13 objectionable yet, and I think I know how to ask a
14 question; I've been doing this 40 years. I don't intend to
15 ask the question in a way that would solicit a hearsay
16 response.

17 THE COURT - All right, sir.

18 MR. RAYNOR - Your Honor, I -- I mean if he asked
19 his client, you know, why did you leave, and he says,
20 because I couldn't do the work, that's one thing, but if he
21 says, why did you leave, and he says, because my employer
22 said I couldn't do the work, well, that's the difference;
23 that's what I'm getting at.

24 THE COURT - All right, well, I'm going to deny
25 your motion in limine. Raise your objection when the

1 question -- (sic) I'll see how out-of-bounds it is. All
2 right? Anything else?

3 MR. MOORE - Very briefly, Your Honor, just we
4 have pre-marked our exhibits and have run them by counsel
5 for the defendant. My understanding is there are not any
6 objections to these, so if I might, I'd like to introduce
7 into evidence plaintiff's 1 through 15, and they're only --
8 I think there are only two exhibits they have that I object
9 to and other than that, I'm perfectly happy with their
10 exhibits coming in; they only have two.

11 MR. RAYNOR - Your Honor, I have copies of my
12 exhibits for the Court. If you'd like I'll hand those up.

13 MR. MOORE - Can I go ahead and get mine into
14 evidence?

15 THE COURT - Let me see -- what is your position?
16 He wants to go ahead and put in plaintiff's exhibits 1
17 through 15. Are there any objections?

18 MR. MOORE - They've seen -- y'all -- they said
19 they were okay yesterday.

20 THE COURT - Well, I'm going to still give them an
21 opportunity. We haven't even sworn in the jury yet, so I'm
22 going to give them an opportunity to take a look at it and
23 see if there's any objections.

1 MR. STEGMAIER - Judge, I -- oh, I understand Mr.
2 Moore's position. I think our preference would be for the
3 documents to come into evidence as they're brought in.

4 THE COURT - That'll be fine.

5 MR. MOORE - Be fine ---

6 THE COURT - Need to lay the groundwork ---

7 MR. MOORE - Not a problem.

8 MR. STEGMAIER - Thank you, sir.

9 MR. MOORE - Might I ask, do they have a copy of
10 the Carolina Adventure World, LLC Assumption of Risk
11 Release or Liability and Indemnity Agreement that's
12 actually signed.

13 MR. RAYNOR - The -- yes, Your Honor.

14 MR. MOORE - Because I don't have any ---

15 MR. RAYNOR - In fact, that's in that notebook. I
16 have one for you and your law clerk, Your Honor. That's
17 exhibit number 4.

18 MR. MOORE - It's not -- I think we had one, too,
19 but the one I'm putting in evidence I don't think is
20 signed, but it's okay.

21 MR. RAYNOR - What were the two that you objected
22 to, Mr. Moore?

23 THE COURT - Your Honor, we would object to --
24 there's a video they have of the trail where this boy was
25 hurt. We don't know who took it or when it was taken. I

1 wouldn't have any objection to it, except it doesn't appear
2 to show the area where the injury took place, and it
3 appears to be -- have been modified from the time.

4 THE COURT - I don't know which exhibit y'all are
5 talking about or what you're referring to.

6 MR. MOORE - But, Your Honor, I think -- I think
7 the smart thing to do with this is going to be for us to
8 just -- if we're going to have -- put ours in, we'll let
9 them authenticate theirs, we'll play it the same way.

10 THE COURT - All right.

11 MR. RAYNOR - Your Honor, the video's not on the
12 list -- but it -- because it's not in the notebook, but
13 I'll authenticate the video before we play it.

14 THE COURT - All right.

15 MR. RAYNOR - Was there anything else, Mr. Moore?
16 You said there were two.

17 MR. MOORE - There was one -- one -- but we'll
18 deal with it when we come to it. If we're going to put
19 them in one at a time that makes it ---

20 MR. RAYNOR - All right, number two? Was that the
21 one?

22 MR. MOORE - I think so, yes.

23 MR. RAYNOR - Okay.

24 THE COURT - All right, has the jury selected a
25 foreperson yet? Because it's a little after 12:00. I want

1 to go ahead and bring them in and cut them loose for lunch.

2 We got anything else pre-trial?

3 MR. MOORE - No, sir, I'm fine.

4 THE COURT - Anything else pre-trial?

5 MR. RAYNOR - Not from me, Your Honor.

6 THE COURT - Okay. I guess we'll probably just
7 wait and swear them in when we get back after lunch. We'll
8 do it that way.

9 MR. MOORE - That would be fine.

10 THE COURT - All right, they have selected juror
11 number 87, Jackie Norris as the foreperson. Okay, on the
12 sheet it says Jacqueline D. Norris. I'm going to mark this
13 sheet as Court's Exhibit 1.

14 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
15 NUMBER 1.)

16 THE COURT - All right, anything from the
17 plaintiff before we bring the jury in?

18 MR. MOORE - None, Your Honor.

19 THE COURT - Anything from the defense?

20 MR. RAYNOR - Nothing from the defense, Your
21 Honor.

22 THE COURT - All right, let's go ahead and bring
23 the jury back in.

24 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

1 THE COURT - All right, ladies and gentlemen,
2 welcome back. I understand, Ms. Norris, you have been
3 selected as foreperson. Is that correct?

4 FOREPERSON - Yes, sir, it is.

5 THE COURT - All right, thank you very much for
6 serving in that capacity. If you'd always occupy the seat
7 where you now sit. As I said, Ms. Feaster and Mr. Twitty,
8 if you'd always occupy your seats unless you become part of
9 the regular jury. The rest of you are at liberty to sit in
10 whatever seat you'd like. Now, we're getting ready to
11 start the trial of the case, but it's about 12:25, so I'm
12 going to go ahead and excuse you to go to lunch on your
13 own. If you'd please be back at -- let's be back at 2:00
14 o'clock. That'll give you an hour and a half to eat lunch
15 and get back in the jury room. The bailiff will show you
16 where you need to return. So I'm going to excuse you to go
17 to lunch on your own. Please be back at 2:00 o'clock.
18 Please do not discuss this case with anyone. Do not
19 discuss it among yourselves; it's still too early for
20 deliberations. Don't conduct any independent
21 investigations on your own; don't go looking on the
22 internet or try to read through the newspaper or go to the
23 event site or anything of that nature. Don't conduct any
24 independent investigations or anything into this case. I

1 hope everybody has a good lunch, and we'll see you back at
2 2:00 o'clock. Thank you very much.

3 (WHEREUPON, JURY EXITS THE COURTROOM FOR LUNCH
4 RECESS)

5 THE COURT - All right, anything from the
6 plaintiff before we break for lunch?

7 MR. MOORE - No, Your Honor, thank you.

8 THE COURT - Anything from the defense?

9 MR. RAYNOR - No, Your Honor.

10 THE COURT - All right, we'll stand in recess.
11 I'll try to take the bench -- I have them coming back at
12 2:00; hopefully they'll be a little bit early and I'll try
13 to take the bench right at 2:00. All right?

14 MR. MOORE - Thank you, Your Honor.

15 THE COURT - Sounds good. Thank you.

16 (WHEREUPON, LUNCH RECESS TAKEN.)

17 (WHEREUPON, DOCUMENTS MARKED FOR IDENTIFICATION
18 AS DEFENDANT'S EXHIBITS 1 THROUGH 7.)

19 THE COURT - Thank you very much. Please be
20 seated. All right, we'll bring the jury in. Will you
21 swear the jury?

22 DEPUTY CLERK - Yes, sir.

23 THE COURT - All right, bring the jury in. I'll
24 do opening charges, opening statements, then we'll go right
25 in.

1 MR. RAYNOR - Your Honor, do you have any time
2 limitations for opening statements?

3 THE COURT - No, I never have really given any
4 time. I mean ---

5 MR. RAYNOR - Okay. We'll try to ---

6 THE COURT - No, we'll be fine.

7 MR. MOORE - Could we get this down? If it's --
8 anyone can maybe get this down while I do mine. I don't
9 mind him ---

10 (WHEREUPON, DISCUSSION IS HELD REGARDING SCREEN
11 BETWEEN COUNSEL WHICH WAS NOT REPORTED.)

12 THE COURT - All right, anything from the
13 plaintiff before we bring the jury in?

14 MR. MOORE - None, Your Honor, thank you.

15 THE COURT - Anything from the defense?

16 MR. RAYNOR - No, Your Honor.

17 THE COURT - All right, let's bring the jury in.

18 (WHEREUPON, JURY ENTERS THE COURTROOM)

19 THE COURT - All right, ladies and gentlemen,
20 welcome back. Hope everyone had a good lunch. We're
21 getting ready to start the trial of this case. As I told
22 you during voir dire, this is the case of Cory Ross vs.
23 Carolina Adventure World, LLC. Also as I told you during
24 qualifications and voir dire, jurors just like witnesses
25 are constantly taking oaths, so please, if everyone would

1 stand and raise your right hand while the clerk administers
2 the oath for you to serve as jurors on this particular
3 case.

4 (WHEREUPON, DEPUTY CLERK SWEARS THE JURY PANEL)

5 THE COURT - Any member of the jury that did not
6 respond to the oath by saying I do or yes or I will or
7 something else in the affirmative, please stand.

8 (NO RESPONSE)

9 THE COURT - All right, ladies and gentlemen, we
10 are getting ready to start the trial of the case of Cory
11 Ross v. Carolina Adventure World LLC, but before we begin
12 the actual trial I want to go over some matters with you.
13 Number one, from watching movies, TV shows, reading books,
14 trials are often full of a lot of adventure, a lot of
15 action, a lot of suspense. While that might be the case in
16 this trial -- it probably won't be -- the major function of
17 this trial is a search for the truth, what actually
18 happened between the parties, and that's often a slow
19 deliberate, repetitive process, the exact opposite of what
20 you might be accustomed to when you watch movies or TV
21 shows or read books about trials for entertainment
22 purposes, but I hope you do find the trial entertaining. I
23 hope you find it educational, and I want to thank you from
24 the outset for serving as jurors in this case. The
25 attorneys appearing before you are advocates for the

1 parties they represent, but first and foremost, they are
2 officers of the Court. They're sworn to uphold the
3 integrity and the fairness of our judicial system. You can
4 expect them to be professional, competent and ethical in
5 the representation of their client's interest. Likewise,
6 they'll expect you to be professional, reasonable and
7 ethical as you serve on this jury. Now, you will need to
8 pay close attention during the trial of this case. This is
9 a very important case for the parties, and it's the only
10 way that they can settle a dispute, and under the law this
11 is how they settle their dispute, by presenting their case
12 to a jury for you to make a decision. And in that regard
13 I'll now let you know why you are here. As the jury in
14 this case, you are the sole judge of the facts of this
15 case. Your job is to determine what the facts of this case
16 are. You are to determine the facts only from the
17 testimony you hear and any other evidence that might be
18 presented during the trial of this case. You should not be
19 influenced by any opinions or statements you may have heard
20 outside of the courtroom. If at any time I make a comment
21 which leads you to believe that I have an opinion about the
22 facts of this case, then you're to disregard my comments.
23 You and you alone must determine what the facts of this
24 case are based upon the testimony and evidence presented in
25 this trial. Now, the same law that makes you the judge of

1 the facts of this case makes me the Judge of the law. The
2 law as I give it to you is the only law that you can
3 consider. You must accept and follow the law as I give it
4 to you even though you may disagree with it. Just as I
5 cannot tell you what the facts of this case are, you cannot
6 disagree with me about the law to be applied in this case.
7 Your job is to take the law as I give it to you and apply
8 it to the facts as you find those facts to be. Now, until
9 I advise you to begin your deliberations, you must not
10 discuss this case with anyone, including your fellow
11 jurors. You cannot discuss it with any friends, family
12 members or anyone involved in the case. During the trial
13 if there is any TV reports or news accounts about the case,
14 you're not to watch those news accounts or TV reports. Do
15 not conduct any independent investigation into the case.
16 Don't go on the internet or read any newspaper accounts or
17 watch any television reports or listen to any radio reports
18 if there is anything about this case. It's important that
19 you keep an open mind and not decide any issue in this case
20 until all of the evidence has been presented to you. When
21 you're instructed to start your deliberations, you can then
22 discuss the case but only in the jury room with your fellow
23 jurors. Now, in just a moment the attorneys will make
24 what's called opening statements. These opening statements
25 is not evidence in this case. It is simply the attorneys'

1 contention as to what they think the issues in this case
2 are. After the opening statements the evidence in this
3 case will be presented to you by testimony of sworn
4 witnesses from the witness stand and any other exhibits
5 that may be introduced into evidence. As the Judge of the
6 law I determine what evidence is admissible at trial. As
7 the Judge of the facts you determine what evidence or
8 testimony is believable. Once testimony is admitted into
9 evidence, whether or not you believe it is solely for you
10 to determine. In deciding whether to believe a witness,
11 you have the right to consider whether the witness has an
12 interest in the result of the trial, whether the witness is
13 prejudiced towards either the plaintiff or the defendant,
14 the opportunity for the witness to have seen the matters
15 and things about which the witness may testify and the way
16 the -- it -- excuse me -- and the way the witness acts on
17 the witness stand. You have the right to consider anything
18 that is in the record that will help you to evaluate the
19 testimony of that witness. That means that it is your duty
20 to pay close attention to the witnesses, to observe them
21 and to listen to them. All right, now, is there any
22 additional charges from the plaintiff?

23 MR. MOORE - None, Your Honor; thank you.

24 THE COURT - Any from the defense?

25 MR. RAYNOR - No, Your Honor; thank you.

1 THE COURT - All right, ladies and gentlemen, at
2 this time we'll begin the trial with the attorneys' opening
3 statements. And as I told you, these opening statements
4 are not evidence. They're simply the attorneys' contention
5 as to what they feel the evidence in this case will show.
6 All right, Mr. Moore?

7 MR. MOORE - May it please the Court, Your Honor.

8 THE COURT - Yes, sir.

9 MR. MOORE - Madam forelady, ladies and gentlemen,
10 good afternoon. Cory Ross has been living with this case
11 since 2008, and he will live with this case for the rest of
12 his life. I was introduced to you earlier. My name is
13 Jake Moore. It's hard for me to believe, but I've actually
14 been practicing law for almost 40 years now. My office is
15 over in West Columbia, South Carolina, and I have some
16 folks with me at the table. Many of you may know my
17 friend, Jonathan Goode. Jonathan used to practice law with
18 me over in West Columbia, and while he was working with me
19 this case was there, and while he's not a counsel of record
20 officially in the case, he's always maintained an interest
21 in the case and has asked to come sit with us, and we are
22 certainly delighted to have him here with us. Martin Ebert
23 is this young man right here. He's in law school. This is
24 the first trial he's ever seen. He will be a third year
25 senior next year, and about a week ago I hired him as my

1 summer law clerk, and I'm glad to have Martin with me.
2 He's been a big help to me on the case. Greg Close is from
3 Fort Mill/Lancaster area, and he has just started as a
4 brand new lawyer with our law firm, and as being a lawyer
5 this is the very first case he's ever had. He clerked for
6 one of our Judges for a year and then he came to work with
7 us, so Greg's with me and he's been helping. The young
8 gentleman at the table with me is Cory Ross. Cory is the
9 claimant in this case, and the claimant is called the
10 plaintiff. He's the person who's actually bringing the
11 case, and he is going to come before you and tell you what
12 happened to him and how he's been hurt. In our society we
13 as a people value something called the rule of law. Laws
14 are nothing more than a series of rules, rules that we all
15 live by. You live by them everyday; I do. We all live by
16 the law. Laws are just the rules. And the rules are in
17 place basically to keep us all safe and to keep us all
18 secure and to make sure things happen like they ought to
19 happen so that the right thing is basically done. When a
20 person or when a business develops a sharp penciled scheme
21 to allow himself to skirt safety rules, we are all in
22 danger. This case is about a company who has attempted to
23 use small print and sharp paper, artful words in an effort
24 not to have to comply with basic rules of safety and
25 decency. It's what this case is about. It's a case of a

1 company who's trying to use a piece of paper instead of
2 safety, and because of that a young man with two small
3 children and a wife has been seriously and severely
4 injured. I was introduced to you earlier; my name is Jake
5 Moore. Again, I've been privileged to be friends with --
6 some of you may know Kenny Goode up here. Kenny and I went
7 to law school together, and I've tried cases in this
8 courthouse from time to time with Kenny, and it's always
9 been my pleasure to come to this beautiful city and to the
10 Robert Mills Courthouse, which I'm sure you are all
11 rightfully proud of. Carolina Adventure World is a large
12 recreational facility. Because of the fact that they were
13 more interested in having pieces of paper than protecting
14 the public, Cory Ross had his eye knocked out, basically
15 his eye gouged out December 27th, 2008. Two days after
16 Christmas Santa Claus came to his children, Cory Ross found
17 himself in the hospital with his eye gouged out and his
18 face broken and with other problems which a young man of
19 that age, a young father, should never have to confront.
20 If you look at Cory right now, you look at him from a
21 distance, you can see something's wrong. One of the things
22 you'll learn as this case goes on, what's wrong is that one
23 of his eyes isn't his. It's glass. It's called a
24 prosthetic eye. Cory can take it out and put it in. Cory
25 Ross lives with a glass eye, because Carolina Adventure

1 World did nothing, nothing to protect the safety of the
2 people who were paying good money to come. The evidence
3 will show that Carolina Adventure World has dirt bike
4 trails and four-wheeler trails, and that even children are
5 allowed to come and recreate there. The evidence will show
6 that a four-wheeler is like anything else; it's a tool;
7 it's a vehicle. If it's ridden safely and if it's ridden
8 on proper terrain, it's a fun thing to ride. It's a way to
9 get out in the country, take your children, take your
10 grandchildren, have a nice afternoon. But the evidence
11 will show that Carolina Adventure World had a policy that
12 even though they claimed to put safety first, they did
13 nothing, nothing, and they had a policy to do nothing to
14 maintain the trails in a safe and passable fashion. The
15 evidence will show that people were regularly getting
16 maimed, not just Cory, but others were being maimed and
17 disfigured at this facility. The evidence will show that
18 collar bones were broken on a regular basis. The ambulance
19 came on a regular basis and toted our citizens off to the
20 hospital, because Carolina Adventure World did nothing on
21 purpose to maintain the facility in a way that children and
22 adults and others could use and enjoy. The evidence is
23 going to show that the business that was out there was
24 maintained on purpose unsafe, and the reason they didn't do
25 anything for safety is because sometimes safety can cost

1 money, and they weren't willing to expend the time nor the
2 effort, nor the money, not even one dollar, not even one
3 dollar on safety. What they did is, they got a lawyer to
4 draw up a piece of paper; it said, hey, if you come and use
5 this place, whatever happens to you is on you. At the same
6 time they're getting pieces of paper that say, we put
7 safety first. And basically a lawyers (sic) draw up a
8 piece of paper -- and they're real proud of that piece of
9 paper. You're going to see it. It says, we can be grossly
10 negligent; we can kill you; we can even kill you, and it's
11 okay by us, it's okay by you. Well, the evidence will show
12 the way they got people to sign this thing is as you drive
13 up they say, here, sign this, give us your twenty dollars
14 and come on in. Our law provides -- our rules provide that
15 the owner of a business stands to make money from operating
16 that business, and making money is a good thing, not a bad
17 thing. But with operating a business, comes a
18 responsibility to the public. Our law basically says that
19 the owner of a business is the person who is best able to
20 inspect and to guard against injury, especially if you're
21 going to have children running around. The law says you've
22 got to be reasonable in making sure that you exercise
23 normal care; you need to inspect, and if there's something
24 that's dangerous, you need to warn people about it if you
25 know about it, and if there's something that's dangerous,

1 you need to remove it. Now, you don't need some gray-
2 haired lawyer standing up here to tell you that. All of
3 you have gone through life and you understand that if you
4 know of something that's dangerous, you tell people. If
5 you're maintaining something that's dangerous, you fix it.
6 And if you have a business, you have to make sure you do
7 reasonable inspections from time to time to make sure that
8 you take them away. The rules basically require that.
9 Isn't that what all of us expect when we go onto a place of
10 business and give them our hard-earned money? Don't we all
11 expect that as simply a minimum common decency? Again, a
12 business has -- no matter what -- our law in South Carolina
13 anyway -- our law says this. You can have people sign
14 anything you want to; that's fine. But no matter what
15 somebody may sign, you still have a duty to the public to
16 inspect, to make reasonably safe and to warn. You can hire
17 all the lawyers you want to, but you cannot basically guard
18 against your own negligence, contract away your own neglect
19 or your own duty to the public, especially if you're
20 opening up to children as these people were. A business is
21 not authorized -- this is incredibly important to
22 understand, and we'll talk about this more later -- but a
23 business is not authorized to get a canned waiver of
24 liability and then do absolutely nothing to protect those
25 people who are basically paying money to have simple fun.

1 Carolina Adventure World is a LLC, a corporation, a
2 company. It's operating in Fairfield County, and people
3 have been getting injured out there for years. The trails
4 can be fun, but the way this track was operating, it was
5 down-right dangerous, and Cory is one of the people -- only
6 one of the people who was maimed, disfigured, injured and
7 had his life destroyed two days after Christmas in 2008.
8 We have tried to eliminate a number of witnesses. We're
9 going to try to keep this case short, but no matter what we
10 do here today, when Cory Ross leaves, he's going to leave
11 with a glass eye. He'll look in the mirror everyday of his
12 life for the rest of his life and see the results of the
13 fact that these people would not lift one finger to protect
14 your neighbors. December 27th, 2008 it was still the
15 Christmas holidays; it was cold outside; it was wet; the
16 ground was wet. Cory went to Carolina Adventure World with
17 one of his friends; his friend is here. Before they were
18 allowed admission in the park, Cory paid his money. He had
19 a properly operational four-wheeler; he had his helmet; he
20 had all the safety gear that he was supposed to have to
21 ride. His four-wheeler was in good shape. It was a
22 Polaris. Many of you probably know what a Polaris is.
23 These things are great fun as long as you're riding them in
24 a place that take them. They rode up and somebody shoved a
25 clipboard in his -- and said, here, sign this. Cory signed

1 it. And they gave him another piece of paper that said, At
2 Carolina Adventure World Safety is Job One; that's us;
3 safety first here. Of course, that's not true. That
4 safety was job last, but what Cory didn't know was that the
5 trails hadn't been maintained at all, and that at the top
6 of one of these trails was a boulder that stuck two feet
7 out of the ground and was imbedded in the track. Now, when
8 Cory got his directions, he was told, do not leave the
9 trail, do not leave the trail, so he understood that he
10 wasn't supposed to leave the trail, and he was riding his
11 four-wheeler just like he was told to ride it. He wasn't
12 dogging it; he wasn't getting it. He was basically riding
13 about 15 miles an hour. As he approached a hill, the hill
14 was wet; the hill was probably so wet the track shouldn't
15 have been open, but Carolina Adventure World wanted that
16 money, so the track was open and Cory comes up a -- down a
17 valley and up a hill. If you've ever ridden a four-
18 wheeler, if you're going on a wet hill, sometimes you can
19 lose traction, and right as he came around a curve, a
20 boulder about this big and about this high out the ground
21 was right in the middle of the trail where it had been for
22 God knows how long, imbedded in the dirt, hadn't just
23 gotten there, and lo and behold, that four-wheeler hits
24 that rock. It wasn't a rock; it was a boulder. And as the
25 four-wheeler hit the boulder, the front-end lifts up, and

1 because the track is so wet, the four-wheeler rolls
2 backwards, and the right handlebar hits the boy in the eye
3 and pushed his eyeball back into his brain, gouges his
4 eyeball back into his head. Cory's laying there; he can't
5 see out of either eye, and his friend realized what was
6 happening and actually had seen it take place. He saw Cory
7 when he hit the boulder that shouldn't have been there on
8 that wet hill and saw the thing roll back and saw the
9 handlebar gouge the boy's eye out of his head and he comes
10 back and he gets help, we need help, and he runs back to
11 where the folks at Carolina Adventure World are, help,
12 help, called an ambulance, but we're not going out on that
13 trail. They wouldn't even go out onto the trail to get the
14 boy's body. As dangerous as these trails were and as wet
15 as they were, there's no wonder. But eventually they get
16 Cory on a stretcher, put him on another four-wheeler, he's
17 blind as a bat out of both eyes, his eyeball gouged into
18 the back of his socket, put him on an ambulance, take him
19 to the hospital. Eventually, the eyesight in the one eye
20 that wasn't gouged out returns. But they had to do
21 surgery, because not only was the eye gouged out and his
22 eyeball in the back of his socket -- this is -- this is
23 hard to talk about folks -- not only was that the case, but
24 it also shattered his entire facial bone, and he had to
25 have surgery, and the good doctors at the hospital did the

1 surgery. They reconstructed his face. They removed the
2 gouged eyeball, and he stayed in the hospital for a long
3 time, as you might imagine. His medical bills alone were
4 around a hundred and fifty-seven thousand dollars. We'll
5 show you pictures of him in the hospital with his little
6 boy sitting on the bed, cute little ole kid. The evidence
7 will show that Cory tried to make do. He tried to go back
8 to work. He worked as a mechanic with his hands, but when
9 he went back to work, he couldn't see. That's pretty easy
10 to understand why he couldn't see. It's hard to see out of
11 a glass eye. But not only could he not see, he had these
12 terrible migraine headaches that would basically be
13 debilitating, still has them. Also, if he got his head in
14 the wrong position, he'd get vertigo. That means he'd get
15 dizzy, lose his balance. He couldn't hold his job. Cory
16 was a working man. Proud, good ole boy, outdoor person.
17 He was making about forty-five thousand dollars a year,
18 taking care of his wife and his two kids; everything had
19 been great before two days after Christmas. His Christmas
20 present was a destroyed life. Now, the evidence is going
21 to show he couldn't hold his job, and he's tried to open
22 his own garage where he's making about half what he was
23 making, but he's still trying to go every single day. The
24 evidence will show, as you might imagine, this sort of
25 injury can be tough on a young marriage; he and his wife

1 are presently separated; he sees his children when he can.
2 Cory Ross. This case is about rules, common decency,
3 common courtesies and about the rules. All the sharp
4 pencil lawyers in the world and all the sharp fine print
5 pieces of paper in the world do not under our rules justify
6 a business owner from doing those things which he ought to
7 do to provide basic protection to the people whose money is
8 taken. Our position is that Carolina Adventure World
9 should've inspected those trails on a regular basis. They
10 did not. Our position is Carolina Adventure World
11 should've maintained those trails in a passable condition;
12 they did not. Our position is Carolina Adventure World
13 should not have allowed this sort of impediment on such a
14 wet hill knowing four-wheelers were they; they did not.
15 Our position is that when they have boulders in the middle
16 of what are supposed to be bike trails or four-wheeler
17 trails, they should at least tell people, look, when you go
18 on 17 or 19 or whatever the number was, you're going to
19 come into a big boulder in the middle of the road. There
20 was no warnings at all. As a matter of fact, this is
21 recreational usage; this is open to you and your family for
22 recreational fun. How many people do they have to kill or
23 maim before they can finally be jerked out from behind a
24 sharp pencil piece of paper and be held accountable mayhem
25 they're creating to our wives and our kids and our children

1 and our families and our friends? This case is not going
2 to last long. We have here the vice president of Carolina
3 Adventure World. Where the owner is, God only knows.
4 Apparently, the vice president is here. I think he is
5 planning to testify. I'm sure he is going to be incredibly
6 proud of his fine-print piece of paper and tell you just
7 how wonderful they are. I invite you -- we have apparently
8 this giant screen that has been brought from Charlotte,
9 North Carolina. I am sure that we are going to be seeing
10 this fine-print piece of paper. I want you to look at what
11 this thing says. According to them, they could kill you
12 and you could have no recourse.

13 MR. RAYNOR - Objection, Your Honor. Can we
14 approach?

15 THE COURT - All right.

16 MR. MOORE - Your Honor, I'll wrap it up; I'll
17 wrap it up.

18 THE COURT - Well, no, he's raised an objection;
19 come on up.

20 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
21 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
22 WHICH WAS NOT REPORTED.)

23 THE COURT - All right, the objection's sustained.
24 Go ahead.

1 MR. MOORE - Ladies and gentlemen, I've talked too
2 long. It is our intention to move this case rapidly and to
3 take as little of your time as we possibly can. I ask you
4 to listen closely to the law and to the evidence and then
5 when this case is over, to return a verdict that is large
6 enough to compensate this young man for all the losses that
7 he has sustained, which would include disfigurement,
8 medical bills, loss of earnings, pain and suffering,
9 emotional distress, lost wages, loss of the ability to
10 earn, loss of enjoyment of life. All of those are elements
11 of damages. And then we ask you one other thing. We have
12 asked for something called punitive damages, which are
13 damages designed in addition to compensating this man for
14 the horrendous loss he's sustained, but also to punish the
15 defendant and to deter him or it from like conduct in the
16 future. Even though this case will be short, I submit to
17 you it is incredibly significant and it is huge. The loss
18 here I believe you will see has been huge. We ask you when
19 this case is over to return a verdict that speaks the truth
20 and that returns a verdict which is just under the
21 evidence. I thank you so much for listening.

22 THE COURT - Mr. Raynor?

23 MR. RAYNOR - Thank you, Your Honor. Good
24 afternoon, ladies and gentlemen of the jury. I am not a
25 sharp pencil lawyer from New York. I'm Ken Raynor. I'm

1 from Charlotte, North Carolina is where I practice, from
2 Eastern North Carolina originally, and along with Christian
3 Stegmaier, I represent Carolina Adventure World in this
4 case. Folks, the evidence in this case will show that the
5 Plaintiff, Cory Ross, was injured when he crashed his all
6 terrain vehicle, his ATV, when he improperly drove over a
7 rock, a four-feet wide that stuck out of the ground at
8 least a foot that should've been visible to him at least 20
9 feet away when he should've been driving at a low rate of
10 speed, because he had never been to this facility. And the
11 accident happened because of the way he conducted himself
12 and the way he operated his vehicle. It's unfortunate that
13 he's had this injury. Nobody would wish that on him, but,
14 folks, as Mr. Moore had talked about the rules, well, the
15 rules that applied to Mr. Ross, although he doesn't want to
16 admit it, and those rules are that you have to exercise due
17 caution for your own protection. You can't just go out and
18 ignore things and act in a hazardous way, and
19 unfortunately, on the date of this accident, Mr. Ross did a
20 lot of things that were not in the best exercise of his own
21 protection. In this case you'll learn a lot about what is
22 a ATV for folks that have never ridden one. You know, it's
23 -- they're all terrain vehicles just like the name sounds
24 like; they are designed for riding on off-road conditions.
25 They're -- you know, they're not designed to be ridden out

1 there on the road; they're designed to be ridden out
2 through the woods and up hills and through the mud, and
3 it's just amazing what these vehicles will do, what terrain
4 they'll go over. They'll go over rocks; they'll go over
5 logs; they'll go through the woods where there's no roads,
6 and that's -- you know, that's hence the name, all terrain
7 vehicles. The -- they're used in a lot of different
8 situations. For example, farmers use them. People who
9 work out in the woods, like loggers use them, forestry
10 people use them, hunters use them a lot to go, you know,
11 out hunting, bring back deer on top of them. In addition
12 to those type of uses, people ride them just for the fun of
13 it, just like people drive ski-boats and drive motorcycles.
14 People drive ATVs for the purpose of just having a good
15 time. And they're not out there riding on the sidewalk.
16 That's not what they bought an ATV for. That's not why
17 they go out and ride it. They want to ride it in
18 conditions that is um -- it was designed to ride in, rough
19 terrain. They want to ride over un-graded trails; they
20 want to ride up-hill; they want to go through the mud.
21 That's part of the challenge of recreational driving which
22 you will hear some about. And, in fact, there's a couple
23 of people in this courtroom who'll be testifying have done
24 a lot of that, some of it out at Carolina Adventure World.
25 They like what they call technical conditions, which are

1 challenging conditions that, you know, allow them to
2 exercise this sport just like you would any other sport.
3 And, folks, just like any other sport, like playing
4 football, you know, if you play football, there is an
5 inherent risk that somebody's going to tackle you and
6 you're going to get injured from playing football.
7 Similarly there are some risks involved in this
8 recreational activity, this sport of riding ATVs, and one
9 of them is that you can crash it just like you can crash a
10 car. You've heard a lot about Carolina Adventure World
11 from Mr. Moore, but let me tell you what Carolina Adventure
12 World is. It is a facility that is designed for people to
13 ride a all terrain vehicle in a variety of different ways.
14 And it's not just four-wheelers. People ride what are
15 called motor cross trail bikes out there as well. There is
16 different types of trails. There is a track where people -
17 - it's pretty flat and people actually just race around it.
18 It's designed for people who drive at high speeds, and
19 literally they have races around it. There's different
20 like mud bogs where people - I'm sorry -- bogs where
21 people just -- you'd be amazed at where people can take
22 ATVs. Some people actually have to put snorkels on them
23 because they go so far in the mud and they just drive right
24 through and the snorkel allows the exhaust to come out and
25 they can drive right through the -- almost under the mud.

