

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. [REDACTED]

2017-001568

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SC Court of Appeals

Callie Barras.....Respondent,

v.

City of Myrtle Beach.....Appellant,

RECORD ON APPEAL
VOLUME I

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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~~
2017-001568

Callie Barras.....Respondent,

v.

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

RECORD ON APPEAL
VOLUME I

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May 2, 2018
Conway, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
CALLIE BARRAS)
Plaintiff,)
vs.)
CITY OF MYRTLE BEACH)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2016-CP-26-00135

**ORDER DENYING POST
TRIAL MOTIONS OF DEFENDANT**

On May 17, 2017, a jury in the above-captioned matter rendered a verdict against the Defendant City of Myrtle Beach in the amount of \$547,128.93. On or about May 19, 2017, the Defendants filed post-trial motions seeking a Judgment Notwithstanding the Verdict, as well as seeking an order to alter or amend this court's previous denials of Defendant's Motion for Summary Judgment, Motion for Non-Suit and Motion for Directed Verdict. Defendant alternatively also moved for a New Trial Absolute and a New Trial Nisi Remittitur.

The Defendant's grounds for these motions were:

1. That pursuant to the Recreational Use Statute the Defendant was "essentially immune" from Plaintiff's claims because no duty of care was owed to the Plaintiff;
2. That Defendant could not show by clear and convincing evidence that the Defendant was grossly negligent; and
3. That the damages awarded were excessive in relation to the medical expenses.

Based upon the arguments of counsel at trial and in their memorandums of law, as well as based upon all testimony and evidence presented at trial, I make the following findings of fact:

FINDINGS OF FACT

1. The Recreational Use Statute (RUS) provides that if a land owner permits the use of their land without charge for recreational purposes, that the owner does not make any assurances that the property is safe and the owner does not assume liability for injury to a person caused by an act of omission.

2. Liability of a land owner is not limited by RUS if there is a grossly negligent willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.

3. Several witnesses testified that the Plaintiff had been a volunteer for the Defendant for over ten years and that on the day she was injured, she was on the Defendant's property in her capacity as a volunteer working for the Defendant and therefore I find that the question of whether the Plaintiff was on the Defendant's property "for recreational purposes", as required by S.C. Code Ann. Section 27-3-40, was an issue properly left to the jury. It was explained to the jury in the court's charges that if it found that the Plaintiff was not on the Defendant's land for recreational purposes, the defenses and immunities of RUS did not apply and that the Defendant could be held liable for negligence if it did not use reasonable care.

4. There was testimony from three witnesses that the Defendant had been made aware, three weeks prior to the Plaintiff's fall, that the mats being used by the Defendant were a tripping hazard. Defendant made no effort to remedy the problem and the Plaintiff subsequently tripped over one of the mats and was injured. I find that this testimony was sufficient to allow the jury to consider whether the Defendant acted in a grossly negligent manner and for the jury to not apply RUS if they found gross negligence existed.

5. I find there was sufficient evidence to support the jury's decision to not apply RUS and to find that the Defendant was negligent.

x 6. At no time did the Defendant object to the Court leaving the applicability of RUS to the determination of the jury.

7. I find there were numerous issues of fact and that this case was properly submitted to the jury.

8. The Plaintiff provided significant evidence to the jury regarding the physical and mental anguish she endured as a result of her injuries as well as her loss of enjoyment of life. Plaintiff described in detail her fears in the hospital that her injuries would leave her incapacitated or with permanent brain damage as a similar blow to the head had permanently damaged her husband. She also testified about the embarrassment of when she had to go into the public with a damaged face leading people to question whether she had been a victim of domestic abuse.

9. The jury was instructed in the court's charges to consider not only her physical pain and suffering and medical bills, but also her mental anguish. I find that the award of damages in this matter, especially when given the reduction to \$300,000 pursuant to the Tort Claims Act, falls within a range supported by the evidence.

Based upon the above Findings of Fact, I make the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Whether the Plaintiff was visiting Defendant's land for a recreational purpose, as required by SC Code Ann. Section 27-3-40 for RUS to apply, is a question of fact for a jury to decide. Harris v. University of South Carolina, 391 S.C. 518, 700 S.E.2d 45 (Ct. App. 2012).

2. While gross negligence is ordinarily a mixed question of law and fact, in most cases gross negligence is a factually controlled concept whose determination best rests with the jury. Solanki v. Walmart Store Number 2806, 410 S.C. 229, 763 S.E.2d 615, 619 (Ct. App. 2014).

3. If a verdict falls within a range supported by the evidence, it should not be disturbed on the basis of excessiveness. Hyload, Inc. v. Pre-Engineered Products, Inc., 308 S.C. 277, 417 S.E.2d 622 (Ct. App. 1992).

4. I further order that the total verdict shall first be reduced by the set off in the amount of \$20,000 and that the remainder \$527,128.93 shall be reduced to \$300,000 as required by the Torts Claims Act.

Based upon the above findings of fact and conclusions of law I find that the verdict of the jury should not be disturbed and therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff, Callie Barras, shall have judgement against Defendant, City of Myrtle Beach, in the amount of \$300,000 and Defendant's post-trial motions are denied.

AND IT IS SO ORDERED

S/ Larry B. Hyman Jr.
Presiding Judge
Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Callie Barras VS Myrtle Beach City of , defendant, et al
Case Number: 2016CP2600135
Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2017-07-03 09:30:13 page 6 of 6

ELECTRONICALLY FILED - 2017 Jul 05 7:50 AM - HORRY - COMMON PLEAS - CASE#2016CP2600135

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER **2016CP2600135**

Callie Barras

Myrtle Beach City of

Also Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

Verdict was returned. Defendant was given ten days to file a motion for a new trial.
 No entry of judgement until motion is heard.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

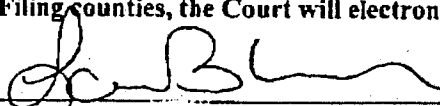
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge Larry B. Hyman

2152
Judge Code

5/17/2017
Date

For Clerk of Court Office Use Only

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

Mark Andrew Nappier Joye, Nappier, Risher & Hardin,
LLC 3575 Highway 17 Business Murrells Inlet, SC 29576

Michael Kirk Battle Battle Law Firm 1200 Main Street
Conway, SC 29528
Dominic Allen Starr PO Box 1349 Myrtle Beach, SC 29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Teresa Bautz

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Callie Barras,)

Plaintiff,)

v.)

City of Myrtle Beach,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-26-00135

VERDICT FORM

FILED
HORRY COUNTY
JAN 12 2017
CLERK OF COURT
MYRTLE BEACH, SC

1. Was the defendant negligent?
☒ YES - Go to Question 2
☐ NO - Stop deliberations
2. Was the defendant's negligence a proximate cause of the plaintiff's injuries?
☒ YES - Go to Question 3
☐ NO - Stop deliberations
3. Was the plaintiff negligent?
☐ YES - Go to Question 4
☒ NO - Go to Question 7
4. Was the plaintiff's negligence a proximate cause of the plaintiff's injuries?
☐ YES - Go to Question 5
☐ NO - Go to Question 7

5. Using the combined negligence that proximately caused the plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the plaintiff and what percentage is attributable to the defendant? [The percentage must add up to 100%. It is not necessary for each party to be assigned a percentage of negligence. It is perfectly acceptable for a party to be assigned a zero percentage (0%).]

Plaintiff _____ %

Defendant _____ %

Total _____ %

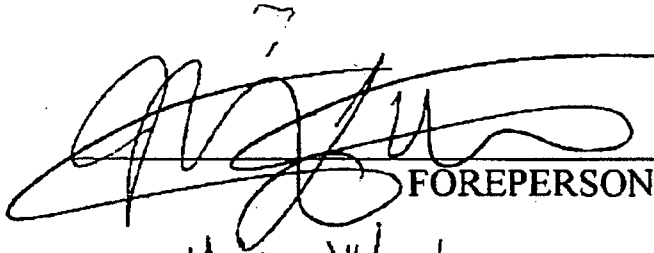
6. Was the plaintiff's negligence greater than fifty percent?

_____ YES - Stop deliberations

_____ NO - Go to Question 7

7. Please state the amount of damages, if any, sustained by the plaintiff. [Do not reduce the plaintiff's total damages based on the percentage of negligence by any party. After you have answered these questions, the judge 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 amount below.]

\$ 500,000 + medical bills total: \$547,129.93
Actual Damages


FOREPERSON
pt 5 8/17/2017
DATE

WHEN YOU HAVE COMPLETED THE QUESTIONS, NOTIFY THE BAILIFF.

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

**POST TRIAL MOTIONS
JNOV, NEW TRIAL ABSOLUTE
& NEW TRIAL REMITTITUR**

TO: PLAINTIFF AND HER ATTORNEY, MARK NAPPIER

PLEASE TAKE NOTICE that Defendant moves and/or will move, before the assigned Presiding Judge, the Honorable Larry Hyman, no sooner than the tenth day after service hereof, or such subsequent time and place as the Court may schedule, for a Judgment Notwithstanding the Verdict Rule 50(b), SCRCF and/or an Order Altering or Amending the Orders Denying Defendant's Motion for Summary Judgment, Defendant's Motion for a Non-Suit and Defendant's Motion for Directed Verdict. Defendant also moves, in the alternative for a New Trial Absolute or a New Trial Nisi Remittitur. The motion shall be based on the pleadings, the affidavits, depositions taken and other evidence presented during the trial of the above captioned case and such other and further submissions as the Court may allow.

The grounds for the motion are that 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 Defendant requests that the Court set aside the jury's verdict and enter a verdict in favor of the Defendant.

In the alternative, Defendant asks for a new trial absolute on the grounds that the verdict of the jury was contrary to a fair preponderance of the evidence. Evidence was introduced which showed the City did maintain the facility by changing the mats regularly. Furthermore, the jury awarded \$500,000 in addition to her medical expenses of \$47,201.93. Plaintiff did not give any testimony about future medical expenses or damages.

As a second alternative, Defendant asks that the Court for a new trial absolute on the ground 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.

As a third alternative, Defendant asks that the Court for a new trial nisi remittitur or a reduction in the amount awarded because the verdict is clearly excessive in view of the evidence adduced at trial for damages arising from the alleged negligence of the Defendant.

/s M. Kirk Battle
M. Kirk Battle (SCB # 79699)
BATTLE LAW FIRM, P.A.
1200 Main Street
PO Box 530
Conway, SC 29528
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kbattle@battlelawsc.com

May 19, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No: 2016-CP-26-00135
	)	
CALLIE BARRAS	)	
	)	MEMORANDUM
Plaintiff,	)	IN OPPOSITION TO POST
	)	TRIAL MOTIONS OF DEFENDANT
vs.	)	
	)	
CITY OF MYRTLE BEACH	)	
	)	
	)	
Defendant.	)	

Defendants have filed multiple post-trial motions under one filing in which they have pled for relief by a Motion for Judgment Notwithstanding the Verdict ("JNOV"), and motions to alter or amend the orders denying Defendant's motions for summary judgment, non-suit and directed verdict. Upon information and belief these motions were heard and denied by the court immediately after the jury rendered its verdict, or in the alternative these motions should be denied based upon the reasoning that the issues in this case as to whether the Recreational Use Statute ("RUS") applied to the Plaintiff and whether the Defendant was grossly negligent were questions of fact which were properly left to the discretion of the jury.

Plaintiff provided sufficient evidence to the jury that would allow them to conclude that the Plaintiff was not using the Defendant's Property for a "recreational purpose", as defined by the statute, due to the fact that she was injured while working as a volunteer for the Defendant and was not participating

in bingo, which may or may not be considered a recreational purpose under the statute. If the jury reached the conclusion that the Plaintiff was not using the property for recreational purposes, RUS would not apply. Furthermore even if the jury could conclude that the Plaintiff was using the property for a recreational purpose, there was also sufficient evidence presented which could lead the jury to conclude the Defendant acted in a grossly negligent manner, which again would mean that the protections of RUS would not apply (S.C. Code Ann. Section 27-3-60). Gross negligence is defined as a failure to exercise slight care. Clyburn v. Sumter County School District Number 17, 317 S.C. 50, 451 S.E. 2d 885 (1994) and See Solanki v. Walmart Store Number 2806, 410 S.C. 229, 763 S.E. 2d 615, 619 (Ct. App. 2014). While gross negligence is ordinarily a mixed question of law and fact, in most cases gross negligence is a factually controlled concept whose determination best rests with the jury. Solanki, Id. There was ample testimony that the Defendant had been placed on actual notice of problems with the mats more than three weeks prior to the Plaintiff's fall, yet the Defendant made no corrective action. This evidence was sufficient to justify a finding of gross negligence by the jury.

The issue of the applicability of RUS was determined to be an issue of fact by the court and therefore the law regarding RUS and the definition of gross negligence were made available to the jury through the court's jury charges and the Defendant raised no objections to the charges. See Harris v. University of South Carolina 391 S.C. 518, 706 S.E. 2d 45 (Ct. App. 2011).

Defendant also raised motions for a new trial and for remittitur alleging in part that the damages were excessive in relation to the medical damages. The Plaintiff gave significant evidence regarding the pain and discomfort she endured for months after the accident as well as the tremendous effects that the accident had upon her everyday life. However, what could have been even more persuasive to the jury was the mental anguish the Plaintiff went through after her concussion due to the fears that her injuries would lead to the same brain damage that her husband has endured when he had suffered a serious blow to the head. This together with the shame and embarrassment she endured from her very visible injuries, more than supported the jury's award, especially when considering that the Tort Claims Act will reduce the figure to \$300,000.00.

CONCLUSION

Based upon the above, the Defendant's post-trial motions should be denied.

S/ Mark A. Nappier
SC Bar #64186
Joye, Nappier, Risher & Hardin, LLC
3575 Hwy. 17 Business
Murrells Inlet, South Carolina 29576
Tel. 843-357-6454
Fax 843651-8127

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
CALLIE BARRAS)
Plaintiff,)
vs.)
CITY OF MYRTLE BEACH and)
ALSCO, INC.)
Defendants.)

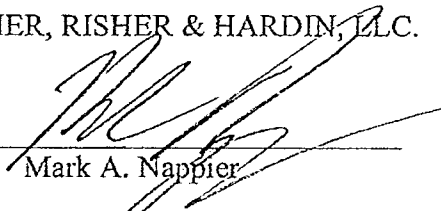
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2016-CP-26-00135

SUMMONS
(Premises Liability)
(Negligence)
(Jury Trial Demanded)

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to respond to the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Amended Complaint upon the subscribers at 3575 Highway 17 Murrells Inlet, South Carolina, 29576, within thirty (30) days after service hereof, exclusive of the date of such service; and if you fail to respond to the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Complaint.

JOYE, NAPPIER, RISHER & HARDIN, LLC.

By: 

Mark A. Nappier

3575 Highway 17 Business
Murrells Inlet, SC 29576
Telephone: (843) 357-6454
S.C. Bar No: 064186
Attorneys for the Plaintiff

July 28 2016

2016 AUG - 1 PM 2:03

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
CALLIE BARRAS)
Plaintiff,)
vs.)
CITY OF MYRTLE BEACH and)
ALSCO, INC.)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2016-CP-26-00135

AMENDED COMPLAINT
(Premises Liability)
(Negligence)
(Jury Trial Demanded)

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The Plaintiff, complaining of the above-named Defendants, alleges as follows:

1. Plaintiff is a citizen and resident of Georgetown County, South Carolina.
2. The Defendant City of Myrtle Beach ("the City") is a municipality located in Horry County, South Carolina.
3. The Defendant ALSCO, Inc., ("ALSCO") is upon information and belief, a corporation organized and existing under the laws of the state of Nevada.
4. The City operates the Base Recreation Center at 800 Gabreski Lane in Myrtle Beach ("the recreation center"), which is located in Horry County, South Carolina
5. The Plaintiff is a long-time volunteer at the recreation center for bingo related events.
6. On the floors of the recreation center were rugs which the City obtained from ALSCO, which would often roll up at the ends and entangle the feet of people who were walking on the rugs.

7. The Plaintiff informed an agent of the City that the rugs in question were a tripping hazard. Despite having been informed of this potentially dangerous situation, Defendant refused to remove the rugs.

8. On April 8, 2015, after the conversation had taken place with the City's agent, the Plaintiff tripped over the rugs in question and fell to the floor injuring herself.

9. As a direct and proximate result of the fall, Plaintiff suffered significant injuries.

FOR A FIRST CAUSE OF ACTION AS TO THE CITY
(Premises Liability)

10. Plaintiff re-alleges the allegations set forth in Paragraphs 1 through 9 as set forth herein verbatim.

11. The Plaintiff was an invitee at the recreation center.

12. The City owed Plaintiff a duty of due care to discover risks and to take safety precautions to warn of or eliminate unreasonable risks within the area of invitation.

13. The City was aware of the dangerous condition that was caused by the rugs and was aware that individuals, including the Plaintiff, used the premises and could easily become entangled in the rugs.

14. Having had knowledge of the dangerous condition, the City failed to exercise due care in reducing or eliminating the risk of harm to the Plaintiff.

15. The City created the dangerous condition, had an actual knowledge of the condition and failed to eliminate the dangerous condition.

16. As a direct and proximate cause of the City's breach of its duty to the Plaintiff, the Plaintiff sustained actual damages, including medical bills, pain and suffering and loss of enjoyment of life.

17. Plaintiff is entitled to an award of actual damages from the City in an amount not to exceed \$350,000.00, as determined by a jury.

FOR A SECOND CAUSE OF ACTION AS TO ALSCO AND THE CITY
(Negligence)

18. Plaintiff re-alleges the allegations set forth in Paragraphs 1 through 17 as set forth herein verbatim.

19. Upon information and belief, the City hired ALSCO to provide mats for the recreation center.

20. ALSCO and the City knew or should have known that guests of the recreation center and volunteers such as the Plaintiff would walk on the mats and that they would rely upon the safety of said mats.

21. The Defendants knew that the Plaintiff would be using the mats in question, and since the Plaintiff was an invitee and an intended beneficiary of the mats, the Defendants owed Plaintiff a duty to insure that the mats were safe and were not a tripping hazard.

22. The Defendants breached their duty to the Plaintiff by negligently, recklessly and willfully failing to insure that the mats would not become a tripping hazard even after having been specifically warned that the mats had a propensity to bunch or roll up.

23. As a direct and proximate result of the Defendants' negligent,

reckless and willful conduct, the Plaintiff tripped and fell over a bunched mat and suffered significant damages, including medical bills, pain and suffering and loss of enjoyment of life.

24. Plaintiff is entitled to an award of actual damages from the City in an amount not to exceed \$350,000.00, as determined by a jury and is entitled to an award of actual and punitive damages from the Defendant ALSCO.

WHEREFORE, Plaintiff prays for:

- a. Judgment against the City on Plaintiff's First and Second Causes of Action for actual damages not to exceed \$350,000.00;
- b. Judgment against ALSCO on Plaintiff's Second Cause of Action for actual and punitive damages;
- c. For the costs of this action; and
- d. For such other and further relief as this Court may deem just and proper.

JOYE, NAPPIER, RISHER & HARDIN LLC.

By: _____

Mark A. Nappier

3575 Highway 17 Business
Murrells Inlet, SC 29576
Telephone (843) 357-6454
S.C. Bar No: 064186
Attorneys for the Plaintiff

July 28, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

CALLIE BARRAS)

Plaintiff,)

vs.)

CITY OF MYRTLE BEACH AND)
ALSCO, INC.)

Defendants:)

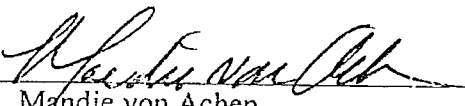
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2016-CP-26-00135

CERTIFICATE OF SERVICE BY MAIL

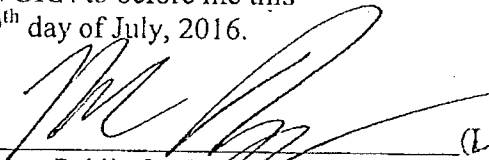
2016 AUG -1 PM 2:03
FILED CLERK OF COURT

I, Mandie von Achen, employee of the law firm of Joye, Nappier, Risher & Hardin, LLC, attorneys for the Plaintiff in the above-captioned action, certify that I have this 29th day of July, 2016, mailed Summons and Amended Complaint to the Defendant by and through its attorney, at his address of record, with sufficient postage attached thereto, as follows:

M. Kirk Battle, Esq.
Battle Law Firm, PA
Post Office Box 530
Conway, SC 29528


Mandie von Achen

SWORN to before me this
29th day of July, 2016.


(L.S.)
Notary Public for South Carolina
My commission expires: 11/17/2021

COPY

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Callie Barras,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant,

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-26-00135

ANSWER OF DEFENDANTS BY
CITY OF MYRTLE BEACH TO
AMENDED COMPLAINT

FILED
HORRY COUNTY
2016 AUG 8
AM 11:09
CLERK OF COURT
MYRTLE BEACH

TO PLAINTIFF AND HER ATTORNEY:

City of Myrtle Beach ("Defendant"), by and through its undersigned counsel, hereby responds to Plaintiff's Complaint and would show this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter expressly admitted is hereby denied.
2. As to Paragraph 1, Defendant is without sufficient information to confirm or deny the residence of the Plaintiff.
3. Defendant admits the allegations in Paragraph 2 through 4.
4. Defendant is without sufficient information to confirm or deny the allegations in Paragraph 4.
5. Defendant admits the allegation in Paragraph 5.
6. Defendant denies the allegations in Paragraph 6 through 17.
7. Paragraphs 18 through 24 are not directed at this Defendant and require no response. Any allegations that may be directed against the City of Myrtle Beach are denied.

FOR A SECOND DEFENSE

8. Defenadnt realleges each and every defense above as if repeated here.

9. As to any portion of the Complaint that may be interpreted as brought under the South Carolina Tort Claims Act, § 15-78-10, entire sequence, of the South Carolina Code of Laws, Defendant pleads said Act and all pertinent provisions contained therein as a limitation or bar on the Plaintiff's claims.

AS A THIRD DEFENSE

10. Defendant realleges each and every defense above as if repeated here.

11. The injuries allegedly sustained by Plaintiff, which are denied, were the direct and proximate result of the negligent, grossly negligent, careless, and reckless acts of a third person whose actions and conduct were not apparent or reasonably foreseeable to Defendant, and Defendant pleads intervening and superseding cause as a complete bar or limit to Plaintiff's claims which should be dismissed, denied or limited accordingly.

AS A FOURTH DEFENSE

12. Defendant realleges each and every defense above as if repeated here.

13. Defendant is informed and believes any conditions or acts which may have caused injury to Plaintiff were due to the acts of a third party independent contractor.

AS A FIFTH DEFENSE

14. Defendant realleges each and every defense above as if repeated here.

15. Defendant asserts that if it was negligent, which it denies, Plaintiff was also negligent, reckless, willful, and wanton in failing to use that degree of care or caution for her own safety, which a reasonable person would have used under the same conditions at the same

time and place as the Plaintiff's accident. Defendant is informed and believes that Plaintiff's negligence, gross negligence, willfulness, wantonness, and recklessness bars or reduces any recovery to which he may otherwise be entitled. Defendant pleads Plaintiff's comparative negligence, gross negligence, willfulness, wantonness, and recklessness as a complete defense to or limitation of her claim, and in any event any recovery by the Plaintiff should be reduced in proportion to that degree of Plaintiff's negligence, gross negligence, willfulness, wantonness, and recklessness.

AS AN SIXTH DEFENSE

16. Defendant realleges each and every defense above as if repeated here.

17. Defendant alleges that all the risks and dangers, if any, connected with the Plaintiff's accident were known to, or should have been known to the Plaintiff; that Plaintiff was perfectly competent to judge the safety of the circumstances and conditions at the time and place alleged in the Complaint, and therefore, by her own actions, Plaintiff assumed the risk of his accident, and for that reason, Defendant is not liable to the Plaintiff.

AS A SEVENTH DEFENSE

18. Defendant realleges each and every defense above as if repeated here.

19. Defendant does not owe a special duty to Plaintiff for the area where Plaintiff was allegedly injured, and Defendant did not have full and complete control over the area where Plaintiff was allegedly injured, and therefore, Plaintiff's claims against Defendant should be dismissed for lack of control over the premises.

WHEREFORE, having fully answered the Complaint, Defendant prays that the same be dismissed, for costs, attorney's fees and for such other relief as may be just and proper.



M. Kirk Battle

Michael W. Battle

BATTLE LAW FIRM, P.A.

Attorneys for Defendant

1200 Main Street

Post Office Box 530

Conway, South Carolina 29528-0530

Area Code (843) 248-4321

August, 2 2016
Conway, South Carolina

STATE OF SOUTH CAROLINA	)	
COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS
	)	
CALLIE BARRAS,	)	Civil Action No. 2016-CP-26-00135
	)	
Plaintiff,	)	
	)	
vs.	)	STIPULATION OF DISMISSAL
	)	WITH PREJUDICE
CITY OF MYRTLE BEACH AND	)	(Not Ending Action)
ALSCO, INC.,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 41(a) of the *South Carolina Rules of Civil Procedure*, Plaintiff in the above-captioned case, by and through the undersigned counsel, hereby dismisses ALSCO, Inc. with prejudice from this action. Defendants consent to this dismissal with prejudice of ALSCO, Inc. The parties agree to bear their own respective costs. This case will proceed against Defendant City of Myrtle Beach.

WE SO STIPULATE:

JOYE, NAPPIER, RISHER & HARDIN, LLC

s/ Mark S. Nappier
 Mark A. Nappier, Esquire
 3575 Highway 17 Business
 Murrells Inlet, South Carolina 29576
 (843) 357-6454
 ATTORNEY FOR CALLIE BARRAS

April 18, 2017

Civil Action No. 2016-CP-26-00135

WE CONSENT:

McANGUS, GOUDELOCK & COURIE,
L.L.C.

s/ Dominic A. Starr

Dominic A. Starr

Bar No: 66231

Post Office Box 1349

Myrtle Beach, South Carolina 29578

(843) 848-6000

ATTORNEY FOR DEFENDANT ALSCO,
INC.

BATTLE LAW FIRM, LLC:

s/ M. Kirk Battle

M. Kirk Battle, Esquire

Battle Law Firm, LLC

Post Office Box 530

Conway, South Carolina 29528

ATTORNEY FOR CITY OF MYRTLE
BEACH

1

2 State of South Carolina) Court of Common Pleas
3 County of Horry) 2016-CP-26-00135

4

5

6 Callie Barras)
7 vs.) Transcript of Record
8 City of Myrtle Beach)

9

10 May 15-17, 2017
11 Conway, South Carolina

12

13 BEFORE:

14 Honorable Larry B. Hyman, Judge.

15

16 APPEARANCES:

17

18 Mark A. Nappier, Esq.
19 Attorney for the Plaintiff

20

21 Michael K. Battle, Esq.
22 Attorney for the Defendant

23

24

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26

27

28

29

30 Teresa J. F. Bautz, RPR
31 Official Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
<u>Monday, May 15, 2017</u>				
Callie Barras				
Mr. Nappier	42	--	89, 95	--
Mr. Battle	--	71	--	94
<u>Tuesday, May 16, 2017</u>				
Eric Weiss				
Mr. Nappier	120	--	--	--
Mr. Battle	--	129	--	--
Irene Demczuk (deposition read into record)				
Mr. Battle	133	--	161	--
Mr. Nappier	--	159	--	--
LeRoy Marcotte				
Mr. Nappier	164	--	179	--
Mr. Battle	--	175	--	--
Dustin Jordan				
Mr. Battle	187	--	210	--
Mr. Nappier	--	201	--	--
Pam Stone				
Mr. Battle	211	--	--	--
Mr. Nappier	--	230	--	--
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Exhibits retained by Clerk of Court.			

1 (The hearing commenced at approximately 2:07 p.m.)

2 THE COURT: Gentlemen, are we ready to pick a jury
3 in this case?

4 MR. NAPPIER: Yes, Your Honor.

5 MR. BATTLE: No, Your Honor.

6 THE COURT: All right, let me ask you a few
7 things. First, how about ALSCO, I know you have
8 alleged negligence of another person or acts of another
9 person. Are we even going to talk about ALSCO? You
10 settled with ALSCO; right?

11 MR. NAPPIER: We did, Your Honor.

12 THE COURT: Okay. Now, how's that going to affect
13 the caption? What do you say, Mr. Battle, is ALSCO out
14 or in?

15 MR. BATTLE: They've settled out, Your Honor, but
16 their delivery driver will be testifying on behalf of
17 the Plaintiff.

18 THE COURT: Okay. Well, I considered that you
19 might want to keep them in. Have you alleged any sort
20 of comparative negligence, the negligence of others?
21 Obviously you have. Are you going to ask for a special
22 verdict that might indicate ALSCO's liability? What do
23 you say, Mr. Napier?

24 MR. NAPPIER: Your Honor, I don't believe, you
25 know, they've -- other than they did have a -- I guess

1 there was an allegation, there's no indemnification
2 claim or anything that they brought to action.

3 THE COURT: Yes. But as to the negligence claim,
4 they may -- they're saying that it was negligence of
5 another. And a jury could find that it was the joint
6 negligence of the City of Myrtle Beach and ALSCO if
7 they return a verdict in your favor. And then what are
8 we going to do as far as the apportionment of damages?
9 They may even find that the Plaintiff was in some part
10 negligent.

11 MR. BATTLE: I did have a comparative breakdown
12 between the City and the Plaintiff. But I think part
13 of the issue is going to be that because our case is --
14 approach the bench, Your Honor.

15 (Discussion off the record.)

16 THE COURT: Madam court reporter, the caption will
17 be amended to Callie Barras versus City of Myrtle
18 Beach. Okay, all right. Do you have witness lists for
19 me?

20 MR. NAPPIER: Your Honor, I have some voir dire in
21 this case.

22 THE COURT: Okay. And I was getting to voir dire.

23 MR. NAPPIER: Pretrial briefs show the witness
24 list on the second page.

25 THE COURT: Okay. Mr. Battle, did you have any

1 voir dire?

2 MR. BATTLE: Yes, Your Honor.

3 THE COURT: Have you exchanged that with Mr.
4 Nappier? Have y'all looked at each other's
5 respective --

6 MR. NAPPIER: I've given him a copy of mine.

7 MR. BATTLE: Sorry. Not sure I have one here.

8 THE COURT: So your witnesses will be Dustin
9 Jordan, Pam Stone and --

10 MR. NAPPIER: Those are actually...

11 THE COURT: I'm talking to Mr. Battle. Dustin
12 Jordan and Pam Stone; is that correct?

13 MR. BATTLE: Yes, Your Honor.

14 THE COURT: And Mr. Nappier, you will have the
15 same two plus Eric Weiss?

16 MR. NAPPIER: Yes.

17 THE COURT: Irene Demczuk; is that right?

18 MR. NAPPIER: I have to look at it again to see.

19 THE COURT: And...

20 MR. NAPPIER: Demczuk.

21 THE COURT: And Leroy Marcotte, okay. Is that
22 right?

23 MR. NAPPIER: That is correct, Your Honor.

24 (Discussion off the record.)

25 THE COURT: Mr. Ropp, can you get a jury up here

1 for me.

