

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No.: 2016-001178

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SC Court of Appeals

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MAY 03 2017

SC Court of Appeals

Linda Estrada, George Estrada, Tyrone Ruff, Khalilah Smith,
Carletta Williams, and Cristian Reyes,.....Respondents,

v.

Andrew Marshall and Linda Marshall,.....Appellants,

RECORD ON APPEAL VOLUME I

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Attorney for Respondents Linda and George Estrada

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Attorney for Respondent Cristian Reye

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R. Nichols Riley, Jr.
John C. Bradley, Jr.
PO Box 5709
West Columbia, SC 29171
Attorneys for the Respondents Tyrone Ruff, Khalilah Smith, and Carletta Williams

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CERTIFICATE OF APPELLANT

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

JUDGM T IN A CIVIL CASE

CASE NUMBER: 2014CP4004304

BY:

Linda Estrada
George Estrada

PLAINTIFF(S)

Andrew Marshall
Linda Marshall

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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 _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 March 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Gerald Eugene Reardon

Damon Christian Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Genevieve W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada and George Estrada,

Plaintiffs,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-04304

**CONSENT MOTION TO
CONSOLIDATE AND CONSENT
ORDER**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05123

RICHLAND COUNTY
FILED
2015 MAR 13 AM 10:56
JENNIFER W. HOSKINS
CLERK, C.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Cristian Reyes.

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-07214

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05122

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05124

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

The above-captioned actions are tort actions relating to the collapse of a deck at the Defendants' residence. The various Plaintiffs have filed suit to recover damages from the same Defendants in each case.

Defendants filed a Motion to Consolidate on November 24, 2014, on the grounds that all actions arise from allegations of negligence relating to the collapse of a deck at a residence in which Plaintiffs in all actions seek to recover from damages from the same Defendants; all cases involve common questions of fact and law, and all cases are currently pending before this Court; and, all cases will, upon information and belief,

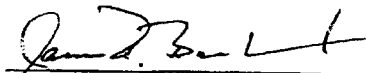
require testimony from Plaintiffs in the above captioned actions, Defendants and the same lay witnesses and expert witnesses.

At the time Defendants filed their motion to consolidate, Civil Action No. 2014-CP-40-07214 had not been filed and served. By way of consent herein, Defendants amend their motion to include this action.

The parties, by the signatures of their undersigned counsel below, now consent that the cases should be consolidated for trial pursuant to Rule 42(a), SCRCP.

NOW THEREFORE, with the consent of the parties hereto, the Court finds that the above referenced matters shall be consolidated for trial pursuant to Rule 42(a) of the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.



James R. Barber, III
Judge

Columbia, South Carolina

~~MARCH~~ 6,
~~February~~ ___, 2015

WE SO MOVE:



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Riley Pope & Laney, LLC
Post Office Box 11412
Columbia, SC 29211
(803) 799-9993
Attorney for Defendants Andrew Marshall
and Linda Marshall

WE CONSENT:

Gerald E. Reardon, Esquire
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, SC 29201
(803) 978-6111
Attorney for Plaintiffs Linda Estrada and
George Estrada



R. Nichols Riley, Jr., Esq.
Stanley Myers, Esq.
Moore Taylor Law Firm, P.A.
PO Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Plaintiffs Carletta Williams,
Khalilah Smith and Tyrone Ruff

Todd Ellis, Esquire
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7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
803-732-0123
Attorney for Plaintiff Cristian Reyes

WE CONSENT:



Gerald E. Reardon, Esquire
Law Office of Jerry Reardon
1329 Blanding Street
Columbia, SC 29201
(803) 978-6111
Attorney for Plaintiffs Linda Estrada and
George Estrada

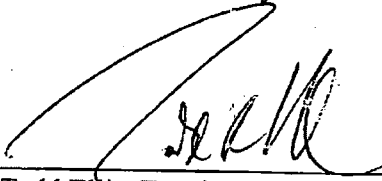
R. Nichols Riley, Jr., Esq.
Stanley Myers, Esq.
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West Columbia, SC 29171
(803) 796-9160
Attorney for Plaintiffs Carletta Williams,
Khalilah Smith and Tyrone Ruff

Todd Ellis, Esquire
Law Office of Todd Ellis
7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
803-732-0123
Attorney for Plaintiff Cristian Reyes

WE CONSENT:

Gerald E. Reardon, Esquire
Law Office of Jerry Reardon
1329 Blanding Street
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(803) 978-6111
Attorney for Plaintiffs Linda Estrada and
George Estrada

R. Nichols Riley, Jr., Esq.
Stanley Myers, Esq.
Moore Taylor Law Firm, P.A.
PO Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Plaintiffs Carletta Williams,
Khalilah Smith and Tyrone Ruff

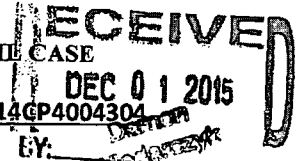


Todd Ellis, Esquire
Law Office of Todd Ellis
7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
803-732-0123
Attorney for Plaintiff Cristian Reyes

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4004304



Linda Estrada

Andrew Marshall

George Estrada

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

Motion for Summary judgment denied.

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
		\$
		\$
		\$

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 2100

Date 11/20/15

For Clerk of Court Office Use Only

This judgment was entered on the 23 day of NOV, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 23 day of NOV, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Gerald Eugene Reardon

Damon Christian Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeannette W. Wlodarczyk

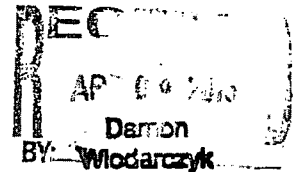
SCANNED

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-4004304



Linda Estrada

Andrew Marshall

George Estrada

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

This "4304" case # is the number for all of the cases which had been previously consolidated. For

INFORMATION FOR THE PUBLIC INDEX *by request of the attorneys.*

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)
<u>Linda Estrada</u>	<u>Andrew Marshall</u> <u>Linda Marshall</u>	\$ <u>60,818.32</u>
<u>George Estrada</u>	<u>Andrew Marshall</u> <u>Linda Marshall</u>	\$ <u>47,684.39</u>
		\$

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.

James E. McLean
Circuit Court Judge

2108
Judge Code

4/7/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 6 day of Apr, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Apr, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

George Reardon

Damon Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

Shanette W. Richards
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-4005122

Khalilah Smith

Andrew Marshall

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ 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 PUBLIC 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)
Khalilah Smith	Andrew Marshall Linda Marshall	\$ 9,452.02
		\$
		\$

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.

Spencer G. Kuttler 21008 4/2/16
Circuit Court Judge Judge Code Date
For Clerk of Court Office Use Only

This judgment was entered on the 8 day of Apr, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Apr, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Ralph Riley

Damon Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kenneth W. M. ...
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

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

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP- 4005123

Carletta WilliamsAndrew MarshallLinda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ☐ **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 PUBLIC 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)
<u>Carletta Williams</u>	<u>Andrew Marshall</u> <u>Linda Marshall</u>	\$ <u>8,683.00</u>
		\$
		\$

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.

Rae M. Gubler
Circuit Court Judge

2168
Judge Code

4/7/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8 day of Apr, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Apr, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Ralph Riley

Darmon Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Shanelle W. M. Brude
CLERK OF COURT

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-4005124

Tyrone Ruff

Andrew Marshall

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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 PUBLIC 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)
<u>Tyrone Ruff</u>	<u>Andrew Marshall</u> <u>Linda Marshall</u>	\$ <u>17,104.00</u>
		\$
		\$

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.

Richard P. Miller
Circuit Court Judge

2168
Judge Code

4/2/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8 day of Apr, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Apr, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Ralph Riley

ATTORNEY(S) FOR THE PLAINTIFF(S)

Damon Wiodarczyk

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-40724

APR 19 2016

Dated

Wlodarczyk

Christian Reyes

Andrew Marshall

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

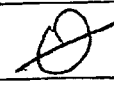
IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC 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)
Christian Reyes	Andrew Marshall Linda Marshall	\$ 
		\$
		\$

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.

Stella Clark
Circuit Court Judge

2166
Judge Code

4/7/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of April 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Todd Ellis

Damon Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Jeanette W. McBride

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-40-04304

Linda Estrada and George Estrada, Carletta
Williams, Cristian Reyes, Khalilah Smith, &
Tyrone Ruff

Plaintiffs,

vs.

Andrew Marshall and Linda Marshall,

Defendants.

Verdict Form

FILED
2016 APR -8 AM 8:58
JEANETTE M. MCNIDE
C.C.P. & G.S.

1. Do you find that the Plaintiffs have proven by a preponderance of the evidence that the Defendants were negligent?

X Yes No

If you answer No, **STOP**.

If you answered Yes, please respond to Question 2 below.

2. Was the Defendants' negligence a proximate cause of the Plaintiffs' alleged injuries/damages? Please mark YES or NO as to each Plaintiff.

As to Plaintiff, Linda Estrada yes

As to Plaintiff, George Estrada yes

As to Plaintiff, Carletta Williams yes

As to Plaintiff, Cristian Reyes no

As to Plaintiff, Khalilah Smith yes

As to Plaintiff, Tyrone Ruff yes

3. If you responded YES to any Plaintiff/Plaintiffs in Question 2, indicate the amount of damages, if any, to be awarded to Plaintiff/Plaintiffs. If you responded NO in Question 2, please leave space blank.

Plaintiff, Linda Estrada

60,818.32

~~WASBAND~~ CP

Plaintiff, George Estrada

471,684.39

Plaintiff, Carletta Williams

8683.00

Plaintiff, Cristian Reyes

Ø

Plaintiff, Khalilah Smith

9,452.02

Plaintiff, Tyrone Ruff

17,104.00

I certify that this was the unanimous decision of the jury.

April 7, 2016

Christ - P. A.
Jury Forelady

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada, George Estrada,
Tyrone Ruff, Khalilah Smith,
Carletta Williams, and Cristian Reyes

Plaintiffs,

vs.

Andrew Marshall and Linda Marshall

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-40-04304

**ORDER DENYING DEFENDANT'S
MOTION FOR JNOV AND ORDER
DENYING PLAINTIFF'S MOTION FOR
COSTS**

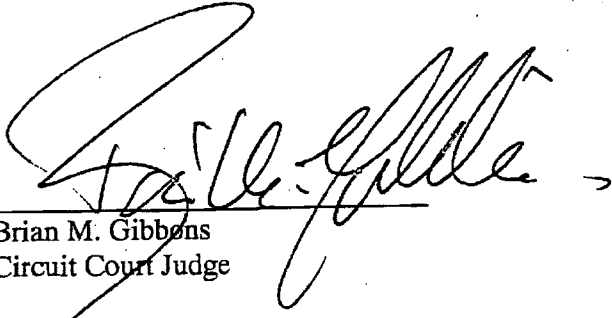
RICHLAND COUNTY
FILED
2016 MAY 24 AM 11:44
JENNIFER W. MCGRIDE
C.O.P. & G.S.

This matter came before the Court for trial in Richland County during the week of April 4th 2016. The trial resulted in a plaintiff's verdict where all plaintiffs recovered with the exception of Mr. Reyes. The Court then gave both sides 10 days to file any post-trial motions. This Court received both the Defendant's motion for JNOV and the Plaintiff's motion for costs within the 10 days following the conclusion of the trial. After having considered both the Defendant's JNOV motion and the Plaintiff's motion for costs, and considering the applicable statutory law, case law and evidence presented, I respectfully deny both Defendant's motion and Plaintiff's motion. No further briefing or argument is necessary.

AND IT IS SO ORDERED.

Chester, SC

April 22, 2016


Brian M. Gibbons
Circuit Court Judge

SCANNED
21

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LINDA ESTRADA and GEORGE
ESTRADA,

Plaintiffs,

-VS-

ANDREW MARSHALL and LINDA
MARSHALL,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.:

COMPLAINT
(JURY TRIAL DEMANDED)

Plaintiff would respectfully show:

1. Plaintiffs are residents of the County of Richland, State of South Carolina.
2. Defendants are residents of the County of Richland, State of South Carolina.
3. On or about April 5, 2014, Plaintiffs were invited by tenants of a home located at 108

Casbel Court in Hopkins, South Carolina, which is owned by Defendants. Plaintiffs were sitting on a deck attached to the home when the deck collapsed and fell on its side and injured Plaintiffs.

4. As a result, Plaintiff George Estrada suffered great physical harm and injury to the right foot, left shoulder, back, and limbs which has caused, and will in the future cause, Plaintiff George Estrada to undergo much physical pain, suffering, mental anguish, emotional distress and impairment of health and bodily efficiency, and has caused, and will in the future cause, Plaintiff George Estrada to have to spend money for medical services.

5. As a result, Plaintiff Linda Estrada suffered great physical harm and injury to the head, body and limbs, specifically to her right arm, elbow, and lower back, which has caused, and

will in the future cause, Plaintiff Linda Estrada to undergo much physical pain, suffering, mental anguish, emotional distress and impairment of health and bodily efficiency, and has caused, and will in the future cause, Plaintiff Linda Estrada to have to spend money for medical services, and has caused, and will in the future cause, Plaintiff Linda Estrada to lose money in the nature of wages or earnings.

6. Defendants were negligent, careless, reckless, and grossly negligent at the time and place above-mentioned in the following particulars:

- a. In failing to warn of the dangerous conditions of the deck;
- b. In failing to properly inspect the deck;
- c. In failing to properly maintain the deck;
- d. In failing to properly keep the deck in a safe and reasonable condition;
- e. In failing to exercise that degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances;
- f. In such further particulars as may be shown at trial.

All of which combined and concurred as the direct and proximate cause of the injuries and damages suffered by Plaintiff, said acts being in violation of the Statute Laws of the State of South Carolina.

7. Plaintiffs are informed and believe that Plaintiffs are entitled to judgment in this matter as set out below.

WHEREFORE, Plaintiffs pray for judgment for actual and punitive damages in amounts determined by a jury, for the costs of this action, and for such other and further relief as the Court may deem just and proper.



GERALD E. REARDON
Attorney for Plaintiffs

ATTORNEYS LEE, EADON, ISGETT,
POPWELL AND REARDON, P.A.
Post Office Box 1505
Columbia, South Carolina 29202
(803) 799-9811

Columbia, South Carolina

July 7, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 14-CP-40-_____

**COMPLAINT
(JURY TRIAL DEMANDED)**

PLAINTIFF, Complains of the Defendants as follows:

1. Plaintiff is a citizen and resident of Richland County, South Carolina.
2. Plaintiff is informed and believes the Defendants are citizens and residents of Richland County, South Carolina.
3. All acts and events complained of herein occurred in Richland County, South Carolina.
4. This Court has subject matter and personal jurisdiction over the parties in of this action. Venue is proper in Richland County, South Carolina.
5. On or about April 5, 2014, the Plaintiff came by invitation to the Defendants' home located at 108 Casbel Court, Hopkins, South Carolina (hereinafter referred to as the "Premises"). The Defendants were renting the home to tenants on that date. The Defendants own the Premises in question.
6. The Plaintiff and various other persons were sitting on a deck attached to the home when the deck collapsed injuring the Plaintiff. As a result of the deck collapsing, Plaintiff suffered serious physical harm and multiple injuries. Specifically, Plaintiff injured her neck and upper back. These injuries Plaintiff to experience great physical pain, suffering, mental anguish, and emotional distress and Plaintiff will continue to suffer physical pain, suffering, mental anguish

and emotional distress in the future. Plaintiff has been forced and will be forced to spend money for medical services and treatment in the future for her injuries.

7. The Plaintiff originally went to the Emergency Room where the treating physician stated that the Plaintiffs symptoms are associated with trauma.

8. Upon discharge from the hospital the Plaintiff required several different prescriptions. The Plaintiff also received treatment from various medical providers due to the injury to her neck and upper back.

9. The Plaintiff is permanently impaired due to the injury she received as a result of the deck collapsing on the Defendants Premises, and she is still experiencing pain in her neck and upper back on a daily basis.

10. The Plaintiff was an invitee while at the Premises. The Defendants owed the Plaintiff a duty of care to discover risk and take safety precautions to warn or limit a unreasonable risk on the Premises.

11. The Defendants owed the Plaintiff a duty of care as an invitee to warn the Plaintiff of any foreseeable risks associated with any condition which the Defendant had knowledge. The Defendants created a dangerous condition for the Plaintiff and other invitees by failing to properly inspect, maintain, and properly keep the deck in a safe and reasonable condition.

12. The Defendants were negligent and reckless in one or more of the following particulars:

- a. In failing to properly inspect the deck;
- b. In failing to warn of the dangerous conditions of the deck;
- c. In failing to properly maintain the deck;
- d. By allowing the deck to be constructed in violation of various building codes;
- e. In failing to properly keep the deck in a safe and reasonable condition;
- f. In failing to exercise a degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances then and there prevailing;
- g. In such other ways as may be shown during the interim.

All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of Statutory and Common Laws of the State of South Carolina.

13. As a direct and proximate result of the Defendants' negligence, gross negligence, recklessness, carelessness, willfulness and wantonness, the Plaintiff sustained severe physical injury; has had to expend a large amount of money for medical bills and service; will have to expend large amounts of money for future medical bills and services; has endured substantial emotional distress; has experienced significant pain, suffering, and aggravation; has been inconvenienced; has experienced loss of enjoyment of life; has lost wages; and has been damaged in other ways.

14. As a direct and proximate result of the Defendants negligence, gross negligence, recklessness, carelessness, willfulness and wantonness, the Plaintiff is entitled to a judgment against the Defendants for actual and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for actual damages; punitive damages; costs associated with having to litigate this action as well as such other and further relief as this Court deems just and proper.

MOORE TAYLOR LAW FIRM, P.A.



R. Nichols Riley, Jr.
Stanley Myers
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
ATTORNEYS FOR PLAINTIFF

West Columbia, South Carolina
August 19, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Carletta Williams,	)	
	)	
Plaintiff,	)	Docket Number: 14-CP-40-_____
	)	
v.	)	
	)	
Andrew Marshall and Linda Marshall,	)	COMPLAINT
	)	(JURY TRIAL DEMANDED)
Defendants.	)	
	)	

PLAINTIFF, Complains of the Defendants as follows:

1. Plaintiff is a citizen and resident of Richland County, South Carolina.
 2. Plaintiff is informed and believes the Defendants are citizens and residents of Richland County, South Carolina.
 3. All acts and events complained of herein occurred in Richland County, South Carolina.
 4. This Court has subject matter and personal jurisdiction over the parties in of this action.
- Venue is proper in Richland County, South Carolina.
5. On or about April 5, 2014, the Plaintiff came by invitation to the Defendants' home located at 108 Casbel Court, Hopkins, South Carolina (hereinafter referred to as the "Premises"). The Defendants were renting the home to tenants on that date. The Defendants own the Premises in question.
 6. The Plaintiff and various other persons were sitting on a deck attached to the home when the deck collapsed injuring the Plaintiff. As a result of the deck collapsing, Plaintiff suffered serious physical harm and multiple injuries. Specifically, Plaintiff injured her middle and lower back and her left side. These injuries caused Plaintiff to experience great physical pain, suffering, mental anguish, and emotional distress and Plaintiff will continue to suffer physical

pain, suffering, mental anguish and emotional distress in the future. Plaintiff has been forced and will be forced to spend money for medical services and treatment in the future.

7. The Plaintiff went to the emergency room on the night in question. The treating physician determined that the Plaintiff sustained left hip and buttock contusion with hematoma and injuries to her lower back.

8. Upon discharge from the hospital the Plaintiff required several different prescriptions. The Plaintiff also received treatment from various medical providers due to the injury to her left side and back.

9. The Plaintiff is permanently impaired due to the injury she received as a result of the deck collapsing on the Defendants Premises, and she is still experiencing pain in her left side and back on a daily basis.

10. The Plaintiff was an invitee while at the Premises. The Defendants owed the Plaintiff a duty of care to discover risk and take safety precautions to warn or limit a unreasonable risk on the Premises.

11. The Defendants owed the Plaintiff a duty of care as an invitee to warn the Plaintiff of any foreseeable risks associated with any condition which the Defendant had knowledge. The Defendants created a dangerous condition for the Plaintiff and other invitees by failing to properly inspect, maintain, and properly keep the deck in a safe and reasonable condition.

12. The Defendants were negligent and reckless in one or more of the following particulars:

- a. In failing to properly inspect the deck;
- b. In failing to warn of the dangerous conditions of the deck;
- c. In failing to properly maintain the deck;
- d. By allowing the deck to be constructed in violation of various building codes;
- e. In failing to properly keep the deck in a safe and reasonable condition;
- f. In failing to exercise a degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances then and there prevailing;
- g. In such other ways as may be shown during the interim.

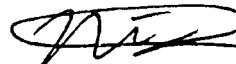
All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of Statutory and Common Laws of the State of South Carolina.

13. As a direct and proximate result of the Defendants' negligence, gross negligence, recklessness, carelessness, willfulness and wantonness, the Plaintiff sustained severe physical injury; has had to expend a large amount of money for medical bills and service; will have to expend large amounts of money for future medical bills and services; has endured substantial emotional distress; has experienced significant pain, suffering, and aggravation; has been inconvenienced; has experienced loss of enjoyment of life; has lost wages; and has been damaged in other ways.

14. As a direct and proximate result of the Defendants negligence, gross negligence, recklessness, carelessness, willfulness and wantonness, the Plaintiff is entitled to a judgment against the Defendants for actual and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for actual damages; punitive damages; costs associated with having to litigate this action as well as such other and further relief as this Court deems just and proper.

MOORE TAYLOR LAW FIRM, P.A.



R. Nichols Riley, Jr.
Stanley Myers
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
ATTORNEYS FOR PLAINTIFF

West Columbia, South Carolina
August 19, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Tyrone Ruff,	)	
	)	
Plaintiff,	)	Docket Number: 14-CP-40-_____
	)	
v.	)	
	)	
Andrew Marshall and Linda Marshall,	)	COMPLAINT
	)	(JURY TRIAL DEMANDED)
Defendants.	)	
	)	

PLAINTIFF, Complains of the Defendants as follows:

1. Plaintiff is a citizen and resident of Richland County, South Carolina.
2. Plaintiff is informed and believes the Defendants are citizens and residents of Richland County, South Carolina.
3. All acts and events complained of herein occurred in Richland County, South Carolina.
4. This Court has subject matter and personal jurisdiction over the parties in of this action. Venue is proper in Richland County, South Carolina.
5. On or about April 5, 2014, the Plaintiff came by invitation to the Defendants' home located at 108 Casbel Court, Hopkins, South Carolina. The Defendants were renting the home to tenants on that date (hereinafter referred to as the "Premises"). The Defendants own the Premises in question.
6. The Plaintiff and various other persons were sitting on a deck attached to the home when the deck collapsed injuring the Plaintiff. As a result of the deck collapsing, Plaintiff suffered serious physical harm and multiple injuries. Specifically, Plaintiff injured his right wrist and back. These injuries caused Plaintiff to experience great physical pain, suffering, mental anguish, and emotional distress and Plaintiff will continue to suffer physical pain, suffering,

mental anguish and emotional distress in the future. Plaintiff has been forced and will be forced to spend money for medical services and treatment in the future for his injuries.

7. The Plaintiff went to the emergency room on the night in question. The treating physician determined that the Plaintiff sustained injuries to his right wrist and lower back.

8. Upon discharge from the hospital the Plaintiff required a brace for his right wrist. The Plaintiff also received treatment from various medical providers due to the injury to his back.

9. The Plaintiff is permanently impaired due to the injury he received as a result of the deck collapsing on the Defendants Premises, and he is still experiencing pain in his right wrist and back on a daily basis.

10. The Plaintiff was an invitee while at the Premises. The Defendants owed the Plaintiff a duty of care to discover risk and take safety precautions to warn or limit a unreasonable risk on the Premises.

11. The Defendants owed the Plaintiff a duty of care as an invitee to warn the Plaintiff of any foreseeable risks associated with any condition which the Defendant had knowledge. The Defendants created a dangerous condition for the Plaintiff and other invitees by failing to properly inspect, maintain, and properly keep the deck in a safe and reasonable condition.

12. The Defendants were negligent and reckless in one or more of the following particulars:

- a. In failing to properly inspect the deck;
- b. In failing to warn of the dangerous conditions of the deck;
- c. In failing to properly maintain the deck;
- d. By allowing the deck to be constructed in violation of various building codes;
- e. In failing to properly keep the deck in a safe and reasonable condition;
- f. In failing to exercise a degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances then and there prevailing;
- g. In such other ways as may be shown during the interim.

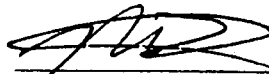
All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of Statutory and Common Laws of the State of South Carolina.

13. As a direct and proximate result of the Defendants' negligence, gross negligence, recklessness, carelessness, willfulness and wantonness, the Plaintiff sustained severe physical injury; has had to expend a large amount of money for medical bills and service; will have to expend large amounts of money for future medical bills and services; has endured substantial emotional distress; has experienced significant pain, suffering, and aggravation; has been inconvenienced; has experienced loss of enjoyment of life; has lost wages; and has been damaged in other ways.

14. As a direct and proximate result of the Defendants negligence, gross negligence, recklessness, carelessness, willfulness and wantonness, the Plaintiff is entitled to a judgment against the Defendants for actual and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for actual damages; punitive damages; costs associated with having to litigate this action as well as such other and further relief as this Court deems just and proper.

MOORE TAYLOR LAW FIRM, P.A.



R. Nichols Riley, Jr.
Stanley Myers
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160
ATTORNEYS FOR PLAINTIFF

West Columbia, South Carolina
August 19, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CRISTIAN REYES

Plaintiffs,

-vs-

ANDREW MARSHALL and LINDA
MARSHALL,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-40-_____

COMPLAINT
(JURY TRIAL DEMANDED)RICHLAND COUNTY
FILED
2014 NOV 18 AM 9:55
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Plaintiff would respectfully show:

1. Plaintiff is a resident of the County of Richland, State of South Carolina.
2. Defendants are residents of the County of Richland, State of South Carolina.
3. On or about April 5, 2014, Plaintiff was invited by tenants of a home located at 108

Casbel Court in Hopkins, South Carolina, which is owned by Defendants. Plaintiff was sitting on a deck attached to the home when the deck collapsed and fell on its side and injured Plaintiff.

4. As a result, Plaintiff Cristian Reyes suffered great physical harm and injury which has caused, and will in the future cause, Plaintiff Cristian Reyes to undergo much physical pain, suffering, mental anguish, emotional distress and impairment of health and bodily efficiency, and has caused, and will in the future cause, Plaintiff Cristian Reyes to have to spend money for medical services.

5. Defendants were negligent, careless, reckless, and grossly negligent at the time and place above-mentioned in the following particulars:

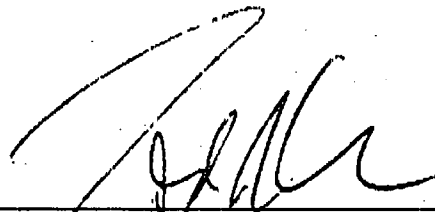
- a. In failing to warn of the dangerous conditions of the deck;

- b. In failing to properly inspect the deck;
- c. In failing to properly maintain the deck;
- d. In failing to properly keep the deck in a safe and reasonable condition;
- e. In failing to exercise that degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances;
- f. In such further particulars as may be shown at trial.

All of which combined and concurred as the direct and proximate cause of the injuries and damages suffered by Plaintiff, said acts being in violation of the Statute Laws of the State of South Carolina.

6. Plaintiff is informed and believes that Plaintiff is entitled to judgment in this matter as set out below.

WHEREFORE, Plaintiff prays for judgment for actual and punitive damages in amounts determined by a jury, for the costs of this action, and for such other and further relief as the Court may deem just and proper.



TODD ELLIS
Attorney for Plaintiffs

LAW OFFICE OF TODD ELLIS
7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
(803) 732-0123

Irmo, South Carolina

November 13, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada and George Estrada,
Plaintiffs,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-04304

**NOTICE OF MOTION
AND
DEFENDANTS' MOTION TO
CONSOLIDATE CASES**

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05123

2014 NOV 24 AM 11:52
JEANETTE W. HEBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05122

IN THE COURT OF COMMON PLEAS

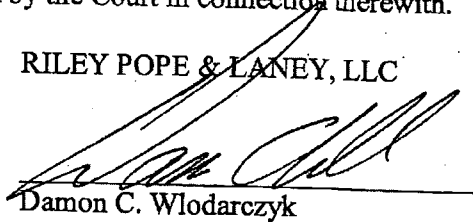
C/A NO.: 2014-CP-40-05124

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendant will appear before the presiding Judge for Richland County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order pursuant to Rule 42(a) of the South Carolina Rules of Civil Procedure consolidating for trial the above captioned actions. The grounds for said motion are as follows:

- 1) All actions arise from allegations of negligence relating to the collapse of a deck at a residence in which the Plaintiffs in all actions seek to recover damages from the same Defendants;
- 2) All cases involve common questions of fact and law, and all cases are currently pending before this Court;
- 3) All cases will, upon information and belief, require testimony from the Plaintiffs in the above captioned actions, the Defendants, and the same lay witnesses and expert witnesses.

Said motion shall be based upon the statute and case law of the State of South Carolina, upon the pleadings and other evidence developed in discovery and upon the affidavits attached hereto and other material properly received by the Court in connection therewith.

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk
Roy F. Laney, SC Bar 64279
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
(803) 799-9993
Attorneys for Defendants

Columbia, SC
November 19, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Linda Estrada and George Estrada,

Plaintiffs,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-04304

**NOTICE OF MOTION
AND
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05123

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cristian Reyes.

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-07214

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05122

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05124

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendants will appear before the presiding judge for Richland County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting to the Defendants Summary Judgment on the grounds that there is no genuine issue as to any material fact and the Defendants are entitled to judgment in their favor as a matter of law. Specifically, plaintiffs cannot present even a scintilla of evidence showing or tending to show the Defendants breached their legal duty to the plaintiffs based upon the discovery obtained in this case as more fully stated hereinafter.

STANDARD

Summary Judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. "In

determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.” Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent must come forward with specific facts showing there is a genuine issue for trial.” Garvin v. Bi-Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact.

FACTS

This is a premises liability case. The Defendants are the owners of a home located in Hopkins, County of Richland, State of South Carolina. The Defendants purchased the home from an acquaintance in approximately 1997, and the property has been used as rental income since it was purchased. The facts giving rise to the above-captioned actions took place on April 5, 2014. From 1997 to April 5, 2014, there had been no prior incidents at this property resulting in injuries.

On the date of the incident, the home was rented to an unnamed third-party (hereinafter “tenant”). The tenant had resided in the property since approximately 2012. On April 5, 2014, the tenant held a party attended by the above named plaintiffs and others. At the time of the incident, the above named plaintiffs and others had gathered on a wooden deck located at the rear of the house. The deck was elevated several feet off the ground. In addition to the guests, there was a metal grill on the deck used to cook food.

At approximately 11:00 p.m., while the above named plaintiffs and others were on the deck, the deck collapsed, which allegedly caused the plaintiffs injuries and resulted in medical treatment and, in some cases, missed work. It is alleged that the deck was improperly secured to the house, which resulted in the collapse. None of the above-named plaintiffs were tenants.

When the Defendants purchased the house in 1997, the deck was present. Neither the Defendants nor anyone on the Defendants' behalf made any improvements, modifications or structural repairs to the deck from 1997 to the date of the incident. There is no evidence that either of the Defendants were aware of any issues related to the deck regarding its installation or support. There is no evidence that the deck was weak or that it gave way prior to the collapse. Moreover, the Defendants never received any complaints about the deck from 1997 to the date of the collapse. Finally, there is no evidence that any of the above-named plaintiffs noticed any structural or support defects with the deck prior to its collapse.

The above-named plaintiffs have brought negligence actions against the homeowners.

ANALYSIS

Four general classifications of persons who come on premises are recognized in South Carolina: adult trespassers, invitees, licensees, and children. Different standards of care apply depending on his or her classification. Sims v. Giles, 343 S.C. 708, 715, 541 S.E.2d 857, 861 (Ct. App. 2001).

"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." Sims v. Giles, 343 S.C. 708, 720, 541 S.E.2d 857, 863-64 (Ct. App. 2001). Social guests, whether invited by tenants or members of private clubs, are considered licensees in South Carolina. See Vogt v. Murraywood Swim & Racquet Club, 357 S.C. 506, 510, 593 S.E.2d 617, 619 (Ct. App. 2004); Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct. App. 1997); see also Singleton v. Sherer, 377 S.C. 185, 199, 659 S.E.2d 196, 204 (Ct. App. 2008).

With regard to the legal duty owed to a licensee in South Carolina,

[t]he possessor is under no obligation to exercise care to make the premises safe for his reception, and is under no duty toward him except:

(a) To use reasonable care to discover him and avoid injury to him in carrying on activities upon the land.

(b) To 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.

Therefore, '[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.'

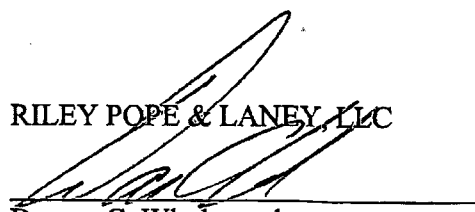
Sims, 343 at 720-21, 541 S.E.2d at 864 (internal citations omitted).

Assuming *arguendo* the deck collapse resulted from improper mounting to the house, the condition was concealed to the Defendants. There is no evidence that the Defendants had any knowledge about the concealed condition prior to the collapse and, therefore, Defendants did not breach their legal duty to the plaintiffs. Moreover, there is no evidence that the deck changed in condition since 1997, the change of which might be dangerous to the plaintiffs. Therefore, Defendants did not breach their legal duty to the plaintiffs.

Based upon the absence of any evidence showing or tending to show the Defendants breached their legal duty to the plaintiffs, there is no genuine issue of material fact and Defendants are entitled to a judgment as a matter of law in their favor.

Said motion shall be based upon the statute and case law of the State of South Carolina, upon the pleadings and other evidence developed in discovery and other material properly received by the Court in connection therewith.

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk
Attorneys for Defendants

Columbia, South Carolina
July 24, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada and George Estrada,

Plaintiffs,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-04304

**NOTICE OF MOTION
AND
DEFENDANTS' MOTION IN LIMINE
TO EXCLUDE UNDISCLOSED
WITNESSES**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05123

2014 NOV -5 PM 2:33
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Cristian Reyes.

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-07214

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05122

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05124

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendants will appear before the presiding judge for Richland County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure excluding Plaintiffs' purported expert and additional medical providers.

STANDARD

[A] trial judge is required to consider and evaluate the following factors before imposing the sanction of exclusion of a witness:

- (1) the type of witness involved;
- (2) the content of the evidence emanating from the proffered witness;

- (3) the nature of the failure or neglect or refusal to furnish the witness' name;
- (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and
- (5) the prejudice to the opposing party.

Jumper v. Hawkins, 348 S.C. 142, 152, 558 S.E.2d 911, 916 (Ct. App. 2001)

FACTS

This is a premises liability case. The Defendants are the owners of a home located in Hopkins, County of Richland, State of South Carolina. The Defendants purchased the home from an acquaintance in approximately 1997, and the property has been used as rental income since it was purchased. The facts giving rise to the above-captioned actions took place on April 5, 2014. From 1997 to April 5, 2014, there had been no prior incidents at this property resulting in injuries.

On the date of the incident, the home was rented to an unnamed third-party (hereinafter "tenant"). The tenant had resided in the property since approximately 2012. On April 5, 2014, the tenant held a party attended by the above named plaintiffs and others. At the time of the incident, the above named plaintiffs and others had gathered on a wooden deck located at the rear of the house. The deck was elevated several feet off the ground. In addition to the guests, there was a metal grill on the deck used to cook food.

At approximately 11:00 p.m., while the above named plaintiffs and others were on the deck, the deck collapsed, which allegedly caused the plaintiffs injuries and resulted in medical treatment and, in some cases, missed work. It is alleged that the deck was improperly secured to the house, which resulted in the collapse. None of the above-named plaintiffs were tenants.

When the Defendants purchased the house in 1997, the deck was present. Neither the Defendants nor anyone on the Defendants' behalf made any improvements, modifications or structural repairs to the deck from 1997 to the date of the incident. There is no evidence that either

of the Defendants were aware of any issues related to the deck regarding its installation or support. There is no evidence that the deck was weak or that it gave way prior to the collapse. Moreover, the Defendants never received any complaints about the deck from 1997 to the date of the collapse. Finally, there is no evidence that any of the above-named plaintiffs noticed any structural or support defects with the deck prior to its collapse.

The above-named plaintiffs have brought negligence actions against the homeowners. The first action was filed on behalf of the Estradas on July 7, 2014. Defendants timely answered the Complaint. On August 7, 2014, Defendants served written interrogatories and requests for production of documents upon counsel for the Estradas. The Estradas answered the discovery requests in September 2014. [Exhibit 1]. To date, no supplemental responses have been received.

On March 17, 2015, the above captioned cases were consolidated for discovery and trial. On July 21, 2015, this Court issued a Scheduling Order providing that the cases would be mediated prior to November 23, 2015 and that the cases would be subject to being called for trial after November 23, 2015.

