

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-CP-26-00135
Appellate Case No. 2014-002491

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SC Court of Appeals

Callie Barras.....Respondent,

v.

City of Myrtle Beach,.....Appellant,

RECORD ON APPEAL
VOLUME II

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1 responsible for the facilities; right?

2 A Yes.

3 Q So when it comes to the maintenance of the
4 facilities, that's the City's responsibility; right?

5 A Yes.

6 Q When it comes to the cleaning of the facility, the
7 rec center, that's the City's responsibility?

8 A Yes.

9 Q When mats are purchased and put down, that is also
10 the City's responsibility; correct?

11 A Yes.

12 Q And the City decides where the mats are going to
13 be and whether the mats are taken up or not; is that
14 right?

15 A Yes.

16 Q All right. So in the instance of the mats in this
17 particular case, do you remember having a conversation
18 with anybody from senior bingo regarding the mats?

19 A I don't recall having a conversation about mats.

20 Q Okay. Now, you did come out there on March 20th;
21 is that correct?

22 A Yes.

23 Q And you had the meeting regarding the -- regarding
24 whether or not seniors could -- they could limit who
25 could and could not come to bingo; is that correct?

1 A Yes.

2 Q All right. And you also indicated that after the
3 meeting -- and I think you said that first meeting was
4 with just a few people; is that right?

5 A Yes. It was Irene --

6 Q Okay.

7 A -- Sarge and Oscar.

8 Q Okay. So Irene, Oscar and Sarge met with you.
9 You went over why they couldn't limit it; is that
10 right?

11 A Yes.

12 Q And did they accept what you told them?

13 A They did. I gave them a choice.

14 Q Okay.

15 A We can operate as we are and not restrict based on
16 discrimination, or they could rent the hall.

17 Q So they asked to make a change, you said, no
18 unless you want to make these changes. And they said,
19 no, we're going to stick with where we're at?

20 A That's right.

21 Q Is that right?

22 A That's right.

23 Q Okay. Then you went into the kitchen; is that
24 correct?

25 A I walked through the hall. I probably went in the

1 kitchen, I normally do. And I say, hey, how are you,
2 thanks for, you know, coming, that type stuff.

3 Q Okay. And you had some conversations with people
4 in the kitchen; is that correct?

5 A I probably did.

6 Q All right. And do you remember as of right now as
7 to what your conversations were about?

8 A I do not.

9 Q Okay. And is it possible that in those
10 conversations something came up regarding mats?

11 A It's possible.

12 Q Okay. And, in fact, you've been here through the
13 course of this trial, and you've heard testimony from
14 three different individuals who indicated they had
15 conversations with you about mats; is that right?

16 A They actually said, we had meetings about mats.

17 Q Okay.

18 A We never had meetings about mats. Have they had a
19 conversation, I don't recall.

20 Q All right. So you differentiate between a meeting
21 and a conversation. So is a meeting just when it's
22 scheduled?

23 A Not always.

24 Q Okay. Well, how are you differentiating between a
25 meeting and a conversation?

1 A Meetings normally last a while, as opposed to
2 making a comment about something.

3 Q Okay. So you believe there's a time requirement
4 as to whether it becomes a meeting or whether it's just
5 a conversation?

6 A I do. We didn't have anything scheduled.

7 Q Okay. So there was nothing scheduled, but it is
8 possible that you had a conversation regarding mats; is
9 that right?

10 A Yes, it's possible.

11 Q And if there was this conversation regarding mats,
12 you never passed any of that on to Dustin; is that
13 right?

14 A That's right.

15 Q And is it possible that in that conversation
16 regarding mats they told you that there had been issues
17 with the mat -- with mats being wavy and people
18 tripping over those mats?

19 A I'm sorry, what was your question?

20 Q Is it possible that in that conversation that they
21 had a conversation with you regarding --

22 A Yes. Yes, it's possible they had a conversation
23 about that.

24 Q And would that be important for you to know?

25 A Sure.

1 Q Because you guys are responsible for the facility;
2 right?

3 A That's right.

4 Q All right. But from March the 20th until April
5 the 8th, there was no change; is that right?

6 A There was not. If I had a conversation about
7 mats, and I did hear the testimonies from Ms. Callie
8 and Mr. LeRoy, I believe, in which they said we had a
9 conversation about mats, and they also said that I said
10 that because of water spills on the floor we weren't
11 going to remove those mats. That sounds like me.

12 Q Okay. So you would agree, then, if that
13 conversation was had and they made that request to you,
14 that you would probably deny the request to take up the
15 mats; is that right?

16 A That's right. Our kitchen is a long, linear
17 kitchen. And you have to carry water in a coffee pot
18 from the sink about 10, 15 feet over to the coffee
19 server to pour water in to make coffee. A water spot
20 on an orange floor you cannot see. So I'm concerned
21 about spills. You can see a three-foot-by-ten-foot
22 graphite colored rug on an orange floor.

23 Q Is there a possibility that there's other ways to
24 resolve a problem with wrinkling rugs?

25 A Maybe. But there are other opportunities or other

1 questions are asked me all the time concerning programs
2 or program safety. For example, why does my son have
3 to wear a cage on his batters helmet when they don't
4 require it in little league rules.

5 Q Okay. Now, back to the carpets a second. Is it
6 possible that there would be mats that are heavier that
7 could be put down in place of those thin mats that were
8 there?

9 A There's possible.

10 Q And isn't it true that Dustin, in fact, has the
11 ability to make purchases up to \$2,500 on his own?

12 A That is true.

13 Q And that wouldn't -- so he wouldn't have had to
14 requisition it through the normal channels; is that
15 right?

16 A Well, he would have -- no, he wouldn't. He could
17 use a local purchase order and make that happen.

18 Q Okay.

19 MR. NAPPIER: Thank you. That's all the questions
20 I have.

21 MR. BATTLE: Nothing further, Your Honor.

22 THE COURT: You may step down. Thank you,
23 Ms. Stone.

24 (Witness excused.)

25 MR. BATTLE: The Defense rests, Your Honor.

1 THE COURT: All right, very well. Ladies and
2 gentlemen, I have some matters that I now have to take
3 up again with the attorneys, so I'm going to let you go
4 home for this afternoon. Be back in here at 9:30 in
5 the morning. Mr. Ropp, you going to have something for
6 them?

7 THE BAILIFF: Yes, sir.

8 THE COURT: I'm sure you will, okay.

9 (WHEREUPON, the jury exited the courtroom at
10 3:20 p.m.)

11 THE COURT: All right. Motions?

12 MR. BATTLE: Renew my motion for a directed
13 verdict, sir. Recreational Use Statute, licensee, also
14 the Tort Claims Act, the inspections Mr. Jordan
15 testified to.

16 THE COURT: I granted your motion as to licensee.

17 MR. BATTLE: What's that?

18 THE COURT: Didn't I grant your motion as to the
19 determination as to licensee?

20 MR. BATTLE: I apologize, Your Honor, I'm kind
21 of -- yes, sir. The other one is just Plaintiff has
22 presented no expert testimony about any defects with
23 the mats, saying the mat's in the wrong place. The
24 defect is just the mat was bunched up, that's a normal
25 condition. So I would argue that he's not shown his

1 burden of any defect.

2 THE COURT: Well, he has produced evidence that it
3 was a chronic condition. He has produced evidence that
4 there was notice. He's produced evidence concerning
5 time. Now, it will be up to the jury to determine
6 whether or not there was actual notice. It would be up
7 to the jury to determine whether there was reasonable
8 action to correct a defect if there was a defect. That
9 would also be a jury issue. So those matters would go
10 to the Tort Claims Act.

11 And as to the Recreational Use Statute which I
12 think comes in secondary to the Tort Claims Act, there
13 is some question as to her status as being either a
14 recreational user or not. I'm not sure that I know
15 exactly what she is. I think that it should certainly
16 go to the jury.

17 Even if she was a recreational use person, we
18 still have 27-3-60 which goes to willful or wanton
19 failure to correct a defect. Jury could find that.
20 It's a jury question. We're going to let it go to the
21 jury. Do you need to say anything for the record,
22 Mr. Nappier?

23 MR. NAPPIER: Not at this time, Your Honor.

24 THE COURT: Okay, thank you. All right,
25 gentlemen, I want you to, again, look very closely at

1 the charge. And as we have discussed, it's going to be
2 complicated. And I want us to give a charge that can
3 be understood by a lay jury. If you'll be here at 9 in
4 the morning, I will be here. And we will conference
5 again about it, have some time to straighten it up.
6 We'll go right into arguments and I'll charge; okay?

7 MR. NAPPIER: Okay. I can place any objections I
8 have at that time, Your Honor.

9 THE COURT: Yeah. And let's see what the final
10 product is; okay?

11 MR. NAPPIER: Sure, sure.

12 THE COURT: All right, thank you.

13 (The hearing adjourned at approximately 3:23 p.m.)

14 (The hearing resumed on Wednesday, May 17, 2017,
15 at approximately 9:05 a.m.)

16 THE COURT: I want to put the matters we discussed
17 in our charge conference in chambers on the record. I
18 have a charge, and you are all aware of the charge.
19 And, of course, you know my policy of providing the
20 jury with a transcript of the charge. Let me hear from
21 you, Mr. Nappier; is there any objections or deletions?

22 MR. NAPPIER: Yes, Your Honor. We would object to
23 the jury being charged with the Recreational Use
24 Statute. We believe that as a matter of law, the Court
25 should find that the Recreational Use Statute does not

1 apply in this matter, as the Plaintiff was not using
2 the premises for recreational purposes.

3 It is uncontested that my client was at the
4 premises as a volunteer. She was working as a
5 volunteer in the kitchen. They made it a big point to
6 say that the kitchen was off limits to the general
7 public. There was no testimony that she was there that
8 day to play bingo.

9 Now, they have indicated that she indicated that
10 she has played in the past. She was never asked the
11 question did she -- was she intending to play that day.
12 And, quite honestly, it doesn't matter. Because when
13 this happened, she was working in her capacity as a
14 volunteer. She was not there for recreational use.
15 She was washing dishes, she was organizing food trays.
16 And therefore, under 27-3-30, the Recreational Use
17 Statute would not apply.

18 A second objection regarding the Recreational Use
19 Statute I would like to put on the record is under
20 27-3-40, it provides that the Act only applies when
21 there are entry fees charged. While it is accurate
22 that no entry fees were charged for the -- just the
23 bingo, it is clear that this facility is used
24 constantly by the public, and they are charged for
25 going to guitar lessons, going to private functions.

1 So the facility is often used in a capacity in
2 which charges are, in fact, levied upon the general
3 public for them to use it. In fact, Jordan, Mr. Jordan
4 indicated that everyday he counts receipts. They've
5 got money coming in, money coming in constantly. And,
6 therefore, under 27-3-40, also the Recreational Use
7 Statute should not apply.

8 Third of all, it is the responsibility of the
9 Defendant to offer sufficient evidence that the
10 Recreational Use Statute does apply. Has not happened
11 really because of the factors that I've listed. And so
12 therefore, Your Honor, we object to any charge on the
13 Recreational Use Statute.

14 THE COURT: All right. Mr. Battle, I'll hear you
15 on that.

16 MR. BATTLE: Your Honor, as I said yesterday, you
17 can't separate out the reasons she's going. She is
18 going to volunteer with her friends and put on this
19 program with people. She says that she normally played
20 bingo afterwards, Mr. Jordan testified that they
21 normally played bingo afterward. Obviously she never
22 got to the point that bingo started, but I don't think
23 that that changes the recreational use purpose here.

24 In regards to the concerns about the building
25 occasionally charging money, Recreational Use Statute's

1 purpose clause attaches to the individual, it's not the
2 building's function, it's the individual. Sometimes a
3 building that charges money regularly may open itself
4 up to the public and temporarily be a recreational
5 facility. In this specific case they were letting
6 people in for free to play senior bingo. I think that
7 covers the gist of it.

8 THE COURT: All right. I think that it's just a
9 matter that the jury can determine as to whether or not
10 it applies. I believe my charge certainly gives them
11 the ability to accept or reject the recreational use
12 factors. They can make a determination as to her
13 purpose, her status and whether it applies.

14 Okay. What else, Mr. Nappier?

15 MR. NAPPIER: Your Honor, the second issue we
16 would like placed on record is the Court has -- is
17 going to charge the jury that my client is a licensee,
18 and therefore the standards as applied to a licensee
19 apply to Ms. Barras. A licensee is somebody that
20 enters the property for their own benefit.

21 My client clearly was not acting in a licensee
22 capacity, but instead was an invitee and, more
23 specifically, should have been a business invitee, as
24 she was there for the purposes of the owner which is
25 the -- the owner of the property being the City of

1 Myrtle Beach. It was their program that she was
2 helping run as a volunteer, which they said they can't
3 even run if they didn't have the volunteers there.

4 Therefore, it's my position that while there is
5 language referring to volunteers as being a licensee,
6 this particular set of circumstances, it's my position
7 that my client was not a licensee, and therefore the
8 charge of stating that she is a licensee is improper.
9 She should be -- the charge should be that she is an
10 invitee.

11 THE COURT: Well, I think the issue of whether or
12 not she was a volunteer or whether she was there for
13 recreational purposes is something that the jury can
14 determine. But in either case, the jurisprudence in
15 this state has specifically said that a person who was
16 there for recreational uses or as a volunteer are
17 licensees. And I think that that is the correct
18 ruling. Okay. Was there anything else?

19 MR. NAPPIER: No, Your Honor. Those are mine.

20 THE COURT: Anything else, Mr. Battle?

21 MR. BATTLE: I need to lodge an objection about
22 the verdict form. It makes no mention of the gross
23 negligence standard or the Recreational Use Statute.
24 And --

25 THE COURT: I think my charge clearly indicates

1 the burden of proof and the standards that must be
2 applied. What you are asking for are just special
3 interrogatories which I do not think are necessary.
4 The jury can certainly, while it may be informative to
5 you, I don't think it's necessary for the jury to reach
6 a verdict.

7 We have prepared a verdict form which is being
8 commonly used in this state, not only by me but, I
9 think, by many other judges as well concerning the
10 comparative negligence which does require, in my view,
11 certain special interrogatories. And I think to add
12 additional interrogatories is unnecessary and would
13 just confuse the jury. And I'm not going to do that.
14 Okay. Anything further?

15 MR. BATTLE: No, Your Honor. Thank you.

16 THE COURT: All right. Chris, if you would.

17 (WHEREUPON, the jury came into open court at
18 approximately 10:07 a.m.)

19 THE COURT: All right. We have our jurors and our
20 alternates back in the courtroom. Good morning. We
21 are about to conclude this case by having the attorneys
22 do their closing arguments or their summation after
23 which I will instruct you on the law.

24 During closing arguments, it's perfectly
25 acceptable for attorneys to speak to you about the

1 evidence in the case. It's perfectly acceptable for
2 them to speak to you on the law in the case and what
3 they believe the law is or the law that should be
4 applied in this case.

5 I've given these attorneys the benefit of my
6 charge, they know what I will be charging you. Let me
7 say that the purpose of closing arguments is not to
8 supplement the facts or the evidence in the case, and
9 what the attorneys say is not evidence in the case. As
10 I said, they could talk to you about the evidence.

11 And I can tell you that neither of these fine
12 lawyers would do so, but if they inadvertently add
13 something to the evidence or say something that you
14 didn't hear, disregard it. Because you can determine
15 this case only by what you heard from this witness
16 stand.

17 Also, if they speak to you on the law or comment
18 on the law, and it is not the law that I give you, you
19 must reject any such statements. And they would not do
20 it purposely, I can assure you. Because you are sworn
21 to follow the law and apply the law exactly as I give
22 it to you.

23 Now, we'll begin with Mr. Nappier, he has the
24 burden. He will open with his summation. And that
25 will be followed by Mr. Battle. And then Mr. Nappier

1 will have an opportunity to briefly respond, after
2 which I will charge you on the law. Mr. Nappier, are
3 you ready to go forward?

4 MR. NAPPIER: Good morning. 28 years, 28 years of
5 volunteering with the City of Myrtle Beach. That's
6 what the three witnesses that you heard from had
7 combined in time that they donated to the City of
8 Myrtle Beach. Ms. Barras, approximately 11 years, Ms.
9 Demczuk had 12 years, Mr. Marcotte had about five
10 years. They have a love for going to the bingo and
11 having and certainly participating in the bingo and in
12 running the bingo for the City.

13 And they have volunteered their time to come there
14 early in the morning two days a week and have done so
15 forever, something that they have in common. Another
16 thing that they had in common was what they told you
17 occurred. Now, there's no question that Ms. Barras
18 fell over a rug and that she was badly injured. And no
19 question about that, there was no dispute over her
20 medical bills and no dispute that she was taken off by
21 ambulance, and no dispute she went to therapy and
22 months of treatment.

23 What the question is and what is going to be the
24 big issue in this case is notice. And now, I referred
25 again to the three, and that being Ms. Barras and then

1 Irene Demczuk whose deposition you heard, of course she
2 was not here, she's out of the country, and then
3 Mr. Marcotte. And all three of them indicated that
4 they had a conversation with Ms. Stone, unequivocal,
5 that they had a conversation with her in which they
6 told her about, people are stumbling over these mats.
7 These mats are getting these waves in them, and people
8 are stumbling.

9 Now, you have -- it's senior bingo, you have older
10 folks there. If there's anybody that's going to be a
11 little more prone to be stumbling over a mat, it's
12 going to be the seniors. And so they raised the issue.
13 And every one of them described talking to her, every
14 one of them talked about that the conversation took
15 place in the kitchen, and every one of them said that
16 her response was, no, other things can fall on the
17 floor, and we can't roll up the mats. Because every
18 one of them also told you that their request was, can
19 we at least just roll up the mats while we're there,
20 and then we'll put them back.

21 Now, Mr. Battle did a good job as an attorney
22 should do, he picked, do you remember the date that you
23 were there, do you remember, was it before the meeting
24 or after the meeting, was it -- you know, what exact
25 day was it. Certainly there was some discrepancies.

1 But I want you to keep in mind, the meeting was to have
2 taken place in March of 2015. It was April of 2015
3 when my client fell.

4 It was not until December of 2016 that they first
5 deposed the folks and took their depositions. You
6 know, these transcripts that people read and said do
7 you remember when you said that, that was done a lot
8 later. And then now we had another gap till now. Now,
9 it's been over two years since this accident took
10 place. So memories fade.

11 And if you -- the judge told you earlier, he
12 talked about, well, this isn't like television or a
13 television trial. And I'm sure you're all going to
14 agree, well, this isn't quite as exciting as the
15 television trials. And the television trials are
16 scripted very nicely, and everybody is along on the
17 same line. That's not real life.

18 In real life, time fades your memories, and you
19 might forget specifics as to exactly what day it was or
20 was it before this or after that. But -- and let's
21 face it, as we all grow older -- I know for me, I mean,
22 as we grow older the memories fade a little quicker.

23 But these folks, if you look at the overall story,
24 every one of them, every one of them talked about
25 meeting the two that were here, they pointed, that's

1 who I talked to. Where did they say it happened, it
2 happened in the kitchen. What did we ask her to do, we
3 asked her to roll up the mats. What did she say, no,
4 we're not rolling up the mats. Every one of them.

5 Now, even Dustin Jordan said, yeah, I saw that
6 there were waves in the mats, he admitted that there
7 were waves in the mats. He wasn't there that day, the
8 day that the meeting took place, was very clear, and I
9 think my clients corroborated that, that he was not at
10 this meeting.

11 And I want to talk a little bit about Ms. Stone.
12 Ms. Stone gave very clear testimony about a lot of
13 things yesterday. She could tell you exactly what day
14 she was there, she could tell you how many minutes that
15 she talked to these folks and how many minutes she was
16 here and how many minutes she went and talked to the
17 other folks. She can tell you that she called the
18 attorney beforehand, talked to the attorney before to
19 make sure that what she was telling was correct. And
20 she went into a whole lot of detail about the senior
21 citizens wanting to keep the bingo for senior citizens.

22 And I want to talk just a second about that.
23 Because it seems that the testimony was kind of jabbing
24 saying, they wanted to exclude children, they want to
25 exclude young people. Well, if you heard all of that

1 testimony, it wasn't that -- that was not the primary
2 issue. I mean, these folks have grand kids, they have
3 children, it's -- they're going out and soliciting
4 prizes, and they say, this is for senior bingo, and
5 we're giving it away to seniors. And if they are
6 not -- if non-seniors were involved they were concerned
7 that they were making misrepresentations.

8 They asked, it was denied, story over. That has
9 nothing to do with my client, other than that's why
10 Ms. Stone was present. But back to what time saying
11 about Ms. Stone. Everything that she testified to very
12 clearly, she remembered this, she remembered that.
13 Then she was asked, did they ask you about the mats.
14 Her response was not, no, absolutely not,
15 unequivocally, no. That was not her response. I don't
16 remember. I don't remember if they asked me that, was
17 her response.

18 And then digging a little deeper, and said, well,
19 if they had asked you about it, or actually pointed out
20 what all three witnesses said she said, you said that
21 they couldn't roll up the mats, she said that's what I
22 would say, that sounds like what I would say. You guys
23 are the ones who are going to weigh the evidence here,
24 you guys are the ones who are going to decide what
25 happened.

1 But it sounds a lot like hedging. I'm not going
2 to say I was definitely there, but I'm not going to
3 tell you no. If you look at what all of the evidence
4 showed you from the other witnesses who took that
5 stand, I think it's very clear that before my client
6 fell, the City had notice.

7 Now, what did they do about that notice? Answer
8 to that's easy, nothing, zero. She said, we can't pull
9 up the mats, end of story. She didn't even bother to
10 tell Dustin, the guy who's running the place, wasn't
11 even bother -- wasn't even worth mentioning. After
12 all, this is senior bingo, they don't like it, we're
13 not making money off them, we're losing money off of
14 senior bingo, they can go elsewhere.

15 Do you remember I brought in the fellow who
16 delivered the mats. I brought him in for a very
17 specific reason. Because he really didn't know
18 anything about the mats, he never had been told a thing
19 about problems with the mats. That's what I wanted you
20 to hear. He's the guy delivering the mats, and you got
21 three of your long-time volunteers telling you, we're
22 having problems with the mats. People are stumbling
23 all over the place. I'm scared somebody is going to
24 fall and hurt themselves.

25 Wouldn't you go to the man who is delivering the

1 mats and say, we got a problem. Mr. Weiss is very
2 straightforward, he even told you he would want to
3 know. And they never told him. They never told him.
4 He told you about, I was told in March or April that
5 somebody -- that some people complained about stumbling
6 and wanted me to start rolling them up.

7 Well, Dustin explained that. He's saying, yeah, I
8 told them to start rolling it up, taking them up, when
9 she fell, after she fell. Didn't mean enough to the
10 City to even tell him, Mr. Weiss, that she had fallen.
11 Never told him. He continued delivering mats and never
12 told him that somebody had actually fallen over one of
13 the mats.

14 And if you remember, the testimony was, not only
15 were people stumbling in the kitchen, people were
16 stumbling in the hall, people were stumbling everywhere
17 over mats. There was not a problem just in the
18 kitchen. They didn't care. They didn't care.

19 Also asked him another question. There are two
20 issues here with Mr. Weiss. Do you have other mats
21 that might not cause such problems, do you have other
22 mats that won't wrinkle up? And he said, yes, there's
23 a thicker mat that we have. Grocery stores use them,
24 and it's -- you know, it's a whole lot less likely to
25 wrinkle up. Do you remember asking about those?

1 No. I asked him very clearly. In fact, I also
2 asked Ms. Stone if she ever looked into that. Nothing.
3 They did nothing, nothing, nothing, nothing.

4 So, they had knowledge. Knowledge was given right
5 around the 20th. Seems like from all the testimony, I
6 think you can safely say it was after she had that
7 meeting regarding the seniors and whether they are
8 excluding the younger folks or not. 20 days later,
9 almost three weeks, my client stumbling, crashed her
10 head into essentially a cement floor. And then they
11 have a little tile, underneath it's concrete.

12 You saw the results, you saw the pictures. You're
13 going to be able to take those pictures back in the
14 back with you. Why didn't the City do anything? They
15 don't care. They don't care.

16 Because if you remember when Mr. Battle went up
17 and he first started, he gave his opening statement, in
18 his opening statement one of the first things he jumped
19 on is this thing known as the South Carolina Recreation
20 Statute. And the Recreation Statute, you're going to
21 hear about that when the judge is charging, says that
22 if somebody is using a -- using premises for a
23 recreation purposes, they are using it for recreation
24 purposes, and they don't charge for them using it for
25 recreation purposes, then they are immune unless they

1 were grossly negligent.

2 And so usually that works pretty good for them.

3 Hey, guys, this is not a protection that regular folks
4 have, this isn't a protection for regular businesses.

5 The government has specific protection. Let me strike
6 that because I'm talking about the government. Let me
7 back up.

8 On the Recreational Use Statute, they want to
9 encourage folks to make their land available. But you
10 got to be using it for recreational purposes. And the
11 judge is going to give you the definition of what
12 recreational purposes are. But I want you to remember
13 what my client was there for. My client was there
14 working as a volunteer for the City.

15 I don't know about you, but putting out snacks and
16 washing dishes is not recreation, that's not a
17 recreational use. And if you find that, if you agree
18 with that, if you agree that when she was -- when
19 Ms. Barras was there and Ms. Barras was injured that
20 day, what she was doing was not for recreational
21 purpose, then the Recreational Use Statute doesn't
22 apply, move on down the road. That's done.

23 If for some reason you think that washing dishes
24 and putting out food is a recreational purpose, then
25 the City can still be held responsible if they were

1 grossly negligent, excuse me, grossly negligent. And
2 the Court will tell you what grossly negligent is.

3 But I can tell you, if you are told about a
4 problem, you blatantly ignore it and you do nothing,
5 bingo, you hit grossly negligent. So either way, the
6 defenses or the protections of the Recreational Use
7 Statute do not apply in this case.

8 They got another shield they can pull up, and
9 that's governmental immunity. It's also known as the
10 South Carolina Tort Claims Act. That is just for
11 government. And there's a way, though, that that
12 doesn't apply. And the question is, did they know of
13 the defect. I think we've established that they knew
14 of the defect. They knew of the rugs. Dustin knew
15 that there were waves in the rugs. Ms. Stone was told
16 by three different people, and they did nothing about
17 it.

18 But the question is, all right, did they know of
19 the defect and did they remedy it in a reasonable time.
20 I think Ms. Barras will tell you that they didn't
21 remedy it in a reasonable time. Ms. Stone told you, I
22 don't know, about ten days after she had that meeting
23 over there in which three people told her about that,
24 she went on vacation. Before she went on vacation, she
25 sure didn't call the fellow about doing the mats. She

1 sure didn't call Dustin to tell him, hey, we need to do
2 something about the rugs.

3 They did nothing. And the result, Ms. Barras paid
4 the price. Ms. Barras suffered significant injuries.
5 So the point is that their two shields, the
6 Recreational Use Statute, government immunity, they
7 don't apply.

8 You're going to -- the judge is going to give you
9 instructions, and he's going to tell you that you get
10 to decide. But the application of those statutes, as I
11 told you -- and as I said, listen to what he tells you
12 about what recreational purposes are, listen to what he
13 tells you about whether immunity applies if they know
14 about the defect and they don't cure it in a reasonable
15 time.

16 Now, three, the issue that's known as comparative
17 negligence. And what comparative negligence is, is if
18 they -- if you are partially to blame for your
19 injuries, then you can -- then you are considered to be
20 comparatively negligent. They have alleged that
21 Ms. Barras was comparatively negligent, that she has
22 some responsibility for the damages that she sustained
23 for her injuries.

24 Now, did she know that at times there were waves
25 in the carpet? Absolutely, I mean, she complained of

1 it. Did she do something about it? Yes, she
2 complained about it. Did she ask, hey, can we move the
3 mats? Absolutely. Did they let her? No. So was she
4 on that particular day walking, looking at the carpet?
5 Any of us look straight down when we walk, especially
6 once you're going on in your normal course of your day.

7 You know, there's a -- we have a kitchen and
8 there's these bar stools, and every once in a while I
9 turn that corner a little sharp and, bam, right on the
10 little toe. And it hurts like the dickens. I know
11 that chair was there. After a while you forget about
12 it again, go on in your normal course, and, bam, you
13 hit it again. It's kind of the same thing. You know
14 there was something there, and for a while you're
15 looking at it.

16 But then you're getting in your normal day-to-day
17 work, your normal day-to-day operations. And memory
18 fades a little bit, and you're just doing what any
19 normal person would do. That's what she was doing that
20 day. She was doing her work. Remember, it had been
21 three weeks since they even talked about the mats. And
22 that's when it hit.

23 And let me ask you, I think, just a second, what
24 did the City do immediately after she fell, busted her
25 face open, taken to the hospital, what did they do?

1 Took up the mats. Suddenly after all of the
2 consternation about, oh, we can't pick up the mats,
3 mats got picked up like that. And that's what the
4 gentleman told you about from the carpet place. That's
5 what Dustin told you.

6 So it could have been corrected, could have been
7 corrected three weeks earlier. And this issue would be
8 a nonissue, and she wouldn't have been hurt. But
9 unfortunately, that's not what happened. And so now we
10 have damages. All right. We went through the medical
11 damages, it was pretty even. Like I said, they were
12 uncontested. She had \$47,128.93 in damages, medical
13 bills, most of which right now are still owed.

14 Now, there are other elements of damages, and the
15 judge is going to tell you about those. Pain and
16 suffering. Do you remember her telling you about the
17 excruciating pain in her head? You saw pictures of her
18 face. You heard her tell you what was going through
19 her head when she was in the hospital. You see, she
20 has, as you heard, a husband who has brain damage from
21 being struck in the head. She told you about that.
22 And the fears that were going through her head, is this
23 going to happen to me too, am I going to be left with
24 seizures.

25 You heard her talk about having to go to months of

1 physical therapy because of the injuries to her
2 shoulder that just wouldn't get better. You heard
3 about her having to wear a boot because her ankle was
4 in so much pain that at one time she thought it was
5 broken, turns out it was sprained. But she was in a
6 boot for a while. All that goes into pain and
7 suffering. So that is an additional number. And that
8 is up to you guys, what you give for pain and
9 suffering.

10 Third is loss of enjoyment of life. I think when
11 somebody you know says, oh, did your husband finally
12 hit you in the face, they call it joking, it's pretty
13 embarrassing. Try going out in public and you've got a
14 battered face. What's the first thing everybody
15 thinks, wow, somebody popped her good. There's a lot
16 of anguish there, so you don't want to go out.

17 She couldn't drive herself most of the time, she
18 was in a cervical collar at first. And then even after
19 she was out of it, she told you she wasn't clear to
20 drive because she couldn't look over her shoulders to
21 check for traffic when she's driving. So she had to
22 rely on other folks to help her out, other folks to
23 help her when her husband needed to go to the doctor.

24 She didn't want to go, she couldn't go out and do
25 any of the social thing, including her bingo, anymore.

1 That's another element of damages. So this is the
2 starting point, the \$47,128.93. You guys decide what
3 goes there and there. You take into consideration what
4 I told you.

5 And one other point that I wanted to bring up just
6 back about the three people that I told you about all
7 that they shared and as far as their interest and their
8 story and everything else, I think what's really
9 interesting is that after all of this, after all of
10 this, all three are still volunteering for the City.
11 They don't have an axe to grind. They just want what's
12 right to be done, that's all. So that's what we're
13 going to ask you to do, do what's right. Thank you for
14 your time.-

15 THE COURT: Mr. Battle. Bobby, can you give him a
16 hand there. You got it, Mr. Battle?

17 MR. BATTLE: Yeah. Y'all see it all right?
18 Ms. Barras, I'm sorry this happened. I know you don't
19 want to be here, and this isn't personal. You're the
20 jury, you decide what happened and what didn't, you
21 decide who you believe and who you don't.

22 As Mr. Nappier noted, I started on the
23 Recreational Use Statute, and I'm going to end on it.
24 This law makes it so property owners feel safe making
25 their land open to the public because it means they're

1 not going to be sued. Like Buzby, the dog park,
2 children's parks, the Base Rec Center for senior bingo,
3 the law makes it so you can feel comfortable doing that
4 for people and not have to be worried about getting
5 sued. It's how they are possible, it's how they
6 happen.

7 Now, the law has several key components. It says
8 the property owner, your property, building structure
9 is a listed example. No one's arguing that the Base
10 Rec Center is a building. The dispute that Mr. Nappier
11 and I are having is putting on a bingo game is a
12 recreational purpose. He disputes that it is because
13 he's saying she was a volunteer. You know that she
14 testified that she plays bingo after she's done
15 volunteering.

16 You know Pam Stone explained that they sit around
17 drinking coffee and eating cookies, that they are
18 banging on the door to get in at 8:30 so they can be in
19 the rec center. You can't separate these purposes out.
20 You don't start being there for a recreational purpose
21 and then do it in another. It's not sectioned off.
22 You're there for bingo. If they weren't having a bingo
23 game, do you think Ms. Barras would be there? No.

24 For that reason, I would argue to you that it is a
25 recreational purpose and that it is there. And when

1 you're listening to the judge explain the Recreational
2 Use Statute, it lists off, summer sports, winter
3 sports, any kind of activity like that, but it says,
4 not limited to. The statute doesn't specifically say
5 bingo because they know that they'd have to have a
6 phone book to list off every single kind of
7 recreational activity.

8 You're going to decide whether or not a
9 recreational activity was going on. You're going to
10 decide whether or not Ms. Barras was there for a
11 recreational purpose. I'm asking you to.

12 Next question you got to ask yourself should you
13 decide that recreational purpose was going on is was
14 the City grossly negligent. It's different from
15 regular negligence. Gross negligence means you failed
16 to exercise slight care, means you did nothing.

17 You know for a fact two things were going on.
18 Multiple people said the City was changing out the
19 mats. The ALSCO driver explained it was every two
20 weeks. They were putting brand new mats down. You
21 know that five days before this accident fell a brand
22 new mat was put down.

23 I asked Mr. Weiss, did you put down bad mats, no.
24 Were those the best mats you could have, yes. Did you
25 tell Dustin there was anything wrong with those mats,

1 no. That is not doing nothing. That is doing slight
2 care. You also know he's checking the facility every
3 morning. The seniors were trying to get in ahead of
4 time, and they had to tell them, no, you have to let me
5 do my morning inspections. That is exercising care,
6 that is taking care of the facility.