2 (WHEREUPON, the jury pool came into open court at
3 approximately 2:14 p.m.)

4 THE COURT: Good afternoon. I am Larry Hyman.
5 This morning all of you probably met Judge Russo who's
6 assigned to Horry County this week, and he, I'm sure,
7 told you he's from over in Florence. This morning you
8 were involved in what we call the first stage of jury
9 qualification. And during that time you probably
10 noticed that no one spoke to you or told you anything
11 about the types of cases that we might be trying here
12 this week. And you might have expected that.

13 But the purpose of that first phase is just to
14 determine which of you are qualified to serve as jurors
15 on the courts of this state. This second phase that we
16 are involved in now is to determine whether or not you
17 might have any interest, prejudice or bias in the
18 particular case that we are about to try.

19 And the case that we are about to try is the case
20 of Callie Barras versus the City of Myrtle Beach. Let
21 me tell you a little bit about that case, so that you
22 will at least have some basic information. Now, the
23 things that I'm about to tell you is information that I
24 gleaned from the file, the complaint that was filed.

25 A complaint is nothing more than an allegation

1 made by a plaintiff against a defendant. The fact that
2 I may tell you what it says or may comment on what it
3 says is certainly not evidence in the case. And you
4 should not consider what I say here telling you what I
5 know about the case as evidence. During the trial you
6 will hear evidence, it will come from this stand, and
7 that will be what you will base any verdict that you
8 may render upon.

9 Now, it is alleged in the complaint that in April
10 of 2015, I think April the 8th of 2015, the Plaintiff,
11 Ms. Barras, was working as a volunteer at the
12 recreation center over on the old Myrtle Beach Air
13 Force base. I'm sure that all of you or many of you
14 are somewhat familiar with that facility.

15 It is operated, it is alleged, by the City of
16 Myrtle Beach. And from time to time they have
17 different activities for the community in that
18 facility, one of which is occasionally they will have
19 bingo. And when they have that, Ms. Barras has for
20 some time been volunteering to help to operate the
21 facility. On this particular day it is alleged that
22 she was there volunteering, helping, and that she
23 tripped and fell.

24 Now, the thing that gives rise to the lawsuit or
25 the allegations that give rise to this lawsuit are the

1 allegations by the Plaintiff that the reason she fell
2 were there were rugs, mats of some type on the premises
3 used as part of the premises, and that they had
4 occasion to wrinkle up and cause people to trip.

5 She alleges that the City was placed on notice of
6 this fact and did nothing to remedy it and that as a
7 result she tripped and fell and sustained injuries.
8 She's here today asking to recover for those injuries
9 that she sustained.

10 Now, the City has raised certain defenses which
11 I'm going to allow these lawyers to talk to you about.
12 But we don't need to get into that because I just want
13 you to know what the case is generally about before you
14 answer some of the questions that I have for you. Now,
15 that's basically what the case is about.

16 Now, we're here now to select a jury, a fair and
17 impartial jury. That's the keystone of any trial
18 that's held, whether it be a criminal case or a civil
19 case. And I'm sure is that Judge Russo took some time
20 and explained the difference to you. But a fair and
21 impartial jury is what we always want to begin with, so
22 we need to let you know a little bit about the case.

23 Now, Judge Russo is down the hall and he is trying
24 criminal cases. Those are cases where people have been
25 charged with violating the criminal laws of the state.

1 This week I am doing what we call common pleas or civil
2 cases. And those are just disputes between people and
3 legal entities that are brought here in our courts. It
4 can be anything from a simple automobile accident, it
5 could be a complex contract case or a construction
6 case. It might even be, as in this case, what we call
7 premises liability, a slip and fall, a trip and fall
8 type case, a personal injury case generally.

9 The difference in the way juries are selected in
10 the two different courts is significant. The
11 traditions in our jurisprudence and the traditions in
12 our court are that if we had a criminal case like Judge
13 Russo's trying down the hall, the way we would select a
14 jury is we would call your name and you would have to
15 come and stand right here in front of everybody and
16 turn and face everybody.

17 And the prosecutor or the Plaintiff, if you will,
18 in a criminal case would begin by saying something
19 like, Your Honor, excuse this juror. And if he were to
20 say, excuse the juror, why you would go back to your
21 seat. And if he said, present the juror, then that
22 juror would be presented to the Defense. And the
23 Defense would then either say, excuse the juror or
24 swear the juror. If you got to the point where they
25 said, swear the juror, you would come around and get in

1 the jury box, and you would sit on the jury.

2 Well, many people find that to be intimidating.

3 You know, you got to come up here and stand in front of
4 everybody, and you got people saying, no, we don't want
5 that one, you know, excuse that one. We try to apply a
6 kinder and gentler process here on the civil side. On
7 the civil side, the reason we bring so many of you up,
8 you know, we need 12 jurors and usually two alternates,
9 is we want to make sure that we have enough jurors.

10 Some of you, after I ask you some questions about
11 what you might know about the case or any interest you
12 might have in the case, we might -- I might disqualify
13 you. So we want to make sure that we have enough.

14 But on the civil side, those of you who remain
15 after the qualification process will be put on a
16 jumbled list by the Clerk of Court. Who have we got
17 down there? Well, we've got Ms. Smith down there.
18 Ms. Smith will jumble your names up, and she will give
19 you new numbers, so that you won't even know who we are
20 talking about when we go through the jury selection
21 process.

22 A list will be given to the attorneys with these
23 new numbers, and the attorneys strike from the list
24 using the new numbers. Now, isn't that a nice way to
25 do it, nobody even knows if they were struck or not.

1 During that process, let me assure you, in spite
2 of the fact that these lawyers are going to sit there,
3 they are going to make faces, they are going to scratch
4 their heads, they are going to whisper back and forth,
5 you would think that they know what they are doing when
6 it comes to selecting a jury. But I can tell you, they
7 do not. Do you, Mr. Battle?

8 MR. BATTLE: Not yet, sir.

9 THE COURT: How about Mr. Nappier?

10 MR. NAPPIER: No, Your Honor.

11 THE COURT: The hardest thing in the world. I
12 practiced law for about 32 years, probably longer than
13 Mr. Battle's even living, before I became a judge, and
14 there is nothing more difficult because they don't know
15 you. You send in that little card, I guess you still
16 do that, kind of tells where you might live and what
17 kind of work you did. But they don't know you. Every
18 attorney wants a jury that they feel will be most
19 sympathetic to their position in the trial. And that's
20 exactly what they are supposed to do.

21 But, again, they just don't know. It is a gut
22 reaction. As my friend Judge Floyd used to tell me, he
23 said, they might strike you because you part your hair
24 on the left or you part your hair on the right or
25 you've got no hair to part. You never know. If you

1 don't get on this jury, please, we're going to try to
2 get you on one later in the week. Don't be dismayed or
3 take offense if you think someone has struck you.

4 You know, I tell every juror that, and y'all are
5 probably sitting there thinking, I hope I get struck, I
6 get to go home if I get struck. But let me tell you
7 this, if you are selected to serve on a jury, I believe
8 that you will leave here with a greater appreciation
9 for your constitutional rights, to have issues
10 involving you and the State or you and some other
11 individual decided by a jury of your peers.

12 You know, they tell me that something like 90 plus
13 percent of all the jury trials in the world take place
14 in the United States. It is a unique thing that we
15 have. It is a precious right that you all have. And I
16 hope that if you leave here after having served on a
17 jury, you will better appreciate those protections that
18 we have as citizens and residents of the United States.

19 Now, with that said, let me tell you what I want
20 to do. I am going to put to you some questions
21 concerning this case, generally and specifically.
22 Before I do so, the fact that you would truthfully and
23 honestly answer these questions is so important that we
24 place you under oath. I know you were placed under
25 oath this morning. We will place you under oath again.

1 And if you get in that jury box, you're going to take
2 an oath a third time.

3 You know, it's always been sort of ironic to me
4 that you can have a person who comes in and testifies
5 in the most serious case in the land, you could have a
6 person who comes in and testifies in a death penalty
7 case, and they take the oath one time. But the juror
8 takes it three times. That emphasizes just how
9 important juries are.

10 Now, Ms. Smith, if you would, would you please
11 swear this jury for me.

12 THE CLERK: Yes, sir.

13 (WHEREUPON, all jurors were duly sworn.)

14 THE CLERK: Please be seated.

15 THE COURT: All right. Now, as I told you a
16 moment ago, there are -- the parties in this case are
17 Ms. Callie Barras. Ms. Barras, would you stand up and
18 let the jury see who you are. Thank you, ma'am, I
19 appreciate that.

20 And the Defendant in this case is the City of
21 Myrtle Beach. Now, Ms. Barras is represented by
22 Mr. Nappier who is here, and we're going to talk about
23 him in a minute. And the City of Myrtle Beach is
24 represented by Mr. Kirk Battle. And Mr. Battle will
25 have representatives of the City here during this

1 trial.

2 Now, let me ask you this. Has anyone on this jury
3 panel ever been related by blood or marriage to the
4 Plaintiff in this case? If so, please just raise your
5 hand. And there is none.

6 You will hear me say that a lot, that there is no
7 response or there is none. Because this is a court of
8 record, every word has to be taken down, transcribed.
9 We have our court reporter here, Ms. Bautz, she can't
10 record a nonresponse by you, so I always have to tell
11 her for the record what that response was so that there
12 will be a record.

13 Is anyone on this jury panel a close personal
14 friend of, do you work with, do you go to church with,
15 do you have any social relationship at all that you're
16 aware of with Ms. Barras? And there is no response to
17 that.

18 I will ask you the same thing about the City of
19 Myrtle Beach. Does anyone on this jury panel work for
20 the City of Myrtle Beach, are you employed by them, are
21 you an official who is elected from the City of Myrtle
22 Beach, do you have any connection at all with the City?

23 All right, sir. And your name, please stand.

24 JUROR #28: Michael Beck.

25 THE COURT: Mr. Beck. And your number?

1 JUROR #28: 28.

2 THE COURT: 28. And do you work for the City?

3 JUROR #28: Yes, sir. I'm a lieutenant with the
4 fire department for 16 years.

5 THE COURT: Well, thank you, Mr. Beck, for your
6 service, it's good to have you here. I will tell you
7 what I'm going to do. I'm going to take you out of the
8 pool so that we don't have to put any undue pressure on
9 you; okay?

10 JUROR #28: Thank you, sir.

11 THE COURT: Thank you, Mr. Beck. If you would,
12 just remain with us for a few minutes; okay?

13 All right. Now, has anyone ever made a claim
14 against the City of Myrtle Beach, has anything ever
15 occurred between you and the City of Myrtle Beach such
16 as you being arrested by them or sued by them or had a
17 zoning problem with them; is there any thing that may
18 have happened in your past that would in any way unduly
19 affect your ability to be a fair and impartial juror in
20 this case? And there is no response to that question.

21 Now, there are about five people who may, sir,
22 testify in this case. I've asked the attorneys to give
23 me the names of anybody that they may call. The fact
24 that during this trial you might not hear from one of
25 these witnesses should mean nothing to you. It's just

1 that we want to make sure that anybody that might
2 testify is known to you because we need to know if you
3 are related by blood or marriage, do you have a close
4 personal or social relationship with any of the
5 following persons: Eric Weiss, Irene Demczuk, LeRoy
6 Marcotte, Dustin Jordan or Pamela Stone? Anyone have a
7 close personal relationship, married, related by
8 marriage, anything of that nature? And there's no
9 response.

10 Now, let me talk to you about these attorneys.
11 For the Plaintiff, we have Mr. Mark Nappier.
12 Mr. Nappier is an attorney, I believe your office is
13 over in Myrtle Beach?

14 MR. NAPPIER: Murrells Inlet, Your Honor.

15 THE COURT: Murrells Inlet. Mr. Nappier, who is
16 your firm?

17 MR. NAPPIER: It's Joye, Nappier, Risher and
18 Hardin.

19 THE COURT: Okay. And you have generally
20 practiced in Horry County for a number of years?

21 MR. NAPPIER: Yes, Your Honor.

22 THE COURT: Okay, I think so. Thank you, sir.
23 All right. And for the Defense, we have Mr. Kirk
24 Battle. And Mr. Battle practices with his father,
25 James Battle, and his brother James Battle; is that

1 right?

2 MR. BATTLE: It's Mike Battle, Sr.

3 THE COURT: Mike Battle, but --

4 MR. BATTLE: And my brother is James, yes, sir.

5 THE COURT: I'm sorry, I didn't mean to do that, I
6 knew better. But Mr. Battle has been practicing also
7 for a number of years, and he's from here in Conway.

8 Now, thank you, is there anybody on this jury
9 panel who is presently or has in the past been
10 represented by any of these attorneys or anyone that
11 you know who is associated with them, a member of their
12 firm? And there is no response to that question.

13 Now, is there any member of this jury panel who
14 has discussed this case with anyone who knows anything
15 about this case who has formed any opinion about any
16 issue that you know of that might arise in this case?
17 And there is no response to that question.

18 Does anyone on this jury panel know of any bias or
19 prejudice that you might have against either the
20 Plaintiff or the Defendant in this case? And there is
21 no response to that.

22 Is there anyone on this jury panel who has been a
23 party to a lawsuit, a civil lawsuit? And there is no
24 response.

25 Is there anyone who has perhaps testified in a

1 case? And there is no response. We have the cleanest
2 jury I have ever seen. You are model citizens. Is
3 there any one of you who may have -- who might have
4 worked in the legal profession in the past? And there
5 is no response to that.

6 Is there anyone on this jury panel who has ever
7 been involved in any of the organized activities,
8 community activities or classes sponsored by the City
9 of Myrtle Beach, including the use of gyms or
10 recreational centers? And there is no response to
11 that.

12 All right, Mr. Nappier, Mr. Battle, anything
13 further?

14 MR. NAPPIER: Nothing further from the Plaintiff,
15 Your Honor.

16 MR. BATTLE: Nothing more from the Defendant, Your
17 Honor.

18 THE COURT: All right. Let me ask you the final
19 question. Does any of you have any reason to believe
20 or know of any reason why you should not serve as a
21 juror in this case with particular emphasis being
22 placed on your ability to be fair and impartial to both
23 the Plaintiff and the Defendant? And there is no
24 response to that.

25 Okay, madam clerk, do you have the list?

1 THE CLERK: Yes, sir. On your list number 16 was
2 excused by the Court.

3 THE COURT: Okay. All right, gentlemen, on your
4 list, now, number 16 was excused by the Court. So we
5 will strike from the first 21, then I will pick an
6 alternate from 22 to 24, one strike each, and then 25
7 to 27, one strike each, okay. Understand? All right.
8 Ms. Smith.

9 I tell you what, why don't I let you all have a
10 quick bathroom break. These attorneys, they were there
11 for the qualifications this morning and they have the
12 list, but let's give them a few minutes to just sort of
13 go through it one more time. Mr. Ropp, let's let them
14 take about a ten-minute break or so. All right, thank
15 you.

16 (WHEREUPON, a brief recess was taken at 2:37 p.m.)

17 THE COURT: All right. Mr. Nappier.

18 MR. NAPPIER: Your Honor, Plaintiff strikes number
19 11.

20 THE CLERK: Plaintiff number 11.

21 MR. BATTLE: Your Honor, Defense strikes number
22 19.

23 THE CLERK: Defendant number 19.

24 MR. NAPPIER: Plaintiff strikes number six.

25 THE CLERK: Plaintiff number six.

1 MR. BATTLE: Defense strikes number 13.

2 THE CLERK: Defendant number 13.

3 MR. NAPPIER: Plaintiff strikes number 21.

4 THE CLERK: Plaintiff number 21.

5 MR. BATTLE: Defense strikes number nine.

6 THE CLERK: Defendant number nine.

7 MR. NAPPIER: Plaintiff strikes number 15.

8 THE CLERK: Plaintiff number 15.

9 MR. BATTLE: Defendant strikes number 26.

10 THE COURT: No, we're striking first 21.

11 MR. BATTLE: Oh, sorry. Defendant strikes number
12 18.

13 THE CLERK: Defendant number 18. Alternate number
14 one, Plaintiff?

15 MR. NAPPIER: The Plaintiff strikes number 22.

16 THE CLERK: Plaintiff number 22.

17 MR. BATTLE: Defense strikes number 24.

18 THE CLERK: Defendant number 24.

19 MR. NAPPIER: Plaintiff strikes number 27.

20 THE CLERK: Plaintiff number 27.

21 MR. BATTLE: And Defense strikes number 26.

22 THE CLERK: Defendant number 26.

23 THE COURT: All right.

24 THE CLERK: Review the strikes, please. Plaintiff
25 strikes numbers 6, 11, 15, 21, 22 and 27.

1 MR. NAPPIER: That's correct.

2 THE CLERK: Defendant strikes numbers 9, 13, 18,
3 19, 24, 26.

4 MR. BATTLE: That's correct.

5 THE COURT: All right. Give me the jury.

6 THE CLERK: When I call your name or jury number,
7 please have a seat in the jury box.

8 THE COURT: And please bring any personal effects
9 you might have with you.

10 THE CLERK: Number 427, Marissa Webb.

11 THE COURT: Ms. Webb, you were the first one
12 selected. So Mr. Ropp, you know where I want you to
13 seat her.

14 THE CLERK: 260, Dorothy Maybush. Number 51,
15 Alora Brock. Number 405, Lillie Torres. Number 220,
16 Sean Kelly. Number 83, Nysha Cochran. Number 392,
17 Paul Strickland. Number 164, Jason Hanslik. Number
18 402, Steven Thompson. Number 303, Kevin Nave. Number
19 133, Nicole Freede. Number 376, Lauren Spivey. Number
20 35, Jennifer Berardino. Number 163, Frank Haney.

21 THE COURT: Mr. Nappier, does the Plaintiff
22 challenge the panel?

23 MR. NAPPIER: No challenge, Your Honor.

24 MR. BATTLE: No challenge, Your Honor.

25 THE COURT: All right, very well, then. We have

1 our jury. The rest of you are excused until --

2 THE CLERK: Call back after six.

3 THE COURT: Call back after six. I'm sure Judge
4 Russo explained the call back system and you have
5 numbers. Just call back after six, and we'll find out
6 whether or not we will be needing you tomorrow. You
7 are, of course, welcome to stay if you would like, but
8 I would imagine most of you have something that you
9 need to do. But all right, the balance is excused.

10 (WHEREUPON, the remainder of the jury panel exited
11 the courtroom at 2:56 p.m.)

12 THE COURT: All right. Ladies and gentlemen, you
13 have been selected as our jurors. Ms. Webb, I would
14 ask you to serve as the forelady of this jury. And in
15 that regard, I want you to always occupy that seat.
16 Now, Mr. Haney, Ms. Berardino, you are alternates, I
17 would ask you two to always occupy either of those
18 seats. The rest of you may sit anywhere you like as we
19 come in and out of the courtroom. But I would ask Ms.
20 Webb, Mr. Haney and Ms. Berardino to always occupy
21 those seats so we can always identify you.

22 Now, Ms. Smith, would you swear this jury in.

23 THE CLERK: Yes, sir. Please stand and raise your
24 right hands.

25 (WHEREUPON, all jurors were duly sworn.)

1 THE CLERK: Thank you. Please be seated.

2 THE COURT: All right. And was there anyone who
3 did not take the oath? And there is no response to
4 that. Before we begin, let me talk to you a few
5 minutes about how we will proceed and how the trial
6 works, just generally.

7 You know, a trial is nothing more than an orderly
8 presentation of information to a jury. That's what
9 it's all about. These attorneys will be putting up
10 witnesses. Their sole purpose is to get information to
11 you. Because at the end of the trial, of course, you
12 are going to be asked to render a verdict in this case.

13 During this trial, let me tell you how I do it.
14 If at any time any of you becomes uncomfortable, you
15 need a break -- you know, I try not to go over about an
16 hour, hour and a half at a time. I figure if you make
17 it that long you can -- you know, if you can make it
18 through preaching, you can make it that far.

19 But if you have any problems, you need to take a
20 break, you need to refresh yourself, please don't
21 hesitate, just raise your hand. That's a signal to me
22 that you need a break. And I promise you, we will take
23 a break. Because, you know, if you're distracted, if
24 you're uncomfortable, it's so hard to pay attention to
25 what's going on. And we certainly don't want you to be

1 distracted in that regard.

2 Now, you know, every time I turn on the TV, it
3 seems like, there's some kind of trial or something
4 about a trial going on. And those are the most action
5 packed things that you will see on TV. There's always
6 a surprise witness or something dramatic happening in
7 the trial. In reality that's not how it works. I'm
8 not saying it doesn't happen sometimes.

9 But the truth of the matter is that the search for
10 the truth here, the search for what occurred, is often
11 repetitive, slow and tedious. And that's because
12 you're going to be receiving information, and you're
13 going to receive that information based upon the rules
14 of evidence and courtroom procedure that we have.

15 I promise you that sometime during this trial,
16 you're going to want to jump right over that wall there
17 and grab these lawyers by the neck and choke the living
18 daylights out of them. Because they are going to start
19 asking questions, and you're going to know where they
20 are going, and they are going to ask ten questions
21 setting up the final question. And you're going to
22 think how they are wasting your time.

23 But let me say this. Lawyers do that because
24 lawyers are supposed to do that. That's what they are
25 trained to do. We have rules for the presentation of

1 evidence. We have rules concerning the foundations for
2 questions that are tried and true, they are hundreds of
3 years old. They have been tested by history. And they
4 are all important rules. And those lawyers know that
5 that's how they must do it.

6 You may have a lawyer who objects to a way a
7 question is asked or the way something is done. Don't
8 hold that against these lawyers. Good lawyers do that.
9 And that's what lawyers are trained to do, and that's
10 what they must do. It's not that anyone is trying to
11 keep anything from you. I may even ask you, if an
12 objection is made, to leave the courtroom while I
13 discuss it with the lawyers.

14 Again, that's not to keep anything from you. It
15 generally has to do with the way something is presented
16 to you. And in ruling on that, I might have to express
17 an opinion about a particular piece of evidence. And I
18 will tell you right now that the jury is the absolute,
19 exclusive, only judge of the facts, of the weight any
20 evidence should receive. And if I say something, it
21 might influence you. That would be absolutely wrong.
22 I don't have the right to have an opinion about any
23 piece of evidence or anything that is presented to you.
24 You will judge it, you will decide what weight and
25 effect that it will receive.

1 Because, you know, I said a moment ago that you're
2 going to be asked to deliberate. And that is a process
3 that sometimes is hard to explain, and I've tried to
4 think of ways that I can impress jurors with how that
5 process works. And the deliberation process is really
6 sort of a three-part process.

7 The first part is to determine what happened, what
8 are the facts. And the facts are not just what
9 evidence is presented, the facts are distilled from the
10 evidence. As I said, you, the jury, decide what weight
11 and effect evidence that you may receive during this
12 trial should be given. And from that, you will decide
13 what happened, what are the facts in the case. And no
14 one can make that decision but you. That is the first
15 part of the deliberation process.

16 The second part is easier for you, because that
17 part is the law which you will apply to the case. And
18 that's going to be easy for you because just like you
19 are the exclusive and sole judges of the facts, I am
20 the exclusive and sole judge of the law. I will tell
21 you at the end of the trial what law you will apply to
22 this case. And the third part of the deliberation
23 process is where you take the facts and the law and you
24 put them together. You see how they fit.

25 Imagine, if you will, a big mill with two big

1 gears that have to come together. One is the facts
2 which you build, and one is the law which I build. And
3 that deliberation process, the final distillation of
4 the facts and the law, is where you bring them together
5 and you see how they fit. That's what we will do
6 during this trial.

7 Now, you sit there and you say, judge, yeah,
8 that's pretty easy, you're going to give us the law.
9 But, you know, we don't know who these witnesses are,
10 how are we supposed to determine what the facts are if
11 we hear conflicting testimony.

12 Well, let me say this. Your evaluation of the
13 evidence, your determination of the truth, is no
14 different in this courtroom as it would be out there on
15 the street. You apply the same test for truthfulness
16 in this courtroom that you would in your everyday
17 lives. You can consider such things as whether a
18 witness might have an interest, prejudice or bias on
19 the outcome of the case, whether the witness was in a
20 position to hear, see, smell whatever the witness
21 testifies to.

22 You can consider a witness' intelligence. You can
23 consider one witness over many or many witnesses over
24 one. You can believe everything a witness says,
25 nothing of what a witness says or part of what a

1 witness says. It's entirely up to you. You can even
2 consider how a witness appears on the witness stand.
3 Sometimes we call that a witness' demeanor, how they
4 testify. All of those are things that you as a jury
5 can consider in your evaluation of that witness'
6 testimony.

7 Now, I will tell you that the Plaintiff in this
8 case has what we call a burden of proof. You know, you
9 may have seen some TV shows or you might have even been
10 on a criminal case where the judge told you that the
11 State must prove its case beyond a reasonable doubt.
12 And that's a very high burden.

13 The burden in a civil case is not that high. The
14 burden is by what we call a preponderance of the
15 evidence, the greater weight of the evidence,
16 51 percent, if you will. Imagine, we start out with a
17 set of balance scales, and it's perfectly even when the
18 trial starts. And we put all the Plaintiff's evidence
19 on one side and all of the Defendant's evidence on the
20 other side. If that scale stays perfectly even, then
21 the Plaintiff has not carried her burden of proof,
22 because it must be proof by a greater weight of the
23 evidence.

24 If it tips even so slightly in favor of the
25 Plaintiff, the Plaintiff has carried the burden, the

1 Plaintiff has proven her case. If it tips slightly to
2 the Defense, again, she has failed to carry the burden
3 in her case. And we'll talk more about that at the end
4 of the trial.

5 Let me just say this. Please, I'm sure that we'll
6 probably go over into tomorrow, don't do any
7 independent research. You know, we've got these
8 smartphones now and everybody's a genius. You can look
9 up anything. Don't do any research on this case, don't
10 try to look up and see if it got reported in the
11 newspaper, and I don't know whether it did or not. I
12 certainly would doubt anything like this would.

13 Don't try to go out to the rec center tonight and
14 look around and see what it looks like. Everything
15 you're going to need and everything you should use in
16 your deliberations is going to be presented from this
17 witness stand.

18 Don't discuss the case with anybody. You know, I
19 got nose wife, and if I go home, she wants to know
20 about every case we've had, she wants to know
21 everything. She wants to know what I had for lunch.
22 And I'm sure that when you go home, your spouses or
23 your significant others are going to say, what did you
24 do, you got on a jury, tell me about the case.

25 Wait until we finish the case and say, I can tell

1 you all about it. Because, you know, you might tell
2 her something about the case and/or him something about
3 the case, and they may start talking to you about it
4 and influence the way you should think about it. So,
5 please, do not do that.

6 Now, let me tell you a little bit about how we're
7 going to proceed. We will begin with Mr. Nappier. He
8 is going to have an opportunity to make what we call an
9 opening remark. And he is going to tell you a whole
10 lot better than I did about what happened. And he's
11 going to explain the case from the Plaintiff's point of
12 view. And he's probably going to tell you why he
13 thinks that his client should recover, and he may even
14 tell you something about her injuries.

15 What Mr. Nappier says is not evidence. It's
16 perfectly permissible for him to give you an overview
17 of his case, but remember, that's not evidence.
18 Evidence comes from the witness stand. Mr. Nappier
19 over there, he didn't take one of those oaths that we
20 were doing this morning, and that's the way it should
21 have been. Evidence is sworn testimony from this
22 witness stand.

23 Then Mr. Battle will have the same opportunity.
24 And he will explain the case from his perspective. And
25 he will talk to you about what occurred or what he

1 believes occurred or did not occur. And, again, what
2 Mr. Battle says is not evidence and shouldn't be
3 considered by you as evidence in the case.

4 Following that, Mr. Nappier will have to go
5 forward with witnesses to present his case. And as he
6 puts a witness up, Mr. Battle has the opportunity,
7 doesn't have to but he has the opportunity, to cross
8 examine that witness. And it goes back and forth like
9 that until Mr. Nappier finally says, Your Honor, the
10 Plaintiff rests.

11 At that time the Defense has the opportunity to
12 come forward and put up witnesses. Mr. Battle will
13 directly examine them, and Mr. Nappier will have the
14 opportunity to cross-examine, and that will go back and
15 forth until Mr. Battle will announce to the Court that
16 the Defense rests.

17 Once that happens, all the evidence is in. And
18 what will occur after that is that each attorney will
19 have an opportunity to make what we call a final
20 summation. They will talk to you about the evidence
21 that's been presented and why it supports their
22 position. Mr. Nappier will go first, and then
23 Mr. Battle will have an opportunity, and then
24 Mr. Nappier will have an opportunity to do a rebuttal.

25 After that, I will charge you on the law. And I

1 do something that I really don't think any other
2 circuit judges are doing in this state, I've done it
3 for ten years now, and that's this. I understand that
4 the law can be very technical at times. And it is
5 unfair for us to bring you in here and have me spout
6 out the law to you and expect you to remember it and
7 absorb it all. It would be like me going to work with
8 you for a day and coming home and knowing everything
9 that you know. That's just not reasonable.

10 So what I do is I prepare a written transcript of
11 my charge. And I will have that for you to take in
12 your jury room so you can refer back to it and use it
13 during your deliberation. Now, that doesn't mean you
14 don't have to listen to me when I'm talking to you
15 about that. I will have a copy of it for you. And
16 then we will bring you back once you reach your
17 verdict, and we will receive your verdict.

18 Now, anything further, Mr. Nappier?

19 MR. NAPPIER: Nothing further.

20 THE COURT: Mr. Battle?

21 MR. BATTLE: Nothing further, Your Honor.

22 THE COURT: Very well, they are satisfied with me.

23 Mr. Nappier, are you prepared to go forward?

24 MR. NAPPIER: I am, Your Honor.

25 THE COURT: All right.

1 MR. NAPPIER: May it please the Court.

2 THE COURT: And please remember, if any time you
3 need a break, just raise your hand, okay.

4 MR. NAPPIER: Good afternoon, members of the jury.
5 As you know, my name is Mark Nappier, and I represent
6 Callie Barras sitting next to me here. You were
7 earlier introduced to her.

8 As you know from the descriptions that the judge
9 gave you at the beginning, this case involves a fall
10 that took place in April of 2015, April 8th, 2015, to
11 be specific. And what happened was Ms. Barras -- who
12 was working as a volunteer for the City of Myrtle
13 Beach, which is something that she had been doing for
14 11 years, 11 years she'd been volunteering and actually
15 still volunteers with the City -- volunteering for
16 what's their senior bingo program.

17 And as part of the senior bingo program, when the
18 folks come in, they prepare some snacks in the kitchen
19 area, and they will bring them out into the other area.
20 And like I said, that's something that she had been
21 doing for some time, working for the City.

22 And on this day, she was heading to some counters,
23 and her foot got caught under a mat. You know, there's
24 these black mats that you see in a lot of places, they
25 have a lot of little like carpeting over the top,

1 usually a black outline, all rubber or at least the
2 outline is rubber, and then underneath is rubber.

3 Well, this particular mat had these waves in it.
4 And what happened was foot gets caught under one of the
5 waves, and she stumbles and falls and, unfortunately
6 leaning mostly with her face and her head, struck her
7 head, also struck her shoulder and was injured
8 significantly, in fact, to the point where she had to
9 be taken by ambulance.