On July 24, 2015, Defendants served and submitted for filing a Motion for Summary Judgment arguing Defendants were entitled to judgment as a matter of law as there was no evidence of a breach of a legal duty by the Defendants. Specifically, there was no evidence that the Defendants had any knowledge about the concealed condition prior to the collapse and, therefore, Defendants did not breach their legal duty to the plaintiffs. Moreover, there was no evidence that the deck changed in condition since 1997, the change of which might be dangerous to the plaintiffs. Therefore, Defendants did not breach their legal duty to the plaintiffs. Sims v. Giles, 343 S.C. 708, 720-21, 541 S.E.2d 857, 864 (Ct. App. 2001).

On October 14, 2015, this Court issued a Notice of Hearing stating that Defendants' Motion for Summary Judgment would be heard by Judge Barber on November 3, 2015 at 11:00 a.m. On

October 27, 2015, this Court issued notices that the consolidated cases would appear on the Jury Trial Roster for the week of November 30, 2015.

On November 2, 2015, at 11:39 A.M., less than twenty-four (24) hours before the summary judgment hearing, counsel for the Estradas delivered to the undersigned via e-mail an Affidavit of Allan Abbata, who claims to have been designated an expert in this case. [Exhibit 2]. The Affidavit was submitted to create an issue of fact as to liability. However, Mr. Abbata has not been designated as an expert by any Plaintiff and no documents have ever been provided regarding a possible expert witness, which was requested in the Requests for the Production of Documents served on the Plaintiffs. [Exhibit 1, pp. 4, 10].

The parties argued the summary judgment motion before Judge Barber on November 3rd at which time the undersigned objected to the timeliness of the affidavit and the failure to disclose the witness in discovery responses. The motion is currently under advisement.

On November 4, 2015, the parties unsuccessfully mediated this case and the case will be subject to being called to trial on November 30th.

On November 5, 2015, at 8:40 A.M., counsel for the Estradas sent the undersigned an e-mail regarding his intent to take the deposition of Dr. Westerkam. [Exhibit 3]. Dr. Westerkam has not been identified as either a fact witness or an expert witness in this case. [Exhibit 1, p. 4] Linda Estrada did produce a two page report indicating Dr. Westerkam performed an Electrodiagnostic Medicine Consult on June 2, 2014, but no further documentation has been produced by the Plaintiff since September 2014. [Exhibit 1, pp. 12-13]. Moreover, Linda Estrada's deposition was taken on August 17, 2015. During that deposition, Linda Estrada testified that she had not met with an orthopaedist since August 2014. [Exhibit 4, pp. 4-5 of 26].

ANALYSIS

Plaintiffs' expert witnesses should be excluded under the five (5) factors set forth in Jumper. 1) Type of witness involved and, (2) the content of the evidence emanating from the

proffered witness: both potential witnesses presumably will be providing expert testimony. Regarding Mr. Abbata, Plaintiffs appear to be proffering the witness to establish notice of the defect complained of when none of the eight (8) fact witnesses previously deposed in this case provided any information that would put the Defendants on notice of the defect or dangerous condition complained of. Dr. Westerkam presumably is being proffered to provide a medical diagnosis and causation. However, the only information relative to this witness was a single, two (2) page report provided in June 2014.

(3) the nature of the failure or neglect or refusal to furnish the witness' name: The Estradas' case has been pending since July 2014. Written discovery has not been supplemented since September 2014. Plaintiffs' depositions were taken in August 2015, and neither the Estradas nor any other Plaintiff deposed indicated they knew of or were informed of the cause of the deck collapse. [Exhibit 4]. Defendants' Motion for Summary Judgment, which contained the legal arguments in the motion, was filed in July 2015 and Plaintiffs had sufficient notice and opportunity to consult with and retain an expert and supplement discovery responses with the requested information.

(4) the degree of surprise to the other party, including the prior knowledge of the name of the witness: Defendants had no knowledge regarding the name of Mr. Abbata and his affidavit received on November 2, 2015 and opinion were a complete surprise. While Dr. Westerkam's name was contained in a two page report, the report itself does not make any mention of the incident complained of nor does it attribute his impressions to the deck collapse. In fact, the report indicates the test was consistent with mild neuropathy or carpal tunnel syndrome, both of which can occur without an acute injury.

(5) the prejudice to the opposing party: prior to receiving the affidavit of Mr. Abbata, Defendants did not intend to identify any expert to testify at trial. However, if the witness is allowed to testify, Defendants would be prejudiced in not having any information relative to his

education, training, qualifications as an expert, or notes or reports generated. Moreover, Defendants have not had an opportunity to depose the witness, receive the transcript, or have it reviewed to present a counter-expert opinion. As to Dr. Westerkam, there has been no indication by the Estradas to provide medical testimony. No medical providers were identified as either fact or expert witnesses. [Exhibit 1, p. 4]. Other than the two page report which does not provide any inference of causation, Defendants' counsel was under the impression that Linda Estrada had not received any orthopaedic treatment since September 2014, which only consisted of evaluations. Accordingly, to the extent Plaintiffs seek to use Dr. Westerkam to establish the issues set forth in the report to the deck collapse or to the extent Linda Estrada has been subsequently treated by Dr. Westerkam which has not been disclosed, Defendants are significantly prejudiced in being able to subpoena documents, move to reopen Ms. Estrada's deposition, or obtain a counter-expert medical opinion.

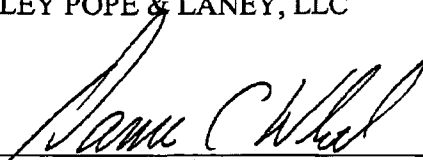
CONCLUSION

For the reasons set forth, Defendants contend that Plaintiffs' failure to disclose the above named witnesses and provide relevant documentation through supplemental discovery responses is grounds to exclude said witnesses as allowed by Rule 37, SCRPC and Jumper. See Densmore v. City of Greenville, No. 2011-UP-089, 2011 WL 11733107, at *3 (S.C. Ct. App. Mar. 4, 2011) (finding trial court proper excluded witness disclosed on August 22, 2008, when the trial was set for the week of September 8 or 15, 2008)

Said motion shall be based upon the statute and case law of the State of South Carolina, upon the pleadings and other evidence developed in discovery and other material properly received by the Court in connection therewith.

SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE

RILEY POPE & LANEY, LLC

A handwritten signature in cursive script, appearing to read "Damon C. Włodarczyk", written over a horizontal line.

Damon C. Włodarczyk
Attorneys for Defendants

Columbia, South Carolina
November 5, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LINDA ESTRADA and GEROGE
ESTRADA,

Plaintiffs,

-vs-

ANDEREW MARSHALL and LINDA
MARSHALL,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-40-04304

**PLAINTIFFS' ANSWERS TO
DEFENDANTS' FIRST SET OF
INTERROGATORIES**

TO: DAMON C. WLODARCZYK, ESQUIRE, ATTORNEY FOR DEFENDANTS:

Plaintiffs would respectfully answer Defendants' Interrogatories as follows:

1. Give the names and addresses of persons known to the Plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: *Linda Estrada*

-No written or recorded statement has been taken at this time.

George Estrada

-No written or recorded statement has been taken at this time.

Andrew Marshall

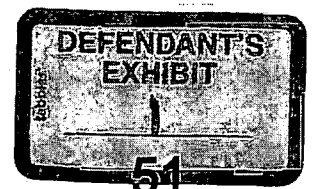
-No written or recorded statement has been taken at this time.

Linda Marshall

-No written or recorded statement has been taken at this time.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the Plaintiffs or Plaintiffs' counsel that relate to the claim or defense in the case.

ANSWER: *Plaintiffs are in possession of no such items at this time, but will supplement if this should change.*



3. Set forth the names and addresses of all physicians or other healthcare providers who have treated the Plaintiffs and all hospitals or other healthcare facilities to which Plaintiffs have been committed in connection with said alleged injuries and also set forth a statement of all medical costs involved.

ANSWER: *Linda Estrada*

<u>Medical Facility</u>	<u>Costs</u>
<i>Richland County EMS PO BOX 863 Lewisville, NC 27023</i>	<i>\$592.31</i>
<i>Palmetto Emergency Physicians Timothy M. Brooks, MD Nicole M. Goings Micah C. Bright, RN Joseph S. Myslinski, MD 293 Greystone Blvd. Columbia, SC 29210</i>	<i>\$198.01</i>
<i>Palmetto Health Richland 293 Greystone Blvd. Columbia, SC 29210</i>	<i>\$1,435.00</i>
<i>Pitts Radiology 2435 Forest Drive Columbia, SC 29204</i>	<i>\$57.00</i>
<i>Medcare Urgent Care Center Kaysi Kays, MD 10136 Two Notch Rd. Columbia, SC 29229</i>	<i>\$576.00</i>
<i>USC Sports Medicine 2 Richland Medical Park Dr. #404, Columbia, SC 29203</i>	<i>\$1,526.00 (to date)</i>
<i>Healthsource of Northeast Columbia 715 Fashion Dr. Ste 3 Columbia, SC 29229</i>	<i>\$3,828.00</i>
Total	\$8,212.32

George Estrada

Medical Facility

Costs

Richland County EMS	\$597.38
PO BOX 863	
Lewisville, NC 27023	
Palmetto Emergency Physicians	\$198.01
Joseph S. Myslinkski, MD	
293 Greystone Blvd.	
Columbia, SC 29210	
Palmetto Health Richland	\$1,470.00
293 Greystone Blvd.	
Columbia, SC 29210	
Healthsource Solutions	\$3,553.00
Steven Hamvay, MD	
715 Fashion Dr. Ste 3	
Columbia, SC 29229	
Pitts Radiology	\$60.00
2435 Forest Drive	
Columbia, SC 29204	
Total	\$5,878.39

4. Set forth the names and addresses of all insurance companies which have any insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: **Health Insurance**
Blue Cross and Blue Shield

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the Plaintiff.

ANSWER: **Linda Estrada**
(a) Mental anguish – (an amount to be determined by a jury)
(b) Emotional distress – (an amount to be determined by a jury)

- (c) *Punitive damages – (an amount to be determined by a jury)*
- (d) *Medications – (Will supplement)*
- (e) *Medical Expenses – \$8,212.32*
- (f) *Wage Loss – (Will supplement)*

George Estrada

- (a) *Mental anguish – (an amount to be determined by a jury)*
- (b) *Emotional distress – (an amount to be determined by a jury)*
- (c) *Punitive damages – (an amount to be determined by a jury)*
- (d) *Medical Expenses – \$5,878.39*

6. List the names and addresses of any expert witnesses whom the Plaintiff or Plaintiff's counsel proposes to use as a witness at the trial of this case.

ANSWER: *The Plaintiff has retained no experts at this time, but reserves the right to do so and will supplement this information if necessary.*

7. For each person known to the Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: *The Plaintiffs will testify as to the facts and circumstances surrounding the accident and the nature and extent of her injuries.*

The nature and content of the Defendants' testimony is unknown to the Plaintiff at this time.

8. State with specificity any obstructions or other conditions which would have prevented you from observing the conditions complained of.

ANSWER: *Plaintiffs note there were no obstructions which prevented their observation, only that it was dark.*

9. Identify by name and address every employer in which the Plaintiff has been employed for the past five (5) years.

ANSWER: *Plaintiff Linda Estrada has worked for the following employers: Providence North East, Parkridge Surgery Center, and Lexington Urology Center
Plaintiff George Estrada has not worked in approximately 7 years.*

10. Set forth any previous claims or lawsuits brought by the Plaintiffs or on their behalf seeking damages for personal injuries including but not limited to the name of the individual against

whom the claim was brought, the name and address of any insurance company involved, and the caption and case number of any lawsuit filed.

ANSWER: *Plaintiff Linda Estrada recalls that her vehicle was hit by another vehicle years ago, but cannot recall the name of the other driver. She further recalls that State Farm was the insurance company involved.*

Plaintiff George Estrada has not been party to any prior lawsuits.

11. Identify any and all suits, workers compensation claims, disability claims or other legal actions to which Plaintiff has ever been party to (excluding family law cases) and set forth a detailed narrative of the resolution of such matter.

ANSWER: *Plaintiff Linda Estrada fell at Providence North East in approximately 2007, for which she received worker's compensation.*

12. Have the Plaintiffs ever been arrested or convicted of a crime in the past ten (10) years and, if so, state the nature of the charge, the date of the charge, the jurisdiction of the charge and the resolution of the charge.

ANSWER: *Plaintiff Linda Estrada has never been arrested nor convicted of a crime in the past ten (10) years.*

Plaintiff George Estrada was involved in a hit run in approximately 2012. Charges dismissed

13. List all medical providers (name and address) for which the Plaintiffs have been treated by for any condition for the past ten (10) years.

ANSWER: *In addition to Plaintiffs Answer to Defendants' Interrogatory # 3, Plaintiffs have been treated by these medical providers: Plaintiff George Estrada receives and has received treatment at the VA hospital for diabetes and prostate cancer.*

14. State the following information as of the date and time the Plaintiffs allegedly were injured on Defendants property: (1) time; (2) weather conditions, (3) number of persons on the deck at the time of the alleged collapse.

ANSWER: *1) Plaintiffs approximate the time to be 11:45 P.M. or 12:00 A.M.*

2) Plaintiff's recall the weather conditions as clear.

3) Plaintiffs recall nine (9) adults and two (2) children being on the deck at the time of the collapse.

These Interrogatories shall be deemed continuing so as to require Supplemental Answers if the parties or any representative or counsel obtained further information between the time the Answers were served and the time of trial.



GERALD E. REARDON
Attorney for Plaintiff

ATTORNEYS LEE, EADON, ISGETT,
POPWELL AND REARDON, P.A.
Post Office Box 1505
Columbia, South Carolina 29202
(803) 799-9811

Columbia, South Carolina

September 17, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LINDA ESTRADA and GEORGE
ESTRADA,

Plaintiffs,

-VS-

ANDREW MARSHALL and LINDA
MARSHALL,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-40-04304

**PLAINTIFFS' RESPONSES TO
DEFENDANTS' FIRST SET OF REQUEST
FOR PRODUCTION**

TO: DAMON C. WLODARCZYK, ESQUIRE, ATTORNEY FOR DEFENDANTS:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute the responses of the Plaintiffs to Request for Production propounded by the Defendants:

1. Any and all documents or other materials which in any way relate to the facts, claims or defenses of this case.

RESPONSE: *Blue Cross Blue Shield*

-Explanation of Benefits (5-29-14)

1 Page

-Explanation of Benefits (4-23-14)

1 Page

-Explanation of Benefits (5-13-14)

1 Page

2. Any and all documents or other materials related to any damages which Plaintiffs claim to have sustained in this case.

RESPONSE:

Linda Estrada

Richland County EMS

-Bill

1 Page

Palmetto Health Emergency Dept.

-Emergency Dept. Record

1 Page

-Emergency Dept. Record (Verified)

3 Pages

-CR Elbow Final Report	1 Page
-CR Knee Final Report	1 Page
-Palmetto Health Emergency Depart. Summary	5 Pages
-Bill	1 Page
Palmetto Health Richland	
-Bill	1 Page
Pitts Radiology	
-Bill	1 Page
Medcare	
-Bill	1 Page
USC Sports Medicine	
-Bill	1 Page
-MRI of Right Elbow	2 Pages
-Electrodiagnostic Medicine Consult	2 Pages
Healthsource of Northeast Columbia	
-Account Ledger	8 Pages
-Initial Report (4-17-14)	5 Pages
-Final Report (6-9-14)	4 Pages
-Daily Chart (D.C.) (6-9-14)	1 Page
-D.C. (6-5-14)	1 Page
-D.C. (6-3-14)	1 Page
-D.C. (6-2-14)	1 Page
-Patient Subjective Progress Report (6-2-14)	1 Page
-D.C. (5-29-14)	1 Page
-D.C. (5-27-14)	1 Page
-Patient Subjective Progress Report (5-27-14)	1 Page
-D.C. (5-22-14)	1 Page
-D.C. (5-20-14)	1 Page
-D.C. (5-19-14)	1 Page
-Patient Subjective Progress Report (5-19-14)	1 Page
-D.C. (5-15-14)	1 Page
-D.C. (5-13-14)	1 Page
-D.C. (5-12-14)	1 Page
-Patient Subjective Progress Report (5-12-14)	1 Page
-D.C. (5-8-14)	1 Page
-D.C. (5-6-14)	1 Page
-D.C. (5-5-14)	1 Page
-Patient Subjective Progress Report (5-5-14)	1 Page
-D.C. (5-1-14)	1 Page
-D.C. (4-29-14)	1 Page
-D.C. (4-28-14)	1 Page
-Patient Subjective Progress Report (4-28-14)	1 Page
-D.C. (4-24-14)	1 Page
-D.C. (4-22-14)	1Page

-D.C. (4-21-14)	1 Page
-Patient Subjective Progress Report (4-21-14)	1 Page
-D.C. (4-17-14)	1 Page
-Master Diagnosis Sheet	1 Page
-History of Illness/Injury/Pain	4 Pages
-Neck Disability Index	1 Page
-Revised Oswestry Low Back Pain Guideline	1 Page

George Estrada

Richland County EMS	
-Bill	1 Page
Palmetto Health Richland	
-Bill	1 Page
Palmetto Health Emergency Dept	
-Bill	1 Page
Healthsource	
-Initial Report	5 Pages
-Final Report	4 Pages
-Account Ledger	8 Pages
-Daily Chart (D.C.) (6-9-14)	1 Page
-D.C. (6-5-14)	1 Page
-D.C. (6-3-14)	1 Page
-D.C. (6-2-14)	1 Page
-Patient Subjective Progress Report (6-2-14)	1 Page
-D.C. (5-29-14)	1 Page
-D.C. (5-27-14)	1 Page
-Patient Subjective Progress Report (5-27-14)	1 Page
-D.C. (5-22-14)	1 Page
-D.C. (5-20-14)	1 Page
-D.C. (5-19-14)	1 Page
-Patient Subjective Progress Report (5-19-14)	1 Page
-D.C. (5-13-14)	1 Page
-D.C. (5-12-14)	1 Page
-Patient Subjective Progress Report (5-12-14)	1 Page
-D.C. (5-8-14)	1 Page
-D.C. (5-5-14)	1 Page
-Patient Subjective Progress Report (5-5-14)	1 Page
-D.C. (5-1-14)	1 Page
-D.C. (4-29-14)	1 Page
-D.C. (4-28-14)	1 Page
-Patient Subjective Progress Report (4-28-14)	1 Page
-D.C. (4-24-14)	1 Page
-D.C. (4-22-14)	1 Page

-D.C. (4-21-14)	1 Page
-Patient Subjective Progress Report (4-21-14)	1 Page
-D.C. (?)	1 Page
-Master Diagnosis Sheet	1 Page
-History of Illness/Injury/Pain	4 Pages
-Neck Disability Index	1 Page
-Revised Oswestry Low Back Pain Guideline	1 Page
Pitts Radiology	
-Bill	1 Page

3. Any tape recordings, videos, photographs, drawings, sketches or other such materials in any way related to the facts, claims or defenses in this case.

RESPONSE: *Plaintiffs are in possession of no such items at this time.*

4. All statements of possible witnesses, whether written or oral, summarized, or otherwise reproduced in any manner relating to this lawsuit.

RESPONSE: *Plaintiffs are in possession of no such items at this time.*

5. Any and all reports, opinions, correspondence, memoranda or other documentation provided to the Plaintiffs from any expert retained in this litigation.

RESPONSE: *Plaintiffs have not retained any experts at this time, but reserve the right to do so and will supplement that material should it become necessary.*

6. A copy of a curriculum vitae for any expert witness retained in this litigation.

RESPONSE: *Plaintiffs have not retained any experts at this time, but reserve the right to do so and will supplement that material should it become necessary.*

7. A copy of any documents identified in, used or referred to in responding to any of Defendants' Interrogatories or in preparing Plaintiffs' Complaint.

RESPONSE: *Please refer to Plaintiffs' above Response to Defendants' Request number two (2).*

8. Each document not already requested that is in the possession of Plaintiffs that is relevant to the issues raised in the Complaint or Answer regardless of whether Plaintiffs will offer the document into evidence or otherwise use at trial, deposition or court proceeding.

RESPONSE: *Plaintiff is in possession of no such documents.*

9. All audio recordings and transcripts of the same made by Plaintiffs of Defendants or any other party related to the matters set forth in Plaintiffs' Complaint or Defendants' Answer.

RESPONSE: *Plaintiffs are in possession of no such recordings/documents at this time.*

10. If Plaintiffs are making a claim for lost wages, all documents related to any claim for lost wages including but not limited to: work excuses, vacation time used, reduced hours worked, etc.

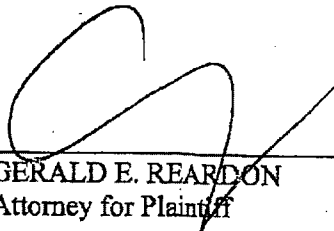
RESPONSE: *Will supplement.*

11. If Plaintiffs are making a claim for lost wages, a copy of Plaintiffs' Federal Tax Returns for the past three (3) years.

RESPONSE: *Will supplement.*

12. A complete copy of your medical records for any and all treatment, including any anticipated or recommended future treatment, including but not limited to correspondence, notes, records, histories, tests, test results, reports, x-ray reports, prescriptions, bills, and any other document relating to any injury alleged to have been received in this action.

RESPONSE: *Please refer to Plaintiffs' above Response to Defendants' Request number two (2).*



GERALD E. REARDON
Attorney for Plaintiff

ATTORNEYS LEE, EADON, ISGETT,
POPWELL AND REARDON, P.A.
Post Office Box 1505
Columbia, South Carolina 29202
(803) 799-9811

Columbia, South Carolina

September 17, 2014.

Electrodiagnostic Medicine Consult

PATIENT NAME: Linda Estrada

DATE: 06/02/14

DOB: REDACTED (Identifier)

REASON FOR EVALUATION: right upper extremity pain and numbness

HISTORY OF PRESENT ILLNESS: Ms. Estrada is a 45-year-old RH AAF who reports a 2 month h/o left upper extremity pain and numbness. See initial eval note dated 5/15/14 for more details

PAST MEDICAL HISTORY: negative for DM

Meds: see intake form

FHx: non-contributory

ROS: non-contributory

SHx: negative for EtOH negative for tobacco

PHYSICAL EXAM: negative for arthritic changes, neg for edema, sensation mildly diminished in the 4th and 5th digits, no atrophy of bilateral UE musculature, motor strength 5/5 except 5-/5 right hand finger abduction, negative Hoffman's, no dysmetria, tender to palp over the lateral epicondyle, medial epicondyle and ulnar groove.

NERVE CONDUCTION STUDIES:

NERVE	DISTANCE	DISTAL LATENCY	AMPLITUDE	CONDUCTION VELOCITY
Right median orthodromic (sensory)	8cm	3.0msec; nl ≤ 2.3	36.3mcV	
Right ulnar orthodromic (sensory)	8cm	2.0msec; nl ≤ 2.2	12.7mcV	
Right radial antidromic (sensory)	10cm	2.5msec; nl ≤ 2.8	16mcV	
Right median stim at the wrist (motor)	8cm	4.5msec; nl ≤ 4.2	11.9mV	
Right ulnar stim at the wrist (motor)	8cm	3.3msec; nl ≤ 4.0	7.8mV	
Right ulnar stim BE (motor)	24.5cm	7.8msec	7.6mV	55.4m/s
Right ulnar stim AE (motor)	10cm	10.4msec	0.667mV	37.5m/s

NEEDLE ELECTROMYOGRAPHIC EXAMINATION: Using a sterile disposable monopolar needle the following muscles were examined.

MUSCLE	Insertional Activity	PSW	Fibs	MUR	Morph
Right Biceps	normal	none	none	normal	normal

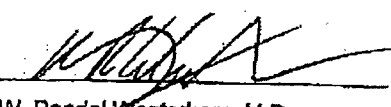
Right Triceps	normal	none	none	normal	normal
Right Pronator Teres	normal	none	none	normal	normal
Right Extensor Carpi Radialis	normal	none	none	normal	normal
Right First Dorsal Interosseous	normal	none	none	normal	normal
Right FCU	normal	none	none	normal	normal

IMPRESSION / SUMMARY:

- 1) Abnormal Study
- 2) The electrodiagnostic exam is consistent with **mild right median neuropathy at the wrist or carpal tunnel syndrome**. Both the sensory and motor components of the right median nerve have prolonged distal latencies. The amplitudes and waveforms are well preserved, indicating no significant axonal loss.
- 3) The electrodiagnostic exam is consistent with a right ulnar neuropathy at the elbow. The ulnar motor nerve has a conduction block across the elbow segment with significant change in waveform, decreased in amplitude and decrease in conduction velocity.

In order to further evaluate the right elbow a diagnostic musculoskeletal ultrasound examination was performed. On the lateral elbow the radial head and lateral epicondyle were identified. The common extensor tendon with its insertion on the lateral epicondyle was also observed. The common extensor tendon demonstrated a normal fibrillar pattern without evidence of tear, tendinosis, calcinosis, and no hyperemia was seen on power Doppler. Attention was then directed towards the medial epicondyle. The common flexor tendon attachment onto the medial epicondyle was observed. This had a normal fibrillar pattern without evidence of tear, tendinosis, or calcinosis. The ulnar nerve was observed in the ulnar groove. There was trace proximal to the elbow as well as distally through the cubital tunnel between the 2 heads of the flexor carpi ulnaris and into the proximal forearm. The nerve had a normal honeycomb type pattern without evidence of constriction, enlargement or other abnormalities.

- 4) The electrodiagnostic exam is negative for evidence of additional mononeuropathy, brachial plexopathy, cervical radiculopathy, or generalized peripheral polyneuropathy.


W. Randal Westerkam, M.D.
Physical Medicine and Rehabilitation

Damon Wlodarczyk

From: Jerry Reardon <jerry@jerryreardonlaw.com>
Sent: Monday, November 02, 2015 11:39 AM
To: Damon Wlodarczyk
Cc: Todd Ellis; nick@mttlaw.com; Monique Trifos
Subject: RE: 11/3/15 Richland Motion Roster - Estrada et al v. Marshall et al
Attachments: affidavit Allan Abbata.pdf

Please find enclosed our affidavit in the above reference case. I will have the brief to you asap

Law Office of Jerry Reardon, LLC
1329 Blanding Street
Columbia, South Carolina 29201
(803) 978-6114 (o)
(803) 978-6112 (f)
(803) 237-0691 (c)
www.jerryreardonlaw.com
jerry@jerryreardonlaw.com

From: Damon Wlodarczyk
Sent: Wednesday, October 28, 2015 3:10 PM
To: rezbarberlc@sccourts.org
Cc: Jerry Reardon; Todd Ellis; nick@mttlaw.com; Monique Trifos
Subject: 11/3/15 Richland Motion Roster - Estrada et al v. Marshall et al

Please find attached a self-explanatory cover letter, memorandum in support and deposition excerpts relative to Defendants' Motion for Summary Judgment scheduled to be heard by Judge Barber next week. Please do not hesitate to contact me with any questions.

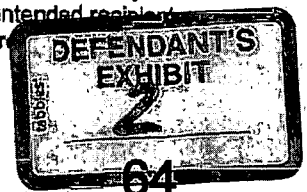
With kind regards,

Damon

Damon C. Wlodarczyk
Attorney and Counselor at Law
Riley Pope & Laney, LLC
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
Office: 803-799-9993
Facsimile: 803-239-1414
E-mail: damonw@rplfirm.com
Web: www.rplfirm.com

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

DOCKET NO: 2014-CP-40-04304

Linda Estrada and George Estrada
Plaintiffs

vs.

Andrew Marshall and Linda Marshall
Defendants

)

)

)

)

AFFIDAVIT OF ALLAN ABBATA

I, Mr. Allan A. Abbata P.E., being first duly sworn, depose and state to a reasonable degree of engineering certainty the following opinions based upon my personal knowledge and expertise:

1. I am a professional engineer specializing in the area of wood deck safety, analysis and design. I have extensive training and experience in the fields of structural design and construction of building materials, standards and code compliance, maintenance of structures, and, products liability, product failures, premises liability and consumer products. I have specialized experience and knowledge relating to collapse of buildings and structures and am educated with respect to safe product design and use.
2. I have been designated as an expert witness in the above captioned matter, and I expect to testify as to my conclusions relating to the wood deck collapse at the residence owned by the Defendants and premises liability at issue in this case. All opinions are based upon a reasonable degree of engineering certainty.

Affidavit of Mr. Allan A. Abbata P.E.

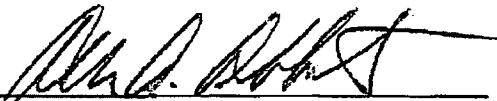
Page 1 of 3

3. I base my conclusions on my education, experience, training, and the review of documents and photos provided by the Plaintiff's attorney including an engineering report with photographs prepared by Applied Building Sciences, Inc. dated May 8, 2014.
4. The International Property Maintenance Code, Chapter 3 General Requirements, Section 304.10 (Stairways, decks, porches and balconies) states every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads. The exterior wood deck located on the west side of the residence that collapsed was not properly designed, constructed or maintained at the time of the injuries to the Plaintiffs, rendering the wood deck surface unreasonably dangerous and defective. The defective conditions contributed to the collapse of the deck.
5. The deck was composed of rotted boards and structural member as well as loose and inadequate structural connections at the time of the collapse
6. The bearing element (brick veneer wall) where expansion anchors were installed to support the deck girders failed to comply with proper engineering standard and building codes. The size and spacing of the fasteners was inadequate to comply with engineering and building code required design loads.
7. The joist girder that supports the floor joist at both ends of the deck were improperly designed and constructed in order to safely transfer the intended loads from the deck surface to the supporting foundation system as required by standard building codes. The girders were not properly supported at their ends along the back wall of the residence and therefore, are ineffective as floor joist supports. This also contributed to the deck collapse.

8. In my opinion to a reasonable degree of engineering certainty that the deck collapse most likely occurred due to the failure to design, inspect, maintain, care, and repair the wood deck in a proper manner.

9. In my opinion to a reasonable degree of engineering certainty that the deteriorated and defective conditions that led to the deck collapse persisted over an extended period of time due to the failure to inspect, maintain, care and repair for the premises. The condition of the deck continued to deteriorate and was in a dangerous condition for an extended period of time which would have been discovered upon a reasonable inspection.

Further affiant sayeth not.


Mr. Allan A. Abbata P.E.

SUBSCRIBED and SWORN to before me

this 30th day of October, 2015


Notary Public

Expiration Date: 3-3-2020

Damon Wlodarczyk

From: Jerry Reardon <jerry@jerryreardonlaw.com>
Sent: Thursday, November 05, 2015 8:40 AM
To: Damon Wlodarczyk; Courtney Tindal
Cc: stanley@mttlaw.com; nick@mttlaw.com; Todd Ellis
Subject: RE: Estrada et al v Marshall MEDIATION NOVEMBER 4, 2015

am also setting depositions of doctors Damon, will let you know when he is available to give deposition.

Courtney, call Dr. Westerkam's office to set deposition

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A #: 2014-CP-40-04304

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Carletta Williams,) 2014-CP-40-05123
Plaintiff,

v.

Andrew Marshall and Linda Marshall,) DEPOSITION OF
Defendants.) LINDA ESTRADA

Cristian Reyes,) 2014-CP-40-07214
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Khalilah Smith,) 2014-CP-40-05122
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896



Tyrone Ruff,)
 Plaintiff,) 2014-CP-40-05124
 v.)
 Andrew Marshall and Linda Marshall,)
 Defendants.)

DEPOSITION OF
LINDA ESTRADA

Monday, August 17, 2015
 2:27 p.m. - 2:54 p.m.

The deposition of LINDA ESTRADA, taken on
 behalf of the Defendants at the law offices of Riley,
 Pope & Laney, LLC, 2838 Devine Street, Columbia,
 South Carolina, on the 17th day of August, 2015
 before M. Sean Cary, Court Reporter and Notary Public
 in and for the State of South Carolina, pursuant to
 Notice of Deposition and/or agreement of counsel.



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 (803) 252-3445 / (800) 822-0896

- 1 A: Yes..
- 2 Q: --- where you were sitting? Okay. And if
- 3 there was some indication in his testimony
- 4 that he was in that chair by the door --
- 5 standing by the door, you're fairly confident
- 6 that you were in a position to s- -- to know
- 7 that he was not out on the deck?
- 8 A: Yes.
- 9 Q: Okay.
- 10 A: Did you notice any problems with the deck
- 11 before it fell?
- 12 A: No, sir, because it was dark.
- 13 Q: Okay. Approximately how many people, aside
- 14 from -- we'll say Mr. Ruff and Ms. Williams
- 15 were on the stairs, you and your husband were
- 16 on the deck, and Ms. Smith was on the deck,
- 17 and you said Mr. Reyes was not. How many
- 18 other people, to your recollection, were on
- 19 the deck?
- 20 A: Seven people and two little babies.
- 21 Q: Okay. And I understand one of them was Ms.
- 22 Smith's child?
- 23 A: Uh-huh (affirmative response).
- 24 Q: Okay. Tell me -- just take me through.
- 25 You're sitting there, everybody's having a



1 Q: What treatment did the prescribe you?

2 A: First I got a -- went to see one of the ortho
3 doctors. He was a regular ortho doctor, and
4 he did a nerve study to see if I had any
5 nerve damage first. And then he told me I
6 had a little nerve damage. Because I was
7 telling him I was having numbness in these
8 two fingers (indicating).

9 Q: Okay.

10 A: And he did a nerve study and told me I had
11 so- -- a little bit of nerve damage. And
12 while I was there he said, well let me just
13 do a little ultrasound to see if I see
14 anything loose or anything broken. And he
15 did that and he said it looks like I see a
16 hair (sic) fracture, but I'm going to make
17 sure you go to Dr. Mazoue, send you over
18 there and get another x-ray of it.

19 Q: Okay. Did you have a cast or anything like
20 that; a soft cast, hard cast, wrap ---

21 A: No, sir. Just a -- he gave me a elbow
22 thing.

23 Q: Okay.

24 A: And injections, I got injections.

25 Q: Injections, okay. Was that for pain or anti-



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1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: All right. I'm told there's been something
2 of a family falling out between some of the
3 folks here, the Ruffs and Ms. White. Have
4 you had any conversations with Carletta
5 Williams, Ms. Smith or Tyrone Ruff regarding
6 what happened that evening or their injuries
7 or their lawsuits or anything related to
8 that?

9 A: No.

10 Q: Okay. DO you know where the renter of the
11 house was -- I'm sorry -- Ms. Ruff, now -- or
12 Ms. White now, Latasha, do you know where she
13 is?

14 A: She lives in Winnsboro.

15 Q: Winnsboro, okay. Have you had any
16 conversations with her about the ---

17 A: The accident? No.

18 Q: Okay. What about Ms. Sylvan Ruff, have you
19 had any conversation with her?

20 A: Huh-uh (negative response).

21 Q: No, okay. Let me just take a few seconds to
22 look over something and we may be finished
23 with your deposition.

24 (Off the record discussion)

25 Q: Just to confirm. You said you didn't notice



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1 anything that evening about the deck. Since
2 that time, has anyone told you about any
3 problems they knew about the deck at any
4 point after?

5 A: No.

6 Q: Okay. All right. I don't have any further
7 questions. I appreciate your time, ma'am.

8 A: Thank you.

9 MR. REARDON: No questions.

10 (There being no further questions, the deposition
11 concluded at 2:54 p.m.)
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CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A #: 2014-CP-40-04304

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Carletta Williams,) 2014-CP-40-05123
Plaintiff,

v.

Andrew Marshall and Linda Marshall,) DEPOSITION OF
Defendants.) GEORGE ESTRADA

Cristian Reyes,) 2014-CP-40-07214
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Khalilah Smith,) 2014-CP-40-05122
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

Tyrone Ruff,)
) 2014-CP-40-05124
 Plaintiff,)
)
 v.)
)
 Andrew Marshall and Linda Marshall,)
)
 Defendants.)
)
)

DEPOSITION OF
GEORGE ESTRADA

Monday, August 17, 2015
 2:57 p.m. - 3:12 p.m.

The deposition of GEORGE ESTRADA, taken on
 behalf of the Defendants at the law offices of Riley,
 Pope & Laney, LLC, 2838 Devine Street, Columbia,
 South Carolina, on the 17th day of August, 2015
 before M. Sean Cary, Court Reporter and Notary Public
 in and for the State of South Carolina, pursuant to
 Notice of Deposition and/or agreement of counsel.



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

1 Q: Okay.

2 A: No, sir.

3 Q: Have you had any conversations with Ms.

4 Williams or Mr. Reyes or Khalilah Smith or

5 Tyrone Ruff about the accident or the deck

6 falling or your injuries these lawsuits since

7 that night?

8 A: No, sir.

9 Q: Okay. And have you spoken with Ms. Latisha

10 Ruff, now White, who was the renter, or Ms.

11 Sylvan Ruff about any of the incidents about

12 the deck?

13 A: No, sir.

14 Q: Okay. Prior to the deck falling, did you

15 notice any problems with it?

16 A: No.

17 Q: Did anyone, or has anyone since then, told you

18 about any problems with the deck other than

19 what we've learned through the lawsuit?

