

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED
DEC 04 2017
SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA, Respondents.

RECORD ON APPEAL

Collins & Lacy, P.C.

Christian Stegmaier, Esquire
PO Box 12487
Columbia, SC 29211
Attorney for Respondents

Collins & Lacy, P.C.

Megan Hazelwood Hall, Esquire
Kelsey Jan Brudvig, Esquire
1330 Lady Street
Sixth Floor
Columbia, SC 29201
Attorneys for Respondents

GRAHAM LAW FIRM, P.A.

Edward L. Graham, Esquire (SC Bar: 2483)
Post Office Box 550
Florence, SC 29503
t. (843) 662-3281
Attorney for Appellants

KROMPECHER LAW FIRM, PLLC

Pedro Eduardo Krompecher, Esquire (SC Bar: 100485)
PO Box 6639
Raleigh, NC 27628
Attorney for Appellants

INDEX

Index	i
1. Orders.....	1
Order Granting Plaintiffs’ Motion to Amend Complaint	1
Order Granting Defendants’ Motion for Summary Judgment.....	5
Order Regarding Plaintiffs’ Motion for Reconsideration	21
Order Denying Plaintiffs’ Denying Motion for Reconsideration	24
2. Pleadings.....	28
Summons and Complaint 2014-CP-32-02210.....	28
Amended Summons and Complaint 2014-CP-32-02210	39
Second Amended Summons and Complaint 2014-CP-32-02210.....	53
Defendants’ Answer to Plaintiffs’ Second Amended Summons and Complaint 2014-CP- 32-02210	65
Defendants’ Answer to Plaintiffs’ Interrogatories.....	80
Defendants’ Answer to Plaintiffs’ Second Set of Interrogatories.....	93
Notice of Appeal	111
Amended Notice of Appeal	114
3. Motions and Supporting Documents	117
Defendants’ Motion for Partial Summary Judgment.....	117
Plaintiffs’ Memorandum in Opposition to Defendants’ Motion for Partial Summary Judgment.....	125
Affidavit of Francesco Pia, Ph.D.	136
Affidavit of Ralph Johnson, Ph.D.....	160

Memorandum in Support of Defendants’ Motion for Partial Summary Judgment	186
Affidavit of Andrea Lange.....	200
Pine Island House Rules	202
Bylaws.....	224
Plaintiffs’ Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP	238
Plaintiffs’ Memorandum of Law in Support of Their Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP	240
Exh 1- December 10, 2015, Stegmaier Email in Reference to Defendants’ Memorandum in Support of Defendants’ Motion for Partial Summary Judgment	268
Supplemental Affidavit of Francesco Pia, Ph.D.	270
Supplemental Affidavit of Ralph Johnson, Ph.D.....	276
Defendants’ Memorandum in Opposition to Plaintiffs’ Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP	284
Plaintiffs’ Reply to Defendants’ Memorandum in Opposition to Plaintiffs’ Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP.....	300
4. Transcripts and Supporting Documents.....	313
Select pages from Mandy Nicole Bellamy Deposition Transcript, August 4, 2015.....	313
Deposition Exhibit 7e and 8 from Mandy Nicole Bellamy Deposition Transcript, August 4, 2015	345
Transcript of Hearing, Motion for Summary Judgment, December 11, 2015	347
5. Exhibits	400

Email Correspondence Between the Honorable William P. Keesley and Counsel For Both
the Plaintiffs and the Defendants on June 15-17, 2016400
Statement of Evan McPherson.....411
Statement of John W. Seay413
6. Certificate of Appellant.....414

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

CIVIL ACTION NO. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of
Evan M. Myers,

Plaintiffs,

v.

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray; South Carolina)
Electric and Gas Holding Company, Inc.;
SCANA; Mandy Nicole Bellamy,

Defendants.

**CONSENT ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND COMPLAINT**

FILED
CLERK OF COURT
JULY 13 2015
LEXINGTON, SOUTH CAROLINA

Whereas, on June 3, 2015, Plaintiff filed a Motion to Amend Complaint and attached a proposed Second Amended Complaint thereto. Since the filing of the motion, Plaintiff has revised the proposed Second Amended Complaint and Defendant has consented to allow Plaintiff to amend its Complaint.

Wherefore, with the consent of the parties, this Court hereby grants Plaintiff leave to amend its Complaint. The Second Amended Complaint attached hereto as EXHIBIT A shall be served upon Defendant, after which Defendant shall have fifteen (15) days within which to serve an Answer to the Complaint.

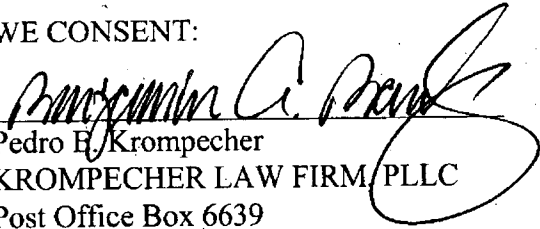
IT IS SO ORDERED.

William C. Housley
Presiding Judge, Eleventh Judicial Circuit

~~Columbia, South Carolina~~

October 23, 2015

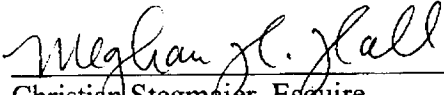
WE CONSENT:


Pedro H. Krompecher
KROMPECHER LAW FIRM, PLLC
Post Office Box 6639
Raleigh, North Carolina 27628
Telephone: (919) 977 8082
Facsimile: (919) 746 7588

AND

Benjamin A. Baroody
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578
Telephone: (843) 448 2400
Facsimile: (843) 448 3022
- Attorneys for the Plaintiffs

WE CONSENT:


Christian Stegmaier, Esquire
Meghan H. Hall, Esquire
COLLINS & LACY, PC
Post Office Box 12487
Columbia, South Carolina 29211
803-256-2660
- Attorneys for the Defendants

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP3202210

Cassandra M Myers Evan M Myers Est	Bartholomew Myers	Consolidated Employee Recreation Clubs South Carolina Electric and Gas Holding Company Inc	Pine Island Club at Lake Murray SCANA
---	-------------------	--	---

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. 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;

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:

ORDER INFORMATION

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge	Judge Code	Date
		10/28/2015

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **2nd of November 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

✓ **Pedro Eduardo Krompecher** PO Box 6639 Raleigh, NC
27628
~~**Benjamin Albert Baroody** PO Box 357 Myrtle Beach, SC
29578~~

Christian Stegmaier PO Box 12487 Columbia, SC 29211
Meghan Hazelwood Hall Esq 1330 Lady Street Sixth Floor
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg /mh

Court Reporter

Beth A. Carrigg - Clerk of Court

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.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
Cassandra M. Myers and Bartholomew)
Myers in their capacity as Co-Personal)
Representatives of the Estate of Evan)
Morris Myers,)

Plaintiffs,)

vs.)

The Consolidated Employee Recreation)
Clubs, a non-profit organization a/k/a Pine)
Island Club at Lake Murray, South Carolina)
Electric and Gas Holding Company, Inc.;)
SCANA,)

Defendants.)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-32-02210

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

RECEIVED

DEC 12 2016

SC Court of Appeals

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 AUG - 8 P 3:04

FILED

The Defendants' motion for summary judgment was heard on December 11, 2015. The court has wrestled with the issue for an extended period and has requested additional input from the attorneys in the interim. Having carefully considered the matter, the court finds that summary judgment must be granted. The events giving rise to this lawsuit are the result of a tragic accident, and there is no evidence that they were the result of any negligence or gross negligence on the part of the Defendants.

FACTUAL/PROCEDURAL BACKGROUND

The Plaintiffs' decedent drowned on June 15, 2011, after having entered the waters of Lake Murray from a boat dock at the Pine Island Club. Defendants are The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray ("Pine Island Club" or the "club"), South Carolina Electric and Gas Holding Company, Inc., and SCANA (all defendants being designated collectively as "SCANA Defendants" or "Defendants"). The Plaintiffs Cassandra M. Myers and Bartholomew Myers, in their capacity as

WPK
#1

Co-Personal Representatives of the Estate of Evan Morris Myers, brought a wrongful death action against the SCANA Defendants.¹ The Plaintiffs subsequently amended their complaint on October 2, 2015, so that the Plaintiffs' remaining negligence and gross negligence causes of action allege the SCANA Defendants failed to warn decedent of an incoming storm and failed to provide lifesaving measures, which they allege could have prevented decedent from drowning.

Decedent Evan Morris Myers was the invited guest of Mandy Nicole Bellamy ("Bellamy") at the Pine Island Club on June 15, 2011. (Complaint ¶ 7). Defendant Consolidated Employee Recreation Clubs owns and operates the Pine Island Club at Lake Murray and is a charitable non-profit organization created for the benefit of SCANA and SCE&G-related company employees and their families. (Affidavit of Andrea L. Lange, at ¶ 4). Mandy Nicole Bellamy's father, Ralph Bellamy, is a member of the Pine Island Club, and she enjoyed the benefits of his affiliation. (Mandy Bellamy Dep., p. 20, line 24 – p. 21, line 10).

WPK
#2

In order to be a member of the Pine Island Club, one must be an employee of SCANA (or have a relationship with SCANA as provided in the by-laws), pay an initiation fee, and pay dues. There is a guard gate at the entrance. Guests of members cannot be on the property without the member also being present. Mr. Myers and Ms. Bellamy had been at the location on a previous occasion. There is a swimming area of the lake that is roped off and a swimming beach adjoins it as part of the club property. There is a separate swimming pool in another area, which has lifeguards on duty. The drowning did not occur at either of those locations.

¹ Plaintiffs' claims have been dismissed against Lexington County Medical Center Auxiliary, Lexington County Sheriff's Department, and the Lexington County Coroner's Office ("Lexington County Defendants"), as well as Mandy Nicole Bellamy and her brother Matthew Bellamy ("Bellamy Defendants").

In the early evening hours of June 15, 2011, Myers and Bellamy first went for a swim at the roped-off area. (Bellamy Dep., p. 74 line 24 – p. 75, line 6).² There is evidence that they were the only people at the roped-off swimming area and that Ms. Bellamy's car was the only one in the parking area. After swimming in that designated swimming area, Myers suggested that they jump from the boat dock and swim at a location that is not designated for swimming. They left their bags and towels at the beach.

The SCANA Defendants maintain that the area where Mr. Myers drowned was in the open waters of Lake Murray, not within the confines of the Pine Island Club. (Bellamy Dep., p. 145 line 25 – p. 146 line 7) (Bellamy Dep., p. 93, lines 10-13). Having reviewed the evidence presented, the only evidence in the record supports that contention. However, there is no question but that they gained access to the lake by using the property of the Pine Island Club.

WPA
#3

A thunderstorm was approaching, and, in the light most favorable to the Plaintiffs, it eventually developed into a violent storm. The swimming pool was closed because of the incoming storm. The lifeguards left the property. The Plaintiffs place significance on those facts. The only evidence is that the lifeguards were assigned to the swimming pool, not to the designated swimming area at the swimming beach, and certainly were not assigned to cover the entire area of the lake accessible from the club's property. From the exhibits produced, the Pine Island Club is surrounded by the waters of Lake Murray, with only a small vehicle access road connecting it to the mainland.

The memorandum in opposition to the motion states that there is evidence that the two swimmers left the area which is roped-off after the time where the swimming pool had been closed and the lifeguard(s) had left the swimming pool area. It states that the two of them

² Signage at the swimming beach stated that swimmers swam at their own risk. (Bellamy Dep., p. 74, line 24 – p. 75, lines 1-17; Bellamy Dep., Ex. 7e).

walked, in wet bathing suits, past a caretaker and jumped from the dock about 50 feet away from that person. The SCANA Defendants dispute that there is anything in the record before the court to substantiate any claims that an employee or agent associated with the Defendants was aware or should have been aware that the two swimmers were in the water off the dock. Viewed in the light most favorable to the Plaintiffs, the court feels that it must accept that there is evidence that a caretaker would have seen the two swimmers go past in wet bathing suits and head toward the boat dock or, at the very least, that the Plaintiffs would be given further opportunity to develop evidence of that fact. However, there is no evidence that the caretaker had any duty to supervise or warn the Plaintiffs' decedent of the approaching storm or to warn of the dangers of swimming in the lake.

WRP
#4

At some point after jumping off the dock, outside the confined swimming area, Mr. Myers struggled to keep afloat and tragically drowned. (Bellamy Dep., p. 96, line 25 – p. 97, line 24). Additional signage at the subject dock from which decedent jumped indicated a prohibition against swimming in the area in which he drowned. (Bellamy Dep., p. 86, line 25 – p. 87, line 14; Bellamy Dep., Ex. 8). The open waters of Lake Murray are owned by South Carolina Electric & Gas and all persons have access to the open waters for recreational use at any time. The point of entry into the lake was clearly from property of the Pine Island Club.

STANDARD OF REVIEW

A court will grant a motion for summary judgment when there exists no genuine issue of material fact and a party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view both the evidence and all reasonable inferences from the evidence in the light most favorable to the non-moving party. Simmons v. Tuomey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000).

Nonetheless, the trial court, "cannot ignore facts unfavorable to [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Accordingly, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory or shadowy one. Saluda Motor Lines v. Crouch, 300 S.C. 43, 46, 386 S.E. 2d 290, 292 (Ct. App. 1989).

The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).³ With respect to an issue on which the non-moving party has the burden of proof, the moving party may point out to the trial court that there is an absence of evidence to support the non-moving party's case. Hedgepath v. AT&T, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001). The non-moving party must

WPK
#5

³ In Bass v. Gopal, Inc., 384 S.C. 238, 247 n.6, 680 S.E.2d 917, 921 n.6 (Ct. App. 2009), the Court of Appeals addressed the recent change in summary judgment standard. In granting the summary judgment motion, the South Carolina Court of Appeals noted:

[I]n Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), our Supreme Court stated that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. However, in footnote 3 of the opinion, the Court was careful to point out that its pronouncement concerning a mere scintilla of evidence was not necessary for its determination of the outcome in the Hancock case. In any event, we must assume any evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative.

The Hancock Court also cited McDowell v. Stille Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947), for the proposition "that although there was a scintilla of testimony that could be used to support the claimants' position, when the entire testimony of the witnesses was viewed as a whole, it was obvious the testimony in support of claimants' position rested on speculation and thus had no probative value." Id.

then “do more than simply show that there is some metaphysical doubt as to the materials facts[.]” but “must come forward with specific facts showing that there is a genuine issue for trial.” Id. “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

DISCUSSION

I. No Evidence of Proximate Cause

The SCANA Defendants are entitled to summary judgment as to any claims arising from an assertion that the weather conditions caused or contributed to the drowning, as well as on any claims made on the basis of a failure to warn of the storm or a failure to close the facility and require Mr. Myers to leave.

The Plaintiffs base their claim in large part on the position that the weather conditions caused the decedent to drown. After carefully searching the record, in the light most favorable to the Plaintiffs, there is only evidence to support the following: 1) a storm was approaching; 2) the pool area was closed because of it; 3) the lifeguards who watched the pool area were sent home; 4) the storm eventually reached the Pine Island Club; 5) the autopsy did not discover any medical condition that caused the decedent to have difficulty in swimming; 6) EMS did not go to the scene because of bad weather conditions (at some unspecified location). The Lexington County Sheriff's office responded.

The exhibits filed in support of the motion include a rule for the Pine Island Club that states, “5. In case of inclement weather, the clubhouse and grounds may be closed.” As previously mentioned, a lifeguard is present at the pool area, and the pool had been closed based on an approaching storm. The grounds had not been closed.

The deposition of the only witness to the drowning, Ms. Bellamy, stated that the drowning occurred before the storm arrived at the Pine Island Club. She testified that the water

was calm and that the decedent exhibited distress for an unknown reason, seemed to panic, and was not able to follow her instructions to relax and try to float. There is no evidence that lightning or any other element associated with the storm caused or contributed to the drowning. There is no evidence that weather conditions hindered anyone, including the EMS personnel, from any realistic rescue attempt that could have saved the life of Mr. Myers. EMS did cease attempting to go to the location due to the weather, but there is no indication they could have saved the life of Mr. Myers had they been able to make it to the location.

It is pointed out by the SCANA Defendants that the Plaintiffs did not plead issues about the weather and the failure to warn swimmers about the storm. If it is not properly raised, the remedy would be to allow amendment rather than to grant summary judgment. However, that is not necessary here because the assertion that the storm caused or contributed to the decedent's death is purely speculative. A jury is not allowed, from the facts presented here, to determine that the weather conditions caused or contributed to the tragic drowning of this young man. Since there is no evidence that the weather conditions were a proximate cause of the drowning, the argument about liability based on a failure to warn or a failure to remove the Plaintiffs' decedent from the property becomes irrelevant. The SCANA Defendants are entitled to partial summary judgment on this issue.

WPK
#7

II. Summary Judgment is Warranted Because Plaintiffs Have Failed to Demonstrate a Colorable Duty of Care Owed to the Decedent

In the court's view, this presents the most difficult issue because of the scintilla rule. There were no lifesaving devices at the boat dock from which the decedent entered the lake. The dock had signage with restrictions and warnings placed thereon by the SCANA Defendants. There was no ladder from the dock into the water by which a swimmer could climb onto the

dock because it was not intended to be a swimming area. It was a place where boats could dock to load and unload passengers. There are several boat docks and, as mentioned previously, the entire property is bounded by the lake. So, people would be able to access the lake to swim at any point along the entire shoreline.

Plaintiffs have produced affidavits from two potential experts in water safety opining to "obligations of a landowner, such as Defendants in this case, to a person lawfully using this swimming beach during an incoming storm..." (Aff. of Francesco A. Pia at ¶ 7). The decedent was not using the swimming beach at the time of his death, nor did he die in the swimming beach area, nor is there any evidence that the approaching storm was a proximate cause of the decedent's drowning.

WPK
#8

The Defendants rely heavily on the South Carolina Recreational Use Statute, S.C. Code Ann. §§ 27-3-10 to -70 ("RUS") for the principle that there was no duty owed to the decedent by the Defendants. That statute is designed to "encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability towards persons entering thereon for such purposes." S.C. Code Ann. § 27-3-10 (1991). "Landowners owe 'no duty of care to keep the premises safe' for recreational users and need not 'give any warning of a dangerous condition, use, structure or activity' on the property." Cole v. SCE&G, 355 S.C. 183, 584 S.E.2d 405 (Ct. App. 2003) (citing Brooks v. Northwood Little League, Inc., 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997) (quoting S.C. Code Ann. § 27-3-30 (1991))). Moreover, an owner that permits a person to use property for recreational purposes without charges does not: "(a) Extend any assurance that the premises are safe for any purpose [;] [or] (b) Confer upon such person the legal status of an invitee or a licensee to who a duty of care is owed." S.C. Code Ann. § 27-3-40 (1991).

The Plaintiffs assert that the decedent died while on the Pine Island Club premises, so the RUS does not apply. The SCANA Defendants deny that assertion and maintain that he was in the waters of Lake Murray, which are open to the public for recreational use, without charge. In this court's view, the Plaintiffs' decedent had the status of an invitee for purposes of this summary judgment motion. His presence at the club and his access to the lake through it required that he be the guest of someone who held membership status by virtue of relationship to Defendants and the payment of dues. The club is not open to the public.

However, if Plaintiffs' decedent were an invitee, to which a duty of care would be owed (and which SCANA Defendants deny), the Defendants argue that a landowner has no duty to warn of the perils of obvious natural conditions of which an invitee is reasonably aware. Meadows v. Heritage Village Church and Missionary Fellowship, Inc., 305 S.C. 375, 378 (1991) (holding wet grass an open and obvious natural condition). The court agrees.

WPK
#9

Exhibits in support of the motion were introduced, and those included such things as photos, deposition excerpts, by-laws, and affidavits. The by-laws of the Pine Island Club state, "Swimming in the lake is allowed only in the designated area. Hazards from boating, underground cables, etc., prohibit swimming around docks, ramps or other areas of the Island." A diagram of the property shows the swimming area near the beach, the swimming pool, and three docks. The court is assuming that the dock in question is the one closest to the designated swimming area.

The court finds that there is no evidence that the Defendants' negligence or gross negligence caused or contributed to any dangerous conditions for which the Defendants are responsible. Dangers of swimming in a lake are open and obvious.⁴

⁴ If there were evidence of a proximate cause related to the weather conditions, an

Here, there is no evidence that the SCANA Defendants breached any duty of care to Plaintiffs' decedent to keep the open waters of Lake Murray safe, and they were not required to give any warnings that someone swimming in the lake could drown. There is no evidence as to any actionable negligence or gross negligence on the part of the SCANA Defendants in creating or maintaining a dangerous condition, use, structure, or activity regarding the open waters of Lake Murray. To the contrary, the Pine Island Club did provide warnings, notifying swimmers that they were to swim at their own risk, that no lifeguards were on duty, and specifically prohibiting swimming off the subject dock near which decedent drowned. (Bellamy Dep., p. 86, line 25 – p. 87, line 14 and Dep. Ex. 8).

WPC
#10

The Defendants cite Cole v. SCE&G, 362 S.C. 445, 608 S.E.2d 859 (2005), a case in which our Supreme Court analyzed the South Carolina Recreational Use Statute and found, even where the landowner charged a fee for parking, the landowner was still afforded the protections of the statute and affirmed summary judgment to the defendant on that issue. In this court's view, Cole is distinguishable because the case at bar involves more than a parking fee. It involves access to property which requires membership and payment of dues.

In Cole, the plaintiff's decedent drowned in the roped-off area of a swimming beach at the lake which was fenced-in and patrolled by a security guard. There were no lifeguards on duty at the lakefront, nor was there any safety equipment present at the site. Warning signs on the property indicated no lifeguards were on duty and that individuals swam at their own risk. The Court held that the purpose of the statute was to encourage landowners to make their property available for public use and recreational purposes and in accordance with that purpose,

overcast sky and purported increasing winds are also open and obvious conditions.

the statute shielded landowners from liability.⁵

In Cole, the plaintiffs further argued the defendant was grossly negligent in failing to provide for lifeguards and lifesaving equipment, as pleaded by the Plaintiffs in the case at bar. The Court in Cole set forth that the "landowner's liability is limited to gross negligence, which is defined as the failure to exercise slight care." Id. at 455. Further, the Court specifically held that "[a] duty to provide recreational safety features such as lifeguards and lifesaving equipment exceeds this 'slight care' standard." Id.

While the court finds the situation regarding the landowner's property to be different here, Cole does establish that it is not gross negligence under these circumstances to fail to provide recreational safety features such as lifeguards and lifesaving equipment because such a duty expressly exceeds the slight care standard. See Cole, 355 S.C. at 455, 608 S.E. 2d at 859 ("A duty to provide recreational safety features such as lifeguards and lifesaving equipment exceeds this 'slight care' standard.").

The party alleging negligence has the burden of proving actionable negligence and "[t]his burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence." King v. J.C. Penney Co., 238 S.C. 336, 120 S.E.2d 229 (1961); see also Hunter v. Dixie Home Stores, 232 S.C. 139, ___, 101 S.E.2d 262, 265 (1957) (stating "[i]t is elementary that in order for a plaintiff to recover damages there must be proof not only of injury, but also that it was caused by the actionable negligence of the defendant. It should be kept in mind that the doctrine of res ipsa loquitur does not apply in this State.").

⁵ The court does not recall this being asserted, but a footnote from Cole discusses Regulation 61-50 being amended in 1999 and applying thereafter only to a natural swimming area if there is "a fee or membership required to gain access to a natural freshwater location." Further, the regulation no longer requires safety measures such as lifeguards and life-saving equipment but applies solely to monitoring water quality.

South Carolina courts have held that the question of whether a duty actually existed between a defendant and a plaintiff is a question of law to be determined by the trial court, and if the trial court determines that no duty exists, "the defendant is entitled to judgment as a matter of law." Doe v. Marion, 361 S.C. 463, 470, 605 S.E.2d 556, 560 (Ct. App. 2004); see also Simmons v. Tuomey Reg'l Med. Ctr., 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). The burden of proving a breach of duty is on the plaintiff. Doe, 361 S.C. at 470, 605 S.E.2d at 560 (Ct. App. 2004) (citing Sabb v. S.C. State Univ., 350 S.C. 416, 429, 567 S.E.2d 231, 237 (2002)); Bishop v. S.C. Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998).

Here, the only evidence, and the only reasonable inferences therefrom, compel the court to determine that the decedent knew about the realities forming the dangerous condition. He knew that he was going into a large lake, without lifeguards or safety equipment. He understood and appreciated that the condition of swimming in that area was dangerous. He understood and appreciated that he was at risk of drowning, if he became unable to swim or float in the area where he chose to enter the water, and he voluntarily exposed himself to that danger. It is common knowledge that boat docks require sufficient water depth to allow boats to approach them without grounding, and the only evidence here is that he knew he left the swimming area to enter the open waters of Lake Murray.

The decedent's assumption of this risk was primary because he knowingly assumed the inherent risks. There is no evidence from which this could be construed as secondary implied assumption of risk because there is no evidence that a dangerous condition was created by the Defendants' negligence or gross negligence. So, while South Carolina has abolished common law assumption of the risk due to the adoption of comparative negligence, the court's reading of the current legal precedent is that a court is still required to grant summary judgment in situations

where the risk would be classified as primary implied assumption of the risk. In the court's understanding, this is because primary implied assumption of the risk deals more with situations where there is an absence of negligence on the part of defendants and that the term "assumption of risk" is somewhat of a misnomer in this analysis.

The Plaintiffs cannot recover because the actions of the decedent amounted to primary implied assumption of the risk inherent in swimming in Lake Murray. Mr. Myers was twenty-one (21) years of age at the time of his accidental drowning. The only evidence is that he knew and appreciated that he was swimming in the open waters of the lake at the time of his death. (Bellamy Dep., p. 144, lines 1-7; p. 148, lines 10-13). Myers was a graduate of nearby Irmo High School, was attending college courses, and had ambitions to become a first responder and join the local police department. (Bellamy Dep., p. 42, lines 19-24; p. 55, lines 10-12; p. 144, lines 16-23). It was the decedent's own decision and suggestion that he and Bellamy leave the Pine Island Club swimming beach and jump from the nearby dock into Lake Murray. (Bellamy Dep., p. 146, lines 5-14). There were warnings posted at the subject dock, which prohibited him from swimming in the area around the dock in which he subsequently drowned. (Bellamy Dep., p. 86, line 25 – p. 87, line 14; Dep. Ex. 8). There was no ladder for swimmers to climb onto the dock from the lake.

To the extent that the Plaintiffs have premised their arguments on the notion that Mr. Myers did not know or appreciate changing weather conditions, the court has previously found that there is no evidence that the weather conditions caused or contributed to the decedent's drowning. That is purely speculative and the court has an obligation to grant summary judgment on that ground. Even if there were a causal link, the evidence demonstrates that any change in

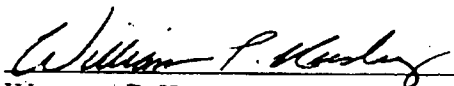
weather condition was open and obvious to the decedent. (Bellamy Dep., p. 78, line 25 – p. 79, line 11).

There is no evidence in this case that the decedent became entangled in any moorings, cables, or other structures placed by the Defendants. There is no legal duty to warn a competent adult of the dangers of swimming in a lake. The only evidence in this case is that Mr. Myers came into distress due to something that the Defendants did not cause or create. He was overcome and unable to escape his tragic drowning. (Bellamy Dep., p. 99, line 17 – p. 101, line 15). Therefore, the Court finds that the SCANA Defendants are entitled to summary judgment on the additional ground that the only evidence supports that the conduct of Mr. Myers amounted to the equivalent of primary implied assumption of risk.

CONCLUSION

The Defendants' Motion for Summary Judgment is granted.

#14
AND IT IS SO ORDERED.


WILLIAM P. KEESLEY
Judge of the Eleventh Judicial Circuit

Lexington, South Carolina

August 8, 2016

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 AUG - 8 P 3:04

FILED

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP3202210

Cassandra M Myers

Bartholomew Myers

Consolidated Employee
 Recreation Clubs
 South Carolina Electric
 and Gas Holding
 Company Inc

Pine Island Club at Lake
 Murray
 SCANA

Evan M Myers Est

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

8/24/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on August 24, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Pedro Eduardo Krompecher PO Box 6639 Raleigh, NC
27628

Christian Stegmaier PO Box 12487 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

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.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Cassandra M. Myers and Bartholomew)
 Myers in their capacity as Co-Personal)
 Representatives of the Estate of Evan)
 Morris Myers,)
)
 Plaintiffs,)
)
 vs.)
)
 The Consolidated Employee Recreation)
 Clubs, a non-profit organization a/k/a Pine)
 Island Club at Lake Murray, South Carolina)
 Electric and Gas Holding Company, Inc.;)
 SCANA,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 Civil Action No.: 2014-CP-32-02210

ORDER REGARDING MOTION FOR RECONSIDERATION

FILED
 2016 SEP 14 A 11:02
 BETH A. CARRIG
 CLERK OF COURT
 LEXINGTON, SC

The plaintiffs have moved to alter or amend the order granting summary judgment. Rule 59(f), SCRCP, allows the court to decide the motion on briefs filed by the parties without oral argument. This order provides notice that the motion will be decided on written submissions. Written submissions are not required by the non-moving party, but will be considered. The moving party may choose to rely upon what has already been filed or may supplement it.

Briefs and supporting documentation must be filed by 5:00 P.M. on Friday, September 23, 2016. Any reply briefs must be filed by 5:00 P.M. on Friday, September 30, 2016. Copies of documents filed must be forwarded to the undersigned judge and to opposing counsel immediately. Copies to the judge shall be sent to P.O. Box 10, Edgefield, SC 29824, and the attorneys must send a copy by email to wkeesleyj@sccourts.org and wkeesleylc@sccourts.org.

AND IT IS SO ORDERED.

September 9, 2016 
 William P. Keesley, Judge

ORIGINAL

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP3202210

Cassandra M Myers Evan M Myers Est	Bartholomew Myers	Consolidated Employee Recreation Clubs South Carolina Electric and Gas Holding Company Inc	Pine Island Club at Lake Murray SCANA
---------------------------------------	-------------------	--	---

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. 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:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

9/21/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **21st of September 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Pedro Eduardo Krompecher
PO Box 6639 Raleigh, NC 27628

Christian Stegmaier PO Box 12487 Columbia, SC 29211
Meghan Hazelwood Hall Esq
1330 Lady Street Sixth Floor Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

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.

5

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,)

Civil Action No.: 2014-CP-32-02210

Plaintiffs,)

**ORDER ON MOTION FOR
RECONSIDERATION**

vs.)

RECEIVED

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina)
Electric and Gas Holding Company, Inc.:)
SCANA,)

DEC 12 2016
Court of Appeals
A 4:00
LEXINGTON, SC

Defendants.)

The plaintiffs have moved to alter or amend the order granting summary judgment. The motion is being decided on written submissions under Rule 59(f), SCRCP. Having reconsidered the matter, the motion is denied.

*WPK
#1*

The plaintiffs ask the court to consider additional affidavits from experts, arguing that the plaintiffs have been the victim of "major-league sandbagging" by the defendants. If the court has misconstrued the positions taken and the efforts to supplement the record, it apologizes; but, the court attempted to be lenient in allowing presentation of all evidence and argument. The court is unaware of any rulings that prevented an effort to properly supplement the record prior to the decision being rendered. The decision was made based on what the court understood to have been presented prior to issuing the order granting summary judgment. The court believes it to be inappropriate to expand the record for a Rule 59 motion.

The plaintiffs seek to restate their positions regarding issues related to how weather conditions contributed to the drowning of plaintiff's decedent. This relates to the proximate

cause issues discussed in the order. The court understands that the plaintiffs are taking the position that the defendants were negligent in failing to have in place a plan, staff, and devices that the plaintiffs allege would have prevented the drowning, and that the defendants were negligent in failing to execute a proper response to the weather conditions by failing to close the entire area and warn people of the danger. Having reconsidered the issues in light of the arguments advanced, the court may have worded the order somewhat differently regarding proximate cause issues, but sees no basis to change the ruling or to alter or amend the original order related to this subject.

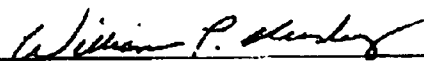
As for the precedent cited in support of the Rule 59 motion, those cases were discussed or the principles they support were considered in making the previous ruling.

#2 As for issues dealing with duty and assumption of risk, the court finds no basis to modify its order, nor any misunderstanding of the law or how the decedent's status as an invitee should change the ruling previously made. The court ruled that the decedent was an invitee and discussed its understanding of the law in that context.

The court finds no genuine issue of material fact that gives rise to liability on the part of the defendants and believes that summary judgment is required. The motion to alter or amend is denied.

AND IT IS SO ORDERED.

November 4, 2016



William P. Keesley
Judge

FEDERAL JUDGING
CLERK OF COURT
LEXINGTON, SC

NOV 4 2016 4 40

FILED

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP3202210

Cassandra M Myers	Bartholomew Myers	Consolidated Employee Recreation Clubs South Carolina Electric and Gas Holding Company Inc	Pine Island Club at Lake Murray SCANA
-------------------	-------------------	---	---

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

11/15/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on the 9th day of November, 2016, and a copy mailed first class or placed in the appropriate attorney's box on the 15th day of November, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Pedro Eduardo Krompecher
PO Box 6639 Raleigh, NC 27628

Christian Stegmaier
PO Box 12487 Columbia, SC 29211
Meghan Hazelwood Hall Esq
1330 Lady Street Sixth Floor Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Beth A. Carrigg - Clerk of Court / kr

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.

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

CASE NO: _____
2014 JUN 13 P 4: 54

CASSANDRA M. MYERS AND
BARTHOLOMEW MYERS in their capacity as
Co-Personal Representatives of the Estate of Evan M. Myers

BETH A. GARRI: **SUMMONS**

Plaintiffs,

VS.

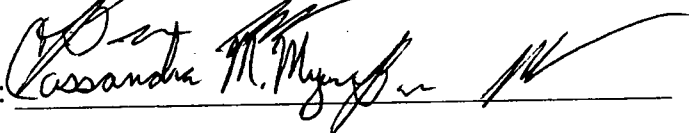
THE CONSOLIDATED EMPLOYEE RECREATION CLUBS,
a non-profit organization A/K/A PINE ISLAND CLUB AT
LAKE MURRAY;
SOUTH CAROLINA ELECTRIC AND GAS COMPANY, INC.; SCANA;
MANDY NICOLE BELLAMY
MATTHEW BELLAMY
LEXINGTON COUNTY CORONOR'S OFFICE;
LEXINGTON COUNTY SHERIFF'S DEPARTMENT
LEXINGTON COUNTY MEDICAL CENTER AUXILLARY

2014CP3202210

Defendants,

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED TO APPEAR AND DEFEND
BY ANSWER THE Complaint in the above-captioned action, a copy of which is served upon
you and to serve a copy of your Answer to the Complaint on the Plaintiffs at 318 Forest
Grove Lane, Columbia, South Carolina, 29210 within (30) days after the service of this
summons and Complaint upon you, exclusive of the day of service. In the event you fail to
answer the said Complaint within this time, the Plaintiffs will apply to the Court for the relief
demanded in the Complaint and judgment by default will be rendered against you for the
relief demanded in the /Complaint.

BY: 

Cassandra M. Myers and Bartholomew Myers
Co-Personal Representatives for the
Estate of Evan M. Myers, 318 Forest Grove Lane
Columbia, South Carolina 29210
(803) 413-8729 or (803) 331-3618

Columbia, South Carolina

June 13 2014

ORIGINAL

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON

2014 JUN 13 P 4: 54 **COMPLAINT**
(Jury Trial Demanded)

BETH A. GARR...
Negligence;;
Negligence;/Premises Liability
Wrongful Death

2014CP3202210

CASSANDRA M. MYERS AND
BARTHOLOMEW MYERS in their capacity as
Co-Personal Representatives of the Estate of Evan M. Myers

Plaintiffs,

VS.

THE CONSOLIDATED EMPLOYEE RECREATION CLUBS,
a non-profit organization A/K/A PINE ISLAND CLUB AT
LAKE MURRAY;
SOUTH CAROLINA ELECTRIC AND GAS HOLDING COMPANY, INC./SCANA
MANDY NICOLE BELLAMY
MATTHEW BELLAMY
LEXINGTON COUNTY CORONOR'S OFFICE;
LEXINGTON COUNTY SHERIFF'S DEPARTMENT
LEXINGTON COUNTY MEDICAL CENTER AUXILLARY

Defendants,

The Plaintiffs above-named, complaining of the Defendants, above-named, does allege and show unto this Honorable Court as follows:

1. That the Plaintiffs Cassandra M. Myers and Bartholomew Myers are acting to commence this action as Co-Personal Representatives of the Estate of Evan M. Myers, their now deceased son; and with citizens and residents of the County of Lexington, State of South Carolina and are subjects to the jurisdiction of the Court.
 - a. Plaintiffs are bringing this action for the benefit of themselves, as the deceased's mother and father, the statutory beneficiary and as the intestate survivors of Evan M. Myers, the administrators herein; stated and his brother, Ryan E. Myers, in accordance with Section 15-51-10 of the South Carolina Code of Laws, 1976, as amended and the other statues for such cases so made and provided.
2. Upon information and belief, Defendants, The Consolidated Employee Recreation Clubs, a non-profit organization A/K/A Pine Island Club at Lake Murray

(hereinafter "Pine Island"), incorporated and duly organized and existing under the laws of the State of South Carolina, having its principal place of business in the County of Lexington, State of South Carolina, and is subject to the jurisdiction of this court.

- a. Upon information and belief, Pine Island is a private, membership and guests-only club, which maintains access to natural freshwaters for recreational purposes at Lake Murray, which is open exclusively to employees of SCE&G Holding Company, Inc. and/or employees of SCANA Corporation (the parent company of SCE&G Holding Company, Inc.), their family and invited guests.
3. Upon information and belief, **Defendants, SCE&G Holding Company, Inc.**, is a corporation duly organized and existing under the laws of the State of South Carolina, having its principal place of business in the County of Richland, State of South Carolina. Further that at all times complained of herein, SCE&G Holding Company, Inc., owned, operated, and maintained the natural freshwaters of Lake Murray, located in Lexington and Saluda Counties including, but not limited to the natural freshwaters extending to the Pine Island Club at Lake Murray, Lexington County, South Carolina, and herein named is subject to the jurisdiction of this court.
4. Upon information and belief, Defendant, Mandy Nicole Bellamy is a citizen and resident of the City of Columbia, in Richland County, State of South Carolina, with membership privileges and /or permission and /or access to the premises owned or operated by Pine Island Club, and/or an agent or servant acting on behalf of Pine Island Club; and is subject to the jurisdiction of this court.
5. Upon information and belief, Defendant, Matthew Bellamy, is a citizen and resident of the City of Columbia, in Richland County, State of South Carolina, with membership privileges and /or permission and /or access to the premises owned or operated by Pine Island Club, and /or an agent or servant acting on behalf of Pine Island Club, and is subject to the jurisdiction of this court.
- a. Upon information and belief, Defendant, Matthew Bellamy is the father of Defendants, Mandy Nicole Bellamy and one of the employees of SCE&G Holding Company, Inc.), and /or SCANA (the parent company of SCE&G Holding Company, Inc.), that has exclusive access to Pine Island Club's natural freshwaters for recreational purposes at Lake Murray, for use by his family and invited guests.
6. Defendants Lexington County Medical Center Auxiliary healthcare in situation organized under the laws of the State of South Carolina, doing business in the County of Lexington, and subject to the jurisdiction of this court.

7. Lexington County Coronor's office is a county government entity organized under the laws of the State of South Carolina, doing business in the County of Lexington, and subject to the jurisdiction of this court.
8. Lexington County Sheriff's Department is a county government entity organized under the laws of the State of South Carolina, doing business in the State of South Carolina, doing business in the County of Lexington, and subject to the jurisdiction of this court.

FACTS

9. On or about Wednesday, June 15, 2011, Mandy Nicole Bellamy (hereinafter "Mandy") invited Evan M. Myers (hereinafter, "Evan") to go swimming at Pine Island that evening. Evan, under the care, custody, and control of Mandy, rode with her, in her vehicle to Pine Island when they arrived on the club premises around 7:10 p.m. Evan and Mandy entered into the water between the dock and the beach areas. Mandy assumed when Evan repeatedly began calling Mandy's name for help he was kidding around; when he was in distress swimming about to drown. Evan subsequently drowned; thereby suffering death.

FIRST CAUSE OF ACTION

Plaintiffs alleges all of the foregoing allegation of their complaint in the foregoing paragraph.

10. Plaintiff is informed and believes that Defendants deviated from the established and/or applicable standards of care and was negligent, grossly negligent and reckless in each of the following particulars, with each being sufficient to support the relief sought:
 - a. Defendants failed to post adequate signs, issue warnings listing safe swimming practices, cautioning swimmers and patrons of the club of the need to avoid the hidden natural safety hazards of uneven terrain under the water; warning of the hidden hazards of swimming in unclear waters and informing swimmers of the location of safety equipment and emergency telephones;
 - b. Defendants failed to provide adequate depth markers to inform swimmers of the depth of the water and to inform swimmers of that depth before swimmers enter the water;

- c. Defendants failed to furnish and supply suitable safeguards, notices, markers and warning signs, indicating the depth of the water and the dangerous places in and about the waters connected with their beaches.
 - d. Defendants failed to furnish life ropes, rafts or other safeguards, devices and appliances ordinarily and customarily used and furnished at recreational swimming areas and beach facilities.
 - e. Defendants failed to have at hand proper means, instruments and appliances for resuscitating patrons and swimmers who were in need thereof.
 - f. Defendants failed to establish aquatic emergency procedures.
 - g. Defendants failed to deny access to Pine Island when it could not or would not provide safety components and procedures as outlined above.
 - h. Vicarious liability on behalf of Defendants agents, servants or employees acting within the course and scope of their employment.
 - i. Defendants failed to prevent Evan from drowning at the Pine Island Club at Lake Murray.
11. As a direct and proximate result of the above referenced negligence and recklessness of the Defendants, the heirs and family of Evan M. Myers have suffered the following injuries and damages:
- a. funeral expenses;
 - b. indescribable grief and sorrow;
 - c. loss of consortium, love, companionship, and advice;
 - d. wounded feelings;
 - e. mental shock and suffering.
12. On information and belief, Plaintiffs is entitled to actual and punitive damages against Defendants for the damage caused by their negligence, gross negligence, and recklessness.

SECOND CAUSE OF ACTION

NEGLIGENCE

(PREMISES LIABILITY)

13. Plaintiff realleges each and every allegation of the first cause of action as fully as if set forth herein verbatim.
14. Defendants knew, or by the exercise of reasonable care and diligence, should have known that several other people have drowned at Lake Murray while making use of natural freshwaters for recreational purposes, including, but not limited to swimming in the Lake Murray waters at Pine Island, but failed and neglected to warn of poorly maintained facilities and freshwaters at Pine Island and of the hidden hazards of unmarked and unclear waters at Pine Island.
15. Defendants should have foreseen that patrons at Pine Island Club, such as Evan, were exposed to an unreasonable risk of serious harm or death as a result of the condition of the premises and/or use of the premises, by failing to provide adequate warnings for hidden freshwater dangers, swimming safeguard measures and lifesaving equipment.
16. Defendants had a duty to keep its premises safe for the known and anticipated use of recreational swimming activities at Pine Island by members and their guests, such as Evan,. Nevertheless, Defendants negligently and recklessly failed to maintain, control, manage, or operate its premises at Pine Island so as to expose Evan to an unreasonable risk death.
17. On information and belief, Plaintiffs is entitled to compensatory and punitive damages against the Defendants as a direct and proximate result are entitled to compensation and punitive damages against the Defendants as a direct and proximate result of the Defendants negligence, Defendants negligent acts and omissions. Such others and farther relief this court deems just and proper.

CAUSE OF ACTION

(Negligence Intentionally)

INFLECTION OF EMOTIONAL DISTRESS

All of the fore mentioned allegations of these complaints in foregone paragraphs

25. Plaintiff is informed and believes defendants exercised negligent conduct so outrageous or extreme or extremely, so **astorious** and utterly intalerable to cause plaintiff decedent family member emotional distress so severe, no reasonable person could be exposted to tolerate at this time following particulars with relief being sought for each.

a.. Defendants under circumstance of distress for decedents where all where effort were of existing distress for decedents family, where all time and effort here of paramount urgency to locate and attempt any possible recue of that decedent, defendant improperly pulled a stun gun (taszer) on decedents on decedents father and brother, for search for decedent.

b. Defendant failed to properly and thoughtly act without delay as overall reconcile major discrepencies and an inconstitance of eye witness and other witness accounts

c.

d.

f. Defendants negligently failed to act responsible and

g. Defendants failed to properly o;ed tp [rp[er;u act tp [rpvode decedent's

h. Defendants negligelly and improperly misrepresented misleading information

i. Defendants failed to exercise appropriate conduct of its administration polices, by an outrage to provide the decedant's family members reasomably requeted documents pertaining to decedent while in defendant's case and

j.

a. Defendants under circumstance of distress for decedents time and

FOURTH CAUSE OF ACTION

(WRONGFUL DEATH)

18. Plaintiffs realleges the foregoing allegations of this complaint contained in the foregoing paragraph.

19. Plaintiffs is informed and believes that Defendants owed a duty of care to the Decedent vicariously through its agent/employee (Defendants and t that duty of care by its own negligent acts and /or omissions _____ legal in the first and several cause of action above and vicariously through the agent/employee (defendant) who violated administrative regulations for employee invited guests; such violations consist listing negligence 'per se' death to the decedant.

a.. Dependant employee of SCE&G/SCANA departed from an administrated negligence of be on-site with his invited guest.

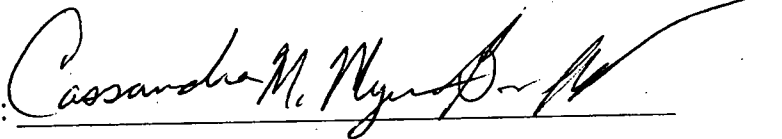
20. Plaintiffs is informed and believes that a breach of the duty of care to the plaintiff occurred in that it was foreseeable that such negligent acts and for the injury resulting in death occurred as a natural and probable consequences of defendant's negligence acts and /or specially alleged in the first stand cause of action with particulars as stated; would likely learn to the decedent which resulting in his death.

21. Wherefore, as a direct and proximate result of the defendant's negligence; gross negligent acts and/or omissions. The following injuries and damages;

21. Wherefore, as a direct and proximate result of the defendant's negligence; gross negligent acts and/or omissions. The following injuries and damages;

- a. pecunary loss
- b. mental shock and suffering
- c. wounded feelings
- d. grief and sorrow
- e. loss of companionship
- f. de of the use and comfort of the including the loss of his experience, knowledge, and in; managing the affair of his self and his beneficiaries.

22. Wherefore, the Plaintiffs for actual and punitive damages against the Defendants caused by these negligence, gross negligence, negligent acts and/or omission such other and farther relief court deem just and proper.

BY: 

Cassandra M. Myers and Bartholomew Myers
Co-Personal Representatives for the
Estate of Evan M. Myers
318 Forest Grove Lane
Columbia, South Carolina 29210
(803) 413-8729 or (803) 331-3618

Columbia, South Carolina

June 13th 2014

FILED

COUNTY OF Lexington

Cassandra M. Meyers and

Bartholomew Myers

Co-Personal Representatives Plaintiff(s)
for the Estate of Evan M. Myers

13 P 4 34

CIVIL ACTION COVERSHEET

-CP-

The Consolidated Employee Recreation Clubs
nonprofit organization A/K/A Pine
Island Club at Lake Murray
(see continuation) Defendant(s)

(Please Print) Cassandra M. Myers

Submitted By: Bartholomew Myers CO-PR

Address: for Estate of Evan M. Myers
318 Forest Grove Land
Columbia, SC 29210

SC Bar #: NA

Telephone #: 803 413-8729/803 331-3618

Fax #:

Other:

E-mail: ROSSINI 318@aol.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Contracts | <input type="checkbox"/> Torts - Professional Malpractice | <input type="checkbox"/> Torts - Personal Injury | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Constructions (100) | <input type="checkbox"/> Dental Malpractice (200) | <input type="checkbox"/> Assault/Slander/Libel (200) | <input type="checkbox"/> Ejectment (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | <u>20 -CP-</u> | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice/ File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input checked="" type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input checked="" type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |

201403202210

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Inmate Petitions | <input type="checkbox"/> Administrative Law/Relief | <input type="checkbox"/> Judgments/Settlements | <input type="checkbox"/> Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Reinstate Drv. License (800) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Magistrate Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Magistrate Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Transcript of Judgment (740) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> SCDOT (950) |
| | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Transfer of Structured Settlement | <input type="checkbox"/> Worker's Comp (960) |
| | | <input type="checkbox"/> Payment Rights Application (760) | <input type="checkbox"/> Zoning Board (970) |
| | | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Public Service Commission (990) |
| | | <input type="checkbox"/> Petition for Workers | <input type="checkbox"/> Employment Security Commission |
| | | <input type="checkbox"/> Compensation Settlement | (991) |
| | | <input type="checkbox"/> Approval (780) | |
| | | <input type="checkbox"/> Other (799) | <input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Special/Complex /Other | <input type="checkbox"/> Pharmaceuticals (630) | | |
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Unfair Trade Practices (640) | | |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Foreign Subpoenas (650) | | |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Motion to Quash Subpoena | | |
| <input type="checkbox"/> Other (699) | in Out-of-County Action | | |
| <input type="checkbox"/> Sexual Predator (510) | (660) | | |

CC: Box
CC: Mail
CC: Person
CC: None

Submitting Party Signature:

Cassandra M. Myers

Date:

June 12, 2014

Cassandra M. Myers and Bartholomew Myers, CO-PR for Estate of Evan Myers

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.

Columbia, SC 29201

Mandy Nicole Bellamy
331 Firetower Road
Irmo, SC 29063

Matthew Bellamy
331 Firetower Road
Irmo, SC 29063

Lexington County Coronor's Office
Attn: William E. Wells, Acting Coronor
117 Duffie Drive
Lexington, SC 29072

Lexington County Sheriff's Department
Chief Operating Officer
Sheriff James R. Metts
521 Gibson Road
Lexington, SC 29072

Lexington County Medical Center Auxiliary
Michael J. Biediger
(Registered Agent)
2720 Sunset Boulevard
West Columbia, SC 29169

Columbia, South Carolina

June 13 2014

FILED

2014 JUN 13 P 4: 54

BETH A. GARRISON
CLERK OF COURT
LEXINGTON, SC

ORIGINAL

2014CP3202210

BY: Cassandra M. Myers and Bartholomew Myers

Cassandra M. Myers and Bartholomew Myers
Co-Personal Representatives for the
Estate of Evan M. Myers
318 Forest Grove Lane
Columbia, South Carolina 29210
(803) 413-8729 or (803) 331-3618

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

CASE NO: 2014-32-02210

CASSANDRA M. MYERS AND
BARTHOLOMEW MYERS in their capacity as
Co-Personal Representatives of the Estate of Evan Morris Myers

2014 JUN 18 P 3:53

AMENDED
SUMMONS

Plaintiffs,

VS.

ORIGINAL

THE CONSOLIDATED EMPLOYEE RECREATION CLUBS,
a non-profit organization A/K/A PINE ISLAND CLUB AT LAKE MURRAY
SOUTH CAROLINA ELECTRIC AND GAS COMPANY, INC. / SCANA
MANDY NICOLE BELLAMY
MATTHEW BELLAMY
LEXINGTON COUNTY CORONOR'S OFFICE
LEXINGTON COUNTY SHERIFF'S DEPARTMENT
LEXINGTON COUNTY MEDICAL CENTER AUXILLARY

Defendants,

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED TO APPEAR AND DEFEND BY ANSWER THE Complaint in the above-captioned action, a copy of which is served upon you and to serve a copy of your Answer to the Complaint on the Plaintiffs at 318 Forest Grove Lane, Columbia, South Carolina, 29210 within (30) days after the service of this originally filed and Amended Summons and Complaint upon you, exclusive of the day of service. In the event you fail to answer the said Complaint within this time, the Plaintiffs will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

BY: Cassandra M. Myers
[Signature]

Cassandra M. Myers and Bartholomew Myers
Co-Personal Representatives for the
Estate of Evan Morris Myers
318 Forest Grove Lane
Columbia, South Carolina 29210
(803) 413-8729 or (803) 331-3618

Columbia, South Carolina

6-18- 2014

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

CASE NO: 2014-32-02210

2014 JUN 18 P 3:53

AMENDED COMPLAINT

(Jury Trial Demanded)

ETHA GARDNER
CLERK OF COURT
LEXINGTON

Negligence; Negligence- Premises Liability
Intentional Infliction of Emotional Distress
Wrongful Death

CASSANDRA M. MYERS AND
BARTHOLOMEW MYERS in their capacity as
Co-Personal Representatives of the Estate of Evan Morris Myers

ORIGINAL

Plaintiffs,

VS.

THE CONSOLIDATED EMPLOYEE RECREATION CLUBS,
a non-profit organization A/K/A PINE ISLAND CLUB AT LAKE MURRAY;
SOUTH CAROLINA ELECTRIC AND GAS HOLDING COMPANY, INC.; /SCANA
MANDY NICOLE BELLAMY
MATTHEW BELLAMY
LEXINGTON COUNTY CORONOR'S OFFICE
LEXINGTON COUNTY SHERIFF'S DEPARTMENT
LEXINGTON COUNTY MEDICAL CENTER AUXILLARY

Defendants,

The Plaintiffs above-named, complaining of the Defendants, above-named, does allege and show unto this Honorable Court as follows:

1. That the Plaintiffs Cassandra M. Myers and Bartholomew Myers are acting to commence this action as Co-Personal Representatives of the Estate of Evan Morris Myers, their now deceased son; both are citizens and residents of the County of Lexington, State of South Carolina and are subject to the jurisdiction of the Court.
 - a. Plaintiffs are bringing this action for the benefit of themselves, as the decedent's mother and father, the statutory beneficiaries and as the intestate survivors of Evan Morris Myers, the administrators herein; stated; and his brother, Ryan E. Myers a statutory beneficiary, in accordance with Section 15-51-10 of the South Carolina Code of Laws, 1976, as amended and the other statues for such cases so made and provided.

2. Upon information and belief, Defendants, The Consolidated Employee Recreation Clubs, a non-profit organization A/K/A Pine Island Club at Lake Murray (hereinafter "Pine Island"), incorporated and duly organized and existing under the laws of the State of South Carolina, having its principal place of business in the County of Lexington, State of South Carolina, and is subject to the jurisdiction of this court.
 - a. Upon information and belief, Pine Island is a private, membership and guests-only club, which maintains access to natural freshwaters for recreational purposes at Lake Murray, which is open exclusively to employees of SCE&G Holding Company, Inc. and/or employees of SCANA Corporation (the parent company of SCE&G Holding Company, Inc.), their family and invited guests.
3. Upon information and belief, Defendants, SCE&G Holding Company, Inc./SCANA, a is a corporation duly organized and existing under the laws of the State of South Carolina, having its principal place of business in the County of Richland, State of South Carolina. Further that at all times complained of herein, SCE&G Holding Company, Inc. /SCANA, operated, and maintained the natural freshwaters of Lake Murray, located in Lexington and Saluda Counties including, but not limited to the natural freshwaters extending to the Pine Island Club at Lake Murray, Lexington County, South Carolina, and herein named is subject to the jurisdiction of this court.
4. Upon information and belief, Defendant, Mandy Nicole Bellamy is a citizen and resident of the Town of Irmo, in Richland County, State of South Carolina, with membership privileges and /or permission and /or access to the premises owned or operated by Pine Island Club, and/or an agent or servant acting on behalf of Pine Island Club; and is subject to the jurisdiction of this court.
5. Upon information and belief, Defendant, Matthew Bellamy, is a citizen and resident of the Town of Irmo, in Richland County, State of South Carolina, with membership privileges and /or permission and /or access to the premises owned or operated by Pine Island Club, and /or an agent or servant acting on behalf of Pine Island Club, and is subject to the jurisdiction of this court.
 - a. Upon information and belief, Defendant, Matthew Bellamy is the father of Defendant, Mandy Nicole Bellamy and is one of the employees of SCE&G Holding Company, Inc. /SCANA the parent company of SCE&G Holding Company, Inc. /SCANA, that has exclusive access to Pine Island Club's natural freshwaters for recreational purposes at Lake Murray, for use by his family and invited guests.

6. Defendant Lexington County Medical Center Auxiliary healthcare institution organized under the laws of the State of South Carolina, doing business in the County of Lexington, and subject to the jurisdiction of this court.
7. Lexington County Coronor's office is a county governmental entity organized under the laws of the State of South Carolina, doing business in the County of Lexington, and subject to the jurisdiction of this court.
8. Lexington County Sheriff's Department is a county governmental entity organized under the laws of the State of South Carolina, doing business in the State of South Carolina, doing business in the County of Lexington, and subject to the jurisdiction of this court.

FACTS

9. On or about Wednesday, June 15, 2011, Mandy Nicole Bellamy (hereinafter "Mandy") invited Evan Morris Myers (hereinafter, "Evan") to go swimming at Pine Island that evening. Evan, under the care, custody, and control of Mandy, rode with her, in her vehicle to Pine Island where they arrived on the club premises around 7:10 p.m. Evan and Mandy entered into the water between the dock and the beach areas. Mandy assumed when Evan repeatedly began calling Mandy's name for help he was kidding around; when he was in distress swimming about to drown. Evan subsequently drowned; thereby suffering death.

FIRST CAUSE OF ACTION (Negligence)

Plaintiffs allege all of the foregoing allegation of their complaint in the foregoing paragraphs.

10. Plaintiff is informed and believes that Defendants deviated from the established and/or applicable standards of care and was negligent, grossly negligent and reckless in each of the following particulars, with each being sufficient to support the relief sought:
 - a. Defendants failed to post adequate signs, issue warnings listing safe swimming practices, cautioning swimmers and patrons of the club of the need to avoid the hidden natural safety hazards of uneven terrain under the water; warning of the hidden hazards of swimming in unclear waters and informing swimmers of the location of safety equipment and emergency telephones;

- b. Defendants failed to provide adequate depth markers to inform swimmers of the depth of the water and to inform swimmers of that depth before swimmers enter the water.
 - c. Defendants failed to furnish and supply suitable safeguards, notices, markers and warning signs, indicating the depth of the water and the dangerous places in and about the waters connected with their beaches.
 - d. Defendants failed to furnish life ropes, rafts or other safeguards, devices and appliances ordinarily and customarily used and furnished at recreational swimming areas and beach facilities.
 - e. Defendants failed to have at hand proper means, instruments and appliances for resuscitating patrons and swimmers who were in need thereof.
 - f. Defendants failed to establish aquatic emergency procedures.
 - g. Defendants failed to deny access to Pine Island when it could not or would not provide safety components and procedures as outlined above.
 - h. Vicarious liability on behalf of Defendants agents, servants or employees acting within the course and scope of their employment.
 - i. Defendants failed to prevent decedent from drowning at the Pine Island Club at Lake Murray.
11. As a direct and proximate result of the above referenced negligence and recklessness of the Defendants, the heirs and family of Evan Morris Myers have suffered the following injuries and damages:
- a. funeral expenses;
 - b. indescribable grief and sorrow;
 - c. loss of consortium, love, companionship, and advice;
 - d. wounded feelings;
 - e. mental shock and suffering.
12. On information and belief, Plaintiffs are entitled to actual and punitive damages against Defendants for the damage caused by their negligence, gross negligence, and recklessness. Such other and further relief this court deems just and proper.

SECOND CAUSE OF ACTION
(NEGLIGENCE-PREMISES LIABILITY)

13. Plaintiff realleges each and every allegation of the first cause of action as fully as if set forth herein verbatim.
14. Defendants knew, or by the exercise of reasonable care and diligence, should have known that several other people have drowned at Lake Murray while making use of natural freshwaters for recreational purposes, including, but not limited to swimming in the Lake Murray waters at Pine Island, but failed and neglected to warn of poorly maintained facilities and freshwaters at Pine Island and of the hidden hazards of unmarked and unclear waters at Pine Island.
15. Defendants should have foreseen that patrons at Pine Island Club, such as the decedent, were exposed to an unreasonable risk of serious harm or death as a result of the condition of the premises and/or use of the premises, by failing to provide adequate warnings for hidden freshwater dangers, swimming safeguard measures and lifesaving equipment.
16. Defendants had a duty to keep its premises safe for the known and anticipated use of recreational swimming activities at Pine Island by members and their guests, such as the decedent. Nevertheless, Defendants negligently and recklessly failed to maintain, control, manage, or operate its premises at Pine Island so as to expose the decedent to an unreasonable risk death.
17. On information and belief, Plaintiffs is entitled to compensatory and punitive damages against the Defendants as a direct and proximate result of the Defendant's negligence and Defendant's negligent acts and/or omissions. Such other and further relief this court deems just and proper.

THIRD CAUSE OF ACTION

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

Plaintiff realleges the foregoing allegations of this complaint contained in the foregoing paragraphs.

18. Plaintiff is informed and believes Defendants exercised negligent conduct so outrageous or extreme, so atrocious and utterly intolerable to cause plaintiff's decedent family members emotional distress so severe; no reasonable person could be expected to tolerate at the time, with the following particulars stated with relief being sought for each.
 - a. Defendants under circumstances of already existing major distress for decedents family, where all time and effort of everyone present was of paramount urgency to use all energy, efforts toward locating and attempting any feasible rescue of the decedent; defendant; recklessly and improperly pulled a stun gun (Taser) on decedent's father and brother, holding them from accessing the incident site to provide any relevant assistance/ information in the search efforts.
 - b. Defendants failed to properly and thoroughly act without delay as would reasonably be expected to be done to investigate and /or appropriately reconcile major discrepancies and /or inconsistencies and reconcile inconsistencies of the eye witness and of other witnesses' accounts of the circumstances surrounding the decedents' death; thereby possibly allowing for and/or withholding facts that could possibly have implications for actionable wrongdoing or possible foul play by others, to not be properly and/or addressed.
 - c. Defendants failed to report factually, relevant inconsistencies of clearly visible, highly questionable markings on decedent's body, that were inconsistent with the findings of the cause of death, by not fully addressing the same on the official autopsy report, and on the official death certificate..
 - d. Defendants negligently failed to act responsibly and with reasonably expected due care in reporting truthful, accurate information on the time of death of decedent by Defendant providing inconsistent official statements of multiple times of death for when the decedent died.

- e. Defendants negligently caused possible delays in rescue efforts for the decedent by questionable inconsistencies and /or discrepancies in defendant's actions in response times to the emergency missing person calls regarding the decedent and the accompanying emergency calls regarding the decedent's drowning.
- f. Defendants failed to properly utilize all available time and/or all available manpower they had for minimizing delays in the search and rescue efforts of the decedent; by wasting manpower dispatched away from the scene of rescue efforts to search and improperly toss and /or almost vandalize decedent's vehicle that was parked many miles away from the incident scene, in search of drugs.
- g. Defendants failed to properly act to provide decedent's family members with reasonably expected access to decedent's body while in their care and control by representing to the decedent's family that were without knowledge of the whereabouts of the decedent's body for an approximate 24-48 hours period of time.
- h. Defendants negligently and improperly misrepresented and provided misleading information and /or instructions to decedent's family members regarding documents required to have undelayed, unfettered access to official autopsy and /or transient reports of the decedent while decedent's body was in their care and control.
- i. Defendant stated to exercise appropriate conduct and /or appropriate administrative practices and /or policies, and/ or regulations; by the outright refusal to provide the decedent's family members reasonably requested documents pertaining to the decedent while in care and control of the defendants; care and control.
- j. Defendant's failed to exercise appropriate and reasonably expected practices of its administrative polices and /or procedures in not providing to the decedent's family relevant information pertinent to tests conducted in the course of autopsy processes that were of questionable concern regarding the decedent's injuries sustained; however billed the decedent's family members for the test cost; as their first knowledge of defendant's actions regarding such concerns.

19. On information and belief for all of the particulars stated herein; plaintiff; is entitled to actual and punitive damages against the defendants for causing the decedent's family members emotional distress so severe, no reasonable person could be expected to tolerate it. Such other and further relief as the court deems just and proper.

**FOURTH CAUSE OF ACTION
(WRONGFUL DEATH)**

20. Plaintiffs realleges the foregoing allegations of this complaint contained in the foregoing paragraphs.

21. Plaintiffs are informed and believes that Defendants owed a duty of care to the Decedent vicariously through its agent/employee (Defendant) and breached that duty of care by its own negligent acts and /or omissions that were specifically alleged in the first and second cause of action above; vicariously through the agent/employee (defendant) who violated administrative regulations for employee invited guests; such violations constituting negligence 'per se'; all of which resulted in harm and death to the decedent.

a. Defendant employee of SCE&G/SCANA departed from following policies and procedures of administrative regulations which required the defendant to be on-site with his invited guest; with responsibility for his safety and care while on the defendant's exclusive premises.

22. Plaintiffs is informed and believes that a breach of the duty of care to the decedent occurred in that it was foreseeable that such negligent acts and/or omissions by the defendant resulted in decedent's death, did occur as a natural and probable consequences of the defendant's negligence acts and /or omissions specially alleged in the first and second cause of action with the particulars as stated; and would likely cause harm to the decedent, which it did thereby resulting in his death.

23. Wherefore, as a direct and proximate result of the defendant's negligence; gross negligent acts and/or omissions, the decedent heirs have suffered the following injuries and damages;

- a. pecuniary loss
- b. mental shock and suffering
- c. wounded feelings
- d. grief and sorrow

- e. loss of companionship
- f. deprivation of the use and comfort of the intestate's society, including the loss of his experience, knowledge, and judgment in; managing the affairs of his self and his beneficiaries.

24. WHEREFORE, as a direct and proximate result of the defendants' negligence; gross negligence and negligent acts and /or omissions, the plaintiffs pray for relief for actual, punitive, and compensatory damages against the defendants.

25. WHEREFORE, the Plaintiffs pray for actual and punitive damages against the Dependents caused by their negligent conduct so outrageous or extreme, so atrocious and utterly intolerable to cause the plaintiff decedent's family members severe emotional distress that no reasonable person could be expected to tolerate.

26. WHEREFORE, the Plaintiffs pray for such further relief as the court deems just and proper.

Cassandra M. Myers

BY: _____

Bartholomew Myers
Cassandra M. Myers and Bartholomew Myers
Co-Personal Representatives for the
Estate of Evan Morris Myers
318 Forest Grove Lane
Columbia, South Carolina 29210
(803) 413-8729 or (803) 331-3618

Columbia, South Carolina

6-18- 2014

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

2014 JUN 18

IN THE COURT OF COMMON PLEAS

CASE NO: 2014-32-02210

RECEIVED
COURT CLERK
LEXINGTON

CASSANDRA M. MYERS AND
BARTHOLOMEW MYERS in their capacity as
Co-Personal Representatives of the Estate of Evan Morris Myers

AMENDED
CERTIFICATE OF SERVICE

Plaintiffs,

VS.

ORIGINAL

THE CONSOLIDATED EMPLOYEE RECREATION CLUBS,
a non-profit organization A/K/A PINE ISLAND CLUB AT LAKE MURRAY
SOUTH CAROLINA ELECTRIC AND GAS COMPANY, INC. / SCANA
MANDY NICOLE BELLAMY
MATTHEW BELLAMY
LEXINGTON COUNTY CORONOR'S OFFICE
LEXINGTON COUNTY SHERIFF'S DEPARTMENT
LEXINGTON COUNTY MEDICAL CENTER AUXILLARY

Defendants,

This is to certify that the Estate of Evan Morris Myers, through its Co-Personal Representatives and Official Agents for service; have this 18th day of June, 2014 served, the originally filed and the Amended Summons and Complaint to the above caption complaint by placing (6) of the same with the Lexington County Sheriff's Office for official Sheriff's service and (1) of the same with C & W Process Servicing Company; for services to the above named said defendants at the following below stated addresses:

THE CONSOLIDATED EMPLOYEE RECREATION CLUBS,
a non-profit organization A/K/A PINE ISLAND CLUB AT LAKE MURRAY
Pine Island Club
150 Pine Island Road
Columbia, SC 29212

South Carolina Electric and Gas Holding Company, Inc. /SCANA
Corporation Service Company, (Registered Agent)
1703 Laurel Street
Columbia, SC 29201

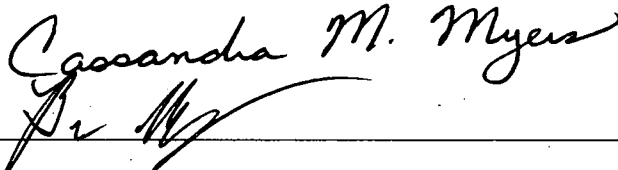
Mandy Nicole Bellamy
331 Firetower Road
Irmo, SC 29063

Matthew Bellamy
331 Firetower Road
Irmo, SC 29063

Lexington County Coronor's Office
Attn: William E. Wells, Acting Coronor
117 Duffie Drive
Lexington, SC 29072

Lexington County Sheriff's Department
Sheriff Lewis McCarty/ Chief Operating Officer
521 Gibson Road
Lexington, SC 29072

Lexington County Medical Center Auxiliary
Michael J. Biediger, (Registered Agent)
2720 Sunset Boulevard
West Columbia, SC 29169

BY: 

Cassandra M. Myers and Bartholomew Myers
Co-Personal Representatives for the
Estate of Evan Morris Myers
318 Forest Grove Lane
Columbia, South Carolina 29210
(803) 413-8729 or (803) 331-3618

Columbia, South Carolina

6-18- 2014

Original

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
Cassandra M. Meyers and
Bartholomew Myers
Co - Personal Represent Plaintiff(s)
for the Estate of Evan Morris Myers

IN THE COURT OF COMMON PLEAS
Amended

CIVIL ACTION COVERSHEET

2014 - CP - 32 - 02210

The Consolidated vs. Employee Recreation Clubs
a non-profit organization AKA
Pine Island Club at Lake Murray
(see defendants continued)
Defendant(s)

(Please Print) Cassandra M. Myers and
Submitted By: Bartholomew Myers Co-PR
Address: for Estate of Evan Morris Myers
318 Forest Grove Lane
Columbia, SC. 29210

SC Bar #: NA
Telephone #: 803 413-8729/803 331-3618
Fax #: NA
Other: NA
E-mail: rossini 318 @ 901.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 <u>-CP-</u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input checked="" type="checkbox"/> Wrongful Death (360) <input checked="" type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript of Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appellate</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input checked="" type="checkbox"/> Probate Court (940) <input checked="" type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Commission (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Foreign Subpoenas (650) <input type="checkbox"/> Motion to Quash Subpoena in Out-of-County Action (660) | | | |

cc: Box
cc: Mail
cc: Person
cc: None

Submitting Party Signature:

Cassandra M. Myers

Date: 6-18-14

Cassandra M. Myers and Bartholomew Myers, Co-PR for Estate of Evan Morris Myers

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.

DEFENDANTS (Civil Action Coversheet Continuation)

THE CONSOLIDATED EMPLOYEE RECREATION CLUBS,
a non-profit organization A/K/A PINE ISLAND CLUB AT LAKE MURRAY
Pine Island Club
150 Pine Island Road
Columbia, SC 29212

FILED
2014 JUN 18 P 3 53

South Carolina Electric and Gas Holding Company, Inc. /SCANA
Corporation Service Company, (Registered Agent)
1703 Laurel Street
Columbia, SC 29201

Mandy Nicole Bellamy
331 Firetower Road
Irmo, SC 29063

Matthew Bellamy
331 Firetower Road
Irmo, SC 29063

ORIGINAL

Lexington County Coronor's Office
Attn: William E. Wells, Acting Coronor
117 Duffie Drive
Lexington, SC 29072

Lexington County Sheriff's Department
Sheriff Lewis McCarty/ Chief Operating Officer
521 Gibson Road
Lexington, SC 29072

Lexington County Medical Center Auxiliary
Michael J. Biediger, (Registered Agent)
2720 Sunset Boulevard
West Columbia, SC 29169

BY: *Cassandra M. Myers*
B. M.

Cassandra M. Myers and Bartholomew Myers
Co-Personal Representatives for the
Estate of Evan Morris Myers
318 Forest Grove Lane
Columbia, South Carolina 29210
(803) 413-8729 or (803) 331-3618

Columbia, South Carolina

6-18 - 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	CIVIL ACTION NO. 2014-CP-32-02210
)	
Cassandra M. Myers and Bartholomew)	
Myers in their capacity as Co-Personal)	
Representatives of the Estate of)	
Evan M. Myers,)	
)	
Plaintiffs,)	
)	SECOND AMENDED COMPLAINT
v.)	(Jury Trial Demanded)
)	
The Consolidated Employee Recreation)	Negligence; Gross Negligence; Wrongful Death
Clubs, a non-profit organization a/k/a Pine)	
Island Club at Lake Murray; South Carolina))	
Electric and Gas Holding Company, Inc.;)	
SCANA; Mandy Nicole Bellamy,)	
)	
Defendants.)	

The Plaintiffs above-named, complaining of the Defendants, above-named, does allege and show unto this Honorable Court as follows:

1. That the Plaintiffs Cassandra M. Myers and Bartholomew Myers are acting to commence this action as Co-Personal Representatives of the Estate of Evan Morris Myers, their now deceased son; both are citizens and residents of the County of Lexington, State of South Carolina and are subject to the jurisdiction of the Court.
 - a. Plaintiffs are bringing this action for the benefit of themselves, as the decedent's mother and father, the statutory beneficiaries and as the intestate survivors of Evan M. Myers, the administrators herein; stated; and his brother, Ryan E. Myers a statutory beneficiary, in accordance with Section 15-51-10 of the South Carolina

Code of Laws, 1976, as amended and the other statutes for such cases so made and provided.

2. Upon information and belief, Defendants, The Consolidated Employee Recreation Clubs, a non-profit organization A/K/A Pine Island Club at Lake Murray (hereinafter the "Pine Island Club"), incorporated and duly organized and existing under the laws of the State of South Carolina, having its principal place of business in the County of Lexington, State of South Carolina, and is subject to the jurisdiction of this court.
 - a. Upon information and belief, Pine Island is a private, membership and guests only club, which maintains access to natural freshwaters for recreational purposes at Lake Murray, which is open exclusively to employees of SCE&G Holding Company, Inc. and/or employees of SCAN A Corporation (the parent company of SCE&G Holding Company, Inc.), their family and invited guests.
3. Upon information and belief, Defendants, SCE&G Holding Company, Inc./SCANA, is a corporation duly organized and existing under the laws of the State of South Carolina, having its principal place of business in the County of Richland, State of South Carolina. Further that at all times complained of herein, SCE&G Holding Company, Inc. /SCANA, operated, and maintained the natural freshwaters of Lake Murray, located in Lexington and Saluda Counties including, but not limited to the natural freshwaters extending to the Pine Island Club at Lake Murray, Lexington County, South Carolina, and herein named is subject to the jurisdiction of this court.
4. Upon information and belief, Defendant, Mandy Nicole Bellamy is a citizen and resident of the Town of Irmo, in Richland County, State of South Carolina, with membership privileges

and /or permission and /or access to the premises owned or operated by Pine Island Club, and/or an agent or servant acting on behalf of Pine Island Club; and is subject to the jurisdiction of this court.