10 You're going to hear testimony that she was
11 treated for a concussion, she was -- that when they got
12 her to the hospital that she was actually vomiting from
13 the concussion, and that she actually had to spend the
14 night there. She ended up having to have significant
15 treatment at the hospital. And then subsequently when
16 she went to, they had some physical therapy and
17 treatment, in the end ended up with, you'll hear
18 testimony, with \$47,000 in medical expenses.

19 Now, that's the tail end of the story. What's
20 going to be very important here and what you're going
21 to hear from testimony of some of the witnesses, other
22 volunteers -- and one will be deposition testimony
23 because that volunteer is not in town, but we'll read
24 you that, you're going to hear testimony from another
25 witness that was there -- that this problem of the

1 waves that I was telling you about, the mats, was not
2 something that they weren't aware of.

3 In fact, the City just three weeks prior to this
4 fall, their director of their whole recreation
5 department had been at the rec center -- this rec
6 center is, as you heard, on the air base out there --
7 had been over there for a meeting on a separate issue.
8 When she came into the kitchen and several of the
9 volunteers, again, who you'll hear testimony from,
10 stopped her and said, look, we're having a problem with
11 these mats, people are tripping on these mats a lot
12 because they are not laying flat all the time.

13 And they said, can we -- would it be -- can we do
14 something about it, can we maybe take them up while
15 we're there, roll them up, stick them aside, we'll put
16 them back down again. And the very short answer was,
17 the mats stay. That's it. There was no attempt made
18 to find another solution. There was no attempt made to
19 cater to the volunteers that worked for them and try to
20 help the City.

21 And in three weeks, just a little less than three
22 weeks later, sure enough, middle of working one of
23 those waves catches her foot, stumbles forward and ends
24 up hitting her head.

25 As I stated, she had, as a result of this

1 accident, more than \$47,000 in medical bills. That
2 doesn't go to the -- you'll see pictures of her face
3 where it is battered. Doesn't talk about the
4 embarrassment, doesn't talk about the pain and
5 suffering. You'll hear testimony regarding all of
6 those things.

7 And my hope is that when, as the judge indicated
8 to you, when you go through the process, the process of
9 hearing the evidence, the process of weighing the
10 testimony that you hear, that you will find that my
11 client is in fact entitled to damages and entitled to
12 relief and that the City needs to be held responsible
13 for their actions or their lack of actions. Thank you
14 for your attention.

15 THE COURT: Mr. Battle?

16 MR. BATTLE: Ladies and gentlemen, my name is Kirk
17 Battle, I'm the attorney for the City of Myrtle Beach.
18 And you've heard Mr. Nappier's version of it. I
19 thought we would start with the things that we agree on
20 with the Plaintiff. We agree that she fell at the Base
21 Rec Center. We agree she had to go to the hospital
22 afterwards, and we agree she was a volunteer.

23 The main question for you as the jury throughout
24 this trial is to assess what you think the City did
25 wrong. Now, in order to assess that, you need to

1 partially understand why we're here. This Base Rec
2 Center is a part of the parks and recreation
3 department. That includes the kiddie parks, dog parks,
4 the beach walks and everything else. That department
5 is protected by a thing that's called the Recreational
6 Use Statute.

7 Now, the judge is going to explain the laws to
8 you, but I'll explain why we feel so strongly about
9 this. That law says, you make your property available
10 to the public and you don't charge them money, they
11 come onto your property for a recreational purpose, and
12 that makes it so you don't owe them a duty. You cannot
13 be sued under litigation by them. And so the entire
14 parks and recreation system depends on that law to
15 function, and that's how it works.

16 Now, there's an exception to the law, and that
17 says if you commit gross negligence, you're still
18 liable. So the question that I would argue you need to
19 be concerned with today is do you think that the City
20 committed gross negligence. You're going to hear from
21 two employees.

22 First is Dustin Jordan. He has ten years with the
23 parks and rec department, he has five with the Base Rec
24 Center. He's going to tell you that every morning he
25 went through that facility and checked it. He's going

1 to tell you that the mats at the facility were changed
2 every two weeks, and he's going to tell you he received
3 no prior complaints from anyone and that there's been
4 no falls at this facility.

5 Second employee you're going to hear from is Pam
6 Stone. She's the parks and rec director, she's been
7 with the City for decades since the '90s, she's going
8 to explain how the volunteer program works and how the
9 Base Rec Center works. And she's also going to tell
10 you she received no complaints about the mats. And
11 she's also going to tell you that they've had no prior
12 falls at this facility.

13 Their testimony, I would argue to you, combined
14 with the evidence you'll see will show that the City
15 did not commit gross negligence. Gross negligence
16 means you did nothing. It's the failure to exercise
17 slight care. The City exercised a great deal of care
18 managing this facility.

19 As you're going through this case, I'd also like
20 to you keep in mind the question of notice as in how is
21 the City supposed to be aware of there being a problem.
22 Because the defect with this mat is not a hole, it's
23 not a rip or tear, it's not rotten, it's not saying
24 that the mats have been lying out for months on end.
25 It's saying that the mats would periodically bunch up.

1 It's not a permanent condition. For all we know, her
2 own foot going into the mat caused the problem. Or it
3 could have been someone who stepped on it before.

4 You know, under Dustin's testimony when you hear
5 it, he's going to say that he checked it that morning,
6 and he'll tell you that it was fine. So notice is also
7 a question for you.

8 Not here to be nasty, not trying to be rude or
9 insult anyone. But the City has to stand up for this
10 law and get protection under the Recreational Use
11 Statute, and I'm going to ask you throughout this trial
12 to do the same. Thank you for listening, thank you for
13 your time.

14 THE COURT: All right. Ladies and gentlemen,
15 there's one other thing I meant to tell you, and it's
16 another bad habit that these lawyers have. I did it
17 myself. They may from time to time have exhibits that
18 they want to show you. I'm not sure if they do or not,
19 but they may. And they will walk right in front of it,
20 and they will stand there, and you can't see it, it's
21 just in our blood. I don't know what it is. But if
22 that happens, if you can't see or hear for any reason,
23 again, just raise your hand. Because those lawyers
24 want you to hear and see what they are talking about.

25 And if a lawyer inadvertently stands in front of

1 an exhibit and you can't see it, well, he can't get his
2 point to you. So just raise your hand if you're ever
3 unable to see or hear what's being presented. And just
4 let me know and we'll fix it, okay.

5 Okay. Mr. Nappier, you want to go forward?

6 MR. NAPPIER: Yes, Your Honor. Your Honor, I call
7 Callie Barras to the stand.

8 CALLIE BARRAS, after being duly sworn, testified
9 as follows:

10 THE CLERK: Have a seat, please, ma'am. State
11 your name for the Court, please, ma'am.

12 THE WITNESS: Callie Barras.

13 DIRECT EXAMINATION

14 BY MR. NAPPIER:

15 Q Ms. Barras, can you please state your full name
16 again for the record.

17 A Callie Barras.

18 Q And Ms. Barras, how long have you been a resident
19 of Myrtle Beach?

20 A Well, I was a resident of Horry County for one
21 year, but I've been a resident of Georgetown County in
22 Murrells Inlet for 12 years.

23 Q Okay. And before that did you grow up in
24 Georgetown County?

25 A I grew up in Georgetown.

1 Q Okay.

2 A South Carolina.

3 Q And where did you go after you grew up?

4 A I went to -- I married a fellow from Pennsylvania,
5 so I went to Pennsylvania when we get married.

6 Q And do you have children?

7 A Yes.

8 Q Where are your children?

9 A In Pennsylvania.

10 Q Now, obviously this involves the senior bingo
11 program. Can you tell me when you first became
12 interested in senior bingo.

13 A It was 13 years ago when I first moved back to
14 South Carolina. I saw an ad in the paper for senior
15 bingo at the base. And so a couple of my friends and I
16 went. And we, you know, liked it, so we kept going.

17 Q All right. And did you eventually volunteer for
18 it?

19 A Yes.

20 Q All right. And when approximately did you start
21 volunteering for senior bingo?

22 A I want to say it was about 2005.

23 Q Okay. Where is the senior bingo?

24 A It's at the recreation center on the old Air Force
25 base.

1 Q All right. And what did you have to do to get
2 into the senior bingo?

3 A We had to fill out a form and with your social
4 security number and your address and your full name and
5 that. And then they submitted it to the City, and they
6 checked it out to see if you were clear of any
7 problems. And they accepted you if you weren't.

8 Q Okay. And when you --

9 A Didn't have anything.

10 Q So you mean they did a background check on you?

11 A Yes.

12 Q All right. And so after they did a background
13 check, is it up to the City, then, as to whether or not
14 they accept you as a volunteer?

15 A Yes.

16 Q And was the City responsible for running the bingo
17 program?

18 A Yes.

19 Q And as far as the -- who was responsible for the
20 day-to-day operations of the senior bingo?

21 A Well, it was called Sarge's Bingo, but it was
22 through the City, I always thought.

23 Q Okay. And was the -- did the City set the ground
24 rules as to what you could or couldn't do with senior
25 bingo?

1 A I would imagine.

2 Q Well, let me ask you this. Was there ever a
3 question, did a question ever come up to as to who
4 could, as far as age, who could and could not
5 participate in senior bingo?

6 A Yes.

7 Q All right. And tell me about that.

8 A It's 50 and over you were supposed to be able to
9 attend.

10 Q Right. And was there an attempt to limit it just
11 to 50 and over?

12 A Yes.

13 Q All right. And did the City make a determination
14 as to whether you could or could not do that?

15 A Well, eventually just shortly recently, they
16 wanted to let children start coming into the senior
17 bingo.

18 Q Okay. And did the City say it's okay if people
19 under age 50 come?

20 A They said they couldn't limit who came in.

21 MR. BATTLE: Your Honor, could she identify who's
22 they in this matter, at least.

23 THE COURT: Who is the --

24 THE WITNESS: The City. The City said that they
25 could not limit the age that came into the senior

1 bingo.

2 Q All right. Do you remember a specific person who
3 said that for the City?

4 A I think it was Pam Stone.

5 Q Okay, all right. So let's talk about the mats,
6 obviously. That's one of the issues here. Tell me
7 what kind of mats were used, if any, at the senior
8 bingo.

9 A They were mats with carpet on them with rubber
10 binding around the outside.

11 Q All right. And how long had they been using those
12 mats?

13 A I think as long as I've been going there.

14 Q Okay. And you heard Mr. Battle in his opening, he
15 made a reference to the fact that they are switched
16 out. Did you notice them being switched out?

17 A Yes.

18 Q Okay. And do you know about how often they were
19 switched out?

20 A About every two weeks.

21 Q Okay. Now, were there ever any problems during
22 those 11 years that you've been volunteering, were
23 there any problems or issues with these mats?

24 A Yes.

25 Q Okay. What kind of problems were there?

1 A Well, people would get their foot caught under
2 them and trip.

3 Q Okay. And was this a problem just you had?

4 A No.

5 Q All right. What other people had issues with
6 them?

7 A Different people coming into the bingo. And a
8 pizza delivery guy had a stack of pizzas, and he was
9 going through the one doorway. And he got his foot
10 caught under one, and he almost fell with those pizza
11 boxes.

12 Q Okay.

13 A He caught himself before he went down.

14 Q And so tell me for the most part since this was
15 called senior bingo, what was the age of the majority
16 of people who come to bingo?

17 A 50 to 90 something.

18 Q And do some of them have problems walking?

19 A Yes.

20 Q Do some of them have to use canes?

21 A Yes.

22 Q So footing is important?

23 A Yes.

24 Q Let me ask you --

25 MR. NAPPIER: Could you mark this for

1 identification purposes.

2 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
3 for identification only.)

4 Q I'm going to hand you what's been marked for
5 identification purposes as Exhibit No. 1, you can take
6 it. Do you recognize what this is a picture of?

7 A Yes.

8 Q And what is that?

9 A That's a carpet in between the two -- in between
10 the doorway.

11 Q All right. Is that a carpet -- well, an example
12 of a mat used at the rec center?

13 A Yes.

14 Q Now, that is not the carpet that you fell on; is
15 that correct?

16 A No.

17 Q But is that an accurate example of the type of
18 mats that were used?

19 A Yes.

20 Q Are there any wave issues, as they've been talked
21 about, on that carpet?

22 A Yes.

23 Q Is that something that you were referring to?

24 A Yes.

25 Q All right. And is that, then, a true and accurate

1 depiction of the carpets or the mats that were used at
2 the recreation center?

3 A Yes.

4 MR. NAPPIER: Your Honor, I move to introduce this
5 Exhibit No. 1.

6 THE COURT: Without objection.

7 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted
8 in evidence.)

9 MR. NAPPIER: Your Honor, may I publish the
10 picture to the jury?

11 THE COURT: Certainly.

12 Q Now, you indicated that that was an example of
13 some of the waves, if you will; is that correct?

14 A Yes.

15 Q And the waves were not an issue that were there
16 every single day; is that correct?

17 A No.

18 Q But was this still a recurring problem?

19 A Yes.

20 Q All right. And as far as complaints, did anybody
21 complain about problems with the carpets or the mats?

22 A I know for sure when that meeting took place with
23 Pam Stone and she came in the kitchen to us, we did
24 tell her about the rugs tripping people.

25 Q All right. Well, let me back you up, because

1 you're referring to that meeting.

2 A Okay.

3 Q So, what is that meeting?

4 A Well, there was a meeting with some of the
5 department heads of the bingo about the age that the
6 people could come into the bingo.

7 Q All right.

8 A And whenever they got done, they came into the
9 kitchen and explained to us what that meeting was
10 about.

11 Q All right. And Pam Stone was one of the people
12 that came out into the kitchen area?

13 A Yes.

14 Q All right. And do you know approximately when
15 this meeting took place?

16 A Not really.

17 Q Okay. Do you know whether or not it was in any --
18 relative to the time when you fell, do you have any
19 idea as to how close it was to that time period?

20 A That was before I fell.

21 Q Okay. There's no question about that?

22 A No question.

23 Q All right. And so they came into the kitchen
24 after they had their meeting --

25 A Yes.

1 Q -- you indicated. And then what happened next,
2 what happened in the kitchen?

3 A We -- Pam Stone told us about what happened in the
4 meeting with the age group thing.

5 Q And tell us, what did she tell you about that?

6 A That they could not keep the children from the
7 senior bingo.

8 Q Okay.

9 A But that we didn't -- different ones were talking
10 about we have things that were donated for the senior
11 bingo that couldn't go to the children because if they
12 did, then we would forfeit those benefits for the
13 seniors, so...

14 Q Okay, all right. And so when she first came into
15 the kitchen, that was the topic of conversation?

16 A Yes.

17 Q All right. So after that conversation, what was
18 next?

19 A Well, we brought up the fact that the carpets were
20 tripping people.

21 Q All right. And did you tell them what
22 specifically was the problem with the carpets?

23 A Yes.

24 Q All right. And you told this to Pam Stone?

25 A Yes.

1 Q Are you sure it was Pam Stone?

2 A I'm absolutely positive.

3 Q Do you see Pam Stone in this courtroom?

4 A She's right there.

5 Q All right. And you're referring to the lady in
6 the white jacket?

7 A The blond-haired lady.

8 Q Okay, thank you. All right. So who else was
9 involved in that conversation?

10 A Everybody in the kitchen. There was about five or
11 six of us.

12 Q Do you know any specific names?

13 A Irene Demczuk, Oscar Creel -- Creed. And there
14 was Leroy -- I can't remember his last name.

15 Q Okay.

16 A Leroy was there and a couple other people.

17 Q All right. And so after -- well, tell me about
18 that conversation with Ms. Stone. After you had
19 finished talking about the age restrictions or lack
20 thereof, tell me about the conversation with Ms. Stone.

21 A Well, we brought up the fact that the carpets were
22 tripping people.

23 Q Okay.

24 A And was there something we could do to keep them
25 from tripping, and maybe we could pick them up and roll

1 them up into a corner while we were there. And she
2 says, no, she says, because we have bigger groups than
3 you here, and we need them for spillage. And we says,
4 well, if we spill anything we'll wipe it up. Could we
5 just move them aside so that we don't trip on them.

6 MR. BATTLE: Objection, Your Honor. She's putting
7 words in Pam Stone's mouth at this point.

8 THE COURT: She was testifying as to what she
9 said.

10 MR. BATTLE: Sorry, Your Honor. Hearsay.

11 THE COURT: I'll allow it.

12 THE WITNESS: So the answer was, no, the rugs
13 stay.

14 Q Okay, all right. And were the members open to any
15 kind of solution to resolve this issue with the bad
16 mats?

17 A Not that we got that day, no.

18 Q No, I'm asking, were you as --

19 A Yes. We told them we would roll them up, put them
20 in the corner. And she said no.

21 Q Okay. And were you open to any other solutions if
22 they would have presented them to you?

23 A If we spilled, we would wipe it up.

24 Q No, no. I don't think you're understanding my
25 question. My question to you is were you open to other

1 solutions other than rolling up the mats if they
2 presented them to you?

3 A Yes. Yes.

4 Q All right. Did they present any solutions to you
5 to deal with this issue with the mats and the waves?

6 A No, not at that time.

7 Q Okay. Did they at any time before you fell
8 present a solution to you for dealing with the problems
9 with the mats?

10 A No.

11 Q And what is your understanding of Ms. Stone's
12 position with the City?

13 A That she was the head of all the recreation --

14 Q Okay.

15 A -- activities.

16 Q So she would have been over or a boss of the
17 gentleman that was actually working at that rec center;
18 is that right?

19 A Yes.

20 Q And who was that, who's the person that actually
21 is there?

22 A Dustin.

23 Q Okay. And do you know Dustin?

24 A Yes.

25 Q Okay. Has he been there during the 11 years that

1 you worked?

2 A Part of it.

3 Q Okay. So is he somebody that you have seen before
4 and talked to before?

5 A Yes.

6 Q After Ms. Stone indicated that she would not allow
7 the taking up of mats, did she ever approach any
8 members of the volunteer staff about other possible
9 solutions?

10 A Not that I know of.

11 Q Okay. As you sit here today, are you aware of her
12 ever attempting before your fall to resolve the
13 problem?

14 A No.

15 Q Okay. Take me to April 8th, 2015. Tell me what
16 was happening that morning.

17 A Well, everybody was going about their chores that
18 they had to do. And I was -- I happened to fix trays
19 and the stuff that we usually put out. And when I
20 turned around to head back in the other direction, my
21 foot caught under the carpet. And I could not right
22 it, and it came with me. And when I fell it was under
23 my leg and all bunched up.

24 Q How did you -- what did you land on?

25 A I landed on the cement floor.

1 Q And were you carrying anything at the time?

2 A No.

3 Q And what hurt immediately?

4 A My head.

5 Q Just your head?

6 A My arm, my knees, my foot.

7 Q And what was -- if you had to say there was one
8 thing that hurt more than anything else?

9 A My head.

10 Q No question about that?

11 A No question.

12 Q Okay. All right. What happened next?

13 A Well, I was dazed, so somebody called an
14 ambulance.

15 Q All right. And did EMS come?

16 A Yes.

17 Q All right. And what did they -- when they got to
18 the scene to assist you, what did they do?

19 A They put a thing around my neck.

20 Q A cervical collar?

21 A Yes. And then they checked me over a little bit,
22 and they put me on a gurney, took me to the hospital.

23 Q And where did they transport to?

24 A Grand Strand.

25 Q And at Grand Strand were you then examined in the

1 emergency room?

2 A Yes.

3 MR. NAPPIER: Mark this for identification
4 purposes, please.

5 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked
6 for identification only.)

7 Q I'm going to hand you what's been marked for
8 identification purposes as Plaintiff's Exhibit No. 2.
9 Is that a summary of your medical bills?

10 A Yes.

11 Q Attached to that, are those your medical -- actual
12 medical bills attached to it?

13 A Yes.

14 Q Okay.

15 MR. NAPPIER: Your Honor, I'd move to enter
16 Exhibit No. 2 into evidence.

17 THE COURT: No objection. It's admitted.

18 (WHEREUPON, Plaintiff's Exhibit No. 2 was admitted
19 in evidence.)

20 MR. NAPPIER: Thank you, Your Honor.

21 Q All right. So on this statement do you have a
22 charge for what you incurred for the transport for the
23 hospital by EMS?

24 A Yes.

25 Q And how much was that?

1 A \$812.50.

2 Q All right. So now you get to the hospital. Tell
3 me what happens there.

4 A Well, they take me in the little room, examination
5 room, and I was put on a bed. And couple people came
6 in and hooked me up to an IV. And then I got -- they
7 left and then I got really sick, and I was throwing up
8 all over.

9 Q Were you in the room by yourself when that
10 happened?

11 A I was in the room by myself.

12 Q Okay.

13 A And I yelled for help how many times, but I
14 couldn't get anybody to come.

15 Q Where was your -- are you married?

16 A Yes.

17 Q You indicated you were. Was your husband there?

18 A Yes.

19 Q Did they allow him to come back with you?

20 A He was in the room, but I sent him out for help.

21 And so he was still out of the room.

22 Q All right. So eventually did they come and assist
23 you with being sick?

24 A Yes.

25 Q What happened next?

1 A Well, I was throwing up all over everything. They
2 attempted to clean me up, and eventually, you know,
3 they gave me a shot, so --

4 Q Was that for nausea?

5 A Yes.

6 Q All right. And then what happened?

7 A Well, the doctor came in and he admitted me for
8 the night.

9 Q All right.

10 A And they did a CAT scan, and I think it was an
11 MRI.

12 Q Okay. So they did some tests on you to check you
13 out?

14 A Yes.

15 Q All right. And did they have to remove your
16 clothes and all?

17 A Yeah. They cut my clothes off.

18 Q All right. So they actually had to cut them off
19 of you?

20 A Yes.

21 Q So you're in the hospital room, they've done a lot
22 of tests for you, so you end up having to spend the
23 night; is that right?

24 A Yes.

25 Q Okay. And describe what you were feeling then.

1 A Embarrassed, pain.

2 Q Were you scared?

3 A Yes.

4 Q Okay. And why?

5 A Because I didn't know exactly how -- how much
6 damage I had had in my body.

7 Q Okay. And does a head trauma have a special
8 meaning to you?

9 A Yes.

10 Q Why is that?

11 A Because I had a concussion.

12 Q Okay. And had that happened to anybody else in
13 your family?

14 A Yes.

15 Q To who?

16 A My husband.

17 Q Tell me what happened with your husband.

18 A He was mugged and almost killed with a baseball
19 bat.

20 Q Okay.

21 A And he's not good today. He has seizures really
22 bad. He lost his job which was our future. And I take
23 care of him from day to day. I never know when a
24 seizure is going to come on. He lost his driver's
25 license, he lost his privilege to be his own man. And

1 he lost a privilege to be my husband as a husband and
2 wife should be. He takes medications, handfuls, three
3 times a day to keep the seizures back. So I was really
4 worried.

5 Q You were worried that something like this would
6 happen to you from your head trauma?

7 A Yes.

8 Q So your husband wasn't in a position to then
9 really drive you anywhere; is that correct?

10 A No.

11 Q Because he can't drive?

12 A He can't drive.

13 Q So as a result of the stay at the hospital, did
14 you -- strike that. Were you able to leave the
15 hospital the next day?

16 A Yes.

17 Q All right. And so how did you go about getting
18 home?

19 A My brother-in-law came and got me.

20 Q Okay. So that's your husband's brother?

21 A Yes.

22 Q And he was able to take you home?

23 A Yes.

24 Q Were you still in a brace?

25 A They took it off just before I went home.

1 Q Okay. So you spent the night in the brace?

2 A Yes.

3 Q Okay.

4 MR. NAPPIER: I'm going to mark these for
5 identification purposes as three and four.

6 (WHEREUPON, Plaintiff's Exhibit Nos. 3 and 4 were
7 marked for identification only.)

8 Q I hand you two photographs which have been marked
9 as Exhibits 3 and 4 for identification purposes. Who
10 took those pictures?

11 A I did.

12 Q You took them of yourself?

13 A Yes.

14 Q Do those pictures accurately depict how you looked
15 as you went through the healing process with your face?

16 A Yes.

17 MR. NAPPIER: Your Honor, I'd ask to admit
18 Exhibits 3 and 4 into evidence.

19 THE COURT: Without objection.

20 (WHEREUPON, Plaintiff's Exhibit Nos. 3 and 4 were
21 admitted in evidence.)

22 MR. NAPPIER: Your Honor, may I present them to
23 the jury, please.

24 THE COURT: Certainly.

25 Q Okay. You still have, I believe it's Exhibit 2 in

1 front of you that has your medical bills; is that
2 correct?

3 A Yes.

4 Q And did you incur charges from Grand Strand
5 hospital?

6 A Yes.

7 Q And how much were your medical bills from Grand
8 Strand hospital?

9 A 39,016.70.

10 Q And did you also incur charges from the GSS Trauma
11 and from Grand Strand ER Physicians?

12 A Yes.

13 Q All right. And was the GSS Trauma bill \$507?

14 A Yes.

15 Q And the Grand Strand ER Physicians bill, was that
16 \$572?

17 A Yes.

18 Q So just from your stay at the hospital, you
19 incurred \$41,000 in medical bills; is that right?

20 A Yes.

21 Q Is that bill for Grand Strand hospital still
22 outstanding?

23 A Yes.

24 Q After you were taken home by your brother-in-law,
25 how were you feeling at that time?

1 A I was sore, hurting.

2 Q Okay.

3 A Tired.

4 Q What was primarily hurting you?

5 A Yes.

6 Q No. I said what was primarily hurting you?

7 A My head and my foot.

8 Q So your foot was still bothering you?

9 A Yes.

10 Q And did you ever go and see your own family
11 physician?

12 A Yes.

13 Q All right. And who is your family doctor?

14 A Dr. Karen Mahood of Sayebrook.

15 Q And is Dr. -- when did you go see Dr. Mahood?

16 A About a week later, I think.

17 Q Okay. And let me back you up a minute. When you
18 were at the hospital, did you also have radiology
19 bills?

20 A Yes.

21 Q All right. How much were the radiology bills?

22 A \$867.

23 Q And so then you went and saw Dr. Mahood; is that
24 correct?

25 A Yes.

1 Q And when did you see Mr. Mahood?

2 A About a week later.

3 Q Okay. And what were the charges from Dr. Mahood
4 for that visit?

5 A \$110.

6 Q And do you know what you were primarily
7 complaining of when you went and saw Dr. Mahood?

8 A My head and my foot, my shoulder.

9 Q Okay. So your shoulder was still bothering you as
10 well?

11 A Yes.

12 Q And when you -- did you go back or did you go see
13 another doctor after you saw Dr. Mahood?

14 A I went to Southern Urgent Care for my foot.

15 Q Okay. And what did they do at Southern Urgent.
16 Care?

17 A They took X-rays of my foot.

18 Q All right. Was your foot broken?

19 A No.

20 Q Was it sprained?

21 A Yes.

22 Q Okay. Did they do anything for the foot?

23 A They put me in a black shoe.

24 Q So one of those boots?

25 A Orthopedic shoe, yes.

1 Q So how long did you have to wear that?

2 A Couple weeks I wore it around the house.

3 Q Okay. Well, let me ask you this. We saw the
4 pictures of your face and all after the fall took
5 place. Did you -- were you going out and about town
6 after that fall?

7 A No.

8 Q All right. Were you capable of doing that?

9 A I was capable, but I didn't feel like I wanted to
10 because of my face being so bruised.

11 Q Okay. And why was that, why was that bothersome
12 to you?

13 A Because some people had asked me who beat me up,
14 and did my husband beat me up.

15 Q Okay. Were they joking with you?

16 A I think so, but it was still embarrassing.

17 Q Sure, sure. All right. So were you pretty much
18 stuck at home, then?

19 A Yes.

20 Q For weeks at a time?

21 A Yes.

22 Q And your husband couldn't take you anywhere; is
23 that right?

24 A No.

25 Q Did you get help being able to take care of your

1 husband and doing things for him?

2 A No. I took care of him myself.

3 Q Did you?

4 A Yes.

5 Q And did your father -- or I'm sorry, your
6 brother-in-law and sister-in-law, were they able to
7 assist some?

8 A My brother-in-law would take him if he had to go
9 someplace.

10 Q Okay. So if he had to go out, he was able to do
11 that?

12 A He took him, yes.

13 Q Okay. So were you limited in your ability to go
14 out and drive at first?

15 A Yes.

16 Q And why is that?

17 A Because I couldn't turn my neck to see different
18 ways of traffic.

19 Q Yeah. And so the inability to turn your neck kept
20 you from driving for a while?

21 A Yes.

22 Q And did you end up having to go back to your
23 family physician?

24 A Yes.

25 Q And when did you do that?

1 A I think it was early May.

2 Q All right. And what were you complaining of
3 primarily when you went back to the physician?

4 A My neck.

5 Q Your neck was still hurting?

6 A Yes.

7 Q All right. And did you eventually go to physical
8 therapy?

9 A Yes.

10 Q And for how many months did you go to physical
11 therapy?

12 A Couple months.

13 Q And when did you finish up physical therapy?

14 A September.

15 Q September of '15. So it was a period --

16 A Yes.

17 Q -- of about five months during which you were
18 getting treated?

19 A Yes.

20 Q And how much was the physical therapy bills?

21 A \$4,887.23.

22 Q So how much are your total medical bills?

23 A \$47,128.93.

24 MR. NAPPIER: Mark this, please.

25 (WHEREUPON, Plaintiff's Exhibit No. 5 was marked

1 for identification only.)

2 Q This is Exhibit 5 for identification purposes. Is
3 this simply a blown up version of your damages?

4 A Yes.

5 MR. NAPPIER: Your Honor, I move to enter Exhibit
6 No. 5 into evidence.

7 THE COURT: Without objection.

8 (WHEREUPON, Plaintiff's Exhibit No. 5 was admitted
9 in evidence.)

10 MR. NAPPIER: Your Honor, may I publish the
11 Exhibit 2, the medical bills.

12 THE COURT: Yes, you may.

13 MR. NAPPIER: Thank you.

14 Q Now, everyday care, things like cleaning the
15 house, that kind of thing, did you have some
16 limitations as to what you could do?

17 A I couldn't bend over because my head hurt bad and
18 my neck. I didn't pull on anything or lift anything.

19 Q And how long did that last?

20 A It lasted two, three months.

21 Q And what about sleeping, were you able to sleep?

22 A I sleep in my lounge chair. I sit up.

23 Q All right. During that time period?

24 A And even yet.

25 Q And how long were you in your -- sleeping in a

1 chair?

2 A I still sleep in a chair.

3 Q Were you sleeping in a chair before this?

4 A No.

5 Q So approximately how long was it until you were
6 able to move around without any further pain?

7 A Probably about three months or so.

8 Q Okay. And then you finished -- you said you
9 finished physical therapy about September?

10 A September.

11 Q Okay. At that point were you --

12 A I was a lot -- my neck was a lot looser, and I
13 could turn to manage to see the traffic coming on both
14 sides at that time.

15 Q So you were able to drive?

16 A Yes. So then he released me.

17 Q Okay. Now, did your fall take place within weeks
18 of the meeting that took place with Pam Stone?

19 A Yes.

20 Q And now -- and you, I believe, indicated that the
21 City after that meeting did nothing to rectify that
22 situation regarding the mats; is that right?

