

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2016-001842
Case No. 2013-CP-10-3901

RECEIVED
AUG 31 2017
SC Court of Appeals

Charleston Electrical Services, Inc. and Selective
Insurance Company of South Carolina as Subrogee of
Charleston Electrical Services, Inc., ... Appellants,

v.

Wanda G. Rahall, ... Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CHARLESTON ELECTRICAL
SERVICES, INC. AND SELECTIVE
INSURANCE COMPANY OF SOUTH
CAROLINA AS SUBROGEE OF
CHARLESTON ELECTRICAL
SERVICES, INC.,

CIVIL ACTION NO.: 2013-CP-10-3901

Plaintiffs,

CONSENT ORDER OF
REFERENCE TO MASTER
IN EQUITY

v.

WANDA G. RAHALL,

Defendant.

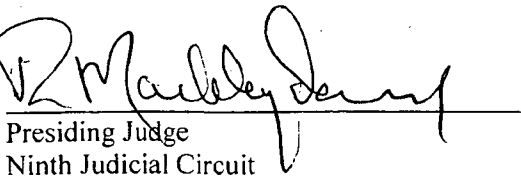
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JULIE J. ARMSTRONG
CLERK OF COURT

IT APPEARING to the Court that the parties to this action seek to have this matter referred to The Honorable Mikell Scarborough, Master-In-Equity for Charleston County for disposition with finality, with any appeal denials to the Court of Appeals or the Supreme Court, as the case may be;

NOW, THEREFORE, BASED ON THE FOREGOING and on Plaintiff's and Defendant's respective attorney's signatures set forth herein below;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-captioned matter be referred to The Honorable Mikell Scarborough, Master-In-Equity for Charleston County to make findings of fact and conclusions of law; to direct entry of final judgment in this action under Rule 53(b), S.C.R.C.P.; to hear any issues, including motions, with any appeal from the final judgment entered by the Master-In-Equity shall be directly to the Court of Appeals or the Supreme Court as the case may be.

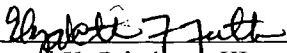
January 27, 2015
Charleston, South Carolina


Presiding Judge
Ninth Judicial Circuit

DATE 1-27-2015
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By: MIKELL R. SCARBOROUGH
MASTER IN EQUITY

WE SO MOVE:

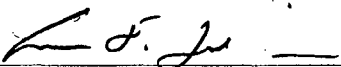
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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Charleston Electrical Services, Inc., and)
Selective Insurance Company of South)
Carolina, as subrogee of Charleston)
Electrical Services, Inc.,)

Plaintiffs,)

v.)

Wanda G. Rahall)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10-3901

ORDER ENTERING
JUDGMENT IN FAVOR OF
DEFENDANT, WANDA G.
RAHALL

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JULIE J. ARMSTRONG
CLERK OF COURT

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BACKGROUND

This is an action for contribution pursuant to Sections 15-38-10 through 70, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended (hereinafter referred to as the "SCCATA")¹. This matter arises out of an August 20, 2010, incident in which a dog jumped up on Elsie Mae Rabon (hereinafter referred to as "Rabon") knocking her to the ground and severely injuring her.

Rabon brought suit against Plaintiffs, Charleston Electrical Services, Inc., (hereinafter referred to as "CES") on December 31, 2010, in the Charleston County Court of Common Pleas alleging negligence and strict liability, which action was captioned *Elsie Mae Rabon v. Charleston Electrical Services, Inc.*, and assigned Civil Action No. 2010-CP-10-10666 (hereinafter referred to as the "Underlying Action"). In turn, CES brought a third-party indemnification action against

¹ At the commencement of the trial Plaintiffs, Charleston Electrical Services, Inc., and Selective Insurance Company of South Carolina, withdrew their claim for equitable indemnity. Accordingly, equitable indemnity is no longer a part of this case and will not be discussed herein.