1 And then there are a set or series of trails out in this
2 facility -- and, folks, I'm going to get dangerous here --
3 anytime I start messing with technology, but -- (pause) --
4 yes, there we go. It worked. It's -- you'll see that
5 there are a series of trails out there and it goes from
6 what is the green trail, which is the easier trail out
7 there; it's pretty flat; it's graded; it's designed for
8 beginners. Just like -- I don't know if anybody's ever
9 skied, but it's the same kind of system they use on ski
10 slopes. Then there is what's called a moderate trail, and
11 that's just like the name says, it's harder than the
12 easiest, but even the moderate trail for people that have
13 never ridden can be challenging, and particularly for
14 people that don't have a lot of experience, it can be
15 challenging; no question about it. Then there is what's
16 called the black diamond, and as the name says, most
17 difficult. And those are very challenging. They're steep
18 incline, steep declines; they're -- just like the blue
19 trails, they're not graded; they're designed not to be
20 graded. People like riding them because they're not
21 graded. They -- they're expected to be challenging. And
22 then there's this most difficult and this is for -- the
23 yellow ones are for trail bikes. The -- it's called the --
24 like single track. There's also -- and this is going to be
25 important, too, you'll see there is service roads out

1 there, and I'll explain in a minute why I think that's
2 important when it goes to what Mr. Cory didn't do to
3 protect himself. The -- now, Carolina Adventure World --
4 so it has trails that go from the easiest for novice
5 people, beginners, all the way -- even children -- all the
6 way to the most difficult. It depends on the person's
7 experience and what they choose to do, and, folks, it's
8 there, because a lot of people that have four-wheelers or
9 ATVs don't have a place to ride. You know, they don't have
10 a bunch of land, and so -- or they don't have a friend
11 that'll let them ride on their land, so instead of having
12 to go trespass somewhere, they can go to Carolina Adventure
13 World and they can pick what they want to do. Now, let's
14 talk a little bit about Mr. Ross's accident on the day of
15 this accident, and I will say why I contend he caused his
16 accident. And, folks, it's -- you know, as I sat here and
17 think about this, it'll be like driving a car. You know,
18 if I drive down that road, if I don't operate my car
19 properly, if I don't pay attention, when I go around a
20 curve I can have a crash. That doesn't mean the road's
21 dangerous; that means I didn't drive in a safe condition,
22 and that's exactly what I'm going to contend to you caused
23 Mr. Ross's accident, his failure to drive and operate his
24 ATV in a proper way. First thing I think goes to this is
25 going to be the evidence of Mr. Ross's lack of experience.

1 Mr. Ross really was this level, and the reason I say that,
2 he had kind of inherited this ATV when he married his wife;
3 it was actually her ATV. He never ridden anywhere but on
4 some land owned by his father-in-law where there are nice
5 level trails and not a whole lot of curves, just a easy
6 place to ride. That was his sole experience when he went
7 out to Carolina Adventure World the day of this accident.
8 He had never ridden at Carolina Adventure World; he had
9 never ridden at a facility like Carolina Adventure World;
10 he had never ridden anywhere where there were un-graded
11 roads, so he was a novice. The -- now, he went with his
12 friend, Richard Paxton, you'll see over here in the red
13 shirt. Now, Mr. Paxton was a very experienced rider. Mr.
14 Paxton, -- you know, he -- he's well beyond most difficult.
15 Mr. Paxton has spent time riding like in sand pits where
16 people have actually mined sand and rock quarries and just
17 any place, a number of places that they just go out and
18 ride, including Mr. Paxton. He's also ridden at Carolina
19 Adventure World on these most difficult trails. He's
20 ridden at other facilities that don't have graded trails,
21 different parts of here and there. Now, Mr. Ross had very
22 little discussions with Mr. Paxton about what to expect.
23 And by the way, I back up one, he did do nothing to like,
24 you know, google or go on the internet and look and see
25 about Carolina Adventure World, didn't really talk to

1 anybody; he just talked briefly to Mr. Ross -- I'm sorry
2 Mr. Paxton -- and basically Mr. Paxton said, yes, these are
3 good trails, but Mr. Ross did not tell his friend how
4 inexperienced he was. He did not tell his friend he was a
5 novice and that really had never ridden trails of this
6 difficulty before. The -- and, folks, you'll hear the
7 evidence, they ended up riding on one of the most
8 challenging trails out there; it's call trail 19. It is a
9 -- it is a double black diamond. In other words, just like
10 on a ski slope where they'll put double black diamond
11 warnings -- that means this is a challenging trail, be
12 careful and know what you're doing. The -- and, folks, I -
13 - Mr. Moore said there was no warning. Well, there was
14 warning, because in addition to this trail rating guide,
15 there was a -- there was a map that Mr. Ross and Mr. Paxton
16 got when they checked into the facility, and it shows the
17 locations of all the various trails, including the ones
18 that are blue, including the ones that are yellow and then
19 the -- this trail over here which is Carolina Z (sic). So
20 they -- they had information about what were the trails.
21 And, folks, the -- and before -- see if I've got a better
22 picture of that -- before they got on trail 19 -- remember,
23 I said the accident happened on trail 19? That's trail 19
24 right there. Before they got on trail 19, they actually
25 rode other trails, which were blue trails. Actually Mr.

1 Ross ran out of gas; I forgot that. And they took a
2 service road back to where they had parked their vehicle,
3 so Mr. Ross knew how to ride the service road if he wanted
4 to; he'd used it once. Well, then the come back, Mr.
5 Paxton -- when Mr. -- I'm sorry -- Mr. Paxton leading the
6 way, Mr. Ross behind him, and they take trail number 1,
7 which is this blue trail, and you can see how far -- it
8 actually starts well over here, but I think they got on it
9 here about the service road, and they're riding all the way
10 over here on a blue trail which is moderate that was in
11 that map that Mr. Ross had. That trail is un-graded; it's
12 not graded; it has ruts in it; it had mud on it. In fact,
13 I think Mr. Ross will say they had to pull people out of
14 the mud before they got to trail 19. And so that trail is
15 hilly. All the conditions that he's complaining about
16 about trail 19 he would've known, and the one thing he
17 would've known, this trail is moderate; this trail is a
18 black diamond. If he'd just been paying attention, he
19 would've known, hey, wait a minute, this is a moderate
20 trail, I'm having difficulty here, I'm getting ready to get
21 on a more difficult trail, and, folks, the -- when they get
22 on this trail -- and I don't know if you can see it --
23 evidence would show that when they got to that trail, trail
24 19, the trail head where you get on it is right at the
25 service road. And the service road's going to be

1 important, because when they got to trail 19, they would've
2 seen -- (pause) -- they would've seen -- this is the sign.
3 By the way, Mr. Paxton says Carolina Adventure World was
4 good about putting up signs to give people warnings about
5 the trails they were getting on, so when they got to the
6 point where that service road met with trail 19, they
7 would've seen this sign that says double black diamond.
8 And so, Mr. Ross, being he was a novice, being he'd never
9 been there, I would contend to you should've been asking
10 his friend, Mr. Paxton, wait a minute, we just came out
11 from this moderate trail, we're getting ready to have a
12 more difficult trail, tell me what that trail's going to
13 be, and I think Mr. Paxton will testify -- and the reason I
14 say this, I've taken his deposition, so I know generally
15 what he's going to say -- I think he will tell you that if
16 Mr. Ross had told him his lack of experience, how little
17 he'd ridden a four-wheeler, that Mr. Paxton would've told
18 him, Mr. Ross, you don't need to be riding on this trail,
19 this is too hard for you, you should go somewhere else.
20 And all he had to do is go right back out the service road
21 we just talked about and he would've been out of the way,
22 but he didn't do that. He didn't say anything to his
23 friend. He just followed Mr. Paxton right down that trail.
24 Now, folks, the um -- Mr. Moore wants to talk about a piece
25 of paper. (Pause) In fact, this is another important

1 little piece of evidence. Mr. Ross did get this document
2 when he checked into the place. Everybody that comes on
3 that facility is given this document, and it says,
4 assumption of risk, and it talks about recreational
5 activities, and it tells Mr. Ross and anybody else that,
6 you know, means all activities provided or permitted at CA
7 World, which is Carolina Adventure World, and um --
8 including the use and operation of all terrain vehicles,
9 and what it tells people is, you know, these recreational
10 activities can be dangerous and that your own risk for
11 taking care of yourself, Mr. Ross, and being careful to
12 provide yourself with protection you need, so this piece of
13 paper is not just something that a sharp pencil lawyer did
14 to get out of liability, it's to tell Mr. Ross, look,
15 you're participating in something that could be hazardous
16 if you don't operate the way you should, and the risk
17 includes a collision, a crash, a vehicle rollover, the very
18 thing that he did. It tells you if you don't drive safely
19 you can have an accident and including a rollover, which is
20 what he did. So I would contend to you that Mr. Ross did
21 have warnings, and not only that, folks, he should've been
22 warned just from operating down that blue trail long enough
23 that he would know that he's getting ready that he pay
24 particularly close attention or needed to. Now, folks, you
25 will hear what happened after that. Mr. -- even Mr. Ross

1 says, if I'm on a new trail, somewhere I've never been,
2 that I should slow down, I should take it easy, I should be
3 extra careful, and that's particularly true after he'd gone
4 all the way up trail 2 to trail 19. I think this accident
5 happened -- there's a little bit of disconnect between Mr.
6 Ross and Mr. Paxton. I think Mr. Paxton is going to
7 testify it happened about three-quarters of the way down
8 that trail, so Mr. Ross would have -- it wasn't like he
9 just turned on the trail and all of a sudden he's in rough
10 conditions. He'd gone down about three-quarters of the
11 way; he gets to a point -- he's following Mr. Paxton; he's
12 going down this trail for the first time ever. He -- Mr.
13 Paxton goes down the hill, back up the hill; Mr. Paxton
14 says that rock could be seen from 20 feet away and that he
15 took -- negotiated over it, and it took some skill to do.
16 You can't just run over into. It's like anything else --
17 even though these vehicles are designed to go over rough
18 terrain, you can't just run into something without paying
19 attention to what you're doing. Mr. Paxton was able to
20 negotiate his vehicle. Mr. Ross proceeds down that hill,
21 up -- and he goes up the hill, although he says he went
22 around the curve, and you'll have to figure out which is
23 right, Mr. Paxton or Mr. Ross, but he says he saw that rock
24 only when he was five feet from it. Never been there
25 before; supposed to be going down at slow speed, although

1 there's some question about how fast he was going, and
2 instead of hitting his brake, which -- Mr. Paxton say you
3 could've stopped the vehicle if he had questions, but
4 instead of going that, Mr. Ross guns it and he hits that
5 boulder or rock -- boulder as he calls it -- some way in --
6 so that his front wheels missed it altogether, but his back
7 wheels hit it, and as he's giving it the gas, the thing
8 flips back over on top of him. And, folks, we contend
9 that's how this accident happened, that if Mr. Ross had
10 been exercising due caution and been operating his vehicle
11 properly, this accident would not have happened. The --
12 and, folks, it's -- again, it's no different than somebody,
13 you know, driving a car and running off the road and then
14 complaining there was a curve there, when the answer is,
15 you know, people need to operate their vehicle safely.
16 It's not that the road is dangerous; it's the operator is
17 not driving appropriately. Folks, I would ask that you
18 listen to all the evidence in this case and listen to His
19 Honor instruct you on the law before you make up your mind,
20 but I think His Honor will also talk to you about the law
21 that applies to Mr. Ross and that his duty to take
22 reasonable efforts to protect himself, and I contend to you
23 that the evidence will show that he did not meet that law
24 and that you should return a verdict for the defense.
25 Thank you.

1 THE COURT - All right, ladies and gentlemen,
2 before we get started into the witnesses, I think we're
3 going to take a break. We've been at it a little bit over
4 an hour right now. I'm going to give you an opportunity to
5 stretch your legs, use the restroom, get something to
6 drink, whatever the case may be. We'll take about a 10, 15
7 minute break. Do not discuss the case even among
8 yourselves. We'll bring you back in in about 15 minutes.
9 Thank you very much.

10 (WHEREUPON, JURY EXITS THE COURTROOM)

11 THE COURT - All right, anything before we take a
12 recess?

13 MR. MOORE - I'm sorry, Your Honor, I thought we
14 were at ease. I apologize.

15 THE COURT - That's all right.

16 MR. STEGMAIER - Two matters, sir.

17 THE COURT - All right, what have you got?

18 MR. STEGMAIER - We respectfully make a motion for
19 a mis-trial in this case based on the presentation by the
20 plaintiff during the opening statements for two reasons.
21 The first is that there was an improper shifting of burden
22 that's well known by every lawyer that's been in practice
23 in South Carolina concerning the golden rule. And it's
24 become the trend in litigation now to make mention about --
25 about cases --- to create arguments that we're all in

1 danger -- that this is all of us, making reference to your
2 neighbors. This is not any sort of community referendum.
3 The jury isn't here to speak on behalf of the community.
4 They're here to make a determination of whether there was
5 failure to do what was reasonable, whether Mr. Ross had
6 equal or better knowledge of the alleged conditions of the
7 property and whether the law of waiver is applicable in
8 this in the instant case. Because of this improper
9 shifting of the burden in this case, the defendant has been
10 prejudiced and it is our position that it's important time
11 by virtue of what is -- can be best characterized as an
12 argument rather than an opening statement, that a fair
13 trial cannot be had at this point in time, and we would
14 also buttress this argument based on two other additional
15 arguments, the first being that Mr. Moore made reference
16 about the matter, the property owner in this case having
17 the duty to protect. That is not the law in South
18 Carolina. The landowner in South Carolina is not the
19 insurer of anybody's safety and does not have the duty to
20 protect anybody, and for that reason -- and for the
21 injection of that statement, again, the defendant is
22 prejudiced. As well, -- (pause) -- as well, too, we take
23 exception to the point where we believe mistrial is
24 appropriate, where the argument presented by the plaintiff
25 in the opening statements is that the law of waiver is not

1 applicable and does not govern in this case and certainly
2 there's nothing to be shown or demonstrated at this point
3 in time that the law of waiver does not apply in South
4 Carolina, and so essentially the jury has been improperly
5 charged about the law and to the point where it's
6 prejudicial to the defendant in this case.

7 THE COURT - All right.

8 MR. STEGMAIER - And so for these reasons we ask
9 for a mistrial.

10 THE COURT - All right, Mr. Moore?

11 MR. MOORE - Your Honor, it clearly is our
12 position that the law of waiver does not apply in this case
13 and we intend to argue that to the Court at the appropriate
14 time, and if it is submitted to the jury, we think we can
15 argue to the jury at best from their standpoint it is a
16 jury question, but we actually think the law of waiver does
17 not apply. We think that the document they have is
18 volative (sic) of public policy. We have a number of cases
19 directly on point. But I think in opening statement we are
20 entitled to tell the jury what we think the law is and how
21 the facts basically apply to the law, which is all I did.
22 I actually did not personalize this case saying -- what is
23 improper is to say, how would you feel if it was you. I
24 did not do that. What I did basically do is to use the
25 exact same document that they're using. The document that

1 they used in their opening statement refers to children,
2 and it basically talks about children using this park. The
3 document which we've agreed as coming into evidence talks
4 about children, and all I basically said is that children
5 are endangered and they are; neighbors are endangered, and
6 they are; others are endangered, and they are, but there's
7 nothing wrong with that. That's a lot different than
8 actually saying, you know, think about if this was your
9 child. I didn't say that. I simply said children are
10 being endangered; your neighbors are being endangered. All
11 that's true, and all that's appropriate argument.
12 Additionally, I only heard one objection throughout the
13 entire -- the entire opening statement. If I were saying
14 something that was so objectionable, I would've assumed
15 that there would've been an objection to it before now.
16 Honestly, I think the opening statement was appropriate. I
17 don't think that I said anything wrong, but if I did, I'm
18 certain that the Judge -- that you will certainly tell the
19 jury that I'm not the Judge of the law, you are, and that
20 the law basically has to do with Cory Ross and the Court is
21 certainly able to explain to the jury everything. I just
22 don't think I said anything wrong in that opening
23 statement.

24 THE COURT - All right.

1 MR. STEGMAIER - It's a matter of semantics.
2 While Mr. Moore didn't say how would you feel if it
3 happened to you, he did make -- and I directly quote, we're
4 all in dangerous (sic), we're all in danger, all of us,
5 your neighbors. This isn't about neighbors; this isn't
6 about all of us. This is about Mr. Ross, and this is a
7 strategy that's been employed by the plaintiff's bar within
8 recent years to create this circumstance where a jury --
9 where jury trials are becoming these community referendums,
10 but again, like I say, this is a test of whether Carolina
11 Adventure World did or did not do something reasonable,
12 whether Mr. Ross is comparatively negligent for that by
13 virtue of that fact that he equaled (sic) better knowledge
14 of it and whether waiver applies in this case, but this
15 emotional -- this emotionality that gets injected into the
16 trial is essentially -- the other word for it is the golden
17 rule, and that's completely volative (sic) of the way
18 trials should be conducted in South Carolina. And so right
19 from the start we've had an essentially inappropriate and
20 wrongful argument made to the jury, which translates into
21 what the defendant maintains is prejudice to the point
22 where a new trial is necessitated.

23 MR. RAYNOR - And, Your Honor, I would add one
24 more point ---

25 MR. MOORE - Could we have one argument?

1 THE COURT - Wait a minute now, we're not going to
2 have two attorneys arguing one motion, so ---

3 MR. RAYNOR - I'm sorry. I'm sorry. No further
4 questions, (sic) Your Honor.

5 THE COURT - --- and it goes, he makes his motion,
6 you get to argue against it, then he gets reply, so that's
7 it.

8 MR. MOORE - Thank you, sir.

9 THE COURT - All right, I'm going to deny your
10 motion for mistrial at this early stage, and I told them in
11 their opening charges, that I determine what the law is and
12 they have to apply the law as I instruct them. I don't
13 know that it's been so overly prejudicial that it's going
14 to deny the defendant a fair trial, so I'm going to deny
15 your motion. All right?

16 MR. RAYNOR - Your Honor, on a different matter?

17 THE COURT - All right, new motion. What's your
18 motion?

19 MR. RAYNOR - The motion is a motion in limine to
20 exclude evidence of other accidents. Mr. Moore talked
21 about all these people who are being carted out of the park
22 and all these other injuries. Your Honor, that is totally
23 inappropriate in this case, because there's no evidence
24 that I know of that anybody else has ever had an accident
25 on this rock that's in question, and that may or may not be

1 relevant, but all the other evidence is that there have
2 been accidents, but nobody has said with any degree of
3 sophistication or expertise that the accident happened
4 because of driver error or position of the track. We don't
5 know if somebody would -- just fell asleep at the wheel,
6 and, in fact, Your Honor, one of the witnesses who talks
7 about other accidents submits, I don't know if it was
8 driver error or not, so it has no relevance in this case
9 and is only going to be unduly prejudicial to talk about
10 other people having accidents unless they have some tie to
11 this case.

12 THE COURT - All right, Mr. Moore, let me hear
13 from you on that.

14 MR. MOORE - Your Honor, first of all, I guess,
15 the first question is, if they don't know, why don't they
16 know? Obviously, they're on notice. One of the -- one of
17 the very important pieces of the deposition of vice
18 president of this company is that collarbones were
19 commonplace, so we know that they're on notice that broken
20 bones are commonplace at their facility.

21 THE COURT - Yes, but I mean, it -- you're talking
22 about broken collarbones for hitting this one spot on this
23 track.

24 MR. MOORE - No, sir. Our position is this. This
25 one -- this one spot caused this one accident. I mean one

1 -- you know, -- I guess that one accident's got to be cause
2 by one spot, but the overall -- what you basically have
3 here is a -- and we'll have testimony to this effect --
4 there was a systemic, an intentional refusal to do any
5 inspection, any inquiry and any maintenance to this track.
6 They were told that the refusal to take those steps was
7 dangerous, and they indicated that they were not going to
8 spend the money or the time to do that. And as a result,
9 there were people carted off from there on a regular basis
10 as one of the jurors said. Now, the question becomes first
11 of all, if people are being carted there to the point where
12 broken bones like this are commonplace, and they say, well,
13 we don't know how that person got hurt, well, I think it
14 sort of begs the question, if you don't know, why don't you
15 know; was there no inquiry made at all about what happened;
16 did you really just not care enough to find out what
17 happened. When we asked the man in the deposition, it's
18 like, well, these things happen, and um, we don't really
19 know what happened; we just know that they were being --
20 broken bones were commonplace. Well, this is something
21 open to the public, and if you don't know what was causing
22 these horrific injuries, why don't you; did you not make
23 any inquiry at all; did you just not care. And we also
24 have very specific testimony that it was pointed out to
25 them regularly that these trails are dangerous. We

1 actually have a man who quit who worked for them in what he
2 called his dream job who quit, because they refused to keep
3 the trails maintained in a safe fashion, and people were
4 getting hurt as a result of it. He's going to testify to
5 that. So it appears to me that it is relevant. It
6 basically goes to the issue of notice and knowledge and
7 willfulness. I think it would be -- I don't think the law
8 would require that we prove that these people were all hurt
9 on the exact same point in the exact same way.

10 THE COURT - Well, I don't know. If you've got a
11 slip and fall in a grocery store, can you argue that this
12 person who slipped on aisle 10 is entitled to recovery,
13 because they didn't correct something that happened on
14 aisle 2 or something on aisle 1 or something where somebody
15 slipped on aisle 5?

16 MR. MOORE - It's a -- that example is a little
17 bit non-analogous, but there is a way it could be
18 analogous. Let us assume that I go in and I put -- having
19 worked in a grocery store -- I put polish -- we go in and
20 we get out mopping machine, our polish machine, and we
21 polish aisle 1, 2, 3, 4 and 5 with this new high-grade
22 polish, and it's beautiful, but it turns out that this
23 stuff is so slippery that it's causing people to fall on
24 aisle 1, 2, 3, 4 and 5, and we say ---

1 THE COURT - I mean if it's all because of the
2 polish, but all of these accidents out there didn't happen
3 because they hit this two foot rock sticking out the
4 ground.

5 MR. MOORE - But hold on. But they did happen, at
6 least arguably or inferentially, they happened because the
7 course as a whole was being maintained in a dangerous
8 condition. You know, the lady who fell on aisle 7, fell
9 inferentially or -- because she said the floor was too
10 slippery. Let's assume they just kept putting the polish
11 back on. You know, they know that they have a dangerous
12 condition and it goes to the -- it goes to the issue of
13 knowledge and intent. If they know inferentially --
14 inferentially you have a dangerous condition that is taking
15 people out -- 20 of them I think the evidence is -- 20
16 people were basically carted out of here -- I think that's
17 the evidence -- over the last several years with broken
18 bones and so forth. Now, the inference is, when you have a
19 person saying they weren't maintaining the place in a safe
20 condition and they knew it and they refused to do it, the
21 inference there, which can be gleaned from the evidence, is
22 that what was causing these accidents was a dangerous
23 condition of the track as a whole. That shows a willful
24 indifference and a motive and a knowledge. Now, again,
25 they can argue that, well, hey, these 20 people were all

1 drunk and doing wheelies and doing stupid things, but then
2 the evidence is going to be, they don't know what caused
3 those injuries. Well, again, the question -- it begs
4 itself -- if you don't know what caused it, you're telling
5 us you didn't investigate? You didn't inspect? You didn't
6 look? You didn't try to find out what caused this person
7 to be injured? Well, that shows a willful indifference to
8 the injuries, because what they have is, is a known unsafe
9 condition. The population as a whole becoming injured,
10 them making no inquiry at all as to what it was that was
11 injuring the various people who were injured and an
12 intentional maintenance of an unsafe condition. So if you
13 wind up with the intentional maintenance of unsafe
14 condition, huge amounts of people being injured on the
15 tracks and no inquiry at all to find out what happened,
16 doesn't that ---

17 THE COURT - Yes, but what -- I mean are you're
18 saying you're presenting evidence that shows that it was a
19 failure to maintain ---

20 MR. MOORE - Oh, yeah.

21 THE COURT - --- track on these others? You're
22 going to say that this accident happened on this course
23 because this root was there ---

24 MR. MOORE - No.

1 THE COURT - --- or this accident happened on this
2 course because of this pothole.

3 MR. MOORE - And our position is this, we are in a
4 position where we can't show that because of this
5 testimony. Their testimony is that they didn't keep any
6 records of it.

7 THE COURT - Yeah, but that doesn't necessarily
8 mean that it was due to their negligence.

9 MR. MOORE - And it doesn't necessarily mean that
10 is wasn't ---

11 THE COURT - Yeah, but there's no --

12 MR. MOORE - --- but there is ---

13 THE COURT - I mean they don't have to -- it's up
14 to you to prove negligence.

15 MR. MOORE - But it is circumstantially, Your
16 Honor, and inferentially. It's not a question of what we
17 believe the facts show or what -- what anybody -- this is
18 simply a matter of evidence. What is the inference that
19 can be gleaned from this fact? Well, there certainly is an
20 inference that these people were being injured because of
21 the defective nature, and even if that inference is not
22 there, there certainly is an inference that it shows a very
23 serious degree of callousness towards what was happening in
24 that they didn't investigate these incidents to see if

1 these other people were being injured due to the lack of
2 maintenance. It shows that they just didn't care.

3 THE COURT - I understand, but I'm going to grant
4 their motion except as to any injuries that happened at
5 this -- by hitting this rock, the same thing. If you've
6 got any other incidents where someone came up on this rock,
7 hit the rock, it caused the injury, I'll deal with that
8 when it comes up, but I'm going to grant their motion that
9 you're not going to be able to reference all the injuries
10 that occurred out there on this -- on this business site.

11 MR. MOORE - Thank you, Your Honor.

12 MR. RAYNOR - Thank you, Your Honor. Is there any
13 way we can craft a curative instruction to the jury,
14 because there was a big point made about all the people
15 carted off.

16 THE COURT - No. I mean we'll go ahead and just
17 move on at this point in time. We'll just -- I told them
18 initially that these opening statements are not evidence,
19 and I'll remind them of that when I charge them on closing
20 arguments, that just like opening statements, closing
21 arguments is not evidence, and so it doesn't come in as
22 evidence, and I've already charged them on that.

23 MR. MOORE - Thank you.

24 THE COURT - Okay?

25 MR. STEGMAIER - Thank you, sir.

1 THE COURT - All right, anything further from the
2 defense before we take a recess?

3 MR. RAYNOR - Not from me, Your Honor.

4 THE COURT - Anything further from the plaintiff?

5 MR. MOORE - Thank you, sir.

6 THE COURT - All right, let's take about a 10
7 minutes recess and we'll come back and get started.

8 (WHEREUPON, RECESS TAKEN)

9 THE COURT - All right, anything from the
10 plaintiff before we bring the jury in?

11 MR. MOORE - Nothing, Your Honor.

12 THE COURT - Anything from the defense?

13 MR. RAYNOR - No, Your Honor.

14 THE COURT - All right, go ahead and bring the
15 jury in.

16 (WHEREUPON, JURY ENTERS THE COURTROOM)

17 THE COURT - All right, ladies and gentlemen,
18 welcome back. We're now ready to start the evidentiary
19 portion of this trial with the calling of witnesses and
20 testimony in this case. All right, Mr. Moore, plaintiff
21 can call their first witness.

22 MR. MOORE - Thank you, Your Honor. Your Honor,
23 pursuant to Rule 611, we would call Mr. John Webster as an
24 adverse witness.

25 THE COURT - All right. Mr. Webster.

1 JOHN WEBSTER, AFTER BEING FIRST DULY SWORN,
2 TESTIFIES AS FOLLOWS -

3 DEPUTY CLERK - State your name for the record.

4 MR. WEBSTER - John Webster.

5 DIRECT EXAMINATION

6 BY MR. MOORE -

7 Q Now, Mr. Webster, I believe that we have met before.

8 Is that right, sir?

9 A No, sir, I don't believe we have.

10 Q Do you recall me taking your deposition?

11 A Yes, sir, I do.

12 Q Did we not meet at the deposition when I examined you?

13 A No, sir, it was over the phone.

14 Q Right. We've met by telephone.

15 A Oh, I'm sorry. I misunderstood the question.

16 Q That's all right. So you and I have met before, but
17 it's been by telephone instead of in person.

18 A Yes, sir.

19 Q All right. Now, I believe that you are the vice
20 president of Carolina Adventure World. Is that correct?

21 A That is.

22 Q And you've held that title since June of 2007.

23 A That's correct.

24 Q Did you work for Carolina Adventure World prior to
25 June of 2007?

1 A I did.

2 Q What did you do for them?

3 A At that point I was a consultant for the -- for the
4 actual family that owns Carolina Adventure World.

5 Q And who is that family?

6 A That's Don Wilburn.

7 Q And he is in Monroe, North Carolina.

8 A Yes, sir.

9 Q And I believe that Mr. Wilburn is actually the present
10 of the company. Is that right?

11 A He is.

12 Q Do you know where he is today?

13 A He's in Monroe, North Carolina.

14 Q Very fine. And you say it's the Wilburn family that
15 owns Carolina Adventure World.

16 A Don Wilburn is the owner of Carolina Adventure World.
17 The family was the one that was concerned about should
18 anything happen to Don, what would they know about what was
19 going on at the company.

20 Q When did you first become a consultant for Carolina
21 Adventure World?

22 A March 27th, 2007.

23 Q Before that what did you do?

24 A I was a quality control technician for an auto body
25 company.

1 Q When you became a consultant for Carolina Adventure
2 World in 2007, had you ever run a track like this or a
3 course like this?

4 A No, I had not.

5 Q Had you ever been in the business?

6 A No.

7 Q At the time you began to consult about the business,
8 did you know anything about how to run a business like
9 this?

10 A No, I did not.

11 Q Have you ever gone to school to take any safety
12 courses about how to run businesses like this?

13 A No.

14 Q Have you ever had a safety consultant of any type come
15 in and consult with you as to how to run or operate a
16 business like this?

17 A No.

18 Q Now, who made you the vice president of Carolina
19 Adventure World?

20 A Don Wilburn.

21 Q And I believe that's an LLC or a limited liability
22 company. Is that correct?

23 A Yes.

24 Q When Mr. Wilburn -- is it Wilburn or Welburn?

25 A Wilburn.

1 Q When Mr. Wilburn made you the consultant from this
2 company, did you tell him, Mr. Wilburn, I don't know
3 anything about these companies, running one of these?

4 A I expressed concern that I would know more about his
5 business than I thought I should.

6 Q Well, did you tell him when you were made vice
7 president that you didn't know anything about how to
8 operate one of these businesses?

9 A No, I did not.

10 Q But he knew what your background was. Correct?

11 A Yes.

12 Q So you explained to him your background which clearly
13 indicated that you didn't know anything at all about how to
14 operate a business like this.

15 A Yes.

16 Q And even though you knew absolutely nothing about how
17 to operate a business like this, he saw fit to make you the
18 vice president. Is that right?

19 A Yes.

20 Q Now, Carolina Adventure World has how many acres that
21 it operates?

22 A Twenty-six hundred.

23 Q And those are filled with trails that you can ride
24 motorbikes, off-road bikes; right?

25 A Yes.

1 Q And they're filled with SUV courses where you can ride
2 four-wheelers.

3 A ATV, yes.

4 Q ATV, I'm sorry. ATV where you can ride four-wheelers;
5 right?

6 A Yes.

7 Q And I believe they even have a -- now a golf course
8 out there where you can play frisbee golf. Is that right?

9 A Disk golf; that's correct.

10 Q At the time Cory Ross was injured in December of 2008,
11 were you the vice president?

12 A Yes, I was.

13 Q And at the time he was injured, did -- had you had any
14 type of courses or training in regard to how to operate one
15 of these courses?