23 A Yes.

24 Q Now, how long did you say you've been volunteering
25 for the City?

1 A At that time, it was about 10 to 11 years.

2 Q You still volunteering for them?

3 A Yes.

4 Q Now, after you fell, did anybody from the City
5 call or check on you to see how you were doing?

6 A No.

7 Q How about when you got home, did they call and
8 check to see if you were doing any better?

9 A No.

10 MR. NAPPIER: Thank you. Please answer any
11 questions that Mr. Battle may have.

12 THE COURT: Mr. Battle.

13 CROSS-EXAMINATION

14 BY MR. BATTLE:

15 Q Ms. Barras, do you need a break, glass of water or
16 anything like that?

17 A No. I'm fine, thank you.

18 Q Ms. Barras, were you ever charged money to access
19 the Base Rec Center?

20 A No.

21 Q Did you pay a membership fee with senior bingo?

22 A No.

23 Q Was there a coffee donation jar there?

24 A Yes.

25 Q Was that mandatory?

1 A No.

2 Q And you were there as a volunteer to put on a
3 bingo game; correct?

4 A Yes.

5 Q Okay. Do you think that putting on a bingo game
6 is a recreational activity?

7 MR. NAPPIER: Objection, Your Honor. He's asking
8 her to draw a legal conclusion.

9 THE COURT: And that is correct, Mr. Battle. That
10 would require a legal opinion; would it not?

11 Q When you volunteered for senior bingo, what did
12 you do?

13 A I call numbers back when people get bingos, and I
14 help with putting snacks out and for the -- when we
15 have a little break, they go and have a cookie or a
16 piece of cake or something.

17 Q Okay. Would you play bingo after you were done
18 setting up food?

19 A Yes.

20 Q So you did play bingo while you were there?

21 A Yes.

22 Q Okay. Who recruited you to join the senior bingo
23 program?

24 A Well, a couple people that I know were already
25 volunteers, and they needed some other people to help.

1 So they encouraged me to put my name in, so I did.

2 Q Okay. And those other members were -- those other
3 people were volunteers with senior bingo?

4 A Yes.

5 Q Okay. Did you fill out a background form to
6 become a volunteer?

7 A Yes.

8 Q Who gave you that form?

9 A It came from the front desk.

10 Q Did you -- are you sure you didn't receive it from
11 another member of senior bingo?

12 A Well, yes, I would imagine it was. Because they
13 had to get it from the front desk.

14 Q And the fall took place in the kitchen of the Base
15 Rec Center; correct?

16 A Yes.

17 Q Okay. Can anyone go back into the kitchen, or is
18 it only volunteers?

19 A Only volunteers of the kitchen.

20 Q So the general public does not go back into the
21 kitchen; correct?

22 A No.

23 Q Okay. Who is in charge of senior bingo?

24 A Douglas Williams.

25 Q Who is Douglas Williams?

1 A He's called Sarge, he's the head of the bingo.

2 Q Okay. And does he assign tasks and resolve
3 disputes among people?

4 A Yes.

5 Q Do you take orders from City officials in the
6 day-to-day running of bingo?

7 A No. We go to Sarge, and he gives the orders or
8 tells us what to do.

9 Q Does senior bingo provide its own food?

10 A Yes.

11 Q Does senior bingo provide its own prizes?

12 A Yes.

13 Q Okay. And do you provide your own bingo
14 equipment?

15 A Yes.

16 Q Okay. What does the City provide to you?

17 A The hall.

18 Q During your deposition we had a dispute about a
19 waiver. You did not sign the waiver; correct, do you
20 recall?

21 A Waiver for what?

22 Q Do you recognize that document, Ms. Barras?

23 A Yes, I do.

24 Q Can you describe it for me.

25 A It's a sheet where everybody's name is on that

1 attends the bingo.

2 Q Okay. And is the date of that April 8th, 2015?

3 A Yes.

4 Q You did not sign that document; correct?

5 A That's correct.

6 Q During your deposition, did you mistakenly think
7 that was your signature?

8 A Yes.

9 Q Okay. And you later corrected that with an
10 affidavit?

11 A Yes.

12 Q Okay. Do you sign a waiver to enter the Base Rec
13 Center now?

14 A We sign a sheet.

15 Q Okay. Have you ever looked at that sheet?

16 A Recently, yes.

17 Q Who filled out your name on that sheet?

18 A One of the ladies at the front desk.

19 Q Is that woman a member of senior bingo?

20 A Yes.

21 Q What is her name?

22 A We know her as Arlene.

23 Q Is that a photograph of Arlene?

24 A Yes.

25 Q And she is a member of senior bingo?

1 A Yes.

2 Q Okay. So every time you enter the Base Rec Center
3 you're supposed to sign in; correct?

4 A Yes.

5 Q Are you a member of any other groups or volunteer
6 organizations besides senior bingo?

7 A Not at this time.

8 Q Okay. Is senior bingo your main social activity?

9 A Yes.

10 Q How often do you do senior bingo?

11 A Two days a week.

12 Q Do you know most of the other volunteers?

13 A Yes.

14 Q Are you friends with them?

15 A Some of them.

16 Q How long have you known Irene Demczuk?

17 A As long as I've been going there.

18 Q How long have you known Leroy Marcotte?

19 A About six years.

20 Q Now, earlier in the Plaintiff's testimony you
21 testified that LeRoy was present at the meeting with
22 Pam Stone; did you not?

23 A Yes.

24 Q And do you remember when your deposition was taken
25 on October 26th of 2016?

1 A Yes.

2 Q Do you remember what you said at that deposition
3 when I asked how many people were there?

4 A I don't recall what I said.

5 Q Okay. If your deposition testimony did not
6 mention LeRoy, would you disagree with that?

7 A I'm not sure. That was back in October.

8 Q Is your memory better now?

9 A Well, I'm not sure.

10 MR. BATTLE: Your Honor.

11 THE WITNESS: I don't know what you're trying
12 to...

13 Q And that's my fault, Ms. Barras.

14 A I mean, because October was a long time, and I
15 don't remember exactly what I said.

16 Q That's fine, Ms. Barras.

17 MR. BATTLE: May I authenticate the Plaintiff's
18 deposition.

19 THE COURT: Certainly, you may. All right, let
20 the record reflect I have a sealed copy of the
21 deposition of Callie B. Barras, the Plaintiff, taken
22 October 26th, 2016 by counsel for the Defendant. My
23 court reporter, Renee Tollison. And we'll open the
24 sealed deposition. And I'm going to admit it as a
25 Court's Exhibit.

1 If you would, Ms. Bautz, just mark it as a Court's
2 Exhibit, then Mr. Battle can use it.

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 identification only.)

5 Q Ms. Barras, if you could, please, turn to page 24
6 of your deposition. And starting at line three where
7 the question is, So Pam Stone had a private meeting --
8 do you see that?

9 A Um-hum.

10 Q Okay. Let's see. So Pam Stone had a private
11 meeting with them, and then she was in the kitchen
12 speaking with you? Answer: Yeah.

13 Was anyone else in the kitchen with you? Yes.

14 Question: Who was in there? Irene, Oscar, Sarge.

15 Do you remember giving that testimony?

16 A Yes.

17 Q So your testimony today is you've now added LeRoy
18 to the group; yes?

19 A Well, I'm not sure who was all in the kitchen. I
20 gave you the names of the ones that I thought were in
21 the kitchen.

22 Q Okay. Okay. So you're not sure who was in the
23 kitchen with you when you told Pam Stone?

24 A I remember Irene, Oscar and Sarge.

25 Q Okay. So you're not sure if LeRoy was in there or

1 not?

2 A I'm not sure.

3 Q Okay. Was the mat ripped or torn, the mat that
4 you tripped on; do you recall?

5 A Neither one.

6 Q Okay. Was it rotten or falling apart?

7 A No.

8 Q And do the mats always have humps in them, or is
9 it only some of the times?

10 A Most of the times.

11 Q Now, the mats don't slide around; correct?

12 A Sometimes.

13 Q Okay. Can you please turn to page 61 of your
14 deposition. That's line 13. And when those mats are
15 laid down on that tile floor, do they stay still on it;
16 in other words, do they stick enough to the tile where
17 they don't slide around? Answer: Yes.

18 So you disagree with that statement now?

19 A Yes, I do.

20 Q Okay. So your testimony has changed?

21 A Yes, it has changed. Because they do -- when your
22 foot hits them, they do move around.

23 Q Okay. In your opinion, were the mats always
24 dangerous?

25 A Not until I saw people getting their foot caught

1 under them.

2 Q When did that happen?

3 A Shortly after I started going to bingo.

4 Q Do you remember what kind of shoes you were
5 wearing on the day of the accident?

6 A Yes, I do.

7 Q What were you wearing?

8 A I had a sandal shoe.

9 Q You were wearing sandals?

10 A Open toe shoe, yes.

11 Q Okay. Have you ever worn flip flops in the
12 kitchen area?

13 A Yes, I have.

14 Q Okay. Do you think that a flip flop might be a
15 tripping hazard with a mat?

16 A Not no more than any other shoe.

17 Q When you tripped, it was your right foot that went
18 under the mat; correct?

19 A Yes.

20 Q When you fell, you hit the right side of your
21 body?

22 A Yes.

23 Q The right side of your head as well?

24 A Yes.

25 Q And you had a right knee replacement in 2005;

1 correct?

2 A Yes.

3 Q And did that knee replacement cause your foot to
4 drag at all?

5 A No.

6 Q When the EMTs arrived, did you refuse the back
7 board?

8 A I think I did, yes.

9 Q Okay. And did you later have to get physical
10 therapy for your neck?

11 A Yes.

12 Q Okay. You spent one night in the hospital;
13 correct?

14 A Yes.

15 Q And you had to wear a boot for a sprained ankle on
16 your right foot; correct?

17 A Yes.

18 Q Based on your testimony, is it accurate to say
19 that you knew the mats were a hazard before you fell?

20 A Yes.

21 Q Okay. So you knew they bunched up before the
22 fall?

23 A Yes.

24 Q Were you looking for the mats that day when you
25 were in the kitchen?

1 A No.

2 Q Did you see the hump in the mat that you tripped
3 on, or did you assume it was there?

4 A Well, my foot went under it, so I didn't see it
5 before my foot went under it.

6 Q So you never saw a hump in the mat?

7 A It was a close area that I was in, and I didn't --
8 I wasn't looking down at the mat, I was looking
9 straight ahead to where I was going.

10 Q I understand, Ms. Barras. But my question is, are
11 you assuming that your foot went under -- are you
12 assuming that there was a hump on the mat, or a wave?

13 A Yes.

14 Q Okay. Do you know the exact date that you
15 complained to Pam Stone about the mats?

16 A I think it was between early May -- March to the
17 middle of March.

18 Q The date, mid March. Now, I'm a little bit
19 confused because in your discovery responses you stated
20 -- do you recall going through the discovery responses
21 with your attorney? Did you help your attorney answer
22 interrogatories in this case?

23 A Could you explain that a little bit.

24 Q One moment.

25 THE COURT: Interrogatories are questions about

1 the case that are posed by the other side that you're
2 required to answer.

3 THE WITNESS: Did I help my attorney what?

4 Q Did you give your attorney any information during
5 the discovery process of this trial?

6 A I really don't understand the question.

7 Q Did you talk with your attorney at all before the
8 day of trial?

9 A Before the day of trial. Before this trial?

10 Q Yes, ma'am.

11 A He asked me -- he told me when -- that we were
12 going to be coming up this week for the trial.

13 Q Sorry, Ms. Barras.

14 A Okay.

15 Q Do you recognize this document, Ms. Barras?

16 A Yes.

17 Q Can you explain to me what that document is.

18 A It's the names of the people that were in the
19 kitchen and pictures of the mats.

20 Q Did you go through that document with your
21 attorney?

22 A Through this?

23 Q Yes.

24 A This document right here?

25 Q Yes.

1 A No, I did not.

2 Q No. You've never seen that document before?

3 A I have, never seen this document.

4 Q Can you explain to me why -- well, here. You
5 agree that the fall was April 8th; right?

6 A Yes.

7 Q Interrogatory question, this is a question I sent
8 to your attorney asking him for information about this
9 case.

10 A Okay.

11 Q List each time the Plaintiff reported the
12 condition of any defect at the recreation center, who
13 they reported it to and what the defect was. Include
14 the name of any agents of the Defendant.

15 The answer given by your attorney in this case is,
16 approximately five days before the Plaintiff fell she
17 had notified Defendant's employee, Pamela Stone, that
18 the carpets were being used often and that people
19 stumbled over the carpets.

20 MR. NAPPIER: Your Honor, I'm going to object. He
21 asked her whether or not she had seen these questions
22 before and whether she was familiar with them. I'm not
23 quite sure what she's -- how she's supposed to respond
24 to this.

25 THE COURT: Well, they are her responses to

1 discovery, and I will allow him to ask her if she made
2 those answers.

3 Q Did you tell your attorney that you told Pamela
4 Stone about the problem with the mats five days before
5 you fell?

6 A I don't think it was five days before I fell.

7 Q Do you know why this was your answer to a
8 discovery question in this case, then?

9 A No.

10 MR. BATTLE: Your Honor, I would like to publish
11 this in the record.

12 THE COURT: I will allow you to ask her about any
13 responses she made. I would not offer it -- I mean,
14 admit it at this point. But you can certainly ask her
15 about any of the questions, any of the interrogatories
16 and her responses.

17 MR. BATTLE: Okay.

18 Q So you have no idea why your discovery responses
19 say that you told Pamela Stone about the mats on
20 April 3rd, 2015?

21 A I'm not sure. I'm really not sure.

22 Q Okay. And you contend that you told Pamela Stone
23 about the mats in mid March?

24 A That's when I thought it was. I mean, you know, I
25 don't have a calendar in front of me, and I don't

1 remember dates too well.

2 Q Okay, okay. I understand, Ms. Barras, and I can
3 move on from it. What was the purpose for Pam Stone
4 being there?

5 A She had a meeting with some people in one of the
6 other rooms.

7 Q Okay. And was that -- I believe you testified
8 earlier that it was about people under 50 at senior
9 bingo?

10 A What I was told, that's what the meeting was
11 about.

12 Q All right. And then you're positive that the
13 meeting happened before the fall?

14 A Yes.

15 Q Just one moment, Ms. Barras, thank you so much.
16 If I could see Exhibit 1, please.

17 MR. BATTLE: Can I go ahead and mark this as an
18 exhibit, Your Honor?

19 THE COURT: Sure.

20 (WHEREUPON, Defendant's Exhibit No. 1 was marked
21 for identification only.)

22 MR. BATTLE: Permission to publish it to the jury,
23 sir?

24 MR. NAPPIER: I have no objection.

25 THE COURT: Without objection.

1 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
2 in evidence.)

3 Q And then, referencing Exhibit 1, the photograph of
4 the mats, Ms. Barras.

5 A Yes.

6 Q When did you take that photograph?

7 A Well, this one doesn't have a date on it, so I
8 can't tell you.

9 Q Was it about eight to ten months after your fall?

10 A Possible, yes.

11 Q Okay. If you gave me a time in your deposition,
12 would you be comfortable with me telling you that?

13 A Yes.

14 Q Okay. I believe you said -- if you flip to page
15 32, ma'am, page 32, line three, did you take those
16 photographs, yes I did. When did you take them, took
17 these photographs ten months, eight months after my
18 fall. Are you comfortable with that answer still?

19 A Yes.

20 Q Okay. So that's not the actual mat that made you
21 trip?

22 A Not the actual mat, no.

23 Q Okay. What were the dimensions of the mat you
24 photographed; what was the size of it?

25 A Well, I didn't -- I didn't measure them and take

1 the measurement, but...

2 Q Do you have a guess?

3 MR. NAPPIER: Objection, Your Honor. Asked and
4 answered.

5 THE COURT: I'll allow him.

6 Q Was it the same size as the mat you tripped on?

7 A It might have been a little wee bit smaller. That
8 one looks to be about -- I don't know, I don't know.

9 Q Okay. So you're not -- it's not the same mat, and
10 you're not sure if it's the same length either?

11 A No.

12 Q So eight to ten months after your fall, is that
13 about the time you started thinking about pressing a
14 case against the City?

15 A No.

16 Q When did you start to think it or consider it?

17 A When my bills started piling up.

18 MR. BATTLE: Just one moment, Your Honor.

19 THE COURT: All right.

20 Q Ms. Barras, you said that you attended bingo
21 because of a newspaper ad that you saw?

22 A Yes.

23 Q You don't have that newspaper ad now?

24 A No.

25 Q Okay. Were members of senior bingo bringing their

1 children to the program?

2 A Just recently they had started.

3 Q Okay.

4 A Bringing grandchildren. And when they came on
5 vacation, if the kids were there, then they wanted to
6 bring them too.

7 Q Okay.

8 MR. BATTLE: No further questions, Your Honor.

9 THE COURT: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. NAPPIER:

12 Q Now, Ms. Barras, the discovery that you were asked
13 about, you didn't sign that, I signed it; is that
14 right?

15 A Yes.

16 Q Okay. Now, what's the date of that discovery?

17 A May 12th, 2016.

18 Q 2016. At the time that that was done, we started
19 taking the depositions of the other witnesses?

20 A Yes.

21 Q Well, didn't your deposition take place, I
22 believe, it was October; is that right? Let me see.
23 Do you recall when your deposition took place?

24 A No, I don't.

25 Q Was it in October, I believe, of 2016; does that

1 sound right?

2 A Yes.

3 Q Okay. So your deposition was taken after the
4 discovery. And then, isn't it true that other
5 witnesses' depositions were taken later on as well; is
6 that right?

7 A Yes.

8 Q All right. So more information came out after the
9 written discovery first went out; is that correct?

10 A Yes.

11 Q Okay. Now, you were asked regarding LeRoy
12 Marcotte. Mr. Marcotte, you've indicated in your
13 direct testimony, you believe that he was there?

14 A Yes.

15 Q And then you were asked about your deposition that
16 took place in October of '16 --

17 A Yes.

18 Q -- in which at that time you had said -- you
19 didn't mention his name; is that right?

20 A Right.

21 Q Mr. Marcotte's deposition was taken after that;
22 isn't that right?

23 A Yes.

24 Q Okay. And were you present at his deposition?

25 A Yes.

1 Q All right. And in his deposition he stated he was
2 there; didn't he?

3 A Yes.

4 Q Okay. Looking for the sign-in sheet. This is
5 Exhibit No. 1, and this is the sign-in sheet,
6 Defendant's Exhibit No. 1. Now, is your signature on
7 that?

8 A No.

9 Q All right. Is your name written on it?

10 A Yes.

11 Q Is your name spelled right?

12 A No.

13 Q How is your last name spelled on there?

14 A B-A-R-R-I-A-S.

15 Q B-A-R-R-I-A-S or I-S?

16 A I-S.

17 Q Okay. Is there an I in your name?

18 A No.

19 Q Okay. How's your last name spelled?

20 A B-A-R-R-A-S.

21 Q Okay. And looking at it, would you agree that
22 most of those signatures were by the same person?

23 A Yes.

24 Q Okay. And so before you fell, were you ever asked
25 to sign a sheet like that with that writing on the top?

1 A No.

2 Q But Mr. Battle asked you about after the fall, and
3 now you're asked to sign a sheet yourself --

4 A Yes.

5 Q -- with the release language; is that right?

6 A Yes.

7 Q Okay, all right. But you didn't sign any such
8 thing before you fell; did you?

9 A No.

10 Q How often is senior bingo played?

11 A Two days a week.

12 Q All right. So that rec center is used for a lot
13 of other stuff besides senior bingo; is that right?

14 A Yes.

15 Q All right. Are you familiar with some of the
16 other things that are held?

17 MR. BATTLE: Objection, Your Honor. Exceeds
18 cross.

19 THE COURT: I'll let him ask the question.

20 THE WITNESS: They have dances there.

21 Q All right. Do you ever go to any of the other
22 things there?

23 A Not recently, no.

24 Q Okay. Do you know, are there some things that
25 they have there, activities that are charged, where

1 they charge for it?

2 A I think they charge for the dance tickets, but I'm
3 not positive.

4 Q Okay. Now, you indicated that Sarge is the one
5 who kind of -- is kind of the head volunteer; is that
6 right?

7 A Yes.

8 Q But is it the City that tells Sarge in the end
9 what they can and can't do?

10 A Yes.

11 Q When did you have your right knee replaced?

12 A 2000 -- November 2005.

13 Q Okay, 2005. He asked you whether or not your foot
14 dragged because you had knee surgery in 2005. Did you
15 have any issues with your knee --

16 A No.

17 Q -- at that time? Were you going to see a doctor
18 at that time regarding current problems with your knee
19 at the time?

20 A When I fell?

21 Q Yes.

22 A No.

23 Q Okay. And how do you know that your foot went
24 under the mat?

25 A Because the rug came with me.

1 Q Okay.

2 MR. NAPPIER: Thank you. Nothing further.

3 MR. BATTLE: I've been inspired, Your Honor. If I
4 could introduce that exhibit, that photograph of
5 Ms. Birch into evidence. What did we do with that?

6 THE WITNESS: I don't know where it's at.

7 MR. BATTLE: Just bear with me, Ms. Barras.

8 THE WITNESS: Okay.

9 (WHEREUPON, Defendant's Exhibit No. 2 was marked
10 for identification only.)

11 RECROSS-EXAMINATION

12 BY MR. BATTLE:

13 Q Is that a photograph of Ms. Arlene Birch?

14 A Yes.

15 Q Is that the woman who filled out your name on that
16 waiver?

17 A Yes.

18 MR. BATTLE: Your Honor, I would like to introduce
19 it into evidence.

20 MR. NAPPIER: I believe the black and white
21 picture has already been introduced.

22 MR. BATTLE: No, I never introduced.

23 THE COURT: All right. Without objection.

24 (WHEREUPON, Defendant's Exhibit No. 2 was admitted
25 in evidence.)

1 Q So Exhibit 2 depicts the woman who was writing in
2 everyone's names into the waiver?

3 A Yes.

4 MR. BATTLE: No further questions, Your Honor.

5 THE COURT: Real quick.

6 RE-REDIRECT EXAMINATION

7 BY MR. NAPPIER:

8 Q As far as that, was there one sheet that you guys
9 did sign in on?

10 A Yes.

11 Q How did it differ from that sheet that was
12 previously admitted into evidence?

13 A It's just -- I think it's just a folder paper,
14 notebook.

15 Q Did it have numbers on it?

16 A Yes.

17 Q Okay. What did they use the numbers for?

18 A To draw the prizes and that, door prizes.

19 Q Okay. And so that sheet, did that sheet that you
20 actually signed have anything on the top of it?

21 A No.

22 Q Okay. Just the sheet that somebody else filled in
23 the names; is that right?

24 A Yes.

25 MR. NAPPIER: Okay. Thank you. Nothing further.

1 THE COURT: You may step down, thank you. Did you
2 have anything else?

3 MR. BATTLE: No.

4 THE COURT: You may step down. Thank you, ma'am.
5 (Witness excused.)

6 THE COURT: All right. It's going on towards
7 five. I have a couple of matters I want to discuss
8 with the attorneys before we move on. Tell you what,
9 ladies and gentlemen, I'm going to let you leave for
10 today. And they got us to start on this trial anyway.
11 Mr. Ropp, will you take them to their jury room, let
12 them know where to be back in the morning and those
13 sort of things.

14 (Discussion off the record.)

15 THE COURT: Yes, 9:30. You might want to bring
16 them in a little bit earlier, and they can have their
17 refreshments in the morning, okay. All right, thank
18 you.

19 (WHEREUPON, the jury exited the courtroom at
20 4:35 p.m.)

21 THE COURT: All right. Gentlemen, one of the
22 things we're going to have to work out is what the
23 status of the Plaintiff was. I want to take that up
24 first thing in the morning.

25 Please be aware of Sims versus Giles and Singleton

1 versus Sherer. Sims can be found at 343 SC 708.
2 Singleton can be found at 377 SC 185. The language I'm
3 looking at in Sims is the most common example of a
4 licensee is the social guest. A social guest is a
5 licensee. As such, he enters the premises by virtue of
6 the possessor's consent.

7 An injured person has been held to be a licensee
8 where he enters the premises to seek a favor, to make
9 inquiries or to ask directions, to do voluntary work,
10 to use recreational facilities without asking specific
11 permission, to recover an item of personal property
12 left on the premises, to obtain some article of value
13 given to the licensee by the occupant, all while
14 chasing his dog.

15 These are just some examples that were set out.
16 They cite Hubbard and Felix, South Carolina law of
17 torts. I think it's significant that they specifically
18 say it is to do voluntary work. In Singleton, it
19 quotes that the Court stated, a licensee is a person
20 who is privileged to enter or remain on land by virtue
21 of the possessor's consent. When a licensee enters
22 onto the property of another, the primary benefit is to
23 the licensee, not the property owner.

24 A licensee is a person whose presence is
25 tolerated, a person not necessarily invited on the

1 premises but one who is privileged to enter or remain
2 on the premises only by the property owner's express or
3 implied consent. While the most common example of a
4 licensee is a social guest, an injured party has been
5 held to be a licensee where he enters the premises to
6 seek a favor, to make inquiries or ask directions or to
7 do volunteer work, to use recreational facilities
8 without asking specific permission or to recover an
9 item of personal property, so forth and so on, again,
10 citing Sims.

11 MR. BATTLE: Your Honor, if I may, also there is
12 another case on licensees, that's Vaught v. Murraywood
13 Swim and Racquet Club.

14 THE COURT: I'm going to let you add to this
15 tomorrow. I just want you to be aware of that case and
16 the language in that case. I'm going to let you argue
17 tomorrow fully as to whether this Plaintiff is a
18 licensee or an invitee. I think that's the issue here.

19 MR. BATTLE: Your Honor, there's a Recreational
20 Use Statute, that was also --

21 THE COURT: I want to talk to you right now about
22 the Recreational Use Statute. And let me tell you what
23 gives me concerns. The Recreational Use Statute --

24 MR. NAPPIER: Your Honor, I apologize for
25 interrupting, she really needs to use the restroom.

1 THE COURT: Okay, I'm sorry.

2 MR. NAPPIER: If that would be okay. I apologize.

3 THE COURT: Well, I would -- I don't think she
4 needs to be here to just to discuss this with the
5 attorneys, this is something we could normally do in
6 chambers. But the Recreational Use Statute, let me
7 tell you what my take is on that. The Recreational Use
8 Statute says or seems to isolate a landowner from
9 liability for injury to a person on the property for
10 recreational purposes. That's what the statute says.

11 Now, I want you to be able to talk to me tomorrow
12 morning about whether or not a person who is there as a
13 volunteer would be a person whose liability or whose
14 claim would be barred or the landowner would be
15 insulated from.

16 MR. BATTLE: Your Honor, I just add that she also
17 played bingo after she was done.

18 THE COURT: I understand. But I believe at that
19 time, I don't think there's any question she was
20 volunteering. Is there any question?

21 MR. NAPPIER: There is no question about that,
22 Your Honor. They've made a big point that she was in
23 the kitchen doing the volunteer work.

24 THE COURT: All right. Well, you want to talk
25 about that, whether or not the Recreational Use Statute

1 extends to people who are there to volunteer. I don't
2 know.

3 What if -- I mean, I just throw this out. What if
4 the City had an employee stationed there; would that
5 employee not be able to make a claim under workers'
6 comp, would the employee not be able to do that? Would
7 a delivery person making a delivery on the premises not
8 be able to make a claim, someone who was not an
9 employee, would he not be able to make a claim.

10 Would someone who entered the property for some
11 other purpose, changing the light fixtures or, you
12 know, would a vendor of some other type be barred
13 simply because the property is being used for
14 recreational purposes.

15 We're going to talk about it tomorrow, I'm just...

16 MR. BATTLE: Yes, sir.

17 THE COURT: Just offering some thoughts, so you'll
18 know what my thought process is or concerns I have, so
19 we don't get too far afield tomorrow. Those are the
20 things that I'm looking at. I think those are primary
21 issues that we need to resolve well before charge time,
22 okay. And I would think that this is probably going to
23 move on very rapidly tomorrow.

24 MR. NAPPIER: It is, Your Honor.

25 THE COURT: Okay. Okay, thank you, gentlemen.

1 I'll see you in the morning. I would like for you to
2 be here about 9 o'clock. Okay.

3 (The hearing adjourned at approximately 4:43 p.m.)

4 (The hearing resumed on Tuesday, May 16, 2017, at
5 approximately 9:25 a.m.)

6 THE COURT: Okay, let's have a seat. Let's talk
7 about, first of all, the Recreational Use Statute.
8 Tell me what you think about that, Mr. Battle.

9 MR. BATTLE: Your Honor, the main case I've drawn
10 for this argument is Brooks v. Northwood Little League.
11 And that one is, the Court ruled that --

12 THE COURT: That's just where a person who was
13 there watching a ball game got hit with a ball; wasn't
14 it?

15 MR. BATTLE: Yes, Your Honor. But when they're
16 talking about how the statute should be applied, they
17 make a specific note that the legislature intended it
18 to apply to both rural and urban areas.

19 THE COURT: No question about that.

20 MR. BATTLE: And they also say that even though
21 T-ball is not listed in the statute, it can still be
22 qualified as a recreational activity.

23 THE COURT: Absolutely.

24 MR. BATTLE: And so, our position is simply that
25 the Base Recreation Center should qualify. The

1 statute --

2 THE COURT: It qualifies. I'm not arguing with
3 you on that.

4 MR. BATTLE: The statute, as I understand it,
5 attaches to the individual. It's not about the
6 facility itself. It's what is the person's purpose for
7 being there.

8 THE COURT: Exactly. Recreational purposes, it
9 protects -- it limits liability towards persons
10 entering the premises for such purposes, recreational
11 purposes, okay.

12 Tell me where the cut-off is. Where do we draw
13 the line? Would you suggest -- suppose I have vending
14 machines in this center. They might -- I don't know if
15 they do or not -- they might, we've certainly got them
16 here in the courthouse. And the soft drink salesman
17 comes in. I think we've heard someone testify earlier
18 about a vendor bringing in pizza maybe. There you go,
19 the Domino's Pizza guy is delivering pizza. And he's
20 injured because of a latent defect. Does the statute
21 apply to him?

22 MR. BATTLE: No, Your Honor, because he's not
23 there for recreational purpose.

24 THE COURT: There you go.

25 MR. BATTLE: It's for a business purpose.

1 THE COURT: There you go, okay. But I was
2 looking, I think I had this before me on summary
3 judgment some while back, and as I recall, there was an
4 allegation in a complaint or maybe an affidavit that
5 the City had an interest in providing these services to
6 the community, a good thing. But they actually relied
7 upon, solicited, the aid of volunteers to do this,
8 okay.

9 Now, if a City employee was on the premises and
10 was injured, certainly the comp carrier could not use
11 the Recreational Use Statute.