FACTS

5. On or about Wednesday, June 15, 2011, Mandy Nicole Bellamy (hereinafter "Mandy") invited Evan Morris Myers (hereinafter, "Evan") to go swimming at the Pine Island Club.
6. Evan, under the care, custody, and control of Mandy, rode with Mandy to the Pine Island Club in her vehicle that afternoon.
7. Evan entered the Pine Island Club with Mandy that afternoon as her guest.
8. No signs were posted at the Pine Island Club at or around the freshwater swimming area informing guests they were prohibited from swimming in the freshwater swimming area.
9. No signs were posted at the Pine Island Club at or around the freshwater swimming area warning guests of the dangers of swimming within the freshwater swimming area, including notice that no lifeguard was on duty or notice that certain hazards exist under the water therein.
10. No lifeguards were employed by the Pine Island Club who were assigned to monitor the freshwater swimming area.
11. No safety equipment, such as free-floating buoys, life-preservers, or floats, were present in or around the freshwater swimming area to prevent drowning, assist a distressed swimmer, or to assist in the rescue of a distressed swimmer.
12. The caretaker was present at the Pine Island Club while Evan and Mandy were present at the Pine Island Club.

13. At least two lifeguards were present in or around the swimming pool at the Pine Island Club while Evan and Mandy were present at the Pine Island Club.
14. Employees, agents, and/or representatives of the Pine Island Club had actual and constructive knowledge that Mandy and Evan were on the premises and were swimming in the freshwater area.
15. Employees, agents, and/or representatives of the Pine Island Club had actual or constructive knowledge that a storm was approaching.
16. Employees, agents, and/or representatives of the Pine Island Club undertook to take certain precautions to warn of the oncoming storm and ensure the safety of their guests and property, including, without limitation, closing and clearing the pool located upon the premises.
17. Employees, agents, and/or representatives, however, failed to warn Evan of the oncoming storm, failed to warn Evan of the known hazards associated with swimming in the freshwater area, failed to supervise their swimming activities and ensure their safety, and failed to take any steps to clear the freshwater in which Mandy and Evan were known to be swimming.
18. While Mandy and Evan were swimming, Evan drowned, thereby suffering death.

FIRST CAUSE OF ACTION

(Negligence)

19. Plaintiffs incorporate all previous allegations herein by reference.
20. Evan was an invitee of the Pine Island Club.
21. The Pine Island Club owed Evan a duty of care as its guest.

22. The Pine Island Club owed Evan a duty to warn him of any known dangerous conditions and/or hazards, a duty to ensure his safety while upon the Pine Island Club's premises, and a duty to take reasonable steps to prevent injury to his life or limb while upon the premises.
23. Defendants deviated from the established and/or applicable standards of care and were negligent in each of the following particulars:
- a. Failed to have sufficient policies and procedures to protect the and safety of lawful members and their lawful guests using the swimming beach.
 - b. Failed to have sufficient training of Defendants' employees and agents, namely but not limited to life guards and caretaker(s) in order to protect the and safety of lawful members and their lawful guests using the swimming beach.
 - c. Failed to have any safety equipment at or near the swimming beach to assist with a potential water rescue and otherwise protect the and safety of lawful members and their lawful guests using the swimming beach.
 - d. Failed to have, erect or display any warning of known dangerous conditions at or near the swimming beach on the afternoon of Evan's death when such warnings were required to protect the and safety of lawful members and their lawful guests using the swimming beach.
 - e. Failed to have employees and or agents warn Evan or Mandy Bellamy of known dangers in the waters at the swimming beach on the afternoon of Evan's death when such warnings were required to protect the and safety of lawful members and their lawful guests using the swimming beach.

- f. Failed to close the swimming beach on the afternoon of Evan's death when such was required to protect the and safety of lawful members and their lawful guests using the swimming beach.
- g. Failed to have life guards at the swimming beach on the afternoon of Evan's death when such was required to protect the well-being and safety of lawful members and their lawful guests using the swimming beach.
- h. Other negligent, conduct and/or omissions which may be identified through discovery.
- i. Defendants failed to post adequate signs, issue warnings listing safe swimming practices, cautioning swimmers and patrons of the club of the need to avoid the hidden natural safety hazards of uneven terrain under the water; warning of the hidden hazards of swimming in unclear waters and informing swimmers of the location of safety equipment and emergency telephones;
- j. Defendants failed to provide adequate depth markers to inform swimmers of the depth of the water and to inform swimmers of that depth before swimmers enter the water.
- k. Defendants failed to furnish and supply suitable safeguards, notices, markers and warning signs, indicating the depth of the water and the dangerous places in and about the waters connected with their beaches.
- l. Defendants failed to furnish life ropes, rafts or other safeguards, devices and appliances ordinarily and customarily used and furnished at recreational swimming areas and beach facilities.

- m. Defendants failed to have at hand proper means, instruments and appliances for resuscitating patrons and swimmers who were in need thereof.
 - n. Defendants failed to establish aquatic emergency procedures.
 - o. Defendants failed to deny access to Pine Island when it could not or would not provide safety components and procedures as outlined above.
 - p. Defendants' employees, including its lifeguards and caretaker, failed to close and clear the freshwater swimming area in the face of an approaching storm;
 - q. Defendants' employees, including its lifeguards and caretaker, failed to communi
 - r. Defendants failed to prevent decedent from drowning at the Pine Island Club at Lake Murray.
24. As a direct and proximate result of the above-referenced negligence of the Defendants, the heirs and family of Evan Morris Myers have suffered the following injuries and damages:
- a. funeral expenses;
 - b. indescribable grief and sorrow;
 - c. loss of consortium, love, companionship, and advice;
 - d. wounded feelings;
 - e. mental shock and suffering.
25. On information and belief, Plaintiffs are entitled to actual and punitive damages against Defendants for the damage caused by their negligence, together with such other and further relief this court deems just and proper.

SECOND CAUSE OF ACTION
(Gross Negligence and/or Recklessness)

26. Plaintiffs incorporate all previous allegations herein by reference.
27. Evan was an invitee of the Pine Island Club.
28. The Pine Island Club owed Evan a duty of care as its guest.
29. The Pine Island Club owed Evan a duty to warn him of any known dangerous conditions and/or hazards, a duty to ensure his safety while upon the Pine Island Club's premises, and a duty to take reasonable steps to prevent injury to his life or limb while upon the premises, including the freshwater swimming area.
30. Defendants deviated from the established and/or applicable standards of care and were grossly negligent and reckless in each of the following particulars:
 - a. Failed to have sufficient policies and procedures to protect the and safety of lawful members and their lawful guests using the swimming beach.
 - b. Failed to have sufficient training of Defendants' employees and agents, namely but not limited to life guards and caretaker(s) in order to protect the and safety of lawful members and their lawful guests using the swimming beach.
 - c. Failed to have any safety equipment at or near the swimming beach to assist with a potential water rescue and otherwise protect the and safety of lawful members and their lawful guests using the swimming beach.
 - d. Failed to have, erect or display any warning of known dangerous conditions at or near the swimming beach on the afternoon of Evan's death when such warnings were

required to protect the and safety of lawful members and their lawful guests using the swimming beach.

- e. Failed to have employees and or agents warn Evan or Mandy Bellamy of known dangers in the waters at the swimming beach on the afternoon of Evan's death when such warnings were required to protect the and safety of lawful members and their lawful guests using the swimming beach.
- f. Failed to close the swimming beach on the afternoon of Evan's death when such was required to protect the and safety of lawful members and their lawful guests using the swimming beach.
- g. Failed to have life guards at the swimming beach on the afternoon of Evan's death when such was required to protect the well-being and safety of lawful members and their lawful guests using the swimming beach.
- h. Other negligent, conduct and/or omissions which may be identified through discovery.
- i. Defendants failed to post adequate signs, issue warnings listing safe swimming practices, cautioning swimmers and patrons of the club of the need to avoid the hidden natural safety hazards of uneven terrain under the water; warning of the hidden hazards of swimming in unclear waters and informing swimmers of the location of safety equipment and emergency telephones;
- j. Defendants failed to provide adequate depth markers to inform swimmers of the depth of the water and to inform swimmers of that depth before swimmers enter the water.

- k. Defendants failed to furnish and supply suitable safeguards, notices, markers and warning signs, indicating the depth of the water and the dangerous places in and about the waters connected with their beaches.
 - l. Defendants failed to furnish life ropes, rafts or other safeguards, devices and appliances ordinarily and customarily used and furnished at recreational swimming areas and beach facilities.
 - m. Defendants failed to have at hand proper means, instruments and appliances for resuscitating patrons and swimmers who were in need thereof.
 - n. Defendants failed to establish aquatic emergency procedures.
 - o. Defendants failed to deny access to Pine Island when it could not or would not provide safety components and procedures as outlined above.
 - p. Defendants' employees, including its lifeguards and caretaker, failed to close and clear the freshwater swimming area in the face of an approaching storm;
 - q. Defendants' employees, including its lifeguards and caretaker, failed to communi
 - r. Defendants failed to prevent decedent from drowning at the Pine Island Club at Lake Murray.
31. As a direct and proximate result of the above referenced gross negligence and recklessness of the Defendants, the heirs and family of Evan Morris Myers have suffered the following injuries and damages:
- a. funeral expenses;
 - b. indescribable grief and sorrow;
 - c. loss of consortium, love, companionship, and advice;

- d. wounded feelings;
 - e. mental shock and suffering.
32. On information and belief, Plaintiffs are entitled to actual and punitive damages against Defendants for the damage caused by their negligence, together with such other and further relief this court deems just and proper.

THIRD CAUSE OF ACTION
(Wrongful Death)

33. Plaintiffs realleges the foregoing allegations of this complaint contained in the foregoing paragraphs.
34. As specifically set forth above in the First and Second causes of action, Defendants owed Evan a duty of care and breached that duty of care which proximately caused his death.
35. Plaintiffs are entitled under the law to recover certain actual and punitive damages as the result thereof to compensate them for the following:
- a. pecuniary loss
 - b. mental shock and suffering
 - c. wounded feelings
 - d. grief and sorrow
 - e. loss of companionship
 - f. deprivation of the use and comfort of the intestate's society, including the loss of his experience, knowledge, and judgment in; managing the affairs of his self and his beneficiaries.

WHEREFORE, the Plaintiffs pray for a jury trial and for an award of any and all actual and punitive damages to which Plaintiffs are or may be entitled under the law.

This the 12 day of June, 2015.

KROMPECHER LAW FIRM, PLLC

BY: 

Pedro E. Krompecher
SC State Attorney Bar No.: 100485
P.O. Box 6639
Raleigh, North Carolina 27628
Telephone: (919) 977-8082
Facsimile: (919) 746-7588

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

BY: 

Benjamin A. Baroody
SC State Attorney Bar No.: 72533
P.O. Box 357
Myrtle Beach, South Carolina 29578
Telephone: (843) 448-2400
Facsimile: (843) 448-3022

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan M. Myers,

Civil Action No.: 2014-CP-32-02210

Plaintiffs,

DEFENDANTS

vs.

THE CONSOLIDATED EMPLOYEE RECRETATION CLUBS, A NON-PROFIT ORGANIZATION A/K/A PINE ISLAND CLUB AT LAKE MURRAY, SCE&G HOLDING COMPANY, INC., AND SCANA'S

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc.; and SCANA

ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants.

(Jury Trial Requested)

TO: PEDRO E. KROMPECHER, III, ESQUIRE, AND BENJAMIN BAROODY, ESQUIRE, COUNSEL FOR PLAINTIFFS:

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray ("Pine Island"), SCE&G Holding Company, Inc., and SCANA ("SCANA") (collectively referred to as "Defendants"), reserving the right to file a motion under Rule 12 of the South Carolina Rules of Civil Procedure, or any other dispositive motion, respond to the Amended Complaint of Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further respond as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Each and every allegation not herein admitted is hereby denied and strict proof thereof demanded.
2. As to the allegations of Paragraph 1 regarding Plaintiffs' county of residence, Defendants respond by stating they lack sufficient knowledge or information in which to form a belief as to the allegations regarding Plaintiffs' county of residency and therefore deny the same and demand strict proof thereof. The remaining allegations of Paragraph 1, not including subparts, contain conclusions of law and do not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 1, not including subparts, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
3. The allegations of Paragraph 1, subpart a, contain conclusions of law and do not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 1, subpart a, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
4. Defendants admit only so much of the allegations of Paragraph 2, not including subparts, which allege Defendant Pine Island is a non-profit organization incorporated and duly organized under the laws of the state of South Carolina. The remaining allegations of Paragraph 2, not including subparts, are denied and strict proof thereof demanded.
5. Defendants admit the allegations of Paragraph 2, subpart a, as stated. Defendants deny the allegations of Paragraph 2, subpart a, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.

6. Defendants admit only so much of the allegations of Paragraph 3, which allege Defendants SCE&G Holding Corporation and SCANA are jural entities incorporated and duly organized under the laws of the State of South Carolina. The freshwaters of Lake Murray are operated and maintained by SCE&G. Defendants deny the allegations of Paragraph 3, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
7. Regarding Paragraph 4, upon information and belief, Defendants admit Defendant Mandy Nicole Bellamy's citizenship/residence. Due to her being a child of a South Carolina Electric & Gas employee, Defendant Mandy Nicole Bellamy possessed "membership privileges and/or permission and/or access to the premises" at Pine Island on June 15, 2011. However, Defendants deny Defendant Mandy Nicole Bellamy is or was an agent or servant of Defendants as it pertains to the operation of Pine Island Club. Defendants deny the allegations of Paragraph 4, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof. Defendants further note Plaintiffs have dismissed Mandy Nicole Bellamy by consent order, which is on file with the Lexington County Clerk of Court.
8. Upon information and belief, Defendants admit the allegations of Paragraph 5.
9. Defendants admit only so much of the allegations of Paragraph 6 that allege that Evan Myers rode with Mandy Nicole Bellamy to the Pine Island Club in her vehicle on June 15, 2011. Defendants deny the allegations of Paragraph 6, which are or could be construed as allegations of negligence or other wrongdoing by Defendants or Mandy Bellamy and demand strict proof thereof.
10. Upon information and belief, Defendants admit the allegations of Paragraph 7.

11. Defendants deny the allegations of Paragraph 8 as worded, and demand strict proof thereof. It is uncontroverted that there existed at Defendant Pine Island Club's swimming beach signage informing swimmers that they swim at their own risk. Defendants specifically deny the allegations of Paragraph 8, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof. Defendants further note that Defendant Pine Island Club's swimming beach was not the situs of the subject accident.
12. Defendants deny the allegations of Paragraph 9 as worded, and demand strict proof thereof. It is uncontroverted that there existed at Pine Island Club's swimming beach signage informing swimmers that they swim at their own risk. Defendants specifically deny the allegations of Paragraph 9, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof. Defendants further note that Defendant Pine Island Club's swimming beach was not the situs of the subject accident.
13. Defendants admit the allegations of Paragraph 10. Defendants further assert that swimmers at the Pine Island Club's swimming beach are informed that they swim in the freshwaters of Lake Murray at their own risk. Defendants further note that Defendant Pine Island Club's swimming beach was not the situs of the subject accident.
14. Concerning Paragraph 11, Defendants aver that Defendant Pine Island Club's swimming beach was not the situs of the subject accident. Defendants specifically deny the allegations of Paragraph 11, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof

15. Defendants admit only so much of the allegations of Paragraph 12 as would allege that JW Seay, caretaker for the Pine Island Club, was on Pine Island on the day of the subject accident. Defendants deny any allegations of Paragraph 12 which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
16. Defendants lack sufficient information upon which to form a belief as to the allegations contained in Paragraph 13 and, therefore, deny the same and demand strict proof thereof.
17. Defendants lack sufficient information upon which to form a belief as to the allegations contained in Paragraph 14 and, therefore, deny the same and demand strict proof thereof.
18. Upon information and belief, Defendants admit the allegations of Paragraph 15. Defendants reserve the right to amend this response should further investigation or discovery necessitate the same.
19. Defendants deny the allegations of Paragraph 16 as worded and demand strict proof thereof. Moreover, to the extent the allegations of Paragraph 16 contain conclusions of law, Defendants need not respond. Further, Defendants note that it is axiomatic in South Carolina that landowners are not the insurers of any person's safety upon their land.
20. Regarding Paragraph 17, Defendants admit Plaintiffs' decedent, Evan Morris Myers, accidentally drowned while swimming in the fresh waters Lake Murray beyond the confines of the Pine Island Club swimming beach on June 15, 2011. Defendants deny the allegations of Paragraph 17, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
21. Regarding Paragraph 18, Defendants admit Plaintiffs' decedent, Evan Morris Myers, accidentally drowned while swimming in the fresh waters Lake Murray beyond the

confines of the Pine Island Club swimming beach on June 15, 2011. Defendants deny the allegations of Paragraph 18, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.

22. Responding to the allegations of Paragraph 19, Defendants restate and reassert their responses and defenses as set forth in Paragraphs 1 through 18 above.
23. The allegations of Paragraph 20 set forth conclusions of law, which require no response from Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 20, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
24. The allegations of Paragraph 21 set forth conclusions of law, which require no response from Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 21, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
25. The allegations of Paragraph 22 set forth conclusions of law, which require no response from Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 22, which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
26. Defendants deny the allegations of Paragraph 23, including all subparts, and demand strict proof thereof.
27. Defendants deny the allegations of Paragraph 24, including all subparts, and demand strict proof thereof.
28. Defendants deny Plaintiffs are entitled to the relief sought within Paragraph 25 and demand strict proof thereof.

29. Responding to the allegations of Paragraph 26, Defendants restate and reassert their responses and defenses as set forth in Paragraphs 1 through 25 above.
30. The allegations of Paragraph 27 set forth conclusions of law, which require no response from Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 27 which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
31. The allegations of Paragraph 28 set forth conclusions of law, which require no response from Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 28 which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
32. The allegations of Paragraph 29 set forth conclusions of law, which require no response from Defendants. To the extent a response is required, Defendants deny the allegations of Paragraph 29 which are or could be construed as allegations of negligence or other wrongdoing by Defendants and demand strict proof thereof.
33. Defendants deny the allegations of Paragraph 30, including all subparts, and demand strict proof thereof.
34. Defendants deny the allegations of Paragraph 31, including all subparts, and demand strict proof thereof.
35. Defendants deny Plaintiffs are entitled to the relief sought within Paragraph 32 and demand strict proof thereof.
36. Responding to the allegations of Paragraph 33, Defendants restate and reassert their responses and defenses as set forth in Paragraphs 1 through 32 above.
37. Defendants deny the allegations of Paragraph 34 and demand strict proof thereof.

38. Defendants deny Plaintiffs are entitled to the relief sought within Paragraph 35, including all subparts, and demand strict proof thereof.
39. Defendants deny Plaintiffs are entitled to the relief sought within their "Wherefore" Paragraph, and demand strict proof thereof.

FOR A SECOND DEFENSE

40. The allegations contained in the Complaint fail to set forth sufficient facts to constitute a cause of action as to Defendants and, therefore, the Complaint must be dismissed pursuant to Rule 12(b)(6) SCRPC.

FOR A THIRD DEFENSE

41. Defendants rely upon and assert all affirmative defenses as may be available under Rules 8 and 12 of the South Carolina Rules of Civil Procedure and any and all affirmative defenses as may be discovered as discovery proceeds.

FOR A FOURTH DEFENSE

42. Defendants assert that some or all the claims against them may be barred by applicable statute(s) of limitation or repose.

FOR A FIFTH DEFENSE

43. Plaintiffs are barred from recovery of punitive damages against Defendant Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray or recovery of actual damages beyond the amount specified in said statutes by virtue of Defendant Pine Island being a "charitable organization," as defined in S.C. Code Ann. §§ 33-56-170 and -180. See also S.C. Code Ann. § 15-78-120(a)(1) and (b).

FOR A SIXTH DEFENSE

44. Plaintiffs' claims are barred from recovery by virtue of the Recreational Use Statute, S.C. Code Ann. §§ 27-3-10 to -70.

FOR A SEVENTH DEFENSE

45. Defendants assert that some or all the claims against them may be barred by the doctrine of waiver, laches, and/or estoppel.

FOR AN EIGHTH DEFENSE

46. Plaintiffs' claims may be barred by the doctrine of unavoidable accident.

FOR A NINTH DEFENSE

47. Any injuries or damages sustained by Plaintiffs was due to and caused and occasioned by Plaintiff's decedent's own action or conduct, or negligence, gross negligence, recklessness, willfulness and wantonness which was the direct and proximate cause of Plaintiffs' alleged injuries or damages, if any, and without which the same would not have occurred and, therefore, due to Plaintiff's decedent's sole negligence, gross negligence, recklessness, willfulness and wantonness, Plaintiffs' claims are barred.

FOR A TENTH DEFENSE

48. Even if Defendants were negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiffs' alleged damages, if any, which is expressly denied, Defendants allege Plaintiff's decedent's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than fifty percent (50%) to the cause of the accident, and therefore, Plaintiffs' claims are barred.

FOR AN ELEVENTH DEFENSE

49. Even if Defendants were negligent in any respect, which is expressly denied, and even if such conduct on the part of Defendants operated as a greater than fifty percent (50%) cause of Plaintiffs' alleged damages, if any, which is also denied, Defendants are entitled to a determination as to the percentage which Plaintiff's decedent's negligent, grossly negligent, reckless, willful and wanton conduct contributed to Plaintiff's decedent's accident and resulting injuries, if any, and to a reduction of any amount awarded to Plaintiffs by an amount equal to the percentage of Plaintiff's decedent's own negligence.

FOR A TWELFTH DEFENSE

50. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs has received or will receive from others for the same injuries claimed in this lawsuit.

FOR A THIRTEENTH DEFENSE

51. Any damages sustained by Plaintiffs were due to and caused by the intervening and superseding acts of negligence, carelessness, recklessness, and gross negligence on the part of third persons as a proximate cause of injuries as alleged, if any, and, therefore, these Defendants should not be liable to Plaintiffs in any sum whatsoever.

FOR A FOURTEENTH DEFENSE

52. Any damages sustained by Plaintiffs were due to and caused by the sole negligence of third persons over which these Defendants had no control and, therefore, these Defendants should not be liable to Plaintiffs in any sum whatsoever.

FOR A FIFTEENTH DEFENSE

53. Plaintiff's decedent either knew or should have known of any alleged deficiencies in the subject property and accepted the same with such knowledge. Therefore, Plaintiffs' claims are barred by Plaintiff's decedent's assumption of risk.

FOR A SIXTEENTH DEFENSE

54. To the extent Plaintiff may be seeking punitive damages, punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.

FOR A SEVENTEENTH DEFENSE

55. Pursuant to Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 522 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore Plaintiff's request for punitive damages "to be determined by the jury" violates the United States Constitution.

FOR AN EIGHTEENTH DEFENSE

56. The U.S. Constitution's Due Process Clause "forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly [do not] represent," Phillip Morris USA v. Williams, 127 S.Ct. 1057, 1063 (U.S. 2007), and, therefore, to the extent Plaintiffs/Plaintiff's decedent seeks an award of punitive damages for potential or speculative harm to non-parties to the present action, such prayer for relief is unconstitutional and must be struck from the pleadings and is otherwise inadmissible at trial.

FOR A NINETEENTH DEFENSE

57. Notwithstanding Defendants' prior defenses incorporating Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 522 U.S. 424 (2001) and State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408 (2003), and the cases upon which they are based, in the event the trial court permits the jury to return a punitive damages award in the instant case, such damages are to be limited to an amount that is no greater than the jury's award of actual damages, as explicated within Exxon Shipping Company v. Baker, 128 S. Ct. 2605 (2008).

FOR A TWENTIETH DEFENSE

58. Defendants plead any and all applicable protections afforded to them under the South Carolina Fairness in Civil Justice Act of 2011, codified at South Carolina Code Annotated Sections 15-32-510 to 15-32-540, as a defense to Plaintiff's claims or request for an award of punitive damages.

FOR A TWENTY-FIRST DEFENSE

59. Defendants reserve the right to assert claims for contribution and indemnity against any named party or a party not named in this action.

FOR A TWENTY-SECOND DEFENSE

60. Defendants assert and rely upon any and all defenses or benefits codified in S.C. Code Ann. §15-38-15 et. seq. including the right to have the jury apportion fault among any named Defendants and any other party whether or not named.

FOR A TWENTY-THIRD DEFENSE

61. Defendants reserve the right to amend the Answer and to raise additional and/or affirmative defenses as may become available or revealed to them during the course of

the investigation and/or discovery in this case. Additionally, Defendants incorporate by reference those defenses articulated by the other Defendants, which may be applicable to Defendants and their defense of Plaintiff's liability and damages cases.

WHEREFORE, Defendants The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray and SCE&G Holding Company, Inc., and SCANA request that:

1. Plaintiffs take nothing by this action;
2. A judgment of dismissal be entered in favor of Defendants;
3. Defendants be awarded the cost of the suit incurred;

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,
COLLINS & LACY, P.C.



By:

CHRISTIAN STEGMAIER
estegmaier@collinsandlacy.com
MEGHAN H. HALL
mhall@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (Voice)
(803) 771-4484 (Facsimile)

ATTORNEYS FOR DEFENDANTS THE
CONSOLIDATED EMPLOYEE
RECREATION CLUBS, A NON-PROFIT
ORGANIZATION AKA PINE ISLAND
CLUB AT LAKE MURRAY, SOUTH
CAROLINA ELECTRIC AND GAS
HOLDING COMPANY, INC, AND
SCANA

**DEFENDANTS THE CONSOLIDATED
EMPLOYEE RECRETATION CLUBS,
A NON-PROFIT ORGANIZATION
A/K/A PINE ISLAND CLUB AT LAKE
MURRAY, SCE&G HOLDING
COMPANY, INC., AND SCANA'S
ANSWER TO PLAINTIFFS' SECOND
AMENDED COMPLAINT**

**These Defendants Demand a Trial by
Jury**

Columbia, South Carolina
October 19, 2015

CERTIFICATE OF SERVICE
(2014-CP-32-02210)

The undersigned employee of Collins & Lacy, P.C. does hereby certify that on the 23rd day of September, 2015, a true and correct copy of the following was served on the below listed counsel via electronic mail and/or by mailing a copy of same to said person(s) via the US Postal Service with sufficient postage affixed thereto and return address clearly marked.

PLEADINGS:


- DEFENDANTS THE CONSOLIDATED EMPLOYEE RECREATION CLUBS, A NON-PROFIT ORGANIZATION F/K/A PINE ISLAND CLUB AT LAKE MURRAY AND SOUTH CAROLINA ELECTRICT AND GAS HOLDING COMPANY, INC. AND SCANA'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

COUNSEL SERVED:

Pedro E. Krompecher, III
Krompecher Law Firm, LLC
Post Office Box 6639
Raleigh, North Carolina 27628

Benjamin A. Baroody
The Bellamy Law Firm
Post Office Box 357
Myrtle Beach, SC 29578

Counsel for Plaintiffs


Susan R. McLeod

Columbia, South Carolina
October 19, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,

Civil Action No.: 2014-CP-32-02210

Plaintiffs,

**DEFENDANTS THE CONSOLIDATED
EMPLOYEE RECREATION CLUBS, A
NON-PROFIT ORGANIZATION A/K/A
PINE ISLAND CLUB AT LAKE
MURRAY, SOUTH CAROLINA
ELECTRIC AND GAS HOLDING
COMPANY, INC./SCANA'S
ANSWERS TO INTERROGATORIES**

vs.

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina
Electric and Gas Holding Company,
Inc./SCANA, Mandy Nicole Bellamy,
Matthew Bellamy, Lexington County
Coroner's Office, Lexington County
Sheriff's Department, and Lexington
County Medical Center Auxiliary.

Defendants.

TO: PEDRO E. KROMPECHER, III, ESQUIRE, COUNSEL FOR PLAINTIFFS;

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendants, The Consolidated Employee Recreation Clubs, a non-party organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc./SCANA ("SCANA Defendants") answers to Plaintiff's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Defendants object to each interrogatory to the extent it seeks information that constitutes evidence or reflects confidential communications between Defendants and their attorneys.
2. Defendants to the extent it seeks information that constitutes evidence or reflects trial preparation materials or work product of the or their representatives, agents, or attorneys.

3. Defendants will remove those documents from files, records or other documents to be the products that come within the foregoing objections. If there are documents withheld based on the privilege, Defendants will provide Plaintiff with a separate list of those documents.
4. Defendants object to each interrogatory to the extent it seeks information already available to or equally available to Plaintiff.
5. The following interrogatory answers are based upon information presently available to Defendants and are made without prejudice to the rights of Defendants to utilize subsequently discovered information.
6. By making a response to any interrogatory or documents request, these Defendants do not intend or mean to waive the attorney-client privilege, the work-product doctrine or any other privilege, objection or other limitations upon discovery as to that interrogatory or as to any other present or future request for discovery.
7. Defendants object to each interrogatory in excess of 25, including subparts, as a violation of Rule 33.
8. All answers to the interrogatories and responses to the requests for production of documents are made without the waiver of these general objections, or the specific objections which are hereinafter set forth.
9. The foregoing objections are general ones applicable to all categories of information to be produced. The following responses to any particular item of information should be deemed to include these objections and categories.

DEFENDANTS' ANSWERS TO PLAINTIFFS' INTERROGATORIES

1. Detail your relationship with every other defendant as it existed on the date of the Incident.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly vague as to the term "relationship." SCANA Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, the Pine Island Club is a recreational facility operated by Consolidated Employee Recreation Clubs, and is incorporated as an eleemosynary/non-profit organization. SCE&G Holding Corporation and SCANA are jural entities incorporated and duly organized under the laws of the State of South Carolina. The freshwaters of Lake Murray are operated and maintained by SCE&G.

2. On the date of the Incident, detail your relationship with the Pine Island Club.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly vague as to the term "relationship." SCANA Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, the Pine Island Club is a recreational facility owned by Consolidated Employee Recreation Clubs, and is incorporated as an eleemosynary/non-profit organization. SCE&G Holding Corporation and SCANA are jural entities incorporated and duly organized under the laws of the State of South Carolina. SCANA employees who choose to become members of the Pine Island Club possess "membership privileges and/or permission and/or access to the premises" at Pine Island. The freshwaters of Lake Murray are operated and maintained by SCE&G.

3. In regards to the Pine Island Club and its surrounding area, please describe in detail your relationship in terms of duties, responsibilities, security, ownership, management and financial obligations or otherwise.

RESPONSE: The Pine Island Club is a recreational facility operated by Consolidated Employee Recreation Clubs, and is incorporated as an eleemosynary/non-profit organization. Pursuant to its articles of incorporation, the Pine Island Club operates, "to promote the welfare and to provide a better feeling of fellowship among the employees of SCANA and its subsidiaries through social functions and accommodation of members and their friends, and to provide a clubhouse, clubrooms, and other conveniences and generally to afford Members and their friends all the usual privileges, advantages, conveniences, and accommodations of a Chapter and non-profit organization." Membership in this chapter shall be limited to full time regular employees and retired employees of SCANA and its subsidiaries or its predecessor companies or companies merged with it. Members pay for membership in the chapter.

4. What was your relationship with Pine Island Club from January 1, 2006 to the date of the Incident? (Please detail all duties and responsibilities as well as all ownership interests and management and operational roles).

RESPONSE: See SCANA Defendants' answer to Interrogatory No. 3 above.

5. Please identify the names, addresses, and phone numbers of the persons who you believe to have the knowledge of your relationship with Pine Island Club during the 90 days before the Incident up to and including the date of the Incident.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and vague as to the term "knowledge." Subject to and notwithstanding these objections, John W. Seay is the permanent caretaker of Pine Island Club and would have knowledge relevant to Pine Island Club.

6. Please identify the names, addresses and phone numbers of the persons who you believe to have knowledge about the Incident.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and vague as to the term "knowledge." Subject to and notwithstanding these objections, SCANA Defendants assert that the following named persons would be witnesses to this incident.

Mandy Bellamy
Defendant
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Matthew Bellamy
Defendant
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Clyde Evan McPherson
301 Barmount
Columbia, SC, 29210
803-217-8322
802-206-9448

Kim McPherson
301 Barmount
Columbia, SC, 29210
(803) 238-4715
(803) 924-2896

John W. ("JW") Seay
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

7. Identify all persons, including members of Pine Island Club, who based on their job duties and responsibilities with any entity, would have knowledge of any complaints, allegations, lawsuits or notices received Pine Island Club with the five (5) years before the date of the Incident up to an including the date of the Incident.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, upon information and belief Pine Island Club has not been the subject of any lawsuit in the last five years. The following persons would have knowledge of any complaints/allegations/lawsuits/notices served upon Pine Island Club within the last five years:

Frank Bouknight
SCANA, Claims Department
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

SCANA Legal Department Personnel

8. If you are an entity, identify all officers of your entity, all members of your board of directors, and all of those individuals who during the month when the Incident took place had any role in safety, security or supervision of any part of Pine Island Club. For each responsive individual, identify their (1) employer, (2) job title, and (3) job duties and responsibilities on the date of the Incident.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Defendants further object on the grounds of relevance, as the names, employers, job titles and job duties of the board of directors and officers of Defendant SCANA and Defendant SCE&G are not relevant in this case. Subject to and notwithstanding these objections, the following were Officers or members of the Board of Directors for Pine Island Club in 2011:

Officers:

Pam Hutto (Past President)
Keith Costley (President)
Carole Shealy (Vice President)
Sharon Dovell (Secretary)
Vanessa Abercrombie (Assistant Secretary)
Wayne Miller (Treasurer)
Ken Jackson (Assistant Treasurer)
Lynda Love Orange (Social Chairperson)
Cindy Westmoreland (Assistant Social Chairperson)
Sherry Drennan (Reservation Coordinator)
Stacy Shuler (Management Representative)
Kevin Marsh (Officer Representative)
JW Seay (Club Coordinator)

Board of Directors:

Pat Woodard
Randy Fabry
D.J. Stone
Charles Fulmer
Cindy Westmoreland
Sharon Dovell
Linda Smith
Julie Desrochers
Khuzem Bhagat
George Fogle
Scarlet Lutz
Phyllis Powell
Joe McCaskill
Gwen Norris
Charles Riley
Linda Koon
Michelle Lowery
Andrea Bundrick

Alice Venyah
Evan McPherson
Joan Ballew
Wayne Baker

9. Identify all individuals who were present at the Pine Island Club on the day of the incident. For each responsive individual, identify their (1) name, (2) employer, (3) current address, (4) current phone number, (5) what you believe they know as it pertains to the Incident and the claims made by Plaintiffs about the cause of Mr. Myer's death, (6) identify all oral and written statements they have made to anyone, at any time, about the Incident, and (7) for each statement (oral or written), identify to whom it was made, when, and how it was recorded or memorialized.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, Pine Island Club does not keep a log of every person present at Pine Island Club on a daily basis. The following were identified as present at the Pine Island Club on the date of the incident, witnesses to the incident, and were interviewed by law enforcement:

Mandy Bellamy
Defendant
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Defendant Mandy Bellamy provided oral statements and a written statement to the Lexington County Sheriff's Office on June 15, 2011.

Matthew Bellamy
Defendant
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

No recorded statements were given by Matthew Bellamy.

Clyde Evan McPherson
301 Barmount
Columbia, SC, 29210
803-217-8322
802-206-9448

Clyde Evan McPherson provided oral statements and a written statement to Lexington County Sheriff's Office on June 16, 2011.

Kim McPherson
301 Barmount
Columbia, SC, 29210
(803) 238-4715
(803) 924-2896

Kim McPherson provided oral statements and a written statement to Lexington County Sheriff's Office on June 16, 2011.

John W. ("JW") Seay
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

John W. Seay provided oral statements and a written statement to Lexington County Sheriff's Department upon information and belief on or about June 15, 2011.

Detective S. Ellis
Lexington County Sheriff's Department

Upon information and belief, Detective Ellis drafted an Investigative Report in Case No. 11023390 on behalf of Lexington County Sheriff's Department.

Deputy Wade Newberry
Lexington County Sheriff's Department

Upon information and belief, Deputy Newberry drafted an Incident Report in Case No. 11023390 on behalf of Lexington County Sheriff's Department.

Detective Trish Stoner
Lexington County Sheriff's Department

Detective M. Longshore
Lexington County Sheriff's Department

Captain Rowe
Lexington County Sheriff's Department

CSI Phipps
Lexington County Sheriff's Department

MD White

Lowell C. Spires, III
Lexington County Deputy Coroner

Upon information and belief, Lowell Spires, III drafted an Incident Report and Supplemental Report in case number 11-865 on behalf of the Lexington County Coroner's Office on or about June 15, 2011.

10. How do you believe Mr. Myers died on the date of the Incident?

RESPONSE: SCANA Defendants crave reference to Evan Myers' death certificate bates numbered LEX CORONER 0030 (SCANA/BELLAMY).

11. Why do you believe Mr. Myers died on the date of the Incident?

RESPONSE: SCANA Defendants crave reference to Evan Myers' death certificate bates numbered LEX CORONER 0030 (SCANA/BELLAMY).

12. Who was responsible for the safety of area where Mr. Myers was swimming after 6:30pm on the date of the Incident?

RESPONSE: Every person swimming in the freshwaters of Lake Murray at Pine Island Club is responsible for his or her own safety.

13. Detail (1) all investigations which were performed, by anyone and at any time, surrounding the Incident, (2) the reason(s) for each responsive investigation, (3) all those individuals involved in the responsible investigation(s), (4) who paid for the investigations, (5) who was interviewed in the responsive investigation(s), (5) identify all documents authored or prepared in the course of each responsive investigation, and (7) the conclusion(s) of each responsible investigation(s).

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, upon information and belief, the Lexington County Sheriff's Office and the Lexington County Coroner's Office investigated this incident and drafted reports regarding the same. Upon information and belief, these documents were requested by Plaintiffs and produced to Plaintiffs on or about August 22, 2011. Finally, upon information and belief, Plaintiffs hired their own private investigator who performed his or her own investigation of this incident.

14. Was anyone disciplined related in any way to what took place at Pine Island Club on the date of the Incident? If so, state (1) who was disciplined, (2) date of discipline, (3) reason for discipline, and (4) result of the discipline (termination, suspension, probation, etc.)

RESPONSE: Upon information and belief, no one was disciplined in any way related to this incident.

15. Was there anyone at Pine Island Club on the date of the Incident that was not lawfully on said property? If so, (1) who was not lawfully on the property, (2) how did said person gain access to the property, (3) why do you believe that said person was not lawfully on the property, and (4) what involvement, if any, do you believe said person(s) may have had with the death of Mr. Myers.

RESPONSE: Upon information and belief, no one was unlawfully at Pine Island Club on the evening of June 15, 2011.

16. Do you contend that any person, company, and/or agency failed to properly design, construct, maintain and/or warn against any dangerous conditions regarding the manmade lake where the Incident occurred?

RESPONSE: Upon information and belief, SCANA Defendants are not aware of any person, company, and/or agency which failed to properly design, construct, maintain, and/or warn against dangerous conditions regarding Lake Murray.

17. How did Mr. Myers gain access to Pine Island Club on the date of the Incident?

RESPONSE: Mr. Myers was the invited guest of Defendant Mandy Bellamy, a member of Pine Island Club.

18. Who was with Mr. Myers at Pine Island Club on the date of the Incident?

RESPONSE: Mr. Myers was the invited guest of Defendant Mandy Bellamy, a member of Pine Island Club, and was with Ms. Bellamy at the Pine Island Club on June 15, 2011.

19. Why was Mr. Myers present at Pine Island Club on the date of the Incident?

RESPONSE: See SCANA Defendants' answer to Interrogatories 17 and 18.

20. If you have ever been a party to a lawsuit in South Carolina, detail (1) caption of the action, (2) county where the action was filed, (3) reason for the action, (4) who represented your interests in said civil action, (5) if you were deposed in said civil action, and (6) the resolution of the civil action.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. Any such documents are available to Plaintiffs as a matter of public record. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, SCANA Defendants are not aware of any instance where Pine Island Club has been a party in a civil action within the last five years.

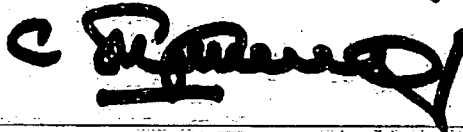
21. Was there security or life guard(s) on duty at Pine Island Club? If so, identify each person and state the following for the date of the Incident: (1) their full name, (2) current address, (3) current phone number, (4) employer on the date of the Incident, and (5) current employer.

RESPONSE: Pine Island Club employs the services of lifeguards at their pool area only. Those lifeguards end their duty at 8pm during typical summer hours. However, due to an approaching storm, the pool closed early on June 15, 2011 and the lifeguards were not present at 8pm. These lifeguards are not responsible for overseeing the freshwaters of Lake Murray, where this incident occurred.

22. Was any video taken of any part of Pine Island Club on the date of the Incident? If so, what video was taken, who has the video, and if it was lost when the last time you had custody or control of said video?

RESPONSE: Upon information and belief, there were no videos taken of any part of Pine Island Club on June 15, 2011.

Respectfully Submitted,
COLLINS & LACY, P.C.



By: _____

CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
MEGHAN HAZELWOOD HALL
mhall@collinsandlacy.com
Post Office Box 12487
Columbia, SC 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
February 29, 2015

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

FOR THE ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,

Civil Action No.: 2014-CP-32-02210

CERTIFICATE OF SERVICE

Plaintiffs,

vs.

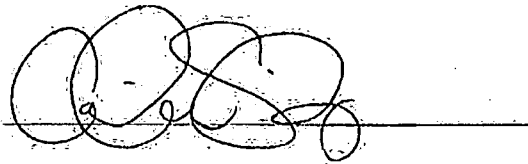
The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina
Electric and Gas Holding Company,
Inc./SCANA, Mandy Nicole Bellamy,
Matthew Bellamy, Lexington County
Coroner's Office, Lexington County
Sheriff's Department, and Lexington
County Medical Center Auxiliary.

Defendants.

I hereby certify that on February 23, 2015, I caused to have served a true and correct copy of the Defendants' Answers to Plaintiffs' First Set of Interrogatories to the below listed counsel of record in this proceeding with sufficient postage and appropriate address.

COUNSEL SERVED:

Pedro E. Krompecher, III, Esquire
Krompecher Law Firm, PLLC
Post Office Box 6639
Raleigh, NC 27628
Counsel for Plaintiff



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,)

Civil Action No.: 2014-CP-32-02210

Plaintiffs,)

vs.)

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina
Electric and Gas Holding Company,
Inc./SCANA, Mandy Nicole Bellamy,
Matthew Bellamy, Lexington County
Coroner's Office, Lexington County
Sheriff's Department, and Lexington
County Medical Center Auxiliary.)

**DEFENDANTS THE CONSOLIDATED
EMPLOYEE RECREATION CLUBS, A
NON-PROFIT ORGANIZATION A/K/A
PINE ISLAND CLUB AT LAKE
MURRAY, SOUTH CAROLINA
ELECTRIC AND GAS HOLDING
COMPANY, INC./SCANA'S
ANSWERS TO PLAINTIFFS'
SECOND SET OF INTERROGATORIES**

Defendants.)

TO: PEDRO E. KROMPECHER, III, ESQUIRE, COUNSEL FOR PLAINTIFFS;

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendants, The Consolidated Employee Recreation Clubs, a non-party organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc./SCANA ("SCANA Defendants") answers to Plaintiff's Second Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Defendants object to each interrogatory to the extent it seeks information that constitutes evidence or reflects confidential communications between Defendants and their attorneys.

2. Defendants object to each interrogatory to the extent it seeks information that constitutes evidence or reflects trial preparation materials or work product of the Defendants or their representatives, agents, or attorneys.
3. Defendants will remove those documents from files, records or other documents to be the products that come within the foregoing objections. If there are documents withheld based on the privilege, Defendants will provide Plaintiff with a separate list of those documents.
4. Defendants object to each interrogatory to the extent it seeks information already available to or equally available to Plaintiff.
5. The following interrogatory answers are based upon information presently available to Defendants and are made without prejudice to the rights of Defendants to utilize subsequently discovered information.
6. By making a response to any interrogatory or documents request, the Defendants do not intend or mean to waive the attorney-client privilege, the work-product doctrine or any other privilege, objection or other limitations upon discovery as to that interrogatory or as to any other present or future request for discovery.
7. Defendants object to each interrogatory in excess of 50, including subparts, as a violation of Rule 33, SCRPC.
8. All answers to the interrogatories and responses to the requests for production of documents are made without the waiver of these general objections, or the specific objections which are hereinafter set forth.
9. The foregoing objections are general ones applicable to all categories of information to be produced. The following responses to any particular item of information should be deemed to include these objections and categories.

DEFENDANTS' ANSWERS TO PLAINTIFFS' SECOND SET OF INTERROGATORIES

1. In your own words without reference to any records or reports or documents, state all events known to and/observed by you on June 15, 2011, from 6:00 p.m. up to and including the moment you thought that Evan Myers had drowned in the water at the Pine Island Club.

RESPONSE: SCANA Defendants have already answered these discovery requests to the best of its belief and knowledge. Caretaker John W. Seay was the only SCANA Defendant employee on property at the time of the incident, and his statement has previously been provided.

John W. ("JW") Seay
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

John W. Seay provided oral statements and a written statement to Lexington County Sheriff's Department upon information and belief on or about June 15, 2011.

2. In June of 2011, who was permitted to use the Pine Island Club? (for example: church groups with permission, boy scouts with permission, families of Members with permission, social organization with permission.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome.

SCANA Defendants further object to this Interrogatory on the grounds that that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence.

Furthermore, SCANA Defendants have already answered this Interrogatory in SCANA Defendants Answers to Plaintiffs' First Set of Interrogatories.

Subject to and notwithstanding these objections, the Pine Island Club is a recreational facility owned by Consolidated Employee Recreation Clubs, and is incorporated as an eleemosynary/non-profit organization. SCE&G Holding Corporation and SCANA are jural entities incorporated and duly organized under the laws of the State of South Carolina. SCANA employees who choose to become members of the Pine Island Club possess "membership privileges and/or permission

and/or access to the premises” at Pine Island. See also Pine Island Club House Rules, DEF-311 – 346, produced herewith.

- 3 In June of 2011, were there security guards at the front gate of the Pine Island Club? If so, when were there security guards? Why were security guards present? What were the job duties and responsibilities of the security guards?

RESPONSE: John W. Seay is the permanent caretaker of Pine Island Club and would have knowledge relevant to Pine Island Club. Furthermore, SCANA Defendants have identified all persons who would be witnesses to this incident in its response to Plaintiff’s First Set of Interrogatories, number 6. No “security guards” are listed as known witnesses to the incident.

4. From June 25, 2010 to the date of the Incident, identify every group, organization, entity, company or party that used the facilities at the Pine Island Club.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence and seeks information that is confidential and proprietary in nature.

Subject to and notwithstanding these objections, Pine Island Club does not keep a log of every person or entity present at Pine Island Club on a daily basis.

5. From June 25, 2010 to the date of the Incident, was any part of the Pine Island Club rented for private use? If so, detail who rented space, what space they/it rented, why it was rented, and the amount paid to rent the space.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence.

Subject to and notwithstanding these objections, Pine Island Club does not keep a log of every person or entity present at Pine Island Club on a daily basis. See also Pine Island Club House Rules, DEF-311 – 346, produced herewith.

6. On June 25, 2011, was any community, social, political or religious organization/group/entity on the Pine Island Club property? If so, identify who was there, why they were there, and how they obtained permission to be in the Pine Island Club?

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence and seeks information that is confidential and proprietary in nature

Subject to and notwithstanding these objections, upon information and belief, there was no "community, social, political or religious organization/group/entity" on the property on the date of the incident.

7. In 2011, identify all individuals who were employed to supervise the conduct of people using the facilities (shelters, pool, volleyball, club house, beach, dock, boat dock, etc.) at the Pine Island Club? For each person, identify their name, job titled, and job duties and responsibilities.

RESPONSE: On the date of the loss, SCANA Defendants identify the following individuals as employees at the Pine Island Club:

1. John W. ("JW") Seay, Pine Island caretaker
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

SCANA Defendants are continuing to investigate the names of any lifeguards on duty on June 15, 2011, and will supplement their response when and if those names are located.

8. On June 25, 2011, who closed the pool area, what time was the pool area closed, why was the pool area closed, who directed that the pool be closed, and identify all documents related to the pool closure on the day, including policies and procedures that authorized the pool closing "due to an approaching storm".

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence.

Subject to and notwithstanding these objections, as previously stated in SCANA Defendants Response to Plaintiffs' First Set of Interrogatories no. 21, Pine Island Club employs the services of lifeguards at their pool area only. Those lifeguards end their duty at 8pm during typical summer hours. However, due to an approaching storm, the pool closed early on June 15, 2011, and the lifeguards were not present at 8pm. These lifeguards are not responsible for overseeing the freshwaters of Lake Murray, where this incident occurred.

Upon information and belief, no documents were created as a result of early closure on June 15, 2011. See the South Carolina Department of Health and Environmental Control, Bureau of Water Regulation 61-51 governing Public Swimming Pools, produced herewith.

9. In the five (5) years before June 25, 2011, identify every time that any swimming area (pool, beach, dock, etc.) at the Pine Island Club was closed during the months of May, June, July, August and September. For every time a swimming area was closed during these months, state with specificity when the swimming area was closed, why the swimming area was closed, and who directed that the swimming area be closed.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence.

Subject to and notwithstanding these objections, SCANA Defendants are not in possession of the records Plaintiffs have requested nor are any known to exist.

10. On June 25, 2011, between the hours of 5:00 p.m. and 10:00 p.m., was swimming permitted in the area between the dock and the beach where it is believed that Evan Myers drowned? If not, identify with specific details about why swimming was not allowed in that area.

RESPONSE: SCANA Defendants are not in possession of the records Plaintiffs have requested nor are any known to exist. The freshwaters of Lake Murray are open to the public and swimming is always permitted in the freshwaters of Lake Murray. Every person swimming in the freshwaters of Lake Murray is responsible for his or her own safety.

11. On June 25, 2011, between the hours of 5:00 p.m. and 10:00 p.m., was there anything (any physical condition, natural or unnatural condition) dangerous or unsafe about the water around the dock where it is believed Mandy Bellamy and Evan Myers jumped off before Evan Myers drowned? If so, identify which specific details why the water around that dock was unsafe for swimming, diving or jumping.

RESPONSE: SCANA Defendants are not in possession of any information responsive to this interrogatory. Notwithstanding the prior objection, upon information and belief, there was no known dangerous or unsafe condition about the water around the dock. SCANA Defendants assert that every person swimming in the freshwaters of Lake Murray at Pine Island Club is responsible for his or her own safety, and that all water is potentially dangerous depending upon the abilities of the swimmer.

12. On June 25, 2011, between the hours of 5:00 p.m. and 10:00 p.m., was there anything (any physical condition, natural or unnatural condition) dangerous or unsafe about the water between the dock (where it is believed Mandy Bellamy and Evan Myers jumped off) and the beach? If so, identify which specific details why the water around that dock was unsafe for swimming, diving or jumping.

RESPONSE: SCANA Defendants are not in possession of any information responsive to this interrogatory. Notwithstanding the prior objection, upon information and belief, there was no known dangerous or unsafe condition about the water around the dock. SCANA Defendants assert that every person swimming

in the freshwaters of Lake Murray at Pine Island Club is responsible for his or her own safety, and that all water is potentially dangerous depending upon the abilities of the swimmer.

13. On June 25, 2011, was there a lifeguard anywhere on the Pine Island Club at any time during that day? If so, detail when there was a lifeguard, where that lifeguard was stationed on the island, the names and addresses of all lifeguards, and the job duty and responsibilities of all lifeguards.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence. Subject to and notwithstanding these objections, as previously stated in SCANA Defendants Response to Plaintiffs' First Set of Interrogatories no. 21, Pine Island Club employs the services of lifeguards at their pool area only. Those lifeguards end their duty at 8pm during typical summer hours. However, due to an approaching storm, the pool closed early on June 15, 2011 and the lifeguards were not present at 8pm. These lifeguards are not responsible for overseeing the freshwaters of Lake Murray, where this incident occurred. SCANA Defendants are continuing to investigate the names of any lifeguards on duty on June 15, 2011, and will supplement their response when and if those names are located.

14. On June 25, 2011, was there anyone on Pine Island Club monitoring the conduct of guests and invitees on the island? If so, detail the job titles of all such people, their names and addresses, and state the employer of each person on June 25, 2011.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Subject to and notwithstanding these objections, John W. Seay is the permanent caretaker of Pine Island Club. However, no one person is employed to monitor the conduct or safety of members, guests, or invitees on the island. The Pine Island Club has a Rules Committee that enforces violations of the House Rules that are reported to a member of the committee. SCANA Defendants have identified all persons who would be witnesses to this incident in its response to Plaintiff's First Set of Interrogatories, No. 6.

15. On June 25, 2011, was there anyone monitoring (monitoring may be in person or remotely with video or surveillance cameras) the safety of members, guests and invitees on the island? If so, detail that person's job titled[sic], job duties and responsibilities, name and address and their employer when they were monitoring the safety of the members, guests, and invitees on the island.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Subject to and notwithstanding these objections, John W. Seay is the permanent caretaker of Pine Island Club. However, no one person is employed to monitor the conduct or safety of members, guests, or invitees on the island. The Pine Island Club has a Rules Committee that enforces violations of the House Rules that are reported to a member of the committee. SCANA Defendants have identified all persons who would be witnesses to this incident in its response to Plaintiff's First Set of Interrogatories, No. 6.

16. In the five (5) years prior to June 25, 2011, did the Pine Island Club employ or contract with any individual or company to monitor (monitoring may be in person or remotely with video or surveillance cameras) or supervise the safety of members, guests, invitees, or any other person or persons swimming in the waters surrounding the club? If so, please provide the names, addresses, and telephone numbers of each such person or company.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Subject to and notwithstanding these objections, John W. Seay is the permanent caretaker of Pine Island Club. However, no one person is employed to monitor the conduct or safety of members, guests, or invitees on the island. The Pine Island Club has a Rules Committee that enforces violations of the House Rules that are reported to a member of the committee. SCANA Defendants have identified all persons who would be witnesses to this incident in its response to Plaintiff's First Set of Interrogatories, No. 6.

17. Had the Pine Island Club, either for itself or through an agent or contractor for hire, prior to June 25, 2011, ever conducted a survey, study, or other investigation to evaluate the safety of the fresh water accessible by its guests for swimming? If so, please identify the names, addresses, and phone numbers of all individuals who conducted such survey/study/investigation.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Subject to and notwithstanding these objections, SCANA Defendants are not in possession of the records Plaintiffs have requested nor are any known to exist. Pursuant to Cole v. SCE&G, 355 S.C. 183, 584 S.E.2d 405 (Ct. App. 2003), SCANA Defendants do not possess a legal duty to perform any such survey, study, or investigation.

18. Has any member, guest, or invitee ever drowned or sustained an injury requiring hospitalization while swimming in the freshwater area accessible by the Pine Island Club? If so, please provide the date of the incident, the name of the individual involved, a brief description of the incident, whether a claim was filed, and whether you are in possession of any records or documentation of the incident.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Subject to and notwithstanding these objections, other than the incident that is the subject of this lawsuit, SCANA Defendants are not in possession of the records Plaintiffs have requested nor are any known to exist. Upon information and belief, Plaintiff's decedent is the first/only swimming fatality at the Pine Island Club.

19. In the five (5) years prior to June 25, 2011, had there ever been a lifeguard or other person employed by or contracted with the Pine Island Club whose duties included monitoring (monitoring may be in person or remotely with video or surveillance cameras) and/or ensuring the safety of persons swimming on any part of the Pine Island Club for any reason? If so, detail when there was a life guard or other such individual, the names and addresses of all lifeguards or other such individuals, and the job duties and responsibilities of all such individuals.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence. Subject to and notwithstanding these objections, as previously stated in SCANA Defendants Response to Plaintiffs' First Set of Interrogatories no. 21, Pine Island Club employs the services of lifeguards at their pool area only. Those lifeguards end their duty at 8pm during typical summer hours. However, due to an approaching storm, the pool closed early on June 15, 2011, and the lifeguards were not present at 8pm. These lifeguards are not responsible for overseeing the freshwaters of Lake Murray, where this incident occurred.

20. In the five years prior to June 25, 2011, was there anyone employed by, contracted with, or otherwise stationed upon the Pine Island Club to monitor (monitoring may be in person or remotely with video or surveillance cameras) the conduct of members, guests, and invitees on the island? If so, detail the job titles of all such people, their names and addresses, and state the employer of each person while they were monitoring the conduct of the members, guests, and invitees on the island.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence. Subject to and notwithstanding these objections, as previously stated in SCANA Defendants Response to Plaintiffs' First Set of Interrogatories no. 21, Pine Island Club employs the services of lifeguards at their pool area only. Those lifeguards end their duty at 8pm during typical summer hours. However, due to an approaching storm, the pool

closed early on June 15, 2011, and the lifeguards were not present at 8pm. These lifeguards are not responsible for overseeing the freshwaters of Lake Murray, where this incident occurred.

21. In the five (5) years prior to June 25, 2011, was there anyone monitoring the safety of the members, guests, and invitees on the island (monitoring may be in person or remotely with video or surveillance cameras)? If so, detail that person's job titled [sic], job duties and responsibilities, name and address and their employer when they were monitoring the safety of the members, guests and invitees on the island.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence. Subject to and notwithstanding these objections, as previously stated in SCANA Defendants Response to Plaintiffs' First Set of Interrogatories no. 21, Pine Island Club employs the services of lifeguards at their pool area only. Those lifeguards end their duty at 8pm during typical summer hours. However, due to an approaching storm, the pool closed early on June 15, 2011 and the lifeguards were not present at 8pm. These lifeguards are not responsible for overseeing the freshwaters of Lake Murray, where this incident occurred.

22. In the five (5) years prior to June 25, 2011, was the safety of the water near the beach and around the dock (where it is believed Mandy Bellamy and Evan Myers jumped off) ever inspected by anyone or any entity for any reason whatsoever? If so, state with specificity all inspections performed, why those inspections were done, who requested those inspections, who performed those inspections, when those inspection[sic] were performed, what documents were prepared related to those inspections, and who has the documents prepared during or as a result of those inspections.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Subject to and notwithstanding these objections, SCANA Defendants are not aware of any such inspections, nor are any known to exist. Upon information and belief, there was no known dangerous or unsafe condition about the water around the dock. Plaintiff's decedent died as a

result of drowning. A risk of swimming is drowning. There was no other cause of death.

23. In the five (5) years prior to June 25, 2011, was the safety of the dock (where it is believed Mandy Bellamy and Evan Myers jumped off) ever inspected by anyone or any entity for any reason whatsoever? If so, state with specificity all inspections performed, why those inspections were done, who requested those inspections, who performed those inspections, when those inspection[sic] were performed, what documents were prepared related to those inspections, and who has the documents prepared during or as a result of those inspections.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Defendants further object on the grounds that the safety of the subject dock is not relevant, as decedent drowned in the open waters of Lake Murray. Subject to and notwithstanding these objections, SCANA's Facilities Maintenance performs preventative maintenance tasks when an issue requires correction. SCANA Defendants are continuing to investigate what, if any records exist that are responsive to this request, and will supplement their response accordingly.

24. In the five (5) years prior to June 25, 2011, was the safety of the beach (which was roped off for swimmers) ever inspected by anyone or any entity for any reason whatsoever? If so, state with specificity all inspections performed, why those inspections were done, who requested those inspections, who performed those inspections, when those inspection[sic] were performed, what documents were prepared related to those inspections, and who has the documents prepared during or as a result of those inspections.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Defendants further object on the grounds that the safety of the subject beach is not relevant, as decedent drowned in the open waters of Lake Murray. Upon information and belief, there was no known dangerous or unsafe condition about the water around the dock. There was no

other cause of death. Subject to and notwithstanding these objections, SCANA Defendants are not aware of any such inspections, nor are any known to exist.

25. In the five (5) years prior to June 25, 2011, was any part of Pine Island Club inspected by anyone or any entity for any reason whatsoever? If so, state with specificity all inspections performed, why those inspections were done, who requested those inspections, who performed those inspections, when those inspection[sic] were performed, what documents were prepared related to those inspections, and who has the documents prepared during or as a result of those inspections.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Defendants further object on the grounds that the safety of "any part of Pine Island Club" is not relevant, as decedent drowned in the open waters of Lake Murray. Upon information and belief, there was no known dangerous or unsafe condition about the water around the dock. Subject to and notwithstanding these objections, SCANA Defendants are not aware of any such inspections, nor are any known to exist.

26. In the five (5) years prior to June 25, 2011, had any person on the Pine Island Club Island required emergency medical attention (CPR, AED, EMS, Fire Department, or any type of emergency medical attention) for any reason? If so, detail the nature and extent of the injury, the cause of the injury, the date of the injury and identify all records or documents prepared about each injury.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Defendants further object on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence. SCANA Defendants are not in possession of the records Plaintiffs have requested nor are any known to exist. Upon information and belief, Plaintiff's decedent is the first/only swimming fatality at the Pine Island Club.

27. Identify all policies and procedures of Pine Island Club in effect on June 25, 2011, that relate in any way to the safety of people on the island (for example, when and why the pool may close early, when and why the beach may be closed early, emergency procedures in case of injury, etc.)

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Subject to and notwithstanding these objections, see DEFS-210 to -242, previously produced.

28. In 2011, how many "members" as that word was used in Defendants' Answer to Interrogatory Number 3) were there of The Pine Island Club? How much did each member pay for his/her membership? What were the membership dues used for in 2011?

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad, vague and unduly burdensome. Defendants further object that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence. Subject to and notwithstanding these objections, see DEFS-210 to -242, previously produced, and DEFS-0308 to 0309, produced herewith.

29. Did you have a cell phone with you? If so, identify (a) your cell phone number, (b) the name of your carrier, and (c) your account number on the day of the events as set forth in the Complaint until the present.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence, and is not an Interrogatory appropriately directed to a corporation. SCANA Defendants were not an eyewitness to the alleged incident and has answered these discovery requests to the best of its belief and knowledge. Furthermore, this Interrogatory exceeds fifty [50] Interrogatories directed at this defendant.

30. Do you have access to your phone records?

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence, and is not an Interrogatory appropriately directed to a corporation. SCANA Defendants were not

an eyewitness to the alleged incident and has answered these discovery requests to the best of its belief and knowledge. Furthermore, this Interrogatory exceeds fifty [50] Interrogatories directed at this defendant.

31. Did you have an email account? If so, please identify (a) your email address, (c) [sic] the name of your email carrier, and (c) your password on the day of the events as set forth in the Complaint until the present.

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence, and is not an Interrogatory appropriately directed to a corporation. SCANA Defendants were not an eyewitness to the alleged incident and has answered these discovery requests to the best of its belief and knowledge. Furthermore, this Interrogatory exceeds fifty [50] Interrogatories directed at this defendant.

32. Did you have any type of social media account (i.e. twitter, Snapchat, Instagram, Facebook) at the time from June 5, 2011 up to and until the present?

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence, and is not an Interrogatory appropriately directed to a corporation. SCANA Defendants were not an eyewitness to the alleged incident and has answered these discovery requests to the best of its belief and knowledge. Furthermore, this Interrogatory exceeds fifty [50] Interrogatories directed at this defendant.

33. Please provide usernames and passwords for any social media account identified in Interrogatory Number 4[sic]?

RESPONSE: SCANA Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. SCANA Defendants further object to this Interrogatory on the grounds that it seeks information not reasonably calculated to lead to the discovery of relevant and admissible evidence, and is not an Interrogatory appropriately directed to a corporation. SCANA Defendants were not an eyewitness to the alleged incident and has answered these discovery requests to the best of its belief and knowledge. Furthermore, this Interrogatory exceeds fifty [50] Interrogatories directed at this defendant.

Respectfully Submitted,
COLLINS & LACY, P.C.

By: Meghan J. Hall

CHRISTIAN STEGMAIER

cstegmaier@collinsandlacy.com

MEGHAN HAZELWOOD HALL

mhall@collinsandlacy.com

Post Office Box 12487

Columbia, SC 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
April 14, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,)

Plaintiffs,)

vs.)

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina)
Electric and Gas Holding Company,)
Inc./SCANA, Mandy Nicole Bellamy,)
Matthew Bellamy, Lexington County)
Coroner's Office, Lexington County)
Sheriff's Department, and Lexington)
County Medical Center Auxiliary.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-32-02210

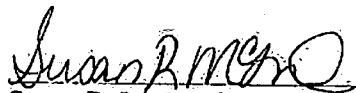
CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2015, I caused to have served a true and correct copy of the Defendants' Answers to Plaintiffs' Second Set of Interrogatories to the below listed counsel of record in this proceeding with sufficient postage and appropriate address.

COUNSEL SERVED:

Pedro E. Krompecher, III, Esquire
Krompecher Law Firm, PLLC
Post Office Box 6639
Raleigh, NC 27628
Counsel for Plaintiff

Mr. Benjamin Baroody
Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.
Post Office Box 357
Myrtle Beach, SC 29578
Counsel for Plaintiff



Susan R. McLeod

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 12 2016

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellant,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

NOTICE OF APPEAL

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of E. M. Myers, appeals the Order on Motion for Reconsideration of the Order Denying Plaintiff's Motion Motion to Alter or Amend and the underlying Order Granting Defendants' Motion for Summary Judgement, both by the Honorable William P. Keesley. The Order on Motion for Reconsideration of the Order Denying Plaintiff's Motion Motion to Alter or Amend was dated November 4, 2016 and entered of record on November 9, 2016.

KROMPECHER LAW FIRM, PLLC

BY: 

Pedro E. Krompecher, III

P.O. Box 6639

Raleigh, North Carolina 27628

Telephone: (919) 977-8082

Facsimile: (919) 746-7588

Email: pedro@krompecherlaw.com

Attorney for Appellant

December 12, 2016

Other Counsel of Record:
Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2014-CP-32-02210

RECEIVED

DEC 12 2016

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellant,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding Company, Inc.; SCANA; and Mandy Nicole Bellamy by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2016, addressed to their attorneys of record, Christian Stegmaier and Megan H. Hall, Collins & Lacy, P.C., 1330 Lady Street, Sixth Floor, Columbia, SC 29201.

KROMPECHER LAW FIRM, PLLC

BY: 

Pedro E. Krompecher, III

P.O. Box 6639

Raleigh, North Carolina 27628

Telephone: (919) 977-8082

Facsimile: (919) 746-7588

Email: pedro@krompecherlaw.com

Attorney for Appellant

December 12, 2016

**COPY
RECEIVED**

DEC 28 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellant,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

AMENDED NOTICE OF APPEAL

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of E. M. Myers, appeals the Order on Motion for Reconsideration of the Order Denying Plaintiff's Motion Motion to Alter or Amend by the Honorable William P. Keesley dated November 4, 2016 and entered of record on November 9, 2016. The Order being challenged on appeal was received by the appellant on November 21, 2016.

KROMPECHER LAW FIRM, PLLC

BY: 

Pedro E. Krompecher, III

P.O. Box 6639

Raleigh, North Carolina 27628

Telephone: (919) 977-8082

Facsimile: (919) 746-7588

Email: pedro@krompecherlaw.com

Attorney for Appellant

December 27, 2016

**Other Counsel of Record:
Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201**

Attorneys for Respondent

RECEIVED

DEC 28 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellant,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding Company, Inc.; SCANA; and Mandy Nicole Bellamy by depositing a copy of it in the United States Mail, postage prepaid, on December 27, 2016, addressed to their attorneys of record, Christian Stegmaier and Megan H. Hall, Collins & Lacy, P.C., 1330 Lady Street, Sixth Floor, Columbia, SC 29201.

KROMPECHER LAW FIRM, PLLC

BY: 

Pedro E. Krompecher, III

P.O. Box 6639

Raleigh, North Carolina 27628

Telephone: (919) 977-8082

Facsimile: (919) 746-7588

Email: pedro@krompecherlaw.com

Attorney for Appellant

December 27, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,)

Civil Action No.: 2014-CP-32-02210

Plaintiffs,)

vs.)

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina
Electric and Gas Holding Company,
Inc./SCANA, Mandy Nicole Bellamy,
Matthew Bellamy, Lexington County
Coroner's Office, Lexington County
Sheriff's Department, and Lexington
County Medical Center Auxiliary,)

**DEFENDANTS THE CONSOLIDATED
EMPLOYEE RECREATION CLUBS, A
NON-PROFIT ORGANIZATION A/K/A
PINE ISLAND CLUB AT LAKE MURRAY,
SOUTH CAROLINA ELECTRIC AND
GAS HOLDING COMPANY, INC./SCANA,
MANDY NICOLE BELLAMY, AND
MATTHEW BELLAMY'S**

**MOTION FOR SUMMARY JUDGMENT
(Argument Requested)**

Defendants.)

FILED
2014 NOV -3 A 9 23

TO: CASSANDRA M. MYERS AND BARTHOLOMEW MYERS:

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc./SCANA, Mandy Nicole Bellamy, and Matthew Bellamy will move before the Presiding Judge of the Lexington County Court of Common Pleas ten (10) days after service hereof or as soon thereafter as it may be heard for an Order granting summary judgment to these defendants.

The instant case involves the accidental drowning of Evan Morris Myers on June 11, 2011, in the waters of Lake Murray in Lexington County. Specifically, Plaintiffs Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers have brought a wrongful death action sounding in negligence and intentional

infliction of emotional distress against these defendants. While this is a tragic circumstance, these defendants are nonetheless entitled to summary judgment upon the following grounds:

- Plaintiffs' claims against the defendants largely center on a theory of negligence. In South Carolina, the four requisite elements of a negligence cause of action include: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breaches this duty through a negligent act or omission; (3) this breach of duty actually and proximately causes the plaintiff's injury; and (4) the plaintiff suffers an injury or damages. Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 560 (Ct. App. 2004). South Carolina courts have held that the question of whether a duty actually existed between the defendant and the plaintiff is a question of law to be determined by the trial court, and if the court determines that no duty exists, "the defendant is entitled to judgment as a matter of law." Id.; see also Simmons v. Tuomey Reg'l. Med. Ctr., 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). The burden of proving breach of a duty is on the plaintiff. Doe, 361 S.C. at 470, 605 S.E.2d at 560 (Ct. App. 2004) (citing Sabb v. S.C. State University, 350 S.C. 416, 429, 567 S.E.2d 231, 237 (2002)); Bishop v. S.C. Department of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998). In the case at bar, Plaintiffs have failed to demonstrate the existence of any colorable duty of care owed by these defendants to Evan Morris Myers on June 11, 2011, which these defendants breached.
- These defendants are entitled to judgment as a matter of law via South Carolina's Recreational Use Statute. S.C. Code Ann. §§ 27-3-10 to -70; see also, e.g., Cole v. SCE&G, 355 S.C. 183, 584 S.E.2d 405 (Ct. App. 2003); and

- Other than file and serve their summons and complaint, Plaintiffs have failed to prosecute their case. See Rules 40 & 41(b), SCRPC. Moreover, Plaintiffs refuse to participate in discovery, which has prejudiced the defendants. See Rule 37, SCRPC. Due to Plaintiff's failure to prosecute and cooperate in discovery, the case should be dismissed.
- Plaintiffs have additionally asserted a cause of action for intentional infliction of emotional distress. To recover under an intentional infliction of emotional distress theory, a plaintiff must establish: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;" (3) the actions of the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could expect to endure it." Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (quoting Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007)); Bass v. S. Carolina Dep't of Soc. Servs., 403 S.C. 184, 193, 742 S.E.2d 667, 672 (Ct. App. 2013). The trial court possesses the purview to determine as a matter of law whether the conduct alleged by a plaintiff is "so extreme and outrageous as to exceed all possible bounds of decency; obnoxious conduct utterly intolerable in a civilized society" See, e.g., Bell v. Dixie Furniture Co., 285 S.C. 263, 265, 329 S.E.2d 431, 433 (1985). In the case sub judice, Plaintiffs are unable to demonstrate any conduct by the defendants that rose to a level of negligence, much less to a level of outrageousness. Thus, these defendants are entitled to summary judgment on this count.

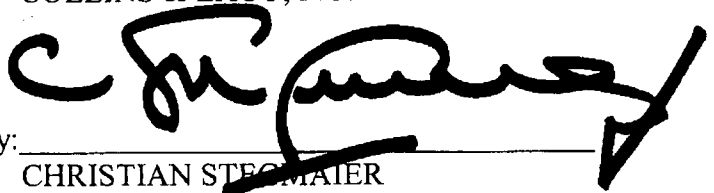
- Matthew Bellamy has no connection whatsoever to the instant case and is thus not liable to Plaintiffs under any theory of recovery they have propounded in their pleadings.

Defendants The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc./SCANA, Mandy Nicole Bellamy, and Matthew Bellamy reserve the right to amend this motion prior to hearing. Further, these defendants reserve the right to supplement this motion with a supporting memorandum of law, as well as supplement its filing with affidavits, materials obtained in discovery, and any other material permitted by Rule 56, SCRPC, which may be considered by this Court at the summary judgment stage.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

COLLINS & LACY, P.C.



By: _____

CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR DEFENDANTS THE
CONSOLIDATED EMPLOYEE RECREATION
CLUBS, A NON-PROFIT ORGANIZATION
A/K/A PINE ISLAND CLUB AT LAKE
MURRAY, SOUTH CAROLINA ELECTRIC
AND GAS HOLDING COMPANY, INC./SCANA,
MANDY NICOLE BELLAMY, AND MATTHEW
BELLAMY

**DEFENDANTS THE CONSOLIDATED
EMPLOYEE RECREATION CLUBS, A NON-
PROFIT ORGANIZATION A/K/A PINE
ISLAND CLUB AT LAKE MURRAY, SOUTH
CAROLINA ELECTRIC AND GAS HOLDING
COMPANY, INC./SCANA, MANDY NICOLE
BELLAMY, AND MATTHEW BELLAMY'S
MOTION FOR SUMMARY JUDGMENT**

Columbia, South Carolina
October 30, 2014

FILED
NOV - 3 A 9 23
CLERK OF COURT
COLUMBIA COUNTY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,)

Civil Action No.: 2014-CP-32-02210

Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina)
Electric and Gas Holding Company,)
Inc./SCANA, Mandy Nicole Bellamy,)
Matthew Bellamy, Lexington County)
Coroner's Office, Lexington County)
Sheriff's Department, and Lexington)
County Medical Center Auxiliary,)

Defendants.)

FILED
2014 NOV - 3 A 9:23
CLERK OF COURT

The undersigned does hereby certify that on the 30th day of October, 2014, the following named individual(s) were served with a copy of the within pleading via electronic mail and/or by mailing a copy of same to said person(s) via the United States Postal Service with sufficient postage affixed thereto and return address clearly marked.

PLEADINGS SERVED:

- **DEFENDANTS THE CONSOLIDATED EMPLOYEE RECREATION CLUBS, A NON-PROFIT ORGANIZATION A/K/A PINE ISLAND CLUB AT LAKE MURRAY, SOUTH CAROLINA ELECTRIC AND GAS HOLDING COMPANY, INC./SCANA, MANDY NICOLE BELLAMY, AND MATTHEW BELLAMY'S MOTION FOR SUMMARY JUDGMENT**

PARTIES SERVED:

Bartholomew Myers
Cassandra M. Myers
318 Forest Grove Lane
Columbia, SC 29210

Kay G. Crowe, Esquire
Barnes, Alford, Stork & Johnson, LLP
Post Office Box 8448
Columbia, SC 29202

Leslie C. Clamp

Leslie C. Clamp

Columbia, South Carolina
October 30, 2014

CLERK'S VERIFICATION

DATE FILED 11-3-14

Collected by:

James
(print name)

- MOTION FEE COLLECTED: \$25.00
- CONTESTED - AMOUNT DUE: \$

SCCA/233 (11-03)

FILED

2014 NOV -3 A 9 23

ESTHERA CARROLL
CLERK OF SUPERIOR COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) CIVIL ACTION NO. 2014-CP-32-02210

2015 DEC -8 PM 4:10

Cassandra M. Myers and Bartholomew
 Myers in their capacity as Co-Personal
 Representatives of the Estate of
 Evan M. Myers,

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

Plaintiffs,

v.