20 A: No, sir.

21 Q: Okay. All right. When the deck falls, what

22 happens to you?

23 A: As I said, we was playing the game and all of

24 a sudden I heard a noise, you know, but I

25 didn't see it from behind me. And I seen that



STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A #: 2014-CP-40-04304

Linda Estrada and George Estrada,
 Plaintiff,

v.

Andrew Marshall and Linda Marshall,
 Defendants.

Carletta Williams,) 2014-CP-40-05123
 Plaintiff,

v.

Andrew Marshall and Linda Marshall,) DEPOSITION OF
 Defendants.) TYRONE RUFF

Cristian Reyes,) 2014-CP-40-07214
 Plaintiff,

v.

Andrew Marshall and Linda Marshall,
 Defendants.

Khalilah Smith,) 2014-CP-40-05122
 Plaintiff,

v.

Andrew Marshall and Linda Marshall,
 Defendants.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

Tyrone Ruff,)
 Plaintiff,) 2014-CP-40-05124
 v.)
 Andrew Marshall and Linda Marshall,)
 Defendants.)

DEPOSITION OF
TYRONE RUFF

Monday, August 17, 2015
 3:59 p.m. - 4:14 p.m.

The deposition of TYRONE RUFF, taken on behalf of the Defendants at the law offices of Riley, Pope & Laney, LLC, 2838 Devine Street, Columbia, South Carolina, on the 17th day of August, 2015 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



CREEL COURT REPORTING, INC.
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- 1 A: Certain positions.
- 2 Q: Both the wrist and the back?
- 3 A: No, not the wrist. The wrist only hurt like
- 4 weight wise and grabbing, grasping. As you can
- 5 tell, you know, I got a lot going on with my
- 6 wrist. So certain wise just -- your wrists
- 7 just hurt automatically. Just certain things
- 8 irritate, like too much cold always irritate.
- 9 Q: Did you ever have problems with your back or
- 10 wrist before?
- 11 A: No. Never.
- 12 Q: Never in a car wreck or anything like that?
- 13 A: No. Never.
- 14 Q: Did you ever have any lawsuits for personal
- 15 injuries before this one?
- 16 A: Never.
- 17 Q: All right. When was the last time you went to
- 18 the chiropractor?
- 19 A: I can't recall. It's been a minute this year.
- 20 Q: Okay.
- 21 A: It been before the summer I think, about like
- 22 May/June.
- 23 Q: All right. And at any point in time after this
- 24 deck fell, aside from what you may have learned
- 25 through this lawsuit, has anyone told you what



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1 the problem was or if there was a problem with
2 that deck?

3 A: No. The only thing that I ever hear of the
4 story was my sister -- like I said, my sister
5 is the home -- the person that rented the
6 house. My sister just go off whatever they
7 come back and tell her. That's all. And she
8 just say whatever she tell me. I don't know.
9 I didn't rent the house. She don't even stay
10 in the house no more.

11 Q: Right. Just whatever she learned was from the
12 -- whatever the owner told her?

13 A: Yeah. Whatever he told her.

14 Q: Okay. All right.

15 A: I'm just guessing though. Like when your
16 question go like, how somebody knew -- I mean
17 ---

18 Q: No. I'm not trying sneak anything in. I just
19 want to know if anybody actually told you what
20 the problem was.

21 A: No. Nobody told us a problem.

22 Q: That's fine.

23 A: I was just stating that nobody told us a
24 problem but being that the way the situation --
25 handled it afterwards, I feel that somebody



1 knew.

2 Q: Okay. That's all the questions I have.

3 MR. RILEY: No questions.

4 (There being no further questions, the deposition
5 concluded at 4:14 p.m.)

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Cristian Reyes,	) 2014-CP-40-07214
Plaintiff,	)
	)
v.	)
	)
Andrew Marshall and Linda Marshall,	)
	)
Defendants.	)

**DEPOSITION OF
CARLETTA WILLIAMS**

Wednesday, July 22, 2015
1:00 p.m. - 1:36 p.m.

The deposition of CARLETTA WILLIAMS, taken on behalf of the Defendants at the law offices of Riley, Pope & Laney, L.L.C., 2838 Devine Street, Columbia, South Carolina, on the 22nd day of July, 2015 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.



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- 1 Q: Okay. How old is he? I mean, is he over ---
2 A: About 18.
3 Q: --- 18? Did he live at the house as well?
4 A: He did.
5 Q: Okay. Is he with Ms. White as well now?
6 A: He's incarcerated at this time.
7 Q: Okay. Do you know which institution he's at?
8 A: I don't. I'm guessing DJJ but I'm not really
9 sure.
10 Q: Okay. Was he out on the deck at the time that
11 it fell?
12 A: No.
13 Q: All right. Was Ms. White on the deck when it
14 fell?
15 A: She was.
16 Q: All right. Has she told you anything about the
17 deck or anything that she thought might be
18 wrong with the deck, at any point in time,
19 either before it fell or, you know, up to now?
20 A: No.
21 Q: Okay. Has -- have you ever asked her, do you
22 know what happened or, do you know why the deck
23 fell?
24 A: No.
25 Q: Okay. Have you asked anybody that? Excluding



1 your attorneys, of course, but just any of
2 these individuals?

3 A: No. When I talked to the insurance company
4 they were just saying that how it was built
5 wrong, but I haven't.

6 Q: Okay. Was that a -- was that State Farm?

7 A: That was.

8 Q: Okay. Did they contact you about the fall and
9 your injuries?

10 A: They did.

11 Q: Okay. Was that before you had an attorney?

12 A: That was.

13 Q: Okay. And did you give a recorded statement to
14 State Farm over the telephone? They usually
15 tell you, so, do you remember if anybody said,
16 can they record your statement?

17 A: I don't remember.

18 Q: Okay. Did they just ask you about what
19 happened and your injuries or did they ask --
20 request any medical bills anything along those
21 lines?

22 A: They didn't request any bills.

23 Q: Okay. Did they just ask you what happened?

24 A: Yes..

25 Q: Okay. Do you remember anything that you told



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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A #: 2014-CP-40-04304

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Khalilah Smith,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

) 2014-CP-40-05122

) DEPOSITION OF
) KHALILAH SMITH

Carletta Williams,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

) 2014-CP-40-05123

Tyrone Ruff,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

) 2014-CP-40-05124



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

Cristian Reyes,) 2014-CP-40-07214
 Plaintiff,)
 v.)
 Andrew Marshall and Linda Marshall,)
 Defendants.)

DEPOSITION OF
KHALILAH SMITH

Wednesday, July 22, 2015
 1:45 p.m. - 2:05 p.m.

The deposition of KHALILAH SMITH, taken on behalf of the Defendants at the law offices of Riley, Pope & Laney, L.L.C., 2838 Devine Street, Columbia, South Carolina, on the 22nd day of July, 2015 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.



CREEL COURT REPORTING, INC.
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- 1 Q: Okay. Had you been to the house before this
2 incident happened?
- 3 A: Yes. Several times.
- 4 Q: Had you ever been on the deck before this
5 incident happened?
- 6 A: Did she have a deck at the time -- yeah, yeah,
7 sure did. Yes, I did.
- 8 Q: Okay.
- 9 A: I had to think back.
- 10 Q: That's alright. I can understand. Do you
11 recall any issues with the deck either prior
12 visits or this night, in particular, before it
13 fell?
- 14 MR. RILEY: Objection to the form of the question,
15 but still answer that.
- 16 A: Okay. No. No issues at all.
- 17 Q: Okay. Do you recall anybody, that evening
18 before the deck fell, making any comments about
19 the deck?
- 20 A: No.
- 21 Q: Okay. Have you had any conversations with Ms.
22 White, since the deck fell, about what happened
23 or what may or may not have caused it or
24 anything along those lines?
- 25 A: We don't even talk no more to be honest with



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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A #: 2014-CP-40-04304

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Khalilah Smith,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

) 2014-CP-40-05122

) DEPOSITION OF
) CRISTIAN REYES

Carletta Williams,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

) 2014-CP-40-05123

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

) 2014-CP-40-05124



CREEL COURT REPORTING, INC.
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1 fell?

2 A: It was a family gathering.

3 Q: Okay. What was your family relationship with

4 the people there?

5 A: I was Ms. Tasha's daughter's boyfriend.

6 Q: Okay. And Tasha White was the one that was

7 renting the house?

8 A: Yes, sir.

9 Q: Okay. And what was your girlfriend's name?

10 A: Shequan Ruff.

11 Q: Okay. Is she any relation to Tyrone Ruff?

12 A: Yes.

13 Q: Okay. What's her relation to Tyrone?

14 A: Niece.

15 Q: Okay. Do you know -- did you ever go to the

16 house prior to this incident?

17 A: Yes.

18 Q: Okay. How many times had you been out there?

19 A: I would almost say that I was somewhat living

20 there.

21 Q: Okay. Did you notice any problems with the

22 deck before it fell?

23 A: Not visual problems. I mean I've been on it a

24 couple of times but it just seemed kind of old,

25 so ...



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- 1 Q: Okay. I mean, I understand it looked old and
2 weathered; is that correct?
- 3 A: Yes.
- 4 Q: Okay. But other than that, did you notice any
5 problems with it?
- 6 A: No, sir.
- 7 Q: Okay. Just the physical look of it being an
8 aged deck?
- 9 A: Yes.
- 10 Q: Okay. Probably needed a paint job as well; is
11 that correct?
- 12 A: Yes.
- 13 Q: Okay. It's my understanding there were quite
14 a number of people on the deck when it fell?
- 15 A: Yes.
- 16 Q: All right. Did anybody -- prior to it falling,
17 did anybody express any concerns to you or did
18 you ever hear anybody saying that, you know,
19 something may be wrong with the deck or it
20 doesn't ...
- 21 A: No, sir.
- 22 Q: Okay. Has Ms. White ever told you anything
23 about the condition of the deck or -- before it
24 fell?
- 25 A: No, sir.



CREEL COURT REPORTING, INC.
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- 1 Q: All right. Have you had any conversations with
2 any of the people at that party since the deck
3 fell, about what happened, their injuries, your
4 injuries, or why the deck fell?
- 5 A: No.
- 6 Q: Okay. As we sit here today do you know why the
7 deck fell?
- 8 A: I guess because everyone was on it.
- 9 Q: Okay.
- 10 A: It was a lot of people.
- 11 Q: But you don't know, regarding any structural or
12 engineering issues or things like that?
- 13 A: No, sir.
- 14 Q: Okay. In your opinion, how many people were on
15 the deck when it fell?
- 16 A: I would say around 15 to 20.
- 17 Q: Okay. Where were you on the deck when it fell?
- 18 A: Closest to the door.
- 19 Q: All right.
- 20 A: Closest to the screen door.
- 21 Q: Was it a sliding deck?
- 22 A: Yeah.
- 23 Q: I mean -- I'm sorry a sliding ---
- 24 A: Sliding door.
- 25 Q: --- door. Okay. Where you -- there's a set of



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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Linda Estrada and George Estrada,

Plaintiffs,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-04304

**NOTICE OF MOTION
AND
DEFENDANTS' MOTION FOR
JUDGMENT NOTWITHSTANDING
THE VERDICTS**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05123

2016 APR 15 PM 4:14
RICHLAND COUNTY
CLERK OF COURT
JANET L. W. HENDERSON
C.C.R. 2.6.5.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cristian Reyes.

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-07214

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05122

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05124

RICHLAND COUNTY
FILED
2016 APR 15 PM 4:14
JEANETTE W. NORRIS
CLERK, C.S.

Defendants hereby move pursuant to Rule 50(b) of the South Carolina Rules of Civil Procedure for an Order setting aside the verdicts in favor of the Plaintiffs Linda Estrada, George Estrada, Carletta William, Khalilah Smith, and Tyrone Ruff and to have judgment entered in favor of the Defendants in accordance with their Motions for Directed Verdict. The grounds in support of this motion are more fully set forth hereinafter.

STANDARD

"[In] ruling on motions to set aside a verdict, a trial court is concerned with the Existence of evidence, not with its Weight. State v. Gunter, 273 S.C. 347, 350-51, 256 S.E.2d 317, 319 (1979). "The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt." RFT Mgmt. Co. v.

Tinsley & Adams L.L.P., 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012) (internal citations omitted). "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." Id.

FACTS

The evidence presented at trial was that there were no prior complaints of the condition or structural soundness of the deck at issue by any party prior to the collapse. The Defendants testified that they had no personal knowledge regarding any construction defects or maintenance/weathering/wood rot issues that created a safety concern or dangerous condition regarding the integrity or stability of the deck prior to its loss. The Defendants further testified that they never walked underneath the deck or otherwise inspected underneath the deck regarding its construction or the method it was mounted to the house.

The evidence also established the South Carolina Housing Authority inspected the premises annually from 1997 for approximately seven to eight years and did not report any problems with the stability, construction, or connection of the deck to the house. Moreover, three of the Plaintiffs had been to the house on occasions prior to the incident date and had been on the deck, yet none of those Plaintiff's expressed any concerns regarding the care, maintenance, stability or safety of the deck prior to its fall.

Plaintiffs' expert, Alan Abatta, testified that the deck collapsed as a result of wood rot on the band joist/rim joist that connected the deck to the house. He further testified that the wood rot *would not* be discovered by looking at the deck from the sides, on top or underneath. Mr. Abatta testified that if there was no lateral sway, sponginess, sagging or giving when walking on the deck, then a person would not have notice of the condition which he believes resulted in the deck collapse. Mr. Abatta testified that in order for the rotted band joist/rim joint to be discovered, Defendant Marshall would have had to go underneath the deck with a hammer and conduct a sounding test which involved hammering the band joist/rim joist across the length of the beam.

Rotted areas would sound differently informing the inspector that a problem existed. Mr. Abatta stated he believed that a person who possessed a residential builders license would know how to perform the test even though there was no direct evidence that Defendants Marshall possessed this information.

Mr. Abatta testified that there were areas on the deck that evidenced wood rot or decay. He admitted that these areas did not have any factor with regard to the collapse. However, he maintains that evidence of areas of wood rot or decay in other areas of the deck would have put someone with a residential builder's license on notice that there may be other, unseen problems, which would warrant the inspection and testing described above.

ANALYSIS

As correctly charged by the Court, the Plaintiffs' were licensees since they were social guests. Accordingly, as charged, the Defendants owed the following duty of care:

[t]he possessor is under no obligation to exercise care to make the premises safe for his reception, and is under no duty toward him except:

- (a) To use reasonable care to warn him of any concealed dangerous conditions or activities which are known to the possessor,
- (b) 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.

However, the owner of property has no duty to search out and discover dangers or defects in the land or to otherwise make the premises safe for a licensee.

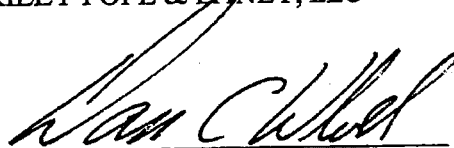
There is no evidence that either of the Defendants had actual knowledge of any dangerous condition regarding the property. To the extent a change in condition occurred regarding the band joint/rim joist due to wood rot or decay, the testimony was that the issue could not have been discovered except by searching out and conducting a sound test on the band joist/rim joist which would take place underneath the deck.

As the only evidence before the Court for directed verdict is that Defendants would have had to search out and discover the defect complained of, and there is no such duty to a licensee, no reasonable jury should have reached the verdicts rendered unless they disregarded the duty charged and rendered a verdict based upon sympathy, compassion, prejudice or caprice. Therefore, the Court should grant Defendants' Motion for a Judgment in Defendants' favor notwithstanding the verdict.

CONCLUSION

For the reasons set forth, Defendants respectfully request the Court grant Defendants judgment in their favor notwithstanding the verdict.

RILEY POPE & LANEY, LLC

A handwritten signature in black ink, appearing to read "Damon C. Włodarczyk", written over a horizontal line.

Damon C. Włodarczyk
Attorneys for Defendants

Columbia, South Carolina
April 15, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada and George Estrada,
Plaintiffs,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-04304

**DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carletta Williams,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05123

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Cristian Reyes.
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-07214

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05122

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-40-05124

On November 3, 2015, this matter came before the Court for a hearing on the Defendants' Motion for Summary Judgment, which is currently under advisement.

On November 2, 2015, at 11:39 A.M., less than twenty-four (24) hours before the summary judgment hearing, counsel for the Estradas delivered to the undersigned via e-mail an Affidavit of Allan Abbata, who claims to have been designated an expert in this case. [Exhibit 1]. At the motion hearing, Defendants' counsel objected to the Affidavit being considered on the grounds that it was untimely, that the purported expert had not been identified in discovery responses and that the Affidavit did not comply with Rule 56(e), SCRCF. The following supplemental memorandum is being submitted in support of those arguments.

The first action was filed on behalf of the Estradas on July 7, 2014. On August 7, 2014, Defendants served written interrogatories and requests for production of documents upon counsel for the Estradas. The Estradas answered the discovery requests in September 2014. [Exhibit 2]. To date, no supplemental responses have been received.

On July 24, 2015, Defendants served and submitted for filing a Motion for Summary Judgment arguing Defendants were entitled to judgment as a matter of law as there was no evidence of a breach of a legal duty by the Defendants. On October 14, 2015, a Notice of Hearing was issued stating that Defendants' Motion for Summary Judgment would be heard on November 3, 2015 at 11:00 a.m. On October 27, 2015, this Court issued notices that the consolidated cases would appear on the Jury Trial Roster for the week of November 30, 2015.

The Affidavit was submitted to create an issue of fact as to liability. However, Mr. Abbata has not been designated as an expert by any Plaintiff and no documents have ever been provided regarding a possible expert witness, which was requested in the Requests for the Production of Documents served on the Plaintiffs. [Exhibit 2, pp. 4, 10].

I. Plaintiffs' counter-affidavit was untimely.

Rule 6(d), SCRC, provides that opposing affidavits "may be served not later than two days before the hearing, unless the court permits them to be served at some other time."

It is clear that the e-mail dated November 2, 2015, at 11:39 A.M. is less than twenty-four hours before the scheduled hearing. Accordingly, the affidavit was untimely. Moreover, Plaintiffs' counsel did not move or otherwise request from the Court that the time requirements set forth in Rule 6(d) be altered to permit service at some other time. In fact, counsel argued the Affidavit was timely served two (2) days prior to the hearing.

For the foregoing reasons, Plaintiffs' counter-affidavit should not be considered as it was untimely.

II. Plaintiffs' purported expert has not been identified during discovery and, therefore, his opinion should be excluded.

[A] trial judge is required to consider and evaluate the following factors before imposing the sanction of exclusion of a witness:

- (1) the type of witness involved;
- (2) the content of the evidence emanating from the proffered witness;
- (3) the nature of the failure or neglect or refusal to furnish the witness' name;
- (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and
- (5) the prejudice to the opposing party.

Jumper v. Hawkins, 348 S.C. 142, 152, 558 S.E.2d 911, 916 (Ct. App. 2001)

Plaintiffs' purported expert witnesses should be excluded under the five (5) factors set forth in Jumper. 1) Type of witness involved and, (2) the content of the evidence emanating from the proffered witness: both potential witnesses presumably will be providing expert testimony. Plaintiffs are proffering the witness to establish notice of the defect complained of when none of the eight (8) fact witnesses previously deposed in this case provided any information that would put the Defendants on notice of the defect or dangerous condition complained of.

(3) the nature of the failure or neglect or refusal to furnish the witness' name: The Estradas' case has been pending since July 2014. Written discovery has not been supplemented since September 2014. Plaintiffs' depositions were taken in August 2015, and neither the Estradas nor any other Plaintiff deposed indicated they knew of or were informed of the cause of the deck collapse. [See Defendants' Memorandum in Support previously submitted to the Court]. Defendants' Motion for Summary Judgment, which contained the legal arguments in the

motion, was filed in July 2015 and Plaintiffs had sufficient notice and opportunity to consult with and retain an expert and supplement discovery responses with the requested information.

(4) the degree of surprise to the other party, including the prior knowledge of the name of the witness: Defendants had no knowledge regarding the name of Mr. Abbata and his affidavit received on November 2, 2015 and opinion were a complete surprise.

(5) the prejudice to the opposing party: prior to receiving the affidavit of Mr. Abbata, Defendants did not intend to identify any expert to testify at trial. However, if the witness was previously identified, Defendants would have had the opportunity to obtain information relative to his education, training, qualifications as an expert, or notes or reports generated. Moreover, Defendants would have had an opportunity to depose the witness, receive the transcript, or have it reviewed to present a counter-expert opinion or otherwise counter the allegations in the affidavit showing there was no genuine issue. Instead, Defendants were presented with a general, unvetted opinion less than twenty-four (24) hours before the summary judgment. Moreover, this matter is on the jury trial roster for the week of November 30, 2015. Should the affidavit be considered and the motion for summary judgment denied, Defendants will be prejudiced in having to engage in crucial last minute discovery for a case that has been pending for fifteen (15) months.

For the foregoing reasons, Plaintiffs' counter-affidavit should be excluded under Rule 37, SCRCP.

III. Plaintiffs' counter-affidavit does not comply with Rule 56(e), SCRCP.

Rule 56(e), SCRCP, provides in part that an opposing affidavit "shall show affirmatively that the affiant is competent to testify to the matters stated therein."

Pursuant to Rule 702, SCRE, a person may be qualified as an expert based upon "knowledge, skill, experience, training, or education." While "Rule 702, SCRE, does not set forth mandatory requirements for the qualification of an expert witness, acknowledging that

‘there are a variety of ways in which a person can become so skilled or knowledgeable in a field that their opinion in a scientific, technical, or specialized area can assist the trier of fact in determining a fact or in understanding the evidence.’” Teseniar v. Profl Plastering & Stucco, Inc., 407 S.C. 83, 90, 754 S.E.2d 267, 270-71 (Ct. App. 2014), reh'g denied (Feb. 20, 2014).

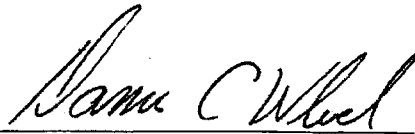
The Affidavit of Allan Abbata only makes slight conclusory statements regarding his qualifications to provide expert testimony. Mr. Abbata claims that his is a professional engineer, that he has extensive experience in several fields and specialized experience and knowledge relating to collapse of buildings and structures. However, the affidavit fails to set forth the affiant’s education, experience, licensure, experience with the construction or maintenance of residential decking or experience as an expert previously qualified by any court of law. Accordingly, the affidavit fails to *affirmatively* show that the affiant is competent to testify to the matters set forth therein. See generally Teseniar, 407 S.C. at 92, 754 S.E.2d at 272.

For the foregoing reasons, Plaintiffs’ counter-affidavit is deficient under Rule 56(e), SCRCF, and should not be considered by the Court.

CONCLUSION

For the reasons set forth, respectfully request that the counter-affidavit be excluded from consideration and that Defendants’ Motion for Summary Judgment be granted.

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk
Attorneys for Defendants

Columbia, South Carolina
November 5, 2015

Damon Wlodarczyk

From: Jerry Reardon <jerry@jerryreardonlaw.com>
Sent: Monday, November 02, 2015 11:39 AM
To: Damon Wlodarczyk
Cc: Todd Ellis; nick@mttlaw.com; Monique Trifos
Subject: RE: 11/3/15 Richland Motion Roster - Estrada et al v. Marshall et al
Attachments: affidavit Allan Abbata.pdf

Please find enclosed our affidavit in the above reference case. I will have the brief to you asap

Law Office of Jerry Reardon, LLC
1329 Blanding Street
Columbia, South Carolina 29201
(803) 978-6114 (o)
(803) 978-6112 (f)
(803) 237-0691 (c)
www.jerryreardonlaw.com
jerry@jerryreardonlaw.com

From: Damon Wlodarczyk
Sent: Wednesday, October 28, 2015 3:10 PM
To: rezbarberlc@sccourts.org
Cc: Jerry Reardon; Todd Ellis; nick@mttlaw.com; Monique Trifos
Subject: 11/3/15 Richland Motion Roster - Estrada et al v. Marshall et al

Please find attached a self-explanatory cover letter, memorandum in support and deposition excerpts relative to Defendants' Motion for Summary Judgment scheduled to be heard by Judge Barber next week. Please do not hesitate to contact me with any questions.

With kind regards,

Damon

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

DOCKET NO: 2014-CP-40-04304

Linda Estrada and George Estrada
Plaintiffs

vs.

Andrew Marshall and Linda Marshall
Defendants

)
)
)
) **AFFIDAVIT OF ALLAN ABBATA**
)
)
)

I, Mr. Allan A. Abbata P.E., being first duly sworn, depose and state to a reasonable degree of engineering certainty the following opinions based upon my personal knowledge and expertise:

1. I am a professional engineer specializing in the area of wood deck safety, analysis and design. I have extensive training and experience in the fields of structural design and construction of building materials, standards and code compliance, maintenance of structures, and, products liability, product failures, premises liability and consumer products. I have specialized experience and knowledge relating to collapse of buildings and structures and am educated with respect to safe product design and use.
2. I have been designated as an expert witness in the above captioned matter, and I expect to testify as to my conclusions relating to the wood deck collapse at the residence owned by the Defendants and premises liability at issue in this case. All opinions are based upon a reasonable degree of engineering certain.

3. I base my conclusions on my education, experience, training, and the review of documents and photos provided by the Plaintiff's attorney including an engineering report with photographs prepared by Applied Building Sciences, Inc. dated May 8, 2014.

4. The International Property Maintenance Code, Chapter 3 General Requirements, Section 304.10 (Stairways, decks, porches and balconies) states every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads. The exterior wood deck located on the west side of the residence that collapsed was not properly designed, constructed or maintained at the time of the injuries to the Plaintiffs, rendering the wood deck surface unreasonably dangerous and defective. The defective conditions contributed to the collapse of the deck.

5. The deck was composed of rotted boards and structural member as well as loose and inadequate structural connections at the time of the collapse

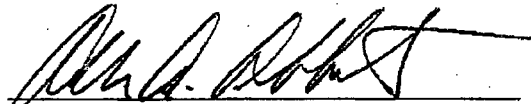
6. The bearing element (brick veneer wall) where expansion anchors were installed to support the deck girders failed to comply with proper engineering standard and building codes. The size and spacing of the fasteners was inadequate to comply with engineering and building code required design loads.

7. The joist girder that supports the floor joist at both ends of the deck were improperly designed and constructed in order to safely transfer the intended loads from the deck surface to the supporting foundation system as required by standard building codes. The girders were not properly supported at their ends along the back wall of the residence and therefore, are ineffective as floor joist supports. This also contributed to the deck collapse.

8. In my opinion to a reasonable degree of engineering certainty that the deck collapse most likely occurred due to the failure to design, inspect, maintain, care, and repair the wood deck in a proper manner.

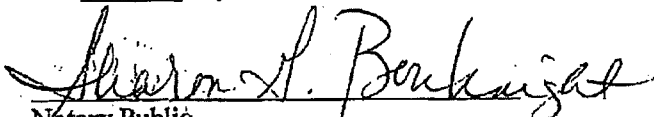
9. In my opinion to a reasonable degree of engineering certainty that the deteriorated and defective conditions that led to the deck collapse persisted over an extended period of time due to the failure to inspect, maintain, care and repair for the premises. The condition of the deck continued to deteriorate and was in a dangerous condition for an extended period of time which would have been discovered upon a reasonable inspection.

Further affiant sayeth not.


Mr. Allan A. Abbata P.E.

SUBSCRIBED and SWORN to before me

this 30th day of October, 2015


Notary Public

Expiration Date: 3-3-2020

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2014-CP-40-04304
	)	
	)	
	)	
	)	
LINDA ESTRADA, GEORGE ESTRADA,	)	
TYRONE RUFF, KHALILAH SMITH,	)	
CARLETTA WILLIAMS, CRISTIAN	)	
REYES,	)	
Plaintiffs,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ANDREW MARSHALL AND LINDA	)	
MARSHALL,	)	
Defendants.	)	
	)	

April 5-7, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE.

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

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CRYSTAL HOLMES
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Plaintiff's Exhibits)			
1	Linda Estrada's medical records	97	136
2	George Estrada's medical records	97	136
3	Cristian Reyes's medical records	97	136
4	Poster with photos	97	136
5	Poster with photos	97	136
6	Poster with photos	97	136
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9	Poster with photos	97	136
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(Defendant's Exhibits)			
1	Photograph	90	95
2	Photograph	90	95
3	Photograph	90	95
4	Photograph	90	95
5	Photograph	90	95
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Court's Exhibits)		
1	Jury Note	147	
2	Jury Note	147	
3	Jury Note	147	

All Exhibits were retained by the Clerk of Court for Richland County.

P R O C E E D I N G S

1
2 THE COURT: I think I have all the requested
3 voir dire as well as the list of witnesses. Anything else
4 I need to know before we bring the panel in?

5 MR. RILEY: Yes, Your Honor, I'd like to take a
6 matter up with you at the bench, please.

7 THE COURT: Okay.

8 (WHEREUPON, a bench conference was held off the
9 record.)

10 THE COURT: All right. Anything before we bring in
11 the panel?

12 MR. RILEY: Yes, Your Honor, I have a motion.

13 THE COURT: Yes, sir.

14 MR. RILEY: I have motion for a continuance. One of
15 my Plaintiffs, Khalilah Smith, I made contact with her
16 yesterday. We were supposed to meet on Sunday to discuss
17 her case and prepare for trial. I heard from her
18 yesterday after I got out of the courtroom. She's
19 notified me that her mom has had an outpatient surgery
20 yesterday. She has absolutely nobody to care for her
21 mother. She has asked that I request a continuance for
22 the whole case. I've advised her of the difficulty of
23 scheduling this matter, transportation issues, all of the
24 issues. I've notified her that if my continuance request
25 is denied, her case would likely be dismissed at some

1 point during this trial if she fails to attend. But I
2 told her I would make a motion on her behalf.

3 THE COURT: All right.

4 Anything on behalf of the Defense?

5 MR. WLODARCZYK: We'll leave it for the Court, Your
6 Honor.

7 THE COURT: All right. Well, gentlemen, given the
8 complexity of the, not complex legal issues, but you see
9 what I'm holding up here, all of these files that's been
10 consolidated. The matter seems to be ready for trial,
11 everybody's on the same page. I mean, getting this many
12 lawyers in the same courtroom on a case is always
13 difficult with all of y'all's various schedules. So I'm
14 going to respectfully deny your motion for a continuance.

15 Just try to get her up here at some point. She
16 doesn't have to be here for the entire trial. You can
17 explain that to the jury, you know, where she is,
18 whatever, if that becomes an issue and we can go from
19 there, okay.

20 MR. RILEY: Thank you, Your Honor.

21 THE COURT: All right. So your motion for a
22 continuance is denied.

23 Anything else before we bring in the panel?

24 MR. REARDON: One second, Your Honor.

25 THE COURT: Okay.

1 (Pause).

2 MR. REARDON: Your Honor, just a quick issue. There
3 is an issue about two things about referrals. Number one,
4 referrals of clients, our clients, to the chiropractors --
5 from the lawyers to the chiropractors and whether or not
6 that's an issue. I generally make that a motion that it's
7 more prejudicial than probative. It doesn't seem to help
8 the jury make any decision. It may very well taint the
9 jury as to why we referred them to a doctor. Obviously,
10 when there's folks not paying in advance for medical care,
11 these folks charge up front and they don't want to come
12 out of pocket, so the lawyers do it for most of the other
13 physicians. I'd like to keep that out if the Court
14 believes it's more prejudicial than probative.

15 THE COURT: All right.

16 MR. WLODARCZYK: Your Honor, it's standard to bring
17 that issue up. If it comes up, this kind of situation
18 where any of these individual had sought prior care from
19 these chiropractors, I think it's a standard question to
20 ask how they sought chiropractic care when it wasn't their
21 primary care physician or regular doctor. I believe
22 there's only going to be one -- one doctor testify, Dr.
23 Westerkam, regarding actual surgery. I believe it goes to
24 the issue that we have. Five or six plaintiffs, all went
25 to their attorneys and all of which went to a

1 chiropractor. I think the just has the right to hear
2 that. I won't ask anything about fees or anything like
3 that. Certainly, they can explain how they see fit.

4 THE COURT: Well, let me deal with that when that
5 comes up, okay? I'll defer ruling on that until the
6 moment, then I'll make a decision whether or not it will
7 be more prejudicial or probative under Rule 403.

8 THE COURT: All right.

9 MR. REARDON: All right.

10 THE COURT: All right. What else?

11 MR. REARDON: Second, Your Honor, the photographs
12 were taken by State Farm and investigation was done by
13 State Farm prior to litigation. So the engineer for the
14 Defendant is relying on information sent to them by a
15 State Farm representative. I would like to ask the same
16 thing if we're going to get into referrals and how you go
17 about getting business and whether your prejudicial based
18 on who sends you work, then I would like -- if we're going
19 to allow things like doctors, I think we would allow
20 things in like State Farm reps sending business to his
21 engineer and going out there and doing work prior to
22 litigation. I think it shows -- his testimony was he does
23 80 percent defense work. I think he's prejudicial in his
24 findings, therefore, we're going to get into other
25 referring issues. And I think that that's an issue for

1 us.

2 THE COURT: I'm not going to let anything concerning
3 insurance, okay, or State Farm or insurance or anything.
4 We're not going to let that in.

5 MR. REARDON: Okay.

6 THE COURT: I think, certainly, you may arguably --
7 and we'll deal with that when that comes up, say that --
8 you may be able to bring out that the photographs were
9 provided to them by the Defense.

10 MR. REARDON: Sure.

11 MR. WLODARCZYK: I think there may be some
12 miscommunication between counsel. I thought the
13 photographs were done by State Farm. The photos that were
14 sent to me that were provided to counsel were taken,
15 actually, by the engineers. So they're not
16 representatives of State Farm. So he didn't ask --

17 THE COURT: Not investigators for the Defense?

18 MR. WLODARCZYK: No, sir.

19 MR. REARDON: Okay.

20 THE COURT: I've used that language before.

21 MR. REARDON: One other one, Your Honor, on unrelated
22 claims, unrelated accidents, unrelated injuries. There's
23 some testimony of other accidents sometime around this
24 time period. I haven't seen any medical records that were
25 produced by the Defendant indicating the injuries were the

1 same, the likeness of the accident to this accident or to
2 these injuries. I haven't seen any -- I don't want
3 fishing, you were in another wreck, you were, also, hurt,
4 you know, what treatment did you have before these other
5 injuries. My client testified she was in a wreck a week
6 or so before this incident, said she had some type of
7 similar injuries, but I haven't seen any record produced
8 by the Defendant. I don't want them trying to get in the
9 back door what they can't get in the front door. There's
10 no records custodian. I don't know if he has any records
11 I haven't seen. I want to make sure nothing comes in
12 regarding --

13 THE COURT: But in her deposition, it came out she
14 had been in a car wreck --

15 MR. REARDON: Yes, Your Honor.

16 THE COURT: -- a week prior to this collapse?

17 MR. REARDON: That's correct.

18 THE COURT: I mean, I think that's relevant. I think
19 that can come in.

20 MR. WLODARCZYK: She did indicate it was an
21 aggravation of her prior problems.

22 THE COURT: She can testify to that.

23 MR. REARDON: Okay.

24 MR. WLODARCZYK: We may ask for a charge of
25 aggravation.

1 THE COURT: Okay. We'll deal with that.

2 MR. REARDON: Two other issues, Your Honor. One,
3 money will not undo the damage. You know, we're not here
4 -- the whole idea as to the lottery. If they're trying to
5 hurt our client, obviously, there's insurance involved. I
6 don't want any improper suggestions that these folks are
7 paying any verdict or that money is not the answer in a
8 case like this and that they use to get an apology -- you
9 know, we're sorry, you know, trying to jury sympathy for
10 apologizing for this incident. I think that's, once
11 again, you're trying to get the jury to sympathize with
12 the Defendants. We're not allowed to go up there in our
13 closing and ask them to do things as far as the Golden
14 Rule, that kind of thing.

15 THE COURT: And I always give the caprice of
16 sympathy, passion charge and that takes care of that. But
17 I can't believe in the calendar year in 2016 we're having
18 an argument about insurance when everybody knows insurance
19 is involved in every personal injury case. I just --
20 eventually, it's going to have to come out, okay. And,
21 eventually, the rules will be amended to allow it. Other
22 states do it and they don't have a problem.

23 MR. WLODARCZYK: We have not complained that type of
24 defense.

25 THE COURT: Okay.

1 MR. REARDON: That's it. Thank you, Your Honor,
2 that's it.

3 THE COURT: Anything else?

4 MR. ELLIS: No, sir.

5 THE COURT: All right. Let's bring the panel in,
6 Madam Clerk.

7 (WHEREUPON, the jury venire entered the
8 courtroom.)

9 THE COURT: Do we have a different list?

10 THE CLERK: That's the new one.

11 THE COURT: This is the new one here?

12 THE CLERK: Yes, Your Honor.

13 BAILIFF: Your Honor, the jurors are seated.

14 THE COURT: Thank you very much.

15 Good afternoon, ladies and gentlemen. I know many of
16 you had a late night last night just like I did watching
17 that wonderful NCAA basketball championship. What a
18 wonderful way to end a wonderful season. Very exciting,
19 but I know y'all are just as excited to be here this
20 afternoon. Again, thank you for being here.