16 A No.

17 Q Well, now, was there anybody who worked under you that
18 knew how to properly operate and maintain one of these
19 courses?

20 A No.

21 Q So at the time Cory Ross was injured, there was nobody
22 who actually worked there who knew how to run and maintain
23 these courses. That's correct; right?

24 A That's correct.

1 Q So we know then from June of 2007 when you became vice
2 president until at least December of 2008, there was nobody
3 working there who even knew how to run or maintain the
4 course; correct?

5 A No, um, it's self-explanatory how to maintain the
6 course. As far as running the business, that's another
7 subject altogether.

8 Q Well, when we talk about self-explanatory in regard to
9 how to maintain the course, I just want to make sure that
10 what you testified to earlier was the truth. There was
11 nobody working there from June of 2007 until December of
12 2008 who had any experience in running and maintaining
13 these courses. That's true, isn't it?

14 A That's true.

15 Q So then there was nobody from June of 2007 until at
16 least December of 2008 who had any knowledge about how you
17 go about maintaining safety of the courses; right?

18 A That's correct.

19 Q Sir, let me place something into evidence that I think
20 we've already looked at. I'm going to hand you plaintiff's
21 exhibit number 14, which is a three-page document, and ask
22 you if this appears to be the sort of the thing that
23 customers like Cory Ross would have been given when they
24 entered the park?

25 A Yes.

1 MR. MOORE - Could we offer this into evidence,
2 please, Your Honor, as ---

3 Q What is the exhibit number on there, please, sir?

4 A 14.

5 MR. MOORE - --- as exhibit number, plaintiff's
6 exhibit number 14.

7 THE COURT - Any objection?

8 MR. RAYNOR - No objection, Your Honor.

9 THE COURT - All right, plaintiff's exhibit 14 is
10 admitted into evidence without objection.

11 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
12 PLAINTIFF'S EXHIBIT NUMBER 14.)

13 Q Sir, the third page of this, if you would read for me
14 on this Carolina Adventure World stationary, the first full
15 paragraph there, just read what it says.

16 A It's always safety first at CAW. Please courteous and
17 considerate of your fellow riders, and help keep our
18 children safe.

19 Q All right, now, sir, if I could hold that back. Now,
20 a piece of paper like this would've been given or should've
21 been given to Cory Ross before he came to ride on your
22 facility; right?

23 A Yes.

24 Q Well, sir, if it's always safety first at Carolina
25 Adventure World, how can you say that if you don't have

1 anybody who has been trained in maintaining the safety of
2 the riders at Carolina Adventure World?

3 A Safety first would -- would mean to each rider, that
4 they should be safe while they are riding.

5 Q Well, that's not actually what it says. It says here,
6 does it not, and we can read together, it's always safety
7 first at CAW. That's Carolina Adventure World; right?

8 A That's correct.

9 Q And then there's a period; right?

10 A That's correct.

11 Q All right. So what you on -- with this piece of paper
12 represents to customers like Cory Ross is, it's always
13 safety first at Carolina Adventure World; right?

14 A Correct.

15 Q You don't say here, it's always you being safe. It
16 says, at Carolina Adventure World, it's always safety
17 first; right?

18 A It says always safety first at Carolina Adventure
19 World.

20 Q Sir, if you have nobody who is trained or knows
21 anything about how to safely maintain these trails, how is
22 it always safety first?

23 A Because we expect our customers to operate these
24 vehicles safely.

1 Q Oh, I see. So safety then is always on the customer
2 and nothing on Carolina Adventure World.

3 A Safety is the customer's responsibility when they're
4 operating these machines.

5 Q Well, sir, on -- that's really not what this piece of
6 paper says though. It says always safety first; right?

7 A Yes. Customers should always operate these machines
8 safely when they're at the park.

9 Q All right. Well, let's talk about that for a moment.
10 We've talked about customers should always operate these
11 machines safely. As I understand it, y'all did have some
12 signs; right?

13 A Sure, yes.

14 Q And a map.

15 A Yes.

16 Q And some trails had one level of difficulty and the
17 others had another level of difficulty; right?

18 A Correct.

19 Q Sir, is there a difference in a level of difficulty
20 and a level of danger?

21 A A level of danger would be equivalent to the level of
22 difficulty.

23 Q Oh, so then what you're telling me is that when you
24 use level of difficulty, what you really meant to say is
25 level of danger; right?

1 A No, I didn't. I meant to say level of difficulty.

2 You said level of danger.

3 Q Well, yes, sir. I'm asking you, do you recognize
4 there is a difference between being (sic) something being
5 difficulty and something being dangerous?

6 A Yes, I do.

7 Q All right. Now, at any point in time did you ever
8 warn customers as to the levels of danger on these courses?

9 A No, sir. The level of danger is consistent with the
10 ability of each individual rider to negotiate these trails.

11 Q Well, my question though is, at no time -- would you
12 agree with me, at no time did you ever tell any people like
13 Cory Ross that there is actual danger on these trails?

14 A No, sir, there is not danger on these trails.

15 Q All right. And basically then the trails themselves
16 are not dangerous.

17 A That's correct.

18 Q The trails shouldn't be dangerous; right?

19 A Right.

20 Q And as a matter of fact, you hold out to the public
21 that the trails are not dangerous; right?

22 A That's correct.

23 Q All right. So the trails might be difficulty (sic),
24 but they're not dangerous.

25 A That's correct.

1 Q And they're not supposed to be dangerous.

2 A That is correct.

3 Q And a person should be able to rely upon the fact that
4 while a trail may be difficult, it's not dangerous.

5 A That is correct.

6 Q Okay. Well, sir, have you ever seen -- yourself, have
7 you ever looked at the place where Cory Ross had his eye
8 knocked out?

9 A I am not -- I am not positive where that place is.
10 I've heard where it may have been, but I've never gone with
11 either -- either of the people that were there to see the
12 spot.

13 Q Well, sir, you've heard where the place was; correct?

14 A Yes.

15 Q When you heard where the place was that Cory lost his
16 eye, did you go out and look at it?

17 A No.

18 Q Sir, if you're the vice president and you're
19 responsible for seeing to it that this place is operating
20 properly, consistent with what you're telling us you told
21 the public about it being safe, you know that a man lost
22 his eye in a very tragic way, why didn't you at least go
23 out there and see if there's something wrong?

24 A The reason is, this -- this happened on a most
25 difficult course we have, on a most difficult trail we

1 have. There had been over twelve hundred people there that
2 week. There was a lot activity on that trail, and Mr. Ross
3 was the only one that had suffered any injury there.

4 Q Well, certainly; I understand that, but you had a man
5 lose his eye on your course. Did you not even bother to go
6 out and look at it?

7 A There was no need to go look at it. This is a -- this
8 is a double black diamond trail, the most difficult trail
9 we have. It had been used consistently by over -- a large
10 percentage of twelve hundred people during the course of
11 the week, and no one else had any issues with the trail.

12 Q Sir, are you able to testify that Cory Ross was
13 speeding as he hit that boulder?

14 A No.

15 Q Are you able to testify that Cory Ross was failing to
16 keep a proper lookout as he hit that boulder?

17 A No.

18 Q Are you able to testify that Cory Ross was hot-dogging
19 in any way as he hit that boulder?

20 A No.

21 Q Are you able to testify sir, as the vice president of
22 this company, that Cory Ross did anything wrong to
23 contribute to his own injury?

1 A The only thing that I can testify to is that Mr. Ross
2 was not experienced enough to be able to negotiate that
3 trail.

4 Q Well, sir, yes, sir, but my question is, do you know
5 of anything that he actually did wrong at the time his
6 vehicle hit that boulder?

7 A Yes, sir.

8 MR. RAYNOR - Objection, Your Honor, lack of
9 foundation. The witness wasn't there, so he can't testify
10 to that.

11 THE COURT - Sustained.

12 Q Sir, you were not there ---

13 THE COURT - Hold on for a second. Let me see the
14 attorneys for one second.

15 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
16 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
17 WHICH WAS NOT REPORTED.)

18 THE COURT - All right, your objection is
19 overruled. Go ahead.

20 MR. MOORE - Thank you, Your Honor.

21 Q Sir, you've talked about this lack of experience that
22 Cory had. Explain to me, specifically, how this lack of
23 experience is what caused him to wreck.

1 A When you -- when you are operating a vehicle beyond
2 your ability to operate the vehicle, there is almost a
3 certain outcome.

4 Q Well, yes, sir, but I want to know how his lack of
5 experience caused him to wreck; do you know?

6 A He was on a -- he was on a trail that he did not have
7 the experience to be on. He didn't have the ability to
8 negotiate this trail safely.

9 Q So then the trail itself was dangerous.

10 A No, the trail itself was not dangerous. Cory Ross
11 being on that trail is what was dangerous.

12 Q Yes, sir. Now, would it be fair to say that the only
13 maintenance that you ever know of between June of 2007 and
14 December of 2008 was to remove fallen trees that would go
15 across the trail?

16 A That's correct.

17 Q From June of 2007 til December of 2008, did anyone
18 ever do regular inspections of that trail in order to make
19 sure they were safe?

20 A There were no inspections of the trail.

21 Q So the answer would be no, no one ever did that?

22 A There were no inspections of the trail. The trails
23 are safe. When someone is riding those trails, if they
24 find a condition that they can't negotiate, they simply go
25 around it.

1 Q So basically then there was a policy in place that the
2 trails were never inspected for safety.

3 A Black diamond trails were not inspected.

4 Q All right. Now, y'all had a device out there called
5 the Sweco; is that right?

6 A That's correct.

7 Q What is a Sweco?

8 A A Sweco is a small bulldozer. It's 54 inches wide.

9 Q What's the purpose of the Sweco?

10 A The Sweco is made specifically for narrow, small
11 trails, 54 inch-wide trails.

12 Q And the black diamond trails were how wide?

13 A 54 inches.

14 Q So the Sweco was designed for a trail as wide as the
15 black diamond trails.

16 A Yes.

17 Q During the 13-month period we're talking about,
18 between the time you became vice president and the time
19 Cory lost his eye, was the Sweco ever used on the black
20 diamond trails?

21 A No.

22 Q Well, was the Sweco ever used anywhere?

23 A Yes, yes, the -- that machine is used to maintain and
24 grade in order of importance. The green trails are
25 maintained to a much, much higher standard. They are very

1 few ruts; there are no elevation change. The blue trails
2 are next on the list; they're maintained not quite as well
3 as the green trails. They provide more of a moderate
4 experience. They're going to have much more elevation
5 change and some ruts, but black trails are not maintained
6 at all. Those are all natural trails. They're for the
7 most extreme experience that you can get on our property.

8 Q So there's no safety maintenance of those trails at
9 all.

10 A There is not.

11 Q There are no safety inspections of those trails at
12 all.

13 A There is not, no.

14 Q And that's by virtue of the policy of the company;
15 correct?

16 A Yes.

17 Q Actually, your philosophy is it's not the trail that's
18 dangerous; it's how it's ridden; right?

19 A That's -- that's it exactly.

20 Q So if you have something like the grand canyon show up
21 one night and somebody ran and fell in the grand canyon on
22 one of the black trails, that would just be not the trail
23 being dangerous, it would be just the driver.

24 A That's correct.

1 Q Now, on the day that Cory lost his eye, there was a
2 gentleman there name Rick Redmon who was working; is that
3 right?

4 A That's correct.

5 Q Rick Redmon would've been the person responsible for
6 maintenance of the park that day; right?

7 A No, Red Redmon was a trail monitor that day.

8 Q Where is he?

9 A I have no clue, no idea.

10 Q When Cory was injured, you got any idea how they got
11 him out of the woods?

12 A Rick Redmon was the one that went and got him out of
13 the woods. Rick brought him out on his four-wheeler.

14 Q The boulder that my client hit on the day in question,
15 do you -- have you ever seen it?

16 A Yes.

17 Q How big is it?

18 A It's very big.

19 Q Just ---

20 A Still there today.

21 Q Still there today. All right. Show me roughly how
22 wide it is?

23 A Today?

24 Q Yes. Well, show me how wide it was at the time Cory
25 got hurt.

1 A At the time he -- at the time he went over it, it
2 would've been at least four-foot wide.

3 Q That's 48 inches wide; right?

4 A At least four-foot wide.

5 Q And it would've come out of the ground how high?

6 A It actually didn't come out of the ground. It came
7 out of the side of the hill, so you went up the rock and
8 over it.

9 Q How high -- how high elevated off the trail would that
10 have been?

11 A Approximately 18 inches.

12 Q Foot and a half?

13 A Approximately.

14 Q Now, sir, in your regulations, as I understand it,
15 which we've looked at, the first thing it says is, please
16 be courteous and considerate of your fellow riders and keep
17 -- help keep our children safe. Do you see that?

18 A Yes.

19 Q Now, do you actually have children riding up there?

20 A Oh, yes, we do.

21 Q Is there any limitation on the trails they can go on?

22 A The limitations would be on their parents. We do not
23 limit any trails to anybody.

24 Q The next thing it says is, ride cautiously and safely
25 at all times, stay on the marked trails. You see that?

1 A Yes.

2 Q So basically then you have a requirement that people
3 riding on these trails stay on the trails. That's what it
4 says; right?

5 A The requirement is that they don't make new trails on
6 their own. They enter at a trail head and they exit at a
7 trail head.

8 Q Well, this basically is the written requirements that
9 you had; right?

10 A Yes.

11 Q It says stay on marked trails.

12 A That's correct.

13 Q All right. So what the actual requirement says is,
14 that the riders have to actually stay on the trails; right?

15 A No, the -- the requirement is that you don't just jump
16 off somewhere and go make a new trail; you stay on a trail
17 that is marked.

18 Q How about just read for me those four words right
19 there that were your words, sir.

20 A Yep. Stay on marked trails.

21 Q All right. Now, if a person is riding on a trail
22 where this boulder was located that's 18 inches elevated,
23 four-feet wide, and one of these ATVs is roughly how wide?

24 A They're no more than 50 inches.

25 Q All right, and the trails are 54 inches.

1 A Yes.

2 Q Well, sir, if the boulder is 48 inches wide in the
3 trail, the only way somebody riding this trail can follow
4 your directive is to go over the boulder, isn't it?

5 A There would take -- it would take a reasonable amount
6 of intelligence to know when you can go over something and
7 when you need to go around it. You will see in multiple
8 cases on every video, there is more than one way around any
9 given obstacle.

10 Q Well, sir, you've told us the trail is 54 inches wide;
11 right?

12 A Sir, you are trying to suggest that we are saying you
13 have to stay within that 54 inches. There is nowhere on
14 here that says you have to stay within that 54 inches. I'm
15 telling you that the marked trail was where you entered and
16 where you exited, not -- you are not supposed to go off and
17 just make trails through the woods on your own.

18 Q Sir, my question is, the trail is 54 inches wide;
19 correct?

20 A Correct.

21 Q Your directive is to stay on the trail; right?

22 A To stay on the marked trails; correct.

23 Q The marked trails are 54 inches wide.

1 A The marked trails are -- the trails that are
2 specifically marked at a trail head with a number and a
3 designation.

4 Q The trail head -- it starts at one point and ends at
5 another, and from start to finish the trail is 54 inches
6 wide.

7 A That's not correct. The trail is maintained at 54
8 inches wide. Black diamond trails are not maintained. Any
9 trail -- any trail that you come to an obstacle at, it
10 would -- it would take a reasonable amount of intelligence
11 to know that you need to go around or take whatever evasive
12 action is necessary.

13 Q Well, sir, let me ask you this. Let's talk about
14 where this four-foot wide boulder 18 inches out of the
15 ground it permeates this trail. How wide is the trail
16 there?

17 A The trail there now is incredibly wide. The trail
18 there now is likely as wide as this room.

19 Q Well, yes, sir, because it's changed since the time of
20 Cory's injury; I understand that. Let's ---

21 A It's been changed by riders that go around an obstacle
22 that they determined was unreasonable for them to
23 negotiate.

1 Q Well, let's talk about how wide that trail was on the
2 day Cory Ross lost his eye at your place of business. How
3 wide was the trail that day?

4 A I do not know.

5 Q Would it surprise you to learn it was a 54 inches
6 wide?

7 A It would surprise me to learn that it was 54 inches
8 wide and no one had decided that it was too hard for them
9 to negotiate, so they made a trail around it, but it would
10 be very surprising to find out that if it was only 54
11 inches wide that it was not negotiable.

12 Q Well, sir, you testified that you went out and looked
13 at the spot where you understand this boulder was. You've
14 testified that the boulder was four-feet wide, 18 inches
15 off the ground. Now, when you went and looked at it, give
16 me approximation of how wide the trail was.

17 A The trail was at least 54 inches wide.

18 Q Right. And if the trail was 54 inches wide and if you
19 did try to stay on the trail as instructed, the only way to
20 navigate that course was to go over that boulder.

21 A That's not true. You could go around that boulder.
22 There were -- there is more than -- there was ample room to
23 go around the boulder. There was no gates on either side
24 of the boulder.

25 Q But that room would entail leaving the trail; right?

1 A Yes, you would leave the trail. There were numerous
2 occasions where you will leave the trail.

3 Q Now, actually in the place that you looked at, as you
4 approach the boulder, you're going up hill; is that right?

5 A That's correct.

6 Q And you go up hill and the hill kind of curves; is
7 that right?

8 A After you go over the boulder.

9 Q All right. Well, so the hill -- is the boulder at the
10 top of the hill?

11 A Close to the top of the hill.

12 Q Well, sir, on December the 27th of 2008, the ground
13 conditions were wet, were they not?

14 A I assume. In the winter the ground conditions are
15 usually wet.

16 Q And this is clay we're talking about; right?

17 A Not on this hill.

18 Q What is it?

19 A It would be rock and sandy loam.

20 Q Well, this rock and sandy loam when it's wet and
21 you're uphill on an ATV is it slippery?

22 A Yes.

23 Q Give me an idea, just using your hands and your
24 numbers, the degree of grade that you were going up before
25 you'll encounter this boulder in the road.

1 A It would a steep -- a steep hill, a steep incline. It
2 would be on the order of that.

3 Q Right. And a person riding would have about 20 feet
4 of vision before he actually sees the boulder?

5 A At least.

6 Q That'd be about right. I believe you testified to
7 that, didn't you?

8 A No, I did not.

9 Q Well, you've heard that testimony I think from your
10 lawyer; right?

11 A I have heard it.

12 Q So if you're coming up the hill, you only have about
13 20 feet to see there's a boulder in the middle of the road
14 before having to react to it; right?

15 A Correct.

16 Q And if you hit the boulder, the front-end of the ATV's
17 going to up in the air; right?

18 A Yes.

19 Q And if the ground is slippery, there's a good chance
20 the thing is going to roll over.

21 A Slippery would have nothing to do with the unit
22 rolling over. Slippery would indicate that it would slide
23 down in a position it was in. If you have -- if it had
24 grip, it would be likely to roll over. A two-wheel drive

1 is pushed up a hill; a four-wheel drive pushes and pulls up
2 the hill.

3 Q Yes, sir.

4 A Attempting to negotiate a steep hill with a two-wheel
5 drive is not reasonable and is not operating a machine
6 cautiously.

7 Q So nobody should've been going up that hill, ---

8 A No.

9 Q --- even with a boulder.

10 A People -- people with the correct units have no
11 problems negotiating that hill.

12 Q Well, but nobody on a -- on an ATV at all should've
13 been going up that hill that day.

14 A Absolutely. Anyone with a four-wheel drive would have
15 no problem negotiating that hill today or any other day.

16 Q Well, all right. Do you ---

17 MR. MOORE - One moment, please.

18 Q Would it surprise you to learn that Cory's ATV was a
19 four-wheel drive?

20 A Yes, it would.

21 Q Um ---

22 A It would surprise me even more, because that's even
23 more reason that he should not have had an issue going over
24 that hill.

1 Q All right, sir. Well, of course, -- so what you're
2 testifying to is a person riding an ATV up a steep grade
3 with 20 feet of visibility, if he hits an 18 foot (sic)
4 boulder four-feet wide in the middle of the road, should be
5 able to just get around it very easily.

6 A 18 foot would be a problem.

7 Q 18 inches, I'm sorry, foot and a half.

8 A Yes, I think 18 inches is negotiable. If someone felt
9 it wasn't negotiable, there's ample room to go around it.

10 Q You testified ---

11 A It's a twenty-six hundred acre park. You can get
12 around it.

13 Q You've testified the trails were not dangerous;
14 correct?

15 A Correct.

16 Q So from your definition of dangerous, a four-foot wide
17 imbedded boulder 18 inches off the ground in the middle of
18 a trail is not dangerous.

19 A Correct.

20 Q I've asked you, sir, you knew that Cory was going too
21 fast on this day, and you said you don't know because you
22 weren't there; right?

23 A Correct.

24 Q Do you know of anybody in the world who could say he
25 was going too fast?

1 A It's my understanding the only person there was Mr.
2 Paxton.

3 Q Right. Do you know of anybody in the world who could
4 say he was going too fast?

5 A It would -- if there was anyone, it would be Mr.
6 Paxton.

7 Q So you would acknowledge then that Mr. Paxton would be
8 the person who actually saw what happened that day?

9 A I would.

10 Q So if -- if this is Cory Ross's fault, the person who
11 can tell us that is Mr. Paxton.

12 MR. RAYNOR - Objection. I think it's -- the
13 question's for the jury based on the testimony of Mr.
14 Paxton.

15 THE COURT - Well, as far as his knowledge, I -- I
16 sustain the objection.

17 MR. MOORE - Thank you, Your Honor.

18 Q Do you know a gentleman by the name of William Ekholm?

19 A Yes.

20 Q Now, actually, Mr. Ekholm was hired by Carolina
21 Adventure World; is that correct?

22 A That's correct.

23 Q And Mr. Ekholm worked there for, I guess, about 13
24 months; is that correct?

25 A I was not there when Mr. Ekholm was hired.

1 Q But you were there when Mr. Ekholm was working.

2 A Yes.

3 Q And Mr. Ekholm was very distressed, is it not true,
4 that you would not do any safety maintenance on this
5 course?

6 A I have no knowledge of that.

7 Q Do you not know that Mr. Ekholm complained vehemently
8 ---

9 MR. RAYNOR - Objection, Your Honor. May we
10 approach?

11 THE COURT - Yeah, come on up.

12 MR. MOORE - I'll withdraw the question, Your
13 Honor. I'll withdraw the question.

14 THE COURT - All right, jury is to disregard the
15 last question.

16 Q It's your testimony, sir, that you have no idea why
17 Mr. Ekholm quit; right?

18 A That's correct.

19 Q Mr. Ekholm certainly was not fired, was he?

20 A No, he was not.

21 Q Do you know a gentleman by the name of Chris Neely?

22 A Yes, I do.

23 Q And I believe that Mr. Neely would have been an
24 operation's manager; is that correct?

25 A That's correct.

1 Q Did Mr. Neely ever do any safety inspections of the
2 place where Cory was hurt, to your knowledge?

3 A Not to my knowledge.

4 Q Was there ever any type of sign or device or anything
5 indicating to riders that there's a boulder in the road
6 ahead?

7 A There was a double black diamond at the beginning of
8 the trail indicating that the trail was very difficult.

9 Q Yes, sir, difficult; I understand. I'm talking about
10 something that would warn, hey, there is a rock, boulder,
11 obstruction in the roadway.

12 A That would be the double black diamond to indicate the
13 trail was very difficult.

14 Q Sir, all that says is it's difficult. Okay, but
15 you've told me there's no difference between difficult and
16 dangerous?

17 A No, sir, I said there is a difference between
18 difficult and dangerous. I'm saying that our trails are
19 not dangerous; our trails are - can be difficult, but they
20 are not dangerous.

21 Q Well, explain the difference to the jury between a
22 course being difficult and a course being dangerous.

23 A A course being difficult is what I'm -- is exactly
24 what I'm telling you. There -- the degree of challenge
25 that you will come across will be rocks, boulders, ruts,

1 trees, things of that nature. Dangers -- I haven't been on
2 a dangerous course. I don't know -- I don't know what a
3 dangerous trail would be. I would leave that to you to
4 describe.

5 Q Sir, you told us that there is a difference between
6 difficult and dangerous, and now you're telling me you
7 don't know what that difference is. Which of those two is
8 true?

9 MR. RAYNOR - Objection, Your Honor, this is
10 argumentative.

11 THE COURT - Sustained.

12 Q Are you able to define what a dangerous course would
13 be?

14 MR. RAYNOR - Objection, ---

15 A No, I have not.

16 MR. RAYNOR - --- Your Honor.

17 THE COURT - Sustained.

18 Q I believe at the -- you told me previously that at the
19 time Cory Ross was hurt, the responsibility for safety
20 maintenance here on this place was your responsibility;
21 right?

22 A That's correct.

23 Q And what you did on this course was nothing.

24 A That is correct.

1 Q Now, sir, we've looked at this exhibit number 14, this
2 Carolina Adventure World, LLC, Assumption of Risk Release
3 or Liability and Indemnity Agreement. You see that? We've
4 look at that; correct?

5 A Yes.

6 Q Where did y'all get that thing?

7 A To the best of my knowledge it came from a ski resort.

8 Q What ski resort?

9 A I do not know.

10 Q Was it a ski resort in South Carolina?

11 A No, I'm sure it was not.

12 Q Who drew it up?

13 A The law firm of -- Dick Riley's law firm in South
14 Carolina.

15 Q And Dick Riley's law firm copied it from the ski
16 resort and gave it to y'all.

17 A Nelson, Mullins & Riley. I'm sorry, I do remember.

18 Q Yes, sir.

19 A To the best of my knowledge, it came from a ski resort
20 and it was modified by Nelson, Mullins & Riley.

21 Q Whose idea was it to draw this thing up?

22 A I do not have that information.

23 Q Was it already in use by the time you got there?

24 A It was.

25 Q How would you go about getting people to sign that?

1 A When they -- when they came to the gate, they would
2 have to sign this before they could purchase a ticket.

3 Q Well, how would you do it? I mean they would drive up
4 -- let's say somebody drives up -- I guess he's pulling his
5 vehicle?

6 A Correct.

7 Q Somebody meets him at the gate?

8 A Correct.

9 Q And how do they get it to the customer?

10 A They would hand it to them on a clipboard.

11 Q So they'd give you a clipboard and say, sign this?

12 A Yes.

13 Q People sign that, give it back and then they can go
14 in.

15 A That's correct.

16 Q How long does that process take?

17 A As long as is necessary.

18 Q We talked about Mr. Ekholm. Do you know that he was
19 hired in March of '07?

20 A I do not.

21 Q Do you know what his title was?

22 A I do not.

23 Q Do you know who hired him?

24 A I actually am not aware he had a title.

25 Q Did he live on the site?

1 A He did.

2 Q Do you know where he was living before he came here?

3 A I do not.

4 Q Do you know that Mr. Ekholm had special knowledge of
5 heavy equipment?

6 A I had heard he had a certificate to operate a
7 bulldozer.

8 Q Did you know that he had special knowledge of tracks
9 and trails like this?

10 A I do not.

11 Q Did Mr. Ekholm -- do you know if he helped design the
12 tracks and trails out there?

13 A I know he did not.

14 Q Do you know how long he helped to operate Carolina
15 Adventure World?

16 A I have never known Mr. Ekholm to operate Carolina
17 Adventure World. He worked on a bulldozer at Carolina
18 Adventure World.

19 Q In his -- in his working there, should he have come to
20 a knowledge of how the safety precautions worked out there?

21 A Mr. Ekholm graded a portion of a motor cross track.

22 Q That's all he did in a year?

23 A Yes, as a matter of fact, that's all he did in the
24 year.

1 Q So everything he did in one year was to grade a
2 portion of one motor cross track.

3 A That's correct.

4 Q Didn't do anything else.

5 A From my understanding he did do some -- some grading
6 for building sites.

7 Q Would it be fair to say that after Mr. Ekholm left the
8 employ of the company, the safety procedures didn't change
9 very much?

10 A It would be safe to say.

11 Q Didn't change at all, did they?

12 A They did not.

13 Q Because they were non-existent, especially on these
14 courses; they were totally non-existent.

15 A On the black diamond trails?

16 Q Right.

17 A There is no maintenance on the black diamond trails.

18 Q And there's no inspection, there's nothing done for
19 safety on the black diamond trails; right?

20 A There is no maintenance done on black diamond trails.

21 Q Well, there's actually nothing done for safety on
22 those, according to what you've told us already; right?

23 A That would be your opinion. I -- I contend that the
24 trails are not dangerous.

1 Q When Cory lost his eye, do you understand he did have
2 his helmet on?

3 A That's my understanding, yes.

4 Q Did anybody ever go out and take a picture of the
5 place where Cory was hurt?

6 A Not to my knowledge unless his attorney did.

7 Q But nobody from Carolina Adventure World did that.

8 A No, we did not.

9 Q And there's no video-tape of any type in existence
10 that you know of that would show the place where Cory was
11 hurt; right?

12 A That I know of.

13 Q Now, y'all do have a video-tape, don't you?

14 A Yes.

15 Q But it doesn't show the place where Cory was hurt;
16 right?

17 A I do not know that.

18 Q Well, you've seen it, haven't you?

19 A Yes, I've seen the video.

20 Q All right, well, when you looked at the video, did it
21 show the place where Cory was hurt?

22 A In my opinion, it did.

23 Q All right. Had -- is that after it was already
24 modified though and changed?

25 A No, absolutely not.

1 Q All right. Are you able to say that it actually did
2 show the place where Cory was hurt?

3 A I am not.

4 Q I think, sir -- may I hold the document?

5 A Yes.

6 Q Would you just read the first paragraph of this
7 release document that y'all have?

8 A In consideration of Carolina Adventure World, LLC, CA
9 World, permitting me or my minor child to participate in
10 recreational activities at CA World on the real property
11 and improvements operated by CA World, the premises or at
12 events sponsored by CA World, I, the undersigned, for
13 myself and for my child, if a participant and/or heirs,
14 personal representatives, successors and assignees agree to
15 the following terms and conditions.

16 Q Now, that's the same document that Carolina Adventure
17 World's lawyer was showing the jury in opening statement;
18 right?

19 A That's correct.

20 Q It talks there about my child. How many children do
21 you have coming out there?

22 A A lot.

23 Q Do you tell people who come out there -- like the
24 parents of these children, do you tell them, look, we don't
25 do anything for safety on the black diamond courses?

1 A No.

2 Q Do you tell the customers who come to ride, you can
3 ride where you want to, but we do nothing for safety on the
4 black diamond courses?

5 A No.

6 Q Well, sir, if you give them a piece of paper that says
7 safety is first at Carolina Adventure World, why don't you
8 at least tell them, safety's first at Carolina --
9 everywhere at Carolina Adventure World except the black
10 diamond courses?

11 A Again, the safety is first in my opinion refers to the
12 rider is responsible for their safety; they should be safe
13 when they are riding.

14 Q So what y'all do is tell them, hey, y'all be safe and
15 that's it.

16 A That's correct.

17 Q Well, sir, do you don't think it's fair to them to at
18 least disclose that, hey, we don't do anything for safety
19 on the black diamond courses?

20 A I don't think it's necessary.

21 Q Who came up with the policy of not disclosing to
22 people that we don't do anything for safety on the black
23 diamond courses?

24 A I have no knowledge of that.

25 Q Was that policy already in effect when you got there?

1 A I have no knowledge of that.

2 Q Well, you've testified that that is the policy; right?

3 A Yes.

4 Q And you've been the vice president since 2007;
5 correct?

6 A Correct.

7 Q That's been the policy at least -- since at least
8 2007.

9 A That's correct.

10 Q Did you adopt that policy, or was it in effect when
11 you got there?

12 A I do not know that.

13 Q But the policy has always been, we do not disclose the
14 fact that we have nothing to do with safety on the black
15 diamond courses. You don't disclose that to anybody.

16 A No, we do not.

17 Q It wouldn't be very hard to disclose it, would it?

18 A No.

19 Q You could basically give them a little card that says,
20 hey, ride on the black diamond courses, but, no, we don't
21 do any safety precautions there.