Rabon's daughter, Defendant, Wanda Rahall (hereinafter referred to as "Rahall") and George Kornahrens (hereinafter referred to as "Kornahrens"). Rabon and CES settled the Underlying Action for \$200,000.00 dollars (hereinafter referred to as the "Settlement"), and executed a release which released all parties involved in the Underlying Action. The Underlying Action was dismissed with prejudice as to Rabon's claim and without prejudice as to CES's claim against Rahall and Kornahrens. On July 3, 2013, CES, and its liability insurance carrier, Selective Insurance Company of South Carolina (hereinafter referred to as "Selective") initiated the present action against Rahall² seeking to recover half of the settlement proceeds paid Rabon.

This matter came before me for a trial on the merits on Friday, June 17, 2016. Present at the hearing were Andrew F. Lindemann, Esq., of Davidson & Lindemann, P.A., Columbia, South Carolina, on behalf of Plaintiffs, CES and Selective, and Elizabeth F. Fulton, Esq., and Edward K. Pritchard, III, Esq., of Pritchard Law Group, LLC., Charleston, South Carolina, on behalf of Rahall. No testimony or evidence was introduced as, by agreement of the parties, this matter is to be decided based on the joint stipulation of facts together with the three exhibits thereto submitted by the parties, the transcript of the deposition of John M. Oakley given November 16, 2011, in the Underlying Action and exhibits thereto, the transcript of the deposition of Kornahrens given November 16, 2011, in the Underlying Action and exhibits thereto, the transcript of the deposition of Rahall given November 16, 2011, in the Underlying Action and the transcript of the deposition of Rahall given May 26, 2016, in this Action. As explained hereinbelow, based on the joint stipulation of facts, the three exhibits, the deposition transcripts and the applicable law, judgment must be entered in favor of Rahall and this matter dismissed as to her with prejudice.

² CES declined to seek contribution against Kornahrens supposedly on the basis that he was an employee of CES.

FACTS

On August 20, 2010, Rahall and Rabon went to visit Rahall's boyfriend, Kornahrens while he was working at CES, whose business is located at 60 Romney Street, Charleston, South Carolina (the "Property"). While on the Property, Gunner, a German shepherd that served as guard dog for CES, jumped on Rabon, knocking her to the ground, causing her to fracture her left hip (hereinafter referred to as the "Incident").

Kornahrens is and has been for many years the owner of the Property. The Property consists of a large yard which is used by CES in its business and two buildings. Kornahrens lives on the second floor of the main building (hereinafter referred to as the "Apartment") and leases the remainder of the Premises to CES. CES uses the yard to store a lot of its equipment, including, among other things, trucks, ladders, and supplies. Essentially, the yard is CES's parking lot for its trucks and storage area for its materials. No vehicles other than CES' vehicles were permitted to be parked in the yard³. The parking spaces for the office and Apartment are located adjacent to Romney Street separate from the yard.

Kornahrens was the original owner of CES. In approximately 1992, Kornahrens' stepson, John Oakley (hereinafter referred to as "Oakley"), became CES' owner. Kornahrens retained no ownership interest in CES. After transferring ownership of CES to Oakley, Kornahrens became a full-time salaried employee of CES⁴. Rahall is not and never has been an agent or employee of CES, does not and did not have any ownership interest in CES or the Property and does not and did not have any relationship to or with CES or the Property.

³ CES's employees were not permitted to park their private passenger vehicles in the yard while they were at work. CES' customers were not permitted to park their cars in the yard either. At one point, however, Kornahrens temporarily stored a boat in the yard.

⁴ Kornahrens leased the Property to CES as a part of the transaction in which ownership of CES was transferred to Oakley.

Rahall owns a home in Myrtle Beach and is a citizen and resident of Horry County. Rabon lives in a senior living apartment complex in Myrtle Beach separate from Rahall. Rabon was not and never has been in the custody or care of a guardian or conservator, and she is and was legally competent⁵.

At the time of the Incident, Rahall and Kornahrens were and had been for five years involved in a romantic relationship. Though engaged at one time, Rahall and Kornahrens were not and never have been married. Rahall typically stayed with Kornahrens in the Apartment when she was in Charleston. Rabon also stayed in the Apartment when she was in Charleston. When in Myrtle Beach, Kornahrens stayed with Rahall at her home.