The Consolidated Employee Recreation
 Clubs, a non-profit organization a/k/a Pine
 Island Club at Lake Murray; South
 Carolina Electric and Gas Holding
 Company, Inc.; SCANA,

Defendants.

**PLAINTIFFS' MEMORANDUM OF LAW IN
 RESPONSE TO DEFENDANTS' MOTION
 FOR SUMMARY JUDGMENT**

NOW COME the Plaintiffs, by and through the undersigned counsel, and respectfully submit this Memorandum of Law in Response to Defendants' Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTS

The instant action arises out of the drowning death of Evan Myers. Evan drowned on the evening of June 15, 2011, while swimming at the swimming beach of Pine Island Club. Lake Murray is owned by Defendant South Carolina Electric and Gas Holding Company. The Pine Island Club is owned and operated by Defendant Consolidated Employee Recreation Clubs. Pine Island Club a membership-only recreational facility available solely to employees of Defendant SCANA. (See Def. Ans. to Interrogatories ¶¶ 1-3.) In order to be a Member of the Pine Island Club and have access to the facilities, including the subject swimming beach, a person must be

(1) an employee of SCANA, (2) have applied and been accepted for membership, (3) have paid an initiation fee, and (4) pay monthly Membership Fees.

Pine Island Club is analogous to a private country club. There are guards at the entrance and Members are checked upon entrance. Members may bring guests onto the island. If a non-member accesses the Pine Island Club without a member, that person is a trespasser and subject to prosecution. (See Defs.' Ans. to Interrogatories, ¶ 3, Feb. 23, 2015. See also Defs.' Ans. to Pls. 2d Set of Interrogatories, ¶¶ 2, 27, 28, April 14, 2015. See also Pine Island Chapter Bylaws Art. V; Consolidated Employee Recreation Clubs Bylaws Art. V.)

On the evening of June 15, 2011. Evan was the invited guest of Mandy Bellamy, a member of Pine Island Club. Evan had been an invited guest of Ms. Bellamy the week before. They swam together, along with Ms. Bellam's boyfriend, for over an hour, without incident.

On the evening of June 15, 2011, Evan and Ms. Bellamy swam together at the swimming beach in approximately 12 feet of water for over 30 minutes. Evan and Ms. Bellamy were the only people at the swimming beach and Ms. Bellamy's car was the only car in the parking lot. Their bags and towels were on the beach.

During the time Evan and Ms. Bellamy were swimming at the swimming beach, the Pine Island Club received information of an incoming storm and closed down the swimming pool, adjacent to the swimming beach. All lifeguards and swimmers were sent home.

After the swimming pool was closed due to the incoming storm, Evan and Ms. Bellamy, without knowledge of the incoming storm, walked passed the Pine Island Club caretaker, Mr. Seay, dripping wet in their bathing suits, and jumped off the boating dock less than 50 feet away.

Evan Myers drowned in Lake Murray because of the changes in water conditions due to the incoming storm. Rescue attempts by Ms. Bellamy and an adult onlooker were unsuccessful as there were no lifeguards on duty and no water rescue devices available.

Pine Island Club failed to keep the premises safe for lawful swimmers at the swimming beach by not having: (1) appropriate weather monitoring equipment, (2) life guards, (3) water rescue devices, (4) safety posts, (5) severe weather safety plan, (6) appropriate policies and procedures, and (7) failed to clear the swimming beach.

Pine Island Club failed to warn Evan of dangers on its property by failing to: (1) warn Evan of the incoming storm, (2) warn Evan of the changing water conditions, and (3) warn Evan of the dangers of swimming in the lake with the incoming storm and changing water conditions.

DISCUSSION

I. Legal Standard

“Summary judgment is appropriate where it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Brooks v. Northwood Little League, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997) (internal citations and quotations omitted).

In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine. If a legal duty is established, whether the defendant breached that duty is a question of fact.

Cole v. BSA, 397 S.C. 247, 251, 725 S.E.2d 476, 478 (2011) (internal citations and quotations omitted).

II. Defendants, as private land owners that charged for access to their property, owed the duties to Evan Myers as a licensee on their property.

A licensee is “a person who is privileged to enter upon land by virtue of the possessor’s consent.” Vogt v. Murraywood Swim & Racquet Club, 357 S.C. 506, 510, 593 S.E.2d 617, 619 (Ct. App. 2004). This is for the licensee’s own benefit, and a landowner owes that person the duties to “(a) discover him and avoid injury to him in carrying on activities upon the land; and (b) warn him of any concealed dangerous conditions or activities which are known to the possessor. Id.

In Vogt, Plaintiff was not charged an admission fee and was a guest of dues paying members of Defendant Racquet Club when he was injured as a result of a diving accident. The Court held that because and “a guest of a dues-paying member enters not by right, but by the permission of the member” and “his presence was entirely permissive” he was a licensee at the Defendant facility. Vogt, 357 S.C. at 511, 593 S.E.2d at 620.

Similarly, Evan Myers was the guest of Ms. Bellamy, a dues paying member of Pine Island Club. As such, Defendants owed Evan Myers the duties imposed on a landowner to a licensee, which are to discover his presence and avoid injury to him, and to warn him of any concealed dangerous conditions known to the possessor.

a. *Defendants failed to discover Evan Myers’s presence and avoid injury to him.*

In Cole v. S.C. Elec. & Gas, Inc., 362 S.C. 445, 608 S.E. 2d 859 (2005) (Infra), the South Carolina Supreme Court declined to answer whether or not a landowner had met its standard of care when the only warning it gave swimmers was that there was no lifeguard on duty. The Court

explained that this was a question of fact for the jury. In that case, the swimmers were invitees. Id., 362 S.C. at 453, 608 S.E. 2d at 868.

Throughout the course of discovery, Plaintiff has retained two (2) national experts in water safety. Both experts have conducted thorough investigations of the policies, procedures, and failures of Defendants in this case. The experts have each filed affidavits regarding the failures of Defendants. See Affidavit of Francesco A. Pia, PhD attached hereto as **Exhibit A**, and Affidavit of Dr. Ralph L. Johnson, PhD attached hereto as **Exhibit B**.

Combined, these experts have over eighty (80) years of experience with water safety standards. Each expert has reviewed the pleadings, discovery, photographs, and deposition testimony in this case, as well as consulting various outside materials. Specifically, Dr. Johnson personally inspected Pine Island Club in order to form his opinions.

Both experts have determined, through their training, education, and experience, that the maintenance of a swimming beach requires life-saving devices to be available, weather monitoring equipment should be used, and that a duty to warn of changes in weather exists. See Pia Aff. ¶¶ 8 – 10; Johnson Aff. ¶¶ 5-7. However, Defendants did not have any of these life-saving devices around the swimming beach or boating docks. Due to these failures, Defendants breached the standard owed to an invitee.

b. Defendants failed to warn Evan Myers of a concealed dangerous condition

A concealed condition is one that is not readily visible at the time the accident occurs. See Neil v. Byrum, 288 S.C. 472, 474, 343 S.E. 2d 615, 616 (1986). However, Defendants owe the duty “[t]o use reasonable care to warn him of any concealed dangerous conditions or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover.” Neil v.

Byrum, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986) (quoting Frankel v. Kurtz, 239 F. Supp. 713, 717 (W.D.S.C. 1965)).

South Carolina Courts have not addressed the topic of whether a change in weather constitutes a change in the condition of premises. However, the Courts of this State have allowed weather conditions to influence opinions. See Montgomery v. Nat'l Convoy & Trucking Co., 186 S.C. 167, 195 S.E. 247 (1938); Young v. Meeting St. Piggly Wiggly, 288 S.C. 508, 343 S.E.2d 636 (Ct. App. 1986); Varn v. S.C. Dep't of Highways & Pub. Transp., 311 S.C. 349, 351, 428 S.E.2d 895, 897 (Ct. App. 1993); Gause v. Smithers, 403 S.C. 140 742 S.E. 2d 644 (2013); Lawrimore v. Fast Fare Stores, Inc., 299 S.C. 418, 385 S.E. 2d 218 (1989).

Taking the evidence in the light most favorable to Plaintiffs, because Evan and Ms. Bellamy continued to swim, they did not know of the oncoming storm. Furthermore, Ms. Bellamy believed the weather to be overcast, or windy, and did not remember any rain, thunder or lightening. See Bellamy Dep. 78:25-79:11, Aug. 4, 2015. Therefore, the storm, and its dangers, were unknown to Evan Myers, and he should have been warned of this condition.

Furthermore, Plaintiffs' experts are expected to testify that because Defendants cleared the pool, Defendants knew of the weather condition, knew of its potential dangers, and failed to take the necessary steps to clear the beach.

III. The Recreational Use Statutes Do Not Apply

Defendants assert the Recreational Use Statutes as an affirmative defense, and therefore have the burden to prove its applicability. The purpose of the Recreational Use Statute is to encourage landowners "to make land and water areas available to the public for recreational purposes by limiting their liability" to the entrants upon the land. See S.C. Code Ann. § 27-3-10.

The Recreational Use Statute states that, "an owner of land owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained his permission to use it for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to such persons entering for such purposes." S.C. Code Ann. § 27-3-30. Furthermore,

an owner of land who permits **without charge** any person having sought such permission to use such property for recreational purposes does not thereby: (a) extend any assurance that the premises are safe for any purpose [;] (b) confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed [;] (c) assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

S.C. Code Ann. § 27-3-40 (emphasis added).

While the purpose of the Recreational Use Statute is to encourage landowners "to make land and water areas available to the public for recreational purposes by limiting their liability" to the entrants upon the land, *See* S.C. Code Ann. § 27-3-10, this relief from liability is not absolute. Instead, a land owner is still liable "for grossly negligent, willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity," or "for injury suffered in any case where the owner of land charges persons who enter or go on the land for the recreational use thereof." S.C. Code Ann. § 27-3-60. As used in this chapter, "'charge' means the admission price or fee asked in return for invitation or permission to enter or go upon the land." S.C. Code Ann. § 27-3-20.

a. The Recreational Use Statutes Do Not Apply Because Defendants Charged a Fee.

In order for the Recreational Use Statute to apply, Defendants must permit without charge entry onto the land. *See* S.C. Code Ann. § 27-3-40. *See also* § 27-3-60. "The statute only

protects landowners who do not charge those who seek and obtain permission to come onto their land for recreational purposes.” Harris v. Univ. of S.C., 391 S.C. 518, 526, 706 S.E. 2d 45, 49 (2011).

A charge for the purposes of the Recreational Use Statutes is “a general charge for admission to the property. Courts interpreting this phrase have consistently held that a parking fee does not qualify as a ‘charge’ because not everyone must pay it for admission to the property.” Cole v. S.C. Elec. & Gas, Inc., 362 S.C. 445, 449, 608 S.E. 2d 859, 861 (2005).

In Cole, a teenager drowned while swimming in Lake Murray. On that day, a three-dollar parking fee was charged at SCE&G’s recreational site. The key fact in that case was that the site itself was open to the public. No fee, admission, or dues were paid in order to actually enter into the property. The recreational area was completely accessible without charge. Id.

Cole is distinguishable from the case at hand. Here, Pine Island Club is not a site readily available for public use. Instead, Pine Island Club is a membership arrangement. Defendant has answered Plaintiff’s written interrogatories in pertinent part:

The Pine Island Club is a recreational facility operated by Consolidated Employee Recreation Clubs, and is incorporated as an eleemosynary/non-profit organization. Pursuant to its articles of incorporation, the Pine Island Club operates, “to promote the welfare and to provide a better feeling of fellowship among the employees of SCANA and its subsidiaries through social functions and accommodation of members and their friends, and to provide a clubhouse, clubrooms, and other conveniences and generally to afford Members and their friends all the usual privileges, advantages, conveniences and accommodations of a Chapter and non-profit organization.” Membership in this chapter shall be limited to full time regular employees and retired employees of SCANA and its subsidiaries or its predecessor companies or companies merged with it. **Members pay for membership in the chapter.**

Defs.' Ans. to Interrogatories, ¶ 3 (emphasis added). Additionally, membership to the Pine Island Club is voluntary to SCANA employees. See Defs.' Answers to Pls. 2d Set of Interrogatories, ¶¶ 2, 27, 28.

Those who choose to be members must pay an initiation fee, as well as month chapter dues which may be deducted from pay roll. See Pine Island Chapter Bylaws Art. V. See also Consolidated Employee Recreation Clubs Bylaws Art. V.

Additionally, the Recreational Use Statute "limits the liability of landowners who open their land to any persons having 'sought and obtained' permission to enter for recreational purposes." Harris, 391 S.C. at 526, 706 S.E. 2d at 49 (emphasis original). While permission may be implied, it must be when the public is invited onto the premises free of charge; in those instances, permission is clearly implied. See Brooks v. Northwood Little League, 327 S.C. 400, 408, 489 S.E. 2d 647, 651 (1997) (personal injuries at a Little League T-ball game at Northwood Middle School).

However, in Harris, not every entrant onto the property was required to pay the fee to gain admission; "volunteers, family members of employees, and honored visitors" were not charged. Harris, 391 S.C. at 521, 706 S.E. 2d at 47. Plaintiff, the mother of an intern at the facility, was injured on boardwalk stairs when returning from the beach. In the lawsuit resulting from her personal injuries, the court held that "whether Harris sought permission to enter the Island and whether her visit was for recreational purposes are questions of fact for the jury to decide." Harris, 391 S.C. at 526, 706 S.E. 2d at 49.

In the case at bar, the facts are more akin to Harris than Brooks. No one is permitted on the island without a member. In this case, Mandy Bellamy's father was a member of Pine Island Club. In her experience, seventy-five percent (75%) of the time; there are people checking

membership cards at the guardhouse at the entrance to the island. See Bellamy Dep. 39:4-41:3, Aug. 4, 2015. Similar to Harris, whether Plaintiff or Ms. Bellamy sought permission to enter Pine Island Club is a question of fact for the jury, and is therefore not proper for a motion for summary judgment.

CONCLUSION

WHEREFORE for the reasons set forth herein, this Honorable Court should DENY Defendants' Motion for Summary Judgment.

Respectfully submitted,

This the 8th day of December, 2015.

KROMPECHER LAW FIRM, PLLC

BY: 

Pedro E. Krompecher

SC State Attorney Bar No.: 100485

P.O. Box 6639

Raleigh, North Carolina 27628

Telephone: (919) 9778082

Facsimile: (919) 7467588

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2015 DEC -8 PM 4: 10

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of *Plaintiffs Memorandum of Law in Response to Defendants' Motion for Summary Judgment* has been served upon the following counsel(s) of record and by regular US mail.

Christian Stegmaier
Collins & Lacy
P.O. Box 12487
Columbia, SC 29211

This the 8th day of December, 2015.

KROMPECHER LAW FIRM, PLLC

BY: 

Pedro E. Krompecher, III
SC State Attorney Bar No.: 100485
P.O. Box 6639
Raleigh, North Carolina 27628
Telephone: (919) 977-8082
Facsimile: (919) 746-7588
Email: pedro@krompecherlaw.com

e. In 2004, I received my Doctorate in Interdisciplinary Studies with a concentration in Psychology, Human Factors, and Public Health.

2. I have published the following articles:

a. Handbook on Drowning: Prevention, Rescue, and Treatment. Bierens, J.J.L. (Ed)
Springer 2014 NY

i. Section 82 *Acute Stress During Emergency Response*. Pia, F.

b. Pia, F., Burkle, F.M., Stanley, A. R. Markenson, D. Critical Incident Stress Debriefing (CISD) *International Journal of Aquatics Research and Education*. 2011(5) (11); 130-13

c. Fox, H.J., Burkle, F.M., Bass, J, Pia, F, Epstein, J.L. & Markenson, D. The effectiveness of psychological first aid as a disaster intervention tool: research analysis of peer-reviewed literature from 1990 – 2010

d. Fielding, R.R, Pia, Francesco, Wernicki, P.G. & Markenson, D. Avoiding hyperventilation. *International Journal of Aquatics Research and Education* Volume 3, Issue 4, November

e. Langendorfer, S.J., Quan, L Pia, F, Fielding, R.R., Wernicki, P.J. Markenson, D. Minimum Age for swim lessons *International Journal of Aquatics Research and Education* Volume 3, Issue 4, November

f. Wernicki, P.J., Chambers, P.R., Fielding R.R., Lees. T.A., Markenson, D., Pia, F. & Quan, L. Analysis and rebuttal of development of an in-water intervention in a lifeguard protocol *International Journal of Aquatics Research and Education* Volume 5, Issue 1, February

g. "Guarding Against Misconceptions" *Aquatics International* May 2006

- h. Handbook on Drowning: Prevention, Rescue, and Treatment Bierens, J.J.L. (Ed) Springer (2002), NY
- i. Section 3.9.9 *The Reasons People Drown*. Pia, F.
 - ii. Section 5.5 *Lifeguard Surveillance and Scanning: past, present and future*": Fenner, Griffiths, Oosterman & Pia
 - iii. Section 5.19. *Management of Physical and Psychological responses during administration of CPR to drowned persons*. Pia, F.
- i. Lifeguard Effectiveness: A Report of the Working Group. "Patron Surveillance: A Key Component of Lifeguarding Services" Atlanta: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control: 2001. Branche, CM & Stewart, S. (Ed.)
- j. "Reflections on Lifeguard Surveillance Programs" New Science of Drowning: Prevention & Intervention. CRC Press: 1999
- k. "Proposing a New Safety Collaboration" Pool & Spa News June 15, 1994
- l. Lead writer for three chapters in Lifeguarding Today: (Aquatic Injury Prevention, Patron Surveillance and Facility Surveillance) American Red Cross 1994
- m. *Preventing Swimming Related Fatalities*" Pennsylvania Parks & Recreation Society Spring 1991 Volume 22, No. 3
- n. "The RID Factor as a Cause of Drowning" Parks & Recreation National Parks & Recreation Society, June, 1984.

- o. *"Reduce Swimming Pool Diving Accidents and Millions of Dollars in Liability Costs"* Crawford Educational Newsletter Crawford & Company, Nov. /Dec. 1982.
 - p. *"Observations on the Drowning of Nonswimmers"* Journal of Physical Education Thelma Society of North America, July, 1974. Reprinted in: Lifeguarding, 1st. Edition (1980) American Association of Health, Physical Education and Recreation.
3. I have produced and directed the following training films and videotapes:
- a. *On Drowning*, 1970, a 13-minute lifeguard film which contains actual, *not staged*, film footage of 12 near drownings and rescues which range from single victims through a group of four. ***Best aquatic safety film: 2012, International Aquatic History Symposium and Film Festival: International Swimming Pool Hall of Fame***
 - b. *Drowning: Facts & Myths*, 1976, a 10-minute general audience film which examines the causes and solutions of swimming, no swimming, and boating related drowning fatalities.
 - c. *The Reasons People Drown*, 1988, 22-minute drowning prevention videotape
4. My current resume is attached hereto as **Exhibit A**.
5. I have been qualified as a water safety expert in drowning cases in the following states:
- a. North Carolina;
 - b. New York;

- c. New Jersey;
- d. Connecticut;
- e. South Carolina;
- f. Michigan;
- g. California;
- h. Rhode Island;
- i. Florida;
- j. Texas;
- k. Nevada;
- l. Colorado;
- m. Minnesota;
- n. Illinois;
- o. Ohio;
- p. Indiana;
- q. Washington, DC;
- r. Pennsylvania.

6. I reviewed the following materials in this case, all of which forms the basis for my expert opinionis, along with my training, experience and training as set forth above:

- a. Complaint;
- b. Defendants' answers to interrogatories;
- c. Defendants' production of documents;

- d. Written statement of Mandy Bellamy taken the night of the subject drowning;
- e. Written statement of J.W. Seay taken the night of the subject drowning;
- f. Written statement of Evan McPhearson taken the night of the subject drowning;
- g. Pictures from the site inspection performed on or about May 19, 2015
- h. Various weather reports from the time of the subject drowning specific to that geographic area where the drowning took place;
- i. Google Earth Map pictures of the Pine Island Club; and
- j. Deposition testimony of Mandy Bellamy.

DUTIES OWED BY LAND OWNER

7. The duties and obligations of a landowner, such as the Defendants in this case, to a person lawfully using this swimming beach during an incoming storm are discussed throughout safety publications of various national water safety organizations. The following list of such sources for each of my opinions is not exhaustive and can be supplemented upon request.

- i. *See* National Oceanic and Atmospheric Administration (NOAA) weather safety standards and suggested practices;
- ii. *See* National Lightning Safety Institute (NLS) weather safety standards and suggested practices;
- iii. *See* Federal Emergency Management Agency (FEMA) weather safety standards and suggested practices;

- iv. *See* National Weather Service (NRS) weather safety standards and suggested practices;
 - v. *See* American Red Cross (ARS) weather and water safety standards and suggested practices;
 - vi. *See* National Water Safety Congress (NWSC) weather and water safety standards and suggested practices; and
 - vii. *See* YMCA lifeguarding and water safety standards and suggested practices.
8. I have the following opinions about the duties owed by a landowner, like Defendants, to a person lawfully on the subject property and using the swimming beach and swimming in the open water around the swimming beach:
- a. Duty to have **Weather Monitoring Equipment** sufficient to detect an incoming storm – an example of industry standard practice would be a NOAA weather radio or lightening detector;
 - b. Duty to have a **Severe Weather Safety Plan** dictating how and when to evacuate all water (open water and swimming pools), this may be also referred to as an **Emergency Action Plan**;
 - c. Duty to have an **Operations Policies and Procedures Manual** applicable to the life guards at the swimming pool and swimming beach;
 - d. Duty to **Clear the beach and pool** and ensure that everyone seeks safe shelter in anticipation of an incoming storm – in this case, the specific duty was to evacuate the swimming pool and the swimming beach and to

stop anyone from using the same for at least 30 minutes from the last time lighting or thunder was observed/heard;

- e. Duty to **Warn** all swimmers and potential swimmers of potential unsafe water conditions – this may be accomplished with a flag cones, or speakers sufficient to be heard by swimming in the designated swimming areas, such as the pool and the swimming beach;
 - f. Duty to have **Safety Posts** near the swimming waters with water safety devises including a “throwing component” like a Throw Bag or Ring Buoy with 40-50 feet of light weight rope, “reaching equipment” such a Shepard’s Crook and a first aid kit;
 - g. Duty to have **Water Rescue Devises** on and around the boating dock – in this case the subject dock where the decedent jumped from minutes before drowning. This duty requires throwing equipment, reaching equipment, and a floatation device necessary for people who may fall out of a boat or off the dock while trying to get in or out of a boat; and
 - h. Duty to have a **Life Guard** on duty at the swimming pool and swimming beach.
9. The purpose of the duties listed above are to (1) warn all swimmers and potential swimmers of unsafe conditions and then to (2) ensure that everyone is out of the water and safe, to avoid drowning.
10. All of my opinions set forth herein are to a reasonable degree of certainty and are satisfactory to myself based upon my education, training and experience as well

as all the case specific data I have reviewed and the various water safety authorities which are listed in paragraph five (5) of this affidavit.

11. All of my opinions set forth herein are to a reasonable degree of certainty and are satisfactory to myself based upon my education, training, experience, all of the case specific data I have reviewed, and the various water safety authorities which are listed in paragraph seven (7) of this affidavit.

FURTHER THE AFFIANT SAYETH NOT.

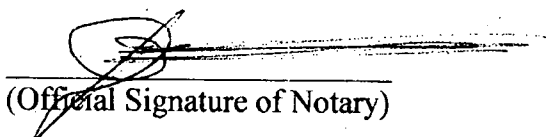
This the 24 day of November, 2015.



Francesco A. Pia, PhD.

Sworn to and subscribed before me, on

this the 24 day of November, 2015.



(Official Signature of Notary)

John Dionisio, Notary Public State of New York
Qualified - Westchester County
01DI4804045 Exp. 9/30/18
(Official Seal) My Commission Expires: _____

Pia Consulting Services

a division of Water Safety Films, Inc
3 Boulder Brae Lane
Larchmont, N.Y. 10538-1105

Francesco A. Pia, President
BA, MA, MS, ACC, Ph.D.

Telephone
(914) 834-7536

RESUME

Summary: Originator of the Distress vs. Drowning person water crisis classification

Conducted the original research on the Instinctive Drowning Response

Copyright author of the four characteristics of an actively struggling drowning person

Instituted the first lifeguard and water safety training program for teaching drowning victim recognition concepts in the United States, Canada, Europe, and Australia

Conceived the "Pia Carry" a non-equipment swimming rescue currently taught by the Lifesaving Society of Canada and formerly described as the modified cross chest carry by the American Red Cross

Conducted a two year research study into the causes of swimming related drowning fatalities in the United States from 1910 to 1980 in areas where lifeguards were on duty

Formulated the RID Factor as a Cause of Drowning

45 years experience in drowning accident causation and reconstruction for public and private aquatic agencies

40 years experience lecturing to federal, state, county, and local agencies on the causes and solutions to swimming, nonswimming, and boating related drowning fatalities

21 years experience as a lifeguard and chief lifeguard at Orchard Beach, Bronx, NY, where approximately 2,000 near drownings and rescues occurred each summer

**September
1979-2010** President, Pia Consulting Services

Responsibilities: provide consultation services to educational and governmental agencies involved in aquatics and to plaintiffs' and defendants' attorneys engaged in litigation

Injury Prevention Publications:

Handbook on Drowning: Prevention, Rescue, and Treatment

Bierens, J.J.L. (Ed) Springer (*in press*) NY

Acute Stress During Emergency Response. Pia, F.

Pia, F., Burkle, F.M., Stanley, A. R. Markenson, D.

Critical Incident Stress Debriefing (CISD)

International Journal of Aquatics Research and Education. 2011(5) (11);
130-137

Fox, H.J., Burkle, F.M., Bass, J, Pia, F, Epstein, J.L. & Markenson, D.

The effectiveness of psychological first aid as a disaster intervention tool:
research analysis of peer-reviewed literature from 1990 - 2010

Disaster Medicine and Public Health Preparedness 2012; 6:3:247-262
American Medical Association

Fielding, R. R., Pia, Francesco, Wernicki, P.G. & Markenson, D.

Avoiding hyperventilation

International Journal of Aquatics Research and Education Volume 3, Issue 4,
November

Langendorfer, S.J., Quan, L Pia, F, Fielding, R.R., Wernicki ,P.J. Markenson, D
Minimum Age for swim lessons

International Journal of Aquatics Research and Education Volume 3, Issue 4,
November

Wernicki,P.J.,Chambers, P.R., Fielding R.R. Lees. T.A., Markenson, D., Pia, F.
& Quan, L. Analysis and rebuttal of development of an in-water intervention in a
lifeguard protocol

International Journal of Aquatics Research and Education Volume 5, Issue 1,
February

"Guarding Against Misconceptions"

Aquatics International

May 2006

Handbook on Drowning: Prevention, Rescue, and Treatment

Bierens, J.J.L. (Ed) Springer (2002), NY

1. Section 3.9.9 *The Reasons People Drown.* Pia, F.

2. Section 5.5 *Lifeguard Surveillance and Scanning: past, present and
future":* Fenner, Griffiths, Oosterman & Pia

3. Section 5.19. *Management of Physical and Psychological responses
during administration of CPR to drowned persons.* Pia, F.

Lifeguard Effectiveness: A Report of the Working Group.

"Patron Surveillance: A Key Component of Lifeguarding Services"

Atlanta: Centers for Disease Control and Prevention, National Center for
Injury Prevention and Control: 2001. Branche, CM & Stewart, S. (Ed.)

"Reflections on Lifeguard Surveillance Programs"
New Science of Drowning: Prevention & Intervention
CRC Press: 1999

"Proposing a New Safety Collaboration"
Pool & Spa News
June 15, 1994

Lead writer for three chapters in Lifeguarding Today:
(Aquatic Injury Prevention, Patron Surveillance and
Facility Surveillance)
American Red Cross 1994

"Preventing Swimming Related Fatalities"
Pennsylvania Parks & Recreation Society
Spring 1991 Volume 22, No. 3

"The RID Factor as a Cause of Drowning"
Parks & Recreation
National Parks & Recreation Society, June, 1984.

*"Reduce Swimming Pool Diving Accidents
and Millions of Dollars in Liability Costs"*
Crawford Educational Newsletter
Crawford & Company, Nov. /Dec. 1982.

"Observations on the Drowning of Nonswimmers"
Journal of Physical Education
The YMCA Society of North America, July, 1974.
Reprinted in:
Lifeguarding, 1st. Edition (1980)
American Association of Health, Physical Education and Recreation.

Produced and directed the following training films and videotapes:

On Drowning, 1970, a 13-minute lifeguard film which contains actual, *not staged*, film footage of 12 near drownings and rescues which range from single victims through a group of four.

Best aquatic safety film: 2012, International Aquatic History Symposium and Film Festival: International Swimming Pool Hall of Fame

Drowning: Facts & Myths, 1976, a 10-minute general audience film which examines the causes and solutions of swimming, nonswimming, and boating related drowning fatalities.

Lifeguard Experience

May 1969 Chief Lifeguard, Orchard Beach, Bronx, NY:
to supervised 50 lifeguards and 3 Lieutenant lifeguards, and
Sept. 1979 conducted in service lifeguard and CPR training at Orchard Beach
and 12 New York City pools.

May 1964 Lieutenant Lifeguard, Orchard Beach, Bronx NY.
to
Sept. 1968

June, 1959 Lifeguard, Orchard Beach, Bronx, NY.
to
Sept. 1963

American Red Cross Volunteer Positions

- Advisory Committee for First Aid, Aquatics, Safety and Preparedness (ACFASP)
- Scientific Advisory Council
- National Technical Advisor for Lifeguard Training

Aquatic Committee Membership

1981 - 1983 American Red Cross National Advisory Committee
Lifeguard Training

1993 American Red Cross National Advisory Committee
Lifeguard Training & Community Water Safety

1995 American Red Cross National Advisory Committee
Head Lifeguard

1997 Chairman: Health and Safety Advisory Committee
Westchester County American Red Cross

1999 American Red Cross National Advisory Committee
Guard Start/Lifeguarding Tomorrow.

2001 American Red Cross National Advisory Committee
Lifeguard Training

2001 American Red Cross National Advisory Committee
Lifeguard Manager

- 2003 American Red Cross National Advisory Committee
Advisory Council for First Aid, Aquatics, Safety & Preparedness
(ACFASP)
- 2004 American Red Cross National Advisory Committee
Lifeguard Training
- 2006 United States Lifeguard Standards Coalition
- 2008 CDC: Model Aquatic Health Code (MAHC):
Bather Supervision Sub-Committee

Awards

- 2013 **American Red Cross Lifetime Achievement Award: Francesco Pia, PhD**
“In recognition of his career of service to both the American Red Cross and the field of aquatics. Through his efforts in research, education, and service he has advanced the field of lifeguarding and aquatics expanding and enhancing Red Cross programs, saving countless lives and making the enjoyment of the aquatic environment a safer activity.”
- 2013 **American Red Cross Scientific Advisory Council Certificate of Appreciation**
Francesco A. Pia, PhD: November 2003 – 2012
“For outstanding service and lasting contributions as a member of the Scientific Advisory Council and to the American Red Cross and the people we serve.”
- 2013 **Aquatics International: Power 25: Dr. Frank Pia**
“One of aquatics most influential people of the past 25 years Frank Pia’s influence is still seen today in lifeguard training and best practices at countless pools and beaches. An experienced lifeguard and educator, Larchmont, N.Y.-based Pia opened people’s eyes to what drowning truly looks like and how it could be missed by overworked or poorly trained guards.

With those principles in mind, he’s spent countless hours developing practices and curriculum with the Red Cross, the world’s largest lifeguard training group with 300,000 people enrolled last year in its programs.

He also brought his science-based approach to the CDC’s Model Aquatic Health Code, where he served on the subcommittee on bather supervision.”
- 2007 Who’s Who in Aquatic Leadership in the USA
Power 25: *Aquatics International*
- 2005 Who’s Who in Aquatic Leadership in the USA
Aquatics International
- 2004 Who’s Who in Aquatic Leadership in the USA
Aquatics International

- 2003 American National Red Cross
Special Citation for Exceptional Volunteer Service
- 2000 American Red Cross in Westchester County, NY
Volunteer of the Year

Invited Lecturer at Aquatic Conferences

- 1970 Council for National Cooperation
in Aquatics (CNCA) Ft. Lauderdale, FL
- 1971 American Red Cross
National Staff Training Conference Cincinnati, OH
- 1972 National Water Safety Congress Dallas, TX
- 1975 National Women's Aquatic Forum Ft. Lauderdale, FL
- 1976 American Red Cross
Regional Aquatic School Brookline, MA
- 1977 American Red Cross
Regional Aquatic School Mountain Lakes, NY
- 1978 U.S. Coast Guard
Second Coast Guard District
Boating Safety Seminars Springfield, IL
Des Moines, IA
- 1979 University of Rhode Island
First Northeast Conference in Cold Water Survival Kingston, RI
- American Red Cross
Regional Aquatic School Mountain Lakes, NY
- Columbia College
Water Rescue '79 Sonoma, CA
- 1980 Westchester County Department of Health
Pool Safety Seminar White Plains, NY
- American Red Cross
Regional Aquatic School Mountain Lakes, NY
- American Red Cross &
Westchester County Department of Health
Hypothermia Conference White Plains, NY
- American Association of Health,
Physical Education and Recreation (AAHPER)
Aquatic School Indiana University, PA

	National Safety Council Water Safety Awareness Program	Chicago, IL
	Council for National Cooperation in Aquatics	Atlanta, GA
	National Park Service Swimming Related Fatalities Seminar	Falls River, NY
1981	Royal Lifesaving Society of Canada University of Victoria	Victoria, British Columbia
	Northeastern University YMCA Aquatic Institute Middle Atlantic Region	Berwyn, PA
	American Red Cross Regional Aquatic School	Mountain Lakes, NY
	Westchester County Dept. of Parks and Recreation Swimming Pool Operators Course	White Plains, NY
	National Safety Council Eastern Region Safety Conference	Philadelphia, PA
1982	Council for National Cooperation in Aquatics	Columbus, OH
	American Red Cross Regional Aquatic School	Mountain Lakes, NY
1983	Rutgers University Aquatics Management Program	New Brunswick, NJ
	American Camping Association New Jersey Section	Lebanon, NJ
	American Red Cross Regional Aquatic School	Mountain Lakes, NY
1984	Advanced Lifeguard Training Conference University of Victoria	Victoria, British Columbia
	American Camping Association Eastern Camping Association NY, NJ & PA Sections	Teaneck, NJ
	YMCA Aquatic School - Northeast Region Springfield College	Springfield, MA
	American Red Cross	Mountain Lakes, NY

Regional Aquatic School

1985	American Camping Association Eastern Camping Association	Teaneck, NJ
1985	Rutgers University Aquatic Management Conference	New Brunswick, NJ
	New Jersey Pool Managers Association	Tenaflly, NJ
1986	National Spa and Pool Institute 1986 Aquatic Symposium	Indianapolis, IN
	American Camping Association Eastern Camping Association	Teaneck, NJ
	NJ Department of Environmental Protection Aquatic Managers Seminar	Trenton, NJ
1986	Royal Lifesaving Society of Canada Rescue '86	Vancouver, British Columbia
1987	National Safety Council 75th Annual Congress	Chicago, IL
1988	National Water Safety Congress National Conference	Scottsdale, AZ
	Army Corps of Engineers Staff Training Conference	Pittsburgh, PA
	Ohio Division of Watercraft Statewide Conference	Columbus, OH
1989	United States Boating Law Administrators National Conference	San Diego, CA
	The Royal Lifesaving Society of Canada National Conference	Quebec, Canada
	Council for National Cooperation in Aquatics	Indianapolis, IN
1990	Connecticut Recreation and Parks Association Northeast Aquatics Seminar	Windsor Locks, CT
1991	State of Maryland Natural Resources Police Outdoor Education Seminar	Ocean City, MD

1992	Westchester County Department of Health Children's Summer Camp Workshop	White Plains, NY
	Westchester County Recreation and Parks Assoc. Aquatics Workshop	White Plains, NY
	Council for National Cooperation in Aquatics	Cincinnati, OH
	Connecticut Recreation and Parks Association 32nd Annual State Conference	North Haven, CT
1996	New York State Recreation and Park Society	Syracuse, NY
1996	International Swimming Pool Hall of Fame Drowning Symposia	Ft. Lauderdale, FL
1997	International Lifesaving Federation Medical Rescue Conference	San Diego, CA
1998	Centers for Disease Control Lifeguard Effectiveness Workgroup	Atlanta, GA
	PRO Aquatics Conference	Haliburton, Ontario
2002	World Congress on Drowning	Amsterdam, Netherlands
	Westchester County Department of Health Children's Summer Camp Workshop	White Plains, NY
2003	AAHPERD National Conference	New Orleans, LA
	Minnesota Recreation & Parks Conference	Minneapolis/St. Paul, MN
2004	International ECCU/CPR Conference Emergency Cardiac Care Union <i>"Beyond CPR: The Physiology and Psychology of the Inexperienced First Responder"</i>	New Orleans, LA
2005	World Waterpark Association National Convention	Las Vegas, NV
2005	New York State Department of Health Bureau of Community Environmental Health Training Workshops for Bathing and Children's Camps Inspectors	Erie, Ontario, Oneida, Suffolk, Saratoga, Ulster, Counties New York City
2006	National Recreation & Park Association <i>"A Human Information Processing Perspective of Lifeguard Surveillance Protocols"</i>	Austin, TX

- 2006 Westchester County Department of Health White Plains, NY
Children's Summer Camp Workshop
- 2006 International ECCU/CPR Conference Orlando, FL
Emergency Cardiac Care Union
"Current Issues in Lay CPR Instruction"
- 2006 World Aquatic Health Conference Austin, TX
National Swimming Pool Foundation
"What Does Science Teach Us about Guarding and Drowning Prevention?"
- 2007 World Water Safety Conference Porto, Portugal
International Lifesaving Society
*"Patron Surveillance:
A Human Information Processing Perspective"*
- 2007 California Aquatic Management School Monterey, CA
Keynote Address:
"Educational, psychological, and social perspectives for recruiting, training, and supervising millennium generation lifeguards"
Conference Session
"Current controversies in lifeguard surveillance concepts and patron surveillance strategies"
- 2010 National Drowning Prevention Symposium Pittsburgh, PA
Keynote Address:
"Maximizing the effectiveness of drowning prevention efforts through targeted approaches"
- 2011 Upper Midwest Regional Pediatric Conference South Sioux Falls, NB
Keynote Address
"Childhood Drowning Prevention"
- 2012 Irish Lifesaving Foundation: Drowning Carlow, Ireland
Drowning Prevention & Rescue Conference
"Lifeguard surveillance: myths, misconceptions, and solutions: a human information processing approach"
- 2013 Pro Aquatics Conference Huntsville, Canada
Key Note Address
Session 1.
On Drowning: from 16 mm to social media: a 44 year journey.
Session 2
Patron surveillance: a human information processing perspective

- 2013 4th Annual Alberta Aquatics Conference Calgary, Canada
 Canadian Red Cross
Key Note Address
 Session 1.
*On Drowning: from 16 mm to social media:
 a 44 year journey.*
 Session 2
*Patron surveillance: a human information
 processing perspective*
- 2014 Saskatchewan/Manitoba Conference Regina, Canada
Key Note Address
 Session 1.
*On Drowning: from 16 mm to social media:
 a 44 year journey.*
 Session 2
*Patron surveillance: a human information
 processing perspective*

Educational Background Summary

In addition to his expertise in lifeguard training and drowning prevention, Dr. Pia has two master's degrees, an advanced 30 graduate credit clinical certificate in psychological testing and assessment. He has worked with academically "at risk" adolescents in urban and suburban settings from 1970 – 1998. During this time he was also a member of the New York City Board of Education's *Citywide Crisis Prevention and Intervention* team and Westchester County's *Youth Gang Task Force*.

Dr. Pia, a school psychologist, trained in the cognitive psychology/human information paradigm has for the past 37 years studied intensely the human visual system, vigilance paradigms, and human information processing. His understanding of the intersection of human performance theories and empirical research enabled him to explain to lifeguards, lifeguard instructors, lifeguard managers, and lifeguard training agencies how humans assign meaning to incoming visual stimuli. His continual learning about the conceptual underpinnings for analyzing perceptual decisions underlying detecting the absence or presence of certain distress and drowning behaviors, delineating short-term memory and working memory capacities and limitations of human attention, and the effects of physiological and psychological stress on human information processing continue to be his areas of academic interest.

Union Institute and University

As a midlife/midcareer adult, with significant varied life experience and advanced degrees, who was guided by principles of andragogy cited by Knowles (1980) and Cross (1981), and deeply influenced by the lifecycle perspectives of Levinson (1978), Bridges (1980), and Hudson (1991), Dr. Pia chose to enroll in the Union Institute and University's Ph.D. program in Interdisciplinary Studies.

For several decades this regionally accredited and renowned educational institution developed higher education models based on the principles of mid-life adult learning and adaptations of the tutorial-based paradigms of British and German research universities. Union Institute and University (UIU) is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools and has degree granting authorization from the Ohio Board of Regents.

The UIU's constructivist adult education model required learners to develop a meticulous learning agreement. UIU doctoral students were not given academic credit for prior master's level work or life experience. The learning agreement contained detailed course descriptions, comprehensive educational goals and objectives, appropriate learning strategies, competency-based faculty assessments and suitable documentation, and substantial primary textbooks bibliographies for all courses. Dr. Pia's studies blended independent study; online learning; individual faculty - learner mentoring and assessment; learner led instructional peer days; attendance at traditional lecture courses given by UIU faculty members; and off-site 40 hour seminars given by credentialed authorities and professors from other universities. This course of study totaled 116 semester credit hours. In 2004, Dr. Pia was granted a Doctor of Philosophy degree in Interdisciplinary Studies with a concentration in psychology, human factors, and public health.

UIU Internship

Dr. Pia completed a 500 hour internship at SUNY-Westchester's Academic Support Center (ASC) where he designed a pilot research study utilizing instruments that measured the impact of environmental factors (hours worked and years away from school), internal factors (anxiety levels and college study behaviors) and the utilization of the Academic Support Center's services by part-time and full-time students. The results of this research study were analyzed and discussed with the members of the ASC and was included in the 1999-2000 and 2000-2001 SUNY Westchester's Strategic Planning Annual Reports.

UIU Dissertation

Dr. Pia's quantitative doctoral dissertation, *A small group multi-theoretical adolescent educational program for reducing traumatic head and spinal cord injuries* assessed 2,226 urban, suburban, and rural middle and high school students' awareness of the physical energy transformation mechanisms that cause traumatic head and spinal cord injuries. He used cognitive psychology constructivist approaches to learning and schema belief modification research findings as the conceptual foundations for increasing the students' knowledge of head and spinal cord injury prevention behaviors in grades 7 through 12. Attention was directed to increasing adolescents' use of seatbelts, bicycle and skateboard helmets, and to decrease the incidence of head first diving into above ground backyard pools, lakes, and beaches. Dr. Pia developed treatment and control groups' instrumentation that assessed adolescents' perceptions of perceived susceptibility, likelihood, and severity for head and spinal cord injuries for the above cited activities.

American Psychological Association (APA) Membership

Upon a review of his doctoral studies, the APA approved his request for a change from associate to full association membership. The APA member category is reserved for individuals who have received a doctoral degree in psychology or a related field from a regionally accredited institution that provided confirmation of proficiency in psychological scholarship and verification of a quantitative psychological dissertation.

Education

Bachelor of Arts: 1968

Long Island University

Accreditation

Commission of Higher Education: Middle States Association

State Authorization

New York State Department of Education

Master of Arts: 1973

Long Island University

Accreditation

Commission of Higher Education: Middle States Association

State Authorization

New York State Department of Education

Master of Science: 1976

The City University of New York

Accreditation

Commission of Higher Education: Middle States Association

State Authorization

New York State Department of Education

Advanced Certificate: 1977

The City University of New York

Clinical School Psychology

Accreditation

Commission of Higher Education: Middle States Association

State Authorization

New York State Department of Education

Doctor of Philosophy: 2004

Union Institute and University

Interdisciplinary Studies:

Psychology, Human Factors & Public Health

Accreditation

Higher Learning Commission:

North Central Association of Colleges and Schools

State Authorization

Ohio Board of Regents

Professional Certificates:

School Psychologist

Permanent Certification

New York State Department of Education

Teacher of English

Work Experience - Education

- 1970 - 1975 Morris High School, Bronx, NY
1970 - 1972
Teacher of Speech
Duties: taught classes of non-English speaking students, beginning and intermediate classes in English as a second language, 11th and 12th grade classes in basic and advanced public speaking
- 1973 - 1975
Coordinator of Student Affairs
Duties: Ombudsman for students, faculty advisor to student organizations, liaison to community, & coordinator for co-curricular and extracurricular activities
- 1976 - 1977
School Psychologist Intern
Mamaroneck Avenue Elementary School
Mamaroneck Public Schools, Mamaroneck, NY
Hommocks Middle School
Mamaroneck Public Schools, Mamaroneck, NY
- 1977
Graduate Teaching Assistant:
The City College of New York
Graduate School of Education
- 1977-1998
Mamaroneck High School
Teacher of English & School Psychologist
Duties: taught English in a self-contained alternative educational program for academic underachievers for grades 9 - 12 and provided psycho-educational consultation to students and staff

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

CIVIL ACTION NO. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of
Evan M. Myers,

Plaintiffs,

v.

AFFIDAVIT OF DR. RALPH L. JOHNSON,
PhD.

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray; South
Carolina Electric and Gas Holding
Company, Inc.; SCANA; Mandy Nicole
Bellamy;

Defendants.

FILED

I, Dr. Ralph L. Johnson, am over eighteen (18) years of age and am competent to make this affidavit.

1. My current *curriculum vitae*, which details my education, training, and experience, is attached hereto as **Exhibit A**.
2. I have been qualified as a water safety expert in drowning cases in the following states:
 - a. South Carolina
 - b. Pennsylvania
 - c. Ohio
 - d. Michigan

- e. New Jersey
- f. Florida
- g. Georgia
- h. Virginia
- i. Louisiana
- j. Texas
- k. Nebraska
- l. California
- m. Washington
- n. District of Columbia

3. I reviewed the following materials in this case, all of which forms the basis for my expert opinions, along with my training, experience and training as set forth above:

- a. Complaint;
- b. Defendants' Answer to the Complaint;
- c. Defendants' Answers to Interrogatories;
- d. Defendants' Production of Documents;
- e. Written statement of Mandy Bellamy taken the night of the subject drowning;
- f. Written statement of J.W. Seay taken the night of the subject drowning;

- g. Written statement of Evan McPhearson taken the night of the subject drowning;
 - h. Pictures from the site inspection performed on or about May 19, 2015;
 - i. I was personally present during the site inspection on or about May 19, 2015;
 - j. Various weather reports from the time of the subject drowning specific to that geographic area where the drowning took place;
 - k. Google Earth Map pictures of the Pine Island Club; and
 - l. Deposition testimony of Mandy Bellamy.
4. The duties and obligations of a landowner, which are applicable those similar to Defendants in this case, to a person lawfully using this swimming beach during an incoming storm are discussed throughout safety publications of various national water safety organizations. I have noted some reliable national sources as references in support of my opinions, however, this list of such sources for each of my opinions is not exhaustive and can be supplemented upon request.
- i. *See* National Oceanic and Atmospheric Administration (NOAA) weather safety standards and suggested practices;
 - ii. *See* National Lightning Safety Institute (NLS) weather safety standards and suggested practices;
 - iii. *See* Federal Emergency Management Agency (FEMA) weather safety standards and suggested practices;

- iv. See National Weather Service (NRS) weather safety standards and suggested practices;
- v. See American Red Cross (AR^CS) weather and water safety standards and suggested practices;
- vi. See National Water Safety Congress (NWSC) weather and water safety standards and suggested practices; and
- vii. See YMCA lifeguarding and water safety standards and suggested practices.

5. I have the following opinions about the duties owed by a landowner, like Defendants to a person lawfully on the subject property and using the swimming beach and swimming in the open water around the swimming beach:

- a. Duty to have **Weather Monitoring Equipment** sufficient to detect an incoming storm – an example of industry standard practice would be a NOAA weather radio or lightening detector;
- b. Duty to have a **Severe Weather Safety Plan** dictating how and when to evacuate all water (open water and swimming pools), this may be also referred to as an **Emergency Action Plan**;
- c. Duty to have an **Operations Policies and Procedures Manual** applicable to the life guards at the swimming pool and swimming beach;
- d. Duty to **Clear the beach and pool** and ensure that everyone seeks safe shelter in anticipation of an incoming storm – in this case, the specific duty was to evacuate the swimming pool and the swimming beach and to stop

anyone from using the same for at least 30 minutes from the last time lighting or thunder was observed/heard;

- e. Duty to **Warn** all swimmers and potential swimmers of potential unsafe water conditions – this may be accomplished with a flag cones, or speakers sufficient to be heard by swimming in the designated swimming areas, such as the pool and the swimming beach;
 - f. Duty to have **Safety Posts** near the swimming waters with water safety devises including a “throwing component” like a Throw Bag or Ring Buoy with 40-50 feet of light weight rope, “reaching equipment” such a Shepard’s Crook and a first aid kit;
 - g. Duty to have **Water Rescue Devises** on and around the boating dock – in this case the subject dock where the decedent jumped from minutes before drowning. This duty requires throwing equipment, reaching equipment, and a floatation device necessary for people who may fall out of a boat or off the dock while trying to get in or out of a boat; and
 - h. Duty to have a **Life Guard** on duty at the swimming pool and swimming beach.
6. The purpose of the duties listed above are to (1) warn all swimmers and potential swimmers of unsafe conditions and then to (2) ensure that everyone is out of the water and safe, to avoid drowning.
7. All of my opinions set forth herein are to a reasonable degree of certainty and are satisfactory to myself based upon my education, training and experience as well as

all the case specific data I have reviewed and the various water safety authorities
which are listed in paragraph five (5) of this affidavit.

FURTHER THE AFFIANT SAYETH NOT.

This the 17th day of November, 2015.

Dr. Ralph Johnson
Dr. Ralph Johnson

Sworn to and subscribed before me, on

this the 17th day of November, 2015.

Jamela D.
(Official Signature of Notary)

James Lawrence Davis, Notary Public

(Official Seal)

My Commission Expires: June 14th, 2017

JAMES LAWRENCE DAVIS
Notary Public
State of South Carolina
Commission Expires June 14th 2017

2013 Curr. Vitae LEXIS 3240

Ralph L. Johnson

Indiana, PA

Disclaimer

Certain information may have been removed or redacted. LexisNexis, its subsidiaries, affiliates and related entities bear no responsibility whatsoever for such content or any removal or redaction thereof.

Expert Information

Address: 202-A Zink Hall, IUP
Indiana, PA 15705

Phone: (412) 357-2773

Additional Information

Date of Birth: [TEXT REDACTED IN ORIGINAL SOURCE]

Marital Status: Married

Home Address: R.D. # 4

Indiana, PA 15701

Phone: (412) 479-3782

Height: 6'2"

Weight: 240 lbs.

No. of Children: Three

Office Address:

R.D. # 4

Indiana, PA 15701

Phone: (412) 479-3782

Present Position: Associate Professor of Health and Physical Education, Director of Aquatic Facilities and Programs, Coordinator of Graduate Studies' in Sport Sciences, Indiana University of Pennsylvania.

EDUCATION

Graduate: 1979-1989, University of Pittsburgh, Pittsburgh, PA.

Degree: Ph.D. Health and Physical Education

Major: Sport Administration

Graduate: 1973-1977, Slippery Rock University, Slippery Rock, Pennsylvania 40 Post Master's Credits in Recreation

Graduate: 1967-1972, Slippery Rock University, Slippery Rock, Pennsylvania

Degree: M.S. in Education

Major: Health and Physical Education

Undergraduate: 1962-1965, Youngstown State University, Youngstown, Ohio

Degree: B.S. in Education

Major: Social Studies

Health & Phys. Education

Education

Minor: General Sciences

Psychology

English

Activities: Swimming Team, Physical Education Major's Club, S.N.E.A.

Undergraduate: 1959-1962, Pennsylvania State University, University Park, Pennsylvania

Major: Social Studies

Minor: Education

Activities: Swimming Team, Student Council, Discipline Tribunal, Residence Hall Floor President

High School: 1955, Elizabeth Forward High School, Elizabeth, Pennsylvania

Curriculum: College Preparatory

Activities: Football, Swimming, Student Government

EXPERIENCE

Youngstown Central Y.M.C.A.

1962-1964

Position: Swimming Caach-Y Neptune age group swim club

Swimming and scuba diving instructor

Youngstovn Jewish Community Center

1964-1966

Position: Swimming Coach-Golden Dolphins age group swim club

Swimming and scuba diving instructor

Youngstown State University

1962-1971 Department of Health and Physical Education

Position: Director of Aquatics

Coach of Swimming, Diving and Water Polo

Intramural Program Supervisor

Courses Taught - Service Program:

Aquatics

Handball

Tennis

Foundations of Physical Education

Sports Appreciation

Health

Courses Taught - Professional Program:

Health Education

Intramural Sports

Camping & Outdoor Education
 First Aid
 Skin and Scuba Diving
 Individual and Dual Sports
 Water Safety Instructor
 Lifesaving
 Theory of Camp Counseling
 Practice of Camp Counseling
 Swimming Pool Management and Chemistry

Activities at Youngstown State University

Academic Activities

Curriculum Committee Chairman

Academic Affairs Committee

Ad hoc Committee for Development of a Physical Education Department Philosophy

Athletic Activities

Re-instituted swimming as a varsity sport at Y.S.U., 1962.

Site Selection Committee (Midwest Rep.) N.C.A.A. College Division Swimming and Diving Championships, 1966-1970.

All-American Selection Committee, Swimming N.C.A.A. College Division, 1964-1966.

President of Penn-Ohio Swimming and Diving Association, 1968.

Diving judge and referee-College Division Swimming Championships, 1966-1970.

Meet Director-Warren, Ohio High School Invitational Relays, 1968-1972. Official for Y.M.C.A. National Swimming and Diving Championships.

Community Activities

Instructor Trainer-Water Safety, Mahoning County Chapter American Red Cross.

Y.M.C.A. Senior Leader's Club.

Aquatic Advisor-Mahoning County Boy Scouts

Mahoning County Camp Fire Girls

Extra-Curricular:

Chapter Counselor of Sigma Phi Epsilon Fraternity-National Representative to the Ohio Mu Chapter

Faculty Advisor of Sigma Phi Epsilon Fraternity

Sharon City Schools

1971-1972

Social Studies and Athletic Department

Position: Teaching History and Geography

Director of Aquatics and Coach of Swimming and Diving

Responsibilities: Establish, organize and supervise the total aquatics program.
 Hire staff, handle finances and budget, publicize and promote the program.
 Chairman of the Aquatic Committee.
 Swimming, Diving and Water Polo Coach.

Present Position:

Indiana University of Pennsylvania

1972 - present

Department: Health and Physical Education

Position: Associate Professor of Health and Physical Education
 Director of Aquatic Facilities and Programs and Coordinator of Graduate Studies in Sport Sciences.

Undergraduate Classes Taught 1972 - Present:

Health
 Camping
 Emergency Health Care
 CPR Instructor
 W.S.I.
 Basic Scuba
 Scuba Instructor
 Aquatics
 Advanced Aquatics
 Basic Small Craft
 Instructor of Handicapped Swimming
 Instructor of Canoeing
 Instructor of Sailing
 Instructor of Infants and Pre-School Children
 Lifeguarding
 Coaching Swimming
 Coaching Diving
 Coaching Water Polo
 Swimming Pool Maintenance and Chemistry
 Aquatic Facilities Management
 Camp Waterfront Administration

Graduate Courses Taught, 1972 - Present:

Master Teacher of:

Lifeguard Training
 Competitive Swim Coaches
 Competitive Diving Coaches
 Pool Chemistry
 Aquatic Facilities Management
 Aquatic Program Administration
 Aquatic Liability
 Camp Waterfront Administration
 Sport Management
 Sport Facilities Management
 Sport Liability

Administration of Athletic Programs

Academic and Professional Activities at IUP, 1972 - Present

1. Developed 16 new undergraduate courses in aquatics.
2. Developed Aquatic Administrator and Aquatic Specialist Track Programs for B.S. in Education Degree.
3. Instituted the IUP Aquatic School (only one of it's kind - annual enrollment 100+ from across USA and foreign countries).
4. Co-developed M.S. in Sport Science program.
5. Developed 16 Graduate level Aquatic Courses. IUP is the only university with an M.S. in Aquatic Administration.
6. Developed an MS in Sport Science - programs in

Aquatic Administration

Fitness/Sport Management

Professional Development

7. Developed and designed IUP Small Craft Center at Yellowcreek State Park (1974).
8. Developed a professional lifeguard training program (HP 265) at IUP (1973) which was used as the model for American National Red Cross program.
9. Instituted the Middle Atlantic Region YMCA Aquatic Institute -- held annually at IUP in May - responsible for training about 90 YMCA Aquatic professionals each year (1973-89).
10. Developed IUP as site for training CPR instructors in cooperation with the Pennsylvania affiliate of American Heart Association (1974).
11. Developed graduate courses in Sport Facilities Management, Sport Liability and Athletic Administration (1978).
12. Developed, implemented and directed the 1st National AAHPERD Aquatic Institutes at IUP. IUP is now a permanent site for this annual institute. 12 Institutes held to date (1989).
13. Directed 2 National YMCA Scuba Institutes held on IUP campus, 1975 and 1977.
14. Founder of IUP Water Polo Club (1974).
15. Co-Founder of IUP Chapter of Fellowship of Christian Athletes (1973).
16. Department Committee work - Recruitment Committee, Undergraduate and Graduate Curriculum Committee, Evaluation Committee (1973-89).
17. Chair - Recruitment Committee (1978), Evaluation Committee (1985 & 1986)
18. Developed a Pool Managers Certification for Commonwealth of Pennsylvania sponsored jointly by IUP, Pennsylvania Department of Community Affairs, and Department of Environmental Resources (1983).
19. Developed program and wrote textbook or workbook for National YMCA P.O.O.L. certification (Pool Operator On Location) 1989, AFM (Aquatic Facility Manager) 1986 and AIT (Aquatic Instructor Trainer) 1988.
20. Member - University Wide Sabbatical Leave Committee, 1986, 1987.

21. Developed, piloted, co-authored workbook and implemented National YMCA AFM Certification (Aquatic Facility Manager) 1979-89.
22. Developed, piloted, co-authored National YMCA Aquatic Instructor Trainer Certification (1988).
23. Chair - IUP Swim Coach Search Committee (1987).
24. Appointed Coordinator of HPE Dept. graduate program in Sport Science (1988).
25. Revised HPE Dept. Graduate Program in Sport Science (1989).

PROFESSIONAL AQUATIC AND FIRST AID CERTIFICATIONS

Instructor Trainer - Indiana County Red Cross

Standard First Aid

Community CPR

CPR - Basic Life Support for the Professional Rescuer

Water Safety

Sailing

Canoeing

Lifeguard Training

Emergency Water Safety

ARC Lifeguard Training Instructor

ARC Water Safety Instructor

ARC Instructor of Adapted Aquatics

ARC Advanced Lifesaving

ARC Lifeguard Training

Standard First Aid Instructor

Community CPR Instructor

CPR Basic Life Support - Prof. Rescuer Instructor

PADI Scuba Instructor

YMCA Gold Star Scuba Instructor

YMCA Aquatic Instructor Trainer

YMCA P.O.O.L. Operator Instructor

YMCA P.O.O.L. Operator Instructor Trainer

American Heart Association-Instructor Trainer in CPR

American Heart Association-State Affiliate Faculty

AAHPERD Aquatic Council Master Clinician:

Lifeguard Training

Competitive Swimming

Pool Chemistry

Aquatic Facilities Management

Aquatic Liability

Competitive Diving
Swimming
Camp Waterfront Administration

PUBLICATIONS COMPLETED

1. Johnson, Ralph L. (1989). YMCA P.O.O.L. Operations Instructors Manual YMCA Program Store, Champaign, IL.
2. Johnson, Ralph L. (1989). YMCA P.O.O.L. Operations Manual, 1st edition, Human Kinetics Inc., Champaign, IL.
3. Pennsylvania dept of Environmental Resources, Pennsylvania Bathing Place Design Manual - Swimming Pools, (June 1989) Harrisburg, PA. (Co-editor)
4. American National Red Cross. (Sept. 1988). Guide for Training American Red Cross Water Safety Instructors, American Red Cross, Washington, D.C. (co-author).
5. American National Red Cross. (Sept. 1988). Lifeguard Training Instructors Manual, American Red Cross, Washington, D.C. (co-author).
6. American National Red Cross. (Sept. 1988). Guide for Training American Red Cross Lifeguard Instructors, American Red Cross, Washington, D.C. (co-author).
7. American National Red Cross. (Sept. 1988). American Red Cross Basic Water Safety and Emergency Water Safety Instructors Manual, American Red Cross, Washington, D.C. (co-author).
8. American National Red Cross. (Sept. 1988). Lifeguard Training (Text Supplement), American Red Cross, 1st edition, Washington, D.C. (co-author).
9. American National Red Cross. (Sept. 1988). Emergency Water Safety, American Red Cross, 1st edition, Washington, D.C. (co-author).
10. American National Red Cross. (Sept. 1988). Basic Water Safety, American Red Cross, 1st edition, Washington, D.C. (co-author).
11. YMCA of the USA. (1989). Aquatic Facility Manager Manual, YMCA Program Store, Champaign, IL. (Developed Administration of Aquatic Safety Module)
12. Gabrielsen, M. Alexander and Johnson, Ralph L. (August, 1987). Swimming Pools - A Guide to their Planning, Design, and Operation - 4th edition. Human Kinetics -Co-Author, Associate Editor (Wrote chapters 3,5,8,12,13,14).
13. Johnson, Ralph L., Gabrielsen, M-Alexander, and Clayton, Robert. (April 1987). New Certification Standard for Lifeguards - Trial Magazine (co-author).
14. Dougherty, Neil and Johnson Ralph L. (March, 1987). Safety in Physical Education, AAHPERD. Reston. VA (Wrote Chapter 17 - Swimming).
15. Johnson, Ralph L. (Winter, 1986). "Preparation for a Career in Aquatics," National Aquatics Journal, CNCA, Indianapolis, Ind.
16. YMCA of the USA. (September, 1086). On the Guard - The YMCA Lifeguard Manual. 1st edition, Human Kinetics Publishers, Co-author.
17. Johnson, Ralph L. (May, 1985). "Water Wisdom," High School Sports Magazine, Pindar Press, New York, New York.

18. Johnson, Ralph L. (November, 1984). Preparation for a Career in Aquatics, Proceedings of the 23rd National CNCA Conference, Fort Worth, Texas.
19. Johnson, Ralph L. (November, 1984). The Immediate Management of Spinal Cord Injuries, Proceedings of the 23rd National CNCA Conference, Fort Worth, Texas.
20. Johnson, Ralph L. (October, 1984). Swimming Pool Operations Manual, Pennsylvania Department of Community Affairs, Harrisburg, PAJ 2nd edition 1986, 3rd edition 1987.
21. Johnson, Ralph L. (May, 1984). Pool Chemistry, 1st edition, AAHPERD, "Reston, VA.
22. Johnson, Ralph L. (April, 1984). "What Is Your Aquatic Liability IQ?," National Recreation and Parks Association Journal.
23. American National Red Cross. (August, 1983). Lifeguard Training - 1st edition -American Red Cross, Washington, D.C. (Co-Author, Co-editor.)
24. Johnson, Ralph L. (March, 1983). Aquatic Professionals and Dinosaurs - Journal of Physical Education and Recreation.
25. Johnson, Ralph L. (November, 1982). "C.N.C.A. Revived Water Case Study: The Final Report," Proceedings of 22nd National C.N.C.A. Conference, Columbus, OH.
26. Johnson, Ralph L. (Ed.) (June, 1982). Compendium of Articles of the National AAHPERD Aquatic Institute's I-IV, AAHPERD.
27. Johnson, Ralph L. (April, 1982). (Co-ed) Aquatic Facilities Management - 1st edition - AAHPERD, Reston, VA.
28. Gabrielsen, M. Alexander and Johnson, Ralph L. (Eds.) (1981). Diving Injuries (Prevention of the Most Catastrophic of all Sports Related Injuries; A Critical Insight and Recommendations) C.N.C.A. Co-Author, Co-editor.
29. Johnson, Ralph L. (November, 1980). "Lifeguarding and Accident Management Procedures," Aquatics in the 80's the Proceeding of C.N.C.A.'s 21st national conference, Atlanta, GA.
30. Gabrielsen, M. Alexander and Johnson, Ralph L. (June, 1979). "Swimming Pool Safety - A Professional Challenge" - Journal of Physical Education and Recreation, AAHPERD.
31. Johnson, Ralph L. (November, 1978). "Leadership in Adult Aquatics" - proceedings of 20th National C.N.C.A. (Council for National Cooperation) Aquatic Conference, San Diego, CA.
32. Johnson, Ralph L.. (Ed.)(June, 1978). Proceedings of 1st National AAHPERD Aquatics Institute. AAHPERD.
33. Johnson, Ralph L. and Clark, Lois. (November, 1977). "New Horizons in Aquatics" -Journal of Physical Education and Recreation, AAHPERD.
34. Johnson, Ralph L. (March, 1971) The Swimming Pool - It's Chemistry, Management and Maintenance, 1st edition. Youngstov, Ohio.
35. "Aquatic Liability Defenses", Aquatics Magazine.

PUBLICATIONS IN PROGRESS

1. Diving Instruction and Safety,' Human Kinetics.

2. Lifeguard Training - 2nd edition, American Red Cross.
3. Lifeguard Systems Management - Council for National Cooperation in Aquatics.
4. National YMCA Scuba Instructor "Leadership Manual".
5. National YMCA Scuba Instructor Institute Manual.
6. Aquatic Liability - AAHPERD, 1st edition.
7. Aquatic Facility Management - AAHPERD, 2nd edition.
8. Pool Chemistry and Maintenance - AAHPERD, 2nd edition.

PROFESSIONAL MEMBERSHIPS

American Alliance for Health, Physical Education, Recreation, and Dance
 PA Alliance for Health, Physical Education, Recreation, and Dance
 Pennsylvania State Education Association
 College Swimming Coaches Association __ Life Member - Swimming Hall of Fame
 National Recreation and Parks Association
 Council for National Cooperation in Aquatics
 National Safety Council
 American Water Ski Association

COMMUNITY SERVICE

Indiana County Red Cross Board of Directors - Executive Committee
 Chairman of Indiana County Red Cross Health Services Committee
 Indiana County YMCA Board of Directors
 Chairman of Indiana County YMCA Physical Committee
 Chairman of Indiana Area Aquatics Council
 Coordinator and advisor to Indiana Fire Dept. - Scuba Rescue Team
 Elder-Graystone United Presbyterian Church
 Adult Sunday School Teacher - Graystone United Presbyterian Church
 Indiana Mega Event - Executive Committee
 Consultant - Mack Foundation

RELATED PROFESSIONAL ACTIVITIES AND EXPERIENCES: 1958 - PRESENT

Pool Manager, Buena Vista Municipal Swimming Pool, 1958-62
 Waterfront Director, Camp T. Frank Soles, 1963-64
 Ass't. Camp Director, Camp T. Frank. Soles, 1965-66
 Director of YMCA Aquatic Institute, McKeesport YMCA, 1965
 Pool Manager and Swim Coach, Poland Swim and Tennis Club, Poland, OH, 1967-68
 Pool Manager, Logan Swim and Tennis Club, Youngstown, OH, 1968-70
 Aquatic Advisor, Mon-Yough Boy Scout Council, McKeesport, PA
 Coach of the Week-Camp Skwim, 1970
 St. Bonaventure University Swim Camp
 Waterfront Director - Camp Mataponi, Naples, Maine, 1972
 Camp Director-Camp Orenda (Handicapped Children and Adults) 1973-74
 Director of IUP Small Craft base and Waterfront Operation at Yellowcreek State Park
 Member of 1977 NCAA Swimming and Diving Championship Meet Committee
 Diving Judge NCAA Division II Championships 1973, 1976, 1977, 1982
 Implemented Commonwealth of Pennsylvania Pool Managers Certification -joint project sponsored by Pennsylvania Department of Community Affairs and Pennsylvania Department of Environmental Resources 1984.

PAST NATIONAL OFFICES

1. Chairman of Aquatic Council - AAHPERD 1979-81
2. Aquatic Editor - AAHPERD Journal of Physical Education and Recreation 1975-1982
3. Editor of Aqua Notes - Aquatic Council AAHPERD quarterly newsletter 1976-81
4. Chairman, Publication Committee C.N.C.A. - Council for National Cooperation in Aquatics 1978-84
5. Board of Directors of ARAPCS (Association for Research, Administration, 1980 -Professional Councils and Societies of AAHPERD)

6. CNCA Publications Committee 1978-1988
7. Chairman of Past Chairs Committee of AAHPERD Aquatic Council 1982-86

CURRENT NATIONAL OFFICES

1. Coordinator of Institutes, AAHPERD Aquatic Council 1988
2. Referee - JOPER (Journal of Physical Education and Recreation) 1977-Present
3. Director of National AAHPERD Aquatic Institute held annually at IUP 1977-89.
4. Executive Committee of CNCA (Council for National Cooperation in Aquatics) 1980-89.
5. Membership Committee of CNCA 1987
6. National Safety Council - Water Safety Committee 1987
7. National YMCA Scuba Committee 1987.
8. Review editor for Human Kinetics Publishers 1988.