22 A Again, my response is, our trail is not unsafe.

23 Q And, again, like you say, that's not something you can
24 say; that's for somebody else to determine; right?

25 A That's correct.

1 MR. MOORE - Sir, I very, very much appreciate you
2 answering my questions. I can assure you counsel may or
3 may not have questions for you. Thank you for answering my
4 questions.

5 MR. WEBSTER - You're welcome.

6 THE COURT - Cross examination.

7 MR. RAYNOR - Yes, Your Honor.

8 CROSS EXAMINATION

9 BY MR. RAYNOR -

10 Q Mr. Webster, tell us how Carolina Adventure World got
11 started.

12 A Carolina Adventure World was started by Don Wilburn
13 when one time he took his grandchildren out on a ATV to a
14 place called Baby Lake in Newary (sic) National Park, and
15 he went out there, and they spent the day out there and had
16 a great time, so he decided -- at one point the kid looked
17 at him and said -- his grandchild looked at him and said,
18 grandpa, I could do this all the time. So Don Wilburn went
19 to looking for a tract of land that he could allow his
20 friends and family to come down and ride on. Well, as with
21 everything else, one thing led to another and Carolina
22 Adventure World was born.

23 Q And so Mr. Wilburn and his grandkids were riding there
24 before the park even existed; is that correct?

1 A Actually once he bought the park, it was already a
2 hunting preserve and had been used for logging as
3 everything around here is, and there -- there were a lot of
4 existing service roads on there and some trails from
5 hunters that they would use against their tree stands and
6 stuff, so they started riding on those.

7 Q Now, an ATV -- we've heard a little bit about ATVs,
8 all terrain vehicle; correct?

9 A Correct.

10 Q They are designed to be ridden where?

11 A ATVs are made to be off-road. They're not -- for the
12 most part they're not golf cart type machines. They do
13 make some that are two wheel sport quads that are designed
14 specifically for racing. They shouldn't be out in the
15 woods under any circumstances.

16 Q Now, sport quad, those are designed to go fast over
17 like a motor cross trail?

18 A Exactly. Those are go-fast/race-type machines. The
19 utility quads on the other hand are made to go everywhere.
20 They're made to go over rocks, boulders, trees, tree
21 stumps, through the ruts, mud, they're -- these machines
22 are tough, and that's exactly what they're used for.

23 Q Do people use them to go places where there's no
24 trails or roads, just like go through the woods?

1 A Just where there's no trails whatsoever. You can go
2 through a trail; you can be riding through a trail and take
3 off through the woods and end up wherever you choose.

4 Q And we talked a little bit about it, you said they're
5 designed to go over obstacles, rocks, ruts, trees?

6 A Rocks, ruts, trees. There are some units out there
7 that are purpose-built for deep mud. They have air intakes
8 and snorkels on them and huge wheels. These things will
9 just about swim. It's the closest thing to a swimming
10 machine I've ever seen.

11 Q But the typical ATV is not the sport quad; it's not
12 the one that's almost a swimmer, but it's designed to go
13 over rough terrain.

14 A That's correct.

15 Q Now, I take it there are limitations to what you can
16 drive it over. Mr. Moore talked about the grand canyon; I
17 suppose there are some limits; correct?

18 A Sure, there are limits, and when you -- when you would
19 approach a limit or an obstacle that you were -- knew your
20 machine couldn't negotiate, you could not go over it or
21 through it or into it.

22 Q And so one of the skills that are needed when you're
23 driving one of these machines is being able to recognize a
24 condition that, hey, this is a condition that I can't just

1 roll over or go through and figure out a way to either go
2 around it or go over it; correct?

3 A That's correct.

4 Q Now, when you're an operator of one of the ATVs and
5 you're out riding through the woods, should you be going at
6 a fast rate?

7 A It's possible that you would go at a fast rate, but
8 it's not very prudent. Any time you've been -- you're
9 going somewhere that's new to you, you should at least
10 negotiate -- go through the trail at least one time so you
11 have some idea of what's coming up. It just doesn't make
12 good sense to go blasting through somewhere you've never
13 been.

14 Q And so first time there, it's good practice to go
15 slowly, check out what's there. Is that a fair statement?

16 A Absolutely.

17 Q And it's -- if you see something that looks like it's
18 a challenge, is there any problem with stopping and looking
19 at it, investigating it?

20 A Absolutely not. That would be prudent. That would be
21 the smart thing to do.

22 Q Come around a curve, there's a -- you know, blind spot
23 in the trail, is it prudent to come around very slowly and
24 then check out what's on the other side?

1 A Absolutely. It's -- it's necessary. There -- there
2 is anything that could happen in the woods, and again, it's
3 twenty-six hundred acres. Because we've been through there
4 this morning doesn't mean that something hasn't happened
5 this afternoon that would require your attention.

6 Q And, in fact, one thing that happens -- well, let me
7 back up one. Do people out at Carolina Adventure World
8 ride in muddy conditions?

9 A Absolutely. Mud is a favorite out there. The --
10 after a good rain is the most popular time in the park.

11 Q Now, you -- growing up in the country or have you ever
12 been out in the country where there's a dirt road? Have
13 you been on a dirt road and that, you know, people drive
14 through and it gets ruts in it?

15 A Absolutely. Absolutely, and again, we have -- in the
16 wintertime when it's winter out there and it -- and it's
17 rained -- you know, we have -- our typical winters it rains
18 just constantly, and the days are short, the ground doesn't
19 get a lot of chance to dry up, so what normally happens is,
20 these ATVs will go through there and they'll rut it up
21 pretty bad, and there's not a lot of chance for us to go
22 out there and to take the ruts out just strictly because
23 it's wet, and you just cannot stack mud no matter what you
24 do. You can't pile mud up but so high, and once you --
25 even if you did it, once you drive over it, it's right back

1 in condition it was in, so typically we have to wait until
2 April before we can -- before we can start to go knocking
3 the ruts back out of the -- out of the trails. And this is
4 with four thousand people a month that are going through
5 the trails.

6 Q And the -- do people that go out ride these trails
7 with the ruts? Do they ride through the ruts? Is that
8 part of the fun?

9 A Absolutely. Absolutely. You'll get -- by the end --
10 by March, when we get around to March, we're getting the
11 guy with the sport quads that are trying to come out and go
12 fast, they're having extremely tough time with it. They --
13 the sport quads are low to start with, and then to go
14 faster they put smaller wheels on them so they can go
15 really fast and it's just -- that low ground clearance and
16 mud there just don't work at all. It just -- it doesn't
17 work for them at all. So it's very slippery and slick for
18 some of these units, but most of these guys that are coming
19 out here and -- guys, girls and kids that are coming out
20 here have machines that that's what they're coming out
21 there to do.

22 Q Let me ask you one thing while we're talking about
23 kids. Do you know of any law in South Carolina that
24 prevents a kid from riding an ATV?

1 A Absolutely not. The manufacturers have requirements
2 or guidelines that they post of their machines for age
3 limits for what they want their kids to do. At Carolina
4 Adventure World we let the parents do the parenting, so if
5 your kid is out there and you decide that this unit -- he's
6 fine on this unit, then that's your business; that's not
7 our business. We don't do the -- we don't do the
8 parenting.

9 Q And people can ride ATVs; they don't have to go to a
10 park like yours to ride an ATV; correct? They can ride it
11 in their backyard if they want to.

12 A Absolutely. If you've got the land, you can ride it
13 anywhere you want. I would not suggest riding on any Duke
14 Power land or private property, because there are stiff
15 fines for that.

16 Q But if -- if I own the land, like a -- or lease some
17 hunting land, I can go ride it there; correct?

18 A Absolutely.

19 Q I can let my kids ride it; correct?

20 A Yes, that's correct.

21 Q Now, Mr. Moore was talking with you about these
22 trails. There are different levels of trails out at
23 Carolina Adventure World. Is that correct?

24 A Absolutely. The trail system is rated green, blue and
25 black for degree of difficulty. The green trails

1 typically, especially for this time of year -- the green
2 trails are almost like golf cart tracks, golf cart trails.
3 You can almost be riding at the golf course. The terrain
4 changes very minimum, and there are little to no rutting,
5 if any at all. After a rain, like the little bit of rain
6 we had last night, you might find a puddle, but it won't
7 last all day long. The blue trails on the other hand are
8 going to have a little bit more rutting. We don't put as
9 much attention to the -- into them. They'll have a little
10 bit more rutting, and they'll hold water here and there.
11 In a rain like last night, it might last til tomorrow. So
12 you'll get a little mud puddle here and there, and the
13 terrain change is significantly different. The blue trails
14 are rated moderate, and that's what they are, but when you
15 get -- when you start -- you'll have little places of hills
16 and terrain change where you've got a little bit of decline
17 or a little bit descent.

18 Q In the wintertime is it unexpected for there to be
19 ruts on that blue trail?

20 A Absolutely not.

21 Q Okay. Now, the black diamond trail, describe what
22 that is.

23 A The black diamond trail is a trail that's left to its
24 own. We don't do anything with the black diamond trail.

25 The idea with the black diamonds is that this is the

1 challenge; this is the most extreme trail we can offer. We
2 don't -- we don't touch a black diamond trail. These
3 people that like these -- this sort of thing, they're
4 saying it's not rough enough for them. The people that
5 aren't that much into it, when they go out there on that
6 black diamond trail, their challenge ---

7 MR. MOORE - Objection to people, Your Honor, as
8 to what people may say. Object to hearsay.

9 THE COURT - Sustained, hearsay.

10 Q Without referencing what people say, do people go out
11 and ride black diamond trails regularly ---

12 A Yes, they ---

13 Q --- at Carolina Adventure World?

14 A Yes, they do.

15 Q Do some people choose not to do that?

16 A Yes, absolutely.

17 Q This is exhibit 6. Let me show you what's been marked
18 for identification purposes as defendant's exhibit number
19 6. Is that the trail rating system that y'all use at
20 Carolina Adventure World?

21 A Yes, it is.

22 Q Now, -- and it shows the different levels of trail
23 rating; is that correct?

24 A That's correct.

1 Q From the green being the easiest, the blue being
2 moderate, to black diamond being most difficult?

3 A That is correct.

4 Q And then there's actually a yellow that is most
5 difficult single track; is that correct?

6 A Yes, most difficult single track is for dirt bikes
7 only. It's only wide enough to get a dirt bike and your
8 shoulders through.

9 MR. RAYNOR - Your Honor, at this point I would
10 move to introduce defendant's exhibit 6?

11 THE COURT - Any objection?

12 MR. MOORE - No, sir. I -- again, Your Honor,
13 except for the one document, I don't have any objection to
14 any of their -- they can -- he can introduce all of those
15 exhibits if he'd like to to save some time. I have no
16 objection to all of them.

17 THE COURT - Well, I mean I thought we addressed
18 this and I -- objected it at that time.

19 MR. MOORE - No objection.

20 THE COURT - Any objection? All right, well first
21 things first. Defendant's exhibit number 6 is admitted
22 into evidence without objection.

23 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 6 IS
24 MARKED INTO EVIDENCE.)

25 MR. RAYNOR - Thank you, Your Honor.

1 THE COURT - Do you have other exhibits, because
2 he said there was no objection to any other defense
3 exhibits.

4 MR. RAYNOR - I do, Your Honor, but I would like
5 to just kind of proceed through it ---

6 THE COURT - That'll be fine. Go ahead. That'll
7 be fine.

8 MR. RAYNOR - Okay.

9 Q Now, this exhibit number 6 also shows the -- that
10 there are service roads marked as well; is that correct?

11 A That's correct.

12 Q Now, let me show you what's been marked for
13 identification purposes as defendant exhibit number 1. Can
14 you identify what that is?

15 A Yes, it's a park trail map.

16 Q And the trail map is given to visitors to the park; is
17 that correct?

18 A That's correct.

19 Q And what is the purpose of the trail map?

20 A To allow them to navigate through -- through -- not
21 just throughout the park but through what level -- to find
22 the level of trail that they would like to ride.

23 MR. RAYNOR - Your Honor, I would move to
24 introduce defendant's exhibit number 1 at this time.

25 MR. MOORE - No objection.

1 THE COURT - All right. Defendant's exhibit 1
2 admitted into evidence without objection.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 1 IS
4 MARKED INTO EVIDENCE.)

5 MR. RAYNOR - Your Honor, I have copies for the
6 jurors. I would like to publish it at this time as well.

7 THE COURT - Okay, you can publish the original
8 and pass it around that way, unless -- look at all of the
9 copies.

10 MR. MOORE - I would just ask that we just pass it
11 around ---

12 THE COURT - Yeah. Pass around the original. You
13 can do that.

14 MR. MOORE - I don't have any -- no objection at
15 all, Your Honor.

16 (WHEREUPON, DOCUMENT PUBLISHED TO THE JURY.)

17 Q Now, Mr. Webster, on this map there -- it shows speed
18 limits indicated; is that correct? See at the bottom there
19 ---

20 A Yes.

21 Q And what is the speed limit for the most easiest
22 trails out there?

23 A 15 miles an hour.

24 Q And then for the other trails, what is the speed
25 limit?

1 A It would be -- for the service roads it's also 15
2 miles an hour. For the blue trails it would be your own
3 safe speed.

4 Q And how about the black diamond trail?

5 A Again, it would be your own safe speed.

6 Q And, generally, when people are on black diamond
7 trails with these kind of changes that are there in terms
8 of elevation and ruts and -- are there rocks in those
9 trails?

10 A Absolutely.

11 Q What is the -- a gear that people -- well, strike
12 that. Are they normally ridden with four-wheel drive
13 vehicles?

14 A Yes.

15 Q And why is that important?

16 A Four-wheel drive -- again, four-wheel drives will push
17 and pull, so it pulls you from and up over things instead
18 of the back-end pushing your front-end up in the air.

19 Q And what typical speeds do people go through black
20 diamond trails ---

21 A Very slow.

22 Q And do they usually use four-wheel drive to go through
23 those?

24 A Yes, absolutely.

1 Q And so vehicles aren't typically flying up and down
2 those trails, are they?

3 A No, they are not. In fact, less than 15 miles an hour
4 is more than likely the normal. If you can get over 15
5 miles an hour, it would be for a short, very short spirts.

6 Q Okay. Now, you've got the map there that shows the
7 various trails that are difficulty. Are there signage out
8 on the trails where people enter them to give them an
9 indication of, in addition to the map, that they know this
10 is where they are?

11 A Absolutely. At each trail head there'll be a number
12 with a designation for the color of the trail and, again,
13 you know, the color would denote the degree of difficulty.

14 Q Okay. Now, let me show you defendant's exhibit number
15 3 and ask you to take a look at that series of photographs.

16 A (Witness complies)

17 Q And -- have you looked at those?

18 A Yes.

19 Q Are those photographs of trail 19 that you took some
20 time after this lawsuit was filed?

21 A I do not recall taking these pictures, but that's what
22 they are, pictures of trail 19.

23 Q And do they show, fairly accurately depict the -- some
24 of the conditions that are found on trail 19?

25 A Yes, they do.

1 Q If you look at the very first one there, does that
2 show a sign of the entrance to trail 19?

3 A Yes, it does.

4 Q And does it show -- there's a -- it has a marking on
5 it 19, and then a double black diamond trail; is that
6 correct?

7 A That's correct.

8 Q And then the -- if you look over to -- we've numbered
9 these as plaintiff's exhibit number 3 and then we have
10 numbers on them, so if you look at the next page, there's a
11 number number 2 on that exhibit, ---

12 A Correct.

13 Q --- photograph number 2.

14 A Yes.

15 Q Is that a scene that's -- was found on number -- trail
16 19?

17 A Yes.

18 Q And that's showing a -- going at an uphill; is that
19 correct?

20 A That's correct.

21 Q And there's rocks scattered throughout that path; is
22 that correct?

23 A That's correct.

24 Q If you look at number 3, is that some more conditions
25 found on trail 19?

1 A Yes.

2 Q Then if you look at number 4, what does that show?

3 A Number 4 is not a great picture; it's hard to really
4 tell what that is, but ---

5 Q Look at ---

6 A --- I assume that this would be further along trail
7 19.

8 Q Look at photograph number 9. Does that depict some of
9 the grades that are found on trail 19? And by grades, I
10 mean how steep you go up and down hills?

11 A Yes.

12 Q Number 10, does that show some of the grades as well?

13 A It does.

14 Q The -- look at photograph number 13. You talked about
15 the soil conditions there being -- you said loam and rock;
16 is that correct?

17 A Yes, that's correct.

18 Q Is that depicted there on photograph number 13 and ---

19 A Yes.

20 Q And look at photograph 14.

21 A Yes.

22 Q Now, you were asked about the ---

23 MR. RAYNOR - Your Honor, at this point I would
24 move to introduce exhibit number 3.

25 THE COURT - Any objection?

1 MR. MOORE - None. No, sir.

2 THE COURT - All right, defendant's exhibit number
3 3 admitted into evidence without objection.

4 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
5 DEFENDANT'S EXHIBIT NUMBER 3.)

6 Q You were asked about -- you know, Mr. Moore asked you
7 questions about this rock. If somebody came to the road
8 that Mr. Ross says he crashed on, what would somebody be
9 able to do in that situation. Well, you've been on trail
10 19 before; correct?

11 A Yes.

12 Q You've ridden that trail from one end to the other; is
13 that correct?

14 A Correct.

15 Q Have you even encountered any condition where you were
16 not able to navigate or drive your ATV over?

17 A No, I have not.

18 Q Have you ever seen any condition there on trail 19
19 that caused you to crash?

20 A No, I have not.

21 Q Now, if somebody sees a situation that they think is
22 more challenging than they can accomplish, what are some
23 options to them?

24 A Well, obviously the first option would be to go around
25 it. You will -- you can't see them very well in here, but

1 you'll see on - on every trail there's -- there are ruts or
2 areas where somebody has gone around and moved the trail.
3 When we talk about how wide is trail 19 today, it's very
4 wide from just that reason, from where people will move
5 around an obstacle or something that they don't feel
6 comfortable going around, so the trail gets wider around
7 obstacles, and then as that trail, what we call, heals
8 (sic), you know, when people quit using it, it dries up and
9 starts accumulating more rock and more dirt and things fill
10 in and the ruts fill themselves back in, people will move
11 back in that direction, so even though it's bad today, by
12 this time next year it's going to be a lot better than it
13 is today and possibly, quite possibly, people will move
14 from where they're riding today to this spot that they used
15 to ride on.

16 Q Just for the challenge?

17 A Just because -- yeah, just -- the challenge has -- the
18 challenge increases the longer the trail -- the longer the
19 trail stays the same. The challenge increases, so people
20 will move from this rut if it's too deep for them, too -- I
21 mean -- you know, the ruts do get -- get very deep, and
22 some of these bigger machines don't have a problem with it,
23 but some of the smaller machines that go up there, they end
24 up riding the top of the rut, so they ride the ridges on
25 the ruts. That wears everything down, so it all comes down

1 to about the same time. Well, in the meantime that the
2 most popular trails are being used, these ones that were
3 being used are sitting over here and they're not doing
4 anything but getting filled back in, you know, with loose
5 rocks, even -- even tree debris and pieces of tree limb
6 will fill them back in, and next year when you come back,
7 you're likely to be riding in these spots that you didn't
8 ride in this year.

9 Q Now, do you know of any condition on trail 19 that
10 where if a rider is keeping a proper lookout and driving at
11 an appropriate speed where they would not be able to stop
12 and to -- if they saw anything in the road that would
13 prevent them from traveling over?

14 A No, I do not.

15 Q And, in fact, if you're driving an ATV at a slow rate
16 of speed and you take your hand off the throttle, what
17 typically happens?

18 A You have -- the ATV will stop all by itself. It's
19 almost what they call a dead man's throttle. Well, if you
20 don't have your thumb on the throttle, it's not giving it
21 any fuel to go forward.

22 Q And in addition there are brakes on these vehicles;
23 correct?

24 A Absolutely.

1 Q Do you know if someone was operating their ATV in a,
2 you know, reasonably safe manner at a proper speed and
3 keeping a proper lookout, do you know of any condition on
4 trail 19 that somebody should not be able to go over
5 without crashing their vehicle and flipping it back over on
6 top of them?

7 A I do not.

8 MR. RAYNOR - Your Honor, at this point I would
9 like to publish exhibit number 3, the photographs. I do
10 have copies, but I can also do the originals.

11 THE COURT - You can publish the originals.

12 MR. RAYNOR - Thank you, Your Honor.

13 (WHEREUPON, PHOTOGRAPHS ARE PUBLISHED TO THE
14 JURY.)

15 MR. RAYNOR - May we approach, Your Honor?

16 THE COURT - Yes.

17 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
18 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
19 WHICH WAS NOT REPORTED.)

20 Q Mr. Webster, I'm going to ask you some questions while
21 some folks are still looking at the photographs. We're
22 going to try to multi-task here, but while they look at
23 that, let me show you exhibit number 4 and ask you if you
24 can identify that.

25 A Yes.

1 Q That is the release signed by Mr. Ross; is that
2 correct?

3 A That's correct.

4 Q And again, this would've been a document you would've
5 signed as he comes to the park, before he's allowed to pay
6 money; correct?

7 A That's correct.

8 Q And one of the things that Mr. Ross says in this
9 agreement that he signed is that, quote, I am solely
10 responsible for selecting the trail that best suits my
11 experience and ability; is that correct?

12 A (No response)

13 Q Let me show you -- you see where it says right there?

14 A (No response)

15 Q I am solely responsibility for selecting the trail
16 that best suits my experience?

17 A Yes.

18 Q And the -- also this document says that Mr. Ross is
19 basically saying, that I know that the recreational
20 activities are dangerous and involve inherent risk to my
21 health and safety, including, but not limited to bodily
22 injury; is that correct?

23 A That's correct.

24 Q Some of the risks includes collisions, crashes,
25 vehicle rollovers; is that correct?

1 A That's correct.

2 Q And Mr. Moore was asking you questions about leaving
3 it up to the rider. That is absolutely true that
4 ultimately the rider, driver of the ATV, is responsible for
5 his safety; is that not true?

6 A That's absolutely correct. The rider will choose the
7 degree of difficulty, how fast or slow they choose to go,
8 not just where they choose to go but how they choose to go
9 through it.

10 Q In fact, you can ride an ATV down this street in front
11 of the courthouse; correct?

12 A You could.

13 Q You can ride it in a way that's improper, and you can
14 crash it in front of this courthouse; correct?

15 A Absolutely.

16 MR. RAYNOR - Your Honor, at this point I would
17 move to introduce exhibit number 4 and publish that to the
18 jury as well.

19 THE COURT - Any objection?

20 MR. MOORE - None.

21 THE COURT - Defendant's exhibit 4 admitted into
22 evidence without objection.

23 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
24 DEFENDANT'S EXHIBIT NUMBER 4.)

1 MR. RAYNOR - I don't have any further questions,
2 Your Honor, at this time.

3 THE COURT - All right. Re-direct?

4 MR. MOORE - None, Your Honor.

5 THE COURT - All right. You may step down.

6 MR. MOORE - We call William Ekholm, Your Honor.

7 THE COURT - Well, no, we're going -- it's already
8 after 5:00; we're going to go ahead and break for the day.

9 MR. MOORE - Your Honor, Mr. Ekholm is here and
10 has a flight. If there's any -- I understand. It's 5:00
11 o'clock.

12 THE COURT - It's 10 after 5:00. If I'd had some
13 pre-warning -- ladies and gentlemen, we're going to go
14 ahead and break for the day. Now, I tell you this simply
15 because I have not -- it's 10 after 5:00. I want to make
16 sure we get this trial in, so if any of you have any
17 arrangements or any obligations tomorrow around the 5:00
18 o'clock time, you probably need to go ahead and make
19 arrangements to work a little bit late tomorrow. I don't
20 know that we're going to work late, but I hate to keep you
21 late today without giving you any pre-warning, so we're
22 going to go ahead and break for the day. Make sure -- I
23 would plan on staying -- making arrangements to stay a
24 little bit later tomorrow if the need arises. Okay? Also,
25 if you have not finished reviewing defense exhibits 3 and

1 defense exhibit 4, we'll give you an opportunity to look
2 over those tomorrow before we resume, and I'll give you an
3 opportunity to look at those, but we're going to go ahead
4 and break for the day. I'm going to ask that you please be
5 back in the jury room tomorrow morning at 9:15. We'll try
6 to get started as soon after 9:15 as we can, but that'll
7 give you an opportunity to get some coffee or whatever the
8 case may be. Do not discuss the case even among
9 yourselves. Don't conduct any independent investigations
10 into the case. Don't go trying to find out anything about
11 the case beyond what you hear here in the trial. Hope
12 everybody has a good evening, and we'll see you back at
13 9:15 tomorrow morning. Thank you very much.

14 (WHEREUPON, JURY EXITS THE COURTROOM AT 5:10
15 P.M.)

16 THE COURT - Mr. Moore, I apologize, but without
17 giving the jury any pre-warning that we might run late, I
18 hate to do it on the first day of trial, and that's why
19 when I get the feel that we might be running late, that's
20 why I went ahead and told them tomorrow night to go ahead
21 and plan on staying as late as we can.

22 MR. MOORE - No apology needed at all, Your Honor.
23 When I realized -- when I realized -- as I was getting up
24 and looked at the clock, I said -- you know, I should've
25 said something earlier. It was my fault.

1 THE COURT - That's no problem at all. Anything
2 from the plaintiff before we recess for the evening?

3 MR. MOORE - None, just thank you, Your Honor.

4 THE COURT - All right. Anything from the
5 defense?

6 MR. RAYNOR - Nothing, Your Honor.

7 THE COURT - All right, I've got the jury coming
8 in at 9:15. I'll try to take the bench right at 9:30.
9 I'll be here before. I'll probably be here a little bit
10 before 9:00, so if anything comes up, let me know, but I
11 like to give them an opportunity to get here and maybe get
12 a cup of coffee or whatever the case may be before I take
13 the bench, so I'll take the bench right at 9:30. Okay?
14 All right, let's make sure before we get out of here that
15 the court reporter has all the exhibits that are in
16 evidence before you leave.

17 MR. MOORE - Judge, do you think the staff can
18 give us maybe 10 minutes back in this room before we break
19 for the night, before we got here?

20 THE COURT - I don't have a problem. Can y'all
21 accommodate that?

22 DEPUTY CLERK - That's fine.

23 THE COURT - All right, sounds good.

24 MR. MOORE - Thank you, guys.

25 THE COURT - Thank you very much.

1 MR. STEGMAIER - Let me just make an inquiry,
2 because we wanted to speed it up where we could and passing
3 around exhibits.

4 THE COURT - Right.

5 MR. STEGMAIER - Do you have -- and Mr. Moore, do
6 you have any difficulty and does the Court have any
7 difficulty, when they've assembled tomorrow morning at
8 9:15, prior to 9:30 having it available in the jury room so
9 they can see it, however you want to do it?

10 THE COURT - Well, I don't have an objection since
11 I cut them short and -- what is the plaintiff's position?

12 MR. MOORE - It's all right by me.

13 THE COURT - Okay. All right, so we can go ahead
14 -- but I don't want them to deliberate.

15 MR. STEGMAIER - Yeah; I understand the concern.

16 THE COURT - That's the thing. I don't want them
17 to take -- get the exhibits and start deliberating. And
18 the best thing might be when they -- any objection to --
19 particularly -- I think we were just talking about defense
20 exhibits 3 and defense exhibit 4 -- any objection -- I'll
21 do whatever y'all want -- to the bailiff giving them
22 defense exhibit 3 and defense exhibit 4 and telling them
23 they can look at it, but they can't discuss it at all.

24 MR. RAYNOR - I have no objection.

25 MR. MOORE - That's okay.

1 THE COURT - Is that all right? I mean I'll do
2 whatever you -- if you want to wait until they get out
3 here, we can wait til we get out here. I don't have a
4 problem with that.

5 MR. MOORE - It's all right.

6 THE COURT - Okay.

7 MR. MOORE - It's all right.

8 THE COURT - Okay.

9 MR. MOORE - It's fine by me.

10 THE COURT - All right, sounds good. We'll do it
11 that way.

12 MR. STEGMAIER - Thank you.

13 THE COURT - All right, anything further from the
14 defense before we recess for the evening?

15 MR. RAYNOR - No, Your Honor.

16 THE COURT - All right, we'll go ahead and stand
17 in recess. I understand you want to ---

18 MR. MOORE - No, I just want to talk with them -
19 with these folks for just a few minutes.

20 THE COURT - Oh, okay. Okay. You don't need me
21 for anything though.

22 MR. MOORE - No, sir. Thank you.

23 (COURT IN RECESS FOR THE DAY AT 5:20 P.M.)
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD) SIXTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-20-0319

CORY ROSS)

vs.)

TRANSCRIPT OF RECORD

CAROLINA ADVENTURE WORLD,)
LLC)

(DAY 2 - VOLUME II)

MAY 28, 2015

WINNSBORO, SOUTH CAROLINA

BEFORE THE HONORABLE BENJAMIN H. CULBERTSON

APPEARANCES:

S. JAHUE MOORE, ESQUIRE
WEST COLUMBIA, SOUTH CAROLINA

GREG CLOSE, ESQUIRE
WEST COLUMBIA, SOUTH CAROLINA

ATTORNEYS FOR THE PLAINTIFF

KENNETH RAY RAYNOR, ESQUIRE
CHARLOTTE, NORTH CAROLINA

CHRISTIAN STEGMAIER, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEYS FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I N D E X

WITNESSES	DIRECT	CROSS	RE-DIRECT	RE-CROSS
John Webster				
By Mr. Moore	96			
By Mr. Raynor		134		
William Ekholm				
By Mr. Moore	162			
By Mr. Raynor		174		
Cory Ross				
By Mr. Moore	180			
By Mr. Raynor		211		

E-X-H-I-B-I-T-S

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P-2	Photo	4	201
P-3	Photo	4	201
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P-5	Photo	4	201
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D-1	Map	51	145
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1 (WHEREUPON, COURT RESUMES AT 9:40 A.M.)

2 THE COURT - Good morning. I -- on the ride home
3 yesterday and this morning I decided that it'd probably be
4 best not to send those exhibits. I just don't want them to
5 deliberate early, so, but we'll go ahead and give -- let's
6 see, what was it -- it was exhibits -- defense exhibits 3
7 and 4 -- when they come out we'll give them back and let
8 them resume reviewing those exhibits when we bring the jury
9 back out. All right, anything from the plaintiff before
10 we bring the jury out?

11 MR. MOORE - No, sir, Your Honor. Thank you.

12 THE COURT - Anything from the defense?

13 MR. RAYNOR - No, Your Honor.

14 THE COURT - All right, let's bring the jury in.

15 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

16 THE COURT - All right, ladies and gentlemen,
17 welcome back. We're ready to resume the trial of the case.
18 When we broke yesterday, I think the jury -- you were
19 reviewing defense exhibits 3 and 4, so if we could get
20 defense exhibits 3 and 4 and give it back, because I don't
21 think everybody had finished looking at those.

22 (WHEREUPON, EXHIBITS ARE PASSED TO THE JURY FOR
23 THEIR REVIEW.)

24 THE COURT - All right. All right, Mr. Moore, the
25 plaintiff can call your next witness.

1 MR. MOORE - May it please, Your Honor, we would
2 call Mr. Ekholm.

3 THE COURT - All right.

4 MR. MOORE - William Ekholm.

5 WILLIAM EKHOLM, AFTER BEING FIRST DULY SWORN,
6 TESTIFIES AS FOLLOWS -

7 DIRECT EXAMINATION

8 BY MR. MOORE -

9 Q What is your name?

10 A William Ekholm.

11 Q Mr. Ekholm, where do you live?

12 A Idaho; Boise, Idaho.

13 Q And I believe that your deposition was previously
14 taken by the lawyers for Carolina Adventure World; is that
15 correct?

16 A That's correct.

17 Q And I believe you've also spoken to me before
18 testifying today; correct?

19 A I have.

20 Q Have both lawyers had a full opportunity to talk to
21 you before you coming here today?

22 A As far as I'm concerned, yeah.

23 Q What do you do for a living?

24 A Currently I'm doing floor covering for pay, and I do a
25 little track designs and development for side-work, hobby.

1 Q How long have you been involved with the sport of ATV
2 and motor bike riding?

3 A Involved? Since I was born. Both my parents raced
4 and rode.

5 Q And I believe you started riding when you were two?

6 A Yes.

7 Q How long have you been involved in actually designing
8 or maintaining tracks and trails for ATVs?

9 MR. RAYNOR - Objection, Your Honor ---

10 A I'd say I ---

11 MR. RAYNOR - Excuse me. Objection, Your Honor,
12 as to compound question. He's asked about tracks or trails
13 or and trails, and it's important I think as we'll see
14 later to distinguish between the two. There is a
15 difference.