12 MR. BATTLE: No, Your Honor.

13 THE COURT: Okay. Well, how, then, does it apply
14 to a volunteer who's there to work --

15 MR. BATTLE: Your Honor --

16 THE COURT: -- for recreational purposes?

17 MR. BATTLE: -- Ms. Barras testified that after
18 she would be done setting out the food, she would go
19 and play bingo. And then my understanding is after the
20 bingo game is done, she goes and cleans up. It's no
21 different than if you go to a restaurant and you're
22 standing in the foyer area --

23 THE COURT: Well, what was she doing when this
24 occurred, then?

25 MR. NAPPIER: She was setting out food for the

1 bingo game.

2 THE COURT: Okay, all right. Let me hear what
3 Mr. Nappier has to say about that.

4 MR. NAPPIER: Your Honor, I would agree with where
5 you're going with this, and that is that it's --

6 THE COURT: I don't have an opinion. I'm fishing
7 right now.

8 MR. NAPPIER: And I had a number of points
9 regarding why the Recreational Use Statute doesn't
10 apply, some of which Your Honor's already kind of shot
11 down with some of the conversation here regarding how
12 it was being used, that as far as, you know, the
13 definition here talks about swimming and that kind of
14 thing, a little off course from bingo.

15 But I'm focussing now on what Your Honor is asking
16 about, and that is the question of what the person was
17 there for. And the statute in 27-3-30 says, except as
18 specifically recognized or provided in 27-3-60, an
19 owner of land owes no duty of care to keep the premises
20 safe for entry or use by persons who have sought and
21 obtained his permission to use it for recreational
22 purposes.

23 My client was there on behest of the City. The
24 City actually advertises this bingo, they run, they,
25 have websites, they have -- they put it on the fliers.

1 And the only reason they are able to run it is because
2 of the volunteers that they recruit in and that they
3 run through their background checks and that they then
4 put into place to run the bingo.

5 So my client, all testimony is that she arrived
6 that day for purposes of working in her capacity as a
7 volunteer. She was working as a volunteer, I think
8 it's undisputed, and therefore she was not there for
9 the recreational purposes. She was there to work as a,
10 and this is going to get us to the other question
11 regarding invitee, she was working as a business
12 invitee for the City when this occurred.

13 THE COURT: And we'll get to that in a minute.
14 We'll get to that in a minute.

15 MR. BATTLE: Your Honor, if I could just add,
16 sorry.

17 THE COURT: Yes.

18 MR. BATTLE: We don't agree that we run this
19 program. We did not recruit her, we don't have a
20 budget for newspaper ads, and all that he's just said
21 in factually about the City being in control of this
22 program is just based on Ms. Barras' testimony. My
23 clients do not agree with that position. We let them
24 in to use the hall to play bingo. That's it, it's a
25 free service we're providing them.

1 MR. NAPPIER: In their depositions they indicated
2 that they put out fliers for the bingo. They put it on
3 their website.

4 MR. BATTLE: Your Honor, it's a flier for the
5 facility. It lists every single activity in the
6 facility, including bingo. It's not just bingo.

7 THE COURT: But does the City control what
8 community activities might be available in the
9 facility? And does the City not encourage -- and
10 that's a good thing, that's what they are there for.--
11 but does the City also encourage this type of activity
12 and more or less advertise it as part of their
13 community outreach program?

14 MR. BATTLE: I mean, to me, the line is very clear
15 between they have City employees run classes and teach
16 guitar lessons and dancing and stuff like that. They
17 rent out the facility to weddings and parties. And in
18 senior bingo's case they just let them in. It's run
19 totally differently from any other program.

20 And while, yes, I understand what you're saying
21 that their job is to provide activities for the
22 community, it's not managed or run like a City event or
23 facility.

24 THE COURT: But didn't we have some testimony
25 about the children coming in, whether they could limit

1 the children, and the City saying you could not?

2 MR. BATTLE: Yes, Your Honor. That is not -- the
3 testimony will be that when senior bingo approached
4 City employees and said, we would like to exclude
5 non-seniors, the facility manager said, you can
6 privately rent it out and get your own insurance, and
7 then you can exclude whoever you want. But as long as
8 you're freely using our facilities, you have to keep it
9 open to everyone in the public.

10 That was the ultimatum. It was not a, you have to
11 do this or you have to do that. They declined to get
12 insurance, and so they opted instead to stay free to
13 the public.

14 THE COURT: Okay. I'll tell you why this gives me
15 some concern. The statute 27-3-30, the Recreational
16 Use Statute, raises issues for a jury that would be, in
17 my view, difficult. The question is whether or not the
18 applicability of the Recreational Use Statute is a
19 matter of law or one of fact. Is it something that the
20 Court would make a ruling on, or is -- and in that case
21 I would either not charge it, or I would charge it, and
22 if I charge it, would essentially tell the jury that
23 the statute applies.

24 Now -- or is it a situation where we take a jury
25 and we ask the jury to decide whether or not the

1 Recreational Use Statute applies. Now, that raises all
2 sorts of other questions. Now, what's your opinions on
3 that, Mr. Nappier?

4 MR. NAPPIER: Well, Your Honor, first of all, it's
5 the duty of the Defendant to prove that the
6 Recreational Use Statute does apply. That burden is on
7 him. Now, there is -- there was a case, it's Parr
8 versus University of South Carolina. And in that case
9 they did say, reference it being a jury issue. So, you
10 know, how it would go about -- you know, how you go
11 about doing that if --

12 THE COURT: Oh, it can be a jury issue. What I'm
13 talking about is the application.

14 MR. NAPPIER: Right.

15 THE COURT: Application of the statute, you know,
16 I think in Parr they were talking about the jury, it's
17 a jury question as to whether or not there was a
18 recreational use and that sort of thing, which is going
19 to be difficult. But the application of the statute,
20 is that a jury matter or is it something the Court
21 rules upon as a matter of law as to whether or not it
22 applies.

23 MR. NAPPIER: It would seem to be a matter of law,
24 Your Honor.

25 THE COURT: What is your position, Mr. Battle?

1 MR. BATTLE: I was under the impression that we
2 would ask the jury to decide whether or not they
3 thought that volunteering for senior bingo was a
4 recreational activity. To me it's something that I
5 know other lawyers have done it that way in the past.

6 THE COURT: Well, I think that that is absolutely
7 unequivocally a recreational use, bingo. But what
8 we're talking about is the Plaintiff's status, is she a
9 recreational user.

10 MR. BATTLE: My position is she was because she
11 was going to volunteer and play bingo. You can't
12 separate the two activities.

13 THE COURT: I heard you ask her if she plays
14 bingo, and she said yes. But did you ask her if on
15 that night she was playing bingo or if she engaged in
16 bingo that night?

17 MR. BATTLE: She never --

18 THE COURT: If she was there for any reason other
19 than as a volunteer.

20 MR. BATTLE: Your Honor, she would have never
21 gotten a chance to start playing. She fell before the
22 games began.

23 THE COURT: So there's no question, then, that she
24 was not engaged in a recreational use at the time of
25 the injury.

1 MR. BATTLE: Your Honor, it's not a question under
2 the law of at that time was she doing it. It's was her
3 purpose for going there, a recreational purpose.

4 THE COURT: Well, her purpose in going there was
5 to volunteer, she's been doing it 13 years.

6 MR. BATTLE: And, as I said, Your Honor, I don't
7 think you can separate volunteering and playing bingo.
8 I think they are the same activity.

9 THE COURT: Well, I think you can. I think a jury
10 would have to. Let's talk her status. Now,
11 Mr. Nappier, if you look at the case law in this state,
12 Sims versus Giles, which I mentioned earlier, and
13 Singleton versus Sherer, and there's a Burris, is there
14 another case that -- or excuse me, Murphy; wasn't it --
15 the Courts have regularly held that a volunteer,
16 someone who volunteers to do work at a premises, is a
17 licensee. What do you say about that?

18 MR. NAPPIER: Your Honor, I think to say in broad
19 strokes that a volunteer, just saying that because they
20 were a volunteer, that they are a licensee is not the
21 way the law reads. It's a licensee, and time and time
22 again, the definition for a licensee is when a -- they
23 say when a licensee enters into the property of
24 another, the primary benefit is to the licensee. That
25 is said again and again in every case.

1 THE COURT: As a social guest.

2 MR. NAPPIER: And that's -- and a social guest,
3 they said, is the prime example of that. Now, the
4 bottom line is, and like I said, they say this in every
5 case, is that the licensee is there for their benefit.

6 Now, if -- and I know Your Honor has referenced
7 the language that was referenced in the Sims case, and
8 they talk about the -- there's the language, an injured
9 person has been held to be a licensee where they
10 entered the premises to seek favor.

11 And I think -- and I want to break this down, Your
12 Honor, because when they enter to seek favor, obviously
13 the person is doing it for their own benefit. To make
14 inquiry or ask directions, again, for their own
15 benefit. The next one says, to do volunteer work.
16 That one, and it seems completely off from all the
17 rest, and I'm going to get back to that, Your Honor.

18 The rest of the sentence says, to use recreational
19 facilities, again, for their own benefit. And without
20 asking -- and then that one, without asking specific
21 permission. They put that in. And then to recover an
22 item of personal property left on the premises, to
23 obtain some article given to the licensee by the
24 occupant or while chasing a dog.

25 What every one of those have in common is that

1 they are for the benefit of the person that is
2 entering, for the licensee themselves. Every one of
3 them except for this question of where to do volunteer
4 work. And so I think on the volunteer work, then, you
5 have to look at when did the Court of Appeals address
6 volunteer. And they do that in the Sherer case,
7 Singleton versus Sherer. And in that one, again, they
8 cite this same language regarding licensees.

9 But then on the bottom, there's a telling section
10 where they talk about volunteer. And in that one it
11 says, Singleton was a licensee while on Underwood's
12 property the day of the incident. By his own
13 admission, Singleton did not enter Underwood's property
14 through express or implied invitation. That's very
15 important.

16 Rather, Singleton voluntarily -- there's
17 voluntarily -- entered the premises in an effort to
18 capture the raccoon -- as we know, this is the raccoon
19 case with the rabid raccoon; guy goes in the house of a
20 family member but without having gotten any permission
21 and gets bit and then sues them for it -- regardless of
22 specific instructions to the contrary.

23 Thus, as described in Sims -- referencing back to
24 Sims -- Singleton was on Underwood's property
25 performing volunteer work, which is actively

1 traditionally associated with licensee statute. So
2 they call that volunteer work. That's where they
3 define volunteer work where somebody entered property
4 without any kind of permission. My client was
5 entering --

6 THE COURT: They simply said what he was doing was
7 voluntary, as a volunteer.

8 MR. NAPPIER: Right.

9 THE COURT: I don't think it defines what
10 volunteer work is. Volunteer work is not limited to
11 chasing rabid coons.

12 MR. NAPPIER: Obviously, obviously.

13 THE COURT: I can promise you that.

14 MR. NAPPIER: Obviously. But it also -- it
15 doesn't define in -- what's important here is in
16 that -- in the one blurb that you're going by from the
17 Sims case where it talks about the licensees in
18 reference to volunteer. Volunteer work for who? It
19 doesn't -- I mean, it just references volunteer work.
20 I don't think that it applies to every person doing
21 volunteer work, are they doing the volunteer work for
22 somebody else when they entered the property?

23 THE COURT: Well, tell me how Ms. Barras would be
24 different.

25 MR. NAPPIER: Because she's doing the volunteer

1 work for the property owner. That's the difference,
2 for their benefit at their invitation.

3 THE COURT: Do you have anything that would say
4 that if you're doing it -- in Singleton they were doing
5 it for the property owner.

6 MR. NAPPIER: But without permission to enter the
7 premises. That's the big difference. There's -- and
8 again, and he also had an interest in the raccoon, he's
9 the one who put the raccoon there. The question was,
10 was it with permission. My client was not -- I mean,
11 the definition of a licensee, my client does not fall
12 under that definition that she was going there for her
13 own benefit. She was going there for the benefit of
14 the City, working for the City. She was a business
15 invitee -- a lot, fits that definition a whole lot
16 closer.

17 THE COURT: Okay. And what do you think the duty
18 to an invitee is; what's the distinction?

19 MR. NAPPIER: An invitee, in the case of a
20 business visitor is an invitee whose purpose for being
21 on the property is directly or indirectly --

22 THE COURT: And, well, what duty is owed to an
23 invitee?

24 MR. NAPPIER: Actually, I have the duty right
25 here. The duty to use reasonable care to discover him

1 and avoid injury to him carrying on activities upon the
2 land. Hang on, I've got actually a better definition
3 than that. The owner of property owes an invitee or
4 business visitor the duty of exercising reasonable or
5 ordinary care for the safety and is liable for injuries
6 resulting from the breach of such duty.

7 Goes on further to say, the degree of care
8 required is commensurate with the particular
9 circumstances involved, including the age or capacity
10 of the invitee. That's the duty owed to an invitee.
11 And that, she clearly falls under the business invitee.

12 THE COURT: And if she is a licensee...

13 MR. NAPPIER: Is a duty to use reasonable care to
14 discover him or her and avoid injury to him in carrying
15 on activities upon the land.

16 THE COURT: There's also a duty to use reasonable
17 care and to warn the licensee of concealed or dangerous
18 conditions or activities; right?

19 MR. NAPPIER: Right.

20 THE COURT: Okay. All right, Mr. Battle, let me
21 hear from you.

22 MR. BATTLE: Your Honor, I think that the
23 Plaintiff's interpretation of volunteer is excessively
24 narrow. The case that I gave your clerk, Vaught v.
25 Murraywood, has --

1 THE COURT: Murraywood, that's what I was trying
2 to remember.

3 MR. BATTLE: -- specifically language. The
4 question is the amount of permission involved and
5 whether or not they were being permitted on the
6 facility. First of all, I take issue with the position
7 that Mrs. Barras was benefitting the City. They make
8 no money, they give free coffee to them, and they allow
9 them to use the services. So there's no financial
10 incentive --

11 THE COURT: In the City, the City, you don't have
12 to have financial incentive. But if you had to have a
13 financial incentive, the City would not even offer a
14 recreational center. I mean, the City gets a benefit
15 from these community services, Mr. Battle.

16 MR. BATTLE: All right.

17 THE COURT: I mean, that's what they are there
18 for.

19 MR. BATTLE: I understand, sir. The other
20 position I'm taking is the amount of permission
21 required, A, she had to -- she was supposed to be
22 signing a waiver, but another bingo member wrote her
23 name in. She had to get a background check done, and
24 she was in a restricted area in the kitchen. This
25 isn't the public area of the senior bingo, she's back

1 in the kitchen.

2 All of these areas you have to have special
3 permission to be in. That amount of permissive force
4 makes it so she's a licensee, not an invitee.

5 THE COURT: But doesn't that also support the
6 inapplicability of the Recreational Use Statute? With
7 all these controls on her, where she's supposed to be,
8 where she's not supposed to be, she has to sign a
9 waiver, she has to do this, doesn't that just sound
10 like more than being a recreational user?

11 MR. BATTLE: No, Your Honor. Because the purpose
12 is still bingo.

13 THE COURT: Okay, all right. I'm taking it under
14 advisement. Let's go ahead and bring the jury out.

15 MR. NAPPIER: Your Honor, could I ask one question
16 real quick?

17 THE COURT: Yes.

18 MR. NAPPIER: Yesterday we briefly were talking
19 about when I do the -- when we're reading in the
20 deposition. Mr. Battle indicated he wants to be up
21 writing words down while this direct testimony is
22 taking place. And, Your Honor, I believe, said that
23 was okay. And I don't know --

24 THE COURT: I thought he was going to be pausing
25 as he did his part and making notes. Mr. Battle, do

1 you propose to be up while the direct examination is
2 going on and over on the side making notes?

3 MR. BATTLE: No, Your Honor.

4 THE COURT: That's going to distract the jury.

5 MR. BATTLE: My concern is that when the
6 deposition is being read into the record, the jury is
7 going to zone out and not listen. There's one specific
8 part where Ms. Irene's testimony I would like to write
9 down, so that they make sure they catch it. Otherwise,
10 I'm scared they are not going to hear a word of it.

11 THE COURT: No. I'm not going to let you
12 interrupt the deposition or distract the jury by doing
13 that. You can write it down on a piece of paper and
14 then get up and write it on a tablet, you know,
15 anything like that, but -- or if you're -- I would
16 suppose that you're going to read your part. And if
17 you want to pause during that and go over and write it
18 down, I would let you do that. But not while
19 Mr. Nappier is reading in -- you're going to read your
20 part?

21 MR. NAPPIER: I was going to read in the entire
22 deposition, Your Honor. It was his deposition reading
23 the deposition because she's not here.

24 MR. BATTLE: I'm happy to stand and read the
25 questions and then go to the board and write stuff down

1 if you want to do it that way, sir.

2 THE COURT: Okay. You're going to read the
3 deposition for Mr. Nappier?

4 MR. NAPPIER: For Mr. Battle. Well, it was a
5 deposition of a witness that is out of the country now.
6 And we just need her testimony and as to what she said.

7 THE COURT: And Mr. Battle took her testimony?

8 MR. NAPPIER: Mr. Battle is the one that took her
9 testimony. I mean, I don't mind if he wants to read
10 his questions, that's fine. I mean, I brought a
11 paralegal here to read.

12 THE COURT: Good, Mr. Battle can read his own
13 questions. You just offer it, and we can do it that
14 way!

15 MR. NAPPIER: Okay.

16 (Discussion off the record.)

17 (WHEREUPON, the jury came into open court at
18 approximately 9:51 a.m.)

19 THE COURT: Good to have you all back this
20 morning. I notice we have all our jurors and our
21 alternates. Mr. Nappier?

22 MR. NAPPIER: Thank you, Your Honor. Your Honor,
23 the Plaintiff calls Eric Weiss to the stand.

24 ERIC WEISS, after being duly sworn, testified as
25 follows:

1 THE CLERK: Have a seat, please, sir. State your
2 name for the Court, please, sir, and spell your first
3 and last name.

4 THE WITNESS: Eric Weiss. E-R-I-C, W-E-I-S-S.

5 DIRECT EXAMINATION

6 BY MR. NAPPIER:

7 Q Good morning, Mr. Weiss. Where do you work?

8 A I work for -- excuse me, nervous. I don't do a
9 lot of public speaking. I work for ALSCO. We're up on
10 the north end of the beach. We deal in towels and
11 napkins and ads for various accounts along the beach
12 and such.

13 Q Okay. And I believe we've taken your deposition;
14 is that correct?

15 A Yes, sir.

16 Q And you had indicated in that deposition that you
17 stutter at times?

18 A Yeah.

19 Q Is that correct?

20 A Yes.

21 Q Okay.

22 A So probably more so when it's like this.

23 Q Sure, that's okay. That's okay. Now, you
24 indicated that you worked for ALSCO. So is part of
25 your job delivering mats?

1 A Yes, sir, it is.

2 Q All right. And how long have you been in the
3 business of delivering mats?

4 A 16 to 18 years.

5 Q Okay. And was the Base Recreation Center included
6 in that route?

7 A Yes, sir.

8 Q All right. And how long did you deliver mats to
9 the Base Recreation Center?

10 A Not exactly sure the exact time. I'm going to say
11 probably about four years, I think.

12 Q Okay. And how often would you have to deliver the
13 mats to the Base Recreation Center?

14 A Let's see, I service the Base Rec Center two times
15 a month.

16 Q Okay. So every couple of weeks you would go?

17 A Um-hum, yes, sir.

18 Q Okay. And when you delivered there, were there --
19 how many mats, do you know approximately how many mats
20 there were?

21 A There were a total of, I think, 11 mats.

22 Q All right. And would you -- when you would
23 deliver the mats, would you speak to anybody while you
24 were there?

25 A From time to time, I would see the guy who was in

1 charge there. Dustin was his name.

2 Q Dustin was the individual?

3 A Yeah.

4 Q Okay. And when Dustin -- would you normally speak
5 to him when you came in?

6 A When I saw him, yes, I did.

7 Q Okay. If -- now, as far as your job goes for
8 ALSCO, did -- were you the person, the contact person
9 basically if there was an issue with a mat?

10 A Yes, sir.

11 Q Okay. And if they didn't come to you and came to
12 your boss, would your boss then go to you?

13 A Oh, yes.

14 Q Okay, all right. And are you familiar with the
15 folks who were doing the senior bingo?

16 A Yeah. I would -- I'm very cognizant of the time
17 on my route. And I would normally get there sometime
18 between like 9:30 and ten. And they would be there
19 doing their thing, playing bingo.

20 Q Okay.

21 A And whatnot.

22 Q And so when you went there and saw those folks, I
23 mean, do you know what the basic age range were of the
24 people that were there?

25 A I can tell you being 48 years old, I was the

1 youngest guy in the place besides Dustin there. So I'd
2 say 65 and up.

3 Q Okay. And does that matter to you as far as --

4 A To me. Yes, sir, it does.

5 Q And why is that?

6 A Now, I have my dad is 83 and my mom is 82. So, I
7 mean, I'm very cognizant when I do my job to make sure
8 I do it in a way that doesn't affect anyone else.

9 Q Okay. But you drop off the mats, and then for
10 about two weeks you don't come back; is that right?

11 A Yes, sir, that's right.

12 Q And so you don't really know what happens to the
13 mats during that two-week period; is that right?

14 A That's right, yes, sir.

15 Q Okay. Now, did the City ever come to you and say,
16 you know, gee, we were -- we need to do something about
17 mats, we're having problems with them?

18 A I had a conversation with Dustin in either March
19 or April of 2015. I can't recall the exact date. I
20 recall general time.

21 Q Okay.

22 A And he said -- he had asked me at that time to
23 please leave the two three-by-tens I would normally lay
24 out in the kitchen rolled up off to the side because he
25 got a few complaints of folks having their feet caught

1 on the mat or whatnot, so...

2 Q Okay.

3 A So I said, okay, sure. I said, sure thing, it's
4 no problem.

5 Q So you know it was March or April, but you're not
6 sure exactly?

7 A Yeah. There's some things like I can -- I mean, I
8 can tell you exactly where I put all the mats. I
9 remember that perfectly, but the time, the exact time
10 of that conversation I just can't place.

11 Q Let me ask you this, do you know -- strike that.
12 Did they ever tell you that somebody fell?

13 A No. No, sir, they did not.

14 Q Okay. So even after that conversation or when
15 that conversation took place, they didn't mention
16 somebody fell; is that right?

17 A No, sir.

18 Q Okay. But it's possible that that conversation
19 took place after the fall; is that right?

20 A Yes, it is.

21 Q Okay. Did they ever come to you and say, hey, is
22 there a way that we can do something to keep the mats
23 from getting wavy; did they ever say that to you?

24 A No, sir.

25 Q Did -- now, you have a number of different mats in

1 your inventory; is that right?

2 A Yes.

3 Q All right. And you -- the grocery stores and some
4 other vendors they use a little thicker mats; is that
5 right?

6 A Right.

7 Q And would you agree that thicker mats aren't going
8 to wrinkle up as easily?

9 A Oh, yes.

10 Q Okay. And that is something that your company has
11 available to deliver to customers; is that right?

12 A Yes, sir.

13 Q And did the City at any time come to you and say,
14 hey, do you have a different mat, a thicker mat that we
15 could use?

16 A No, sir, they did not.

17 Q Did they ever give you the opportunity to tell
18 them about another mat that would work and wouldn't
19 trip people?

20 A No, sir, they do not.

21 Q Okay. And how long did you continue on that
22 route, or how long did ALSCO continue delivering mats?

23 A We lost all those stops for the City, I believe,
24 in the fall of that year, 2015.

25 Q Okay. So in the fall of 2015 they didn't renew.

1 How long had you been with them, how long had ALSCO,
2 been working with them?

3 A Let's see. Like I said, I think I worked those
4 stops about four years. I know we had them for a long
5 time before that.

6 Q Okay. Do you know why they stopped using you, or
7 why they stopped using ALSCO?

8 A From what I was told, just what I was told, and I
9 like to tell people I'm the driver, I'm always the last
10 guy to know stuff like this. But from what I'm told,
11 because I had asked about this, are we going to be able
12 to keep these stops because I know our bid was up at
13 the time, or did we lose or what.

14 From what I understand and was told, the person in
15 charge of that process, our bid was a bit higher than
16 all the other ones. But she knew it was, you know,
17 from working with us for a long time. So I don't know
18 where the lawyers got involved, but what happened was
19 we lost that bid because they wanted us to accept any
20 and full blame for anything like this that they had --

21 MR. BATTLE: Your Honor, can you please identify
22 they.

23 THE COURT: Who are you speaking of?

24 THE WITNESS: The -- they being -- I'm sorry, I
25 just lost my train of thought, I apologize.

1 THE COURT: You were saying that they told you
2 some things.

3 THE WITNESS: Oh, I'm sorry, excuse me. Whoever
4 was the person in charge of the bidding.

5 THE COURT: Contract of the City?

6 THE WITNESS: Yes, sir, Your Honor. Sorry.

7 THE COURT: All right. Thank you.

8 Q So they said if you weren't going to accept
9 liability for people falling, they weren't going to
10 renew the contract?

11 A Right. That's what I was told.

12 Q All right.

13 (WHEREUPON, Plaintiff's Exhibit No. 6 was marked
14 for identification only.)

15 Q I hand you what has been marked as Plaintiff's
16 Exhibit No. 6 for identification. Is that an invoice
17 for the carpets?

18 A Yes, sir, it is.

19 Q And are the invoices usually given at the time
20 that the mats were delivered?

21 A Yes, sir, it is.

22 Q And was the -- what is that invoice date?

23 A That invoice date is April 3rd, 2015.

24 Q All right. So that means you would have delivered
25 mats on April 3rd; is that right?

1 A Yes, sir.

2 Q And so if Ms. Barras fell on April 8th, they had
3 already been down for about five days; is that right?

4 A Yes, sir. If I had not -- after rolled up again.
5 I don't recall when Dustin and I had that conversation.

6 Q Okay. Did Pam Stone ever call you and talk to you
7 about issues with mats?

8 A No, sir.

9 Q Okay. And other than that one conversation that
10 took place with Dustin, before or after the fall, did
11 he ever say anything to you about the mats?

12 A No, sir.

13 Q And to this day, has the City ever told you that
14 somebody fell on the mats?

15 A No, sir. I only found out about this last year.

16 Q Okay.

17 MR. NAPPIER: Thank you. Your Honor, may I move
18 to enter Exhibit No. 6 into evidence, please.

19 THE COURT: Mr. Battle?

20 MR. BATTLE: Oh, yes, sorry, go ahead.

21 THE COURT: Without objection, then.

22 MR. NAPPIER: Thank you.

23 (WHEREUPON, Plaintiff's Exhibit No. 6 was admitted
24 in evidence.)

25 MR. NAPPIER: Thank you. Please answer any

1 questions Mr. Battle has.

2 THE WITNESS: Okay.

3 CROSS-EXAMINATION

4 BY MR. BATTLE:

5 Q Good morning, Mr. Weiss.

6 A Good morning.

7 Q Do you need a cup of water or a break or anything?

8 A No, no. I'm good.

9 Q Okay. Did you specifically speak to the City
10 employee about the ALSCO contract?

11 A No, sir. No, I mean, no.

12 Q So you're repeating what someone else told you
13 they said?

14 A Yes, sir.

15 Q Okay. Were the mats you laid down at the Base Rec
16 Center good mats?

17 A Yes, sir.

18 Q Okay. Was there any kind of defect or flaw with
19 the mats you laid down?

20 A No, sir.

21 Q Did you tell Dustin Jordan that your mats were
22 defective on April 3rd?

23 A No, sir, I did not.

24 Q Okay. Just one moment.

25 A Sure.

1 Q Thank you for your patience. You and Mr. Jordan
2 ever meet outside of work?

3 A No, sir.

4 Q So you just strictly know each other from the
5 delivery route?

6 A Yes, sir.

7 Q Okay.

8 MR. BATTLE: No further questions, Your Honor.

9 THE COURT: Thank you, sir, you may step down. Do
10 you have anything further?

11 MR. NAPPIER: I do not, Your Honor. And may
12 Mr. Weiss leave? He's here under subpoena.

13 THE COURT: Mr. Weiss, you're excused and released
14 from your subpoena.

15 THE WITNESS: Thank you, Your Honor.

16 (Witness excused.)

17 MR. NAPPIER: Your Honor, my next witness is Irene
18 Demczuk who is out of the country. And so we are going
19 to read her deposition in.

20 THE COURT: All right, ladies and gentlemen. The
21 testimony we're about to have will be by way of
22 deposition. There are several ways in which
23 depositions may be taken in this state. They may be
24 done by video, and in such cases we would have a video
25 recording of the deposition, or they may be just taken

1 orally, and in such cases a court reporter would be
2 present.

3 The way a deposition works is that one party or
4 the other will notice the other party that there is a
5 potential witness, and both of the attorneys get to
6 come together outside of the courtroom setting but with
7 a court reporter. And the person, whether it's
8 videotaped or not, there's always a court reporter.
9 And the court reporter puts the witness under oath, and
10 both sides then get to ask the witness questions.

11 In many cases the deposition is simply used to
12 examine a witness when the witness is testifying live
13 in court. You may have seen some of that already in
14 this trial. In other cases where the witness has
15 become unavailable, is no longer available to testify,
16 the parties may present the testimony by way of
17 deposition.

18 And in this case, we have a written deposition of
19 a witness, and the attorneys will be reading the
20 deposition, their questions. And they will have
21 someone here who will be reading the responses.

22 A deposition is just like live testimony. You may
23 give it such weight or effect as you deem appropriate.
24 Unfortunately, you don't have the benefit of observing
25 the demeanor of the witness, but nevertheless, a

1 deposition is sworn testimony and should be considered
2 as such.

3 All right. Mr. Nappier?

4 MR. NAPPIER: Thank you, Your Honor. Your Honor,
5 the primary --

6 THE COURT: I think that Mr. Battle actually led
7 off in the deposition?

8 MR. NAPPIER: That is correct, Your Honor.

9 THE COURT: And so he's going to do that. And you
10 have someone here who can --

11 MR. NAPPIER: Yes, Your Honor.

12 THE COURT: -- read the responses?

13 MR. NAPPIER: Yes, Your Honor.

14 (Discussion off the record.)

15 THE COURT: Thank you. Are you entering the
16 deposition, the whole deposition?

17 MR. NAPPIER: We are. There's a few excerpts that
18 are left out, but it's most of the deposition, yes,
19 Your Honor.

20 THE COURT: Okay. Then we might need to mark it.

21 (WHEREUPON, Court's Exhibit No. 2 was marked for
22 identification only.)

23 MR. NAPPIER: Go ahead and mark these Plaintiff's,
24 yes.

25 (WHEREUPON, Plaintiff's Exhibit Nos. 7 and 8 were

1 marked for identification only.)

2 (Discussion off the record.)

3 THE COURT: Mr. Battle, I'm sorry.

4 MR. BATTLE: May I proceed, Your Honor?

5 THE COURT: Let me explain to the jury what I'm
6 doing up here. You keep seeing me whispering to this
7 young lady. She is my clerk, she is Ms. Elizabeth
8 Smith. She is an attorney. We are fortunate enough as
9 circuit judges in South Carolina to have young
10 attorneys assigned to us, and they can stay with us for
11 one to two years. I always keep my two years. And I
12 rely on them so heavily.

13 So I spoke to you yesterday about my charge and on
14 the law and those things. She's constantly working on
15 that, and I'm constantly bringing new issues to her
16 mind so that she can keep up with that. So I'm not
17 ignoring the attorneys of the Court, but I have to keep
18 talking with her about what we're doing.