For the last twenty years, CES has kept a guard dog on the Property to deter theft of its equipment⁶. On January 30, 2010, Kornahrens purchased Gunner, a full-blooded German shepherd, for CES. CES was the owner of Gunner, and at the time of the Incident, Gunner was under the care and keeping of CES⁷.

Rahall rarely interacted with Gunner. Shortly after CES purchased Gunner, Rahall told Rabon about him.

Gunner, like all of the other guard dogs before him, lived in the yard. Neither Gunner nor any of the previous guard dogs were allowed inside the main building. Every morning, Gunner was fed and on weekdays was chained up prior to the arrival of CES's employees to prevent him from escaping through the opened gates. Once the gates close, typically around 8:30 am, Gunner was released and allowed to roam free in the yard. On weekdays, Gunner was again chained between

⁵ Rabon passed away in November 2015.

⁶ CES has not had the same guard dog for twenty years, but, rather, has had several in succession over the years, though never more than one at a given time.

⁷ Gunner was given away shortly after the Incident.

3:30 pm and 5:30 pm when CES's employees returned to the yard. Gunner was described as a playful and friendly dog. CES never had a problem with Gunner attacking or biting anyone.

Rahall and Rabon stayed with Kornahrens at the Apartment on the night of August 19, 2010. On August 20, 2010, Rabon accompanied Rahall to a doctor's appointment in Charleston. After Rahall's doctor's appointment, they went to CES to take Kornahrens to lunch. Upon arrival at CES, Rahall walked through the front office toward the back of the Property to speak with Kornahrens who was working in the back, while Rabon waited in the front office. A few minutes later, Rabon exited the office and walked out in to the yard, presumably to join Rahall and Kornahrens. Gunner, who had been unchained by Kornahrens, jumped up on Rabon knocking her to the ground. Kornahrens and Rahall observed the Incident, but neither were able to prevent it from where they were standing. Rabon was immediately transported from CES to Roper St. Francis Hospital by EMS where she was diagnosed with a broken hip.

DISCUSSION

To maintain an action for contribution, CES and Selective must show that Rahall shares "common liability" for the damages suffered by Rabon. See Section 15-38-40(D), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended; *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). CES and Selective claim Rahall's liability is grounded in negligence. Because Rahall owed Rabon no duty, this position lacks merit.

To establish negligence, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. *Steinke v. S.C. Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999) ("The court must determine, as a matter of law, whether the law

recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict.”). An essential element in a cause of action for negligence is the existence of a legal duty owed by the defendant to the plaintiff; in the absence of a duty, there can be no negligence. *Huggins v. Citibank, N.A.*, 355 S.C. 329, 585 S.E.2d 275 (2003). “A legal duty is that which the law requires to be done or forbore with respect to a particular individual or the public at large. Without a violation of such a legal duty, there is no negligence.” *Byerly v. Conner*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992)(citation omitted).

In the instant matter, CES and Selective seek to have this Court impose upon Rahall, an affirmative duty to act. Specifically, CES and Selective contend that Rahall owed Rabon a duty to protect Rabon from Gunner or to warn Rabon of the danger associated with Gunner.

One generally has no duty at common law to act affirmatively to protect the interests of another. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003). In order for an affirmative duty to act to arise, one must have a relationship to the injured party recognized by law sufficient to support such a duty. *McCullough v. Goodrich & Pennington Mortg. Fund, Inc.*, 373 S.C. 43, 644 S.E.2d 43, 46 (2007). As explained in *Hendricks v. Clemson Univ.*, *supra*:

‘The determination of the existence of a duty is solely the responsibility of the court.’ Whether the law recognizes a particular duty is an issue of law to be decided by the Court. An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. Ordinarily, the common law imposes no duty on a person to act. Where an act is voluntarily undertaken, however, the actor assumes the duty to use due care.