7 Now, you're going to have eventually a point where
8 you have to sit down and compare each party's
9 negligence, and you need to do what's called an
10 assumption of the risk breakdown. Got a chart. And
11 let's be fair, let's start with the City, what is the
12 Plaintiff saying was wrong with the City, the biggest
13 issue they have is notice. We told you, we asked you
14 to fix it, you didn't do anything about it.

15 What's their evidence of notice? You got three
16 witnesses. Let me be clear here. I think Ms. Barras
17 believes what she's saying, I think she got mixed up.
18 You know that she was taking photos of mats for her
19 lawsuit about a year after the fall. And just like
20 Mr. Nappier said, memory fades. I think that she took
21 a conversation she had with Ms. Stone and decided in
22 her mind it must have come before the fall. I think
23 that's true of the others as well.

24 Ms. Barras said it happened in mid March, she said
25 it falls on 4/8/15, it was about the age discrimination

1 case. You know her attorney already had to change the
2 date once because on April 3rd, Pam was on vacation.
3 So that date wasn't going to work. At her deposition
4 it becomes mid March after the meeting.

5 Irene said, I don't remember the date. And that's
6 fine, I understand that, people have memory problems.
7 But she also specifically said, I did not meet with Pam
8 Stone after the age discrimination meeting. You look
9 at Pam Stone's calendar, that meeting was specifically
10 with Irene. You can also see Pam Stone's notes, you
11 can see the questions the seniors were asking her that
12 day. There's nothing about mats. You can see on the
13 back, she has a section for housekeeping where she has
14 to explain the coming in thing. She didn't write mats
15 down.

16 Now, if you want to believe Mr. Nappier's thing
17 that this is some kind of elaborate conspiracy, why
18 would Dustin Jordan write down on his own incident
19 report someone said something about mats. Why 15
20 minutes after the fall did he immediately report it to
21 Pam Stone? The City, as soon as that fall happened,
22 wrote it down, reported it.

23 And as you heard Mr. Jordan say, there's not been
24 a single fall in that facility or any other
25 recreational facility. Because ALSCO wasn't just

1 servicing the Base Rec Center, it's every single
2 facility in the recreation department. No falls. No
3 notice.

4 The next witness they have saying that he had a
5 meeting with Pam Stone was LeRoy Marcotte. He changed
6 his testimony three times. First he said, I don't
7 know, in his deposition. Then he said, well, no, I
8 think that the conversation happened after the fall.
9 You heard him read it. Then at trial today he changed
10 it to, no, it was definitely before the fall that it
11 happened.

12 I don't think Mr. Marcotte is any different from
13 Ms. Barras, I think he's just mixed up and he's trying
14 to help his friend. He could not recall what the
15 purpose of the meeting was as well. For that reason
16 I'm arguing to you that the notice is highly
17 questionable.

18 The three witnesses have all changed their
19 testimony about when it happened. And the two
20 employees involved with this facility, Pam Stone and
21 Dustin Jordan, don't remember it happening. You heard
22 Mr. Nappier say, well, you know, Ms. Stone has such a
23 great memory. Why would she forget it, why would she
24 notice it? Why would a woman with 29 years of
25 experience working for the City and the base rec

1 department not mention something.

2 He's talking on and on about how possible it was
3 for them to fix it. Why wouldn't the City do it? The
4 reason is because no one told them anything. They
5 didn't know there were any issues with the mats, no one
6 warned them.

7 The next issue is the defect itself. What is the
8 defect we're talking about here, what's the problem.
9 It's not a broken sidewalk, it's not a pothole, this
10 mat's not ripped, it's not rotten or torn. They are
11 saying it bunched up. And you know from Irene's
12 testimony and other people's testimony that the mat
13 could get bunched up just by a person walking on it or
14 carts going over it. And my argument here is how is he
15 supposed to know.

16 If he can check it that morning and it can be
17 perfectly flat and fine, and then a few minutes later
18 it's bunched up, that's not a defect. Do you throw out
19 a carpet just because it's bunched up? No. You
20 straighten it out.

21 Now, the other thing they've made an issue about
22 is what the City could have done had there been notice.
23 You heard Pam Stone say, I didn't want those mats
24 picked up because I'm just going to be in here on a wet
25 floor case. If Mr. Nappier wasn't giving you an

1 argument about picking up mats, someone would have
2 slipped because of a wet floor, and you'd be hearing
3 him going back and forth saying, they didn't have any
4 mats down, and this is a kitchen and this is a wet
5 floor. This is a perfectly valid concern for her to
6 say that.

7 And so while I am contending that that
8 conversation happened after the fall, that's not
9 something you should use against her. It's a valid
10 thing for her to be worried about.

11 Let's go to what Ms. Barras did. Their whole case
12 revolves around the argument that she knew the mats
13 were bunching up. You know that she said she wasn't
14 looking. You also know that she was wearing open-toe
15 sandals on the day of the fall. That alone is far more
16 negligence than anything the City did wrong. You know
17 a sandal is going to create a bigger risk. She
18 knowingly wore them in the kitchen where these mats, as
19 she's claiming, were bunching up. And you know that
20 creates a problem.

21 Her negligence exceeds anything the City did wrong
22 because, again, the notice has got stories changing
23 left and right. And the defect is literally something
24 that can form or not form depending on who stepped on
25 it.

1 Now, the attorney mentioned some of the laws, and
2 yes, I do feel strongly about them. I like the parks
3 and rec centers, I like taking walks around Lake Buzby,
4 I like going fishing. The Tort Claims Act that we're
5 specifically alleging here is notice, as in you have to
6 rule that the City actually had notice, someone had to
7 tell them about the defect with the mats. I've
8 explained already why I don't think that notice
9 happened before she fell.

10 Now, we've gone a little bit into her licensee
11 status. Someone comes onto your property, in this
12 situation they have a little designation called a
13 licensee. Another word for that, social guest, that's
14 someone you've invited into your house.

15 A licensee is owed three specific duties. You owe
16 them a duty to be aware of their presence. You know
17 the City was aware of her presence because the waivers,
18 the background checks, you know Dustin was there in the
19 office that day. You know he was immediately at the
20 fall site and calling EMS as soon as this happened.

21 You owe them a duty to do no harm to them. I've
22 already explained notice and the defect and why I don't
23 think the City did any harm to her. And the third duty
24 is to warn of hidden or concealed dangers. In this
25 situation, she's already saying she -- claiming she

1 knew about the issues with the mats. That's what you
2 owe someone visiting your house. And in this
3 situation, that's what the City owed her. We didn't
4 breach any of those duties.

5 I know this is hard. It's not easy for anyone to
6 have to stand up and do these kind of cases where you
7 have someone who's hurt. The reason I'm here is
8 because this law is what makes parks possible. They
9 can work because juries like you will stand up for the
10 park system and say, no, you have a higher burden here.
11 This isn't just a normal accident.

12 You need to do something worse than just not
13 having any notice, not having a real defect at your
14 facility. That's why I'm here. That's why the City is
15 here. I care about these facilities. And I'm sorry
16 this happened, Ms. Barras, but I'm here to ask you to
17 please uphold these statutes and rule not guilty for
18 the City. Thank you for your time.

19 THE COURT: Mr. Nappier, response?

20 MR. NAPPIER: Conversations were after the fall.
21 They must have all be confused, the conversations were
22 after the fall. What did they tell you they did right
23 after the fall, pulled up the mats. Why would they
24 have a conversation to say, we need you to pull up the
25 mats because people are falling. Doesn't make any

1 sense. The timing just doesn't work, no.

2 The witnesses were pretty clear. They had the
3 conversation with Ms. Stone prior to the fall, they
4 told, they warned her, and the City did nothing because
5 they didn't care, because they have this Recreational
6 Use Statute. They have this Tort Claims Act, all of
7 these other things that government can try to rely on,
8 so that they don't have to take reasonable steps.

9 But I told you in this case, in this case they are
10 not going to be able to rely on that. Because there
11 was notice given here, because my client was not a
12 recreational user of the property. She was working for
13 them. Had been for 11 years.

14 So when -- and I want to add one other thing.
15 Mr. Battle was nice enough to indicate that he was
16 sorry that this had happened to my client. That was
17 the first time that anybody from the City ever told my
18 client they were sorry. They never checked on her.
19 She checked out, she was in the hospital. Didn't check
20 on her when she was at home.

21 All right. You're going to go into the jury room.
22 Along with the evidence, the judge is going to give you
23 a verdict form. He's going to have some questions on
24 it, and going to ask, the first question is, was the
25 Defendant negligent. I contend to you that the City of

1 Myrtle Beach was negligent. I'm not going to go
2 through it all again. They were negligent. I think
3 it's very clear. You agree, you will check yes.

4 The second question, was the Defendant's
5 negligence the proximate cause of the Plaintiff's
6 injuries? In other words, had they not been negligent,
7 would my client have been injured. If they would have
8 done something, if the negligence were -- if they would
9 have taken up those mats and put down heavier mats,
10 they would have just taken up the mats. If they would
11 have gone to the rug guy and said, hey, we got this
12 problem, what can we do, my client wouldn't have been
13 hurt. So the answer to that question is going to be
14 yes.

15 Question number three, was the Plaintiff
16 negligent? You just heard Mr. Battle here talking
17 about my client was negligent because the shoes she was
18 wearing, over the fact that she knew that the carpet
19 was having problems. But yet, he's saying she knew
20 about it, but she didn't say anything to Ms. Stone
21 about it. So I think I've discussed this comparative
22 negligence thing.

23 And if you think her just doing her job three
24 weeks later that she was somehow negligent, I'd have to
25 disagree. Hopefully you do too. And I hope that your

1 answer to that question, was the Plaintiff negligent,
2 that you will say no.

3 And if you do that, if you answer yes to the first
4 two questions and answer no to the third one, then you
5 go down to here which is number seven and which is
6 where you put in the damages amount. That means, and
7 like I said, starting with her medical bills,
8 \$47,128.93 in medical bills.

9 And then you look at the pain and suffering and
10 the loss of enjoyment of life. And that's for you guys
11 to decide. Look, the City needs to be told, you need
12 to care, you need to care, and that you're not always
13 going to be able to hide behind these statutes. It's
14 still about people, in this case, senior citizens. I'm
15 going to ask you to look out for them. I appreciate
16 your time.

17 THE COURT: All right. And Bobby, if you would
18 roll the podium out as well, I want to be able to see
19 my jurors. Thank you. There you go, that's good,
20 that's good.

21 JURY CHARGE

22 THE COURT: All right, ladies and gentlemen, we
23 have concluded the case, and now I'm going to instruct
24 you on the law. As I told you earlier, I do something
25 that no other judge I know of does. And that is I give

1 you a transcript of my charge. And I think the unique
2 nature of this case will explain to you or make you
3 appreciate the fact that I do that.

4 Because there are factors involved in this case
5 that make it much more complex than your ordinary trip
6 and fall or premises liability case. And you'll see
7 that when we start to do the charge. The Supreme Court
8 has said that I can do this as long as I give you a
9 verbatim copy of or transcript of my charge. So I'll
10 be reading from the transcript that I have.

11 Let me tell you that you should not focus in on
12 any one section of this charge. You should view the
13 charge as a whole because of the unique factors
14 involved in this case such as governmental immunity,
15 the Recreational Use Statute. There are exceptions
16 made to the general law. So I ask you and suggest to
17 you that you should look at it as a whole and make sure
18 that you consider all parts of the charge because they
19 are all important.

20 Now, I want to remind you that during this trial
21 you and I have certain duties to perform. As trial
22 judge it is my responsibility to preside over the trial
23 of the case, and I also have the duty to rule on the
24 admissibility of the evidence offered during this
25 trial.

1 And you are to consider only the evidence before
2 you. If there was any testimony ordered stricken from
3 the record during the trial, you must disregard that
4 testimony. You are to consider only the testimony
5 which has been presented from this witness stand, any
6 exhibits which have been made part of the record in
7 this case and any stipulations, agreements of counsel.

8 I have the additional duty to charge you the law
9 applicable to the case. It is your duty as jurors to
10 accept and apply the law as I now state it to you. If
11 you think you have an idea as to what the law is or
12 what the law ought to be and it does not agree with
13 what I tell you the law is, you must forget that idea
14 because you are sworn to accept the law and apply the
15 law exactly as I state it to you.

16 In every case tried in this court before a jury,
17 the jury becomes the sole and exclusive judge of the
18 facts. A trial judge cannot comment on or make any
19 statement about the facts in a case since you are the
20 sole judges of the facts. Do not think by anything I
21 have said during this trial that I have any opinion
22 about the facts in the case. The law does not allow me
23 to have an opinion about the facts.

24 Now, the burden of proof in this case is by a
25 preponderance of the evidence. A preponderance of the

1 evidence simply means the greater weight of the
2 evidence. It's evidence which as a whole shows that
3 the fact sought to be proved is more likely true than
4 not true. This can be illustrated by imagining a set
5 of scales. When the case begins, the scales are even.

6 After all of the evidence has been presented, if
7 the scales remain even or if they tip even slightly in
8 favor of the Defendant, then the Plaintiff has failed
9 to make the burden of proof and would not be entitled
10 to recover in this case.

11 If, on the other hand, the scales tip even
12 slightly in favor of the Plaintiff, the Plaintiff will
13 have met her burden of proof, and you should return a
14 verdict for the Plaintiff. The preponderance of the
15 evidence is not determined by the number of witnesses.
16 Instead, it must be determined by the greater weight of
17 all of the evidence.

18 Now, there are two types of evidence generally
19 presented during a trial, direct evidence and
20 circumstantial evidence. Direct evidence is the
21 testimony of a person who claims to have actual
22 knowledge of a fact, such as an eye witness. It is
23 evidence which immediately establishes the main fact to
24 be proven.

25 Circumstantial evidence is proof of a chain of

1 facts and circumstances indicating the existence of a
2 fact. It is evidence which immediately establishes
3 collateral facts from which the main fact may be
4 inferred. Circumstantial evidence is based on
5 inference and not on personal knowledge or observation.
6 It is proof that does not actually establish the fact
7 in question but that asserts or describes something
8 else from which you may either reasonably infer the
9 truth of the fact or at least reasonably infer the
10 truth -- an increase, excuse me, an increase in the
11 probability that the fact is true.

12 For circumstantial evidence to be sufficient to
13 warrant the finding of fact, the circumstances must
14 lead to that fact with reasonable certainty. The facts
15 and circumstances should be considered in light of
16 ordinary experience and common sense. The existence of
17 a fact cannot be based on speculation, surmise or
18 conjecture.

19 Now, the law makes absolutely no distinction
20 between the weight or value to be given to either
21 direct or circumstantial evidence. Nor is a greater
22 degree of certainty required of circumstantial evidence
23 than of direct evidence.

24 Now, necessarily, you must determine the
25 credibility of witnesses who have testified in this

1 case. Credibility simply means believability. It
2 becomes your duty as jurors to evaluate the evidence
3 and determine which evidence convinces you it is true.
4 In determining the believability of witnesses who have
5 testified in this case, you may believe one witness
6 over several or several witnesses over one witness.
7 You may believe a part of the testimony of a witness
8 and reject the remaining part of the testimony of that
9 same witness.

10 You may believe the testimony of a witness in its
11 entirety or reject the testimony of a witness in its
12 entirety. You may consider whether a witness has an
13 interest in the results of the trial, whether the
14 witness is prejudiced towards either the Plaintiff or
15 the Defendant, the opportunity for the witness to have
16 seen the matters and things about which the witness may
17 testify and the way the witness testifies or acts on
18 the witness stand.

19 In this trial testimony was presented to you by a
20 deposition. A deposition is a document or recording
21 containing sworn testimony given by a witness outside
22 of court in the presence of the lawyers for each party
23 who may ask questions of the witness. If any
24 objections were made at the deposition, I will rule on
25 them -- or did rule on them when the deposition was

1 read.

2 This testimony is entitled to the same
3 consideration and to be judged as to credibility and
4 weighed by you in the same way as if the witness were
5 present and gave the testimony that was read to you
6 from the witness stand or played for you from a
7 recording. It is then for you, the jury, to determine
8 the effect, value, weight and truth of the testimony
9 given in the deposition.

10 Now, the Plaintiff claims that the Defendant was
11 negligent and should compensate her for the injuries
12 she suffered as a result of the Defendant's negligence.
13 In order to prove that the Defendant was negligent, the
14 Plaintiff must prove by a preponderance or greater
15 weight of the evidence four things.

16 First, the Plaintiff must prove by a preponderance
17 or greater weight of the evidence that the Defendant
18 owed the Plaintiff a duty of care. Next, the Plaintiff
19 must prove by a preponderance or greater weight of the
20 evidence that the Defendant breached that duty by a
21 negligent act or omission. Negligence means that a
22 person has done something that a reasonable person
23 would not have done or has failed to do something that
24 a reasonable person would have done in the same
25 situation.

1 The Plaintiff must also prove by a preponderance
2 or greater weight of the evidence that she suffered
3 damages as a result of the Defendant's breach of duty.
4 The mere fact that an injury has been sustained is not
5 in and of itself sufficient to impose liability. The
6 Plaintiff must prove negligence and that such
7 negligence was a proximate cause of the injury.

8 Finally, fourthly, the Plaintiff must prove by a
9 preponderance or greater weight of the evidence that
10 the damages were proximately caused by the Defendant's
11 breach of duty. Proximate cause is something that
12 produces a natural chain of events which in the end
13 brings about the injury. It is the direct cause of the
14 injury.

15 To prove that the Defendant's negligence
16 proximately caused the Plaintiff's injury, the
17 Plaintiff must first prove causation and fact. This is
18 proved by showing that the injury would not have
19 occurred but for the Defendant's negligence. The
20 Plaintiff must also prove legal cause. Legal cause is
21 proved by showing that the injury was foreseeable.
22 This means that the injury occurred as a natural and
23 probable consequence of the Defendant's negligence.
24 The Plaintiff must prove that some injury from the
25 Defendant's negligence was foreseeable but does not

1 have to prove that the particular injury that occurred
2 was foreseeable.

3 However, the Defendant cannot be held responsible
4 for things which could not be expected to happen.
5 Proximate cause does not mean the only cause. The
6 Defendant's act can be a proximate cause of the
7 Plaintiff's injury if it was at least one of the direct
8 concurring causes of the injury.

9 If you find that the Plaintiff impliedly assumed
10 the risk inherent in the activity, there is no duty to
11 the Plaintiff. In order to show that the Plaintiff
12 assumed the risk, it must be shown that the Plaintiff,
13 number one, had knowledge of the facts constituting the
14 dangerous condition; number two, knew the condition was
15 dangerous; number three, understood and appreciated the
16 nature and extent of the danger; and number four,
17 freely and voluntarily exposed herself to that danger.

18 If you find that the Defendant has proved all the
19 four conditions set forth above by a preponderance of
20 the evidence, there can be no recovery for the
21 Plaintiff because she has assumed the risk of the
22 injury.

23 Now, under the common law of this state, a person
24 who enters property without asking for specific
25 permission of the landowners to do volunteer work or to

1 use recreational facilities, among other things, is
2 held to be a licensee. I have determined that the
3 Plaintiff in this case is a licensee.

4 The landowner under the common law owes a duty to
5 a licensee who enters his property to use reasonable
6 care to discover the licensee and to avoid injuring the
7 licensee in carrying on activities on the premises. In
8 addition, the landowner has a duty to use reasonable
9 care to warn a licensee of any concealed, dangerous
10 conditions or activities which are known to the
11 landowner or of any change in the condition of the
12 premises which may be dangerous and which the landowner
13 should reasonably be expected to discover.

14 Normally a breach of this duty would constitute
15 negligence as is set forth earlier in my charge.
16 However, our state has adopted certain laws to
17 encourage owners of land to make it available to the
18 public for recreational purposes by limiting the
19 landowner's liability towards persons entering the
20 property for such purposes, except under the following
21 specific circumstances:

22 A, for grossly negligence, willful or malicious
23 failure to guard or warn against dangerous conditions,
24 use, structure or activity, or for injuries suffered in
25 any case where the land -- where the owner of the land

1 charges the person who enters or goes on the land for
2 recreational purposes a fee for such use. An owner of
3 land owes no duty of care to keep the land safe for
4 entry or use by the persons who have sought and
5 obtained his permission to use it for recreational
6 purposes or to give any warning of a dangerous
7 condition, use, structure or activity on the premises
8 to such person entering for such purposes.

9 When a landowner has opened his property to the
10 public and has charged no fee, it is inferred that
11 members of the public going on the property do so with
12 his permission, except under these limited
13 circumstances. The landowner would not owe the
14 generally recognized duty to licensees, as I have
15 described above.

16 If you find there was no duty because a special
17 exception for landowners making their property
18 available to the public for recreational purposes, then
19 the Plaintiff may not prevail, except in the case of
20 grossly negligent, willful or malicious conduct by the
21 Defendant or in circumstances where the Defendant
22 charged a fee for the use of his property.

23 He would first be immune from liability. The key
24 here is whether you find that the Plaintiff was upon
25 the property for recreational purposes. If you find

1 that the Plaintiff was using the property for
2 recreational purposes, there would be no liability for
3 the Defendant unless you find that one of the special
4 circumstances described in number A or B, which I just
5 read to you, exists.

6 The Recreational Use Statute defines recreational
7 purpose as including but not limited to any of the
8 following activities. And there again, including but
9 not limited to any of the following activities:
10 Hunting, fishing, swimming, boating, camping,
11 picnicking, hiking, pleasure driving, nature study,
12 water skiing, summer and winter sports, viewing or
13 enjoying historic, archaeological, scenic or scientific
14 sites.

15 Additionally, a governmental entity cannot be made
16 liable for failure to maintain or supervise any public
17 property intended or permitted to be used for
18 recreational purposes unless the defect or condition
19 causing an injury is not corrected by the particular
20 governmental entity responsible for the maintenance or
21 supervision of the property within a reasonable time
22 after actual notice of the defect or condition.

23 The Plaintiff must prove by a preponderance of the
24 evidence that the Defendant had actual notice of a
25 defect which caused the injury and failed to remedy the

1 condition in a reasonable time.

2 Gross negligence is the intentional, conscious
3 failure to do something in which it is incumbent upon
4 one to do or the doing of a thing intentionally that
5 one ought not to do. Negligence is the failure to
6 exercise due care while gross negligence is the failure
7 to exercise even the slightest care. Gross negligence
8 is a relative term, and it means the absence of care
9 that is necessary under the circumstances.

10 Gross negligence connotes the failure to
11 exercise a slight degree of care. Gross negligence
12 involves intentional, conscious failure to do something
13 which one ought to do or the doing of something which
14 one ought not to do. A Defendant is guilty of gross
15 negligence if he or she is so indifferent to the
16 consequences of their conduct as not to give slight
17 care to what he or she is doing.

18 Now, damages. Actual damages are properly called
19 compensatory damages, meaning to compensate, to make
20 the injured party whole, put her in the same position
21 she was in prior to the damages received insofar as
22 this is monetarily possible. In other words, actual or
23 compensatory damages include compensation for all
24 injuries which are naturally the proximate result of
25 the alleged wrongful conduct of the Defendant.

1 Actual damages are awarded to a litigant in
2 compensation for her actual loss or injury. Actual
3 damages are such as will compensate the party for
4 injuries suffered or losses sustained. There are such
5 damages which will simply make good or replace the loss
6 caused by the wrongful injury.

7 Actual damages are damages sustained -- excuse me,
8 damages in satisfaction or in recompense for loss of
9 injuries sustained. The goal is to restore the injured
10 party as near as possible through the payment of money
11 to the position she was in before the wrongful injury
12 occurred.

13 The existence, causation or amount of damages
14 cannot be left to conjecture, guess work or
15 speculation. However, proof of amount of loss with
16 absolute or mathematical certainty is not required.
17 Damages must be proved with a reasonable degree of
18 certainty. The evidence presented by the Plaintiff
19 must enable you, the jury, to determine what amount is
20 fair, just and reasonable.

21 When one person is injured by the negligent acts
22 of another, the injured person is entitled to be fully
23 compensated for all injuries directly or proximately
24 resulting from the negligent act or omission by the
25 Defendant. In determining the amount of compensation

1 for injuries suffered by the Plaintiff as a result of
2 the Defendant's negligence, it is proper for you to
3 consider and award past, present and future damages,
4 including medical expenses, including physicians,
5 hospital, medicines, physical therapy, expenses,
6 rehabilitation expenses and transportation expenses
7 conducted with medical treatment, out-of-pocket
8 expenses, alteration of lifestyle, pain and suffering
9 and loss of enjoyment of life.

10 The Plaintiff bears the burden of proving these
11 elements by a preponderance of the evidence. Pain and
12 suffering compensates the Plaintiff for physical
13 discomfort and emotional response to the sensation of
14 pain caused by the injury. There is no definite
15 standard by which to compensate the Plaintiff for pain
16 and suffering. You have the authority to determine the
17 amount, if any, to be allowed for pain and suffering
18 using calm and reasonable judgment to insure that the
19 damages are just and reasonable in light of the
20 testimony and evidence presented.

21 Loss of enjoyment of life compensates a Plaintiff
22 for limitations on the Plaintiff's ability to
23 participate in and derive pleasure from the normal
24 activities of daily life. The Plaintiff must prove
25 that expenses caused by injuries were necessary and

1 reasonable. Actual damages for a Plaintiff who has
2 been physically injured include pain and suffering as
3 well as mental anguish, impairment of health or
4 physical condition and disfigurement.

5 Plaintiff may also claim lost wages due to absence
6 from work and reduced earning ability for the future.
7 In determining the amount of compensation for personal
8 injuries, it is proper to consider past and present
9 aspects of the injury. This would include physical and
10 mental pain and suffering, expenses incurred from a
11 necessary medical treatment, loss of time and income
12 which resulted from the impairment of the ability to
13 work and earn a livelihood, the loss of enjoyment of
14 life suffered as a result of the injury and any other
15 losses which are reflected by the character of the
16 injury.

17 Now, the Defendant claims that the Plaintiff's own
18 negligence proximately caused the Plaintiff's injuries.
19 If you find that the Defendant was negligent, you must
20 then decide whether the Plaintiff was negligent. The
21 Defendant must prove by a preponderance or greater
22 weight of the evidence that the Plaintiff breached a
23 duty of care which proximately caused the Plaintiff's
24 injuries.

25 The same law which I have told you to use in

1 deciding whether the Defendant was negligent should be
2 used in deciding whether the Plaintiff was negligent.
3 If you find that the negligence of both the Plaintiff
4 and the Defendant proximately caused the Plaintiff's
5 injury, then you must decide how much the negligence of
6 the Plaintiff contributed to the Plaintiff's injuries
7 and how much the Defendant's negligence contributed to
8 the Plaintiff's injuries.

9 In deciding the percentages of negligence of the
10 Plaintiff and the Defendant, you may consider among
11 other things the following factors: Number one,
12 whether each party's conduct was only inadvertent or
13 whether it was engaged in with an awareness of the
14 dangers involved; number two, the magnitude of the risk
15 created by each party's conduct, including the number
16 of persons endangered and the possible severity of the
17 injury; number three, the significance of the goal that
18 each party was trying to reach and the need to achieve
19 that goal in that manner;

20 Number four, each party's capabilities and
21 abilities to realize and eliminate the risk involved;
22 number five, the particular circumstances confronting
23 each party at the time the conduct occurred such as the
24 existence of an emergency requiring a quick decision;
25 number six, the relative closeness of the causal

1 relationship of the negligent conduct of the Defendant
2 and the harm to the Plaintiff; and number seven, the
3 conduct of either party involved -- whether the conduct
4 of either party involved a violation of a safety
5 statute or regulation.

6 Now, I will give you written questions on a
7 special verdict form for you to reach your verdict.
8 The form will have spaces for you to write your
9 decisions about the percentages of the negligence, if
10 any, of the parties which proximately caused the
11 Plaintiff's injuries.

12 The first two questions on the verdict form ask
13 you to decide whether the Defendant was negligent, and
14 if so, whether the Defendant's negligence was the
15 proximate cause of the Plaintiff's injuries.

16 Question three and four asks the same questions
17 about any negligence by the Plaintiff. Question five
18 asks you to decide the percentages of each party's
19 negligence which proximately caused the Plaintiff's
20 injury. And those percentages must add up to
21 100 percent.

22 Question six asks you if the Plaintiff's
23 negligence was greater than 50 percent. If so, the
24 Plaintiff would not be entitled to any damages, and
25 your verdict would be for the Defendant.

1 If, however, you find that the Plaintiff's
2 negligence, if any, was equal to or less than
3 50 percent, you would answer question seven which asks
4 you to determine the total amount of damages suffered
5 by the Plaintiff.

6 Do not reduce the Plaintiff's total damages based
7 on the percentage of negligence of any party. After
8 you've answered the questions, I will compute the
9 amount of damages for which the Defendant is
10 responsible based on the percentages or percentage of
11 the Defendant's negligence which you have decided
12 proximately caused the Plaintiff's injuries. You are
13 to determine only the total amount of the Plaintiff's
14 damages and enter that figure on the verdict form.

15 Now, all 12 of you must agree on the verdict, it
16 must be unanimous. Your verdict cannot be based on
17 sympathy, compassion, prejudice, emotion or any other
18 consideration not in evidence in this case.

19 Ms. Foreperson, when the jury agrees on a verdict,
20 I'll have you sign your name as foreperson on the line
21 underneath the jury verdict. And then I'll have you
22 knock on the door and inform the bailiff who will be
23 there that you have reached a verdict, and at that time
24 we'll receive you back in the courtroom.

25 Now, I'm going to in just a moment ask you to

1 return to your jury room. I will ask you not to begin
2 deliberations. One of two things will happen. I will
3 bring you back and give you additional charges. I
4 don't think that will happen, but I want to make sure.
5 Or I will send in the exhibits in this case along with
6 my charge and the verdict form. If I send in the
7 exhibits and the verdict form and the charge, that
8 means start your deliberations, okay. If I bring you
9 back out, of course I'm going to tell you what to do
10 then.

11 Let me just make one comment about the verdict,
12 form. We went over it in my charge. The first
13 question was, was the Defendant negligent. Due to the
14 unique nature of this case, I feel like I should make
15 some other comment on that. You know, if you go down
16 to J and J's Cafe at 6 o'clock in the morning, and
17 Monday through Friday I'll be sitting at one of those
18 tables. And I hope if you did, you'd come in and sit
19 with me and have coffee.

20 But if you were to say to me, judge, what is
21 negligence, I would say to you, well, it's the breach
22 of a duty by a Defendant wherein he does something that
23 a reasonable person wouldn't do, or doing something --
24 or not doing something that a reasonable person would
25 do. And that's kind of the simple concept of what

1 negligence is. And, of course, there's the idea of
2 whether it's proximate or not.

3 But in this case when we ask you, was the
4 Defendant negligent, in answering that question, I do
5 not suggest to you whether the Defendant in this case
6 was or was not, that is entirely up to you. That
7 question should be answered not with that simple
8 conduct of did they or did they not do something that
9 someone should have on done or should not have done.
10 But it should also be in the conduct of whether or not
11 the defenses that are described in my charge apply.

12 Were they shielded by governmental immunity? It's
13 for you to decide. Were they shielded by the
14 Recreational Use Statute, was there assumption of risk?
15 Those should be taken into consideration in determining
16 whether the Defendant was negligent or not. And,
17 again, I make absolutely no suggestion to you as to how
18 you should rule in that. I just want to make sure that
19 you understand that you must also consider the very
20 unique defenses that we have in this case that we
21 normally don't; okay?

22 All right. Mr. Ropp, if you would take your jury
23 back in the jury room.

24 (WHEREUPON, the jury exited the courtroom at
25 11:29 a.m.)

1 THE COURT: All right, gentlemen, do you want to
2 add anything to your comments earlier about objections
3 or deletions to the charge? They are of the record
4 now, but do you want to add to that?

5 MR. NAPPIER: I don't really need to add to it,
6 Your Honor, I just want to make sure I'm protected.

7 THE COURT: Okay, all right.

8 MR. NAPPIER: And I just simply want to place on
9 the record that, again, I believe that the issue of
10 whether or not the Recreational Use Statute applies in
11 this case, and under the facts of this case as a matter
12 of law --

13 THE COURT: All right.

14 MR. NAPPIER: -- that the jury should not have
15 been charged on the Recreational Use Statute. And I
16 also want to place on the record that I believe that my
17 client should not have been considered a licensee, but
18 instead should have been an invitee.

19 THE COURT: Okay. And that's clearly on the
20 record.

21 MR. NAPPIER: Thank you, Your Honor.

22 THE COURT: Anything you want to add?

23 MR. BATTLE: No, Your Honor.

24 THE COURT: Your objections are already a part of
25 the record.

1 MR. BATTLE: I've got it on there.

2 THE COURT: All right, gentleman, let's come up
3 and make sure you've got your charges -- I mean, your
4 exhibits.

5 (WHEREUPON, Court's Exhibit No. 3 was marked for
6 identification only.)

7 (WHEREUPON, the jury begins to deliberate at
8 11:35 a.m.)

9 THE COURT: And in response to your question
10 concerning the testimony of the delivery man, we have
11 checked the transcript and it was not deemed
12 inadmissible. Okay. There was no objection, and it
13 was not deemed inadmissible, okay. Anybody got a note
14 that I can send that back on?

15 (Discussion off the record.)

16 THE COURT: The mat company lost the contract with
17 the City. I have reviewed the transcript, there was no
18 objection. Any such testimony was admitted into
19 evidence.

20 MR. NAPPIER: That's fine.

21 THE COURT: If you would mark those as exhibits,
22 and we'll send both of them back. Okay, thank you.

23 (WHEREUPON, Court's Exhibit No. 5 was marked for
24 identification only.)

25 THE COURT: All right, we're at ease.

1 (WHEREUPON, the continues deliberating at 1:05
2 p.m.)

3 THE COURT: Could you bring the jury in, Chris.

4 (WHEREUPON, the jury came into open court at
5 approximately 1:39 p.m.)

6 THE COURT: All right. And we've got everybody
7 in. And Ms. Webb, I have two notes that you have sent
8 out. I had a chance to discuss them with the attorneys
9 involved. The first one asks, how long after injuries
10 Ms. Barras suffered were the pictures in evidence
11 taken, Plaintiff's-3 and 4. And it's our understanding
12 the those were the facial pictures.

13 THE FOREPERSON: Yes, sir.

14 THE COURT: The only evidence that was in the
15 record, and we've had a chance to look at it is they
16 were taken during the healing process.

17 THE FOREPERSON: Okay.

18 THE COURT: During the healing process was the
19 language.

20 THE FOREPERSON: So they were not taken at the
21 hospital, that's the...

22 THE COURT: Well, all I can tell you is that's
23 what the record shows.

24 THE FOREPERSON: Okay.

25 THE COURT: During the healing process. I can't

1 add to it or interpret it for you; okay?