16 THE COURT - Okay, I'll let you bring that out
17 when you -- you'll be able to cross examine him on
18 qualifications, and I'll allow you to do it at that time.
19 All right, Mr. Moore, go ahead.

20 Q Sir, how long -- Mr. Ekholm, how long have you been
21 involved in the design and maintenance of tracks and
22 trails?

23 A I'd say I got started probably 10 years ago that I
24 started tinkering with it.

1 Q All right. And at some point in time were you hired
2 to come to work for Carolina Adventure World?

3 A Yes.

4 Q When would you have been hired to come and work for
5 Carolina Adventure World?

6 A In March of '07.

7 Q Did they approach you, or did you approach them?

8 A I approached them.

9 Q How did you find of their existence?

10 A My brother lived in North Carolina and he had informed
11 me that a new facility was being built in South Carolina
12 that I might be interested in.

13 Q Who did you negotiate with for a job?

14 A Chris Neeley.

15 Q Who was Chris Neeley?

16 A You know, he never gave me his direct job description;
17 he just hired me and kind of ran (sic) me; it seemed as
18 though he was running the maintenance of the facility, the
19 grounds-keeping type.

20 Q All right, that's fine. He appeared to be the person
21 doing the maintenance and the grounds-keeping.

22 A Yeah, kind of the runner of that. He wasn't
23 personally doing it himself, but he had men under him.

24 Q When you had -- were hired, had you had any experience
25 at that time in the maintenance of trails and/or tracks?

1 A I had been around it all my life, so I'd seen it and
2 done my own since about three years before getting hired.
3 I had started, like I said, tinkering with it.

4 Q All right. So for about three years before you were
5 hired, you were already in the business in some fashion.

6 A Yes, I was getting into it at that point.

7 Q Now, when you were hired, what were you hired to do?

8 A I was hired for track maintenance and track
9 development, and in turn I was asked to help with trail,
10 because that's where they wanted to hire me, but then they
11 had a crew, so they hired me on for track, and I told them
12 that's where I'd prefer to be.

13 Q All right, now, there's a difference between a track
14 and a trail. Is that right?

15 A Yes.

16 Q What is a track?

17 A A track is a developed for race, sanctioned racing or
18 practice racing, high speed jumps, whoops. It's usually a
19 lot wider to where two to three vehicles can be side-by-
20 side at any point.

21 Q And a trail is what?

22 A Trail is usually single-wide and for more of a -- how
23 would I word it -- just fun.

24 Q Kind of recreational riding?

25 A Yes.

1 Q Now, when you arrived, did you actually have a title?

2 A It wasn't a written title, but Chris Neeley told me
3 I'm basically track management, so I was ---

4 Q All right.

5 A --- running management of the track.

6 Q And did track management ultimately include trail
7 management?

8 MR. RAYNOR - Objection, Your Honor, leading.

9 THE COURT - All right, let's don't lead.

10 Sustained.

11 Q What, if any, development did you have into trail
12 management while you were there?

13 A At times I would be asked by Chris Neeley to help him
14 with say, rock placement to wash-out areas to help keep it
15 from washing out and little tree removal, stuff like that.

16 Q When you first arrived at the job -- I want to talk
17 about the trails. When you first arrived, what, if any,
18 maintenance and safety maintenance was done for the trails?

19 A At the time that I was hired, there was a crew. There
20 was, I believe, approximately seven guys that would ride
21 out and maintain trails.

22 Q All right. And maintenance, what is the purpose of
23 maintenance?

24 MR. RAYNOR - Objection, ---

25 A To keep the trails safe.

1 MR. RAYNOR - --- Your Honor.

2 THE COURT - Sustained.

3 Q Do you know to your own first-hand knowledge what the
4 purpose of maintenance is on ---

5 MR. RAYNOR - Objection to ---

6 Q --- the trail?

7 MR. RAYNOR - May we approach?

8 THE COURT - Yes.

9 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
11 WHICH WAS NOT REPORTED.)

12 Q When you first arrived, the maintenance crew, did they
13 maintain just certain trails or all the trails?

14 A As far as I was concerned, they were maintaining all
15 trails.

16 Q And were you able to see that of your own personal
17 eyes?

18 A I seen them on multiple trails, multiple levels,
19 multiple trails.

20 Q All right. And did you yourself ever do any
21 maintenance on the multiple trails?

22 A Like I said, I was asked several times to go and help.

23 Q All right. Now, the safety crew that was there when
24 you first arrived -- let me ask you this; let me change the

1 question. Where did you live when you were working for
2 Carolina Adventure World?

3 A On site.

4 Q Did you move to the site from out-of-state?

5 A Yes.

6 Q Where did you come from?

7 A Oklahoma.

8 Q Did you bring your family with you?

9 A Yes.

10 Q So you and your family lived on site 24/7?

11 A Yes.

12 Q Would you ever leave?

13 A To go to the grocery store or to go get food for us
14 serving two people.

15 Q All right. And did you have interaction with the
16 management of Carolina Adventure World?

17 A Yes.

18 Q And did you perform services on the tracks as well as
19 the trails?

20 A Yes.

21 Q Did you observe the conditions of the tracks as well
22 as the trails?

23 A Yes.

24 Q Were you able to observe the actual staffing of the
25 location?

1 A Yes.

2 Q Now, this -- these maintenance crew that was there
3 working on the trails when you first arrived, were there
4 any such maintenance crews at the time you left?

5 A No. There is ---

6 Q What happened to the maintenance crews?

7 A I don't know; they just started disappearing; I don't
8 know if people were fired or if they had quit themselves.
9 It wasn't something I kept track of. I just kept track of
10 the fact that they kept getting less.

11 Q When the -- when the maintenance crew began to shrink,
12 did it ultimately go down to nothing?

13 A As far as I could tell, yes.

14 Q Now, when the maintenance crew ceased to exist, did
15 any of those responsibilities fall upon you?

16 A Not by direction; more by a motion.

17 Q All right. What sorts of things would you try to do
18 to make up for the fact that the maintenance crew was gone?

19 MR. RAYNOR - Objection, Your Honor. May we
20 approach?

21 THE COURT - All right.

22 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
23 PERSENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
24 WHICH WAS NOT REPORTED.)

1 THE COURT - All right, objection's overruled.
2 Mr. Moore, go ahead.

3 MR. MOORE - Thank you, Your Honor.

4 Q Mr. Ekholm, when the safety -- well, I mean -- I'm
5 sorry -- when the maintenance crew ceased to exist, what
6 sorts of things would you undertake to do on your own?

7 A Ride the trails and the track and either pick up rocks
8 or move tree limbs that are just basically anything that I
9 saw was a hazard, trying to take care of it.

10 Q All right. Now, as you rode those trails and looked,
11 would you tell me, basically, some of the things that you
12 saw?

13 A Deep ruts on green trails, large rocks on green
14 trails, tree limbs hung at chest-height, head-height,
15 things that I just didn't want my son to deal with.

16 Q What, if anything, would you see in regard to boulders
17 and rocks on the black diamond trails?

18 A I stayed away from a lot of those, because I rode a
19 race quad. I did ride them occasionally if I was
20 completely by myself, because I knew I could do it, and on
21 those trails it was usually extremely loose boulder that
22 could become an issue or a limb against chest or head-
23 height or something that I figured dangerous, something I
24 couldn't handle.

1 Q Now, when you would see these things that you could
2 not handle, did you tell anybody about them?

3 A Usually I'd go to Chris Neeley first, and I proceeded
4 to go up from there.

5 Q And when you would go up -- who all would you go up
6 the ladder to?

7 A It was usually Chris Neeley several times, and then
8 I'd go to Joe Phelps.

9 Q Now, who was Joe Phelps?

10 A I don't know his job title, but he was always in the
11 office, and he was definitely above Chris Neeley.

12 Q When you would point out these things that you could
13 not fix yourself, what would be the response you would get
14 from management of Carolina Adventure World?

15 MR. RAYNOR - Objection, Your Honor, hearsay.

16 THE COURT - Overruled. I'll allow it. Go ahead.

17 A None. It was, you know, that's not my job or, you
18 know, we'll take care of it or something, and that was
19 about the extent of it.

20 Q Were any of the issues you pointed out ever repaired?

21 A Very seldom.

22 Q All right. Now, as time went along, did -- how long
23 had you actually worked there?

24 A Approximately a year.

25 Q Were you fired, or did you quit?

1 A I quit.

2 Q Did you express to the owners of Carolina Adventure
3 World the reason why you were quitting?

4 A Yes, I did ---

5 Q Well, hold on. Did you tell them that?

6 A Yes.

7 Q What people at Carolina Adventure World did you tell
8 the reason why you were quitting?

9 A Joe Phelps and Don Wilburn.

10 Q Why did you tell them you were quitting?

11 MR. RAYNOR - Objection, Your Honor.

12 THE COURT - Sustained. It's irrelevant.

13 MR. MOORE - Your Honor, might I be heard? Can

14 maybe ---

15 THE COURT - Come on up.

16 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
17 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
18 WHICH WAS NOT REPORTED.)

19 THE COURT - Objection sustained.

20 Q How many times before you quit would you have
21 expressed to management that there were things out there
22 that needed to be taken care of?

23 MR. RAYNOR - Objection, Your Honor. It's not
24 relevant.

1 THE COURT - Well, I'm going to allow that
2 question. Go ahead.

3 A It became daily.

4 Q Now, sir, as I understand it now, are you a certified
5 heavy equipment operator?

6 A Yes, I am.

7 Q And are you now -- do you now have a business which is
8 involved in trail and track maintenance and design?

9 A I do.

10 Q What is the name of the business that you now have
11 that is involved in trail maintenance and design?

12 A EMF Track Designs.

13 Q How long have you been in the business of designing
14 and building and maintaining trails and tracks; as your
15 actual own business?

16 A I would say it's been five years ago. I started as
17 soon as I left Adventure World. As soon as I moved to
18 Idaho I started that.

19 Q Can you tell me how many trails you would've designed?

20 A At this point I'm at about 90 trails, dirt tracks,
21 that are out there.

22 Q Well, let's -- there's been a discussion about the
23 difference between trails and tracks, so let's cut it in
24 two. How many trails have you designed?

25 A I haven't designed any trails.

1 Q All right. How many tracks have you designed?

2 A Approximately 90.

3 Q Is there a difference between the maintenance in
4 regard to trails and the maintenance in regard to tracks?

5 A Yes.

6 Q All right. How many trails have you been involved
7 with the maintenance of?

8 A Since Adventure World?

9 Q Yes.

10 A None.

11 Q How about before Adventure World?

12 A One.

13 Q Which one is that?

14 A That would be my own trail on my own property.

15 MR. MOORE - All right. Your Honor, I don't have
16 any further questions. Thank you very much.

17 THE COURT - Cross examination.

18 MR. RAYNOR - Yes, Your Honor.

19 CROSS EXAMINATION

20 BY MR. RAYNOR -

21 Q Mr. Ekholm ---

22 A Yes.

23 Q --- you were -- you wrote to Carolina Adventure World
24 to basically ask for a job; is that correct?

25 A Yes.

1 Q And the job you wanted was something that you were
2 very passionate about and that was track building; is that
3 correct?

4 A Yes.

5 Q You're still passionate about that; are you?

6 A Very.

7 Q And when you got to Carolina Adventure World, you
8 spent, what, about 85 percent of your time doing something
9 other than track building?

10 A Hit and miss. You know, they had me designing a track
11 for WPSA National that was going to be coming, and I would
12 be periodically trying to develop that if I wasn't being
13 called away to go build a storage pad or a silt pond.

14 Q And, in fact, 85 percent of your time, the work you
15 did at Carolina Adventure World was building silt ponds and
16 building pads. Is that correct?

17 A No. Not 85.

18 Q Well, how much of your time was spent building --
19 doing stuff other than track building?

20 A A good 60.

21 Q A good 60.

22 A Good 60.

23 Q And that's certainly not what you signed up for, was
24 it?

1 A No, but I signed to be part of the facility. You
2 know, their website looked great.

3 Q Now, do you know when the facility actually opened?

4 A The actual opening date, no, I can't remember the
5 date. I have pictures of grand opening.

6 Q Okay. But sitting here today you can't tell me when
7 that was.

8 A Not the exact date.

9 Q And do you know the date the construction crews
10 stopped working there?

11 A There wasn't a set date that they stopped working; it
12 was kind of like one would leave and another one would be
13 gone and they slowly swindled down.

14 Q Now, I'm talking about the construction crew, the crew
15 that actually went in and started doing the trails.

16 A No, that was done before I got there.

17 Q Do you know when that date was? Well, I guess you
18 don't know if it was done before you got there.

19 A Yeah, the trails were built when I got there.

20 Q Now, you have spent a lot of time riding ATVs;
21 correct?

22 A Yes.

23 Q Do you consider yourself an expert?

24 A Darn close.

25 Q Darn close.

- 1 A Yes.
- 2 Q You have wrecked your ATV, have you not?
- 3 A (Indicating yes)
- 4 Q Yes or no.
- 5 A Multiple times.
- 6 Q Multiple times.
- 7 A Yes.
- 8 Q Why, if you're such an expert, and I don't mean to
- 9 attack you ---
- 10 A No.
- 11 Q --- but if you're an expert, why would you end up
- 12 wrecking your ATV?
- 13 A I push the limits.
- 14 Q What do you mean you push the limits?
- 15 A I -- in order to progress to become better, I go
- 16 faster.
- 17 Q You challenge yourself; correct?
- 18 A Yes.
- 19 Q And it's just like any other sport, you know, if you
- 20 want to get better you have to challenge yourself; correct?
- 21 A Yes.
- 22 Q That's true of recreational ATV driving.
- 23 A No, I don't do it for recreation; I do it to get
- 24 faster.
- 25 Q To get faster.

1 A Yes.

2 Q Okay. But the same thing's true with recreational ATV
3 riding, if you want to get better, you have to challenge
4 yourself.

5 A It's kind of a difference. When you recreational
6 ride, that'd be like when I ride with my wife and son; I
7 don't push; they don't push; we just ride.

8 Q Okay, well, I'm -- I'm talking about -- when I say
9 recreational, you just riding for the sheer joy of it.

10 A Yes.

11 Q You've ridden places that were not graded paths, have
12 you not, on your ATVs?

13 A Right; yes.

14 Q Tell the jury some of the places you've ridden?

15 A I've rode at the dunes; I've rode on miscellaneous
16 state-owned lands; I've done desert races; I've been around
17 ---

18 Q And nobody's out there managing -- or not managing --
19 but nobody's out there keeping those trails smooth, are
20 they?

21 A No, they're all un-maintained.

22 Q And, in fact, that's what you're looking for was
23 something un-maintained that you would have the challenge
24 and thrill of the sport; correct?

25 A Somewhat, yes.

1 Q And, in fact, I think you told me in your deposition,
2 one of the accidents you had was at a -- like in a sandy
3 area along the bank where you were going 50 miles an hour.

4 A Probably, yes, maybe a little faster.

5 Q And you actually hits holes in the ground; is that
6 correct?

7 A Yes.

8 Q And that ---

9 A Washouts.

10 Q --- caused you to crash.

11 A (No response)

12 Q But then you got up and started riding again; correct?

13 A Oh, yeah, rode my way back to the truck.

14 Q Have you had crashes since then?

15 A Oh, yeah.

16 MR. RAYNOR - Just a minute, Your Honor.

17 THE COURT - All right.

18 MR. RAYNOR - That's all the questions I have,
19 Your Honor.

20 THE COURT - All right, re-direct.

21 MR. MOORE - No further questions.

22 THE COURT - All right, sir, you may step down.

23 MR. MOORE - Your Honor, might this witness be
24 excused?

25 THE COURT - Any objection?

1 MR. RAYNOR - I don't have any objection, Your
2 Honor.

3 THE COURT - All right, he's free to go. Thank
4 you very much.

5 MR. MOORE - We call Cory Ross.

6 THE COURT - All right.

7 CORY ROSS, AFTER BEING FIRST DULY SWORN,
8 TESTIFIES AS FOLLOWS -

9 DIRECT EXAMINATION

10 BY MR. MOORE -

11 Q What is your name?

12 A Cory Ross.

13 Q What's your date of birth?

14 A 10/17/81.

15 Q All right, Cory, slow down. Okay? We've got all day
16 today and all day tomorrow and all next week if we need to
17 get there; we're not going to take that much time. You're
18 not a little nervous are you?

19 A Little bit.

20 Q Where you live, sir?

21 A Live in Lexington, West Columbia area.

22 Q Born and raised over there?

23 A The Lexington area my whole life, yes, sir.

24 Q How far'd you go in school?

25 A Associates degree in automotive.

- 1 Q Where'd you get your associates degree in automotive?
- 2 A Phoenix, Arizona.
- 3 Q You went out to Arizona to go to school?
- 4 A Yes, sir.
- 5 Q Did you like your automotive work?
- 6 A Yes, sir.
- 7 Q Cory, if you were born when you say, that makes you
- 8 how old now?
- 9 A 33.
- 10 Q And two days after Christmas in 2008, you'd have been
- 11 how old?
- 12 A 27.
- 13 Q About 27 years old. So you were a very young man at
- 14 the time this thing happened; is that right?
- 15 A Yes, sir.
- 16 Q Are you married?
- 17 A Yes, sir.
- 18 Q Are you presently separated?
- 19 A Yes, sir.
- 20 Q Have the difficulties with your eye had anything or
- 21 not with (sic) your marital problems?
- 22 MR. RAYNOR - Objection.
- 23 A Yes, sir.
- 24 THE COURT - Hold for a second. There's an
- 25 objection.

1 MR. RAYNOR - May we approach?

2 THE COURT - All right.

3 (WHEREUPON BENCH CONFERENCE WAS HELD IN THE
4 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
5 WHICH WAS NOT REPORTED.)

6 THE COURT - Overruled.

7 Q Cory, have your injuries impacted your marriage, son?

8 A Extremely.

9 COURT REPORTER - He needs to speak up a just a
10 little bit; I'm having trouble hearing him.

11 A Yes, sir, extremely.

12 Q How many children y'all got?

13 A Two, boy and a girl.

14 Q How long y'all been separated?

15 A Ten months.

16 Q Now, immediately before you were injured, were you
17 working somewhere?

18 A Yes, sir.

19 Q Where were you working?

20 A Dick Dyer Mercedes-Benz.

21 Q What was your job?

22 A Technician.

23 Q About what were you making a year?

24 A I was commission so I made close to about forty-eight,
25 fifty thousand.

1 Q So you were making forty-eight to fifty thousand
2 dollars a years; is that right?

3 A Yes, sir.

4 Q Are you still able to do that work?

5 A No, sir.

6 Q Why not?

7 A I'm not fast; it's hard to see at possession (sic);
8 it's -- in that line of work it is um -- it's commission
9 basically. It's -- you have to be quit and fast. To the
10 get the hours are slower -- to get ---

11 Q Can you do the work at a dealership anymore?

12 A No, sir.

13 Q What kind of work are you doing now?

14 A I opened up a automotive shop.

15 Q Where is it?

16 A In West Columbia.

17 Q How much are you making a year now?

18 A Twenty thousand or under.

19 Q Are you able to do any better than that considering
20 your disability?

21 A No, sir.

22 Q Cory, let's go back to the ATV that you were riding on
23 the day that you lost your eye. What type of ATV was it?

24 A It was a Polaris four-by-four.

25 Q When you say, four-by-four, what do you mean by that?

1 A It's four-wheel drive.

2 Q Now, did you have experience riding these things?

3 A Yes, sir.

4 Q Would you tell the jury something about the experience
5 that you have riding ATVs.

6 A Pretty much rode four-wheelers in and out pretty much
7 my whole life. I mean about -- if it wasn't -- was my
8 friends -- that certain four-wheeler I got in '06. I rode
9 that one a good bit on my father-in-law's land. He had a
10 lot of land, which involved hills that was maintained, and
11 we actually used the tractor to go over the hills and to
12 scrape the hills and the trails. I lived and raised (sic)
13 on three acres of land when I was a little boy as well.
14 Not only did I make trails, you know, I made sure that the
15 trails was cleaned and maintained before my friends came
16 over.

17 Q If a trail is properly maintained are you capable to
18 ride?

19 A Yes.

20 MR. RAYNOR - Objection.

21 THE COURT - Overruled. Go ahead.

22 Q Do you know what you're doing on an ATV, son?

23 A Yes, sir.

24 Q Were you -- on December 27th of 2008, were you a
25 novice?

- 1 A No, sir.
- 2 Q Were you an experienced ATV rider?
- 3 A Yes, sir.
- 4 Q Now, son, when you -- when you basically decided that
- 5 morning -- I believe Christmas had been what, two days
- 6 earlier?
- 7 A Yes, sir.
- 8 Q You had -- at that time your two children would've
- 9 been very young.
- 10 A Correct.
- 11 Q How old would your two children have been?
- 12 A My little girl was one. Four -- he might've been four
- 13 then, my son.
- 14 Q You still had a baby at home and a very young child.
- 15 A Yes, sir, I believe.
- 16 Q And you and your wife, were y'all living in a mobile
- 17 home or were you living in a house?
- 18 A In a house.
- 19 Q You were trying to buy that house or renting it?
- 20 A (No response)
- 21 Q Were you trying to buy it or were you renting?
- 22 A Trying to buy it at the time.
- 23 Q All right, so you had a mortgage on your house.
- 24 A Yes, sir.

1 Q Now, was it a fancy house or was it just where y'all
2 lived?

3 A Just where we lived.

4 Q Normal house, three bedrooms ---

5 A Normal house, three bedrooms, two baths, yes, sir.

6 Q And you were happy.

7 A Yes, sir.

8 Q Are you happy now, Cory?

9 A No, sir.

10 Q You had Christmas, and the next day after Christmas I
11 guess y'all cleaned up from Santa Claus, the next day you
12 were going to go riding with your friend.

13 A Yes, sir.

14 Q Who's your friend?

15 A Richard Paxton.

16 Q Is Richard here?

17 A Yes, sir.

18 Q I believe he's the gentleman in the t-shirt on the
19 second row; is that right?

20 A Yes, sir.

21 Q And he's been subpoenaed here today by the folks from
22 Carolina Adventure World.

23 A Yes, sir.

24 Q Now, were y'all bosom buddies? I mean you hang out
25 every day together?

- 1 A No, sir.
- 2 Q How did you know him?
- 3 A My wife went to his wife's hair school.
- 4 Q All right, your wife was a beautician.
- 5 A Yes, sir.
- 6 Q She fixed hair for a living.
- 7 A Correct.
- 8 Q And his wife owned a hair styling school, and that's
- 9 where she learned to do her trade.
- 10 A Yes, sir.
- 11 Q Now, son, you got up that -- whose idea was it to go
- 12 riding ATVs that morning?
- 13 A It was planned I think a week before.
- 14 Q And whose idea was it to go to Carolina Adventure
- 15 World?
- 16 A I think a little bit of all of ours. My wife
- 17 mentioned to me, you know, why don't you and Richard get
- 18 together, you know, he does a lot of riding and get out of
- 19 the house for a little while, and why don't y'all go
- 20 driving, and I said okay.
- 21 Q And had you ever been to Carolina Adventure World
- 22 before?
- 23 A No, sir.
- 24 Q Did you know anything about the condition of the
- 25 trails that were up there?

- 1 A No, sir.
- 2 Q Did you know anything about the place except there was
3 a place in Fairfield County you could go ride?
- 4 A Yes, sir.
- 5 Q That's all you knew.
- 6 A Correct.
- 7 Q Now, I believe William (sic) had ridden there before;
8 is that right?
- 9 A Yes, sir.
- 10 Q And you had not.
- 11 A Correct.
- 12 Q So you got up and you drove up there. How'd you get -
13 - how did you get your ATVs there?
- 14 A On Richard's trailer; we drove up there.
- 15 Q Did you have two -- one or two ATVs?
- 16 A We had two on the trailer.
- 17 Q All right. You got there and when you arrived, what's
18 the first thing you met?
- 19 A We pulled in and we met a man having us to sign a
20 waiver through the car window, handing us a clipboard.
- 21 Q Did you know what that was when he handed it to you?
- 22 A They just said it was a waiver over the facility and
23 we just sign and pull forward and park.
- 24 Q Did you know what that meant?
- 25 A No, sir.

1 Q All right, so he handed you the clipboard, said this
2 is a waiver over the facility, sign this and go on in.

3 A Correct.

4 Q You signed it; right?

5 A Yes, sir.

6 Q Did you have any time to read it?

7 A No, sir.

8 Q Son, if you had had time to read it, would you have
9 understood the legalese in this?

10 A Yes, sir.

11 Q All right. So he gave you the clipboard, said sign
12 this, it's a waiver over the facility and go in.

13 A Correct.

14 Q Were you also given a map, which basically showed the
15 trails and a piece of paper talking about safety first?

16 A Yes, sir.

17 Q Did you read any of that stuff?

18 A Briefly.

19 Q When you read the part that said at Carolina Adventure
20 World safety is first, did that have any meaning to you?

21 A It let me know that I'm at a good place to ride, that
22 it is going to be maintained and that it was going to be a
23 fun, good day.

24 Q And did you later learn that it wasn't properly
25 maintained?

1 A Yes, sir.

2 Q And did you later learn that it wasn't safe?

3 A Yes, sir.

4 Q Now, son, y'all began -- you paid your money. How
5 much money did it cost you to ride your ATV at Carolina
6 Adventure World?

7 A I believe it was twenty dollars.

8 Q You paid him your money.

9 A Yes, sir.

10 Q And you started riding.

11 A Yes, sir.

12 Q How long did you and Richard ride before you lost your
13 eye?

14 A It was a good while. We hit a lot of trails; we went
15 through some -- about an hour or so, I believe, hour or
16 two.

17 Q All right. Was the ground wet or was it dry?

18 A It was extremely muddy.

19 Q And with four-wheel drive, were you able to negotiate
20 the mud?

21 A Yes, sir.

22 Q And sometimes riding these things in the mud can be
23 fun. Is that right?

24 A Yes, sir.

1 Q So let's take me at the time you were injured, did you
2 do anything at all to cause your own injury?

3 A No, sir.

4 MR. RAYNOR - Objection, Your Honor; calls for an
5 opinion.

6 THE COURT - Overruled.

7 Q Son, did you do anything at all to cause your own
8 injury?

9 A No, sir.

10 Q What caused the injury?

11 MR. RAYNOR - Objection, Your Honor.

12 A Big boulder.

13 THE COURT - Overruled.

14 A A big boulder in the middle of a hill on a trail.

15 Q Did you have any idea this boulder was there before
16 you started up the hill?

17 A No, sir.

18 Q Now, let's talk about the hill. Was it -- was it
19 rutted or was it slick?

20 A It was a slick, steep hill.

21 Q All right. You started up the hill; is that right?

22 A Yes, sir.

23 Q Were you going fast?

24 A No, sir.

25 Q Why not?

1 A It was muddy, rough road, little cautious trying to
2 see what's ahead.

3 Q Did you have your helmet on?

4 A Yes, sir.

5 Q Were you trying to be cautious?

6 A Yes, sir.

7 Q Now, as you were coming up that hill, did -- did you
8 go first or did Richard go first?

9 A Richard went first.

10 Q And you were following him.

11 A Yes, sir.

12 Q How much warning did you have that this boulder was
13 going to be in the middle of the road?

14 MR. RAYNOD - Objection, Your Honor.

15 THE COURT - Overruled.

16 A No warning.

17 Q How far would you have been from the boulder before
18 you could first see it?

19 A Sir, it happened so fast, 15, 20 feet, if even that.

20 Q Well ---

21 A Come up on it really quick and just ---

22 Q All right, did you have time to stop?

23 A No, sir.

24 Q Were you looking where you were going?

25 A Yes, sir.

1 Q So you're going up this incline, and we're talking
2 about a boulder that's in the middle of the road. Explain
3 to these folks what this boulder in the middle of the trail
4 looked like.

5 A Was just a big boulder.

6 Q How wide? Four feet? It's been described as four
7 feet. Would you agree with that?

8 A Yes, sir.

9 Q Now, did it come out the ground?

10 A Yes, sir.

11 Q How far out the ground was it?

12 A Probable this much.

13 Q That's about -- how far is that? The court reporter's
14 going to have to write this down, son. So it was roughly
15 how high out of the ground?

16 A Six feet.

17 Q Well, I mean -- coming out the ground.

18 A Yes, sir.

19 Q You said this much. That's going to be -- show the
20 jury. That looks to me about 18 inches to two feet.

21 A 18 inches or so.

22 MR. RAYNOR - Excuse me, Your Honor. Objection to
23 the leading by counsel.

24 THE COURT - Let's don't lead.

25 MR. RAYNOR - Motion to strike.

1 THE COURT - Sustained.

2 Q Son, ---

3 A About 18 inches or so.

4 Q All right. Now, was there any way you could stay on
5 the trail and avoid hitting this thing?

6 A No, sir.

7 Q Was there any way you could have time to go around it?

8 A Not on a hill. Not when you're on a hill. You can't
9 really maneuver to go around it. No, sir.

10 Q Could you have stopped?

11 A No, sir.

12 Q Why not?

13 A I mean you're just going and I mean you just have --
14 it just happened so fast, and you're on a trail; it's a
15 narrow trail. I mean it's not a wide trail, so I mean you
16 don't really have time to stop.

17 Q Was the rock just laying there or did it appear to be
18 imbedded in the ground?

19 A It was imbedded in the ground.

20 Q From what you recall, did it appear as if it had been
21 there for a long time?

22 A Yes, sir.

23 Q Now, as you're coming up the hill, did you strike the
24 rock?

25 A Yes, sir.

1 Q What part of the ATV ran into the boulder that was in
2 the middle of the road?

3 A It happened so fast; I believe as I was going up the
4 hill I believe the -- my front wheels did end up clearing
5 it, and I was thinking that everything was good at the
6 time. It hit hard. Everything was so slick and muddy. As
7 my back wheels caught -- caught the back part of the
8 boulder, either it lost traction and it started flipping
9 back over on me.

10 Q Describe, son, what took place as that ATV rolled
11 backwards on top of you.

12 A As -- as the four-wheeler was flipping back over on
13 me, the right handle bar gouged me in the right eye and um
14 I flipped backwards. I was submerged under the four-
15 wheeler. Thank the Lord Richard was there, because if I
16 was by myself, I would not be here today. Richard comes --
17 he comes around and he -- I could tell he was -- he was
18 very nervous and he threw his four-wheeler off -- that
19 heavy machine like it was nothing and he throws it off of
20 me and puts a -- I believe it was his shirt. I was -- I
21 was blacked out at the time as far as no sight.

22 Q Were you conscious, son?

23 A I was conscious. I could not see at all.

24 Q But could not see at all.

25 A Could not see at the time.

1 Q Out of either eye?

2 A Just -- just -- I could feel blood coming down, but I
3 could not see the blood coming out of my -- out of my eye.
4 He tells me to hold it -- pressure over my eye. He went --
5 I remember asking him what happened, and he said you're
6 going to be okay, and he ran to go get help. I remember
7 sitting on the hill for a very long time.

8 Q Now, as you were sitting on that hill with his shirt
9 pressed upon the eye, could you see anything?

10 A No, sir.

11 Q Out of either eye.

12 A No, sir.

13 Q So you were there basically blinded sitting on the
14 side of the hill waiting on help.

15 A Yes, sir.'

16 Q Now, I know it seemed like a long time, son, but how
17 long did it take before somebody came to get you?

18 A Maybe 45 minutes.

19 Q Now, I'm going to ask you a question that's going to
20 sound silly, but I have to ask you this question. While
21 you were there sitting on the side of the hill blinded as a
22 result of the collision with this rock or this boulder,
23 were you in pain?

24 A Yes, sir, I was in extreme pain, and my body was
25 getting cold.

1 Q How profusely were you bleeding? Do you know?

2 A I lost four units of blood before we got to the
3 hospital.

4 Q Were you bleeding from anywhere other than your head?
5 Do you know?

6 A My nose.

7 Q Okay. That's part of your head. All right. Bleeding
8 from your head.

9 A Yes, sir.

10 Q Son, were you going slow or fast when you hit the
11 rock?

12 A I was going slow.

13 Q With all the time that you've ever ridden an ATV, have
14 you ever seen any type of an obstacle like -- as big as
15 this in the middle of a trail?