21 We are about to begin a trial in a common pleas
22 matter, which is civil court. The name of the case -- and
23 I'm going to have the lawyers and everybody introduce
24 themselves to you in a moment. But let me give you the
25 name of the case, give you kind of a general idea of what

1 the case is about because I'm going to have some questions
2 I have to ask you before a jury is selected, a trial jury
3 is selected. So you see there's 35 of you in here, 13 of
4 you are going to be selected for the trial. So you can
5 kind of figure out what your odds are when looking around.

6 The name of the case is Estrada and Estrada, Carletta
7 Williams, Cristian Reyes, Khalilah Smith and Tyrone Ruff.
8 Those are the Plaintiffs. The plaintiffs are people who
9 bring a lawsuit. Versus Andrew Marshall and Linda
10 Marshall. That's the name of the case. Now, there's a
11 bunch of -- there were several cases and they were all
12 consolidated into one case so it could all be heard at the
13 same time. That's why there's so many people involved,
14 okay. But that's the name of the case. And it is a
15 negligence action involving the alleged collapse of a deck
16 at a home, okay, and then injuries which resulted --
17 alleged injuries which resulted from that alleged
18 collapse. That's generally what the case is about, okay.

19 So before we can have a jury seated, I do need to ask
20 you a couple of questions. If all of you will please
21 stand at this time and I'll swear you in.

22 (WHEREUPON, all jurors stood.)

23 THE COURT: Raise your right hand.

24 (WHEREUPON, the jury was duly sworn.)

25 THE COURT: Thank you. Everybody can be seated.

1 All right. Before I start asking questions, I'm
2 going to have the lawyers introduce themselves to you as
3 well as point out who their respective clients are and
4 then we can go from there. So first, we'll start off with
5 the Plaintiff's side.

6 Mr. Reardon, I'll let you go first.

7 MR. REARDON: Thank you, Your Honor. May it please
8 the Court.

9 I'm Jerry Reardon of the law office of Jerry Reardon.
10 I'm the only person there, along with my new associate
11 Greg Parker. Seated next to me, these are my two clients,
12 Linda and George Estrada.

13 THE COURT: All right. Thank you.

14 Yes, sir.

15 MR. RILEY: My name is Nick Riley. I'm with the
16 Moore Taylor Law Firm. In this case, I speak for Carletta
17 Williams and Mr. Tyrone Ruff.

18 THE COURT: All right. Thank you.

19 Yes, sir, Mr. Ellis.

20 MR. ELLIS: May it please the Court.

21 I'm Todd Ellis. I practice here in Columbia and in
22 North Carolina as well. It's my pleasure to represent
23 Cristian Reyes.

24 Cristian, stand up for these folks.

25 (WHEREUPON, Mr. Reyes stood.)

1 MR. ELLIS: Thank you.

2 THE COURT: All right. Thank you.

3 Yes, sir, Mr. Wlodarczyk. I got your name right.

4 MR. WLODARCZYK: You did good. I appreciate that,
5 Judge.

6 Good afternoon, ladies and gentlemen, my name is
7 Damon Wlodarczyk. I practice here in Columbia at Riley,
8 Pope & Laney on Devine Street. I represent Mr. and Mrs.
9 Marshall, who are the owners of the property at issue
10 here.

11 JURY QUALIFICATIONS

12 THE COURT: All right. Now, that you've been
13 introduced to the relevant parties in the case, the first
14 question I have for you, ladies and gentlemen, concern the
15 people who you have just been introduced to, the parties
16 in this lawsuit.

17 Is there any juror who's related by blood or marriage
18 or has a close personal or social relationship with any of
19 these people, the Plaintiffs or the Defendants, in this
20 case? If so, please stand.

21 (Jurors stand.)

22 THE COURT: All right. Yes, sir, juror number?

23 PROSPECTIVE JUROR: 157.

24 THE COURT: All right. And how do you know the
25 people?

1 PROSPECTIVE JUROR: I know Mr. Ellis pretty well.

2 THE COURT: The lawyer for Mr. Reyes?

3 PROSPECTIVE JUROR: Right.

4 THE COURT: All right. In what capacity do you know
5 him?

6 PROSPECTIVE JUROR: A number of capacities. He
7 helped me get hired here. He's a friend of mine socially.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: And from Gamecock football.

10 THE COURT: Would that affect your ability to be a
11 fair and impartial juror?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Thank you, sir. You can be seated.

14 All right. Now, as to any other questions as to the
15 parties. And I meant to delineate or separate. Now, as
16 to the lawyers, does any perspective juror have a close,
17 personal or social relationship with any of the lawyers or
18 are related to any of the lawyers involved in this case?
19 If so, please stand, other than that gentleman because
20 he's already good.

21 (There was no response.)

22 THE COURT: All right. No response. Has any -- has
23 any member of the perspective juror panel -- or
24 perspective jurors, excuse me, ever been represented or
25 have any business dealings with any of the lawyers

1 involved in the case? If so please stand.

2 (Juror stands.)

3 PROSPECTIVE JUROR: Am I supposed to stand up on
4 that?

5 THE COURT: Oh, yes, sir.

6 PROSPECTIVE JUROR: Mr. Ellis represented my wife on
7 a speeding ticket.

8 THE COURT: All right. Thank you. Would that affect
9 your ability to be fair and impartial?

10 PROSPECTIVE JUROR: It would not, sir.

11 THE COURT: All right. Thank you, sir.

12 I'm going to list out in no particular order some
13 names. You've already met some people who are going to be
14 testifying in this case. And, again, just because I
15 mention names doesn't mean they're going to testify or
16 not. These are just potential witnesses, okay, so listen
17 carefully. And I'll just list out all the names of people
18 who may or may not be testifying. And the question I'm
19 going to have for you is if you have a close, personal or
20 social relationship with any of these people or if you're
21 related by blood or marriage to any of those people. And,
22 of course, some of these people, most of them are here in
23 court.

24 Linda Estrada, George Estrada, Khalilah Smith,
25 Carletta Williams, Tyrone Ruff, Cristian Reyes, Dr. R.

1 Dean McCaughan, Alan Abatta, PE, Parker Shields, Luis A.
2 Mariaca, Dr. William Randall Westerkam, Steven Hamvay, R.
3 Dean McCaughan, again, sorry, didn't recognize that, and
4 Joseph G. Carew.

5 If any of those names sound familiar, either by way
6 of a social or personal relationship or by way of having
7 any possible business dealings or being related by blood
8 or marriage to any of those people, please stand.

9 (There was no response.)

10 THE COURT: All right. No response.

11 All right. Has any member of jury panel ever
12 received chiropractic treatment as the result of personal
13 or bodily injury? If so, please stand.

14 (Jurors stand.)

15 THE COURT: All right. We'll just go from front to
16 back.

17 Yes, sir, juror number?

18 PROSPECTIVE JUROR: Sixty-nine.

19 THE COURT: All right.

20 PROSPECTIVE JUROR: Yeah, I injured something in my
21 neck.

22 THE COURT: Okay. And how long ago was your
23 treatment?

24 PROSPECTIVE JUROR: It's ongoing. I think the last
25 one was maybe three months ago.

1 THE COURT: Okay. Would that affect your ability to
2 be fair and impartial?

3 PROSPECTIVE JUROR: Not at all.

4 THE COURT: All right. Thank you.

5 Yes, sir?

6 PROSPECTIVE JUROR: No. 214. I've seen chiropractors
7 throughout the year through sports just getting banged up.

8 THE COURT: Okay. And would that affect your ability
9 to be fair and impartial?

10 PROSPECTIVE JUROR: No.

11 THE COURT: All right.

12 Yes, ma'am?

13 PROSPECTIVE JUROR: No. 21. This was probably 20
14 years ago after an accident.

15 THE COURT: Okay. Would that affect your ability to
16 be fair and impartial?

17 PROSPECTIVE JUROR: No.

18 THE COURT: All right. Thank you.

19 Yes, ma'am?

20 PROSPECTIVE JUROR: No. 277. From a car accident in
21 2013.

22 THE COURT: All right. About a couple years ago.
23 Would that affect your ability to be fair and impartial?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: All right.

1 Yes, ma'am?

2 PROSPECTIVE JUROR: No. 44. Just as a result of wear
3 and tear of being a nurse about 25 years ago.

4 THE COURT: Would that affect your ability to be fair
5 and impartial?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Thank you.

8 All right. Next question, is any member of the jury
9 panel the owner of residential rental property?

10 (Jurors stand.)

11 THE COURT: In other words, if you own a rental home
12 that you, I guess, rent out? If so, please stand.

13 All right. Yes, ma'am, what's your number again?

14 PROSPECTIVE JUROR: Forty-four.

15 THE COURT: All right. You own residential rental
16 property?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: All right. The fact that you own
19 residential rental property, would that affect your
20 ability to be fair and impartial in this case?

21 PROSPECTIVE JUROR: I will be fine, sir.

22 THE COURT: All right. Thank you.

23 Yes, sir?

24 PROSPECTIVE JUROR: No. 65.

25 THE COURT: Yes, sir, how does this apply to you?

1 PROSPECTIVE JUROR: I have a co-op. Not a house, but
2 a co-op.

3 THE COURT: All right. Would that affect your
4 ability to be fair and impartial?

5 PROSPECTIVE JUROR: No.

6 THE COURT: All right. Thank you.

7 All right. Next question, we're almost through, has
8 any member of the jury panel or any member of your
9 immediate family ever been a party to a lawsuit, either as
10 a plaintiff or a defendant, as result of a claim for
11 bodily or personal injuries?

12 (Jurors stand.)

13 THE COURT: Okay. So if you or a member of your
14 family has ever been sued or you've ever sued for personal
15 or bodily injury, please stand.

16 All right. We'll go from my right to my left.

17 Yes, ma'am, Juror No. 44?

18 PROSPECTIVE JUROR: Yes, sir, I had a fall at a
19 resort and I was the plaintiff.

20 THE COURT: You were the plaintiff. Okay. And would
21 that affect your ability to be fair and impartial in this
22 case?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Okay. Thank you.

25 Yes, sir?

1 PROSPECTIVE JUROR: Juror No. 22.

2 THE COURT: Yes, sir.

3 PROSPECTIVE JUROR: I was a plaintiff in a case. I

4 was hit by a drunk driver about 20 years ago.

5 THE COURT: Would that affect your ability to be fair

6 and impartial?

7 PROSPECTIVE JUROR: No.

8 THE COURT: All right.

9 Yes, sir?

10 PROSPECTIVE JUROR: Juror 304.

11 THE COURT: Yes, sir.

12 PROSPECTIVE JUROR: My wife had a claim against

13 Delta.

14 THE COURT: All right.

15 PROSPECTIVE JUROR: About four years ago.

16 THE COURT: Would that affect your ability to be fair

17 and impartial?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you.

20 Yes, ma'am?

21 PROSPECTIVE JUROR: I had a claim just recently for

22 the same accident. And my brother, also, had a claim for

23 a different accident.

24 THE COURT: What's your juror number again, ma'am?

25 PROSPECTIVE JUROR: 277.

1 THE COURT: Would that affect your ability to be fair
2 and impartial?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: All right.

5 And yes, sir?

6 PROSPECTIVE JUROR: Sixty-five. About 25 years ago,
7 a 55-gallon barrel broke and landed on my toe. And I was
8 a plaintiff for that.

9 THE COURT: All right. Would that affect your
10 ability to be fair and impartial?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Thank you. You can be seated.

13 All right. Give me just a second.

14 (Pause.)

15 THE COURT: All right. Does any perspective juror
16 have a close, personal or social relationship or related
17 by blood or marriage to any other juror here on the jury
18 panel today? If so, please stand.

19 (There was no response.)

20 THE COURT: Has any member of the jury panel or a
21 member of your family ever held or had a residential
22 builder's license? If so, please stand.

23 (There was no response.)

24 THE COURT: All right. Has any member of the jury
25 panel member or a member of your family ever worked in

1 construction? If so, please stand.

2 (Jurors stand.)

3 THE COURT: Okay. We'll going from my left to my
4 right this time.

5 Yes, sir?

6 PROSPECTIVE JUROR: No. 65. I'm working at the BC
7 Summer Plant. They're under construction of two units.

8 THE COURT: Would that affect your ability to be fair
9 and impartial in this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: All right. Thank you.

12 Yes, ma'am?

13 PROSPECTIVE JUROR: No. 277. My two brothers and my
14 dad all work in construction.

15 THE COURT: Would that affect your ability to be fair
16 and impartial?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: All right.

19 Yes, sir?

20 PROSPECTIVE JUROR: No. 22. I have two uncles that
21 are general contractors.

22 THE COURT: Would that affect your ability to be fair
23 and impartial?

24 PROSPECTIVE JUROR: No.

25 THE COURT: All right.

1 Yes, ma'am?

2 PROSPECTIVE JUROR: Forty-one. My brother works in
3 construction.

4 THE COURT: Would that affect your ability to be fair
5 and impartial?

6 PERSPECTIVE JUROR: Absolutely not.

7 THE COURT: All right.

8 Yes, ma'am?

9 PROSPECTIVE JUROR: No. 44. My son is a helper.

10 THE COURT: Would that affect your ability to be fair
11 and impartial?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Yes, ma'am?

14 PROSPECTIVE JUROR: No. 56. My brother and my father
15 both was construction.

16 THE COURT: Would that affect your ability to be fair
17 and impartial?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Thank you.

20 All right. I'll go ahead and ask this, even though I
21 think it's the same as another question. Have you or a
22 relative ever purchased an investment property for the
23 purposes of serving as a landlord to a residential tenant?
24 If so, please stand.

25 (Jurors stand.)

1 THE COURT: Okay. Got you, No. 44. You've already
2 answered that question.

3 Yes, ma'am?

4 PROSPECTIVE JUROR: Twenty-one, two of my girls have.

5 THE COURT: Would that affect your ability to be fair
6 and impartial?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Yes, ma'am?

9 PROSPECTIVE JUROR: 277, I have an investment
10 property with my uncle.

11 THE COURT: Okay. You receive rent from that
12 investment property?

13 PROSPECTIVE JUROR: (The witness nodded head.)

14 THE COURT: Would that affect your ability to be fair
15 and impartial?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: All right.

18 Yes, sir?

19 PROSPECTIVE JUROR: Sixty-nine. My father-in-law
20 owns, I think, 17 rental properties.

21 THE COURT: Would that affect your ability to be fair
22 and impartial?

23 PROSPECTIVE JUROR: Not at all.

24 THE COURT: Yes, sir, Mr. 65?

25 PROSPECTIVE JUROR: Condo, me and my wife own.

1 THE COURT: Would that affect your ability to be fair
2 and impartial?

3 PROSPECTIVE JUROR: No.

4 THE COURT: All right. Any further voir dire from
5 the Plaintiffs?

6 MR. ELLIS: Nothing, Your Honor.

7 THE COURT: Any further from the Defense?

8 MR. WLODARCZYK: No, Your Honor.

9 THE COURT: All right. Well, ladies and gentlemen,
10 we're going to commence with selecting a jury at this
11 time. Just give us your patience while the lawyers go
12 through the list they have in front of them. And this is
13 kind of done differently.

14 Were y'all able to be in front of -- remember, this
15 isn't a criminal case, this is a civil case. It's done
16 differently in civil court. I'm not going to make you
17 come and stand in front of people and, you know, if they
18 select, you have to go over there, if they don't select
19 you, you have to take that walk of shame back.

20 (Laughter.)

21 THE COURT: We're not going to do it that way. The
22 clerk will tell if you're selected after a few moments.
23 Then if you're selected, you'll come over here and have a
24 seat in the jury box, okay. So just give us a moment
25 while we do all that right now.

1 Y'all just let me know when y'all are ready.

2 MR. WLODARCZYK: The Defendant's ready, Your Honor.

3 THE COURT: Okay. Y'all kind of pre-had the list.

4 (Pause.)

5 MR. REARDON: We're ready, Your Honor.

6 THE COURT: Madam Clerk, you're running the show.

7 CLERK: All right. Counsel exercises the strikes for
8 the numbers on the left beginning with the Plaintiff.

9 SELECTION OF THE JURY

10 MR. REARDON: Plaintiff strikes No. 11.

11 THE CLERK: Plaintiff strikes No. 11.

12 MR. WLODARCZYK: Defendant strikes No. 4.

13 THE CLERK: Defendant strikes No. 4.

14 MR. REARDON: Plaintiff strikes 13.

15 THE CLERK: Plaintiff strikes 13.

16 MR. WLODARCZYK: Defendant strikes No. 1.

17 THE CLERK: Defendant strikes No. 1.

18 MR. REARDON: Plaintiff strikes No. 9.

19 THE CLERK: Plaintiff strikes No. 9.

20 MR. WLODARCZYK: Defendant strikes No. 15.

21 THE CLERK: Defendant strikes No. 15.

22 MR. REARDON: Plaintiff strikes No. 10.

23 THE CLERK: Plaintiff strikes No. 10.

24 MR. WLODARCZYK: Defendant strikes No. 16.

25 THE CLERK: Defendant strikes No. 16.

1 Using the numbers 21 through 23, we're going to
2 strike an alternate. Starting with the Plaintiff.

3 MR. REARDON: Plaintiff strikes No. 23.

4 THE CLERK: Plaintiff strikes No. 23.

5 MR. WLODARCZYK: Defendant strikes No. 22.

6 THE CLERK: Defendant strikes No. 22.

7 Counsel, please allow me to review your strikes.
8 With the Plaintiff, I've got Juror No. 11, 13, 9, 10,
9 alternate 23.

10 MR. REARDON: That's correct.

11 THE CLERK: Defendant, I've got Juror No. 4, 1, 15,
12 16, alternate No. 22; is this correct?

13 MR. WLODARCZYK: That's correct, ma'am.

14 THE CLERK: Okay. If I call your juror name, go
15 ahead and grab your belongings and go ahead and prepare to
16 sit in the jury box.

17 Sylvia Richardson.

18 (Sylvia Richardson, a white female, was seated.)

19 THE CLERK: Melissa Hennessey.

20 (Melissa Hennessy, a white female, was seated.)

21 THE CLERK: Trythenia Smith.

22 (Trythenia Smith, a black female, was seated.)

23 THE CLERK: Alfreda Burkley.

24 (Alfreda Burkley, a black female, was seated.)

25 THE CLERK: Brady Staberg.

1 (Brady Staberg, a white male, was seated.)
2 THE CLERK: Leslie Bessellieu.
3 (Leslie Bessellieu, a black female, was seated.)
4 THE CLERK: Karen Chiles.
5 (Karen Chiles, a white female, was seated.)
6 THE CLERK: Scott Washington.
7 (Scott Washington, a black male, was seated.)
8 THE CLERK: Eugene Benjamin.
9 (Eugene Benjamin, a black male, was seated.)
10 THE CLERK: Christina Putnam.
11 (Christina Putnam, a white female, was seated.)
12 THE CLERK: Bianca Williams.
13 (Bianca Williams, a black female, was seated.)
14 THE CLERK: Mary Bryant.
15 (Mary Bryant, a black female, was seated.)
16 THE CLERK: And John Philipoom.
17 (John Philipoom, a white male, was seated.)
18 THE COURT: All right. Any legal issues regarding
19 the jury selection from the Plaintiffs?
20 MR. REARDON: Nothing, Your Honor.
21 THE COURT: From the Defense?
22 MR. WLODARCZYK: Regarding the strike, Your Honor, we
23 need to take up something.
24 THE COURT: Sure. All right. Thank you.
25 Ladies and gentlemen of the trial jury, I need you --

1 before I swear you in for the trial of the case, I need
2 you to go back to your jury room. The bailiffs will show
3 you where that is. Don't talk about the case. Obviously,
4 you don't know any about the case. You're fixing to find
5 out here shortly. So y'all can surely introduce
6 yourselves to each other, but don't talk about the case,
7 okay. We'll bring you back out here momentarily.

8 (WHEREUPON, the jury left the courtroom at 1:43
9 p.m.)

10 THE COURT: Ladies and gentlemen of the jury panel,
11 y'all are now free to leave and go back, I guess, to the
12 jury assembly room?

13 THE CLERK: Yes, Your Honor.

14 THE COURT: All right. You will receive further
15 instructions. Thank you.

16 (WHEREUPON, the jury panel left the courtroom at
17 1:43 p.m.)

18 THE COURT: Yes, sir.

19 MR. WLODARCZYK: Your Honor, after the jury was
20 selected, Ms. Marshall indicated that she knows or has
21 known Eugene Benjamin, which was No. 16, about 40 years
22 ago. And it was not a personal relationship as he didn't
23 recognize her. Obviously, he did not recognize her. I
24 just wanted to make everybody aware.

25 THE COURT: All right. What y'all want to do?

1 MR. ELLIS: Judge, we don't want to make it harder
2 than what it is. We propose to put the alternate in there
3 or ask him whether or not he knows.

4 THE COURT: Well, the easiest thing to do is -- you
5 know, they don't know anything about the case at this
6 point. The easiest thing to do, just out of an abundance
7 of caution, just relieve him, move the alternate up and
8 just strike for another alternate.

9 MR. REARDON: We're fine with that.

10 MR. WLODARCZYK: We're fine.

11 MR. REARDON: We don't need an alternate if they
12 don't want one, Your Honor.

13 THE COURT: Or we can just go forward with the 12 we
14 have and let's roll.

15 MR. REARDON: I think if we have 11, we'll be fine.

16 MR. WLODARCZYK: I'm fine with 11, Judge.

17 THE COURT: There you go. See, that was easy.

18 (Laughter.)

19 THE COURT: All right. The juror can leave -- what
20 are we going to do?

21 MR. RILEY: That was No. 16, I think.

22 PROSPECTIVE JUROR: Yeah, Juror No. 16. I'll explain
23 to him what's going on so he won't feel bad.

24 THE CLERK: Yes, Your Honor.

25 THE COURT: Then we'll let the jury know what's going

1 on.

2 (WHEREUPON, Juror No. 16, Eugene Benjamin,
3 entered the courtroom.)

4 THE COURT: Mr. Benjamin.

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Come on up here. You're not in trouble.

7 PROSPECTIVE JUROR: Yes, I am.

8 THE COURT: Ms. Marshall noticed -- realized that she
9 was friends with you a long time ago and forgotten it or
10 something like that.

11 MS. MARSHALL: Not friends, just an acquaintance.

12 THE COURT: Just an acquaintance. So out of an
13 abundance of caution, everybody agreed we're going to let
14 you off of this trial. All right. So you can head on
15 back down to the jury assembly room. That way, the
16 alternate is now going to be in the trial.

17 PROSPECTIVE JUROR: Okay.

18 THE COURT: Nothing you did, okay. Take care.

19 (WHEREUPON, Juror No. 16, Eugene Benjamin, left
20 the courtroom.)

21 THE COURT: Openings and closings, since we have so
22 many lawyers involved -- I never try to limit y'all on
23 arguing and talking to the jury, but since we do have so
24 many lawyers involved, can we kind of --

25 MR. ELLIS: We've definitely worked that out, Your

1 Honor. Mr. Reardon is going to start and give the
2 majority of the story and we're going to introduce our
3 clients and talk a little bit about them.

4 THE COURT: Okay.

5 MR. ELLIS: Is that good?

6 THE COURT: Sounds good to me.

7 Mr. Wlodarczyk, is that good for you?

8 MR. WLODARCZYK: I'm the only one on this side,
9 Judge.

10 THE COURT: Y'all ready for the jury?

11 MR. ELLIS: Yes, sir, I think.

12 MR. REARDON: Yes.

13 THE COURT: What I plan on doing, I'm going to do my
14 initial charge. We'll do openings. We'll get through, at
15 least, one witness before we take a potty break. Sound
16 good?

17 MR. REARDON: I'm sorry, Your Honor, one more time.

18 THE COURT: We'll do the initial charge, opening
19 statements, try to get through, at least, one, maybe two
20 witness before we take a potty break.

21 MR. REARDON: Okay. Thank you.

22 THE COURT: All right. Bring them in.

23 (WHEREUPON, the jury returned to the courtroom
24 at 1:58 p.m.)

25 THE BAILIFF: The jury is seated, Your Honor.

1 THE COURT: All right. Thank you.

2 Ladies and gentlemen of the jury, at this time, I'm
3 going to have the clerk of court swear you in. What
4 happened -- you'll notice we had 13, now, there's only 12
5 of you. What happened was one of the parties recognized
6 one of the potential jurors. And out of an abundance of
7 caution, I went ahead and removed that juror from the
8 trial of the case. That's why the alternate moved on up.
9 That's why we even have an alternate. So there's 12 of
10 you instead of 13 now, and that's what happened.

11 So we need to go ahead and swear in the jury.

12 THE CLERK: Stand and raise your right hand, please.

13 (WHEREUPON, the jury was sworn.)

14 THE CLERK: Thank you. You can have a seat.

15 THE COURT: All right. Thank you, ladies and
16 gentlemen.

17 Thank you, Madam Clerk.

18 If y'all would please your direction to me. Can
19 everybody hear me okay?

20 (All jurors answered in the affirmative.)

21 THE COURT: I'm going to talk to you just for a
22 moment before I let you hear from the lawyers and kind of
23 give you an idea of what's going to happen. Let me tell
24 you, before we begin this trial, this trial is probably
25 going to be very different from what you might expect.

1 Many people don't have the chance to attend actual court
2 sessions as you're now, much less participate in them as
3 you're doing now, being on the trial jury. Of course,
4 those people tend to think that what they see on TV or in
5 movies or reading books are the way trials always are.
6 They tend to think that a trial is always full of high
7 drama, intense action and riveting circumstances.

8 Now, while that may be true from time to time, this
9 trial is not for entertainment, ladies and gentlemen, it
10 is a fundamental part of our democracy. It's a search for
11 the truth to make sure that justice is done between the
12 parties before the Court. You know, sometimes searching
13 for justice and making sure that -- searching for the
14 truth and making sure that justice is done can,
15 oftentimes, be a slow and repetitive process, the opposite
16 of what you may have come to expect through media and
17 stuff.

18 Now, this courtroom, ladies and gentlemen, is a place
19 of honor dedicated to the preservation of citizens'
20 rights, what many have called the greatest justice system
21 ever created. The attorneys who are appearing before you
22 are advocates for the parties that they represent, but,
23 first and foremost, they're officers of this court sworn
24 to uphold the integrity and fairness of our judicial
25 system and to help you in your search for the truth. You

1 should expect them to be professional, competent and
2 ethical in the representation of their client's interest.
3 And remember that you've just taken an oath to try this
4 case and to reach a fair and just verdict, so you are,
5 also, expected to act the same way. Thank you again for
6 accepting this very important responsibility.

7 Let me tell you a little bit about how this case will
8 proceed. As I told you before, this is a civil case.
9 This is not a criminal case. So the first thing that will
10 occur is that the attorneys in this case for the
11 Plaintiffs -- and, again, the plaintiff is a person who
12 brings a lawsuit. The attorneys will make an opening
13 statement to you, which will be followed by a similar
14 opening statement given to you by the attorney for the
15 Defendant.

16 Now, the opening statement -- these statements that
17 the lawyers make to you are not evidence. They're not
18 arguments. They're just simply an outline of what the
19 lawyers think the evidence will show to you and what they
20 expect for you to hear, okay.

21 Now, following opening statements, each side then
22 will be able to present its evidence with the Plaintiff,
23 once again, going first.

24 Evidence can take many forms. It can be --
25 typically, it's testimony. And there's a box right there

1 in front of you, that's where the witnesses are going to
2 testifying. There may be documents, pictures, poster
3 boards, photographs, anything like that which I allow into
4 evidence, you will be able to consider in determining any
5 verdict in this case. Now, please pay close attention to
6 all of the evidence which is presented by each party.
7 You, the jury, ladies and gentlemen, the 12 of you, y'all
8 are the sole finders of fact in this case. No one else
9 will be permitted to weigh the evidence and render a
10 verdict based upon it.

11 And after all the evidence has been presented, the
12 attorneys will once again talk directly to you by way of
13 what's called closing arguments. And unlike opening
14 statements, these are true arguments. Each side will
15 emphasize certain portions of the evidence and try to
16 persuade you to agree with their version of the facts.
17 Now, keep in mind, like I told you before, the evidence is
18 what comes from that witness stand and what's introduced
19 as evidence in the case, not what the lawyers argue to
20 you, okay.

21 Now, after the arguments are finished, that's when my
22 job -- of course, my job is to preside over the trial and
23 decide what comes and doesn't come into evidence because
24 that's my role as the judge of the law. But at the
25 conclusion of everything, that's when I will explain to

1 you the law which applies to this case. That's when you
2 -- after you hear that, that's when you will go back to
3 your jury room and you will consider the facts as you find
4 them to be and apply those facts to the law which I
5 instruct you and that's how you will reach your verdict,
6 okay.

7 Now, during the course of the trial, the Plaintiff
8 has the burden of proof in this case. The Plaintiff must
9 meet this burden. Again, this is a civil case, not a
10 criminal case, so the burden of proof in civil cases is
11 what's called a preponderance or greater weight of the
12 evidence. It's not criminal court where it has to be
13 beyond a reasonable doubt. Civil court is a preponderance
14 or greater weight of the evidence.

15 Now, what do we mean by that? You know, the old way
16 to illustrate this is just imagine a traditional set of
17 scales that you see. And, you know, when the case begins,
18 as the case is fixing to start, the scales are even.
19 Let's say this is the Plaintiff, this is the Defendant.
20 The scales are even. After all the evidence is presented,
21 if the scales remain evenly balanced or if they tip, even
22 slightly, in favor of the Defendant, then the Plaintiff
23 would have failed to meet his or her burden of proof and
24 your verdict would be for the Defendant. If, on the other
25 hand, the scales should tip, even slightly, in favor of

1 the Plaintiff, then he or she would have met the burden of
2 proof and your verdict will be for the Plaintiff.

3 All right. Let me make just a few more additional
4 comments to you before we get started. Now, although, I'm
5 the only person who can tell you what the law is, again,
6 as the fact finders, you're the only ones who can
7 determine what the facts are. I don't have the right as
8 the judge of this case to indicate to you how I feel about
9 the facts or how I feel about the evidence being
10 presented. And throughout this trial, my intention,
11 ladies and gentlemen, is going to be to act impartially
12 toward each party.

13 From time to time, to that end, an attorney may stand
14 and say objection. Y'all have seen that on TV, on all
15 these shows and stuff. And what that does is, just like
16 in sports and business, we have certain rules in court
17 which determine what evidence can come into court. Now,
18 the goal of these rules of evidence is so you, the jury,
19 will have the best evidence available to make your
20 decision. So when a lawyer thinks something may violate
21 the rules of evidence, that's when he or she will stand up
22 and say objection. And then as the judge of the law, I
23 will have to make a ruling on that. So if I sustain an
24 objection, that means the thing can't come into evidence
25 or the question can't be answered. And don't speculate

1 about what the answer would have been or what the thing
2 would have shown because, again, you have to go by the
3 evidence presented, not by what you speculating, okay.
4 Just remember that as we go forward.

5 So, also, from time to time, I may ask you to step
6 back into your jury room while I deal with matters of law
7 involving the lawyers. As frequently as possible,
8 however, I'll have them approach the bench where I can
9 talk to them about matters of law. Again, we're not
10 trying to hide anything or keep anything from you, we just
11 want to make sure that all of you get the best evidence
12 possible, okay.

13 And finally, ladies and gentlemen, this is very
14 important, okay, because I always get a question about it.
15 You're going to have to please pay close attention to all
16 of the evidence presented to you. You're going to have to
17 make this decision based upon your memory. You're not
18 going to be allowed to take notes, okay. You're going to
19 have to decide the credibility of the witnesses, also,
20 know as the believability of the witnesses, and of all the
21 witnesses who testify in this matter. You're
22 participating in a time-tested system and it's extremely
23 important for each of you to listen carefully to
24 everything that's been presented, okay.

25 Now, I think I've said everything I need to say.

1 We're going to jump right into it at this moment. Please
2 give all of your attention to the lawyers as they present
3 their opening statements to you, okay. Thank you very
4 much.

5 Mr. Reardon.

6 MR. REARDON: May it please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 OPENING STATEMENT OF MR. REARDON

9 MR. REARDON: Ladies and gentlemen, thank you. The
10 Judge has kind of laid out what's going to happen. I want
11 to give you a quick layout of the land that we're going to
12 present to you over the next couple of days.

13 Again, I'm Jerry Reardon and I'm here on behalf of
14 Linda and George Estrada. And you'll see several other
15 lawyers here today, Todd Ellis, Nick Riley representing
16 their clients, also. We're all going to give you a brief
17 understanding about what we believe the evidence is going
18 to show in the few minutes. And then Mr. Wlodarczyk is
19 going to give his side based on his representation of the
20 Marshalls. We thank you for your service. This is going
21 on two years almost to the day since this event happened.
22 You're our only chance to make a decision, to decide what
23 happened that night and whether anybody is entitled to any
24 sort of a verdict based on the evidence presented.

25 So what's going to happen? Well, first, we'll begin

1 opening statements. What am I going to tell you? Well,
2 I'm going to show you lots of difference evidence that
3 you're going to hear and you're going to see over the next
4 couple of days. You're going to hear testimony from
5 witnesses up at the witness stand. They're going to swear
6 with their hand on the Bible to tell the truth. You're
7 going to hear from those folks today, tomorrow and maybe
8 Thursday. You're also going to see exhibits. We have
9 multiple exhibits already marked for you, which are
10 photographs of the deck that collapsed on the night that
11 we're going to talk about, medical bills, reports, things
12 you're going to have a chance to take back with you in
13 your jury room.

14 You get to decide what's credible and what's not
15 credible. And that's what we need a jury for. We,
16 obviously, don't agree with anything other than maybe the
17 events that happened that night. We don't agree what
18 caused the wreck -- the accident. We don't agree who was
19 injured. There's a bunch of disputes you're going to
20 decide.

21 So how do you do that, 12 members of our community?
22 Well, you weigh the evidence. You're going to assess the
23 folks that are up on the stand. You're going to listen to
24 their backgrounds. You're going to listen to their
25 testimony. And you're going to decide whether or not they

1 are credible and whether or not they present themselves in
2 a way that you can believe them. My job, again, and the
3 other attorneys job is to present that evidence to you.

4 The Judge told you it's based on the preponderance of
5 the evidence. And that's a fancy way of, basically,
6 saying more likely than not. We don't have to prove it to
7 a mathematical certainty. You're not going to see CSI or
8 people coming from the newspapers that present all those
9 different types of technological testimony. This is going
10 to be evidence presented on the witness stand and
11 photographs, for the most part, that you're going to
12 evaluate. It's not a decision you make beyond a
13 reasonable doubt. Like the Judge said, you're going to
14 have scales that start even, if we tip them ever so
15 slightly, we've met our burden. If we don't tip the
16 scales, we haven't met our burden and you would have to
17 return a verdict based on what evidence was presented and
18 what we met our burden of proof.

19 What are the only undisputed facts? Well, I'll you
20 this, April 4th of 2014, they were all at a family
21 birthday celebration at 108 Casbel Court in Hopkins, South
22 Carolina. This home was owned by the Marshalls, seated
23 over here. They purchased this home back in 1997. They
24 rent homes. They build homes. They're into the home
25 business. They rented this particular house to a Ms.

1 Latasha White. Mr. Marshall is a home builder. He builds
2 homes, builds decks, inspects places that he builds and he
3 is involved with.

4 The Estradas, Mr. Reyes, Mr. Smith and Ms. Williams
5 were all gathered at the home that evening for this
6 birthday party. The home has an inside and outside like
7 many homes. There's a deck. And you will see Exhibit No.
8 4 and other pictures later on that are passed around to
9 you. And you will see there is a deck out back. At the
10 time of this incident, this deck collapsed at about 11:40
11 or so at night. And they'll tell you a little bit about
12 it. They were -- there were about eight people out there
13 on the deck, some children out there. They were having a
14 problem. Again, it was food and drinks and games were
15 being played.

16 What we don't agree, which a lot of the testimony is
17 about, is why this deck collapsed. Why were all these
18 folks hurt that night on this deck collapse? Well, we
19 hired an engineer and they hired an engineer. You're
20 going to hear the battle of the experts. Who do you
21 believe? Who's more credible? What evidence gives you a
22 chance to arrive at a decision?

23 Alan Abatta, he's our engineer, he's going to tell
24 you the deck collapsed due to several reasons. One, it
25 was deteriorating. And you'll see photograph where

1 there's a lot of rot and wood rot that occurred in that
2 deck. Number two, there were failed supports. You will
3 see photographs of this deck where there were only two
4 supports holding up this deck. It's like the old
5 two-legged table you put against the wall. If you push on
6 it, it falls over. There are not two legs in the back of
7 this deck. There's only two small ones at the front of
8 this deck. It was built incorrectly at the time this home
9 was purchased.

10 Mr. Abatta's going to tell you that Mr. Marshall, a
11 licensed home builder, who builds homes, who builds decks,
12 he'll tell you, and testified that he, in fact, did that,
13 would have inspected this deck upon renting it to other
14 folks. He said he's been out there and looked at it. He
15 had no doubt that these dangerous conditions, which you
16 will see lots of photographs were present for some period
17 of time, for a substantial period of time. And he should
18 have known about these dangers. And, again, you'll look
19 at it and make the decision.