2 THE FOREPERSON: Okay, yes, sir.

3 THE COURT: Also, is it possible to award the
4 Plaintiff an open-ended amount covering any future
5 medical costs incurred due to the injuries suffered
6 from the fall?

7 Let me say this, in my instructions I described
8 actual damages, and those actual damages include future
9 damages. But I will tell you there can only be one
10 award.

11 THE FOREPERSON: Yes, sir.

12 THE COURT: And this case must end with your
13 verdict. So and we speak in the charge about the fact
14 that damages don't need to be to a mathematical
15 certainty, but -- and it gives you instructions. I'd
16 ask you to follow those instructions in any award for
17 future damages. Of course, that would be entirely up
18 to you, the jury, okay. Thank you, ma'am. Does that
19 answer your questions?

20 THE FOREPERSON: Yes, sir.

21 THE COURT: All right, thank you.

22 (WHEREUPON, the jury exited the courtroom at
23 1:41 p.m.)

24 (WHEREUPON, Court's Exhibit Nos. 6 and 7 were
25 marked for identification only.)

1 THE COURT: All right. We're at ease.

2 (WHEREUPON, the jury begins to deliberate at
3 1:41 p.m.)

4 THE COURT: Gentlemen, I think we discussed the
5 response that the Court would make, and I believe
6 everybody was satisfied with that; is that right?

7 MR. NAPPIER: No objection from the Plaintiff.

8 MR. BATTLE: No objection, Your Honor.

9 THE COURT: Very well, thank you.

10 (WHEREUPON, a brief recess was taken at 1:42 p.m.)

11 VERDICT

12 (WHEREUPON, the jury came into open court at
13 approximately 1:55 p.m.)

14 THE COURT: All right, madam forelady, have you
15 reached a verdict?

16 THE FOREPERSON: Yes, sir.

17 THE COURT: And is it a unanimous verdict?

18 THE FOREPERSON: Yes, sir.

19 THE COURT: Mr. Ropp, would you give me the
20 verdict, please, sir. Thank you. Very well. Would
21 you publish the verdict, please.

22 THE CLERK: Yes, sir. State of South Carolina,
23 county of Horry, Court of Common Pleas, Civil Action
24 No. 2016-CP-26-135, Callie Barras, Plaintiff, versus
25 City of Myrtle Beach, Defendant, verdict.

1 Number one, was the Defendant negligent? Yes.

2 Number two, was the Defendant's negligence a proximate
3 cause of the Plaintiff's injuries, yes. Number three,
4 was the Plaintiff negligent? No.

5 Number 7, we find \$500,000 plus medical, total of
6 547,128.93 actual damages. Melissa L. Webb,
7 foreperson. Should we change the date on this?

8 THE COURT: Ms. Webb, I note that on the verdict
9 form you indicate that it was 4/17.

10 THE FOREPERSON: I put the wrong number. Yes, I
11 went to put a five, I apologize.

12 THE COURT: Okay. Did you mean today's date?

13 THE FOREPERSON: Yes. Yes, sir.

14 THE COURT: Any objection to my correcting that
15 part of the verdict form?

16 MR. NAPPIER: No objection.

17 THE COURT: Mr. Battle, just to indicate that it's
18 May the 17th, not April the 17th.

19 MR. BATTLE: No, Your Honor.

20 THE COURT: Is there a request for individual
21 polling of the jury?

22 MR. NAPPIER: None from the Plaintiff, Your Honor.

23 THE COURT: Very well. From the Defense? I mean,
24 from Plaintiff?

25 MR. NAPPIER: None from the Plaintiff.

1 THE COURT: Very well. Ladies and gentlemen of
2 the jury, thank you so much for your participation.
3 This has been a three-day trial. It's a little longer
4 than many other trials that we have, but you've been
5 very attentive. I know it was a complex trial.

6 The unique nature of this by having a governmental
7 agency as a Defendant and having a landowner who had
8 opened the property for recreational uses had the
9 unique features to this trial that would have been
10 difficult for any jury.

11 I certainly appreciate your effort in dealing with
12 that, I know it was a long charge. But you are placed
13 in that jury box because every litigant in this state
14 has the right to have the matters decided by a jury.
15 And also, every citizen who is not otherwise
16 disqualified has the right to participate in that
17 process. I know most jurors look at jury duty as just
18 an obligation, something that they've got to do.

19 But I hope you will think about it as you exercise
20 your right to decide these cases. I can't decide them,
21 the governor can't decide them, your president can't
22 decide them. Nobody but you 12 people who were
23 selected as a jury could resolve these issues. And
24 that's a very important right that you have to
25 participate in that process. It sort of makes you

1 kings and queens for a day. You decide it, issues that
2 cannot be resolved otherwise.

3 I thank you for being here. I enjoyed having you
4 in my courtroom. I'm all over the county, I'm from
5 Conway. I have to travel all over the State and hold
6 court, but I'm here this week. But I'm all around. I
7 don't always remember who's on my jury, but if you see
8 me out I'm extremely easy to approach. And I hope
9 you'll speak to me and tell me about your experience
10 and what you learned from jury service.

11 Again, thank you. Mr. Ropp, if you would take
12 them to their jury room and let them collect their
13 things, this ends the week. The other cases have
14 settled and we don't have anything else to try, so
15 you're done for the week. Thank you so much for being
16 here.

17 (WHEREUPON, the jury exited the courtroom at
18 2:00 p.m.)

19 THE COURT: All right, gentlemen, I think we have
20 issues, okay. Mr. Battle?

21 MR. BATTLE: Set-off amount from ALSCO was 20,000.
22 I would like to make a Rule 50 motion under B for a
23 judgment notwithstanding the verdict based on the
24 arguments submitted in a directed verdict motion.

25 THE COURT: I understand. And for the same

1 reasons stated there, I would deny your motion. I
2 think this was a jury issue and that it was properly
3 submitted to the jury. And the jury has spoken.

4 Obviously you are entitled to a set-off for -- I
5 think in pretrial, Mr. Nappier, you told me you had a
6 \$20,000?

7 MR. NAPPIER: Yes, sir, 20,000.

8 THE COURT: 20,000. What about the statutory
9 maximum?

10 MR. BATTLE: My understanding, Your Honor, is that
11 300,000 is the most a verdict could be, and then the
12 set-off would come from that. So it would be 280,000.

13 MR. NAPPIER: My position would be that given the
14 fact that there was more than, it was in excess of 300,
15 that they would still be responsible for the --

16 THE COURT: Well, quite frankly, I've never had
17 that come up. I don't know whether it would come off
18 the top or it would come off the 300. I think it comes
19 off the 300, that's my gut feeling.

20 However, I will allow you gentlemen the balance of
21 the week to brief that and submit it to me on briefs.
22 Or if you can reach an agreement after delving into it,
23 it's not an issue that comes up very often. But if you
24 would look at that, either submit an order of -- a
25 stipulation, let me put it that way, a stipulation as

1 to whether it would come off the 547 or the 300, I'll
2 be happy to deal with that.

3 And if you agree, of course, I will enter a
4 judgment or Form 4 indicating how the verdict will be
5 entered by the clerk. If you do not, I will inform you
6 of my decision promptly, okay.

7 MR. BATTLE: Your Honor, I also need to make a
8 Rule 59(a) motion for a new trial, ten days, please.

9 THE COURT: Okay, I'll give you ten days to do it,
10 okay. All right. Thank you, gentlemen.

11 MR. BATTLE: Thank you, Your Honor.

12 THE COURT: Okay.

13 (The hearing concluded at approximately 2:04 p.m.)

14 (End of Transcript of Record)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

I, TERESA J.F. BAUTZ, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 8th day of November, 2017.

I FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

S/Teresa J. F. Bautz

TERESA J.F. BAUTZ, RPR
Official Court Reporter

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF HORRY

3 CALLIE P. BARRAS,

4 Plaintiff,

5 vs.

CASE NO. 2016-CP-26-00135

6 CITY OF MYRTLE BEACH, and ALSCO, INC.,

7 Defendants.

8
9 DEPOSITION OF: CALLIE P. BARRAS

ORIGINAL

10 DATE: October 26, 2016

11 TIME: 10:19 a.m.

12 LOCATION: Joye Nappier Risher & Hardin
13 3575 Hwy 17 Business
14 Murrells Inlet, SC

15 TAKEN BY: Counsel for the Defendant

16 REPORTED BY: RENEE H. TOLLISON, Certified
17 Verbatim Reporter

18
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

21
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R-336

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20 (INDEX AT REAR OF TRANSCRIPT)
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* * * * *

CALLIE P. BARRAS,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BATTLE:

Q. Ms. Barras, my name is Kirk Battle.

I'm the attorney retained to represent the City of Myrtle Beach. We're going to take your deposition today. The goal of this from my perspective is to have a written record of what you would say if we were on the stand right now so my client can look at it and I can look at, and we'll all be looking at it months down the road.

In order to make sure that record is as clear as possible, it's very important that you say yes or no, so gestures like nodding your head or hands pointing at things don't communicate. If I correct you or say please respond, I'm not trying to hassle you. I just want to make sure the record is very clear.

It's not a marathon. If you need to take a break or anything like that, let me know. In the very likely event that I say a question that's confusing, you can say I don't understand, can you ask it again. All those things are

1 perfectly viable.

2 It's important that you answer the
3 question. You shouldn't look to your attorney or
4 anyone else for a response or information. If you
5 don't know something, just say I don't know. And
6 we'll get right to it.

7 If you could state your full name,
8 please, for the record.

9 A. Callie Pauline Barras.

10 Q. What's your date of birth, Ms. Barras?

11 A. June 24, 1942.

12 Q. What I'm going to do now is ask you a
13 series of background questions. The main reason I
14 want these is that if we pull a jury, I don't want
15 to get your cousin or a friend on the jury just
16 like you wouldn't want a City employee on there.

17 A. Okay.

18 Q. Are you married, Ms. Barras?

19 A. Yes.

20 Q. What's your husband's name?

21 A. Robert Joseph Barras.

22 Q. What's your address?

23 A. 22 Woodhaven Drive, Unit C, Murrells
24 Inlet, South Carolina 29576.

25 Q. Do you have any children?

1 A. Yes.

2 Q. Do they live in the area?

3 A. No.

4 Q. Where do they reside?

5 A. Pennsylvania.

6 Q. Do you have any cousins, sisters,
7 aunts, uncles in this area?

8 A. Yes, I have cousins and a brother.

9 Q. The way I usually make it work in South
10 Carolina is I'll just say what are some last names
11 that show up.

12 A. Okay.

13 Q. What are some last names in your
14 cousins?

15 A. Cooper, Blankenship.

16 Q. Can you spell that, please?

17 A. B-L-A-N-K-E-N-S-H-I-P.

18 Q. Just like it sounds. What else?

19 A. Blakely, Lambert. I think that about
20 covers that.

21 Q. What's your brother's last name?

22 A. Blakely.

23 Q. Does he have kids?

24 A. Yes.

25 Q. Do they live in the area?

1 A. Yes.

2 Q. What are their names?

3 A. Samuel Blakely.

4 Q. What are their ages first?

5 A. Their ages -- they're in their forties,
6 but I don't know their --

7 Q. That's fine. I just wanted to --
8 sometimes they're two years old, and obviously
9 they're not going to be pulled for a jury.

10 A. No.

11 Q. What are his children's names?

12 A. He has Joey.

13 Q. And his last name is Blakely?

14 A. Uh-huh (affirmative). Mardie,

15 M-A-R-D-I-E.

16 Q. Must be French. Are there any other
17 names?

18 A. Yeah, we're half French. That was it.

19 Q. Anyone else that you're related to that
20 lives in the area?

21 A. Yes. Let me think of their names. I
22 have an aunt. Her last name is King, and her
23 daughter is King, Nell King.

24 Q. Does she have any children?

25 A. No.

1 Q. Do they live in Horry County?

2 A. No. They live in Georgetown.

3 Q. That's close enough. You never know.

4 Do you attend a church?

5 A. Church of God, Murrells Inlet.

6 Q. Are you a member of any clubs or

7 organizations?

8 A. Just the bingo at the Base Recreation

9 Center.

10 Q. Any other charities, things like that?

11 A. No.

12 Q. How long have you been a member of the

13 senior bingo program?

14 A. About ten years.

15 Q. And is it a membership thing? Or
16 you'll have to explain. How does the program work?

17 A. Anybody that's over 50 can attend.

18 Q. How did you hear about it?

19 A. I think it was the paper, newspaper, I
20 first saw the ad for senior bingo.

21 Q. Is it run by a board?

22 A. It's run by the City, I think.

23 Q. What's your --

24 A. Myrtle Beach. It's Horry County, I
25 think.

1 Q. Is there -- I guess from my
2 perspective, is there like a president of the bingo
3 club or anything like that?

4 A. Yes. It's called Sarge's Bingo,
5 Sarge's Senior Bingo.

6 Q. And I don't mind explaining what I'm
7 after. Is this like a charity group where there's
8 a president and a board and accountant who handles
9 funds?

10 A. No, there's none of that. It's just a
11 senior bingo that we all attend twice a week, and
12 we take in a little gift for the prizes when you
13 win the bingos. And then there's different ones
14 that's designated to different areas, like call
15 numbers back when people bingo, and I work in the
16 kitchen. We put out a little snack before they
17 start and at break time.

18 Q. Is there someone who organizes all of
19 that?

20 A. Well, we all have our assigned
21 positions when we start to volunteer, when we get
22 cleared for volunteering. And then we're put in
23 those positions as we sign up to be a volunteer and
24 we're cleared.

25 Q. Who clears you to be a volunteer?

1 A. The City.

2 Q. Is there an application process or
3 anything like that?

4 A. Yes.

5 Q. Do you have to pay money to the City to
6 volunteer or apply?

7 A. No.

8 Q. Who assigns the duties for the group?

9 A. The head of the program, Sarge. Well,
10 his wife did before she passed away a couple of
11 years ago, and now we're all in our designated
12 positions.

13 Q. Do you ever have to pay money or
14 anything like that to play bingo?

15 A. No. They will not accept money.

16 Q. What are the prizes?

17 A. Everybody that goes takes a dollar
18 gift.

19 Q. So you just create a prize pool
20 basically?

21 A. Yes. And then we have several
22 volunteers that they go to different stores, and
23 they get, like, a gift voucher. And that's given
24 for a bigger door prize.

25 Q. Were you always volunteering, or were

1 you a player and then became a volunteer?

2 A. Well, at first when I first started, I
3 volunteered for the 50 Plus Club. It was in
4 Surfside at the community center at that time, and
5 then they moved it to where we play bingo at the
6 community center on the base.

7 Q. What is the 50 Plus Club?

8 A. People over 50.

9 Q. It's pretty self-explanatory.

10 A. Seniors more or less.

11 Q. Okay.

12 MR. NAPPIER: Really? Fifty plus is
13 seniors?

14 MR. BATTLE: That's you, right?

15 MR. NAPPIER: Yes. Thank you.

16 BY MR. BATTLE:

17 Q. You know, again, part of what I'm
18 looking for is there -- so there's no formal
19 organization or anything. Was the 50 Plus Club a
20 formal group?

21 A. Now, the 50 Plus Club did have
22 officers.

23 Q. Yes. That's what I was -- okay.

24 A. Okay.

25 Q. Did you leave them? Did you break off?

1 A. Well, we stopped going to that because
2 it became like a business. All they had for their
3 activities were they had so many speakers that, you
4 know, we decided to leave that. We were in that
5 about three or four years.

6 Q. Then you switched to senior bingo?

7 A. Yes. And then we started -- actually
8 started a little bit before we stopped that at the
9 bingo.

10 Q. And it was automatically -- you were a
11 volunteer from the very beginning with senior
12 bingo?

13 A. Pretty much. I went to Doris, who was
14 Sarge's wife at that time, and told her I would
15 like to be a volunteer, so she got me a form. I
16 filled it out. They sent it to the City, and it
17 was approved. Then I became a volunteer in the
18 kitchen with doing the snacks and stuff like that.
19 Then Doris asked me if I would call numbers back.
20 And I said yes, so I've been calling numbers back
21 also.

22 Q. So you said you helped prepare snacks
23 and you called numbers back for the group. Did you
24 perform any other activities for senior bingo?

25 A. No.

1 Q. And I'm just marking out stuff that
2 you've already answered.

3 How many members were there in senior
4 bingo?

5 A. Well, it's according to what time of
6 the year it is.

7 Q. So summertime picks up?

8 A. Yeah, summertime is about fifty, a
9 little more than fifty. Wintertime we have up to
10 200.

11 Q. So wintertime is busier?

12 A. Yes. We have all the snowbirds in.

13 Q. I guess that makes sense, then, in some
14 way.

15 How many volunteers are there?

16 A. Well, let's see. There's at least a
17 dozen.

18 Q. Do they rotate regularly?

19 A. No, we don't rotate. We stay in our
20 position unless someone needs us in another
21 department. Then we also go and help them when
22 we're asked.

23 Q. Who is in charge of the the Base Rec
24 Center itself?

25 A. I'm not really sure right now who it

1 is.

2 Q. Do you know who was in charge at the
3 time of your incident?

4 A. I thought it was Pam, but I can't say
5 for sure.

6 Q. This is kind of a random question. Do
7 you have a lawsuit pending against a woman named
8 Terri Mula?

9 A. I don't think so.

10 Q. Like I said, it was a shot in the dark.
11 When I do background checks on people, sometimes
12 you have name overlaps. It can't hurt to ask.

13 A. Yeah.

14 MR. BATTLE: Let's mark this as Exhibit
15 1, please.

16 (DFT. EXH. 1, Base Recreation Center
17 Sign-in Sheet, was marked for identification.)

18 BY MR. BATTLE:

19 Q. Ms. Barras, do you have to sign in to
20 go into the Base Recreation facility?

21 A. Yes.

22 Q. If you could please review Exhibit 1
23 and let me know when you've reviewed it.

24 A. Okay.

25 Q. Is that the sign-in sheet that you

1 signed on the date of this incident?

2 A. Yes.

3 Q. Did you ever read that sheet?

4 A. Well, it has the names on it of people
5 that signed in that day.

6 Q. Did you read the formal text at the top
7 of the sheet?

8 A. No, I never read that.

9 Q. Okay. Did you sign that every time you
10 -- I know sometimes there's an overlap. Did you
11 sign that every time you --

12 A. Yes.

13 Q. -- went into the facility?

14 MR. NAPPIER: Always let him finish his
15 question first and then answer. It helps the court
16 reporter.

17 THE WITNESS: Okay.

18 BY MR. BATTLE:

19 Q. Is that your signature on the sign-in
20 sheet that's highlighted?

21 A. Yes.

22 Q. There will be moments that I'll ask
23 legal questions. I don't want to know anything
24 that you and your attorney have talked about, nor
25 do I expect a lawyer answer. I just want to know

1 what you think about it.

2 What reason do you think that that
3 sign-in sheet doesn't release the City from
4 liability?

5 MR. NAPPIER: Object to the form of the
6 question.

7 You can answer if you can.

8 THE WITNESS: I don't know how to
9 answer that.

10 BY MR. BATTLE:

11 Q. Do you understand that the text at the
12 top is saying that you release the City of Myrtle
13 Beach from liability arising from using the
14 facility?

15 A. Yes.

16 Q. Do you think that that should not apply
17 in this situation?

18 MR. NAPPIER: Same objection.

19 THE WITNESS: I'd rather not answer
20 that question.

21 MR. NAPPIER: You can answer the
22 question if you can.

23 THE WITNESS: Does it have to be a yes
24 or no answer?

25 BY MR. BATTLE:

1 Q. It's not a trick question.

2 MR. BATTLE: We can go off the record
3 for a second.

4 MR. NAPPIER: Well, even though --

5 MR. BATTLE: Or we can stay on.

6 MR. NAPPIER: -- it's just an
7 objection, you're asking her to draw a legal
8 conclusion because that is a legal conclusion that
9 you're asking her to draw. She's not an attorney.

10 MR. BATTLE: And I stipulated earlier
11 that I understand that.

12 BY MR. BATTLE:

13 Q. And this isn't going to be a binding
14 thing. The question is just what I want to know
15 when I ask this, again, if this goes trial, why do
16 you think as we sit here today that shouldn't apply
17 to you?

18 MR. NAPPIER: If you know, you can
19 answer.

20 THE WITNESS: I don't know.

21 BY MR. BATTLE:

22 Q. Okay. We can move on.
23 Could you understand the text in this
24 waiver after you read it?

25 A. Yes.

1 Q. Earlier you said you thought Pamela
2 Stone was in charge of the facility. What made you
3 think that?

4 A. Well, she came in, and she would talk
5 to Sarge and different ones about certain things
6 that was going on with the bingo. She held
7 meetings with them, and I was told by different
8 ones that she was the head of the recreation center
9 there.

10 Q. How often did she hold meetings with
11 people?

12 A. Not too often. Not too often. But
13 when there had to be something discussed, then she
14 was the one that they discussed it with.

15 Q. When you say not too often, is that
16 five?

17 A. Maybe a couple times a year, three
18 times a year.

19 Q. Did she come personally? Did they
20 communicate by email?

21 A. She was there personally.

22 Q. I know based on your complaint that you
23 informed Pamela Stone about the mats. Did you tell
24 anyone else about them?

25 A. Yes. The people at the desk was

1 informed. When someone would trip, they were
2 informed.

3 Q. How often did you tell someone at the
4 desk?

5 A. Well, between me and how many other
6 people, everybody that was in the kitchen or worked
7 for the bingo, they would, you know, inform the
8 people at the desk that people were tripping over
9 the rugs.

10 Q. I understand. How often did you tell
11 them?

12 A. Well, I told them several times.

13 Q. And I know that it's hard to remember
14 specific numbers. And it's not like I have any
15 idea what the exact number was. Can you give me
16 like a two to three ---

17 A. Every three to four months.

18 Q. So you tripped on the mats every three
19 to four months?

20 A. I tripped before that. I tripped lots
21 of times on them.

22 Q. Do you remember the name of the person
23 at the desk that you told?

24 A. Dustin was told, and I don't recall the
25 names of the other people that were at the desk at

1 different times.

2 Q. Do you know of any other volunteers who
3 tripped on the mat?

4 A. Yes. We had an old gentleman named
5 Gene, who is no longer with us. He tripped coming
6 in the front door, on the one at the front door,
7 and almost fell.

8 Q. Do you know of anyone who tripped on
9 the mats in the kitchen?

10 A. Well, just about all of us. Just about
11 everybody in the kitchen at one time or another.

12 Q. Does that include all the witnesses
13 you've named in this complaint?

14 A. Yes.

15 Q. Did they tell any employees?

16 A. I'm sure they did, but I can't say for
17 sure that they did, but I'm almost positive they
18 did. I know Irene did.

19 Q. When did you tell Pamela Stone about
20 the mat problem?

21 A. The date that's on that paper that she
22 came in. She had a meeting with Sarge and the
23 different heads of the departments. And when she
24 came into the kitchen to talk to the rest of us,
25 she told us what they had the meeting about. And

A W R

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1 when she started to leave, I mentioned to her that
2 people were tripping on the rugs. And she said,
3 well, we have larger parties coming in. We need
4 the rugs for spillage, and she said, so the rugs
5 stay.

6 Q. Do you think that's a valid reason to
7 have the rugs there there?

8 A. That's her opinion. I mean, you know,
9 I don't know. I just told her, and that's what she
10 gave me the answer back.

11 Q. Have you ever slipped on a wet floor
12 before?

13 A. Well, I guess you would if there was
14 water or wet coming in.

15 Q. And the line of the questioning is
16 mainly just -- I mean, do you think Pam Stone's
17 reasons for wanting the rugs there are wrong or
18 deficient in some way? Like her -- do you
19 understand that her reason -- why do you think Pam
20 Stone wanted the rugs in the kitchen?

21 A. Well, she gave us a reason. She said
22 because they had bigger parties than us and that
23 the rugs stay.

24 Q. But you said earlier that she'd
25 mentioned concerns about spillage and things like

1 that?

2 A. Yes.

3 Q. So is the reason she wants the rugs
4 there in case the kitchen gets wet?

5 MR. NAPPIER: Object to the form of the
6 question.

7 Answer if you can.

8 THE WITNESS: I suppose.

9 BY MR. BATTLE:

10 Q. Do you think that's a valid reason?

11 A. Yes.

12 MR. NAPPIER: Same objection.

13 BY MR. BATTLE:

14 Q. What was the purpose of the meeting you
15 had with Pamela Stone?

16 A. Well, we didn't have the meeting. She
17 came into the kitchen after her meeting with the
18 heads of the bingo and let the ones in the kitchen
19 know what their meeting was about because it
20 concerned the whole bingo.

21 Q. What was the meeting with the heads of
22 the bingo about?

23 A. It was about people were wanting to
24 bring in children during our bingos, and we didn't
25 think that they should be admitted because it was

1 senior bingo. So she came in to let everybody know
2 what it was about.

3 Q. Did you have any problems with children
4 or young people at the bingo?

5 A. I wouldn't say it was problems, but we
6 had people that were bringing in their
7 grandchildren, and the officials at the bingo
8 didn't believe they should have the same benefits
9 as the seniors do because we give gifts away and
10 stuff like that that they believed that belongs
11 just to the seniors because they have other
12 children's programs.

13 Q. Did you sign a petition for that?

14 A. I didn't sign anything. I don't know
15 if anybody else did or not.

16 (DFT. EXH. 2, Petition, was marked for
17 identification.)

18 BY MR. BATTLE:

19 Q. Ms. Barras, I'm handing you Exhibit 2,
20 but I'm turning to a page with your signature. Is
21 that your signature on that petition?

22 A. Yes, it is.

23 Q. Is that petition to limit it --

24 A. Oh, man.

25 Q. That's okay. It's better if we do this

1 now.

2 A. Yeah.

3 Q. Limit it to people only the ages of 15
4 and over?

5 A. Yes. I'd forgotten that we had taken
6 that up.

7 Q. It's okay. It's much better for us to
8 do it now than later.

9 Was the meeting with Pam Stone like
10 where everyone -- so my image in my head that I had
11 of the meeting was all the bingo members are
12 sitting there and Pam Stone is talking to them.
13 You're describing something that sounds a little
14 more informal.

15 A. No. Pam asked Sarge and Oscar and
16 Irene -- and there may have been one or two more --
17 to a meeting in the back of a building in another
18 room to discuss this about the children coming in,
19 you know. And whenever she was done, they came
20 into the kitchen to the rest of the volunteers from
21 the kitchen in that area, and they told us what it
22 was about.

23 Q. Okay.

24 A. We cannot -- they said, we can't turn
25 them away, but don't be asking them to the bingos

1 because they think that that's a senior thing, not
2 a program for children.

3 Q. So Pam Stone had a private meeting with
4 them, and then she was in the kitchen speaking with
5 you?

6 A. Yeah.

7 Q. Was anyone else in the kitchen with
8 you?

9 A. Yes.

10 Q. Who was in there?

11 A. Irene, Oscar, Sarge.

12 Q. For some reason, I thought Sarge and
13 Oscar were the same.

14 A. No.

15 Q. What is Sarge's real name or full name?

16 A. Douglas Williams. I think it's
17 Williams.

18 Q. Anyone else?

19 A. I don't recall if there was anybody
20 else. There may have been, but I don't recall.

21 Q. When you told Pamela about the mats,
22 did you explain the defect with them? Like did you
23 say they crumpled up, or did you say people tripped
24 on them?

25 MR. STARR: Object to the form.

1 You can answer.

2 THE WITNESS: And then someone said
3 that -- I don't recall if it was Irene or who --
4 what if you picked them up for when we're in here,
5 and she said okay, but they never did get picked
6 up.

7 Q. Maybe the fastest way to do this with
8 the least objections, do you remember what you
9 specifically told Pam?

10 A. I told her a lot of people we're
11 tripping over the rugs because they had little
12 humps in them to where your feet could slide right
13 under them as you'd get up there. I said, people
14 are slipping over these rugs, and somebody is going
15 to get hurt. And she says, well, the rugs have to
16 stay because we have more people than you guys in
17 here, bigger parties than you.

18 Q. Did she mention spillage or water or
19 anything else?

20 A. Well, she said something about we have
21 bigger parties than you, so the rugs stay. That's
22 what she said.

23 Q. Have you ever worked in a kitchen
24 before, like in a professional setting, a
25 restaurant?

1 A. No.

2 Q. Did anyone ever spill anything in the
3 kitchen?

4 A. Not that I know of.

5 Q. Did you ever see the mats being changed
6 out or replaced?

7 A. Yes.

8 Q. How often did that happen?

9 A. Probably at least every two weeks.

10 Q. So the mats are being changed out every
11 two weeks. Was there ever periods during those
12 two-week intervals that the mats didn't have the
13 humps in them?

14 A. No.

15 Q. So every single time the mats were
16 brought, they always had the same humps in them?

17 A. Yes.

18 MR. BATTLE: I'm going to skip a couple
19 of these exhibits regarding the meeting just
20 because it's something Ms. Barras wasn't involved
21 in.

22 BY MR. BATTLE:

23 Q. Were the humps in the mats automatic,
24 or did they have to be stepped on first?

25 A. Well, actually, they never went away.

1 I mean, you know, people were walking over them and
2 everything, and they were always there.

3 Q. And part of the nature of the question
4 is was people -- did people walking on it cause the
5 humps to form, or were they just naturally like
6 that?

7 A. They were just naturally like that when
8 the guy put them down.

9 Q. Okay. The way I do an accident like
10 this is I'll kind of ask the person to talk me
11 through their day of the accident and then sort of
12 go back and ask questions.

13 So you woke up that morning. What did
14 you do?

15 A. I got ready, had breakfast and went to
16 bingo.

17 Q. What did you have for breakfast?

18 A. Oh, gosh.

19 Q. If you need a break or anything, too,
20 please don't hesitate to ask.

21 A. Okay. I don't know.

22 Q. That's fine.

23 A. I don't recall what I had for
24 breakfast.

25 Q. What time did you get to bingo?

1 A. About 8:30.

2 Q. Is that the time you always got there?

3 A. Yes.

4 Q. There was nothing unusual going on,
5 just a regular volunteer visit?

6 A. Yes. Volunteers come at 8:30.

7 Q. What time does bingo start?

8 A. Ten.

9 Q. About how long had you been there
10 before the fall happened?

11 A. Maybe about half an hour.

12 Q. What were you doing?

13 A. We were preparing for the snack.

14 Q. What was the snack that day?

15 A. I don't recall.

16 Q. What was the snack usually?

17 A. Usually we put cookies or angel food
18 cake or sweet rolls and coffee and tea out.

19 Q. Is the coffee in a big percolator or in
20 a pot or what?

21 A. A big coffee pot.

22 Q. How about the tea?

23 A. It's in a little carafe.

24 Q. Do you remember -- and the line of
25 questioning is what had been carried to the table?

1 What were you going back to get? What was set out
2 at that point?

3 A. Well, we were getting things out of our
4 bins. We have some bins that has all our equipment
5 in.

6 Q. Had you prepared the coffee or cookies
7 or anything?

8 A. Well, I don't do the coffee. We have a
9 couple guys do the coffee.

10 Q. Right before the fall, what were you
11 working on?

12 A. Getting things out and putting them on
13 trays.

14 Q. Just like cookies and things like that?

15 A. Yes.

16 Q. When the fall happened, did you have
17 anything in your hand?

18 A. No, I didn't.

19 Q. Were you talking on a phone or anything
20 like that?

21 A. No, I wasn't.

22 Q. And I ask this of everybody. But had
23 you been drinking or anything?

24 A. No, I hadn't.

25 Q. Were you on any medication or drugs?

1 Q. I was on my -- let's see. What was I
2 taking at that time? Thyroid medication and blood
3 pressure medication. That was it.

4 Q. What's the name of the blood pressure
5 medication?

6 A. It's a big long name. It starts with
7 an M, but I don't recall the name of it.

8 MR. NAPPIER: Metoprolol.

9 THE WITNESS: Yes.

10 MR. BATTLE: That's cheating, now.

11 MR. NAPPIER: Just trying to help you
12 out. Metoprolol.

13 MR. BATTLE: It's okay.

14 BY MR. BATTLE:

15 Q. And the mats were bunched up that
16 morning?

17 A. Well, they had humps in them.

18 A. I figured you were going to say that.
19 Were you watching the mats while you walked?

20 A. Well, I didn't have mats -- no, I
21 wasn't. I was just going about my business.

22 Q. Did a specific foot hit the mat, or do
23 you remember?

24 A. My right foot went under the mat.

25 Q. Had you had any issues with your right

1 foot or knee before the accident?

2 A. Well, I had a knee replacement in '05,
3 but it's always been working good.

4 Q. Do you have any trouble with bending or
5 lifting your right leg?

6 A. No.

7 Q. Were you experiencing any dizziness or
8 vertigo that day?

9 A. No.

10 Q. Typically, I try to sort of bookmark
11 before we get into the medicals and stuff like
12 that. But just as a quick question, did you strike
13 your head or face after the fall because of the
14 fall?

15 A. Yes, my head hit the floor.

16 Q. Did it strike -- hit the floor? Did
17 you strike anything in the kitchen other than the
18 floor?

19 A. No.

20 (DFT. EXH. 3, Photocopy of Two Mats,
21 was marked for identification.)

22 Q. This is Exhibit 3. Ms. Barras, do you
23 recognize what's depicted in those photographs?

24 A. Yes, I do.

25 Q. And can you describe what's in them?

1 A. There's a rug, and it's got little
2 humps all along the sides.

3 Q. Did you take those photographs?

4 A. Yes, I did.

5 Q. When did you take them?

6 A. I took these photographs ten months,
7 eight months after my fall.

8 Q. When you took them, were the mats
9 naturally like that, or did you scuff them up?

10 A. They were like that.

11 Q. I just have to ask that.

12 After the fall, what happened?

13 A. Well, a friend of mine got me up in a
14 chair -- he was a retired EMT -- because I told him
15 I couldn't breathe because I was flat on my face,
16 my stomach, and then someone called the ambulance.

17 Q. Who saw you fall?

18 A. Well, I'm not sure exactly who saw me
19 fall, but I know who was in the kitchen.

20 Q. Who was in the kitchen?

21 A. Irene, Oscar. There was another one.
22 Franco. There was a couple of older men, but one
23 of them has passed away, and the other one is in a
24 nursing home.

25 Q. How long did it take for the EMTs to

1 arrive?