16 A No, sir.

17 Q Now, did you know that this was a challenging trail?

18 A I knew that it was a little bit more than some of the
19 beginning trails but ---

20 Q Did you expect it to be dangerous?

21 A No, sir.

22 Q Now, from this boulder, this four-foot wide, 18 inch
23 boulder in the middle of the road, did you -- do you
24 perceive that to have been dangerous?

25 MR. RAYNOR - Objection.

1 A Yes.

2 THE COURT - Overruled.

3 A Yes, sir.

4 Q Was there any way you could avoid hitting it?

5 MR. RAYNOR - Objection.

6 A No, sir.

7 THE COURT - Overruled.

8 Q Cory, let's get back to you on the side of the hill.

9 How'd they get you off?

10 A After sitting up there on the hill, I remember it -- I
11 don't know exact how long I was there. I just know it was
12 quiet around me. I heard -- I remember yelling, help,
13 help; I was getting no response. I know Richard went back
14 to headquarters and I was -- knowing it was deep in the
15 woods, you know -- I was -- I remember myself just
16 hollering help, help. I remember, you know, praying, um,
17 Lord, don't take me, you know I have children that need me.
18 And um -- but as I was hollering for help, I just -- I knew
19 -- I knew Richard was going, so I knew eventually he'd come
20 back, eventually I heard a four-wheeler make noise and a --
21 I hollered a couple more times, it stopped and then it
22 would crank up again, then I would holler and it would
23 crank up again; finally it made it to me. And I remember
24 being picked up and I assume I was over someone's handle
25 bars. I don't know how I was laid; I couldn't see anything

1 and I just remember them cranking the four-wheeler back up
2 and taking me to the service road where I -- we met the
3 ambulance.

4 Q And the ambulance took you to Fairfield County
5 Hospital?

6 A Richland.

7 Q Richland. You went to the trauma center at Palmetto
8 Richland.

9 A Correct.

10 Q Were you treated and released or were you admitted?

11 A I was admitted.

12 Q How many days, son, did you stay in the hospital?

13 A I believe it was over a week.

14 Q Did they do surgeries on you?

15 A Yes, sir.

16 Q What did they do for you?

17 A They reconstructed my face. I crushed my face, all
18 the bones in my nose. I want to say it was nine plus bones
19 in my face, a plate that is in my forehead. They had to
20 build me a prosthetic eye.

21 Q I want to get to your eye. Let's talk about your eye
22 for a minute. I believe the eye had been pushed back into
23 your head?

24 A Yes, sir.

25 Q How'd they get that out?

1 A They had to remove it out.

2 Q Was that surgery?

3 A That was surgery.

4 Q All right. So when they finished the surgery, there
5 was no longer an -- there was -- the eyeball had been
6 removed.

7 A Yes, sir.

8 Q It had been destroyed in the wreck?

9 A Yes, sir.

10 Q How many different surgeries did you have during that
11 week or so at the hospital?

12 A I remember having a lot of different doctors as far as
13 surgery goes, the face surgery, reconstruction of the face,
14 the eye surgery and then the constantly following up with
15 the prosthetic, building the eye.

16 Q All right. Let's just -- exhibit number 1 and 2 and 3
17 and 4 and 5, would these be photographs of you while you
18 were actually in the hospital? Would these be accurate
19 representations of what you would've looked like while in
20 the hospital?

21 A Yes, sir.

22 MR. MOORE - We'd like to offer these into
23 evidence, please, Your Honor.

24 THE COURT - Any objections?

25 MR. RAYNOR - No, Your Honor.

1 THE COURT - All right, plaintiff's exhibits 1, 2,
2 3, 4 and 5 are admitted into evidence without objection.

3 (WHEREUPON, DOCUMENTS INTO EVIDENCE AS
4 PLAINTIFF'S EXHIBITS 1 THROUGH 5.)

5 Q Now, here's another photograph of you, plaintiff's
6 exhibit number 6. There is a young gentleman with you in
7 this photograph. Would this be an accurate representation
8 of what you would've looked like in the hospital?

9 A Yes, sir.

10 Q You're getting better at this time; is that right?

11 A In this picture I believe I was in the recovery room.

12 Q All right. Who is the young man on the bed with you?

13 A My son.

14 MR. MOORE - We'd like to offer this into
15 evidence, please, Your Honor.

16 THE COURT - Any objection?

17 MR. RAYNOR - No objection.

18 THE COURT - I'm sorry. Any objection?

19 MR. RAYNOR - I'm sorry, no objection.

20 THE COURT - All right, plaintiff's exhibit 6
21 admitted into evidence without objection.

22 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
23 PLAINTIFF'S EXHIBIT NUMBER 6.)

24 Q Now, did your wife -- when you got out of the
25 hospital, did you go home eventually?

1 A Yes, sir.

2 Q Would this be a -- would be an accurate photograph of
3 what -- exhibit number 7 -- of what you looked like shortly
4 after you got out of the hospital?

5 A Yes, sir.

6 MR. MOORE - We'd like to offer this into
7 evidence, please, Your Honor.

8 MR. RAYNOR - No objection, Your Honor.

9 THE COURT - All right, plaintiff's exhibit -- you
10 said that was 7?

11 MR. MOORE - Yes, sir.

12 THE COURT - All right, plaintiff's exhibit 7
13 admitted into evidence without objection.

14 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
15 PLAINTIFF'S EXHIBIT NUMBER 7.)

16 Q Now, son, you talked about them fitting you with a
17 prosthetic eye. The eye is basically made out of what?

18 A Glass.

19 Q And who was the doctor who basically fitted you with
20 the prosthetic eye?

21 A Dr. Cook - or Crooks I believe.

22 Q And did he basically -- I believe you have some
23 photographs of you while you were in the process of being
24 fitted for the eye; is that correct?

25 A Yes, sir.

1 Q Would these exhibits number 10, 9, 11 and 12, would
2 these be photographs of you with the doctor while you're
3 being fitted for your glass eye?

4 A Yes, sir.

5 MR. MOORE - We'd like to offer these into
6 evidence, please, Your Honor.

7 MR. RAYNOR - No objection, Your Honor.

8 THE COURT - Plaintiff's exhibits 9, 10, 11 and 12
9 admitted into evidence without objection.

10 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
11 PLAINTIFF'S EXHIBITS 9, 10, 11 AND 12.)

12 Q Son, how hard is it to put -- to learn how to put an
13 eye in and take an eye out?

14 A In the mornings when you wake up, everything is so
15 swollen and -- not easy.

16 Q How easy is it to learn how to do it? You had to be
17 taught?

18 A You did, yes, sir.

19 Q Who taught you how to put this prosthetic eye in and
20 to take it out?

21 A The doctors.

22 Q How do you clean it?

23 A A solution.

24 Q Do you put it there overnight, or do you keep it in
25 overnight?

1 A I have to take it out at night because I -- I mean
2 it's hard to sleep and I get -- I get migraines with it in
3 because of the pressure through the day.

4 Q Explain to me about these migraines that you get.
5 Have they been constant since the loss of the eye?

6 A All the time.

7 Q How often do you have these migraines?

8 A About every day.

9 Q Do they get worse as the day goes on?

10 A Yes.

11 Q Does the glass eye seem to make them worse?

12 A Yes, sir.

13 Q What, if any, problem do you now have that seems to be
14 permanent in regard to dizziness?

15 A I have no feeling on the right side of my face; it's
16 numb, and due to the right side of my body, I have -- my
17 hand and arm tingles and falls asleep and it's numb. You
18 know, I drop things, and it's just -- it affects my
19 everyday.

20 Q All right. Now, exhibit number 8, is this with the
21 eye in or with the eye out?

22 A That is with the eye out.

23 Q And exhibit number 13, is that with the glass eye in
24 or out?

25 A In.

1 MR. MOORE - We'd like to offer these into
2 evidence, Your Honor.

3 THE COURT - Any objection?

4 MR. RAYNOR - No objection.

5 THE COURT - Plaintiff's exhibits 8 and 13 are
6 admitted into evidence without objection.

7 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
8 PLAINTIFF'S EXHIBITS NUMBERS 8 AND 13.)

9 Q Now, Cory, I believe that we have collected the
10 medical bills that you have had as a result of the damage
11 to your eye and the injury to your body; is that correct?

12 A Yes, sir.

13 Q And you have been billed by the medical providers who
14 have worked for you?

15 A Yes, sir.

16 Q Exhibit number 15, are these the medical bills that
17 have been billed to you in regard to the loss of your eye
18 and the resulting medical treatment?

19 A Yes, sir.

20 MR. MOORE - We'd like to offer the medical bills
21 into evidence, please, Your Honor.

22 THE COURT - Any objection?

23 MR. RAYNOR - Is that the only authentication?

24 MR. MOORE - Your Honor, these are the medical
25 bills he says he has received.

1 THE COURT - Any objection?

2 MR. MOORE - These are his bills.

3 MR. RAYNOR - Your Honor, we'd object. I don't
4 think it's a proper authentication.

5 THE COURT - All right. Plaintiff's exhibit
6 number 15 are admitted into evidence over defendant's
7 objection.

8 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE OVER
9 OBJECTION AS PLAINTIFF'S EXHIBIT NUMBER 15.)

10 Q Cory, if you would just go down the list and tell the
11 jury what medical providers you owe how much money, just
12 which ones are ---

13 MR. RAYNOR - Objection, Your Honor. May we
14 approach?

15 THE COURT - All right.

16 (WHEREUPON, BENCH CONFERENCE IS HELD IN THE
17 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
18 WHICH WAS NOT REPORTED.)

19 Q Cory, tell me, please, how much you've been billed by
20 each provider?

21 A Fairfield County EMS, one thousand forty dollars,
22 sixty cents; Palmetto Health Richland, a hundred and
23 thirty-six thousand, five hundred seventy-seven dollars,
24 twenty-seven cents; Universal Specialist Clinic Surgery,
25 one thousand one hundred and eighteen dollars; Pitts

1 Radiologist, five hundred and ninety-eight dollars, ninety-
2 five cents; Professional Pathologist Service, three hundred
3 dollars; Emerge Care, LLC, two hundred sixty-five dollars;
4 can't say that word ---

5 COURT REPORTER - I'm having trouble hearing him,
6 Judge.

7 A --- consultant of Columbia, two thousand two hundred
8 and fifty dollars; Robert M. Crooks, Jr., DMD, six thousand
9 seven hundred forty-five dollars, MD, two thousand one
10 hundred fifty-one dollars.

11 Q I believe the total bill was for about a hundred and
12 fifty-seven -- a hundred and fifty-seven thousand nine
13 hundred dollars; is that correct?

14 A Yes, sir.

15 Q Now, I want to talk a moment about emotionally how
16 this thing has impacted you. Take your time, Cory, and
17 explain to these ladies and gentleman, the emotional impact
18 this injury has had on you and your life?

19 A I'm not normal anymore. I look -- I'm looked at
20 differently. I left my job for a lot of name-calling and
21 harassment, and I was an asset and then I became a
22 liability. They said their insurance went up all because
23 of Cory.

24 (WHEREUPON, WITNESS IS CRYING)

25 Q So did you become depressed at all?

1 A At times I -- but -- and at the same the time I knew
2 the only way of income I had to do something, you know. My
3 wife didn't have a steady job; she stayed home with the
4 kids. I had to force myself to do something to make it
5 happen. Didn't have the desire.

6 Q Are you frustrated?

7 A Yes, sir.

8 Q Can you put into words that people can understand the
9 degree of frustration you have felt since two days after
10 Christmas, 2008?

11 A Alone.

12 (WHEREUPON, WITNESS CRYING)

13 Q From the day this thing's happened, have you been a
14 very good husband?

15 A Yes, sir.

16 Q Do you perceive that your frustration and depression
17 had anything to do with the deterioration and separation
18 between you and your wife?

19 A Yes, sir.

20 Q Explain that to the jury.

21 A She wouldn't look at me the same. She even told
22 people how am I going to look at him differently and how --
23 -

24 MR. RAYNOR - Objection, Your Honor.

25 Q You can't say what she said.

1 THE COURT - Sustained.

2 Q Let me ask you this ---

3 MR. RAYNOR - Move to strike.

4 THE COURT - All right, strike the last response.

5 Q Let me ask you this, son. Are you worried about the
6 ability to support your children?

7 A Yes, sir.

8 Q Does that bother you?

9 A It does. I used to be able to afford a good income
10 and then it went away.

11 Q Do you have the physical ability now ever to earn the
12 kind of money that you earned?

13 A No, sir.

14 Q You basically worked with your hands; is that right?

15 A Yes, sir.

16 Q Where is your little shop now?

17 A Class Ridge (sic) Road, West Columbia.

18 Q You working with anybody?

19 A Just me; I have two helpers.

20 Q Do they have to do most of the actual work?

21 A They do the work.

22 MR. MOORE - Cory, thank you for answering my
23 questions. Could you answers any Mr. Raynor might have for
24 you?

25 MR. ROSS - Yes, sir.

1 THE COURT - We're going to take a break. All
2 right, ladies and gentlemen, we still are in the middle of
3 the testimony of this witness, but we've been at it for
4 little over an hour now. I think it's a good time for just
5 to take our morning break. I'm going to excuse you back to
6 the jury room to get something to drink, use the restroom,
7 stretch your legs, whatever the case may be. You can check
8 your phone messages; you can return calls, but do not
9 discuss this case with anyone. Do not discuss it among
10 yourselves at this point in time. It's too early for
11 deliberations. Don't conduct any independent
12 investigation. We'll take about a 15 minute break and come
13 back in.

14 (WHEREUPON, JURY EXITS THE COURTROOM.)

15 THE COURT - All right, Mr. Ross, we're still in
16 the middle of your testimony, so you cannot discuss your
17 testimony with anyone, whether that be what you've
18 testified to thus far or what you anticipate testifying to
19 in the future. You can't discuss it with your attorney or
20 with anyone else. Okay?

21 MR. ROSS - Yes, sir.

22 THE COURT - All right, anything from the
23 Plaintiff before we recess?

24 MR. MOORE - No, sir.

25 THE COURT - Anything from the defense?

1 MR. RAYNOR - Not from me, Your Honor.

2 THE COURT - All right, let's take about a 15
3 minute recess.

4 (WHEREUPON, RECESS TAKEN)

5 THE COURT - All right, anything from the
6 plaintiff before we bring the jury in?

7 MR. MOORE - No, sir, Your Honor.

8 THE COURT - Anything from the defense?

9 MR. MOORE - No, Your Honor.

10 THE COURT - All right, Mr. Ross, if you'd come
11 back up and take the witness chair, witness stand rather;
12 you're still under oath.

13 (WHEREUPON, MR. ROSS RE-TAKES THE WITNESS STAND.)

14 THE COURT - Go ahead and bring the jury back in.

15 (WHEREUPON, JURY ENTERS THE COURTROOM.)

16 THE COURT - Ladies and gentlemen, welcome back;
17 we're ready to resume the trial of the case. Mr. Raynor,
18 cross examination.

19 MR. RAYNOR - Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. RAYNOR -

22 Q Good morning, Mr. Ross.

23 A Good morning.

24 Q Let me kind of back you up for a moment and talk about
25 your employment history. You worked at Dick Dyer Mercedes

1 from April 2nd until March 10th -- I'm sorry March, 2010. Is
2 that correct?

3 A I was employed at Dick Dyer Mercedes from 2002 to
4 2010.

5 Q And, in fact, March of 2010.

6 A Yes, sir.

7 Q And then you quit that job to go work at CARMAX;
8 correct?

9 A Correct.

10 Q And you told the people at Dick Dyer that you were
11 quitting that job and going to work at CARMAX because you
12 were getting -- were going to get paid more money at
13 CARMAX.

14 A That was going to be the -- for better pay,
15 opportunity; correct.

16 Q Yes, sir. And then you worked at CARMAX from March of
17 2010 -- you were still working there in May of 2012 when I
18 took your deposition; correct?

19 A Correct.

20 Q How long did you continue to work there?

21 A I was fired -- May -- wait -- May of '13.

22 Q May of 2013; is that correct?

23 A Or March. March or May, one of those, 2013.

24 Q And is that when you opened up your shop?

25 A Didn't open my shop until July of '13.

1 Q And you opened a repair job; is that correct?

2 A I did.

3 Q The -- now, if you would, sir, take a look at
4 defendant's exhibit number 4. That is the document that
5 you signed that you talked about the day you got to
6 Carolina Adventure World; is that correct?

7 A That's correct.

8 MR. RAYNOR - Plaintiff's number 14, please.

9 Q And plaintiff's exhibit 14 you -- this is essentially
10 that document that's defendant's number 4 that you signed,
11 but this is a blank copy; is that correct?

12 A Yes.

13 Q On the first page, and then the second page is a trail
14 map; is that correct?

15 A That's correct.

16 Q And you got a copy of that trail map when you got the
17 first page, the release; is the correct?

18 A Yes, sir.

19 Q And then you got the last page which has just some
20 general information there; is that correct?

21 A Yes, sir.

22 Q And you say you read this document, this last page --
23 is that correct?

24 A Briefly, yes, sir.

1 Q In fact, um -- did anything on this then jump out at
2 your attention?

3 A As far as ---

4 Q Anything particularly -- you said you read it briefly
5 -- anything that you paid any particular attention to.

6 A Just knowing that it was safety first.

7 Q And, in fact, I think you said from reading that
8 document, you expected the trails to have been maintained
9 and graded; is that correct?

10 A Correct.

11 Q You didn't expect ---

12 A That let me know that it was going to be safe.

13 Q Pardon?

14 A That let me know that it was going to be a safe place
15 to ride; yes, sir.

16 Q Yes, sir. In fact, on your direct testimony you said
17 that you thought that meant these trails were going to be
18 smooth and level and graded; correct?

19 A Safe.

20 Q Well, did that include the trails being graded smooth?

21 A I take as that it's going to be a safe environment.

22 Q But my question is this ---

23 A Not really necessarily that it has to be smooth, that
24 it's just going to be a safe place to ride.

1 Q Then -- did you understand or have an expectation that
2 these trails were going to be graded or not?

3 A Maintained, yes, sir.

4 Q So, yes, that you thought they would be graded.

5 A Yes, sir, that it'd be a safe place to ride.

6 Q And I understand you want to say safe, but as your
7 definition of safe, your expectation is these trails would
8 be graded; correct?

9 A Correct.

10 Q And I -- you did not expect large ruts in those
11 trails, did you?

12 A No obstacles.

13 Q And obstacles including mud so thick that people got
14 their ATVs stuck in it. That would not be your definition
15 of graded, would it?

16 A No, sir.

17 Q Your definition of maintained wouldn't be that there
18 would be a road so wet and muddy that people got their ATVs
19 stuck in it to the extent they had to be pulled out by
20 somebody else; is that true?

21 A That's true.

22 Q And certainly your expectation of what would be
23 maintained would include that there would be large rocks or
24 steep hills with irregular rocks strewn about the path; was
25 that not true?

1 A Boulders.

2 Q Well, so your -- you were only expecting there to be
3 anything other than a boulder.

4 A Rocks are everywhere; they're fine, but when you have
5 a large boulder in the middle of a hill that you're
6 climbing, it is unsafe for anyone.

7 Q Well, Mr. Ross, before you got to that boulder, you
8 had encountered areas on the trail where there were rocky
9 faces and mud; correct?

10 A Mud, yes, sir.

11 Q And rocky faces; correct?

12 A Not a lot, no, sir.

13 Q Well, had you seen any there before you got to the
14 boulder?

15 A There was a few rocks, yes, sir.

16 Q How about rocky faces? Do you know what I mean by a
17 rocky face?

18 A No, sir.

19 Q Okay. A level of the trail that was mainly rock as
20 opposed to having dirt on it.

21 A No, sir. There was -- there was mainly just some
22 brush and some ruts and some mud, some gravel.

23 Q And no rocky areas.

24 A Very -- very little, nothing that was on the middle on
25 a hill or nothing like that.

1 Q In fact, had you seen things on that trail that made
2 you slow down and take it at a very slow rate of speed?

3 A Most definitely, yes, sir.

4 Q And why were you going at the -- well, let me ask you
5 this. What gear were you in when you were going down trail
6 19?

7 A Between 15 and 20 miles an hour.

8 Q And what gear were you in?

9 A Just -- I was in four-wheel drive going up the hill.

10 Q And is that the slowest gear on your vehicle?

11 A It is.

12 Q And it has a throttle; correct?

13 A It is, yes, sir.

14 Q And when you give it gas, you have push the throttle
15 in; correct?

16 A Correct.

17 Q If you take your hand off that throttle, what happens?

18 A It stops.

19 Q Okay. It had a brake on it, as well; correct?

20 A It did.

21 Q Okay. Now, you had -- before this incident, you had
22 only ridden on trails on property that your father-in-law
23 owned or you owned; is that correct?

24 A Since I bought that four-wheeler in 2000 -- since I
25 was given that four-wheeler as a gift in 2006. Prior to

1 that, I mean when I was single I've owned another four-
2 wheeler. I've owned two of them in my life and I've rode
3 some friends' four-wheelers, but during this accident in
4 2006 when I got that four-wheeler on my father's land, but
5 as a child when I lived at home, yes, I rode there.

6 Q Well, I didn't mean to confuse you. What I was really
7 asking was this. Before the day of this incident, you had
8 never ridden on hilly, rocky terrain that was unsmooth and
9 had only ridden on trails that were at your father-in-law's
10 or places that were fairly smooth trails, although they may
11 had a rut or two in ---

12 A Maintained trails, correct.

13 Q Is that correct?

14 A Maintained trails that was properly maintained by the
15 -- my father-in-law's tractor.

16 Q Okay. And by maintained, you mean get out there and
17 grade it smooth; is that correct?

18 A To a level of when we're riding with my son on the
19 four-wheeler with me that we wanted to be safe, yes, sir.

20 Q Now, when you got to the beginning of trail 19, you
21 were aware that the trails at Carolina Adventure World that
22 you were riding on were not all maintained; is that
23 correct?

24 A I wasn't aware that they wasn't all maintained. I was
25 thinking that they was maintained facility.

1 Q I understand, sir, when you walked out there that day
2 and you signed that form and paid your money, you thought
3 they were all maintained; correct?

4 A Correct.

5 Q But you'd been riding these trails for an hour you
6 said before you got to trail 19; correct?

7 A Correct.

8 Q And you had ridden trails that you were obviously
9 aware were not maintained before you got to trail 19;
10 correct?

11 A Did not come to any obstacle like that as far as
12 condition of the mud and stuff, yes.

13 Q Yeah, but you knew they were not maintained; right?

14 A Correct.

15 Q And certainly -- now, do you know how far it was down
16 trail 19 you rode before you had this accident?

17 A 15, 20 minutes?

18 Q And certainly you were aware that trail 19 was not
19 maintained before you got to that boulder; is that correct?

20 A It wasn't terrible. I mean to go down something for
21 almost 15, 20 minutes and not have any issues, I mean it
22 wasn't bad. I mean it wasn't -- being cautious, you know.

23 Q But my question, sir, was, you were aware that trail
24 19 had not been maintained; is that correct?

25 A Yes, sir.

1 Q And you were aware that it had hilly, rocky terrain
2 before you got to that boulder; correct?

3 A Yes, sir.

4 Q And again that's a condition you'd never ridden on;
5 correct?

6 A I have ridden on ---

7 Q Well, before that day ---

8 A I never rode there.

9 Q No, sir. My question is this. Before that day at
10 Carolina Adventure World, you had never ridden on hilly,
11 rocky terrain that was unsmooth.

12 A I have.

13 Q Mr. Ross, do you remember being deposed in this case?

14 A (No response)

15 Q And by being deposed, that's where I took your --
16 that's -- what I mean by that is, that's where I took your
17 deposition. You actually -- I think I went to your
18 attorney's office. Yeah, I went to Mr. Moore's office down
19 in Columbia back in May of 2012, and I was there, Mr. Moore
20 was there, and there was a court reporter, just like
21 there's a court reporter in this courtroom there?

22 A Sir, I road on hills without boulders in them. Don't
23 really mean it has to be completely smooth surface.

24 There's a difference between hills and with ruts in it and
25 there's a difference between having a boulder in the middle

1 of a hill as you're going that changes the elevation of the
2 hill; you're climbing a hill and then you have a boulder
3 sticking up makes the hill even taller. So you're then
4 going over an obstacle. Have I ever done that before? No.

5 Q Mr. Ross, my questions is, did you remember being
6 deposed in this case?

7 A Yes, sir.

8 Q And do you remember that you took an oath to tell the
9 truth in that deposition just like you took an oath to tell
10 the truth here?

11 A Yes, sir.

12 Q And do you remember me telling you, warning you so-to-
13 speak, that you had a duty to be truthful and accurate in
14 this deposition as if you were testifying in Court?

15 A I do.

16 Q And did you intend to give the truth when you took --
17 when you gave your testimony in that deposition?

18 A And I did.

19 MR. RAYNOR - If I may approach -- it's on page
20 94, Mr. Moore.

21 Q Mr. Ross, page 94, line 3, I asked you the question,
22 well, that's what I mean, before this day at Carolina
23 Adventure World, you had never ridden -- excuse me -- never
24 ridden on a hilly, rocky terrain that was unsmooth; is that
25 correct?

1 A With that four-wheeler that was purchased in 2006 I
2 haven't, only at my father-in-law (sic), so with that four-
3 wheeler, correct, that is right.

4 Q Well, let me back up. The question is, on page 94,
5 line 3, well, that's what a mean, before this day at
6 Carolina Adventure World you had never ridden on a hilly,
7 rocky terrain that was unsmooth; is that correct, and what
8 was your answer?

9 A Correct, with that four-wheeler.

10 Q No, sir; what was your answer?

11 A Correct.

12 Q And you didn't mention anything in this deposition
13 about riding in that condition or with some other vehicle,
14 did you?

15 A You didn't ask.

16 Q No, I asked you the question, had you ever; your
17 answer was -- and you said correct, I had never done that.

18 A Maintained properly (sic) trails. Trails that are
19 maintained. I mean it's common sense, need to be
20 maintained.

21 Q But right now my question is, in your deposition you
22 said, before that day at Carolina Adventure World you had
23 never ridden on hilly, rocky terrain that was unsmooth, and
24 you said that was correct in your deposition.

25 A On that day with that four-wheeler.

1 Q Well, no, sir, that's not what you said. You said
2 correct.

3 MR. MOORE - Well, Your Honor, could he ask him a
4 question. I apologize.

5 THE COURT - All right, go ahead. Overruled.

6 Q You said correct.

7 A (Indicating yes)

8 Q Is that true?

9 A That's true.

10 Q You didn't mention anything about, well, that's true,
11 but I'd ridden some other vehicle some other place that was
12 exactly like Carolina Adventure World, did you?

13 A You didn't ask.

14 Q No, sir, I asked you had you ever, and you said, no,
15 I've never.

16 A I thought you were related (sic) to that four-wheeler.

17 Q Well, does it say, before this day did you ride that
18 four-wheeler on rocky, hilly terrain? Is that what the
19 question was, Mr. Ross?

20 A (No response)

21 Q You want to read it?

22 A (No response)

23 Q Have you read it?

24 A (Indicating yes)

1 Q So my question didn't ask you about riding a specific
2 four-wheeler. My question asked you, had you ever ridden
3 on these kind of conditions, which included hilly, rocky
4 terrain that was unsmooth, and your answer was, correct.

5 A (No response)

6 Q Is that true?

7 A Confusing question, but, yes, sir..

8 Q And then I asked, after you said correct, I said, and
9 the next question is, because you had ridden on these
10 trails that were at your father-in-law's or your place that
11 were fairly smooth trails, although they may have a rut or
12 two to them, is that correct, and what was your answer?

13 A My answer was, correct.

14 Q And then I said, are there any hills of any
15 appreciable nature on your father-in-law's property at all,
16 and what was your answer?

17 A Nothing compared to the hill that I battled going up.
18 There's no type of hill -- what I mean by that is there was
19 no -- we had no boulders in the hills that we ride on when
20 I go riding.

21 Q And then I asked you the question, nothing like you
22 faced that day at Carolina Adventure World ---

23 A That's correct.

24 Q --- and you said, that is correct, but little one,
25 yeah; correct?

1 A Yeah, hills that you can go over.

2 Q And then the question was, and the same is true of
3 your property, no hill like at the facility like you faced,
4 and what was your answer?

5 A No.

6 Q And then I said, question, no trail with, for lack of
7 a better word, the degree of difficulty of that trail
8 number 19 at your place or your father-in-law's place. Is
9 that correct?

10 A That's correct.

11 Q Oh, by the way, your ATV was a 2000 Polaris Magnum
12 325; is that correct?

13 A That's correct.

14 Q And, sir, before this incident, you had never ridden a
15 ATV at a facility like Carolina Adventure World; is that
16 correct?

17 A That's correct.

18 Q And by that, I mean some place where you go to pay
19 money to ride.

20 A That's correct. Just with friends on their land or
21 our land.

22 Q And you had never been to Carolina Adventure World
23 before either; correct?

24 A Correct.

1 Q Before -- well, let's go back. You said your wife
2 suggested that you go with Richard Paxton to go ride ATVs?

3 A Correct, to get out to enjoy the day.

4 Q Yeah. And so did you call up Mr. Paxton, or did he
5 call you?

6 A He came to pick me up. We had it planned I think
7 several days or week or so before.

8 Q Well, that's what I meant, as far as the planning, did
9 you call him and say, hey, Richard, let's go ride, or did
10 he call you and say, hey, Mr. Ross, let's go ride?

11 A I think it was really planned between the wives, and
12 then me and Richard talked on the phone and decided which
13 day to come.

14 Q Well, did you say, Richard, come on over here to my
15 father-in-law's place, we got some trails here, they're
16 nice and smooth and well-maintained, you can ride here?

17 A No, he offered Carolina Adventure World and thought it
18 was -- be a good place ---

19 Q When he's ---

20 A I mean ---

21 Q Well, when he offered Carolina Adventure World, did
22 you say, hey, Mr. Ross -- I'm sorry -- Mr. Paxton, we have
23 a place right here at my father-in-law's, we don't have to
24 drive to Fairfield County?

25 A No, sir, I didn't.

1 Q Well, did you ask him, well, tell me about -- what is
2 Carolina Adventure World?

3 A Saw on-line what it was about and it seemed that it
4 was maintained by looking at the stuff on line.

5 Q So you went on the internet and did some kind of
6 research about ---

7 A Carolina Adventure World.

8 Q -- Carolina Adventure World?

9 A Yes, sir.

10 Q Pardon?

11 A Yes, sir.

12 Q And did you -- and what did you find on the internet?

13 A Just pictures of the facility, other people riding.

14 Q Now, did you see at any point that there was a trail
15 marking guide before you got to the facility?

16 A Trail marking as far as in numbers, like marking
17 numbers?

18 Q No, sir, the guide that goes from green to blue to
19 black?

20 A Sir, I don't understand the question.

21 Q I'm sorry, Mr. Ross. You remember the map you said
22 you got which is part of exhibit 14? You said you got that
23 map. Remember that?

24 A Yes, sir.

25 Q And this map has a trail rating guide to it; correct?

1 A Correct.

2 Q When you went on the internet, did you see anything
3 about the trail map on the internet?

4 A No, sir.

5 Q Did you see anything about these marking system before
6 you got to the facility that day?

7 A No, we just kind of looked just as far as seeing You-
8 Tube and stuff, looking at videos and stuff of people
9 riding and stuff.

10 COURT REPORTER - I'm having trouble hearing him,
11 Judge.

12 THE COURT - You're going to speak more clearly
13 and into the microphones.

14 A It was not really -- as far as detail -- as far as
15 looking as far as the map on the line, no, sir.

16 Q So you went to You-Tube to look at videos as part of
17 your research.

18 A Seeing what it's like.

19 Q Yes, sir. But you didn't see this map.

20 A I didn't look for that map.

21 Q Okay. And did you ask your friend Mr. Paxton about
22 what he knew about the facility?

23 A He said he's been out there before, and it's a good
24 place to ride, and we'd have a good day. I took it as it
25 was maintained.

1 Q Well, did you -- did you ask him specifically if the
2 trails were smooth and well-maintained to be comparable
3 with what was on your father's land?