CURRENT COMMUNITY AND REGIONAL OFFICES

1. Chairman - Indiana County Red Cross Health Services Committee 1977-89
2. Indiana County Y.M.C.A. Board of Directors advisory Committee 1982-89
3. YMCA East Field (Middle Atlantic Region) Aquatic Committee 1 977-89

CONTINUING AQUATIC CONSULTANTSHIPS

1. United States Dept. of the Navy - Aquatic Facilities Management, Liability, and Pool Chemistry
2. Pa. Dept. of Environmental Resources - Aquatic Facilities Management, Lifeguarding, Pool Chemistry, and Liability
3. Pa. Dept. of Community Affairs - Aquatic Facilities Management, Lifeguarding, and Liability
4. Council for National Cooperation in Aquatics - all areas of aquatics
5. National American Red Cross - Lifeguarding and Water Safety
6. U.S. Olympic Training Center - Colorado Springs, Colorado, for new, natatorium complex. Milton Costello, P.E. Designer
7. National Board of YMCA's - Pool Chemistry, Aquatic Facilities Management, and Springboard Diving
8. Indiana Boro Recreation Department - Mack Community Pool
9. Indiana Volunteer Fire Co. - Scuba Rescue Team
10. Operating Council of National Board of YMCA's - Pool Chemistry and Springboard Diving
11. National Safety Council - Water Safety and Aquatic Facilities Management
12. National Recreation and Parks Association - Pool Chemistry, Liability, and Aquatic Facilities Management

13. Mack Foundation - Community Pool
14. New Jersey State Department of Health - development of legislation
15. Delaware State Department of Health - development of legislation
16. New York State Department of Health - development of legislation
17. National Council of YMCA's of Japan - development and implementation of National Japanese Scuba Instructor program

AQUATIC FACILITY DESIGN, REHABILITATION AND HAZARD ANALYSIS CONSULTING

1977 - Richland Twp. High School - corrosion of aluminum pool bottom
 1978 - Central Cambria School District - reduction of pool operational cost
 1978 - Dartford College, Kent, England - aquatic curriculum design
 1979 - Millcreek School District - resurfacing of pool walls and bottom
 1979 - University of Puerto Rico at Mayaguez - aquatic curriculum design
 1980 - Elizabeth Forward School District - water chemistry problems
 1982 - City of Pittsburgh - Cost effective operation and administration of city pools
 1982 - City of Philadelphia - Research study on operation and administration of 85 city pools
 1982 - City of Butler, Pa. - redesign of Memorial Park Pool
 1984 - Indiana Club, Indiana, Pa. - operational problems with spas
 1984 - Loma Linda University, Loma Linda, California - design of new outdoor 50' m pool
 1985 - Allegheny County - wave pool management and lifeguard training
 1985 - City of Tyrone, Pa. - rehabilitation of old city pool
 1985 - City of Greensburg, Pa. - rehabilitation of old city pool
 1985 - Pottsville, Pa. School District - resurfacing of pool and asbestos removal
 1985 - Indiana, Pa. - Mack Community Pool - rehabilitation of pool vessel and filters
 1986 - New Brighton, Pa. - Recreation Board - water chemistry problems
 1986 - Lake Naomi Club, Pocono Pines, Pa. - liability and risk control study - 3 pools
 1986 - Manheim Twp., Pa. - Recreation Dept. - assessment of condition 2 private pools considered for purchase by Twp.
 1986 - Kennywood Corporation - Idewild Park Water Flume construction and operation
 1986 - Lancaster, Pa. - Parks and Recreation Dept. - assessment of 2 private pools considered for purchase by city
 1986 - 4 Seasons Corporation Health Club - hazard analysis and conversion of outdoor pool to indoor
 1987 - Lititz, PA - Design and Development of New Pool - design of new community pool
 1987 - City of New Britain, Conn. - hazard analysis, risk control program
 5 city pools
 1988 - City of McKeesport, PA - feasibility study on rehabilitation of Renziehausen Park pool
 1988 - City of Jeanette, PA - assessment of a private pool considered for purchase by city
 1988 - Disney World - Orlando, FL - risk control program and lifeguard training
 1988 - Japanese YMCA - development and initial training of Scuba instructors in National YMCA programs
 1989 - Ligonier Valley YMCA - design and construction of new pool
 1989 - Presque Isle State Park - Beach Operations study - to revise management of beach and reduce liability to Commonwealth
 1990 - Pennsylvania Dept. of Environmental Resources - Development of state Lifeguard Manual
 1990 - Kennywood Corp. Sandastles water park management and lifeguard training

PROFESSIONAL AWARDS

YEAR	AWARD	(PURPOSE)
1. 1977	- 15 year Coaching Award from College Swim Coaches Association	(15 years coaching)
2. 1979	- Pittsburgh Division Red Cross Water Safety Award	(developing IUP Aquatic School)
3. 1979	- YMCA Middle Atlantic Region Award - Pool Chemistry	(developing YMCA pool)
4. 1980 & 1981	- University of Oregon - Outstanding Aquatic Administrator Award	(recognition of 1st AAHPERD Aquatic Institute held at IUP)
5. 1981	- Master Coach Award - College Swim Coaches Association	(qualifying for master coach)
6. 1981	- IUP Distinguished Faculty	(service)

2013 Curr. Vitae LEXIS 3240

YEAR	AWARD	(PURPOSE)
	Award for Outstanding Academic-Service	to IUP and Aquatic Profession)
7. 1982	- YMCA Middle Atlantic Region Award - Pool Chemistry	(acceptance of Pool Operator course as National Cert. Program)
8. 1982	- AAHPERD Aquatic Council Professional Service Award	(3 years as Chair of National Aquatic Council)
9. 1983	- National YMCA Aquatic Service Award	(conducting 10th National YMCA Aquatic Conference at IUP)
10. 1984	- C. B. Douglas Award - Middle Atlantic Region YMCA -	(outstanding leadership and service in aquatics)
11. 1985	- Eastern District AAHPERD Award of Merit in Recreation	(significant contributions to AAHPERD Aquatics)
12. 1986	- West Field YMCA -	(outstanding contributions to YMCA Aquatics at West Field Aquatic Schools)
13. 1988	- Indiana County Red Cross Volunteer Service Award	(2000 volunteer hours)
14. 1989	- National AAHPERD Aquatic Council Honor Award	(AAHPERD publications and Spinal Injury Management research)

PRESENTATIONS

- Jan. 1990: PA National Intramural Rec. Sports Assoc. Aquatic Liability, Millersville, PA
- Feb., 1990: National Red Cross, Lifeguard Course Revision, Washington, DC
- March 1990: National YMCA. P.O.O.L. Instructor Course. Ft. Walton Beach FL
- April 1990: Assoc. of Trial Lawyers, Changes in Standard of Care in Aq., Washington, DC
- April 1990: Univ. Texas - Austin, Pool Operator & Instr. Course, Austin, TX
- June, 1989: PA Dept. of Comm. Affairs, Pool Manager Course, Monroeville, PA
- June, 1989: PA Dept. of Comm. Affairs, Pool Manager Course, Philadelphia, PA
- June, 1989: Directed IUP/National AAHPERD Aquatic Institute, Indiana, PA
- May, 1989: PA Dept. of Conn. Affairs, Pool Manager Course, Pittsburgh, PA
- May, 1989: PA Dept. of Comm. Affairs, Pool Manager Course, Allentown, PA
- May, 1989: South Dakota State Parks & Rec., YMCA Pool Operator Certification Course, Sioux Falls, S.D
- Apr., 1989: YMCA Pool Operator Certification Course, University of Texas, Austin, TX
- Apr., 1989: New Jersey State Health Dept., Seminar on Drowning for State Health Dept. Officials, New Brunswick, NJ
- Mar., 1989: NY State Parks & Rec. Conference, YMCA Pool Operator Certification Course, Amherst, MY

- Mar., 1989: Presented to Class of 1989 PA DER Sanitarians, PA Dept. of Env. Resources, Harrisburg, PA
- Feb., 1989: National Red Cross Aquatic Faculty - National Training Workshop for Instructor Trainers, Memphis, TN
- Dec, 1988: National Red Cross Aquatic Faculty Implemented new ARC Water Safety and Lifeguard Program to National Red Cross staff, Austin, TX
- Nov., 1988: National Japanese YMCA Scuba Leadership Training Team - 1st National Scuba Instructor Training School, Okinawa, Japan
- Nov., 1988: American Representative and Keynote Speaker for 1st National Japanese YMCA Scuba Instructor Symposium, Tokyo, Japan
- Nov., 1988: Pool Operator Certification Course, CNCA Board of Directors Meeting, Orlando, FL
- Nov., 1988: National YMCA Scuba Instructor Convention - Presentation on Scuba Liability (Conducting Mock Trial), Atlanta, GA
- Oct. 1988: (3) 1 hr. lectures Aquatic Liability, S. Dakota Parks and Rec. Assoc, Sioux Falls, SD
- Jun., 1988: Aquatic Facility Manager Program, presentation for YMCA National Assembly (135 yr. Anniversary founding of 1st YMCA), Boston, MA
- Jun., 1983: Director, AAHPERD National Aquatic Institute, Indiana, PA
- Jun., 1988: Director, Indiana University Pennsylvania Aquatic School, Indiana, PA
- May, 1988: Pool Operator Certification Workshop, PA Dept. of Community Affairs, Philadelphia, PA
- May, 1983: Pool Manager Training Workshop, City of Philadelphia, Philadelphia, PA
- May, 1988: PA Pool Operator Certification Workshop, PA Dept. of Community Affairs, Philadelphia, PA
- May, 1988: PA Pool Operator Certification Workshop, PA Dept. of Community Affairs, Harrisburg, PA
- Apr., 1988: D.E.R. Class of 88 Sanitarian Training, presentation for PA Dept. of Environmental Resources, Harrisburg, PA
- Apr., 1988: YMCA Pool Operator Workshop, University of Texas-Austin AAHPERD Aquatic Institute, Austin, TX
- Apr., 1988: Pool Operators Course, Aquatic Facility Manager, East Field YMCA Aquatic Institute & Committee Meeting, IUP, Indiana PA
- Apr., 1988: Pool Design Hazards, AAHPERD National Convention, Kansas City, MO
- Mar., 1988: Liability and Standard of Care in Pool Operation, IRSA National Convention (International Racquet Sports Assoc), New Orleans, LA
- Feb., 1988: Eight hour Workshop - Aquatic Liability, NRPA (Pacific Region), Long Beach, CA
- Feb., 1988: YMCA National Staff Training Introduced P.O.O.L., P.O.O.L. Instructor and AFM Courses, to National YMCA staff, Chicago, IL
- Feb., 1988: YMCA Pool Operator Certification Course, Creator Boston Area YMCA, Boston, MA

- Dec, 1987: YMCA Pool Operator and Aquatic Facility Manager Certification Courses, East Field YMCA, Frost Valley, NY
- Nov., 1987: Lifeguard Project Revision presentation , National Red Cross Conference, Orlando, FL
- Nov., 1987: National YMCA Scuba Conference Instructor Liability, National YMCA, Atlanta, GA
- Oct., 1987: NSPI Pool Operators Certification Course, National Spa & Pool Institute Workshop, Indianapolis, IN
- Sep., 1987: YMCA Pool Operators Certification Course, South Field YMCA, Nashville, TN
- June, 1987: City Pool Lifeguard Training Workshop, City of New Britain, New Britain, Conn.
- June, 1987: YMCA Pool Operator Certification Workshop, National YMCA, Harrisburg, PA
- June, 1987: Pool Operator Certification Workshop, Pa. Dept. of Community Affairs Env. Resources Carlisle, PA
- June, 1987: Pool Operator Certification Workshop, Pa. Dept. of Community Affairs Env. Resources Warrendale, PA
- June, 1987: IUP Aquatic School National AAHPERD Aquatic Institute (Aquatic Liability), IUP, Indiana, PA
- June, 1987: YMCA Pool Operator Certification Workshop, Midwest. Field YMCA, Canton, OH
- May, 1987: YMCA Pool Operator Certification Workshop, West Field and National YMCA, Los Angeles, CA
- May, 1987: Pennsylvania Pool Operators Certification Workshop, Pa. Dept. of Community Affairs/Env, Resources, King of Prussia, PA
- May, 1987: Pennsylvania Pool Operators Certification Workshop, Pa- Dept. of Community Affairs/Env. Resources, Monroeville, PA
- Apr., 1987: AAHPERD Aquatic Conference, P.O.O.L. Operator Course, University of Texas-Austin, Austin, TX
- Apr., 1987: 14th Annual YMCA Aquatic Institute, AFM/P.O.O.L. Operator Certification Courses, IUP, Indiana, PA
- Mar., 1987: DER Class of 1987 Sanitarian Training, presentation for Commonwealth of Pennsylvania, Dept. of Environmental Resources, Harrisburg, PA
- Mar., 1987: NRPA National Conference, Hazards & Risks of Aquatic Facilities, National Recreation & Parks Association, Indianapolis, IN
- Mar., 1987: NRPA Pacific Coast Conference, Aquatic Accidents/Liability/Risk Control, presented to National Recreation & Parks Association, San Francisco, CA
- Feb., 1987: NRPA Management Conference, Liability and Risk Control, presentation to National Recreation & Parks Association, Philadelphia PA
- Dec, 1986: East Field YMCA Training Conference, Pool Operator and Aquatic Facility Management certification courses, Frost Valley, NY
- Sep., 1986: National Risk Management Symposium (3 lectures on liability), National Recreation & Parks Association, Chicago, IL
- Sep., 1986: Pool Operator Course, Aquatic Facility Management, presentations for East Field YMCA Aquatic Institute, Philadelphia, PA

Aug., 1986: Pool Operator Course Aquatic Facility Management, presentation to West Field YMCA Aquatic Institute, Tacoma, WA

Aug., 1986: Pool Operators Workshop, presentation for the State of New Jersey, Clinton, NJ

July, 1986: Drowning & Diving Accidents, presentation for the American Trauma Society, Indiana, PA

May, 1986: Aquatic Facility Manager Workshop, East Field YMCA Aquatic Institute, Indiana, PA

May, 1986: Pool Operator Course, East Field YMCA Aquatic Institute, Indiana, PA

Apr., 1986: University of Texas AAHPERD Aquatic Management Workshop, Aquatic Liability, Risk Management, and Drowning Physiology. University of Texas, Austin, TX.

Apr., 1986: Pool Operators Certification, "YMCA P.O.O.L. Course." University of Texas, Austin, TX

Apr., 1986: Aquatic Management Workshop, Aquatic Liability, Risk Management, Cost Effective Operation, and Pool Chemistry. Rutgers University, New Brunswick, NJ

Apr., 1986: AAHPERD National Convention (Aquatic Council), Symposium on Drowning. Cincinnati, OH (Physiology, Psychology, and Sociology of Drowning).

Apr., 1986: National Recreation and Parks Association: National Aquatic Management School. Aquatic Liability, Risk Management, and Pool Chemistry. Arizona State University, Tempe, AR.

Apr., 1986: DER Class of 1986 Sanitarian Training, presentation for Commonwealth of PA, Dept. of Environmental Resources, Harrisburg, PA.

Mar., 1986; National Recreation and Parks Association: First National Aquatic Conference. Organization and Implementation of Emergency Plans: Are You Prepared? Chicago, IL.

Mar., 1986: YMCA National Aquatic Conference: 100th Anniversary Celebration. How YMCA Aquatic Certifications Work in Colleges and Universities, New Orleans, LA

Mar., 1986: AAHPERD Eastern District, Pool Operator Certification Workshop, Lancaster, PA

Feb., 1986: National Recreation and Parks Association: Mid Atlantic Region Risk Management Workshop, Aquatic Liability: Contemporary Issues and Trends. Philadelphia, PA

Jan., 1986: YMCA of Greater New York, "Pool Chemistry and Maintenance" and "Aquatic Liability." New York, New York.

Nov., 1985: Council for National Cooperation in Aquatics: Invitational Workshop Presentation on Water Safety Standards for Lakes and Beaches. Indianapolis, IN

Oct., 1985: U.S. Army Corps of Engineers: Water Safety Workshop on Emergency Procedures for Spinal Cord Injured Divers. Ford City, PA.

Sep., 1985: 2 Day Workshop Pool Chemistry and Aquatic Facility Managers Workshop, East Field YMCA, Berwyn, PA.

Aug., 1985: National American Red Cross: Presentation on ARC curriculum changes to 2nd conference on Water Safety Program Revision. Colorado Springs, Colorado.

Jun., 1985: PA Dept. of Community Affairs and Dept. of Environmental Resources: 3 workshops introducing new Commonwealth of PA Pool Managers Certification, Monroeville, PA, Harrisburg, PA, and Philadelphia, PA.

Jun., 1985: Great Lakes Area YMCA Aquatic School, Dayton, OH: (8hr) Pool Chemistry and Maintenance Workshop, Dayton, OH.

Jun., 1985: Northeast Region YMCA Aquatic School, Springfield College: 8 hr. Pool Chemistry and Maintenance Workshop, Springfield, Mass.

May, 1985: Mid-East Swim Clinic, presentation on Spinal Cord Injuries in Competitive Swimming, Pittsburgh, PA

Apr., 1985: DER Class of 1935 Sanitarian Training, presentation for Commonwealth of PA, Dept. of Environmental Resources, Harrisburg, PA

Apr., 1985: Aquatic Liability Symposium 4 hr. presentation - Conducted for AAHPERD Aquatic Council, AAHPERD National Convention, Atlanta, GA.

Apr., 1985: Arizona State University and National Recreation and Parks Association. Aquatic Management School - Liability, Risk Management, Water Chemistry, Disinfection Systems. Tempe, AR.

Apr., 1985: Aquatic Faculty Manager Seminar Cost Effective Operation, Risk Management, Emergency Procedures, Spinal Cord Injury Management, University of Texas-Austin, Austin, TX.

Jan., 1985: U.S. Army Corps of Engineers: presentation on Ice Rescue and Cold Water Survival, Workshop held at IUP, Indiana, PA.

Dec, 1984: National American Red Cross: presentation to Conference on Water Safety Program Revision, Washington, D.C.

Nov., 1984: Presented to CNCA National Aquatics Conference: Careers in Aquatics and "Research in Spinal Cord Injuries," Ft. Worth, Texas.

Oct., 1984: YMCA Pool Operator Wordshop, East Field YMCA, Rochester, NY.

Oct., 1984: Research in Water Recreation, presented to Tennessee Valley Authority Water Recreation Seminar, Nashville, TN.

Sep., 1984: Aquatic Facilities Management Workshop, East Field YMCA, Berwyn, PA

Sep., 1984: YMCA Pool Chemistry Course, East Field YMCA, Berwyn. PA.

May, 1984: YMCA Pool Operators Course, Richmond Fitness Center, Richmond, VA.

Apr., 1984: 2 hr. Presentation to HPE Dept. students on Aquatic Facilities Management and 4 hr. Liability Symposium, presentation to HPE Dept. faculty Univ. of Texas-Austin, Austin, TX.

Apr., 1984: Aquatic Facilities Management Symposium, presented 2 hrs. on Pool Chemistry, Rutgers University, New Brunswick, NJ.

Mar., 1984: DER Class of 1984 Sanitarian Training, presentation for Commonwealth of PA Dept. of Environmental Resources, Harrisburg, PA.

Mar., 1984: Swimming Pool Operator's Workshop (8 hr. presentation), Los Angeles Metropolitan YMCA's, San Pedro, CA.

Mar., 1984: Chair man and Speaker - Lifeguard Training Symposium, National AAHPERD Convention, Anaheim, CA.

Mar., 1984: Risk Management, Lifeguarding and Bather Management, Pool Chemistry and Careers in Aquatics, CNCA National Aquatic Conference, Indianapolis, IN.

Feb., 1984: Filtration, Pool Chemistry, Aquatic Liability, Eastern District AAHPERD Convention, Philadelphia, PA.

Feb., 1984: Lifeguard Instructor Training program, presented to Indiana County Red Cross, Indiana, PA.

Jan., 1984: Aquatic Liability and Careers in Aquatics, presentation to Physical Ed. faculty and students, West Chester State University, West Chester, PA.

Jan., 1984: "Career Preparation in Aquatics," presentation given to National Forum for the Advancement of Aquatics, Ft. Lauderdale, FL

Dec, 1983: Pool Chemistry Workshop and Aquatic Director Institute speaker, YMCA of Puerto Rico, Mayaguez, Puerto Rico

Nov., 1983: Co-chair and Speaker at Accident Management Workshop at CNCA Aquatic Conference, Indianapolis, IN.

Sep., 1983: National YMCA Pool Chemistry Workshop - Upper Mainline YMCA, Berwyn, PA.

Aug., 1983: Organized and taught the 1st National Training Conference for the 1983 American "Red Cross Lifeguard Program instituted at TUP, Indiana, PA.

Aug., 1983: Organization and administration of the 10th National YMCA Aquatic Conference, Co-Chair of Springboard Diving Workshop, Chair of Pool Operators workshop, Co-Chair of Aquatic Facility Managers Workshop. held at IUP, Indiana, PA.

Jun., 1983: Pool Managers Seminar (4 hrs.) - Indiana County Municipal Pools in Cooperation with Indiana County Red Cross, Indiana, PA.

May, 1983: Mid East Swim Clinic - IUP's Total Aquatic Program, a 2 hour presentation, Elizabeth, PA.

Apr., 1983: 3 workshops for PA Dept. of Environmental Resources Sanitarians on Pool Chemistry, Filtration, Cost Effective Operation and Liability, Meadville, PA, State College, PA, and Bethlehem, PA.

Nov., 1982: CNCA National Aquatic Symposium Presentation, Revived Water Case Study - The Final Report. Chairman of Lifeguard Training Workshop, Columbus, OH.

Sep., 1982: Pool Chemistry Workshop (3 hr.) - Middle Atlantic Region YMCA, Berwyn, PA

Jul., 1982: 8 hour Lifeguard Training Workshop conducted for City of Philadelphia, Philadelphia, PA.

Jul., 1982: Drowning, Near Drowning and Water Related Accidents - 3 hour symposium conducted for Vanango County EMT Association, Oil City, PA.

Apr., 1982: Energy Conservation in Swimming Pools, presentation to AAHPERD National Convention, Houston, TX.

Mar., 1982: Diving and Spinal Cord Injuries, Presentation to 1982 annual Middle Atlantic Region Physical Directors Conference, Harrisburg, PA

Dec., 1981: Presented changes and chaired an ad hoc committee for the PA Dept. of Environmental Resources charged to update and rewrite Act 193 PA Bathing Code, Harrisburg, PA.

Dec., 1981: "The Continuing Challenge of Swimming Pool Safety," presentation to PAAHPERD State Convention, Pittsburgh, PA

Dec., 1981: "Cost Effectiveness and Energy Conservation", "presentation to PA AAHPERD State Convention, Pittsburgh, PA.

Oct., 1981: 1981 National Safety Council's National Safety Congress. 8 hour Aquatic Facility Management professional development seminar, Chicago, IL.

Sep., 1981: Middle Atlantic Region YMCA 1981 Aquatic Institute, Berwyn, PA Taught 1st P.O.O.L. (Pool Operator on Location) course. Pilot project for the National YMCA utilizing my original Pool Chemistry textbook.

May, 1981: Aquatic Administrators Workshop sponsored by University of Oregon and -Highline College. Topics - Safe Pool Design, Pool Chemistry, Lifeguard Training, Filtration and Aquatic Liability

May, 1981: Aquatic Facilities Management Workshop. Two workshops, co-sponsored by PA Dept. of Community Affairs and Dept. of Environmental Resources, Boyce Park Wavepool - Monroeville, PA and Philadelphia, PA

Apr., 1981: Design Safety, Pool Chemistry and Filtration workshop, presentation for PA Dept. of Environmental Resources Sanitarians workshop held at IUP, Indiana, PA

Nov., 1980: Aquatic Accident Procedures. Report on a 2 year research project sponsored by CNCA. Paper presented at CNCA International Aquatic Conference, Atlanta, GA.

May, 1980: Aquatic Liability presentation given at Aquatic Administrators Workshop sponsored by University of Oregon, Portland, Oregon.

May, 1980: Aquatic Facilities Management Workshops (3). Co-sponsored by PA Dept. of Community Affairs and Dept. of Environmental Resources, Meadville, PA, Ephrata, PA, and Philadelphia, PA.

May, 1980: Safety and Management of Backyard Swimming Pools, presentation for the community given at Indiana County Red Cross, Indiana, PA

Apr., 1980: Aquatic Liability Middle Atlantic Region YMCA Physical Directors Annual Meeting, Mt. Pocono, PA.

Distinguished Swimmers:

Steve Job - All American - Yale University

Brian Job - All American - Stanford University, Bronze Medal winner, 100 Meter Breaststroke, 1968 Olympic Games

Youngstown State University:

1962 - 1970: Won 48, Lost 19

Distinguished Swimmers and Divers:

Tom Craciun - All American, 3 years, 50 yd. Freestyle

Dale Welk - All American, 3 years, 1 and 3 meter diving

Nick Gavolas - All American, 2 years, 1 and 3 meter diving

Sharon High School:

1971 - 1972: Won 6, Lost 6

Indiana University of Pennsylvania:

1972-1973:	Won 3, Lost 8	8th PSAC	
1973-1974:	Won 5, Lost 6	7th PSAC	27th NCAA Division II
1974-1975:	Won 8, Lost 3	5th PSAC	15th NCAA Division II
1975-1976:	Won 7, Lost 2	3rd PSAC	14th NCAA Division II
1976-1977:	Won 7, Lost 1	3rd PSAC	9th NCAA Division II
1977-1978:	Won 4, Lost 3	3rd PSAC	14th NCAA Division II
1973-1979:	Won 4, Lost 4	5th PSAC	16th NCAA Division II
1979-1980:	Won 7, Lost 2	3rd PSAC	19th NCAA Division II
1980-1981:	Won 4, Lost 4	5th PSAC	
1981-1982:	Won 5, Lost 4	3rd PSAC	19th NCAA Division II
1982-1983:	Won 7, Lost 1	5th PSAC	20th NCAA Division II
TOTAL	61 38		

Intercollegiate Coaching Record

1962 - 1983: 109 Wins 57 Losses .656

Career Coaching Record (swimming)

1961 - 1983: 183 Wins 67 Losses .744

Distinguished Swimmers All American NCAA:

Emilio Abreu

Doug Bennink

Doug Cooper

Bill Kane

Matt Kohler

Bruce Kirk

Joe McCeol

Neil Postas

Steve Trogljo

Dan Deacon - National Champion in 200 yd. Backstroke

Kim Tyson

Andres Arraez

Bick Murphy

Keith McQueston

Hosted: Penn-Ohio Conference - 1975

PSAC Conference - 1975

PSAC Conference - 1976

PSAC Conference - 1980

PSAC Conference - 1932

Dec, 1979: Curriculum Consultant to University of Puerto Rico - Mayaguez, presentation to the faculty on aquatic curriculum developed for and instituted at Indiana University of Pennsylvania.

Dec., 1979: Motor Learning, Teaching Methods, Stroke Mechanics, Aquatic Liability, Pool Chemistry, Physiology of Drowning presentation to YMCA - Aquatic Director Institute, Mayaguez, Puerto Rico.

Nov., 1979: Aquatic Accident Procedures presented to CCA Closed (Invitational) Workshop, Colorado Springs, CO.

Sep., 1979: Legal Liability, Energy Efficiency, Operational Cost Savings and Lifeguard Training. Middle Atlantic Region YMCA Aquatic Director Institute; Upper Main Line YMCA, Berwyn, PA.

Apr., 1979: Aquatic Safety and Accident Management Procedures: What the Aquatic Facilities Manager Should Know, presentation to 1979 PA Recreation and Park Society, Pittsburgh, PA.

Mar., 1979: Accident Management Procedures, Lifeguard Qualifications, Pool Chemistry and Filtration, U.S. Navy Aquatic Symposium, Coronado Beach Naval Base, San Diego, CA.

Mar., 1979: Accident Management Procedures, Lifeguard Qualifications, Pool Chemistry and Filtration, U.S. Navy Aquatic Symposium, Little Creek Amphibious Base, Little Creek, VA.

Nov., 1978: Leadership in Adult Aquatic Education, presentation made to 1978 CNCA International Aquatic Symposium, San Diego, CA.

Jan., 1978: Swimming Pool Operation and Energy Saving, 1978 Middle Atlantic Region YMCA Aquatic Directors Conference, Harrisburg, PA.

Jan., 1978: Innovations in American Competitive and Educational Aquatic Programs, presentation to 1973 British Swimming Coaches Association, Coventry, England.

COACHING RECORD 1962-1982

Youngstown YMCA:

1961 - 1962: Won 15, Lost 1

1962 - 1963: Won 16, Lost 0

Distinguished Swimmers:

Dick Baxter - All American - Bucknell University

Ross Wales - All American - Princeton University, Bronze Medal winner

100 meter Butterfly 1968 Olympic games

Hosted YMCA National Championships, 1963, Youngstown Central YMCA

Youngstown Jewish Community Center:

1964 - 1965: Won 18, Lost 2

1965 - 1966: Won 19, Lost 1

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FILED) ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew)
Myers in their capacity as Co-Personal)
Representatives of the Estate of Evan)
Morris Myers,)
2015 DEC 14 A 11:23
BETLA O'BRIEN
CLERK OF COURT
LEXINGTON, SC

Plaintiffs,)
vs.)
The Consolidated Employee Recreation)
Clubs, a non-profit organization a/k/a Pine)
Island Club at Lake Murray, South Carolina)
Electric and Gas Holding Company, Inc.,)
and SCANA,)
Defendants.)
**DEFENDANTS THE CONSOLIDATED
EMPLOYEE RECREATION CLUBS, A
NON-PROFIT ORGANIZATION A/K/A
PINE ISLAND CLUB AT LAKE MURRAY,
SOUTH CAROLINA ELECTRIC AND
GAS HOLDING COMPANY, INC. AND
SCANA'S MEMORANDUM IN SUPPORT
OF THEIR MOTION FOR
SUMMARY JUDGMENT**

TO: PEDRO E. KROMPECHER, III, ESQUIRE, AND BENJAMIN BAROODY, ESQUIRE,
COUNSEL FOR PLAINTIFFS:

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc., and SCANA (hereinafter "SCANA Defendants") have moved this Court for an order granting summary judgment in the above-referenced case. The following is Defendants' memorandum in support of this motion:

FACTS/PROCEDURAL BACKGROUND

The instant case involves the accidental drowning of Evan Myers Morris on June 15, 2011, in the freshwaters of Lake Murray in Lexington County. While this is a tragic circumstance, these defendants are nonetheless entitled to summary judgment as a matter of law.

Plaintiffs filed this action in Lexington County on June 18, 2014. Specifically, Plaintiffs Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers brought a wrongful death action sounding in negligence and intentional infliction of emotional distress claims against these defendants. Plaintiffs also asserted the same claim against Lexington County Medical Center Auxiliary, Lexington County Sheriff's Department, and the Lexington County Coroner's Office ("Lexington County Defendants"), as well as Mandy Nicole Bellamy and her brother Matthew Bellamy ("Bellamy Defendants").

On January 16, 2015, Plaintiffs voluntarily dismissed the Lexington County Defendants. Plaintiffs subsequently amended their complaint on October 2, 2015 in which they eliminated their intentional infliction of emotional distress claims, and voluntarily dismissed the Bellamy Defendants. Plaintiffs' remaining negligence and gross negligence causes allege the Pine Island Club failed to warn decedent of an incoming storm and failed to provide lifesaving measures, which they allege could have prevented decedent from drowning.

Decedent Evan Morris Myers was the invited guest of Mandy Nicole Bellamy at the Pine Island Club at Lake Murray on June 15, 2011. (Complaint ¶ 7). Defendant Consolidated Employee Recreation Clubs owns and operates the Pine Island Club at Lake Murray, and is a charitable non-profit organization created for the benefit of SCANA and SCE&G-related company employees and their families. (Ex. B, Affidavit of Andrea L. Lange, at ¶ 4). Mandy Nicole Bellamy's father, Ralph Bellamy, is a member of the Pine Island Club, and she enjoyed the benefits of his affiliation. (Ex. A, M. Bellamy Depo., p. 20, line 24 – p. 21, line 10). In the early evening hours of June 15, 2011, Mr. Myers and Ms. Bellamy first went for a swim at the swimming beach at Pine Island Club. (Ex. A, p. 74 line 24 – p. 75, line 6). Clear and prominent

signage at the swimming beach informed swimmers that they swam at their own risk. (Ex. A, p. 74, line 24 – p. 75, lines 1-17; Ex. A, Deposition Ex. 7e).

After swimming at the swimming beach, Mr. Myers suggested that they jump from the boat dock and swim in the open waters of Lake Murray. (Ex. A, p. 145 line 25 – p. 146 line 7). Mr. Myers and Ms. Bellamy then left the confines of the Pine Island Club and went for a swim in the open freshwaters of Lake Murray. (Ex. A, p. 93, lines 10-13). Mr. Myers struggled to keep afloat and tragically drowned. (Ex. A, p. 96, line 25 – p. 97, line 24). Additional signage at the subject dock from which decedent jumped and entered the open waters of Lake Murray clearly prohibited swimming in the area in which he subsequently drowned. (Ex. A, p. 86, line 25 – p. 87, line 14; Ex. A, Deposition Ex. 8). Lake Murray is owned by South Carolina Electric and Gas, and any person has access to its recreational use at any time.

While the circumstances surrounding this incident are heartrending, Defendants are nonetheless entitled to summary judgment as a matter of law. Plaintiffs have had nearly eighteen months to conduct discovery, however Plaintiffs have adduced no evidence revealing a genuine issue of material fact regarding whether Defendants owed a colorable duty of care to the decedent, or whether Defendants breached any duty. In addition, even if such a duty existed, which Defendants expressly deny, Plaintiffs have failed to provide any evidence any such breach proximately caused the decedent to drown. This failure of proof with respect to essential elements of Plaintiff's case requires judgment be entered in favor of defendants as a matter of law.

STANDARD OF REVIEW

A court will grant a moving party's motion for summary judgment when there exists no genuine issue of material fact, and that party is entitled to judgment as a matter of law. Rule

56(c), SCRCF. In determining whether any triable issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. Simmons v. Tuomey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312 (2000). Nonetheless, a court, “cannot ignore facts unfavorable to [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Accordingly, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory or shadowy one. Saluda Motor Lines v. Crouch, 300 S.C. 43, 46, 386 S.E. 2d 290, 292 (Ct. App. 1989).

The plain language of Rule 56(c), SCRCF, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial. Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001).¹ With respect to an issue on

¹ In Bass v. Gopal, Inc., 384 S.C. 238, 247 n.6, 680 S.E.2d 917, 921 n.6 (Ct. App. 2009), the Court of Appeals addressed the recent change in summary judgment standard. In granting the summary judgment motion, the South Carolina Court of Appeals noted:

[I]n Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), our Supreme Court stated that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. However, in footnote 3 of the opinion, the Court was careful to point out that its pronouncement concerning a mere scintilla of evidence was not necessary for its determination of the outcome in the Hancock case. In any event, we must assume any evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative.

The Hancock Court also cited McDowell v. Stille Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947), for the proposition “that although there was a scintilla of testimony that could be used to support the claimants’ position, when the entire testimony of the witnesses was viewed as a whole, it was obvious the testimony in support of claimants’ position rested on speculation and thus had no probative value.” Id.

which the non-moving party has the burden of proof, the moving party may point out to the trial court that there is an absence of evidence to support the non-moving party's case. Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001). The non-moving party must then "do more than simply show that there is some metaphysical doubt as to the materials facts[,] but "must come forward with specific facts showing that there is a genuine issue for trial." Id. "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

LAW/ANALYSIS

I. Plaintiffs Have Failed to Demonstrate a Colorable Duty of Care Owed to the Decedent

In South Carolina prove negligence, a plaintiff must establish:

- (1) a duty of care owed by the defendant to the plaintiff;
- (2) the defendant's breach of this duty by a negligent act or omission;
- (3) the defendant's breach was the proximate cause of plaintiff's injury; and
- (4) the plaintiff suffered damages.

Doe v. Marion, 361 S.C. 463, 470, 605 S.E.2d 556, 560 (Ct. App. 2004).

Furthermore, the party alleging negligence has the burden of proving actionable negligence and "[t]his burden cannot be met by relying upon the theory that the thing speaks for itself or that the very fact of injury indicates negligence." King v. J.C. Penney Co., 238 S.C. 336, 120 S.E.2d 229 (1961); see also Hunter v. Dixie Home Stores, 232 S.C. 139, ___, 101 S.E.2d 262, 265 (1957) (stating "[i]t is elementary that in order for a plaintiff to recover damages there must be proof not only of injury, but also that it was caused by the actionable negligence of the defendant. It should be kept in mind that the doctrine of res ipsa loquitur does not apply in this

State.”).

South Carolina courts have held that the question of whether a duty actually existed between the defendant and the plaintiff is a question of law to be determined by the trial court, and if the trial court determines that no duty exists, “the defendant is entitled to judgment as a matter of law.” Doe v. Marion, 361 S.C. 463, 470, 605 S.E.2d 556, 560 (Ct. App. 2004); see also Simmons v. Tuomey Reg’l Med. Ctr., 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). The burden of proving a breach of duty is on the plaintiff. Doe, 361 S.C. at 470, 605 S.E.2d at 560 (Ct. App. 2004) (citing Sabb v. S.C. State Univ., 350 S.C. 416, 429, 567 S.E.2d 231, 237 (2002)); Bishop v. S.C. Dept. of Mental Health, 331 S.C. 79, 502 S.E.2d 78 (1998).

A. The South Carolina Recreational Use Statute Applies

The South Carolina Recreational Use Statute, S.C. Code Ann. §§ 27-3-10 to -70, applies in this case because Plaintiff’s decedent drowned while voluntarily swimming in the open waters of Lake Murray, which is owned by South Carolina Electric and Gas and open to the public for its recreational use at any time. The Recreational Use Statute (“RUS”) is designed to “encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability towards persons entering thereon for such purposes.” S.C. Code Ann. § 27-3-10 (1991). “Landowners owe ‘no duty of care to keep the premises safe’ for recreational users and need not ‘give any warning of a dangerous condition, use, structure or activity’ on the property.” Cole v. SCE&G, 355 S.C. 183, 584 S.E.2d 405 (Ct. App. 2003) (citing Brooks v. Northwod Little League, Inc., 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997) (quoting S.C. Code Ann. § 27-3-30 (1991))). Moreover, an owner that permits a person to use property for recreational purposes without charges does not: “(a) Extend any assurance that the premises are safe for any purpose [;] [or] (b) Confer upon such person the legal status of an invitee or a

licensee to who a duty of care is owed.” S.C. Code Ann. § 27-3-40 (1991).

In the case at bar, Plaintiffs have failed to demonstrate the existence of any colorable duty of care owed by SCANA Defendants to Evan Morris Myers on June 15, 2011, which these defendants breached. Plaintiffs have premised their claims upon the notion that decedent died while on the Pine Island Club premises. However, the evidence in this case is uncontroverted that Mr. Myers and Ms. Bellamy were swimming beyond the confines of the Pine Island Club swimming beach at the time Mr. Myers accidentally drowned. (Ex. A p. 145, line 25 – p. 146, line 7). Therefore, Mr. Myers was not upon Pine Island Club premises at the time of his death, but swimming in the freshwaters of Lake Murray, which are open to the public for recreational use.

Furthermore, by virtue of the fact that Plaintiff had left the premises of the Pine Island Club, Decedent was neither an invitee nor a licensee of the club at the time of this incident. The South Carolina Recreation Use Statute is clear in its language that these Defendants owed no duty of care to decedent to keep the premises safe, and need not have given any warnings of a dangerous condition, use, structure or activity on the property. See S.C. Code Ann. § 27-3-30 (1991). Even if Plaintiffs’ decedent were an invitee, to which the highest duty of care would be owed (and which Defendants deny), our courts have consistently held that a landowner has no duty to warn of the perils of obvious natural conditions of which an invitee is *reasonably* unaware. Meadows v. Heritage Village Church and Missionary Fellowship, Inc., 305 S.C. 375, 378 (1991) (holding wet grass an open and obvious natural condition). An overcast sky and increasing winds are open and obvious conditions.

In Cole v. SCE&G, 362 S.C. 445, 608 S.E.2d 859 (2005), our Supreme Court analyzed the South Carolina Recreational Use Statute and found, even where the landowner charged a fee

for parking, the landowner was still afforded the protections of the statute and affirmed summary judgment to the defendant on this issue. In Cole, the plaintiff's decedent and several friends were swimming within a recreational area at Lake Murray when the decedent drowned while swimming to a buoy. The recreational site at issue in Cole was fenced-in and patrolled by a security guard. There were no lifeguards on duty at the lakefront, nor was there any safety equipment present at the site. The swimming area was roped off with buoy lines, however, in Cole, the decedent drowned within the swimming beach. Warning signs on the property indicated no lifeguards were on duty and that individuals swim at their own risk. The Court held that the purpose of the statute was to encourage landowners to make their property available for public use and recreational purposes and in accordance with that purpose, the statute shielded landowners from liability.

The Cole case proceeded to trial on the plaintiff's allegations of gross negligence and the jury returned a verdict for the defendant on that cause of action. In Cole, the Plaintiffs further argued that Defendant was grossly negligent in failing to provide for lifeguards and lifesaving equipment, as identically pled here. The Court in Cole set forth that under the RUS "a landowner's liability is limited to gross negligence, which is defined as the failure to exercise slight care." Id. at 455. Further, the Court specifically held that "[a] duty to provide recreational safety features such as lifeguards and lifesaving equipment exceeds this 'slight care' standard." Id.

In Cole, SCE&G was not liable for the negligence or gross negligence where the child drowned within an SCE&G recreational swimming area. Here, twenty-one year old Mr. Myers was not in the confines of any SCANA Defendants' recreational area at the time of his death. As such, Plaintiffs' claims against Defendants must fail under the RUS. Additionally, these

Defendants did not fail to exercise slight care in failing to provide recreational safety features such as lifeguards and lifesaving equipment, because such a duty expressly exceeds the slight care standard. See Cole, 355 S.C. at 455, 608 S.E. 2d at 859 (“A duty to provide recreational safety features such as lifeguards and lifesaving equipment exceeds this ‘slight care’ standard.”).

In opposition to Defendants’ Motion for Summary Judgment, Plaintiffs have misapplied both the Cole and Vogt cases. Vogt v. Murraywood Swim and Racquet Club, 357 S.C. 506, 593 S.E.2d 617 (Ct. App. 2003). Any inquiry into Plaintiffs’ decedent’s entrance to the Pine Island Club moot because Plaintiffs’ decedent had left the Pine Island Club premises at the time of his death, and was in the open and public waters of Lake Murray. Plaintiffs have also produced affidavits from two potential experts in water safety opining to “obligations of a landowner, such as Defendants in this case, to a person lawfully using this swimming beach during an incoming storm...” (Aff. of Franceso A. Pia at ¶ 7). These opinions are also irrelevant, because again, decedent was not using the swimming beach at the time of his death.

Moreover, Plaintiff’s decedent had a right to enter the open waters of Lake Murray without permission, as distinguished as the central inquiry in Vogt. See Vogt, 357 S.C. at 513, 593 S.E. 2d at 620. Lake Murray, which covers approximately 78 square miles of land and which is owned by SCE&G, is open to the public free of charge. Here, Pine Island Club owed no duty of care to decedent to keep the open freshwaters of Lake Murray safe, and did not have to give any warnings as to a dangerous condition, use, structure, or activity regarding the open waters of Lake Murray. However, the Pine Island Club did provide such warnings, notifying swimmers that they were to swim at their own risk, that no lifeguards were on duty, and specifically prohibiting swimming off the subject dock near which decedent drowned. (Ex. A, p. 86, line 25 – p. 87, line 14 and Depo. Ex. 8).

The R.U.S. provides that these Defendants cannot be held liable as a matter of law because they owed the Plaintiff no legal duty of care. Therefore, Defendants cannot be liable for either negligence or gross negligence, and Defendants move for dismissal on these grounds.

B. Plaintiffs' Decedent Assumed the Risk

In addition, Mr. Myers was twenty-one (21) years of age at the time of his accidental drowning, and both knew and appreciated that he was swimming in around in the open waters of the lake at the time of his death. (Ex. A, p. 144, lines 1-7; p. 148, lines 10-13). In fact, Mr. Myers was a graduate of nearby Irmo High School, was attending college courses, and had ambitions to become a first responder and join the local police department. (Ex. A, p. 42, lines 19-24; p. 55, lines 10-12; p. 144, lines 16-23). Moreover, it was decedent's own decision and suggestion that he and Ms. Bellamy leave the Pine Island Club swimming beach and jump from the nearby dock into the open freshwaters of Lake Murray. (Ex. A., p. 146, lines 5-14). Mr. Myers ignored clear warnings posted at the subject dock which prohibited him from swimming in the area around the dock in which he subsequently drowned. (Ex. A, p. 86, line 25 – p. 87, line 14; Ex. A, Deposition Ex. 8). This illustrates the requirements for assumption of the risk set forth in Senn v. Sun Printing Co., 295 S.C. 169, 367 S.E.2d 456 (Ct. App. 1988). Decedent knew of the dangers inherent in swimming, both knew and appreciated he was swimming in the open waters of Lake Murray where no lifeguard would be present, ignored clearly posted signage which prohibited him from swimming from the subject dock, and by ignoring such warnings voluntarily exposed himself to the dangers of swimming in the open waters of Lake Murray. Any argument that Decedent, who as an adult of reasonable intelligence with admitted previous experience swimming in Lake Murray, could not appreciate open and obvious changing weather

conditions is untenable. At twenty-one (21) years of age, decedent had invariably encountered and appreciated meteorological changes in his lifetime, and any change in weather condition was open and obvious to him. (Ex. A, p. 78; line 25 – p. 79, line 11). No such legal duty to warn an adult of the same, whether they are on the landowner's property or not, exists under South Carolina law. Most importantly, Plaintiffs had adduced absolutely no evidence whatsoever that any purported change in weather condition actually caused Mr. Myers to drown.² The only testimony in this case shows that Mr. Myers began panicking while swimming in the open waters of Lake Murray, was unable to calm himself down and float on his back, and ultimately drowned. (Ex. A, p. 99, line 17 – p. 101, line 15).

Therefore, decedent's death did not occur on Pine Island Club premises, but rather in the fresh lake waters of Lake Murray, and Plaintiffs' negligence and gross negligence causes of action related to purported failures of the Pine Island Club to provide adequate recreational safety features such as lifeguards and lifesaving equipment must fail.

II. Consolidated Employee Recreation Clubs is the Only True Party in Interest

Defendants SCANA and SCE&G further move for dismissal on the grounds that Consolidated Employee Recreation Clubs is the only SCANA-related entity that is a true party in interest in the case at bar. Consolidated Employee Recreation Clubs owns and operates the Pine Island Club, which was created for the benefit of SCANA and SCE&G employees. See (Ex. B, Affidavit of Andrea L. Lange, at ¶ 4). Therefore, improper defendants SCANA and SCE&G should be dismissed from this case.

The articles of incorporation for Consolidated Employee Recreation Clubs demonstrate that this entity was incorporated as an eleemosynary/non-profit organization. See (Ex. B,

² Only after Mr. Myers drowned and Ms. Bellamy left the water did the storm approach. (Ex. A, p. 116, line 15 – p. 117, line 2).

Affidavit of Andrea L. Lange, at ¶ 4). Therefore, under the Charitable Organizations Act, such entities are governed by a two (2) year state of limitations. S.C. Code Ann. § 33-56-180 (1976); see also S.C. Code Ann. § 15-78-10 (1976). Because this tragic accidental drowning occurred on June 15, 2011, and this case was filed on June 18, 2014, Plaintiffs' claims are barred as a matter of law by the applicable statute of limitations. Moreover, under the same Charitable Organizations Act, Consolidated Employee Recreation Clubs is not subject to punitive damages awards. S.C. Code Ann. § 15-78-120 (1976).

Plaintiff has made no showing of any active negligence by the SCANA-related corporate entities in this case. Therefore, they must be dismissed.

CONCLUSION

Simply stated, even when the facts are viewed in a light most favorable to the Plaintiffs, the Plaintiffs have not demonstrated a duty of care owed to the decedent, nor any breach of any duty of care. Therefore, Plaintiffs' negligence, gross negligence, and wrongful death claims must fail as a matter of law. Defendants therefore move for an order granting summary judgment for each and every cause of action.

[SIGNATURE PAGE TO FOLLOW]

BETH A. CHARRING
CLERK OF COURT
LEXINGTON, SC

2015 DEC 14 AM 11:27

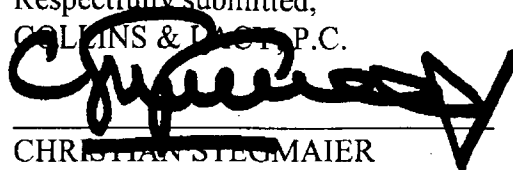
FILED

FILED

2015 DEC 14 A 11: 23 By:

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Respectfully submitted,
COLLINS & LACY, P.C.


CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
MEGHAN H. HALL
mhall@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (Voice)
(803) 771-4484 (Facsimile)

ATTORNEYS FOR DEFENDANTS THE
CONSOLIDATED EMPLOYEE
RECREATION CLUBS, A NON-PROFIT
ORGANIZATION AKA PINE ISLAND
CLUB AT LAKE MURRAY, SOUTH
CAROLINA ELECTRIC AND GAS
HOLDING COMPANY, INC AND
SCANA

**DEFENDANTS THE CONSOLIDATED
EMPLOYEE RECREATION CLUBS, A
NON-PROFIT ORGANIZATION AKA
PINE ISLAND CLUB AT LAKE
MURRAY, SOUTH CAROLINA
ELECTRIC AND GAS HOLDING
COMPANY, INC, AND SCANA'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Columbia, South Carolina
December 10, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Cassandra M. Myers and Bartholomew)
 Myers in their capacity as Co-Personal)
 Representatives of the Estate of Evan)
 Morris Myers,,)
)
 Plaintiffs,)
)
 vs.)
)
 The Consolidated Employee Recreation)
 Clubs, a non-profit organization a/k/a Pine)
 Island Club at Lake Murray, South Carolina)
 Electric and Gas Holding Company, Inc.,)
 and SCANA,)
)
 Defendants.)
)
)
)
)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 Civil Action No.: 2014-CP-32-02210

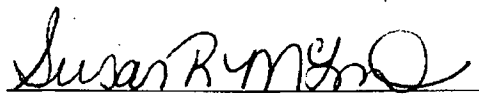
CERTIFICATE OF SERVICE

FILED
 2015 DEC 14 A 11:23
 BETTE A. OVERHILL
 CLERK OF COURT
 LEXINGTON, SC

I hereby certify that on December 10, 2015, a true and correct copy of the above and foregoing **Defendants' Memorandum in Support of Summary Judgment** was mailed to the below listed counsel of record in this proceeding with sufficient postage and appropriate return address and/or served via electronic mail to the below listed counsel of record.

COUNSEL SERVED:

Pedro E. Krompecher, III, Esquire
 Krompecher Law Firm, PLLC
 Post Office Box 6639
 Raleigh, NC 27628


 Susan R. McLeod

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Cassandra M. Myers and Bartholomew)
 Myers in their capacity as Co-Personal)
 Representatives of the Estate of Evan)
 Morris Myers,)
)
 Plaintiffs,)
)
 vs.)
)
 The Consolidated Employee Recreation)
 Clubs, a non-profit organization a/k/a Pine)
 Island Club at Lake Murray, South Carolina)
 Electric and Gas Holding Company,)
 Inc./SCANA, Mandy Nicole Bellamy,)
 Matthew Bellamy, Lexington County)
 Coroner's Office, Lexington County)
 Sheriff's Department, and Lexington)
 County Medical Center Auxiliary,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 Civil Action No.: 2014-CP-32-02210

**AFFIDAVIT OF
 ANDREA L. LANGE**

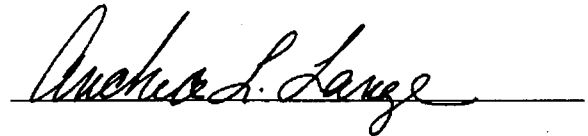
PERSONALLY APPEARED BEFORE ME, the undersigned Andrea L. Lange, who being duly sworn, deposes and states as follows:

1. My name is Andrea L. Lange. I am of sound mind, capable of making this affidavit, and am personally acquainted with the facts of this case.
2. I am employed as a Plant Administrator with SCANA ("SCANA") and I am authorized to execute this affidavit on behalf of SCANA.
3. During the calendar year of 2011, I served as the President of the Pine Island Club at Lake Murray.
4. The Pine Island Club is a recreational facility owned by Consolidated Employee Recreation Clubs, and is incorporated as an eleemosynary/non-profit organization. The

Articles of Incorporation are attached at Exhibit 1. SCANA employees who choose to become members of the Pine Island Club possess membership privileges and/or permission and/or access to the premises at Pine Island.

5. Upon information and belief, Plaintiff's decedent drowned while swimming off the nearest dock outside of the swimming beach at Pine Island Club on June 15, 2011.
6. At the subject dock there prominently exists signage prohibiting fishing, sunbathing or swimming on or in the dock area. Additional signage at the dock provides for the address of the Pine Island Club, in case of emergency. This signage pre-dates Plaintiff's decedent's drowning on June 15, 2011.
7. At the Pine Island swimming beach there prominently exists signage cautioning swimmers that there is no lifeguard on duty, and that swimmers will swim at their own risk. This signage pre-dates Plaintiff's decedent's drowning on June 15, 2011.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.



ANDREA L. LANGE

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 9th DAY OF December 2015



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 1-27-2025

PINE ISLAND CHAPTER

HOUSE RULES

RESERVATION COORDINATOR: 217-4484
CLUB COORDINATOR/CLUBHOUSE: 781-6491

SECTION I. HOURS OF OPERATION

1. The clubhouse and grounds open and close as follows:

Chapter Grounds

Monday	7:00 a.m. to 12 midnight year-round
Tuesday	7:00 a.m. to 12 midnight year-round
Wednesday	7:00 a.m. to 12 midnight year-round
Thursday	7:00 a.m. to 12 midnight year-round
Friday	7:00 a.m. to 12 midnight year-round
Saturday	7:00 a.m. to 12 midnight year-round
Sunday	7:00 a.m. to 12 midnight year-round

Note: Shelters are not available until 8:00 AM

Club House

Monday	Closed
Tuesday	Closed
Wednesday	11:00 a.m. to 12 midnight year-round
Thursday	11:00 a.m. to 12 midnight year-round
Friday	11:00 a.m. to 12 midnight year-round
Saturday	11:00 a.m. to 12 midnight year-round
Sunday	11:00 a.m. to 12 midnight year-round

NOTE: During the months of May through September, the clubhouse may close at 9:00 p.m. if no Members are present. During the months of October through April, the clubhouse may close at 6:30 p.m. if no Members are present. This will not apply if the clubhouse has been reserved.

2. **If a holiday falls on Monday or Tuesday, the Club Coordinators will have a "CLOSED DAY" on Wednesday, or as soon as possible.** Any changes in clubhouse hours of operation due to a holiday will be decided by the Board at the beginning of the year and Members will be notified.
3. Closing time for special Chapter functions, such as dances and parties, will be set by the Social Committee with the approval of the President.
4. The clubhouse facilities will not be available for Members when the Club Coordinator is not on duty, except when approved by the President of the Chapter or when a person approved by the Company Management Representative is in attendance at the function.
5. In case of inclement weather, the clubhouse and grounds may be closed.
6. The gate usually opens at 7:00 AM during restricted months and by 8:30 AM during non-restricted months. The gate will be locked nightly at 9:00 p.m. throughout the year. A key will be necessary to access the Island between the hours of 9:00 p.m. and midnight. All Members and guests must be off the Island by midnight, unless special permission has been granted by the President of the Club or the Management Representative. A key can be purchased from the Club Coordinator. Upon entering the Island, Members will be responsible for keeping the main gate locked.

SECTION II. GENERAL RULES

1. Definitions:

Chapter (Club) – the Pine Island chapter of the Consolidated Employee Recreation Clubs.

Chapter Events - Any event or function officially organized, by the Board of Directors of the Pine Island Chapter, for the benefit of Members. These events include, but are not limited to, Annual Meeting, Ladies' Night, Stag Night, Children's Picnic, Halloween Carnival, Children's and Retirees' Christmas Party, and the New Year's Eve Dance.

Company Events – Any event or function officially organized by SCANA or its subsidiaries. These events include, but are not limited to, Company sponsored employee groups, retirement parties, departmental meetings and other functions for the benefit of employees, and Company hosted outside group functions.

Eligible Dependent Child(ren) – Children, residing in the home, up to age 19 are eligible unless the child is a full-time student and then they are eligible up to age 23. On their 23rd birthday, the child is not longer considered a member.

Leave of Absence – An employee on approved Leave of Absence or Family Medical Leave or Military Leave of Absence may continue membership by paying to the Chapter Treasurer dues in advance for the period of the leave.

Member - Employee (or retired employee), spouse and eligible **dependent** children.

Outside Group - Outside groups are those groups that gather with a common interest and that would not ordinarily assemble in that manner were it not for their common interest. This includes groups with and without a formal name. Any function containing an outside group is considered an outside group function, and as such, outside group fees will apply. Member groups such as, but not limited to, birthday and retirement parties and family reunions that exceed 100 persons will be considered as an outside group, and outside group fees will apply.

Restricted Months – The first Friday in May through Monday of Labor Day. In December, the clubhouse is closed for use by outside groups.

STD (Short Term Disability) & LTD (Long Term Disability) – Employee Members on STD/LTD, their spouses and eligible dependents, are Members of Pine Island Chapter as long as the employee is eligible for STD/LTD. Membership will terminate when **LTD benefits terminate** unless employee transfers to retirement.

Surviving Spouse – Eligible surviving spouse as defined by the SCANA Pension Plan.

Weekend - Friday, Saturday and Sunday.

2. Pine Island Chapter is a private, non-profit corporation. The Chapter facilities are intended to serve Member recreational and leisure needs and develop a sense of common employee culture that contributes to the success of the business and its team members. The facilities are not intended for activities that conflict with enjoyable recreational use of the property by all Members, or that do not support a sense of common employee culture such as: loud disruptive music, political rallies, worship services, artistic performances, loud and disruptive groups, profanity, and abusive or inappropriate behavior.
3. The name or logo of Pine Island Club may not be used in any advertising in outside newspapers, publications, billboards, radio, websites or any other outside media. This applies even if the event or function is charitable in nature.
4. No ticket sales or sale of merchandise or raffles may be conducted by Member groups or outside groups on Chapter premises. This applies even if the event or function is charitable in nature.
5. Chapter Events must be approved by the Pine Island Board and Pine Island Management Representative prior to the event. A facility charge will not be required for Chapter Events.
6. Company Events require a written business justification with the approval of the appropriate Vice President within the applicable department, the Pine Island Management Representative, and the Pine Island President. Company-hosted outside groups are charged a fee for usage but Company-sponsored groups are not charged. **Company Events must be booked by a Member of Pine Island and that Member must be in attendance.**
7. It is the duty of the Violations Committee to enforce the House Rules and Bylaws and all other rules and regulations of the Chapter. Violations are subject to a fine and/or suspension. See Fines for Violations (Addendum #4).
8. Members should direct all questions related to Chapter Rules and By-laws to their Director or Club President in writing. *The Pine Island Reservation Coordinator is to be contacted only to make reservations for Chapter facilities.*
9. The Chapter **will not be responsible** for the loss or damage of valuables or personal property, nor will it be responsible for personal injury to Members, their families, guests, or vendors.
10. **Pets of any kind will not be allowed on the premises in any capacity.**

11. Profanity, threats, objectionable behavior, or violations of Company's Code of Conduct and Ethics will not be tolerated.
12. Liquor will not be bought or sold on the premises.
13. Firearms and fireworks will not be permitted on the premises.
14. Overnight camping by individuals or groups will not be permitted on the premises.
15. Skateboards, roller blades, bicycles and like athletic equipment, will not be permitted on the premises.
16. The speed limit on the Chapter grounds shall be 10 miles per hour. Club Members and their guests and vendors shall be expected to observe this limit at all times. All persons are requested to observe all signs on the island. Any unsafe operations of vehicles, as determined by the Club Coordinator, could result in disciplinary action.
17. Charter buses will not be allowed on the Island during Restricted Months unless approved by the Pine Island Board.
18. Swimming in the lake is allowed only in the designated area. Hazards from boating, underground cables, etc., prohibit swimming around docks, ramps or other areas of the Island.
19. Members and guests will not park cars, boats, or trailers on the boat ramp. Please be considerate of others and pull your vehicles up to the parking area to prepare your boat.
20. Boats will not be left tied unattended to the ramp side of the docks.
21. No eating, drinking, fishing, sitting, or playing is permitted on the docks. Docks are for boat loading or unloading only.
22. **THERE IS A "NO SMOKING" POLICY IN THE CLUBHOUSE.** Smoking is permitted on the porch and on the grounds.
23. No personal checks will be cashed at the Snack Bar.
24. Persons in wet bathing suits will not be allowed in the clubhouse - with the exception of canteen area. Appropriate bathing attire is expected of all persons - no thong bathing suits are allowed.
25. The clubhouse kitchen facility may be used by individuals and caterers at no charge to prepare food for events that are held in the clubhouse, and may be used for food preparation for shelter events only if no other group has the clubhouse reserved; provided, however, that the user is responsible for leaving the kitchen

and kitchen appliances clean and in good repair and that the Club Coordinator, in his/her sole discretion, may charge an additional clean-up/repair fee if the kitchen and kitchen appliances are not left clean and in good repair. No kitchen utensils will be provided. The only appliances are a large refrigerator, gas stove and oven, microwave and large sink.

26. All outside vendors, including disc jockeys, caterers, bartenders, bands, florists, decorators, etc., **must contact** the Club Coordinator to arrange set-up times. All vendors will leave the facility as they found it. The rules and regulations of the Chapter, including rules applicable to conduct, apply to all vendors while on the Island. *Violations will be referred to the Violations Committee for investigation and subsequent action.*
27. Live bands, disc jockeys, or loud music will not be allowed outside the clubhouse at any time unless it is a Company or Chapter sponsored event.
28. The audio and video equipment installed in the clubhouse is not available for Member/guest usage. Company hosted/Company sponsored groups must make arrangements with Corporate Communications for operational instructions. The console housing the audio equipment is not intended to be used as a wet bar.
29. Absolutely no one is allowed to string fabric, streamers or any objects from the rafters of the clubhouse. This is in direct violation of the National Fire Code and the company safety policy and procedure. All decorations must be approved, prior to the event, by the Club Coordinator (see Wedding Policy).
30. Nothing may be taped to the walls of the clubhouse. Candles must in a container large enough to catch the wax drippings (see Wedding Policy).
31. The use of shaving cream, and throwing confetti, streamers, other paper products, rice, birdseed, flower petals or any similar items at a wedding, wedding reception or any event, is prohibited. Only bubbles used outside and away from the clubhouse entrance are acceptable (see Wedding Policy).
32. All functions, including wedding receptions, birthday parties, anniversary parties, family reunions, etc., must conclude by 10:30 PM. **All Members, guests and vendors – as well as equipment (both personal and rented) and decorations - must be off Pine Island by 12:00 midnight. Non-compliance could result in a violation, fine and/or suspension.**
33. Pine Island Membership cards are issued yearly to the Members. Single Members will be issued one (1) card; married Members will be issued two (2) cards. *No cards will be issued to any dependents.*

SECTION III. RESPONSIBILITIES OF MEMBERS AND THEIR GUESTS

1. Members, Member spouses, or Member's dependent children are required to have chapter cards with them when using the facilities. **YOU WILL BE REQUIRED RANDOMLY TO SHOW A PICTURE ID. PINE ISLAND CLUB CARDS ARE NOT TO BE LOANED TO RELATIVES, INCLUDING INELIGIBLE DEPENDENT CHILDREN, AND FRIENDS.** Members shall identify themselves, family and/or guests upon the request of the Club Coordinator, Gate Guard, Club Officers or Members of the Board. **Violation of this rule is grounds for termination of Club Membership.**
2. If a Membership card is lost, Members should contact their Pine Island director for a replacement card.
3. Members will be held personally responsible for the behavior of their children and/or guests. Children under 16 should not be left unattended on the island. Member's dependent children, age 16 and older, are limited to **four (4)** friends without adult supervision.
4. All guests must be accompanied by the Chapter Member inviting them. The Chapter Member should arrive before their guests and shall remain on the island until all guests have departed.
5. In the event the guest(s) arrives at the Island before the host Member arrives, the guest(s) will not be permitted to make use of the facilities until the host Member arrives.
6. Game equipment must be checked out by a Member and returned to the clubhouse as specified by the Club Coordinator.
7. Members using the kitchen, ballroom or other areas of the clubhouse, the shelters, barbeque pit or grounds shall be required to leave them in a clean and orderly condition and will perform superficial clean-up (remove paper, pick up plates, cups and trash, litter, decorative material) at completion of the function.
8. Members using Chapter equipment and facilities will be held responsible for their use. The Member holding a function or event will be held responsible for any damage done by their guests or vendors during the event.
9. Members must sign a Hold Harmless Agreement (see Addendum #1) with every reservation request, which must be submitted to the Pine Island Reservation Coordinator no later than seven business days prior to the event. Failure to timely sign and submit the agreement will result in the cancellation of the reservation.
10. A Member that sponsors an organized group or party must have a permit and lease agreement for members of the party to consume alcoholic beverages on Chapter property (see Alcoholic Beverage Regulations, Addendums #2 & #3).

SECTION IV. RESERVATIONS GENERAL

1. The following are considered to be standing reservations for the year:
 - (1) Children's Picnic – 2nd Saturday before Easter – All shelters and clubhouse
 - (2) Halloween Carnival – Friday before Halloween
Clubhouse – Thursday, Friday and Saturday
All shelters – Day of the carnival
 - (3) Retirees' Christmas Luncheon – 1st Thursday of December - Clubhouse
 - (4) SCANA Leadership Association (formerly Foreman's Club) – 1st Friday of December - Clubhouse
 - (5) Children's Christmas Party – 1st Saturday of December- Clubhouse
 - (6) Engineers' Club – 2nd Saturday of December - Clubhouse
2. All reservations shall be made in a paying Members name, and may be made by the Member or the Member's spouse. No reservations may be made by dependent children of any age.
3. Reservations for groups involving dependent children shall be made by the Member parent. Outside youth groups must have an adult Member present who is familiar with Chapter rules.
4. During normal working hours, (Monday – Friday, 8:30 – 5:30 PM), contact the Pine Island Reservation Coordinator at 217-4484 for reservations. The Club Coordinator (781-6491) can make reservations for shelters after normal work hours on the day the reservation is to be used and during the weekend..
5. Information as to the size and nature of the party shall be given when the reservation is made. **Misrepresenting information on the reservation will be cause for action by the Violations Committee and may result in loss of Chapter privileges, suspension and/or a fine.**
6. **Any Member found misrepresenting their group or having failed to fully disclose the purpose of a function will be fined, and subject to Membership suspension.**
7. The following groups are not eligible for sponsorship by Members: businesses as a whole (in excess of 100 employees), artistic groups intending to perform on Chapter premises and groups intending to conduct worship services or political rallies, high school proms, college fraternity or sorority parties, and similar groups.
8. When a reservation is made, the Member shall specify the time of the reservation.

If the reservation is not taken within an hour after the specified time, *it will be canceled unless the party making the reservation contacts the Club Coordinator advising that they will be late.* The Club Coordinator has the authority to make the reservation available to another Member. If the grace period elapses, and the Club Coordinator has not been contacted about a late arrival, the Club Coordinator has the right to reassign the facility to another party. It is the responsibility of the Member to check their on-line reservation time.

9. Members are required to call and cancel shelter and clubhouse reservations. During Restricted Months, the clubhouse and shelters that are booked and have "no" shows will be charged a fee. The fee charged will be equivalent to the outside group fee for the number of people indicated in the reservation.
10. Shelter reservations will not be accepted more than one (1) year in advance and must be kept to no more than two reservations at any one time.
11. Clubhouse reservations will not be accepted more than one (1) year in advance.
12. Shelters or the clubhouse cannot be reserved for two consecutive days by the same family. Two shelters cannot be booked by the same family on the same day. The only exception is for weddings and rehearsal dinners.
13. The outdoor area and associated facilities cannot be reserved in its entirety by Chapter Members at any time. Reservations will be limited to one facility for any group. Company departmental groups may use the clubhouse and a shelter for departmental functions on the same day during the work week.
14. The actual number of guests to be present is to be stated when making the reservation; however, the following is a listing of shelter capacity.

<u>Shelter Number</u>	<u>Maximum Summer Capacity</u>
1, 2 ,3, 4, 5, 7, 9C, 10, 11, 12, 13, 14, 15	25 Persons
6 & 17	50 Persons
8	75 Persons
2A & 16	100 Persons
9AB	200 Persons
Barbeque Pit	25 Persons

15. Member groups of 100 or less persons are generally considered as family and friends for which clubhouse and shelters may be reserved without rental charges. Groups exceeding 100 persons or containing outside groups will be charged the outside group rates. This does not apply to weddings, wedding receptions, rehearsal parties or anniversary parties.
16. Clubhouse and shelters may be used for weddings, wedding rehearsals, wedding dinners, wedding receptions, and anniversary parties - for Members, a Member's parents, or a Member's children only. The schedule below shall be used to determine charges for these events. The clubhouse may be reserved the day or night before one of these scheduled events for decoration purposes only for an additional fee of \$100.00. The cleaning fee for the clubhouse is in addition to the rental fee.

Wedding Fees

Clubhouse Rental Fee		Clubhouse Clean-Up Fee	Shelter Rental	
1-100 persons	\$125.00	\$ 50.00	25 or less	\$ 25.00
101-225 persons	250.00	75.00	26-50	50.00
226-350 persons	425.00	100.00	51-75	75.00
			76-100	85.00
Day/night before	100.00		101-150	115.00
			151-200	135.00

17. Clubhouse and shelters may be used for family reunions. A family reunion is defined as the Member or the Member's spouse's family. There is no rental fee for family reunion groups of 1 - 100 persons; groups with over 100 persons will be charged the outside group rates.
18. A clean-up fee in the amount of \$50.00 will be assessed for Member functions held in the clubhouse for groups of 1 - 100 persons.
19. Payment of the facility charges and clean-up fees must be made three (3) weeks in advance, or at the time of the reservation if less than three (3) weeks of event, to the Reservation Coordinator along with the signed reservation request. If payment is not received within the time frame stated above, the reservation is subject to cancellation. If the shelter or clubhouse is not used on the date reserved by the Member, and Member fails to notify Club Coordinator that the facility will not be used on the reserved date, the facility charge will not be refunded.
20. Shelter scheduling for July 4th will be held by random drawing.

SECTION V. ADDITIONAL RESERVATION RULES FOR OUTSIDE GROUPS

1. Outside groups will be required to pay a fee for use of Chapter facilities or grounds and will have restricted use during the Restricted Months. The following schedule shall be used to determine the cost for an outside group (to include Member groups in excess of 100 persons) to use the Chapter facilities.

Facility Charge - Outside Groups Rates

Clubhouse		Shelters	
1-100 persons	\$ 350.00	25 or less persons	\$ 50.00
101-225 persons	725.00	26 to 50 persons	100.00
226-350 persons	1,000.00	51 to 75 persons	125.00
		76 to 100 persons	175.00
		101 to 150 persons	225.00
		151 to 200 persons	275.00

2. The employee Member, spouse or dependent child **must** be a Member of the outside group being sponsored. **Members cannot sponsor outside groups for other family members or friends. The sponsoring adult Member must be present at all times during the event in order for the group to be sponsored and authorized to use the facilities.**
3. Examples of outside groups required to pay a fee include, but are not limited to: Sunday School and Church Groups, Civic Groups, Social Groups, Class Reunions, School Groups, Sports Clubs, Athletic Groups, Clubs, Dinner Clubs, Bridge Clubs, Day Care Groups, Associations, and Member groups in excess of 100 persons.
4. Outside groups, to include but not limited to Day Care Groups, requesting the use of the Chapter grounds, will be charged the applicable shelter facility charge.
5. Businesses cannot be sponsored as a whole. Departmental co-workers of the spouse of a Member may be sponsored as an outside group with appropriate fees.
6. Retirement parties, other than for SCANA employees, are considered to be outside groups.
7. The justification request for use of the Chapter facilities by outside groups sponsored by SCANA (eligibility does not include commercial or industrial entities in whole or in part) should be submitted by the Member, in writing, along with the reservation form, to their Vice President for approval, and then sent to the Pine Island Management Representative for approval. The Pine Island Representative will contact the requester if disapproved.

8. No outside organizations will be allowed to reserve the clubhouse on Monday or Tuesday, or during the month of December. This includes Company Events.
9. Outside Group reservations for the clubhouse will not be accepted for groups in excess of 350 persons. *There are no exceptions.*
10. Reservations for an outside organization will not be accepted for more than one event at a time.
11. Outside Groups cannot use Chapter facilities on weekends during the Restricted Months with the following exceptions: On Fridays during the Restricted Months shelters, except for shelters 9AB, may be available for outside groups of 50 or less. This restriction does not apply to outside groups on other weekdays. This restriction also does not apply to departmental gatherings, Company or Chapter sponsored functions.
12. During Restricted Months, the number of persons attending an outside group must be a minimum of one-half the shelter capacity in order to reserve shelters 2A, 6, 8, 16 or 17 - or you will be charged the fee for the shelter capacity. Member groups should also use consideration to the size of their groups when reserving shelters. (For example: If your reservation is for 50 and you have 75 guests in attendance, then you will be charged the rate for the higher number of people. However, if you have less than the number of your reservation, there will not be a reduction in fee.) Members and their guests should be courteous to others around them and park across from their respective shelter.
13. NO REFUND WILL BE GIVEN FOR RESERVATIONS THAT ARE NOT CANCELLED.

SECTION VI. SWIMMING POOL

1. The days and hours of operation of the swimming pool and pool fees are set by the Board of Directors before each season of swimming. The pool will be closed on Monday and Tuesday, except if a holiday falls on a Monday or Tuesday.
2. Detailed swimming pool regulations are posted on the Clubhouse Bulletin Board and at the entrance to the shower rooms Pool regulations are:
 - (a.) Shower before entering the pool.
 - (b.) Obey lifeguard on duty.
 - (c.) No swimming in street clothes will be permitted.
 - (d.) No swimming in "cut-offs."
 - (e.) No running in pool area.
 - (f.) No smoking in pool area.
 - (g.) No glass containers in pool area.
 - (h.) No food or drink (other than water in plastic containers) in pool area.
 - (i.) Swim disposable diapers only are allowed in the pool area.

SECTION VII. TENNIS COURTS

1. A double tennis court is available for Members and their guests. Rules necessary to ensure all players equal time for the courts and to maintain the courts in good condition are as follows:
 - (a.) Limit play to 1 and 1/2 hours when others are waiting.
 - (b.) No street shoes (tennis shoes only).
 - (c.) Do not track mud on court.
 - (d.) No food or drink inside fence (except water).
 - (e.) Players only inside court area.
 - (f.) Keep gate closed.

SECTION VIII. MARINA

1. A marina for wet and dry storage of boats is available at Pine Island with a limited number of slips. These slips are available to Members, who actively use their boats, for lease on an annual basis. Inquiries into the availability of slips and rental fees should be directed to the Pine Island Secretary.
2. Members and guests will not park cars, boats, or trailers on the boat ramp. Please be considerate of others and pull your vehicles up to the parking area to prepare your boat.

SECTION IX. DRY DOCK

1. A limited number of leased dry-dock spaces are provided for Members to park their boat and trailer. The "Lessee" is required to keep his space neat, clean and orderly. Direct inquiries concerning the availability of space and rental fees should be directed to the Pine Island Secretary.

SECTION X. BOARD OF DIRECTORS

The affairs of the Chapter shall be managed by the President under direction of and control of the Board of Directors. The Board of Directors shall consist of not more than twenty-two Members – the President, the Vice President, and one Director representing each of the following groups:

1. Palmetto Center – Basement, Mezzanine, 2nd, 3rd and 4th Floors
2. Palmetto Center – 5th, 6th, 7th, 8th Floors
3. Palmetto Center – 9th, 10th, 11th, 12th Floors
4. Palmetto Center - 13th, 14th and 15th Floors
5. Operations Support Center
6. Transmission Operations Center
7. Shakespeare Road
8. SCANA Subsidiaries, 1401 Main Street, 19th Floor
9. Northeast
10. Wateree Plant
11. St. Andrews/Greystone
12. V. C. Summer A (400 series Mail Codes)
13. V. C. Summer B (300 and Pxx series Mail Codes)
14. V. C. Summer C (All other Mail Codes at VCS)
15. Fleet
16. Columbia Business Office, 24/7, Lady Street and Broadway
17. Test Lab, Dixiana
18. Fossil Hydro, McMeekin, Central Lab, Hydro & Peaking Plants
19. Districts
20. Retirees

The Directors of the following groups shall be elected on even years:

SCANA Subsidiaries, 1401 Main Street, 19th Floor
Palmetto Center – 5th, 6th, 7th, and 8th Floors
Palmetto Center – 9th, 10th, 11th, 12th
Palmetto Center - 13th, 14th, and 15th
Operations Support Center
Shakespeare
Northeast
Wateree

The Directors of the following groups shall be elected on odd years:

Palmetto Center – Basement, Mezzanine, 2nd, 3rd and 4th Floors
St. Andrews/Greystone Operations Support Center
V. C. Summer A Transmission Operations Center
V. C. Summer B Test Lab, Dixiana
V. C. Summer C Fossil Hydro, McMeekin, Central Lab
Fleet Hydro Peaking Plants
Districts Cola Business, 24/7, Lady Street & Broadway

**THE CONSOLIDATED EMPLOYEE RECREATION CLUBS ("CERC")
HOLD HARMLESS AGREEMENT FOR USE OF SCANA EMPLOYEE CLUBS**

In consideration of the grant of right to use a facility of The Consolidated Employee Recreation Clubs, the undersigned User agrees as follows:

1. CERC shall provide no security as to persons or property on the Facility premises. User is fully responsible for the protection of its property and the property of its employees, agents, guests, servants or invitees.
2. User shall be liable for all damage to buildings, grounds and equipment incident to User's use of the Facility. User shall be charged for the cost of materials plus labor to repair any damage.
3. User is subject to any posted rules and any House rules for the Facility to be used. A copy of the House rules, if any, will be provided by the SCANA Employee Representative upon request.
4. User hereby agrees to indemnify and hold CERC, South Carolina Electric & Gas Company and its corporate affiliates harmless from any loss resulting from bodily injuries (including death) or damages to property, or any claims or suits, arising directly or indirectly out of negligence on the User's part, or part of any employee, agent, guest, servant, or invitee of the User, whether independent or otherwise, sustained, incurred or required arising out of the actions of User in the course of its usage of the Facility permitted herein. Further, User hereby agrees to indemnify and hold CERC, South Carolina Electric & Gas Company and its corporate affiliates harmless as to any costs incurred by CERC, South Carolina Electric & Gas Company and/or its corporate affiliates in enforcing this provision, which shall include, but not be limited to, attorney's fees.

THIS SIGNED FORM MUST BE RETURNED NO LATER THAN SEVEN (7) BUSINESS DAYS PRIOR TO THE SCHEDULED USE OR THE RESERVATION WILL BE CANCELED. RETURN FORM TO:

**South Carolina Electric & Gas Company
Attention: Club Reservations, Mail Code B01
Columbia, SC 29218**

Signature (as applicable) of Club Member
or Authorized Representative of
Sponsored Group

Witness

Date

1/25/2008

The State of South Carolina ABC Liquor Lease Requirements

**THE STATE OF SOUTH CAROLINA
Alcoholic Beverage Control Commission**

**Edgar Brown Office Building
1205 Pendleton Street
Columbia, SC 29201
Telephone: (803) 734-0470**

**PRIVATE PARTY REGULATIONS
PARTIES AT LOCATION THAT HAVE AN ABC LICENSE**

At locations that have a beer/wine permit or mini bottle license issued by the SC ABC Commission, you will need to meet the following conditions in order to legally have liquor in bottles larger than mini bottles at your party.

1. You must have a written lease from the person operating the licensed location. The lease must be written on it the hours during which it is valid, as well as, how much rent you are paying. Keep the lease where it is available for inspection.
2. The party must be private. If anyone who has not been personally invited can attend the party, it is not a private party. You can invite people to your party by word of mouth or by first class mail. Invitations printed in the newspaper or publicized on television or radio would make your party public and would make it unlawful for anyone to possess or consume alcoholic beverages.
3. You, as the host, must purchase all the alcoholic liquor to be consumed at the party. You will need to keep the liquor under your possession and control during the party. You can have a bartender to do this for you, or you can set up a bar in one or more places in the location. Your guests cannot carry bottles of liquor to their tables. At the end of the party, you or your representative must remove all the liquor from the premises. Don't ask the owner of the business to store the liquor for you. If a law enforcement officer discovers the liquor on the premises, the owner will be fined and could lose his ABC license.
4. Your party must end by 2:00 AM. ABC Regulations require that your lease to the premises must terminate by 2:00 AM. Therefore, after 2:00 AM, the possession and consumption of liquor is unlawful. Yours guests could be arrested, and the owner of the business can be fined and could lose his ABC license.
5. You cannot sell beer, wine, or liquor. You can sell these beverages only if you obtained a specific temporary license authorizing the sale from the ABC Commission. If you desire to sell beer, wine, or liquor, you will need to apply to the ABC Commission at least three weeks before the event. Issuance of these temporary licenses is not automatic. Character and location investigations must be conducted. Also, citizens and law enforcement officers have the right to object to these temporary licenses being issued.
6. Going to and from the party, carry any open containers of liquor in the trunk or luggage compartment of your vehicle.