2 A. Probably about 15 minutes.

3 Q. What did you do during that 15 minutes?

4 A. I sat in the chair after Leroy got me
5 up and waited for the EMT.

6 Q. Did you ice anything?

7 A. Yes. They brought me a towel with some
8 ice in it.

9 Q. Did any Base Rec employees come in at
10 that point?

11 A. Yes. Dustin came in, and I think he's
12 the one that called the ambulance.

13 Q. Did you talk with Dustin at all, or
14 were you not ...

15 A. I don't really think I did.

16 Q. What happened when the EMTs arrived?

17 A. They brought in a stretcher. They
18 wanted to put me on a board, but I said no. My
19 foot was hurting. My head was hurting. And then
20 they took me to the hospital.

21 Q. Why did you refuse to use the board?

22 A. Well, I told them my back felt good,
23 you know, okay. But they put me in a neck brace.

24 Q. Did you ask for the neck brace?

25 A. No.

1 Q. Once you got to the hospital, what
2 happened?

3 A. They took me in and put me in a room
4 and took -- well, then everybody disappeared. And
5 I told my husband I was getting sick, so he went to
6 see if they could come in to attend to me. Before
7 they could get there, I got violently ill.

8 Q. Did you yell at the hospital staff?

9 A. Pardon?

10 Q. I'm sorry. I couldn't hear what you
11 said. Could you say that again?

12 A. I said before anyone could come in to
13 take care of me, I started throwing up. I got
14 violently ill.

15 Q. Okay. I thought you said something
16 else. I apologize.

17 A. No.

18 Q. What happened after that?

19 A. They got me something to keep throwing
20 up in and cleaned up my bed, and then they did a
21 CAT scan and some other tests.

22 Q. Do you remember the results of those
23 tests? This is just like with the legal questions
24 I was asking. I know you're not a doctor. I'm not
25 a doctor. What I want is your personal impression.

1 What were the results?

2 A. I'm not sure, but I'm sure someone told
3 me I had a concussion.

4 Q. Do you remember who told you that?

5 A. No, I don't.

6 Q. Did you receive any medication or
7 treatment for that?

8 A. I don't recall.

9 Q. How long were you in the hospital?

10 A. Overnight up until about two the next
11 day.

12 Q. Did you have any operations or
13 surgeries or anything?

14 A. No.

15 Q. Were you able to move around the
16 hospital without assistance?

17 A. I don't recall if I did or not.

18 Q. Was the hardware in your right knee
19 damaged in any way?

20 A. From what they told me, it wasn't.
21 They did an x-ray.

22 Q. Did you receive physical therapy after
23 this?

24 A. Yes, for my neck.

25 Q. How long did you go?

1 A. I think I had 10 or 12 treatments.

2 Q. Do you remember where that was at?

3 A. Yes. That was at the Waccamaw facility
4 behind the hospital or right beside the hospital.

5 Q. Are you still going there now, or has
6 that completed?

7 A. No. That was done.

8 Q. The next phase is just me sort of going
9 through hospital records. What I'll do is just
10 mark them, hand them to you to review then ask a
11 few questions about them. It doesn't take very
12 long.

13 A. Okay.

14 MR. BATTLE: Here you go.

15 (Off-the-record conference.)

16 (DFT. EXH. 4, Waccamaw Community
17 Hospital Record, was marked for identification.)

18 BY MR. BATTLE:

19 Q. Do you remember that hospital visit on
20 March 14, 2007? Or doctor's visit, whichever one
21 it is.

22 A. No, I don't.

23 Q. Do you remember reporting to your
24 doctor that you were experiencing dizziness,
25 headaches, hypertension, and vertigo?

1 A. Yes.

2 Q. Were you having those sorts of issues
3 in 2007?

4 A. Yes, I've had those in the past.

5 Q. Did you ever get any kind of conclusive
6 diagnosis for that?

7 A. I had high blood pressure.

8 Q. Did you ever have any falls, trips or
9 slips?

10 A. No. When I was real young, I had one
11 fall, but I was going uphill on a slippery
12 sidewalk.

13 Q. When was that?

14 A. I was about 30.

15 Q. I don't think that will be proved
16 relevant. Don't worry. Nothing recent though?

17 A. No.

18 Q. What medications -- you use one that
19 started with an M for your high blood pressure.
20 Did you receive any other treatments for that
21 condition?

22 A. No, I don't think so.

23 Q. Were you prescribed the -- I'm
24 embarrassed.

25 MR. BATTLE: Can you say it again? I'm

1 sorry.

2 MR. NAPPIER: Metoprolol.

3 BY MR. BATTLE:

4 Q. The Metoprolol, were you prescribed
5 that in 2007?

6 A. I probably was.

7 Q. Did that take care of the issues of
8 dizziness, vertigo and all that?

9 A. Yes.

10 Q. Did you have any relapses with that
11 condition?

12 A. It pretty much controlled it as long as
13 I took it right.

14 Q. What does taking it right mean?

15 A. As long as I made sure that I took it
16 twice a day, which I did.

17 Q. Did you take it on the day of the
18 accident?

19 A. Yes, I did.

20 MR. BATTLE: Next exhibit.

21 (DFT. EXH. 5, Family Medicine of
22 Sayebrook Record, was marked for identification.)

23 BY MR. BATTLE:

24 Q. If you could just go through the
25 highlighted portions. Those are the parts I'm

1 going to ask about. Of course, you're welcome to
2 read the rest of it.

3 A. Okay.

4 Q. Is the date of that doctor's visit --
5 do you remember going to the doctor on June 26,
6 2013?

7 A. No. I mean, I'm sure I did -- the
8 records are here -- but I don't recall the visit.

9 Q. That's fine. Do you remember having an
10 issue of tingling and numbness in your right leg
11 during that time period?

12 A. I must have had. It's on the paper.

13 Q. Was there any problem going on? Was
14 your knee okay?

15 A. My knee has always been fine since I
16 had it replaced.

17 Q. When was it replaced?

18 A. '05.

19 Q. So you don't remember having any issues
20 with your right leg in 2013?

21 A. No.

22 Q. There's a note about pain in your lower
23 -- let me give you that stack. There's a note
24 about pain in your lower back. Do you recall
25 having that?

1 A. Yes. It must -- I mean, it's on the
2 paper. And if it's on the paper, then I went to
3 the doctor for it. But I don't have a problem -- I
4 haven't had a problem since.

5 Q. Again, a lot of this is -- what I want
6 is do you remember anything? What's your personal
7 impression? So you don't remember having any
8 issues with your lower back in 2013?

9 A. No.

10 Q. Did you receive any treatment or go to
11 a specialist or anything for it?

12 A. I don't recall if I did.

13 Q. That's fine. Around the bend. Don't
14 worry.

15 MR. BATTLE: This is exhibit 6.

16 (DFT. EXH. 6, EMS Incident Report, was
17 marked for identification.)

18 BY MR. BATTLE:

19 Q. Ms. Barras, this is the EMS report. If
20 you could take a moment to review that, please.

21 A. Okay.

22 Q. Have you reviewed it?

23 A. Uh-huh (affirmative).

24 Q. The EMS report lists its arrival time
25 as 8:26 a.m. Does that sound accurate, or do you

1 think -- I know earlier you said you'd gotten there
2 after 8:30?

3 A. I may have gotten there a little early
4 that day because sometimes we do get there a little
5 earlier than 8:30. It could have been that I got
6 there a little after eight, you know, but it
7 doesn't seem that I was there at 8:00 o'clock
8 because we usually try to arrive at 8:30.

9 Q. Okay.

10 A. And they don't open the door to let us
11 in until about 8:30.

12 Q. The EMS report notes that you hit the
13 right side of your face. Do you agree with that?

14 A. Yes.

15 Q. So it wasn't -- I'm just narrowing it
16 down. It wasn't like the nose or the forehead?

17 A. No.

18 Q. It was the right side?

19 A. It was right here.

20 Q. Okay. It also notes that you hit your
21 right shoulder? Do you agree with that?

22 A. Yes.

23 Q. There's a note that you told them your
24 neck and back felt okay. I know sometimes I repeat
25 myself. You said --

1 A. I was quite dazed.

2 Q. That's okay. I know it's serious,
3 but it's about like a trip to the dentist, going
4 through one of these depositions.

5 Did the EMTs warn you about not using a
6 brace or anything like that?

7 A. They probably did, but like I said, I
8 was quite dazed.

9 Q. That's fine. I understand. I imagine
10 we all would be.

11 MR. BATTLE: Let's do ...

12 (DFT. EXH. 7, Hospital Record, was
13 marked for identification.)

14 BY MR. BATTLE:

15 Q. With Exhibit 7, that appears to be a
16 report from the hospital. It notes you were on
17 blood thinners. Do you agree with that?

18 A. Yes.

19 Q. It also notes you were able to ambulate
20 to the bathroom with minimal assistance. Do you
21 agree with that?

22 A. Yes.

23 Q. That's fine. We'll move right on.

24 This is just a note saying they took
25 scans of your right knee and they found no acute

1 issues. Do you agree with that?

2 A. Yes.

3 MR. BATTLE: I should have had you mark
4 these beforehand. I apologize.

5 (DFT. EXH. 8, Grand Strand Regional
6 Diagnostic Imaging Report, was marked for
7 identification.)

8 (DFT. EXH. 9, Family Medicine of
9 Sayebrook History and Physical Report, was marked
10 for identification.)

11 BY MR. BATTLE:

12 Q. This is Exhibit 9. I noticed it says
13 you were diagnosed with a concussion and sent home.
14 Do you agree with that?

15 A. Yes.

16 Q. Did they prescribe any treatment for
17 the concussion?

18 A. I don't think so. Just rest, I think.

19 Q. There's a note on that record. It's
20 not a descriptive one. It's in the history. It
21 says on May 20th, '09, you reported experiencing
22 memory loss. Do you recall reporting that?

23 A. Well, I don't really recall. I mean,
24 these are doctor visits in the past. I don't
25 recall because, you know ...

1 Q. I'll reiterate again I don't recall is
2 an acceptable answer. What I want is what you
3 remember, not your analysis. Do you understand
4 what I'm saying?

5 A. Yes.

6 Q. Did you ever have any other issues of
7 memory loss in the past?

8 A. No, I don't think so.

9 Q. Have you ever been diagnosed with any
10 sort of condition or anything like that, mental or
11 physical or psychological, that might relate to the
12 memory loss?

13 A. I've got to think. I don't think so.

14 Q. That's fine. Do you need a break or
15 anything like that, Ms. Barras?

16 A. Yes. I would like to go to the
17 bathroom.

18 Q. That's fine. Please go ahead.

19 MR. BATTLE: Let's go off the record.

20 (A recess transpired.)

21 BY MR. BATTLE:

22 Q. Ms. Barras, did you experience any pain
23 in your right foot after this incident?

24 A. Yes.

25 (DFT. EXH. 10, Southern Urgent Care

1 Record, was marked for identification.)

2 BY MR. BATTLE:

3 Q. And is Exhibit 10 from the doctor's
4 visit you had afterwards about your foot?

5 A. Yes.

6 Q. What happened during that visit? What
7 did they tell you?

8 A. That it was just sprained.

9 Q. Did you get it x-rayed?

10 A. Yes.

11 Q. For treatment, foot bandaging? Did
12 they give you one of those moon boots?

13 A. Bandage and the boot.

14 Q. How long did you wear the boot?

15 A. Probably a couple of weeks around the
16 house.

17 Q. After the accident, did you experience
18 any memory loss, dizziness or vertigo?

19 A. No.

20 Q. Were there any other psychiatric
21 issues?

22 A. No.

23 Q. Did the doctors tell you to just take
24 the boot off whenever it felt better?

25 A. Yes.

1 Q. At this phase of the deposition, I'll
2 start marking things off because you've already
3 answered them. Just be patient with me. Thank you
4 very much.

5 (DFT. EXH. 11, MUSC Cardiology Record,
6 was marked for identification.)

7 BY MR. BATTLE:

8 Q. And is this a note regarding a visit to
9 MUSC Cardiology?

10 A. Yes.

11 Q. Was this related to the accident, or
12 was this your blood pressure causing issues?

13 A. I don't think it was related to the
14 accident. I was having a little problem with my
15 heart.

16 Q. Were you experiencing difficulty
17 breathing and chest tightness at that point?

18 A. Yes.

19 Q. Did your doctor prescribe you a
20 medication called Sotalol?

21 A. Sotalol.

22 Q. Are you taking that now?

23 A. Yes.

24 Q. Have you experienced any side effects
25 from it?

1 A. No.

2 Q. When it says you have trouble walking
3 around a store or simple shopping --

4 A. I get real short of breath.

5 Q. Okay.

6 MR. BATTLE: Exhibit 12.

7 (DFT. EXH. 12, January 7, 2016 Medical
8 Record, was marked for identification.)

9 BY MR. BATTLE:

10 Q. And just to check back, you were not
11 taking Sotalol at the time of your accident?

12 A. Let me think. I may have been. I
13 really am not sure.

14 Q. This is a -- I have trouble finding the
15 dates on these things.

16 MR. STARR: It's January 7, 2016. It's
17 on the back.

18 MR. BATTLE: Thank you.

19 BY MR. BATTLE:

20 Q. This is a note about your experiencing
21 light headedness, shortness of breath, and heart
22 palpitations. Are those related to the high blood
23 pressure?

24 A. That was relating to my heart.

25 Q. It doesn't have anything to do with

1 this incident?

2 A. Pardon?

3 Q. The symptoms you were experiencing that
4 are listed in that report on January 7th, they
5 don't have anything to do with this accident, do
6 they?

7 A. No.

8 (DFT. EXH. 13, CT Scan Report, was
9 marked for identification.)

10 Q. This is a report of a CT scan on
11 March 7th, 2016. Do you remember going in for
12 that?

13 A. I don't recall this. I know I go to
14 the doctors. I know I have tests for certain
15 things, but I don't recall that certain day and
16 test.

17 Q. That's fine. Do you remember -- was
18 there any reason you were getting a CT scan of your
19 head during around that time period?

20 A. Maybe to see if I had a blood clot or
21 something. I'm not sure.

22 Q. And do you agree with the conclusion
23 that they didn't find anything involving acute --
24 do you remember them --

25 A. Yes.

1 Q. It's a tricky question because if they
2 found something, I'm assuming you'd remember it a
3 lot better.

4 A. I don't remember that, and I would
5 probably be on other medications or whatever.

6 Q. So you don't remember them finding any
7 issues after these scans?

8 A. No.

9 Q. Okay.

10 (DFT. EXH. 14, Ocean Cardiology Medical
11 Record, was marked for identification.)

12 BY MR. BATTLE:

13 Q. This is Exhibit 14. It's a doctor's
14 note. Did you experience memory loss during that
15 time period referenced in that Exhibit 11?

16 A. Yes, I did.

17 Q. Is that the first time you recall
18 having memory loss?

19 A. Like that, yes.

20 Q. Do you know of any connection between
21 the memory loss you experienced then and the
22 accident which we're here for today?

23 A. I don't know if it's related, but I
24 think it was stress.

25 Q. Okay. Thank you very much, Ms. Barras.

1 I don't have any more questions.

2 EXAMINATION

3 BY MR. STARR:

4 Q. Ms. Barras, I just have a few followup
5 questions for you.

6 A. Okay.

7 Q. I know we met before we went on on the
8 record. But just for the record, my name is
9 Dominic Starr, and I represent AlSCO, Inc., which
10 is the company that supplies the mats or rugs. I
11 call them mats, but it's okay if you think of them
12 as rugs. I want to just ask you a few followup
13 questions about those.

14 Exhibit Number 3 is the black-and-white
15 copies of the photos that you took of the mats.
16 You said those photos were taken approximately
17 eight months after your fall, is that correct?

18 A. Yes, sir.

19 Q. And I'm not going to try to pin you
20 down to any exact date, but I think that you fell
21 April 8th of 2015. Does that sound right?

22 A. Yes.

23 Q. So do you think that these were taken
24 sometime between -- around October to the end of
25 the year of 2015, or do you remember?

1 A. That picture was taken in the spring of
2 this year.

3 Q. And what makes you remember that it was
4 the spring of this year?

5 A. Because it's been about three or four
6 months since I've taken them.

7 Q. And I'll just tell you now, it doesn't
8 really matter to me or for the case exactly when
9 you took them. I'm just trying to get just a
10 general picture of it in my mind from just the
11 overall timeframe.

12 In those two pictures -- and just for
13 the record, Exhibit Number 3 is a photocopy of two
14 pictures. One is above the other one on the page,
15 is that correct?

16 A. Yes.

17 Q. Do you recall -- are those two photos
18 two different photos of the same mat, or are they
19 photos of two different mats?

20 A. That's the same mat.

21 Q. And are those two photos -- they look
22 to me like they're both taken from the same side of
23 the mat. In other words, looking at the mat in the
24 same direction in both pictures, is that correct?

25 A. Yes.

1 Q. And for example, I see like a dark
2 circular, maybe a stain on the floor that looks to
3 be at the same -- kind of at the same spot on both
4 mats for both photos, is that correct?

5 A. Yes.

6 Q. And maybe the photo below on the bottom
7 half of the page, is that just maybe a little bit
8 more close up of the mat?

9 A. Yes.

10 Q. Do these photos -- and I know that
11 they're not great copies. But do these photos show
12 what you refer to as the mats having humps?

13 A. Yes.

14 Q. And if you would -- I'm going to give
15 you my pen. And just so we're all -- you know, we
16 know what we're referring to, if you will circle on
17 those, directly on that document because that's the
18 exhibit that will be attached to the deposition.

19 A. Okay.

20 Q. If you'll just circle the spots where
21 you -- what you refer to as the humping or bunching
22 of the mat.

23 A. (Complying)

24 Q. Okay. You finished it?

25 A. Uh-huh (affirmative).

1 Q. I'm just kind of looking across at
2 yours. But for the record, you circled two areas
3 to the left on the photo and one area to the right,
4 is that correct?

5 A. Yes.

6 Q. And I'm not trying to get you to give
7 me an exact size. But how big is this mat in
8 length and width?

9 A. Well, this mat is in a doorway that
10 leads from one room to another like hallway to the
11 bathrooms.

12 Q. And so --

13 A. And it's about this long.

14 Q. And just for the record, since the
15 record won't show your hands being spread apart,
16 maybe three feet, roughly two and a half to three
17 feet, four feet?

18 A. About four feet.

19 Q. Four feet? Okay. And are they square
20 or are they rectangular? In other words, is it as
21 --

22 A. They're oblong.

23 Q. So is it not quite as deep as it is
24 long?

25 A. They're about this wide.

1 Q. Maybe two feet?

2 A. Yes.

3 Q. Are all of the mats that are on the
4 floor in the senior center or the rec center all
5 the same size?

6 A. No. There's some coming in the front
7 door that's more of a square, and then some are
8 oblong like this, and most them about the same
9 size.

10 Q. Are the ones that are square smaller or
11 larger?

12 A. They're larger.

13 Q. Larger? Do you know which kind you
14 fell over?

15 A. This kind.

16 Q. But you don't have any reason to think
17 that this mat that you took the picture of that's
18 in Exhibit 3 is the exact same mat that you fell
19 on, do you?

20 A. I couldn't tell if it's the very same
21 mat, but it's a mat just like it.

22 Q. That's what I'm trying to get at. The
23 mat that you actually fell on on April 8th, do you
24 know if anyone took that mat, picked it up, put it
25 in a closet or did anything with it so that it

1 would be kept?

2 A. No, I don't know.

3 Q. And do you have any knowledge today of
4 what happened to that mat after you fell?

5 A. No, I don't.

6 Q. Just describe for me what these mats
7 are like. I think that I know, but just for the
8 record, tell me -- what do they feel like on top of
9 the mat, the part that you actually are supposed to
10 step and walk on.

11 A. I guess sort of furry or fuzzy on the
12 top, and around the edges, it's got like a rubber
13 binding.

14 Q. And that rubber binding that goes --
15 does it go all the way around all four sides?

16 A. Yes.

17 Q. And that strip, we'll call it, around
18 the perimeter does not have any carpet-type or
19 fuzzy-type material on it, is that correct?

20 A. Correct.

21 Q. Do you have any best guess about how
22 wide that rubber strip is?

23 A. Three fourths to an inch wide.

24 Q. Is it even all the way around as best
25 you know?

1 A. Yes.

2 Q. The humps or bunches that you circled
3 in Exhibit 3, are those typical of what you saw and
4 complained about before, or do these in any way to
5 you look different than the ones you had seen prior
6 to your fall?

7 A. That's exactly like all the rugs that
8 I've seen that are down.

9 Q. And is it typical that each one would
10 have three or so humps like that? I know they're
11 not all exactly the same.

12 A. Yes.

13 Q. And if that rug or mat that is in these
14 photos is three to four feet long, is it fair to
15 say that those humps or bunches are just a matter
16 of some number of inches across each one?

17 A. Yes. And some of them have a hump on
18 the end. Like the width is like this. Some of
19 them have humps in that end, and that's how I fell.
20 My foot went under the end of that mat. It was in
21 front of the sink.

22 Q. When you say the end of the mat, which
23 side of that mat are you referring to that would be
24 the end?

25 A. This is the end if this is the narrow

1 end.

2 Q. So just for the record, you're pointing
3 to -- if the main part of the rug that we see on
4 these photos -- we'll call it the front just
5 because the way you're facing it.

6 A. Yes.

7 Q. So then you pointed to the right side
8 of that mat, is that correct?

9 A. Yes.

10 Q. And that's what you call the end?

11 A. Yes.

12 Q. So the end is not like a corner; it's
13 the side of the mat, is that correct?

14 A. That's the end of the mat. Like if
15 you spread a mat in front of a sink like this, this
16 is the length, and that's the width. My foot went
17 under the width of that rug because it had a couple
18 of little humps.

19 Q. Was the mat that you tripped over
20 rectangular? In other words, was it longer than it
21 was wide?

22 A. Yes.

23 Q. And it was in front of a sink?

24 A. Yes.

25 Q. And when you tripped on it, were you

1 walking past the sink, or were you walking toward
2 it or away from it?

3 A. I was walking towards it.

4 Q. Towards the sink?

5 A. Yes.

6 Q. But when you fell, you didn't hit the
7 sink? No part of you hit the sink, did it?

8 A. No. There was nothing to grab onto.

9 Q. Okay. I'm a very bad artist, but I'm
10 going to draw a sink just for my own reference, and
11 then I'll draw the mat under it. And I'm going to
12 show you that, okay?

13 A. Yes.

14 Q. Can you tell from my great drawing
15 where the sink is?

16 A. Uh-huh (affirmative).

17 Q. And is it fair that the mat was about
18 like that in front of the sink?

19 A. Yes.

20 Q. And is that mat set up in front of the
21 sink so that when a person is at the sink washing
22 dishes or getting something, getting water from the
23 sink, they would be standing on the mat?

24 A. Yes.

25 Q. Now, mark on that picture that I drew

1 what part of the mat you tripped on. You can
2 circle it or make an 'X' or whatever.

3 A. (Complying)

4 Q. You were walking toward the sink?

5 A. Yes.

6 Q. Just draw an arrow in the direction
7 that you were walking when you fell.

8 A. (Complying)

9 Q. So you were walking directly toward the
10 sink, but you weren't walking toward the front of
11 the sink; you were walking toward the sink but from
12 the side, is that correct?

13 A. Well, I probably was going to go --
14 because we do our setting up our food right here
15 (indicating) on the base. And I was walking back
16 towards. And then as soon as I hit that, my foot
17 went under, and then it folded up under me. I had
18 brought it with me because my foot was under there,
19 and I was in full motion, I guess, and I ended up
20 over here on the floor.

21 Q. And so you were -- were you intending
22 to walk past the sink? You weren't intending to
23 work at the sink?

24 A. Yes, I was. I was planning on working
25 at the sink.

1 Q. All right. But you were approaching
2 the sink from the right side the way we're looking
3 at it on there?

4 A. Yes.

5 Q. And so what would you have done if you
6 had not fallen? Would you have continued walking
7 in the direction of the arrow, and then when you
8 got in front of the sink, kind of turned to your
9 right to face the sink?

10 A. Yes.

11 Q. And then you said it was your right
12 foot that got caught under the --

13 A. Yes.

14 Q. And did you notice that mat or pay any
15 attention to the mat prior to when you fell?

16 A. No, I didn't.

17 Q. Did you ever actually see, before you
18 tripped, the hump in the mat that your foot went
19 under?

20 A. I didn't take notice of it at that
21 time.

22 Q. Sure. And I wouldn't really expect you
23 to. I'm just wanting to make sure that I know what
24 you did or didn't see prior to your fall. Having
25 not looked or paid any particular attention to the

1 mat before you fell, how do you know that you fell
2 because your foot went under a hump in the mat?

3 A. Because there's humps on the ends of
4 all of them and the centers of all of them, so I
5 just assumed because my foot was under the mat that
6 something had to be there for my foot to have gone
7 under it like that.

8 Q. Those mats, when they're laid down on
9 the floor, what is the material of the floor? Is
10 it concrete?

11 A. Well, it's like a tile, but it's
12 concrete underneath it.

13 Q. And when those mats are laid down on
14 that tile floor, do they stay still on it? In
15 other words, do they stick enough to the tile that
16 they don't slide around?

17 A. Yes.

18 Q. And do you know underneath what those
19 mats look like?

20 A. No, I don't.

21 Q. My guess is they're just that same
22 rubber that's around the edges, and that rubber is
23 what sits on the floor directly. But have you ever
24 personally picked up one of those mats to examine
25 it before or after your fall?

1 A. No, I haven't.

2 Q. And do you still work over there or
3 volunteer over there?

4 A. Yes, I do.

5 Q. Are the same mats still there?

6 A. Yes, they are.

7 Q. Are they in the same kind of condition
8 that you complained of before your fall?

9 A. Yes, they are.

10 Q. Do you know -- have you ever seen the
11 mats get delivered?

12 A. Yes, I have.

13 Q. Okay. Tell me who brings the mats into
14 the community center.

15 A. I don't know his name, but he's pretty
16 much the same guy each time. He's from the rug
17 delivery that brings them.

18 Q. Do you know if he actually works for
19 Alsco, Inc.?

20 A. I'm really not sure.

21 Q. What is his routine when he comes in?
22 What does he do first when he walks in?

23 A. He takes up the old rugs, and then he
24 puts down the fresh ones, the clean ones.

25 Q. How does he take up the -- I mean, does

1 he bring in like a bin that he throws them all into
2 and wheels them out, or how does he carry them all
3 out? Do you know?

4 A. I don't recall how he gets them all
5 out.

6 Q. How many mats are in there?

7 A. There's five or more that I can recall
8 in there.

9 Q. And when you say in there, is that just
10 in the kitchen?

11 A. That's just in the front door that we
12 come in and the back door that sometimes we come in
13 and out.

14 Q. So one at each door?

15 A. In this doorway, there's one, and
16 there's another doorway coming from the inside when
17 you first come in to the desk. There's another one
18 of these rugs in that doorway, but it's not facing
19 you long ways. It's the short side coming in.

20 Q. So is there one mat in front of every
21 door?

22 A. I think so, yes.

23 Q. And then are there other mats in the
24 kitchen?

25 A. Yes.

1 Q. And you fell on one in the kitchen,
2 correct?

3 A. Yes.

4 Q. So how many mats are in front of doors?

5 A. Just --

6 Q. I'm sorry. That wasn't a good
7 question. How many doors are there that have a mat
8 in front of them?

9 A. Six that I know of. Now, the back, the
10 others in the back, I don't know.

11 Q. So you can think of six doors that each
12 have one mat in front of them?

13 A. Yes.

14 Q. And then in addition to those six mats,
15 are there other mats in the kitchen area?

16 A. Yes.

17 Q. And am I saying it correctly? Did you
18 fall in the kitchen?

19 A. Yes.

20 Q. Is there a kitchen in that building?

21 A. Yes.

22 Q. So how many mats are in the kitchen as
23 best you can recall?

24 A. There's four or five.

25 Q. And when the guy comes to replace the

1 mats, does he take all ten or twelve or however
2 many mats are in the whole building with him?

3 A. Yes.

4 Q. And then after he does that, he lays
5 out new mats?

6 A. Yes.

7 Q. Or clean mats or whatever?

8 A. Yes. Now, I will tell you that they
9 did put down two rubber mats in front of the sinks
10 for a while.

11 Q. After your fall or before your fall?

12 A. After my fall. For a while. I noticed
13 the last time I was in there last week, this kind
14 of rug is back in front of the sinks.

15 Q. When you say rubber mats, were they
16 just entirely rubber?

17 A. Yes.

18 Q. Was it the same company putting them
19 down, or did the City do that?

20 A. I didn't see them put them in there or
21 take them out.

22 Q. But last time you were there, it was --
23 the same kind that you fell on was there again?

24 A. That was back there.

25 Q. After the guy delivers the new mats,

1 takes away the old mats, are you aware of whether
2 anyone else does anything to the mats? In other
3 words, does he put each mat down where it's
4 supposed to be?

5 A. Yes.

6 Q. And do you know if anyone else does
7 anything as far as moving those mats or cleaning
8 those mats while they're there before he comes
9 again or anything like that?

10 A. I don't know any of that.

11 Q. Have you ever done anything like that
12 with any of the mats?

13 A. No.

14 Q. That's all I've got for you. Thank
15 you.

16 MR. BATTLE: No questions. Thank you
17 so much, Ms. Barras.

18 THE WITNESS: Thank you.

19 MR. STARR: Oh, I'm sorry. Let's mark
20 that drawing.

21 THE REPORTER: Do you want to just go
22 with the next number?

23 MR. STARR: Yes. So that should be,
24 what, 15?

25 THE REPORTER: 15.

(DFT. EXH. 15, Drawing, was marked for
identification.)

(The witness, after having been advised
of her right to read and sign this transcript,
waives that right.)

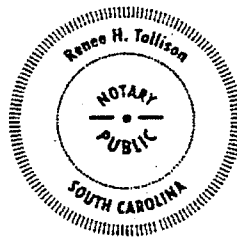
(The deposition was concluded at 12:07
a.m.)

CERTIFICATE OF REPORTER

I, Renee H. Tollison Court Reporter
and Notary Public for the State of South Carolina
at Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 26th day of October,
2016 at Murrells Inlet, Horry County, South
Carolina.



Renee Tollison

Renee H. Tollison, CVR
Court Reporter
My Commission expires
May 23, 2022

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In the Matter Of:

Barras, Callie v
City of Myrtle Beach

Irene Demczuk
December 01, 2016

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R-406



1980 - 2015

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF HORRY

3
4 CALLIE BARRAS,

5 Plaintiff,

6 vs.

CASE NO. 2016-CP-26-00135

7 CITY OF MYRTLE BEACH and ALSCO, INC.,

8 Defendants.

9
10 DEPOSITION OF: IRENE DEMCZUK

11 DATE: December 1, 2016

12 TIME: 10:26 AM

13 LOCATION: JOYE, NAPPIER & RISHER, LLC
14 3575 Highway 17 Business
Murrells Inlet, SC

15 TAKEN BY: Counsel for the Defendant

16 REPORTED BY: LINDA A. MAHONEY, Court Reporter

17
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R-407

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21 ALSO PRESENT:

22 Callie Barras

23
24 (INDEX AT REAR OF TRANSCRIPT)
25

1 IRENE DEMCZUK,
2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. BATTLE:

5 Q Ms. Demczuk, my name is Kirk Battle. I'm
6 the attorney for the City of Myrtle Beach. Thank
7 you for coming out today for your deposition.

8 The goal of this is to get your recorded
9 testimony so that we know what you would say in
10 trial. We'll all be reading this much down the
11 road, my client will be reading it, and for that
12 reason it's important that the record be as clear as
13 possible.

14 Nodding, going uh-huh, huh-huh, or
15 gestures with your hands aren't going to be
16 recorded, so throughout the deposition I may ask you
17 to say yes or no or to like utter it. The reason is
18 so that it's as clear as possible on the record.

19 If you need to take break, bathroom,
20 please don't hesitate to ask. If I say something
21 that doesn't make any sense, feel free to point it
22 out, and we'll just get right underway.

23 I'll start with, these are basic
24 background questions. The goal is to make sure I
25 don't get any friends or family of yours on the

1 jury.

2 I guess, when did you move to Horry
3 County?

4 A 2005.

5 Q Where are you from originally?

6 A West Hartford, Connecticut.

7 Q Where do you live?

8 A In Prestwick. You want the address?

9 Q Sure.

10 A 2026 North Berwick Drive, Myrtle Beach,
11 South Carolina.

12 Q Do you have any family in South Carolina?

13 A No.

14 Q Okay. Children? No cousins, nothing?

15 A Nothing in South Carolina. I have a son
16 in North Carolina.

17 Q Okay. Are you a member of a church here?

18 A Yes.

19 Q What's the name of the church?

20 A It's United Methodist of Surfside.

21 Q Are you a member of any social clubs or
22 anything like that?

23 A No. At the church?

24 Q Anywhere. The goal is to make sure I
25 don't get any friends or anything like that.

1 A No. I just do a lot with the seniors at
2 the rec center. That's mostly all my contacts.

3 Q Are there any programs besides the senior
4 bingo that you're involved with?

5 A No. Mostly senior bingo.

6 Q Okay. And I have to ask: Have you ever
7 been arrested?

8 A No.

9 Q Have you ever been diagnosed with any
10 mental or psychological things that would impede
11 your testimony today?

12 A No.

13 Q Are you on any medications that would
14 impede your testimony today?

15 A No.

16 Q How long have you been a member of Senior
17 Bingo?

18 A We were snowbirds before we moved here in
19 2005. I've been there since 2005 and probably about
20 seven or eight years before that when we were
21 snowbirds.

22 Q When did you transition from attending
23 Senior Bingo to a volunteer?

24 A When I moved here.

25 Q Okay.

1 A 2005, 2006.

2 Q So as early as 1997 you were attending
3 Senior Bingo?

4 A Yes.

5 Q Have you ever been charged money to go to
6 the Base Rec facility?

7 A Have I ever been?

8 Q Charged money to go to the Base Rec
9 facility?

10 A No.

11 Q Involving the group itself, do you play
12 bingo still or is it only volunteering?

13 A Both. We do different things as
14 volunteers, but we also play.

15 Q What volunteer activities do you do for
16 the group?

17 A In the kitchen, I volunteer there a lot of
18 my time. And also soliciting sponsors for vendors,
19 gifts for bingo.

20 Q What do you do in the kitchen?

21 A Prepare all the food.

22 Q What kind of food is it?

23 A It's food that is donated by the bingo
24 players and also some of the food is donated from
25 the food bank, which we're associated with.

1 Q Okay. What kind of food; cookies
2 spaghetti?

3 A Snacks, cookies, cakes. It depends.
4 Somebody might bring in macaroni salad, somebody
5 else brings in sandwiches. It's just a variety of
6 what happens to come in that day.