4 A I did not, but as reading the paper that I was given,
5 it said it was a safe place, so, I mean I didn't really
6 have to ask if it was safe.

7 Q And when you say you read the paper that says it's a
8 safe place, you mean the third page of plaintiff's exhibit
9 14?

10 A That's it, correct.

11 Q Is that true?

12 A Where it says safety first.

13 Q Yeah. So third page of exhibit number 14, that three-
14 page exhibit, the first page being that page; correct?

15 A (No response)

16 Q Well, there's three pages to this exhibit; correct?

17 A (Indicating yes)

18 Q And I'm just asking you ---

19 COURT REPORTER - He needs to answer verbally and
20 speak up.

21 Q There's three pages to the exhibit; correct?

22 A Yes, sir.

23 Q The last page is the one that's got the big title,
24 Carolina Adventure World, and you said you read that.

25 Well, ---

- 1 A You keep -- you keep that one.
- 2 Q Oh, you read ---
- 3 A You keep the map, and then the other one you turn --
- 4 you sign and turn in.
- 5 Q And you -- you kept the map.
- 6 A Correct.
- 7 Q But you did not read the first one, the first page?
- 8 A That's the one you sign and date and turn in?
- 9 Q Yes, sir. You did not read that.
- 10 A You don't have time to read it, no, sir.
- 11 Q My question was, did you read it or not?
- 12 A No, sir.
- 13 Q Okay.
- 14 A That one's not kept with you. That one you turn in.
- 15 Q Right. Now, when you got to the trails with your
- 16 friend, Mr. Paxton, when you got to Carolina Adventure
- 17 World and you got that map, did you ask him to explain to
- 18 you what the difference was between the green and the blue
- 19 and red trails?
- 20 A We did briefly go over that, yes, sir.
- 21 Q And what did he explain to you would be the type of
- 22 challenges that would be involved in the green trails?
- 23 A The green and blue are close to the same.
- 24 Q Well, what did he say a green trail would be like?
- 25 A That they're really not much of a difference.

1 Q Much of a difference between a green and a blue?

2 A Correct.

3 Q And then what did he explain the blue trail would be
4 like, the moderate trail?

5 A A safe trail ride.

6 Q And is that what he said? It'd be a safe trail?

7 A I don't really know exact words, but that we shouldn't
8 have any problems riding, it'd be a good trail.

9 Q And then -- and the blue trails -- was it the blue
10 trail or green trail that y'all rode on during that hour
11 before you got to trail 19?

12 A I think the blue trail, I think.

13 Q Was it a blue trail you had to pull somebody out of
14 the mud on occasion?

15 A I believe so. I don't really remember the color.

16 Q Okay. And then ---

17 A One trail -- one trail led into another trail and they
18 were just kind of all twined into everything.

19 Q So you didn't know -- you didn't ---

20 A Not clearly marked, correct.

21 Q Well, my question is, you didn't pay attention to
22 which trail you were on enough to know if you were on a
23 blue trail, a black diamond trail or a green trail; is that
24 true?

25 A It wasn't marked clearly at the time.

1 Q Well, certainly your testimony here today is, for
2 whatever reason, whether it was your failure to read or
3 their failure to mark, you didn't even know which of these
4 trails you were on when you were riding; is that correct?

5 A I believe we knew what trails we was on.

6 Q So when you pulled those people out of that trail, you
7 knew you were on the blue moderate trail; correct?

8 A Correct.

9 Q And then when you got to trail 19 at the trail-head --
10 you know, like when I said trail-head, where you go into
11 that path, did you know you were entering a black diamond
12 trail?

13 A I believe we talked about that, yes, sir.

14 Q When did you talk about it, when you got to trail 19?

15 A Yes, sir.

16 Q And did you see that that trail was marked as a double
17 black diamond trail?

18 A I don't remember seeing -- I remember seeing a 19 on
19 it, but I don't believe I remember seeing anything about
20 diamonds on the post.

21 Q Well, how did -- how did you know it was a black
22 diamond trail? Before you started going down it.

23 A We talked about it and on it it seemed fine. Actually
24 seemed -- at the beginning of the trail seemed better than
25 the blue.

1 Q When you talked to Richard Paxton there before you
2 started down that now black diamond trail, what did you ask
3 him and what did he tell you about that trail that you'd
4 never been on before?

5 A Don't remember the exact words, just -- all the -- I
6 just remember saying all the trails just are about the
7 same.

8 Q Is that what Richard told you?

9 A To a certain extent.

10 Q Did he not tell you that trail 19 was one of the most
11 challenging trails out there?

12 A I don't think he used the word challenging, no, sir.

13 Q Did he tell you it was one of the most difficult
14 trails out there?

15 A I don't remember being used difficult; I just
16 remember, you know, -- it was just a trail. For 15, 20
17 minutes on it, it actually seemed fine. There was really
18 no -- nothing dangerous about it at our beginning.

19 Q It was smooth and well-graded?

20 A It wasn't smooth, no, sir.

21 Q Was it graded? Yes or no?

22 A It wasn't graded, no, sir.

23 Q Okay. Now, did you ask Richard why this trail that
24 was marked 19 was marked black diamond versus a blue?

25 A I didn't ask him that, no, sir.

1 Q During any time that day there did you ever tell
2 Richard Paxton that you had never ridden on trails this
3 difficult?

4 A It didn't seem difficult when we was on it. It seemed
5 difficult when I got to certain spot that was -- that
6 became, you know, unsafe spot.

7 Q Well, let me ask you this, a different way. Did you
8 tell Richard at any time before you got on trail 19 that
9 you had not ridden on conditions like the ones at Carolina
10 Adventure World, that you'd only ridden on the conditions
11 like at your house and your father's house?

12 A That's correct.

13 Q You did not tell Richard that; correct?

14 A He knew we just -- that's the only places that I rode,
15 yes, sir. He know (sic) I have not been to a facility. I
16 do remember -- I think he did ask if I ever been out there
17 and I told him no, and he said, you know, we'll have fun.

18 Q Well, did you specifically tell him, Richard, I've
19 only ridden on graded, well-maintained trails at my father-
20 in-law's or my property?

21 A Not to that point, no, sir.

22 Q And when you saw those trail rating system you didn't
23 ask him did he think these would be more -- too difficult
24 for someone with your experience, did you?

25 A What do -- definition of my experience. (sic)

1 Q Whatever your experience was at that point.

2 A I think it's ---

3 Q Pardon?

4 A --- very good. It's a four-wheeler, ---

5 Q Yes, but that ---

6 A --- four wheels.

7 Q But you never asked Richard Paxton if he thought you
8 would have difficulty going down trail 19 given your
9 experience like.

10 A Thought we could handle it, and as we -- you know, it
11 was challenging for him as well.

12 Q My question is a little different, sir. You didn't
13 answer my question. And just make sure you understand the
14 question. As y'all got to trail 19 and you saw it was
15 trail 19 and you appreciated it was a black diamond trail -
16 - is that true? You knew it was a black diamond trail.

17 A Correct.

18 Q You knew that you'd been on moderate trails before
19 that; correct?

20 A Yes, sir.

21 Q You knew that this trail was more difficult than what
22 you'd been on based on the fact it was a black diamond
23 trail.

24 A Yes, sir.

1 Q At that point did you set there and ask Mr. Paxton,
2 you know, hey, Richard, this is my experience, do you think
3 I'm good enough to go down this trail?

4 A No, we did not talk about that. We just kept riding.

5 Q Did you ask him about any specific hazards that he
6 would expect to see on that trail?

7 A I kept cautious. I was behind, so I ---

8 Q My question is, did you ask him about any specific
9 conditions on that trail?

10 A No, sir.

11 Q Okay. And then at some point you started riding down
12 that trail; is that correct?

13 A Yes, sir.

14 Q And now you -- by the way, you had never received any
15 instructions on how to ride a four-wheeler. Is that
16 correct?

17 A Instructions -- had a manual with my four-wheeler.

18 Q Well, but have you ever been to a class, like a
19 motorcycle class? They have motorcycle classes. You ever
20 been to an ATV class?

21 A No, sir.

22 Q But you knew that on a slow -- I mean sorry -- on a
23 new trail that you'd never been on before, that's one you
24 should be extra cautious on; is that correct?

25 A That's correct.

1 Q And -- and you knew at that point at least that when
2 you started down trail 19 that the trails had not been
3 maintained; is that correct?

4 A That's correct.

5 Q You knew they were muddy; is that correct?

6 A That's correct.

7 Q And, in fact, you'd only been on that trail for about
8 five minutes until you realized it had not been maintained;
9 is that correct?

10 A What's your definition of maintained? I mean it's --
11 I mean it's -- it would seem safe.

12 Q Yes, you knew that within five minutes.

13 A It seemed that it was fine when we was on it. In
14 other words, there was no difficult challenge within the
15 15, 20 minutes on the trail.

16 Q But my question is, ---

17 A It seemed like a trail to ride on.

18 Q How far had you gone down this trail until you
19 realized that it was not maintained? How long had you been
20 on that trail before you realized that?

21 A Time-frame, I don't -- it's probably around, I'm
22 saying 15, 20 minutes, if even that. I don't really -- I
23 didn't really keep count with that.

24 Q Well, was it at 5 to 10 minutes that you realized that
25 trail was not maintained?

1 A Probably, yes.

2 Q In fact, you could tell the trail had not been
3 maintained almost as soon as you started it; correct?

4 A Correct. It is a -- and it's also a one-way trail, so
5 once you're on it, you're on it, you're stuck; there's no
6 turning around or you head-on collision.

7 Q Now, -- now, did you -- you said you were traveling in
8 four-wheel drive; correct?

9 A Correct.

10 Q Lowest gear on your vehicle; correct?

11 A Yes, sir.

12 Q You were trying to go very slow given the conditions
13 you encountered; correct?

14 A Correct.

15 Q And particularly this a new trail for you; never been
16 there before.

17 A (No response)

18 Q And -- is that correct?

19 A Yes, sir.

20 Q And before you had gotten to that boulder, you had
21 seen conditions that had caused you to even go slower; is
22 that correct?

23 A Correct.

24 Q And what kind of conditions had you seen that had made
25 you, like, reduce the speed of your vehicle?

1 A Muddy ponds across the trail, being stuck, causing
2 your four-wheeler to cut off, puts you to a stop.

3 Q Well, this -- okay. Anything else?

4 A That was about it.

5 Q And actually you had reduced your speed on some
6 occasions because you had actually gotten into conditions
7 that caused you to reduce your speed, but you'd also
8 observed conditions ahead of you that caused you to reduce
9 your speed; is that true?

10 A Yes, sir.

11 Q And so you were trying to look down the trail to see
12 what was coming; correct?

13 A Correct, yes, cautious.

14 Q You would agree with me that would be a proper thing
15 to do for somebody riding an ATV on trail 19 would be keep
16 a good look-out about what's coming down the road; correct?

17 A Correct.

18 Q And then -- and then at some points you would
19 actually, if you slowed down, go through those areas, then
20 you would speed back up to catch up with Richard, because
21 he was ahead of you; correct?

22 A I stayed behind the whole time. I never really stayed
23 right on his tail.

1 Q I understand you didn't stay on his tail, but there
2 would be occasions that after you slowed down, you would
3 speed up to catch up with him.

4 A If it was a area that I could drive; I mean there was
5 some flat area out there as well. I mean depends on where
6 we was at.

7 Q So the answer is yes.

8 A Yes, sir.

9 Q And -- but you were not reducing your speed to a crawl
10 constantly down that path, were you?

11 A I was at a speed, a safe speed to looking ahead of me.

12 Q Well, but you certainly had not reduced your speed to
13 a crawl constantly, had you?

14 A What do you mean?

15 Q The slowest pace you could go.

16 A I mean -- not the whole time, but I also wasn't flying
17 down it either.

18 Q Now, let's go back to this boulder that you talked
19 about. You saw this boulder one time; is that correct?

20 A Correct.

21 Q You have not been out to Carolina Adventure World
22 since your accident, have you?

23 A No, sir.

1 Q And you are able to tell us from your observation that
2 day before you hit that boulder, that that boulder was four
3 feet wide. You saw that; correct?

4 A Correct.

5 Q You saw that you -- you said it was about 18 inches
6 high.

7 A Correct.

8 Q You could even tell that it was like -- been there for
9 a while; correct?

10 A Correct.

11 Q You made all those observations before you hit it.

12 A Correct.

13 Q And you said -- you told us you saw it 15, 20 feet
14 from the time you hit it.

15 A At least, got -- yes, sir.

16 Q Okay. And when you first saw it, that 15 to 20 feet
17 from it, you didn't take your thumb off the accelerator,
18 did you?

19 A No, because if you're going to make it over a hill,
20 you don't take your thumb off the accelerator.

21 Q Well, and the answer is no you did not; correct?

22 A No, sir.

23 Q You did not hit your brakes, did you?

24 A No, sir.

1 Q You didn't, you know, get off your bike, stop it, get
2 off of it and go look at it to see what would need to be
3 done to get over it or around it, did you?

4 A I didn't do that the whole time I was there, no, sir.

5 Q In fact, what you did, after you saw that boulder, you
6 actually increased your speed, did you not?

7 A I wouldn't say increased but a little bit, yes, sir.
8 You have to have a little bit of momentum to get over; if
9 you don't then you're not going to make it over it, so ---

10 Q But you certainly increased your speed; is that
11 correct?

12 A Increased it a little bit with some momentum to get it
13 over.

14 Q Did you increase your speed before you hit it or after
15 you hit it?

16 A As you're climbing the hill, you would want to
17 increase -- you would want to have momentum to go up over
18 it. If you see an obstacle -- okay, here's an obstacle and
19 you're going to hit it, and, you know, you come up to it so
20 fast and you don't realize it's -- okay. It's done
21 happened.

22 Q Okay. After you saw the boulder there, you realized
23 it was there, you increased your speed, what else did you
24 do as you went toward your point where you crashed?

25 A Leaned forward a little bit.

1 Q Did you do anything else?

2 A That's ---

3 Q Pardon?

4 A That was about it.

5 Q And then your -- some part of your vehicle hit the
6 boulder and you said it -- did it flip back on top of you?

7 A Yes, sir.

8 Q Now, -- now, you said your front wheels cleared the
9 boulder; is that correct?

10 A To a -- to a point. As it went over, I thought I was
11 in clear; I thought it was clear as I went over and back --
12 back wheels grabbed it as far as being either the mud or
13 the slippery rock, whatever, and it comes -- comes back
14 over on me.

15 Q Now, when ---

16 A At a moment I thought it was clear.

17 Q And when you say clear, do you mean that it had gone
18 across the boulder or that had gone around the boulder?
19 Which do you mean when you say cleared it?

20 A As far as -- there for a moment I thought the four-
21 wheeler has cleared the boulder and then before I know it,
22 happened so fast, the four-wheeler is then coming back over
23 on me.

24 Q Well, my questions is, though, sir, when you say you
25 cleared it, do you mean it went past -- the front wheels

1 when it past the boulder or you say the four wheels went
2 around the boulder?

3 A The front wheels went up in the air, I leaned forward,
4 and I believe the back wheels hit the boulder and comes
5 tumbling on top of me.

6 Q And then did it come directly back on top of you?

7 A Yes, sir.

8 Q Now, you said you had your helmet on; correct?

9 A Correct.

10 Q Did you have a face shield to that helmet?

11 A I don't believe so, no, sir.

12 Q Did you have goggles?

13 A No, sir.

14 Q So nothing to protect your eye as you were riding
15 through those trails; is that correct?

16 A As heavy as a four-wheeler, (sic) it wouldn't have
17 made a difference if I had one or not.

18 Q But the answer is, you didn't have any eye protection,
19 did you?

20 A No, there's no requirements for it.

21 Q Looking at exhibit 15, this is the medical bills that
22 you've introduced. You remember that?

23 A I do, yes, sir. Yes, sir.

24 Q The -- there is a bill from The Mental Health
25 Richland. Do you see that?

1 A Yes, sir.

2 Q And you've got a hundred thirty-six thousand five
3 hundred and seventy-seven dollars, twenty-seven cent.

4 A Yes, sir.

5 Q But there is an adjustment to that of forty-five
6 thousand dollars, a deduction; correct?

7 A (No response)

8 Q You see right there?

9 A Yes, sir.

10 Q So really the bill was ninety-one thousand four
11 hundred and two dollars; correct?

12 A Yes, sir. Just be glad I had -- just be glad I had
13 insurance at the time. Like now, I don't.

14 THE COURT - All right, the jury's to disregard
15 the last statement.

16 MR. RAYNOR - If I could have a moment, Your
17 Honor.

18 THE COURT - All right.

19 MR. RAYNOR - That's all the questions I have,
20 Your Honor.

21 THE COURT - All right, re-direct.

22 MR. MOORE - No questions, Your Honor.

23 THE COURT - All right, you may step down.

24 MR. ROSS - Thank you, sir.

1 MR. MOORE - Your Honor, that'll be the
2 plaintiff's case.

3 THE COURT - All right, ladies and gentlemen, the
4 plaintiff has rested their case, and now is the time in the
5 trial where I need to take up some matters of law with the
6 attorneys. And -- so I'll be excusing you in just a minute
7 while we address these matters of law, and I'll tell you
8 why we excuse the jury. It's not that we're trying to hide
9 anything from you or keep anything from you, but as I told
10 you in my opening charges, you and you alone decide the
11 facts of this case, and you decide those facts based upon
12 the testimony and evidence presented at trial. Now, we've
13 reached the part of the trial where I have to discuss the
14 law to be applied in this case with the attorneys. The
15 plaintiff has finished their case, and procedure mandates
16 that I address these legal matters with the attorneys.
17 Well, often times when we discuss these legal matters, it
18 requires me as the Judge and the attorneys to reference
19 factual issues. Well, what we say is not evidence, so we
20 do not want you to be influenced by anything that I might
21 say or anything the attorneys might say when we decide the
22 law to be applied; we do not want that to influence you in
23 your determination of what the facts in this case are, and
24 that's why we excuse you. Now, it is 12:00 o'clock, so I
25 think it's a good time while we address these legal matters

1 to let you go to lunch and you can go to lunch on your own.
2 I'm going to excuse you to go to lunch. Please be back in
3 the jury room at 1:30; that'll give you an hour and a half
4 to eat lunch and get back. Do not discuss the case even
5 among yourselves. Don't conduct any independent
6 investigation; don't conduct any independent research or
7 anything of that nature. Hope everybody has a good lunch,
8 and we'll see you back at 1:30. Thank you very much.

9 (WHEREUPON, JURY EXITS THE COURTROOM FOR LUNCH
10 RECESS.)

11 THE COURT - All right, any motions?

12 MR. RAYNOR - Yes, Your Honor. At this point I
13 would make a motion to Rule 50 of the Rules of Civil
14 Procedure for a directed verdict, and there's multiple
15 parts of this, Your Honor, but the first part certainly
16 would be a motion to dismiss any claim for punitive
17 damages. There's been no evidence of any willful, wanton
18 or reckless conduct, and certainly not think that would
19 meet the standard of clear and convincing evidence of that
20 conduct. The -- so that would be the first part of the
21 motion. Then, Your Honor, the second part is the
22 plaintiff's own evidence shows that he signed an expressed
23 release that covers the very situation that he -- he had,
24 that he signed this agreement basically saying he assumed
25 the risk of the recreational activity he was taking; he

1 assumed the risk of selecting the -- not only the vehicle
2 but the trail he was riding, and he basically warranted
3 that he had the ability to ride those trails, and -- now,
4 the problem is he didn't read it, and he admitted he didn't
5 read it, but under South Carolina law, Your Honor, that --
6 that's no excuse. He's bound by that agreement, and so I
7 think his own evidence shows that the expressed release
8 bars the claim. And then, Your Honor, I would also move
9 for a directed verdict on the basis of there's been no
10 showing of any breach of duty by the defendant in this
11 case, and I would just start off by pointing out, Your
12 Honor, at this point there is no evidence from anybody that
13 gives a different duty than just a general duty owed by a
14 landowner. I mean there -- it's not like somebody brought
15 in some expert to say that this is the standard that
16 applies to someone who's operating an ATV facility, so I
17 guess the only duty that would be a theory that they could
18 proceed on would be just a general duty owed by a
19 landowner to a invitee. And the -- there's been no showing
20 of a breach of that duty. Certainly, there's no duty to
21 warrant of this condition, that rock, which the gentleman
22 said he saw 15 to 20 feet ahead of him and described it
23 pretty explicit terms -- terms, four feet wide and 18
24 inches high. In fact, saw it long enough to make the
25 decision to speed up his vehicle to try to get across it,

1 so I would argue, Your Honor, there's been no showing of
2 any breach of any duty that was owed, much less a breach of
3 any duty that was owed. And then, Your Honor, the -- I
4 would -- this is, I think a question of law for the Court,
5 that would be his claim is barred by the doctrine of
6 primary assumption of the risk, and that is if there are
7 inherent risk associated with an activity, that is what you
8 basically sign-up for when you participate in that
9 activity, and, Your Honor, here, that -- you know, we've
10 heard witnesses say that's what happens when you ride four-
11 wheelers and you take that risk. In fact, it's pretty --
12 at least one person -- the express release as well, Your
13 Honor, is related to that, but it basically tells the man
14 these are dangerous conditions out here; riding this
15 vehicle is a dangerous condition, and he's going to assume
16 that, so I think that would be part of the evidence there
17 as well. So for those reasons, Your Honor, we would ask
18 that the case in its entirety be dismissed, but certainly
19 any claim for anything other than negligence be dismissed,
20 and specifically punitive damages.

21 THE COURT - All right. Mr. Moore?

22 MR. MOORE - May it please, Your Honor. In regard
23 to -- I will try to argue this or at least state our
24 position in order. In regard to the claim of punitive
25 damages, Your Honor, it is our understanding of the law

1 that punitive damages would apply in regard to not on --
2 not to simple negligence but to gross negligence and/or
3 recklessness. And as I understand the law, the gross
4 negligence is defined as the want of any care at all.
5 Under these facts, the testimony is they used to have a
6 maintenance crew and the maintenance crew would go by and
7 basically maintain the trails in a safe and ordinary
8 fashion, that the maintenance crew was basically fired, and
9 according to, I believe, Mr. Webster, they had an actual
10 policy in regard to these trails to do nothing.

11 THE COURT - Well, I mean but what -- what are you
12 relying on that creates a duty for them to do so?

13 MR. MOORE - That's a great question and here's
14 the answer, and the answer is -- it goes back to the
15 general requirements of the common law. As the Court knows
16 better than I, there are different duties dealing with the
17 various type of status a occupier of land occupies. In
18 regard to a trespasser, a person has a duty to do no more
19 than not to do intentional harm to the person. Now, if you
20 have a social guest or licensee, the only duty that
21 basically exists is to warn of known concealed danger and
22 to not do any act to intentionally harm. Those are the
23 duties to trespasser and social guest. The most protected
24 person in the law in regard to duties is the business
25 invitee. In regard to a business invitee, there is a duty

1 to inspect; there is a duty to maintain; there is a duty to
2 warrant; ---

3 THE COURT - But I -- excuse me -- and excuse me
4 for interrupting, but what is the standard of maintaining?

5 MR. MOORE - All right, well, if I might ---

6 THE COURT - Okay.

7 MR. MOORE - If I might. The law basically says
8 that there are two types of notice. There's actual notice,
9 and there's constructive notice. There is an obligation to
10 discover dangers in regard to a business property. Now, we
11 have a question here, and this is going to be the seminal
12 question which is the question of fact for this jury. Was
13 this or was this not a dangerous condition? You have
14 testimony in the record from Mr. Ross that it was
15 dangerous. Certainly anybody or at least anybody could
16 looking at this say a trail is a trail. If you have a four
17 foot wide foot and a half impediment on a trail, that could
18 be dangerous. Now, we asked the representative of Carolina
19 Adventure World was that dangerous, and he says that's for
20 somebody else to answer, not me. All right, I'll accept
21 that; it is for somebody else to answer. Mr. Ross
22 basically says it's dangerous. When you wind up putting a
23 -- or having a -- something that could be removed and it
24 sits in the middle of a trail where people are going to be
25 riding ATVs and you tell them you can't leave the trail and

1 you only have three inches on either side to get by, a
2 person riding up that trail with only 20 feet of visibility
3 before hitting it, what's going to happen is this, you're
4 going to have to collide with the thing; you don't have
5 time to stop, and if the thing is wet, you can't stop
6 because you're going to slide down. You don't have time to
7 stop. They've put something or maintained something in the
8 middle of the trail that you're going to have to collide
9 with. This isn't an obstacle; it is an impediment. This
10 thing is something that is going to cause a collision.
11 Think about it this way. They allow children out here, and
12 they basically say, up to the parents where the kids ride.
13 Children can ride on this basic course. Can you imagine a
14 five year old colliding with this? Now, let's think about
15 it one step further. Well, you say it's up to the parents
16 to make that decision. Well, how can the parent make that
17 decision if he doesn't know it in advance. You could
18 basically have a five year old riding up this trail one
19 more of the smaller ATVs and hitting something that is 18
20 inches high and four feet tall. You can kill a kid. Now,
21 if that's the case and it could kill a kid, then it could
22 certainly hurt somebody else. We have a question here in
23 regard to what is and what is not a dangerous condition,
24 and as the Court properly advised me in regard to expert
25 testimony in this regard, isn't that something that the

1 general population would be expected to know, that a giant
2 boulder in the middle of a trail is dangerous? And the
3 Court was right. That's not something for expert
4 testimony. That's something that people with general
5 knowledge is going to know, that if you put a four foot
6 wide, 18 inch boulder in the middle of a trail at the top
7 of a hill, you're either going to stop or run into it. It
8 is an obstacle waiting for a collision. This is a -- this
9 is a collision that's going to happen. Somebody's
10 eventually going to get hurt; somebody's going to
11 eventually get wrecked. Now, if we take as a given the
12 fact that a jury could find what their witness testified to
13 and my witness testified to that this is dangerous on
14 business property, then we have evidence in the record that
15 this condition was dangerous. That's pretty simple. Can't
16 say as a matter of law that it wasn't. We have testimony
17 that it was. So we have testimony, actual testimony, that
18 this condition was dangerous. Now, I got to prove more
19 than the condition was dangerous. I got to prove that they
20 either knew or should've known that it was there. I know
21 that, but we have testimony that they didn't do any looking
22 for over a year. We have testimony that these sorts of
23 conditions were all over the place, and we have testimony
24 that they didn't bother to go look or check or anything
25 else. That's where the issue of constructive notice comes

1 in. If they knew or in the reasonable exercise of diligent
2 care should've known that a dangerous condition was there,
3 they had an obligation to remove it; they had an obligation
4 not only to warn about it, but they had an obligation to
5 remove it. Why? Because my client was a business invitee,
6 and the law basically says there's a duty to inspect;
7 there's a duty to make safe; there's a duty to warn;
8 there's a duty to remove; all of those duties by common law
9 flow to the owner of a -- an occupant who was an invitee.
10 Now, let's take it one step further. Let's say that they
11 are chargeable with constructive notice as a jury could
12 find, because it's a factual question, I know that, but
13 let's say a jury could find that they're on constructive
14 notice that what they could find to be a dangerous
15 condition is there, they had an obligation to warn, but
16 they did different than warn. They made firmative (sic)
17 representations to this man that the track was safe. At
18 Carolina Adventure World safety is job one. Now, we know
19 what they did for safety was nothing. They didn't inspect;
20 they didn't look; they didn't make safe; they didn't warn;
21 and as a matter of fact, they represented the exact
22 opposite. Now, I understand that -- let's just assume for
23 half a moment that they didn't have to do those things the
24 law says they have to do; let's assume for just a moment
25 that they could've just remained silent. The law -- I

1 believe the case is Gilbert vs. Mid-South Marine -- but
2 there are others -- which basically says that when a person
3 undertakes to speak, he has an obligation to speak the
4 truth. Now, we know that they undertook to speak, and they
5 represented the park to be safe. They represented the
6 trail to be safe. Now, how in the world can they have no -
7 - not -- no information at all, because they didn't look,
8 and at the same time come in and tell customers, hey, this
9 is safe. Does that sound right? They assumed the duty to
10 speak. Whether they were obligated to do so or not, they
11 did. Shouldn't the law basically say what it says, that if
12 they do undertake to represent things to customers, they
13 have the obligation to tell the truth? Now, if we know --
14 if we accept what a jury could certainly find, which
15 certainly is a matter of law, it's a question of fact if
16 whether the condition was dangerous; their witness says it
17 was; our witness says it was, but that's a question of
18 fact, but isn't it a violation of their common-law
19 obligations to tell things that aren't true? You have a
20 situation here where people go in and you're riding ATVs.
21 ATVs have inherent dangers to them. An ATV, if you do
22 something stupid on it, it's not a matter of if it's going
23 to hurt you, it's a matter of when. But an ATV, if ridden
24 properly on a properly maintained area is as safe as a car,
25 maybe safer. Now, it's one thing to say, that gee, these

1 things are dangerous. Yes, they are dangerous if you do
2 something stupid or ride them somewhere stupid, yes,
3 they're dangerous, but there's no indication that my client
4 did anything stupid. As a matter of fact, he testified he
5 didn't do anything stupid. He was riding in a normal
6 fashion. If the jury determines that he was riding in a
7 normal fashion and there was something on this trail that
8 caused him to wreck, could we not legitimately have an
9 inference that the thing that caused the man to wreck and
10 maimed him for life was dangerous?

11 THE COURT - Well, I mean how do you distinguish
12 this from the moguls on a black diamond slope or the
13 hurdles on a track that is part of the impediment as an
14 inherent part of the activity?

15 MR. MOORE - That's a great question, and there's
16 a very real distinction, a very real distinction. If you
17 are on a course that has jumps, -- all right -- you expect
18 for there to be jumps; you know they're there. As a matter
19 of fact, I believe that if you are going to engage in a
20 jumping procedure, that you can probably contract away that
21 liability, saying, look, there's something inherently -- if
22 I jump, I might fall, but here this is different. You
23 know, if a course is properly maintained, it may have ruts
24 and it may have some rocks, but it's not going to have

1 something that is specifically designed to cause a
2 collision. This thing's four feet wide and 18 inches tall.

3 THE COURT - Well, what about the jump on a horse
4 track that the horses have to jump over? You've got to
5 clear it or you're going to collide with it.

6 MR. MOORE - But it's altogether different,
7 because when you go out there, you know that there are
8 going to be jumps on a horse track. You -- you know that
9 when you ride an ATV there are going to be rocks on the
10 trail. You do not know that there's going to be something
11 the size of Mount Everest sitting in the middle of the
12 track. I mean you don't expect to have something in the
13 track that is going to actually wreck you. This thing is
14 so big and so mammoth, it is over and above what would
15 normally be expected. On a horse track, if you -- if you
16 are riding and you had jumps, that's fine, but let's assume
17 that on the other end of the jump they had built a big pit
18 and covered it up with straw that you couldn't see, so
19 you're riding a horse and you jump the jump, and the horse
20 hits the straw and falls into the pit that was concealed,
21 and you broke your neck. You're saying, my God, there's a
22 pit there; say, yeah, we had a big hole there, so we just
23 sort of left it and covered it up with straw so you
24 could've see it. The pit would not be something that would
25 be anticipated. The jump is not what caused your injury.

1 The jump was fine. It's the pit that caused your injury.
2 The pit would not be something that you would've reasonably
3 anticipated in advance, and the pit would've been something
4 that was dangerous. The jump was dangerous too, but that's
5 a danger you would assumed. The pit, no. That's not
6 reasonably anticipated to be there. Now, add to that the
7 fact -- and that's the difference here. This obstruction
8 in the roadway, this giant boulder that is designed to
9 cause wrecks is not the type of recreational impediment
10 that one would expect. This is pure-t dangerous. Now, I'm
11 not saying it's pure-t dangerous as a matter of the law.
12 What I'm saying is, it is pure-t dangerous in regard to
13 what someone could find, and therein lies the difference.
14 There are inherent dangers in horse-jumping. Those
15 inherent dangers do not include things that are not
16 anticipated. There are inherent dangers with riding an
17 ATV. You could fall off, all sorts of things, but one of
18 those inherent dangers is not that you're going to run into
19 the side of a mountain. You don't anticipate those things.
20 Now, the problem is this -- the really -- the only real
21 question here is whether or not a jury could find a four
22 foot wide rock 18 inches high in the middle of a 54 inch
23 trail to be dangerous.