Pine Island Chapter Lease
Pine Island Club
Columbia, SC 29218

DATE: _____

THIS CERTIFIES THAT THE CLUBHOUSE ON THE PREMISES OPERATING AS THE PINE ISLAND CLUB, LAKE MURRAY, IS LEASED TO:

NAME: _____
NAME OF GROUP: _____
PERIOD: _____

THE ABOVE NAMED AND PARTY IS PERMITTED TO LEASE THE PINE ISLAND CLUBHOUSE DURING THE PERIOD SHOWN ON THIS LEASE AGREEMENT. ALL CONDITIONS FOR LEASE MUST BE ADHERED TO. THE FEE FOR THE USE OF THE FACILITY IS \$ _____.

THIS LEASE MUST BE IN POSSESSION OF THE LESSEE, SIGNED, AND POSTED ON THE TABLE CONTAINING ALCOHOL (IF ANY).

LESSEE LESSOR-PRESIDENT, PINE ISLAND CLUB

CONDITIONS FOR LEASE

SECTION I: PARTIES WITHOUT ALCOHOL

1. A copy of the lease must be in possession of the party listed above.
2. Party must end and all liquor and sound equipment removed from clubhouse by midnight.
3. Lessee must perform superficial clean-up (placement of cups, food, containers, etc. in trashcans).
4. Parties must be **PRIVATE. NO INVITATION MAY BE PRINTED IN THE NEWSPAPER OR PUBLICIZED ON TV OR RADIO.**

SECTION II: PARTIES WITH ALCOHOL

1. Lease from Pine Island Club must be posted where it is available for inspection upon request.
2. The part must be **PRIVATE. NEWSPAPER INVITATIONS OR PUBLIC ANNOUNCEMENT ON TV OR RADIO WOULD MAKE YOUR PARTY PUBLIC AND UNLAWFUL TO POSSESS OR CONSUME ALCOHOLIC LIQUORS.**
3. The host must purchase all alcoholic beverages to be consumed at the party. All beer, wine, wine coolers, and/or alcoholic beverages must be set-up at a central bar. The host must provide TWO Persons to tend bar at all times. No unopened beer, wine, wine coolers, and/or alcoholic beverages may be placed on an individual table at any time. The beer, wine, wine coolers, and/or alcoholic beverages must be brought to the premises two hours prior to the function by the host or his designee. NOTE: THE ONLY EXCEPTION TO #3 IS FOR THE HOST TO APPLY TO THE ABC FOR A TEMPORARY PERMIT AND LICENSE 61-6-510 WHICH IS A TEMPORARY PERMIT THAT ALLOWS THE POSSESSION, SALE, AND CONSUMPTION OF ALCOHOLIC LIQUORS (S.C. Code Ann Section 61-6-510). The permit is \$35 per day and may be purchased by non-profit organizations. This must be done three weeks prior to the date of party and must be posted at time of use. Contact ABC for further instructions. Pine Island must be notified of use of temporary license prior to event.
4. A copy of the lease must be in the possession of the party listed above.
5. You can not sell any alcoholic beverage (beer, wine, or liquor) at your party.
6. All alcoholic beverages must be removed before 12:00 midnight. Any alcoholic beverages left on the premises will be destroyed immediately.
7. Lessee must perform superficial clean-up (placement of cups, food, containers, etc., in trash cans).

ANY VIOLATION OF CONDITIONS FOR LEASE WILL RESULT IN TERMINATION OF CLUB MEMBERSHIP

PINE ISLAND CHAPTER FINES FOR VIOLATIONS

A monetary fine will be imposed for, but not limited to, the following:

- A Member misrepresents the number in their group
- A Member misrepresents the type of group (i.e. family & family/outside group)
- When conduct is deemed to be inappropriate at Pine Island
- No Shows

Fines for reservation violations are:

For 1 – 25 attendees	\$ 50.00
For 26 – 50 attendees	100.00
For 51 – 75 attendees	150.00
For 76 – 100 attendees	200.00
For 101 – 150 attendees	300.00
For 151 – 200 attendees	400.00

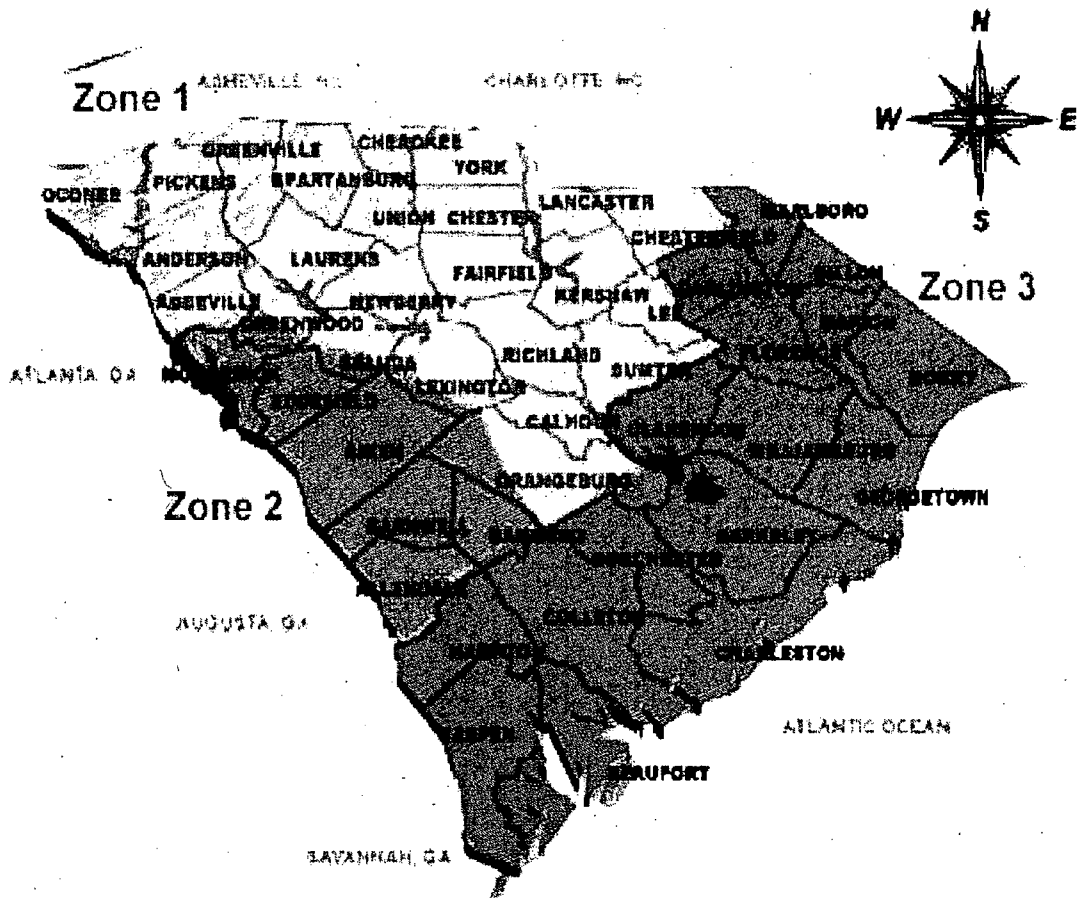
In addition to the above fine, a Member deemed in violation could be assessed the following:

1. Reservation privileges may be suspended.
2. Island privileges may be suspended
3. Membership suspended.

Any Member found to be in violation can appeal in person before the House Rules Committee or submit their appeal in writing to the committee within ten (10) days of the date on the *Notice of Violation*.

The appeal results of the House Rules Committee are final.

Zone 1 is for Pine Island. Zone 2 is for Misty Lake. Zone 3 is for Sand Dunes.



DIRECTIONS TO PINE ISLAND CLUB

150 Pine Island Road

Columbia, SC 29212

803-781-6491

From Columbia (via Bush River Rd.):

Take I-26 to Colonial Life Blvd. Take Colonial Life Blvd. to Bush River Rd. intersection. Turn left onto Bush River Road. Take Bush River Road to intersection with St. Andrews Rd (approx. 3 miles). Turn left on St. Andrews Rd. Cross over Railroad Tracks, proceed to Old Bush River Rd intersection (just past the Bi-Lo grocery store). Take a left onto Old Bush River Rd. At the intersection where you would turn left to go over the dam, stay straight and proceed on North Lake Dr. toward Ballentine. Just before the Citgo Gas Station, take a left on River Road. Take River Road almost until the end, where you will see the sign for Pine Island on your left. Turn left, enter the gates, and cross the causeway onto Pine Island.

From Newberry (via 176):

Take I-26. Bear right off I-26 at the "176, Ballentine, Irmo" exit. Proceed for 0.5 of a mile on "176 East" to Bickley Road. Turn right on Bickley Road and continue for 1.1 miles. Cross the railroad tracks and turn left at the light on to "Highway 76". Go for 0.1 of a mile and turn right at the convenience store and continue for 1.4 miles until you approach a "Dead End" sign at the entrance to Pine Island Club. Turn left, enter the gates, and cross the causeway onto Pine Island.

From Charleston: take Interstate 26W. **From Asheville/Newberry:** take Interstate 26E

1. Exit #102A - SC-60W / LAKE MURRAY BLVD-WEST (toward IRMO)
2. Travel 3.5 miles
3. Turn RIGHT onto SC-6 / N LAKE DR
4. Travel 0.7 miles
5. Turn LEFT onto RIVER ROAD (at Citgo Gas Station)
6. Travel 1.6 miles
7. Turn LEFT onto PINE ISLAND ROAD
8. Enter GATES
9. Cross the Causeway
10. Continue straight to reach Clubhouse

PINE ISLAND CHAPTER BYLAWS

Contents

Article	Title	Page
I	General	2
II	Meetings	4
III	Officers	5
	Description of Office	5
	Election	5
	Term of Office	5
IV	Duties of Officers	6
V	Membership	8
	Eligibility	8
	Dues	8
VI	Committees	10

DEFS-0333

We, the undersigned, hereby associate ourselves together for the purpose of forming and organizing a corporation, not for profit, under the laws of the State of South Carolina, and with our associate Members do hereby adopt and declare the following as Articles of Incorporation.

ARTICLE I

Section 1. The name of this chapter shall be the Pine Island Chapter and its principal place of business shall be located in the City of Columbia, County of Richland, and State of South Carolina.

Section 2. The purpose of this chapter shall be to promote the general welfare and to provide a better feeling of fellowship among the employees of SCANA and its subsidiaries through social functions and the accommodation of Members and their friends and to provide a clubhouse, clubrooms, and other conveniences and generally to afford to Members and their friends all the usual privileges, advantages, conveniences, and accommodations of a Chapter and non-profit organization.

Section 3. Membership in this chapter shall be limited to full-time regular employees and retired employees of SCANA and its subsidiaries or its predecessor companies or companies merged with it, an unmarried widow or widower of such employees or retired employees, and Co-Op students as designated by SCANA management. Regular, full-time employees of SCANA and SCANA subsidiary companies are eligible for chapter Membership upon approval of the subsidiary company's president. Retiree and surviving spouse eligibility is as established by the subsidiary president. Monthly rates for non-subsidizing subsidiaries will be as established by the Board of Directors.

Section 4. The existence of this chapter shall be perpetual or until such time as it shall have been dissolved by law.

Section 5. This chapter shall have the general powers as normally provided by law for chapters of similar type and purpose.

Section 6. The affairs of the corporation shall be conducted by the President, Vice President, a Secretary, and Assistant Secretary, a Treasurer and Assistant Treasurer, and Board of Directors consisting of not less than eleven, and not more than twenty-two, who shall be employees of SCANA and/or its subsidiaries and Members of the Chapter.

The Vice President shall be elected by the Membership. The Vice President will succeed the President in this position. To be eligible for the offices of President or Vice President of Pine Island Chapter, a person must have at least one year's experience on the Board of Directors, and/or in an appointed office. If no one with this experience desires the office of President or Vice President, this office shall be filled by election from the Membership. All other officers shall be elected or appointed in accordance with these Bylaws.

Section 7. The Bylaws of the Chapter are to be made, altered, or rescinded by the vote of two-thirds majority of the Membership present at any meeting called for that purpose. Changes shall first be submitted to the Board of Directors and presented to the Membership by written notice either posted on each SCANA and its subsidiaries department bulletin board in the zone/area or mailed to each Member after the Board's consideration and not less than seven nor more than sixty days prior to such meeting.

ARTICLE II

Section 1. The annual meeting of the Chapter will be held in January, time and place to be specified by the President, and notice thereof given to the Members not less than thirty nor more than sixty days prior to said meeting, provided that the place shall be within the Columbia area.

Section 2. Special meetings of the Chapter shall be called by the President, at his/her discretion, or at the request of the majority of the Directors, or at the written request of ten percent of the Membership of the Chapter. At least one week's written notice shall be given all Members prior to any special meeting. Written notice will state reason for meeting and shall be given as provided in Article I, Section 7.

Section 3. At all meetings of Members, a simple majority of Members present shall govern on any question except as set forth in Article I, Section 7.

Section 4. The Board of Directors shall hold a regular meeting each month. Special meetings of the Board shall be called by the President at his/her discretion or at the request of a majority of the Directors. A simple majority of the Directors shall constitute a quorum and govern any question before the Directors.

ARTICLE III

Section 1. The President shall serve a period of one year, term of office terminating at the annual meeting.

At least one month before the Annual Meeting, the Election Committee, appointed by the President and approved by the Board of Directors, shall submit a nominating ballot for Vice President to each Member of the Chapter. Individuals must receive a minimum of twenty-five (25) written nominations from Members of the Chapter in order to qualify as a nominee for the office of Vice President. At least two weeks before the Annual Meeting, the Election Committee will furnish a written ballot listing the top three qualified nominees for Vice President to each Member of the Chapter. The Vice President shall be elected as a result of the ballot. The out-going Vice President will automatically assume the office of President.

Section 2. The Management Representative shall serve as a Director for a period of one year, term of office terminating at the annual meeting, or as soon thereafter as his successor shall be appointed and qualify. Management Representative will review and approve justifications of all Company and Chapter events. The Management Representative shall be appointed or reappointed as follows:

At least one month before the expiration of the Management Representative's term of office as Director, the Chapter President shall request the Chief Executive Officer appoint a Management Representative to succeed the retiring Director.

Section 3. The Directors shall serve for a period of two years, their term of office terminating at the annual meeting or as soon thereafter as their successors shall be elected and qualify. The Directors shall be elected as follows:

At least one month before the expiration of any Director's term of office, the Election Committee shall submit a written ballot to the Members of the group concerned, who shall vote for one Member of their group for Director. The President shall declare the results of the elections.

Section 4. In the event of the inability of any elected Officer or Director to serve his/her full term, the Board of Directors may within its sole discretion fill such office or cause an election to be held to fill such office; in the event it chooses to fill the vacancy by election, such election shall be held in accordance with these Bylaws. Such election by the Board or in accordance with these Bylaws shall be for the remainder of the term for which such Officer or Director was originally elected. In the event any elected Officer or Director ceases to be employed in the Columbia area or in the group which he/she represents, as outlined in Article III, Section 1, such employee shall, as of the date he/she ceases to be so employed in the Columbia area or group from which he was elected, cease to hold the office, or exercise any of the functions or prerogatives thereof to which he has been elected. A successor shall be appointed or elected for the remainder of his/her term as provided in the first sentence of this Section 4, such appointment or election to be either by the Board of Directors or in accordance with these bylaws, as the Board of Directors shall, in its sole discretion, decide.

ARTICLE IV

Section 1. The duties of the President shall be to preside at all meetings and carry out the directions of the Board of Directors. He/She shall preside at all meetings of the Board of Directors and shall vote only in case of a tie of the Board of Directors. He/she shall appoint all standing committees with the approval of the Board. It shall also be the duty of the President, after conferring with the Chairmen of the various standing committees, to plan the budget and activities of the Chapter along social, educational, and recreational lines. The President shall then submit this budget or program to the Board of Directors for their approval. No dues will be assessed to past Presidents.

If possible, the Immediate Past President shall serve in an advisory capacity for one year.

Section 2. The duties of the Board of Directors shall be to supervise the affairs of the Chapter and to do any and all things necessary in the governing and operation of the Chapter as provided in these Bylaws; and, further, to set up rules and regulations governing the operation of any Chapter grounds, and other properties and activities. The Directors shall have power to set the annual dues of the Chapter and to make assessment of not over 50 percent of the annual dues.

Directors are expected to actively participate in Chapter activities and events, monthly Board meetings, and appointed committee meetings.

Section 3. The Vice President shall assist the President in the performance of the President's duties, as requested by the President and shall perform the duties of the President in his/her absence or in the event of his/her inability to serve, until such time as a replacement has been elected for the President pursuant to Article III, Section 4.

Section 4. The Secretary and Assistant Secretary shall be appointed by the President, with the approval of the Board, for a term of one year, or until his/her successor is appointed and qualified, and shall keep and preserve records of all meetings, issue notice of meetings and shall perform such other duties as the office requires. The Secretary will be in charge of the Marina for the lease of Wet and Dry Slips and for the waiting list for each.

Section 5. The Treasurer and Assistant Treasurer of the Chapter shall be appointed by the President with the approval of the Board of Directors for a term of one year, or until his/her successor is appointed and qualified. It shall be the duty of the Treasurer to collect all dues, to receive and disburse all moneys belonging to the Chapter, and to preserve complete records in connection within. All bonds, notes, deeds, mortgages, and leases must be signed by the Treasurer or Assistant Treasurer and countersigned by the President or Vice President (in the absence of the President). Any disbursements not in excess of Five Hundred Dollars (\$500) may be made by the Treasurer with approval of the President or Vice President; all other disbursements shall be made if approved by the Board of Directors.

Section 6. The Social Chairperson shall be appointed by the President, with the approval of the Board, for a term of one year, or until his/her successor is appointed and qualified, and shall be responsible for planning all chapter events.

Section 7. Payment for the services of President, Vice President, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, and the Chairman of the Social Committee shall be fixed and revised as necessary by the Board of Directors.

ARTICLE V

Section 1. All regular, full-time employees of SCANA and its subsidiaries, and Co-Op students as designated by SCANA management, residing in Zone #1 (See Map on Page 20 of the House Rules) shall be eligible for Membership in the Chapter upon payment of initiation fee as determined by the Board of Directors. There is no restrictive time limit on joining Pine Island Chapter except that it must be prior to retirement. The Initiation Fee is still required for employees joining prior to retirement date. The Member's spouse and unmarried eligible dependents (age 19 to age 23, provided dependent is a full-time student) are also considered Members. Their responsibility to the Chapter is the same as the employee Member.

There shall be three classes of Membership in the Chapter: Active Employee Members, Retired Members and Co-Op students (as designated by SCANA management). The Board of Directors in accordance with Article IV, Section 2, shall assess Membership dues. Employees must be a Member of Pine Island Chapter for **ten (10) years** prior to retirement or be required to pay the balance of the ten (10) years' dues after retirement.

The unmarried spouse of a deceased Member shall be eligible for Membership in the Chapter, if also eligible for a surviving spouse benefit under the SCANA Pension Plan, and not subject to further payment of dues. If the spouse of a deceased Member remarries, Membership in the Chapter will be terminated. Unmarried eligible dependents (age 19 to as 23, provided dependent is a full-time student), or a deceased Member's spouse remains a Member of the Chapter.

Section 2. All Applications for Membership shall be read into the Minutes for acceptance by the Board of Directors. Employees may join Pine Island Chapter anytime prior to retirement or prior to going on Long Term Disability (LTD). The Board shall have the authority to deny or cancel Membership, after a hearing, and the decision of the Board of Directors denying or canceling Membership shall be final.

Section 3. All properties of the Chapter under the supervision of an Officer of the Chapter must be accounted for and turned over to the Officer's qualified successor.

Section 4. Initiation fees may be paid in advance or deducted monthly through payroll deductions for five months. Monthly Chapter dues for all active Members shall be payroll deducted upon a written request from the Members, which written request must be filed at the time of making application for Membership. Upon retirement during the year, the Retiree will be required to pay the remainder of that year's dues at that time; thereafter, with less than ten (10) years Membership, payment will be due each January for the annual dues until the Retiree has been a Member for ten (10) years.

Cancellation of this written request will result in automatic termination for Membership in the Chapter.

Section 5. If a Member voluntarily elects to discontinue Membership in the Chapter and later decides to be reinstated, he/she must, upon approval of the Board of Directors, either pay the back dues or the initiation fee – whichever is less.

Section 6. A Member on a Company approved Leave of Absence or Family Medical Leave or Military Leave of Absence may continue Membership by paying to the Chapter Treasurer dues in advance for the period of the leave.

Section 7. Pine Island, Misty Lake, and Sand Dunes Chapter have a reciprocal agreement as to the use of each other's facilities.

ARTICLE VI

Section 1. The following standing committees may be appointed annually by the President subject to the approval of the Board of Directors.

1. **Social Committee** – The duties of this committee shall be to plan activities of the Chapter along social lines and to see that such plans are carried out.
2. **Auditing Committee** – The duties of this committee shall be to audit the books and accounts of the Treasurer, to audit the Financial Statement and certify as to its correctness, and generally to audit any special accounts of any kind. The books shall be audited prior to the Annual Meeting each year and a report submitted to the Members at the Annual Meeting.
3. **House Rules and ByLaws Revision Committee** – The duties of this committee shall be to study carefully the Chapter Bylaws and Rules of the Chapter, accept suggested changes from Members, discuss them as a committee, and to propose to the Chapter any desirable changes.
4. **Financial Committee** – The duties of this committee shall be to meet with the standing committees, to assist such committees in preparing their budgets for the current year and to prepare an operating budget to be approved by the Board of Directors.
5. **Violations Committee** – The duties of this committee shall be to enforce any clubhouse or Club rules. It will also be charged with the responsibilities promulgated by the Board of Directors. The committee shall report to the President at the end of each month.
6. **Publicity Committee** – The duties of this committee shall be to originate all bulletins and advertising pertaining to the Chapter.
7. **Safety Committee** – The duties of this committee shall be to enforce all safety rules in connection with the use of any Club House, Club Rooms, and activities of the Chapter.
8. All other committees as considered appropriate by the President and Board of Directors, such as grounds, swimming pool, tennis courts, election, etc.

Pine Island Wedding Policy

Pine Island Club is an employee club located on Lake Murray. The clubhouse can be reserved a year in advance for weddings, rehearsals, and receptions. Due to the number of Pine Island Members, the clubhouse can only be reserved for Members and Member's children for weddings, wedding rehearsals, wedding dinners, and wedding receptions. **There are no exceptions.**

Restrictions

Music is allowed in the clubhouse. All music must be provided via a DJ or band. DJ, band, or speakers are not allowed to be set up on the outside of the clubhouse or on the porches. Large bands needing additional staging are prohibited. **During the Christmas season, all Christmas decorations will remain in place.** Prior to the event, you must contact the Pine Island Coordinator to determine the power requirements. ***The clubhouse sound system and video equipment can not be used as this equipment is strictly for Company business meeting purposes.***

Hours of Event/Charges

You may reserve the clubhouse the day before your wedding, if available, for decorating or a rehearsal dinner. The clubhouse will be open after 11:00 AM for decorating for the wedding or rehearsal dinner. The wedding event must end by 10:30 PM with all guests, vendors, and equipment (both personal and rented) off the island by 12:00 midnight. On Sunday, events must end by 7:30 PM with all guests, vendors and equipment off the island by 9:00 PM. All items brought into the clubhouse, must be removed from the facility at the end of the event. The Member must make sure that this rule is followed. Non-compliance could result in a violation and fine.

The Hold Harmless Agreement must be signed by the Member and returned to the Pine Island Reservation Coordinator along with fees associated with the rental of the clubhouse seven days prior to the event. Failure to return the Hold Harmless Agreement and/or fee payment will result in the cancellation of the facility.

Sunday Events:

Rental hours for Sunday weddings and receptions are from 12:00 noon to 7:30 PM. All vendors and guests must be off the island by 9:00 PM.

Set Up And Decorations

Decorations **cannot** be applied to any surface inside or outside the clubhouse by means of tacks, nails, staples, wire or adhesive products (i.e. tape, glue, etc.) This includes banisters, floors, trees, and gazebo. Decorations can only be attached by tying to the surface to which they are to be applied with ribbon or string. Due to safety reasons, **absolutely no** materials of any kind will be placed within the rafters of the ceiling of the clubhouse. Any damages incurred by vendors or guests to the clubhouse will be the responsibility of the Member. Balloons can be used inside the clubhouse but must be tied down and can not be released inside the clubhouse.

Pine Island furniture (entrance way and bathroom), pictures, and piano will not be moved from the designated areas. Decorations and equipment must not be placed in such a manner that it impedes traffic flow or blocks the exits of the clubhouse.

To avoid damage to wood floors do not drag tables or chairs. If tables need to be re-arranged, please ask Pine Island Coordinator for assistance.

Votive or floating candles may be used for decorations on tables. They must be placed in a container surrounded by glass. No

lighted candles are allowed in the windows. Column and tapered candles may not be used on tables where people will be sitting.

Bubbles **can only be used** outside and away from the clubhouse entrance. **No** glitter, sparklers, bird seed, shaving cream, paper products, confetti, rice, spray string, ribbon, or rose petals (real or silk) can be used. Car decorations are allowed but parking lot must be clear of all debris (cans, containers, balloons, string, etc.). Cleanup is the responsibility of the Member. A fine of \$200.00 will be charged to the Member if the parking lot area is left untidy.

Alcoholic Beverages

Member must sign the Pine Island Lease Agreement if alcohol will be served and must abide by all alcoholic beverage control laws, regulations and conditions of Pine Island. Bars must have bartenders available at all times until the bar closes. Beer provided by the Member will be served in cans only. Glass bottles **are not** allowed due to safety reasons. Keg beer is not allowed in the clubhouse but can be set up on the porch facing the lake.

Smoke Free Environment

Smoking is not allowed inside the Pine Island Clubhouse. The designated smoking area is located just outside the clubhouse entrance. All discarded cigarettes must be placed in the proper receptacle provided, not in planters, on porches, sidewalks, or grounds; excessive cleanup charges will result.

Kitchen Facility

The kitchen facility is available for caterers to use for the preparation of food. Area should be left like it was found to include, but not limited to, kitchen work surfaces, stove, sink, and oven. If not left as found, a clean-up/repair fee may be charged

as determined by the Club Coordinator. All food will be removed from Pine Island at the conclusion of the event. Trash will be removed from the clubhouse by the Club Coordinator.

Facility Capacity

Pine Island Clubhouse must not exceed the maximum capacity of 350 people as set by the Fire Marshall. This includes total guests both inside and outside.

Equipment Available

Pine Island has tables and chairs available for use at no charge. **They can only be used inside the clubhouse, no exceptions.** The Member is responsible for determining the number of required tables and chairs to meet the events needs. Paper table covering is available for the long tables only. Fabric table cloths are not available and must be furnished by Member or caterer.

Chairs: 350 - Black padded stack chairs
Tables: 40 - 30" x 8 ft. long tables
12 - 60" round tables
2 - 48" round tables
2 - 2' x 4' oblong tables

Pine Island Rules

The rules and regulations of Pine Island, including rules applicable to conduct, apply to all guests and vendors while on the Island. Pine Island will not be responsible for the loss or damage of valuables or personal property, nor will it be responsible for personal injury to Members, their families, guests or vendors.

Any questions concerning this policy, please call 781-6491.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) CIVIL ACTION NO. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of
Evan M. Myers,

Plaintiffs,

v.

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray; South
Carolina Electric and Gas Holding
Company, Inc.; SCANA; Mandy Nicole
Bellamy;

Defendants.

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(e), SCRPC**

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2016 SEP -6 P 3:20

JP
FILED

TO: Christian Stegmaier and Megan H. Hall, counsel for defendants:

PLEASE TAKE NOTICE that ten (10) days from the date of this Notice, or at such other time as the Court may schedule, the undersigned counsel for Plaintiff will move before the Honorable William P. Keesley, circuit court judge of the eleventh judicial circuit, for an Order to Alter or Amend the Order granting Defendants' Motion for Summary Judgment.

This Motion is made pursuant to Rule 59(e), South Carolina Rules of Civil Procedure and is based upon the South Carolina Rules of Civil Procedure, statutory and case law governing such matters, as reflected in the accompanying memorandum, and upon such other and further materials as may be cited or presented to the Court at the hearing of this Motion.

The undersigned hereby affirms in accordance with Rule 11, South Carolina Rules of Civil Procedure, that the movants' counsel prior to filing the Motion has communicated, orally or in

writing, with opposing counsel to attempt in good faith to resolve the matter contained in the Motion without success; or affirms that it would serve no useful purpose to consult.

Respectfully submitted,

KROMPECHER LAW FIRM, PLLC

BY: *Pedro Krompecher*

Pedro E. Krompecher, III

SC State Attorney Bar No.: 100485

P.O. Box 6639

Raleigh, North Carolina 27628

Telephone: (919) 977-8082

Facsimile: (919) 746-7588

Email: pedro@k

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2016 SEP - 6 P 3: 20

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CIVIL ACTION NO. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan M. Myers,

Plaintiffs,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding Company, Inc.; SCANA; Mandy Nicole Bellamy;

Defendants.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO ALTER OR AMEND PURSUANT TO RULE 59(e), SCRC

2014 SEP -6 P 3:20
KETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

FILED

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiffs Cassandra M. Myers and Bartholomew Myers in their capacity as co-personal representatives of the Estate of Evan Morris Myers, asks this Court to reconsider its Order granting Defendants' Motion for Summary Judgment. Plaintiffs respectfully submit that the court misapprehended the dispositive legal principles applicable to the facts of this case.

PROCEDURAL HISTORY

Defendants filed a motion for summary judgment on November 3, 2014. In summary, the grounds for summary judgment were stated as follows: (1); no duty of care, (2); judgment as a matter of law pursuant to the South Carolina Recreational Use Statute, S.C. Code Ann. § 27-3-10 to -70, (3); failure to prosecute their case, (4); failure to prove intentional infliction of emotional distress for failure to show extreme and outrageous conduct on behalf of the defendants, and (5);

dismissal of Matthew Bellamy individually as he lacks any connection to this case or the theories of recovery that have been pleaded.

Plaintiffs submitted a memorandum of law in response to Defendants' Motion for Summary Judgment that was dated December 8, 2015. Plaintiffs addressed each and every purported basis for summary judgment stated by Defendants in their November 3, 2014 motion.¹ Late in the afternoon the day before the hearing on the Motion, Defendants submitted by email a Memorandum in Support of the Motion for Summary Judgment. (email, Exhibit 1). Defense counsel sent Plaintiffs a "courtesy copy" of the memorandum at 3:39 PM, December 10, 2015, which went to counsel's inbox while he was driving to the hearing the day before. The hearing occurred at 10:00 AM the following morning. Plaintiffs lacked any meaningful opportunity to analyze and respond to the Memoranda, especially any new arguments not previously disclosed. Interestingly however, even this eleventh hour brief merely glossed over causation as a basis for summary judgment. Under "Facts/Procedural Background," Defendants state without support that "Plaintiffs have failed to provide any evidence any such breach proximately caused the decedent to drown." (Mem. In Supp. of Mot. S.J. p. 3). Then, buried under a section titled, "Decedent Assumed the Risk," Defendants argue, "Plaintiffs had adduced absolutely no evidence whatsoever that any purported change in weather condition actually caused Mr. Myers to drown." (Def. Mem. in Supp. of Mot. S.J., p. 11). Importantly, Plaintiffs made no such allegation because Plaintiffs contend that decedent's drowning was caused by the breaches committed by Defendants, not because of weather.

¹ On October 26, 2015, his Court granted Plaintiff's Motion to Amend the Complaint, to which defense counsel consented. The Amended Complaint removed Matthew Bellamy as a defendant and did not include a claim for intentional infliction of emotional distress.

At the hearing, counsel for Plaintiffs raised his concerns about Defendants new arguments and whether the court should entertain them in light of the late hour in which they were raised, without time to meaningfully respond. Assuming it were even possible to have secured affidavit testimony from the experts addressing the late challenge to causation, the rules of civil procedure would have barred its admission. Rule 56(c), SCRPC requires that the adverse party may serve opposing affidavits "not later than two days before the hearing." Accordingly, Defendants eleventh hour challenge to causation effectively barred Plaintiffs from response through expert affidavit.

On August 8, 2016, this Court stated in an email sent to the parties that it intended to grant the motion for summary judgment. The Court also noted it had attached a draft of the Order it intended to file, but had not yet filed the Order. Because Plaintiffs had not received written notice of entry of the order, on August 26, 2016, Plaintiffs inquired of the Court whether it had in fact entered an Order in accordance with the Court's previously expressed intention. In response to Plaintiffs' inquiry, the Court Supervisor for the Court of Common Pleas of Lexington County stated that she apologized for the delay and that copies of the order "were mailed out this week." This was the first correspondence received by counsel from which it was able to determine that the Order granting Defendants' Motion for Summary Judgment had in fact been entered. Accordingly, the earliest date from which Plaintiff could have received receipt of written notice of entry of the Order was the August 26, 2016 email from the court supervisor in response to Plaintiffs inquiry as to whether an Order had been entered.²

² This assumes that a response email in the affirmative to Plaintiffs' inquiry regarding whether an Order had been entered is sufficient "receipt of written notice of the entry of the order." Out of an abundance of caution, Plaintiffs have filed this response within ten days of the Court's email reply indicating an order had in fact been filed. Ultimately, a copy of the signed order was received Tuesday, August 30th, 2016. The Form 4 accompanying the signed order indicates that judgment was entered on August 24, 2016.

LAW

Rule 59(e) of the South Carolina Rules of Civil Procedure permits a party to request the court to reconsider its holdings. *Elam v. S.C. DOT*, 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004). A party may file a Rule 59(e) motion when she "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it," and a party must file a Rule 59(e) motion "when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* at 24, 602 S.E.2d at 780. South Carolina's rule 59(c) is "practically identical" to the Federal Rules of Civil Procedure. *Id.* at 22, 602 S.E.2d at 779. Federal courts will consider a Rule 59(e) motion when a party asserts review is "necessary to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." *McLaughlin v. Williams*, 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct. App. 2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005).

“Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law.” *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986). “The question of proximate cause is ordinarily a question of fact for determination by the jury.” *Id.*

ANALYSIS

I. Proximate Causation

a. The record shows more than a scintilla of evidence in support of proximate causation.

Plaintiffs respectfully submit that the evidence of record is more than sufficient to establish a “scintilla of evidence,” as required to withstand a motion for summary judgment. Moreover, Plaintiffs respectfully submit that this is not the “rare or exceptional case” where the question of proximate causation may be decided as a matter of law instead of by the jury.

“To show the defendant was the proximate cause of the injury, the plaintiff must establish the defendant was both the cause-in-fact and the legal cause of the injury.” *Cody P. v. Bank of Am., N.A.*, 395 S.C. 611, 620, 720 S.E.2d 473, 478 (Ct. App. 2011) citing *Mellen v. Lane*, 377 S.C. 261, 278, 659 S.E.2d 236, 245 (Ct. App. 2008). “The cause-in-fact requirement is proved by showing the injury would not have occurred but for the defendant’s negligence.” *Id.* “The legal cause requirement is proved by establishing the plaintiff’s injury was foreseeable. *Id.* “An injury is foreseeable if it is the natural and probable consequence of the defendant’s conduct in light of the attendant circumstances.” *Id.* “Although foreseeability of some injury from an act or omission is a prerequisite to establishing proximate cause, the plaintiff need not prove that the actor should have contemplated the particular event which occurred.” *Sims v. Hall*, 357 S.C. 288, 298, 592 S.E.2d 315, 320 (Ct. App. 2003) “It is axiomatic in this State that issues of negligence and proximate cause may be resolved by direct or circumstantial evidence.” *Mahaffey v. Ahl*, 264 S.C. 241, 247,

214 S.E.2d 119, 122 (1975). "Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law." *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Cl. App. 1986).

Previously submitted affidavits of Drs. Francesco Pia and Ralph Johnson noted that Defendants had certain duties and obligations arising out of their relationship to the decedent and obligations of a land owner providing swimming and docking areas to a person who had lawful access to their premises. These included duties to have: (1) weather monitoring equipment, (2) a severe weather safety plan, (3) an Operations Policies and Procedures Manual for life guards, (4) to clear the beach and pool in anticipation of an incoming storm, (5) to warn all swimmers of potentially unsafe water conditions, (6) to have safety posts near the swimming waters that included throwing components, (7) to have water rescue devices on and around the boating dock, and (8) to have a life guard on duty at the swimming pool and beach. (Aff. of Drs. Pia and Johnson, Exhibit 2). There is no evidence that Defendants: (1) had weather monitoring equipment, (2) had a severe weather safety plan, (3), had an Operations Policies and Procedures Manual for lifeguards, (4), cleared the beach and pool when the storm approached, (5) warned all swimmers of potentially unsafe water conditions, (6) had safety posts near the swimming waters that included throwing components, (7) kept any water rescue devices near the boating dock, or (8) had a lifeguard on duty at the beach time decedent drowned. Based upon the absence of any of the above, Plaintiff's have clearly presented a scintilla of evidence that Defendants breached the standards of care in the above-mentioned ways.

As previously stated, proximate causation is a question of fact for the jury to determine. *Ballou v. Sigma Nu General Fraternity*, 291 S.C. at 147, 352 S.E.2d at 493. It would be entirely reasonable for a jury to infer from the aforementioned breaches that decedent's drowning was a

result of the Defendants' conduct. More specifically, a reasonable jury could easily conclude that Defendants' conduct was both a "but-for" cause of the decedent's drowning and that that it was foreseeable to Defendants that if they breached the standards in the manner alleged, a person might drown. Accordingly, Plaintiffs have submitted ample evidence to satisfy the scintilla of evidence requirement to survive a motion for summary judgment.

i. Legal Causation

"The touchstone of proximate cause in South Carolina is foreseeability." *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). A jury could reasonably determine it is foreseeable that if Defendants failed to follow industry guidelines and regulations for water safety, failed to monitor, failed to keep lifeguards on duty, failed to clear the beach when the lifeguards went off duty, and failed to have required life saving devices near the beach and near the dock, then someone might drown. Said differently, it is well within a reasonable jury's province to determine it was foreseeable to Defendants that someone might drown if it violated industry standards and guidelines as set forth by Plaintiffs' experts, in light of the fact that these guidelines exist for the sole purpose of keeping swimmers safe from drowning and to rescue distressed swimmers from drowning.

The very purpose for the monitoring, safety devices, and policies and procedures is to keep swimmers safe from drowning. Therefore, it is inconceivable to think that Defendants would not have foreseen that if it failed to have water safety devices near the water to save someone from drowning, then someone might in fact drown. The same is true for their failure to monitor, failure to clear the beach, failure to have in place appropriate policies and procedures, and every other alleged breach. Thus, Plaintiffs respectfully submit that there is far more than a scintilla of evidence within the record that establishes proximate causation and foreseeability.

ii. Causation in Fact

“Causation in fact is proved by establishing the injury would not have occurred ‘but for’ the defendant’s negligence.” *Bishop v. S.C. Dep’t of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 83 (1998). Although causation in fact, or “but-for” causation, was not specifically referenced in the order, Plaintiff respectfully submits that the record also presents more than a scintilla of evidence that “but-for” Defendants failure to have the above-mentioned policies, monitoring, and safety devices, the decedent would not have drowned. A reasonable jury could easily reach this conclusion, and therefore Plaintiffs respectfully submit it was error to determine that as a matter of law, Plaintiffs had not submitted even a scintilla of evidence to support causation. But for the Defendants failure to have the appropriate equipment, or have a severe safety weather plan, or have an Operations Policies and Procedures Manual for life guards, or clear the beach and pool area, or warn swimmers of potentially unsafe water conditions, or have safety posts near the swimming waters with throwing components, or have water rescue devices near the boating dock, or have a lifeguard on duty at the swimming pool and beach, the decedent would not have drowned.

b. Plaintiffs need only show Defendants’ conduct was a cause, not the sole cause, of decedent’s death.

It is not necessary for Plaintiffs to prove each and every breach that has been alleged or that any number of the breaches alleged, were the proximate cause of decedent’s drowning. Plaintiffs do not even have to prove any specific negligent act was *the sole* proximate cause or that any certain number of the alleged breaches combined to form the proximate cause of decedent’s drowning. Plaintiffs only have to show that a negligent act, one of the alleged breaches in Defendants’ duties, was a *proximate cause* of decedent’s drowning. See *Skipper v. Hartley*, 242 S.C. 221, 224, 130 S.E.2d 486, 488 (1963) (“Negligence need not be the sole cause of injury in order to impose liability, but need only be a ‘proximate concurring cause,’” To be found liable

for negligence, a defendant's conduct need only be "at least one of the direct, concurring causes of the injury." *Rife v. Hitachi Constr. Mach. Co.*, 363 S.C. 209, 216-17, 609 S.E.2d 565, 569 (Ct. App. 2005).

The evidence of record supports any number of the alleged breaches occurred in this case. Defendants have failed to present any evidence showing that there were water rescue devices near the dock, that there were safety posts near swimming waters that included throwing components, that a lifeguard was monitoring the beach at the time of drowning, that the Defendants had appropriate lifeguard policies and procedures in place, that the beach and pool area were cleared when a storm approached, or any evidence negating any of the other alleged breaches. A reasonable jury could have concluded that any one or more of this multitude breaches was a proximate cause of decedent's drowning. Because Plaintiffs presented far more than a scintilla of evidence that any one of these breaches was a proximate cause of decedent's drowning, Plaintiffs respectfully submit that summary judgment should not have been granted based upon the absence of causation. *See Mellen v. Lane*, 377 S.C. 261, 280, 659 S.E.2d 236, 246 (Ct. App. 2008) ("Liability can be imposed on a defendant if his actions, not necessarily the sole cause, are the proximate concurring cause of the injury").

c. Decedent's drowning was caused by Defendants' breaches, not by the weather.

Despite Defendants best efforts to mischaracterize plaintiff's claims, Plaintiffs theory of liability is not that the weather caused decedent to drown or that a storm was present and overhead at the exact time decedent drowned. Plaintiffs theory is that Defendants had no available water rescue devices near the boating dock and had no safety posts near the swimming beach with throwing components. A storm approached. Defendants had no severe weather safety plan or operations policies and procedures manual for life guards. When the storm approached, the

lifeguards went off duty but did not clear the beach area when the storm approached, nor did they warn the swimmers near the beach. Decedent went swimming in an area that should have been in view of the lifeguards, but the life guards went off duty without clearing the beach or warning those at the beach. There should have been a policy and procedure requiring explaining to the lifeguards how to appropriately handle this situation, but there was none. Decedent went swimming in an area where water rescue devices should have been available at the dock, and there should have been safety posts near the beach with throwing components. Defendants, in violation of industry standards, had neither. Decedent became distressed while swimming. Because there were no life guards, throwing components on the beach, or water rescue devices near the dock, there was no way to help decedent as he struggled in the water. Because there was no way to help decedent, the decedent drowned. But for the absence of life guards, throwing components on the beach, and rescue devices near the dock, decedent would not have drowned. It is entirely foreseeable that a landowner who opens his land to invitees to swim but has failed to meet industry requirements concerning lifeguard oversight, clearing the beach when there is no oversight, throwing components on the beach, and water rescue devices on the dock, all intended to save swimmers in distress, that the absence of any of these might result in someone drowning.

Had the storm been the sole cause of decedent's death, summary judgment might have been appropriate as it would be difficult to hold a landowner responsible for proclivities in the weather. This is not to say that there is no relevancy to the fact that a storm was approaching. Indeed, it was the impending storm which led to the lifeguards leaving their posts and therefore not being available to assist swimmers in distress. The lifeguards went off duty but failed to clear the beach and failed to warn swimmers at the beach area of either (a) the impending storm, (b) closure of the swimming areas, or (c), that the lifeguards were going off duty because the swimming areas were

being closed for safety reasons. Defendants breached their duties and violated industry regulations by failing to do the above. Moreover, Defendants breached their duties by failing to have in place a severe weather safety plan or operations policies and procedures for the lifeguards requiring the lifeguards to do these things. Thus there is ample relevancy to the fact that a storm was *approaching* but not to whether the storm was in fact upon the swimmers at the time decedent drowned.

All of the above-mentioned is set forth in the first paragraph of this Court's order discussing proximate cause. However, Plaintiffs respectfully submit that these facts illustrate precisely why proximate cause *has* been established. These facts set forth that decedent drowned because of Defendants breaches and not due to any unforeseeable superseding intervening event, such as the storm itself being the sole cause of decedent's death. The lifeguards knew the storm was approaching, closed and cleared only the pool, and went home. Had Defendants not breached the standard of care by failing to warn swimmers at the beach area of the impending storm, the closing of the swimmer areas, or that lifeguards were going off duty, decedent would not have drowned. Defendants failed to have policies and procedures requiring this. These factors were a proximate cause of decedent's death, which combined and concurred with other breaches committed by Defendants, such as the absence of safety posts with throwing components and the absence of water rescue devices around the dock.

Moreover, as the factual representation from the Order confirms, the autopsy did not discover any medical condition that caused decedent to have difficulty swimming. This eliminated yet another potential superseding intervening cause from consideration. Decedent did not drown solely due to some medical condition which caused decedent to drown. Decedent drowned because of the alleged acts of negligence committed by Defendants.

The Order also confirms that the decedent was swimming, became distressed while swimming, was unable to relax and try to float, and drowned. Ms. Bellamy described exactly what one would expect when a swimmer becomes distressed. This is precisely why it was necessary for Defendants to have and do all the previously mentioned duties, such as have lifeguards watching the area, clearing of the beach, and the presence of throwing components on the beach and water rescue devices on the dock. Plaintiffs respectfully submit that the presence or absence of lightning is irrelevant to the breaches in Defendants' duties and the cause of decedent's drowning.

There has been no argument that weather conditions hindered rescue or decedent died because rescue attempts were hindered by the weather. Rescue attempts were hindered by the absence of lifeguards, the absence of safety posts with throwing components on the beach, and the absence of water rescue devices near the dock. The absence of each of these was a breach in the standard of care committed by Defendants. Had policies and procedures appropriately required life guards to stay on duty and/or clear the beach swimming area, which they failed to do, decedent would not have needed rescuing in the first place.

Finally, the Order acknowledges that issues concerning weather were not pleaded. This is because Plaintiff's claim is not that the weather caused decedent to drown. The Complaint alleges that the following breaches in the applicable standards of care were a proximate cause of decedent's drowning:

28. Defendants deviated from the established and/or applicable standards of care and were negligent by:
 - a. Failing to instruct Evan and Mandy to stop swimming and clear the swimming beach;
 - b. Failing to instruct Evan and Mandy not to jump off the dock and into the water;
 - c. Failing to warn Mandy and Evan of the dangerous condition of the freshwater in the face of an oncoming storm;

- d. Failing to warn Mandy and Evan of the dangerous condition of the freshwater surrounding the dock area;
- e. Failing to equip the swimming beach with proper safety equipment, lifeguards, and warning signs sufficient to ensure the safety and well-being of known swimmers;
- f. Failing to prevent Evan from drowning at the Pine Island Club at Lake Murray;
- g. Failing to have and implement proper policies and procedures to ensure the safety and well-being of known swimmers;
- h. Failing to train its employees, agents and/or representatives how to manage dangerous and hazardous situations, like an incoming storm; and
- i. Other negligent conduct and/or omissions which may be identified through discovery.

29. As a direct and proximate result of the above-referenced negligence of the Defendants, the heirs and family of Evan Morris Myers have suffered the following injuries and damages . . .

(Compl. p. 6-7).

As evidenced by the Complaint, numerous alleged breaches occurred irrespective of whether the storm was overhead at the very moment the decedent drowned. Neither the Complaint nor Plaintiffs' expert affidavit testimony is solely dependent upon a storm being overhead causing the decedent to drown. It is certainly not alleged that the weather was the cause of decedent's death.

Plaintiffs respectfully submit that the only discussion of weather in the pleading, that the storm was approaching, is all that is materially relevant to Plaintiffs' allegations. This is the fact concerning the storm which is relevant to the actions and inactions committed by Defendants. The Court's conclusion that a jury is not allowed to determine that weather conditions caused or contributed to decedent's drowning only bolsters Plaintiff's claims, as it eliminates potential argument by Defendants that an event superseding their own negligence was the only cause of death. Accordingly, Plaintiffs respectfully submit it was error to grant summary judgment on the basis that Plaintiffs failed to present facts that weather conditions caused decedent to drown.

d. Expert testimony supports causation.

Plaintiffs respectfully submit that it was well within a reasonable jury's province to determine Defendants' conduct was a proximate cause of decedent's death based upon the evidence of record that was before the Court at the hearing. However, Plaintiffs submit that expert testimony submitted by Plaintiffs' experts also supports the same. "If scientific technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert . . . may testify thereto in the form of an opinion" Rule 702, SCRE.

By way of supplemental affidavit, Drs. Ralph I. Johnson, Ph.D, and Francesco A. Pia, Ph.D., state Defendants breached the duties they owed to Decedent in the following manner:

- a. The swimming beach was not cleared as required by industry standards;
- b. The decedent was not warned of unsafe weather conditions;
- c. There were no Safety Posts with the required water safety devices;
- d. The boating dock from where the decedent jumped did not have the required water safety and rescue devices; and
- e. There was no life guard on duty supervising the beach swimming area.

(Supp. Aff. of Drs. Johnson and Pia, Ex. 3).

Moreover, the experts explain that decedent's death was a direct and proximate result of defendants' breaches in their duties. They state:

- a. Had the beach been timely cleared when the swimming pool was cleared, the decedent would not have drowned,
- b. Had the decedent been warned of the unsafe weather conditions, the decedent would not have drowned,

- c. Had there been appropriate water safety devices on the Safety Posts for use during the water rescue attempt, the decedent would not have drowned,
- d. Had there been appropriate water safety devices on the boating dock for use during the water rescue attempt, the decedent would not have drowned,
- e. Had a life guard been on duty supervising the beach area, the decedent would not have drowned,
- f. Because all the above-mentioned are industry standards and well-known to exist to protect recreational swimmers from drowning, decedent's death was a foreseeable result of Defendants' breaches.
- g. J.W. Seay, Island Caretaker, observed the decedent and Ms. Bellamy walk from the beach area to the boat dock and failed to prevent them from entering the water. Had he prevented them from entering the water, the decedent would not have drowned.

(Supp. Aff. of Drs. Johnson and Pia, Ex. 3).

Accordingly, expert testimony also supports Plaintiffs' allegations that Defendants' negligent conduct was a proximate cause of decedent's drowning.

As discussed, Defendants did not even raise the issue of causation until literally hours before the hearing. Not only would submission of expert affidavit testimony in response to Defendants' eleventh hour addition have been technically impossible, it would have been prohibited by the South Carolina Rules of Civil Procedure. Rule 56(c), requires that the adverse party may serve opposing affidavits "not later than two days before the hearing." Therefore, due to Defendants' gamesmanship, Plaintiffs were forced to contest the newly raised issues without the ability to timely secure affidavits in opposition.

For these reasons, at the hearing Plaintiffs questioned whether the argument on causation should be heard at all. Nevertheless, Plaintiffs addressed the issue to the extent the Court requested. Plaintiffs contend the evidence of record presented to the court clearly defeats any contention that a scintilla of evidence supporting causation has not been presented. Had defendants appropriately raised the issue of causation in a manner that allowed Plaintiffs to respond, Plaintiffs would have also submitted this expert affidavit testimony further supporting causation.

Ultimately, as the question of proximate cause is for the jury except in the most extreme circumstances, the record is sufficient to allow the jury to reasonably infer that decedent's drowning was proximately caused by at least one of the several breaches in the duties Defendants owed to the decedent. Plaintiffs experts support the same. Accordingly, for the aforementioned reasons, Plaintiffs respectfully request this Court reconsider and alter the Order granting Defendants' motion for summary judgment.

II. Colorable Duty of Care

a. Decedent as invitee

This Court in its analysis confirmed that the decedent in this case had the status of an invitee for purposes of analyzing the summary judgment motion. Decedent's presence at the club and access to the lake required he be a guest of someone with membership status, relationship to Defendants, and payment of dues. The club is not open to the general public. Accordingly, decedent was correctly classified by this court as an invitee onto Defendants' premises.

b. South Carolina Recreational Use Statute does not apply

This court correctly rejected Defendants arguments that there was no duty owed to decedent by Defendants due to protections afforded by the South Carolina Recreational Use Statute found at S.C. Code Ann. §§ 27-3-10 to 70. In reaching its decision, this Court noted that decedent's

presence at the club and access to the lake required he be a guest of a paying member. The Court noted further that this is a private club and not open to the general public. This Court distinguished this case from *Cole v. SCE&G*, 362 S.C. 445, 608 S.E.2d 859 (2005). In *Cole* the Court held the SCE&G was afforded the protections of the recreational use statute because the parking fee was not a "charge" as defined by S.C. Code Ann. § 27-3-60(b). *Cole v. S.C. Elec. & Gas, Inc.*, 362 S.C. 445, 451, 608 S.E.2d 859, 862 (2005). Moreover, not everyone had to pay the parking fee to access the premises, such as bicyclists or pedestrians. *Id.* Here, access to the property required membership to the private club and payment of dues. Accordingly, this Court correctly held the South Carolina Recreational Use statute did not apply to the facts of this case.

c. *Cole v. S.C. Elec. & Gas, Inc.* confirms Defendants did in fact owe decedent a duty of care

Because of its factual similarities, *Cole v. SCE&G* is especially instructive with respect to the questions brought before this Court in Defendants' motion for summary judgment. As seen in the Supreme Court's analysis, *Cole* all but confirms that, in this case just as in *Cole*, SCE&G owed decedent a duty. The precedent set forth in *Cole* also establishes that the jury is to determine whether SCE&G proved its affirmative defense of assumption of the risk. Finally, as set forth in *Cole*, Plaintiffs respectfully submit that Defendants have failed to establish as a matter of law that the decedent "assumed the risk inherent in swimming in a natural body of water." *Id.* This is especially true given the fact that at summary judgment, the standard of review is whether the plaintiff has set forth scintilla of evidence.

d. The facts, parties, duties, and alleged breaches in *Cole* are strikingly similar to those present in this case.

Cole v. SCE&G, involved the same defendant named in this case. Similarly, *Cole* involves a wrongful death action brought on behalf of a decedent who drowned in Lake Murray who gained

access to the lake from SCE&G property. Plaintiffs in *Cole* alleged the SCE&G breached its duty by failing to have lifeguards on duty, failing to have safety equipment that could have been used by any bystanders to save a distressed swimmer, and failing to have proper warnings. *Id.* at 448, 608 S.E.2d at 861 (2005). *This case* involves allegations that SCE&G breached its duty by failing to have lifeguards on duty, failing to have appropriate safety equipment that could have been used by bystanders to save a distressed swimmer, and failing properly warn, among other alleged breaches.

The fourteen-year-old decedent in *Cole* decided to go swimming in the lake. *Id.* Decedent was known to be a good swimmer. Decedent and his friend were instructed by their parents not to go swimming in the lake without first telling an adult. Despite this instruction, they went into the lake without telling an adult. *Id.* The boys swam out to the safety line but did not know the water at the safety line was over their heads. *Id.* Decedent then began to struggle. *Id.* Bystanders attempted rescue but were unable to help. *Id.* Eventually, the decedent's body was found at the bottom of the lake in seven to eight feet of water. *Id.* This case similarly involves a swimmer in waters over his head, who began to struggle, who was unable to be rescued by bystanders, and who eventually drowned.

At trial the plaintiff's expert testified that if there had been a lifeguard on duty, or if there had been safety equipment available for the bystanders to use, decedent would have lived. *Id.* The experts also testified that the warning signs were inadequate to warn of the dangers present and that the defendant failed to develop an effective risk management plan despite their having been two prior drownings at the very same site. *Id.* These duties and breaches nearly mirror those set forth in the affidavits submitted by Plaintiffs' experts *in this case*.

- e. **Unlike this case, SCE&G in *Cole* was afforded protection from ordinary negligence under the Recreational Use Statute**

The jury returned a verdict for SC&G. The Court of Appeals affirmed application of the immunity statute but reversed and remanded for a new trial on the gross negligence cause of action on the grounds that the trial judge failed to charge it was SCE&G's burden to prove its affirmative defense of assumption of the risk. The Supreme Court affirmed applicability of the South Carolina Recreational Use Statute. Accordingly, the defendant in *Cole* could only be held liability for gross negligence and was immune from ordinary negligence. Notably, in this case Defendants are not afforded protection from ordinary negligence under this statute for reasons previously explained.

f. Precedent set forth in *Cole* holds that assumption of the risk is an affirmative defense that must be proven by the defendant.

The Supreme Court then reviewed whether it was error for the trial court to refuse to charge that SCE&G had the burden of proving its affirmative defense of assumption of the risk, instead charging only that "SCE&G had the burden of proving the plaintiff's 'fault' for purposes of comparative negligence and that the jury should 'consider the defenses' set forth by SCE&G. *Id.* at 452, 608 S.E.2d at 863. The Supreme Court determined the trial court's charge on defendant's duty to prove the affirmative defense of assumption of the risk was inadequate. *Id.*

In reaching this decision, the Court reaffirmed that "[i]t is well-settled that assumption of the risk is an affirmative defense which the defendant bears the burden of proving." *Id.* The Supreme Court then rejected the defendant's argument that there was no need to charge assumption of the risk under the doctrine of primary implied assumption of the risk. *Id.*

g. Precedent under *Cole* establishes that even where decedent is a licensee, landowner owes decedent a duty.

Notably, the Supreme Court in *Cole*, viewing the decedent as a licensee and determining that the recreational use statute applied, *still* held that SCE&G owed the decedent a duty. *Id.* at 453, 608 S.E.2d at 863. After explaining that primary implied assumption of the risk is merely

another way of stating there is no duty to the plaintiff, the Supreme Court noted, "We disagree SCE&G owed no duty here." *Id.* Because the Supreme Court rejected the contention that there was no duty, it implicitly rejected any argument that the assumption of risk in *Cole* was primary implied assumption of the risk. The Court concluded, "Whether SCE&G met this standard of care in warning only that there was no lifeguard is a question of fact for the jury." *Id.*

The factual presentation of this case more strongly favors a finding that SCE&G owed decedent a duty. First, unlike *Cole*, the decedent in this case was an invitee. "A licensee is a person whose presence is tolerated, a person not necessarily invited on the premises, but one who is privileged to enter or remain on the premises only by the property owner's express or implied consent." *Singleton v. Sherer*, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008). In contrast, "[An invitee is a person] who enters onto the property of another by express or implied invitation, his entry is connected with the owner's business or with an activity the owner conducts or permits to be conducted on his land, and there is a mutuality of benefit or a benefit to the owner." *Singleton v. Sherer*, 377 S.C. 185, 199, 659 S.E.2d 196, 203 (Ct. App. 2008) (citations omitted).

Duties owed to a licensee are less than those owed to an invitee. "A landowner owes a licensee a duty to use reasonable care to discover the licensee, to conduct activities on the land so as not to harm the licensee, and to warn the licensee of any concealed dangerous conditions or activities." *Singleton v. Sherer*, 377 S.C. 185, 201, 659 S.E.2d 196, 204 (Ct. App. 2008) quoting *Landry v. Hilton Head Plantation Prop. Owner's Ass'n*, 317 S.C. 200, 203, 452 S.E.2d 619, 621 (Ct. App. 1994). "[S]ince a licensee is there for his own benefit, he can be said to accept the premises as they are and demand no greater safety than his host provides himself." *Id.*

In contrast to a licensee, the landowner owes an invitee a greater duty. "[T]he owner of property owes an invitee or business visitor the duty of exercising reasonable or ordinary care for

his safety and is liable for injuries resulting from the breach of such duty.” *Id.* at 202, 659 S.E.2d at 205. “[U]nlike a licensee, an invitee enters the premises with the implied assurance of preparation and reasonable care for his protection and safety while he is there.” *Id.* Having adopted Section 343A of the Restatement (Second) of Torts (1965), a landowner is still liable to invitees for harm caused by conditions known and obvious to the invitee where the landowner should anticipate the harm despite such knowledge or obviousness. *Id.*

Duties owed by a landowner to a licensee are less than those owed to an invitee. This court determined the decedent in this case was an invitee. Because the decedent in *Cole* was a licensee, the duties SCE&G owed to the decedent in *Cole* necessarily were less than those owed to the decedent in this case. The Court in *Cole* still held SCE&G owed decedent a duty, despite being a licensee. Therefore, because of the factual similarity between these cases and the fact that decedent in this case was an invitee, to whom a greater duty is owed, Plaintiffs respectfully submit Defendants in this case similarly owed the decedent in this case a duty of care.

h. Precedent under *Cole* holds that based on the facts at hand, assumption of the risk should not be determined as a matter of law.

Finally, SCE&G in *Cole* contended the court should have determined as a matter of law that the decedent assumed the risk inherent in swimming in a natural body of water and that his fault was greater than 50 percent. *Cole v. SCE&G*, 362 S.C. at 453-54, 608 S.E.2d at 863-64 (2005). The Court in *Cole* rejected defendant’s argument. The Court held that the plaintiff had submitted expert testimony which created a factual issue concerning assumption of risk. *Id.* Therefore, the Court held SCE&G had not established assumption of risk as a matter of law.

Similarly, Plaintiffs respectfully submit that any question regarding the extent to which decedent in this case assumed any risk associated with swimming on the landowner’s property was for the jury to determine. As previously discussed, assumption of the risk is an affirmative defense

which must be proven by the defendant. Duties owed to the decedent in this case were those of an invitee, including liability for harm caused by conditions known and obvious to the invitee where the landowner should anticipate the harm despite such knowledge or obviousness. The record, including expert testimony submitted by Plaintiffs, presents far more than a scintilla of evidence regarding to what extent, if any, decedent assumed any risks in this case. Accordingly, as set forth in *Cole*, Plaintiffs respectfully submit that the question of whether defendants have proven their affirmative defense of assumption of the risk is a question for the jury to determine in this case.

i. Plaintiffs respectfully submit the Court misapprehended the law of assumption of the risk.

Plaintiffs respectfully submit that this court misapprehended the law of assumption of the risk. Plaintiffs note that this Court evaluated assumption of the risk as a question of whether Defendants owed Plaintiffs a duty. This Court stated Plaintiffs' assumption of the risk was primary because he knowingly assumed the risks. The Court also noted there is no evidence the dangerous condition was created by Defendants' negligence. This Court also stated that "primary implied assumption of the risk deals more with situations where there is an absence of negligence on the part of defendants."

Plaintiffs respectfully submit that, under the precedent set forth from the holding of *Cole*, Defendants as a matter of law owed the decedent a duty of care in this case. As previously discussed, *Cole* held that even where the swimmer is a licensee, the landowner owes the swimmer certain duties including a duty to warn. In *Cole*, the Court held that a duty existed and it was for the jury to determine whether SCE&G met the standard of care in "warning only that there was no lifeguard." *Cole v. S.C. Elec. & Gas, Inc.*, 362 S.C. at 453, 608 S.E.2d at 863.

As the decedent in this case was an invitee, the duty Defendants owed decedent in this case were even greater than in *Cole*. As previously discussed, "[A]n invitee enters the premises with

the implied assurance of preparation and reasonable care for his protection and safety while he is there." *Singleton v. Sherer*, 377 S.C. at 202, 659 S.E.2d at 205. Moreover, a landowner is still liable to invitees for harm caused by conditions known and obvious to the invitee where the landowner should anticipate the harm despite such knowledge or obviousness. *Id.*

Unlike primary implied assumption of risk which "focuses not on the plaintiff's conduct in assuming the risk, but on the defendant's general duty of care," secondary implied assumption of risk "arises when the plaintiff knowingly encounters a risk created by the defendant's negligence." *Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*, 333 S.C. 71, 82 508 S.E.2d 565, 571 (1998). "Secondary implied assumption of risk may involve either reasonable or unreasonable conduct on the part of the plaintiff." *Id.* Our Supreme Court determined "[T]he defendant's fault in causing an accident is not diminished solely because the plaintiff knowingly assumes a risk." *Id.* at 86, 508 S.E.2d at 573. Under secondary implied assumption of the risk, a plaintiff's conduct in assuming a risk is compared with the defendant's negligence and even if one assumes a risk of injury, he is not barred from recovery unless his negligence exceeds the defendant's negligence.

Plaintiffs respectfully submit that the statement that decedent's assumption of the risk is primary because he knowingly assumed the risks misapprehends the law. It is secondary implied assumption of the risk which "arises when the plaintiff knowingly encounters a risk." *Id.* It is then necessary to compare this knowing encounter to the negligence of Defendants. In this case, Defendants' negligence which created the dangerous condition was their failure timely clear the beach when the pool was cleared, failure to warn, failure have available appropriate safety devices on the dock and beach, and failure to have a lifeguard on duty. It is unclear whether decedent had knowledge of the absence of any or all of these duties. Accordingly, there is a question regarding

whether decedent assumed any of these risks. Nevertheless, the extent to which he did assume any risks is evaluated under secondary implied assumption of the risk and compared against Defendants negligence. Plaintiffs contend they submitted far more than a scintilla of evidence that Defendants' negligence far exceeded any purported assumption of the risk by the decedent. Accordingly, Plaintiffs respectfully submit the court misapprehended the law of assumption of the risk and that summary judgment should not have been granted in Defendants' favor.

j. Plaintiffs submitted more than a scintilla of evidence that Defendants' negligence exceeded any negligence on the part of the decedent through assumption of risk.

Although this Court titled the second basis for summary judgment as failing to demonstrate a duty of care from Defendants to decedent, the extensive factual discussion of this section appears to compare the actions of the decedent to those of Defendants. As such, it appears to analyze the question of whether decedent's negligence or assumption of the risk was greater than any purported negligence by Defendants. This would suggest that it is a discussion of secondary implied assumption of the risk. However, the court still determined that it is for the court to determine whether a duty exists, and therefore determined this was a question of law for the court to determine. Plaintiffs respectfully submit that the analysis conflated the two principles and that, as a question of secondary implied assumption of the risk, this was a question to be submitted to the jury.

This court stated in the order that there were no lifesaving devices at the boat dock, that the dock had signage with restrictions and warnings, there was no ladder on the dock, that Plaintiffs submitted affidavits from experts noting what obligations landowners who provide swimming areas and purport provide lifeguard supervision have to its guests, and that by-laws allowed swimming only in designated areas. The court also outlined the decedent's age, education, and

ambitions. The court then determined that Defendants were not negligent because "dangers of swimming in the lake are open and obvious."

Plaintiffs respectfully submit that this was a determination by the court that decedent's assumption of the risk was greater than Defendants' negligence. As such, it is evaluation of assumption of risk as secondary implied assumption of the risk. Plaintiffs respectfully submit that this is a question of fact to be decided by the jury. Moreover, at this stage, Plaintiffs only had to submit a scintilla of evidence that Defendants' negligence caused decedent to drown. Plaintiffs submit that through the evidence discussed in this motion, including the expert affidavits, as well the evidence presented at the hearing, Plaintiffs have met its burden at this stage of the litigation.

The Court determined that there is no evidence Defendants breached any duty of care and that they were not required to provide any warnings. Again, Plaintiffs submit that this is not analysis of whether a duty extends from Defendants to decedent, but rather whether said duty was breached. Plaintiffs respectfully submit that the expert affidavits previously submitted set forth precisely what Defendants' obligations were under industry standards and practices. Moreover, Plaintiffs have shown that for any number of these, Defendants failed to follow industry standards and practices. Accordingly, the statement that there is no evidence Defendants breached any standard or duty of care is directly refuted by Plaintiffs' expert affidavits.

The Order states that Defendants were not required to give warning that someone swimming could drown. Plaintiffs list of duties and breaches found in the Complaint and in the expert affidavits never assert Defendants were required to warn that someone swimming could drown. However, both the complaint and the affidavits set forth a number of duties and responsibilities Plaintiffs argue were required of Defendants and for which there is evidence Defendants failed to do.

The Order notes that it is not gross negligence to fail to provide recreational safety features such as lifeguards and lifesaving equipment. Again, Plaintiffs submit that this is assessment of whether and the extent to which a duty has been breached and not whether there any duty. Because the recreational use statute is inapplicable to the facts of this case, Plaintiffs do not have to prove gross negligence. Therefore, this fact, if true, would not bar Plaintiffs from recovery. Nevertheless, Plaintiffs respectfully submit that this analysis is relevant only to *Cole's* discussion of the effect of Regulation 61-50, as the subheading of the order suggests. Moreover, because that case was remanded for a new trial, Plaintiffs in *Cole* still submitted sufficient evidence for the question of gross negligence to be considered by the jury, even if the presence of lifeguards and equipment was evidence of slight care.

This Court noted that decedent knew he was going into a lake without lifeguards or safety equipment. Plaintiffs respectfully submits there are no facts of record which support this contention. Plaintiffs submit there is no testimony or other evidence to suggest that decedent knew Defendants failed to have industry required safety equipment to save a distressed swimmer. There is no evidence that decedent knew the lifeguards would go off duty without properly clearing the beach area of swimmers or that Defendants would fail to have any policy and procedure requiring this. The Court stated the decedent understood and appreciated the risk of drowning. However, there is no evidence that decedent understood and appreciated that Defendants would breach industry standards in numerous respects, thereby exposing the decedent to far greater harm than he otherwise would have been exposed had Defendants not breached the applicable standards of care. Moreover, simply exposing oneself to danger does not completely bar one's recovery against another for negligence. This is made clear in *Davenport*, which explicitly stated any such rule would be repugnant, to the state's adoption of comparative negligence.

In summary, the Court made the determination that decedent's negligence through assumption of the risk was greater than the negligence of Defendants. Plaintiffs respectfully submit that because Plaintiffs at this stage have submitted a scintilla of evidence that Defendants negligence caused the decedent to drown, and that there is a scintilla of evidence that any purported assumption of the risk by decedent was not greater than decedent's negligence, this Court should have denied summary judgment.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit this court misapplied the law regarding causation and duty of care and/or assumption of risk. Plaintiffs submit that far more than a scintilla of evidence has been submitted proving the duties which Defendants' owed the decedent, that Defendants' breach of these duties was a proximate cause of decedent's death, and that any purported assumption of risk by the decedent was minimal when compared to Defendants' breaches. Therefore, Plaintiffs respectfully request that court reconsider its Order granting summary judgment and alter or amend the order so as to deny summary judgment for the reasons set forth.

Respectfully submitted,

KROMPECHER LAW FIRM, PLLC

BY: *Pedro Krompecher*
Pedro E. Krompecher, III
SC State Attorney Bar No.: 100485
P.O. Box 6639
Raleigh, North Carolina 27628
Telephone: (919) 977-8082
Facsimile: (919) 746-7588
Email: pedro@krompecherlaw.com

FILED
2016 SEP - 6 PM 3:29
BETH A. CARROLL
CLERK OF COURT
LEXINGTON

CERTIFICATE OF SERVICE

ORIGINAL

The undersigned hereby certifies that on this date a copy of (1); *Plaintiffs' Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e)*, (2); *Memorandum of Law in Support of their Motion to Alter or Amend Pursuant to Rule 59(e)*, and (3); exhibits referenced therein have been served upon the following counsel(s) of record and by regular US mail.

Christian Stegmaier
Megan H. Hall
Collins & Lacy
P.O. Box 12487
Columbia, SC 29211

This the sixth day of September, 2016.

BETH A. CARRIGAN
CLERK OF COURT
LEXINGTON SC

2016 SEP -6 P 3:26

FILED

JP

KROMPECHER LAW FIRM, PLLC

BY: *Pedro E. Krompecher, III*

Pedro E. Krompecher, III
SC State Attorney Bar No.: 100485
P.O. Box 6639
Raleigh, North Carolina 27628
Telephone: (919) 977-8082
Facsimile: (919) 746-7588
Email: pedro@krompccherlaw.com

John Ruffin

From: Pedro Krompecher <pedro@krompecherlaw.com>
Sent: Wednesday, August 31, 2016 3:48 PM
To: John Ruffin
Subject: Fwd: Myers v. The Consolidated Employee Rec. Clubs, et al. (2014-CP-32-02210)
Attachments: Clerk (Memo in Supp of MSJ).pdf.pdf

----- Forwarded message -----

From: Christian Stegmaier <estegmaier@collinsandlacy.com>
Date: Thu, Dec 10, 2015 at 3:39 PM
Subject: Myers v. The Consolidated Employee Rec. Clubs, et al. (2014-CP-32-02210)
To: "WKeesleyj@sccourts.org" <WKeesleyj@sccourts.org>, "Keesley, William P. Law Clerk (Anna Marsh)" <wkeesleylc@sccourts.org>
Cc: Pedro Krompecher <pedro@krompecherlaw.com>, Emily Smith <emily@krompecherlaw.com>, Emily Diaz <emily.diaz@krompecherlaw.com>

Judge Keesley:

Good afternoon.

This Court will be hearing the motion for summary judgment filed by the defendants in the above-referenced case tomorrow morning in Lexington at 10.00a. Please find attached the memorandum in support of this motion. We will bring a hard copy as well.

Thank you for your time and attention. As well, thank you for making the time to hear this motion. Please let us know if you have any questions or concerns.

By copy of this email, we have included counsel for Plaintiff in this communication with the Court.

Christian Stegmaier

Christian Stegmaier

Direct: (803) 255-0454
Main: (803) 256-2660
Fax: (803) 771-4484
Vcard: [download vcard](#)
Web: www.collinsandlacy.com

1330 Lady Street, 6th Floor
Columbia, SC 29201

Collins & Lacy
ATTORNEYS AT LAW



Confidentiality Note: The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Collins and Lacy, P. C. client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Pedro Krompecher

Krompecher Law Firm, PLLC

P: 919-977-8082

F: 919-746-7588

E: pedro@krompecherlaw.com

W: www.krompecherlaw.com

Mailing address:

P.O. Box 6639

Raleigh, NC 27628

North Carolina

4010 Barrett Drive, #203

Raleigh, NC 27609

A referral is our greatest compliment. If you know someone in need of our services, we welcome the opportunity to help.



KROMPECHER
LAW FIRM, PLLC

CONFIDENTIALITY NOTICE: The information contained in this e-mail message (including any attachments) is for the sole use of the intended recipient(s) and may contain confidential, legally privileged, or other information subject to legal restrictions. The sender does not intend to waive any privilege (including the attorney-client or attorney work product privileges) which may attach to this information. If you are not an intended recipient, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. If you have received this email message in error, immediately destroy/delete the message and promptly notify the sender of this error by email or at 919.977.8082.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of
Evan M. Myers,

ORIGINAL

Plaintiffs,

v.

**SUPPLEMENTAL AFFIDAVIT OF
FRANCESCO A. PIA, PhD**

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray; South
Carolina Electric and Gas Holding
Company, Inc.; SCANA; Mandy Nicole
Bellamy;

FILED
SEP - 2 P 12:16
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

Defendants.

I, Francesco A. Pia, PhD, am over eighteen (18) years of age and am competent to make this supplemental affidavit. I hereby incorporate by reference all information to which I previously attested in my original affidavit, including my qualifications, education, training, experience.