20 He's going to testify, again, that Mr. Marshall, a
21 licensed home builder, either knew of these conditions,
22 because if you go out and look at them, you'll realize
23 there's so many code violations, or if he'd done a
24 reasonable inspection, he would have learned of them. So
25 you're going to hear about that later on today.

1 It's a ticking time bomb when you have a deck that's
2 supporting eight or 10 people and it only has two legs on
3 it and it's bolted into the side of this house incorrectly
4 with only three screws. There's three screws holding it
5 against the entire house, the way it's bolted. And
6 there's other errors.

7 Their engineer is going to tell you that Mr. Marshall
8 could never have learned about the bad deck build or the
9 rotting conditions or the fact it was going to fall in.
10 His story is it was hidden. He couldn't get to it. He
11 couldn't see it. We dispute that and that's one of the
12 big issues in this case. So then you'll have to evaluate
13 all of the testimony and look at the photographs and make
14 a decision.

15 Moving to the next thing, to the injuries. My
16 clients were injured in this accident. Mr. and Mrs.
17 Estrada both fell. You'll see photographs where they
18 fell. Ms. Estrada was in a chair. The chair is very
19 prevalent. And you'll see from the photographs taken that
20 night where she fell out of the chair and crashed and
21 landed on her right elbow. The deck came down and hit her
22 -- a grill came down and hit her on her right elbow.
23 You'll see a substantial bruise in that area where she was
24 hit. She attempts to get up, pushed the grill off her.
25 She falls down and lands on both her knees. You'll see

1 when the deck collapses a substantial slant to it where
2 you would not expect anyone to be able to stand up. With
3 Exhibit No. 6, you'll see that it's a substantial slant
4 into the house. This is the chair she was sitting in at
5 the time. As you can see, it's pinned up against the
6 wall. There's a grill behind her, which ends up hitting
7 her that night. There is a second grill that tips over
8 and hits Mr. Estrada, which you will hear about, also. So
9 they were both struck by these grills that were out there
10 that night cooking and celebrating.

11 They will tell you about their medical treatment,
12 where they went. Ms. Estrada and Mr. Estrada were both
13 taken by EMS that night to the hospital. You'll hear
14 about that. They were taken to Palmetto Richland. X-rays
15 were taken of Linda's left knee and right elbow. Mr.
16 Estrada, he just had his toe amputated. He had a bruise
17 to his foot and injured his left shoulder trying to hold
18 up one of these grills. And you'll get a chance to hear
19 about that. Ms. Estrada followed through with going to a
20 local MedCare, underwent an MRI and nerve conduction tests
21 and some other x-rays. She treated for about five months
22 with a local orthopedic here in town. You'll see a
23 deposition from the orthopedist telling you about her
24 injuries and the problems she's having. It's a quick
25 video deposition of Dr. Westerkam. And you'll see that,

1 also.

2 Both of them treated be Health Source Chiropractic
3 Care. You will hear about the chiropractor's care that
4 was rendered to them, each about three months. And then
5 Mr. Estrada did go back at some point in time for some
6 additional treatment. Dr. Hamvay will come testify about
7 his treatment and what he did to help these folks recover.
8 There are bills and they're exhibits, you'll see those.
9 Linda's bill is about \$10,818.32, and George is 7684.39.
10 So you'll get a chance to look at those, also.

11 What do we have to prove? What does the law make me
12 provide to you? Well, one, I have to show that the
13 Marshalls did one of two things. Either they failed to
14 use reasonable care to warn of these dangerous conditions
15 of this deck, which they were aware of. You'll hear
16 testimony of whether they were aware of it or should have
17 been aware of it based on the evidence. Secondly, or did
18 they fail to warn of any changes in the conditions of the
19 deck which were dangerous to those using the deck, like
20 our clients, in which he should have been -- reasonably
21 been expected to discover. In other words, if he had gone
22 out there and looked at this deck like we do now with
23 these photographs, would he have been expected to discover
24 the condition of this deck deteriorating, rotting and
25 falling apart? I think when you look at the photographs,

1 you'll agree with me it's pretty obvious that the
2 Marshalls, especially, Mr. Marshall as a home builder,
3 should have know these problems. And I think he knew of
4 these problems and he ignored these problems. Your
5 typical landowner that did not want to put money back in
6 the house and correct the house. This is what happened
7 and the deck collapses.

8 Again, the second thing I've got to show is that the
9 clients were injured, that my folks were injured in the
10 accident, and that these injuries are directly related to
11 this collapse. And you'll hear testimony about that.

12 If I meet my burden to prove those things, then the
13 Judge is going to tell you, you must return a verdict in
14 our favor, to include medical bills, pain and suffering.
15 And you'll hear about that and I'll give you a little more
16 idea as we get to our closing statements what you need to
17 do to arrive at that decision. It's unanimous verdict,
18 all 12 of you have got to agree. I know that's tough at
19 times, but we believe that -- we chose 12 different folks
20 from 12 different backgrounds for a reason, to use your
21 common sense, to evaluate the evidence and to arrive at a
22 decision, that number one, the deck collapsed for a
23 reason; and number two, it should not have collapsed and
24 the Marshalls are responsible for that. Just like if you
25 own a house or car, you must keep it within good working

1 condition. That did not occur in this situation here and
2 that's why the deck collapsed.

3 I appreciate your time here. You'll hear from a
4 couple of the other attorneys now and I'll be back to talk
5 to you in a few minutes. Thank you.

6 THE COURT: Thank you, Mr. Reardon.

7 MR. REARDON: Thank you, Your Honor.

8 MR. RILEY: May it please the Court, Your Honor?

9 THE COURT: Yes, sir.

10 OPENING STATEMENT OF MR. RILEY

11 MR. RILEY: Ladies and gentlemen of the jury, the
12 Judge and Mr. Reardon introduced myself to you a few
13 moments ago. I was in front of you a couple of rows away.
14 Please allow me to let you get a closer look at me and
15 allow me to, again, remind you that I speak for Carletta
16 Williams and Tyrone Ruff in this case. And I'm not going
17 to stand up here and tell you all the facts that we're
18 going to present and how it affects our case. Mr. Reardon
19 just did an excellent job of that. I know all of you are
20 great listeners. I watched all of you listen to the
21 Judge's instructions here today and I have no doubt that
22 you listened to Mr. Reardon.

23 What I do want to tell you is on the night of
24 April 5th, 2014, what we're here to talk about, my
25 clients, Carletta Williams and Tyrone Ruff, were both

1 present on that deck. They were there for a birthday
2 party for Tyrone Ruff's mother-in-law. It was a night of
3 celebration. It was a night that quickly turned
4 approximately after 11:00 p.m. to a night of panic and
5 chaos. It was a night that ended in pain for both
6 Carletta and Tyrone.

7 Tyrone is a 32-year-old male. Carletta is 31 years
8 of age. They both have three children together. They
9 care for their children deeply. They both work jobs.
10 Tyrone had two jobs at this time. Carletta had a job as a
11 -- she provided healthcare to home health patients. They
12 both spend a lot of time with their children.

13 As a result of this case, they were injured. They
14 had to seek medical treatment. Tyrone sought medical
15 treatment at the ER. He had to have MRIs. For a long
16 time, they didn't quite know the significance of his
17 injuries. It took a lot of care to determine that. He,
18 also, treated with physical therapy that provided chiro
19 treatment. His medical bills ended up being about \$12,000
20 for this case. Carletta, also, was treated at the ER that
21 night. She also required chiropractic care for her
22 injuries.

23 I will admit to you that the injuries in this case
24 did not consist of broken bone or life-threatening
25 injuries. Thank goodness. They were lucky. But it

1 doesn't mean they didn't experience pain. You will hear
2 about the pain that they experienced throughout this case.

3 In conclusion, I just want to say there will become a
4 time in this case that we have to talk about damages and
5 the compensation to be owed to Carletta and Tyrone as a
6 result of the injuries they suffered. Now is not the
7 appropriate time. I would like for you just to sit here
8 and listen to the events that happened that night. Listen
9 to how this event could have been avoided and how
10 precautions could have been taken and they weren't taken.

11 I want to again thank you for your time and service
12 here today. You serve a very important function. We
13 couldn't get this done without you and we thank you for
14 your service.

15 OPENING STATEMENT OF MR. ELLIS

16 MR. ELLIS: May it please the Court? I'm Todd Ellis.
17 I represent Cristian Reyes. This story, shockingly,
18 reminded me of my brother, Mark, in Greensboro, North
19 Carolina, growing up. He has nothing to do with it. He
20 wasn't at this party. He's not a lawyer in this case.
21 But my brother, Mark, was in charge of one thing when we
22 were growing up in high school, and that was taking out
23 the trash in our home in Greensboro on Pineville Road.

24 And how could that remind you of this at all? It's
25 because Mark did everything, dispute the fact that he knew

1 the trash was always picked up on Wednesday, despite the
2 fact that he knew we had two cans outside and we,
3 generally, filled those cans up by Wednesday, despite the
4 fact that my mom would leave him a note on his lunch and
5 put it on his bag that it was time to take the trash out
6 that day. Sometimes, she would even leave some kind of
7 indication or put the trash by the back door where we
8 formally went out to go out to the bus. My brother turned
9 a blind eye to all of those clues. He would go out the
10 front door and then defended himself like he'd never seen
11 it when he got home at night. I did not see that, I went
12 out the front door.

13 Mark's behavior reminded me about this case.
14 Reminded me that, listen, if you know the rules, you know
15 all the signs, you know the duties, you can't walk by your
16 task and responsibility all that period of time. And
17 that's what I want y'all to keep in mind. All these other
18 facts, they're going to come out fine. You're going to
19 see all of these photographs. You're going to see all you
20 want regarding the medical damages that occurred in this
21 case. What you've got to remember is my brother, Mark.
22 You can only walk by that so many times. So many times
23 you missed it and know that you should have done that
24 task. He knew it, he just turned a blind eye. I think
25 that's what you'll find from the facts.

1 It's my pleasure to represent Cristian Reyes. He's
2 23 years old. I've known the kid since he was probably
3 seven or eight years old. His mom and father and I have
4 worked together in the past. Cristian was, also, at the
5 party that night involved in this case. I know he
6 wouldn't be here and y'all wouldn't be there. Thank
7 goodness of all the folks that are here, the medical bills
8 expended by Cristian Reyes as a result of his injuries are
9 the least amount. They're around \$4,000.

10 But that brings me to my next point. It doesn't
11 matter if it's \$4,000 or four million dollars, our country
12 was founded on two boxes, y'all, two boxes, the ballot box
13 and this jury box (indicating). There's only a couple of
14 places in the world that people have the right to have
15 their peers, folks that are picked from a diverse
16 background sit in judgment and make decisions on those
17 cases. I saw all of your faces when you came up here with
18 your bags and your purses to sit in here. No one was
19 jumping up and down. Y'all probably hid it pretty well.
20 You're probably regretting it a little bit that you are
21 serving. But let me tell you this, I'm not going to thank
22 you. I'm going to tell you you're doing one of the
23 greatest duties you can do in our country. Other than
24 serving during military time, this is the most important
25 thing that you can do. Because few places in the world

1 can you have a group of people sit in judgment and make
2 these decisions.

3 Now, listen, Judge Gibbons, this courtroom, they hear
4 cases where he sentences people to many, many, many, many
5 years in prison. He hears cases where people are maimed
6 for life, lose limbs or kills. That's not one of these
7 cases. This is not one of those cases, thank goodness.
8 But I can tell you it is so important, so important for
9 y'all to serve this. How else would we resolve these
10 disputes? How else would the Marshalls -- and this is
11 very important to them, who owns six rental properties.
12 You think this issue might come up in the future for them?
13 It's important for them to know what you might want to do.
14 It's, certainly, important for our clients who have
15 personal injuries related to this that you all get to make
16 a decision. It doesn't matter if it's \$4,000, 14,000 or
17 four million dollars, y'all got to make a decision that
18 compensates him, if you so choose, properly. And that's
19 incredibly important. So over the next couple of days,
20 we're going to try to be as efficient as we can, says the
21 lawyer, difficult to do sometimes -- be as efficient as we
22 can to present this case.

23 But the beauty of it is, what do y'all have to do to
24 decide it? Use what you do everyday, that common sense.
25 When you sit in a meeting and you go, surely, she didn't

1 do that last night. This ain't right. That will never
2 work. You know what, I don't believe Todd, see this guy
3 on his truth. I don't trust him. There's a look there.
4 Use your common sense and judgment and you will determine
5 the credibility of these witnesses. Nobody in this thing
6 is real -- we don't have bad people here. We don't have
7 bad people in this case. We have a dispute, which y'all
8 need to help us resolve. I've got great faith you will be
9 able to.

10 So Cristian is going to present his damages in the
11 case. He was hurt. He got treated over a period of time.
12 And thank goodness, he was okay. He's doing pretty good.
13 But under our law, should you so find he meets his burden,
14 then he has a right to recover for that. And we'll ask
15 you about that at the end of the case. Thank you very
16 much.

17 THE COURT: Thank you, Mr. Ellis.

18 OPENING STATEMENT OF MR. WLODARCZYK

19 MR. WLODARCZYK: Good afternoon, ladies and
20 gentlemen. My name is Damon Wlodarczyk, I introduced
21 myself to you earlier. I represent Mr. and Mrs. Marshall.
22 And I represent that I'm the only one here that knows
23 Mr. and Mrs. Marshall. I have met with them the past two
24 years and dealt with this case. Plaintiffs' counsel don't
25 know Mr. and Mrs. Marshall, and the Plaintiffs don't know

1 Mr. and Mrs. Marshall, and yet, they've already been up
2 here maligning my clients, saying they're too cheap to put
3 money back into this house, that they turned a willful,
4 blind eye to dangerous conditions which they should have
5 known about. The simple fact is Mr. and Mrs. Marshall, as
6 you will hear, have done things the right way their entire
7 life.

8 Mr. Marshall is retired from the Department of
9 Corrections. Ms. Marshall retired from the Department of
10 Juvenile Justice. She was a teacher there. They had the
11 opportunity to raise two grown men, put them through
12 college themselves because they were taught that their
13 children shouldn't bear the burden of education expenses.
14 One's an electrical engineer and one's ready to open his
15 dental practice. Yeah, they've done some smart things
16 over the years through hard work and were able to purchase
17 six rental properties. As you'll hear, prior to this deck
18 collapse, they've not had one complaint about any of those
19 six rental properties. They've never been sued before.
20 They've never had any inspections come back saying there
21 were violations of city codes, nothing.

22 As Mr. Reardon explained to you, the issue why we're
23 here is that the deck did fall, it did collapse. It was
24 poorly constructed. We know that. The problem is under
25 South Carolina law, which is you're being charged with

1 applying the facts in this case to the law. You have to
2 put away sympathy. You have to put away the idea of like
3 well, you know, the deck fell. They didn't do anything to
4 cause the deck to fall, we should just compensate them.
5 That's not the way it works. That's why we chose you,
6 because you're impartial, to the apply the law. And the
7 law is quite simply, Mr. and Mrs. Marshall had to know
8 that there was a dangerous condition. And then if they
9 knew about it, they had an obligation to warn.

10 The ticking time bomb was built in 1977. The
11 testimony will be that since my clients have owned the
12 property in 1997, which we're approaching 20 years, prior
13 to this collapse, there was never any issue or complaint
14 from any of the tenants who lived there. You will learn
15 that when they first purchased this house for an
16 investment income, it was through Section 7, which is a
17 federal program, the U. S. Government sent people out to
18 inspect the property. And not once were they ever told
19 that this was a dangerous condition, structurally unsound.

20 They used to do walk-throughs on the property when
21 tenants turned over. They'd go out on the deck. It
22 didn't wobble. It didn't shake. It didn't give. It
23 wasn't pulling away from the house. It wasn't tilting.
24 The only thing you will see in those photographs is the
25 fact that it probably could use a coat of paint. You'll

1 see, I have 24 photographs myself marked for you. They
2 will show that the wood is intact. You will hear that
3 when an occasional board became worn and needed replaced,
4 Mr. Marshall did it. They had no knowledge of any
5 problems with this deck.

6 In fact, a couple of the Plaintiffs are friends with
7 the lady who rented this property from the Marshalls and
8 they had been on this deck plenty of times. Mr. Reyes was
9 dating the daughter of the person who tenanted and was
10 living there. And he had been on the deck and didn't
11 notice any problems. And yet, now my clients are
12 willfully turning a blind eye to a dangerous condition.

13 What Mr. Reardon didn't tell you that's going to come
14 out in the testimony is their own expert has stated that
15 the condition he believes resulted in this collapse, the
16 worn board, the rotted material wood was the board that's
17 adjacent to the house and that you could not see it
18 because it was attached to the house. That's his --
19 that's their own expert.

20 Their own expert, also, testified that unless you're
21 an engineer or inspector, you would not have any
22 information unless you consulted the international
23 building code to determine whether this deck was properly
24 mounted to the house, which we now know it wasn't. But
25 for 30 plus years, there was never an issue. Almost 20

1 years that my clients have had this house, there was no
2 issue.

3 Mr. Reardon represented that Mr. Marshall is a house
4 builder. He builds houses and he builds decks and he's an
5 inspector. Well, in the deposition, which you will hear,
6 Mr. Marshall does have a contractor's license. He does
7 renovations for his property. He has never built a house.
8 He's never built a deck. He's never constructed anything
9 along these lines where it's mounted to the house. He's
10 not an inspector. He's not an engineer. He doesn't have
11 any of the information necessary to determine load or
12 structure. That's a simple fact. He did, in fact, build
13 a gazebo of some sort at one point in time that was
14 detached.

15 The simple fact is, ladies and gentlemen, when you
16 get to the end of this case, you are going to have to
17 determine based on the facts and testimony presented to
18 you whether or not Mr. and Mrs. Knew that there was a
19 dangerous condition or aware of a change in circumstances,
20 this alleged wood rot. I would submit to you that at the
21 end of this case, you will find that they had no knowledge
22 of this and they would be entitled to a judgment in their
23 favor. Thank you.

24 THE COURT: All right. Thank you.

25 Plaintiffs ready to proceed with their first witness?

1 MR. ELLIS: Yes, Your Honor.

2 THE COURT: All right. Call your first witness.

3 MR. ELLIS: All right. The Plaintiffs call Andrew
4 Marshall.

5 THE COURT: All right.

6 Mr. Marshall, come on around.

7 Thereupon;

8 ANDREW MARSHALL, after having been duly
9 sworn, testified as follows:

10 THE CLERK: Thank you. Have a seat in the witness
11 box, please.

12 MR. ELLIS: Your Honor, permission to treat him as a
13 hostile witness?

14 THE COURT: All right.

15 THE WITNESS: Andrew Marshall.

16 DIRECT EXAMINATION

17 BY MR. ELLIS:

18 Q Mr. Marshall, good afternoon. I'm Todd Ellis. I
19 introduced myself to you earlier. If you can't see that
20 or hear me, just let me know; is that okay?

21 A That's fine.

22 Q Okay. And remember, there's a microphone there.

23 A Right.

24 Q And I haven't spoken to you enough to know whether
25 your voice carries, but if you would make sure you speak

1 up. Will you do?

2 A Yes.

3 Q Thank you so much. You and your wife own the home at
4 108 Casbel Court; is that correct?

5 A That's correct.

6 Q And you brought this house as an investment to rent
7 to folks back in 1997?

8 A That's correct.

9 Q Is that house depicted in the two pictures that are
10 shown here in Plaintiff's Exhibit No. 4?

11 A Yes, it is.

12 Q It is. And this would be the front elevation of that
13 house; is that correct, on the bottom?

14 A That's correct.

15 Q And this is the back of the house; is that correct?

16 A That's correct.

17 Q It appears that the deck in question is, actually,
18 down when this photograph is taken; is that correct?

19 A That's correct.

20 Q All right. And that home is over in the Hopkins
21 area?

22 A That's correct.

23 Q It's off Leesburg Road?

24 A Uh-huh.

25 Q Is that a yes?

1 A Yes.

2 Q Okay. Great.

3 A Right.

4 Q Are your other six rental properties over in this
5 area?

6 A No.

7 Q Where are they, sir?

8 A They are in various areas in Columbia.

9 Q In the Columbia area?

10 A That's right.

11 Q You've never lived in that house yourself; have you?

12 A No.

13 Q You've had that house 19 plus years and you were the
14 owner of that house when that deck collapsed in April of
15 2014?

16 A Yes.

17 Q You have six rental homes like this house that is
18 supporting you with earning income; is that correct?

19 A That's correct.

20 Q The more rent that you receive, the more income you
21 earn; is that correct?

22 A That's correct.

23 Q The fewer amount of costs that you have in each
24 house, the more money you earn for yourself personally?

25 A That's correct.

1 Q Okay. Now, I want to talk to you a little bit about
2 the knowledge that you bring to this case. You're a
3 licensed residential home builder in the State of South
4 Carolina?

5 A That's correct.

6 Q For 28 years, you've been licensed and have been
7 working on construction and remodeling of homes just like
8 the ones that were involved in this case; is this correct?

9 A That's correct.

10 Q All right. You have a business separate from what
11 you and your wife own on these homes, you own them
12 personally, correct?

13 A The homes?

14 Q The rental homes, you own personally?

15 A Yes.

16 Q But have a business separate from that, in which you
17 service, provide remodeling and construction to
18 homeowners, correct?

19 A Correct.

20 Q Now, a lot of that work you subcontract, right?

21 A The majority.

22 Q Right, but you're the residential licensed contractor
23 that has to get the contract to perform work to do it;
24 isn't that correct?

25 A That's correct.

1 Q And as part of your duties and responsibilities as a
2 residential contractor, you have the responsibility for
3 all those subs that provide work on your house?

4 A That's correct.

5 Q If that work is not done correctly, you're in
6 trouble, right?

7 A That's correct.

8 Q As a matter of fact, your licensed to oversee
9 roofers, correct?

10 A Correct.

11 Q Electricians?

12 A Correct.

13 Q HVAC?

14 A Correct.

15 Q Plumbers?

16 A (The witness nodded head.)

17 Q Correct?

18 A Correct.

19 Q And framers, correct?

20 A (The witness nodded head.)

21 Q Plus an abundance of other speciality licenses,
22 correct?

23 A Correct.

24 Q Every aspect of the home is your responsibility when
25 you sign a contract to do that work; isn't that right?

1 A That's correct.

2 Q And part of your role in being a residential licensed
3 builder is not just making sure the work that you put your
4 hands on is done properly, isn't a big part of what you do
5 watching to make sure the work those subcontractors do is
6 proper?

7 A That's correct.

8 Q Make sure that it's done in proper professional
9 construction standards, correct?

10 A Correct.

11 Q Making sure that there's structural integrity on the
12 work they've done?

13 A Correct.

14 Q So a big part of what you do, if you were to take
15 this jury box and make this a house, is that you've got to
16 spot defects that were done by your subcontractors when
17 you walk into that house?

18 A That's correct.

19 Q You testified -- excuse me, you told us a while back
20 that you have the personal responsibility for doing the
21 maintenance and duties on all six rental homes that you
22 and your wife own?

23 A As needed, right.

24 Q As needed. But as needed, you get called out and/or
25 go do the work yourselves; is that correct?

1 A That's correct.

2 Q You personally?

3 A (The witness nodded head.)

4 Q Now, for instance, when this deck collapsed, you
5 didn't rebuild it, but you did have somebody build a stoop
6 there; did you not?

7 A I did.

8 Q But you oversaw the work?

9 A Yes.

10 Q You had to because you were the residential licensed
11 builder. In fact, the only thing that you do, that you
12 claim to do to inspect these houses that you own and rent
13 out to people is that you do a walk-through when you
14 change tenants; is that correct?

15 A That's correct.

16 Q And the full extent of what you did to walk through
17 this house that was built in 1977 to insure that it was
18 okay for Ms. White to move in and her tenants to be there
19 was to walk out onto the back deck; is that correct?

20 A Basically, true.

21 Q Right.

22 A Uh-huh.

23 Q So you did some plumbing work inside?

24 A Exactly.

25 Q But you walked out on the back deck and walked back

1 inside; is that right?

2 A (The witness nodded head.)

3 Q Sir?

4 A That's right.

5 Q Okay. And in the entire 19 years, the only that you
6 said you ever did, though, we could find no evidence of it
7 was that you replaced a couple boards, in 19 years on that
8 deck?

9 A That's right.

10 Q You never weatherproofed it, correct?

11 A Right.

12 Q You never painted it?

13 A Correct.

14 Q You never did anything to maintain that deck other
15 than to replace a couple of rotted boards; is that right?

16 A That's correct.

17 Q And that's only when the homeowner -- the tenant
18 called you out there on those boards?

19 A That's when we rented through the housing authority.

20 Q So the housing authority had to make you come out?

21 A That's during their inspection, they saw it.

22 Q You never put any weatherproofing on that deck?

23 A That's correct.

24 Q In fact, one time, you went under the house, but you
25 never looked to see how that deck was attached to the

1 home; did you?

2 A Well, going under house, you wouldn't see how the
3 deck is attached because the deck is on the exterior. And
4 going under the house, you are between the petition wall
5 and the deck.

6 Q Right.

7 A So you wouldn't see how it's attached.

8 Q But didn't look; is that correct?

9 A That's correct.

10 Q Okay. So did you know structurally -- did you know
11 that when you went under the house, there's no need for me
12 to go look because I can't see how it's attached?

13 A I had no need to do that.

14 Q You just didn't do it?

15 A I had no need to do it.

16 Q You've never had this house inspected, correct?
17 Never paid for any one to inspect this house?

18 A Correct.

19 Q In fact, even after this incident, you didn't pay for
20 anybody to inspect the house?

21 A Correct.

22 Q You didn't pay any expert who's going to testify in
23 this case; did you?

24 A No, I didn't.

25 Q As a licensed home builder, you're required to know

1 structural principles for building decks like the one on
2 this house; isn't that correct?

3 A That is correct.

4 Q You're supposed to know generally how do I support an
5 area of about 10 by 12 or 10 by 10 so it can handle a load
6 of people that will fit in that space; isn't that right?

7 A Yes, when they're built first.

8 Q When they're built, you're supposed to know that,
9 correct?

10 A Uh-huh.

11 Q In fact, as a licensed builder, you've built decks
12 before?

13 A No. No, I haven't.

14 Q Okay. Would you like me to get your deposition?

15 A I haven't build -- I have subbed it out to someone,
16 but I haven't built a deck.

17 Q Yes, sir. Let me clarify. How many have you subbed
18 out for folks to build?

19 A I have no idea.

20 Q Right. And in each of those cases, though, sir, you
21 were the one responsible to determine whether that deck
22 was built, correctly?

23 A True.

24 Q Isn't that right?

25 A True.

1 Q And you testified that you never, ever have built a
2 deck like this one before?

3 A True.

4 Q That's right. And the reason you didn't do that is
5 you've never built one where they didn't have four
6 supports, one at each of the corners of the deck, isn't
7 that correct?

8 A Correct.

9 Q You've never allowed your subcontractors to build
10 like that?

11 A Correct.

12 Q Right. And the reason is it's not good practical
13 construction principles, right?

14 A Right.

15 MR. ELLIS: Mr. Bailiff, will you stand for a minute?

16 BY MR. ELLIS:

17 Q How many legs on the bottom of this?

18 A Four.

19 Q There's not two on the front and, I assume, the
20 bailiff would lean back against the wall here; is it?
21 It's not?

22 A No.

23 Q Because the four make it more stable, right?

24 A True.

25 Q All right. How many legs on this table, if you can

1 see?

2 A Four.

3 Q Four. And there's four, even though it's up against
4 another desk, because the foundation, the basics of all
5 residential home building is create that foundation with
6 four gives you more stability, correct?

7 A Correct.

8 Q So you didn't ever make any modifications on that
9 deck, right?

10 A No, I didn't.

11 Q Despite the fact that you purchased that in 1997 and
12 that did not have two legs underneath the two corners
13 nearest to the house, correct?

14 A Correct. And in 1997, the codes would allow them to
15 anchor it to a house like that.

16 Q You just testified you knew it was not good
17 construction principles?

18 A 1997, sir.

19 Q Okay. So are you telling this jury that you made a
20 conscious decision, even though you knew it wasn't
21 construction -- it wasn't sound, that you could get away
22 with it because in '97 it was properly built?

23 A No, sir, the deck was sturdy when I bought it.

24 Q Sir?

25 A The deck was sturdy on the house when I brought it

1 and that's the way it remained.

2 Q So 19 years later, you have no responsibility for
3 making sure that deck is still sturdy?

4 A That's not what I said.

5 Q Well, I'm asking?

6 A No, sir.

7 Q Okay.

8 A I didn't say that.

9 Q As the owner of that property, Mr. Marshall, you have
10 been very honest, you are responsible for the tenants in
11 that property and their safety and the soundness of the
12 construction of that home, correct?

13 A Correct.

14 Q Mr. Marshall, I don't want to get into all of your
15 business, but give me a generality here, how much did ou
16 lease this home out to the Whites on a monthly basis?

17 A I have no idea. I do not deal with leases of the
18 homes at all.

19 Q Okay. Have you -- do you know the amount that you
20 charge any time that you've been leasing this in 19 years?

21 A No, sir, I don't know.

22 Q You have no idea what the rate was?

23 A What the rent was, no.

24 Q Is it \$300?

25 A I don't know.

- 1 Q Is it \$900?
- 2 A I don't manage the property, so I don't know.
- 3 Q You've never collected these checks before from these
- 4 folks?
- 5 A I don't collect the checks.
- 6 Q Okay. How long has this house been paid for from
- 7 when you purchased it?
- 8 A That, I don't know.
- 9 Q Who does that? Does your wife do that?
- 10 A She does.
- 11 Q She handles all of the books?
- 12 A Yes, she does.
- 13 Q All six houses?
- 14 A Exactly.
- 15 Q Do you know how many months that you've collected
- 16 rent on this house? 228 months, you've collected rent on
- 17 it?
- 18 A Uh-huh.
- 19 Q Do you know if that was at \$400 a month that you
- 20 would have made \$91,000 on this house in rent? Did you
- 21 realize that?
- 22 A Not really, no.
- 23 Q You don't own a mortgage on this house, correct?
- 24 A Correct.
- 25 Q So any money you get in rent, you've been pocketing?

1 A Yes.

2 Q Other than the taxes?

3 A (The witness nodded head.)

4 Q Correct, sir?

5 A And maintenance, yes, sir.

6 Q Well, you haven't painted it, the deck. You haven't

7 waterproofed it. And you've changed out a couple of

8 boards. Other than, at least, on the deck, it's been a

9 win-win for you; has it not?

10 A (There was no response.)

11 Q You agree that it's the homeowner's responsibility

12 to keep the house in working order safe for its tenants?

13 A Yes.

14 Q Your lease did not prohibit Ms. White from having

15 folks over at the house; did it?

16 A I don't deal with the leases at all.

17 Q Okay.

18 A My wife manages the property.

19 Q You never told them not to have folks over at the

20 house; did you?

21 A (There was no response.)

22 Q You personally?

23 A No.

24 Q And you never gave them any warning that said, hey,

25 you should only have three or four people on this back

1 deck; you didn't do?

2 A No.

3 Q When did you -- when did you research that when it
4 was built in '77, the locking in or bolting in the back
5 part of that deck into the house was proper under the
6 code?

7 A I haven't researched it. When studying the codes,
8 that was at that time was okay. And I'm not sure the deck
9 was built by whomever owned the home.

10 Q Yes, sir.

11 A I'm not sure. I don't know.

12 Q You're not even sure when the deck was built, really?

13 A I'm not sure.

14 Q Okay. But you haven't done it since this case is
15 pending?

16 A No.

17 Q All right. For 19 years, you've walked around that
18 house; haven't you?

19 A Yes.

20 Q For 19 years, you changed tenants, you did
21 walk-throughs and you saw that house when those tenants
22 changed out; is that correct?

23 A That's correct.

24 Q Mr. Marshall, you've been kind. I appreciate your
25 patience in answering my questions. Do you and your wife

1 feel responsible for this deck falling?

2 A No, I don't.

3 Q You don't?

4 A No.

5 Q Nothing you've told me in 15 or 20 minutes has told
6 me that you were going answer that way in any way
7 whatsoever.

8 MR. ELLIS: That's all --

9 MR. WLODARCZYK: Objection.

10 MR. ELLIS: That's all I have.

11 THE COURT: Well, let me see the lawyers up here real
12 quick.

13 (WHEREUPON, a bench conference was held off the
14 record, in the presence of the jury, but out of the
15 hearing of the jury.)

16 THE COURT: All right. Objection sustained as to
17 that last question.

18 Okay. Mr. -- who's going next, Mr. Riley or Mr.
19 Reardon?

20 MR. REARDON: I am, Your Honor.

21 THE COURT: All right.

22 DIRECT EXAMINATION

23 BY MR. REARDON:

24 Q Mr. Marshall, you were asked about city codes and
25 violations. In fact, you were told to replace these

1 boards on several occasions by the city, correct?

2 A No.

3 Q You remember when I asked you that in your
4 deposition? We asked whether you had any work done on the
5 house?

6 A The Housing authority.

7 Q Okay. The housing authority who's in charge of the
8 inspections over this premise told you to replace those
9 boards; is that correct?

10 A Just a few boards.

11 Q I don't care if it's 10 or 20, I'm just asking if
12 they told you --

13 MR. WLODARCZYK: Objection, Your Honor. He's
14 badgering the witness.

15 THE COURT: Overruled.

16 BY MR. REARDON:

17 Q I'm just asking you did they tell you to replace
18 those boards?

19 A Yes.

20 Q So the city housing authority told you to replace the
21 boards because were in a rotted condition; is that
22 correct?

23 A They were in a weathered condition.

24 Q Okay. Weathered, all right. Mr. Ellis asked you
25 whether you had done any decks before and you said no, you

1 had not. Do you recall that answer?

2 A Yes, I do.

3 Q Do you recall in your deposition when we asked you
4 whether you had done any decks before? We asked you
5 whether you had done any decks before and you said yes,
6 you had done some decks before?

7 A I subcontracted.

8 Q All right. Let me --

9 A I did not say -- did I say I physically built it?

10 Q Correct. I asked you, Okay, have you done decks
11 before?

12 Answer, I've done some, uh-huh.

13 Do you remember answering that question?

14 A No, I do not.

15 Q All right. Would you disagree with that answer?

16 A Yes, because my work is subbed.

17 Q I'm sorry?

18 A Because my work is subbed out to subcontractors.

19 Q Okay. So the answer you gave me back on June of 2015
20 was incorrect, you had not done decks before?

21 A Exactly.

22 Q Okay. Today, your answer is I've had decks done, but
23 they were subcontracted?

24 A Exactly.

25 Q All right. You mentioned you had never attached a

1 deck to a house like this before because you knew you
2 would not do that without having four supports; is that
3 correct?

4 A Did I answer that in my deposition?

5 Q No, I'm just asking you now.

6 A That's correct.

7 Q Let me show you Exhibit No. 10, do you recognize
8 these pictures? If you want it closer, tell me. Can you
9 see those?

10 A I See where the steps are, yes.

11 Q Does that appear to be the two poles, the two support
12 systems in place in this photo blown up?

13 A Yes.

14 Q And it looks like they're about two inches, maybe two
15 inches wide; is that correct?

16 A Yeah.

17 Q And if you look closely at it, do you see that
18 there's some issues with boards rotting attached to that
19 leg?

20 A The splitting doesn't mean that it's rotting.

21 Q Do you see where --

22 A It's splitting, that's not rot.

23 Q You see where it's splitting is probably a better --

24 A Uh-huh.

25 Q You can see that there's splitting done at the bottom

1 or the base of these legs; is that correct?

2 A The legs?

3 Q Yes, sir, you see splitting?

4 A Down at the base here (indicating) on the side?

5 Q Yes, sir. Yes, sir.

6 A Right on the side.

7 Q Yes, sir. Let me show you Exhibit No. 11, which is a
8 much closer picture of one of the legs that's holding up
9 this deck. If I can show you a picture -- there's two
10 photographs. You see that leg there holding up this deck?

11 A Uh-huh.

12 Q How many screws do you see in the bottom photograph
13 holding up this deck right here (indicating)?

14 A I really can't tell.

15 Q You can't see that?

16 A Is there two?

17 Q Look like there's one screw holding up this deck.
18 Does that look right to you?

19 A There's one over there, also.

20 Q You see two screws?

21 A Yes.

22 Q All right. Maybe two, one, if not two; is that what
23 you're telling me?

24 A Yeah.

25 Q Does it appear it's not connecting on the backside of

1 the photograph?

2 A There's one.

3 Q You see one there, yes, sir.

4 A Yes.

5 Q All right. So what we're showing the jury is you see
6 one screw holding up the deck on the left side and looks
7 like one screw on the right side; is that correct? So
8 there's a total of four screws holding up this entire
9 deck; is that correct? Is that what you're telling us?

10 A (There was no response.)

11 Q You have to answer yes or no?

12 A Okay. Yes, then.

13 Q Okay. All right. Now, you testified you would walk
14 out there and do a home inspection of the area. Did you
15 ever walk by and look at the different posts on the deck?