7 Q I guess the goal is -- is this like, the
8 kitchen's on and active and people are cooking, or
9 you're just arranging and plating?

10 A There is no cooking, no.

11 Q Okay.

12 A It's all food that's brought in or we're
13 arranging it because we've brought it in or other
14 people have, or it's from the food bank.

15 Q How are tasks assigned in the group?

16 A We all kind of do our own thing. After
17 all the years of people being in there, we've kind
18 of gotten accumulated to where we're comfortable.
19 Callie and I usually do the food preparation, are
20 receiving the food from people who are bringing it
21 in, setting the tables up outside, in the hall,
22 cleaning up, doing dishes, cutting bread. We get
23 bread from Toffino's Bakery. Putting things in the
24 refrigerator that we have to keep cool until we
25 serve them. And then cleaning up afterwards and

1 putting everything away.

2 Q How often do you have to do dishes?

3 A Every time we're there, Wednesday and
4 Friday.

5 Q Is the food served on paper plates or
6 regular China?

7 A The food is served on regular plates on
8 the big table. But we also have paper plates for
9 every one of the people that come up to the table to
10 take their food.

11 Q What -- sometimes what I do is I sort of
12 repeat back to make sure I clearly understand what
13 the person's saying.

14 When you say regular plates, do you mean
15 like the sandwich --

16 A Plastic, the heavy like Melmac plates like
17 that. Nothing that's easily breakable. And then we
18 use the paper plates for the people to serve
19 themselves and take it to the table.

20 Q And the material ones are the ones that
21 need to be washed?

22 A Yes. Or any of the silverware, the
23 utensils that we have to use in order to serve them.

24 Q Are these immediately given back to the
25 people that day or are they stored at the Base Rec

1 facility?

2 A They're stored at the base. Unless we
3 happen to use the plastic disposable utensils, those
4 are thrown out. But the serving utensils, obviously
5 they are metal and they're washable, and we've used
6 those.

7 Q Is there any formal leader of the group or
8 you are saying that it's kind of people just do
9 whatever?

10 A I think I've acclimated myself to the
11 leader over the years.

12 Q So you think you're the leader of the
13 group?

14 A Yes.

15 Q How many members -- how many volunteers
16 work for Senior Bingo?

17 A Oh, Lord, I never counted. There must
18 be --

19 Q I don't want to cut you off. You can't
20 look for an answer from the plaintiff or her
21 attorney. You've have to --

22 A Oh, okay.

23 Q Just stopping it now.

24 A Volunteers are counted, all the ones that
25 are in the kitchen, people that pick up gifts, all

1 the callers, all the people that pick up food, I'm
2 guessing 25 individual volunteers. I've never had
3 to put the list together. That's usually done by
4 the fellow that's in charge of bingo.

5 Q Well, who's the person in charge of bingo?

6 A It's Douglas Williams. They call him
7 Sarge.

8 Q What's the difference -- when you said you
9 were in charge, did you mean --

10 A The kitchen.

11 Q The kitchen. Okay. I'm sorry, yeah.

12 A The kitchen. And I solicit and go to all
13 the vendors and the restaurants and everything else
14 to try to get gifts for Senior Bingo, but I'm in
15 charge of the kitchen.

16 Q Okay. How many people attend Senior
17 Bingo?

18 A It varies. Right now we're at 95. We
19 can -- because the snowbirds are starting to come
20 in. We can go as high as 140, 150 every Wednesday
21 and every Friday during the winter months because
22 the snowbirds are here. During the summer months,
23 we run about 50 with locals.

24 Q Who is in charge of the facility itself?

25 A You mean the person?

1 Q Yeah. Who runs the Base Rec Center?

2 A The City of Myrtle Beach Recreation
3 Department.

4 Q Do you know any individual who is there or
5 assigned there?

6 A Pam Stone.

7 Q Okay. Is she --

8 A She's the recreational -- I don't know
9 what her official title is. I think she's the
10 director of recreational activities. Something like
11 that.

12 Q Is she at the facility every day?

13 A No. She comes and goes.

14 Q Who is the person that's there every day?

15 A The manager is Dustin -- I think his last
16 name is Jordan. J-O-R-D-A-N.

17 Q And there are specific instances of
18 talking to both of them alleged in the complaint.
19 How often do you talk to Pam Stone?

20 A Not very often. Just once in a while if
21 we happen to get her or she comes in. Her
22 assistant's name is Lisa, but I don't know what her
23 last name is. She's there a lot more often than Pam
24 is.

25 Q Did you talk to Dustin Jordan often?

1 A Yes, he's there all the time.

2 Q Okay. What do you talk with him about?

3 A If there's any kind of a problem. If
4 there's a shortage of napkins, toilet paper,
5 whatever. If there's a problem with an appliance,
6 coffeepots, whatever.

7 Q Okay. I'm going to hand the first
8 exhibit -- this is Exhibit 1.

9 MR. BATTLE: Let's go ahead and mark it.

10 THE WITNESS: This's what we sign every
11 day.

12 BY MR. BATTLE:

13 Q This is not the total page. She needs to
14 marks it first. I should have handed it to her
15 first. I messed up the order.

16 A That's all right.

17 (DFT. EXH. 1, Base Recreation Center Daily
18 Sing-In Sheet, was marked for identification.)

19 BY MR. BATTLE:

20 Q You said you signed the sheet daily?

21 A Yes.

22 Q Do you see where Ms. Barras' signature is
23 highlighted on that?

24 A Yes.

25 Q Do you see the waiver of liability at the

1 top?

2 A Yes.

3 Q Do you understand what it says?

4 A Yes.

5 Q Okay. That's all I've got for that one.

6 You can keep reading, if you want.

7 How long have you known Ms. Barras?

8 A Since I started bingo. I didn't know her
9 as a snowbird, I don't think. So that would be --
10 I've known her since 2005 when we moved here.

11 Q Do you ever see her outside of Senior
12 Bingo?

13 A Oh, just once in a blue moon. We may go
14 out to lunch, her and her husband and myself and I,
15 but not regularly. Except Monday nights, we see
16 them down at the McDonald's at Garden City because
17 they have -- I started one of the bingo programs at
18 all the McDonald's. So in order to honor the people
19 that are doing it, I will often go on Monday night
20 and Callie and her husband go just about every
21 Monday night.

22 Q What sort of tasks does Ms. Barras do in
23 the kitchen?

24 A Whatever is necessary, we all help each
25 other. The only exception is making and handling

1 the coffee. That is strictly done by Mr. Crede, who
2 is the leader of the coffee making. And we have Bud
3 Mark who is also making the coffee.

4 Q Why do they strictly do that task?

5 A It can be heavy, the pots, handling them,
6 because they are hot. And we tend to gravitate
7 towards the food, and the guys happen to like to
8 make the coffee. So that's kind of gone that
9 direction.

10 Q Have you ever seen Ms. Barras trip or fall
11 before this incident?

12 A No.

13 Q Has she tripped or fallen after this
14 incident?

15 A No.

16 Q Has she ever complained about dizziness or
17 vertigo before the accident?

18 A I can't say. I don't recall if she had
19 said once that she might have vertigo. But it
20 was -- could have been quite a while ago, but I
21 can't say it definitely.

22 Q Have you ever seen Ms. Barras experience
23 memory loss?

24 A No.

25 Q Have you ever seen Ms. Barras walk with a

1 limp?

2 A No.

3 Q Has she ever had any issues with her right
4 leg or foot?

5 A Not that I know of.

6 Q Okay.

7 MR. BATTLE: How am I doing on time?

8 MR. NAPPIER: A quarter till.

9 (DFT. EXH. 2, Handwritten Notes, was
10 marked for identification.)

11 BY MR. BATTLE:

12 Q That's just the opening page. Was -- what
13 I'm getting around to is the meeting with Pam Stone
14 where you complained about the rugs.

15 Was the reason she was there because of a
16 petition the group had made?

17 A Not really a petition. We were just
18 concerned because we seen different people like get
19 caught on the rugs because the rugs would buckle.
20 And not just in the kitchen, but we've seen people
21 even stumble out in the main hallway and the hall
22 because they have them at all the different
23 entrances.

24 Q And I tried to kind of compartmentalize
25 things. But if you could review Exhibit 2 for a

1 second. Can you read that?

2 A Mm-hmm. Right.

3 Q Was that a petition that the Senior Bingo
4 group made to the city?

5 A No, it's not a petition. It's just a
6 concern of us that were in the kitchen. It wasn't a
7 petition.

8 We were concerned about it being kept as
9 Senior Bingo because it was -- one of the meetings
10 with Pam Stone that she said we couldn't really keep
11 it to that age group because it's a city building,
12 and you cannot prevent any particular -- you can't
13 discriminate against any particular age group.

14 It can -- we can hopefully just, within
15 ourselves, call it Senior Bingo, but you could not
16 prevent anybody else from coming in.

17 Q Okay.

18 (DFT. EXH. 3, Petition, was marked for
19 identification.)

20 THE WITNESS: This is later. This is a
21 petition. This was not originally -- oh, wait a
22 minute. This isn't closed. I'm incorrect on that.
23 I completely forgot that we did this. I'm incorrect
24 on that.

25 Q It's okay. It's not a big --

1 A I completely forgot about that. There's
2 not even a date on here. March 18th. Yeah. These
3 are individual signatures. And a lot of these are
4 snowbirds, too.

5 Q The basic point I'm getting around to is
6 that your organization requested that the city
7 exclude people who were not under the age -- who
8 were not over the age of 50, correct?

9 A Yes.

10 Q And Pam Stone came to talk to you about
11 that, correct?

12 A Yes, she did. Because it's listed as
13 Senior Bingo everywhere.

14 Q After the meeting, did you talk to Pam
15 Stone?

16 A I don't think so.

17 Q Did you ever --

18 A I don't think so. Because she made it
19 clear on the rule of the city buildings, and how it
20 couldn't be restricted.

21 Q Did you do that by e-mail or phone call?

22 A No, she did it in person.

23 Q So you did meet with Pam Stone because of
24 that petition?

25 A In fact, I think it was the day -- I can't

1 remember if it was a particular meeting with her,
2 when it happened, but we did meet. She came in
3 personally. She was in a couple of times. So I
4 think once she did come in and told us what the
5 rules were with the city.

6 Q When did you tell Pam Stone that -- about
7 complaining about the mats to her?

8 A I don't know if it was the first meeting
9 or the second meeting, I can't remember that. It
10 was quite a while ago.

11 Q What was her response?

12 A Her response was -- first of all, we asked
13 if we could move the rugs while we were there on
14 Wednesday and Friday. In other words, just roll
15 them up and just get them out of the way. And she
16 said no. She would prefer to have the rugs left
17 there because the hall is rented and it was to
18 prevent slippage, water, whatever.

19 Q Okay. Do you remember seeing Ms. Barras
20 complain to Ms. Stone about the rugs?

21 A She was probably one of the voices, yes,
22 because we are in the kitchen talking about it. All
23 of us were mentioning something about the rugs and
24 how we were concerned and if we could just roll them
25 up and move them out.

1 Q And what made you concerned about the
2 rugs?

3 A Because you could see them buckling all
4 the time. People didn't trip, but you could see
5 someone stumble. Because once you get busy, you
6 start working in there and they buckle up, if you're
7 not aware of it, it could cause an accident.

8 Q I think I know what you mean by the word
9 buckle, but what does it mean to you?

10 A It doesn't lay flat.

11 Q Okay.

12 A There are different qualities of those
13 rugs and the ones that were down there originally
14 were ones that would kind of buckle -- move up and
15 down. And they changed them, I think it was every
16 couple weeks they would come in from an outside
17 source and change the rugs.

18 Q Was it the same kind of rug each time?

19 A Yes.

20 Q Were there rugs automatically buckled or
21 did they start out flat?

22 A Some when they were put down were a little
23 bit, but as they stayed it got worse. I'm only
24 talking about the rugs that I see in the kitchen.

25 Q That's fine. Those are the rugs --

1 A Because they are all over the place. And
2 we've had other people trip and fall out in the
3 hallway, but that doesn't pertain to this.

4 Q So I'm going to do where I repeat it back
5 to you and you tell me if I've got it right or not.

6 A Okay.

7 Q The rugs would come in and at first they
8 would be okay but over time they would get more and
9 more buckled up?

10 A Yeah. The more usage that they received
11 and people walking back and forth, yes.

12 Q I suppose part of it is -- would the rugs,
13 would they be flat on the ground even like later on
14 in the two-week period or were they automatically
15 bunched up when they came in? I don't know if that
16 question made sense.

17 A It depends upon the traffic. I think it
18 got worse over time.

19 Q Okay.

20 A Because you've got carts that you're
21 wheeling, people going in and out, and deliveries
22 and -- yes, I would say they got worse over time.

23 Q Okay. How often did the city change the
24 rugs?

25 A I think every couple of weeks. I'm not

1 sure if it was every week or every couple of weeks.

2 Q All right. Did you ever complain to
3 Dustin Jordan about the mats?

4 A I can't say if we did or not. Probably.

5 Q Were there any employees besides Pam Stone
6 that you can recall complaining about the mats to?

7 A Yes. There was Bob Mitchell who died.
8 There was another fellow that tripped. But that was
9 out in the front lobby. That was Gene Nagel. We
10 also had a delivery person from Cici's who was
11 coming in with a whole big stack of pizzas that
12 almost tripped and went headfirst, but that was at
13 the entrance between the front lobby and the hall.

14 Q I'm kind of going through a checklist
15 here. Part of the plaintiff's complaint is that she
16 herself told Pam Stone that they were having issues
17 with the mats.

18 Did you witness that conversation or hear
19 it?

20 A Yes, I did.

21 Q And what do you remember being said?

22 A Wow. Well, she complained about the mats,
23 because people were stumbling on them. We all said
24 the same thing. And the only thing we wanted to do
25 was roll them up and move them out of the way. Only

1 for bingo, and then we would put them back.

2 Q Were the mats -- when they bunched up,
3 could you flatten them back out, just had to reach
4 down and do it?

5 A You had to reach down and do it.

6 Q Okay.

7 A And I will -- I don't know if you're going
8 to get to this, but after the accident they did
9 order new mats, the heavy rubber ones that do not
10 bunch up at all.

11 Q So these mats are better?

12 A Oh, they are 100 percent better. There's
13 no comparison. I might have jumped the gun on that.
14 I don't know.

15 Q You can talk to me about the weather if
16 you want. I might cut you off. No, go ahead.

17 A In fact, many places should go to this
18 kind of a rug because it would prevent a lot of
19 accidents. Now they have a real nice heavy one.
20 And the edges angle downwards so it's hard for you
21 to even trip or get your foot caught on it. They're
22 really a hundred percent better.

23 Q All right. Finally we get to the meat of
24 it. The day of the accident, you were present,
25 correct?

1 A Right.

2 Q I usually tell people just talk me through
3 the whole day starting with you got up that morning.

4 A All right. Got up that morning, went to
5 bingo.

6 Q What time did you go?

7 A 8:00 we arrive. And we start unpacking
8 everything, bringing the food in, bringing whatever
9 containers that are underneath the stage, that's
10 what keeps all of our supplies locked up, all of our
11 dishes, our paper goods, our utensils. All of that
12 stuff has to be brought into the kitchen.

13 That's brought in -- there are big carts
14 and there's a wagon that we bring all the stuff in.
15 And Callie and I usually -- we figure out what our
16 count was the previous day because in between
17 changing of seasons, your people can go from 50, we
18 were two weeks ago, to right now about 95. And it
19 can change like that. So we kind of guess how much
20 food we're going to need and what to set up.

21 And then it depends upon what kind of food
22 is being brought in and who is going to donate. We
23 were work with the food bank, Oscar Crede and his
24 wife bring in a lot of the food from the food bank
25 designated for seniors only. And so we were getting

1 things ready.

2 I believe this happened at breaktime or
3 the end of the day, because I was at the sink
4 washing dishes and cleaning up, when all of the
5 sudden Callie tripped behind me and I heard her hit
6 something. I don't know if it was the side wall or
7 the floor. And as I turned, she was on the floor
8 headfirst.

9 Q What I'm going to do is ask questions that
10 kind of go back and unpack various statements.

11 You said you arrived at 8:00 AM. Is that
12 the time you usually arrived?

13 A We arrive between 8:00 and 8:15.
14 Sometimes the door is unlocked at 8:15. If it's
15 not, then we have to wait until 8:30. Bingo is at
16 10:00.

17 Q You said that you -- the accident happened
18 at the end of the day?

19 A I don't know if it was during breaktime or
20 the end of the day. The only time we're at the sink
21 washing dishes is either at breaktime if all the
22 food is gone and we can clean up, or if there's
23 still food left, then at the end of bingo we then
24 have to finish cleaning up and packing everything
25 away. So there's two times where you could be at

1 the sink depending upon consumption, and how much
2 food is left or not left.

3 Q What time is breaktime?

4 A It's about a quarter to 11:00. Now,
5 before 10:00 -- somewhere between 20 minutes to
6 10:00 and 10:00 we do open up the tables for coffee
7 and whatever food we have. So they can come up then
8 and get whatever they want. If there's anything
9 left, then we leave it out for breaktime at quarter
10 to 11:00. They can eat twice.

11 Q Can you remember if you rolled any carts
12 or anything like that over in the kitchen?

13 A They are always rolled over on every day.

14 Q Are these carts that the city provides?

15 A Yes, there's two carts. There's a blue
16 one and a black one. And we put our food on there
17 to bring it out to the hall. The bread that we've
18 cut an sliced from Toffino's, that gets brought out.

19 Q Are the carts -- my line of questioning --
20 I don't mind explaining my thinking. You said the
21 carts cause a lot of the bunching up?

22 A I said they can.

23 Q They can?

24 A They can.

25 Q Does regular foot traffic cause bunching

1 up?

2 A Both things do.

3 Q Okay. Based on your testimony you didn't
4 see the fall personally?

5 A I didn't stand in front of her and see her
6 fall. My back was to the sink, but I heard her
7 fall. And that's when she cried out and I had
8 heard -- she hit something, I don't know what. It
9 could have been the cabinet or could have been the
10 floor. I don't know. The next thing is I saw her
11 laying on the floor when I turned.

12 Q When you say your back was to the sink,
13 you mean --

14 A Back was to her. I didn't put her right.
15 The sink is here to the wall, I was behind the sink.
16 She landed behind me.

17 Q Was she bringing anything to you like
18 dishes or something?

19 A I don't think so. No, I don't think so.

20 Q Do you remember what she was doing?

21 A No. There's so many days, that's hard to
22 remember, my God.

23 Q Yeah. I don't know is an acceptable
24 answer.

25 A I don't remember her carrying any dishes.

1 If she was carrying dishes, when she fell the dishes
2 would have been with her. There were no dishes on
3 the floor. It was just her.

4 And the minute it happened, they were
5 going to try to see if anybody could get her up.
6 And I said, no. Get ahold of Dustin. I want an
7 incident report written right away. And I said to
8 Callie, stay there.

9 Q Who is they?

10 A Well, we had -- Oscar was in the kitchen,
11 Franco, I believe, was in the kitchen, I think LeRoy
12 came in and out.

13 Q Did you see anything wrong with the mats
14 before the accident that day?

15 A Well, they are always bunching up. I
16 mean, that's -- that was the norm.

17 Q Do you specifically remember seeing the
18 mats bunched up before the accident happened that
19 day?

20 A I can't say I did.

21 Q That's fine. Did you, after the accident
22 happened, see anything wrong with the mats?

23 A Yes. There was a bunch-up. The thing is
24 when you see the mats like that, so many times I
25 would just straighten them out, a lot of us did.

1 You would have to pull them.

2 Q Could you pull them with your foot or did
3 you do it with your hands?

4 A Both ways.

5 Q Okay.

6 A If you were carrying something you tend to
7 do it with your foot. And if not, then you use your
8 hands.

9 Q Did the mats look like they had been
10 upturned or kicked up?

11 A I don't think so, no.

12 Q Almost done, ma'am.

13 A That's all right.

14 Q Ms. Barras said people tripped on the mats
15 every three to four months. Would you agree with
16 that?

17 A Yes. Not only in the kitchen.

18 Q But out in the hallway?

19 A Out in the hallways, near the restrooms,
20 the entranceway, from the lobby to the hall, yeah.

21 Q And I think earlier you said that you
22 yourself have tripped on the mats?

23 A Yeah.

24 Q Okay.

25 A But you get so used to it that you just

1 fix it, pull it, fix it.

2 Q Would you say that you were -- I mean,
3 were you aware of the mats bunching up? Did you
4 keep an eye out for them?

5 A Yeah, I guess we kind of looked.
6 Especially if you're pulling the carts, if they were
7 bunched up, then the carts wouldn't go easily; or
8 the big supply boxes that we have on wheels
9 underneath the stage, when you're pulling those in,
10 if they're bunched up it would prevent them from,
11 you know, just rolling easily.

12 Q How did Ms. Barras seem after the fall?
13 Was she unconscious or --

14 A She was very confused, which anybody would
15 be falling like that. I did notice on her face that
16 it was already starting to turn red immediately.
17 That's why -- I heard her hit something, but I did
18 not see what she hit.

19 And they decided to call the ambulance.
20 Dustin, Callie, her husband. Callie just went with
21 it. She was agreeable at that point.

22 Q Was she talking or dazed?

23 A She was kind of dazed a little.

24 Q Okay.

25 A I was concerned because the immediate

IRENE DEMCZUK - EX. BY MR. STARR
1 reaction to the face right away, because I'm a
2 retired hospital administrator, that's why I was
3 insisting on the incident report immediately when it
4 happened, nobody gets moved.

5 Q How long did it take from the time of the
6 fall for Jordan to come see her?

7 A Oh, immediately. I sent someone out to
8 get him. He's very good. If you need him in the
9 kitchen, he's there immediately.

10 Q And he called the EMS. How long did it
11 take for EMS to get there?

12 A Probably ten minutes. They were there
13 very quick.

14 Q Okay. No further questions right now.
15 I'm sure Mr. Starr has something and I might come
16 back with some in a minute.

17 EXAMINATION

18 BY MR. STARR:

19 Q I just have a couple follow-ups for you
20 Ms. Demczuk. I represent AlSCO, Inc., which is the
21 company that makes and delivers the mats.

22 Did you ever have any conversations with
23 anyone from AlSCO --

24 A Never.

25 Q -- about the mats at all?

IRENE DEMCZUK - EX. BY MR. STARR

1 A That would not be our position to do it.
2 It's a city building. It would be Dustin's or
3 whoever is the manager to follow through on that.

4 Q And did you ever see any Alsco employee
5 come and deliver the new mats and take up the ones
6 when they get replaced like every couple weeks?

7 A All the time.

8 Q Do you know what time they would typically
9 come in and make those replacements in the morning
10 or --

11 A In the morning. Most times before bingo
12 started because it would be very difficult to try --
13 although, sometimes they were there during bingo.
14 Most times before bingo.

15 Q Okay. And are you aware of anyone who is
16 involved with the bingo and the rec center there
17 speaking to any of those Alsco employees when they
18 delivered the rugs about what kind they were
19 delivering or anything like that?

20 A Not that I know of.

21 Q Okay. Do you know whether Pam Stone or
22 anyone else -- after y'all talked with her about
23 your request about the rugs, do you know if she ever
24 spoke to anyone at Alsco in response to that?

25 A I have no idea.

IRENE DEMCZUK - EX. BY MR. NAPPIER

1 Q Did she ever represent to you or to any of
2 the folks in your group that she would talk to them
3 about different rug options or anything like that?

4 A I don't believe so. I would assume that
5 discussion would have come from her or Dustin
6 because a short time after the accident we got the
7 new rugs and they were wonderful, wonderful.

8 Q Are those new rugs still the ones that
9 they use today?

10 A Yup, they are. Well, they are in the
11 kitchen. I never really -- I come in the side door,
12 so I haven't come in through the front. I don't
13 know if they changed them everywhere.

14 Q But definitely in the kitchen?

15 A But definitely in the kitchen. And that's
16 where a lot of the use is because they left the hall
17 out also.

18 Q And sitting here today you don't know who
19 spoke to Alsco about getting the new kind of rugs in
20 the kitchen, do you?

21 A No, I have no idea.

22 Q All right. I don't have any other
23 questions. Thank you.

24 MR. BATTLE: I'm good as well. Thank you.

25 EXAMINATION

IRENE DEMCZUK - EX. BY MR. NAPPIER
BY MR. NAPPIER:

Q Real quick. I represent Ms. Barras in
this matter.

A Okay.

Q In fact, I called you, I believe, and
spoke to you in July about this.

A Yes.

Q Just real quick. When you come into the
rec center, have you always been asked to sign a
sheet?

A Yes.

Q Such as Exhibit Number 1?

A Yes, we always have to sign a sheet. The
thing that's changed, however, previously the people
at the front could -- we have two -- we have this
and we have a book that you have to sign with the
number on it, because your number can be called
where you win a gift.

Previously we would sign one book and then
she would just copy the names onto the list. But
then she was told that people now -- this no longer
can happen. Everybody has to sign their own
signature.

Q Okay.

A That's why this looks so familiar. It's

1 the same writing, except this one person here.

2 Q Okay. So is it your belief then that on
3 this sign-in sheet, in fact, it was a city employee
4 that wrote in those notes?

5 A Mm-hmm.

6 Q Is that a yes?

7 A Yes, it is. Except for one or two that I
8 see that are different, but it's the standard same
9 signature. That was before we changed.

10 Q And we're referring to Exhibit Number 1;
11 is that correct?

12 A Yes.

13 Q And the heading on there, it just says
14 that it's a sign-in sheet; is that correct?

15 A That's right.

16 Q It doesn't say on the heading that it's a
17 release, does it?

18 A No.

19 Q No further questions.

20 EXAMINATION

21 BY MR. BATTLE:

22 Q I've got a few follow-ups. Has anyone
23 talked to you about your testimony today?

24 A No.

25 Q Have you talked to Ms. Barras about this

1 case?

2 A Only thing is she reminded me was to come
3 today. In fact, we spoke on Wednesday. I said,
4 I'll see you Friday. She said, oh, no. I'll see you
5 tomorrow. That's right, deposition.

6 Q In regards to Exhibit 1, you sign into a
7 book first?

8 A Yes.

9 Q Okay. What is the book?

10 A It's got numbers on it. I sign in, I'm
11 the 25th person, my number for the day is going to
12 be 25. When they -- they pick numbers out of a box
13 for different gifts, different games, and if you're
14 number -- like for the cakes and stuff that we get
15 in from the food bank, they might call number 25, so
16 that means I can go up to the stage and I can pick
17 out one of the cakes or pies or whatever.

18 Q Does the book --

19 A So there's no favoritism that way, you
20 just pull up -- pull a number out and you can't say
21 that oh, gee, just because I'm the leader in the
22 kitchen that I'm going to be pulled every day. If
23 you win on Wednesday, you don't win on Friday, but
24 they go by the number that's in the book.

25 Q Has anyone at the Base Rec or the facility

1 talked to you about the waiver. I don't mind --
2 Exhibit 1 is a waiver of liability that the city
3 purports to have people sign.

4 MR. NAPPIER: I'm going to object to that.
5 Number one, it's not a question. Number two, you're
6 giving a legal opinion.

7 Go ahead and ask your question and I'm
8 sure she can answer.

9 THE WITNESS: No.

10 BY MR. BATTLE:

11 Q No one's ever talked to you about waivers?

12 A No.

13 Q No one's ever instructed you about when
14 you volunteer for the facility, the -- anything
15 about it at all?

16 A No.

17 Q Okay. What was your understanding of the
18 book sign-in? It was purely that it was for prizes?

19 A Right. And they wanted the list of people
20 that were attending for Senior Bingo, the city did.
21 There was never any explanation as far as liability
22 or anything else like that.

23 Q Okay. No further questions.

24 (The deposition was concluded at 11:35 AM)

25

(The witness, after having been advised of
her right to read and sign this transcript, waives
that right.)

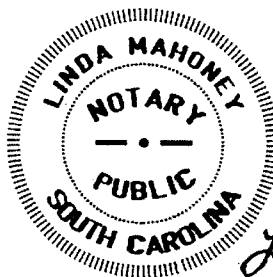
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CERTIFICATE OF REPORTER

I, Linda A. Mahoney, Court Reporter
and Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 17th day of December,
2016, at Horry County, South Carolina.



Linda A. Mahoney, Court Reporter
My Commission expires
October 12, 2017

I N D E X

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WITNESS/EXAMINATION

IRENE DEMCZUK

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(No Information Requested)

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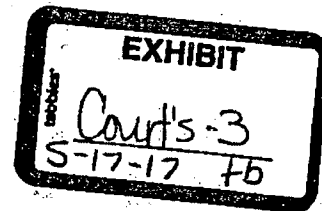
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DUTIES OF JURY AND JUDGE



I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU THINK YOU HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I TELL YOU THE LAW IS, YOU MUST FORGET THAT IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS. A TRIAL JUDGE CANNOT COMMENT ON OR MAKE ANY STATEMENT ABOUT THE FACTS IN A CASE. SINCE YOU ARE THE SOLE JUDGES OF THE FACTS, DO NOT THINK BY ANYTHING I HAVE SAID DURING THE TRIAL THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS.

PREPONDERANCE OF THE EVIDENCE

THE BURDEN OF PROOF IN THIS CASE IS BY A PREPONDERANCE OF THE EVIDENCE. A PREPONDERANCE OF THE EVIDENCE SIMPLY MEANS THE GREATER WEIGHT OF THE EVIDENCE. IT IS EVIDENCE WHICH, AS A WHOLE, SHOWS THAT THE FACT SOUGHT TO BE PROVED IS MORE LIKELY TRUE THAN NOT TRUE.

THIS CAN BE ILLUSTRATED BY IMAGINING A SET OF SCALES. WHEN THE CASE BEGINS, THE SCALES ARE EVEN. AFTER ALL OF THE EVIDENCE HAS BEEN PRESENTED, IF THE SCALES REMAIN EVEN OR IF THEY TIP EVEN SLIGHTLY IN FAVOR OF THE DEFENDANT, THEN THE PLAINTIFF HAS FAILED TO MEET THE BURDEN OF PROOF AND WOULD NOT BE ENTITLED TO RECOVER IN THIS CASE. IF, ON THE OTHER HAND, THE SCALES TIP EVEN SLIGHTLY IN FAVOR OF THE PLAINTIFF, THE PLAINTIFF WILL HAVE MET THE BURDEN OF PROOF AND YOU SHOULD RETURN A VERDICT FOR THE PLAINTIFF.

THE PREPONDERANCE OF THE EVIDENCE IS NOT DETERMINED BY THE NUMBER OF WITNESSES. INSTEAD, IT MUST BE DETERMINED BY THE GREATER WEIGHT OF ALL OF THE EVIDENCE.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION. IT IS PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN QUESTION, BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF THE FACT OR AT LEAST REASONABLY INFER AN INCREASE IN THE PROBABILITY THAT THE FACT IS TRUE. FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT TO WARRANT THE FINDING OF A FACT, THE CIRCUMSTANCES MUST LEAD TO THAT FACT WITH REASONABLE

CERTAINTY. THE FACTS AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF ORDINARY EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF A FACT CANNOT BE BASED ON SPECULATION, SURMISE, OR CONJECTURE.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU IT IS TRUE.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER THE WITNESS HAS AN INTEREST IN THE RESULT OF THE TRIAL, WHETHER THE WITNESS IS PREJUDICED TOWARD EITHER THE PLAINTIFF OR THE DEFENDANT, THE OPPORTUNITY FOR THE WITNESS TO HAVE SEEN THE MATTERS AND THINGS ABOUT WHICH THE WITNESS MAY TESTIFY, AND THE WAY THE WITNESS ACTS ON THE WITNESS STAND.

DEPOSITIONS

IN THIS TRIAL TESTIMONY WAS PRESENTED TO YOU BY A DEPOSITION. A DEPOSITION IS A DOCUMENT OR RECORDING CONTAINING SWORN TESTIMONY GIVEN BY A WITNESS OUTSIDE OF COURT IN THE PRESENCE OF LAWYERS FOR EACH PARTY WHO MAY ASK QUESTIONS OF THE WITNESS. IF ANY OBJECTIONS WERE MADE AT THE DEPOSITION, I WILL RULE ON THEM WHEN THE DEPOSITION IS READ. THIS TESTIMONY IS ENTITLED TO THE SAME CONSIDERATION AND IS TO BE JUDGED AS TO CREDIBILITY AND WEIGHED BY YOU IN THE SAME WAY AS IF THE WITNESS WERE PRESENT AND GAVE THE TESTIMONY THAT WAS READ TO YOU FROM THE WITNESS STAND OR PLAYED FOR YOU FROM A RECORDING. IT IS THEN FOR YOU, THE JURY, TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE TESTIMONY GIVEN IN THE DEPOSITION.

NEGLIGENCE

THE PLAINTIFF CLAIMS THAT THE DEFENDANT WAS NEGLIGENT AND SHOULD COMPENSATE HER FOR THE INJURIES SHE SUFFERED AS A RESULT OF THE DEFENDANT'S NEGLIGENCE. IN ORDER TO PROVE THAT THE DEFENDANT WAS NEGLIGENT, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE FOUR THINGS.

FIRST, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DEFENDANT OWED THE PLAINTIFF A DUTY OF CARE.

NEXT, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DEFENDANT BREACHED THAT DUTY BY A NEGLIGENT ACT OR OMISSION.

NEGLIGENCE MEANS THAT A PERSON HAS DONE SOMETHING THAT A REASONABLE PERSON WOULD NOT HAVE DONE OR HAS FAILED TO DO SOMETHING THAT A REASONABLE PERSON WOULD HAVE DONE IN THE SAME SITUATION.

THE PLAINTIFF MUST ALSO PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT SHE SUFFERED DAMAGES AS A RESULT OF THE DEFENDANT'S BREACH OF DUTY.

THE MERE FACT THAT AN INJURY HAS BEEN SUSTAINED IS NOT, IN AND OF ITSELF, SUFFICIENT TO IMPOSE LIABILITY. THE PLAINTIFF MUST PROVE NEGLIGENCE AND THAT SUCH NEGLIGENCE WAS A PROXIMATE CAUSE OF THE INJURY.

FINALLY, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DAMAGES WERE PROXIMATELY CAUSED BY THE DEFENDANT'S BREACH OF DUTY.

PROXIMATE CAUSE IS SOMETHING THAT PRODUCES A NATURAL CHAIN OF EVENTS WHICH, IN THE END, BRINGS ABOUT THE INJURY. IT IS THE DIRECT CAUSE OF THE INJURY.