19 Yes, sir, Mr. Battle.

20 MR. BATTLE: Thank you.

21 (Whereupon, the deposition of Irene Demczuk is
22 being read into the record.)

23 Q I guess, when did you move to Horry County?

24 A 2005.

25 Q Where are you from originally?

1 A West Hartford, Connecticut.

2 Q Where do you live?

3 A In Prestwick. You want the address?

4 Q Sure.

5 A 2026 North Berwick Drive, Myrtle Beach, South
6 Carolina.

7 Q Do you have any family in South Carolina?

8 A No.

9 Q Okay. Children, no cousins, nothing?

10 A Nothing in South Carolina. I have a son in
11 North Carolina.

12 Q Okay. Are you a member of a church here?

13 A Yes.

14 Q What's the name of the church?

15 A It's United Methodist of Surfside.

16 Q Are you a member of any social clubs or
17 anything like that?

18 A No. At the church?

19 Q Anywhere. The goal is to make sure I don't
20 get any friends or anything like that.

21 A No. I just do a lot with seniors at the rec
22 center, that's normally -- excuse me -- that's
23 mostly all of my contacts.

24 Q Are there any programs besides the senior
25 bingo that you're involved with?

1 A No. Mostly senior bingo.

2 Q Okay. And I have to ask, have you ever been
3 arrested?

4 A No.

5 Q Have you ever been diagnosed with any mental
6 or psychological things that would impede your
7 testimony today?

8 A No.

9 Q Are you on any medications that would impede
10 your testimony today?

11 A No.

12 Q How long have you been a member of senior
13 bingo?

14 A We were snowbirds before we moved here in
15 2005. I've been there since 2005 and probably
16 about seven or eight years before that when we
17 were snowbirds.

18 Q When did you transition from attending senior
19 bingo to a volunteer?

20 A When I moved here.

21 Q Okay. Page 6, line 1.

22 A Oh. 2005, 2006.

23 Q So as early as 1997 you were attending senior
24 bingo?

25 A Yes.

1 Q Have you ever been charged money to go to the
2 base rec facility?

3 A I have -- have I ever been?

4 Q Charged money to go to the base rec facility?

5 A No.

6 Q Involving the group itself, do you play bingo
7 still, or is it only volunteering?

8 A Both. We do different things as volunteers,
9 but we also play.

10 Q What volunteer activities do you do for the
11 group?

12 A In the kitchen I volunteer there a lot of my
13 time. And also soliciting sponsors for vendors,
14 gifts for bingo.

15 Q What do you do in the kitchen?

16 A Prepare all the food.

17 Q What kind of food is it?

18 A It's food that is donated by the bingo
19 players, and also some of the food is donated from
20 the food bank which we're associated with.

21 Q Okay. What kind of food; cookies, spaghetti?

22 A Snacks, cookies, cakes, it depends. Somebody
23 might bring in macaroni salad, somebody else
24 brings in sandwiches. It's just a variety of what
25 happens to come in that day.

1 Q I guess the goal is, is this like the
2 kitchen's on and active and people are cooking, or
3 you're just arranging and plating?

4 A There is no cooking, no.

5 Q Okay.

6 A It's all -- it's all food that's brought in
7 or we're arranging it because we've brought it in
8 or other people have. Or it's from the food bank.

9 Q How are tasks assigned in the group?

10 A We are all kind of -- we all kind of do our
11 own thing. After all the years of people being in
12 there, we've kind of gotten accumulated to where
13 we are comfortable. Callie and I usually do the
14 food preparation, are receiving the food from the
15 people who are bringing it, setting up the tables
16 in the hall.

17 Cleaning up, doing dishes, cutting bread. We
18 get bread from Toffino's bakery, putting things in
19 the refrigerator that we have to keep cool until
20 we serve them, and then cleaning up afterwards and
21 putting everything away.

22 Q How often do you have to do the dishes?

23 A Every time we're there, Wednesday and Friday.

24 Q Is the food served on paper plates or regular
25 China?

1 A The food is served on regular plates on the
2 big table, but we also have paper plates for
3 everyone of the people that come in -- excuse
4 me -- that come up to the table to take their
5 food.

6 Q What -- sometimes what I do is sort of repeat
7 back to make sure I clearly understand what the
8 person is saying. When you're saying regular
9 plates, do you mean like the sandwich?

10 A Plastic, the heavy like Melmac plates, like
11 that. Nothing that's really breakable. And then
12 we use the paper plates for the people to serve
13 themselves and take it to the table.

14 Q And then material ones are the ones that need
15 to be washed?

16 A Yes. Or any of the silverware or utensils
17 that we have to use in order to serve them.

18 Q Are these immediately given back to the
19 people that day, or are they stored at the base
20 rec facility?

21 A They are stored at the base unless we happen
22 to use the plastic disposable utensils, those are
23 thrown out. But the serving utensils, obviously
24 they are the metal, and they are washable and
25 we're -- we've used those.

1 Q Is there any formal leader of the group, or
2 you are saying that it's kind of people just do
3 whatever?

4 A I think I've acclimated myself to leader over
5 the years.

6 Q So you think you're the leader of the group?

7 A Yes.

8 Q Okay.

9 MR. BATTLE: I think we're moving to page 9, line
10 24.

11 A Volunteers are counted, all of the ones that
12 are in the kitchen people that pick up gifts, all
13 the colors, all the people that pick up food, I'm
14 guessing 25 individual volunteers. I've never had
15 to put the list together. That's usually done by
16 the fellow that's in charge of the bingo.

17 Q Well, who's the person in charge of bingo?

18 A It's Douglas Williams. They call him Sarge.

19 Q What's the difference; when you said you were
20 in charge, did you mean?

21 A The kitchen.

22 Q The kitchen, okay, I'm sorry, yeah.

23 A The kitchen. And I solicit and go to all the
24 vendors and the restaurants and everything else to
25 try to get gifts for senior bingo. But I'm in

1 charge of the kitchen.

2 Q Okay. How many people attend senior bingo?

3 A It varies. Right now, we're at 95. We can,
4 because the snowbirds are starting to come in, we
5 can go as high as 140, 150, every Wednesday and
6 every Friday during the winter months because the
7 snowbirds are here. During the summer months we
8 run about 50 with locals.

9 Q Who is in charge of the facility itself?

10 A You mean the person?

11 Q Yeah. Who runs the Base Rec Center?

12 A The City of Myrtle Beach Recreation
13 Department.

14 Q Do you know any individual who is there or
15 assigned there?

16 A Pam Stone.

17 Q Okay. Is she --

18 A She's the recreational -- I don't know what
19 her official title is. I think she's the director
20 of recreational activities, something like that.

21 Q Is she at the facility every day?

22 A No. She comes and goes.

23 Q Who is the person that's there every day?

24 A The manager is Dustin. I think his last name
25 is Jordan, J-O-R-D-A-N.

1 Q And there are specific instances of talking
2 to both of them alleged in the complaint. How
3 often do you talk to Pam Stone?

4 A Not very often, just once in a while if we
5 happen to get her or she comes in. Her
6 assistant's name is Lisa, but I don't know what
7 her last name is. She's there a lot, more often
8 than Pam is.

9 Q Do you talk to Dustin Jordan often?

10 A Yes. He's there all the time.

11 Q Okay. What do you talk with him about?

12 A If there is any kind of a problem, if there's
13 a shortage of napkins, toilet paper, whatever, if
14 there's a problem with an appliance, coffee pots,
15 whatever.

16 Q Okay. I'm going to hand the first exhibit,
17 this is Exhibit 1. Let's go ahead and mark it.

18 A This is what we sign everyday.

19 MR. NAPPIER: For purposes of the record, Your
20 Honor, that is already marked as an Exhibit, is it
21 Exhibit, what's the exhibit number?

22 THE READER: One.

23 MR. NAPPIER: That's Defendant's Exhibit No. 1,
24 Your Honor.

25 THE COURT: Very well, okay.

1 MR. BATTLE: Moving to line 20 -- and just to be
2 clear, the Plaintiff and I agreed to skipping just us
3 talking over the record. Page 12, line 20.

4 Q You said you signed the sheet daily?

5 A Yes.

6 Q Do you see where Ms. Barras' signature is
7 highlighted on that?

8 A Yes.

9 Q Do you see the waiver of liability at the
10 top?

11 A Yeah.

12 Q Do you understand what it says?

13 A Who runs the Base Rec Center.

14 MR. BATTLE: Page 13, line 3 is where I'm at.

15 THE READER: Excuse me.

16 MR. BATTLE: Page 13, line 3.

17 Q Do you understand what it says?

18 A Yes.

19 Q Okay. That's all I've got for that one. You
20 can keep reading if you want. How long have you
21 known Ms. Barras?

22 A Since I started bingo. I didn't know her as
23 a snowbird, I don't think. So that would be --
24 I've known her since 2005 when we moved here.

25 Q Do you ever see her outside of senior bingo?

1 A Oh, just once in a blue moon we may go out to
2 lunch, her and her husband and myself and I. But
3 not regularly except Monday nights we see them
4 down at the McDonald's in Garden City because they
5 have -- I started one of the bingo programs at the
6 McDonald's.

7 So in order to honor the people that are
8 there doing it, I will often go on Monday night,
9 and Callie and her husband just go about every
10 Monday night.

11 Q What sort of tasks does Ms. Barras do in the
12 kitchen?

13 A Whatever is necessary. We all help each
14 other. The only exception is making and handling
15 the coffee. That is strictly done by Mr. Creed,
16 who is the leader of the coffee making. And we
17 have Bud Mark who is also making the coffee.

18 Q Why do they strictly do that task?

19 A It can be heavy, the pots, handling them
20 because they are hot. And we tend to gravitate
21 towards the food, and the guys happen to like the
22 coffee, like to make the coffee. So that's what,
23 kind of that direction.

24 Q Have you ever seen Ms. Barras trip or fall
25 before this incident?

1 A No.

2 Q Has she tripped or fallen after this
3 incident?

4 A No.

5 Q Has she ever complained about dizziness or
6 vertigo before the accident?

7 A I can't say. I don't recall if she had said
8 once that she might have -- might have vertigo,
9 but it was, could have been quite -- could have
10 been quite a while ago. But I can't say
11 definitely.

12 Q Have you ever seen Ms. Barras experience
13 memory loss?

14 A No.

15 Q Have you ever seen Ms. Barras walk with a
16 limp?

17 A No.

18 Q Has she ever had any issues with her right
19 leg or foot?

20 A No, not that I know of.

21 MR. BATTLE: Plaintiff's Exhibit No. 7.

22 Q That's just the opening page. What I'm
23 getting around to is the meeting with Pam Stone
24 where you complained about the rugs. Was the
25 reason she was there because of a petition the

1 group had made?

2 A Not really a petition. We were just
3 concerned because we seen different people like
4 get caught on the rugs because the rugs would
5 buckle. And not just in the kitchen, but we've
6 seen people even stumble out in the main hallway
7 and the hall because they have -- because they
8 have them at all different entrances.

9 Q And I tried to kind of compartmentalize
10 things, but if you could review Exhibit 2 for a
11 second, can you read that.

12 A Right.

13 Q Was that a petition that the senior bingo
14 group made to the City?

15 A No, it's not a petition. It's just a concern
16 of us that were in the kitchen. It wasn't a
17 petition. We were concerned about it being kept
18 as senior bingo because it was -- one of the
19 meetings with Pam Stone that she said we couldn't
20 really keep it so that age group because it's a
21 City building.

22 And you cannot prevent any particular -- you
23 can't discriminate against any particular age
24 group. It can -- we can hopefully just within
25 ourselves call it senior bingo, but you could not

1 prevent anybody else from entering -- from coming
2 in.

3 Q Introducing Plaintiff's Exhibit No. 8. Okay.
4 MR. BATTLE: And then picking up P 16, L 20.

5 A This is later, this is a petition. This was
6 not originally -- oh, wait, wait a minute. This
7 isn't closed. I'm incorrect on that. I
8 completely forgot that we did this. I'm incorrect
9 on that.

10 Q It's okay. It's not a big...

11 A I completely forgot about that. There's not
12 even a date on here. March 18th, yeah. These are
13 individual signatures, and a lot of these are
14 snowbirds, too.

15 Q The basic point I'm getting around to is that
16 your organization requested that the City exclude
17 people who are not under the age -- who are not
18 over the age of 50; correct?

19 A Yes.

20 Q And Pam Stone came to talk to you about that;
21 correct?

22 A Yes, she did. Because it's listed as senior
23 bingo everywhere.

24 Q After the meeting, did you talk to Pam Stone?

25 A I don't think so.

1 Q Did you ever?

2 A I don't think so. Because she made it clear
3 on the rule of the City buildings and how it
4 couldn't be -- how it couldn't be restricted.

5 Q Did you do that by e-mail or phone call?

6 A No. She did it in person.

7 Q So you did meet with Pam Stone because of
8 that petition?

9 A In fact, I think it was the day -- I can't
10 remember if it was a particular meeting with her
11 when it happened, but we did meet. She came in
12 personally, she was in a couple of times. So I
13 think once she did come in and told us what the
14 rules were -- rules were with the City.

15 Q When did you tell Pam Stone that about
16 complaining about the mats to her?

17 A I don't know if it was the first meeting or
18 the second meeting. I can't remember that. It
19 was quite a while ago.

20 Q What was her response?

21 A Her response was -- first of all, we asked if
22 we could move the rugs while we were there on
23 Wednesday and Friday. In other words, just roll
24 them up and get them out of the way. And she
25 said, no. She would prefer to have the rugs left

1 there because the hall is rented, and it was to
2 prevent slippage, water, whatever.

3 Q Okay. Do you remember seeing Ms. Barras
4 complain to Ms. Stone about the rugs?

5 A She was probably one of the voices, yes.
6 Because we are in the kitchen talking about --
7 yes, we were in the kitchen talking about it. All
8 of us were mentioning something about the rugs and
9 how we were concerned, and if we could just roll
10 them up and move them out.

11 Q And what made you concerned about the rugs?

12 A Because you could see that -- see them
13 buckling all the time. People didn't trip, but
14 you could see someone stumble. Because it --
15 excuse me -- because once you get busy you start
16 working in there and they buckle up. If you're
17 not aware of it, it could cause an accident.

18 Q I think I know what you mean by the word
19 buckle, but what does it mean to you?

20 A It doesn't lay flat.

21 Q Okay.

22 A There are different qualities of those rugs,
23 and the ones that were down there originally were
24 ones that would kind of buckle, move up and down.
25 And they changed them. I think it was every

1 couple weeks they would come in from an outside
2 source and change the rugs.

3 Q Was it the same kind of rug each time?

4 A Yes.

5 Q Were there rugs automatically buckled, or did
6 they start out flat?

7 A Some when they were put down were a little
8 bit. But as they stayed it got worse. I'm only
9 talking about the rugs that I see in the kitchen.

10 Q That's fine, those are the rugs.

11 A Because they are all over the place. We've
12 had other people trip and fall out in the hallway,
13 but that doesn't pertain to this.

14 Q So I'm going to do where I repeat it back to
15 you, and you tell me if I've got it right or not.

16 A Okay.

17 Q The rugs would come in, and at first they
18 would be okay, but over time they would get more
19 and more buckled up?

20 A Yeah. The more usage they received and
21 people walking back and forth, yes.

22 Q I suppose part of it is, would the rugs,
23 would they be flat on the ground even like later
24 on in the two-week period, or were they
25 automatically bunched up when they came in? I

1 don't know if that question makes sense.

2 A It depends upon the traffic. I think it got
3 worse over time.

4 Q Okay.

5 A Because you've got carts that you're
6 wheeling, people going in and out, the deliveries,
7 and -- yes, I would say they got worse over time.

8 Q Okay. How often did the City change the
9 rugs?

10 A I think every couple weeks. I'm not sure if
11 it was every week or every couple of weeks.

12 Q All right. Did you ever complain to Dustin
13 Jordan about the mats?

14 A I can't say if we did or not. Probably.

15 Q Were there any employees besides Pam Stone
16 that you can recall complaining about the mats to?

17 A Yes. There was Bob Mitchell who died. There
18 was another fellow that tripped, but that was out
19 in the front lobby. That was Gene Nagle. We also
20 had a delivery person from Cicis who was coming in
21 with a whole big stack of pizzas that almost
22 tripped and went head first. But that was at the
23 entrance between the front lobby and the hall.

24 Q I'm kind of going through a checklist here.
25 Part of the Plaintiff's complaint is that she

1 herself told Pam Stone that they were having
2 issues with the mats. Did you witness that
3 conversation or hear it?

4 A Yes, I did.

5 Q Okay. And what do you remember being said?

6 A Wow. Well, she complained about the mats
7 because people were stumbling on them. We all
8 said the same thing. And the only thing we wanted
9 to do was roll them up and move them out of the
10 way. Only for bingo, and then we would put them
11 back.

12 Q Were the mats -- when they bunched up, could
13 you flatten them back out, just had to reach down
14 and do it?

15 A You had to reach down and do it.

16 MR. BATTLE: Moving to line 23.

17 Q All right. Finally, we get to the meat of
18 it. The day of the accident, you were present;
19 correct?

20 A Right.

21 Q I usually tell people, just talk me through
22 the whole day starting with you got up that
23 morning.

24 A All right. Got up that morning, went to
25 bingo.

1 Q What time did you go?

2 A 8 o'clock we arrive, and we start unpacking
3 everything, bringing the food in, bringing
4 whatever containers are underneath the stage.
5 That's where we keep all our supplies locked up.
6 All of our dishes, our paper goods, our utensils,
7 all of that stuff has to be brought into the
8 kitchen. That's brought in. There are big carts,
9 and there's a wagon that we bring all the stuff
10 in.

11 And Callie and I usually, we figure out what
12 our count was the previous day. Because in
13 between changing of seasons your people can go
14 from 50 we were two weeks ago to right now about
15 95. And it can change like that. So we kind of
16 guess how much food we're going to need and what
17 we set up.

18 And then, it depends upon what kind of food
19 is being brought in and who is being -- who is
20 going to donate. We were work -- we were working
21 with the food bank. Oscar Creed and his wife
22 bring in a lot of food from the food bank
23 designated for seniors only. And so we were
24 getting things ready.

25 I believe this happened at break time or the

1 end of the day because I was at the sink washing
2 dishes and cleaning up when all of a sudden Callie
3 tripped behind me, and I heard her hit something.
4 I don't know if it was the side of the wall or the
5 floor. And as I turned, she was on the floor head
6 first.

7 Q What I'm going to do is ask questions to kind
8 of go back and unpack various statements. You
9 said you arrived at 8 a.m. Is that the time you
10 usually arrived?

11 A We arrive between eight and 8:15. Sometimes
12 the door is unlocked at 8:15. If it's not, then
13 we have to wait until 8:30. Bingo is at ten.

14 Q You said that you -- the accident happened at
15 the end of the day?

16 A I don't know if it was during break time or
17 the end of the day. The only time we're at the
18 sink washing dishes is either at break time if all
19 the food is gone and we can clean up, or if there
20 is still food left, then at the end of the day --
21 at the end of bingo we then have to finish
22 cleaning up and packing everything away.

23 So there's two times where you could be at
24 the sink depending upon consumption and how much
25 food is left or not left.

1 Q What time is break time?

2 A It's about quarter to 11. Now, before ten,
3 somewhere between 20 minutes to ten and ten we do
4 open up the tables for coffee and whatever food we
5 have. So they can come up then and get whatever
6 they want. If there's anything left, then we
7 leave it out for break time at quarter of 11.
8 They can eat twice.

9 Q Can you remember if you rolled any carts or
10 anything like that over in the kitchen?

11 A They were always rolled over on every day.

12 Q Are these carts that the City provides?

13 A Yes. There's two carts, there's a blue one
14 and a black one. And we put our food on there to
15 bring it out to the hall. The bread that we've
16 cut and sliced from Toffino's, that gets brought
17 out.

18 Q Are the carts -- my line of questioning, I
19 don't mind explaining my thinking. You said the
20 carts cause a lot of the bunching up?

21 A I said they can.

22 Q They can?

23 A They can.

24 Q Does regular foot traffic cause bunching up?

25 A Both things do.

1 Q Okay. Based on your testimony, you didn't
2 see the fall personally?

3 A I didn't stand in front of her and see her
4 fall. My back was to the sink. But I heard her
5 fall, and that's what she cried out. And I had
6 heard she hit something, I don't know what. It
7 could have been the cabinet or could have been the
8 floor, I don't know. The next thing is I saw her
9 laying on the floor when I turned.

10 Q When you say your back was to the sink, you
11 mean?

12 A Back was to her, I didn't put her right. The
13 sink is here to the wall (indicating), and I was
14 behind the sink. She landed behind me.

15 Q Was she bringing anything to you like dishes
16 or something?

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

18 Q Do you remember what she was doing?

19 A No. There's so many days, that's hard to
20 remember, my God.

21 Q Yeah, I don't know is an acceptable answer.

22 A I don't remember her carrying any dishes. If
23 she was carrying dishes when she fell, the dishes
24 would have been with her. There were no dishes on
25 the floor, it was just her. And the minute it

1 happened they were going to try to see if anybody
2 could get her up.

3 And I said, no, get a hold of Dustin, I want
4 an incident report written right away. And I said
5 to Callie, stay there.

6 Q Who is they?

7 A Well, we had Oscar was in the kitchen,
8 Franco, I believe, was in the kitchen, I think
9 LeRoy came in and I.

10 Q Did you see anything wrong with the mats
11 before the accident that day?

12 A Well, they're always bunching up. I mean,
13 that's -- that was the norm.

14 Q Do you specifically remember seeing the mats
15 bunched up before the accident happened that day?

16 A I can't say I did.

17 Q That's fine. Did you after the accident
18 happened see anything wrong with the mats?

19 A Yes. There was a bunch up. The thing is
20 when you see the mats like that, so many times I
21 would just straighten them out, a lot of us did.
22 You would have to pull them.

23 Q Could you pull them with your foot, or did
24 you do it with your hands?

25 A Both ways.

1 Q Okay.

2 A If you were carrying something, you tend to
3 do it with your foot. And if not, then you use
4 your hands.

5 Q Did the mats look like they had been upturned
6 or kicked up?

7 A I don't think so, no.

8 Q Almost done, ma'am.

9 A That's all right.

10 Q Ms. Barras said people tripped on the mats
11 every three to four months; would you agree with
12 that?

13 A Yes. Not only in the kitchen.

14 Q But out in the hallway?

15 A Out in the hallways, near the restrooms, the
16 entrance way from the lobby to the hall, yeah.

17 Q And I think earlier you said that you
18 yourself have tripped on the mats?

19 A Yeah.

20 Q Okay.

21 A But you get so used to it that you just fix
22 it, pull it, fix it.

23 Q Would you say that you were -- I mean, were
24 you aware of the mats bunching up. Did you keep
25 an eye out for them?

1 A Yeah, I guess we kind of looked, especially
2 if you're pulling the carts. If they were bunched
3 up, then the carts wouldn't go easily, or the big
4 supply boxes that we have on wheels underneath the
5 stage. When you're pulling those in, if they are
6 bunched up it would prevent them from, you know,
7 just rolling easily.

8 Q How did Ms. Barras seem after the fall; was
9 she unconscious or?

10 A She was very confused, which anybody would be
11 falling like that. I didn't -- I did notice her
12 face that was already starting to turn red
13 immediately. That's why I heard her hit
14 something, but I did not see what she hit. And
15 they decided to call the ambulance, Dustin, Callie
16 and her husband. Callie just went with it, she
17 was agreeable at that point.

18 Q Was she talking or dazed?

19 A She was kind of dazed a little.

20 Q Okay.

21 A I was concerned because -- sorry -- concerned
22 because reaction to the face right away. Because
23 I'm a retired hospital administrator, that's why I
24 was insisting on the incident report immediately
25 when it happened. Nobody gets moved.

1 Q How long did it take from the time of the
2 fall for Jordan to come see her?

3 A Oh, immediately. I sent someone out to get
4 him. He's very good. If you need him in the
5 kitchen, he's there immediately.

6 Q And he called the EMS. How long did it take
7 for the EMS to get there?

8 A Probably ten minutes. They were there very
9 quick.

10 MR. BATTLE: Then we go to page 33, line 8. No.
11 Are you talking now? Okay.

12 BY MR. NAPPIER:

13 Q Just real quick, when you come in the rec
14 center, have you always been asked to sign a
15 sheet?

16 THE READER: What are we on?

17 MR. NAPPIER: I'm sorry, we're on page 33 and
18 you're on line 11.

19 A Yes.

20 Q Such as Exhibit No. 1?

21 A Yes. We have -- we always have to sign a
22 sheet. The thing that's changed, however,
23 previously the people at the front could. We have
24 two. We have this, and we have a book that we --
25 that you have to sign with the number on it.

1 Because your number can be called where you will
2 win a gift.

3 Previously we would sign one book, and then
4 we would just copy the names onto the list. But
5 then she was told that people now, this no longer
6 can happen. Everybody has to sign their own
7 signature.

8 Q Okay.

9 A That's why this looks so familiar. It's the
10 same writing except this one person here.

11 Q Okay. So it's your belief, then, that on the
12 sign-in sheet, in fact, it was a City employee
13 that wrote in those notes?

14 A Um-hum.

15 Q Is that a yes?

16 A Yes, it is. Except for one or two that I see
17 that are different. But it's the standard same
18 signature that was before we changed.

19 Q And we're referring to Exhibit No. 1; is that
20 correct?

21 A Yes.

22 Q And a heading on there, it just says that
23 it's a sign-in sheet; is that correct?

24 A That's right.

25 Q It does not say on the heading that it's a

1 release; does it?

2 A No.

3 MR. NAPPIER: No further questions.

4 MR. BATTLE: Pick up, P 33 -- I'm sorry, P 34,
5 line 22.

6 BY MR. BATTLE:

7 Q I've got a few follow-ups. Has anyone talked
8 to you about your testimony today?

9 A No.

10 Q Have you talk to Ms. Barras about this case?

11 A Only thing is she reminded me was to come
12 today. In fact, we spoke on Wednesday. I said,
13 I'll see you Friday. She said, oh, no, I'll see
14 you tomorrow. That's right, deposition.

15 Q In regards to Exhibit 1, you signed into a
16 book first?

17 A Yes.

18 Q What is the book?

19 A It's got numbers on it. I sign in, I'm the
20 25th person, my number for the day is going to be
21 25. When they pick the numbers out of the box for
22 different gifts -- different games, and if your
23 number like for the cake and stuff that we get in
24 from the food bank, they might call number 25. So
25 that means I can go up to the stage and I can pick

1 out one of the cakes or pies or whatever.

2 Q Does the book --

3 A So there's no favoritism that way. You just
4 pull up, pull a number out, and you can't say
5 that, oh, gee, just because I'm the leader in the
6 kitchen that I'm going to get to be pulled
7 everyday. If you win on Wednesday, you don't win
8 on Friday. But they go by the number that's in
9 the book.

10 Q Okay.

11 MR. BATTLE: Going to page 36, line 11.

12 Q No one's ever talked to you about waivers?

13 A No.

14 Q No one's ever instructed you about when you
15 volunteer for the facility anything about it at
16 all?

17 A No.

18 Q Okay. What was your understanding of the
19 book sign-in, it was purely that it was for
20 prizes?

21 A Right. And they wanted -- they wanted the
22 list of people that were attending for senior
23 bingo, the City did. There was never any
24 explanation as far as liability or anything else
25 like that.

1 Q , Okay.

2 MR. BATTLE: No further questions.

3 MR. NAPPIER: That's the end, Your Honor.

4 THE COURT: Thank you. You may step down. Okay.

5 Just leave that there, thank you. Let's let the jury

6 take a break, okay. It's been about an hour.

7 (WHEREUPON, the jury exited the courtroom at

8 10:44 a.m.)

9 THE COURT: All right. Let's take a break, okay.

10 (WHEREUPON, a brief recess was taken at

11 10:44 a.m.)

12 THE COURT: Okay. Thank you, let's bring the jury

13 back in.

14 (WHEREUPON, the jury came into open court at

15 approximately 11:22 a.m.)

16 THE COURT: Okay, we've got everyone back in the

17 courtroom. Mr. Nappier?

18 MR. NAPPIER: Thank you, Your Honor. Your Honor,

19 the Plaintiff calls LeRoy Marcotte to the stand.

20 LeROY MARCOTTE, after being duly sworn, testified

21 as follows:

22 THE CLERK: Have a seat, please, sir. State your

23 name for the Court, please, sir. Spell your first and

24 last name.

25 THE WITNESS: LeRoy James Marcotte, L-E, capital

1 R-O-Y. Last name is Marcotte, M-A-R as in Robert,
2 C-O-T-T-E.

3 DIRECT EXAMINATION

4 BY MR. NAPPIER:

5 Q Good morning, Mr. Marcotte. Where do you
6 currently live?

7 A Myrtle Beach, South Carolina.

8 Q And how long have you lived in the beach area?

9 A Since 1982.

10 Q And do you currently do volunteer work here in the
11 Myrtle Beach area?

12 A Yes, I do.

13 Q And what kind of volunteer work do you do?

14 A I do bingo volunteering work.

15 Q Okay. And you volunteer at other organizations as
16 well?

17 A Yes, I do. At the Elks and at the senior center.

18 Q Okay. And, now, as far as the City of Myrtle
19 Beach, how long have you volunteered for the City of
20 Myrtle Beach?

21 A I believe about five to eight years.

22 Q And do you remember how you went about becoming a
23 volunteer for the City?

24 A Yeah. The City needed, you know, people to work
25 their bingo, and so they asked me. And that's when I

1 became a volunteer.

2 MR. BATTLE: Your Honor, I'm sorry to harp on
3 this, but who is they?

4 THE WITNESS: The City of Myrtle Beach. Well, we
5 have a representative, you know, for bingo. You asked
6 a question.

7 THE COURT: I think he's asking, do you know who
8 you -- who with the City may have asked for volunteers.

9 THE WITNESS: Okay. The person in charge of the
10 bingo is Douglas Williams. They call him Sarge. He's
11 the one that basically, that the City puts in charge of
12 the bingo.

13 Q Okay. And is he a volunteer as well?

14 A Yes, he is.

15 Q Okay. And he then goes to the City; is that
16 correct?

17 A That is correct.

18 Q All right. So when you had to volunteer, what did
19 you have to -- what steps did you have to take?

20 A I have to be cleared for the -- by the City as a
21 criminal investigation.

22 Q Okay. So they do background checks?

23 A Right.

24 Q All right. And it's the City that does the
25 background checks?

1 A That is true.

2 Q And it's the City who tells you whether or not
3 you've been approved to be a volunteer; is that right?

4 A Yes.

5 Q And as far as who is running senior bingo?

6 A The City of Myrtle Beach.

7 Q All right. And as far as then the volunteers go,
8 do you have a couple volunteers that kind of take the
9 lead role?

10 A Yes. We do, we have, you know, different areas
11 where, you know, people are in charge.

12 Q All right. And you heard the Myrtle -- or rather
13 the testimony from the deposition of Irene Demczuk. Is
14 Ms. Demczuk, was she kind of in charge of the kitchen
15 area?