16 A I never went under the deck.

17 Q You never even looked at the deck outside of the
18 boards themselves?

19 A Only the top, right.

20 Q Only the top?

21 A Right.

22 Q So you never once either crawled under to inspect
23 potential rot issues; is that correct?

24 A That's correct.

25 Q Potential termite issues; is that correct?

- 1 A That's correct.
- 2 Q Potential screw issues, support issues; is that
3 correct?
- 4 A That's correct.
- 5 Q The only thing you would do is walk out on the deck
6 and turn around and say looks good to me?
- 7 A It's sturdy.
- 8 Q It was sturdy. How would you determine that?
- 9 A By being able to --
- 10 Q I'm sorry?
- 11 A By being able to handle the weight and the elasticity
12 of the wood.
- 13 Q Would you jump on it?
- 14 A Yes.
- 15 Q You would? Let me show you Exhibit No. 5, do you
16 recognize these as being stairs on that area?
- 17 A Yes.
- 18 Q Look real close and tell me how those nails look to
19 you, whether they're attached or they're pulling up,
20 whether the wood is rotted around it?
- 21 A It's weathered around it.
- 22 Q I'm sorry?
- 23 A I would say it's weathered.
- 24 Q It's weathered?
- 25 A Yes.

1 Q Okay.

2 A It's not rotted.

3 MR. REARDON: Let me show you Exhibit No. 5, ladies
4 and gentlemen, you can see the stairs and make your own
5 determination.

6 BY MR. REARDON:

7 Q If I look closer and point out to you areas of the
8 bottom of the stairs, would you agree these nails are
9 coming out of these stairs? Yes or no?

10 A I wouldn't say they were coming out.

11 Q You would not?

12 A No, I wouldn't.

13 Q When this deck did collapse, did you get a chance to
14 look at the different pieces of wood under the house, on
15 top of the house -- on the deck or around the deck as far
16 as the actual wood holding up this deck? Did you get a
17 chance to look at Exhibit No. 8 and see the pieces of wood
18 that held up this deck or was part of the deck? You
19 recognize that photograph?

20 A No, I don't recognize that photograph. That's
21 probably the one that was attached to the house.

22 Q If I asked you to look at that top photograph, would
23 you agree with me that is wood rot?

24 A On the inside, yes.

25 Q Yes, sir. Would you agree with me that if you went

1 up under the house and tapped on this wood, wood rot would
2 come out?

3 A No.

4 Q Have you ever done that before?

5 A Yes, but I don't -- with the way that board is set up
6 against there on the outside of it, you probably would
7 have gotten that.

8 Q What keeps wood from rotting on a deck between the
9 house and the deck?

10 A Flashing.

11 Q Explain to the jury what flashing it.

12 A That's a cover that keeps water from running down
13 directly on the wood.

14 Q There was no flashing on this deck; was there?

15 A No.

16 Q And as a licensed contractor, when you build
17 something out of wood, flashing is a key element to keep
18 the wood from rotting, correct?

19 A Correct.

20 Q Did you know there was no flashing?

21 A No, I did not.

22 Q How could you not know?

23 A Because I didn't take the boards up once the deck was
24 built.

25 Q You didn't look at the side of the house where the

1 wood was running into the house?

2 A Where the wood was running into house?

3 Q Yes, sir.

4 A If you looked at from a topical point, you would not
5 see that.

6 Q Okay. So it's your testimony that flashing would not
7 be obvious to a licensed home builder if he came and
8 looked at this deck prior to collapse; is that what you're
9 telling me?

10 A Unless you crawled up under there to see it.

11 Q If he crawled under the deck, he would see it?

12 A Exactly.

13 Q If he looked between the -- where the board is
14 against the wall, if he looked over the edge or looked
15 around, he would see flashing, right?

16 A Not necessarily.

17 Q What's flashing made out of?

18 A Aluminum.

19 Q Aluminum, okay. Did you ever provide any warnings to
20 any of your tenants that there was any issues with this
21 deck that you knew of?

22 A No, I didn't.

23 Q Looking at these photographs, would you agree with me
24 that there were several issues wrong with this deck?

25 A At the time, like I said, I inspected it from walking

1 on it, I didn't see any evidence of problems with it.

2 Q That wasn't my question. My question is looking at
3 these photographs now, between the stairs, the wood rot,
4 the attached boards, the no flashing, the two legs, would
5 you agree that there were a substantial amount of problems
6 with this?

7 A There possibly was.

8 Q No. It's a yes or no answer. Do you agree that
9 there were issues with this deck?

10 A There was.

11 Q Okay. And if you took the time to look at them,
12 would you agree this would be evident to somebody if they
13 crawled under the house or looked at the boards or looked
14 at the flashing or looked at the posts, these were areas
15 that were easily, easily obtained and understood and
16 recognized if you stared at them, if you looked at them
17 and inspected them?

18 A Not necessarily.

19 MR. REARDON: Thank you, Mr. Marshall.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. Mr. Riley?

22 MR. RILEY: No questions, Your Honor.

23 THE COURT: All right. Thank you.

24 Yes, sir.

25 (WHEREUPON, Defendant's Exhibit Nos. 1 through

1 25 were marked for identification.)

2 CROSS-EXAMINATION

3 BY MR. WLODARCZYK:

4 Q Mr. Marshall?

5 A Yes, sir.

6 Q I have here marked Defendant's 1 through 24. Just
7 take a second -- I know you've already been presented with
8 those photos, but if you could just flip through them and
9 identify if that's the deck at issue in this house?

10 A Yes, sir, it is.

11 Q Okay. And do those photographs represent what the
12 deck looked like after it collapsed?

13 A Yes, sir.

14 Q Okay. The photographs that were shown to you by
15 Plaintiff's counsel regarding the stairs and nails, was
16 that after the deck collapsed?

17 A That was after it collapsed.

18 Q Would you agree that -- tell me this, did the
19 photographs of the deck after it collapsed, did that show
20 what it looked like beforehand in terms of the condition
21 of the deck?

22 A No, sir, it did not.

23 Q Okay. You've owned this house for approximately 17
24 years. What maintenance did you do on the house?

25 A We did exterior painting and interior painting,

1 plumber and minor electrical.

2 Q Okay. Did you ever have to have the HVAC repaired or
3 replaced?

4 A Replaced, yes, we did.

5 Q Okay. Is that an expensive item to replace?

6 A Yes, it is.

7 Q Okay. But you had it done when there was a
8 complaint?

9 A No. When we were -- when we were told that we were
10 having problems with the unit, we replaced it so that we
11 could accommodate our tenants.

12 Q Okay. If you ever had a complaint from a tenant
13 regarding a matter of leaks, electrical, et cetera; would
14 you fix it?

15 A Yes, I would.

16 Q Had either you or your wife ever had any type of
17 legal action brought against you for breach of a lease
18 agreement and not maintaining the property?

19 A No, sir.

20 Q Okay. Have there been any complaints with the county
21 regarding you or your wife's actions as landlords on any
22 of your properties?

23 A No, sir.

24 Q You ever had any injuries of any of your tenants or
25 their guests prior to this case on any of your properties?

1 A No.

2 Q You ever had any debt collection actions on any of
3 your properties or you personally?

4 A No, sir.

5 Q Okay. Did you ever walk underneath the deck?

6 A No, I didn't..

7 Q Okay. It's my understanding from your testimony that
8 you have never constructed a deck similar to this where
9 it's mounted to the house and then supported on the far
10 end; is that correct?

11 A That's correct.

12 Q Okay. And you never personally constructed any
13 decks; is that correct?

14 A That's correct.

15 Q In fact, would you agree that most of the building
16 work that you did do was subcontracted out?

17 A Yes.

18 Q In all these years that the federal housing authority
19 would do inspections, were you ever made aware of any
20 problems with the structural soundness of this deck?

21 A Never.

22 Q Were you ever informed of any need to bolster the
23 side of the deck that's attached to the house with
24 additional supports?

25 A No, sir.

1 Q Yet, you were informed by that group to replace
2 certain boards when needed; is that correct?

3 A That's correct.

4 Q Aside from walking -- aside from walking on the deck,
5 did you ever notice any problems with the structural
6 soundness of it at any time prior to this deck collapse?

7 A No, sir.

8 Q Did you have any knowledge that the deck was mounted
9 with only three bolts?

10 A No, I did not.

11 Q Did you have any knowledge whether the bolts,
12 actually, passed through the entire house into a frame or
13 just drilled into the brick?

14 A I didn't have any knowledge.

15 Q Did you first learn about how the deck was, actually,
16 mounted to the house after it collapsed?

17 A That's when I found out.

18 Q Did you ever have any complaints from tenants or
19 their guests through the 17 years that you owned this
20 house regarding the deck?

21 A No, sir.

22 Q Any complaints about the soundness of the deck?

23 A No, sir.

24 Q Any concerns of people's safety while out there on
25 the deck?

1 A No, sir.

2 Q What did you do -- just a little bit of background
3 that you can tell the jury a little bit about yourself.
4 Where did you work before you retired?

5 A Department of Corrections.

6 Q And what did you do there?

7 A I was a teacher, an adult ed teacher.

8 Q How long did you work for the Department of
9 Corrections?

10 A Twenty-seven years.

11 Q And when did you decide to get your builder's
12 license?

13 A 1982, I believe it was.

14 Q Okay. What was the requirements to get your building
15 license at that point in time?

16 A To understand codes and law.

17 Q Okay. And is there any continuing education that's
18 required to maintain your license once you get it?

19 A No, sir, it's not.

20 Q And is it accurate, based on your prior testimony,
21 that when you took the exam to get your licenses that the
22 codes provided for decks to be built in this fashion?

23 A There were allowed at that time.

24 Q Okay. If you had ever been told by any person or
25 entity that there was a structural problem with this

1 deck --

2 A No, I haven't.

3 Q -- that posed a dangerous condition, what would you
4 have done?

5 A I would have made the corrections to it.

6 Q And, in fact, what is there now after the collapse of
7 the deck?

8 A There is a stoop with some steps there coming down to
9 the yard.

10 Q Okay.

11 MR. WLORDARCZYK: At this time, Your Honor, I would
12 like to move to introduce Defendant's Exhibit Nos. 1
13 through 25 into evidence.

14 THE COURT: All right. Is there an objection?

15 MR. ELLIS: No, Your Honor.

16 THE COURT: All right. Introduced.

17 (WHEREUPON, Defendant's Exhibit Nos. 1 through
18 25 were admitted into evidence.)

19 MR. WLORDARCZYK: Your Honor, I have no further
20 questions. I'd like to publish those photos to the jury.

21 THE COURT: All right. Permission to publish
22 granted.

23 Any redirect, Mr. Ellis?

24 MR. ELLIS: Just one moment, Your Honor.

25 THE COURT: Okay.

1 MR. ELLIS: Nothing further, excuse me. Thank you.

2 THE COURT: All right. Mr. Reardon, any redirect?

3 MR. REARDON: No, sir.

4 MR. RILEY: No, sir.

5 THE COURT: Anything else, Mr. Wlodarczyk?

6 MR. WLODARCZYK: Nothing, Your Honor.

7 THE COURT: All right. Thank you, sir. You may step
8 down.

9 Ladies and gentlemen of the jury, let's go ahead and
10 take about a 15, 20-minute recess, kind of refresh before
11 we get started on the rest of the afternoon. Don't talk
12 about the case. We'll see you in here momentarily.

13 (WHEREUPON, the jury left the courtroom at 3:08
14 p.m.)

15 THE COURT: All right. Before we break, Mr.
16 Wlodarczyk.

17 MR. WLODARCZYK: Yes, Your Honor, I believe the rules
18 of civil procedure regarding the trial, the fact that this
19 has been consolidated requires that one attorney do direct
20 and any objections and one attorney do the cross.

21 THE COURT: What rule is that?

22 MR. WLODARCZYK: Thank you.

23 THE COURT: You know the rule? Because I think Rule
24 611 of the evidence rules gives me the discretion to let
25 the trial run however I see fit.

1 MR. WLODARCZYK: And I take the position that the
2 Judge always has the discretion.

3 THE COURT: Well, what I'm thinking is to be
4 fundamentally fair to everybody, I'm torn with the idea,
5 since we do have three Plaintiffs lawyers, you know, to
6 give -- you know, whenever they're through with the
7 witness, then you go to cross-examine, and then the next
8 Plaintiff lawyer goes, and then you get to cross-examine
9 again if you want to, then the next one goes. We can do
10 it that way if you want to.

11 MR. WLODARCZYK: No, sir, I just prefer to do it all
12 at once.

13 THE COURT: Okay. That's what I thought. All right.
14 Well, thank you for noting your objection to it. For the
15 purpose of the record, I overrule your objection. I
16 believe it's fair the way I'm doing it.

17 All right. Anything else before we take a break?

18 MR. ELLIS: Nothing else, Your Honor.

19 MR. WLODARCZYK: Nothing from the Defendants, Your
20 Honor.

21 THE COURT: All right.

22 (WHEREUPON, a short recess was held.)

23 (WHEREUPON, Plaintiff's Exhibit Nos. 1 through
24 16 were marked for identification.)

25 THE COURT: All right. Y'all can bring the jury in.

1 BAILIFF: All right, Your Honor.

2 (WHEREUPON, the jury returned to the courtroom
3 at 3:31 p.m.)

4 BAILIFF: The jury is seated, Your Honor.

5 THE COURT: All right. Thank you very much. Where
6 is Ms. Bessellieu? Am I saying it the right way?

7 THE JUROR: Yes.

8 THE COURT: All right. I'm going to appoint you as
9 the forelady of the jury, ma'am. So next time that we
10 come in, you'll be seated where the forelady is and the
11 bailiffs will show you, okay?

12 As the forelady of the trial jury, you will be the
13 jury spokesperson here in court. You will also be the
14 sole person who can write on the verdict form. I will go
15 over that with you at the end of the trial. Although,
16 you're the only one who can write on the verdict form, you
17 can't write on it until it's a unanimous verdict. I will
18 go into more detail at the end of the trial. Thank you
19 very much for accepting that responsibility that you
20 didn't choose.

21 (Laughter.)

22 THE COURT: All right. Let's proceed with the next
23 witness.

24 You may call your next witness.

25 MR. REARDON: I call Ms. Marshall, Your Honor.

1 THE COURT: All right.

2 Thereupon;

3 LINDA MARSHALL, after having been
4 duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box, please,
6 and state your name for the record.

7 THE WITNESS: Linda Marshall.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. REARDON:

11 Q Ms. Marshall, I'm Jerry Reardon. I'm going to ask
12 you a few questions, okay?

13 A Okay.

14 Q You are, in fact, married to your husband who's
15 seated over here and testified earlier, correct?

16 A Yes.

17 Q And y'all work together running this company that
18 rents home or builds home or constructs home; is that fair
19 to say?

20 A The company that does the remodeling and repairs, is
21 that the one you're referring to?

22 Q Is it two separate companies?

23 A No, no. I'm just asking.

24 Q I couldn't hear you.

25 A Because you said rents homes. We don't rent homes.

1 We personally have homes.

2 Q Is this a rental?

3 A I can't --

4 Q Where the house collapsed, was that a rental?

5 A Yes, that's a rental.

6 Q So you have homes that you rent is what I'm asking
7 you?

8 A Yes.

9 Q Okay. And I think at the time of your deposition,
10 you said there are about six homes that you rent out?

11 A Yes.

12 Q Is that still something that you do?

13 A Yes.

14 Q Okay. So you're in the rental business; is that fare
15 to say? Explain -- you tell us. Tell the jury.

16 A Well, the rental business, I wouldn't say rental
17 business, but yes, we do have some homes that we rent.

18 Q Okay. What else do you do? What other type of
19 business?

20 A We have the construction and real estate.

21 Q Okay. Well, tell me -- when you say real estate, I
22 think of folks that are either buying homes and either
23 them or buying homes and flipping them and selling them.
24 Is that what you do?

25 A Yes.

1 Q All right. So you do home buying and then selling?
2 A Yes.
3 Q Then home buying and renting?
4 A Well, we don't --
5 Q Like here, you bought this home and rented it?
6 A Yes.
7 Q All right.
8 A But not through the company.
9 Q Not through the company?
10 A No.
11 Q All right. Explain to us, I'm not following you.
12 A We have bought personal property that's separate from
13 the company.
14 Q Okay. So when you say six homes are being rented, is
15 that personally six homes?
16 A Personally.
17 Q What about the company, is there a company that
18 rents?
19 A No.
20 Q All right. Let's just focus on the six homes you
21 rent.
22 A Okay.
23 Q So there are six homes that you and your husband rent
24 out to other folks?
25 A Right.

1 Q In South Carolina?

2 A Right.

3 Q All right. I asked you in deposition what kind of
4 rental income you make with those six houses a year. Do
5 you recall me asking you that?

6 A Yes, and I said between 35 and 40.

7 Q Thirty-five to \$40,000 a year?

8 A Yes.

9 Q All right. And you, also, build homes?

10 A Remodel and repair.

11 Q Just remodel and repair?

12 A Yes.

13 Q Okay. All right. This home itself, we asked your
14 husband and he didn't know. What does it come -- what do
15 you charge for rent a month?

16 A Eight hundred.

17 Q All right. So \$800 a month. And you've had this
18 since I think -- for over 19 years?

19 A It's '97.

20 Q Would be 19 years in 2016; does that sound right?
21 I'll tell you, 19 years would put it into 2016 if you
22 brought it in '97; does that sound correct?

23 A Okay.

24 Q If you're charging \$800 a month, that would have
25 brought in an income of \$182,400; is that correct?

1 A That would be correct had the tenants always paid.
2 Q Oh, sure, sure. I'm sure some ran out on you; is
3 that correct?
4 A Exactly.
5 Q Okay. Now, I asked in your deputies, also, did you
6 do anything in regards to inspections of the deck. What
7 was your answer?
8 A That I visually inspected going from room to room.
9 Q Inside of the house?
10 A Yes.
11 Q Would you go outside?
12 A I would go outside as well.
13 Q Tell the jury what you would do in regards to
14 inspection of the deck outside the house?
15 A Walk outside and, you know, test -- well, you know,
16 kind of check to see whether any boards were weak and that
17 sort of thing. Or if we had nail pops and that sort of
18 thing. We, of course, do whatever was necessary.
19 Q All right. And I think I know the answer, but you
20 didn't crawl under there and inspect anything?
21 A I Did not.
22 Q Your husband is the fellow that would be in charge of
23 doing most of the maintenance on these six homes?
24 A Yes.
25 Q Okay. And you would be in charge of picking up money

1 from renters or in charge of the account; is that fair to
2 say?

3 A Yes.

4 Q And as far the deck collapsing, if I showed you all
5 these exhibits that I showed your husband, would you have
6 any opinion as to flashing, rot, four legs versus two
7 legs?

8 A No, I would not.

9 Q That's not your expertise or your specialty?

10 A No.

11 Q Okay. All right. All you know is that you got a
12 call that the deck did, in fact, collapse that night?

13 A Right.

14 Q And as far as the injuries or the people that were
15 involved -- let me rephrase that, do you know anything
16 about the Estradas and their medical care?

17 A No.

18 Q You're not a doctor or a nurse?

19 A No.

20 Q And you didn't attend with them to any of these
21 doctor appointments?

22 A No.

23 Q Have you talked to them since the deck collapsed?

24 A No.

25 Q Have you called to check on them?

1 A No.

2 Q Do you have any idea about the medical care they were
3 given or rendered?

4 A No.

5 Q Do you have any idea about their injuries?

6 A No.

7 Q Do you dispute that the set up that night of these
8 photographs showing there were multiple grills that had
9 been tipped over and that the deck, in fact, collapsed to
10 the ground?

11 A You can show me the photograph.

12 Q Sure.

13 A Now, the only thing that I was aware of was the
14 tenant, actually, told me that there was a grill out
15 there.

16 Q All right. As far as the actual night, though, you
17 wouldn't have any -- this Exhibit No. 6 showing the grill
18 and showing the deck collapsed, you don't have any opinion
19 as to whether that, in fact -- let me ask it this way. Do
20 you know whether that's what it looked like the night of
21 the collapse?

22 A I don't know.

23 Q Y'all came to the house that night, though, correct?

24 A No, my mother has Alzheimer's and I was not able to.

25 Q Okay. I was under the impression that either you or

1 your husband did go to the scene that night?

2 A He did go.

3 Q He went?

4 A Yes.

5 Q All right. I got you. And as far as any opinion as
6 to whether or not the house was properly inspected or
7 cared for, you're not offering any testimony about that?

8 A No.

9 Q Do you agree that a tenant has the responsibility to
10 keep the house in a working and safe condition?

11 A Yes..

12 Q Okay. Thank you. I said tenant. I meant landlord?

13 A And I didn't even notice that.

14 Q Okay. Thank you.

15 MR. REARDON: No further questions, Your Honor.

16 THE COURT: All right. Mr. Riley, Mr. Ellis?

17 DIRECT EXAMINATION

18 BY MR. ELLIS:

19 Q Ms. Marshall, you didn't give Ms. White any
20 instruction that she should not have people over at the
21 house; did you?

22 A I did not.

23 Q And you never told her don't have anybody out on this
24 deck?

25 A No.

1 Q And were you the one that drafted the lease between
2 most of these tenants?

3 A Yes.

4 Q And where did you find the terms of those leases?
5 Are you trained or skilled in that?

6 A I, generally, would go online and download them.

7 Q Look for things with terms on residential leases?

8 A Right.

9 Q And in those leases, it was, generally, the
10 landlord's responsible for major structural upgrades or
11 changes in the house; isn't that right?

12 A I'm not sure.

13 Q You don't know in the lease if it says that?

14 A I don't know the legal lease there, but as far as
15 maintaining the property, yes, it's our responsibility.

16 Q Right. So if there was a hole in the roof
17 (indicating), y'all would be responsible for it?

18 A Yes.

19 Q And the HVAC unit, like Mr. Marshall discussed, you
20 replaced that; is that correct?

21 A Yes.

22 Q So the structural changes in the house or needs in
23 the house were the responsibility of the landlord?

24 A Yes.

25 Q And small maintenance?

1 A Uh-huh.

2 Q Keeping the yard upgraded, maybe some painting?

3 A Yes.

4 Q That's the tenant's responsibility; is that your
5 recollection?

6 A Well, painted whenever necessary.

7 Q Right, but that was the switching of the tenants,
8 correct, so that you can market it again?

9 A Yes, generally.

10 Q Okay.

11 MR. ELLIS: That's all I have. Thank you.

12 THE COURT: Mr. Riley?

13 MR. RILEY: Nothing, Your Honor.

14 THE COURT: Cross?

15 MR. WLORDARCZYK: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. WLODARCZYK:

18 Q Ms. Marshall, just tell the jury a little bit about
19 yourself. Before you retired, where did you work?

20 A I worked for 35 years and retired from the Department
21 of Juvenile Justice.

22 Q When did you and your husband purchase your first
23 rental home?

24 A Our first rental home was probably in the early 80's.

25 Q And I understand you have children?

1 A Yes.

2 Q And are grown?

3 A They are.

4 Q Did you can put them through college?

5 A Yes, we did.

6 Q What do they do now?

7 A One is an electrical engineer and the other one is a
8 dentist.

9 Q Now, have you had any complaints from any of your
10 tenants from any of your properties that you did not make
11 repairs or take care of the property?

12 A Never.

13 Q Okay. Did you have any complaints specific to this
14 property from any of your tenants regarding the condition
15 of the deck?

16 A No.

17 Q Okay. Were there ever any request to waterproof it
18 or paint the deck or claims that the deck may be unsafe?

19 A No.

20 Q It's my understandings, and tell me if I'm correct or
21 not, that this property was rented through section eight
22 at one point in time?

23 A It was.

24 Q And how much years approximately did you rent through
25 that program?

1 A Probably seven or eight years.

2 Q And if you can tell the jury just a little bit about
3 what a section eight housing program is, that you
4 understand it to be?

5 A It's whereby the rent is subsidized and in order for
6 the tenant to remain there, there has to be an inspection
7 given on the house every year. And whatever the -- is
8 found, defects or flaws to be found, they had to be
9 corrected in order to continue on that program. And they
10 would make a list of the repairs. And after doing the
11 repairs, then they would come back out and reinspect it.

12 Q And that's a federal program?

13 A That is federal and state, yes, sir.

14 Q And the -- go ahead.

15 A Each state has housing authority.

16 Q Okay. In this particular instance, was the house
17 inspected annually by the housing authority for those
18 eight years that it was under that program?

19 A Yes.

20 Q And was that the first eight years that you,
21 actually, purchased this house?

22 A I think it was the first eight.

23 Q Okay. And just if you didn't state it, are tenants
24 present with the inspectors?

25 A Yeah, tenants were always there to point out if

1 anything that they felt needed to be done, therefore, we
2 had no control as to say well, don't report this or I'll
3 take care of it later.

4 Q And were you or your husband ever present to meet
5 with the inspectors when those inspections were done?

6 A We were never there.

7 Q Completely independent to your knowledge?

8 A Independent, yes.

9 Q And what would you get in terms of documentation to
10 say what needed to be repaired?

11 A They would send out a list of repairs that needed to
12 be made.

13 Q Okay.

14 A And they would give us a date that they had to be
15 done by.

16 Q Okay. And I believe your husband's testimony was
17 that based on those inspections that a few of the boards
18 had to be replaced; is that accurate?

19 A That is correct.

20 Q Okay. Did you ever receive any documentation from
21 the housing authority, the U. S. Government calling into
22 question the structural soundness of this deck?

23 A Never.

24 Q Did you ever receive any documentation from the
25 housing authority saying that the deck needed to be

1 removed or was a dangerous -- in a dangerous condition.

2 A No, never.

3 Q So is it accurate then that for eight years, from
4 1997, that the U. S. Government inspected this house
5 annually with a tenant and there was no complaints
6 regarding the deck other than to replace a couple of
7 boards?

8 A That's the only thing that was ever made mention of.

9 Q Okay. Did you have the opportunity to meet with
10 tenants at this particular property when you would collect
11 checks?

12 A Yes, I did.

13 Q Did you ever receive any complaints from the tenants
14 regarding the condition of the deck?

15 A Never.

16 Q Okay. Aside from the change over in tenants when you
17 would walk through the property, did you ever have the
18 opportunity to go inside the house or on the deck while it
19 was being rented?

20 A Yes, I have been in when she complained of a leak in
21 the bathroom. I think I went down to the basement because
22 the washing machine had a leak. And I went into the
23 kitchen, which is just -- the deck is right outside the
24 kitchen. I went in and collected rent one time.

25 Q Did you personally notice any problems during these

1 visits with the condition of the deck?

2 A No.

3 Q Okay. Prior to this deck following, was there
4 anything that gave you cause or concern that this deck was
5 unsafe?

6 A No.

7 Q Had you ever been notified by any party or entity
8 that the deck was -- that the deck was a dangerous -- in a
9 dangerous condition, what would have been done?

10 A Oh, had we been notified that something needed to be
11 done, we would have taken care of it right away. Because
12 I always tell my tenants, you know, call me because we
13 don't want anything to happen that concerns water. You
14 know, I don't care if you call me 2:00 or 3:00 o'clock in
15 the morning.

16 Q Okay. And do, in fact, your tenants call regarding
17 problems with the property -- various properties?

18 A Yes, we have gotten called late at night and my
19 husband will, generally, get out bed and take care of it,
20 you know, if it's deemed to be an emergency.

21 Q And it's my understanding that this deck collapsed
22 late at night as well; is that correct?

23 A Yes.

24 Q And your husband did, in fact, go out to the property
25 that evening?

1 A Yes.

2 MR. WLODARCZYK: Okay. Thank you, ma'am. I have no
3 further questions.

4 THE COURT: Any redirect?

5 MR. ELLIS: One second, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. ELLIS:

8 Q Ms. Marshall, the U. S. Housing Authority, you have
9 no idea what level of inspection or otherwise check-off
10 system they have in order to go through and approve that
11 facility to low-income tenants; do you?

12 A I do not.

13 Q Right. And the U. S. Housing Authority is not the
14 owner of that house and responsible to the tenants in
15 there; isn't that correct?

16 A Right.

17 Q You and your husband are?

18 A Right.

19 Q So you said for the first seven or eight years, I
20 think you said in your deposition --

21 A Uh-huh.

22 Q -- That it did -- it did rent to lower income
23 housings folks; is that correct?

24 A Right.

25 Q And you're not telling this jury that those

1 low-income housing folk are not equal in what they're
2 supposed to receive in regard to the protection from the
3 owner; is that correct, in protection for the house?

4 A I'm not following you on that. The inspection is
5 part of the house's program, regardless, we always checked
6 all of our houses where they mandated it or not. It was
7 just their standards that certain things had to be up to
8 snuff.

9 Q Like rotted boards?

10 A Uh-huh.

11 Q Electric outlets?

12 A Yes.

13 Q Isn't that correct?

14 A Right.

15 Q But not structural issues, that's your responsibility
16 as the owner of the building?

17 A Right, but if there had been something structural and
18 they saw it, they would have pointed it out.

19 Q Ms. Marshall, that's what I'm asking you. You don't
20 know that? That's not true?

21 A I said if they noticed it, they would have not
22 approved the tenant.

23 Q That's what I'm asking you. The first question I
24 asked you was do you know the standards that they have?

25 A I don't know the standards.

1 Q Okay. So you're just assuming they would have told
2 you that, right?

3 A I --

4 Q You're assuming?

5 A I am assuming they would have.

6 Q Right, but you, also, said that the ultimate
7 responsibility lies with you and your husband as the
8 owner?

9 A The ultimate responsibility, yes, but one would also
10 assume if they saw something, they would say something.

11 Q Okay. But your tenants assumed that if you saw
12 something, you would do something?

13 A Right. And we always did that.

14 Q Okay.

15 A We did not see anything.

16 Q Yes, ma'am. All right. And so we're straight, too,
17 when it was low income housing, that was for seven or
18 eight years; is that correct?

19 A That is correct.

20 Q So of the 19 years you've had that house, no one else
21 has done an inspection since that period of time, in seven
22 or eight years?

23 A No -- no one with the --

24 Q U.S. Housing?

25 A Huh?

1 Q U.S. Housing?

2 A No one who has been labeled as an inspector, no.

3 Q Okay. Well, I would like to know those who were not
4 labeled as inspectors?

5 A Well, that just would have been my husband doing his
6 walk-through.

7 Q Right. But of the 19 years, seven of them the U. S.
8 Housing Authority supposed did some inspection of the
9 property?

10 A Right.

11 Q But the remaining time, no one else has?

12 A Right, that's correct.

13 MR. ELLIS: That's all, Your Honor. Thank you.

14 THE COURT: Anything else, Mr. Wlordarczyk?

15 MR. WLODARCZYK: No, Your Honor.

16 THE COURT: All right. Thank you, ma'am. You can
17 step down.

18 All right. Plaintiff would call the next witness.

19 MR. REARDON: Your Honor, I call Linda Estrada to the
20 stand, Your Honor.

21 THE COURT: All right.

22 Thereupon;

23 LINDA ESTRADA, after having been
24 duly sworn, testified as follows:

25 THE CLERK: Thank you. Have a seat in the witness

1 box, please. State your name for the record.

2 THE WITNESS: My name is Linda Estrada.

3 DIRECT EXAMINATION

4 BY MR. REARDON:

5 Q Ms. Estrada, tell us where you live.

6 A I live at Montrooper Court, Columbia, South Carolina,
7 29223.

8 Q Where is that in relation to downtown?

9 A That's in Wildwood.

10 Q Wildwood, okay. And how old are you today?

11 A I'm 47.

12 Q Forty-seven. Who do you live with?

13 A My husband, George Estrada.

14 Q How long have you been married?

15 A Six years.

16 Q Have y'all had the ability to raise any children or
17 have any children?

18 A We raised two twins that were my niece's twins.

19 Q Okay. How long did you raise them?

20 A From the time they were two until 19.

21 Q What type of career did your husband, going back the
22 last 20, 30 years or so?

23 A He was in the Vietnam war and, also, he did like
24 electrical, went to college, two-year college for
25 electrician.

1 Q Okay. And did you grow up in Columbia?

2 A I did.

3 Q Did you go to high school in Columbia?

4 A I went to Columbia high.

5 Q All right. How about other schooling you might have
6 completed after high school?

7 A I went to a professional training institute, which
8 was a trade school. Since I got out of high school, I
9 didn't take the summer off, I just went straight to there
10 and I did medical assistant. And then I went to Midlands
11 Tech and I did phlebotomy and I, also, went for a surgical
12 tech, also, done my nursing classes, just waiting to do my
13 clinicals.

14 Q All right. Currently, where do you work?

15 A I work at Palmetto Health Baptist.

16 Q All right. And what do you do there?

17 A I'm a surgical technologist.

18 Q How long have you been doing that type of work?

19 A I've been in the hospital setting for 27 years.

20 Q All right. Let's talk about April 4th of 2014. That
21 appears to be a Friday; is that correct?

22 A That is correct.

23 Q Did you work that day?

24 A Yes, sir.

25 Q Did you and your husband have plans that evening?

1 A We planned to go to my brother's mother's birthday
2 party.

3 Q And is that at the home listed here in one of the
4 exhibits in front of us earlier?

5 A Yes, sir.

6 Q Exhibit No. 4?

7 A Yes, sir.

8 Q Is that Casbel -- 108 Casbel Court?

9 A Yes, sir.

10 Q Had you been to that home before?

11 A During Christmas, yes, sir, I did.

12 Q All right. As you can see from the photograph,
13 there's a front and a back side of the house. Had you
14 been outside the house prior to the night of this deck
15 collapse?

16 A No, sir.

17 Q What time did you arrive at the birthday party?

18 A 9:00, 9:00ish, 9:20.

19 Q That would have been you and your husband together?

20 A My husband and I both, yes.

21 Q Did you go in the front door or back door?

22 A We came in through the front door.

23 Q When you arrived, tell how, generally, how many folks
24 were there and what was going on?

25 A It was about 12 people. The mother was in the house

1 when we came to the door. Of course, we came in and we
2 spoke to everybody and told her happy birthday and kind of
3 sat and chat with her for a while. And then we went on
4 out to the deck.

5 Q Was there food, drinks, games, what was going on?

6 A Yes, we -- there was food in the house and birthday
7 cake was in the house. They had drinks in the cooler that
8 was on the outside on the deck.

9 Q Okay. And at some point, you said you did go out to
10 the deck. What time was that approximately?

11 A 10:00.

12 Q What time did the deck collapse?

13 A 11:40.

14 Q So between 10:00 and 11:40, were you positioned out
15 on the deck?

16 A Yes, I had been sitting for some time.

17 Q Would you go in and out of the house from that time
18 period or did you stay in one spot?

19 A I stayed in that one spot.

20 Q All right. I'm going to show you what's been marked
21 as Exhibit No. 6. Generally, can you tell us where you
22 would have been seated if this deck was up -- and maybe it
23 will help you to show both of them. Where were you seated
24 on this deck?

25 A On this deck, I would be sitting over here

1 (indicating) to the right of the outside. Right here in
2 this white chair where the grill is. Yeah, there.

3 Q Okay. So if I'm near the deck or on the deck, if I'm
4 looking, the right side of the deck would have been up
5 against the house, the left side of the deck would have
6 been farthest from the house. Was your chair originally
7 on the left side or the right side?

8 A On the right side.

9 Q All right. Where was George sitting at the time of
10 -- before the deck collapsed?

11 A He was on the opposite side of me. It would be the
12 left closest to the steps.

13 Q Using these steps as an example, is he somewhere near
14 this area (indicating)?

15 A No, further up.

16 Q Further up. So if I used these photographs here, he
17 would have been positioned where?

18 A He would be right here on the side (indicating).

19 Q Okay. So the far right side of the deck?

20 A That is correct.

21 Q Was he in a chair or was he standing, where was he?

22 A He was sitting on the cooler.

23 Q All right. So you were in a chair at that point in
24 time prior to the deck collapse. What were you doing?

25 A I was just sitting there just having a drink.

1 Q Okay. What was the lighting like in this area?

2 A It was dark. The only light we had was kind of like
3 the light that was coming from the inside of the house.
4 And it was, I think it's a light pole further out in the
5 yard.

6 Q Like a street lamp type thing?

7 A Yes, yeah. Yes.

8 Q Okay. All right. Before the deck collapsed, had you
9 had any conversations about the condition or any dangers
10 of the deck?

11 A No.

12 Q All right. So you're sitting in your chair, tell
13 this jury what happens?

14 A I'm sitting in the chair and we're talking. My
15 nieces are on the porch and just talking back and forth,
16 just having a good time. And they were sitting in front
17 of me playing a little game on the porch. And the next
18 thing I know, the deck collapsed without warning. We
19 didn't hear any sounds, any cracks or anything. It just
20 went down. It was two little babies on the porch jumping
21 up and down. The main concern when the porch fell is the
22 grill slid, hit me on my elbow, fractured my elbow. And
23 we were just screaming for the kids. I told them not to
24 get me, just look for my husband because he had just had
25 an amputation of his right toe. So I just wanted them to

1 kind of get him and then they kind of helped me out.