DUTIES OWED BY LAND OWNER

1. I have the following opinions about the duties owed by a landowner, like Defendants, to a person lawfully on the subject property and using the swimming beach and swimming in the open water around the swimming beach:
 - a. Duty to have **Weather Monitoring Equipment** sufficient to detect an incoming storm – an example of industry standard practice would be a NOAA weather radio or lightening detector;

- b. Duty to have a **Severe Weather Safety Plan** dictating how and when to evacuate all water (open water and swimming pools), this may be also referred to as an **Emergency Action Plan**;
- c. Duty to have an **Operations Policies and Procedures Manual** applicable to the life guards at the swimming pool and swimming beach;
- d. Duty to **Clear the beach and pool** and ensure that everyone seeks safe shelter in anticipation of an incoming storm – in this case, the specific duty was to evacuate the swimming pool and the swimming beach and to stop anyone from using the same for at least 30 minutes from the last time lighting or thunder was observed/heard;
- e. Duty to **Warn** all swimmers and potential swimmers of potential unsafe water conditions – this may be accomplished with a flag cones, or speakers sufficient to be heard by swimming in the designated swimming areas; such as the pool and the swimming beach;
- f. Duty to have **Safety Posts** near the swimming waters with water safety devises including a “throwing component” like a Throw Bag or Ring Buoy with 40-50 feet of light weight rope, “reaching equipment” such a Shepard’s Crook and a first aid kit;
- g. Duty to have **Water Rescue Devises** on and around the boating dock – in this case the subject dock where the decedent jumped from minutes before drowning. This duty requires throwing equipment, reaching equipment, and a floatation device necessary for people who may fall out of a boat or off the dock while trying to get in or out of a boat; and

- h. Duty to have a **Life Guard** on duty at the swimming pool and swimming beach.
2. The purpose of the duties listed above are to (1) warn all swimmers and potential swimmers of unsafe conditions and then to (2) ensure that everyone is out of the water and safe, to avoid drowning.

BREACHES IN DUTIES OWED BY LAND OWNER

3. Based on my review of all materials listed above in this case, Defendants breached the following duties:

- a. The swimming beach was not cleared as required by industry standards;
- b. The decedent was not warned of unsafe water conditions;
- c. There were no Safety Posts with the required water safety devices;
- d. The boating dock from where the decedent jumped did not have the required water safety and rescue devices; and
- e. There was no life guard on duty monitoring the beach swimming area.

DECEDENT'S DEATH A RESULT OF BREACHES IN DUTIES

4. Based on my review of the materials listed above and my education, training and experience, I have the following opinions about the cause and effect of the Defendants numerous failures to comply with the industry standards and duties listed in the paragraph 10, above and decedent's death:
- a. Had the beach been timely cleared when the swimming pool was cleared, the decedent would not have drowned.

- b. Had the decedent been warned of the unsafe water conditions, the decedent would not have drowned,**
 - c. Had there been appropriate water safety devices on the Safety Posts for use during the water rescue attempt, the decedent would not have drowned,**
 - d. Had there been appropriate water safety devices on the boating dock for use during the water rescue attempt, the decedent would not have drowned,**
 - e. Had a life guard been on duty monitoring the beach area, the decedent would not have drowned,**
 - f. Because all of the above-mentioned are industry standards and well-known to exist to protect recreational swimmers from drowning, decedent's death was a foreseeable result of Defendants' breaches.**
5. All of my opinions set forth herein are to a reasonable degree of certainty, most probably, and are satisfactory to myself based upon my education, training and experience as well as all the case specific data I have reviewed and the various water safety authorities which I previously listed in my initial affidavit.
6. All of my opinions set forth herein are to a reasonable degree of certainty and are satisfactory to myself based upon my education, training, experience, all of the case specific data I have reviewed, and the various water safety authorities which I previously listed in my initial affidavit.

FURTHER THE AFFIANT SAYETH NOT.

- b. Had the decedent been warned of the unsafe water conditions, the decedent would not have drowned,**
 - c. Had there been appropriate water safety devices on the Safety Posts for use during the water rescue attempt, the decedent would not have drowned,**
 - d. Had there been appropriate water safety devices on the boating dock for use during the water rescue attempt, the decedent would not have drowned,**
 - e. Had a life guard been on duty monitoring the beach area, the decedent would not have drowned,**
 - f. Because all of the above-mentioned are industry standards and well-known to exist to protect recreational swimmers from drowning, decedent's death was a foreseeable result of Defendants' breaches.**
5. All of my opinions set forth herein are to a reasonable degree of certainty, most probably, and are satisfactory to myself based upon my education, training and experience as well as all the case specific data I have reviewed and the various water safety authorities which I previously listed in my initial affidavit.
6. All of my opinions set forth herein are to a reasonable degree of certainty and are satisfactory to myself based upon my education, training, experience, all of the case specific data I have reviewed, and the various water safety authorities which I previously listed in my initial affidavit.

FURTHER THE AFFIANT SAYETH NOT.

This the 1 day of SEPTEMBER, 2016.

Francesco A. Pia
Francesco A. Pia, PhD

Sworn to and subscribed before me, on

this the 1 day of SEPTEMBER, 2016.

[Signature]
(Official Signature of Notary)

John Dionisio
Notary Public, State of New York
Qualified in Westchester County
No. 01D14804045
Commission Expires 9/30/2018

John Dionisio, Notary Public

(Official Seal) My Commission Expires: 9/30/18

FILED
2016 SEP - 2 P 12: 15
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF LEXINGTON)

CIVIL ACTION NO. 2014-CP-32-02210)

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of
Evan M. Myers,

Plaintiffs,

v.

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray; South
Carolina Electric and Gas Holding
Company, Inc.; SCANA; Mandy Nicole
Bellamy;

Defendants.

**AFFIDAVIT OF DR. RALPH L. JOHNSON,
Ph.D.**

I, Dr. Ralph L. Johnson, am over eighteen (18) years of age and am competent to make this affidavit.

1. My current *curriculum vitae*, which details my education, training, and experience, is attached hereto as **Exhibit A**.
2. I have been qualified as a water safety expert in drowning cases in the following states:
 - a. South Carolina
 - b. Pennsylvania
 - c. Ohio
 - d. Michigan

DETHA A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 SEP - 6 A 11: 53

FILED

- e. New Jersey
- f. Florida
- g. Georgia
- h. Virginia
- i. Louisiana
- j. Texas
- k. Nebraska
- l. California
- m. Washington
- n. District of Columbia

3. I reviewed the following materials in this case, all of which forms the basis for my expert opinions, along with my training, experience and training as set forth above:

- a. Complaint;
- b. Defendants' Answer to the Complaint;
- c. Defendants' Answers to Interrogatories;
- d. Defendants' Production of Documents;
- e. Written statement of Mandy Bellamy taken the night of the subject drowning;
- f. Written statement of J.W. Seay taken the night of the subject drowning;

- g. Written statement of Evan McPherson taken the night of the subject drowning;
 - h. Pictures from the site inspection performed on or about May 19, 2015;
 - i. I was personally present during the site inspection on or about May 19, 2015;
 - j. Various weather reports from the time of the subject drowning specific to that geographic area where the drowning took place;
 - k. Google Earth Map pictures of the Pine Island Club; and
 - l. Deposition testimony of Mandy Bellamy.
4. The duties and obligations of a landowner, which are applicable those similar to Defendants in this case, to a person lawfully using this swimming beach during an incoming storm are discussed throughout safety publications of various national water safety organizations. I have noted some reliable national sources as references in support of my opinions, however, this list of such sources for each of my opinions is not exhaustive and can be supplemented upon request.
- i. *See* National Oceanic and Atmospheric Administration (NOAA) weather safety standards and suggested practices;
 - ii. *See* National Lightning Safety Institute (NLSI) weather safety standards and suggested practices;
 - iii. *See* Federal Emergency Management Agency (FEMA) weather safety standards and suggested practices;

- iv. See National Weather Service (NWS) weather safety standards and suggested practices;
- v. See American Red Cross (ARC) weather and water safety standards and suggested practices from the 2012 Lifeguard Manual;
- vi. See National Water Safety Congress (NWSC) weather and water safety standards and suggested practices from their *Safety Standards of 1982*; and
- vii. See YMCA lifeguarding and water safety standards and suggested practices from the 2011 edition of *On the Guard, the YMCA Lifeguard Manual*.

5. I have the following opinions about the duties owed by a landowner, like Defendants to a person lawfully on the subject property and using the swimming beach and swimming in the open water around the swimming beach:

- a. Duty to have **Weather Monitoring Equipment** sufficient to detect an incoming storm – an example of industry standard practice would be a NOAA weather radio or lightning detector;
- b. Duty to have a **Severe Weather Safety Plan** dictating how and when to evacuate all water (open water and swimming pools), this may be also referred to as an **Emergency Action Plan**;
- c. Duty to have an **Operations Policies and Procedures Manual** applicable to the life guards at the swimming pool and swimming beach;

- d. Duty to **Clear the beach and pool** and ensure that everyone seeks safe shelter in anticipation of an incoming storm – in this case, the specific duty was to evacuate the swimming pool and the swimming beach and to stop anyone from using the same for at least 30 minutes from the last time lightning or thunder was observed/heard;
- e. Duty to **Warn** all swimmers and potential swimmers of potential unsafe water conditions – this may be accomplished with warning flags cones, or speakers sufficient to be heard by swimming in the designated swimming areas, such as the pool and the swimming beach;
- f. Duty to have **Safety Posts** near the swimming waters with water safety devices including a “throwing component” like a Throw Bag or Ring Buoy with 40-50 feet of light weight rope, “reaching equipment” such a Shepard’s Crook and a first aid kit;
- g. Duty to have **Water Rescue Devices** on and around the boating dock – in this case the subject dock where the decedent jumped from minutes before drowning. This duty requires throwing equipment, reaching equipment, and a floatation device necessary for people who may fall out of a boat or off the dock while trying to get in or out of a boat; and
- h. Duty to have a **Life Guard** on duty at the swimming pool and swimming beach.

6. The purpose of the duties listed above are to (1) warn all swimmers and potential swimmers of unsafe conditions and then to (2) ensure that everyone is out of the water and safe, to avoid drowning.

BREACHES IN DUTIES OWED BY LAND OWNER

7. Based on my review of all materials listed above in this case, Defendants breached the following duties:
 - a. The swimming beach was not cleared as required by industry standards;
 - b. The decedent was not warned of unsafe weather conditions;
 - c. There were no Safety Posts with the required water safety devices;
 - d. The boating dock from where the decedent jumped did not have the required water safety and rescue devices; and
 - e. There was no life guard on duty supervising the beach swimming area.

DECEDENT'S DEATH A RESULT OF BREACHES IN DUTIES

8. Based on my review of the materials listed above and my education, training and experience, I have the following opinions about the cause and effect of the Defendants numerous failures to comply with the industry standards and duties listed in the paragraph 10, above and decedent's death:
 - a. Had the beach been timely cleared when the swimming pool was cleared, the decedent would not have drowned.

- b. Had the decedent been warned of the unsafe weather conditions, the decedent would not have drowned,**
 - c. Had there been appropriate water safety devices on the Safety Posts for use during the water rescue attempt, the decedent would not have drowned,**
 - d. Had there been appropriate water safety devices on the boating dock for use during the water rescue attempt, the decedent would not have drowned,**
 - e. Had a life guard been on duty supervising the beach area, the decedent would not have drowned,**
 - f. Because all of the above-mentioned are industry standards and well-known to exist to protect recreational swimmers from drowning, decedent's death was a foreseeable result of Defendants' breaches.**
 - g. J. W. Seay, Island Caretaker, observed the decedent and Ms. Bellamy walk from the beach area to the boat dock and failed to prevent them from entering the water. Had he prevented them from entering the water, the decedent would not have drowned.**
9. All of my opinions set forth herein are to a reasonable degree of certainty and are satisfactory to myself based upon my education, training, research and experience, as well as, all the case specific data I have reviewed and the various water safety authorities which are listed in paragraph five (5) of this affidavit.

FURTHER THE AFFIANT SAYETH NOT.

This the 31st day of August, 2016.

Dr. Ralph Johnson
Dr. Ralph Johnson

Sworn to and subscribed before me, on

this the 31st day of August, 2016.

Tina H. Wells
(Official Signature of Notary)

Tina H. Wells, Notary Public

(Official Seal)

My Commission Expires: May 12, 2021

FILED
2016 SEP - 6 A 11:54
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON 2016-SEP-23)

ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,,)

Civil Action No.: 2014-CP-32-02210

Plaintiffs,)

vs.)

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina
Electric and Gas Holding Company, Inc.;
SCANA ,)

DEFENDANTS
**THE CONSOLIDATED EMPLOYEE
RECREATION CLUBS, A NON-PROFIT
ORGANIZATION A/K/A PINE ISLAND
CLUB AT LAKE MURRAY, SOUTH
CAROLINA ELECTRIC AND GAS
HOLDING COMPANY, INC. AND
SCANA'S**

**MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION TO ALTER OR
AMEND PURSUANT TO RULE 59(e)**

Defendants.)

ORIGINAL

TO: PEDRO E. KROMPECHER, III, ESQUIRE, COUNSEL FOR PLAINTIFFS.

This matter comes before the Court on motion of the Plaintiffs Cassandra M. Myers and Bartholomew Myers in their capacity as co-personal representatives of the Estate of Evan Morris Myers pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, dated September 6, 2016. By Order of this Court on September 9, 2016, Plaintiffs' Rule 59(e) Motion will be decided on written submissions. Defendants The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc., and SCANA respond to Plaintiffs' Rule 59(e) Motion to Alter or Reconsider pursuant to this Court's enunciated deadlines regarding the same.

FACTS/PROCEDURAL BACKGROUND

Pursuant to Rule 56, SCRCP, Defendants The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc., and SCANA moved this Court for an order granting them summary

judgment in the above-referenced case. Defendants' Motion for Summary Judgment was originally filed on or about October 30, 2014. Some fourteen (14) months later, Defendants' Motion for Summary Judgment was set for oral argument and Defendants timely and properly served upon the Court and opposing counsel Defendants' Memorandum in Support of their Motion for Summary Judgment on December 10, 2015.

On December 11, 2015, this Court entertained lengthy and detailed oral arguments from the parties both in support of and in opposition to Defendants' Motion for Summary Judgment. At the hearing, the Court specifically inquired as to both parties regarding Plaintiffs' theories and arguments as they relate to weather. Specifically, the Court inquired:

I'm trying to understand if the argument, this is addressed to both of you, if the argument about this weather condition is that there is evidence that the weather contributed to the decedent's death or if there is – the assertion is that the area should have been closed because of the weather so the decedent would never have entered into the water and, therefore, would not have drowned.

In response to Judge Keesley's specific questioning, Plaintiffs' counsel responded:

Your Honor, on behalf of the plaintiffs, **it's both of what you talked about**. So both the fact that the weather was the condition that required the swimming beach to be closed down, required warning, that is part of the allegations that are supported by the affidavits of our two experts, but also that the weather, the reason why you close it down is because it affects the current of the water and for the same reason you close down the swimming pool when you have significant weather incoming...**So the argument is both**. The weather was an element that required more things to have been done, such as closing the pool – or closing the beach like they closed the pool and warning people at the beach like they warned people at the pool, but also that the weather played a role in why.

(Ex. A, Motion for Summary Judgment Hearing Transcript, p. 39, line 7 – p. 41, line 9)

(emphasis added).

Following the hearing, the Court requested proposed orders from Plaintiffs and Defendants, which the parties submitted to the Court for review. On June 15, 2016, the Court contacted the parties via email, posing the following query:

Before I rule, I want to make sure I have each side's response to the following question. What evidence is there that the weather conditions caused or contributed to Mr. Myers drowning? I would appreciate your prompt response. Thank you.

(See Ex. B).

Both Plaintiffs and Defendants then engaged in a series of emails between Wednesday, June 15, 2016 and Friday, June 17, 2016 directly responding to this specific issue. (See Ex. C, D, E, F, G, H, I, J, K).

In response to the Court's direct questioning, Plaintiffs responded to the Court on Thursday, June 16, 2016 via email, "There is evidence that the weather conditions caused or contributed to Mr. Myers drowning. I will send responsive materials when I arrive to the office later this morning." (See Ex. C). In addition, Plaintiffs sent another email to Court on the same date, stating "Attached please find an outline and documents that demonstrate that the weather conditions contributed to and caused Evan Myers to drown." (See Ex. D). Plaintiffs attached a detailed two page memorandum setting forth Plaintiffs' position as to weather contributing to Mr. Myers drowning, as well as some additional forty-seven (47) pages of documents in support of the Plaintiffs' proposition that the change in weather was the proximate cause of Mr. Myers death. (See Ex. D).

Based on a review and analysis of the pleadings, the parties' respective memoranda and supporting materials, the parties' respective arguments to the Court on December 11, 2015, in Lexington, and a series of electronic correspondence from the parties with the Court from Wednesday, June 15, 2016 to Friday, June 17, 2016, this Court granted summary judgment to

Defendants in the instant case. The Court advised the parties of its decision to grant Defendants' motion for summary judgment by email on August 8, 2016, and attached an Order intended for filing. The Order was filed on August 8, 2016, but was first received by the parties on August 26, 2016 via email from the Lexington County Clerk of Court's Office.

In granting Defendants' Motion for Summary Judgment, the Court held that there was no evidence of proximate cause, and Plaintiffs' "assertion that the storm caused or contributed to the decedent's death is purely speculative." (See Ex. L). Therefore, because there was no evidence that the weather conditions were a proximate cause of decedent's drowning, "the argument about liability based on a failure to warn or a failure to remove the Plaintiffs' decedent from the property becomes irrelevant." (See Ex. I). The Court further held that summary judgment was warranted because Plaintiffs failed to demonstrate a colorable duty of care owed to the Decedent.

Plaintiffs now file this Rule 59(e) Motion to Alter or Amend premised upon the argument that Plaintiffs never argued or contended that the weather or changing weather conditions caused or contributed to Mr. Myers drowning. (See Ex. M) ("Importantly, Plaintiff's made no such allegation because Plaintiffs contend that decedent's drowning was caused by breaches committed by Defendants, not because of weather.") The collective evidence, testimony, oral arguments and written arguments demonstratively show that Plaintiffs' contention is patently false.

STANDARD OF REVIEW

A motion under Rule 59(e) long has been viewed as “motion for reconsideration” despite the absence of those words from the rule. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004); *see also* Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992) (reciting the “purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits”). Rule 1, SCRPC (the Rules of Civil Procedure should be construed so as to secure a “speedy ... determination of every action”).

A party may not use a Rule 59(e) Motion to present an issue the party could have raised prior to judgment but did not. Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990); *see also* Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 443 S.E.2d 399 (Ct. App. 1994) (a party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not); *accord* C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993); Brailsford v. Brailsford, 380 S.C. 443, 669 S.E.2d 342 (Ct. App. 2008). A Rule 59(e) motion “may in the discretion of the court be determined on the briefs filed by the parties without oral argument.” Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

LAW/ANALYSIS

I. Plaintiffs Have Failed to Present Evidence in Support of Proximate Causation

Plaintiffs aver they have submitted more than a mere scintilla of evidence in support of proximate causation. Plaintiffs contend that based on the affidavits of Drs. Francesco Pia (See Ex. N & P) and Ralph Johnson (See Ex. O & Q), a jury could infer that any number of

breaches¹ by the Defendants was the proximate cause of decedent's drowning. Plaintiffs further allege that they are only required to show Defendants' conduct was a cause and not the sole cause of decedent's death.

As an initial matter, Plaintiffs contend they have made no such allegation that the purported change in weather condition actually caused decedent to drown. However, in response to Plaintiffs' assertion, Defendants crave reference to the following colloquy from the hearing on Defendants' motion:

[Court]: I'm trying to understand if the argument, this is addressed to both of you, if the argument about this weather condition is that there is evidence that the weather contributed to the decedent's death or if there is – the assertion is that the area should have been closed because of the weather so the decedent would never have entered into the water and, therefore, would not have drowned?

[Plaintiffs' Counsel]: Your Honor, on behalf of the plaintiffs, it's both of what you talked about. So both the fact that the weather was the condition that required the swimming beach to be closed down, required warning, that is part of the allegations that are supported by the affidavit of our two experts, but also that the weather, the reason why you close it down is because it affects the current of the water and for the same reason you close down the swimming pool when you have significant weather incoming ... So the argument is both. The weather was an element that requires more things to have been done, such as closing the pool ... and warning people at the beach like they warned people at the pool, but also that the weather played a role in why.

(Ex. A, Motion for Summary Judgment Hearing Transcript, p. 39, line 7 – p. 41, line 9).

¹ The duties referenced by Plaintiffs, and which Plaintiffs aver were breached, include: (1) weather monitoring equipment; (2) a severe weather safety plan; (3) an Operations Policies and Procedures Manual for life guards; (4) to clear the beach and pool in anticipation of an incoming storm; (5) to warn all swimmers of potentially unsafe water conditions; (6) to have safety posts near the swimming waters that included throwing components; (7) to have water rescue devices on and around the boating dock; and (8) to have a life guard on duty at the swimming pool and beach. (Ex. M. Plaintiffs' Memorandum in Support of Their Motion to Alter or Amend Pursuant to Rule 59(c), SCRCP, p. 6).

Furthermore, attached as **Exhibits B-K** are a host of emails exchanged between the Court and counsel, in which Plaintiffs repeatedly argued that weather played a role in decedent's drowning. Therefore, Defendants aver Plaintiffs are attempting to circumvent their original arguments in order to dodge this Court's unfavorable ruling that "[s]ince there is no evidence that the weather conditions were a proximate cause of the drowning, the argument about liability based on a failure to warn or a failure to remove the Plaintiffs' decedent from the property becomes irrelevant."

Moreover, Plaintiffs have failed to present any evidence that an alleged breach of duty was the proximate cause of decedent's drowning. While Plaintiffs have previously submitted affidavits from Drs. Francesco Pia and Ralph Johnson asserting the duties owed by Defendants to the decedent, the original affidavits fall short of concluding that a breach of any one of those duties was the proximate cause of decedent's drowning. (See Ex. P, Affidavit of Dr. Francesco Pia; Ex. Q, Affidavit of Dr. Ralph Johnson).

Plaintiffs have now submitted supplemental affidavits from Drs. Pia and Johnson with their Rule 59(e), SCRCP motion. Plaintiffs attempt to argue that this new expert witness testimony compels this Honorable Court to reverse his ruling. Plaintiffs contend that had Defendants "appropriately raised the issue of causation in a manner that allowed Plaintiffs to respond, Plaintiffs would have also submitted this expert affidavit testimony further supporting causation."

However, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); see also Bogart v. Chapell, 396 F.3d 548, 555 (4th Cir. 2005) (recognizing that one of the limited purposes of Rule 59(c) is "to account for new evidence not

available at trial”); Peters v. General Service Bureau, Inc., 277 F.3d 1051, 1057 (8th Cir. 2002) (“Arguments and evidence which could have been presented earlier in the proceedings cannot be presented in a Rule 59(e) motion.”); Nagle Industries, Inc. v. Ford Motor Co., 175 F.R.D. 251 (E.D. Mich. 1997) (explaining that a Rule 59(e) motion “should not be utilized to submit evidence which could have been previously submitted in the exercise of reasonable diligence.”); Natural Resources Defense Council v. U.S. E.P.A., 705 F.Supp. 698, 701 (D.D.C.1989), vacated on other grounds, 707 F.Supp. 3 (D.D.C.1989) (“Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier.”); Smith v. Stoner, 594 F.Supp. 1091, 1118 (N.D.Ind.1984) (“Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived.”); Johnson v. City of Richmond, 102 F.R.D. 623, 623 (E.D.Va.1984) (“I do not conceive of Fed.R.Civ.P. 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.”).

By the submission of the supplemental affidavits, Plaintiffs are attempting to enlarge the record on which this Court made its decision. The affidavits are dated August 31, 2016 and September 1, 2016—well after not only entry of judgment, but also the hearing on Defendants’ motion. Plaintiffs had a substantial amount of time to submit their supplemental affidavits well ahead of this Court’s entry of judgment. Plaintiffs have attempted to use their Rule 59(e) motion as a mechanism to supplement the record and as an attempt to present evidence that was not new or unavailable prior to judgment. Accordingly, Plaintiffs’ supplemental affidavits must not be considered by this Court.

Because Plaintiffs’ affidavits attached to their Rule 59(e) motion cannot be considered by the Court, Plaintiffs have failed to raise any additional issue not addressed in the order granting

Defendants' motion for summary judgment. Consequently, Plaintiffs' Rule 59(e) motion must be denied.

II. This Court Properly Determined Decedent Assumed the Risk As a Matter of Law

Plaintiffs aver the Court inappropriately determined—as a matter of law—that decedent assumed the risk of swimming in the subject waters. Plaintiffs further contend the Court misapprehended the law of assumption of the risk, asserting that the Court evaluated assumption of risk as a question of whether Defendants owed Plaintiffs a duty. Rather, Plaintiffs contend, the assumption of risk is secondary implied assumption of risk in which decedent's assumption of risk must be compared to Defendants' negligence.

A trial court may declare that the plaintiff assumed the risk as a matter of law when it clearly appears that the plaintiff freely and voluntarily exposed himself to a known danger and understood and appreciated the danger. Humphrey v. Day & Zimmerman Intern., Inc., 997 F. Supp.2d 388 (D.S.C. 2014). “Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity.” Davenport v. Cotton Hope Plantation Horizontal Property Regime, 333 S.C. 71, 81, 508 S.E.2d 565, 570 (1998) (emphasis in original). Importantly, our Supreme Court has clearly held that, “[p]rimary implied assumption of risk is not a true affirmative defense, but instead goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff.” Id. Plaintiffs' contention that assumption of risk is purely an affirmative defense and a jury issue does not comport with clear South Carolina law to the contrary.

In its Order Granting Defendants' Motion for Summary Judgment, this Court held that “the only evidence, and the only reasonable inferences therefrom, compel the court to determine that the decedent knew about the realities forming the dangerous condition[,] including that he

was going into a large lake, without lifeguards or safety equipment. Any argument that the subject existing warning signs were of insufficient size, location, or content are not supported by any credible evidence in the record whatsoever.² Indeed, the only evidence in the record supports the existence of warning signs to “swim at your own risk” and “no lifeguard on duty.” Moreover, the aforementioned signage specifically prohibits persons from swimming off the subject docket from which decedent entered the open waters of Lake Murray, which the Court properly took into consideration in its Order.

Plaintiffs’ decedent assumed the risks inherent in swimming in an open body of water. Cantrell v. Plex Indoor Sports, LLC, No. 2015-UP-274, 2015 WL 3536560, at *1 (S.C. Ct. App. June 3, 2015) (See Ex. R) (citing Cole v. Boy Scouts of Am., 397 S.C. 247, 251, 725 S.E.2d 476, 478 (2011) (“Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity.” (internal quotation marks omitted)); id. (“The doctrine of primary implied assumption of risk goes to the initial determination of whether the defendant’s legal duty encompasses the risk encountered by the plaintiff.” (internal quotation marks omitted)); id. at 253, 725 S.E.2d at 479 (“Where a person chooses to participate in a contact sport, whatever the level of play, he assumes the risks inherent in that sport.”); Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 656 (2006) (“Under South Carolina common law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger.”); Hurst v. E. Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006) (“If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.”).

² Plaintiffs again contend there is evidence supporting a breach of duty by Defendants by way of their supplemental expert affidavits. For the reasons addressed supra, Plaintiffs’ supplemental affidavits are not properly before the Court for consideration in Plaintiffs’ Rule 59(e) Motion. Defendants reassert that there is no evidence of any alleged breach of duty owed to decedent.

Primary implied assumption of risk goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff. See Davenport, 333 S.C. at 81, 508 S.E.2d 565. Plaintiffs' misconstrue and confuse their argument suggesting that decedent did not appreciate the duties owed to him. Defendants have not found any supporting case law in South Carolina supporting Plaintiffs' misguided contention, nor have Plaintiffs cited any supporting authority for this legal proposition. The proper issue, which this Court has thoroughly addressed, is whether Plaintiffs' decedent assumed the risks inherent in swimming in open waters, not whether the Plaintiffs assumed the risk of not being warned or any other alleged duty owed to them. To suggest that Plaintiffs' decedent did not know and appreciate the clearly visible warning signs, or the risks inherent in swimming, as an adult of twenty-one (21) years of age, with advanced education bends the bounds of credulity. Accordingly, this Court properly determined that decedent's assumption of risk was primary, and as a matter of law, Plaintiffs' decedent assumed the risks inherent in the activity he was engaged in at the time of his death.

CONCLUSION

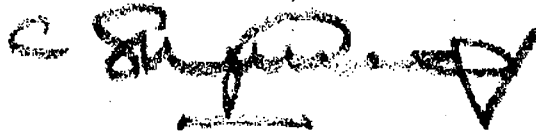
For foregoing reasons, Defendants assert that Plaintiffs' motion to alter or amend the judgment be denied and that the Order dated August 8, 2016 be affirmed.

[SIGNATURE PAGE TO FOLLOW]

2016 Sep 23 PM 3:28

CLERK OF COURT
LEXINGTON

Respectfully submitted,
COLLINS & LACY, P.C.



By:

CHRISTIAN STEGMAIER
estegmaier@collinsandlacy.com
MEGHAN H. HALL
mhall@collinsandlacy.com
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (Voice)
(803) 771-4484 (Facsimile)

ATTORNEYS FOR DEFENDANTS THE
CONSOLIDATED EMPLOYEE
RECREATION CLUBS, A NON-PROFIT
ORGANIZATION AKA PINE ISLAND
CLUB AT LAKE MURRAY, SOUTH
CAROLINA ELECTRIC AND GAS
HOLDING COMPANY, INC AND
SCANA

DEFENDANTS THE CONSOLIDATED
EMPLOYEE RECREATION CLUBS, A
NON-PROFIT ORGANIZATION AKA
PINE ISLAND CLUB AT LAKE
MURRAY, SOUTH CAROLINA
ELECTRIC AND GAS HOLDING
COMPANY, INC AND SCANA
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO ALTER OR
AMEND PURSUANT TO RULE 59(e)

Columbia, South Carolina
September 23, 2016

CERTIFICATE OF SERVICE

(2014-CP-32-02210)

2016 SEP 23 PM 3:28

The undersigned employee of Collins & Lacy, P.C., hereby certify that (s)he has served the following named individual(s) with a copy of the pleading(s) indicated below via electronic mail and/or by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

Pedro E. Krompecher, III, Esquire
Krompecher Law Firm, PLLC
Post Office Box 6639
Raleigh, NC 27628
Counsel for Plaintiffs

PLEADING: DEFENDANTS THE CONSOLIDATED EMPLOYEE RECREATION CLUBS, A NON-PROFIT ORGANIZATION AKA PINE ISLAND CLUB AT LAKE MURRAY, SOUTH CAROLINA ELECTRIC AND GAS HOLDING COMPANY, INC AND SCANA MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59(e)



Columbia, South Carolina
September 23, 2016

2016 SEP 23 PM 3: 28

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Cassandra M. Myers and Bartholomew)
Myers in their capacity as Co-Personal)
Representatives of the Estate of Evan)
Morris Myers,)
Plaintiffs,)

Civil Action No.: 2014-CP-32-02210

**EXHIBIT LIST TO DEFENDANTS'
MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION TO ALTER OR
AMEND PURSUANT TO RULE 59(e)**

vs.

The Consolidated Employee Recreation)
Clubs, a non-profit organization a/k/a Pine)
Island Club at Lake Murray, South Carolina)
Electric and Gas Holding Company, Inc.;)
SCANA,)
Defendants.)

ORIGINAL

- Ex. A - 12/11/15 Summary Judgment Hearing Transcript, p. 39, line 7 - p. 41, line 9
- Ex. B - Email 6/15/16 at 4:09 p.m., from The Honorable William P. Keesley
- Ex. C - Email 6/16/16 at 6:50 a.m., from Pedro Krompecher
- Ex. D - Email 6/16/16 at 10:50 a.m., from Emily Smith
- Ex. E - Email 6/15/16 at 4:15 p.m., from Christian Stegmaier
- Ex. F - Email 6/15/16 at 5:42 p.m., from Christian Stegmaier
- Ex. G - Email 6/16/16 at 12:24 p.m., from Christian Stegmaier
- Ex. H - Email 6/16/16 at 12:41 p.m., from Christian Stegmaier
- Ex. I - Email 6/17/16 at 9:06 a.m., from Emily Smith
- Ex. J - Email 6/17/16 at 11:16 a.m., from Christian Stegmaier

Ex. K - Email 6/17/16 at 1:48 p.m., from Pedro Krompecher

Ex. L - August 8, 2016 Order granting Defendants' Motion for Summary Judgment

Ex. M - Plaintiff's Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e) SCRPC

Ex. N - November 24, 2015 Affidavit of Dr. Francesco Pia, Ph.D.

Ex. O - November 17, 2015 Affidavit of Dr. Ralph Johnson, Ph.D.

Ex. P - September 1, 2016 Supplemental Affidavit of Dr. Francesco Pia, Ph.D.

Ex. Q - August 31, 2016 Supplemental Affidavit of Dr. Ralph Johnson, Ph.D.

Ex. R - Cantrell v. Plex Indoor Sports, LLC, No. 2015-UP-274, 2015 WL 3536560, at *1 (S.C. Ct. App. June 3, 2015)

CASE # 2014CP3202210

**EXHIBITS
NOT
SCANNED**

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

CIVIL ACTION NO. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of
Evan M. Myers,

Plaintiffs,

v.

**PLAINTIFFS' REPLY TO DEFENDANTS'
RESPONSE TO PLAINTIFFS' MOTION TO
ALTER OR AMEND PURSUANT TO RULE
59(e), SCRPC**

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray; South
Carolina Electric and Gas Holding
Company, Inc.; SCANA; Mandy Nicole
Bellamy;

Defendants.

BERNARD S. CARPISCO
CLERK OF COURT
LEXINGTON, SC

2016 OCT 10 A 8:00

FILED

TO: Christian Stegmaier and Megan H. Hall, counsel for defendants:

INTRODUCTION

Although Plaintiffs are sure defense counsel meant well when they submitted entirely new arguments for summary judgment just eighteen hours before the summary judgment hearing, the effect of what they did was major-league sandbagging. Doing so denied Plaintiffs' counsel the opportunity to provide any meaningful response to the new arguments. Moreover, it forced this Court to make a decision in a serious case involving the drowning death of a young man without having access to all the relevant facts. Despite the patent unfairness this created, they now cavalierly instruct this Court that it is not permitted to review the affidavits which, by defense counsel's very own actions, this Court was denied opportunity to review before the hearing. Although Plaintiffs respectfully submit that the record before the Court at the hearing was sufficient to show a scintilla of evidence in support of causation, refutation of assumption of the

risk, and proof that Defendants had certain duties which they breached, Plaintiffs submit that the Court may consider the affidavits submitted with the Motion to Reconsider. Moreover, Plaintiffs respectfully submit that, for the reasons stated herein and in the Motion to Reconsider, the Order entered by the Court misapprehended the law and case precedent with respect to proximate causation, assumption of the risk, and duty of care to an invitee.

I. Defense counsels' actions denied this Court the opportunity to review all the relevant testimony and Plaintiffs' counsel notice and opportunity to respond.

Defendants filed their motion for summary judgment on November 3, 2015. Nowhere in this motion did Defendants ever contend that Plaintiffs failed to establish causation. The argument is completely absent. The same is true for assumption of the risk. Over a year passed without Defendants ever supplementing their motion for summary judgment or even submitting a memorandum in support of their motion. As required by the rules, Plaintiffs submitted affidavits two days before the hearing, along with Plaintiffs' responses to those arguments actually made by Defendants in their November 3, 2015 motion. Rule 56(c), SCRPC. Then, the afternoon before the hearing, Defendants submitted a memorandum in support of the motion for summary judgment, which for the first time raised the new arguments that Plaintiffs had not established causation and the decedent assumed the risk.

Because Defendants waited until eighteen hours before the hearing to raise the new arguments, Plaintiffs were effectively precluded from presenting any affidavits from their experts to show that Defendants' breaches in the standard of care were clearly a proximate cause of the drowning death of the decedent. First, it would have been technically infeasible to contact the experts, have the experts review the facts in light of the newly raised arguments, and then submit a thoughtful affidavit expressing their opinions to a reasonable degree of certainty. Second, even if this monumental feat could have been accomplished, the affidavits would have been

inadmissible under Rule 56(c), SCRCP. The rules of civil procedure mandate that the responding party *must* submit any opposing affidavits not later than two days before the hearing. *Id.* Indeed, Defendants made this very argument at the hearing to preclude the Court from reviewing other documents that Plaintiffs' counsel scrambled to compile to respond to Defendants new arguments. In the greatest show of gamesmanship, Defendants attempted to use Rule 56 to prevent this court from even considering Plaintiffs best attempt to respond Defendants' tardy arguments. Defendants argued:

With regard to some of the documents that have been provided to you today, obviously, we object to the document Rule 56 [and] the case law that has been enunciated by our courts, clearly articulate the proper mechanism for attaching documents for consideration . . . by this Court for purposes of Rule 56 analysis.

. . . And dumping a bunch of documents in at the summary judgment hearing doesn't count. Typically, this is done by affidavit.

(Hr. Tr. 35:14-21, 37:11-13).

This confirms that Defendants were fully aware of what effect it would have on Plaintiffs' ability to respond if they waited until immediately before the hearing to raise new arguments. Then, as if to highlight what their tactic had accomplished, Defendants stated, "The other thing, too, we reiterate that these affidavits of these experts talk about duty, but they don't talk about proximate cause, and they have to provide that kind of testimony and neither one of them do." (Hr. Tr. 43:2-6). Thus, Defendants correctly point out that Plaintiffs did not ask their experts to opine on every conceivable summary judgment argument that Defendants had not made, but only those that were in fact made in their motion for summary judgment.¹

¹ Defendants never sought to take the deposition of either of Plaintiffs' experts.

When Plaintiffs' had opportunity to speak at the hearing, counsel requested this Court not consider any of the eleventh-hour arguments presented by defense counsel and to which Plaintiffs had been denied a fair opportunity to respond. Plaintiffs stated:

[Defendant's November 3, 2015] motion for summary judgment . . . lays out the arguments and puts the plaintiff on notice of what the defendants are going to argue in terms of their motion for summary judgment. And in that document, you will see [lists arguments made]. And so last night at about 5:00 P.M., I received this memorandum of law that now makes a number of other arguments that were not contained in the motion. *For that reason, I think, at this time, it would only be appropriate to consider the arguments that were identified in the original motion for summary judgment.*

(Ex. 1, Hr. Tr. 19:5-24).

In an effort to skirt the issue, Defendants represented to the Court that Defendants were merely "augmenting" their previous arguments. (Hr. Tr. 35:7-10). However, a quick read of Defendants' original motion for summary judgment makes clear Defendants did not merely "augment" previously made arguments, but submitted entirely new bases for which they argued summary judgment should be granted. Defendants never mentioned causation in their initial motion for summary judgment. Defendants never mentioned assumption of the risk. Plaintiffs' counsel should not be required to expend time, money, and effort to "shadow-box" all potential arguments a defendant might make for summary judgment did not make for summary judgment.

Defendants now attempt to hide behind a rule which precludes evidence from being presented to the court in a motion to reconsider that could have been presented to the court in response to the motion, but was not presented. In fairness, this rule must not apply when the reason such evidence was not presented at the hearing was because of Defendants' tactic of raising new arguments immediately prior to the hearing. Defendants perfectly timed when to submit their new arguments regarding causation and assumption of the risk so as to preclude submission of opposing

affidavits by the South Carolina Rules of Civil Procedure. As such, Defendants denied this Court the opportunity to review all material evidence in a case involving loss of human life.

In *Won, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724. (2000), South Carolina Supreme Court explained, "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." In this case, Defendants removed this Court's ability to rule properly after considering all relevant facts, law, and arguments because of their tardy addition of new argument for summary judgment. Substantial justice requires consideration of all the arguments that would have been available to this court had Defendants provided Plaintiffs with appropriate notice and opportunity to respond through affidavit testimony to their bases for summary judgment. *See. e.g.* " *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 102, 668 S.E.2d 798, 801 (2008) "South Carolina courts have long observed that equity looks beneath rigid rules of law to seek substantial justice." For this reason, Plaintiffs respectfully request this Court review the whole record as it would have been available had Defendants through gamesmanship not hamstrung the Court's review and Plaintiff counsels' ability to respond.

II. Plaintiffs never conceded nor stated that Decedent's drowning was caused by the weather and not Defendants' negligent acts.

Defendants continue to mischaracterize Plaintiffs' words, mis-frame their theory of causation, and raise red herrings concerning the weather. Despite being denied a fair opportunity to brief and provide affidavits to the newly raised issues, Plaintiffs' counsel addressed the newly raised issues to the extent the Court had questions at the hearing. Additionally, Plaintiffs sought to adequately answer all questions posed by this court in the emails that followed the hearing. Because of Defendants' tactics, both Plaintiffs' and Defendants' counsel were forced to engage in a lengthy back and forth via email with the Court in an effort to resolve questions the Court still

had. However, even this Court noted its disdain for a piecemeal email discussion, noting, "I really don't want to get into a back and forth through email." (Def. Ex. II).

Defendants mischaracterize Plaintiffs' best efforts at addressing their eleventh hour issues and the Court's questions as a concession that weather was or needed to be the causal factor of decedent's drowning. Defendants stated, "Plaintiffs had adduced absolutely no evidence whatsoever that any purported change in weather condition actually caused Mr. Myers to drown." (Def. Mem. in Supp. of Mot. S.J., p. 11). This is Defendants' framing of the argument. Plaintiffs' theory is that Defendants' breaches in the standard of care were a proximate cause of decedent's drowning, not the weather. The weather in and of itself did not cause decedent to drown. This has always been Plaintiffs' theory, and this is evidenced not only by the pleadings and arguments made by Plaintiffs, but also by common sense. As previously stated, if the weather alone had been the cause of decedent's drowning, then there would be no basis for a lawsuit. Moreover, any contention that Plaintiffs ever denied that "weather played a role" is patently false. Weather clearly played a role as Plaintiffs have consistently noted and is relevant to certain breaches in the standard of care.

As discussed in Plaintiff's motion to reconsider, the existence of *impending* bad weather served as the impetus to *some* of the alleged breaches. For instance, defendants had no severe weather safety plan or operational policies and procedures manual for the lifeguards. Therefore, when bad weather approached, the lifeguards closed and cleared the pool but failed to clear the beach area. Therefore, everyone on the beach was not informed that the lifeguards were leaving their posts or warned. Therefore, there was no lifeguard available to assist decedent when he became distressed in the water, and was not warned of the same. The lifeguards went off duty but failed to clear the beach and failed to warn swimmers at the beach area of (a) the impending storm, (b) closure of the swimming areas, or (c), that the lifeguards were going off duty because the

swimming areas were being closed for safety reasons. Defendants breached their duties and violated industry regulations by failing to do the above.

Had there been no storm, then the lifeguards may not have gone off duty and left decedent to drown. Had there been no storm, Defendant's negligent failure to have industry standard policies requiring the lifeguards to clear the area before leaving their posts may not have mattered. However, the presence of the storm was the triggering event to these particular negligent acts, which ultimately did have causal significance. Thus, in a tertiary respect, the storm had causal significance to the extent it triggered the relevancy of Defendants' violations in standards of care; just not in the way Defendants attempt to focus the argument.

Accordingly, when the Court asked about what evidence Plaintiff had that weather conditions caused or contributed to Mr. Myer's drowning, Plaintiffs submitted ample evidence noting the existence of the impending storm. With respect to the aforementioned breaches, the storm, as stated, did in a sense "contribute" to the drowning death of decedent. However, Plaintiffs' reply to this Court's email should not be misconstrued, as defense counsel suggests, as any admission that the storm was the cause of Decedent's drowning, or that the storm needed to be the causal factor. Plaintiffs' responses certainly should not be understood to mean that Plaintiffs' contention is that the weather itself was the cause of decedent's drowning. Instead, the evidence Plaintiffs presented should be understood for what it clearly stands for; proof that there was an impending storm that ultimately reached Defendants' property, that Defendants violated standards of care with respect to what should be done when a storm is approaching and/or present, and Defendants' violations of these standards was a proximate cause of decedent's drowning.

There is no evidence in the record before the Court to refute any of these allegations. Defendants breached their duties by failing to have in place a severe weather safety plan or

operations policies and procedures for the lifeguards requiring the lifeguards to do these things. Each of the above was a proximate cause of decedent's drowning. As discussed in the initial Motion, causation is a determination made by the jury, and a reasonable jury could easily reach the decision that these breaches were a proximate cause of decedent's drowning. *See Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986). As such, decedent's assertion that Plaintiffs' failed to present any evidence that an alleged breach was a proximate cause of decedent's drowning is patently false. Even the hearing transcript reflects that Plaintiff's set that "the weather was the condition that required the swimming beach be closed down, required warning," (Hr. Tr. 40:16-18), that "they had closed the pool, sent all the lifeguards home and individuals at the pool," (Hr. Tr. 23:3-6), that "from every lifeguard booth, you can see the swimming beach in its entirety," (Hr. Tr. 24:7-9), that "none of the lifeguards at the pool did anything," (Hr. Tr. p. 24:15-16), and that "there was a policy to close down the swimming pool for inclement weather, which was done, What was not done was closing down the swimming beach." (Tr. 33:19-22).

Other breaches existed as well that occurred irrespective of the storm. These included the failure to warn of unsafe water conditions, failure to have safety posts near the swimming waters that included throwing components, and failure to have water rescue devices on and around the boating dock. These failures additionally contributed to and were a cause of decedent's drowning. Moreover, these breaches existed independently of the presence or absence of a storm. However, the presence of a storm would have only exacerbated these breaches and would not have been an unforeseeable superseding intervening event. For these reasons, Plaintiffs respectfully submit that a scintilla of evidence in support of causation has been presented, and summary judgment should not be granted.

III. Plaintiff respectfully maintains that summary judgment should not have been granted as a matter of law based upon assumption of the risk.

Noticeably absent from Defendants entire discussion on assumption of the risk is even a single citation to *Cole v. SCE&G*, 362 S.C. 445, 608 S.E.2d 859 (2005). The only plausible reason for its absence is the obvious recognition that this case necessitates finding in Plaintiffs' favor. However, one cannot simply put his head in the sand and ignore the most pertinent case to the facts and legal issues before this Court. Defendants' failure to even attempt to distinguish *Cole* or challenge Plaintiffs' assertions as to the propositions it sets forth speaks volumes to the strength of Defendants' position.

Instead of using this Reply to rehash all the reasons a case that involves the same defendant; a drowning death in Lake Murry; and questions regarding liability where the same defendant failed to have lifeguards on duty, safety equipment available to save a distressed swimmer, and proper warnings is critical to the issues at hand, counsel merely craves reference the analysis Plaintiffs set forth in the Motion to Reconsider. Simply stated, *Cole* necessitates a finding that Defendants owed decedent a duty and that whether decedent assumed a risk is a question for the jury.

Moreover, the two biggest distinctions between this case and *Cole* favor the Plaintiffs in this case. Unlike in *Cole*, the decedent in this case was an invitee. Unlike in *Cole*, the South Carolina Recreational Use Statute does not apply. Defendants have not challenged the Court's ruling on either of these issues. Accordingly, beyond the factual reasons presented that make this case stronger than *Cole*, these two legal distinctions favor a finding that Defendants owed the decedent a duty and that there was no assumption of the risk. At the very least, assumption of the risk was a question of fact for the jury to determine.

Defendants take issue with the fact that assumption of the risk is an affirmative defense and a jury issue. *Cole* makes clear this is indeed the case. The Court in *Cole* stated, "[i]t is well-

settled that assumption of the risk is an affirmative defense which the defendant bears the burden of proving." *Id.* The Supreme Court then rejected the defendant's argument that there was no need to charge assumption of the risk under the doctrine of primary implied assumption of the risk. *Id.*

Defendants assume without establishing that this case involves primary implied assumption of the risk. They simply plow forward on this incorrect assumption and misstatement of the law. A quick review of *Cole* makes clear this is not the case. The South Carolina Supreme Court in *Cole* rejected the contention there was no duty in that case, thereby rejecting the contention that assumption of the risk under these facts and circumstances was primary implied assumption of the risk. The Court in *Cole* determined the Defendant did in fact owe the Plaintiff a duty *despite* the fact that the decedent in *Cole* was deemed only a licensee.

Where primary implied assumption of risk "focuses not on the plaintiff's conduct in assuming the risk, but on the defendant's general duty of care . . .," secondary implied assumption of risk "arises when the plaintiff knowingly encounters a risk created by the defendant's negligence." *Davenport v. Cotton Hope Plantation Horizontal Prop. Regime*, 333 S.C. 71, 82 508 S.F.2d 565, 571 (1998). "Secondary implied assumption of risk may involve either reasonable or unreasonable conduct on the part of the plaintiff." *Id.* Our Supreme Court determined "[T]he defendant's fault in causing an accident is not diminished solely because the plaintiff knowingly assumes a risk." *Id.* at 86, 508 S.E.2d at 573. Therefore, under secondary implied assumption of the risk, a plaintiff's conduct in assuming a risk is compared with the defendant's negligence and even if one assumes a risk of injury, he is not barred from recovery unless his negligence exceeds the defendant's negligence. Accordingly, despite affidavits signed by the president of this club stating the contrary, it is within the jury's province to determine the adequacy of the signage and to what extent, if any, the decedent assumed any risks. Decedent certainly did not knowingly

assume the risks that lifeguards would negligently leave their posts and that Defendants would fail to have life saving devices nearby for the purpose of aiding distressed swimmers. Defendants claim they have not found any case law supporting Plaintiffs contentions, yet they wholly ignore the existence of *Cole v. SCE&G*. Accordingly, Plaintiffs respectfully submit that the extent to which decedent assumed any risks, whatever those risks might be, is for the jury to determine, along with Defendants negligence in the manner alleged by Plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reconsider its Order granting summary judgment and alter or amend the order so as to deny summary judgment for the reasons set forth.

Respectfully submitted,

KROMPECHER LAW FIRM, PLLC

BY: Pedro Krompecher[®]

Pedro F. Krompecher

SC State Attorney Bar No.: 100485

P.O. Box 6639

Raleigh, North Carolina 27628

Telephone: (919) 977-8082

Facsimile: (919) 746-7588

Email: pcdro@krompecherlaw.com

BETH A. CHARRIG
CLERK OF COURT
LEXINGTON, SC

2016 OCT 10 A 8:00

FILED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of (1); *Plaintiffs' Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e)*, (2); *Memorandum of Law in Support of their Motion to Alter or Amend Pursuant to Rule 59(e)*, and (3); exhibits referenced therein have been served upon the following counsel(s) of record and by regular US mail.

Christian Stegmaier
Collins & Lacy
P.O. Box 12487
Columbia, SC 29211

This the 2nd day of October, 2016.

KROMPECHER LAW FIRM, PLLC

BY: Pedro Krompecher

Pedro E. Krompecher

SC State Attorney Bar No.: 100485

P.O. Box 6639

Raleigh, North Carolina 27628

Telephone: (919) 977-8082

Facsimile: (919) 746-7588

Email: pedro@krompecherlaw.com

REBEKA DANKING
CLERK OF COURT
LEXINGTON, SC

2016 OCT 10 A 8:00

FILED

CASE # 2014 CP3202210

EXHIBITS

NOT

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

THE COURT OF COMMON PLEAS
DOCKET NO.: 2014-CP-02210

CASSANDRA M. MYERS AND BARTHOLOMEW
MYERS IN THEIR CAPACITY AS CO-PERSONAL
REPRESENTATIVES OF THE ESTATE OF
EVAN M. MYERS,

PLAINTIFF,

DEPOSITION TRANSCRIPT

vs.

MANDY NICOLE BELLAMY

THE CONSOLIDATE EMPLOYEE RECREATION
CLUBS, A NON-PROFIT ORGANIZATION
A/K/A PINE ISLAND CLUB AT LAKE
MURRAY, SOUTH CAROLINA ELECTRIC AND
GAS HOLDING COMPANY, SCANA, MANDY
NICOLE BELLAMY, and MATTHEW BELLAMY,
DEFENDANTS.

AUGUST 4, 2015

DEPOSITION ON THE EXAMINATION OF MANDY NICOLE BELLAMY,
REPORTED BY CECILIA ENGLERT, COURT REPORTER AND NOTARY PUBLIC
FOR THE STATE OF SOUTH CAROLINA; PURSUANT TO NOTICE AND IN
ACCORDANCE WITH RULE 30 OF THE SOUTH CAROLINA RULES OF CIVIL
PROCEDURE; SAID DEPOSITION WAS TAKEN AT COLLINS & LACY, 1330
LADY STREET, COLUMBIA, SOUTH CAROLINA SCHEDULED FOR 2:00 P.M.
AND COMMENCING AT 2:24 P.M.

1 A. Yes.

2 Q. Let me hand you what I've marked as
3 Plaintiff's Exhibit No. 2.

4 (PLAINTIFF'S EXHIBIT NO. 2; MARKED PRIOR TO DEPOSITION)

5 MR. KROMPECHER: Can we go off the
6 record for a second?

7 (OFF THE RECORD DISCUSSION)

8 BY MR. KROMPECHER:

9 Q. We're back on the record. Do you know what
10 that is?

11 A. I believe so, yes.

12 Q. Did you participate in answering those
13 written questions?

14 A. Yes.

15 Q. Before I handed you Exhibit No. 2, have you
16 had occasion to review that document?

17 A. Yes.

18 Q. Okay. And just for the record, I understand
19 the objections are probably not your objections. They
20 were your lawyer's or somebody else. My question is to
21 the substantive part of the answer. Does that make
22 sense?

23 A. Yes.

24 Q. Okay. Who in your family is a member of the
25 Pine Island Club?

1 A. My father.

2 Q. How long has your father been a member of the
3 Pine Island Club?

4 A. All his life.

5 Q. Did you grow up going to the Pine Island
6 Club?

7 A. Yes.

8 Q. How far, approximately, did you grow up
9 living from the Pine Island Club?

10 A. About 10-15 minutes.

11 Q. Can you tell me when was the first time you
12 went to swim at the swimming beach at the Pine Island
13 Club?

14 A. When I was young.

15 Q. Did you also attend the pool?

16 A. Sometimes.

17 Q. Does the pool look like the way it does now?

18 A. For the most part.

19 Q. Does the swimming beach look like the way it
20 does now?

21 A. Yes.

22 Q. Would it be fair to say that as long as
23 you've been going to the swimming beach at Pine Island
24 Club, it looks the way it looked the last time you went
25 there, earlier this summer?

1 A. Uh-huh.

2 MR. KROMPECHER: You want to take one?

3 MR. STEGMAIER: Yeah, let's take a five
4 minute break. Let me just share with
5 you one of the rules of the road. We
6 can talk about the Braves, we can talk
7 about the Tigers, we can't talk about
8 the deposition, you know, during our
9 break.

10 THE WITNESS: Okay.

11 MR. STEGMAIER: That's the only rule,
12 so.

13 THE WITNESS: Okay.

14 (OFF THE RECORD / 3:01 P.M. - 3:08 P.M.)

15 MR. KROMPECHER: Back on the record,
16 please.

17 THE REPORTER: Yes, sir.

18 BY MR. KROMPECHER:

19 Q. When did you first meet Evan Myers?

20 A. At Midland's Tech.

21 Q. What year was that?

22 A. 2011.

23 Q. How did you meet him?

24 A. He was in my class.

25 Q. Do you remember what part of the year you met

1 Q. Nobody at the guardhouse ever stopped you
2 from bringing anybody on the island?
3 A. No.
4 Q. Have you ever heard of people playing air
5 assault on the island?
6 A. No.
7 Q. Okay. Do you know what I'm talking about
8 when I use that term, "air assault"?
9 A. Not really.
10 Q. Okay. All right. Have you ever heard of or
11 seen people playing with pellet guns on the island?
12 A. No.
13 Q. How about paint ball guns?
14 A. No.
15 Q. Have you ever seen or heard of anybody
16 playing with any sort of projectile devices on the
17 island?
18 A. No.
19 Q. Okay. I'm going to switch gears now and ask
20 you some questions about Evan. Remember I told you at
21 the beginning of this deposition, you can take a break
22 whenever you like. It's not my intention to hold you
23 over for a long period of time, but if you want to take
24 a break, this would be kind of a logical place in the
25 deposition.

1 A. Uh-huh.
2 MR. KROMPECHER: You want to take one?
3 MR. STEGMAIER: Yeah, let's take a five
4 minute break. Let me just share with
5 you one of the rules of the road. We
6 can talk about the Braves, we can talk
7 about the Tigers, we can't talk about
8 the deposition, you know, during our
9 break.
10 THE WITNESS: Okay.
11 MR. STEGMAIER: That's the only rule,
12 so.
13 THE WITNESS: Okay.
14 (OFF THE RECORD / 3:01 P.M. - 3:08 P.M.)
15 MR. KROMPECHER: Back on the record,
16 please.
17 THE REPORTER: Yes, sir.
18 BY MR. KROMPECHER:
19 Q. When did you first meet Evan Myers?
20 A. At Midland's Tech.
21 Q. What year was that?
22 A. 2011.
23 Q. How did you meet him?
24 A. He was in my class.
25 Q. Do you remember what part of the year you met

1 him?
2 A. It was spring semester.
3 Q. Do you remember what class it was?
4 A. It -- Art is Film, Film is Art. Something
5 like that.
6 THE REPORTER: Can you say that again?
7 I just didn't hear you.
8 THE WITNESS: Which part?
9 THE REPORTER: The part with --
10 MR. KROMPECHER: The class.
11 THE WITNESS: -- what class you took.
12 MR. KROMPECHER: What class --
13 THE WITNESS: Oh, the class. It was an
14 art class. Something like Art as Film,
15 or Film as Art.
16 BY MR. KROMPECHER:
17 Q. Did you only have one class with Evan?
18 A. Yes.
19 Q. When did your spring semester start at
20 Midland's Tech in 2011?
21 A. January.
22 Q. When was the first time you saw Evan outside
23 of the classroom?
24 A. On just a hanging out occasion? Or as class
25 ended we were walking out to the same car? What do you

1 mean?
2 Q. As -- let me rephrase the question and give
3 you some more -- a better idea of what I'm asking.
4 Aside from anything related to school, so anything in a
5 classroom or at a parking lot, when was the first time
6 that you saw Evan and spent any amount of time with
7 him, outside of the classroom environment?
8 A. It was the week before.
9 Q. Can you tell me about the first time you
10 spent time with Evan outside of the classroom
11 environment?
12 A. Yeah. We went to Pine Island to swim.
13 Q. Who went?
14 A. It was me, him, and my fiance Andrew.
15 Q. Was Andrew your fiance at that time?
16 A. He was my boyfriend at the time.
17 Q. Okay. Did Andrew know Evan before that day?
18 A. Yes.
19 Q. Did Andrew attend Midland's Tech with you?
20 A. Yes.
21 Q. Was Andrew in the same Arts class where you
22 met Evan?
23 A. No.
24 Q. When did Andrew meet him for the first time?
25 A. It -- after class. Sometimes we go to the

1 computer lab and Andrew met me there, and Evan happened
2 to be sitting with me.

3 Q. Can you tell me about — strike that.

4 Was there only one prior occasion that you
5 were at Pine Island Club with Evan before June 15,
6 2011?

7 A. No, it was just that one time.

8 Q. So one time you were there with Evan and
9 Andrew, and then the next time that you and Evan were
10 there was the evening that he drowned. Right?

11 A. Yes.

12 Q. Okay. The first time that you were at Pine
13 Island Club with Andrew and Evan, can you tell me about
14 that occasion?

15 A. We just swam around.

16 Q. Do you know what day of the week it was?

17 A. I think it was the weekend.

18 Q. Do you know what time you all arrived?

19 A. I'm not sure.

20 Q. Did you arrive in the same vehicle?

21 A. I think we drove together, yeah.

22 Q. Do you know where you all met before driving
23 to the Pine Island Club?

24 A. Probably Beef O' Brady's.

25 Q. What is Beef O' Brady's?

1 A. It's — so going to Pine Island Cloud — Pine
2 Island Club, I don't know the road name, but there's a
3 Publix, Beef O' Brady's, all that.

4 MR. STEGMAIER: Route 6.

5 THE WITNESS: Route 6?

6 MR. STEGMAIER: Route 6.

7 BY MR. KROMPECHER:

8 Q. Is Beef O' Brady's a bar?

9 A. I think it's like a restaurant and there is,
10 like, a bar there.

11 Q. Do you know what time you all arrived at the
12 Pine Island Club?

13 A. I don't know the exact time.

14 Q. Do you know approximately what time of day?

15 A. It had to be around noon. Afternoon.

16 Q. How do you know that?

17 A. It was sunny outside.

18 Q. Did you work that day?

19 A. I don't think so.

20 Q. Was there someone at the guardhouse that day?

21 A. I can't remember.

22 Q. Were you all going to meet anybody else at
23 the Pine Island Club that day?

24 A. No.

25 Q. Before arriving at the Pine Island Club, what

1 was the plan about what you all were going to do when
2 you got there?

3 A. Just to swim

4 Q. Where were you going to swim?

5 A. The beach area.

6 Q. Whose car were you in?

7 A. I can't remember.

8 Q. Where did you all park?

9 A. Right in front of the beach area

10 Q. And so we are on the same page, I'm still
11 asking you about the first time you went there.

12 A. Yes.

13 (PLAINTIFF'S EXHIBIT NO 7; MARKED FOR IDENTIFICATION)

14 MR. STEGMAIER: Thank you.

15 Q. Okay. Let me hand you what I've marked as
16 Plaintiff's Exhibit No. 7. Will you take a look at
17 that for me. The location where you all parked the
18 first time you went to Pine Island Club, with Evan and
19 Andrew, to swim at the swimming beach, is that parking
20 lot visible on Plaintiff's Exhibit No. 7?

21 A. Yes.

22 Q. Okay. Is there a white SUV parked there?

23 A. Yes, I guess that's an SUV

24 Q. Is there a white car parked there?

25 A. Yes

1 Q. Okay. Is that where you normally parked when
2 you went to the swimming beach?

3 A. Yes.

4 Q. How long were you all there that day?

5 A. Maybe an hour or two.

6 Q. Did you bring anything with you to eat or
7 drink?

8 A. No, I don't remember that. I don't think so.

9 Q. During the time that you were there, did
10 anybody else arrive that you knew?

11 A. No

12 Q. Was there anybody else there at the swimming
13 beach while you were there with Andrew and Evan?

14 A. Yes

15 Q. Did you know any of them?

16 A. No.

17 Q. What did you all do on that occasion when you
18 were at the swimming beach?

19 A. We swam around in the water

20 Q. Did you swim anywhere outside of the rope
21 line?

22 A. No.

23 Q. I want to make sure that we're using the same
24 — the same terms.

25 MR. STEGMAIER: Thank you.

1 how you would normally leave the island, if you had
2 parked at the parking lot you can see on Plaintiff's
3 Exhibit No. 7?

4 A. Yeah. So when you get out of the beach area,
5 you just back up and you're on this road, right here,
6 and then you would take a left and then you can just go
7 straight out –

8 Q. Okay.

9 A. – the causeway,

10 Q. Okay. Did Evan appear to have any problems
11 in the water while he was there with you and Andrew?

12 A. No

13 Q. Did any of you three have any difficulties in
14 the water that afternoon?

15 A. No

16 Q. Did you see anybody patrolling the swimming
17 beach that afternoon?

18 A. No.

19 Q. Have you ever used the restrooms that are
20 near the parking lot that you can see on Exhibit No. 7?

21 A. You mean three?

22 Q. Near the parking lot for the swimming beach,
23 there's, I guess, a hut. There is a men's and women's
24 restroom. Do you know what I'm talking about?

25 A. Yes.

1 Q. Okay. Is that the restroom that you would
2 normally use when you were at the swimming beach?

3 A. Yes.

4 Q. Okay. Have you ever seen any floatation
5 devices of any sort hanging on or near that restroom
6 building?

7 A. No.

8 Q. Did you know Evan – strike that.

9 Before Evan drowned, did you know anything
10 about his family?

11 A. No.

12 Q. Have you met his family?

13 A. No.

14 Q. Siblings?

15 A. No.

16 Q. Did you know what his hobbies were?

17 A. I know he liked to work out.

18 Q. Anything else that you knew of?

19 A. Not really.

20 Q. Okay. How about any activities, sports or
21 otherwise, that he enjoyed doing, that you knew of,
22 before June 15, 2011?

23 A. No, not that I can recall.

24 Q. Do you know if Evan had been to the Pine
25 Island Club before the day he was there with you and

1 Andrew?

2 A. I don't know.

3 Q. That never came up?

4 A. Uh-uh.

5 Q. Did you know anything about Evan's swimming
6 experience?

7 A. No.

8 Q. Did you know what his job was then?

9 A. I think he worked at Kroger.

10 Q. Did you know if he was preparing to join the
11 police academy?

12 A. Yes

13 Q. What was the relationship like between Evan
14 and Andrew?

15 A. They were friends.

16 Q. By what you could see, did they have any
17 conflict or any disagreements?

18 A. No.

19 Q. Was that the same during the entire course
20 that they knew each other?

21 A. Yes.

22 Q. I'm going to shift gears and ask you
23 questions about June 15, 2011.

24 A. Okay.

25 Q. What did you do that day before you all went

1 to Pine Island?

2 A. I worked.

3 Q. At the Dollar Store?

4 A. Yes.

5 Q. Do you know what shift you worked that day?

6 A. I was mid-shift, so 1:30 to 6:30.

7 Q. And where was that store located?

8 A. It's on Dutch Fork Road, I believe.

9 Q. Dutch Fork Road?

10 A. Yes.

11 Q. Before you went into work that day, did you
12 have the plans of going to the Pine Island Club after
13 work?

14 A. Yes.

15 Q. Who did you have plans to go with?

16 A. Evan.

17 Q. Was Andrew ever a part of those plans?

18 A. At one time, but he had to work.

19 Q. And where was Andrew working at that time?

20 A. Cracker Barrel.

21 Q. How far was Cracker Barrel from Pine Island?

22 A. Fifteen-ish [ph] minutes.

23 Q. At what point did Andrew let you know that he
24 had to work that day?

25 A. I'm not sure.

1 **Andrew?**

2 A. I don't know.

3 Q. That never came up?

4 A. Uh-uh.

5 Q. Did you know anything about Evan's swimming
6 experience?

7 A. No.

8 Q. Did you know what his job was then?

9 A. I think he worked at Kroger.

10 Q. Did you know if he was preparing to join the
11 police academy?

12 A. Yes.

13 Q. What was the relationship like between Evan
14 and Andrew?

15 A. They were friends.

16 Q. By what you could see, did they have any
17 conflict or any disagreements?

18 A. No.

19 Q. Was that the same during the entire course
20 that they knew each other?

21 A. Yes.

22 Q. I'm going to shift gears and ask you
23 questions about June 15, 2011.

24 A. Okay.

25 Q. What did you do that day before you all went

- 1 Q. When did you and Evan agree to go to the Pine
2 Island Club?
- 3 A. I think the -- when we went the previous
4 occasion.
- 5 Q. So on the previous occasion, did you all come
6 to some general agreement that you'd go again some days
7 later?
- 8 A. Yes.
- 9 Q. I'll represent to you that June 15, 2011 was
10 a Wednesday.
- 11 A. Okay.
- 12 Q. Does that help you remember when was the last
13 time you were there with Evan and Andrew?
- 14 A. Not really. I know it was like a week-ish
15 [ph] -- not even a week before.
- 16 Q. Okay. That Wednesday, June 15, 2011, did you
17 and Evan have communications through text messages
18 before you went to Pine Island Club?
- 19 A. Yes.
- 20 Q. Okay. Can you tell me what you all were
21 talking about?
- 22 A. It was just saying like, Hey, are you still
23 coming, essentially.
- 24 Q. Scheduling type things?
- 25 A. Yes.

- 1 Q. Was Evan working that day?
- 2 A. I don't know.
- 3 Q. Before you got off work at around 6:30 p.m.,
4 what was your understanding of the plan?
- 5 A. To meet at Beef O' Brady's.
- 6 Q. Okay. Why did you all pick that location?
- 7 A. I think because it was mid-way.
- 8 Q. Mid-way between what?
- 9 A. Just a meeting point, like mid-way from his
10 house and my house, to get to Pine Island.
- 11 Q. All right. Can you tell me what happened
12 from the time you got off work at the Dollar Store
13 until you all arrived at Pine Island Club?
- 14 A. Sure. So I got off, I -- I texted him, I
15 think, and we got it set up where we'd meet at Beef O'
16 Brady's. And then around 7:00, I think, I met him
17 there and we got in my car, we drove to Pine Island
18 Club, and we just swam around.
- 19 Q. Okay. How far was it from the Dollar Store
20 to Beef O' Brady's?
- 21 A. Ten minutes.
- 22 Q. And how far was it from Beef O' Brady's to
23 the Pine Island Club?
- 24 A. Maybe another 10 minutes.
- 25 Q. Okay. When you arrived at Beef O' Brady's

- 1 was Evan already there?
- 2 A. Yes.
- 3 Q. Can you remember anything about what happened
4 from the time you arrived at Beef O' Brady's, until you
5 all left for the Pine Island Club?
- 6 A. Yeah. I met him inside. He was at the bar.
- 7 Q. What was he doing?
- 8 A. He was drinking with a friend.
- 9 Q. Do you know who he was with?
- 10 A. I don't know the guy.
- 11 Q. Was it somebody that you recognized from
12 school?
- 13 A. No.
- 14 Q. Was it your understanding that they were
15 friends?
- 16 A. Yeah. They were talking, so I assumed they
17 were.
- 18 Q. How long were you there before you and Evan
19 left?
- 20 A. Just a few minutes.
- 21 Q. And then it's my understanding that you all
22 left in your vehicle. Is that correct?
- 23 A. Yes.
- 24 Q. Is the Beef O' Brady's next to the Publix?
- 25 A. Yes.

- 1 Q. Do you know where Evan's vehicle was?
- 2 A. I think he parked right in front of Beef O'
3 Barley's.
- 4 Q. Why did you all take your vehicle?
- 5 A. I think because I had the card, so it was
6 just easier coming up to the gatehouse just to show it
7 instead of, you know, reaching over and grabbing it and
8 all of that stuff.
- 9 Q. Where was Evan in your vehicle when you were
10 driving up to the Pine Island Club?
- 11 A. The passenger seat.
- 12 Q. What kind of a vehicle were you driving?
- 13 A. A 2006 Chevy Cobalt.
- 14 Q. Is that an SUV or a sedan?
- 15 A. No, it's a car.
- 16 Q. Okay. Four doors or two doors?
- 17 A. Two doors.
- 18 Q. Did you bring anything with you?
- 19 A. I think a towel and just my sandals.
- 20 Q. Did he -- did you have a beach bag with you?
- 21 A. I don't remember.
- 22 Q. Did Evan bring anything with him in your car?
- 23 A. I think so.
- 24 Q. Do you remember what he had with him?
- 25 A. I think he had his wallet -- his wallet, his

1 we were still standing.

2 Q. Do you remember, approximately, how tall Evan
3 was?

4 A. I think he was a little taller than me.

5 Q. I'm sorry, how tall are you again?

6 A. I'm 5'6.

7 Q. Okay. Were you two within arm's length of
8 each other?

9 A. I would say yes.

10 Q. Okay. Is there any picture, 7 through 7II,
11 that you can use to mark or identify the general area
12 where you and Evan were when you first got in there and
13 were standing in the water?

14 A. I guess 7A works. Do you want me to circle
15 it or —

16 Q. Yeah, you could circle it, that's fine. And
17 how long — here, why don't you put a one or something
18 next to that circle.

19 A. Sure.

20 Q. How long were you and Evan, generally, in the
21 area that you've circled and marked with a "1" on
22 Plaintiff's Exhibit No. 7A?

23 A. I think about 10 minutes.

24 Q. After about 10 minutes, what did you all do?

25 A. Then we swam out to the buoy line.

1 Q. I'm sorry, I'm just trying to kind of mark it
2 on my side, so I can see.

3 A. Uh-huh.

4 Q. Then you swam directly out to the buoy line?

5 A. Yes.

6 Q. Okay. Do you remember doing that,
7 specifically?

8 A. Yes.

9 Q. Okay. Was Evan swimming in front of you,
10 next to you, or behind you?

11 A. I think he was sort of next and behind.

12 Q. Okay. How far did you all have to swim from
13 where you couldn't reach anymore until you got to the
14 buoy line?

15 A. I'm not sure the length.

16 Q. Was it a short swim, like 10 or 15 feet, or a
17 longer swim, like 30 or 40'?

18 A. Probably like the 15 feet.

19 Q. Okay. And then what happened?

20 A. And then we got to the buoy line and we kind
21 of sat there and talked some more.

22 Q. Let's see. Do any of the pictures you have
23 in front of you, 7 through 7II, give a good picture of
24 where you were on the buoy line? Maybe this will help.

25 (PLAINTIFF'S EXHIBIT NO. 8A; MARKED FOR IDENTIFICATION)

1 MR. STEGMAIER: Thank you.

2 BY MR. KROMPECHER:

3 Q. Let me hand you what I've marked as Exhibit
4 No. 8A, as in apple. Is the location of where you and
5 Evan were on the buoy line depicted in Plaintiff's
6 Exhibit No. 8A, as in apple?

7 A. I think so.

8 (PLAINTIFF'S EXHIBIT NO. 8C; MARKED FOR IDENTIFICATION)

9 Q. Okay. Let me also hand you another one.
10 Maybe it's easier. Let me hand you what I've marked as
11 No. 8C, as in cat. And I don't mind which one you use.

12 A. Uh-huh.

13 Q. But can you use one of those, either 8A or
14 8C, to identify approximately where you and Evan were
15 on the buoy line?

16 A. Yeah, 8C works.

17 Q. Okay. I think — if you're done with that, I
18 can give you another one.

19 A. Oh, yeah. Here it is.

20 Q. Okay.

21 A. I think right in this general direction.

22 Q. Okay. All right. That's fine. You can turn
23 it back around. Thank you. Were you two hanging on
24 the buoy line?

25 A. Not hanging. Because on the line, it's kind

1 of like a stiff pole and you can kind of like sit,
2 float there. So we were sitting on it.

3 Q. Okay. Can you explain that to me a little
4 bit better?

5 A. Yeah. So you see the orange floatation
6 devices?

7 Q. Yeah. I'm going to try and get you a closer
8 up picture.

9 A. Okay.

10 (PLAINTIFF'S EXHIBIT NO. 4S; MARKED FOR IDENTIFICATION)

11 Q. One second. Here you go. This may help.
12 Let me hand you what I've marked as Exhibit No. 4S, as
13 in Sam, and I'll also hand — I think that's probably
14 the closest one that I have. Can you take a look at
15 that and tell me if that helps you explain how it was
16 that you two were standing or sitting on that rope
17 line?

18 A. Yes.

19 Q. Okay.

20 A. You can —

21 Q. Why don't you use Exhibit 4S and explain it
22 to me?

23 A. Okay. So you see the orange, and then
24 between each of the orange buoys there's like a white
25 pipe, kind of, cable. We were sitting on that

1 **Q. Did you see anybody else come to the**
2 **playground area?**

3 A. No.

4 **Q. Did you see anybody else come to the beach**
5 **area?**

6 A. No.

7 **Q. Have you or Evan left anything on the beach**
8 **area itself?**

9 A. I think just our clothes and our towels and
10 stuff.

11 **Q. Okay. After sitting on the rope line, what**
12 **did you and Evan do?**

13 A. We talked. And, one time, we did go down and
14 touch the bottom.

15 **Q. And after that, what did you all do?**

16 A. Then that's when we started talking about the
17 dock and how it would be fun to go jump off of it.

18 MR. KROMPECHER: Okay. Let me just take
19 a quick break. I have to use the
20 restroom real quick. I'll be right
21 back.