16 A Yes, that's correct.

17 Q Okay. Now, as far as the bingo goes, do you also,
18 do you sometimes participate in bingo?

19 A We participate after we get through all of our
20 duties and details --

21 Q Okay.

22 A -- for setting up bingo.

23 Q And are -- and so, tell me how it works as far as
24 when you come in in the morning, what do you do?

25 A We come in between eight and 8:30 when the doors

1 open. Each one goes to their assigned duties. My
2 duty, believe it or not, is master of all. I have to
3 do everything from signing people in to setting up the
4 bingo boards, bringing out the cards and putting them
5 on the table so people can pick their cards out. I
6 also remove the bins underneath the stage and bring
7 them into the kitchen. I also work in the kitchen, so
8 I do it all.

9 Q You sometimes call the numbers too?

10 A Yes. I'm a caller also.

11 Q Okay. All right. So do you know Ms. Barras?

12 A Yes, I do.

13 Q Okay. How do you know Ms. Barras?

14 A By being at bingo, and that's the only way.

15 Q Okay. So how long have you known her?

16 A I've known her ever since I, you know, been going
17 to bingo.

18 Q All right. And do you know what her primary job
19 function was?

20 A Her primary job is working in the kitchen.

21 Q Okay. Now, I'm going to hand you what's been
22 previously marked as Exhibit No. 1, and this is
23 Defendant's Exhibit No. 1, ask you if you've seen this
24 sign-in sheet before.

25 A Yes. But not this particular one.

1 Q Okay. Now, is your name written on that sign-in
2 sheet?

3 A Yes, it is.

4 Q All right. And is that your signature?

5 A No, it isn't.

6 Q All right. And how do you know it's not your
7 signature?

8 A Well, I write a lot more clearer than this. Plus
9 my name is all one word from LeRoy, that's how you
10 pronounce it. But people call me Leroy. And it's with
11 L-E, capital R-O-Y, it's all together when I write it.

12 Q And on that sheet it's not together?

13 A It's separated.

14 Q All right, thank you. So tell me about the
15 sign-in process, how does it -- how did it work?

16 A When we come in, we are required to at that time
17 of the incident was that we sign a book with just
18 numbers, and that was it.

19 Q So there was no writing at the top?

20 A No writing at the top. It was just a -- like a,
21 you know, school book. A memo book they call it, I
22 guess. And we wrote -- they wrote down numbers. And
23 it served two purposes, that book did.

24 Q And what was that?

25 A One was the -- a count of how many people we had

1 each day playing bingo. Also, randomly they would just
2 pick numbers from that book, enabled people to actually
3 go up and get a cake from the stage. And that's what
4 the purpose of the book was.

5 Q Okay. And the second book, then, where these
6 names were written down, you guys didn't sign that?

7 A I never saw it.

8 Q All right. And when is the first time that you
9 saw that page with the writing on it?

10 A I saw that in your office, but --

11 Q Was that during the deposition?

12 A During the deposition.

13 Q Okay, all right. Well, as you know, the reason
14 that we're here today concerns issues with mats. Are
15 you familiar with mats being used in the kitchen area?

16 A Definitely.

17 Q All right. And how would you describe these mats?

18 A They were very thin, little weak, they had little
19 ruffles in it. As a matter of fact, I even tripped on
20 them a couple times myself.

21 Q Let me hand you what's been previously marked as
22 Plaintiff's Exhibit No. 1, ask you to take a look at
23 that. Is that kind of an example of the type of mats
24 that were down at that time?

25 A Yes.

1 Q Okay. And does that show some of the ripples?

2 A Yes, it does. And very thin mat.

3 Q Was that the way the ripples always looked, or
4 were they sometimes bigger or smaller?

5 A As you progress into the week other people, you
6 know, use that facility in the kitchen. And the rugs
7 got worn worse and worse from day to day.

8 Q All right. And so you noticed these problems
9 yourself; is that right?

10 A Yes.

11 Q And did you ever tell anybody about the problems?

12 A Yes, I did. I reported it to the director of the
13 parks and recreation center, Pam Stone.

14 Q Is Pam Stone in here today?

15 A Yes. She is sitting right there.

16 Q So that's who you spoke to?

17 A Yes.

18 Q All right. And tell me what you said to her.

19 A On a couple occasions I told her that I almost
20 tripped on these mats, they need to be removed or
21 replaced. I basically asked her to remove them
22 completely, she said, no, can't do that, because other
23 people come in here, they spill food and water on it,
24 and that's what -- the mats are going to stay there
25 permanently.

1 Q All right. Did she ever suggest another solution
2 to fixing the problem?

3 A No. She just was firm about making sure those
4 mats stayed on that floor.

5 Q All right. And you say you spoke to her on a
6 couple occasions?

7 A Yes.

8 Q Do you know, was anybody else present when those
9 conversations took place?

10 A Yeah. Irene was there and couple other employees.
11 What I mean by employees, I mean volunteers, we do not
12 get paid.

13 Q Okay. Was Ms. Barras there?

14 A Yes.

15 Q Okay. So when you had the conversation with Pam
16 Stone, Callie Barras was also present; is that right?

17 A Yes.

18 Q And did Ms. Barras also express concerns about the
19 mats?

20 A Yes.

21 Q Do you know -- now, do you know when this
22 happened, I mean, can you tell me a date?

23 A I cannot tell you exactly. I just know that we
24 had the conversation a couple times, you know, about,
25 you know, the problems that was in the building.

1 Q Okay. Were you there on the day that Ms. Barras
2 fell?

3 A Yes, I was.

4 Q Tell me what happened.

5 A I was just outside the kitchen door putting gifts
6 on the table. And then I heard a, you know, scream.
7 And I went into the kitchen to see what was the
8 problem. When I went into the kitchen, I saw
9 Mrs. Barras laying on the floor in pain and agony. I
10 could see her face, you know, the expression was, you
11 know, real bad.

12 So I told the people, do not move her, just call
13 the EMS right away. Because I didn't want, you know,
14 any further injury to her.

15 Q Okay. And did EMS come?

16 A Yes, they did.

17 Q And was she complaining of any specific pain that
18 you recall?

19 A I cannot recall. I know that just by the facial
20 expression on her face that she was in, you know, pain.

21 Q All right. And did EMS come and take her?

22 A Yes, they did. They put her in a neck brace and,
23 you know, back board and took her to the hospital.

24 Q Okay. Are you sure they put her on a backboard or
25 nothing?

1 A I'm not quite sure. But that's usually the
2 procedure.

3 Q Sure, sure. And did they take her to the
4 hospital, then?

5 A Yes.

6 Q Now, you indicated that you had two conversations
7 with Ms. Stone. Were they both basically the same
8 conversation?

9 A They basically were the conversation because this
10 conversation had to happen before the incident because
11 I haven't, you know, talked to anybody about this
12 afterwards, you know. So the complaint was basically
13 before, you know, the accident happened about the mats.

14 Q Well, let me ask you this. Were the mats still
15 down after the accident?

16 A No, they weren't.

17 Q Okay. So makes sense that the conversation took
18 place before?

19 A Yes.

20 Q Okay.

21 A And because we got different mats now.

22 Q Now, in your deposition, you indicated you weren't
23 sure when it happened; is that right?

24 A That's correct.

25 Q Now, this fall happened about little over two

1 years ago; is that right?

2 A I believe so. I can't even remember that for
3 sure.

4 Q Okay, all right. Well, they took your deposition
5 in December of '16, so that would have been about a
6 year and a half after the fall; is that right?

7 A Maybe.

8 Q Okay. And so now we're looking at close to two
9 years. But what you're telling me is that dates you
10 don't have any specifics?

11 A Dates I don't have specific on.

12 Q Okay.

13 A Just the, you know, details about what happened.

14 Q All right. Now, do you know before Ms. Barras
15 fell, did the City ever allow the volunteers to pick up
16 the mats?

17 A No.

18 Q Before she fell, did they ever put down a thicker
19 mat?

20 A No.

21 Q That weren't prone to wrinkles?

22 A No.

23 Q Okay. Before she fell, are you aware at least of
24 them having any contact with the folks that deliver the
25 mats asking them for a solution?

1 A No, I wouldn't, because that's between, you know,
2 whoever, you know, talked to the people from that
3 company about the mats. I would have no knowledge of
4 that.

5 Q Well, when you talked to them, you talked to
6 Ms. Stone about the problem, did you tell her that
7 other people were stumbling over the mats besides just
8 you?

9 A Yes.

10 Q And did Ms. Barras tell her the same thing?

11 A Yes.

12 Q And Ms. Demczuk, did she tell her the same thing?

13 A Yes.

14 Q All right. But after those conversations, the
15 City --

16 A Nothing was done.

17 MR. NAPPIER: Okay. Thank you. No further
18 questions.

19 CROSS-EXAMINATION

20 BY MR. BATTLE:

21 Q Mr. Marcotte, do you remember our deposition in
22 Mr. Nappier's office?

23 A Yes.

24 Q I'm a little bit confused. You said that these
25 conversations with Pam Stone happened before the

1 incident, I apologize. Do you remember stating in your
2 deposition that you thought that the conversation
3 happened after the incident?

4 A No. I said that I didn't know exactly when it
5 happened.

6 Q All right.

7 A Because I can't put a specific date.

8 Q That's okay, Mr. Marcotte. I just -- I want to
9 make sure I just write this down right. You can't
10 remember the date that you had the conversations with
11 Pam Stone?

12 A No.

13 Q Okay. So you don't know if it was before or
14 after?

15 A I know it had to be before because I haven't
16 talked to her, you know, since, after the accident.

17 MR. BATTLE: I would like to authenticate the
18 deposition of Mr. Marcotte.

19 THE COURT: All right, you may. Mark it as
20 Court's-3. Is it three?

21 COURT REPORTER: Yes.

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

24 THE WITNESS: When I did that disposition, what I
25 meant is that I didn't know, exactly know, when I had

1 the conversation. Just like I told the other lawyer
2 that I didn't know, you know, exactly when the, you
3 know, the deposition was or when the accident actually
4 happened.

5 Q Now, Mr. Marcotte, I understand. But my confusion
6 is for everyone, you keep saying it had to have been
7 before the incident. In your deposition testimony you
8 said it was after the incident. So are you comfortable
9 with saying, I don't know when it happened?

10 A I can say for sure now that I know it had to be
11 before. Because the reason why is because I have not
12 talked to Mrs. Stone since the accident. So it had to
13 be before. You trying to put words in my mouth --

14 MR. BATTLE: Your Honor?

15 THE WITNESS: And all I'm saying is, you know, at
16 that time when I did the deposition, you know, now I
17 can remember I didn't talk to Mrs. Stone after the
18 incident. So it had to be before.

19 Q All right, Mr. Marcotte. I just want you to read
20 the statements you told me in December, and then we'll
21 be done; all right?

22 A Yeah.

23 Q Starting at line 20, can you review that.

24 A Okay. As far as you remember, you're not sure
25 whether --

1 Q Mr. Marcotte, I'm sorry, could you just give me
2 one moment. I need to find your deposition so I can
3 follow along with you.

4 A Oh, okay.

5 Q Thank you so much, sir. Okay. So I'll ask the
6 question, if you could read your response.

7 A Okay.

8 Q Okay. As far as you remember, you're not sure
9 whether those multiple meetings took place before or
10 after Ms. Barras fell?

11 A Well, I didn't see the -- blank. I can't say if I
12 saw Ms. Stone before the incident. I think it came
13 after the incident. That's when I, you know -- that
14 was whoever was working, you know, the front desk at
15 the time, if we had any problems that the air is too
16 cold we ask to turn the thermostat up.

17 Q So you're changing your testimony to now say it
18 was before the incident?

19 A What I'm saying is that at that time, I didn't
20 know exact date, okay. After I'm thinking about it
21 because I know in my mind, I know I did not talk to
22 Mrs. Stone after the incident about this. So it had to
23 be, you know, talking to her about the mats before the
24 incident. That's what I'm saying.

25 Q So that testimony is wrong that you gave at your

1 deposition?

2 A Not at the time when I said it.

3 Q Okay.

4 A Because I definitely couldn't, you know, remember.

5 Q You said you were present for the meeting when
6 Callie Barras complained to Pam Stone about the mats?

7 A Yes, with Irene.

8 Q What was the purpose of the meeting?

9 A She was just introducing herself and telling, you
10 know, that she was the director. And I don't know the
11 main purpose why she was there.

12 Q Was she there to discuss the mats or something
13 else?

14 A No. I don't know what she was there, you know,
15 for.

16 Q Were you ever charged money to go to the Base Rec
17 Center, sir?

18 A No.

19 MR. BATTLE: No further questions. Thank you,
20 Mr. Marcotte.

21 THE COURT: All right, Mr. Nappier.

22 REDIRECT EXAMINATION

23 BY MR. NAPPIER:

24 Q Do you still have that deposition?

25 A Yes, I do.

1 Q Look on page 23. I'm going to read you where I'm
2 starting on line seven. And I said, Just real quick,
3 just to clarify, you indicated that there was a meeting
4 with Pam Stone prior to Callie falling in which the
5 rugs were discussed; is that correct? And what was
6 your answer to that?

7 A I can't remember it was prior or after.

8 Q So even in the same deposition you were indicating
9 you weren't sure which way, whether it was before or
10 after; is that right?

11 A That is correct.

12 Q Okay. And didn't you just state earlier that the
13 reason that you knew that it was -- it had to have been
14 before is because they took the mats up after; isn't
15 that right?

16 A That is correct. And also, I didn't have no
17 contact with Mrs. Stone, you know, after the fact.

18 MR. NAPPIER: Thank you. Nothing further.

19 MR. BATTLE: Nothing further, Your Honor.

20 THE COURT: All right. You may step down,

21 Mr. Marcotte.

22 THE WITNESS: Thank you, Your Honor.

23 MR. NAPPIER: I'd ask that Mr. Marcotte be
24 released from his subpoena.

25 THE COURT: Mr. Battle, do you have any objection?

1 MR. BATTLE: No, Your Honor. Mr. Marcotte, you're
2 released from your subpoena, thank you.

3 THE WITNESS: Thank you, Your Honor.

4 (Witness excused.)

5 MR. NAPPIER: Your Honor, that's the Plaintiff's
6 case.

7 THE COURT: That's the Plaintiff's case, all
8 right. Mr. Ropp, take the jury out while I entertain
9 motions.

10 (WHEREUPON, the jury exited the courtroom at
11 11:45 a.m.)

12 THE COURT: All right.

13 MR. BATTLE: Your Honor, I would like to make a
14 motion for -- pardon me -- directed verdict under Rule
15 50 ASRP on the basis of Recreational Use Statute or a
16 licensee status both granting us not owing her a duty.
17 Also a Tort Claims Act.

18 THE COURT: All right. Tell me about the Tort
19 Claims Act.

20 MR. BATTLE: Under Subsection 13, there is -- you
21 cannot be found liable for inspections or failure to
22 inspect. In this case because the mats were being
23 changed, I'd argue that if absolutely anything,
24 ignoring the other statutes, Mr. Jordan's inspection
25 failed to detect any problem with the rugs, we can't be

1 held responsible for that.

2 THE COURT: Well, I haven't heard anything from
3 your client as to whether or not they did any
4 inspections or failed to do any inspections. The only
5 testimony I heard thus far is that the allegedly
6 defective mats were brought to the attention of the
7 City. And the City would not allow their removal, and
8 that resulted in a dangerous condition. Now, that's
9 where we are presently, okay.

10 Now, tell me why the Tort Claims Act would
11 insulate the City from that sort of liability. I mean,
12 where we are right now, and this is just what I've
13 heard, we have a situation where the City was on notice
14 of a condition and failed to remedy it. Now, tell me
15 how that would not allow a permitted action under the
16 Tort Claims Act.

17 MR. BATTLE: Under Subsection 16, maintenance,
18 security or supervision of any public property intended
19 or permitted to be used as a park, playground or open
20 area for recreational purposes, unless that entity is
21 not corrected after actual notice. So notice is still
22 being disputed, so --

23 THE COURT: That's what we got, that's the jury
24 question we have left is whether it was -- whether
25 there was notice. And that's disputed. I mean,

1 obviously, I'm sure you're taking the position you had
2 no notice.

3 MR. BATTLE: Yes, sir.

4 THE COURT: But there is certainly evidence thus
5 far that there was notice. So I would deny your motion
6 on those grounds. I would also -- let me tell you,
7 gentlemen, where I'm going with this thing on the
8 Recreational Use Statute.

9 I am going, Mr. Nappier, to make a finding based
10 on the testimony and looking at it in a light most
11 favorable to you, if we look at the Sims case, it says
12 whether you're there for voluntary as doing volunteer
13 work or whether you're there for recreational use, in
14 either case, you are a licensee.

15 I'm going to charge the general law as to
16 negligence including breach of a duty. I will charge
17 the common law duty to licensees. However, I have a
18 question as to whether or not the Recreational Use
19 Statute applies. That statute is in derogation of
20 common law and must be strictly construed.

21 Whether she was a recreational user, which I think
22 the statute was enacted to shield against, or she was a
23 volunteer which comes outside the statute, I'm not
24 sure. So I'm going to as an exception to the general
25 rule, give it to the jury and tell the jury the purpose

1 of the statute, what it shields against, the exceptions
2 to the statute, and let them determine whether or not
3 this is a case where the Plaintiff either fits under
4 the statute or she does not. Okay.

5 And that's the way I'm going to go with this,
6 okay. I just tell you that to let you know throughout
7 the rest of the case. I'm denying your motion for a
8 directed verdict at this time. Okay. Bobby, if you
9 would, if they are ready to come back in, bring them.

10 Wait a minute. It's noontime, isn't it. Anybody
11 have any objection to Mr. Moore -- I'm sorry, our
12 deputy telling the jury that I'm going to let them go
13 to lunch until about 1:30, any objection to that?

14 MR. NAPPIER: No objection.

15 MR. BATTLE: No, Your Honor.

16 THE COURT: Mr. Palmer, if you would just tell
17 them it's almost noon, and I'm going to let them go to
18 lunch. About 1:30, be back about 1:30.

19 All right, gentlemen, Elizabeth has been working
20 on this charge. We just spent about a half hour during
21 the break, and we kind of roughed something out. I
22 will get it to you by e-mail as soon as possible so
23 you'll be able to review it, okay. All right.

24 MR. BATTLE: Thank you, Your Honor.

25 (WHEREUPON, a luncheon recess was taken at 11:51

1 a.m.)

2 THE COURT: I understand we only got one witness
3 left; is that right?

4 MR. BATTLE: Two, Your Honor.

5 THE COURT: Two. And they will be relatively
6 short, I would imagine?

7 MR. BATTLE: Yes, sir, I think not too long.

8 THE COURT: Okay. Elizabeth sent you a charge
9 that she's been working on. I'm going to give you some
10 time, let's look over it. And this is a very complex
11 charge situation for this jury, I think we can all
12 agree on that. But I always give them a transcript.
13 So look at it in the next, I don't care if it takes a
14 half hour, let's look at it. I want to get the
15 transcript -- I mean, the charge in place, okay, before
16 we do anything.

17 So just -- it should be on your e-mail, okay.

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

19 THE COURT: All right. Thank you, please be
20 seated.

21 (WHEREUPON, the jury came into open court at
22 approximately 2:17 p.m.)

23 THE COURT: Okay, we've got everybody back in the
24 courtroom.

25 MR. NAPPIER: My client's in the restroom.

1 THE COURT: Okay, all right. While we're waiting
2 on them, let me just make a few comments to the jury.
3 Ladies and gentlemen, normally the law that will apply
4 to what we attorneys and judges refer to as a slip and
5 fall case is rather simple.

6 However, as you know, the Defendant is the City of
7 Myrtle Beach, that is a political subdivision. And the
8 property involved was also a recreational property that
9 was maintained by the City. That raises very specific
10 and very special complexities to the case. There are
11 very special rules which and conditions by which a
12 political subdivision can be sued.

13 And then there are others that apply to
14 recreational facilities whether they are owned by a
15 political subdivision or an individual. And those
16 overlap. And so the attorneys and I have been working
17 very hard, and Ms. Smith particularly, all during
18 lunch, early this morning and yesterday to try to put
19 together a charge that would not overcomplicate the
20 issues for you.

21 And that's why we just got out of conference on it
22 trying to figure out how to put it to you at the end of
23 the trial so it will be easier for you to understand.
24 Because it's very complex when you think about it. And
25 that's why the delay. We're not wasting time, we have

1 been working. And I want to apologize for the delays.
2 I know you've be back there in that jury room thinking,
3 why doesn't he write. We have been working, and I
4 apologize for the delay.

5 Okay. Now, you have heard Mr. Nappier state to
6 the Court that the Plaintiff rests. That means the
7 Plaintiff's testimony is ended. Mr. Battle, as I told
8 you, now has an opportunity to put up the defense. Are
9 you prepared to go forward, Mr. Battle?

10 MR. BATTLE: We are, Your Honor.

11 THE COURT: Go ahead.

12 MR. BATTLE: The Defense calls Dustin Jordan to
13 the stand.

14 DUSTIN JORDAN, after being duly sworn, testified
15 as follows:

16 THE CLERK: Have a seat, please, sir. State your
17 name for the Court, please, sir.

18 THE WITNESS: Dustin Jordan.

19 DIRECT EXAMINATION

20 BY MR. BATTLE:

21 Q Mr. Jordan, could you give me your educational
22 background, please.

23 A I graduated high school from Conway High School.
24 Then I attended Clemson University where I majored in
25 business management and minored in parks and

1 recreation.

2 Q And how many years of experience have you had with
3 parks and recreation departments?

4 A Ten years in total.

5 Q How many of those years are with the City of
6 Myrtle Beach?

7 A The past five years have been with the City of
8 Myrtle Beach.

9 Q Where were you working at that time?

10 A The Base Recreation Center.

11 Q What are your responsibilities at the Base
12 Recreation Center?

13 A Well, I'm the recreation supervisor for the Base
14 Recreation Center. So I manage all of the day-to-day
15 activities for the recreation center. That would be
16 including supervision of staff, programs, private
17 rentals, any contract services that are out on the
18 building, I would manage those. You know, anything
19 like that.

20 Q And how exactly does the Base Rec Center work,
21 what does it offer?

22 A Well, we offer programs for the citizens, and we
23 also do private rentals. So when we're not operating
24 programs, we do have rooms that are available for rent
25 for weddings, birthdays, family reunions, stuff like

1 that.

2 Q Okay. And how are the programs managed?

3 A Well, there's different types of programs, some
4 are instructor led programs which would be City
5 employees, instructors, you know, giving dance lessons,
6 guitar lessons, such as that. And then some are
7 volunteer led programs.

8 Q Okay. Describe your daily routine for me,
9 Mr. Jordan.

10 A I usually get to the facility about 8 o'clock.
11 That's 30 minutes before we open the doors. When I
12 first come in, I go throughout the facility turning on
13 all the lights, doing a safety check which is checking
14 for roof leaks, water on the floor, check the rugs,
15 check all the doors, make sure they were secure, no
16 break-ins, you know, no windows broken and stuff like
17 that.

18 And then I would count the money from the night
19 before, do a check of the bank deposit. And then after
20 that it's usually nearing 8:30, so I would open the
21 doors to the public for the day.

22 Q And if there were any issues detected, you would
23 resolve them?

24 A Correct.

25 Q Did you detect any issues with the mats during

1 your inspections?

2 A Which time; at a certain time or?

3 Q Before this fall.

4 A No, not to my knowledge.

5 Q Okay. Did you see any rotting or tearing in the
6 mats?

7 A No.

8 Q Did you receive any complaints about the mats
9 before the fall?

10 A No.

11 Q Why do you think the Plaintiff insists that she
12 complained about the mats?

13 A I'm not sure why or if she complained about the
14 mats. I would think her dates are mixed up if --

15 MR. NAPPIER: Objection as to speculating what the
16 Plaintiff was thinking.

17 THE COURT: I would sustain that objection.

18 Q And you mentioned bank statements and checking the
19 register. You don't charge everyone to enter the Base
20 Rec Center; correct?

21 A Correct.

22 Q The charges are for specific classes?

23 A Classes or private rentals.

24 Q Okay. Did you ever charge anyone at senior bingo
25 to come into the facility?

1 A No.

2 Q Does the City donate coffee to senior bingo?

3 A We do.

4 Q Do you make any money off of the senior bingo
5 program?

6 A No.

7 Q So you basically just let them in and to use the
8 facility?

9 A That is true. We provide them the facility, and
10 we provide them coffee.

11 Q Okay. I'm picking up what's been labeled as
12 Plaintiff's Exhibit No. 6. Would you look at that,
13 please. Can you describe what I've handed you.

14 A This would be the invoice from the ALSCO driver
15 who delivers the rugs.

16 Q So based on that document, brand new mats were
17 delivered to that facility on April 3rd?

18 A Correct.

19 Q And if Ms. Barras' fall occurred on April 8th,
20 would that mean that only five days had gone by since
21 those new mats were put down?

22 A Correct.

23 Q What was your arrangement with ALSCO?

24 A Well, ALSCO would come in every other week. They
25 were a contract service, so they went through a bid

1 process to obtain that. And they would change out all
2 of the rugs in the facility, all of the mop heads,
3 brooms, you know, janitorial stuff like that.

4 Q When they delivered the mats, were they in good
5 condition?

6 A Yes.

7 Q Did you and the ALSCO driver speak about this
8 incident?

9 A We had a conversation after the incident about the
10 rugs, about picking the rugs up in the kitchen area. I
11 can't say for sure that we spoke specifically about the
12 incident.

13 Q Okay. Did you ever receive any instructions from
14 Pam Stone regarding those mats?

15 A No.

16 Q Did the conversation with the ALSCO driver happen
17 in April?

18 A I don't know the exact date. I know it was after
19 the fall, and probably recently after the fall. So
20 probably the end of April.

21 Q In regards to the senior bingo volunteers, do they
22 play bingo after they are done volunteering?

23 A Yes.

24 Q Do you recruit volunteers for the senior bingo
25 program?

1 A No.

2 Q Do you post ads anywhere for volunteers?

3 A Only on the City's website. And then we have some
4 fliers in the facility that show all of the programs
5 that the facility offers.

6 Q Now, is that an ad for volunteers or for senior
7 bingo?

8 A That's for the program. We don't post any ads for
9 volunteers.

10 Q Okay. Does senior bingo recruit all their own
11 people?

12 A Yes.

13 Q So what role do you play with senior bingo?

14 A Very little. We play no role in their day-to-day
15 activity. But if there is a problem, a big concern,
16 they would come to us for that. But as far as the
17 day-to-day activity, we have no role.

18 Q And those would be concerns regarding the
19 facility?

20 A Sure.

21 Q Okay. Who manages the senior bingo volunteers?

22 A The head volunteer, Doug Williams, he goes by
23 Sarge, he's in charge of the program.

24 Q Does any City employee directly manage senior
25 bingo?

1 A No.

2 Q But because it's listed on the flier in the
3 website, do you consider it a City program?

4 A That would be a volunteer led City program.

5 Q Okay. Do you provide bingo equipment to the
6 senior bingo?

7 A No.

8 Q Do you provide prizes to them?

9 A No.

10 Q Do you provide food?

11 A No.

12 Q So what does the City provide to senior bingo?

13 A For that program, we provide the facility, the
14 tables and chairs and then the coffee and coffee
15 supplies.

16 Q Does the City lose money hosting senior bingo?

17 A Yes.

18 Q Okay. How?

19 A Well, obviously we staff the facility, the coffee
20 and coffee supplies, and then the loss of revenue from
21 private rental opportunities during that time.

22 Q And is it a benefit to the public to run senior
23 bingo?

24 A A benefit to the public, yes.

25 Q I refer to Defendant's Exhibit 1. Would you

1 please describe what I've handed you, Mr. Jordan.

2 A This is the daily sign-in sheet for the recreation
3 center.

4 Q Okay. And is that a sign-in sheet that people
5 entering the facility are supposed to sign?

6 A Correct.

7 Q Now, we've established very clearly that
8 Ms. Barras did not sign that waiver; correct?

9 A Correct.

10 Q All right. And instead it was another volunteer
11 with senior bingo that signed it; correct?

12 A That is correct.

13 Q All right. So Arlene Birch was writing in
14 people's names into that form; correct?

15 A Correct.

16 Q Was it a shock to you when you found out she was
17 doing that?

18 A It was.

19 Q Okay. And why was that?

20 A Well, I did not realize that she was writing the
21 people's name down as they come in.

22 Q Okay. Was Callie Barras a volunteer with senior
23 bingo?

24 A Yes.

25 Q Where was she working?

1 A She was a volunteer in the kitchen area.

2 Q Okay. Is the public allowed in the kitchen, or is
3 it only volunteers?

4 A That would be volunteers.

5 Q Who enforces that only volunteers can go into the
6 kitchen?

7 A That would be Sarge.

8 Q And Sarge is a member of senior bingo?

9 A Correct.

10 Q All right. You were present at the Base Rec
11 Center on the day of the accident?

12 A That is correct.

13 Q Tell me what happened.

14 A I was in my office and it was early morning. I
15 was in my office when the fall happened. One of the
16 other volunteers from the kitchen, Oscar, came to my
17 office and got me and said, Ms. Callie has fallen, you
18 need to come back here.

19 And then at that time, I went to the kitchen area
20 where she was. You know, there was a group of
21 volunteers in there. I called EMS and, you know,
22 eventually they came and took her away.

23 Q All right. Did you do your morning check of the
24 facility that day?

25 A I did.

1 Q Okay. Did you see any defects with the mats that
2 morning?

3 A No.

4 Q Did someone in the group mention being concerned
5 about mats making her trip?

6 A They did.

7 Q Did you check the mat after Ms. Barras fell?

8 A I did.

9 Q What did you see?

10 A The mat was perfectly normal.

11 Q Was it ripped?

12 A No.

13 Q Was it rotten?

14 A No.

15 Q Was there a hole in it, or was it wet?

16 A No.

17 Q Did you see anything wrong with the mat at all?

18 A No.

19 Q Was that fall the first time you had any notice of
20 an issue with the mat?

21 A It was.

22 (WHEREUPON, Defendant's Exhibit No. 3 was marked
23 for identification only.)

24 Q Mr. Jordan, I'm handing you what's been marked as
25 Defendant's Exhibit 3. Would you please review that.

1 Do you recognize that document?

2 A Sure. It's the facility incident report that I
3 filled out.

4 Q Did you fill that out right after the fall?

5 A I did.

6 Q Does it include a note saying that parties were
7 saying that the mat may have caused it?

8 A It does.

9 Q Okay. It also notes that you were the one to call
10 EMS?

11 A Correct.

12 Q And is that note part of the reason why you
13 checked the mats immediately after the fall?

14 A It was.

15 Q Did you send that report to your supervisor, Pam
16 Stone, that day?

17 A Yes.

18 (WHEREUPON, Defendant's Exhibit No. 4 was marked
19 for identification only.)

20 Q Handing you what's been marked as Defendant's
21 Exhibit 4, would you please review that.

22 A Okay.

23 Q Is that an e-mail that you sent to your
24 supervisor?

25 A It is.

1 Q Okay. That e-mail contains the report that you've
2 also examined, the prior exhibit?

3 A Correct.

4 Q Okay. Is the send time on that e-mail at 9 a.m.?

5 A It is.

6 Q So based on your incident report which is saying
7 that EMS arrived at 8:45, within 15 minutes of that,
8 had you told Pam Stone about the fall at the facility?