2 Q If I look at Exhibit No. 1, it appears that there is
3 a -- looks like a window, is that, in fact, the door?

4 A That is the door.

5 Q And so there appears to be the deck down below the
6 door, did it drop from the area --

7 A Yes.

8 Q -- of the door down to the floor?

9 A Yes.

10 Q All right. If I go back to Exhibit No. 6, I see a
11 chair. Is that the white chair you're talking about?

12 A That's the chair and that's where the grill slammed
13 into my right elbow (indicating) and slammed me up against
14 the house.

15 Q It appears that the chair is trapped under a piece of
16 wood. Is that part of the grill?

17 A That is.

18 Q And there's another grill to the left. Did that
19 grill strike you or is that a different grill?

20 A That one just kind of kept me from being able to get
21 out, also. I couldn't get out. I was kind of trapped
22 until somebody could get me out.

23 Q Okay. Once it collapsed, what do you do, how do you
24 get up? What position --

25 A I just screamed and told them to just get my husband.

1 And they helped my husband up. And then my niece and my
2 nephew, Tyrone, came and got me after they got him safe.

3 Q Did any of those grills have anything inside of them?
4 What I mean by that is charcoal, fire, anything inside of
5 it?

6 A Yes, the grill that fell forward had charcoals. It
7 still was lit. It was still burning, so they, actually
8 burnt a hole into the wood.

9 Q Was there any issue with ashes or soot?

10 A Yeah, there was ashes all over my clothes, all over
11 my pocketbook. It knocked me so hard, it even knocked my
12 wig off.

13 Q Okay. All right. Were you helped off of the deck?

14 A Yes, the steps was broken.

15 Q So if we look at the steps coming down, they appear
16 to have fallen down onto the ground. How did you get from
17 the deck down to the steps?

18 A My nephew helped me down because my elbow was hurt so
19 bad, I couldn't even brace or anything with it.

20 Q Okay. Where was George when you started walking
21 towards the stairs to go down?

22 A They had gotten him down. He was sitting in the
23 chair.

24 Q So were you both able to get off of the deck before
25 it collapsed again or had any other issues?

1 A Yes.

2 Q All right. When you got off the deck, what was
3 everybody else you doing?

4 A They was just sitting there kind of, you know, in a
5 daze, like, what happened, what caused it? And then 15
6 minutes later, we saw the ambulance and a bunch of lights.
7 Then I saw Mr. Marshall when he came and said how many of
8 y'all was on the deck and how did y'all break my deck
9 down.

10 Q Did EMS come there and take you from the scene?

11 A No.

12 Q Did EMS come?

13 A Did EMS, yes.

14 Q Okay.

15 A EMS did, yes.

16 Q Where did they take you?

17 A To Palmetto Health Richland.

18 Q Was George in the ambulance with you?

19 A That is correct.

20 Q All right. How were you doing inside the ambulance?
21 What problems were you having?

22 A I had -- my elbow was hurting really bad, both of my
23 knees were hurting -- well, at the time, just my leg I
24 could, actually, see and feel at that time that was
25 scraped, then my wrist, my left wrist.

1 Q How did you go -- how did you hurt your knees?

2 A Trying to get upon my own, I fell forward and fell on
3 both of my knees.

4 Q Okay. Are you right-handed or left-handed?

5 A I'm right-handed.

6 Q Is this your dominate arm that was injured?

7 A That is correct.

8 Q You went to the ER that night along with George.

9 Tell me what the ER did for you. Don't tell me what the
10 doctor, just tell me what they did for you.

11 A When I went there, they gave -- we sat in the room
12 for a while until they could get an x-ray because they had
13 a lot of people there. And I had an x-ray of my right
14 elbow and my left leg that they could see that was
15 physically scraped. I had a bruise on it.

16 Q Did you go home in the early hours of the morning
17 that night?

18 A Yes, we did.

19 Q And how were you doing over the next 48 hours?

20 A Just really sore and just hurting really bad, just my
21 elbow was really, really the worst out of all.

22 Q Did you have any issues with any other parts of your
23 body, shoulders, neck, back, legs?

24 A My neck and my lower back.

25 Q When did that become an issue?

1 A It became an issue the next day.

2 Q Okay. Now, it appears from the medical records and
3 the bills that you went to MedCare about seven days later?

4 A Yes.

5 Q Is that fair to say?

6 A Yes.

7 Q What is MedCare?

8 A MedCare is what they call sometimes a doc in the box.
9 It's one of those places you can go if you don't have a
10 doctor or no place else is opened or if you can't go to
11 your doctor.

12 Q What did they do for you there?

13 A I went there and they took x-rays and they said my
14 elbow was fractured.

15 Q Okay. And did make an appointment to followup with
16 an orthopedic in town?

17 A I did.

18 Q And can you tell me who that was?

19 A USC Sports Medicine.

20 Q All right. Did you also followup and make an
21 appointment with Health Source Chiropractic Care on or
22 about April 17th?

23 A I did.

24 Q What issues were you having as far as body parts when
25 you went to see them?

1 A Neck and back pain.

2 Q Did you have any issues with your elbow or knee?

3 A Yes.

4 Q Okay. Were they treating your elbow and knee or were
5 they treating your back and your neck?

6 A They was treating my back and my neck.

7 Q Now, why did you choose Health Source.

8 A I chose Health Source because I was trying to find
9 somewhere close by the house, so I asked you if you know
10 anything that was close to my house where I could go.

11 Q My office gave you a referral?

12 A Yes.

13 Q Okay. And did you, in fact, make an appointment to
14 go to Health Source?

15 A Yes.

16 Q Tell me a little bit about the treatment that Dr.
17 Hamvay provided for you beginning on April 17th at his
18 office in Northeast Columbia.

19 A He would do adjustment on my back and neck and
20 massages and he would have me do types of physical
21 therapy.

22 Q You did work with him and his staff?

23 A I did.

24 Q What would you generally say would the amount of time
25 you spent going there for each treatment? How long would

1 it last?

2 A I think about two hours a day.

3 Q Okay. And did you continue to treat with the hot
4 packs, adjustment, ultrasound and exercises from April the
5 17th until June the 9th?

6 A Yes.

7 Q How were doing overall as, say, June 9th when he
8 released you?

9 A I was still really sore and in a lot of pain.

10 Q Where were you hurting?

11 A My neck, m back and my elbow.

12 Q All right. You had been in an accident sometime back
13 in, was it February?

14 A Yes, February 22nd.

15 Q All right. And did you, in fact, receive similar
16 treatment with a doctor in Columbia back in February?

17 A Yes.

18 Q All right. And this accident here, did it aggravate
19 or did it cause a different injury? Tell us a little bit
20 about it.

21 A When I went -- when I had my car accident in
22 February, I was getting treated for my neck and my upper
23 back.

24 Q Okay.

25 A In between my shoulder blades. And when I had this

1 accident, when I fell off this deck, it made it worse.
2 Because it had just been a month, so I was just starting
3 to heal a little bit. But when the deck collapsed, it
4 made it worse.

5 Q You eventually made an appointment with USC.
6 Orthopedics, looks like, on May the 15th; does that sound
7 right?

8 A Yes, sir.

9 Q Did you go, in fact, to see Dr. Westerkam?

10 A I did.

11 Q What did he do for you on those open -- his first
12 visit?

13 A He did x-rays, did x-rays and stuff and then he
14 wanted to do a never study on my arm.

15 Q Did you, in fact, have a nerve conduction test done
16 on your arm on June the 2nd?

17 A I did.

18 Q Did you, also, have an MRI of your arm done on June
19 the 10th?

20 A Yes, sir.

21 Q Did you continue to treat with him up through June
22 and then into August, into September, and then, finally,
23 released in October?

24 A Yes, sir.

25 Q All right. And that would have been Dr. Westerkam?

1 A Yes.

2 Q Did he do anything to your elbow to help with the
3 injury you sustained?

4 A I had injections in my elbow. I had to wear an elbow
5 brace.

6 Q Let me show you what's been marked as Exhibit No. 7.
7 Is that, I guess, the inside of your elbow?

8 A Yes, that's the inside.

9 Q Was that sustained in this accident?

10 A Yes.

11 Q Okay. And it was, in fact, a fractured elbow?

12 A Yes.

13 Q Did you wear a sling for some period of time?

14 A He just gave me a brace and he told me I needed to
15 have surgery.

16 Q All right. As far as the elbow is concerned, did you
17 have any problems from your elbow down to your hands due
18 to this fall?

19 A Yes, I have nerve damage, so these two fingers, they
20 numb.

21 Q They're numb?

22 A Yes.

23 Q Tell me about that. How often does it happen? What
24 do you do for it?

25 A That's constantly. Those two fingers stay numb. It

1 has a pinched nerve.

2 Q And you've had injections?

3 A Yes.

4 Q You've taken medication?

5 A Yes.

6 Q Surgery was ordered?

7 A Yes.

8 Q But you have not had the surgery?

9 A No, I'm the sole provider for my family. My husband
10 doesn't work anymore. I'm the only one that work. So for
11 me to have this surgery done on my elbow, I would be out
12 for two months.

13 Q And are you working five, six days a week now?

14 A Yes.

15 Q And are you working early mornings for surgery or
16 late afternoon? What do you do?

17 A I work early morning, 6:30 a.m. to 3:15.

18 Q Did you, in fact, go to work today?

19 A Yes, sir.

20 Q You've been released since October of 2014, haven't
21 had any surgery, but still having problems?

22 A Yes.

23 Q Tell the jury how often you have the problems, how it
24 affects your daily life?

25 A I have problems with my elbow everyday. Simple

1 things, just vacuuming, pumping the gas for your car,
2 opening -- I'm a surgical technologist, so I have to
3 present surgical instrumentation to the sterile field.
4 Just moving patients from one stretcher to the OR bed is a
5 problem for me, but I still have to deal with it everyday.

6 Q Do you believe the numbness and pain symptoms you're
7 having now are permanent?

8 A Yes.

9 Q Let me show you what's been marked as Exhibit No. 1.
10 Are these, in fact, your bills from this deck collapse?

11 A Yes.

12 Q And the total \$10,818.32?

13 A Yes, sir.

14 Q Are all of these directly related to this deck
15 collapse?

16 A Yes.

17 Q Were you given any warning about the deck set up or
18 the issues with the deck prior to going to this residence?

19 A No, sir.

20 Q Did ever have a chance to walk around outside the
21 deck and inspect it in any way?

22 A No, sir.

23 Q You were released from Dr. Hamvay's office back on
24 June the 9th, and you indicated you still have problems
25 with that. When do you -- do you feel like it's resolved

1 50 percent, 80 percent, give us an idea?

2 A I think it's better than what it was. I think it's
3 resolved itself, at least, maybe 40 percent or better.

4 Q And are you doing anything currently for the neck and
5 back patient?

6 A I take ibuprofen everyday.

7 Q Do you do anything else for it?

8 A No, sir.

9 Q Okay. Have you lost the ability to do certain things
10 that you were doing before the accident that you're not
11 doing now?

12 A Well, I used to work out some and go to the gym and
13 lift weights or try to do the treadmill, but it just
14 irritates my elbow so much, I just don't go.

15 Q As far as activities around the home, are you still
16 about to do them?

17 A Yes, sir, I'm able to do them, but with pain.

18 Q Did you ever have any issues with your elbow prior to
19 this?

20 A No.

21 Q Now, you also had an MRI done of your knee; is that
22 correct?

23 A Yes, sir.

24 Q Was that your left or your hand?

25 A I had it done on my left and my right.

1 Q All right. Are you still having issues with your
2 knees?

3 A Yes.

4 Q All right. Tell me about those?

5 A My knees stay swollen a lot. The back of my
6 hamstring on my right leg, it just stays in knots and it
7 really hurts from the swelling. I stand up a lot, that's
8 my job being a surgical technologist. As a surgical tech,
9 you assist the doctors all day, so I'm constantly in pain.

10 MR. REARDON: Okay. Thank you very much. Answer any
11 questions they have for you.

12 THE COURT: Y'all have any other questions before Mr.
13 Wlodarczyk?

14 MR. RILEY: None, Your Honor.

15 THE COURT: All right. Mr. Wlodarczyk.

16 MR. REARDON: Your Honor, just for the record, those
17 exhibits, I move those into evidence.

18 THE COURT: All of the exhibits have been submitted.

19 MR. REARDON: Thank you, Your Honor.

20 (WHEREUPON, Plaintiff's Exhibit Nos. 1 through
21 15 were admitted into evidence.)

22 CROSS-EXAMINATION

23 BY MR. WLODARCZYK:

24 Q Good afternoon, Ms. Estrada.

25 A Good afternoon.

1 Q We had an opportunity to meet a while ago at your
2 deposition. I just have some follow-up questions. Your
3 accident in February of 2014, you were represented by Bill
4 Green in that matter?

5 A That is correct.

6 Q And he gave you a different chiropractor to go to to
7 get treated for those injuries?

8 A He did.

9 Q I believe in your deposition, you stated that it was
10 the similar pain, it just was aggravated following this
11 collapse; is that correct?

12 A That is correct.

13 Q Okay. Now, your attorney asked you if you were
14 released by Dr. Westerkam in October of 2014. It's my
15 understanding from your prior testimony and your doctor's
16 testimony that you, in fact, have not been released from
17 Dr. Westerkam?

18 A I have not been released by him? I have been
19 released by him. He sent me to another doctor, which is
20 Dr. -- the one that did the MRI on my leg.

21 Q And when was -- when were you released?

22 A I don't remember the exact date.

23 Q Your last visit with him was in October of 2014; is
24 that correct?

25 A I'm not exactly sure on the date.

1 Q Okay. Is it accurate that Dr. Westerkam recommended
2 that you get some physical therapy?

3 A No. Dr. Maxway (ph) did.

4 Q Same practice, though; is that correct?

5 A Yes, sir.

6 Q The orthopedist. Did you, in fact, go that physical
7 therapy?

8 A The physical therapy, no, sir, because my husband was
9 in the hospital. He's been sick and I haven't been able
10 to go.

11 Q I am going to give you a copy of your deposition just
12 to let you see if you can refresh your recollection about
13 what you told me.

14 MR. REARDON: What's the question, Your Honor?

15 MR. WLODARCZYK: Discharge.

16 BY MR. WLODARCZYK:

17 Q I would direct you to the portion I'd like you to
18 look at.

19 A Okay.

20 Q Page 26, you and I were discussing your visits with
21 the orthopedist. And you can take a moment just to read
22 through that page and just familiarize yourself with our
23 conversation. Is it accurate that we were talking about
24 your orthopedist at that point in time?

25 A Yes.

1 Q Okay. And I asked you how many visits did you have
2 with the orthopedist and you told me four; is that
3 correct?

4 A Yes.

5 Q And at the time, you thought your last visit was
6 August of 2014?

7 A Okay.

8 Q And then I asked you if you were discharged by your
9 doctor, and you said no; is that correct?

10 A Yes, I did say that.

11 Q Okay. That's what I wanted to make sure. And you
12 never did get any physical therapy that was recommend by
13 your orthopedist; is that correct?

14 A He today me I could take physical therapy if I didn't
15 want to do the surgery. And I did not have the physical
16 therapy done because my husband was in and out of the
17 hospital.

18 Q Okay. But you're still complaining of problems
19 related to your elbow?

20 A Yes.

21 Q And you have never returned to the orthopedist for
22 any new prescriptions for physical therapy; is this
23 correct?

24 A I can't take any kind of prescription medicine
25 because of the type of job I do. But yes, I could have

1 gone to physical therapy.

2 Q I think I misspoke. Doctor to get an order for
3 physical therapy, not a prescription for a pain killer or
4 anything like that. You never returned to the
5 orthopedist, either followup of your complaints with your
6 elbow or to see if you could go to physical therapy after
7 your husband was out of the hospital?

8 A My main reason for not doing that other than my
9 husband going back and forth to the hospital, like I said
10 earlier, I'm the sole provider for my husband. So each
11 time I go to the doctor, that accrues a bill for me that I
12 can't afford to pay right now.

13 Q And you haven't presented any lost wages as a part of
14 your testimony and your medical bills; is that correct?

15 A No, I did not. I missed one day.

16 Q One day?

17 A The only reason why I missed one day is because I had
18 just been in the accident prior and I had been out for a
19 week or so and I did not want to lose my job by
20 continuously just taking a day off. Even though I was in
21 pain, I worked through that pain. I didn't want to, but I
22 had to.

23 Q What's your work schedule again?

24 A At this job?

25 Q At the job that you were working at approximately at

1 time of this incident?

2 A What time was I working there? It was different
3 hours. If I was scheduled to be in the OR, I had two days
4 of the OR, which I would have to be there at 6:00 a.m. to
5 3:30. If I was doing local procedures, I would have to be
6 there at 8:00 in the morning to 4:30 in the afternoon.

7 Q Okay. And is it accurate that you never followed up
8 with a physical therapist to find out if they could work
9 around your schedule?

10 A No, I did not call them back.

11 Q You don't have any information or knowledge about
12 what was done or not done to this deck prior to it
13 following down; is that correct?

14 A No, I don't know.

15 Q And you don't know if boards were replaced or not
16 replaced?

17 A No, sir.

18 Q No one represented to you that the deck was in good
19 condition or poor condition; is that correct?

20 A No, sir.

21 Q Okay. It's accurate that you were out there with
22 approximately 10 people for about two hours; is that
23 correct?

24 A Yes, sir.

25 Q And you weren't going back and forth, you were just

1 seated enjoying the evening, correct?

2 A That is correct.

3 Q And with all those people out there, you didn't have
4 any concerns about the deck or it didn't appear to be any
5 problems until finally, it just gave way?

6 A Exactly, yes.

7 Q You don't have any information regarding how it was
8 mounted, whether it was correct or incorrect or supports
9 or anything along those lines?

10 A No, sir.

11 Q Okay. I was not privy to see you show where you were
12 seated, but if you could direct me to which -- I believe
13 it's this one. It's your testimony that you were seated
14 near this chair, but up where the deck would have been?

15 A Uh-huh, yes, sir.

16 Q I was asking you some questions about the locations
17 of the Plaintiffs, one of which was Mr. Reyes. Do you
18 know Mr. Reyes or recognize him here today?

19 A Yes.

20 Q I represent that Mr. Reyes says that he was, also,
21 standing by the sliding glass door, but when I asked you
22 whether he was on the deck, you indicated that he was not
23 when it collapsed; is that correct?

24 A No, he wasn't.

25 Q Okay. In fact, you were adamant or, at least, very

1 confident that he was in the house when the deck fell; is
2 this correct?

3 A Yeah, you just said he was standing by the sliding
4 door, yes, sir.

5 Q On the inside?

6 A Yes, sir.

7 Q Are you aware that he sought medical treatment
8 following --

9 A Yes, I saw him at the hospital after while we were
10 there.

11 Q Okay.

12 A When we were leaving.

13 Q Go ahead. Did you question him as to why he was
14 there or anything like that?

15 A I had no reason to.

16 Q Have you had any conversations with him about why he
17 was there?

18 A No, sir.

19 Q Okay. Do you know Ms. White, who was tenant at the
20 house?

21 A That's my niece.

22 Q Okay. And it's my understanding that he was dating
23 her daughter?

24 A That is correct.

25 Q Did they make any comments about why he would go to

1 the hospital for injuries if he wasn't on the deck when it
2 fell?

3 A No, sir.

4 Q And is it accurate that the position that you were in
5 by the end of the deck, next to the sliding glass door for
6 two hours, that you would have been in a position to see
7 if someone -- if he was standing there at the sliding
8 glass door when the deck collapsed?

9 A Yes.

10 Q In fact, he would have likely been right in front of
11 you, from my understanding of where you were seated?

12 A Yes, sir.

13 Q And you are absolutely sure he was not on the deck
14 when it collapsed?

15 A I did not see him on the deck.

16 MR. WLODARCZYK: Thank you.. I don't have anything
17 further.

18 THE COURT: All right. Any redirect?

19 MR. REARDON: Just real quick, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. REARDON:

22 Q Ms. Estrada, the numbness that you had in your hand
23 and fingers were noted on your original 5/15 record when
24 you went to see your doctor; is this correct, when you
25 went to see an orthopedist?

1 A Yes.

2 Q You had the same symptoms?

3 A Yes.

4 Q Same problems?

5 A Yes, sir.

6 Q Went through the medications?

7 A (Witness nods head.)

8 Q Took the injections?

9 A Yes.

10 Q And you're still having the same problem; is that

11 correct?

12 A Yes, sir.

13 Q It has not resolved?

14 A No, sir.

15 Q Okay. As far as your knees are concerned, you told

16 the doctors about the knee injuries?

17 A Yes, sir.

18 Q And they did the MRIs?

19 A Yes, sir.

20 Q And they treated you for the injury?

21 A Yes, sir.

22 Q And you're still have problems there, also?

23 A Yes, sir.

24 MR. REARDON: Okay. Thank you.

25 No further questions, Your Honor.

1 THE COURT: All right. Thank you, ma'am. You can
2 step down.

3 All right. Ladies and gentlemen of the jury, that's
4 going to be it for today. I have a matter I need to take
5 care of prior to driving all the way back to Chester, so
6 we're going to have to end a little bit early today. I
7 want you in your jury room tomorrow at 9:15 tomorrow
8 morning. That way, we can take care of any legal issues
9 with the lawyers and we can promptly start at 9:30. So be
10 in your jury room tomorrow at 9:15 and then we'll get
11 started no later than 9:30 out here.

12 Okay. Thank you very much. You're free to leave.
13 Do not talk about the case, not even with each other.
14 Don't try to find any independent news stories, if there
15 are any about it. Don't Google names of lawyers or the
16 names of witnesses here. Remember, your verdict is only
17 from the testimony given at that witness stand and from
18 the evidence presented in this courtroom during this
19 trial. So don't do any independent research, okay. You
20 have to rely on me as the judge of the law and what you
21 hear only in this courtroom, okay. Thank you very much.
22 We'll see you in the morning.

23 (WHEREUPON, the jury left the courtroom at 4:22
24 p.m.)

25 THE COURT: All right. Anything else today?

1 MR. WLODARCZYK: No, Your Honor.

2 MR. REARDON: No.

3 MR. RILEY: No, Your Honor.

4 THE COURT: All right. I'll see y'all in the
5 morning.

6 APRIL 6, 2016

7 (WHEREUPON, Court's Exhibit No. 1 was marked for
8 identification.)

9 THE COURT: All right. I got a note from the jury.
10 I'll read it to you. This is from Ms. Bessellieu, who I
11 appointed as the forelady yesterday. It says, This is
12 Juror No. 21. Yesterday evening, I realized that I knew
13 or, rather, had met the Defendant, Mr. Marshall one or two
14 years. A close personal friend had recommended him to
15 possibly do some work on my house. I did not recognize
16 Mr. Marshall when I saw him yesterday nor did I remember
17 his name. In reviewing tax sheets last night, I came
18 across a paper with his name and phone number on it and
19 that's when I recalled meeting him. Although he came to
20 my home to look at my roof and discover my concerns, or
21 whatever, I can't really make that word our -- or discuss
22 my concerns, I did not call back or proceed with an
23 estimate. It also turns out that he knows one of my
24 relatives as he recognized my last name.

25 What y'all want to do?

1 MR. ELLIS: Judge, how would she know that he
2 recognized the last name of one --

3 THE COURT: I'm just reading the note to you. I
4 could ask her about it. It also turns out that he knows
5 one of my relative as he recognized --

6 MR. ELLIS: Relative?

7 THE COURT: Yeah.

8 MR. ELLIS: So she spoke with a relative about it?

9 THE COURT: I guess so. As he recognized my last
10 name. It says my, looks like my. I'll let y'all look at
11 it.

12 MR. ELLIS: Yes, sir.

13 THE COURT: How do y'all want to proceed? I mean, I
14 can bring her out here and question her and go from there
15 or, of course, we can go forward with 11 and I can
16 reappoint a foreperson.

17 MR. WLODARCZYK: The Defendant's position is that we
18 just ask the Court to see if it would create a bias just
19 like we do any other juror. If she says yes, strike her,
20 if not, I don't think there's any prejudice.

21 THE COURT: Uh-huh.

22 MR. REARDON: Your Honor, our position is if she's
23 met with him, dealt with him -- tax receipts doesn't make
24 any sense. If she didn't hire him, why does she have tax
25 receipts? I guess I would like to question her, Your

1 Honor.

2 MR. ELLIS: She's done something she shouldn't have
3 done, researched, and she knows him. You asked her not to
4 do that. She should, at least, come back and ask. I'm
5 not mad at her, but those things involved, seems like it
6 would be inappropriate for her to continue. I mean,
7 that's a conflict.

8 THE COURT: Well, let me get her out here and talk to
9 her.

10 THE CLERK: Jury No. 21, please.

11 MR. WLODARCZYK: Judge, I just rather strike her. I
12 mean, if we start questioning her about it.

13 THE COURT: You'd rather just go ahead and strike
14 without questioning?

15 MR. REARDON: I want to make sure she didn't go back
16 and tell the rest of the gang either. If she's sitting
17 back there oh, I know him and he did this --

18 THE COURT: We can do that. Y'all agree to go with
19 11?

20 MR. ELLIS: Yes, sir.

21 MR. WLODARCZYK: Yes, sir.

22 THE COURT: Okay.

23 MR. WLODARCZYK: But not 10. If we lose another one
24 --

25 THE COURT: Well, 11 is the limit.

1 (WHEREUPON, Leslie D. Bessellieu, Juror No. 21,
2 entered the courtroom.)

3 THE COURT: Ms. Bessellieu, come on down. I received
4 your note, ma'am. You're not in trouble. You can come on
5 over here. I just want -- any time I receive a note from
6 a particular juror, I have to question the juror --

7 THE JUROR: Uh-huh.

8 THE COURT: -- just to make -- better safe than
9 sorry. All right, I received your note.

10 THE JUROR: Uh-huh.

11 THE COURT: Tell me what -- the situation again, how
12 you recognize Mr. Marshall and then, you know, what lead
13 you to this discovery and writing the note.

14 THE JUROR: Sure. I can't say that I recognized him
15 when I saw him yesterday, but, like I said, yesterday
16 evening when I went home, I was looking for some paperwork
17 and I ran across his name and number. I had a friend -- a
18 very good friend of mine had recommended him to do some
19 work. And we met. And I didn't recognize him because I
20 think when he came to my house, he had the cap on or
21 something.

22 THE COURT: Okay.

23 THE JUROR: But either way, when he entered the
24 courtroom yesterday, it didn't jog my memory. It wasn't
25 until I got home that I thought about it.

1 THE COURT: The last sentence, it says, It also turns
2 out that he knows one of my relatives.

3 THE JUROR: So yeah, I remembered a conversation that
4 we had on the phone about my last name.

5 THE COURT: During the time he was going to give you
6 an estimate?

7 THE JUROR: Right. Right, a couple years ago,
8 uh-huh.

9 THE COURT: Okay. So he recognized your last name?

10 THE JUROR: Right.

11 THE COURT: All right. Now, did you discuss this
12 possible conflict with any other jurors back there in the
13 jury room?

14 THE JUROR: No. Huh-uh.

15 THE COURT: You haven't had any discussion with the
16 jury about --

17 THE JUROR: No no.

18 THE COURT: -- this possible conflict?

19 THE JUROR: Correct.

20 THE COURT: Okay. All right. Well, thank you,
21 ma'am. Thank you again for your jury service. I think
22 what we're going to do then -- because I'm going to go
23 ahead and relieve you from further being on the trial --
24 on the trial jury. Just head on back down to the jury
25 assembly room. So you're relieved from the trial jury of

1 this case.

2 THE JUROR: Okay.

3 THE COURT: Thank you very much. Just hand your tag
4 to the bailiff and you can head on back downstairs. You
5 got everything you need from the jury room?

6 THE JUROR: Yes. Yes. Thank you.

7 THE COURT: Don't let her back in the jury room.

8 Okay. Thank you.

9 (WHEREUPON, Leslie D. Bessellieu, Juror No. 21,
10 left the courtroom.)

11 MR. WLODARCZYK: I've got one more matter to take up,
12 too.

13 THE COURT: All right. Mr. Wlodarczyk.

14 MR. WLODARCZYK: Thank you. Your Honor, I put a case
15 and a post-charge on your bench there to the right. This
16 came up -- I was getting ready to look at charges last
17 night in light of Mr. Ellis's examination of my witness
18 regarding --

19 MR. REARDON: Your Honor, before -- is there
20 something you handed up I didn't get?

21 MR. WLODARCZYK: I put one on there. Just the charge
22 of the case.

23 MR. ELLIS: We're arguing charges?

24 MR. WLODARCZYK: No no.

25 MR. REARDON: You're arguing the charge to him?

1 MR. WLODARCZYK: No, no. I'm -- I'll get to it.

2 MR. ELLIS: What are you doing?

3 MR. WLODARCZYK: All right. I'm making a motion to
4 limit the scope of Mr. Abatta's expert testimony for this
5 afternoon. And the reason why I want to make that motion
6 at this point in time is based on Mr. Ellis's examination
7 of my witness. Specifically, in regards to your
8 responsibilities to your tenant, what landlord does with
9 maintenance, did he do any maintenance on this property.

10 And then last night going through these -- looking
11 for proposed charges, I discovered what's attached, which
12 is Ralph Anderson's proposed charge as well as the
13 accompanying case, which, actually, involves Mr. Jake
14 Moore's law firm, which it states that a licensee has no
15 duty to search out defects. In other words, in this case,
16 the Marshalls had no duty to inspect. It, also, says they
17 have no duty to make any repairs to make the premises
18 safe.

19 I think what has happened, whether or not
20 intentionally or not, is that we're trying -- or, at
21 least, the Plaintiffs are trying to create this as a
22 landlord/tenant act, where there would be different
23 duties, or, perhaps, even invitee situation, where there
24 would be enhanced duties.

25 In this particular case, these are social guests. It

1 doesn't matter that this is a rental problem or not. The
2 only duty owed according to the case law is treating this
3 home as if the Marshalls lived there. They owe no greater
4 duty to the Plaintiffs than they owe to themselves. So
5 you can't bootstrap on saying well, you have these duties
6 to Ms. White, who was a tenant, and you should have done
7 these duties to Ms. White based on the residential
8 landlord/tenant act. And had you done those duties to
9 Ms. White under the residential landlord/tenant act, this
10 issue wouldn't have happened for our insurer.

11 I think that's the argument. I think that's improper
12 because, ultimately, the Court in determining the directed
13 verdict motion at the end of this case is going to have to
14 provide what the legal duty is. And the legal duty is,
15 specifically, as set forth in that charge is to give a
16 warning only of any dangerous condition which they know
17 of. And the second duty is if there's a change in the
18 conditions, which they could reasonably discover as
19 dangerous, to give a warning at that point.

20 I anticipate, based on my deposition and based on
21 what was presented during the summary judgement arguments,
22 that Mr. Abatta is going to be solicited to an opinion as
23 to is there a better way of constructing the steps? You
24 know, should it have had four pillars instead of two
25 pillars? Should it have had X, Y, Z? Should it have been

1 maintained better? Should it have had paint on it or
2 weather stripping? None of those issues go to the two
3 duties that are going to be presented to the Court.

4 Regarding the first one, the testimony that Mr. and
5 Mrs. Marshall have presented and what had been emphasized
6 is that nothing had been done to this deck aside from a
7 couple of boards being replaced in 35 years. So there's
8 no change in condition with regard to the construction of
9 the deck. Whoever constructed it, properly or improperly,
10 whenever it was done, it was certainly done before they
11 purchased the house in 1997, it has not changed.

12 So they can't come in now and say well, Mr. Marshall
13 should have known because he's a building -- or builder,
14 licensed builder that the deck was improperly constructed
15 or could have defects, that he should have taken extra
16 steps to inspect it because that's not a duty that's
17 going to be charged. It's not whether he had knowledge of
18 the defect or the dangerous condition or should have to
19 have knowledge or should have reasonably had knowledge.
20 It is did he have knowledge. And the testimony to this
21 Court is he had no knowledge.

22 It would be completely improper to allow an expert to
23 come in now and hypothesize as to what Mr. Marshall should
24 have known had he done a reasonable inspection, which,
25 again, there is no duty to inspect with regard to a

1 licensee or a social guest.

2 THE COURT: All right.

3 MR. WLODARCZYK: Second part of it, Your Honor, I
4 think the only argument that Mr. Abatta can testify to is
5 a change in condition. That change being whether or not
6 the wood rotted, which then resulted in the collapse. So
7 I would ask that that be the sole issue of his
8 examination.

9 THE COURT: Okay.

10 MR. ELLIS: I would say first, before we got into the
11 two stems, Your Honor, with regard to what the law is on
12 licensees, it came from the malice of the Defendants as to
13 what their duties were with regard to the folks that there
14 were on the night of the collapse. He can't change that
15 just because the law states another duty. They should
16 have testified to the fact that they had a responsibility
17 to Ms. White and her guests that night. So therefore,
18 anything that might have been prevented based on his
19 argument, they testified, Mr. Marshall did at the time,
20 and, really, Ms. Marshall did, about their duties and
21 responsibilities to the guests of that house on that
22 evening. We can't take that away. So either they had a
23 personal responsibility or from the Defendant's mouth
24 alone, they've created that duty. It's there. The jury
25 can consider that.

1 And with regard to the expert, I'll let Mr. Reardon
2 speak to what the standards are.

3 THE COURT: Okay.

4 MR. ELLIS: But I would say the testimony from the
5 witness stand has opened that door.

6 THE COURT: Okay. Mr. Reardon.

7 MR. REARDON: May it please the Court. If you look
8 at the two issues, number one, to use reasonable care to
9 warn of any concealed dangerous conditions or activities
10 which are known to the possessor. The evidence that we
11 presented -- is going to be presented to the experts,
12 they're going to say it is very obvious that the condition
13 of this deck from these photographs taken the day of or
14 the day after, I should say, present to them several
15 dangers. A danger would be the actual set up, the rotting
16 condition, the screws are not attached to the bottom.

17 If you look at the photographs -- if he turns a blind
18 eye to it, a jury can say he just did not know. For him
19 to get up on the stand and say I don't know, sure,
20 anybody's going to say that, but it's still a jury
21 question as to whether or not he knew or didn't know.
22 They have to make that decision. I don't -- if you don't
23 take reasonable care to warn -- if you give no warning, he
24 testified he gave no warning, then you can't say he took
25 the reasonable care to warn. So if he doesn't give a

1 warning and doesn't do an inspection, how can he ever warn
2 of any concealed dangerous conditions which are known to
3 him. So I think a jury's got to decide did he, in fact,
4 decide not to warn. And if, in fact, they believe he did
5 know -- and if you look at the photographs of the deck
6 that he is in charge of, it's pretty obvious that the
7 dangerous conditions were present at the time of the deck
8 collapse. If you don't believe that part, then it goes
9 back to the second part about the condition -- the change
10 of the condition which may be dangerous and reasonably
11 expects to discovery.

12 Once again, he's testified -- when I showed him the
13 picture, yes, that's his deck, yes, that's the condition
14 on the day. Whether he knows or not it's dangerous is
15 going to be a jury question. It's reasonable to discover
16 these defects. It's reasonable to conclude this is a
17 dangerous condition --

18 THE COURT: Is it reasonable to discover the defects
19 when he was called out there to replace rotten boards
20 before?

21 MR. REARDON: Sure.

22 THE COURT: Was it reasonable for him to then further
23 inspect the deck? I guess that's what I'm getting into.

24 And I'm going to let you address that, Mr.
25 Wlodarczyk.

1 MR. REARDON: Along that line, when I asked him, What
2 would cause deck rot? What would you do to prevent it?

3 Flashing.

4 Isn't flashing a key part of building houses?

5 Yes, it is.

6 Doesn't every residential builder known to put
7 flashing down when you have a deck?

8 That's true.

9 When he's out there replacing boards, he can see
10 there's no flashing. When he was under the house, he said
11 he could see there was no flashing. He's been under the
12 house, at least, once to replace stuff for air
13 conditioning. He's walked around the deck. He's seen the
14 deck. The jury is going to conclude that a residential
15 builder should know flashing should be out there and if
16 you don't have flashing, the deck is going to rot. My
17 expert is going to say that based on those photographs,
18 you can tap that and rot is going to fall out. There's is
19 substantial wood rot on all sides of that board.

20 The original testimony he's talking about from Mr.
21 Abatta, he was only given five photographs. 85 new
22 photographs were produced right after his deposition and
23 he's going to come here and say, my gosh, I had no idea
24 that there was so much rot. And, also, I believe the
25 photographs that they produced and the testimony they're

1 going to provide is not correct either. He's going to
2 correct that during his testimony.

3 I think it's a jury question and I think you have to
4 wait and see what he says. To limit his testimony based
5 on that in this case, I think is going to limit the jury's
6 ability to make a decision if he knew about the defects
7 and whether he took the reasonable care to discover the
8 defects.

9 THE COURT: All right. I'm going to deny your motion
10 at this time, Mr. Wlodarczyk. Give me an opportunity to
11 -- of course, you can renew your objection at the
12 appropriate time and I'll make a more definitive ruling.
13 At this point in time, I haven't heard -- I don't know
14 exactly what he's doing to say. If he starts going into
15 something that you think is beyond the scope of what a
16 licensee duty -- owed to a licensee, make your objection
17 then and we'll deal with it then. That will give me more
18 of an opportunity to read everything that's going on.