22 (OFF THE RECORD / 3:57 P.M. - 4:01 P.M.)

23 BY MR. KROMPECHER:

24 **Q. All right. We are back on the record. When**
25 **you and Evan arrived to the beach, did you see any**

1 signs?

2 A. Yes. There are signs on the beach area.

3 Q. How many signs did you all see?

4 A. I know there's two.

5 Q. What do the signs say?

6 A. Essentially, swim at your own risk.

7 Q. I think if you look at 7E -- do you have that
8 in front of you? Or 7F, also, if that has it.

9 A. Yes.

10 Q. I think 7E is closer up.

11 A. Yes.

12 Q. Is it? Okay. Is that the sign, or is that
13 one of the signs you saw on the beach that day?

14 A. Yes.

15 Q. And how long had that sign been on that
16 beach?

17 A. I think all my life.

18 Q. To the best of your memory, you've always
19 recalled there being two signs on the beach?

20 A. Yes.

21 Q. And to the best of your memory, have those
22 signs looked like the one depicted on the right side of
23 7E?

24 A. Yes.

25 Q. Have you ever seen anything hanging from

1 A. No.

2 Q. How about dock Number B?

3 A. No.

4 Q. So any occasion you've had to see anybody
5 else swimming in the waters of Lake Murray was confined
6 to dock Number C?

7 MR. STEGMAIER: Object to the form.

8 A. Yes.

9 Q. I think the last part we left off, you were
10 saying that you and Evan were on the rope line and
11 started to talk about jumping off the dock?

12 A. Yes.

13 Q. Can you tell me about that conversation?

14 A. Yeah. While we were sitting on the rope
15 line, just talking, we were looking at the dock and he
16 said, maybe we should go over there. And I seemed
17 hesitant, but I didn't see anything really wrong with
18 it because we both seemed like we could swim and all
19 that. So I was like, yeah, I guess so. And there
20 wasn't any boats coming in and out of the area where it
21 was crazy.

22 Q. All right. Was it usual for you to see boats
23 coming in and out of that dock area?

24 A. Sometimes, yes.

25 Q. Before you all got off the rope line, what

1 was the weather like?

2 A. It was overcast.

3 Q. Was it windy?

4 A. Maybe a little, but I don't remember it being
5 very strong or anything.

6 Q. Was it drizzling or raining?

7 A. No.

8 Q. Had you heard any thunder?

9 A. No.

10 Q. Had you seen any lightning?

11 A. No.

12 Q. When you were on the rope line, were you able
13 to see anybody in the pool area?

14 A. No.

15 Q. Did you look?

16 A. I don't think so.

17 Q. Was it dark enough that there was artificial
18 light at the island?

19 A. No.

20 Q. Okay. And is there artificial light posts
21 around the island?

22 A. Yes.

23 Q. At some certain time, when it gets dark
24 enough, those lights go on. Correct?

25 A. Yes.

1 Q. Okay. How did you all get from the rope line
2 to the dock?

3 A. We swam back to the beach area, on the sand,
4 and then we walked around by the shelters onto the
5 dock.

6 Q. Okay. When you walked around, did you walk
7 between the shelter and the water, or did you walk
8 between the shelter and the paved drive?

9 A. Between the shelter and the paved drive.

10 Q. Okay. I'm going to - before I hand you some
11 more pictures, will you look through 7 - 7A through
12 7H. And I will tell you these pictures were taken a
13 couple of months ago -

14 A. Uh-huh.

15 Q. - during what's called a site inspection.
16 So these were not taken in 2011.

17 A. Uh-huh.

18 Q. Will you take a look at those pictures, one
19 at a time, and tell me if the picture looks the same
20 that you remember that area looking in June of 2011?
21 We'll just start with 7.

22 A. Yeah. Yeah, it looks the same.

23 Q. Okay. 7A?

24 A. Looks the same.

25 Q. 7B?

1 A. Looks the same.

2 Q. 7C?

3 A. Looks the same.

4 Q. I think there's a 7D somewhere in here?

5 A. I got it.

6 Q. Okay. 7D?

7 A. Yeah, looks the same.

8 Q. 7E?

9 A. It looks the same.

10 Q. 7F?

11 A. Looks the same.

12 Q. 7G?

13 A. Looks the same.

14 Q. 7H?

15 A. It looks the same.

16 Q. And 7I?

17 A. It looks the same.

18 Q. And 7II?

19 A. It looks the same.

20 Q. Okay. I'm going to give you some pictures
21 that, basically, kind of walk from the beach to the
22 dock area?

23 A. Okay.

24 Q. Just give me a second. I'm going to have to
25 show them to your attorney first, so give me a second

1 to find them.

2 A. Okay.

3 (PLAINTIFF'S EXHIBIT NO. 9; MARKED FOR IDENTIFICATION)

4 (PLAINTIFF'S EXHIBIT NO. 9A; MARKED FOR IDENTIFICATION)

5 (PLAINTIFF'S EXHIBIT NO. 9B; MARKED FOR IDENTIFICATION)

6 Q. Okay. The first three I've marked - I've
7 previously marked as Exhibit No. 9, 9A and 9B. And
8 I'll ask you to also look on Exhibit No. 3. Do you
9 know the letters of the shelters or the numbers of the
10 shelters? I'm sorry

11 A. Not off the top of my head.

12 Q. Okay. If you look at Exhibit No. 3, seven is
13 the shelter closest to the beach, and then eight, and
14 then nine is a long one that's divided up into two
15 halves.

16 A. Uh-huh.

17 Q. And then 9C is a separate shelter. So you
18 use that, No. 3, to help you a little bit. These
19 pictures should mark the shelter numbers. Here's 9,
20 9A, 9B. Okay. I'm also going to hand you four more.

21 (PLAINTIFF'S EXHIBIT NO. 8L; MARKED FOR IDENTIFICATION)

22 (PLAINTIFF'S EXHIBIT NO. 8M; MARKED FOR IDENTIFICATION)

23 (PLAINTIFF'S EXHIBIT NO. 8N; MARKED FOR IDENTIFICATION)

24 (PLAINTIFF'S EXHIBIT NO. 8O; MARKED FOR IDENTIFICATION)

25 MR. STEGMAIER: Thank you.

1 BY MR. KROMPECHER:

2 Q. I have marked these Exhibit 8L, 8M, 8N, as in
3 Nancy, and 8O, as in octopus. Let me hand those to
4 you. And I'll represent to you that the dock you see
5 on 8L -

6 A. Uh-huh.

7 Q. - that's the dock where you and Evan jumped
8 off of. So to give you some perspective.

9 A. Okay.

10 Q. Will you look through those pictures and tell
11 me if any of those pictures help you explain how it was
12 that you walked from the beach to the dock?

13 A. Yeah. So -

14 Q. And I think - do you have a No. 9 in front
15 of you? I think you do. Yeah, it's -

16 A. I've got 9A.

17 Q. Okay. That may help you as well.

18 A. Yeah, So from Exhibit No. 9, we got out on
19 the sand and we went around the outside. And you can
20 see the swing right there.

21 Q. Yeah. On Exhibit No. 9 on the right-hand
22 side?

23 A. Yes.

24 Q. Okay.

25 A. And I think that was shelter 9A/9B, the one

1 (PLAINTIFF'S EXHIBIT NO. 8E; MARKED FOR IDENTIFICATION)

2 (PLAINTIFF'S EXHIBIT NO. 8F; MARKED FOR IDENTIFICATION)

3 (PLAINTIFF'S EXHIBIT NO. 8G; MARKED FOR IDENTIFICATION)

4 Q. Okay. Let me hand you what I've marked as
5 Exhibit No. 8, 8A, 8B, as in boy, 8C, as in cat, 8D, as
6 in David, 8E, as in Edward, 8F, as in Frank, and 8G, as
7 in good.

8 A. Okay. I think I have 8A and C right here.

9 Q. Will you put those in order for me, please?

10 A. Sure.

11 Q. Let me direct your attention to 8B, as in
12 boy.

13 A. Okay.

14 Q. Will you look on the left-and side of that,
15 and there's not really a path, but there's an area
16 between the trees. Would that have been where you
17 walked through to get past the shelters to the dock?

18 A. Yes.

19 Q. Okay. And there's a sign on the bottom of
20 8B, as in boy, and I'll represent to you if you look at
21 8A and 8B, that's the sign that you see at the bottom.

22 A. Yes.

23 Q. So that sign is right in front of the dock?

24 A. Yes.

25 Q. Okay. Let me direct your attention to the

1 sign, to Exhibit No. 8. Was that sign there on June
2 15, 2011?

3 A. I think so.

4 Q. Okay. Do you have an independent memory of
5 there being a sign next to the dock?

6 A. Yes.

7 Q. Okay. Would it be fair to say that exactly
8 what the sign said is not something you remember?

9 A. I remember it was essentially like the no
10 fishing, sunbathing, or swimming.

11 Q. Okay. So the top part of it?

12 A. Yes, that's right.

13 Q. The part that's yellow on your exhibit?

14 A. Yes.

15 Q. Okay. Do you remember whether the bottom
16 part of that sign was there on June 15, 2011?

17 A. I can't remember.

18 Q. When you and Evan walked from the beach,
19 behind the swings, next to the shelters, and to the
20 dock area --

21 A. Uh-huh.

22 Q. During that time, did you see anyone else?

23 A. That's when we saw the Ferguson's, I think
24 there name is?

25 Q. The --

1 direction, that you can recall?

2 A. I think they acknowledged that we were

3 walking past, but that was it.

4 Q. Was anybody else with them?

5 A. Not that I recall.

6 Q. Did you see anyone in the shelters?

7 A. No.

8 Q. Aside from Kim and Evan McPherson, either in

9 or around that vehicle you described, did you see

10 anyone else during your walk from the swimming beach to

11 the dock?

12 A. No.

13 Q. Before we look at the pictures, do you

14 remember there being any floatation devices hanging in

15 front of, near, or on the dock?

16 A. No.

17 Q. Do you remember we looked at the pictures in

18 the storage room of the ring buoy that was white –

19 A. Yeah.

20 Q. – and then we looked at a linear, red

21 floatation device, the two orange cubes, and that

22 yellow long board. You can look at it again.

23 A. Yeah, I remember.

24 Q. Okay. Did you see anything like those items

25 hanging anywhere on, next to, or near the dock?

1 A. No.

2 Q. Okay. Aside from the sign you just spoke

3 about –

4 A. Uh-huh.

5 Q. – do you remember seeing any other signs at,

6 on, or near the dock?

7 A. Not that I recall.

8 Q. Was this the first time that you had stepped

9 foot on the dock?

10 A. No. I'd done it in previous years.

11 Q. Okay. And I think I remember your prior

12 testimony. Was this the first time you had ever jumped

13 off the dock?

14 A. Correct.

15 Q. Okay. But you had been on the dock before?

16 A. Yes.

17 Q. Okay. Will you look at picture – I'm sorry,

18 Exhibit No. 8E, as in Edward. Has the dock, as long as

19 you can remember, always looked that way?

20 A. Yes.

21 Q. Would you agree with me that the first half

22 of the dock is not floating, and then there is, like, a

23 bridge ramp, and then there's the last part of the dock

24 that is floating?

25 A. Yes.

1 (PLAINTIFF'S EXHIBIT NO. 8H, MARKED FOR IDENTIFICATION)

2 (PLAINTIFF'S EXHIBIT NO. 8I, MARKED FOR IDENTIFICATION)

3 (PLAINTIFF'S EXHIBIT NO. 8J, MARKED FOR IDENTIFICATION)

4 (PLAINTIFF'S EXHIBIT NO. 8K, MARKED FOR IDENTIFICATION)

5 MR. STEGMAIER: Thank you

6 Q. Okay. Let me hand you what I've marked as

7 Plaintiff's 8H, as in house, 8I, 8J, and 8K. Could you

8 take a look at that?

9 A. Sure.

10 Q. As far as you can remember, is that how the

11 dock has always looked?

12 A. Yes.

13 Q. Do you know what a cleat is on a dock?

14 A. Is that where you hook the boat up?

15 Q. Yes. It's a metal thing that you tie the

16 boat line to.

17 A. Yes.

18 Q. Okay. As far as you can remember, has there

19 always been boat cleats on that dock?

20 A. Yes.

21 Q. Okay. Do you have 8G in front of you? I

22 think it's – no.

23 A. I've got – this one?

24 Q. Yeah. Do you see that sign on H – on 8G?

25 A. Yes.

1 Q. Do you recall that sign being there on June

2 15, 2011?

3 A. I think so, but I don't really remember.

4 Q. Okay. Did you and Evan talk about anything

5 from the time you left the rope line, swam back to the

6 beach, walked behind the swings, and arrived at the

7 dock, that you can remember?

8 A. Nothing of importance.

9 Q. Okay. Did you have any more discussions

10 about what you were going to do when you got to the

11 dock?

12 A. Not that I recall.

13 Q. Okay. When you got to the dock, can you tell

14 me what happened? And feel free to use the pictures to

15 help me understand where you were on the dock.

16 A. Yeah. So we got on the dock and it was – in

17 8J, that is where we had stopped, between the middle

18 pole. And there is the last pole, so three poles in a

19 row on each side.

20 Q. Just let me get to that real quick. Sorry.

21 8J, right?

22 A. Yeah, and 8E.

23 Q. And 8E?

24 A. Yeah.

25 Q. Okay. So if I put 8E and 8J together, then

1 can you tell me where it was that you two ended up on
2 the dock before you jumped off?

3 A. Yeah. So if you're looking at 8E, on the
4 left-hand side -- so if you're looking at the three
5 poles -- the three left poles, we were between the last
6 two.

7 Q. Okay. So the last two on the side of the dock
8 closest to the swimming beach?

9 A. Correct.

10 Q. Okay. Then what happened?

11 A. Then he jumped in first and I waited about 30
12 seconds so he could move out of the way and then I
13 jumped in.

14 Q. Okay. When you were walking across onto the
15 end of the dock, did you see anybody else on the
16 island?

17 A. No.

18 Q. Were you able to see over to the swimming
19 pool area to see if there were any lifeguards or
20 anybody around the pool?

21 A. I didn't look that way, no.

22 Q. Were the artificial lights on at that time?

23 A. No.

24 Q. Did you see anybody on the beach?

25 A. No.

1 30 seconds of time until he got out of your way, was he
2 kicking his legs?

3 A. I think so.

4 Q. Okay. How far away did he get from the dock
5 before you jumped in?

6 A. Maybe five feet.

7 Q. Okay. And then what happened?

8 A. And then that's when I jumped in.

9 Q. And then what happened --

10 A. Oh, and then --

11 Q. -- after you jumped in?

12 A. And then I started swimming back to the rope.

13 Q. Okay. When you all jumped off the dock and
14 started swimming back towards the rope, were you aiming
15 at a certain part of the rope or a certain part of the
16 beach?

17 A. Just the closest part of the rope that we
18 could get to.

19 Q. Where was Evan in comparison to where you
20 were?

21 A. By the time I had started swimming, he was
22 about -- a little bit behind me.

23 Q. Okay. And at some point did you pass Evan?

24 A. Yes.

25 Q. Okay. Why don't you just tell me, in your

1 own words, after you jumped in and you started to swim,
2 what it is that you remember happening?

3 A. So I swam past him going to the rope line,
4 and maybe 5-10 feet past him, that's when he started,
5 like, kind of calling my name, saying help. And I
6 thought maybe he was kidding and I kind of, like,
7 turned around while I was still swimming. And then
8 that's when I realized he was struggling.

9 So I swam back to him, and that's when I told
10 him, "Get on your back." And I tried to help him, but
11 then he grabbed onto me and he started pushing me
12 under. And then I managed to pull away from him and I
13 swam back over -- I swam to the rope trying to catch my
14 breath. And so I swam back to the rope trying to catch
15 my breath, and that's when I looked back at him and I
16 saw that he had went under the water.

17 And I tried to swim back over to him, and I
18 dove under to where he was, trying to pull him back up
19 to the surface, but I was tired, he was heavy, and I
20 couldn't. So by the time I popped back up in the
21 water, I was swimming back toward the line, and I
22 looked up to see if the people were -- the couple was
23 still there. And that's when I started screaming for
24 help.

25 Q. Okay. Let me tell you in advance of these

1 A. Yes.

2 Q. And then you tried to swim back to Evan?

3 A. Yes.

4 Q. You went under, he was heavy, you came up and
5 then you tried to go back to the rope line again?

6 A. Yes.

7 Q. Okay. I just wanted to make sure I had down
8 the back and forth. The first time that you heard Evan
9 say something that sounded like he needed help, how
10 loud was it? Do you remember?

11 A. He wasn't, like, screaming it, but it was
12 audible.

13 Q. And do you know, approximately, how far away
14 you were the first time you heard that sound?

15 A. Maybe that's when I was the five-ish [ph] or
16 so feet away.

17 Q. Okay. When you turned around and saw Evan
18 for the first time, in response to his audible sounds
19 he was making, what did he look like?

20 A. He just kind of had that panicked look on his
21 face.

22 Q. Was he swimming the crawl, like we talked
23 about before? Or was he dog paddling, or was he
24 treading water? What did he physically look like he
25 was doing?

1 A. It looked like he was treading water.

2 Q. Was his entire head out of the water?

3 A. Yes.

4 Q. Okay. Approximately, how long did it take
5 you to get back into an arms-length reach of where Evan
6 was?

7 A. Maybe a minute, less. I can't really
8 remember.

9 Q. I understand. I'm just going to ask you to
10 do your best.

11 A. Yeah.

12 Q. Was there anything about the condition of the
13 water that it was making -- I'm sorry, strike that.

14 Was there anything about the condition of the
15 water that was making it difficult for you to swim?

16 A. No. It was very smooth that day.

17 Q. Okay. So there was no waves in the water?

18 A. No.

19 Q. No current?

20 A. No.

21 Q. When you got back to Evan the first time,
22 were you close enough where you could touch him?

23 A. Yes.

24 Q. Okay. I may characterize it as a struggle
25 between you two, but how long did you and him stay

1 within an arm-length before you turned around again and
2 went back towards the line?

3 A. I don't know. Maybe a minute, two. It felt
4 like forever. I'm not sure.

5 Q. Can you explain to me what your efforts were
6 at that time; the first time you went back and you were
7 within an arms reach of Evan?

8 A. I was -- when I took swimming lessons, I had
9 always been told to swim on your back when you got in,
10 like, that situation. So I was just trying to relay
11 that to him, so maybe he could, you know, figure it
12 out, calm down, so that he could manage to get back to
13 the rope.

14 Q. Okay. So you were speaking to Evan?

15 A. Yes.

16 Q. Okay. Did you have occasion to touch Evan at
17 that point in time?

18 A. I don't recall me touching him, but he had
19 touched me.

20 Q. Was he reaching out for you?

21 A. Yes.

22 Q. Was he continuing to say anything?

23 A. I don't -- like, help, but I don't really
24 remember him saying much.

25 Q. Okay. After a period of time, you turned

1 we have to mark anything else on that? Can you mark on
2 Exhibit No. 7 where your stuff was on the beach?

3 A. I think it was right around here.

4 Q. Okay. You can just write "stuff."

5 A. Okay.

6 Q. Who did you go back to the beach with to
7 gather your items?

8 A. I think it was just her and me.

9 Q. Once you gathered your items, what happened
10 next?

11 A. Then we just sat at the shelter and waited.

12 Q. Did you return to the shelters 9A and B, the
13 larger ones?

14 A. Yes.

15 Q. Okay. Did it start raining at some point?

16 A. Yes.

17 Q. Do you remember when it started to rain?

18 A. I think it was like a little after we had got
19 back to the shelters, 9A and B.

20 Q. Okay. Did the wind ever pick up, that you
21 remember?

22 A. I think it did a little after it started
23 raining.

24 Q. Did you hear thunder?

25 A. I don't recall thunder.

1 Q. Did you see lightning?

2 A. No.

3 Q. As long as you were by the water that
4 evening, did you ever see, observe, anything about the
5 water that had changed?

6 A. I know it started getting a little rough at
7 that point, when the storm had rolled in.

8 Q. Okay. At what point -- when you say the
9 storm had rolled in, at what point during the course of
10 the evening do you believe that the storm had rolled
11 in?

12 A. Like time-wise?

13 Q. Yeah. So in the events that we just talked
14 about --

15 A. Yeah.

16 Q. -- at what point in time did you believe the
17 storm started to roll in?

18 A. Just a little after we had got back to that
19 shelter.

20 Q. Once you got your items from the beach?

21 A. Yes. Yeah.

22 Q. Okay. What else can you tell me about the
23 condition of the sky, the air, the water, that you
24 haven't already told me, once the storm rolled in?

25 A. Not -- I mean, the clouds got a little bit

1 Q. That's good. And I think he was also a
2 candidate for law enforcement, too, as well?

3 A. Yes.

4 Q. All right. So you knew him, at that point in
5 time, to be at least 21. So that would obviously make
6 him an adult. Correct?

7 A. Correct.

8 Q. Now you went to Dutch Fork. Right?

9 A. Yes.

10 Q. But was he from Irmo?

11 A. I want to say yes.

12 Q. Okay. So do you know where he lived,
13 approximately, in relation to Beef O' Brady's and Route
14 6?

15 A. No.

16 Q. Okay. You didn't have any idea where he
17 lived, but you think he might have graduated from Irmo?

18 A. I think so.

19 Q. Okay. Based on your experience just growing
20 up in the Dutch Fork, whether you're from Irmo or
21 whether you're from Dutch Fork High School, Lake Murray
22 is just part of being from around there, isn't it?

23 A. Yes.

24 MR. KROMPECHER: Object to the form.

25 Q. Was -- was Mr. Myers familiar with Lake

1 Murray?

2 MR. KROMPECHER: Object to the form.

3 A. I think so.

4 Q. Counsel had asked you about the conditions of
5 the water at the time of the accident, and your
6 testimony was that it was smooth?

7 A. Yes.

8 MR. KROMPECHER: Object to the form.

9 Q. Is that correct?

10 A. Yes.

11 MR. KROMPECHER: Same objection.

12 Q. Was it daylight?

13 A. Yes.

14 Q. There's an intimation here, by virtue of the
15 fact that it rained afterwards, that somehow the wind
16 or the weather caused Mr. Myers to die. In your
17 opinion, is that in fact the case?

18 MR. KROMPECHER: Object to the form.

19 A. No.

20 Q. So in your opinion, it was nothing about the
21 weather or the wind or the water that would have caused
22 Mr. Myers to drown?

23 A. Correct.

24 MR. KROMPECHER: Object to the form.

25 Q. At the time of the accident, I think it's

1 been well depicted in the exhibits that you've seen
2 today, but, Mr. Myers drowned outside the roped area at
3 the swimming beach. Did he not?

4 A. Correct.

5 Q. It was actually his idea to get out of the
6 water and walk around to the dock?

7 A. Yes.

8 MR. KROMPECHER: Object to the form.

9 Q. Did you have to coerce or threaten or chide
10 him into leaving the water to go over there?

11 A. No.

12 MR. KROMPECHER: Object to the form.

13 Q. Because, again, it was his idea. Wasn't it?

14 A. Yes.

15 MR. KROMPECHER: Object to the form.

16 Q. Was there a ladder -- I'm sure you've been to
17 plenty of docks around Lake Murray where there are
18 ladders on people's docks. Was there a ladder at the
19 -- at the dock that you all jumped off of?

20 A. No.

21 Q. Would you mind -- I know there is a ton of
22 documents here, but there's a document -- there is an
23 exhibit labeled "8A."

24 A. 8A?

25 Q. And that's the document where you were asked

1 to show where Mr. Myers -- where you had lost sight of
2 Mr. Myers.

3 A. This one?

4 Q. Yes, ma'am. Counsel had asked whether Mr.
5 Myers was closer to the dock or the rope line at the
6 time you lost sight of him. And of course, we're
7 looking again -- I said 8A, but we're actually looking
8 at Exhibit 80. And that's your circle. Correct?

9 A. Yes.

10 Q. And you wrote Evan there. Correct?

11 A. Yes.

12 Q. And you were also asked a question about,
13 well, Mandy, why did you choose to swim towards the
14 rope line versus the dock. Is it fair to say that at
15 the point in time where Mr. Myers was having
16 difficulty, you were -- you were, arguably, closer to
17 the rope line?

18 MR. KROMPECHER: Object to the form.

19 A. Yes.

20 Q. Okay. And as you have drawn the circle where
21 you last saw Mr. Myers, is it fair to say that he was
22 essentially in the middle, between the dock, and the
23 rope line?

24 MR. KROMPECHER: Object to the form.

25 A. Yes.

1 Q. You had been asked about the previous visit
2 with you and Evan and Andrew the week before, did --
3 and I think you might have already been asked this
4 question, but let me ask you this; did Evan demonstrate
5 any reticence about being in the water, inability to
6 swim, or anything along those lines, as it related to
7 being in the water that week before?

8 MR. KROMPECHER: Object to the form.

9 A. No.

10 Q. Okay. In your opinion, did he know and
11 appreciate the fact that he was swimming around in a
12 lake?

13 A. Yes.

14 MR. STEGMAIER: Okay. If you'll --
15 counsel, if you'll give us about 30
16 seconds, I'll consult with co-counsel
17 and we might be done.

18 MR. KROMPECHER: Uh-huh.

19 BY MR. STEGMAIER:

20 Q. Just one last question, and I think it's
21 already been pretty well documented. But at the time
22 of the accident, it was still daylight. Wasn't it?

23 A. Yes.

24 MR. STEGMAIER: All right. Counsel,
25 that's all the questions I have.

REDIRECT EXAMINATION

BY MR. KROMPECHER:

Q. Ms. Bellamy, do you have any degree, certification or a licensure in water safety?

A. No.

Q. Do you have any experience, training, or education in human behavior analysis or human factors analysis?

A. No.

Q. Do you have any experience, training, behavior in pathology?

A. No.

Q. Have you read the autopsy in this case?

A. No.

Q. If you had available to you, anything to help you try and rescue Evan, would you have done everything possible to do so?

A. Of course.

MR. STEGMAIER: Object to the form.

Q. If you would have had the ability to use a floatation device or a life - water rescue device, would you have done so?

A. Yes.

Q. There was nothing preventing you from swimming back to that dock, was there?

A. No.

MR. KROMPECHER: Okay. I have no further questions for you. Thank you for your time.

THE REPORTER: Are you done?

MR. STEGMAIER: Just one second.

THE REPORTER: Okay.

MR. STEGMAIER: That's all the questions we've got. Thank you.

(FURTHER DEPONENT SAYETH NOT.)
(THERE BEING NOTHING FURTHER, THE DEPOSITION OF MANDY BELLAMY CONCLUDED AT 6:02 P.M.)

CERTIFICATE OF REPORTER

I, CECILIA ENGLERT, COURT REPORTER AND NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF MANDY NICOLE BELLAMY ON AUGUST 4, 2015. THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING 150 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF THE AFOREMENTIONED DEPOSITION

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT SHALL BE SEALED AND DELIVERED TO PEDRO KROMPECHER, ESQUIRE, 4010 BARRETT DRIVE, SUITE 203, RALEIGH, NORTH CAROLINA, THAT THIS ORIGINAL TRANSCRIPT SHALL BE RETAINED BY THE ABOVE PARTY, WHO WILL BE RESPONSIBLE FOR FILING SAME WITH COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE

IN WITNESS WHEREOF, I SET MY HAND AND SEAL THIS 21ST DAY OF AUGUST, 2015.

CECILIA ENGLERT, COURT REPORTER
MY COMMISSION EXPIRES JUNE 3, 2018

VERIFICATION OF DEPONENT

I, MANDY NICOLE BELLAMY, HAVE READ THE FOREGOING DEPOSITION TESTIMONY, WHICH WAS REPORTED BY CECILIA ENGLERT, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, ON AUGUST 4, 2015.

I FIND THE TRANSCRIPT OF THE DEPOSITION TO BE A TRUE AND ACCURATE TRANSCRIPT ACCORDING TO MY TESTIMONY ON THAT DATE, WITH THE EXCEPTION OF _____ CORRECTIONS AS LISTED ON THE ATTACHED ERRATA SHEET, WHICH WAS COMPLETED BY ME

MANDY NICOLE BELLAMY DATE



MR. J. P. ...
ON ...
...
...

EXHIBIT
7e.

10-1

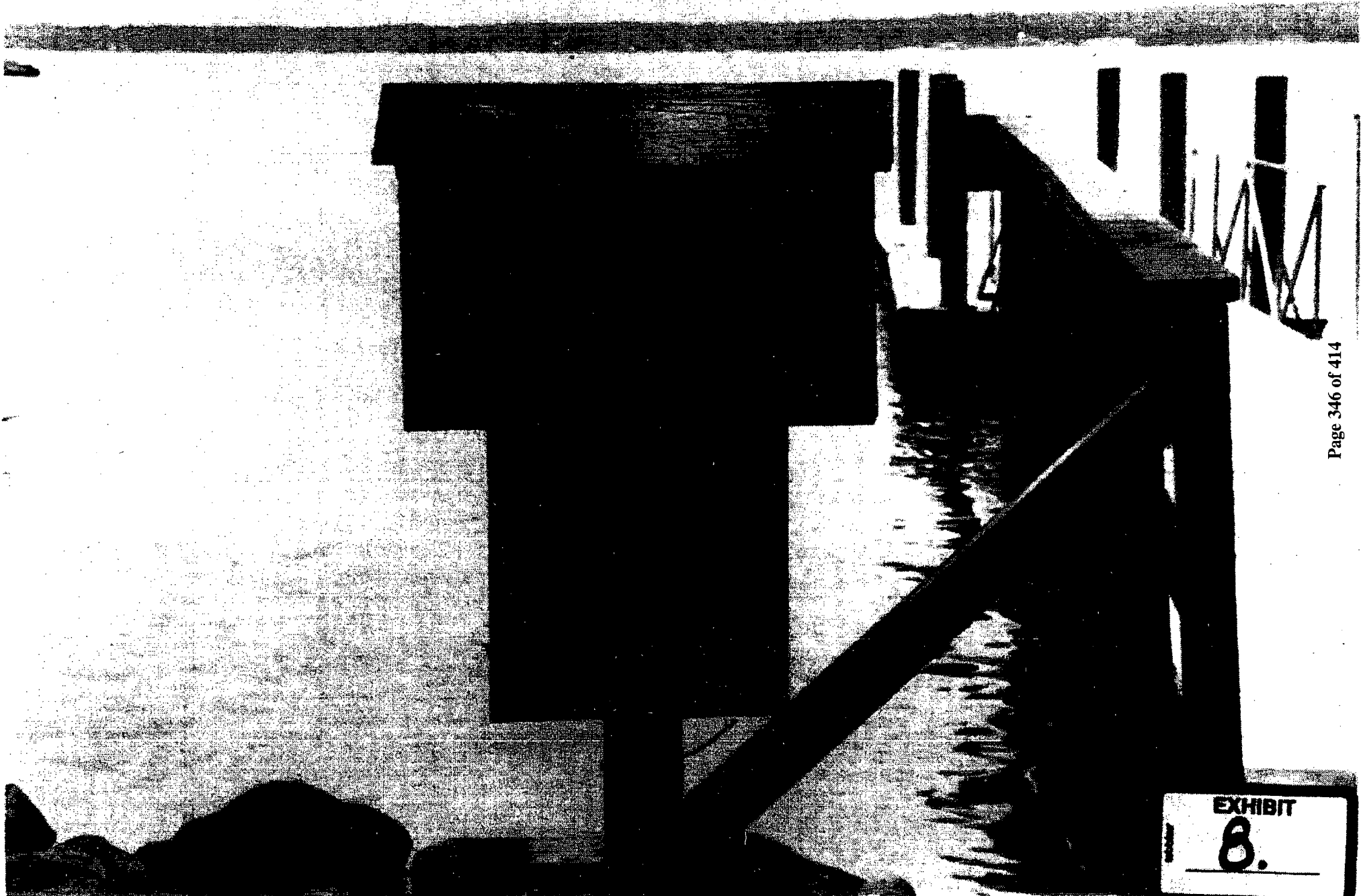


EXHIBIT
8.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of South Carolina
County of Lexington

Court of Common Pleas

Cassandra M. Myers and)
Bartholomew Myers as)
Co-Personal Representatives)
of the Estate of)
Evan M. Myers,)
)
Plaintiffs,)
v.)
)
The Consolidated Employee)
Recreation Clubs, a)
nonprofit organization a/k/a)
Pine Island Club at)
Lake Murray, et al.)
)
Defendants.)

Transcript of Record
14-CP-32-2210

December 11, 2015
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

Pedro Krompecher, Esquire
Attorney for the Plaintiffs

Christian Stegmaier, Esquire
David Kiebler, Esquire
Attorneys for the Defendants

Stacy L. Sheppard, RPR
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

(There were no witnesses.)

E X H I B I T S

NO.

DESCRIPTION

ID.

EVD.

(There were no exhibits.)

1 (The following proceedings were held on
2 December 11, 2015.)

3 **THE COURT:** All right. Let me hear from the
4 moving party, please.

5 **MR. STEGMAIER:** Good morning, sir. Christian
6 Stegmaier from Collins and Lacy. We represent the
7 defendants in this case. May I approach, sir?

8 **THE COURT:** Yes, sir.

9 **MR. STEGMAIER:** We had transmitted to chambers
10 yesterday afternoon the briefing, but in the
11 interest of saving paper, for the Court, we brought
12 our other copies and brought one for Ms. Marsh as
13 well. As well, we have copies of the cases for your
14 use too as well, sir.

15 **THE COURT:** All right.

16 **MR. STEGMAIER:** You had the opportunity on a
17 multitude of occasions, sir, to hear about this case
18 through the various status conferences that have
19 occurred, so I won't belabor the point, but
20 nevertheless let me just briefly go over the basic
21 facts of this case.

22 The date of -- this is a wrongful death
23 survival action emanating from a June 15, 2011,
24 accidental drowning at Pine Island Club here in
25 Lexington County. I'm certain that the Court is

1 more likely than not familiar with the Pine Island
2 Club. It's a private nonprofit entity. Separate
3 and distinct from the other defendants in this case,
4 which have been named as South Carolina Electric and
5 Gas, as well as SCANA, our position as articulated
6 not only in our pleadings, but as well in the
7 briefing to the Court today is that the Pine Island
8 Club, more specifically the Consolidated Employee
9 Recreation Club, is the true party in interest in
10 this case based on the pleadings.

11 The plaintiffs' decedent in this case is a
12 gentleman by the name of Evan Myers. And he was an
13 adult at the time of his death, and that's important
14 that we keep that in mind with regard to the
15 ultimate analysis and disposition of this case.
16 Mr. Myers was the guest of Mandy Bellamy, who is the
17 child of Ralph Bellamy, who is a long-term employee
18 of SCE&G.

19 As this Court is, more likely than not,
20 familiar, membership with regard to Pine Island Club
21 is premised upon your employment or affiliation with
22 SCE&G and/or SCANA. So Mandy Bellamy, by virtue of
23 the fact that she was a child of a member, was --
24 had permission, was entitled to come onto Pine
25 Island. Mr. Myers was his guest -- was her guest.

1 Mr. Myers had been to the club before as articulated
2 not only in the pleadings in this case, but as well
3 as recognized by the plaintiffs' response to our
4 motion for summary judgment.

5 Long story short is the reason why Mr. Myers
6 and Ms. Bellamy had come out to Pine Island Club was
7 to swim and to recreate and that, in fact, is what
8 occurred. They had spent some time at the swimming
9 beach. And during the time that they were in the
10 swimming beach, they had swam out to a rope that had
11 been strung out there that delineated the swimming
12 beach from the rest of the lake. And, again, we
13 reiterate and will continue to reiterate that the
14 club does not own or operate the lake. Lake Murray,
15 of course, is what we're talking about.

16 During the course when they were out on the
17 rope, Mr. Myers suggested that the two of them get
18 out of the swimming area, walk around and jump off a
19 boat dock. And what's important about that is that
20 the boat dock contained signage. And, of course,
21 the plaintiff has had the opportunity to come out
22 and inspect the property. And I think plaintiffs'
23 counsel would freely recognize and acknowledge that
24 there is signage at the boat dock that prohibited
25 swimming among other activities on or near the dock

1 area.

2 There's an affidavit to that effect that was
3 included in our materials that have been submitted
4 to the Court by the president of the club on 2011.
5 She states under oath that that signage did, in
6 fact, exist on June 15, 2011.

7 When they got out to the dock -- and what's
8 important too is keep in mind, at this point in
9 time, Ms. Bellamy is college aged and her father has
10 worked for the power company for years on end and
11 she has gone out to Pine Island from childhood. She
12 stated in her deposition that this is the first time
13 she'd ever been out on the boat dock to swim, but
14 Mr. Myers had advised that that's what he wanted to
15 do and she went out there with him and they jumped
16 off the dock.

17 When they jumped off the dock -- what's
18 important also for purposes of this analysis, and I
19 can't reiterate this enough, is because when we're
20 talking about duty and the application of duty,
21 Mr. Myers and Ms. Bellamy left the premises that is
22 the Pine Island Club and instead jumped into the
23 fresh water -- fresh waters of Lake Murray. Lake
24 Murray, of course, with regard to the land
25 underneath Lake Murray is owned and operated by

1 SCE&G not Pine Island Club, a separate and distinct
2 entity.

3 When they got into the water, Mr. Myers
4 challenged Bellamy to a race from the dock to the
5 rope at the swimming area. And I'll make this
6 representation, and plaintiffs' counsel can agree
7 with me or not agree with me, but there's probably a
8 distance of at least a hundred yards, if not more,
9 between the dock to the swimming -- back to the
10 swimming area.

11 Once they made the halfway mark, Mr. Myers
12 encountered trouble and developed apparent
13 difficulty. Despite Ms. Bellamy's best attempts at
14 trying to rescue him, unfortunately, Mr. Myers
15 drowned. Again, Ms. Bellamy had expended all
16 efforts herself to help Mr. Myers. She testified to
17 the same under oath when she was deposed.

18 And, again, Judge, with regard to -- or, I
19 guess, without regard to legal liability or fault or
20 anything along those analysis, the club in this case
21 and SCANA and SCE&G, they freely acknowledge that
22 this is a very, very unfortunate event and obviously
23 an outcome that nobody wanted or desired, but we
24 have to put emotion aside and we're in a court of
25 law at this point in time and a lawsuit that had

1 been filed --

2 Of course, as this Court knows, the theory of
3 recovery in this case has taken some wild divergent
4 paths. At one point, the plaintiff alleged that the
5 -- Ms. Bellamy's boyfriend had killed Mr. Myers. At
6 one other point, there had been an allegation that
7 the boyfriend had been an employee in the club and
8 was either complicit directly in or watched
9 Mr. Myers die.

10 Of course, we've been able to establish by
11 clear and convincing evidence that Mr. --
12 Ms. Bellamy's boyfriend, who's now her fiancé,
13 number one, knew about Bellamy and Myers being out
14 there, Myers and Bellamy were school classmates,
15 Mr. -- the boyfriend did not work at the club, the
16 boyfriend was not at the lake, the boyfriend was, in
17 fact, at the Cracker Barrel where he worked at the
18 time all of this happened. So the theory has widely
19 diverged from one to the other.

20 Of course, we, from a Rule 11 standpoint, have
21 difficulty with what was originally pled, but
22 notwithstanding that, today we sit here in summary
23 judgment and you're, of course, well acquainted with
24 the summary judgment standard.

25 We also want, with regard to the standard, want

1 to reiterate that with regard -- when this Court
2 considers summary judgment -- of course, the Supreme
3 Court within recent years has injected this
4 scintilla of the evidence application in summary
5 judgment going back to the Newberry County premises
6 case by Judge Dodson, but scintilla of the evidence
7 doesn't mean suspend all disbelief. And as well,
8 the case law stands for the proposition that this
9 Court cannot ignore facts that are unfavorable to
10 the nonmoving party and this Court must search proof
11 to ascertain whether real proof exists rather than a
12 perfunctory or a shadowy one.

13 Concerning the arguments supporting summary
14 judgment, of course, what's alleged here is a
15 negligence analysis. And this Court is well
16 familiar with negligence analysis in this case as
17 far as the four-step process enunciated by our
18 courts. As well with regard to the negligence,
19 especially the premises liability context, we have
20 to observe or consider what the status of the
21 plaintiff is at the time of the loss. And Judge
22 Ralph King Anderson's case in Sims versus Giles is,
23 of course, instructive with regard to that.

24 With -- concerning Mr. Myers' presence on the
25 property, at the club property at the time, we

1 believe, established by, among other things, the
2 Vogt case, which has been injected into this
3 analysis by both the plaintiff and the defendant,
4 Mr. Myers was a licensee of the property at the
5 time. But by virtue and by operation of the
6 Recreational Use Statute, again, the analysis
7 completely changes the minute Mr. Myers enters the
8 lake because he leaves club property and he enters
9 the fresh waters of Lake Murray. And our assertion
10 is that he was neither an invitee or a licensee at
11 that point in time of anybody because the
12 Recreational Use Statute found in chapter 27 -- I'm
13 sorry -- found in Title 27 of the 1976 Code applies.

14 As this Court is more -- is well familiar with
15 regards to the Recreational Use Statute, landowners
16 owe no duty of care to keep the premises safe for
17 recreational users and need not give any warning of
18 a dangerous condition, use, structure or activity on
19 the property. That's what the General Assembly has
20 said and that's what's been recognized by our
21 appellate courts, including Cole versus South
22 Carolina Electric and Gas, which has been reviewed
23 both by the Court of Appeals, as well as the Supreme
24 Court.

25 That case related to an accident that occurred

1 directly across the lake on the Lexington side where
2 a youth had drowned and there had been the assertion
3 on the part of the power -- there had been an
4 assertion on the part of the family that the power
5 company had a responsibility, had a duty to -- to
6 that youth with regard to him being at the lake at
7 the recreational area. Ultimately, the circuit
8 court didn't agree. The Court of Appeals affirmed
9 as did the Supreme Court.

10 When an owner under the Recreational Use
11 Statute permits a person to use property for
12 recreational purposes without charges, that does not
13 extend any assurance that the premises is safe for
14 any purpose. And, of course, the premises that
15 we're talking about at this point in time is not the
16 club, but the lake.

17 And -- Or confer upon such person the legal
18 status of an invitee or licensee to who a duty of
19 care is owed. By virtue of the fact the plaintiff
20 had left the premises on Pine Island Club, the
21 decedent is neither an invitee or licensee of the
22 club at the time of the incident.

23 Again, we believe the Recreational Use Statute
24 standing alone is a mechanism for disposition of
25 this case in favor of the defendants. But

1 irrespective of the Recreational Use Statute, there
2 are a multitude of other reasons why summary
3 judgment should be granted in this case.

4 We take the position that Meadows versus
5 Heritage Village Church and Missionary Fellowship,
6 which I've handed up to this court, which emanates a
7 1991 disposition by the Supreme Court, supports the
8 proposition that our courts have consistently held
9 that a landowner has no duty to warn of the perils
10 of obvious natural, and that's the operative word
11 there, conditions of which, in this case, an invitee
12 is reasonably aware. That's what Meadows says.

13 Of course, we don't believe that Mr. Myers was
14 either an invitee or a licensee, but our courts --
15 the main theme here is that our courts have held
16 that you don't have a duty to warn of obvious
17 natural conditions.

18 This ties back to the fact that Mr. Myers was
19 an adult at the time. And, of course, Sims versus
20 Giles, which is a case that we previously
21 referenced, talks about where the duties lie in
22 South Carolina as it relates to status. And, of
23 course, we have invitee, we have licensee, we have
24 children and we have trespassers. And Mr. Myers was
25 not a child, he was an adult.

1 And as we have argued in this case, number one,
2 the conditions that were extant in the lake were
3 open and obvious. Anybody who is an adult is
4 acquainted with the fact that water can be deep and
5 there's always a chance for drowning. The other
6 thing, too, that we assert is that Mr. Myers had
7 been at the lake at this particular -- this very
8 same area the week before, so he was obviously
9 acquainted with the conditions that were extant at
10 the property.

11 We also -- notwithstanding what Meadows says,
12 there was an express advisory, at least at the
13 swimming beach, to swim at your own risk, and at the
14 dock, there was an expressed advisory or a directive
15 of the prohibition not to swim off the dock. There
16 is no evidence of any condition on Pine Island or at
17 Lake Murray other than the water which caused the
18 death of Evan Myers.

19 The second part -- or the third argument we
20 would raise is assumption of the risk, essentially
21 comparative negligence as a matter of law. Myers
22 was 21 years old. He knew and appreciated the
23 conditions.

24 And although it's not explicated within our
25 brief, I want to take this time to argue by analogy

1 the very important case of Tobias Versus Sports
2 Club. And I'm sure this Court is very familiar with
3 the fact that when we talk about alcohol liability
4 in South Carolina, we have both first-party
5 liability and third-party liability as it relates to
6 service of an adult.

7 Our courts have obviously recognized through
8 the Marcum decision among others that there's
9 third-party liability that exists. But as it
10 relates to an adult intoxication of the first party
11 sent -- the first party since, there is no
12 first-party liability in South Carolina. Tobias
13 stands for that proposition. And I've handed that
14 case up. And the basis for that decision by the
15 Supreme Court is that public policy dictates that a
16 permit holder cannot be held liable where an adult,
17 somebody over the age of 21 years old, has knowingly
18 and intox -- and intentionally gotten themselves
19 intoxicated.

20 We argue that by analogy by virtue of the fact
21 that we believe good public policy not only
22 necessitates, but demands summary judgment be issued
23 in this case because if summary judgment here were
24 to be denied and this case go forward to a jury,
25 this sends a dangerous precedent. It also creates a

1 chilling effect on both commercial and private
2 concerns that are contiguous to the lake.

3 If somebody comes on your property and jumps
4 off the dock into the lake that they don't own, how
5 are they all of a sudden responsible for any
6 potential adverse outcome? Public policy requires
7 that, in this case, the decedent not prevail in that
8 circumstance. So we obviously would look to the
9 Tobias case as a basis for summary judgment in this
10 case.

11 As well, if we want to get really deep into the
12 analysis, we can talk about trespasser liability in
13 as much as Myers' status as a licensee on Pine
14 Island arguably was revoked when he walked onto the
15 boat dock for purposes of swimming. The case law in
16 this state makes it clear when a landowner does not
17 possess liability for an outcome in such a
18 circumstance. The presence of a dock by Mr. Myers
19 for swimming was neither invited or suffered. No
20 one gave Mr. Myers permission to swim. And with
21 regard to the suffering element, there were signage
22 at the dock that expressly stated, Do not swim off
23 this dock.

24 The Estate of Adair versus L-J, Incorporated,
25 which I've handed up too as well, emanates from our

1 Court of Appeals. Judge Kittredge decided that
2 case. And that was a ATV -- that was actually a
3 Jeep accident that had occurred in some sand pits
4 where the folks had trespassed upon property. And
5 ultimately the circuit court and the Court of
6 Appeals upheld the fact that when you're trespassing
7 on that point and you're an adult, there is no duty
8 of care except the duty not to do willful or wanton
9 injury.

10 And there's no evidence whatsoever that there
11 was any intent or activity by the club in this case
12 or anyone else that caused Mr. Myers willful or
13 wanton injury. And we would suggest that would have
14 to be demonstrated by clear and convincing evidence,
15 not necessarily by a preponderance of the evidence,
16 when we get to that level of inquiry. So that is
17 the basis for summary judgment in this case.

18 And I do want to talk a little bit about, just
19 for three minutes, about some of the arguments
20 raised by the plaintiff in this case. Plaintiff has
21 tried to rescue this case from summary judgment by
22 submitting some affidavits from two alleged experts
23 in this case.

24 I would assert to this Court or we would assert
25 to this Court that these affidavits are insufficient

1 for purposes of the Rule 56 analysis by virtue of
2 the fact that careful inquiry into and careful
3 analysis of these affidavits demonstrate that while
4 these experts allege or layout alleged duties that
5 were owed by the -- by the club in this case to
6 Mr. Myers, there is no testimony under oath that
7 discusses either proximate -- that discusses
8 proximately caused damages, which is a requirement
9 in this state.

10 There is no testimony that most probably what
11 the club did or didn't do to a reasonable degree of
12 certainty, in fact, caused the death of Mr. Myers,
13 and that is required and that's well stated not only
14 in our rule, but as well as in the case law that
15 interprets Rule 56.

16 The other -- the last thing I want to mention
17 is that there had been a storm or a rainstorm that
18 appeared. And the plaintiffs in this case make much
19 of that in as much as they say, There was a storm
20 coming and the club should have done something to
21 warn or advise Mr. Myers of -- an adult of the same.

22 First and foremost, that's an obvious and open
23 condition that's -- could be well detected. The
24 other thing is that's a red herring. By virtue of
25 Mandy Bellamy's testimony, the only person that's

1 provided sworn testimony in this case as it relates
2 to what happened factually, the storm occurred after
3 the drowning when she got back up on the bank and
4 after help had come and arrived to try to reconcile
5 the situation.

6 So the storm that will be indubitably talked
7 about by the plaintiff didn't occur until after the
8 drowning. Moreover, there is no evidence with
9 regard to the storm that that was a proximate cause
10 of Mr. Myers' death.

11 So the reasons that we've articulated today in
12 the argument as well as in our briefing, we would
13 respectfully request this Court grant summary
14 judgment in favor of all the defendants in the
15 incident case. Thank you very much, sir.

16 **THE COURT:** Yes, sir.

17 All right. What's your response?

18 **MR. KROMPECHER:** Yes, Your Honor. May it
19 please the Court. Pedro Krompecher here on behalf
20 of the plaintiffs.

21 Your Honor, may I approach and hand you a
22 little binder of some materials?

23 **THE COURT:** Sure.

24 **MR. KROMPECHER:** Your Honor, behind me are my
25 clients, the parents of the decedent.

1 As an initial matter, the -- if you look in the
2 open flap of your binder, Your Honor, the first
3 thing you'll see is the defendant's motion for
4 summary judgment that was filed back in November.
5 That motion for summary judgment beginning on page
6 two, three and four lays out the arguments and puts
7 the plaintiff on notice of what the defendants are
8 going to argue in terms of their motion for summary
9 judgment;

10 And in that document, you will see the first
11 argument is that the defendants had no duty to
12 Mr. Myers. The next argument is the application of
13 the Recreational Use Statute. The third argument on
14 the third page is a failure to prosecute. The
15 fourth argument is intentional infliction of
16 emotional distress. And the fifth argument is
17 Matthew Bellamy not a proper defendant.

18 And so last night at about 5:00 P.M., I
19 received this memorandum of law that now makes a
20 number of other arguments that were not contained in
21 the motion. For that reason, I think, at this time,
22 it would only be appropriate to consider the
23 arguments that were identified in the original
24 motion for summary judgment. And I'll start with
25 those, Your Honor.

1 The duty of care it sounds to me, from the
2 brief I read or the memorandum, that the defendants
3 are not arguing the applicability of the
4 Recreational Use Statute so long as we are
5 discussing what took place on the dirt of the island
6 itself. Sounds like the argument for the
7 application of the Recreational Use Statute is that
8 once Mr. Myers, Evan, was in the water of Lake
9 Murray, then you consider the water of Lake Murray.
10 And as -- if we can bifurcate those, it would make
11 it quite a bit easier.

12 First, lets begin with what duties are required
13 by law of landowners. And, in this case, Pine
14 Island Club is a -- is private land and Evan was an
15 invitee. There are duties under the law to those
16 individuals. I heard a little bit about maybe Evan
17 was a trespasser once he was on the dock, I'll
18 address that in a moment, but for now, the island
19 itself is essentially a private country club, has
20 membership house rules, secured entrance.

21 The parties responsible for what's taking place
22 on the Pine Island Club. First, you'll look to who
23 owns the land. And in the defendant's memorandum of
24 law, it states that the land was owned by
25 Consolidated Employee Recreation Clubs. That's on

1 page two, last paragraph of defendant's memorandum
2 in support of their motion for summary judgment.

3 Your Honor, if you will look in your binder,
4 you will see three documents that are tax records
5 for this property. And you will see there's a map,
6 there is a town property card and then a close-up of
7 the parcel view of the map. And you'll see that
8 these 27.13 acres with an appraised value of 4.3
9 million dollars is owned by SCE&G. And so the owner
10 of the land --

11 **MR. STEGMAIER:** Can I interrupt? What are you
12 referring to?

13 **MR. KROMPECHER:** It's in your binder.

14 **MR. STEGMAIER:** Well, which tab, please?

15 **MR. KROMPECHER:** It's not a tab. It's at the
16 beginning of the binder.

17 So for purposes of dismissing defendants and
18 determining who has a duty to whom, the owner of the
19 land certainly has a duty to Evan Myers -- had a
20 duty to Evan Myers.

21 Who operated the private club? If you'll look
22 at the discovery responses, on this club was a
23 full-time caretaker. Mr. Seay was an employee of
24 SCANA. Mr. Seay's job responsibilities were to
25 monitor the club. He was there that day.

1 He signed for the police department -- and if
2 you'll look, Your Honor, right behind the tax
3 records, you'll see the written voluntary statement
4 of J.W. Seay taken that evening where he says, At
5 8:30 P.M., I saw two young people walking west
6 behind -- or, sorry -- beside shelter number 8
7 towards the dock and beyond shelter 9-C. The next
8 thing I remember was the girl was screaming, Help,
9 help.

10 So J.W. Seay concedes that he saw them walk by
11 them. Ms. Bellamy, at her deposition, discussed
12 walking past a number of adults that were next to a
13 car, that they acknowledged her presence.

14 And there are, if you'll look as well, I can
15 show you, Your Honor, in the flap, it's a document
16 titled Lexington County Sheriff's Office
17 Investigative Report. It talks about these
18 individuals, one being the caretaker, seeing
19 Ms. Bellamy and Mr. Myers swimming in the water,
20 seeing them walk out wearing their bathing suits
21 walking towards the dock. There was nobody else at
22 the beach. There is the only one vehicle,
23 Ms. Bellamy's. Their items, their clothes, their
24 bags, their towels were the only items on the beach.

25 And as conceded through the motions and in the

1 discovery responses, prior to Ms. Bellamy and
2 Mr. Myers walking out of the beach area and walking
3 in their bathing suits past the caretaker, they had
4 closed down the swimming pool because of an incoming
5 storm. They had closed the pool, sent all of the
6 lifeguards home and the individuals at the pool
7 because they were concerned the incoming storm was
8 dangerous.

9 Mandy Bellamy talks about, in her deposition,
10 that she didn't notice a storm, it wasn't windy, the
11 water was still. The gravity of the storm is a
12 question of fact.

13 I'll also direct your attention, Your Honor, a
14 few documents back, County of Lexington Department
15 of Public Safety Emergency Medical Services
16 Division. On the bottom, there's a Bates stamp
17 number LEXEMS001 through 003. And the first large
18 paragraph reads, After review of our records, we
19 were unable to locate any documentation relating to
20 the care or transport of Evan Morris Myers. After
21 calling for {phonetic} additional information, it
22 was determined that this was a drowning that took
23 place -- it gives the address. The only
24 documentation I could locate shows that the incident
25 location listed above in our unit was cancelled from

1 that call due to weather conditions.

2 The weather was so bad, the EMS couldn't even
3 make it there. They were called at 11 -- I'm sorry
4 -- at 8:29, according to the police report.

5 Also notable is who employs the lifeguards.
6 The pool is adjacent to the swimming beach. We went
7 through an inspection of this location. And from
8 every lifeguard booth, you can see the swimming
9 beach in its entirety and you would certainly notice
10 if there was only one car in the parking lot, two
11 people next to each other swimming around for at
12 least half an hour, according to Ms. Bellamy's
13 written statement to the police officer and her
14 deposition testimony, and a bundle of items on the
15 middle of the beach. None of the lifeguards at the
16 pool did anything either. And so the lifeguards,
17 based on the discovery answers, are also SCANA
18 employees.

19 So we have SCANA employees monitoring the pool,
20 which was closed due to inclement weather, we have a
21 SCANA employee caretaker monitoring the property who
22 we believe, there's no evidence to the contrary, we
23 believe was the individual who actually made the
24 decision to close the pool since there was nobody
25 else on the island of authority and that same

1 individual, after closing the pool due to weather,
2 which is undisputed in this case, saw two people who
3 had been swimming for over a half an hour, get out
4 in their bathing suits, walk right past him and go
5 to the dock and jump off the dock.

6 So we definitely have SCANA as employers. We
7 have a corporation as a landowner. And the
8 allegations are against those individuals that were
9 employed or agents of SCANA, as well as the other
10 defendants.

11 One of the arguments that persist through the
12 memorandum of law is that the roped off area was the
13 end of the property line and that is a question of
14 fact. That roped off area is a depth marker, it is
15 not the end of the property.

16 The argument or the contention that once
17 somebody is in the water, they no longer -- the
18 landowner and the employees on the property are
19 responsible for warning of conditions and keeping
20 the property safe no longer have any responsibility
21 once a toe goes in the water defies logic.

22 This dock was -- and I do dispute the distance,
23 which also is a question of fact as to how far away
24 the dock was from the depth marking rope, but where
25 the drowning occurred, according to the pictures and

1 the deposition of Ms. Bellamy, was very close to the
2 depth marker. Where the property line ends and
3 responsibilities end is a question of fact.

4 All of the allegations of negligence, and I'll
5 walk through them quickly for Your Honor, failure to
6 have lifeguards, failure to have appropriate weather
7 monitoring equipment, failure to have severe weather
8 plans, failure to warn, failure to clear the
9 swimming beach like they did of the swimming pool,
10 failure to have water rescue devices, all of those
11 allegations undisputably took place before Mr. Myers
12 jumped off that dock.

13 Had the proper policy and procedures been in
14 place and been followed like they were at the pool,
15 had they warned as they should have, had they had a
16 lifeguard, all of those allegations took place while
17 Mr. Myers was an invitee on the property. And
18 certainly and moreover, the allegation that the
19 caretaker should have told Mr. Myers and Ms. Bellamy
20 that the swimming beach was closed, there was no
21 more swimming because there was incoming storm, all
22 of that took place once they were on the property.
23 And whether the property line ended or terminated or
24 whether Mr. Myers was a trespasser once he jumped
25 into the water is a question of fact.

1 Mr. Myers drowned somewhere around that depth
2 marker. Whether he jumped off the dock or swam from
3 where he was swimming five minutes before with
4 Ms. Bellamy, the issue of how he got there if that
5 water is still water within the eyesight and control
6 of the Pine Island Club and its subsidiaries is a
7 question of fact.

8 As a example or as an analogy, if we would have
9 had the opposite happen in this case, had they
10 closed the swimming beach for the incoming storm,
11 but failed to close the swimming pool, failed to
12 warn and failed to clear, you'd have the same -- the
13 same application.

14 Ms. Bellamy also talked about in her deposition
15 that she had seen, at page 77 of her deposition --
16 Your Honor, the defendants have submitted a few
17 pages of Ms. Bellamy's deposition. In your binder,
18 you have the complete deposition. It's lengthy.
19 But at page 77 in her deposition, she talks about
20 people swimming around the docks. She also talks
21 about, at page 81, 84, 85, 88 and 89, walking by the
22 caretaker and how their presence was acknowledged by
23 those adults that were next to this vehicle.

24 The question as to whether this is open and
25 obvious, one, I think exceeds the motion for summary

1 judgment that was filed in this case and was only
2 brought to our attention last night. However,
3 whether something is open and obvious is a question
4 of fact.

5 Mandy herself claims not to have noticed the
6 storm until afterwards. We have weather reports and
7 the EMS reports that I already discussed that
8 demonstrate that there is an absolute question of
9 fact as to when the storm was incoming and how
10 severe it was.

11 As to the application of the Recreational Use
12 Statute, the only plausible argument that would
13 satisfy the requirements of the Recreational Use
14 Statute would be that the recreational use -- that
15 that statute applies to anybody who's in Lake Murray
16 regardless of how close they are or how they access
17 that water and for the reason that I already
18 discussed is a question of fact as to whether
19 Mr. Myers was still on the property at the time of
20 his injury. However, the negligence itself
21 occurred, undisputably, while he was on the dirt,
22 while he was on the property.

23 There's no allegation that the caretaker was
24 not prepared or did not try to save him, he did not,
25 but that is not an allegation. That would be the

1 only allegation that would apply to negligence while
2 Mr. Myers was in the water and we have not made that
3 allegation. Every allegation we have made of (
4 negligence relates to conduct by and on behalf of
5 SCANA while Mr. Myers was undisputably on the
6 property.

7 As to assumption of risk, again, the position
8 of the plaintiffs is that that argument exceeds the
9 scope of the initial motion for summary judgment
10 filed in November. However, assumption of risk is
11 an affirmative defense and whether the negligence of
12 Mr. Myers exceeded 50 percent is a question for the
13 jury to answer.

14 Whether he appreciated the risk of the storm is
15 a question of fact. We know Ms. Bellamy did not and
16 she was with him. Whether the signs were sufficient
17 in size, whether they were sufficient in location is
18 a question of fact.

19 With all due respect to the president of the
20 club who signed the affidavit, it is within the
21 province of a jury to determine whether a sign is
22 sufficient as to where it's located, how big or
23 large it is and what its contents are.

24 And there is an argument contained in the
25 memorandum of law that I did not -- he articulated,

1 by Mr. Stegmaier, about a statute of limitations
2 argument pursuant to the Charitable Organizations
3 Act. One, I think that, as I previously stated,
4 exceeds the scope of the initial motion for summary
5 judgment and, therefore, is not proper.

6 However, out of an abundance of caution, Your
7 Honor, in your binder, you will see a copy of that
8 statute. And I only had time last night to look it
9 up along with everything else that was submitted to
10 me, but I don't see authority for a two-year statute
11 of limitations to the Consolidated Employee
12 Recreation Clubs. In addition, as we have stated
13 before, this afternoon or today, that the SCANA
14 Corporation itself is, in fact, the owner and
15 employee of relevant persons which we believe acted
16 negligently.

17 The proximate cause, I'll reflect on that and
18 answer those allegations and those arguments of the
19 defendant. Again, that was not contained in the
20 motion for summary judgment. Proximate cause in a
21 negligence case like this one does not require
22 expert testimony, is not a medical malpractice case.
23 And whether the storm had the effect on the water
24 conditions, which our experts believe it did, is
25 also a question for the jury.

1 The two experts we have are national experts.
2 They testify all over the country in these types of
3 cases. And their affidavits were in response to the
4 motion for summary judgment that there's no legal
5 duty. And to that extent, they've outlined, I
6 think, seven or eight duties that were required at
7 this location.

8 In addition, Your Honor, if I may, there are a
9 couple other cases -- well, let me walk through some
10 of the statements that Your Honor has in your
11 binder. Mandy Bellamy's written statement is in
12 there where she talks about how long they were
13 swimming for.

14 Just, again, to the extent this Court is
15 inclined to consider a proximate cause argument,
16 Mr. Myers had been there the week before for over an
17 hour with Mandy and her boyfriend swimming without
18 incident. The day of his drowning he was swimming
19 in 12 feet of water for over a half hour before the
20 storm came. The only change in condition, the only
21 thing that changed was this storm.

22 As our experts have detailed and they will
23 testify, a storm is much more dangerous to an area
24 of open water than to a confined body of water such
25 as a pool. And in this case, it is undisputed that

1 SCANA acknowledged and understood that danger
2 because they implemented their own weather policy to
3 close the pool down early and send everyone home.
4 So there can be no argument made that this condition
5 of the weather was not known to SCANA because it
6 closed down the swimming pool because of the
7 weather.

8 The next statement is Kim McPhierison --
9 McPherson. She was with J.W. Seay. And she talks
10 about, in her written statement, seeing the decedent
11 and Ms. Bellamy, while she was next to the
12 caretaker, swimming in the water for a lengthy
13 amount of time, which again demonstrates that there
14 was undisputed notice to an employee caretaker of
15 the club that there were people using the swimming
16 beach that should have been cleared out or at least
17 warned of the incoming storm.

18 Your Honor, if I may approach, there are two
19 cases I would like to hand up. And in the -- in the
20 plaintiffs' response brief -- Your Honor, may I
21 approach?

22 **THE COURT:** Yes, sir.

23 **MR. KROMPECHER:** What I'm handing you, Your
24 Honor, is -- well, I'll read it once I get back.

25 Your Honor, for the record, Grant versus Wakeda

1 Campground, LLC, United States District Court for
2 the District of New Hampshire, that is 631 F.Supp.2d
3 120, 2009, and that is a campground case.

4 Specifically, as to weather, South Carolina has not
5 held plainly one way or the other. There's a
6 handful of cases that we cite to where the courts of
7 this state acknowledge weather being a concern that
8 should be considered.

9 But these two cases, the Grant case and
10 Maussner versus Atlantic City Country Club, Superior
11 Court New Jersey, Court of Appeals, 299 N.J.Super.
12 539, 1997, that is a golf course case, both of these
13 cases talk about those states for their first
14 impressions on weather. And they fall in line with
15 the proposition that if a landowner and a facility
16 has in place some policies to manage inclement
17 weather conditions, they affirmatively have a duty
18 to apply those policies reasonably.

19 And in this case, as I've already discussed,
20 there was a policy to close down the swimming pool
21 for inclement weather, which was done. What was not
22 done was closing down the swimming beach.

23 The experts retained by the plaintiff have
24 signed affidavits indicating that the risk and
25 danger of an inclosed pool is much less than the

1 risk and danger of this type of water when an
2 inclement storm is coming.

3 One of the two experts was actually present at
4 the site inspection. The other one saw video and
5 pictures. All of the experts have received copies
6 of Ms. Bellamy's deposition, all of these statements
7 and all of the discovery produced in this case.

8 And for those reasons, Your Honor, plaintiffs
9 requestfully -- or respectfully submit to this Court
10 that the application of the Recreational Use Statute
11 to the dirt itself to the land is not in dispute.
12 The Recreational Use Statute application to the
13 water itself is very much in dispute, and it depends
14 significantly on where a jury determines the
15 property lines and the responsibilities and for the
16 owner of the Pine Island Club. And given the fact
17 that there has been no competent testimony that
18 these buoys are anything other than a depth marker,
19 then that would be a question of fact. And I'm
20 happy to answer any questions Your Honor might have,
21 otherwise I'm done.

22 **THE COURT:** Thank you.

23 Any response?

24 **MR. STEGMAIER:** Briefly, sir.

25 Of course, as this Court well knows, this

1 motion was made pursuant to Rule 56 which states
2 that we're entitled, as a matter of law, for
3 judgment in our favor. Rule 56 simply -- and, of
4 course, this Court knows just from doing this on a
5 day in and day out basis, you can file Rule 56
6 motions just asserting the rule and essentially
7 filing a one-paragraph motion in this case. And
8 we're certainly not precluded from augmenting our
9 previous argument with the additional ones here
10 today.

11 We will note that that motion has been pending,
12 at this point in time, for 13 months in this
13 tribunal. So it wasn't filed just last month.

14 With regard to some of the documents that have
15 been provided to you today, obviously, we object to
16 the document; much as -- much of it is hearsay, if
17 not all of it is hearsay. Rule 56 in the case law
18 that has been enunciated by our courts, clearly
19 articulate the proper mechanism for attaching
20 documents for consideration to this -- by this Court
21 for purposes of Rule 56 analysis.

22 The assertion is that while Mr. Myers was on
23 the land possessed by Pine Island, that he was an
24 invitee. This, of course, is in direct
25 contravention to the Supreme Court's holding in Vogt

1 versus Murraywood Swim and Racquet Club, which is
2 another Lexington County case. And that case
3 brought -- ended up -- I don't know if he had died,
4 or had been injured, but in headnote three and four
5 of this case, the Supreme Court noted:

6 By his own admission, Vogt entered the pool
7 facilities as a social guest of club members
8 Soobitsky and Pevey. Even assuming Murraywood did
9 charge a two dollar admission fee and limited to the
10 number of times he could visit, this does not affect
11 the analysis of whether he was licensee or an
12 invitee. The more appropriate issue is whether he
13 had the right to use Murraywood's facilities. The
14 obvious conclusion is that he did not. In fact, his
15 presence was entirely permissive.

16 The same thing happens in this case as it
17 relates to Mr. Myers. He was a guest of
18 Ms. Bellamy, but ultimately at the end of the day,
19 his presence on Pine Island was permissive which
20 makes him a licensee while he was on the property on
21 the land rather than a licensee {sic}, and that's
22 important to keep in mind.

23 With regard, again, to some of these documents
24 that have been presented today purportedly from
25 Lexington County, they're hearsay documents. We

1 have the affidavit from the club president that
2 says, As it relates to the club itself, its
3 operations, it's owned and operated by Consolidated
4 -- by the Consolidated, the club's entity.

5 Concerning some of the arguments as it relates
6 to Mr. Seay and the other witnesses, number one,
7 this is all hearsay at this point in time. As we
8 stated before, our courts and our rules recognize
9 the mechanism of how these statements do become
10 evidence for purposes of consideration of Rule 56.
11 And dumping a bunch of documents in at the summary
12 judgment hearing doesn't count. Typically, this is
13 done by affidavit.

14 The other thing irrespective of that as it
15 relates to Mr. Seay, we do point out this: As far
16 as this voluntary statement about Mr. Seay, there
17 had been an averment by plaintiffs' counsel that Mr.
18 Seay had stated that he had seen them jump off the
19 dock -- I'm reading that statement, and, again, we
20 don't think it's admissible for purposes of this
21 analysis -- but I don't believe Mr. Seay says
22 anything about watching them jump off the dock.

23 Words are supposed to mean something, Your
24 Honor. And swimming at your own risk is in plain
25 English and it means what it means. Mr. Myers was

1 an adult.

2 And, again, we make clear reference to Meadows
3 versus Heritage Village Church that talks about the
4 absence of a duty to warn of the perils of obvious
5 natural conditions of which an invitee is reasonably
6 unaware. That case is what holds up. We don't need
7 to look at cases emanating from other jurisdictions
8 which have no binding effect on this tribunal for
9 you to arrive at that -- at that understanding and
10 that conclusion.

11 **THE COURT:** Well, the New Hampshire case he
12 handed up states the same thing. New Hampshire law
13 would not expand the duty of care of a campground
14 owner to keep its campground reasonably safe to
15 include constant monitoring of and warning about the
16 weather.

17 **MR. STEGMAIER:** Yes, sir, and that's what
18 Meadows says. And I guess if we're going to make
19 that -- if we're going to make a disposition as it
20 relates to natural conditions for purposes of our
21 analysis, we believe that Meadows is what should
22 govern this Court's analysis. But I mean --

23 **THE COURT:** I don't want to get too deep into
24 this. I want to read everything you all have
25 provided to me.

1 **MR. STEGMAIER:** Yes, sir.

2 **THE COURT:** And many times my opinion will
3 change as we go through and read. And I'm very much
4 aware of the summary judgment standard and it's a
5 drastic remedy.

6 **MR. STEGMAIER:** Yes, sir.

7 **THE COURT:** I'm trying to understand if the
8 argument, this is addressed to both of you, if the
9 argument about this weather condition is that there
10 is evidence that the weather contributed to the
11 decedent's death or if there is -- the assertion is
12 that the area should have been closed because of the
13 weather so the decedent would never have entered
14 into the water and, therefore, would not have
15 drowned?

16 **MR. STEGMAIER:** Well, with regard to that, sir,
17 there was the averment, I think there had been some
18 words or language inserted, put in the mouths of
19 employees at the club with regard to their knowledge
20 or understanding that conditions were dangerous.
21 There is no -- there has been no testimony elicited
22 by anybody working for the club that's confident
23 that -- that demonstrates that the conditions were
24 dangerous prior to the accident.

25 In fact, too, Mandy Bellamy said things were

1 smooth and things were calm as it pertained to the
2 conditions while they were swimming in the water.
3 That's the only testimony that exists in this case.
4 And she also further says that with regard to the
5 storm, nothing occurred, nothing, you know, nothing
6 materialized until she was back on land after the
7 accident occurred.

8 So if we're talking about competent testimony
9 that's been elicited prior to today, the only
10 testimony that exists that conditions were either
11 dangerous or not dangerous are -- is possessed by
12 Mandy Bellamy and she says they weren't dangerous.

13 **THE COURT:** Yes, sir.

14 **MR. KROMPECHER:** Your Honor, on behalf of the
15 plaintiffs, it's both of what you talked about. So
16 both the fact that the weather was the condition
17 that required the swimming beach to be closed down,
18 required warning, that is part of the allegations
19 that are supported by the affidavits of our two
20 experts, but also that the weather, the reason why
21 you close it down is because it affects the current
22 of the water and for the same reason you close down
23 the swimming pool when you have significant weather
24 incoming.

25 The only variable that changed between 45

1 minutes of swimming in 12 feet of water was the
2 weather and the time before, he was there five days
3 earlier, the same thing.

4 So the argument is both. The weather was an
5 element that required more things to have been done,
6 such as closing the pool -- or closing the beach
7 like they closed the pool and warning people at the
8 beach like they warned people at the pool, but also
9 that the weather played a role in why.

10 And in Mandy's deposition, she talks about she
11 was having a hard time swimming. The individual who
12 tried to rescue him, not the caretaker, but an adult
13 onlooker with the caretaker, struggled to swim in
14 that water as did he. And -- so the only thing that
15 changed the condition of that water was the weather
16 itself. And we know from the EMS reports that the
17 weather was so severe, in fact, by the time they
18 were called, they couldn't even drive to the island,
19 but Mandy says it was clear and smooth and calm, yet
20 she could hardly swim.

21 **MR. STEGMAIER:** Your Honor, with regard to
22 that, a couple things: Number one, with regard to
23 the accident or the ambulance run, that obviously
24 occurred after the accident. And so whatever
25 occurred after the accident -- and, again, by

1 Ms. Bellamy's own admission, the weather did not
2 turn until after the accident occurred. So whatever
3 was in the accident, this letter, again, it's not --
4 it's not proper for consideration, is evidence of
5 anything today, but it's not material as to what the
6 conditions were at the time prior to the -- prior to
7 the accident.

8 The other thing, too, plaintiffs' counsel puts
9 words into the mouths where -- or it's supposition
10 as it relates to the man that -- the man that
11 attempted to help. He didn't have a hard time
12 helping them because of the water conditions, but
13 Ms. Bellamy testified he was just a guy that was out
14 of shape who wasn't able to swim real well just by
15 virtue of his physical condition.

16 The other thing we want to mention is they
17 didn't swim from the beach; they jumped off the
18 dock. The weather issue is, in our position, is
19 completely a red herring by virtue of what
20 Ms. Bellamy has testified to, as well as there's no
21 other evidence that's been elicited that
22 demonstrates that weather was a proximate cause of
23 this accident. Just saying it's a jury issue
24 doesn't make it a jury issue. There has to be
25 evidence that's competent to support the proposition

1 that it is a jury issue.

2 The other thing, too, we reiterate is these
3 affidavits of these experts talk about duty, but
4 they don't talk about proximate cause, and they have
5 to provide that kind of testimony and neither one of
6 them do.

7 You can enunciate all the duty you want, but at
8 the end of the day, if you can't say, most probably
9 to a reasonable degree of certainty, that the
10 failure to do these things is a cause or the cause
11 of accident, then it's not competent. Think about
12 every professional malpractice case you ever
13 presided over, if you didn't have that testimony,
14 that's the case that gets dismissed.

15 As well, just to wrap up, there is no evidence
16 that the caretaker or the lifeguards were SCANA
17 employees. And as far as the roped off area being a
18 depth marker, that's pure supposition not supported
19 by evidence.