TO PROVE THAT THE DEFENDANT'S NEGLIGENCE PROXIMATELY CAUSED THE PLAINTIFF'S INJURY, THE PLAINTIFF MUST FIRST PROVE CAUSATION IN FACT. THIS IS PROVEN BY SHOWING THAT THE INJURY WOULD NOT HAVE OCCURRED BUT FOR THE DEFENDANT'S NEGLIGENCE.

THE PLAINTIFF MUST ALSO PROVE LEGAL CAUSE. LEGAL CAUSE IS PROVEN BY SHOWING THAT THE INJURY WAS FORESEEABLE. THIS MEANS THAT THE INJURY OCCURRED AS A NATURAL AND PROBABLE CONSEQUENCE OF THE DEFENDANT'S NEGLIGENCE.

THE PLAINTIFF MUST PROVE THAT SOME INJURY FROM THE DEFENDANT'S NEGLIGENCE WAS FORESEEABLE, BUT DOES NOT HAVE TO PROVE THAT THE PARTICULAR INJURY THAT OCCURRED WAS FORESEEABLE. HOWEVER, THE DEFENDANT CANNOT BE HELD RESPONSIBLE FOR THINGS WHICH COULD NOT BE EXPECTED TO HAPPEN.

PROXIMATE CAUSE DOES NOT MEAN THE ONLY CAUSE. THE DEFENDANT'S ACT CAN BE A PROXIMATE CAUSE OF THE PLAINTIFF'S INJURY IF IT WAS AT LEAST ONE OF THE DIRECT, CONCURRING CAUSES OF THE INJURY.

ASSUMPTION OF THE RISK

IF YOU FIND THAT THE PLAINTIFF IMPLIEDLY ASSUMED RISKS INHERENT IN THE ACTIVITY, THERE IS NO DUTY TO THE PLAINTIFF. IN ORDER TO SHOW THAT THE PLAINTIFF ASSUMED THE RISK, IT MUST BE SHOWN THAT THE PLAINTIFF:

1. HAD KNOWLEDGE OF THE FACTS CONSTITUTING THE DANGEROUS CONDITION;
2. KNEW THE CONDITION WAS DANGEROUS;
3. UNDERSTOOD AND APPRECIATED THE NATURE AND EXTENT OF THE DANGER; AND
4. FREELY AND VOLUNTARILY EXPOSED HERSELF TO THE DANGER.

IF YOU FIND THAT THE DEFENDANT HAS PROVED ALL OF THE FOUR CONDITIONS SET FORTH ABOVE BY A PREPONDERANCE OF THE EVIDENCE THERE CAN BE NO RECOVERY FOR THE PLAINTIFF BECAUSE SHE HAS ASSUMED THE RISK OF THE INJURY.

DUTY

UNDER THE COMMON LAW OF THIS STATE A PERSON WHO ENTERS PROPERTY WITHOUT ASKING FOR SPECIFIC PERMISSION OF THE LAND OWNER TO DO VOLUNTEER WORK OR TO USE RECREATIONAL FACILITIES, AMONG OTHER THINGS, IS HELD TO BE A LICENSEE. I HAVE DETERMINED THAT THE PLAINTIFF IN THIS CASE IS A LICENSEE.

THE LANDOWNER, UNDER THE COMMON LAW, OWES A DUTY TO A LICENSEE WHO ENTERS HIS PROPERTY TO USE REASONABLE CARE TO DISCOVER THE LICENSEE AND TO AVOID INJURING THE LICENSEE IN CARRYING ON ACTIVITIES ON THE PREMISES. IN ADDITION, THE LANDOWNER HAS THE DUTY TO USE REASONABLE CARE TO WARN A LICENSEE OF ANY CONCEALED DANGEROUS CONDITIONS OR ACTIVITIES, WHICH ARE KNOWN TO THE LANDOWNER, OR OF ANY CHANGE IN THE CONDITION OF THE PREMISES WHICH MAY BE DANGEROUS AND WHICH THE LANDOWNER SHOULD REASONABLY BE EXPECTED TO DISCOVER.

RECREATIONAL USE STATUTE

NORMALLY A BREACH OF THIS DUTY WOULD CONSTITUTE NEGLIGENCE AS IS SET FORTH ABOVE, HOWEVER OUR STATE HAS ADOPTED CERTAIN LAWS TO ENCOURAGE OWNERS OF LAND TO MAKE IT AVAILABLE TO THE PUBLIC FOR RECREATIONAL PURPOSES BY LIMITING THE LANDOWNER'S LIABILITY TOWARDS PERSONS ENTERING THE PROPERTY FOR SUCH PURPOSES.

EXCEPT UNDER THE FOLLOWING SPECIFIC CIRCUMSTANCES:

- a. FOR GROSSLY NEGLIGENCE, WILLFUL, OR MALICIOUS FAILURE TO GUARD OR WARN AGAINST DANGEROUS CONDITION, USE, STRUCTURE, OR ACTIVITY; OR
- b. FOR INJURY SUFFERED IN ANY CASE WHERE THE OWNER OF THE LAND CHARGES THE PERSON WHO ENTERS OR GOES IN THE LAND FOR RECREATIONAL PURPOSES A FEE FOR SUCH USE.

AN OWNER OF LAND OWES NO DUTY OF CARE TO KEEP THE LAND SAFE FOR ENTRY OR USE BY PERSONS WHO HAVE SOUGHT AND OBTAINED HIS PERMISSION TO USE IT FOR RECREATIONAL PURPOSES OR TO GIVE ANY WARNING OF A DANGEROUS CONDITION, USE, STRUCTURE, OR ACTIVITY ON SUCH PREMISES TO SUCH PERSONS ENTERING FOR SUCH PURPOSES. WHEN A LANDOWNER HAS OPENED HIS PROPERTY TO THE PUBLIC AND

CHARGED NO FEE, IT IS INFERRED THAT MEMBERS OF THE PUBLIC GOING ON THE PROPERTY DO SO WITH HIS PERMISSION.

EXCEPT UNDER THESE LIMITED CIRCUMSTANCE THE LANDOWNER WOULD NOT OWE THE GENERALLY RECOGNIZED DUTY TO LICENSEES AS DESCRIBED ABOVE. IF YOU FIND THERE WAS NO DUTY BECAUSE OF THE SPECIAL EXCEPTION FOR LANDOWNER'S MAKING THEIR PROPERTY AVAILABLE TO THE PUBLIC FOR RECREATIONAL PURPOSES THEN THE PLAINTIFF MAY NOT PREVAIL. EXCEPT IN THE CASE OF GROSSLY NEGLIGENT, WILLFUL, OR MALICIOUS CONDUCT BY THE DEFENDANT OR IN CIRCUMSTANCES WHERE THE DEFENDANT CHARGED A FEE FOR THE USE OF HIS PROPERTY. HE WOULD BE FIRST IMMUNE FROM LIABILITY. THE KEY HERE IS WHETHER YOU FIND THAT THE PLAINTIFF WAS UPON THE PROPERTY FOR RECREATIONAL PURPOSES. IF YOU FIND THAT THE PLAINTIFF WAS USING THE PROPERTY FOR RECREATIONAL PURPOSES THERE WOULD BE NO LIABILITY FOR THE DEFENDANT UNLESS YOU FIND THAT ONE OF THE SPECIAL CIRCUMSTANCES DESCRIBED IN (a) OR (b) ABOVE EXIST.

THE RECREATIONAL USE STATUTE DEFINES RECREATION PURPOSE AS INCLUDING BUT NOT LIMITED TO ANY OF THE FOLLOWING ACTIVITIES; HUNTING, FISHING, SWIMMING, BOATING, CAMPING, PICNICKING, HIKING, PLEASURE DRIVING,

NATURE STUDY, WATER SKIING, SUMMER AND WINTER SPORTS, AND VIEWING OR ENJOYING HISTORIC, ARCHAEOLOGICAL, SCENIC, OR SCIENTIFIC SITES.

GOVERNMENTAL IMMUNITY

ADDITIONALLY, A GOVERNMENTAL ENTITY CANNOT BE MADE LIABLE FOR FAILURE TO MAINTAIN OR SUPERVISE ANY PUBLIC PROPERTY INTENDED OR PERMITTED TO BE USED FOR RECREATIONAL PURPOSES UNLESS THE DEFECT OR CONDITION CAUSING AN INJURY IS NOT CORRECTED BY THE PARTICULAR GOVERNMENTAL ENTITY RESPONSIBLE FOR THE MAINTENANCE OR SUPERVISION OF THE PROPERTY WITHIN A REASONABLE TIME AFTER ACTUAL NOTICE OF THE DEFECT OR CONDITION. THE PLAINTIFF MUST PROVE BY THE PREPONDERANCE OF THE EVIDENCE THE DEFENDANT HAD ACTUAL NOTICE OF A DEFECT WHICH CAUSED THE INJURY AND FAILED TO REMEDY THE CONDITION IN A REASONABLE TIME.

GROSS NEGLIGENCE

GROSS NEGLIGENCE IS THE INTENTIONAL, CONSCIOUS FAILURE TO DO SOMETHING IN WHICH IT IS INCUMBENT UPON ONE TO DO OR THE DOING OF A THING INTENTIONALLY THAT ONE OUGHT NOT TO DO. NEGLIGENCE IS THE FAILURE TO EXERCISE DUE CARE, WHILE GROSS NEGLIGENCE IS THE FAILURE TO EXERCISE EVEN THE SLIGHTEST CARE. GROSS NEGLIGENCE IS A RELATIVE TERM, AND MEANS THE ABSENCE OF CARE THAT IS NECESSARY UNDER THE CIRCUMSTANCES.

GROSS NEGLIGENCE CONNOTES THE FAILURE TO EXERCISE A SLIGHT DEGREE OF CARE. GROSS NEGLIGENCE INVOLVES AN INTENTIONAL, CONSCIOUS FAILURE TO DO SOMETHING WHICH ONE OUGHT TO DO OR THE DOING OF SOMETHING WHICH ONE OUGHT NOT TO DO. A DEFENDANT IS GUILTY OF GROSS NEGLIGENCE IF HE OR SHE IS SO INDIFFERENT TO THE CONSEQUENCES OF THEIR CONDUCT AS NOT TO GIVE SLIGHT CARE TO WHAT HE OR SHE IS DOING.

DAMAGES

ACTUAL DAMAGES

ACTUAL DAMAGES ARE PROPERLY CALLED COMPENSATORY DAMAGES, MEANING TO COMPENSATE, TO MAKE THE INJURED PARTY WHOLE, TO PUT HER IN THE SAME POSITION SHE WAS IN PRIOR TO THE DAMAGES RECEIVED IN SO FAR AS THIS IS MONETARILY POSSIBLE. IN OTHER WORDS, ACTUAL OR COMPENSATORY DAMAGES INCLUDE COMPENSATION FOR ALL INJURIES WHICH ARE NATURALLY THE PROXIMATE RESULT OF THE ALLEGED WRONGFUL CONDUCT OF THE DEFENDANT.

ACTUAL DAMAGES ARE AWARDED TO A LITIGANT IN COMPENSATION FOR HER ACTUAL LOSS OR INJURY. ACTUAL DAMAGES ARE SUCH AS WILL COMPENSATE THE PARTY FOR INJURIES SUFFERED OR LOSSES SUSTAINED. THERE ARE SUCH DAMAGES WHICH WILL SIMPLY MAKE GOOD OR REPLACE THE LOSS CAUSED BY THE WRONG INJURY. ACTUAL DAMAGES ARE DAMAGES IN SATISFACTION OF, OR IN RECOMPENSE FOR, LOSS OF INJURY SUSTAINED. THE GOAL IS TO RESTORE THE INJURED PARTY, AS NEARLY AS POSSIBLE THROUGH THE PAYMENT OF MONEY, TO THE POSITION SHE WAS IN BEFORE THE WRONGFUL INJURY OCCURRED.

THE EXISTENCE, CAUSATION, OR AMOUNT OF DAMAGES CANNOT BE LEFT TO CONJECTURE, GUESS WORK, OR SPECULATION. HOWEVER, PROOF OF AMOUNT OF LOSS WITH ABSOLUTE OR MATHEMATICAL CERTAINTY IS NOT REQUIRED. DAMAGES MUST BE PROVED WITH A REASONABLE DEGREE OF CERTAINTY. THE EVIDENCE PRESENTED BY THE PLAINTIFF MUST ENABLE YOU, THE JURY, TO DETERMINE WHAT AMOUNT IS FAIR, JUST, AND REASONABLE.

WHEN ONE PERSON IS INJURED BY THE NEGLIGENT ACTS OF ANOTHER, THE INJURED PERSON IS ENTITLED TO BE FULLY COMPENSATED FOR ALL INJURIES DIRECTLY OR PROXIMATELY RESULTING FROM ANY NEGLIGENT ACT OR OMISSIONS BY THE DEFENDANT.

IN DETERMINING THE AMOUNT OF COMPENSATION FOR INJURIES SUFFERED BY THE PLAINTIFF AS A RESULT OF THE DEFENDANT'S NEGLIGENCE, IT IS PROPER FOR YOU TO CONSIDER AND AWARD PAST, PRESENT, AND FUTURE DAMAGES INCLUDING: 1) MEDICAL EXPENSES, INCLUDING PHYSICIANS, HOSPITAL, MEDICINE, PHYSICAL THERAPY EXPENSES, REHABILITATION EXPENSES, AND TRANSPORTATION EXPENSES CONNECTED WITH MEDICAL TREATMENT; 2) OUT-OF-POCKET EXPENSES; 3) ALTERATION OF LIFESTYLE; 4) PAIN AND SUFFERING; AND 5) LOSS OF ENJOYMENT OF LIFE.

THE PLAINTIFF BEARS THE BURDEN OF PROVING THESE ELEMENTS BY THE PREPONDERANCE OF THE EVIDENCE.

PAIN AND SUFFERING

PAIN AND SUFFERING COMPENSATES THE PLAINTIFF FOR PHYSICAL DISCOMFORT AND EMOTIONAL RESPONSE TO THE SENSATION OF PAIN CAUSED BY THE INJURY ITSELF. THERE IS NO DEFINITE STANDARD BY WHICH TO COMPENSATE THE PLAINTIFF FOR PAIN AND SUFFERING. YOU HAVE THE AUTHORITY TO DETERMINE THE AMOUNT, IF ANY, TO BE ALLOWED FOR PAIN AND SUFFERING, USING CALM AND REASONABLE JUDGMENT TO ENSURE THAT THE DAMAGES ARE JUST AND REASONABLE IN LIGHT OF THE TESTIMONY AND EVIDENCE PRESENTED IN THE CASE.

LOSS OF ENJOYMENT OF LIFE

LOSS OF ENJOYMENT OF LIFE COMPENSATES THE PLAINTIFF FOR LIMITATIONS ON THE PLAINTIFF'S ABILITY TO PARTICIPATE IN, AND DERIVE PLEASURE FROM, THE NORMAL ACTIVITIES OF DAILY LIFE.

PERSONAL INJURIES

THE PLAINTIFF MUST PROVE THAT EXPENSES CAUSED BY THE INJURY WERE NECESSARY AND REASONABLE.

ACTUAL DAMAGES FOR A PLAINTIFF WHO HAS BEEN PHYSICALLY INJURED INCLUDE PAIN AND SUFFERING AS WELL

AS MENTAL ANGUISH, IMPAIRMENT OF HEALTH OR PHYSICAL CONDITION, AND DISFIGUREMENT. THE PLAINTIFF MAY ALSO CLAIM LOST WAGES DUE TO ABSENCE FROM WORK AND REDUCED EARNING ABILITY FOR THE FUTURE.

IN DETERMINING THE AMOUNT OF COMPENSATION FOR PERSONAL INJURIES, IT IS PROPER TO CONSIDER PAST AND PRESENT ASPECTS OF THE INJURY. THIS WOULD INCLUDE PHYSICAL AND MENTAL PAIN AND SUFFERING, EXPENSES INCURRED FOR NECESSARY MEDICAL TREATMENT, LOSS OF TIME AND INCOME WHICH RESULTED FROM THE IMPAIRMENT OF THE ABILITY TO WORK AND EARN A LIVELIHOOD, THE LOSS OF ENJOYMENT OF LIFE SUFFERED AS A RESULT OF THE INJURY, AND ANY OTHER LOSSES WHICH ARE REFLECTED BY THE CHARACTER OF THE INJURY.

COMPARATIVE NEGLIGENCE

THE DEFENDANT CLAIMS THAT THE PLAINTIFF'S OWN NEGLIGENCE PROXIMATELY CAUSED THE PLAINTIFF'S INJURIES. IF YOU FIND THAT THE DEFENDANT WAS NEGLIGENT, YOU MUST THEN DECIDE WHETHER THE PLAINTIFF WAS NEGLIGENT. THE DEFENDANT MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE PLAINTIFF BREACHED A DUTY OF CARE WHICH PROXIMATELY CAUSED THE PLAINTIFF'S INJURIES. THE SAME LAW WHICH I HAVE TOLD YOU TO USE IN DECIDING WHETHER THE DEFENDANT WAS NEGLIGENT SHOULD BE USED IN DECIDING WHETHER THE PLAINTIFF WAS NEGLIGENT.

IF YOU FIND THAT THE NEGLIGENCE OF BOTH THE PLAINTIFF AND THE DEFENDANT PROXIMATELY CAUSED THE PLAINTIFF'S INJURIES, YOU MUST THEN DECIDE HOW MUCH THE NEGLIGENCE OF THE PLAINTIFF CONTRIBUTED TO THE PLAINTIFF'S INJURIES AND HOW MUCH THE DEFENDANTS NEGLIGENCE CONTRIBUTED TO THE PLAINTIFF'S INJURIES. IN DECIDING THE PERCENTAGES OF NEGLIGENCE OF THE PLAINTIFF AND THE DEFENDANT, YOU MAY CONSIDER, AMONG OTHER THINGS, THE FOLLOWING FACTORS:

(1) WHETHER EACH PARTY'S CONDUCT WAS ONLY INADVERTENT OR WHETHER IT WAS ENGAGED IN WITH AN AWARENESS OF THE DANGER INVOLVED;

(2) THE MAGNITUDE OF THE RISK CREATED BY EACH PARTY'S CONDUCT, INCLUDING THE NUMBER OF PERSONS ENDANGERED AND THE POSSIBLE SEVERITY OF THE INJURY;

(3) THE SIGNIFICANCE OF THE GOAL THAT EACH PARTY WAS TRYING TO REACH AND THE NEED TO ACHIEVE THE GOAL IN THAT MANNER;

(4) EACH PARTY'S CAPABILITIES AND ABILITIES TO REALIZE AND ELIMINATE THE RISK INVOLVED;

(5) THE PARTICULAR CIRCUMSTANCES CONFRONTING EACH PARTY AT THE TIME THE CONDUCT OCCURRED, SUCH AS THE EXISTENCE OF AN EMERGENCY REQUIRING A QUICK DECISION;

(6) THE RELATIVE CLOSENESS OF THE CAUSAL RELATIONSHIP OF THE NEGLIGENT CONDUCT OF THE DEFENDANT AND THE HARM TO THE PLAINTIFF; AND

(7) WHETHER THE CONDUCT OF EITHER PARTY INVOLVED A VIOLATION OF A SAFETY STATUTE OR REGULATION.

I WILL GIVE YOU WRITTEN QUESTIONS ON A SPECIAL VERDICT FORM FOR YOU TO REACH YOUR VERDICT. THE FORM WILL HAVE SPACES FOR YOU TO WRITE YOUR DECISIONS ABOUT THE PERCENTAGE OF THE NEGLIGENCE, IF ANY, OF THE PARTIES WHICH PROXIMATELY CAUSED THE PLAINTIFF'S INJURIES.

THE FIRST TWO QUESTIONS ON THE VERDICT FORM ASK YOU TO DECIDE WHETHER THE DEFENDANT WAS NEGLIGENT AND, IF SO, WHETHER THE DEFENDANT'S NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE PLAINTIFF'S INJURIES. QUESTIONS THREE AND FOUR ASK THE SAME QUESTIONS ABOUT ANY NEGLIGENCE BY THE PLAINTIFF.

QUESTION FIVE ASKS YOU TO DECIDE THE PERCENTAGE OF EACH PARTY'S NEGLIGENCE WHICH PROXIMATELY CAUSED THE PLAINTIFF'S INJURIES. THE PERCENTAGES MUST ADD UP TO ONE HUNDRED PERCENT.

QUESTION SIX ASKS YOU IF THE PLAINTIFF'S NEGLIGENCE WAS GREATER THAN FIFTY PERCENT (50%). IF SO, THE PLAINTIFF WOULD NOT BE ENTITLED TO ANY DAMAGES, AND YOUR VERDICT WOULD BE FOR THE DEFENDANT.

IF, HOWEVER, YOU FIND THAT THE PLAINTIFF'S NEGLIGENCE WAS EQUAL TO OR LESS THAN FIFTY PERCENT (50%), YOU WOULD ANSWER QUESTION SEVEN WHICH ASKS YOU TO DETERMINE THE TOTAL AMOUNT OF DAMAGES SUFFERED BY THE PLAINTIFF.

DO NOT REDUCE THE PLAINTIFF'S TOTAL DAMAGES BASED ON THE PERCENTAGE OF NEGLIGENCE OF ANY PARTY. AFTER YOU HAVE ANSWERED THE QUESTIONS, I WILL COMPUTE THE AMOUNT OF DAMAGES FOR WHICH THE DEFENDANT IS RESPONSIBLE BASED ON THE PERCENTAGE OF THE DEFENDANT'S NEGLIGENCE WHICH YOU HAVE DECIDED PROXIMATELY CAUSED THE PLAINTIFF'S INJURIES. YOU ARE TO DETERMINE ONLY THE TOTAL AMOUNT OF THE PLAINTIFF'S DAMAGES AND ENTER THAT FIGURE ON THE VERDICT FORM.

JURY VERDICT

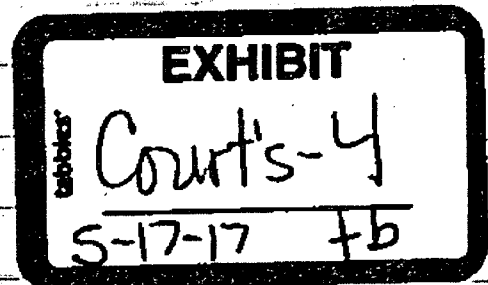
ALL TWELVE OF YOU MUST AGREE ON THE VERDICT. IT MUST BE UNANIMOUS. YOUR VERDICT CANNOT BE BASED ON SYMPATHY, PASSION, PREJUDICE, EMOTION, OR ANY OTHER CONSIDERATION NOT IN EVIDENCE IN THIS CASE.

MRS. FOREPERSON, WHEN THE JURY AGREES ON THE VERDICT, YOU WILL SIGN YOUR NAME AS FOREPERSON ON THE LINE UNDERNEATH THE JURY VERDICT. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE CLERK OR THE BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

Was testimony given
by AlSCO delivery man
saying they lost their
bid to deliver mats to
the City of MB due to
their denial of liability
deemed inadmissible?

AlSCO

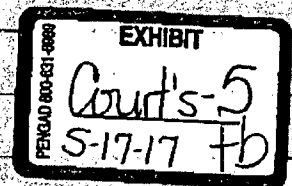


R-477

Madam Forelady,

IN RESPONSE TO YOUR QUESTION
CONCERNING THE TESTIMONY OF THE
DELIVERY MAN STATING THE REASON
THE MAT COMPANY LOST THE CONTRACT
WITH THE CITY, I HAVE REVIEWED THE
TRANSCRIPT. THERE WAS NO OBJECTION.
ANY SUCH TESTIMONY WAS ADMITTED
INTO EVIDENCE.

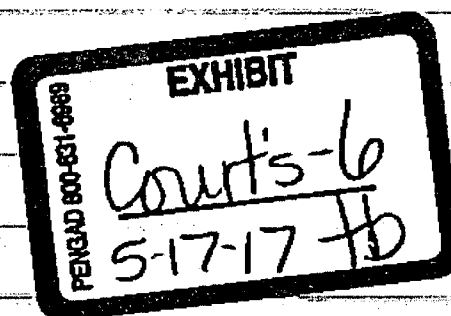
Day 3



How long after the
injuries Mrs Barrns
suffered were the
pictures ~~taken?~~ in
evidence taken?

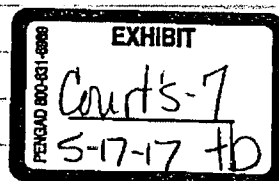
~~Handwritten signature~~

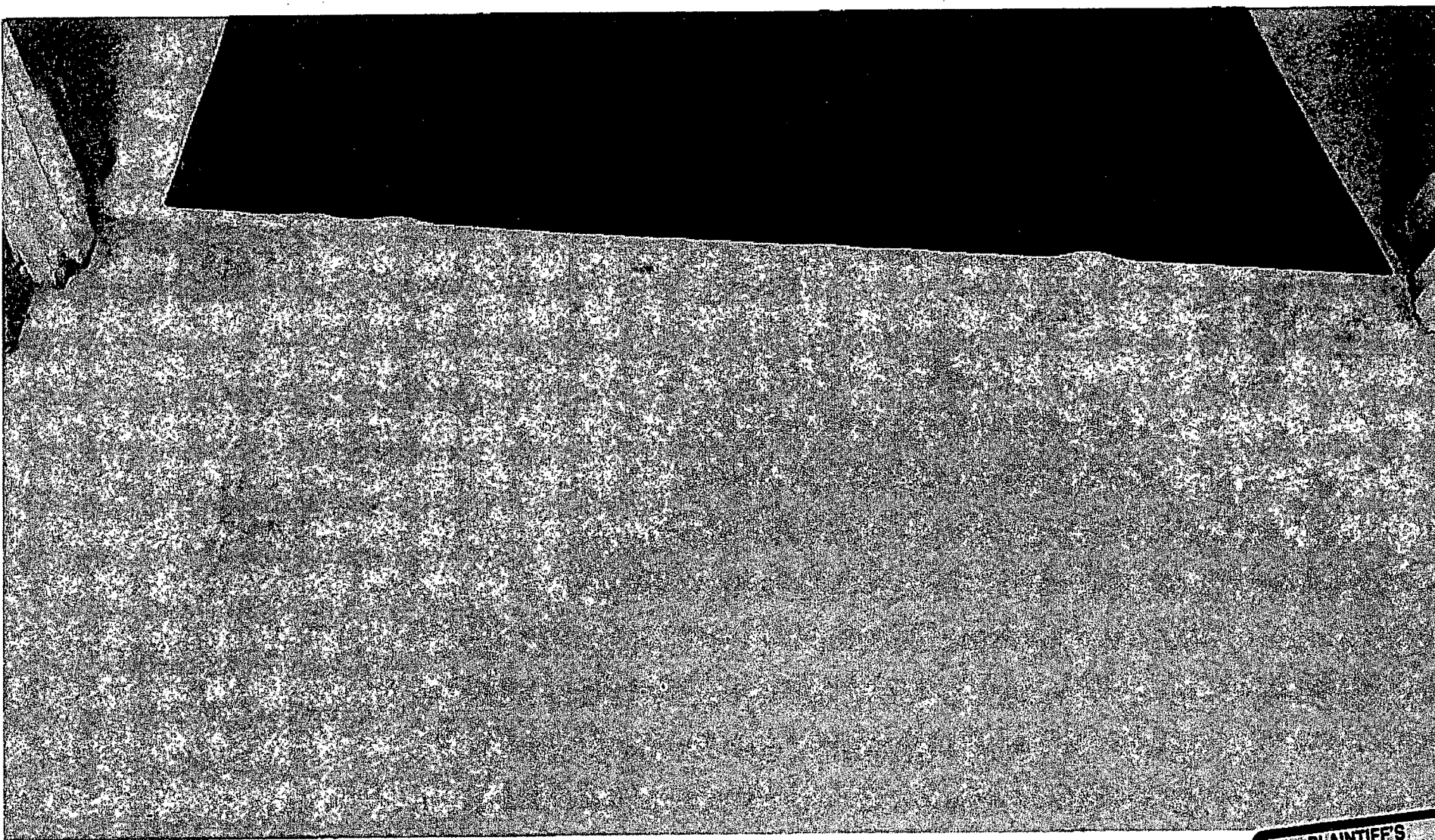
Plaintiff's
Exhibit 3+4



Is it possible to award
the plaintiff an open ended
amount covering any medical
future medical costs incurred
due to the injuries suffered
from the fall?

[Handwritten signature]





R-481

PERIOD 800-011-0000
PLAINTIFF'S
EXHIBIT
5-15-17 JD

Callie Barras Medical Bills

4/8/15	Horry County EMS	\$812.50
4/8/15	Grand Strand ER Physicians	\$572.00
4/8-4/9/15	GSSS Trauma Gen Surgery	\$507.00
4/8-4/9/15	Grand Strand ER Regional Hosp.	\$39,016.70
4/8/15	Carolina Radiology	\$867.00
4/13/15	Family Medicine of Sayebrook	\$110.00
4/20/16	Southern Urgent Care	\$219.00
4/29/15	Carolina Sports & Ortho Sales	\$7.50
5/6/15	Family Medicine of Sayebrook	\$130.00
7/7 - 9/3/15	Next Step Physical Therapy	\$4,887.23
TOTAL:		\$47,128.93



HORRY COUNTY FIRE RESCUE

2560 North Main Street, Suite 1
Conway, SC 29526
(843)915-5182
Federal Tax ID: 57-6000365

Patient Name: CALLIE BARRAS

Patient Number: 80086
Call Number: 50408013773M311
Date Of Call: 04/08/2015
Call Time:
Caller:
From Location: 800 GABRESKI LN
To Location: Grand Strand Medical Center

CALLIE BARRAS
22 WOODHAVEN DR UNIT C
Murrells Inlet SC 29576

Reason(s) 719.46
For
Transport

<u>DESCRIPTION OF CHARGES</u>	<u>HCPC</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
ALS1 Emergent	A0427	1.0	700.00	700.00
Ambulance Mileage Charge	A0425	12.5	9.00	112.50

Total Charges 812.50

DESCRIPTION OF PAYMENT

Private Payment / Cash

<u>RECEIPT</u>	<u>PAYMENT DATE</u>	<u>AMOUNT</u>
CC6906	08/30/2016	98.79
	07/14/2015	0.00
	07/14/2015	0.00
	07/14/2015	0.00

Total All Other Payments

Total Credits 812.50

PLEASE PAY THIS AMOUNT => \$0.00

^DETACH ALONG ABOVE LINE AND RETURN STUB WITH YOUR PAYMENT^

Patient Name: BARRAS, CALLIE
Patient Number: 80086

Call Number: 50408013773M311
Current Date: 08/30/2016

Amount Due: \$0.00
Amount
Enclosed \$ _____

R-483

HORRY COUNTY FIRE RESCUE 2560 North Main Street, Suite 1 Conway, SC 29526-3756

GRAND STRAND REGIONAL
PO BOX 402724
ATLANTA, GA 30384-2724
866-492-9084

BARRAS CALLIE 00103329579800104000039016704

0030521

STATEMENT DATE

PAGE 1 OF 1

04/14/15

ACCOUNT NUMBER	PATIENT NAME	STATEMENT PERIOD
1033295798	BARRAS CALLIE	OUTPATIENT 04/08/15 TO 04/09/15

AMOUNT DUE

\$39,016.70

BARRAS CALLIE
22 WOODHAVEN DR
UNIT C
MURRELLS INLET SC 29576

MAIL PAYMENT TO
GRAND STRAND REG MED CTR
00104
P.O. BOX 740766
CINCINNATI OH 45274-0766

TO VIEW/PAY YOUR ACCOUNT VIA INTERNET SEE THE WEB ADDRESS BELOW
TO RECEIVE PROPER CREDIT, PLEASE RETURN THIS PORTION WITH YOUR PAYMENT
NOTE: SHOULD YOU WISH TO PAY BY CREDIT CARD, SEE AUTHORIZATION NOTICE ON THE BACK.

SUMMARY OF
ACCOUNT

GRAND STRAND REGIONAL
PO BOX 402724
ATLANTA, GA 30384-2724
866-492-9084

STATEMENT DATE 04/14/15

STATEMENT PERIOD	PATIENT NAME	ACCOUNT NUMBER
04/08/15 TO 04/09/15	BARRAS CALLIE	1033295798

TOTAL CHARGES	NEW CHARGE ACTIVITY	NEW PAYMENTS OR CREDITS	NEW ACCOUNT ADJUSTMENTS	PREVIOUS TRANSACTIONS	AMOUNT DUE
39,016.70	0.00	0.00	0.00	0.00	\$39,016.70

DATE	DESCRIPTION	UNITS	AMOUNT	DATE	DESCRIPTION	UNITS	AMOUNT
04/09/15	OUTPATIENT SERVICES			04/08/15	OBS PER HOUR	22	2,283.60
04/08/15	CT HEAD/BRAIN W/O CONT	2	3,783.38	04/08/15	CT C-SPINE W/O CONTRAST	1	2,322.94
04/08/15	XR CHEST 1 V	1	89.85	04/08/15	XR KNEE 1 OR 2 V RT	1	280.18
04/08/15	VENIPUNCTURE	1	17.89	04/08/15	COMP METABOLIC PANEL	1	553.67
04/08/15	UA W MICRO AUTO	1	134.82	04/08/15	UA W O MICRO AUTO	1	122.04
04/08/15	UA W O MICRO AUTO	1	122.04	04/08/15	CBC	1	166.80
04/08/15	PROTIME	1	77.96	04/08/15	PTT	1	118.21
04/08/15	OXYGEN PER HOUR	1	39.05	04/08/15	ABO TYPE	1	53.04
04/08/15	RH TYPE	1	53.04	04/08/15	EMER DEPT LEVEL 5	1	2,743.86
04/08/15	IVP SINGLE/INITIAL DRUG	1	252.56	04/08/15	ANTIBODY SCREEN EA	1	180.51
04/08/15	DRUG SCR MULTI MOD COMP	1	545.04	04/08/15	TRAUMA RESP NO CC LVL 2	1	21,235.50
04/08/15	IVP-EA-ADD SEQ-SAME DRUG	1	232.38	04/08/15	ALCOHOL ETHANL NOT BREAT	1	85.00
04/08/15	CATH SFTY IV 20GX1 1/4	1	36.50	04/08/15	VALVE SMARTSITE 1ML	1	29.50
04/08/15	BETAPACE 80 MG TAB	1	28.22	04/08/15	ONDANSETRON 4 MG VL	2	131.20
04/08/15	OXYCODONE HCL	2	29.50	04/08/15	D5NS 1000 ML	2	268.18
04/09/15	CT MAXIFAC W/O CNT	1	2,322.94	04/09/15	CULT COLONY COUNT UR	1	143.46
04/09/15	EKG TRACING ONLY	1	293.87	04/09/15	IVP EA ADD SEQ SAME DRUG	1	232.38
04/09/15	ACETAMIN TABS	4	3.88	04/09/15	BETAPACE 80 MG TAB	1	28.22
04/09/15	HYDROCHLOROTH-25MG	1	9.94	04/09/15	LEVOTHYRO .05MG TAB	1	9.94
04/09/15	ONDANSETRON 4 MG VL	1	65.60	04/09/15	D5NS 1000 ML	1	134.09
					TOTAL CHARGES		39,016.70
					ACCOUNT BALANCE		39,016.70
					DUE FROM PATIENT		39,016.70

04/13/15 TPL PENDING TRAUMA BILLED

TO VIEW/PAY YOUR ACCT VIA WEB: WWW.GRANDSTRANDMED.COM/BILL.ASP
IF YOU HAVE QUESTIONS REGARDING YOUR ACCOUNT PLEASE CALL: 866-492-9084
*****PLEASE PAY AMOUNT DUE*****

Get a new health plan that fits your needs and budget. Visit getcoveredhca.com. Visiting will disclose to Enroll America that you have been a patient of this hospital.