19 MR. WLODARCZYK: I don't think it will be until this
20 afternoon anyway.

21 THE COURT: Okay. That's fine. We'll revisit it.
22 So I'm denying your motion without prejudice at this time
23 for you to renew it at the appropriate time.

24 MR. WLODARCZYK: Thank you.

25 THE COURT: Anything else before we bring the jury

1 in?

2 MR. ELLIS: Nothing.

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

4 (WHEREUPON, the jury returned to the courtroom
5 at 9:43 a.m.)

6 BAILIFF: Your Honor, the jury is present.

7 THE COURT: Thank you.

8 Morning, ladies and gentlemen. You may notice that
9 y'all are one less than what you were when we started.
10 Nothing Ms. Bessellieu did wrong, just the Court had to --
11 there was a possible conflict and she brought it to the
12 Court's attention, so better safe than sorry. I just let
13 her go back downstairs to the jury pool downstairs. So
14 she's no longer on the trial jury for the remainder of
15 this case, so that leaves up with 11. So now y'all are
16 the jury, okay. And I'll keep looking at you and see
17 who's paying really good attention and consider who I'm
18 going to appoint as the foreperson here momentarily.

19 So thank you again. I hope you had a good evening
20 last night. We'll jump right into this morning.

21 Y'all may call your next witness.

22 MR. REARDON: I call George Estrada to the stand.

23 THE CLERK: Raise your right hand, please.

24 Thereupon;

25 GEORGE ESTRADA, after having been

1 duly sworn, testified as follows:

2 THE CLERK: Thank you. Have a seat in the witness
3 stand, please. State your name for record, spelling your
4 last.

5 DIRECT EXAMINATION

6 BY MR. REARDON:

7 Q State your full name.

8 A George Estrada.

9 Q Spell your last name.

10 A Estrada, E-S-T-R-A-D-A.

11 Q Mr. Estrada, how old are you today?

12 A Sixty-three years old.

13 Q Okay. And where were you born?

14 A Cuba.

15 Q Where you grow up?

16 A United States of America.

17 Q Where?

18 A I grew up in -- up north some.

19 Q What did you do as far as education, high school --
20 where you complete high school?

21 A I graduated from high school from Washington Lee High
22 School in Arlington, Virginia.

23 Q What did you do after school in regards to your
24 career or service? Tell us about that.

25 A I joined the Army.

1 Q All right. Did you volunteer?

2 A Yes, sir.

3 Q All right. What years were you in the Army?

4 A I was in the Army from '70 to '74.

5 Q All right. And where were you performing your duties

6 as a soldier?

7 A I was sent to Vietnam. I was a member of the 101st

8 Air Borne Division, a ranger, infantry front line.

9 Q Did you, actually, serve in the --

10 A Yes, two duties.

11 Q Were you injured in Vietnam?

12 A Yes, sir, I did.

13 Q Tell us about that.

14 A I was shot on my left arm (indicating). As a result,

15 they had to put two metal brackets on both sides to save

16 my arm.

17 Q Okay. Were you sent home after you were shot?

18 A I was sent to Germany to put a cast on and then they

19 sent me home.

20 Q Okay. Are you still having issues with that arm as a

21 result?

22 A Very much. I don't have the same results that I have

23 with my right.

24 Q Okay. Thank you for your service.

25 A Thank you.

1 Q When you came back home, did you do any post-war
2 education?

3 A Yes, sir. I went to college at Midlands Tech
4 College. I have an associate degree in electronic
5 technology. I, also, graduated from the criminal justice
6 academy.

7 Q What kind of work did you do in the last 30 years or
8 so?

9 A Electronics and police work.

10 Q Okay.

11 A Both of them.

12 Q Tell me what type of work in electronics and police
13 work.

14 A Well, I was involved in consumer electronics, you
15 know, fixing televisions, cameras for banks, you know.

16 Q Okay.

17 A Yeah.

18 Q What about your police service?

19 A I worked a little bit for the highway patrol and then
20 I went back to booking. And I was in charge of booking
21 department in Florence, South Carolina, Effingham.

22 Q Okay. April 4th of 2014, we all know you were there
23 that night, your wife told us. Tell us where you were on
24 this deck prior to it collapsing?

25 A I was sitting on the cooler just talking and -- on

1 the end of the cooler, top of the cooler.

2 Q Okay. Where would this cooler have been in this
3 photographs?

4 A Right there by the deck.

5 Q All right. Point to it.

6 A Right in that area (indicating).

7 Q So you're pointing to the corner of the deck?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q And that would be closest to the stairs?

12 A That's right.

13 Q You were sitting on the cooler?

14 A Yes, sir.

15 Q All right. What were you doing while you were
16 sitting on that cooler?

17 A I was just talking, listening to music and we decided
18 we would play some games, you know.

19 Q Okay.

20 A And I was enjoying playing a game and --

21 Q Any issues up until the time the deck collapsed with
22 the deck?

23 A Nope.

24 Q Anybody warn you of any conditions?

25 A No, sir.

1 Q All right. So you're seated on this cooler, tell us
2 what happens next.

3 A So I was sitting on the cooler, I seen everybody
4 panic and I turned to my left, I saw that big grill coming
5 at me. That's the one they just got through cooking, you
6 know, and it had hot charcoal. And very fast, I put my
7 left hand to block the grill from me because my feet was
8 -- my foot was amputated, the toe. And it through me to
9 the side where, you know, it caused me problem to get off
10 the floor.

11 Q All right. Let me go back. So you're on the cooler,
12 the deck collapsed, which way do you fall, to the right or
13 to the left?

14 A To the right.

15 Q Do you land on your right side?

16 A Yes.

17 Q When you look up, that's when the grill is coming
18 towards you?

19 A Yes, it was sliding toward me and it still had the
20 hot charcoals in it.

21 Q So what did you do?

22 A I stuck my left arm out to hold the grill.

23 Q Okay. Is this the grill we're talking about on the
24 bottom picture here?

25 A That's correct.

1 Q There appears to be a box, is that the game you were
2 playing?

3 A Yes.

4 Q So this cooler here -- I'm sorry, this grill here and
5 this is the game board you were playing on at the time?

6 A Yes, sir.

7 Q So you were somewhere in that area?

8 A Yes, sir.

9 Q Okay. When the grill comes to a rest, is your arm on
10 the grill?

11 A Still, yeah, until they came for help.

12 Q Who helped you up?

13 A Mr. Ruff.

14 Q And what did they do with you?

15 A They brought me down the steps and sat me down in a
16 chair.

17 Q All right. You mentioned your foot had been
18 amputated, tell us about that. What part of your foot was
19 amputated?

20 A My right toe.

21 Q Which toe, the big toe?

22 A The big toe, yes.

23 Q Is that because you have diabetes?

24 A Yes, correct.

25 Q Okay. So you're helped off the deck, you're put down

1 in a chair; is that correct?

2 A Yes.

3 Q At some point, does EMS arrive?

4 A Yes.

5 Q Do they put in the back of an ambulance?

6 A My wife and I, yes.

7 Q Take you to the hospital?

8 A That's correct.

9 Q Are you examined at the hospital?

10 A Yes, sir.

11 Q What problems are you having at this point?

12 A I'm having some very bad problems with my shoulder
13 ligaments, you know.

14 Q What about your foot? Any injuries to your foot?

15 A I had a contusion on my foot.

16 Q Okay. A contusion on which foot, your right foot?

17 A Yes.

18 Q All right. Were you treated and released that night?

19 A That's correct.

20 Q All right. How were you doing over the next several
21 days?

22 A I was in pain, you know, my back, my neck started
23 hurting.

24 Q Okay.

25 A Real bad.

1 Q At some point, did you seek care with Health Source
2 Chiropractic Care?

3 A That's correct.

4 Q It appears you went there April 17th. Did you go
5 there with your wife?

6 A Yes.

7 Q All right. How is it you chose Health Source?

8 A Well, my wife, she's the boss. She take care of
9 everything. I don't drive, so, you know.

10 Q Do you drive?

11 A No.

12 Q So she's the boss, she chose the place?

13 A That's correct. She does everything.

14 Q Okay. All right. Let's talk about your treatment
15 there. It looks like you treated from April 17th to June
16 the 9th for the first round of treatment?

17 A Yes, sir.

18 Q What did they do for you?

19 A Well, they did extensive massaging. They did
20 electrical electrodes, you know.

21 Q Yeah.

22 A And there was other machines that I don't recall the
23 names.

24 Q Did they do hot packs?

25 A Hot packs, yes.

1 Q Cold packs?

2 A Yes, sir.

3 Q Electrical stimulation?

4 A Yes, sir.

5 Q Ultrasound?

6 A Yes, sir.

7 Q And adjustments?

8 A Yes, sir.

9 Q All right. You treated for about three months. How
10 were you doing when you left after your first round of
11 care in June?

12 A I was doing pretty fairly okay, but then, all of a
13 sudden, I started having, you know, back pains and neck
14 pains again.

15 Q Was he treating your back, neck and shoulder?

16 A All of that, yes, sir.

17 Q All right. Did you have any more problems with the
18 foot? I mean, were you released from the -- when you got
19 released from the hospital, they didn't treat your
20 amputation?

21 A Yeah, everything was okay on the shoulder.

22 Q All right. You go back to see him again in November,
23 so about five months later, why did you go back?

24 A Because I thought that I was getting a little bit
25 better, but -- you know, doing the exercises and stuff

1 like that, but then, all of a sudden, I started having
2 some problems, you know, sleeping. I couldn't sleep on my
3 left side any more because it hurt so bad. Less than a
4 minute, I had to turn back up (indicating) to sleep or to
5 the right (indicating), you know.

6 Q Okay. Any issues with lifting, household work, those
7 kind of things.

8 A Oh, I had to eliminate all that. Sometimes, I have
9 to have my wife help me put to put a shirt on.

10 Q Okay. You went back from November until January and
11 got released in January, how were you doing in January, in
12 January of 2014 -- 2015?

13 A I was doing the same.

14 Q Okay. You have not been back since January of 2015;
15 is that correct?

16 A Excuse me?

17 Q You have not been back since January of 2015?

18 A No, sir.

19 Q You've been released from the doctor's care?

20 A That's right.

21 Q What problems are you currently having with your left
22 shoulder?

23 A Very much so. You know, like I said, I'm having
24 problems sleeping at night when I turn to the left. I
25 can't even lift heavy weights anymore. You know, my

1 chores in the house that I used to do, I can't hardly do
2 anymore.

3 Q Okay. Do you have take over-the-counter pain
4 medicines?

5 A No, I take Tylenol sometime, you know.

6 Q All right. You were referred to an orthopedic; did
7 you go?

8 A Moore Clinic.

9 Q What did he recommend?

10 A Well --

11 Q Don't tell me what he said, just what was
12 recommended?

13 A MRI.

14 Q Did you undergo the MRI?

15 A No, I couldn't because I have a metal bracket in my
16 arm.

17 Q So because of the metal bracket in your arm, you
18 could not undergo the MRI?

19 A Yes, sir.

20 Q All right. That would have been the last treatment
21 you had for that shoulder?

22 A Yes, sir.

23 Q Do you believe the problems you're having now, the
24 pain in your shoulder, the pain in your back, the pain in
25 your neck are now permanent?

1 A Pretty much so.

2 Q Is that yes?

3 A Yes.

4 Q Did you have any issues with that shoulder prior to
5 this accident?

6 A Not at all.

7 Q You never had surgery on your shoulder?

8 A No.

9 Q Did you have surgery on the arm up until the top of
10 your forearm?

11 A That's correct, to my shoulder.

12 Q Let me show you what's been marked as Exhibit No. 2.
13 Are these your medical bills?

14 A Yes, sir.

15 Q All right. Are these all related to this deck
16 collapse only?

17 A Yes, sir.

18 Q Did you have any conversations with the owners of
19 this house after the deck collapsed?

20 A No, sir.

21 Q Did you see him at the scene the night of the
22 collapse?

23 A The night, yes.

24 Q Have you heard from them since?

25 A No.

1 Q Have they called to check on you?

2 A No, sir.

3 Q Have they offered to take you to a doctor?

4 A No, sir.

5 Q Have they done anything for you?

6 A No, sir.

7 Q Thank you.

8 MR. REARDON: No further questions, Your Honor.

9 THE COURT: All right.

10 Anybody else?

11 MR. ELLIS: I do, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. ELLIS:

14 Q Mr. Estrada, Todd Ellis.

15 A Yes, sir.

16 Q Approximately, how many folks were on that deck at
17 the time of this collapse? I'm not sure I've heard that.

18 A Probably about 10 or 11, something like that.

19 Q Not exactly sure?

20 A Yeah, I'm not exactly sure.

21 Q But it was very crowded; is that correct?

22 A Little bit, yes.

23 Q Do you know if, in fact, Cristian Reyes was on the
24 deck at the time that it collapsed?

25 A I don't remember seeing him at the time it collapsed,

1 but I saw him afterwards.

2 Q Are you sure he was not on there or you just don't
3 know?

4 A I just don't know.

5 Q Okay. Thank you.

6 A Uh-huh you're welcome.

7 THE COURT: All right. Mr. Wlodarczyk.

8 CROSS-EXAMINATION

9 BY MR. WLODARCZYK:

10 Q Good morning, Mr. Estrada. How are you today?

11 A Good morning, sir.

12 Q I had the opportunity to meet you before and talk to
13 you. I just have a few questions. I won't take much of
14 your time.

15 A Yes, sir.

16 Q Just to confirm, you didn't have any knowledge about
17 the conditions of the deck or any problems with the deck
18 or any repairs that were or were not made to the deck
19 prior to it falling; is that correct?

20 A No, sir.

21 Q Nobody made any representations to you prior to it
22 falling that the deck was safe or not safe; is that
23 correct?

24 A No, sir.

25 Q As far as you know, you didn't notice any problems

1 with deck in terms of being, I don't know the term,
2 slimsy, bouncy, squishy, anything that would make you
3 think that it was giving way until it fell?

4 A No, sir.

5 Q Okay. My understanding is your wife, I think,
6 testified yesterday that she was sitting in the chair that
7 was on the far side of the deck next to the door; is this
8 correct?

9 A That's correct.

10 Q And you were sitting almost adjacent to her on the
11 cooler that was by the stairs; is that correct?

12 A That's correct.

13 Q Were you facing her or towards her, could you see
14 her?

15 A I could see her some, yeah.

16 Q Now, Mr. Reyes, I will represent to you, testifies in
17 his deposition that he was standing in front of that
18 sliding glass door when the deck gave way. Would you
19 agree with me that if he was standing -- I apologize, this
20 is probably better. If your wife is standing on the left
21 side as we're looking and you were on the right side and
22 Mr. Reyes is somewhere in this door area that he would
23 have been in your field of vision when the deck collapsed?

24 A Like I said, I don't recall seeing Mr. Reyes when the
25 deck collapsed, but I saw him afterwards.

1 Q Okay. But my point is if someone was standing there,
2 you would have been able to have seen that person standing
3 in --

4 MR. ELLIS: Objection.

5 THE WITNESS: But I wasn't looking that way.

6 MR. ELLIS: Objection, Your Honor, calls for
7 speculation. He asked him whether he saw him or not, now
8 he's saying should he have been able to see him.

9 MR. WLODARCZYK: I said see him.

10 THE COURT: Just reword it.

11 MR. ELLIS: So in other words you're speculating.

12 MR. WLODARCZYK: Hypothetical.

13 THE COURT: Go ahead.

14 BY MR. WLODARCZYK:

15 Q So you did not see him at any point in time on the
16 deck that night?

17 A No, sir.

18 Q You did see Mr. Ruff, correct, prior to the fall?

19 A Sure.

20 Q You saw Ms. Smith?

21 A Sure.

22 Q Ms. White?

23 A Sure.

24 Q Ms. Williams?

25 A Yeah.

1 Q She was there, too, right? You remember seeing all
2 those people on the deck beforehand?

3 A Yeah, we were playing games, you know.

4 Q But at no point in the two hours that you and your
5 wife were on the deck you recall seeing Mr. Reyes on the
6 deck?

7 A I don't recall seeing him, but I saw him after that.

8 Q Good. Okay. You get free medical treatment through
9 the VA; is that correct?

10 A Yes.

11 Q Due to your service?

12 A Right.

13 Q And I understand from your prior testimony, you have
14 never seen anybody, any doctor or health care provider
15 through the Veterans Administration for any problem
16 related to this accident?

17 A That's correct.

18 Q Okay. In fact, this accident happened April 4th; is
19 that correct?

20 A That's correct.

21 Q All right. And you were going to the chiropractor --
22 your first visit was April 17th?

23 A Yes, something like that.

24 Q And in between that date on April 17th, you and your
25 wife went to Mr. Reardon's office; is that correct?

1 A Yes.

2 Q And he is the one that recommended you go to the
3 chiropractor?

4 A Yes.

5 Q Okay. Considering the shoulder injury, the pain it's
6 causing you, how come you haven't seen any of your VA
7 doctors or made a complaint with the VA for any type of
8 treatment?

9 A Well, if I explain it, please?

10 Q Sure.

11 A First of all, VA won't pay for this because it didn't
12 happen, you know.

13 Q What didn't happen?

14 A I mean, this right here, the VA won't pay for.

15 Q Okay. They paid for your diabetes with regard to
16 your --

17 A Yeah, whatever is personal that I have, yes, as far
18 as diabetes, all that stuff.

19 Q But that's not service related?

20 A What?

21 Q Your diabetes?

22 A No.

23 Q But you still get treatment for it?

24 A Of course.

25 Q So why -- what's the difference between getting

1 treated for a nonservice-connected injury of diabetes and
2 your shoulder?

3 A Well, first of all, as we stated earlier, the
4 ligaments are damaged in here, supposedly, you know,
5 that's what the orthopedic told me at Moore Clinic. But
6 they can't go any deeper in there to look and see what it
7 is, so VA would have done the same thing.

8 Q But you haven't even consulted with the VA?

9 A No, sir.

10 Q So you don't know what could be done?

11 A That's right.

12 Q Thank you, sir.

13 MR. WLODARCZYK: I don't have further questions.

14 THE COURT: Any redirect, Mr. Reardon?

15 MR. REARDON: Just real quick, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. REARDON:

18 Q We've all heard about the VA, how long does it take
19 to get an appointment at the VA to see a doctor?

20 A You see a doctor today, then it might be six months
21 before you see him again.

22 Q A tremendous delay; is that correct?

23 A That's correct.

24 Q You mentioned they won't pay where there's an
25 accident claim where somebody else is at fault, correct?

1 A That's right.

2 Q Because what -- the deck collapsed under the Marshall
3 home, you would have to file that an injury occurred as a
4 result of someone else's negligence, correct?

5 A That's correct.

6 Q Thank you.

7 THE COURT: Anything further?

8 MR. ELLIS: No, sir.

9 THE COURT: All right. Thank you, sir. You can step
10 down.

11 Call your next witness.

12 THE WITNESS: Thank you, Your Honor.

13 MR. RILEY: Your Honor, before our next witness, we
14 have an issue we need to take up outside the presence of
15 the jury.

16 THE COURT: All right. Thank you, ladies and
17 gentlemen. We will take a quick break. Don't talk about
18 the case.. Head on back to your jury room.

19 (WHEREUPON, the jury left the courtroom at 10:04
20 a.m.)

21 THE COURT: All right. Yes, sir.

22 MR. RILEY: Can we get Mr. Ruff on the stand, Your
23 Honor?

24 THE COURT: Oh, okay.

25 While the jury is out, I like to talk out loud while

1 I'm thinking sometimes. Is there an issue as to licensee
2 versus invitee in this case?

3 MR. WLODARCZYK: I don't know if there's any evidence
4 that they were invitees. They all admit they were at the
5 party as social guests. The case law I cited says that a
6 guest --

7 THE COURT: I'm reading this case. This case is
8 about a guy who was on somebody's land without them.
9 knowing about it to chase a raccoon. And he was
10 classified as a licensee. So, you know, the fact pattern
11 of this case that you handed up is very different than --

12 MR. WLODARCZYK: And I did not --

13 THE COURT: -- this case.

14 MR. WLODARCZYK: I did not submit that for --

15 THE COURT: I understand.

16 MR. WLODARCZYK: But I think, the social guest
17 standard is clear that they're licensees of --

18 THE COURT: And, normally, you're absolutely correct.
19 I was just reading the whole invitee section of it.

20 Is there any argument from the Plaintiffs that this
21 is more of an invitee situation versus a licensee?

22 MR. WLODARCZYK: I think that case is only for one
23 case and only has to do with the duty to inspect or
24 repair.

25 THE COURT: Right.

1 MR. WLODARCZYK: Everything else is a --

2 MR. REARDON: Your Honor, give us a minute. You're
3 asking us whether he's a licensee versus invitee?

4 THE COURT: Yeah.

5 MR. ELLIS: Your Honor, there is a case out there
6 that states, obviously, that he's in the business of
7 renting homes, so the tenant is possibly an invitee. The
8 issue is just expand to his guest. You rent the house
9 with the anticipation that your tenant will then be able
10 to have with no prohibition, which they said from the
11 stand, guests over at his home. It could fall in the
12 invitee.

13 THE COURT: Well, that's why I asked the question.

14 MR. ELLIS: That's what I thought.

15 THE COURT: This unique fact pattern where it's not
16 the owner of -- the owner was not the person hosting the
17 party.

18 MR. ELLIS: That is correct.

19 THE COURT: The tenant was hosting the party. That's
20 why I asked the question, so.

21 MR. ELLIS: I know.

22 THE COURT: I'm just thinking out loud.

23 MR. ELLIS: We're trying to give you more concrete
24 theory on that. We've done research on it preparing for
25 the charges.

1 THE COURT: Okay. We'll talk about it later. I'm
2 just letting y'all know what I'm thinking about.

3 MR. WLODARCZYK: I would just say, practically, if
4 the tenant was considered the owner, then the guest would
5 still be social guests.

6 THE COURT: I understand what you're saying. Right.
7 I got you. I just want to know where we going with this.
8 I want to have a charge conference this afternoon as well.

9 MR. WLODARCZYK: Okay.

10 THE COURT: So y'all try to have this in request for
11 charge.

12 MR. WLODARCZYK: A scheduling matter, I think we can
13 get done with most of the Plaintiffs, not all of the
14 Plaintiffs this morning. I think that we can get done
15 with my expert this afternoon. Mr. Reardon may call him,
16 call my expert. I have no problem -- you know, we go to
17 5:00, finish up. If we can just agree to do charge and
18 closing in the morning --

19 THE COURT: Yeah, we're definitely going to charge
20 and close in the morning.

21 MR. WLODARCZYK: Okay.

22 THE COURT: I just want y'all's request to charge
23 this afternoon.

24 MR. REARDON: Okay.

25 THE COURT: So y'all -- we can try to put something

1 together during breaks this afternoon.

2 MR. WLODARCZYK: I was going to propose a special
3 jury verdict form. Do you want me to submit --

4 THE COURT: He's working on that right now. Why
5 don't y'all look at what he's going to be working on --

6 MR. ELLIS: Do it now?

7 THE COURT: -- and then y'all can amend from there,
8 unless you have one.

9 MR. ELLIS: After he finishes?

10 THE COURT: Yeah.

11 Okay. Are we ready?

12 MR. RILEY: We're ready, Your Honor.

13 THE COURT: Okay. Bring them in.

14 (WHEREUPON, the jury returned to the courtroom
15 at 10:10 a.m.)

16 BAILIFF: Your Honor, the jury's present.

17 THE COURT: All right. Thank you, ladies and
18 gentlemen.

19 All right. Yes, sir.

20 MR. RILEY: Thank you, Your Honor.

21 Thereupon;

22 TYRONE RUFF, after being duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. RILEY:

1 Q Mr. Ruff, would you please introduce yourself to the
2 jury?

3 A I'm Tyrone Ruff.

4 Q And how old you are?

5 A Thirty-two.

6 Q Are you a resident of South Carolina?

7 A That's correct.

8 Q Where did you grow up?

9 A Right here in Columbia.

10 Q Were you previously married to Carletta Williams?

11 A Yes, I was.

12 Q Do you have any children together?

13 A Yes, I do.

14 Q How many?

15 A I have three.

16 Q You support your children?

17 A Yes, I do.

18 Q What kind of work did do you in April of 2014?

19 A Well, I was cooking at McDonald's at night from 4:00
20 to 12:00 and I worked for Miller Painting in the morning
21 from 7:00 to 3:00.

22 Q How long had you been employed at those jobs at that
23 time?

24 A A little over a year.

25 Q Were you living in Richland County on April 5th,

1 2014?

2 A Richland County, no. I was living in Lexington
3 County.

4 Q But you were still working at McDonald's and
5 painting?

6 A That's correct.

7 Q How do you know Latasha White? She was the tenant
8 that lived at the Marshalls' home on April 5th, 2014.

9 A That's my older sister.

10 Q You understand she rents that home from the
11 Defendants?

12 A Yes, I do.

13 Q Were you at her house on April 5th, 2015?

14 A That's correct.

15 Q Why were you there?

16 A I was there for my mother's birthday party.

17 Q Had you been to her house before?

18 A Yes, I have.

19 Q What time did you arrive that evening?

20 A Arrived about 9:00.

21 Q Generally, tell the jury what you did when you
22 arrived at the home.

23 A When I arrived there, I escorted my family to the
24 house and greeted my mother, told her happy birthday. The
25 kids got their hugs, walked down to the hall to the rest

1 of the kids. Me and my wife went outside where all of the
2 laughing was going on. They was grilling and playing
3 games and that's when we started playing games as well.

4 Q Let me kind of clear something up. You said you went
5 outside, was that outside on the deck?

6 A That's outside on the deck, correct.

7 Q You said people were grilling and playing games out
8 there on the deck?

9 A You're, also, correct.

10 Q How long do you think you were on the deck before it
11 collapsed?

12 A Probably about an hour and 30 minutes, something like
13 that.

14 Q I'm going to show you what has previously been marked
15 as Plaintiff's Exhibit No. 4. And I'd like for you to
16 point in that top picture there where you were sitting on
17 that deck when it collapsed?

18 A I was located right here (indicating) kind of against
19 the door near the steps.

20 Q All right. So you would be right here (indicating)
21 where the steps met the deck right by that door?

22 A That's correct.

23 Q I'm going to show you what's Plaintiff's Exhibit No.
24 5. In that picture that shows a closer view of where the
25 steps meet that deck, where would you have been sitting?

1 A The location right there to the far left if you
2 coming outside the door.

3 Q Where was Carletta sitting at the time?

4 A She was sitting right beside me right on the stop of
5 the steps.

6 Q Okay. So both you and Carletta at the time it
7 collapsed were seated right there where those steps meet
8 the deck?

9 A That is correct.

10 Q Thank you. Were you surprised when the deck
11 collapsed?

12 A I surely was.

13 Q Was there any warning before it collapsed?

14 A No, there was no warning at all.

15 Q Was there any warning given to you about the
16 condition of the deck?

17 A There was absolutely none.

18 Q Did anybody do anything on that deck to make it
19 collapse that night?

20 A Not to my knowledge. I seen nothing.

21 Q Was anybody jumping on the deck?

22 A No, we wasn't.

23 Q Was anybody dancing on the deck?

24 A No, there wasn't.

25 Q Were there people wrestling on the deck?

1 A No, there wasn't.

2 Q You didn't see anything happen on that deck that
3 would cause it to collapse done by anybody else?

4 A Nothing.

5 Q What did you do after that deck collapsed?

6 A After that deck collapsed, I was in shock. I was in
7 V shape stuck for a minute. Uncle George, like he said,
8 he testified he had just got his toe amputated, so he came
9 towards me. I was trying to hold him because he had the
10 grill, you know what I'm saying. My wife, she was right
11 there on the steps that had collapsed. So I'm stuck
12 between everybody, you know what I'm saying. So at the
13 same time I'm trying to get my uncle, then worry about my
14 wife, then little girl over there trapped and my little
15 boy, he was right there. So I was trying to get myself up
16 so I'd be able to help them, you know what I'm saying. So
17 I tried to help my wife up and help Mr. George up and get
18 to my auntie, Linda Estrada.

19 Q So to summarize what you said, you were shocked?

20 A Yes, I was real shocked.

21 Q You saw people who needed help?

22 A Exactly.

23 Q You provided help to them?

24 A Exactly.

25 Q Were you drinking that night?

- 1 A No, I wasn't drinking.
- 2 Q Were you hurt as a result of the deck collapsing?
- 3 A Yes, I was hurt.
- 4 Q Tell the jury what injuries you had immediate after
5 that deck collapsed?
- 6 A Well, immediately, first injury came was my right
7 wrist. It started to swell. After I got everybody off
8 the deck, I realized when I sat myself down my wrist
9 started to swell up and I started feeling throbbing pain
10 from my back.
- 11 Q So your right risk was hurting you?
- 12 A That's correct.
- 13 Q And your back was hurting you?
- 14 A That's correct.
- 15 Q Did you get any medical treatment that night?
- 16 A I did.
- 17 Q Where did you go?
- 18 A I went to Palmetto Health.
- 19 Q How did you --
- 20 A Palmetto Baptist.
- 21 Q You went to Palmetto Baptist ER?
- 22 A That's correct.
- 23 Q How did you get there?
- 24 A Personal transportation.
- 25 Q What type of transportation?

1 A A car.

2 Q Who drove you?

3 A I drove.

4 Q Why did you have to take a car?

5 A I had to take a car because there wasn't enough EMSs
6 at the moment and they said it was going to be a minute
7 because they was already packed.

8 Q So they didn't have enough ambulances for you to ride
9 in?

10 A That's correct.

11 Q What did Baptist Hospital do for your injuries?

12 A Can you repeat that, sir?

13 Q What did Baptist Hospital do to treat you for your
14 injuries?

15 A Well, first thing, they got me in there and got to
16 doing the x-rays on my right wrist and then wanted to do
17 x-rays on my lower back.

18 Q Were you given any medication?

19 A I was. I was given multiple medications and I, also,
20 received a brace for my right wrist.

21 Q Were you released that evening?

22 A I was released that same night, yes, sir.

23 Q Now, this pain you had, what happened to it after you
24 left the ER?

25 A After the ER, I mean, I still had the same pain. All

1 they gave me was some -- they gave me some medication at
2 that moment in time and told me to get a prescription
3 filled.

4 Q Did you get any treatment at Lexington Urgent Care at
5 any time?

6 A Yes, I did. It was, actually a follow-up because I
7 my pain had increased. Due to it being overnight, my pain
8 had increased, so I went to get some help with my pain.
9 They also did x-rays for my right wrist and for my lower
10 back. And they, also, gave me more medications, gave me
11 tons of medication, actually. Then they gave me -- told
12 me to get an MR -- MRI.

13 Q Was there any problem scheduling that MRI?

14 A Yes, it was. It was a big problem because I ain't
15 had no insurance.

16 Q Was a referral required for that MRI?

17 A Yes, it was.

18 Q Was it difficult to find a physician to give you that
19 referral?

20 A Yes, it was. Actually, I called -- to be honest with
21 you, me and my wife -- for mine, we called everybody in
22 Lexington County, Richland County for me. Everybody said
23 they don't do MRIs and they told me they couldn't do it
24 unless I had insurance. So I been trying to see if they
25 could bill me later and they was like they can't do it

1 like that. So I had to go through -- find another way to
2 get help.

3 Q What facility referred you for the MRI?

4 A Riley Family Practice.

5 Q Do you have a primary care physician?

6 A No, I don't.

7 Q You don't have a family physician?

8 A No, sir.

9 Q So you had to seek on what family physician to use?

10 A I surely did.

11 Q Now, after this MRI, what other type of treatment did
12 you get?

13 A After my MRI, I went to therapy.

14 Q Physical therapy?

15 A Yes, that's correct.

16 Q Approximately, how long did you treat with a physical
17 therapist?

18 A About six weeks -- probably about a month.

19 Q About a month?

20 A Yeah, a month.

21 Q What did the physical therapist do for you?

22 A The physical therapist gave me electrical shocks,
23 cold pack, massage pack. He did physical therapy or
24 exercises with me. He did a lot of things with my back.

25 Q So they provided cold packs and hot packs?

1 A Yes, sir.

2 Q Massages?

3 A Yes, sir.

4 Q And adjustments?

5 A Yes.

6 Q You believe all of your treatment was reasonable and
7 necessary?

8 A Yes, it was.

9 Q Now, you were released from the physical therapist
10 July 10th, 2014. What is your condition like today?

11 A I mean, today, I mean too much heavy weight on my
12 right wrist, it give me like immediately pain, but on my
13 back, I still have an occasional pain on that, so I have
14 to be careful how I move around. Because I, also, was
15 advised to put a pillow between my legs -- that's the way
16 I have to sleep, pillow between my legs due to the pain in
17 my back. So I have a pillow back there and a pillow up on
18 my stomach, so all that, you know, change different when
19 you sleeping.

20 Q What type of activities do you enjoy doing with your
21 children?

22 A I mean, I have three little boys all under the age of
23 10. And I like really having fun, like laughing a lot, so
24 we be like crawling on the ground like dogs, barking at
25 the kids, chasing the kids around. Being able to pick

1 them up and play and wrestle, stuff like that, you know
2 what I'm saying.

3 Q Were you able to partake in any of those activities
4 for approximately a month after this incident?

5 A Yes, I couldn't do nothing. You know, I couldn't do
6 none of that.

7 Q Now, I think you also testified that you worked for
8 Miller Painting at this time?

9 A That is correct.

10 Q What arm is your dominate arm?

11 A My dominant arm is my right arm.

12 Q Were you able to paint due to this wrist injury?

13 A No, I could not.

14 Q I'm going show to you what's previously been marked
15 as Plaintiff's Exhibit No. 13. It's a packet of your
16 medical bills that total \$12,140. Do you recognize that?

17 A Yes, I do recognize each and every last one of them.

18 Q And those bills were incurred as a part of this
19 incident?

20 A That's exactly correct.

21 Q Those bills are still owed today?

22 A That's exactly correct.

23 Q And it's all related to the treatment for the
24 injuries that you sustained as a part of this deck
25 collapsing?

- 1 A Absolutely, that is correct.
- 2 Q So do you have any lost wages as a part of this
- 3 claim?
- 4 A Yes, I do.
- 5 Q How many days were unable to work, three?
- 6 A Well, yes, that's what happened at first.
- 7 Q And that was three shifts at McDonald's?
- 8 A Yes, sir.
- 9 Q How much did you make per hour at McDonald's?
- 10 A Seven twenty-five, sir.
- 11 Q How long were your shifts?
- 12 A My shoplift last from 3:00 -- I mean, from 4:00 to
- 13 12:00.
- 14 Q So eight-hour shifts?
- 15 A That's correct.
- 16 Q So you made \$170 -- over those three days, you lost
- 17 out \$174; is that correct?
- 18 A That's correct.
- 19 Q How much were you paid by Miller Painting?
- 20 A Ten dollars.
- 21 Q You missed one day of work as part of this?
- 22 A Yes, sir.
- 23 Q And that was a hundred dollars worth of wages?
- 24 A Yes.
- 25 Q Are you asking the wages be paid --

1 A That is correct.

2 Q -- as part of this case?

3 MR. RILEY: Thank you, Your Honor. I have no further
4 questions of this witness.

5 THE COURT: All right. Any other lawyer over here
6 have any questions?

7 MR. ELLIS: Yes, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. ELLIS:

10 Q Tyrone, I'm Todd Ellis. Approximately how many
11 people do you think were on the deck that night at the
12 time of the incident?

13 A We was so excited and having so much fun, so had to
14 be, at least, probably a total of nine, 10, maybe.

15 Q Describe the condition after it fell. Was it
16 chaotic, was it loud?

17 A It was very loud. Actually, it was crazy, like, you
18 know what I'm saying. Everybody was panicking. We didn't
19 know what danger we was really in, you know what I'm
20 saying. You know, the deck collapse, you just -- you come
21 here to have fun. It's like I'm sitting in this chair
22 right now and this chair drop, I'm not expecting that. So
23 it really threw everybody off.

24 Q Was it chaotic?

25 A Yeah, it was very chaotic.

1 Q Were people crying?

2 A They was crying, they was screaming.

3 Q Screaming?

4 A Yes, sir.

5 Q Did you happen to see my client at all, Cristian
6 Reyes, that night?

7 A Yeah, I seen him that night.

8 Q How about on the deck at the time or before the time
9 of the collapse?

10 A Yeah, I seen him on the deck. I seen him on the
11 deck. He came out and played tic-tac-toe. There was a
12 tic-tac-toe game out there, too. So everybody went back
13 and forth. It wasn't so much room, so most people, they
14 was on the ground or they was in the house. But like I
15 said, we was sitting down and we was on coolers.

16 Q Okay. Thank you.

17 THE COURT: All right. Mr. Wlodarczyk.

18 CROSS-EXAMINATION

19 BY MR. WLODARCZYK:

20 Q Good morning, Mr. Ruff.

21 A Good morning to you.

22 Q I have just a few questions. You were sitting on the
23 stairs with your wife; is that correct?

24 A Actually, I was sitting on the deck and my wife was
25 sitting on the stairs.