20 And the other thing, too, and I know
21 plaintiffs' counsel is not from here and -- from
22 North Carolina, but everybody here well knows that
23 when we talk about property lines as it relates to
24 -- as it relates to Lake Murray, number one, Lake
25 Murray is in fresh waters and everybody in this room

1 has heard of the 360 line. And we ask -- we ask
2 this Court to take judicial notice of Project 516,
3 which is Lake Murray and its construction that
4 creates the project boundary line. Anybody --
5 everybody knows that the boundary does not --
6 anybody who lives on the lake or manages property on
7 the lake knows that their boundary line does not go
8 outside into the fresh waters of Lake Murray.

9 For these reasons, again, we ask for summary
10 judgment to be granted. Thank you, sir.

11 **THE COURT:** Anything else?

12 **MR. KROMPECHER:** Nothing from the plaintiffs,
13 Your Honor.

14 **THE COURT:** Thank you very much. I'll notify
15 you of a decision in writing.

16 **MR. KROMPECHER:** Thank you.

17 **MR. STEGMAIER:** Thank you, sir.

18
19 END OF PROCEEDINGS
20
21
22
23
24
25

C E R T I F I C A T E

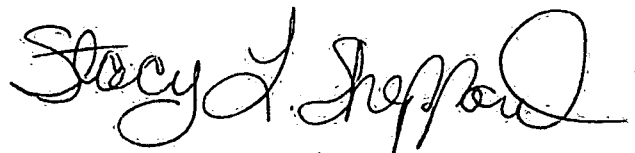
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 11th of December, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 2, 2016



Stacy L. Sheppard, RPR
Circuit Court Reporter

0

003 [1] - 23:17

1

11 [4] - 1:13, 3:2, 8:20, 24:3
11th [1] - 45:14
12 [2] - 31:19, 41:1
120 [1] - 33:3
13 [1] - 35:12
14-CP-32-2210 [1] - 1:7
15 [2] - 3:23, 6:6
1976 [1] - 10:13
1991 [1] - 12:7
1997 [1] - 33:12

2

2 [1] - 45:18
2009 [1] - 33:3
2011 [3] - 3:23, 6:4, 6:6
2015 [3] - 1:13, 3:2, 45:14
2016 [1] - 45:18
21 [2] - 13:22, 14:17
27 [2] - 10:12, 10:13
27.13 [1] - 21:8
299 [1] - 33:11

3

360 [1] - 44:1

4

4.3 [1] - 21:8
45 [1] - 40:25

5

50 [1] - 29:12
516 [1] - 44:2
539 [1] - 33:12
56 [8] - 17:1, 17:15, 35:1, 35:3, 35:5, 35:17, 35:21, 37:10
5:00 [1] - 19:18

6

631 [1] - 33:2

7

77 [2] - 27:15, 27:19

8

8 [1] - 22:6
81 [1] - 27:21
84 [1] - 27:21
85 [1] - 27:21
88 [1] - 27:21
89 [1] - 27:21
8:29 [1] - 24:4
8:30 [1] - 22:5

9

9-C [1] - 22:7

A

al/ka [1] - 1:9
able [2] - 8:10, 42:14
absence [1] - 38:4
absolute [1] - 28:8
abundance [1] - 30:6
access [1] - 28:16
accident [12] - 10:25, 16:3, 39:24, 40:7, 41:23, 41:24, 41:25, 42:2, 42:3, 42:7, 42:23, 43:11
accidental [1] - 3:24
according [3] - 24:4, 24:12, 25:25
accurate [1] - 45:9
acknowledge [3] - 5:23, 7:21, 33:7
acknowledged [3] - 22:13, 27:22, 32:1
acquainted [3] - 8:23, 13:4, 13:9
acres [1] - 21:8
Act [1] - 30:3
acted [1] - 30:15
action [1] - 3:23
activities [1] - 5:25
activity [2] - 10:18, 16:11
Adair [1] - 15:24
addition [2] - 30:12, 31:8
additional [2] - 23:21, 35:9
address [2] - 20:18, 23:23
addressed [1] - 39:8
adjacent [1] - 24:6
admissible [1] - 37:20
admission [3] - 36:6, 36:9, 42:1
adult [11] - 4:13, 12:19, 12:25, 13:3, 14:6, 14:10, 14:16,

16:7, 17:21, 38:1, 41:12
adults [2] - 22:12, 27:23
adverse [1] - 15:6
advise [1] - 17:21
advised [1] - 6:14
advisory [2] - 13:12, 13:14
affect [1] - 36:10
affects [1] - 40:21
affidavit [4] - 6:2, 29:20, 37:1, 37:13
affidavits [7] - 16:22, 16:25, 17:3, 31:3, 33:24, 40:19, 43:3
affiliation [1] - 4:21
affirmatively [1] - 33:17
affirmed [1] - 11:8
afternoon [2] - 3:10, 30:13
afterwards [1] - 28:6
age [1] - 14:17
aged [1] - 6:9
agents [1] - 25:9
agree [3] - 7:6, 7:7, 11:8
al [1] - 1:10
alcohol [1] - 14:3
allegation [7] - 8:6, 26:18, 28:23, 28:25, 29:1, 29:3
allegations [6] - 25:8, 26:4, 26:11, 26:16, 30:18, 40:18
allege [1] - 17:4
alleged [4] - 8:4, 9:14, 16:22, 17:4
alone [1] - 11:24
ambulance [1] - 41:23
amount [1] - 32:13
analogy [3] - 13:25, 14:20, 27:8
analysis [15] - 4:15, 6:18, 7:20, 9:15, 9:16, 10:3, 10:6, 15:12, 17:1, 17:3, 35:21, 36:11, 37:21, 38:21, 38:22
Anderson's [1] - 9:22
answer [3] - 29:13, 30:18, 34:20
answers [1] - 24:17
apparent [1] - 7:12
appeal [1] - 45:12
Appeals [5] - 10:23, 11:8, 16:1, 16:6, 33:11
appeared [1] - 17:18

appellate [1] - 10:21
applicability [1] - 20:3
application [8] - 6:20, 9:4, 19:12, 20:7, 27:13, 28:11, 34:10, 34:12
applies [2] - 10:13, 28:15
apply [2] - 29:1, 33:18
appraised [1] - 21:8
appreciated [2] - 13:22, 29:14
approach [4] - 3:7, 18:21, 32:18, 32:21
appropriate [3] - 19:22, 26:6, 36:12
area [12] - 5:18, 6:1, 7:5, 7:10, 11:7, 13:8, 23:2, 25:12, 25:14, 31:23, 39:12, 43:17
arguably [1] - 15:14
argue [3] - 13:25, 14:20, 19:8
argued [1] - 13:1
arguing [1] - 20:3
argument [19] - 13:19, 18:12, 19:11, 19:12, 19:13, 19:15, 19:16, 20:6, 25:16, 28:12, 29:8, 29:24, 30:2, 31:15, 32:4, 35:9, 39:8, 39:9, 41:4
arguments [8] - 9:13, 16:19, 19:6, 19:20, 19:23, 25:11, 30:18, 37:5
arrive [1] - 38:9
arrived [1] - 18:4
articulate [1] - 35:19
articulated [4] - 4:5, 5:1, 18:11, 29:25
ascertain [1] - 9:11
aside [1] - 7:24
Assembly [1] - 10:19
assert [3] - 13:6, 16:24
asserting [1] - 35:6
assertion [5] - 10:9, 11:2, 11:4, 35:22, 39:11
assuming [1] - 36:8
assumption [3] - 13:20, 29:7, 29:10
assurance [1] - 11:13
Atlantic [1] - 33:10
attaching [1] - 35:19
attempted [1] - 42:11
attempts [1] - 7:13
attention [2] - 23:13, 28:2
Attorney [1] - 1:20

Attorneys [1] - 1:22
ATV [1] - 16:2
augmenting [1] - 35:8
authority [2] - 24:25, 30:10
averment [2] - 37:17, 39:17
aware [2] - 12:12, 39:4

B

bad [1] - 24:2
bags [1] - 22:24
bank [1] - 18:3
Barrel [1] - 8:17
Bartholomew [1] - 1:4
based [2] - 4:10, 24:17
basic [1] - 3:20
basis [4] - 14:14, 15:9, 16:17, 35:5
Bates [1] - 23:16
bathing [1] - 22:20, 23:3, 25:4
beach [19] - 5:9, 5:10, 5:12, 13:13, 22:22, 22:24, 23:2, 24:6, 24:9, 24:15, 26:9, 26:20, 27:10, 32:16, 33:22, 40:17, 41:6, 41:8, 42:17
become [1] - 37:9
begin [1] - 20:12
beginning [2] - 19:5, 21:16
behalf [3] - 18:19, 29:4, 40:14
behind [3] - 18:24, 22:2, 22:6
belabor [1] - 3:19
Bellamy [26] - 4:16, 4:17, 4:22, 5:6, 6:9, 6:21, 7:4, 7:15, 8:13, 8:14, 19:17, 22:11, 22:19, 23:1, 23:9, 26:1, 26:19, 27:4, 27:14, 29:15, 32:11, 36:18, 39:25, 40:12, 42:13, 42:20
Bellamy's [10] - 7:13, 8:5, 8:12, 17:25, 22:23, 24:12, 27:17, 31:11, 34:6, 42:1
beside [1] - 22:6
best [1] - 7:13
between [2] - 7:9, 40:25
beyond [1] - 22:7
bifurcate [1] - 20:10
big [1] - 29:22
binder [8] - 18:22

19:2, 21:3, 21:13,
21:16, 27:17, 30:7,
31:11
binding [1] - 38:8
bit [3] - 16:18, 20:11,
20:16
boat [5] - 5:19, 5:20,
5:24, 6:13, 15:15
body [1] - 31:24
booth [1] - 24:8
bottom [1] - 23:16
boundary [3] - 44:4,
44:5, 44:7
boyfriend [7] - 8:5,
8:7, 8:12, 8:15, 8:16,
31:17
brief [3] - 13:25, 20:2,
32:20
briefing [3] - 3:10, 4:7,
18:12
briefly [2] - 3:20,
34:24
brought [4] - 3:11,
3:12, 28:2, 36:3
bunch [1] - 37:11
bundle [1] - 24:14
buoys [1] - 34:18

C

calm [2] - 40:1, 41:19
Campground [1] -
33:1
campground [3] -
33:3, 38:13, 38:14
cancelled [1] - 23:25
cannot [2] - 9:9, 14:16
captioned [1] - 45:12
car [2] - 22:13, 24:10
card [1] - 21:6
care [6] - 10:16, 11:19,
16:8, 20:1, 23:20,
38:13
careful [2] - 17:2
caretaker [12] - 21:23,
22:18, 23:3, 24:21,
26:19, 27:22, 28:23,
32:12, 32:14, 41:12,
41:13, 43:16
Carolina [11] - 1:1,
1:14, 4:4, 10:22,
12:22, 14:4, 14:12,
33:4, 43:22, 45:8,
45:13
CAROLINA [1] - 45:3
case [63] - 3:7, 3:17,
3:21, 4:3, 4:10, 4:11,
4:15, 5:2, 7:20, 8:3,
9:6, 9:8, 9:16, 9:22,
10:2, 10:25, 11:25,

12:3, 12:11, 12:20,
13:1, 14:1, 14:14,
14:23, 14:24, 15:7,
15:9, 15:10, 15:15,
16:2, 16:11, 16:17,
16:20, 16:21, 16:23,
17:5, 17:14, 17:18,
18:1, 18:15, 20:13,
25:2, 27:9, 28:1,
30:21, 30:22, 31:25,
33:3, 33:9, 33:12,
33:19, 34:7, 35:7,
35:17, 36:2, 36:5,
36:16, 38:6, 38:11,
40:3, 43:12, 43:14
cases [8] - 3:13, 31:3,
31:9, 32:19, 33:6,
33:9, 33:13, 38:7
Cassandra [1] - 1:4
caused [4] - 13:17,
16:12, 17:8, 17:12
caution [1] - 30:6
certain [1] - 3:25
certainly [4] - 21:19,
24:9, 26:18, 35:8
certainty [2] - 17:12,
43:9
certify [2] - 45:8,
45:15
challenged [1] - 7:4
chambers [1] - 3:9
chance [1] - 13:5
change [2] - 31:20,
39:3
changed [3] - 31:21,
40:25, 41:15
changes [1] - 10:7
chapter [1] - 10:12
charge [1] - 36:9
charges [1] - 11:12
Charitable [1] - 30:2
child [3] - 4:17, 4:23,
12:25
childhood [1] - 6:11
children [1] - 12:24
chilling [1] - 15:1
Christian [2] - 1:21,
3:5
Church [2] - 12:5,
38:3
Circuit [5] - 1:25, 45:6,
45:7, 45:12, 45:22
circuit [2] - 11:7, 16:5
circumstance [2] -
15:8, 15:18
cite [1] - 33:6
City [1] - 33:10
claims [1] - 28:5
classmates [1] - 8:14
clear [7] - 8:11, 15:16,

16:14, 26:8, 27:12,
38:2, 41:19
cleared [1] - 32:16
clearly [1] - 35:18
clients [1] - 18:25
close [9] - 21:6, 24:24,
26:1, 27:11, 28:16,
32:3, 33:20, 40:21,
40:22
close-up [1] - 21:6
closed [9] - 23:4, 23:5,
24:20, 26:20, 27:10,
32:6, 39:12, 40:17,
41:7
closing [4] - 25:1,
33:22, 41:6
clothes [1] - 22:23
club [25] - 5:1, 5:14,
6:4, 7:20, 8:7, 8:15,
9:25, 10:8, 11:16,
11:22, 16:11, 17:5,
17:11, 17:20, 20:19,
21:21, 21:22, 21:25,
29:20, 32:15, 36:7,
37:1, 37:2, 39:19,
39:22
Club [17] - 1:10, 3:24,
4:2, 4:8, 4:9, 4:20,
5:6, 6:22, 7:1, 11:20,
14:2, 20:14, 20:22,
27:6, 33:10, 34:16,
36:1
club's [1] - 37:4
Clubs [3] - 1:9, 20:25,
30:12
co [1] - 1:5
co-Personal [1] - 1:5
Code [1] - 10:13
Cole [1] - 10:21
college [1] - 6:9
Collins [1] - 3:6
coming [2] - 17:20,
34:2
commercial [1] - 15:1
Common [1] - 1:1
company [2] - 6:10,
11:5
comparative [1] -
13:21
competent [4] - 34:17,
40:8, 42:25, 43:11
complete [2] - 27:18,
45:9
completely [2] - 10:7,
42:19
complicit [1] - 8:8
conceded [1] - 22:25
concedes [1] - 22:10
concern [1] - 33:7
concerned [1] - 23:7

concerning [3] - 9:13,
9:24, 37:5
concerns [1] - 15:2
conclusion [2] -
36:14, 38:10
condition [9] - 10:18,
13:16, 17:23, 31:20,
32:4, 39:9, 40:16,
41:15, 42:15
conditions [17] -
12:11, 12:17, 13:2,
13:9, 13:23, 24:1,
25:19, 30:24, 33:17,
38:5, 38:20, 39:20,
39:23, 40:2, 40:10,
42:6, 42:12
conduct [1] - 29:4
confer [1] - 11:17
conferences [1] - 3:18
confident [1] - 39:22
confined [1] - 31:24
consider [4] - 9:20,
19:22, 20:9, 31:15
consideration [3] -
35:20, 37:10, 42:4
considered [1] - 33:8
considers [1] - 9:2
consistently [1] - 12:8
Consolidated [6] -
1:8, 4:8, 20:25,
30:11, 37:3, 37:4
constant [1] - 38:15
construction [1] -
44:3
contained [4] - 5:20,
19:20, 29:24, 30:19
contention [1] - 25:16
contents [1] - 29:23
context [1] - 9:19
contiguous [1] - 15:2
continue [1] - 5:13
contrary [1] - 24:22
contravention [1] -
35:25
contributed [1] -
39:10
control [1] - 27:5
convincing [2] - 8:11,
16:14
copies [3] - 3:12, 3:13,
34:5
copy [1] - 30:7
corporation [1] - 25:7
Corporation [1] -
30:14
counsel [6] - 5:23,
7:6, 37:17, 42:8,
43:21, 45:16
count [1] - 37:12
Country [1] - 33:10

country [2] - 20:19,
31:2
COUNTY [1] - 45:4
County [8] - 1:2, 3:25,
9:5, 22:16, 23:14,
36:2, 36:25, 45:13
couple [2] - 31:9,
41:22
course [19] - 5:15,
5:16, 5:20, 6:24, 8:2,
8:10, 8:20, 8:23, 9:2,
9:14, 9:23, 11:14,
12:13, 12:19, 12:23,
33:12, 34:25, 35:4,
35:24
court [4] - 7:24, 11:8,
12:6, 16:5
COURT [14] - 3:3, 3:8,
3:15, 18:16, 18:23,
32:22, 34:22, 38:11,
38:23, 39:2, 39:7,
40:13, 44:11, 44:14
Court [40] - 1:1, 1:25,
3:11, 3:25, 4:7, 4:19,
6:4, 8:2, 9:1, 9:3,
9:9, 9:10, 9:15,
10:14, 10:23, 10:24,
11:8, 11:9, 12:7,
14:2, 14:15, 16:1,
16:5, 16:24, 16:25,
18:13, 18:19, 31:14,
33:1, 33:11, 34:9,
34:25, 35:4, 35:20,
36:5, 44:2, 45:7,
45:13, 45:22
Court's [2] - 35:25,
38:22
courts [9] - 9:18,
10:21, 12:8, 12:14,
12:15, 14:7, 33:6,
35:18, 37:8
Cracker [1] - 8:17
creates [2] - 14:25,
44:4
CROSS [1] - 2:2
current [1] - 40:21

D

damages [1] - 17:8
danger [3] - 32:1,
33:25, 34:1
dangerous [9] - 10:18,
14:25, 23:8, 31:23,
39:20, 39:24, 40:11,
40:12
date [1] - 3:22
David [1] - 1:21
days [1] - 41:2
death [6] - 3:22, 4:13,

- 13:18, 17:12, 18:10, 39:11
decendent [6] - 4:11, 11:21, 15:7, 18:25, 32:10, 39:13
decendent's [1] - 39:11
December [3] - 1:13, 3:2, 45:14
decided [1] - 16:1
decision [4] - 14:8, 14:14, 24:24, 44:15
deep [3] - 13:4, 15:11, 38:23
defendant [3] - 10:3, 19:17, 30:19
defendant's [3] - 19:3, 20:23, 21:1
defendants [10] - 3:7, 4:3, 11:25, 18:14, 19:7, 19:11, 20:2, 21:17, 25:10, 27:16
Defendants [2] - 1:11, 1:22
defense [1] - 29:11
defies [1] - 25:21
definitely [1] - 25:6
degree [2] - 17:11, 43:9
delineated [1] - 5:11
demands [1] - 14:22
demonstrate [2] - 17:3, 28:8
demonstrated [1] - 16:14
demonstrates [3] - 32:13, 39:23, 42:22
denied [1] - 14:24
department [1] - 22:1
Department [1] - 23:14
deposed [1] - 7:17
deposition [12] - 6:12, 22:11, 23:9, 24:14, 26:1, 27:14, 27:15, 27:17, 27:18, 27:19, 34:6, 41:10
depth [6] - 25:14, 25:24, 26:2, 27:1, 34:18, 43:18
DESCRIPTION [1] - 2:15
desired [1] - 7:23
despite [1] - 7:13
detailed [1] - 31:22
detected [1] - 17:23
determine [1] - 29:21
determined [1] - 23:22
determines [1] - 34:14
determining [1] - 21:18
- developed** [1] - 7:12
devices [1] - 26:10
dictates [1] - 14:15
die [1] - 8:9
died [1] - 36:3
difficulty [2] - 7:13, 8:21
DIRECT [1] - 2:2
direct [2] - 23:13, 35:24
directive [1] - 13:14
directly [2] - 8:8, 11:1
dir [3] - 20:5, 28:21, 34:11
disbelief [1] - 9:7
discovery [4] - 21:22, 23:1, 24:17, 34:7
discussed [4] - 22:11, 28:7, 28:18, 33:19
discusses [2] - 17:7
discussing [1] - 20:5
dismissed [1] - 43:14
dismissing [1] - 21:17
disposition [4] - 4:15, 11:24, 12:7, 38:19
dispute [3] - 25:22, 34:11, 34:13
distance [2] - 7:8, 25:22
distinct [2] - 4:3, 7:1
distress [1] - 19:16
District [2] - 33:1, 33:2
diverged [1] - 8:19
divergent [1] - 8:3
Division [1] - 23:16
dock [29] - 5:19, 5:20, 5:24, 5:25, 6:7, 6:13, 6:16, 6:17, 7:4, 7:9, 13:14, 13:15, 15:4, 15:15, 15:18, 15:22, 15:23, 20:17, 22:7, 22:21, 25:5, 25:22, 25:24, 26:12, 27:2, 37:19, 37:22, 42:18
docks [1] - 27:20
document [3] - 19:10, 22:15, 35:16
documentation [2] - 23:19, 23:24
documents [7] - 21:4, 23:14, 35:14, 35:20, 36:23, 36:25, 37:11
Dodson [1] - 9:6
dollar [1] - 36:9
dollars [1] - 21:9
done [6] - 17:20, 33:21, 33:22, 34:21, 37:13, 41:5
down [0] - 23:4, 32:3, 32:6, 33:20, 33:22, 40:17, 40:21, 40:22
drastic [1] - 39:5
drive [1] - 41:18
drowned [4] - 7:15, 11:2, 27:1, 39:15
drowning [7] - 3:24, 13:5, 18:3, 18:8, 23:22, 25:25, 31:18
due [4] - 24:1, 24:20, 25:1, 29:19
dumping [1] - 37:11
during [2] - 5:9, 5:16
duties [5] - 12:21, 17:4, 20:12, 20:15, 31:6
duty [20] - 6:20, 10:16, 11:5, 11:18, 12:9, 12:16, 16:7, 16:8, 19:11, 20:1, 21:18, 21:19, 21:20, 31:5, 33:17, 38:4, 38:13, 43:3, 43:7
-
- E**
-
- early** [1] - 32:3
easier [1] - 20:11
effect [4] - 6:2, 15:1, 30:23, 38:8
efforts [1] - 7:16
eight [1] - 31:6
either [5] - 8:8, 12:14, 17:7, 24:16, 40:10
Electric [2] - 4:4, 10:22
element [2] - 15:21, 41:5
Eleventh [1] - 45:7
elicited [3] - 39:21, 40:9, 42:21
emanates [2] - 12:6, 15:25
emanating [2] - 3:23, 38:7
Emergency [1] - 23:15
emotion [1] - 7:24
emotional [1] - 19:16
employed [1] - 25:9
Employee [4] - 1:8, 4:8, 20:25, 30:11
employee [6] - 4:17, 8:7, 21:23, 24:21, 30:15, 32:14
employees [5] - 24:18, 24:19, 25:18, 39:19, 43:17
employers [1] - 25:6
employment [1] - 4:21
employs [1] - 24:5
EMS [3] - 24:2, 28:7, 41:16
encountered [1] - 7:12
end [6] - 6:10, 25:13, 25:15, 26:3, 36:18, 43:8
END [1] - 44:19
ended [2] - 26:23, 36:3
ends [1] - 26:2
English [1] - 37:25
entered [2] - 36:6, 39:13
enters [2] - 10:7, 10:8
entirely [1] - 36:15
entirety [1] - 24:9
entitled [2] - 4:24, 35:2
entity [3] - 4:2, 7:2, 37:4
entrance [1] - 20:20
enunciate [1] - 43:7
enunciated [2] - 9:17, 35:18
equipment [1] - 26:7
especially [1] - 9:19
Esquire [3] - 1:19, 1:21, 1:21
essentially [3] - 13:20, 20:19, 35:6
establish [1] - 8:10
established [1] - 10:1
Estate [2] - 1:5, 15:24
et [1] - 1:10
Evan [9] - 1:6, 4:12, 13:18, 20:8, 20:14, 20:16, 21:19, 21:20, 23:20
EVD [1] - 2:15
evening [1] - 22:4
event [1] - 7:22
evidence [17] - 8:11, 9:4, 9:6, 13:16, 16:10, 16:14, 16:15, 18:8, 24:22, 37:10, 39:10, 42:4, 42:21, 42:25, 43:15, 43:19, 45:11
example [1] - 27:8
exceeded [1] - 29:12
exceeds [3] - 27:25, 29:8, 30:4
except [1] - 16:8
exhibits [1] - 2:19
exist [1] - 6:6
exists [4] - 9:11, 14:9, 40:3, 40:10
expand [1] - 38:13
expended [1] - 7:15
expert [1] - 30:22
-
- F**
-
- F.Supp.2d** [1] - 33:2
facilities [2] - 36:7, 36:13
facility [1] - 33:15
fact [30] - 4:23, 5:7, 6:6, 8:17, 11:19, 12:18, 13:4, 14:3, 14:20, 16:6, 17:2, 17:12, 23:12, 25:14, 25:23, 26:3, 26:25, 27:7, 28:4, 28:9, 28:18, 29:15, 29:18, 30:14, 34:16, 34:19, 36:14, 39:25, 40:16, 41:17
facts [2] - 3:21, 9:9
factually [1] - 18:2
failed [3] - 27:11, 27:12
failure [8] - 19:14, 26:5, 26:6, 26:7, 26:8, 26:10, 43:10
fall [1] - 33:14
familiar [5] - 4:1, 4:20, 9:16, 10:14, 14:2
family [1] - 11:4
far [4] - 9:17, 25:23, 37:15, 43:17
father [1] - 6:9
fault [1] - 7:19
favor [3] - 11:25, 18:14, 35:3
fee [1] - 36:9
feet [2] - 31:19, 41:1
Fellowship [1] - 12:5
few [2] - 23:14, 27:16
fiancé [1] - 8:12
fifth [1] - 19:16
file [1] - 35:5
filed [5] - 8:1, 19:4, 28:1, 29:10, 35:13
filing [1] - 35:7
first [12] - 6:12, 14:4, 14:10, 14:11, 14:12,

17:22, 19:2, 19:10,
20:12, 20:22, 23:17,
33:13

first-party [2] - 14:4,
14:12

five [2] - 27:3, 41:2

flap [2] - 19:2, 22:15

folks [1] - 16:4

followed [1] - 26:14

following [1] - 3:1

foregoing [1] - 45:9

foremost [1] - 17:22

forward [1] - 14:24

four [3] - 9:17, 19:6,
36:4

four-step [1] - 9:17

fourth [1] - 19:15

freely [2] - 5:23, 7:21

fresh [5] - 6:23, 10:9,
43:25, 44:8

full [1] - 21:23

full-time [1] - 21:23

G

Gas [2] - 4:5, 10:22

General [1] - 10:19

gentleman [1] - 4:12

Giles [2] - 9:22, 12:20

girl [1] - 22:8

given [1] - 34:16

golf [1] - 33:12

govern [1] - 38:22

grant [1] - 18:13

Grant [2] - 32:25, 33:9

granted [2] - 12:3,
44:10

gravity [1] - 23:11

guess [2] - 7:19, 38:18

guest [5] - 4:16, 4:25,
36:7, 36:17

guy [1] - 42:13

H

half [3] - 24:12, 25:3,
31:19

halfway [1] - 7:11

Hampshire [3] - 33:2,
38:11, 38:12

hand [2] - 18:21,
32:19

handed [4] - 12:6,
14:13, 15:25, 38:12

handful [1] - 33:6

handing [1] - 32:23

happy [1] - 34:20

hard [2] - 41:11, 42:11

hardly [1] - 41:20

headnote [1] - 36:4

hear [2] - 3:3, 3:17

heard [2] - 20:16, 44:1

hearing [2] - 37:12,
45:11

hearsay [4] - 35:16,
35:17, 36:25, 37:7

held [5] - 3:1, 12:8,
12:15, 14:16, 33:5

help [4] - 7:16, 18:4,
22:9, 42:11

Help [1] - 22:8

helping [1] - 42:12

hereby [1] - 45:8

hereto [1] - 45:16

Heritage [2] - 12:5,
38:3

herring [2] - 17:24,
42:19

herself [2] - 7:16, 28:5

holder [1] - 14:16

holding [1] - 35:25

holds [1] - 38:6

home [2] - 23:6, 32:3

Honor [24] - 18:18,

18:21, 18:24, 19:2,

19:25, 21:3, 22:2,

22:15, 23:13, 26:5,

27:16, 30:7, 31:8,

31:10, 32:18, 32:20,

32:24, 32:25, 34:8,

34:20, 37:24, 40:14,

41:21, 44:13

Honorable [1] - 1:16

hour [4] - 24:12, 25:3,

31:17, 31:19

house [1] - 20:20

hundred [1] - 7:8

I

ID [1] - 2:15

identified [1] - 19:23

ignore [1] - 9:9

implemented [1] -

32:2

important [6] - 4:13,
5:19, 6:8, 6:18, 14:1,

36:22

impressions [1] -

33:14

incident [4] - 11:22,

18:15, 23:24, 31:18

inclement [4] - 24:20,

33:16, 33:21, 34:2

inclined [1] - 31:15

inclosed [1] - 33:25

include [1] - 38:15

included [1] - 6:3

including [1] - 10:21

incoming [7] - 23:4,

23:7, 26:21, 27:10,

28:9, 32:17, 40:24

Incorporated [1] -

15:24

indicating [1] - 33:24

individual [3] - 24:23,
25:1, 41:11

individuals [4] -

20:16, 22:18, 23:6,
25:8

indubitably [1] - 18:6

inflation [1] - 19:15

information [1] -

23:21

initial [3] - 19:1, 29:9,

30:4

injected [2] - 9:3, 10:2

injured [1] - 36:4

injury [3] - 16:9,

16:13, 28:20

inquiry [2] - 16:16,

- 17:2

inserted [1] - 39:18

inspect [1] - 5:22

inspection [2] - 24:7,

34:4

instead [1] - 6:22

instructive [1] - 9:23

insufficient [1] - 16:25

intent [1] - 16:11

intentional [1] - 19:15

intentionally [1] -

14:18

interest [3] - 3:11, 4:9,

45:16

interprets [1] - 17:15

interrupt [1] - 21:11

intox [1] - 14:18

intoxicated [1] - 14:19

intoxication [1] -

14:10

introduced [1] - 45:11

Investigative [1] -

22:17

invited [1] - 15:19

invitee [1] - 10:10,

11:18, 11:21, 12:11,

12:14, 12:23, 20:15,

26:17, 35:24, 36:12,

38:5

irrespective [2] - 12:1,

37:14

island [4] - 20:5,

20:18, 24:25, 41:18

Island [19] - 1:10,

3:24, 4:1, 4:7, 4:20,

4:25, 5:6, 6:11, 6:22,

7:1, 11:20, 13:16,

15:14, 20:14, 20:22,

27:6, 34:16, 35:23,

36:19

issue [6] - 27:4, 36:12,
42:18, 42:23, 42:24,

43:1

issued [1] - 14:22

items [3] - 22:23,

22:24, 24:14

itself [8] - 20:6, 20:19,

28:20, 30:14, 34:11,

34:13, 37:2, 41:16

J

J.W [3] - 22:4, 22:10,
32:9

Jeep [1] - 16:3

Jersey [1] - 33:11

job [1] - 21:24

Judge [5] - 1:16, 7:18,

9:6, 9:21, 16:1

judgment [27] - 5:4,

8:23, 8:24, 9:2, 9:5,

9:14, 12:3, 14:22,

14:23, 15:9, 16:17,

16:21, 18:14, 19:4,

19:5, 19:9, 19:24,

21:2, 28:1, 29:9,

30:5, 30:20, 31:4,

35:3, 37:12, 39:4,

44:10

judicial [1] - 44:2

Judicial [1] - 45:7

jump [4] - 5:18, 25:5,

37:18, 37:22

jumped [7] - 6:15,

6:17, 6:22, 26:12,

26:24, 27:2, 42:17

jumps [1] - 15:3

June [2] - 3:23, 6:6

jurisdictions [1] - 38:7

jury [8] - 14:24, 29:13,

29:21, 30:25, 34:14,

42:23, 42:24, 43:1

K

keep [5] - 4:14, 6:8,
10:16, 36:22, 38:14

keeping [1] - 25:19

Keesley [1] - 1:16

Kiebler [1] - 1:21

killed [1] - 8:5

Kim [1] - 32:8

kin [1] - 45:15

kind [1] - 43:5

King [1] - 9:22

Kittredge [1] - 16:1

knowingly [1] - 14:17

knowledge [1] - 39:19

known [1] - 32:5

knows [6] - 8:2, 34:25,

35:4, 43:22, 44:5,

44:7

Krompacher [2] -

1:19, 18:19

KROMPECHER [8] -

18:18, 18:24, 21:13,

21:15, 32:23, 40:14,

44:12, 44:16

L

Lacy [1] - 3:6

lake [13] - 5:12, 5:14,

8:16, 10:8, 11:1,

11:6, 11:16, 13:2,

13:7, 15:2, 15:4,

44:6, 44:7

Lake [14] - 1:10, 5:14,

6:23, 6:25, 10:9,

13:17, 20:8, 20:9,

28:15, 43:24, 44:3,

44:8

land [10] - 6:24, 20:1

1:14, 3:25, 11:1,
22:16, 23:14, 36:2,
36:25, 45:13
LEXINGTON [1] - 45:4
liability [9] - 7:19,
9:19, 14:3, 14:5,
14:9, 14:12, 15:12,
15:17
liable [1] - 14:16
licensee [10] - 10:4,
10:10, 11:18, 11:21,
12:14, 12:23, 15:13,
36:11, 36:20, 36:21
lie [1] - 12:21
lifeguard [2] - 24:8,
26:16
lifeguards [6] - 23:6,
24:5, 24:15, 24:16,
26:6, 43:16
likely [2] - 4:1, 4:19
limitations [2] - 30:1,
30:11
limited [1] - 36:9
line [7] - 25:13, 26:2,
26:23, 33:14, 44:1,
44:4, 44:7
lines [2] - 34:15, 43:23
listed [1] - 23:25
lives [1] - 44:6
LJ [1] - 15:24
LLC [1] - 33:1
locate [2] - 23:19,
23:24
located [1] - 29:22
location [4] - 23:25,
24:7, 29:17, 31:7
logic [1] - 25:21
long-term [1] - 4:17
look [9] - 15:8, 19:1,
20:22, 21:3, 21:21,
22:2, 22:14, 30:8,
38:7
loss [1] - 9:21

M

main [1] - 12:15
malpractice [2] -
30:22, 43:12
man [2] - 42:10
manage [1] - 33:16
manages [1] - 44:6
Mandy [10] - 4:16,
4:22, 17:25, 23:9,
28:5, 31:11, 31:17,
39:25, 40:12, 41:19
Mandy's [1] - 41:10
map [2] - 21:5, 21:7
Marcum [1] - 14:8
mark [1] - 7:11

marker [5] - 25:14,
26:2, 27:2, 34:18,
43:18
marking [1] - 25:24
marsh [1] - 3:12
material [1] - 42:5
materialized [1] - 40:6
materials [2] - 6:3,
18:22
matter [3] - 13:21,
19:1, 35:2
Matthew [1] - 19:17
Maussner [1] - 33:10
McPherson [1] - 32:9
McPherson [1] - 32:8
Meadows [6] - 12:4,
12:12, 13:11, 38:2,
38:18, 38:21
mean [3] - 9:7, 37:23,
38:22
means [2] - 37:25
mechanism [3] -
11:24, 35:19, 37:9
Medical [1] - 23:15
medical [1] - 30:22
member [1] - 4:23
members [1] - 36:7
membership [2] -
4:20, 20:20
memorandum [6] -
19:19, 20:2, 20:23,
21:1, 25:12, 29:25
mention [2] - 17:16,
42:16
middle [1] - 24:15
might [1] - 34:20
million [1] - 21:9
mind [3] - 4:14, 6:8,
36:22
minute [1] - 10:7
minutes [3] - 16:19,
27:3, 41:1
Missionary [1] - 12:5
moment [1] - 20:18
monitor [1] - 21:25
monitoring [4] -
24:19, 24:21, 26:7,
38:15
month [1] - 35:13
months [1] - 35:12
moreover [2] - 18:8,
26:18
morning [1] - 3:5
Morris [1] - 23:20
most [2] - 17:10, 43:8
motion [15] - 5:4,
19:3, 19:5, 19:8,
19:21, 19:24, 21:2,
27:25, 29:9, 30:4,
30:20, 31:4, 35:1,

35:7, 35:11
motions [2] - 22:25,
35:6
mouths [2] - 39:18,
42:9
moving [1] - 3:4
MR [20] - 3:5, 3:9,
3:16, 18:18, 18:24,
21:11, 21:13, 21:14,
21:15, 32:23, 34:24,
38:17, 39:1, 39:6,
39:16, 40:14, 41:21,
44:12, 44:16, 44:17
multitude [2] - 3:17,
12:2
Murray [14] - 1:10,
5:14, 6:23, 6:24,
6:25, 10:9, 13:17,
20:9, 28:15, 43:24,
43:25, 44:3, 44:8
Murraywood [2] -
36:1, 36:8
Murraywood's [1] -
36:13
must [1] - 9:10
Myers [53] - 1:4, 1:4,
1:6, 4:12, 4:16, 4:25,
5:1, 5:5, 5:17, 6:14,
6:21, 7:3, 7:11, 7:14,
7:16, 8:5, 8:9, 8:13,
8:14, 10:4, 10:7,
12:13, 12:18, 12:24,
13:6, 13:18, 13:21,
15:18, 15:20, 16:12,
17:6, 17:12, 17:21,
19:12, 20:8, 21:19,
21:20, 22:19, 23:2,
23:20, 26:11, 26:17,
26:19, 26:24, 27:1,
28:19, 29:2, 29:5,
29:12, 31:16, 35:22,
36:17, 37:25
Myers' [3] - 9:24,
15:13, 18:10

N

N.J. Super [1] - 33:11
name [1] - 4:12
named [1] - 4:4
national [1] - 31:1
natural [4] - 12:10,
12:17, 38:5, 38:20
near [1] - 5:25
necessarily [1] - 16:15
necessitates [1] -
14:22
need [2] - 10:17, 38:6
negligence [10] - 9:15,
9:16, 9:18, 13:21,

26:4, 28:20, 29:1,
29:4, 29:11, 30:21
negligently [1] - 30:16
never [1] - 39:13
nevertheless [1] -
3:20
New [4] - 33:2, 33:11,
38:11, 38:12
Newberry [1] - 9:5
next [7] - 19:12, 22:7,
22:12, 24:11, 27:23,
32:8, 32:11
night [3] - 19:18, 28:2,
30:8
NO [1] - 2:15
nobody [3] - 7:23,
22:21, 24:24
none [1] - 24:15
nonmoving [1] - 9:10
nonprofit [2] - 1:9, 4:2
North [1] - 43:22
notable [1] - 24:5
note [1] - 35:11
noted [1] - 36:5
nothing [4] - 40:5,
44:12
notice [5] - 19:7,
23:10, 24:9, 32:14,
44:2
noticed [1] - 28:5
notify [1] - 44:14
notwithstanding [2] -
8:22, 13:11
November [2] - 19:4,
29:10
number [10] - 8:13,
13:1, 19:20, 22:6,
22:12, 23:17, 36:10,
37:6, 41:22, 43:24

O

oath [3] - 6:5, 7:17,
17:6
object [1] - 35:15
observe [1] - 9:20
obvious [8] - 12:10,
12:16, 13:3, 17:22,
27:25, 28:3, 36:14,
38:4
obviously [6] - 7:22,
13:8, 14:7, 15:8,
35:15, 41:23
occasions [1] - 3:17
occur [1] - 18:7
occurred [12] - 3:19,
5:8, 10:25, 16:3,
18:2, 25:25, 28:21,
40:5, 40:7, 41:24,
41:25, 42:2

OF [3] - 44:19, 45:3,
45:4
Office [1] - 22:16
officer [1] - 24:13
old [2] - 13:22, 14:17
once [8] - 7:11, 20:8,
20:17, 25:16, 25:21,
26:22, 26:24, 32:24
one [23] - 3:12, 8:4,
8:6, 8:13, 8:19, 9:12,
13:1, 15:20, 22:18,
22:22, 24:10, 25:11,
27:25, 30:3, 30:21,
33:5, 34:3, 34:4,
35:7, 37:6, 41:22,
43:5, 43:24
one-paragraph [1] -
35:7
ones [1] - 35:9
onlooker [1] - 41:13
open [6] - 13:3, 17:22,
19:2, 27:24, 28:3,
31:24
operate [1] - 5:14
operated [3] - 6:25,
21:21, 37:3
operation [1] - 10:5
operations [1] - 37:3
operative [1] - 12:10
opinion [1] - 39:2
opportunity [2] - 3:16,
5:21
opposite [1] - 27:9
organization [1] - 1:9
Organizations [1] -
30:2
original [1] - 19:23
originally [1] - 8:21
otherwise [1] - 34:21
outcome [3] - 7:23,
15:6, 15:17

outlined [1] - 31:5
outside [1] - 44:8
owe [1] - 10:16
owed [2] - 11:19, 17:5
own [7] - 5:14, 13:13,
15:4, 32:2, 36:6,
37:24, 42:1
owned [4] - 6:25,
20:24, 21:9, 37:3
owner [6] - 11:10,
21:9, 21:18, 30:14,
34:16, 38:14
owns [1] - 20:23

P

P.M [2] - 19:18, 22:5
page [6] - 19:5, 19:14,
21:1, 27:15, 27:19,

11:5, 25:20
responsible [3] - 15:5,
 20:21, 25:19
rest [1] - 5:12
retained [1] - 33:23
review [1] - 23:18
reviewed [1] - 10:22
revoked [1] - 15:14
risk [8] - 13:13, 13:20,
 29:7, 29:10, 29:14,
 33:24, 34:1, 37:24
role [1] - 41:9
room [1] - 43:25
ropé [4] - 5:10, 5:17,
 7:5, 25:24
roped [3] - 25:12,
 25:14, 43:17
RPR [2] - 1:25, 45:21
rule [3] - 17:14, 35:3,
 35:6
Rule [8] - 8:20, 17:1,
 17:15, 35:1, 35:5,
 35:17, 35:21, 37:10
rules [2] - 20:20, 37:8
run [1] - 41:23

S

safe [4] - 10:16, 11:13,
 25:20, 38:14
Safety [1] - 23:15
sand [1] - 16:3
satisfy [1] - 28:13
save [1] - 28:24
saving [1] - 3:11
saw [4] - 22:5, 22:10,
 25:2, 34:4
SCANA [14] - 4:5,
 4:22, 7:21, 21:24,
 24:17, 24:19, 24:21,
 25:6, 25:9, 29:5,
 30:13, 32:1, 32:5,
 43:16
SCE&G [5] - 4:18,
 4:22, 7:1, 7:21, 21:9
school [1] - 8:14
scintilla [2] - 9:4, 9:6
scope [2] - 29:9, 30:4
screaming [1] - 22:8
search [1] - 9:10
Seay [9] - 21:23, 22:4,
 22:10, 32:9, 37:6,
 37:15, 37:16, 37:18,
 37:21
Seay's [1] - 21:24
second [1] - 13:19
secured [1] - 20:20
see [9] - 19:3, 19:10,
 21:4, 21:5, 21:7,
 22:3, 24:8, 30:7,
 30:10
seeing [3] - 22:18,
 22:20, 32:10
send [1] - 32:3
sends [1] - 14:25
sent [2] - 14:11, 23:5
separate [2] - 4:2, 7:1
September [1] - 45:18
service [1] - 14:6
Services [1] - 23:15
seven [1] - 31:6
severe [3] - 26:7,
 28:10, 41:17
shadowy [1] - 9:12
shape [1] - 42:14
shelter [2] - 22:6, 22:7
Sheppard [3] - 1:25,
 45:6, 45:21
Sheriff's [1] - 22:16
short [1] - 5:5
show [1] - 22:15
shows [1] - 23:24
sic [1] - 36:21
side [1] - 11:1
sign [1] - 29:21
signage [4] - 5:20,
 5:24, 6:5, 15:21
signed [3] - 22:1,
 29:20, 33:24
significant [1] - 40:23
significantly [1] -
 34:14
signs [1] - 29:16
simply [1] - 35:3
Sims [2] - 9:22, 12:19
sit [1] - 8:22
site [1] - 34:4
situation [1] - 18:5
size [1] - 29:17
smooth [2] - 40:1,
 41:19
social [1] - 36:7
somewhere [1] - 27:1
Soobitsky [1] - 36:8
sorry [3] - 10:13, 22:6,
 24:3
sounds [2] - 20:1,
 20:6
SOUTH [1] - 45:3
South [10] - 1:1, 1:14,
 4:4, 10:21, 12:22,
 14:4, 14:12, 33:4,
 45:8, 45:13
specifically [2] - 4:8,
 33:4
spent [1] - 5:8
Sports [1] - 14:1
Stacy [3] - 1:25, 45:6,
 45:21

stamp [1] - 23:16
standard [3] - 8:24,
 8:25, 39:4
standing [1] - 11:24
standpoint [1] - 8:20
stands [2] - 9:8, 14:13
start [1] - 19:24
State [2] - 1:1, 45:8
STATE [1] - 45:3
state [3] - 15:16, 17:9,
 33:7
statement [7] - 22:3,
 24:13, 31:11, 32:8,
 32:10, 37:16, 37:19
statements [3] -
 31:10, 34:6, 37:9
states [5] - 6:5, 20:24,
 33:13, 35:1, 38:12
States [1] - 33:1
status [5] - 3:18, 9:20,
 11:18, 12:22, 15:13
statute [4] - 28:15,
 30:1, 30:8, 30:10
Statute [13] - 10:6,
 10:12, 10:15, 11:11,
 11:23, 12:1, 19:13,
 20:4, 20:7, 28:12,
 28:14, 34:10, 34:12
STEGMAIER [12] -
 3:5, 3:9, 3:16, 21:11,
 21:14, 34:24, 38:17,
 39:1, 39:6, 39:16,
 41:21, 44:17
Stegmaier [3] - 1:21,
 3:6, 30:1
step [1] - 9:17
still [3] - 23:11, 27:5,
 28:19
storm [21] - 17:17,
 17:19, 18:2, 18:6,
 18:9, 23:5, 23:7,
 23:10, 23:11, 26:21,
 27:10, 28:6, 28:9,
 29:14, 30:23, 31:20,
 31:21, 31:23, 32:17,
 34:2, 40:5
story [1] - 5:5
structure [1] - 10:18
struggled [1] - 41:13
strung [1] - 5:11
submit [1] - 34:9
submitted [3] - 6:3,
 27:16, 30:9
submitting [1] - 16:22
subsidiaries [1] - 27:6
sudden [1] - 15:5
suffered [1] - 15:19
suffering [1] - 15:21
sufficient [3] - 29:16,
 29:17, 29:22

suggest [1] - 16:13
suggested [1] - 5:17
suits [3] - 22:20, 23:3,
 25:4
summary [26] - 5:4,
 8:22, 8:24, 9:2, 9:4,
 9:13, 12:2, 14:22,
 14:23, 15:9, 16:17,
 16:21, 18:13, 19:4,
 19:5, 19:8, 19:24,
 21:2, 27:25, 29:9,
 30:4, 30:20, 31:4,
 37:11, 39:4, 44:9
Superior [1] - 33:10
support [2] - 21:2,
 42:25
supported [2] - 40:19,
 43:18
supporting [1] - 9:13
supports [1] - 12:7
supposed [1] - 37:23
supposition [2] - 42:9,
 43:18
Supreme [7] - 9:2,
 10:23, 11:9, 12:7,
 14:15, 35:25, 36:5
survival [1] - 3:23
suspend [1] - 9:7
swam [2] - 5:10, 27:2
Swim [1] - 36:1
swim [10] - 5:7, 6:13,
 13:13, 13:15, 15:20,
 15:22, 41:13, 41:20,
 42:14, 42:17
swimming [39] - 5:8,
 5:10, 5:11, 5:18,
 5:25, 7:5, 7:9, 7:10,
 13:13, 15:15, 15:19,
 22:19, 23:4, 24:6,
 24:8, 24:11, 25:3,
 26:9, 26:20, 26:21,
 27:3, 27:10, 27:11,
 27:20, 31:13, 31:17,
 31:18, 32:6, 32:12,
 32:15, 33:20, 33:22,
 37:24, 40:2, 40:17,
 40:23, 41:1, 41:11
sworn [1] - 18:1

T

tab [2] - 21:14, 21:15
talks [9] - 12:21,
 22:17, 23:9, 27:19,
 27:20, 31:12, 32:9,
 38:3, 41:10
tax [2] - 21:4, 22:2
term [1] - 4:17
terminated [1] - 26:23
terms [1] - 19:8
testified [3] - 7:16,
 42:13, 42:20
testify [2] - 31:2, 31:23
testimony [13] - 17:6,
 17:10, 17:25, 18:1,
 24:14, 30:22, 34:17,
 39:21, 40:3, 40:8,
 40:10, 43:5, 43:13
THE [14] - 3:3, 3:8,
 3:15, 18:16, 18:23,
 32:22, 34:22, 38:11,
 38:23, 39:2, 39:7,
 40:13, 44:11, 44:14
theme [1] - 12:15
themselves [1] - 14:18
theory [2] - 8:2, 8:18
therefore [2] - 30:5,
 39:14
they've [1] - 31:5
third [5] - 13:19, 14:5,
 14:9, 19:13, 19:14
third-party [2] - 14:5,
 14:9
three [4] - 16:19, 19:6,
 21:4, 36:4
ties [1] - 12:18
Title [1] - 10:13
titled [1] - 22:16
Tobias [3] - 14:1,
 14:12, 15:9
today [9] - 4:7, 8:22,
 18:11, 30:13, 35:10,
 35:15, 36:24, 40:9,
 42:5
toe [1] - 25:21
took [5] - 20:5, 23:22,
 26:11, 26:16, 26:22
towards [2] - 22:7,
 22:21
towels [1] - 22:24
town [1] - 21:6
Transcript [1] - 1:7
transcript [1] - 45:10
transmitted [1] - 3:9
transport [1] - 23:20
trespassed [1] - 16:4
trespasser [3] - 15:12,
 20:17, 26:24
trespassers [1] -
 12:24
trespassing [1] - 16:6
tribunal [2] - 35:13,
 38:8
tried [2] - 16:21, 41:12
trouble [1] - 7:12
true [2] - 4:9, 45:9
try [2] - 18:4, 28:24
trying [2] - 7:14, 39:7
turn [1] - 42:2
two [14] - 5:17, 16:22,

19:6, 21:1, 22:5,
24:10, 25:2, 30:10,
31:1, 32:18, 33:9,
34:3, 36:9, 40:19

two-year [1] - 30:10

type [1] - 34:1

types [1] - 31:2

typically [1] - 37:12

U

ultimate [1] - 4:15

ultimately [3] - 11:7,
16:5, 36:18

unable [1] - 23:19

unaware [1] - 38:6

under [5] - 6:5, 7:17,
11:10, 17:6, 20:15

underneath [1] - 6:25

undersigned [1] -
45:6

understood [1] - 32:1

undisputably [3] -
26:11, 28:21, 29:5

undisputed [3] - 25:2,
31:25, 32:14

unfavorable [1] - 9:9

unfortunate [1] - 7:22

unfortunately [1] -
7:14

unit [1] - 23:25

United [1] - 33:1

up [11] - 12:6, 14:14,
15:25, 18:3, 21:6,
30:9, 32:19, 36:3,
38:6, 38:12, 43:15

upheld [1] - 16:6

users [1] - 10:17

V

value [1] - 21:8

variable [1] - 40:25

various [1] - 3:18

vehicle [2] - 22:22,
27:23

versus [9] - 9:22,

10:21, 12:4, 12:19,
15:24, 32:25, 33:10,
36:1, 38:3

Versus [1] - 14:1

video [1] - 34:4

view [1] - 21:7

Village [2] - 12:5, 38:3

virtue [8] - 4:22, 10:5,
11:19, 14:20, 17:1,
17:24, 42:15, 42:19

visit [1] - 36:10

Vogt [3] - 10:2, 35:25,
36:6

voluntary [2] - 22:3,
37:16

W

Wakeda [1] - 32:25

walk [6] - 5:18, 22:10,
22:20, 25:4, 26:5,
31:9

walked [1] - 15:14

walking [6] - 22:5,
22:12, 22:21, 23:2,
27:21

wanton [2] - 16:8,

16:13

warn [6] - 12:9, 12:16,

17:21, 26:8, 27:12,
38:4

warned [3] - 26:15,

32:17, 41:8

warning [5] - 10:17,

25:19, 38:15, 40:18,
41:7

watched [1] - 8:8

watching [1] - 37:22

water [30] - 6:23, 7:3,

13:4, 13:17, 20:8,
20:9, 22:19, 23:11,

25:17, 25:21, 26:10,

26:25, 27:5, 28:17,

29:2, 30:23, 31:19,

31:24, 32:12, 34:1,

34:13, 39:14, 40:2,

40:22, 41:1, 41:14,

41:15, 42:12

waters [4] - 6:23, 10:9,

43:25, 44:8

wearing [1] - 22:20

weather [30] - 24:1,

24:2, 24:20, 25:1,

26:6, 26:7, 28:6,

32:2, 32:5, 32:7,

33:4, 33:7, 33:14,

33:17, 33:21, 38:16,

39:9, 39:10, 39:13,

40:16, 40:20, 40:23,

41:2, 41:4, 41:9,

41:15, 41:17, 42:1,

42:18, 42:22

week [2] - 13:8, 31:16

west [1] - 22:5

whatsoever [1] -

16:10

widely [1] - 8:18

wild [1] - 8:3

willful [2] - 16:8, 16:12

William [1] - 1:16

windy [1] - 23:10

WITNESSES [1] - 2:2

witnesses [2] - 2:5,

37:6

word [1] - 12:10

words [3] - 37:23,

39:18, 42:9

wrap [1] - 43:15

writing [1] - 44:15

written [4] - 22:3,

24:13, 31:11, 32:10

wrongful [1] - 3:22

Y

yards [1] - 7:8

year [1] - 30:10

years [4] - 6:10, 9:3,

13:22, 14:17

yesterday [1] - 3:10

young [1] - 22:5

youth [2] - 11:2, 11:6

Keesley, William P. Law Clerk (Anna Marsh)

From: Pedro <pedro@krompecherlaw.com>
Sent: Friday, June 17, 2016 1:48 PM
To: Christian Stegmaier; Keesley, William P.
Cc: Keesley, William P.; Keesley, William P. Law Clerk (Anna Marsh); Meghan Hazelwood Hall; Huggins, Mona Denise; Emily Smith; Pedro Krompecher
Subject: Re: Myers, et. al. v. Consolidated Employees Recreation Club, et. al.; C/A Number 2014-CP-32-02210

Judge Keesley,

Summary judgement is the most drastic resolution to a case of this magnitude. The amount of argument from defense, in and of itself, is compelling that sufficient facts exist to overcome a Summary Judgement motion. Plaintiffs look forward to your decision.

Pedro Krompecher

Sent from my iPhone

On Jun 17, 2016, at 11:16 AM, Christian Stegmaier <cstegmaier@collinsandlacy.com> wrote:

Judge Keesley-

You have advised that you were not inclined to litigate by email (which we appreciate and understand). So, we respond cautiously and concisely. However, Plaintiffs' disregard for facts in evidence and the case law and standards regarding summary judgment in South Carolina nevertheless compels our response.

Our case law in South Carolina is very clear as to the Court's consideration of **admissible** evidence only in defeating summary judgment. See Rule 56(e), SCRPC; Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (holding hearsay evidence presented in response to summary judgment motion did not create a genuine issue of material facts because "[o]ur appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be admissible in evidence."). Plaintiffs did not offer any business or public record as an exhibit to the sole deposition in this case, nor have they offered them through the sworn affidavit of a records custodian or otherwise, which is required. Moreover, Defendants maintain these records do not apply to any business records or public records exception under SCRE Rules 803(6) or 803(8). As such, they remain inadmissible evidence, and the statements within are hearsay within hearsay—which are specifically excluded under Rule 803(8). Bottom line: There were mechanisms under our rules, which are readily available to Plaintiffs that would have allowed the Court to potentially make various materials admissible for purposes of the Court's consideration of whether a genuine issue of material fact exists (notwithstanding Defendants' duty arguments). That Plaintiffs failed to properly utilize those mechanisms is not an opportunity now for Plaintiffs to "throw the kitchen sink" at the Court in the 11th hour in defending a motion for summary judgment. ***Further, irrespective of the admissibility arguments above, Defendants note that nothing establishes that Seay saw or knew Myers or Ms. Bellamy were actually in the water prior to the incident.

Additionally, to the extent Plaintiff suggests that a "group in the parking lot" had some duty to Plaintiff's decedent, there is absolutely no evidence in any record, admissible or not, that supports that Evan

and/or Kim McPherson were employees, agents, or in any way representatives of the Pine Island Club. They were bystanders who had no duty of care to Plaintiffs or Ms. Bellamy; frankly, any suggestion that they had any connection to Pine Island bends the bounds of credulity.

Finally --- by happenstance, I have been writing an article for the state hospitality association this morning about liability for wild animal attacks in light of what happened earlier this week in Florida. Because of that work, I re-read Judge Anderson's opinion in Singleton v. Sherer, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008), which is arguably a continuation of his seminal opinion on premises liability in Sims v. Giles, 343 S.C. 708, 541 S.E.2d 857 (Ct. App. 2001). Singleton (and Sims) are applicable in our case. In Singleton, Judge Anderson referenced section 343A of the Restatement (Second) of Torts, which our Supreme Court has adopted. The judge specifically noted comment e of section 343A, which states:

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

Singleton was a premises case involving a pet raccoon owned by the defendant, which bit the plaintiff. Applying comment e, the Court of Appeals held as a matter of law that the plaintiff had knowingly exposed himself to the conditions and any potential danger posed by the raccoon biting him and was thus precluded from recovery. The same principal resides here. Myers--an adult--was swimming at his own risk, disregarded the signage re: prohibiting swimming from the dock, and knowingly/intentionally entered the water. He made intentional and intelligent choices; unfortunately, the choice he made to swim resulted in an unfortunate outcome after he panicked in the water. As tragic as that outcome is, under our law, Defendants have no liability for this loss.

Thank you for your time and attention.

CS

From: Emily Smith [<mailto:emily@krompecherlaw.com>]

Sent: Friday, June 17, 2016 9:06 AM

To: Pedro

Cc: Keesley, William P.; Christian Stegmaier; Keesley, William P. Law Clerk (Anna Marsh); Meghan Hazelwood Hall; Huggins, Mona Denise

Subject: Re: Myers, et. al. v. Consolidated Employees Recreation Club, et. al.; C/A Number 2014-CP-32-02210

Judge Keesley,

Attached please find the JW Seay's, Evan McPherson's, and Kim McPherson's statements to police stating that they each saw Evan Myers and Ms. Bellamy walking from the swimming beach to the dock. Additionally, the Lexington County Sheriff's Office Investigative Report is attached, and it again states that JW Seay saw the couple walking towards the pier. The last documents in the group are excerpts from Ms. Bellamy's deposition where she states that the

group in the parking lot acknowledged her and Evan as they were walking on the path to the dock.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Emily Anne Smith

On Fri, Jun 17, 2016 at 6:44 AM, Pedro <pedro@krompecherlaw.com> wrote:

I am out of the office on a family vacation, working from my phone. That factual reference comes from both the witness statements to the police department which are business records and public records, and is also from Ms. Bellamy's deposition where she discusses the same. Emily Anne Smith from my office will circulate the police records and sworn testimony of Ms. Bellamy which discuss these facts upon her arrival to the office this morning.

Pedro Krompecher

Sent from my iPhone

On Jun 16, 2016, at 12:29 PM, Keesley, William P. <WKeesleyj@sccourts.org> wrote:

I really don't want to get into a back and forth through email. But, as to your point #6, the plaintiffs' memorandum in opposition to the motion states that the two youngsters walked past the caretaker, Mr. Seay, in wet bathing suits after the pool area had been closed, and that they jumped off the dock about 50 feet away from him. Is there nothing in the record about that? Thank you. [wpk]

From: Christian Stegmaier [<mailto:cstegmaier@collinsandlacy.com>]

Sent: Thursday, June 16, 2016 12:24 PM

To: Keesley, William P.; Keesley, William P. Law Clerk (Anna Marsh)

Cc: Meghan Hazelwood Hall; Huggins, Mona Denise; 'Emily Smith'; Pedro Krompecher

Subject: RE: Myers, et. al. v. Consolidated Employees Recreation Club, et. al.; C/A Number 2014-CP-32-02210

Judge Keesley,

In brief response to Plaintiff's counsel's letter dated today, please find below Defendants' counter arguments as to each issue:

1. Plaintiffs have not pled changing weather conditions, or a failure to warn thereof, as a basis of recovery or allegation of wrongdoing within their complaint. In fact, the only thing they have plead is that Defendants failed to "caution swimmers and patrons of the club of the need to avoid the hidden natural safety hazards of uneven terrain under the water, warning of the hidden hazards of swimming in unclear waters, and informing swimmers of the location of safety equipment and emergency telephones." (Def. Ex. A, Complaint at Paragraph 10). While South Carolina is a liberal pleadings state, where a Plaintiff's complaint alleges specific acts of negligence, as is the case here, plaintiff is restricted to proof of such acts of negligence. See Mize v. Blue Ridge Ry. Co., 219 S.C. 119, 128-129, 64 S.E.2d 253, 257 (1951).

<image001.png>

<image002.png>

2. With the sole exception of deposition excerpts from Ms. Bellamy's deposition, Plaintiff's counsel has only offered hearsay documents that are not properly in the record and were not introduced as any exhibit to the sole deposition taken in this matter. These records are: Plaintiffs' Exhibit A, Interrogatory Responses; Plaintiffs' Ex. B, Evan McPherson's statement to police; Plaintiffs' Ex. C, Police Report; Plaintiffs' Ex. D, news reports and weather reports; Plaintiffs' Ex. F, EMS run report; and Plaintiffs' Exhibit I, Autopsy Report). As such, these documents are not properly considered in response to a motion for summary judgment, as they are not part of any record in this case. The only evidence in this case has been the testimony of Mandy Bellamy, and the photographs offered by Plaintiff's counsel as a exhibits to her deposition. See Rule 56(e), SCRPC; Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (holding hearsay evidence presented in response to summary judgment motion did not create a genuine issue of material facts because "[o]ur appellate courts have interpreted Rule 56(e) to mean materials used to support or refute a motion for summary judgment must be admissible in evidence."); Trustees of Erkskine College v. Central Mut. Ins. Co., 270 S.C. 118, 124, 241 S.E.2d 160, 162 (1978) (holding newspaper articles were unsworn statements and contain hearsay evidence and cannot be considered in a motion for summary judgment).
3. Plaintiff makes an enormous, factually unsupported leap by suggesting that because Decedent did not have trouble swimming one week prior to his death on a day when the weather was clear, he must have drowned because of a change in weather that, by all accounts, occurred after decedent had already drowned. In fact, Plaintiffs offer the same excerpts from Ms. Bellamy's testimony that support that the weather did not change until after decedent had already drowned, a rescue was attempted by Ms. Bellamy and a bystander, and she and the bystander exited the water and waited on law enforcement to arrive. Moreover, Ms. Bellamy clearly and unequivocally testified that at the time she and Mr. Myers were swimming on the date of his death, the water conditions were calm, smooth, no waves, no current, no significant wind, no rain, no lightning, and no thunder. (See previously submitted excerpts of

Deposition of Mandy Bellamy, p. 78, line 24 – p. 79, line 11; p. 145, lines 4-23; p. 100, lines 12-20). She is adamant that no weather condition contributed to his death in any way, but rather that Mr. Myers panicked and failed to follow her instructions to calm himself down and float on his back.

4. Irrespective of Plaintiffs' arguments related to changing weather conditions as causing Decedent's death, ***which were not pled in Plaintiffs' complaint***, the only evidence in this case supports that at the time of decedent's drowning, he and Ms. Bellamy were swimming outside of the ropes of the swimming beach beyond the confines of the Pine Island Club, knew and appreciated the "swim at your own risk" signage at the swimming beach, and had ignored clearly posted signage that prohibited them from jumping off and swimming from the subject boat dock beyond which decedent drowned. (See attached excerpts of Deposition of Mandy Bellamy, p. 74, line 24 – p. 75, lines 1-17; Deposition Ex. 7e; p. 145 line 25 – p. 146 line 7; p. 93, lines 10-13; p. 86, line 25 – p. 87, line 14; Deposition Ex. 8).

5. Our courts have consistently held that a landowner has no duty to warn of the perils of obvious natural conditions of which an invitee is *reasonably* unaware. Meadows v. Heritage Village Church and Missionary Fellowship, Inc., 305 S.C. 375, 378 (1991) (holding wet grass an open and obvious natural condition). There is no recognized duty in South Carolina which would require the Pine Island Club to warn or notify Decedent, an adult of twenty one years of age, of open and obvious weather conditions (i.e., approaching rain clouds). See generally Hancock v. Mid-South Mngt. Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (finding no general duty to warn of open and obvious conditions); West v. City of St. Paul, 936 P.2d 136, 139 (Alaska 1997) ("Because most weather conditions are open and obvious, and can be discovered with reasonable diligence, a wharfinger does not have a duty to warn of such dangers.")

6. There is absolutely no evidence in the record whatsoever that any employee or agent of the Pine Island Club knew Mr. Myers or Ms. Bellamy were on the island or in the water at the time of this incident.

Thank you for your time and attention. We greatly appreciate it.

CS

From: Emily Smith [mailto:emily@krompecherlaw.com]
Sent: Thursday, June 16, 2016 10:50 AM
To: Pedro Krompecher
Cc: Christian Stegmaier; Keesley, William P.; Keesley, William P. Law Clerk (Anna Marsh); Meghan Hazelwood Hall; Huggins, Mona Denise
Subject: Re: Myers, et. al. v. Consolidated Employees Recreation Club, et. al.; C/A Number 2014-CP-32-02210

Judge Keesley,

Attached please find an outline and documents that demonstrate that the weather conditions contributed to and caused Evan Myers to drown.

Sincerely,

Emily Anne Smith

On Thu, Jun 16, 2016 at 6:49 AM, Pedro Krompecher
<pedro@krompecherlaw.com> wrote:

Judge Keesley,

There is evidence that the weather conditions caused or contributed to Mr. Myers drowning. I will send responsive materials when I arrive to the office later this morning.

Pedro Krompecher

On Wed, Jun 15, 2016 at 4:15 PM, Christian Stegmaier
<cstegmaier@collinsandlacy.com> wrote:

Judge Keesley-

Good afternoon.

Defendants aver there is **no** evidence that weather conditions caused or contributed to Mr. Myers' drowning. The only evidence of storm or inclement weather was that it was raining after the incident when law enforcement etc arrived. Ms. Bellamy testified to that. Ms. Bellamy also testified that at the time of the drowning accident, the waters were calm. She also testified that Mr. Myers panicked in the water and subsequently drowned. Ms. Bellamy is the only person who has provided sworn testimony regarding the accident, the circumstances regarding the same, and the related conditions. We can/will provide the applicable portions of the transcript re: the same for your review/use; however, you sought an expedited reply and we wanted to be responsive.

CS

From: Keesley, William P. [mailto:WKeesleyj@sccourts.org]
Sent: Wednesday, June 15, 2016 4:09 PM
To: Christian Stegmaier; Keesley, William P. Law Clerk (Anna Marsh); Pedro Krompecher; Meghan Hazelwood Hall
Cc: Huggins, Mona Denise; Emily Smith
Subject: RE: Myers, et. al. v. Consolidated Employees Recreation Club, et. al.; C/A Number 2014-CP-32-02210

The attorneys for each side have sent me proposed orders. I have reviewed them, as well as the briefs and the arguments. Before I rule, I want to make sure I have each side's response to the following question. What evidence is there that the weather conditions caused or contributed to Mr. Myers drowning? I would appreciate your prompt response. Thank you. [wpk]

Christian Stegmaier

Direct: [\(803\) 255-0454](tel:(803)255-0454)
Main: [\(803\) 256-2660](tel:(803)256-2660)
Fax: [\(803\) 771-4484](tel:(803)771-4484)
Vcard: [download vcard](#)
Web: www.collinsandlacy.com

1330 Lady Street, 6th Floor
Columbia, SC 29201

<~WRD000.jpg>

Confidentiality Note: The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized

persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Collins and Lacy, P. C. client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

--

Pedro Krompecher

Krompecher Law Firm, PLLC

P: 919-977-8082

F: 919-746-7588

E: pedro@krompecherlaw.com

W: www.krompecherlaw.com

Mailing address:

P.O. Box 6639

Raleigh, NC 27628

NEW Office locations:

North Carolina

4010 Barrett Drive, #203

Raleigh, NC 27609

South Carolina

1824 Bull Street
Columbia, SC 29201

A referral is our greatest compliment. If you know someone in need of our services, we welcome the opportunity to help.

<image003.png>

CONFIDENTIALITY NOTICE: The information contained in this e-mail message (including any attachments) is for the sole use of the intended recipient(s) and may contain confidential, legally privileged, or other information subject to legal restrictions. The sender does not intend to waive any privilege (including the attorney-client or attorney work product privileges) which may attach to this information. If you are not an intended recipient, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. If you have received this email message in error, immediately destroy/delete the message and promptly notify the sender of this error by email or at 919.977.8082.

--

Emily Anne Smith

Litigation Associate

Krompecher Law Firm, PLLC

P: [919-977-8082](tel:919-977-8082)

F: [919-746-7588](tel:919-746-7588)

E: emily@krompecherlaw.com

W: www.krompecherlaw.com

Mailing address:

P.O. Box 6639

Raleigh, NC 27628

NEW Office locations:

North Carolina

4010 Barrett Drive, #203

Raleigh, NC 27609

South Carolina

1824 Bull Street
Columbia, SC 29201

A referral is our greatest compliment. If you know someone in need of our services, we welcome the opportunity to help.

<image003.png>

CONFIDENTIALITY NOTICE: The information contained in this e-mail message (including any attachments) is for the sole use of the intended recipient(s) and may contain confidential, legally privileged, or other information subject to legal restrictions. The sender does not intend to waive any privilege (including the attorney-client or attorney work product privileges) which may attach to this information. If you are not an intended recipient, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. If you have received this email message in error, immediately destroy/delete the message and promptly notify the sender of this error by email or at [919.977.8082](tel:919.977.8082).

~~~ **CONFIDENTIALITY NOTICE** ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

--  
Emily Anne Smith

Litigation Associate

Krompecher Law Firm, PLLC

P: [919-977-8082](tel:919-977-8082)

F: [919-746-7588](tel:919-746-7588)

E: [emily@krompecherlaw.com](mailto:emily@krompecherlaw.com)

W: [www.krompecherlaw.com](http://www.krompecherlaw.com)

Mailing address:

P.O. Box 6639

Raleigh, NC 27628

NEW Office locations:

**North Carolina**

4010 Barrett Drive, #203

Raleigh, NC 27609

South Carolina

1824 Bull Street  
Columbia, SC 29201

**A referral is our greatest compliment. If you know someone in need of our services, we welcome the opportunity to help.**

<image001.png>

**CONFIDENTIALITY NOTICE:** The information contained in this e-mail message (including any attachments) is for the sole use of the intended recipient(s) and may contain confidential, legally privileged, or other information subject to legal restrictions. The sender does not intend to waive any privilege (including the attorney-client or attorney work product privileges) which may attach to this information. If you are not an intended recipient, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. If you have received this email message in error, immediately destroy/delete the message and promptly notify the sender of this error by email or at [919.977.8082](tel:919.977.8082).



# VOLUNTARY STATEMENT

Victim / Witness

Case # 11-

Name: Kim McPherson Home Phone #: \_\_\_\_\_ Beeber Phone #: \_\_\_\_\_  
 Sex: M Work Phone #: \_\_\_\_\_ Cell: 238-4715 Location: \_\_\_\_\_  
 Age: 30 Cell: 0015  
 Cell: 924-2896

Name of person with whom you are being interviewed: Kim McPherson

Name of person being interviewed: Evan McPherson

Name of person to whom you are making this statement: Det. T.L. Stoner

Without being accused or questioned about any criminal offenses regarding the topic of this statement, I state the following information of my own free will to whatever purpose I may serve.

at 47 years of age, I am a white male

Talk with my friend J.W. and his wife at that time we heard a call from the water when we saw that a girl was just out side of the swim area calling for help. we only saw "her" at that point I attempted to swim out to help. By the time I got to the rope I was too tired to do any rescue attempt. I then talked to the girl and asked her to swim back to where my wife was.

Q Which side of the rope was she on?  
A out side (Rock side)

Q Which side of the rope were you on?  
A in side next to shelter 9AB

I have read each page of this statement consisting of 2 page/s each page of which bears my signature, and corrections if any, bear my initials, and received a copy of each page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Sworn to before me this 16 day of June, 2011  
J.D. Stoner, LCSO  
 Witness or  Notary Public

[Signature]  
 Signature of person giving voluntary statement

My Commission expires \_\_\_\_\_

VOLUNTARY STATEMENT

Page 2 of 2 pages.

Q When did you find out that there was another person in the water?

A I knew that there were two, we had observed them earlier.

Q Who called 911?

A J.W. Seay

Q What time did this occur?

A 8:30 pm

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

  
Signature of person giving voluntary statement

In to before me this 16 day of June 20 11  
Det. J. D. Stoner, ICSD  
Notary Public of South Carolina



# VOLUNTARY STATEMENT

Victim / Witness

Case # \_\_\_\_\_

|              |          |                |          |          |       |
|--------------|----------|----------------|----------|----------|-------|
| Home Phone # | 781-5459 | Beeper Phone # | _____    | Location | _____ |
| Work Phone # | 781-6491 | Date           | 606-4808 | Time     | 12:15 |

Name of individual who was injured: \_\_\_\_\_  
 Name of individual who was arrested: \_\_\_\_\_  
 Name of the law enforcement agency: \_\_\_\_\_

John W. Seay was arrested on \_\_\_\_\_ at \_\_\_\_\_  
 victim/witness name (Print Name) Last

The events of about which are known to \_\_\_\_\_  
 (Print Name)

Without being accused of or questioned about any criminal offense regarding the facts of which I state the following information of my own free will for whatever purpose I may serve.

On 64 day of April at Columbia SC 29212

At 8:30 PM, I saw two young people walking west beside Shelter #8 toward the dock beyond Shelter #9C. The next thing I remember was the girl was screaming help, help. At that moment I ran and I got out of our cars to see what was happening. I saw the girl trying to get swim to the swimming area boyies. I called 911 and told the lady what was going on. I never saw the young man in the water. The girl said he had gone down and tried to grab her and that she pushed him away.

I have read each page of this statement consisting of \_\_\_\_\_ page(s); each page of which bears my signature, and corrections if any, bear my initials, and received a copy of each page. I certify that the facts contained herein are true and correct to the best of my knowledge.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Witness or  Notary Public

John W. Seay  
 Signature of person giving voluntary statement

My Commission expires \_\_\_\_\_

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

---

Appellate Case No. 2016-002487

---

RECEIVED  
REC 04 2017  
SC COURT OF APPEALS

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal  
Representatives of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a  
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding  
Company, Inc.; SCANA, Respondents.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned hereby certifies that the Record on Appeal contains all material proposed  
to be included by any of the parties and not any other material.

**GRAHAM LAW FIRM, P.A.**



---

Edward L. Graham (SC Bar: 2483)  
Post Office Box 550  
Florence, SC 29501  
t. (843) 662-3281  
*Attorney for Appellants*

**KROMPECHER LAW FIRM, PLLC**  
Pedro E. Krompecher, III (SC Bar: 100485)  
Post Office Box 6639  
Raleigh, NC 27628  
*Attorney for Appellants*