9 A I did.

10 Q Does that e-mail also mention the mats? Does it
11 not?

12 A I do not think it does.

13 Q But the incident report that's attached to it does
14 mention the mats?

15 A Correct.

16 Q And the date of that e-mail is April 8th, 2015;
17 correct?

18 A Correct.

19 Q All right. Who is Pam Stone to you?

20 A Pam Stone is the recreation director for the City
21 of Myrtle Beach.

22 Q Okay. Does she visit the Base Rec Center often?

23 A She does.

24 Q Okay. Did she ever mention any issues with those
25 mats prior to the fall?

1 A No.

2 Q Did she ever tell you that anyone had complained
3 about the mats prior to the fall?

4 A No.

5 Q Okay. Did one of her site visits come up in your
6 deposition with the Plaintiff?

7 A It did.

8 Q Were you present for that site visit?

9 A I was not. That was on a day I was off work.

10 Q And that's the March 20th site visit?

11 A I believe that's the date, I'm not exactly sure.

12 Q So what do you know about that meeting with Pam
13 Stone?

14 A I know the meeting was called. That was when
15 there was the whole issue with the age discrimination,
16 and that's the reason the meeting was called and why
17 Pam was out there.

18 Q But you were not personally present?

19 A Correct.

20 Q And Ms. Stone did not talk to you about it
21 afterwards?

22 A Correct.

23 Q How long have you known Callie Barras?

24 A As far as I know, she's been a volunteer my entire
25 five years I've been there. I don't remember the exact

1 time or date I met her, but I would assume it was, you
2 know, pretty soon after that five years.

3 Q Have you ever had any issues with her?

4 A No.

5 Q Okay. Does she still volunteer today?

6 A She does.

7 MR. BATTLE: Please answer any of Mr. Nappier's
8 questions.

9 THE COURT: Mr. Nappier?

10 CROSS-EXAMINATION

11 BY MR. NAPPIER:

12 Q Mr. Jordan, you indicated that you did a safety
13 check. Are you saying that you remember a specific
14 safety check on April 8th, 2015?

15 A Well, it's something I do every morning when I get
16 there.

17 Q So you don't really remember specifically looking
18 at a particular rug on April 8th, 2015; do you?

19 A Correct.

20 Q Okay. And didn't you also indicate that you had
21 seen times where the rugs had rolled up?

22 A Sure, I've seen them with waves in them before.

23 Q Okay. So it does happen that these rugs roll up?

24 A Sure.

25 Q Did you ever go to the ALSCO representative and

1 tell him, hey, you know, these rugs are rolling up and
2 they are getting waves in them, is there something we
3 can do about that?

4 A No.

5 Q Did you ever go to the ALSCO representative and
6 say, is there a heavier mat we could use so they don't
7 roll up?

8 A No.

9 Q Okay. Now, you indicated that the volunteers,
10 when they come in, they have to go through a background
11 check; is that right?

12 A All volunteers with the City do, correct.

13 Q Okay. And so the City says that they have to go
14 through a background check if they are going to be a
15 volunteer for the City; is that correct?

16 A Correct.

17 Q All right. And they are, in fact, working as
18 volunteers for the City; correct?

19 A For the bingo program, correct.

20 Q Okay. Well, are there volunteers that work for
21 other programs that the City puts on?

22 A Sure, sure.

23 Q Like what?

24 A Well, I don't know exactly. Not at my facility
25 there's not. But I'm sure there are with some of the

1 other programs throughout the City.

2 Q Okay. So there are other programs throughout the
3 City in which volunteers are brought in by the City to
4 use or to run the program; is that right?

5 A Sure. I'm sure there are.

6 Q Okay. And now, you have other programs as well,
7 like things like quilting, guitar lessons, line
8 dancing, things like that?

9 A Sure.

10 Q And people are charged for those programs; is that
11 right?

12 A It depends on the program. If the program has an
13 instructor that has to lead the program, then there's a
14 fee involved with that.

15 Q Okay. And is that instructor a City employee, or
16 are they like an independent contractor?

17 A The instructor is a City employee.

18 Q All right. So then the fee is going to the City;
19 correct?

20 A Correct.

21 Q All right. And as well there are instances where
22 the premises are used for private functions, the rec
23 center, the rec center is used. And people in order to
24 use the rec center, they'd have to pay to use it;
25 correct?

1 A Correct.

2 Q And they are paying the City for that?

3 A That's correct.

4 Q Okay. And part of your job is collecting those
5 payments; is that right?

6 A That's right.

7 Q And, in fact, I think you said daily you're
8 counting up the money and, I guess, are you making the
9 deposits, are you responsible for that?

10 A Yes, sir.

11 Q So that's part of your everyday work?

12 A Sure.

13 Q All right. Now, you indicated that there had been
14 a meeting with Pam Stone in which there were
15 discussions regarding the use of the facility or the
16 nonuse of the facility by people in the bingo program
17 or wanting to eliminate children or younger people from
18 going to the bingo; is that right?

19 A Right.

20 Q Sorry I didn't ask that very well.

21 A Yes.

22 Q All right. So there was actually a petition, I
23 believe, that was passed around in which they were
24 asking to limit, they being the volunteers, limit bingo
25 to 50 and over; is that right?

1 A I believe so.. That's not something I ever saw. I
2 believe that was presented at the meeting which I was
3 not part of.

4 Q Okay.

5 A But I believe that's correct.

6 Q All right. So that would have been what was
7 presented to Pam Stone; is that right?

8 A I'm not really sure. I think, maybe.

9 Q All right. Well, Pam Stone, is she your boss or
10 one of your bosses?

11 A She is.

12 Q She's really the boss of your boss; is that right?

13 A Exactly.

14 Q Okay. So you have another in-between supervisor,
15 and then there's Pam Stone?

16 A That's right.

17 Q But Pam Stone will come to the premises, and she
18 will address issues such as this matter that came up
19 regarding the petition; is that right?

20 A If she needs to, yeah.

21 Q Okay. And you know that she actually came and had
22 a meeting at the facility; is that right?

23 A Yes.

24 Q It happened to be on a day that you were off?

25 A Correct.

1 Q Is that right? But you also heard that there had
2 been a meeting subsequently with Pam Stone that same
3 day in which there was a discussion about mats; is that
4 right?

5 A Well, I did not know that until the case came
6 about, and I was told that by the attorney.

7 Q So there was -- so you were told that there had
8 been a discussion regarding mats; is that right?

9 A Correct.

10 Q And there had been a discussion with Pam Stone
11 about mats; is that right?

12 A Correct.

13 Q And did Pam Stone ever come to you and ask you any
14 questions about the mats?

15 A No.

16 Q All right. And did you ever try to ask her about
17 the mats?

18 A No.

19 Q All right. Even to this day, have you asked her
20 about the conversation about the mats?

21 A No.

22 Q Okay. And now, you are the facility supervisor;
23 is that correct?

24 A That's correct.

25 Q All right. So you're basically in charge of that

1 rec center; is that right?

2 A Right.

3 Q Okay. And you indicated that there was a
4 conversation with the ALSCO driver about taking up the
5 mats; is that right?

6 A That's correct.

7 Q In the kitchen?

8 A That's correct.

9 Q Okay. And that was after she fell; is that right?

10 A That was after she fell.

11 Q Okay. So after she fell, you told the ALSCO
12 driver, hey, let's not put the mats down in the
13 kitchen; is that right?

14 A That was at the request of the volunteers in the
15 kitchen, yes.

16 Q Okay. And that was, again, after she had fallen?

17 A Correct.

18 Q And was there anything else done after she had
19 fallen?

20 MR. BATTLE: Objection, Your Honor. May I
21 approach the bench.

22 THE COURT: I know where you're going, I'm going
23 to sustain it.

24 Q Well, let me ask you this. Other than as to your
25 meeting with the members or the volunteers, you said

1 that they told you that they wanted the mats up; is
2 that right?

3 A Well, not necessarily a meeting with them, but
4 several of them came to me and requested that I take
5 the mats up.

6 Q Was there a specific person that you remember?

7 A Not -- I mean, I think Ms. Irene probably did.
8 But I can't say for sure if it was her and who else.

9 Q All right. Did Ms. Irene mention to you an
10 earlier conversation she had had with Ms. Stone before
11 Callie fell?

12 A No.

13 Q And Ms. Stone also never mentioned that
14 conversation to you; is that right?

15 A Correct.

16 Q Now, you indicated, did you not, in your
17 deposition that you know that Pam Stone had a
18 conversation prior to the fall with members -- with
19 volunteers; is that right?

20 MR. BATTLE: Your Honor, that's a -- sorry. I
21 misheard his question, I apologize.

22 THE COURT: Go ahead.

23 THE WITNESS: Would you repeat that.

24 Q Yes. Isn't it accurate that you had stated in
25 your deposition that you knew that Pam Stone had a

1 conversation with volunteers prior to Ms. Callie
2 falling in which mats were discussed?

3 A At the time of the deposition, I had been informed
4 that there was a claim that Ms. Pam had spoke with them
5 about the mats.

6 Q Okay. You indicated that, and let's -- can you
7 tell me if you remember this.

8 A Okay.

9 Q I asked you whether or not did you know that the
10 meeting took place. You indicated that you didn't
11 know. I know it was the day I wasn't there, but I
12 don't know the date. And I said, I asked you, but I
13 think it was prior to the fall; is that correct? And
14 you said, I think so.

15 Does that sound kind of like what you said?

16 A Sure.

17 Q Okay, all right. So at least at the time that you
18 took your deposition, and your deposition was about a
19 month ago; is that right?

20 A I'm not exactly sure of the date and month, maybe
21 more.

22 Q Okay. April 5th sound about right?

23 A Sure.

24 Q Okay. And at that time you indicated, yeah, I
25 knew there was a conversation about mats. But I think

1 you said you didn't know what they talked about with
2 the mats; is that right?

3 MR. BATTLE: Your Honor, that's a misstatement of
4 the deposition. I can hand it...

5 THE COURT: Well, let's just show him the
6 deposition, then.

7 MR. NAPPIER: I'm just asking him if he knows,
8 Your Honor.

9 THE WITNESS: At the time of the deposition, I had
10 been informed that there was supposedly a conversation
11 about the mats.

12 Q Okay.

13 MR. NAPPIER: That's all I have, Your Honor.
14 Thank you very much.

15 THE COURT: Very well.

16 MR. BATTLE: Real quick.

17 REDIRECT EXAMINATION

18 BY MR. BATTLE:

19 Q Were you there on the day that Pam Stone was
20 visiting the facility about age discrimination?

21 A No.

22 Q So you did not see or hear that conversation at
23 all?

24 A No.

25 Q Did I tell you that Callie Barras was claiming

1 that she told Pam Stone about the mats on that day?

2 A You did. And that's the first I had heard of it.

3 MR. BATTLE: Okay, thank you.

4 THE COURT: All right. Mr. Nappier?

5 MR. NAPIER: Nothing further, Your Honor.

6 THE COURT: Thank you. You may step down, sir.

7 Thank you.

8 (Witness excused.)

9 MR. BATTLE: Your Honor, the Defendant calls Pam
10 Stone.

11 THE COURT: Okay. Come around, Ms. Stone.

12 PAMELA STONE, after being duly sworn, testified as
13 follows:

14 THE CLERK: Have a seat, please, ma'am. State
15 your name for the Court, please. Spell your first and
16 last name.

17 THE WITNESS: Pamela Stone, P-A-M-E-L-A,
18 S-T-O-N-E.

19 DIRECT EXAMINATION

20 BY MR. BATTLE:

21 Q Hi, Ms. Stone. Can you tell the jury how long
22 you've been with the City?

23 A A little over 29 years.

24 Q What all have you done with the City of Myrtle
25 Beach?

1 A I started as a part-time employee in 1985 while I
2 was a student at Coastal Carolina. But I began
3 full-time over 29 years ago, 1988. I was a recreation
4 leader in aquatics. I was able to progress throughout
5 the organization from recreation leader to youth
6 program supervisor where I ran summer camps and after
7 school programs at Pepper Geddings Rec Center and the
8 Canal Street Recreation Center.

9 From there I became a recreation facilities
10 manager over the City's four recreation centers. The
11 facilities manager saw the day-to-day operations of the
12 building but not the programming. From there I became
13 the recreation superintendent which manages and directs
14 all of recreation.

15 From recreation superintendent I became the
16 recreation services manager. In 2011 -- our director
17 of cultural and leisure services retired in December of
18 2010. And they basically took the cultural and leisure
19 department and assigned some duties to the park
20 superintendent and other duties to the recreation
21 superintendent.

22 So as recreation services manager, not only was I
23 responsible for all of recreation, but Whispering Pines
24 Golf Course, Chapin Memorial Library, the historic
25 Myrtle Beach Train Depot, the maintenance and upkeep at

1 the historic Myrtle Beach Colored School, Myrtle's
2 Market farmers market and outside contracts and
3 maintenance at Pelicans Ball Park. From there I was
4 promoted last October to recreation services director.
5 And those are the same duties I have.

6 Q Thank you, Ms. Stone. You were not a witness to
7 this fall; correct?

8 A Correct.

9 Q You were not at the Base Rec Center that day?

10 A I was not.

11 Q Okay. Can you describe the Base Rec Center to me,
12 please.

13 A Sure. It's a passive recreation center. It has
14 four classrooms and a ballroom and a warming kitchen.
15 It has a lobby area with two pool tables, and it has a
16 game room with a ping-pong table.

17 Q Ms. Stone, if you need a glass of water or
18 anything...

19 A Thank you. So it's what we call a passive rec
20 center as opposed to an active recreation center, which
21 would have gymnasiums and weight rooms and racquetball
22 courts or a swimming pool, etcetera.

23 Q What does it offer to the public?

24 A It offers a variety of programming as well as
25 rental opportunities. We have everything from oil

1 painting, to quilting, to senior's movie, to bingo, to
2 guitar lessons. There's just a variety of activities.
3 We have billiards leagues. And then, like I said,
4 there's rental opportunities for the public for the big
5 meeting hall where we do family reunions, wedding
6 receptions, birthday parties, things like that.

7 Q And is anyone who uses that facility allowed to
8 exclude people?

9 A Only if it is a private rental, then in a private
10 rental, you can close that facility more or less to the
11 public. You've paid your rental fee, you've provided
12 the City with a copy of your liability insurance naming
13 the City as an additional insured. So it becomes your
14 event.

15 Q Can you tell me about the history of senior bingo
16 with the City.

17 A I can tell you what I remember. Back in the early
18 to mid '90s we had bingo at Pepper Geddings Recreation
19 Center. And then in 1996 the City of Myrtle Beach
20 received the Base Recreation Center and Crabtree Gym
21 along with the ball fields as part of the Department of
22 Interior's public benefit transfer when the air base
23 closed.

24 Because of the large senior population on the
25 south end of Myrtle Beach and it being a passive hall

1 that we could add more users to, we decided to move
2 senior bingo from Pepper Geddings out to the Base
3 Recreation Center.

4 Q Okay.

5 A Now, that program has always been a volunteer led
6 program. Donna Skinder was the originator of senior
7 bingo at Pepper Geddings and took it with her when her
8 office moved over to the Base Recreation Center.

9 Q Is senior bingo unique in that it mostly runs
10 itself?

11 A It is.

12 Q Is senior bingo listed on the City website?

13 A It is. We consider ourselves a partner or a
14 cosponsor. We provide the facility and the coffee, and
15 the seniors organize the bingo themselves. It's their
16 equipment, they run the program. We facilitate.

17 Q And is senior bingo also listed on the flier for
18 the Base Rec Center?

19 A It is.

20 Q Are the other programs at the Base Rec Center also
21 on that flier?

22 A They are.

23 Q And is that flier for the Base Rec Center?

24 A It is.

25 Q Do you recruit volunteers for senior bingo?

1 A We do not.

2 Q Do you run ads in the newspaper for senior bingo?

3 A We do not.

4 Q Do you have a budget for newspaper ads?

5 A We do not.

6 Q Do you do anything for the senior bingo program
7 besides give them a free space and coffee?

8 A We do not.

9 Q Who is in charge of senior bingo?

10 A Sarge, Doug Williams.

11 Q Are there any other groups that work at the Base
12 Rec Center like senior bingo?

13 A Not really. We have a quilting group, but that
14 group leads quilting but they pay a quilting
15 membership. And that goes to the quilters guild.

16 Q Does Sarge give orders to the members of senior
17 bingo?

18 A He does. It's their program.

19 Q Who talks to Sarge when there's a problem?

20 A Dustin.

21 Q Do you provide any bingo equipment to senior
22 bingo?

23 A We do not.

24 Q Do you provide any prizes?

25 A We do not.

1 Q Does the City lose money hosting senior bingo?

2 A Yes.

3 Q How?

4 A Well, it prohibits us from being able to rent that
5 hall Wednesdays and Fridays from 8:30 in the morning
6 until noon. We have a significant number of rentals at
7 the Base Recreation Center. I believe we had 374 last
8 year. Most of those are weekend rentals. A lot of the
9 folks that rent on Saturdays that are particularly for
10 family reunions or wedding receptions would like to get
11 in the hall on Friday to decorate. So it prohibits us
12 from being able to rent until after bingo is over.

13 Q What is the benefit of senior bingo?

14 A It's -- it's recreation. Bingo is an enjoyable
15 activity. We call it senior bingo. They can get
16 together and socialize. That's why we allow them into
17 the facility at 8:30 for a 10 o'clock program. They
18 come and they sit and they talk and they drink coffee.
19 And they have cookies and they socialize.

20 And then at 10 o'clock they play bingo. They
21 normally play for about an hour, then they take a
22 break, use the restroom, they get more snacks. And
23 then they start back with bingo and they conclude it at
24 noon.

25 Q How are volunteers vetted before they can become a

1 volunteer for the City?

2 A Sarge usually asks if an individual can volunteer
3 for the City. You know, usually we ask if there's a
4 need, and I don't think he'd ask us if there wasn't.
5 Policy is that Dustin provides them with a background
6 check form to complete. It has their name, their
7 address and social security number and their date of
8 birth on it. So Dustin has them complete that form.

9 And it either goes to his direct supervisor, Lisa,
10 or it comes to me. Myself and the other three managers
11 are the only ones who can log into the company that we
12 use to run background checks and enter information.

13 Q Why do you do background checks on your
14 volunteers?

15 A Well, our target demographic in recreation are
16 usually vulnerable citizens. Mostly it's senior and
17 mostly it's children. So we vet anyone that works with
18 children volunteers, whether it's reading a book in an
19 after school program or whether it's coaching youth
20 baseball. We want to make sure that there's no drug or
21 alcohol charges, that there are no violence charges,
22 that there's no fraud or theft, things likes that.
23 It's for the protection of that demographic.

24 Now, what preempted us using it for seniors as
25 well is I was approached back in 2004 when my office

1 was at the Base Recreation Center, when I was
2 facilities manager. And that was when technology was
3 starting to become popular. And we were hosting -- we
4 had a line dance class, the instructor is a City
5 employee. But a member of the class wanted to download
6 music, and at the time Wal-Mart.com was one of the
7 things you can download music from.

8 And so they came over to the front desk and asked,
9 you know, Pam, do you know how to download music, and I
10 said, I sure do. And they said, well, would you help
11 me download these songs that our staff was using in a
12 class to teach line dancing, so that they could burn a
13 disc so they could go home and practice.

14 And I said, I'll be glad to show you how to do
15 that. And as I said that, they reached in their purse
16 and handed me their credit card. And I said, wait a
17 minute. You don't ever hand someone your credit card.
18 Oh, but I trust you.

19 So as a manager that goes, wow, this demographic
20 could severely be taken advantage of by someone who is
21 not trustworthy, I said, look, I'm going to show you
22 how to do this, and I'm going to let you enter in your
23 own information to burn a disk. But I don't want you
24 to give your personal information like that to just
25 anyone.

1 So we made it a point from then on that all
2 volunteers working with seniors and children, the City
3 would run a background check.

4 Q Are volunteers City employees?

5 A They are not. They are volunteers.

6 Q I'm going to hand you what's been marked as
7 Plaintiff's Exhibits 7 and 8. Do you recognize the
8 documents I've handed you?

9 A I do.

10 Q Okay. Tell me about that petition.

11 A I received a phone call from Ms. Irene asking if I
12 would be willing to meet with her and a couple of the
13 other bingo folks over at the Base Recreation Center.
14 She expressed to me some of the problems that they were
15 having in bingo and that she said she had a petition
16 for me that she'd like for me to take and give to the
17 Mayor of the City.

18 And I said, well, I'll be glad to come and talk to
19 you. I have an open door policy, whether it be
20 employees or members of the public. If you ask me to
21 meet with you, I'll gladly do that.

22 So when I went and met with, it was Ms. Irene and
23 Sarge and Oscar, at the Base Rec Center on March the
24 20th, this letter they wanted me to give to Mayor John
25 Rhodes is dated March 18th. And the signatures on the

1 petition that they handed me were dated from the 13th
2 through the 18th.

3 So since she had kind of told me over the phone
4 what they wanted to talk about, some of the issues that
5 they were having were bingo participants were bringing
6 their grandchildren or their great-grandchildren with
7 them to bingo. And there's even another letter that
8 goes into detail how this individual did not want to be
9 a babysitter for someone else's grand kids while they
10 attended a senior program.

11 Instead of talking to the individuals who were
12 bringing their grandchildren, they wanted to make a
13 statement to the Mayor and have the City enforce that
14 senior bingo could only be for ages 50 and older.

15 (WHEREUPON, Defendant's Exhibit No. 5 was marked
16 for identification only.)

17 Q Mrs. Stone, I'm handing you what's marked as
18 Defendant's Exhibit 5. Can you identify that document
19 for me.

20 A Yes. These were the questions concerning senior
21 bingo at the Base Recreation Center that Oscar had
22 typed up. So when I arrived, our meeting was at 9:15,
23 according to my calendar, on March the 20th. And I'm
24 one of those people that has to write dates down or I
25 forget them. I pretty much live by my phone or my

1 calendar on the phone.

2 So before I met with them, I picked up the phone
3 and I called our City attorney and said, here's what I
4 think the position on this age restriction should be
5 based on what we do in our other programs. And he
6 pretty much confirmed what my thoughts were, if it's a
7 City program, it can't be restricted.

8 If you want to make restrictions on programs,
9 you're going to need to rent the hall and provide us
10 with a copy of your insurance. So my choice -- or my
11 point when I went to meet with Oscar, Irene and Doug
12 were to tell them what the City's position was if they
13 wanted to remain a part of a City program.

14 So when I arrived, they had these four questions
15 for me. And these questions are, are you going to
16 continue to refer to our bingo officially as senior
17 bingo? And if so, people under 50 cannot receive gifts
18 donated to senior bingo. And question number two, as
19 far as I know, we're the only senior bingo that
20 solicits donations. Is it possible to keep our bingo
21 as is and make others for all ages?

22 Question three was, the law that requires no age
23 discrimination is a federal, state, county or city,
24 what's the reference number? And, four, our senior
25 bingo players contribute money to the City for coffee

1 supplies; do other City sponsored bingos do this?

2 Q Did you write personal notes on those questions?

3 A I did, after meeting with the three individuals
4 that I named. And I gave them a choice. I said, look,
5 we can continue to operate as you are, and it costs you
6 nothing, and you get a rental hall and you get coffee.
7 But you can't have any age restriction. Just like if a
8 little girl wants to play football, she gets to play
9 football. If a little boy wants to be a cheerleader,
10 he gets to be a cheerleader. So we can't put a
11 restriction on a demographic.

12 So as we were talking, I wrote down on the back
13 just some general notes because they asked me to
14 address bingo when it started at ten. So my notes on
15 this say, thanks. And then I have legalities and
16 discrimination, and I talk about the City's position,
17 we will not discriminate based on age, race, religion,
18 gender or any of those type situations.

19 The next thing I have is program name. And beside
20 it are my bullet points, expectations, rules of conduct
21 and donations. So the expectation is that it always
22 remains senior bingo. That's how we advertise it. We
23 don't advertise it as open bingo, public bingo. And
24 when I say advertise, I mean on the City's websites and
25 on our fliers for things that go on at the base rec.

1 Our rules of conduct. It is called senior bingo,
2 and if you don't want your neighbors to bring their
3 children or grandchildren, then please, you know, honor
4 their wishes to do that. And then donations, you're
5 not required to give to the coffee fund. Dustin nor I
6 have ever asked for anyone to make a donation into the
7 coffee fund. And that's a jar that sits near the
8 coffee server. And some folks will throw some change
9 in it, and that goes into our revenue as donations.

10 And then the last thing I have is called
11 housekeeping items, and my bullet points there list
12 hours of operation, 8:30 doors open and why.

13 Dustin was having a problem with the seniors
14 coming at eight or 8:15 and rattling the door and
15 wanting to get in. Our hours of operation, we open at
16 8:30. In our standard operating procedures manual, it
17 points out what Dustin and every other center
18 supervisor should do.

19 We always have staff come in 30 minutes before the
20 building opens, and they have to check the deposit from
21 the night before. They have to make sure that the cash
22 drawer for the day is right. They walk through the
23 building, they turn on lights and they look for things
24 like is there water on the floor, has the roof leaked,
25 did the trash cans get emptied last night, did we have

1 lights out in a room, are the rugs flat.

2 There's a whole list of things that they check
3 when they come into the building, it's standard
4 operating procedure. One of the things that I'd notice
5 right now is you have a tripping hazard right next to
6 you. And we'd have to do something to correct that
7 before we unlock those doors.

8 So people are complaining to Dustin, I see you in
9 there, why can't I come in. We already opened the
10 building at 8:30 for a 10 o'clock program. There are
11 things Dustin needs to attend to. So I explained to
12 the group, we will open the doors at 8:30, and we
13 welcome you in then.

14 Q Did anyone complain to you about the mats at that
15 meeting?

16 A No.

17 Q Did anyone complain to you about the mats after
18 that meeting?

19 A Not that I recall.

20 Q If they had, would you have made a note on your
21 sheet?

22 A It depends on what they ask me, tell you the
23 truth.

24 Q Okay.

25 (WHEREUPON, Defendant's Exhibit No. 6 was marked

1 for identification only.)

2 Q I hand you Defendant's Exhibit 6. Do you
3 recognize that document, Ms. Stone?

4 A I do.

5 Q Is that your calendar?

6 A It is.

7 Q Does that indicate that this meeting happened on
8 March 20th?

9 A It does. At 9:15. I think we talked for maybe 20
10 minutes at this meeting. And I hung around and chatted
11 until bingo was to start at ten. That's when I
12 addressed the group.

13 (WHEREUPON, Defendant's Exhibit No. 7 was marked
14 for identification only.)

15 Q Please look at Exhibit 7, Ms. Stone.

16 A Okay.

17 Q Do you recognize that document?

18 A I do.

19 Q Is that your April calendar?

20 A It is.

21 Q What does it say you were doing on April 3rd?

22 A I was off. That was the week before Easter, which
23 is Horry County Schools spring break. My husband is an
24 Horry County school teacher, and we always take spring
25 break off for vacation.

1 Q And if someone were to state that they made a
2 complaint to you on April 3rd, would that have been
3 physically impossible?

4 A Probably. Because usually we take a motorcycle
5 trip somewhere, which means I have a cell phone that
6 you can reach me on. But I don't answer it. I check
7 voice mails and e-mails, you know, when we stop.

8 Q And you were not at the facility; correct?

9 A Correct.

10 Q When the incident happened?

11 A Correct. According to my calendar on April the
12 8th at 10 o'clock, I was at Pepper Geddings rec center
13 doing an employee-of-the-month presentation.

14 Q All right. Handing you Defendant's Exhibits 3 and
15 4, is that the e-mail Dustin Jordan sent you after the
16 fall?

17 A Yes, it is.

18 Q And is that the incident report he sent you?

19 A Yes, it is.

20 Q Okay. And you received those on the day of the
21 accident?

22 A I did. I received the e-mail April 8th of 2015 at
23 9:01. And I've initialed it on 4/8, I initialed the
24 incident report so...

25 Q Okay.

1 A The procedure is that I receive an e-mail as the
2 event happens and that the incident report is put in an
3 inner office envelope. At 9 o'clock in the morning if
4 Dustin had put it in an inner office envelope, I would
5 have received it later that afternoon.

6 Q All right. Changing to the subject of mats
7 itself, are you familiar with the arrangement with
8 ALSCO?

9 A Yes.

10 Q Tell me about that arrangement.

11 A Okay. ALSCO at the time was the provider of all
12 City of Myrtle Beach facilities for their mats and rugs
13 and dust mops.

14 Q Okay.

15 A That actually is handled through the procurement
16 office. ALSCO provides commercial mats. We don't use
17 any residential products in our facility, we don't use
18 residential weight equipment. Everything has to be
19 commercial grade. Procurement for the City of Myrtle
20 Beach, they manage blanket purchase orders.

21 If the City is going to use a large amount or have
22 a reoccurring service, it's cheaper to do a blanket
23 purchase order. So usually a purchase order, a blanket
24 purchase order, is good for two or three years. And
25 there's usually a period of a year or so to extend it

1 if you haven't had any issues with the company. But
2 after that time, it's sent out for rebid. The City is
3 looking for the best value as a whole for the City.

4 Each individual department doesn't get to pick
5 what type of mat. We get what's assigned to us. Now,
6 if there's usually an issue with a mat or we decide we
7 need something larger, you know, we can change and make
8 a request. But procurement handles...

9 Q So you're not involved with the decision of
10 whether to accept ALSCO's bid or not?

11 A No, we're not.

12 Q And they went with the cheaper offer essentially?

13 A They did.

14 Q Okay. Are senior bingo people charged money to
15 attend the facility?

16 A No, they're not.

17 Q Did you ever talk with Dustin Jordan about the
18 mats before the fall?

19 A No, I did not.

20 Q Okay. Do you micromanage your facilities?

21 A I do not. I have a lot of facilities. I talk to
22 a lot of people everyday. Dustin is a center
23 supervisor, he is the person in charge on-site. He
24 handles day-to-day activities and operations. If
25 someone calls and requests to meet with me, I honor

1 that request. But for the most part, it's Dustin.

2 . And there have been times in the past where, you
3 know, Dustin may call to ask me about something, you
4 know, that a group has brought up, and I'll give him my
5 thoughts on that. But it's usually Dustin dealing with
6 the group. The reason I went down that day is because
7 Ms. Irene called me and said, would you come meet with
8 us.

9 Q And when you say that day, you mean March 20th?

10 A She called me, it was either on the 18th or the
11 19th, but yes, called me to ask to meet them on the
12 20th.

13 MR. BATTLE: No further questions. Please answer
14 Mr. Nappier's questions.

15 CROSS-EXAMINATION

16 BY MR. NAPPIER:

17 Q You indicate that the City basically does nothing
18 but gives them the facilities and coffee; is that
19 correct?

20 A Yes.

21 Q But they do collect money for coffee which they
22 then give to the City; is that right?

23 A The bingo participants collect money for coffee
24 that's turned into the City, yes.

25 Q Okay. But as far as the facilities go, the City's