THIS BILL IS FOR HOSPITAL SERVICES ONLY

CAROLINA RADIOLOGY ASSOCIATES, LLC
P O BOX 51030
MYRTLE BEACH SC 29579-0018
(800)841-4235

Patient:

Acct #: 96242
BARRAS, CALLIE P
22 WOODHAVEN DRIVE UNIT C UNIT C
MURRELLS INLET, SC 29576

Responsible party:

BARRAS, CALLIE P
22 WOODHAVEN DRIVE UNIT C UNIT C
MURRELLS INLET, SC 29576

Srvc. Date	CPT	Proc. Description	Charge	Balance	Physician
04/08/2015	71010	RADEX CH 1 VIEW FRNT	\$47.00		RIKE, GARY L
04/08/2015	70450	CT HEAD/BRN C-MATRL	\$248.00		LACKEY, JEFFREY SCOTT
04/08/2015	72125	CT CRV SPI C-MATRL	\$289.00		RIKE, GARY L
04/08/2015	70450	CT HEAD/BRN C-MATRL	\$248.00		RIKE, GARY L
04/08/2015	73560	RADEX KNE 1/2 VIEWS	\$35.00		RIKE, GARY L

GSSS TRAUMA GENERAL SURGERY
 1 MARYLAND FARMS STE 250
 BRENTWOOD TN 37027-5053

01/2011

ADDRESS SERVICE REQUESTED

If you have a question about your bill or would like to make a payment arrangement, please contact a practice representative at 888-422-7720

IF PAYING BY CREDIT CARD, FILL OUT BELOW.

☐ CHECK CARD USING FOR PAYMENT

☐ MASTERCARD ☐ VISA ☐ AMERICAN EXPRESS ☐ DISC

CARD NUMBER: _____ AMOUNT: _____

SIGNATURE: _____ EXP. DATE: _____

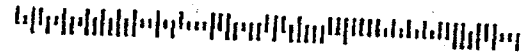
STATEMENT DATE: 2015-05-15 PAY THIS AMOUNT: 329.55 ACCOUNT NUMBER: BX500831319

PATIENT NAME: Callie P Barras

SHOW AMOUNT PAID HERE \$

Callie P Barras
 22 Woodhaven Dr Unit C
 Murrells Inlet SC 29576

GSSS TRAUMA GENERAL SURGERY
 PO BOX 740776
 CINCINNATI OH 45274-0776



BARRASCALLI 000500831319033952600700000032955051520150

☐ Please check box if above address is incorrect or insurance information has changed, and indicate change(s) on reverse side.

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

PLEASE MAKE CHECK PAYABLE TO: GSSS TRAUMA GENERAL SURGERY

SERVICE DATE	RENDERER	DESCRIPTION	CHARGES	CREDITS	BALANCE
2015-04-08	2015-04-08	Claim:504171113, Provider: ANDREA E. ROMANO, MD			
2015-04-08	2015-04-08	Facility: 339521GSR GRAND STRAND REG MED CTR			
2015-04-08	2015-04-08	99223 INITIAL HOSPITAL CARE			
2015-04-08	2015-04-13				373.00
2015-04-08	2015-05-15	Your Account Is Past Due. Please remit payment.			
2015-04-08	2015-05-15	Your Balance Due On These Services ...			
2015-04-09	2015-04-09	Claim:504175645, Provider: CARLOS A. FERNANDEZ, MD			
2015-04-09	2015-04-09	Facility: 339521GSR GRAND STRAND REG MED CTR			
2015-04-09	2015-04-09	99238 HOSP DISC <30MIN			
2015-04-09	2015-04-14				134.00
2015-04-09	2015-05-15	Your Payment Is now due. Thank you for your prompt response.			
2015-04-09	2015-05-15	Your Balance Due On These Services ...			

CURRENT	30 DAYS	60 DAYS	90 DAYS	120 DAYS	TOTAL AMOUNT DUE
87.10	242.45	0.00	0.00	0.00	329.55

MESSAGE:

This is a statement for professional services rendered by your physician. You may receive a separate bill from the hospital for its services.

If you have a question about your bill or would like to make a payment arrangement, please contact a practice representative at 888-422-7720

PATIENT ACCOUNT NUMBER

R-486

BX500831319

PLEASE PAY THIS AMOUNT

329.55

PLANTATION BILLING CENTER
PO BOX 459077
SUNRISE FL 33345-9077

DETACH AND RETURN THIS COUPON WITH
THE REVERSE SIDE COMPLETED TO PAY BY
CREDIT CARD. TO PROVIDE INSURANCE
INFORMATION OR FOR CHANGE OF ADDRESS

Credit card charges will appear as "Team Health"

Patient
Name: CALLIE BARRAS

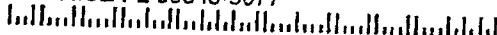
AMT DUE: \$572.00

PHYSICIAN SERVICES RENDERED AT: GRAND STRAND REGIONAL MEDICAL
CENTER



54862153-29-2901
PS ▲ 020469
CALLIE BARRAS T75 P1
22 WOODHAVEN DR UNIT C
MURRELLS INLET SC 29576-6440

GRAND STRAND EMERGENCY PHYSICI
DEPT: A ☐ B ☐ C ☐ (check one - see reverse)
PO BOX 459077
SUNRISE FL 33345-9077



018000548621531026029715990290160005720087

↑ Detach Here ↑

DATE	INVOICE#	DESCRIPTION	PROVIDER	DEBITS	CREDITS
04/08/15	148722781	EMERGENCY DEPT VISIT	FALKOWITZ DO, JAMIE S	\$572.00	

THIS IS YOUR PHYSICIAN SERVICES BILL AND IS SEPARATE FROM THE HOSPITAL BILL

ACCOUNT NUMBER: 54862153-29-2901 STATEMENT DATE: 05/27/15 TOTAL NOW DUE: \$572.00

HAVE YOU OVERLOOKED YOUR PAYMENT? YOUR ACCOUNT IS PAST DUE. TO AVOID FURTHER ACTION ON YOUR ACCOUNT, PLEASE MAIL YOUR PAYMENT TODAY OR
VISIT OUR WEBSITE AT WWW.THBILLPAY.COM TO PAY BY CREDIT CARD.

For Billing Inquiries, call 888-952-6772 on Monday through Friday, from 8am to 8pm and Saturday from 10am to 3pm Eastern Time.

SEND US YOUR INFORMATION OVER THE WEB!

You may now provide insurance information and make credit card payments at <http://www.thbillpay.com/>

↓ Detach Here ↓

PAYMENT COUPON - RETURN WHEN PAYING BY CHECK OR MONEY ORDER

PATIENT NAME: CALLIE BARRAS ACCT#: 54862153-29-2901 CHECK# AMT PAID:

PHYSICIAN SERVICES RENDERED AT: GRAND STRAND REGIONAL MEDICAL
CENTER

DO NOT STAPLE OR TAPE YOUR CHECK
OR MONEY ORDER TO THIS COUPON

☐ CHECK HERE FOR CHANGE OF ADDRESS

MAKE CHECKS PAYABLE TO:

54862153-29-2901
Callie Barras
22 Woodhaven Dr Unit C
Murrells Inlet SC 29576-6440

GRAND STRAND EMERGENCY PHYSICI
PO BOX 740022
CINCINNATI OH 45274-0022

018000548621531026029715990290160005720087

FAMILY MEDICAL OF BAYVIEW
100 BAYVIEW COURT
SUITE 100
MYRTLE BEACH, SC 29588
842 293 8650

INQUIRY
Date 06/18/2015
Time 11:21a
User kwoolley
Page 1

Patient Name: CALLIE P BARRAS
Patient #: 002831
DOB: 06/24/1942
Death Date: 00/00/0000
Age: 73 Sex: F
SSN: 250-74-7995

Resp Party: CALLIE P BARRAS
Bill To #: 002831

Dr #: 3 KAREN L MAHOOD
RDr #: 12 KAREN L MAHOOD
Patient Type: 2 MEDICARE
Bill Cycle: 1 A - F
Credit Status: 0

Date Registered: 10/04/2007

Patient E-mail:
Responsible Party E-mail:

Balances
0 - 30: 15.71-
31 - 60: .00
61 - 90: .00
91 - 120: .00
121 - 150: .00
151+: .00
Updated: 15.71-
Not Updated: .00
Total Balance: 15.71-
- Pending: .00
= Patient Balance: 15.71-

Responsible Party Address:
22 WOODHAVEN DR
UNIT C
MURRELLS INLET, SC 29576
H/Ph #: 843-357-6825 M/Ph #: 843-655-6601
W/Ph #: 000-0000

Patient Address:
22 WOODHAVEN DR
UNIT C
MURRELLS INLET, SC 29576
H/Ph #: 843-357-6825 M/Ph #: 843-655-6601
W/Ph #: 000-0000

Budget Due: .00
Non-budget Due: 15.71-
Total Due: 15.71-
Budget Balance: .00
Budget Payment: .00

Last Transactions:
Charge: 07/29/2015 30.60
Personal: 07/29/2015 30.60
Insurance: 06/02/2015 .00
Aging: 08/13/2015 15.71-
Location: 1 FAMILY MED SAYE
Diagnosis: 999.99 MISCELLANEOUS

Billing History: 01/11/2015 12/11/2014
10/20/2014 08/18/2014

Current Coverages

Cov#	Insurance Company	Insurance Plan	Subscriber
1	1 MEDICARE		CALLIE P BARRAS
	Subscriber ID: 1803476948		
	Patient ID:		
2	3 BCBS SC		ROBERT J BARRAS
	Subscriber ID: UGG921606540	9101003777	
	Patient ID:		

Debit mode details

[Unallocated Receipts]

Post Date Receipt# Batch#/User Transaction Type
01/27/2015 808748U 8999/phenegar 1000003 CREDIT/DEBIT CARD PAYMENT, THANK Y
Total Receipt: 84.32 Orig Unallocated: 36.27- Unallocated Bal: 15.71-

Patient#/Name: 002831 CALLIE P BARRAS
Post Date Debit# Batch#/User Dr# Name Loc# Name Orig Pend Total
04/13/2015 326025U 8999/phenegar 3 K MAHOOD 1 FAMILY ME .00 110.00
Dates of Service Proc Desc Diag PRT Units Unit Chg Line Chg
04/13/2015-04/13/2015 99213 OFFICE/OUTPA +784.0 YYY 1.00 110.00 110.00
E688.9

Post Date Receipt# Cov# Transaction Type Amount Applied
04/13/2015 834169U 1000003 CREDIT/DEBIT CARD PAYMENT, THANK Y 110.00 110.00-
Paid Write-off

R-488

FAMILY MEDICAL CENTER
100 LANSFORD COURT
SUITE 100
MYRTLE BEACH, SC 29586
543 293 8950

INQUIRY
Date 08/19/2015
Time 11:21
User KWO011
Page

Primary: .00 .00 Personal Paid: 110.00 Total Balance: .00
Secondary: .00 .00 Other Paid: .00 Pending: .00
Tertiary: .00 .00 Pat Paid On Form: .00 Patient Balance: .00
Ins Total: .00 .00

Patient#/Name: 002831 CALLIE P BARRAS

Post Date Debit# Batch#/User Dr# Name Loc# Name Orig Pend Total
04/29/2015 306433U 8999/gtroat 3 K MAHOOD 1 FAMILY ME .00 .00
Dates of Service Proc Desc Diag PRT Units Unit Chg Line Chg
04/29/2015-04/29/2015 LCBILL LCBILL 401.1 NNN 1.00 .00 .00
Paid Write-off

Primary: .00 .00 Personal Paid: .00 Total Balance: .00
Secondary: .00 .00 Other Paid: .00 Pending: .00
Tertiary: .00 .00 Pat Paid On Form: .00 Patient Balance: .00
Ins Total: .00 .00

Patient#/Name: 002831 CALLIE P BARRAS

Post Date Debit# Batch#/User Dr# Name Loc# Name Orig Pend Total
05/06/2015 306432U 8999/gtroat 3 K MAHOOD 1 FAMILY ME 130.00 130.00
Cov# Claim# Ins Co# Filed Refiled BA PA Status
1 3064321 05/11/2015 Y N Paid
2 3064322 05/11/2015 Y Y Paid
Dates of Service Proc Desc Diag PRT Units Unit Chg Line Chg
05/06/2015-05/06/2015 99214 OFFICE/OUTPA +244.8 YYY 1.00 130.00 130.00
401.1
V77.91

Post Date Receipt# Cov# Transaction Type Amount Applied
01/27/2015 808748U 1000003 .00
05/20/2015 847955U 1 2000001 * 64.32 20.56-
05/20/2015 847956U 1 9000101 * 80.61 80.61-
05/20/2015 847957U 1 4000001 * .00 .00
06/02/2015 849924U 2 2000003 * 28.83 28.83-
06/02/2015 849925U 2 9000101 * .00 .00
Paid Write-off .00 .00

Primary: 80.61 28.83 Personal Paid: 20.56 Total Balance: .00
Secondary: .00 .00 Other Paid: .00 Pending: .00
Tertiary: .00 .00 Pat Paid On Form: .00 Patient Balance: .00
Ins Total: 80.61 28.83

Patient#/Name: 002831 CALLIE P BARRAS

Post Date Debit# Batch#/User Dr# Name Loc# Name Orig Pend Total
07/29/2015 340204U 7900/lgarozzo 13 K MAHOOD 1 FAMILY ME .00 30.60
Dates of Service Proc Desc Diag PRT Units Unit Chg Line Chg
07/30/2015-07/30/2015 MEDREC MEDICAL RECO 999.99 NNN 1.00 30.60 30.60
Post Date Receipt# Cov# Transaction Type Amount Applied
07/29/2015 867757U 1000002 MED RECORD CK #12454 30.60 30.60-
Paid Write-off

Primary: .00 .00 Personal Paid: 30.60 Total Balance: .00
Secondary: .00 .00 Other Paid: .00 Pending: .00
Tertiary: .00 .00 Pat Paid On Form: .00 Patient Balance: .00
Ins Total: .00 .00

Southern Urgent Care - Murrells Inlet
 3683 Hwy 17 Bypass
 Murrells Inlet, SC 29576
 Phone: 843-357-4357 Fax:
 843-357-4359
 www.southernuc.com

Name: BARRAS, CALLIE P DOB: 6/24/1942 AGE: 72
 Acct #: 201504201306194
 MR #: 15a3982704293bb
 Visit Date: 04/20/2015 14:10
 Treating Provider: Arvin Ward PA-C in association with: Yenney Meza MD
 Patient's PMD: DR. MALTOOD

--- PAYMENT ARRANGEMENTS AT TIME OF VISIT---

Today you were seen at Southern Urgent Care - Murrells Inlet.

Our Tax ID number is .

Based on your billing class you are responsible for all charges at time of service.

BILLING STATUS FOR THIS VISIT:

This is not your final bill and is only an estimate based upon your visit. These charges will be reviewed by our billing department/service and may be adjusted accordingly. This is an estimate for your records and a final invoice will be sent to you or submitted to your insurance if applicable.

CHARGES - ADJUSTMENTS - PAYMENTS:

Total Charges:	\$ 282.00
Less Co-Pay Paid:	\$ -
Less Self Pay Deposit:	\$ 219.00 - cc-Visa
Less Discount:	% 25.0
Less Adjustment:	\$
Amount Due:	\$0.00
Amount Paid:	\$ -
Remaining Balance:	\$ 0.00

--- SUMMARY OF YOUR VISIT---

Primary Diagnosis for this visit:

Foot Sprain/Strain

Treatments received this visit:

- 1) X-Ray of right Foot minimum of 3 views (Indication: Injured foot. Painful foot.) (Note: X-ray of right Foot minimum of 3 views - Primary Initial review. (AW) No radiographic evidence of acute fracture. (AW) Has soft tissue changes on plain films. (AW) Films show a mild amount of soft tissue swelling noted over the base of the fifth metatarsal (AW) No significant degenerative or osteoporotic changes on plain films of the ankle. (AW) Normal joint space. (AW)]
- 2) ACE
- 3) Post-op. Shoe

--- CHARGES SUMMARY---

Below is a listing of Medical Billing Codes, Description and Standard Service Fee. These charges represent our standard fee for service and do not reflect adjustments or discounts. Amounts billed to your insurance company or employer may be adjusted at time bill is submitted.

CODE	DESCRIPTION	FEE
------	-------------	-----

Name: BARRAS, CALLIE P

Acct #: 201504201306194

Visit Date: 04/20/2015 14:10

73630-26	X-RAY EXAM OF FOOT	50.00
73630	X-RAY EXAM OF FOOT	85.00
98203	OFFICE/OUTPATIENT VISIT NEW	145.00
94760	MEASURE BLOOD OXYGEN LEVEL	N/A
L3280	SURGICAL BOOT/SHOE, EACH	N/A
S9088	SERVICES PROVIDED IN URGENT	N/A
S9083	URGENT CARE CENTER GLOBAL	N/A
A6448	LT COMPRES BAND <3"YD	10.00

LINA SPORTS AND ORTHO SLS
OX 13225
LESTON SC 29422
775-5666
843-763-8777
CCEPT VISA/MC/AMEX

INVOICE

Page 1

Order # 1182

Invoice # 429162

Date 4/29/15

Date 4/29/15

To
IE BARRAS
OODHAVEN DR APT C
ELLS INLET SC 29576

Ship To
CALLIE BARRAS
22 WOODHAVEN DR APT C
MURRELLS INLET SC 29576

UMBER	Terms	ShipDate Via	DUE IN	Sales Rep	Code
-------	-------	--------------	--------	-----------	------

4/29/15

Shp	Part #	Description	Tax	Price	Amount
1	1 HDS-	UNIVERSAL POSTOP SHOE THIS IS FOR THE SHOE RECEIVED AT YOUR RECENT URGENT CARE VISIT. PLEASE PAY ASAP WE ACCEPT ALL MAJOR CC AND CHECK		7.50	7.50

nt Paid \$ 0.00
nt Due \$ 7.50

SubTotal	\$	7.50
Tax 1 on 0.00 @ 8.000 %	\$	0.00
Tax 2 on 0.00 @ 0.500 %	\$	0.00
Freight	\$	0.00
Total	\$	7.50

DATE: 07/30/16 @ 1258
USER: RCAGLE

GEORGETOWN MEMORIAL B/AR **LIVE**
Charge Detail

PAGE 1

Acct: G00006747030
BARRAS, CALLIE P
22 WOODHAVEN DR UNIT C

Guar: 250-74-7995
BARRAS, CALLIE P
22 WOODHAVEN DR UNIT C

MURRELLS INLT, SC 29576-6440
(843) 655-6601 (H)

MURRELLS INLT, SC 29576-6440
(843) 357-6825 (H)

Select All

Date	Procedure	User	Description	Beh Date	Num	Journal	Amount	CPT-4	HCPCS
07/07/15	4200058981	BKG DAEMON	PT BODY POS CURRENT - Change AT\ Maint Body: Current	07/07/15	127	BAR OV	0.01		G8981GP
07/07/15	4200058982	BKG DAEMON	PT BODY POS PROJ/GOAL - Change AT\ Maint Body: Projected	07/07/15	127	BAR OV	0.01		G8982GP
07/07/15	4200097017	BKG DAEMON	PT THER EXERCISE WHP - PT Exercise(1)	07/07/15	127	BAR OV	101.08	97110GP	
07/07/15	4200097067	BKG DAEMON	PT EVALUATION WHP - PT Evaluation	07/07/15	127	BAR OV	178.67	97001GP	
07/09/15	4200097007	BKG DAEMON	PT ELEC STIM UNATTEND WHP - PT Electric Stimulation (1)	07/09/15	141	BAR OV	102.82	97014GP	G0283GP
07/09/15	4200097017	BKG DAEMON	PT THER EXERCISE WHP (2X) - PT Exercise(2)	07/09/15	141	BAR OV	202.16	97110GP	
07/09/15	4200097212	BKG DAEMON	PT MANUAL THERAPY WHP - PT Manual Therapy(1)	07/09/15	141	BAR OV	95.34	97140GP	
07/14/15	4200097007	BKG DAEMON	PT ELEC STIM UNATTEND WHP - PT Electric Stimulation (1)	07/14/15	156	BAR OV	102.82	97014GP	G0283GP
07/14/15	4200097017	BKG DAEMON	PT THER EXERCISE WHP - PT Exercise(1)	07/14/15	156	BAR OV	101.08	97110GP	
07/14/15	4200097212	BKG DAEMON	PT MANUAL THERAPY WHP (2X) - PT Manual Therapy(2)	07/14/15	156	BAR OV	190.68	97140GP	
07/16/15	4200097007	BKG DAEMON	PT ELEC STIM UNATTEND WHP - PT Electric Stimulation (1)	07/16/15	215	BAR OV	102.82	97014GP	G0283GP
07/16/15	4200097017	BKG DAEMON	PT THER EXERCISE WHP (2X) - PT Exercise(2)	07/16/15	215	BAR OV	202.16	97110GP	
07/21/15	4200097007	BKG DAEMON	PT ELEC STIM UNATTEND WHP - PT Electric Stimulation (1)	07/21/15	185	BAR OV	102.82	97014GP	G0283GP
07/21/15	4200097017	BKG DAEMON	PT THER EXERCISE WHP (2X) - PT Exercise(2)	07/21/15	185	BAR OV	202.16	97110GP	
07/21/15	4200097212	BKG DAEMON	PT MANUAL THERAPY WHP - PT Manual Therapy(1)	07/21/15	185	BAR OV	95.34	97140GP	
07/28/15	4200097007	BKG DAEMON	PT ELEC STIM UNATTEND WHP - PT Electric Stimulation (1)	07/28/15	273	BAR OV	102.82	97014GP	G0283GP
07/28/15	4200097017	BKG DAEMON	PT THER EXERCISE WHP (2X) - PT Exercise(2)	07/28/15	273	BAR OV	202.16	97110GP	
07/28/15	4200097212	BKG DAEMON	PT MANUAL THERAPY WHP - PT Manual Therapy(1)	07/28/15	273	BAR OV	95.34	97140GP	
07/30/15	4200097007	BKG DAEMON	PT ELEC STIM UNATTEND WHP - PT Electric Stimulation (1)	07/30/15	314	BAR OV	102.82	97014GP	G0283GP
07/30/15	4200097017	BKG DAEMON	PT THER EXERCISE WHP (2X) - PT Exercise(2)	07/30/15	314	BAR OV	202.16	97110GP	

R-493

DATE: 08/30/16 @ 1258
USER: NCAGLE

GEORGETOWN MEMORIAL B/AR **LIVE**
Charge Detail

PAGE 1

Acct: G00006760013
BARRAS, CALLIE P
22 WOODHAVEN DR UNIT C

Guar 250-74-7995
BARRAS, CALLIE P
22 WOODHAVEN DR UNIT C

MURRELLS INLT, SC 29576-6440
(843) 655-6601 (H)

MURRELLS INLT, SC 29576-6440
(843) 357-6825 (H)

Select All

Date	Procedure	User	Description	Bch Date	Num	Journal	Amount	CPT-4	HCPCS
08/06/15	4200097007	BKG DAEMON	PT ELEC STIM UNATTEND WHP - PT 08/06/15	146	BAR	OV	102.82	97014GP	G0283GP
08/06/15	4200097017	BKG DAEMON	Electric Stimulation (1) PT THER EXERCISE WHP (2X) - PT 08/06/15	146	BAR	OV	202.16	97110GP	
08/06/15	4200097212	BKG DAEMON	Exercise(2) PT MANUAL THERAPY WHP - PT 08/06/15	146	BAR	OV	95.34	97140GP	
08/10/15	4200097007	BKG DAEMON	Manual Therapy(1) PT ELEC STIM UNATTEND WHP - PT 08/10/15	175	BAR	OV	102.82	97014GP	G0283GP
08/10/15	4200097017	BKG DAEMON	Electric Stimulation (1) PT THER EXERCISE WHP (2X) - PT 08/10/15	175	BAR	OV	202.16	97110GP	
08/10/15	4200097212	BKG DAEMON	Exercise(2) PT MANUAL THERAPY WHP - PT 08/10/15	175	BAR	OV	95.34	97140GP	
08/13/15	4200056961	BKG DAEMON	Manual Therapy(1) PT BODY POS CURRENT - Change 08/13/15	286	BAR	OV	0.01		G8981GP
08/13/15	4200058982	BKG DAEMON	ATV Maint Body: Current PT BODY POS PROJ/GOAL - Change 08/13/15	286	BAR	OV	0.01		G8982GP
08/13/15	4200097007	BKG DAEMON	ATV Maint Body: Projected PT ELEC STIM UNATTEND WHP - PT 08/13/15	286	BAR	OV	102.82	97014GP	G0283GP
08/13/15	4200097017	BKG DAEMON	Electric Stimulation (1) PT THER EXERCISE WHP (2X) - PT 08/13/15	286	BAR	OV	202.16	97110GP	
08/13/15	4200097212	BKG DAEMON	Exercise(2) PT MANUAL THERAPY WHP - PT 08/13/15	286	BAR	OV	95.34	97140GP	
08/20/15	4200097007	BKG DAEMON	Manual Therapy(1) PT ELEC STIM UNATTEND WHP - PT 08/20/15	101	BAR	OV	102.82	97014GP	G0283GP
08/20/15	4200097017	BKG DAEMON	Electric Stimulation (1) PT THER EXERCISE WHP (2X) - PT 08/20/15	101	BAR	OV	202.16	97110GP	
08/20/15	4200097212	BKG DAEMON	Exercise(2) PT MANUAL THERAPY WHP - PT 08/20/15	101	BAR	OV	95.34	97140GP	
08/25/15	4200097007	BKG DAEMON	Manual Therapy(1) PT ELEC STIM UNATTEND WHP - PT 08/25/15	163	BAR	OV	102.82	97014GP	G0283GP
08/25/15	4200097017	BKG DAEMON	Electric Stimulation (1) PT THER EXERCISE WHP (2X) - PT 08/25/15	163	BAR	OV	202.16	97110GP	
08/25/15	4200097212	BKG DAEMON	Exercise(2) PT MANUAL THERAPY WHP - PT 08/25/15	163	BAR	OV	95.34	97140GP	
08/25/15	4200097212	BKG DAEMON	Manual Therapy(1)						

R-494

DATE 08/30/16 @ 1258
USER: KCAGLE

GEORGETOWN MEMORIAL B/AR **LIVE**
Charge Detail

PAGE 1

Acct G00006770592
BARRAS, CALLIE P
22 WOODHAVEN DR UNIT C

Guar 250-74-7995
BARRAS, CALLIE P
22 WOODHAVEN DR UNIT C

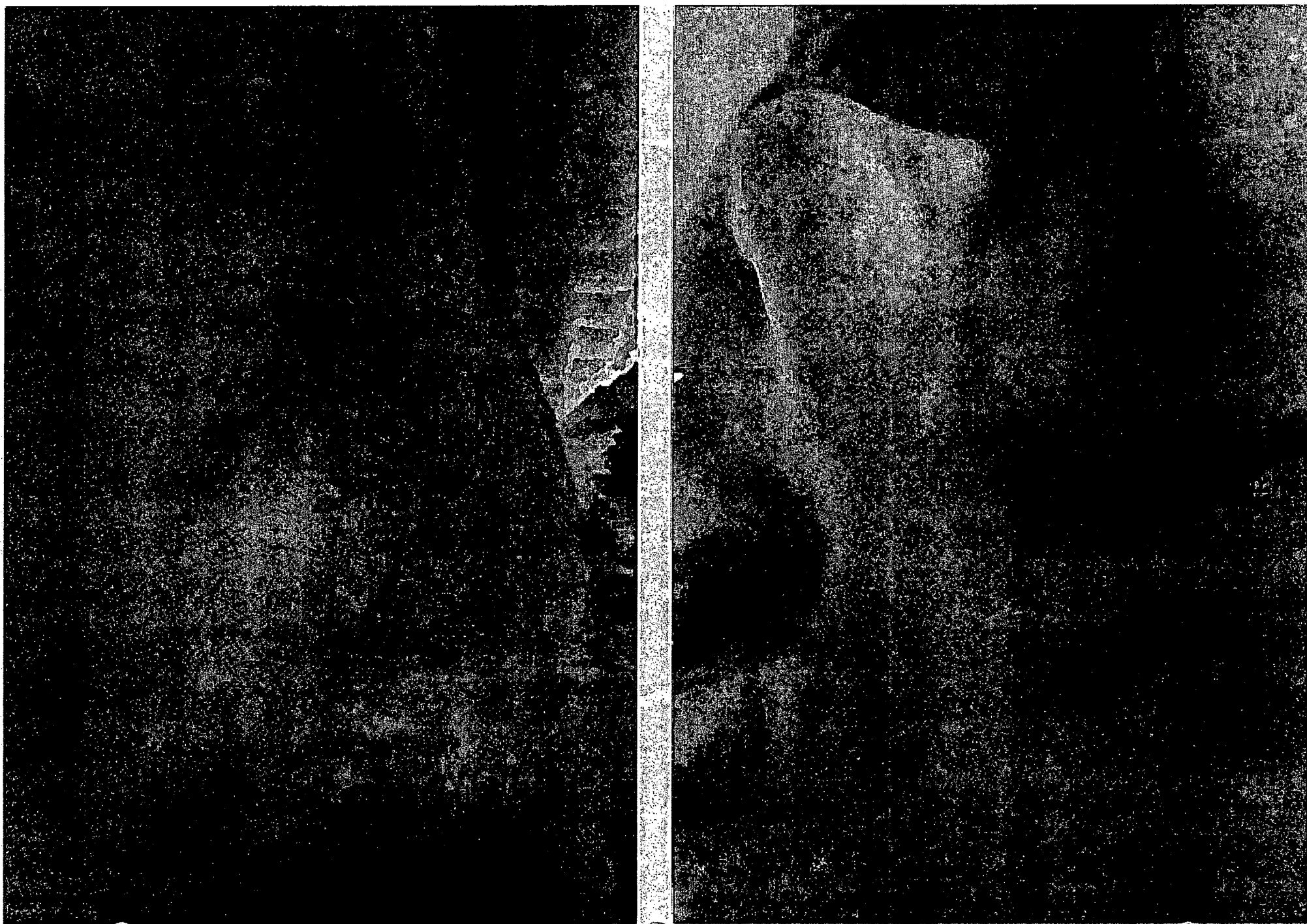
MURRELLS INLT, SC 29576-6440
(813)655-6601 (H)

MURRELLS INLT, SC 29576-6440
(843)357-6825 (H)

Select All

Date	Procedure	User	Description	Bch Date	Num	Journal	Amount	CPT-4	HCPCS
09/03/15	4200058982	BKG DAEMON	PT BODY POS PROJ/GOAL - Change	09/03/15	157	BAR OV	0.01		G8982GP
09/03/15	4200058983	BKG DAEMON	AT\ Maint Body: Projected	09/03/15	157	BAR OV	0.01		G8983GP
09/03/15	4200097007	BKG DAEMON	PT BODY POS DISCH - Change	09/03/15	157	BAR OV	102.82	97014GP	G0283GP
09/03/15	4200097017	BKG DAEMON	Maint Body: Discharge	09/03/15	157	BAR OV	202.16	97110GP	
09/03/15	4200097212	BKG DAEMON	PT ELEC STIM UNATTEND WMP - PT	09/03/15	157	BAR OV	95.34	97140GP	
			Electric Stimulation [1]						
			PT THER EXERCISE WMP (2X) - PT						
			Exercise[2]						
			PT MANUAL THERAPY WMP - PT						
			Manual Therapy[1]						

R-495





AlSCO Myrtle Beach Depot
AlSCO
PO Box 958
Kinston, NC 28501

Phone : (843)399-2610
Fax : (843)399-3708

INVOICE

LKIN1165740

Invoice Date: Apr 03 2015
Customer No: 0109849
Location No: 0109849
Route: 24 Stop: 090
Terms: Net 10 EOM

City of Myrtle Beach
Base Recreation Center
P.O. Box 2468
Myrtle Beach SC 29578

Base Recreation Center
800 Gabreski Ln
Myrtle Beach, SC 29577-1550

Phone : 843-918-2381

Quantity	Item Code	Item Description	Locker	Locker Name	Locker No	Locker Value
8	2005-CC	3X4 Mat, Charcoal			18	13.20
4	2020-CC	4X6 Mat, Charcoal			8	9.80
2	2015-CC	3X10 Mat, Charcoal			4	6.30
	29100	Wet Mop			14	8.75
	2940	36 Dust Mop Untreated			16	7.20
	2960	60 Dust Mop Untreated			8	5.20
2	9635	Mop Handle			2	0.00
2	9815	36 Mop Frame			2	0.00
2	9625	60 Mop Frame			2	0.00
MATTHIS GRISSETT						
843-918-2380						
Current Month: \$54.49; Last Month: \$0.00; Total Balance: \$54.49						



The services for which these charges are made are being furnished to you pursuant to a service agreement between our company as supplier and the above named customer. Said merchandise is not to be cleaned or laundered other than by our company. Customers are responsible for articles lost or damaged.

Sub Total \$50.45
Tax 8.00% \$4.04
Invoice Total \$54.49

March 18, 2015

To: The Honorable Mayor John Rhodes

The attached 11 sheets of signed Petitions represent the seniors who attend the Base Bingo Program at the Recreation Center, both local and snow birds.