1 THE COURT - Well, I mean but first don't I have
2 to find that there as a matter of law is a duty owed by the
3 defendant to the plaintiff?

4 MR. MOORE - Well, I think this; I think that
5 first of all, we have to determine what is the legal status
6 of the plaintiff, and I think that clearly is that of an
7 invitee.

8 THE COURT - Okay. And I agree with that. That's
9 an invitee, but what is the standard of care that the
10 defendant as a matter of law is required to maintain?

11 MR. MOORE - And that's where I'm absolutely
12 correct, and I know the answer to that question with all of
13 my heart, because I've looked at it and I've had these
14 cases a hundred times. To an invitee there's a duty to
15 inspect; there's a duty to make safe; there's a duty to
16 disclose; there's a duty to warn; there's a duty to remove.
17 All those things are common-law duties.

18 THE COURT - So you're saying that's done on every
19 ski slope, every ---

20 MR. MOORE - Oh, yes.

21 THE COURT - --- horse track.

22 MR. MOORE - Sure. Sure. I mean let's assume
23 from -- again, yes, sir, all those things there is a duty.
24 Those things which are the known, known risks, such as a
25 jump on a horse trail, you still have to inspect it. You

1 know, let's assume for a moment that you had a horse jump -
2 - this is -- this is a much better example. Let's assume
3 that there's a horse jump; you're out here at Camden and
4 you have the horse jump; some vandal in the middle of the
5 night got super glue and went out and glued those post down
6 to where they wouldn't move, one horse hits the impediment,
7 it falls apart and the horse doesn't die, but let's assume
8 that a vandal had gotten superglue and had glued those
9 things together and the horse track had a policy that, you
10 know, we don't inspect those things ever, we never inspect
11 the jumps, and that the jump had been out there for three
12 weeks glued down where if a horse hit it, the horse was
13 going to fall and the rider was going to come tumbling off
14 and put his eye out, and before the race, they don't go out
15 to check the jumps to make sure they're in proper working
16 order. They just assumed that, well, who cares, we think
17 they're all right, let it go. And then you go out and
18 you're riding a horse, you jump and the horse hits the jump
19 and the superglue holds it in place, the horse falls, you
20 break your neck, you become a quadriplegic; you're going,
21 wait a minute, I knew that there was going to be a jump
22 there and I knew I could fall, but I also knew that the
23 jump was supposed to be reasonably pliable to where if the
24 horse hits it, the railings are going to fall off and I'll
25 just have a penalty. I didn't now that you had a trap;

1 you're going, well, gee, the vandals came in three weeks
2 ago and did that, and you're going to go, yeah, but before
3 I take my horse and pay my money on your track, don't I
4 have a right to assume that you're going to at least make
5 sure that the jumps are in proper working order, and the
6 answer is, of course you do. As matter of fact, that's one
7 of the things you'll see them doing before any and every --
8 any steeplechase you ever see. You will see that every one
9 of those jumps is inspected time and again to make positive
10 that the jump is like it's supposed to be, because if the
11 jump is maintained in a dangerous condition, that is not
12 something that a horse-jumper assumes is going to be there.
13 The jumper has the right to assume that the course is
14 properly maintained in a safe condition. Absolutely.
15 Absolutely. And you will see -- why is that? It's because
16 the courses do have business invitees. This is their
17 business. It is their obligation to make sure that that
18 track is safe and that the impediments out there are -- and
19 - are impediments that would reasonably be anticipated and
20 are not concealed dangers. Now, let's assume that the
21 vandal had gone out with his superglue and glued this stuff
22 down, and let's assume that the track owner knew it, the
23 track owner knows that three weeks ago a vandal came out
24 here with superglue and glued this thing down, and when the
25 horse hits it, boy, is that rider going to get a surprise,

1 so the track knows it. Those jumps are not in the
2 condition they're supposed to be, and the guy on the track
3 knows it. Here comes the rider, boom, he hits the thing
4 and falls. Is the man not guilty of negligence? Is the
5 owner not guilty of negligence for not disclosing that this
6 jump is not in the condition it should have been in? Yes,
7 if it had been in normal condition it would've been
8 dangerous, but not like this. This is a total different
9 concept. And the answer is, of course, the track owner
10 would be liable for that. Now, that's because the track
11 owner had notice and knowledge of a dangerous condition.
12 The question we have here is, what if he just didn't
13 inspect at all, but he had the opportunity to inspect? The
14 law says you have to inspect, because you have the
15 obligation to your customers to inspect so that you will
16 know of known dangers and be able to correct them. The law
17 basically says, if you do not, if you do not take that
18 opportunity to do a reasonable inspection on a reasonable
19 basis and reasonably maintain it, then you're charged with
20 constructive notice. And when you have constructive
21 notice, it's the exact same thing as the guy who knew the
22 jump post was glued down. Same thing. It's -- if you have
23 notice of a dangerous condition and you do nothing about
24 it, you're liable. Now, gets back to the question. Was
25 this condition something someone could consider dangerous?

1 The answer is clearly, a jury could find that it was.
2 That's not something anybody could say as a matter of law.
3 Was it dangerous? Was it not? Was it dangerous over and
4 above that which would ordinarily be expected? Again,
5 question of fact. They said the trails were safe, but was
6 the danger out there -- was the danger out there over and
7 above what a normal rider would have anticipated
8 reasonably? It's a question of fact. It's not a question
9 of law. So if we take as a given that a jury could find
10 that this thing was unreasonably dangerous and not within
11 the purview of what should be foreseeable by a ordinary
12 rider, based upon the condition it was and the
13 representations made by the track, then we've got a danger,
14 and we have constructive notice of the danger, and we have
15 a failure to warn, and we have on the other hand,
16 representations to the total contrary, and they're making
17 these representations with no factual basis to make them at
18 all. How in the world can they tell me -- how in the world
19 can they tell me that safety is job one when they do
20 absolutely nothing to inspect and maintain anyone (sic) and
21 haven't for over a year? It's a question of fact, Your
22 Honor. And again, I respectfully submit it's a question of
23 fact, and I thank you for listening to me, but honest to
24 goodness with the law of invitee and the law in regard to
25 danger -- and I understand -- but I thank you for listening

1 to me. I honestly am convinced this is a question of fact
2 for the jury.

3 THE COURT - All right, anything in reply?

4 MR. RAYNOR - Your Honor, you have hit the nail on
5 the head. This is the question of duty and the assumption
6 of risk is the question of duty and that is a legal
7 question for the Court, and, you know, the question is,
8 first of all, there is no evidence that this rock was
9 anything outside the expectation of the recreational
10 activity taking place riding four-wheelers. The simple
11 fact that Mr. Ross had an accident on this rock or on this
12 trail does not change that. Mr. Ross's subjective feelings
13 doesn't change that. The Court, as the case law points
14 out, looks at it from an objective standard. And I would
15 point out, Your Honor, we know, of the three people that
16 testified in this case, and one of them being Mr. Elkard
17 (sic) -- one of them being Mr. Webster, no one had ever
18 testified they had a problem with this rock and this
19 particular rock before. Nobody ever testified, such as an
20 expert witness, that look, this is not within the concept
21 of ATV riding; this is not something outside what is within
22 that activity. And the fact that Mr. Ross wrecked doesn't
23 prove that, Your Honor. And then I would also point out
24 that we know another gentleman went right over that rock,
25 and that was Mr. Paxton; Mr. Ross testified to that. So

1 for plaintiff's counsel to get up and say this rock was the
2 equivalent of a rail at a horse jump that somebody had
3 tampered with, it's just not -- it's not talking about
4 apples and oranges. And, Your Honor, if you -- if you let
5 this case go forward past a motion for directed direct,
6 then really what activity -- and you had a good point, the
7 ski slope. What difference is this than a black diamond
8 slope at a ski resort? You know, if I listen to Mr. Moore,
9 you know, 20 people could go down that slope and then I
10 could go down it, knowing it was a black diamond slope, and
11 get there and the moguls are too big and I fall. Does that
12 mean that that slope is now, you know, outside the
13 assumption of risk of the sport of skiing? I don't think
14 so. I think what that means is that's the challenge, and
15 just like you've heard the one witness say, you know, as
16 you try to get better, sometimes you fall, but that's part
17 of the sport. It's no different than if I'm playing
18 football; if somebody hits me and I say, well, I -- I knew
19 I was playing football, but I didn't expect that guy to hit
20 me that hard, and there's actually a case kind of on that
21 point. That's part of the sport, and just because you got
22 hit harder than you thought you were going to get hit. So,
23 Your Honor, the analysis here about the assumption of risk
24 is -- you know, that is the first question. They've got to
25 show that there's some duty -- you know, this isn't a

1 Piggly Wiggly -- we're not walking around a Piggly Wiggly
2 here. We're engaging in that recreational activity of
3 riding a four-wheel vehicle in an off-road condition. They
4 have -- that's their burden to show that there is some
5 breach of that duty or -- I'm sorry -- some duty that
6 existed that was breached, and they don't prove that just
7 by showing Mr. Ross wrecked his vehicle. In fact, Your
8 Honor, I would -- I contend the Nelson vs. Piggly Wiggly
9 Center case which is 390 South Carolina 382, a 2010 case,
10 and I have a copy of this, because Your Honor, it talks
11 about the fact, you know, that a landowner doesn't have a
12 duty to guard against improper operation of a vehicle and
13 somebody wrecking their car, and if I follow Mr. Moore's
14 line of thought here -- you know, if somebody crashed their
15 car on a curvy road, then that's a dangerous condition, but
16 I think most people would say, hey, a curvy road is
17 inherent in the risk of operating a car, but you can't just
18 prove your case by showing I wrecked the car, and that's
19 essentially what he's trying to do. (Pause) And, Your
20 Honor, the -- I would -- I'm citing that case, and in that
21 case an expert witness testified about various things about
22 the -- this was an accident in a parking lot -- it was a
23 tragic case; the grandmother actually ran over her
24 granddaughter, but one thing the Court held that the
25 expert's opinion did not as a matter of law establish a

1 duty on a respondent to guard against the possibility that
2 an improperly operated vehicle would injure the plaintiff.
3 And that was cited as -- Court -- of the Court entering
4 judgment as a matter of law, and it's essentially what we
5 have here. They have evidence of a crash but nothing more.
6 And, Your Honor, the express release and assumption of risk
7 document, it talks about the hazards of what was being
8 expected at this facility. That should be go to, you know,
9 the objective inquiry. And, again, Your Honor, we're not
10 talking about -- Mr. Moore wants to talk about all the
11 children. We're talking about the duty that is owed to
12 this adult plaintiff himself, not somebody else, the duty
13 owed to him.

14 THE COURT - All right.

15 MR. RAYNOR - So I would ask that the case be
16 dismissed, Your Honor.

17 THE COURT - All right, I've got a handle of it;
18 I'll take it under advisement. I need to take a look at
19 some of these cases over lunch, and I'll let you know my
20 decision when you come back.

21 MR. RAYNOR - Thank you, Your Honor.

22 THE COURT - Anything further from the plaintiff
23 before we recess?

24 MR. MOORE - No, sir, Your Honor. Thank you.

25 THE COURT - Anything from the defense?

1 MR. STEGMAIER - What time, sir?

2 THE COURT - 1:30.

3 MR. STEGMAIER - Thank you, sir.

4 THE COURT - All right.

5 (WHEREUPON, LUNCH RECESS TAKEN.)

6 THE COURT - All right, I've done some research
7 and looked into the matter and reviewed the pleadings, and
8 I am going to grant the defendant's motion for a directed
9 verdict. I don't see any evidence in the record that show
10 that the defendant failed to exercise the degree of care
11 that is generally accepted in the operation of businesses
12 engaged in providing facilities to all terrain vehicles.
13 The plaintiff signed an assumption of risk agreement
14 acknowledging the inherent dangers of ATV trail riding.
15 Those dangers it specifically says vehicle rollover is an
16 inherent risk when you ride on those trails. It's not like
17 the defendant went and put this boulder out there in the
18 trail; it was a natural part of the trail. Part of the ATV
19 trail-riding experience is riding up slopes, through water,
20 over rocks, up ridges; that's part of the activity and the
21 inherent characteristic of the activity. There were
22 different trails, the beginner green trail, the novice blue
23 trail, and the double black diamond was designated as the
24 most challenging trails on the facility which in itself
25 carries certain inherent risk with the activity. So I find

1 that the defendant -- number one, the plaintiff has failed
2 to show that there is a duty or whether by statute or
3 general business -- I know there's -- or I -- I can't
4 believe there's a statute or it would've been brought up,
5 but there's nothing that shows that the generally accepted
6 business practices of operating these types of facilities
7 for ATV off-road trail-riding requires them to go remove
8 impediments from these trail-ways, that that is part of the
9 experience of riding these ATVs through the woods and
10 through the trails and things of that nature, and so,
11 therefore, there's no evidence that shows that the
12 defendant failed to exercise the degree of care that is
13 generally accepted in operation of these types of
14 businesses, so I'm going to grant the directed verdict, and
15 that's my ruling. All right.

16 MR. RAYNOR - Thank you, Your Honor.

17 THE COURT - Thank you.

18 MR. MOORE - Your Honor, ---

19 THE COURT - Do you want a written order to that
20 effect or is the record ---

21 MR. MOORE - Yes, sir, please. Yes. I would like
22 it if possible, yes, sir.

23 THE COURT - All right.

24 MR. MOORE - Actually, Your Honor, I think not.

25 We can appeal with this. This is ---

1 THE COURT - Okay, we've got a record; I've voiced
2 my ruling on the record, and I'll do a Form 4 that
3 basically says that the -- at the conclusion of the
4 plaintiff's case the defendant's motion for directed
5 verdict was granted, and you'll have the record and
6 everything thus far for appellate review. Okay?

7 MR. MOORE - Thank you, Your Honor.

8 THE COURT - All right, thank you very much.

9 (WHEREUPON, BRIEF PAUSE OFF THE RECORD BETWEEN
10 COUNSEL AND COURT REPORTER REGARDING ORDERING TRANSCRIPTS
11 AND ALSO THE JUDGE STATING WE NEED TO BRING THE JURY OUT TO
12 BE RELEASED)

13 THE COURT - Anything from the plaintiff before we
14 bring the jury out?

15 MR. MOORE - We certainly accept -- we would like
16 to point out to the Court, Your Honor, again, I would like
17 just the exceptions to be on the record.

18 THE COURT - Okay.

19 MR. MOORE - The law is incredibly clear on these
20 pre-release forms that a person may not release and
21 certainly may not release gross negligence in advance; it
22 violates public policy. The case law is just directly on
23 point there. The law also is directly on point, the case
24 law that says that a release which releases everything is
25 not allowed, but thirdly of all, the law is very clear that

1 one cannot release that which he does not know. There is
2 no question but that you may probably released the known
3 dangers, but there's a difference between a known danger
4 that things will roll over and a danger that they --
5 they're -- they've got something sitting out on the course
6 that's basically a trap that will cause them to roll over.
7 A known rollover -- if the thing had rolled over on its
8 own, that's one thing, but when they've got traps ---

9 THE COURT - Well, and I don't know that it's a
10 trap. It was a rock that was in the trail on the most
11 demanding trail on the course.

12 MR. MOORE - But that's not the question. The
13 question is could reasonable people disagree. Is it a
14 question of fact as to whether it was a trap or not?

15 THE COURT - Well, the first thing though I have
16 to rule is whether a matter of law a duty exists for the
17 operators of these ATV trails to go out on the trails and
18 to remove rocks from the trail.

19 MOORE - There -- certainly there's no duty to go
20 out and remove rocks from the trail. There are duties to
21 go out and to inspect and remove traps and things which are
22 inherently dangerous, and there's a major distinction
23 there, and therein is where the entire problem lies in this
24 case. Therein is where the entire problem lies in this
25 case. The question is, was this thing so huge and

1 inherently dangerous as to be a trap, or was this thing
2 simply a rock. That's not something that should be decided
3 as a matter of law. In the United States and South
4 Carolina we normally have finders of fact that are
5 presented questions such as this. Now, when you have a set
6 of inferences and a set of testimony where they say they
7 don't know if it's dangerous or not and the plaintiff says
8 that this is not something that would rationally be
9 expected to be on a trail, it is a trap. It is a -- either
10 a latent defect ---

11 THE COURT - And I understand your argument, Mr.
12 Moore. You made the argument against the motion for a
13 directed verdict. I think that's all on the record. I've
14 made my ruling, ---

15 MR. MOORE - Sure.

16 THE COURT - --- and I'm going to let it stand it
17 at that.

18 MR. MOORE - I wasn't going to say anything until
19 the Court asked. Thank you.

20 THE COURT - Thank you very much. Anything from
21 the plaintiff before we bring the jury in?

22 MR. MOORE - No, sir.

23 THE COURT - Anything from the defense?

24 MR. RAYNOR - No, sir.

1 THE COURT - All right, let's bring the jury in,
2 please.

3 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

4 THE COURT - All right, ladies and gentlemen,
5 welcome back. Over lunch we had to address some matters of
6 law and I've addressed them with the attorneys and there
7 was a motion filed which I granted which effectively ends
8 this case. Basically my ruling was that there were no
9 facts upon which a jury could grant a verdict in favor of
10 the plaintiff, and that as a matter of law the defendant
11 had not breached a duty. That is a legal determination
12 that I have to make before I even allow the case to go to a
13 jury, and so I have made that ruling which in effect ends
14 this case, but I do want to thank you for your service not
15 only for this case but for this week. This will conclude
16 your duties on this case and will also conclude your duties
17 for this week. You have a one year disqualification from
18 serving jury duty in Circuit Court, and you have a three
19 year exemption. I hope you don't use your exemption,
20 because we do need good jurors, but I do want to thank you
21 for your service, and you're free to go for the remainder
22 of the day and for the remainder of the week. Thank you
23 very much.

24 MR. MOORE - Your Honor, could I -- we're free to
25 talk to the jury? They're free to talk to us, aren't they?

1 THE COURT - Yes, they can -- I mean at this point
2 in time you can discuss whatever you want to with whomever
3 you want to, if you want to. All right? If you don't want
4 to, you don't have to, but you are certainly at liberty.
5 Now, the clerk, you need something?

6 CLERK - I just want to let them know we
7 appreciate your service this week, and we will put your
8 checks in the mail tomorrow along with a statement for your
9 work. A statement for your work will be attached to your
10 check.

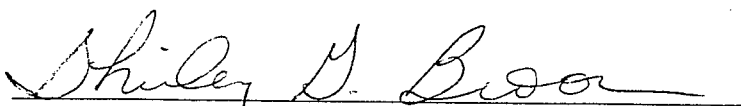
11 THE COURT - Don't spend all the money in one
12 place. All right, thank you very much.

13 (END OF TRANSCRIPT)
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 275 pages consisting of Volumes I and II is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Cory Ross vs. Carolina Adventure World, as taken by me in the Court of Common Pleas of the Sixth Judicial Circuit on May 27 and 28, 2015, and provided by me this the 25th day of August, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina



CAROLINA ADVENTURE WORLD, LLC
ASSUMPTION OF RISK, RELEASE OF LIABILITY AND INDEMNITY AGREEMENT.

In consideration of Carolina Adventure World, LLC ("CA World") permitting me or my minor child to participate in Recreational Activities at CA World, on the real property and improvements operated by CA World (the "Premises"), or at events sponsored by CA World, I, the undersigned, for myself, and for my child if a participant, and our heirs, personal representatives, successors and assigns, agree to the following terms and conditions.

"Recreational Activities" mean all recreational activities provided, offered, or permitted by CA World at the Premises or at a CA World sponsored event, including, but are not limited to, the use or operation of motorcycles, all-terrain vehicles and other types of motorized vehicles for off-road driving, motor-cross or racing on the Premises or at CA World sponsored events, together with all tracks, trails, improvements, buildings, facilities, equipment or goods. Recreational Activities also include your participation or involvement in activities as a driver, operator, passenger, sponsor, mechanic, or person otherwise assisting or supporting the use or operation of a vehicle at the Premises or CA World sponsored events.

I choose to participate in the Recreational Activities voluntarily and of my free will. I know that (1) the Recreational Activities are dangerous and involve inherent risks to my health and safety including, but not limited to, bodily injury, paralysis, disability, dismemberment or death; (2) some of the risks include collisions, crashes, vehicle roll-overs, falls, fires, explosions, mechanical failure, acts or omissions of other persons, and forces of nature such as rain, wind, ice and lightning; (3) the Recreational Activities are physically demanding and could cause serious or life threatening medical conditions like heart attack or stroke; (4) by participating in the Recreational Activities I am voluntary and of my free will exposing myself to these risks and dangers with full knowledge that they may result in my injury or death. With full knowledge and acceptance of these facts, I expressly **ASSUME THE RISK** of my participation in the Recreational Activities and agree that CA World and the Released Parties shall have no liability or legal duty to me for the risks that I am voluntarily and expressly assuming.

I also know that I may be injured, damaged or die as a result of the acts or omissions of other persons including the negligence or gross negligence of CA World, its employees or representatives. Acknowledging that such risks exist, I hereby forever **RELEASE AND DISCHARGE** CA World and Wilburn Enterprises, LLC, and their respective officers, managers, members, employees, representatives, agents, successors and assigns (the "Released Parties"), of and from any and all liabilities, strict liability, claims, damages, punitive damages, property damage, actions or causes of action, that I, anyone on my behalf, my heirs, or personal representative have or may have for or relating to any injury or damage to my person or property suffered or claimed to have been suffered by me or death which arises out of, is related to, results from, or is caused in whole or in part by my participation in any of the Recreational Activities at CA World, the Premises, or a CA World sponsored event, including, but not limited to, any claim that an act or omission was **caused in whole or in part by the NEGLIGENCE or GROSS NEGLIGENCE of one or more of the Released Parties** or by hidden, latent or obvious defects at CA World, the Premises or a CA World sponsored event.

I further agree to **INDEMNIFY, HOLD HARMLESS, AND DEFEND** the Released Parties in any claim, action or proceeding from and against all liabilities, strict liability, claims, damages, punitive damages, property damage, actions or causes of action, for or relating to my participation in any of the Recreational Activities at CA World, the Premises, or a CA World sponsored event, or my failure to comply with the terms of this Agreement, regardless of whether the act or omission was **caused in whole or in part by the NEGLIGENCE or GROSS NEGLIGENCE of one or more of the Released Parties** or by hidden, latent or obvious defects at CA World, the Premises or a CA World sponsored event.

I certify, covenant and warrant that: I have the skills and ability needed to carefully and competently participate in the Recreational Activities, which I will employ; I have inspected the vehicle(s) I bring to CA World or a CA World sponsored event and that I have no knowledge of any condition that might render the vehicle(s) unsafe in any way; I have no health condition that will put me or others at increased risk while participating in the Recreational Activities; I will follow all rules and safety standards applicable to the Recreational Activities; I am solely responsible for selecting the trail that best suits my experience and ability; and under no circumstances will I leave a marked trail. If the participant in Recreation Activities is a minor, both the minor participant and his or her parent or legal guardian further certify, covenant and warrant that: the parent or legal guardian signing below is the legal parent or legal guardian of the minor; has legal custody of the minor; has the legal right to act on behalf of the minor; has legal authority to enter into this Agreement and bind the minor to its terms; the parent or legal guardian is signing individually and on behalf of the minor; and the parent or legal guardian and the minor both agree to the terms hereof.

The laws of the State of South Carolina shall govern this Agreement. Any provision or term of this Agreement that is invalid, illegal or unenforceable in any respect shall be severed and ineffective to the extent of such invalidity, illegality or unenforceability without in any way affecting the validity, legality or enforceability of the remaining provisions and terms of the Agreement. CA World may take and use photographs, video, film,

CA World may take and use photographs, video, film, and other images of me participating in or observing activities. I waive the right of privacy, publicity, compensation, copyright or other rights to those images and I consent to CA World using those images for any purpose.

I have read and fully understand this Assumption of Risk, Release of Liability and Indemnity Agreement and agree to be bound by its terms. I understand that by signing this Agreement I am waiving significant legal rights, including the right to assert claims against, sue or recover from the CA World and the Released Parties. I sign this Agreement freely and willingly.

Adult Information:

Print Participant Name: _____ Participant Age and D/B : _____

Participant Signature: X _____ Date: _____

Parent/Legal Guardian of Minor Information:

Print Minor Participant Name: _____ Minor's Age and D/B: _____

Print Parent/Legal Guardian Name: _____

I affirm I am the legal Parent/Legal Guardian of Minor: X _____ Date: _____

Please send me information from Carolina Adventure World - Email address: _____

CAROLINA ADVENTURE WORLD

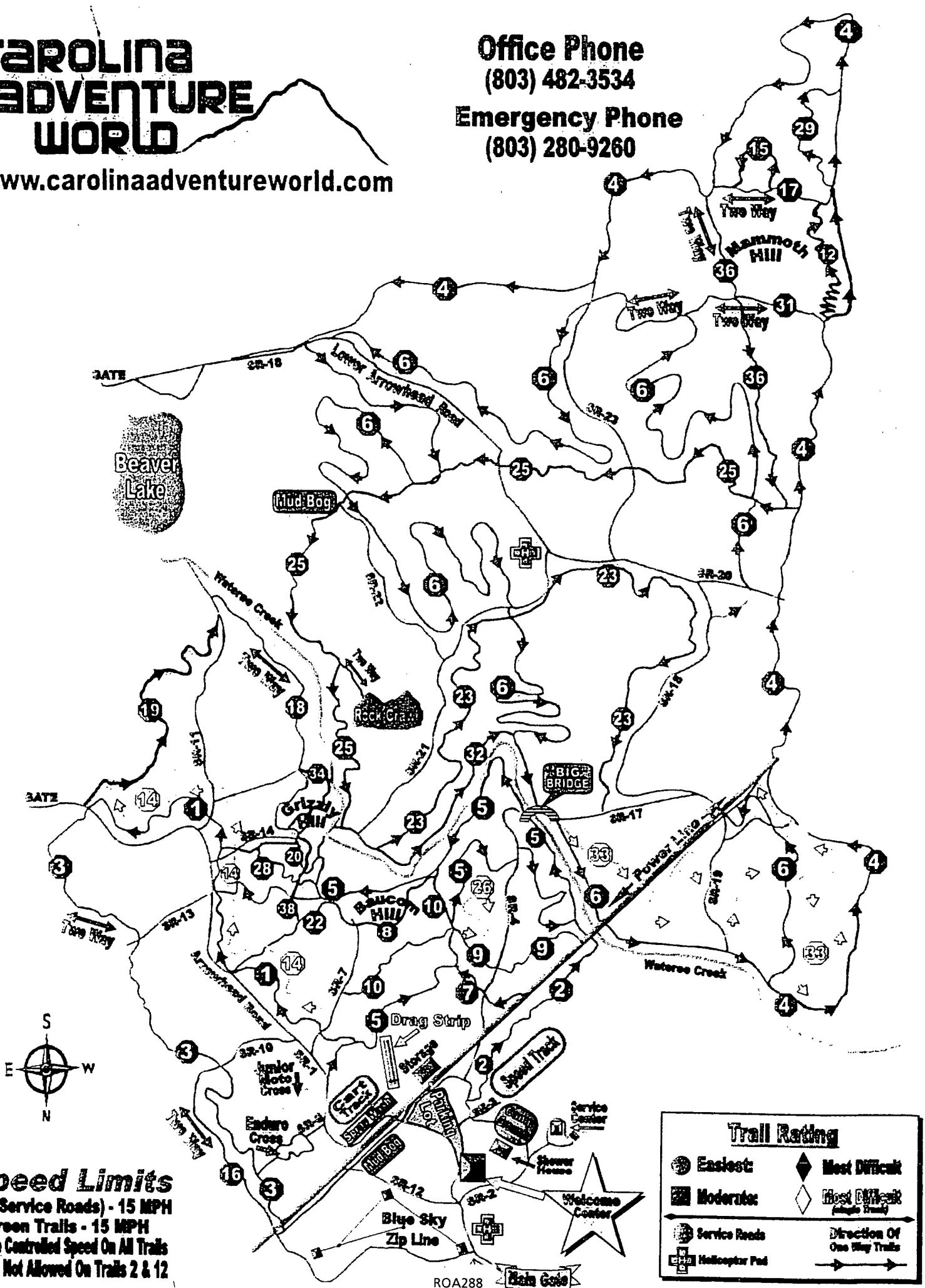
www.carolinaadventureworld.com

Office Phone

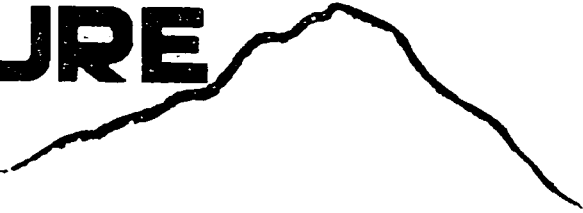
(803) 482-3534

Emergency Phone

(803) 280-9260



CAROLINA ADVENTURE WORLD



It's always safety first at CAW. Please be courteous and considerate of your fellow riders, and help keep our children safe.

Camping and fires in approved areas only. Please NO littering.

Admittance ID's—Annual pass riders must have their annual pass card with them upon entry. Day pass riders will be given a wristband to wear as identification. Please stop when signaled by a park ranger or CAW staff.

Helmets--- All riders are required to wear a DOT approved helmet at all times. (Except golf carts.)

MX Daily Riding Tracks---- CAW strongly recommends that you wear a chest protector on these tracks.

Tire restrictions--- No Tire Restrictions!!!! Please No Paddle, Blade, Spike, Chains. All others are welcome here at CAW. Please don't rut out the trails or service roads. Use designated mud areas.

Riding Double--- Only on Factory designed ATV or RUV units designed for two riders.

Three Wheelers--- NOT Allowed

Minors--- Anyone under the age of 18 must have a parent or legal guardians sign the liability waiver and on-site with them at all times. CAW recommends that you follow Federal Guidelines on ATV age restrictions.

Rentals—CAW currently rents Golf carts and ATV's. Please see the rental section for details.

Trails--- Ride cautiously and safely at all times. Stay on marked trails, and obey all signs, gates and barriers. See map for one and two way trails. Federal Law—No riding in creek beds. Crossings allowed only at marked areas.

Speed Limits--- Parking lots and camping -- Less than 10 MPH. Please obey all speed limit signs.

-16143

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 01 2015

SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Common Pleas Court

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2011-CP-20-319

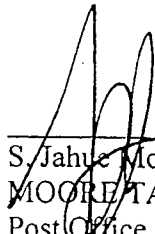
 Corey Ross.....Appellants,

v.

Carolina Adventure World, LLC.....Respondents.

NOTICE OF APPEAL

Corey Ross hereby appeals the Order of the Honorable Benjamin H. Culbertson dated May 28, 2015. Counsel for Appellants received oral notice of this Order on May 28, 2015, but have not yet received written notice of this Order.


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Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2015-001178

RECEIVED

JUL 14 2016

SC Court of Appeals

Cory Ross, ... Appellant,

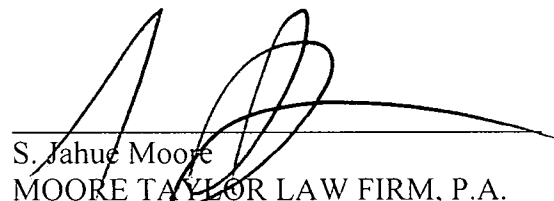
v.

Carolina Adventure World, LLC, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies that the Record on Appeal complies with
Rule 210(g) SCAR.

Respectfully submitted,


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Telephone: 803-796-9160
Attorney for Appellant Corey Ross

West Columbia, South Carolina

July 8, 2016

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2015-001178

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SC Court of Appeals

Cory Ross, ... Appellant,

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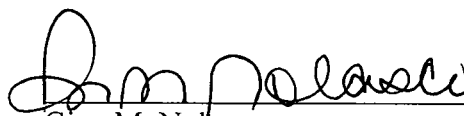
Carolina Adventure World, LLC,, ... Respondents.

PROOF OF SERVICE

I, Gina M. Nolasco, an employee of Moore Taylor Law Firm, PA certify that I
have served the Record on Appeal on counsel of record for Respondents in this action
by depositing a copy of same in the US Mail, postage prepaid, on July 15, 2016 to:

Christian Stegmaier, Esq.
Meghan Hazelwood Hall, Esq.
COLLINS AND LACY, P.C.
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