We hope that this program can be kept to ages 50 and over, otherwise it will eliminate our special food program and the many vendors who support us with gift certificates and special events intended only for seniors.

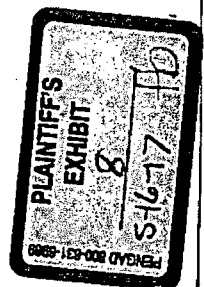
Hoping for a favorable reply,

Douglas W. Allen
Deane Demaree
Carmen Allen



Petition to the City of Myrtle Beach
to retain the BASE Bingo Program as
a Senior Bingo Program only for ages 50
and older as it has been for over
15 years.

<u>DATE</u>	<u>NAME</u>	<u>CITY / STATE</u>
3-13-15	Robert Mitchell	Murrells Inlet, S.C.
3-13-15	Bert Mitchell	Murrells Inlet, S.C.
3-13-15	Nancy Bedgood	Kelph Ont Canada
3-13-15	Bob [unclear]	Kelph, Ont. Canada
3/13/15	Judith Fitzgerald	Myrtle Beach
3/13/15	Michael Dornbaw	Myrtle Beach
3/13/15	Gerald Dornbaw	Myrtle Beach
3-12-15	Timothy Spifford	Dalgette N.Y.
3/13/15	Cyrus W Spifford	Dalgette, N.Y.
3/13/15	Linda Baazene	Tamagua, PA
3/13/15	Eleen Jones	Myrtle Beach
3/13/15	Latun Spi	Aust. Ohio
3-13-15	Bob L McBrady	Myrtle Beach
3-13-15	Thompson	"
3-18-15	Bird Hawk	"
3-18-15	E. Spifford	Georgetown, SC
3-18-15	Arnell Burch	Georgetown, SC
3-18-15	Laine Lavigne	Myrtle Beach, SC
3-18-15	Deane Compton	Myrtle Beach SC
"	Donna Johnson	Myrtle Beach SC
3-18-15	Mary Day	Conway SC.
3-18-15	Mary Foley	Fair Haven Vermont



Petition to the City of Myrtle Beach
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15 years.

<u>DATE</u>	<u>NAME</u>	<u>CITY/STATE</u>
3-13-15	DORA COOK	~~Myrtle Beach~~ MB, S.C.
3-13-15	Mandy Fox	Myrtle Beach, S.C.
3-13-15	JOY MULLAN	MYRTLE BEACH S.C.
3-13-15	PATRICK MULLAN	Myrtle Beach S.C.
3-13-15	JIMMY KUGLER	MB, S.C.
3-13-15	John P. [unclear]	MB, S.C.
3-13-15	Joe Perryman	Myrtle Beach, S.C.
3-13-15	Dorothy Lake	MB, S.C.
3-13-15	Stan Klemann	MB, S.C.
3-13-15	Mavis Nelson	MB, S.C.
3-13-15	Verion Kimes	Summerville S.C. & E.
3-13-15	Richard Kimes	SURF SIDE BEACH S.C.
3-13-15	Sue Harpinc	201 S Ocean Blvd. MB SC 12 Townley Dr. BH NY 201 S Ocean Blvd MB SC 12 Townley Dr BH NY 402 Meadowbrook Dr MB SC 24580 See above
3-13-15	Gordon Harpinc	
3-13-15	Alma Andrews	
3-13-15	Larry Andrews	
3-13-15	Barbara Evans	Myrtle Beach, S.C.
3-13-15	Glenn Liden	Myrtle Beach SC
3-13-15	Donald Kinder	Myrtle Beach SC
3-13-15	Duane St. Clair	Myrtle Beach S.C.
"	Eileen St. Clair	Myrtle Beach S.C.

Petition to the City of Myrtle Beach
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15 years.

<u>DATE</u>	<u>NAME</u>	<u>CITY / STATE</u>
3-13-15	Callie Barnes	Myrtle Beach, SC
3-13-15	Rhet J. Barnes	Myrtle Beach, SC
3-13-15	Irene Klemm	Myrtle Beach, SC
3-13-15	George Dechert	Myrtle Beach, SC
3-13-15	Sarah Dechert	Myrtle Beach, SC
3-13-15	Doris Reese	Myrtle Beach, SC
3-13-15	Leo Troy	Myrtle Beach, SC
3-13-15	Jackie Heinicke	Webster, New York
3-13-15	John Holt John Holt	Edison, Ohio
3-13-15	Clara Rice	Edison, Ohio
3-13-15	Kathleen Doolan	Racine, Wisconsin
3-13-15	Kaye Miles	Punta Gorda, FL
3-13-15	D.L. Browning	Beverly, OH
3-13-15	Margaret Hancock	Surfside, SC
3-13-15	Jessie Duncan	Surfside Beach, SC
3-13-15	Sam J. Seltz	Myrtle Beach
3-13-15	Sandy Belleville	Proctorville, Ohio
3-13-15	Donna Smith	Myrtle Beach, SC
3-13-15	LeRoy Marcotte	Myrtle Beach, SC

Petition to the City of Myrtle Beach
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15 years.

<u>DATE</u>	<u>NAME</u>	<u>CITY</u> / <u>STATE</u>
03-13-15	Cawlyn Cude	MB S.C.
"	Oscar Cude	MB S.C.
"	Kay Elder	~~MB~~ S.C.
"	Mary Farfan	MB SC
"	Marc Farfan	MB SC
"	Marie Hall	MB SC
"	Bob Hall	MB SC
3/13/15	Ed Barber	MB SC
"	Pat Barber	MB SC
"	Melba Brumling	MB S.C.
"	Sandra Knight	MB SC
3-13-15	Cynthia Schomberg	MB S.C.
"	Linn Phelps	MB SC
"	Jeanne McGrady	MB SC
"	Kathy Schwader	MB SC
03-13-15	Muriel Sullivan	Shanetides, NY
03-13-15	Jim Sullivan	Shanetides, NY
03-13-15	Bryant P. White	Bucksport, ME
03-13-15	Patricia White	Bucksport, ME
3-13-15	Anna Alexander	Seaside Beach, SC
3-13-15	James Alexander	Seaside Beach, SC
3-13-15	Verethy Pepin	Conway
3-13-15	Raymond Pepin	Conway

Petition to the City of Myrtle Beach
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<u>DATE</u>	<u>NAME</u>	<u>CITY/STATE</u>
3-13-2015	Kathy Cox	Huntville N.C.
3-13-2015	Clara Stoner	Myrtle Beach S.C.
3-13-2015	Dorothy Ball	Myrtle Beach S.C.
3-13-2015	Tina Stoner	Myrtle Beach, S.C.
3-13-2015	Mary Ann Harding	Washington, Pa
3-13-2015	Bill Harding	Washington, Pa
3-13-15	Joan Hames	GRAND VALLEY, ON. Can
3-13-15	Sylvia Coderre	Myrtle Beach, SC
3-13-15	Jean Miller	Huntville, N.C.
3-13-15	Monty Delaney	Chickadee, N.Y.
3-13-15	Tom Delaney	Chickadee, N.Y.
3-13-15	Betty Miller	Victor, Pa.
3-13-15	ARTHUR WEIR	NEW CASTLE, PA
3-13-15	John D. Bogrowicz	BANERD, ONTARIO
3-13-15	Cindy K. Weir	New Castle, PA
3-13-15	Henry DeVandry	Myrtle Beach, S.C.
3-13-15	Henry DeVandry	Williston, VT
3-13-15	Gina Wickham	Williston, VT
3-13-15	Bela Newton	La Crosse, Wis
3-13-15	Karen Jannesson	La Crosse, WI
3-13-15	Lana Jannesson	La Crosse, WI
3-13-15	Paul Brucki	La Crosse, WI
3-13-15	Sandy Brucki	La Crosse, WI

Petition to the City of Myrtle Beach
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<u>DATE</u>	<u>NAME</u>	<u>CITY / STATE</u>
3-13-15	DOUGLAS WILLIAMS	SURFSIDE BEACH, SC
"	R. L. McLAUGHLIN	GARPER CITY, S.C.
"	Tanice Hicks	Bristol, VA
"	Judy Campbell	Johnson City, TN
"	Bobby Campbell	Johnson City, TN
"	Jane Golden	Surfside, SC
"	Frank Sweeney	Surfside, S.C.
"	Jan Stephen	Marcy, NY
"	Glen Stephen	Marcy, NY
"	Darryl Skisley	PAJ
"	John Seremet	Conway, S.C.
3-13-15	Sherry L. Seremet	Conway, S.C.
"	Nancy Ashcraft	Conway, S.C.
3/13/15	BRYANT SCOTT	Conway, SC
"	Rosaleen Taylor	Blue Water Myrtle
"	Aileen Taylor	Blue Water Myrtle Bea.
3-13-15	Kitty Scott	North Myrtle Beach, SC
3/13/15	James Scott	NAB
3/13/15	Richard Smith	SURFIDE, SC 2957
3/13/15	Edward A. Laci	MYRTLE BEACH, SC
3/13/15	James E. Aglioni	PA 15710
3/13/15	Doris Day	Myrtle Beach, SC

Petition to the City of Myrtle Beach
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15 years.

<u>DATE</u>	<u>NAME</u>	<u>CITY/STATE</u>
3-13-15	Dorothy Osgood	MB/SC
"	Stasia Gilbride	MB/SC
"	Dorothy South	M.B. S.C.
"	Jane Parrie	M.B. S.C.
"	Jameson Smith	FAIRBURY CITY SC ^{Bellville}
"	Carol Burdette	BARDON CITY S.C. ^{Ohio}
"	Linda Wells	SCHUYLER, NY
"	Gordon Wells	Frankfort NY
"	Jane Haffrey	Aptons Tenn.
"	~~Robert~~ ^{Robert} ~~W. Li~~	Clay NY 13041
03/13/15	~~Robert~~ ^{Robert} ~~Kembloski~~	Clay NY 13041
"	~~Robert~~ ^{Robert} ~~W. Li~~	Portsmouth Ohio
"	~~Robert~~ ^{Robert} ~~W. Li~~	
"	Barbara Kania	M.B. - S.C.
"	Ronald Kania	M.B. S.C.
3-13-15	~~Richard Van Meter~~	~~M.B. S.C.~~
"	Marie Van Meter	M.B. S.C.
"	Mary Ann Kania	M.B. S.C.
"	Frank Fickles	ONT. CA.
"	Eric Fickles	ONT. CA.
"	Dolan Ayler	Pg H. PA.

Petition to the City of Myrtle Beach
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15 years.

<u>DATE</u>	<u>NAME</u>	<u>CITY / STATE</u>
Mar. 13, 2015	Kathy Reiter	Attica, NY 1401
Mar. 13, 2015	Pet Reiter	Attica, NY 1401
Mar. 13, 2015	Richard Baras	Murrells Inlet, SC
March 13/15	Larry G. Baras	Murrells Inlet, SC
March 13, 15	James A. Bonds	Hagerstown, MD. 21722
March 13, 15	Linda Bonds	Hagerstown, MD.
March 13, 15	Lou Engen	Marysville, In.
3/13/15	Hillie Martinez	Coliro, N.Y.
3-13-15	Joan Demone	Spencer, MA
3-13-15	Marie Hines	Troy, N.Y.
3-13-15	Nora E. Sadler	Ottawa, Ont.
3/13/15	Ethel Hansen	Takelaris, Mich.
3/13/15	Elaine Stollen	Winston, WV 26452
3-14-15	TREVA SWEETZ	Newton, N.C. 28658
3-13-15	CLAYE PROVENCHER	MONTREAL, QUE.
3-13-15	Rose H. Fontana	Hewletton, NY
3-13-15	Paul Posen	Gaylord, MI
3-13-15	Delma De Buggis	E. Falmouth, Me
3-13-15	Anne Yahn	NY
3-13-15	Tom Freund	Clinton, C. Jovic

Petition to the City of Myrtle Beach
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15 years.

<u>DATE</u>	<u>NAME</u>	<u>CITY/STATE</u>
3-13-16	Kathy Klein	Monrovia, IN SC
3-13-16	Emm Klein	Monrovia, IN SC
"	Jean Jones	" "
"	Loelle Jones	" "
"	Creed Collins	Charter W Va
"	Hena Collins	Charter W Va
"	Dorothy Jell	Leicester, NC
3-13-15	Maureen Vezis	Wanamassa, N.J.
"	Paula Zarek	Cold Spring, NY
"	Connie Schenke	Myrtle Beach, SC
"	Pat Dengel	Monaca, PA
"	Pat Jenkins	Zionia, NY
"	Ginda Wassell	Oxford, Ma
"	Antia Reid	Mansfield, Ohio
3/13/15	Bonnie Tucker	515 A Ode Rd,
3/13/15	Tamera Stuart	~~699 Sycamore~~ Howes Cove, N.Y.
3/13/15	Paul Stuart	Howes Cove, NY
3/13/15	Phlomyng Nowakowski	Yorkville, NY
3/13/15	Rebecca L. McShane	Whitestown, NY
3/13/15	Flora Masch	Williamson, NY
3/13/15	Carmely Felde	Campbell, Ohio
3/13/15	Anita Delancey	Franklin, Ma

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<u>DATE</u>	<u>NAME</u>	<u>CITY/STATE</u>
Mar. 18 15.	Jean Kay.	Myrtle Beach, Ontario Ca
3-18-15	DON T. ANDERSON	MYRTLE BEACH SC
3/18/15	ISADORA S. ALTMAN	MYRTLE BEACH SC.
3/18/15	~~Paul~~ Paul Campbell	Apt. NC
3/18/15	Wanda Campbell	Apt. NC
3/18/15	Cigeland Hicks	Bristol VA
3/18/15	Karen H. Hulse	Myrtle Beach SC.
3/18/15	John Hulse	Myrtle Beach SC.
3/18/15	Sarah Merrell	Myrtle Beach S.C.
3/18/15	Geckie Agnew	Lake Milton, Fla
3-18-15	James Moore	ASCOTNEY VT
3-18-15	Joseph Dyer	Conway S.C.
3-18-15	Eleen H. Slater	Bloomington MA
3-18-15	Judith Ann Cronin	Myrtle Beach S.C.
3-18-15	Ann Gravitt	Seaside, S.C.
3-18-15	Sandy Slater	Myrtle Beach SC
3-18-15	Russell E. Kiser	Daytona, Fla
3-18-15	Quinn A. Gilks	Leonia, NY
3-18-15	Sam Fuld	Campbell, Ohio
3-18-15	Janet Mercer	Seneca, Pa
3-18-15	Glenn Mercer	Seneca, Pa

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<u>DATE</u>	<u>NAME</u>	<u>CITY / STATE</u>
3-18-15	Kathy Fletcher	Conway, SC.
3-18-15	Iella Thrash	Apex, Ohio
3-18-15	Barb Hunter	Canton OH
3-18-15	Fred Hunter	Canton OH
"	Howard Gibbs	INTL GENE, Ont
"	LOIS WILKIE	NORTH BRIDGE Ont
"	Eleanor Moore	Ascutney, VT.
"	Edgar Davignon	Murrells Inlet
"	Kermit Thacker	Myrtle Beach
"	Ben Jaros	NY Myrtle Beach
"	Sylvia Jorgensen	Catskill, NY, " "

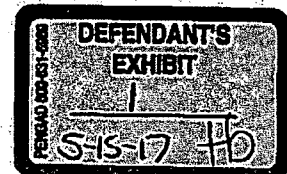


Base Recreation Center Daily Sign-In Sheet

I/We hereby release the City of Myrtle Beach, all staff, instructors and volunteers from any liability arising from my participation at City of Myrtle Beach facilities. I also hold the above harmless and indemnified from all claims. I understand and voluntarily consent to this agreement

Date: 4-8-15

PRINT NAME	SIGNATURE	CITY RESIDENT?	PROGRAM
Bert Mitchell			
Bob Mitchell			
Arlene Boush			
Gene Nagel			
Bud White			
Barbara Kania			
Oscar Cede			
Carolyn Cede			
Kay Elder			
Gene Demegub			
Bob Barras			
Callic Barras			
Stacy Gilbride			
Donna Johnson			
Donna Johnson			
Stattie Smith			
Eileen St Clair			
Quane St Clair			
Le Roy Marcotte			
Eloise STUTLER			
Ruby Reynolds			
Owen L. Oliver			
Jackie Oliver			
Kitty Scott			
Jackie Scott			





DEFENDANT'S
EXHIBIT
2
58-17 #10
PENAD 800-631-6368

FACILITY INCIDENT REPORT

Use back as necessary by referencing line number applicable

Named Subject of incident: Callie Barras

Date of incident: 4/8/15 Time 8:30am Age Gender F

Subject's Address: 22 Northaven Dr Unit 11a, Myrtle Beach 29576

Contact info phone, email:

Specific location (facility and area within or on premises of facility/attach photo of location.

Ballroom Kitchen

Activity at time of incident (league or free play, gym use, sports teams, lessons, open swim, etc.):

Preparing Food For senior bldg

Nature of injury, if directly observed, or as reported by subject or witnesses. Describe what you directly

observed, or what was reported to you by the subject or witnesses. Ms Barras Fell down

and hit her head. It was said that she may have tripped on a rug.

Part of body reported as affected or observed by you to be affected: Head, knee, shoulder

Action taken: Called EMS, transported to Grand Strand Regional

Was EMS or Police called? Y Arrival? 8:45am

Were blood products or bodily fluids present? N Universal precautions taken? N/A

Employee filling out report: Dustin Jordan

Witnesses Name, Address & Phone: Oscar Crede, 2512 Clearwater St.

Myrtle Beach 29577

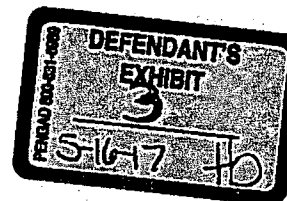
Signatures: This report is certified true and correct to the best of my knowledge:

[Signature] 4/8/15
Employee Date

[Signature] 4/8/15
Supervisor Date

[Signature]

Revised June 2014

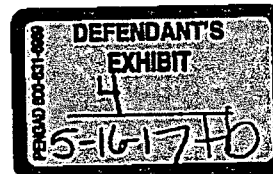


Kirk Battle

From: Pam Stone <PStone@cityofmyrtlebeach.com>
Sent: Wednesday, April 5, 2017 1:39 PM
To: Kirk Battle
Subject: FW: Base Rec Incident Report

Email referring to incident report as requested.

Pamela W. Stone, CPRP
Recreation Services Director
City of Myrtle Beach
pstone@cityofmyrtlebeach.com
Office: 843-918-1187
Fax: 843-918-1137



We C.A.R.E. – Connect, Assist, Recreate, Educate

From: Dustin Jordan
Sent: Wednesday, April 8, 2015 9:01 AM
To: Pam Stone <PStone@cityofmyrtlebeach.com>; Lisa Ibbetson <Libbetson@cityofmyrtlebeach.com>
Subject: Base Rec Incident Report

FYI..

Injured Person: Callie Barras

Employee on Duty: Dustin Jordan

Injury Date: 4/8/15

Injury: Fell down and hit head.

Summary: Ms. Barras is one of our Senior Bingo volunteers. While preparing the food for today's Senior Bingo, she fell down in the kitchen area and hit her head. She never lost consciousness and was not bleeding. Her face, however, was swollen, she had pains in her right knee, and right shoulder. EMS was called by Dustin to come check her out. They took her by ambulance to Grand Strand.

Dustin Jordan | CPRP, CPSI
Base Recreation Center Supervisor
City of Myrtle Beach
OFFICE: (843)918-2381
CELL: (843)213-8861
FAX: (843)918-2384
"We Create Community through People, Parks, and Programs"

*** WARNING *** All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act(FOIA). 2007

Questions Concerning Senior Bingo

Base Recreation Center

1. Are you going to continue to refer to our bingo officially as "Senior Bingo"?

If so, people under 50 cannot receive gifts donated to Senior Bingo.

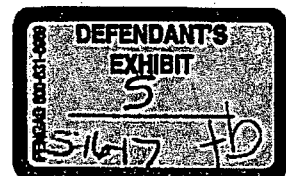
2. As far as I know, we are the only senior bingo that solicits donations. Is it possible to keep our bingo as is and make others for all ages?

3. The law that requires no age discrimination, is it a Federal, State, County or City law? What is the reference number?

4. Our Senior Bingo players contribute money to the city for coffee supplies. Do other city sponsored bingo's do this?

Thank you,

Oscar



**March 15, 2015 -
March 21, 2015**

March 2015
Su Mo Tu We Th Fr Sa
1 2 3 4 5 6 7
8 9 10 11 12 13 14
15 16 17 18 19 20 21
22 23 24 25 26 27 28
29 30 31

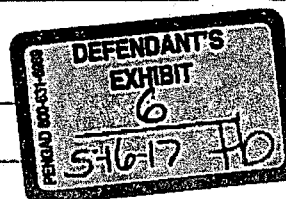
April 2015
Su Mo Tu We Th Fr Sa
1 2 3 4
5 6 7 8 9 10 11
12 13 14 15 16 17 18
19 20 21 22 23 24 25
26 27 28 29 30

	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	15	16	17 Kirk Gallion's Birthday Shelly Pesato Bday	18 Jen Nassar using Briget Out Tim - Truck (After Lunch)	19 Amy's Vehicle - Parr Briget Dr. 3:00 - Briget Pam Off 8am -	20 Anna Beth Off APLA Meeting, Bring Walters Tim Truck	21
7 AM							
8					HTC	Defen: Driving Class	
9		Dept Head Staff Meeting	Managers Meeting	Recreation Introduction Meeting TBD Fox Simons	City Safety Board City He Pam St	Canal St. Troy Marror	
10			Troy & Pam WPGC Pam Stone				
11							
12 PM							
1							
2		Employee of the				Tour-Lewis; Trai	
3			Anna Beth; Care	Gale - Library Needs Troy with Truck Pam Stone			
4					Tour- Abonza; T		
5							
6							

Pam Stone

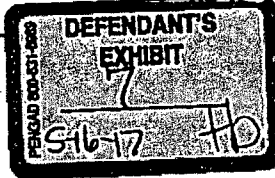
1

5/24/2016 10:58 AM



R-515

April 2015



April 2015

Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May 2015

Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 29	30	31	Apr 1	2	3	4
			Pam Stone Off - Pam Stone			
			3:00pm Jim Waters Retirement (City)	Wanda Off - Maybe		
			3:45pm Dr. Hong	Brent Timmons Birthday		
5	6	7	8	9	10	11
Pam Stone Off - Pam Stone	LIBRARY HOSTS		10:00am EOM	12:30pm SCRPA SITE MEETINGS	8:30am SCRPA SITE MEETING	
Easter Day (United States)	8:30am Dept Head Staff Meeting (CHAPIN LIBRARY)		Presentation (Pepper Geddings) - Anna Beth Doig		12:00pm Guitars	
					2:00pm Sue Ellen Drop	
					3:00pm Go get Amy's	
12	13	14	15	16	17	18
City Council Retreat - Pam Stone			Briget out all day?	Troy off		
Leave Crabtree at 1:30pm	8:30am Dept Head Staff Meeting	12:00pm AB Covering	Wanda Off	Truck 452 PM Service		Cover Rental for Troy
	12:00pm AB Covering	Admin Phones (Rec Admin) - Pam Stone	Tax Day (United States)	12:00pm Guitars		Kaleb's Bday
			9:00am Recreation			
			1:30pm Pre Event			
19	20	21	22	23	24	25
Troy off			Administrative	(Briget Dr in Charleston All Day) - Briget	8:30am Meeting w/ Anna Beth	10:30am Kama
SXSE (Train Depot)	Lisa Off at 1pm	4:00pm Tour-Crystal-MB	Professionals Day	Jen Shaffer's Birthday	10:30am Grand Park discussion (2nd floor)	
Troy's Bday	8:30am Dept Head Staff Meeting	Middle (Train Depot) - Troy Marron	Myrtle's Market Opens	11:00am Recreation	10:30am Grand Park	
			12:00pm Myrtle's Market	3:30pm Orthopedic		
			2:00pm Security			
26	27	28	29	30	May 1	2
Anna Beth Doig's Birthday	8:30am Dept Head Staff Meeting		Fox Cancelled	9:00am Meeting with		
	1:00pm David Utterbach (Recreation Conference Room) -		Lisa Off	10:00am Recreation		
			8:30am Recreation	10:00am Tour		
			9:00am Tour-Passon	1:30pm Michael Price		
			11:00am Meeting-Calay	2:00pm Pick up		

Pam Stone

R-516

Mike Battle

From: Kirk Battle
Sent: Thursday, April 19, 2018 4:54 PM
To: Mike Battle
Subject: FW: Barras v. City of Myrtle Beach

From: Hyman, Larry B. Law Clerk (Liz Smith) <lhyanlc@sccourts.org>
Sent: Monday, June 26, 2017 10:55 AM
To: Mark Nappier <MNappier@inletlaw.com>
Cc: Kirk Battle <KBattle@battlelawsc.com>
Subject: RE: Barras v. City of Myrtle Beach

Good Morning,

Judge Hyman has asked that both parties submit proposed orders on the post-trial motions.

Best Regards,

Liz Smith
Law Clerk
The Honorable Larry B. Hyman Jr.
1301 Second Avenue, Suite 3B71
Conway, South Carolina 29526
(843) 915-6706

From: Mark Nappier [<mailto:MNappier@inletlaw.com>]
Sent: Wednesday, June 7, 2017 3:18 PM
To: Hyman, Larry B. Law Clerk (Liz Smith) <lhyanlc@sccourts.org>
Cc: Kirk Battle (KBattle@battlelawsc.com) <KBattle@battlelawsc.com>
Subject: Barras v. City of Myrtle Beach

Hi Liz,
Do you have any idea when Judge Hyman will address the post-trial motions in this matter?

Mark A. Nappier, Esq
Joye, Nappier, Risher & Hardin LLC
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STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Callie Barras,

Plaintiff,

vs.

City of Myrtle Beach,

Defendants,

FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
CASE NO.: 2016-CP-26-00135

**ORDER GRANTING MOTIONS FOR  
JNNOV, NEW TRIAL ABSOLTE, &  
NEW TRIAL REMITTITUR**

This matter came before the Court upon the Post-Trial Motions filed by Defendant City of Myrtle Beach. Plaintiff sued Defendant for negligence and gross negligence. A hearing was held on May 15, 2017. Present at the hearing were Attorney M. Kirk Battle representing the moving Defendants and Attorney Mark Nappier representing the Plaintiff.

**STATEMENT OF THE CASE**

Plaintiff was volunteering for the Senior Bingo program on April 8, 2015 when she tripped on a mat located in the kitchen area of the Base Rec Center. EMT services were called and she was kept overnight at Grand Strand Regional for tests and x-rays. She was released the following day and participated in physical therapy afterwards. She did not claim any future medical costs and stated that she had fully recovered from the fall. Her medical cost total was \$47,201.93.

Plaintiff alleged that she informed Pamela Stone about the tripping hazard of the mats sometime prior to her accident. She believed this occurred after Pamela Stone visited the facility on March 20, 2015. Witness Irene Demczuk stated she could recall a meeting but did not believe it happened after the March 20, 2015 meeting. Witness Leroy Marcotte could not recall the

precise date but believed it happened before the fall, which contradicted his deposition testimony. Pamela Stone stated she could not recall the conversation ever happening.

The court ruled that because Plaintiff was volunteering at the facility she should be considered a licensee.

### **ANALYSIS**

#### **I. Judgment Notwithstanding the Verdict**

A motion for a JNOV is merely a renewal of the directed verdict motion. When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). 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, 331–32, 732 S.E.2d 166, 171 (2012)

#### **a) Recreational Use Statute**

Plaintiff sought and was granted permission by the Defendant to use Defendant's property for recreational purposes free of charge. At the time Plaintiff was injured, Defendant's obligations to the Plaintiff were governed by the Recreational Use Statute. S.C. Code Ann. § 27-3-40. Therefore Defendant did not (a) Extend any assurance that its premises were safe for any purpose; or confer upon the Plaintiff the legal status of an invitee or licensee to whom a duty of care was owed. S.C. Code Ann. § 27-3-40. Defendant was essentially immune from Plaintiff's claim because Defendant did not owe a duty of care to Plaintiff. The one exception to

Defendant's immunity exists if Plaintiff proves Defendant was grossly negligent and such gross negligence proximately caused Plaintiff's injuries.

Plaintiff was required to show by clear and convincing evidence that Defendant was grossly negligent in order to be held liable. Plaintiff must present evidence that the City did not exercise even slight care in the maintenance of the mats at issue here. *See Clyburn v. Sumter County School Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994) Gross negligence ordinarily is a mixed question of law and fact. *See Rogers v. Atlantic Coast Line R.R. Co.*, 222 S.C. 66, 71 S.E.2d 585 (1952). When the evidence supports but one reasonable inference, however, the question becomes a matter of law for the court. *See Foster v. South Carolina Dep't of Highways and Public Transportation*, 306 S.C. 519, 413 S.E.2d 31 (1992). Witnesses from both sides testified that the mats were being changed regularly and that five days prior to the fall a new mat was put on the floor.

This demonstrates slight care and so the Court sets aside the jury's verdict and enters a verdict in favor of the Defendant.

**b) Licensee**

Under South Carolina jurisprudence, "a landowner owes a licensee a duty to use reasonable care to discover the licensee, to conduct activities on the land so as not to harm the licensee, and to warn the licensee of any concealed dangerous conditions or activities." *Landry*, 317 S.C. at 203, 452 S.E.2d at 621; *see Neil v. Byrum*, 288 S.C. 472, 473, 343 S.E.2d 615, 616 (1986). *Singleton v. Sherer*, 377 S.C. 185, 201, 659 S.E.2d 196, 204 (Ct. App. 2008)

Plaintiff did not allege the Defendants were unaware of her presence at the facility. Plaintiff has not alleged any activities the Defendants were conducting which harmed her

directly, only that there was a dangerous condition at the facility. Defendants did not fail to warn the Plaintiff of any concealed conditions because she was herself already aware of the defects with the mats as early as March 20, 2015 when she allegedly complained to Pamela Stone about them.

As a consequence, the Defendants breached no duty owed to her and the court thus grants a directed verdict in favor of the Defendant.

## II. New Trial Absolute

A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993). The jury's determination of damages, however, is entitled to substantial deference. *Id.* The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *See Cock-n-Bull Steak House, Inc. v. Generali Ins. Co.*, --- S.C. ---, 466 S.E.2d 727 (1996); *McCourt by and Through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995); *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993); *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993); *Rush, supra*.

The jury awarded \$500,000 in addition to her medical expenses of \$47,201.93. The most likely basis for this was future medical expenses because the jury sent back a question asking if they could keep that matter open on the verdict. Plaintiff did not give any testimony about future medical expenses or damages. As result the additional \$500,000 was based on an erroneous assumption or misconception by the jury about the Plaintiff's damages. The verdict is thus grossly excessive and must be reduced.

Even if the verdict was not based on a mistake about her medical damages, the Court must grant a new trial absolute on the grounds that the jury's verdict in relation to the actual damages suffered by the Plaintiff was so excessive as to be the result of passion, caprice, prejudice or some other influence outside the evidence. Both sides introduced witnesses who testified that the City was changed the mats at the facility every two weeks. Five days prior to the accident a brand new mat was laid down at the facility. The only other possible basis for the \$500,000 verdict besides a misconception about her medicals is a strong prejudice by the jury against the Defendant.

A verdict of \$94,403.86, which doubles the Plaintiff's medical damages, accurately reflect the jury's findings while keeping the damages within the law. In the alternative, the Plaintiff may request a new trial pursuant to this order.

### **III. New Trial NISI**

#### **a) Special Verdict**

The verdict form did not contain the special interrogatories necessary to inform the jury about the Recreational Use Statute and the standard of gross negligence.

A special verdict question may be so defective in its formulation that its submission results in a prejudicial effect which constitutes reversible error. 9A Wright & Miller, *Federal Practice and Procedure*, Civil 2d § 2508, p. 193. In evaluating the prejudicial effect of a defective special verdict question or special interrogatory, the court must consider the question or interrogatory along with the instructions given to the jury. *Fortune v. Gibson*, 304 S.C. 279, 282, 403 S.E.2d 674, 675 (Ct.App.1991) (finding that special interrogatories and instructions must be considered together). The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions. *See State v. Covert*, 368 S.C. 188, 214, 628

S.E.2d 482, 496 (Ct.App.2006); *State v. Myers*, 344 S.C. 532, 536, 544 S.E.2d 851, 853 (Ct.App.2001). *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 303, 641 S.E.2d 903, 907-08 (2007)

The verdict form makes no reference to the Recreational Use Statute or the standard of gross negligence. It instead gives the appearance that the legal standard is merely negligence against the Defendant. The issue is further compounded because the charges for this statute and the burden of gross negligence are buried in twenty-five pages of jury charges. This omission unfairly prejudiced the Defendants by effectively denying them the legal protections they were entitled to under the Recreational Use Statute.

For this reason, this court grants the Defendant a new trial.

**b) Reformation of Jury Verdict**

The trial court's authority to correct, modify, or interfere with the jury's verdict is embraced in and limited to the power to grant new trials. *Id.* The court may grant or refuse a new trial or, in a proper case, may grant a new trial nisi, but should do one thing or the other. *Id.* For the court to amend a verdict without an accompanying option of a new trial nisi to the party against whom the amendment operates adversely amounts to an invasion of the province of the jury. *Id.* "The law rather forbids this court assuming to take upon itself the powers, duties, rights, and privileges of a jury." *Id.* at 282, 178 S.E. at 829-30. *Vinson v. Hartley*, 324 S.C. 389, 407, 477 S.E.2d 715, 724 (Ct. App. 1996)

A verdict of \$94,403.86, which doubles the Plaintiff's medical damages, accurately reflect the jury's findings while keeping the damages within the law. In the alternative, the Plaintiff may request a new trial pursuant to this order.

**CONCLUSION**

For the forgoing stated reasons, Plaintiff's claims against Defendant City Of Myrtle Beach are hereby dismissed.

**AND IT IS SO ORDERED.**

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The Honorable Larry Hyman  
Presiding Circuit Court Judge

June \_\_, 2017



R-527

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2016-CP-26-00135  
Appellate Case No. 2014-002491

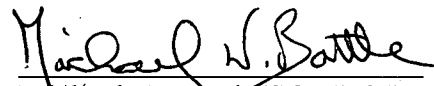
Callie Barras.....Respondent,

v.

City of Myrtle Beach,.....Appellant,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material  
proposed to be included by any of the parties and not any other material.

  
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May 2, 2018  
Conway, South Carolina

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