Id. at 456- 457, 578 S.E.2d at 714 (quoting *Miller v. City of Camden*, 329 S.C. 310, 494 S.E.2d 813 (1997)(citing *Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47 (1996)). South Carolina law recognizes five exceptions to the general rule that there is no general duty to control the conduct of another or to warn a third person or potential victim of danger: (1) where the defendant has a

special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant. *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002). It is the relationship between the parties, not the potential "foreseeability of injury," that determines whether the law will recognize a duty in a given context. *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003). "This ensures that the concept of duty in tort liability is not extended beyond reasonable limits." *Williams v. Preiss-Wal Pat III*, 17 F.Supp.3d 528 (D.S.C. 2014); accord *Huggins v. Citibank*, 355 S.C. 329, 333, 585 S.E.2d 275, 277 (2003); see *South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324, 326 (1986). If there is no duty, the defendant is entitled to a judgment as a matter of law. *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007).

CES and Selective contend that Rahall owed Rabon a duty to act affirmatively for two reasons: (1) Rahall had a special relationship to Rabon which gave rise to a duty; and, (2) Rahall's duty to Rabon arises out of her interest in the Property. Neither position is supported by either the facts or the law.

A. Rahall Owed No Duty to Rabon Arising Out of a Special Relationship.

It is not entirely clear what CES and Selective believes is the relationship between Rahall and Rabon which gives rise to an affirmative duty ~~to~~ on the part of Rahall to protect Rabon from Gunner or to warn Rabon of the danger associated with Gunner. To some extent, CES and Selective ~~seem to~~ contend that a parent-child relationship gives rise to the duty, with the child, Rahall, owing the duty to the parent, Rabon. At other points, CES and Selective ~~seem to~~ advance the theory that the duty arises due to the fact that Rabon is elderly. At other points, CES and

Selective ~~seem to~~ argue that it is a combination of the foregoing. Finally, CES and Selective also ~~seem to~~ take the position that Rahall's duty arises out of her relationship with Gunner. However, it matters not which of these theories CES and Selective is operating under, as the Court's research leads to the ineluctable conclusion that none of these theories is legally or factually sufficient to give rise to an affirmative legal duty on the part of Rahall to protect Rabon from Gunner or to warn her of Gunner's tendencies to jump up on people.

The Court of Appeals decision in *Roe v. Bibby*, 410 S.C. 287, 294, 763 S.E.2d 645, 649 (Ct. App. 2014), *reh'g denied* (Oct. 23, 2014), *cert. granted* (Jan. 16, 2015), contains the most recent appellate court pronouncement on special relationships under South Carolina law. In *Roe v. Bibby*, *supra*, the Court declined the invitation to impose upon a wife a duty to warn minor children living in the neighborhood that her husband had a predilection for sexual molestation holding that there is no general special relationship between a husband and wife or between the wife of a sexual predator and neighboring children which is sufficient to give rise to such a duty. The Court of Appeals based its ruling, in part, on the fact that the wife had no ability to monitor and control her husband. As to the children, the Court of Appeals rested its holding on the fact that the children were not entrusted

to the wife's care.

This court is quite far from the inability of a child to monitor and control the actions of an independent parent.

CES and Selective have failed to present any case from any jurisdiction holding that a child has a general duty to protect his or her parent from harm presented by the conduct of a third party or an instrumentality not within the custody and control of the child. A review of South Carolina case law reveals that South Carolina courts have recognized a special relationship – except for the duty owed by a landowner – sufficient to give rise to an affirmative duty to protect or warn another from danger related to the conduct of a third party or an instrumentality not within the custody and control of the person upon whom the duty is imposed only in five limited and narrow

circumstances: (1) a group home has a duty to supervise a minor child in its care, *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485575 S.E.2d 549 (2003); (2) a psychiatrist has a duty to warn her patient of specific known threat of harm from another patient, *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007); (3) the South Carolina Department of Juvenile Justice has a duty to supervise and control a dangerous juvenile in its custody, *Faile v. S.C. Dep't of Juvenile Justice*, *supra*; (4) the South Carolina Department of Mental Health has a duty to supervise and control an involuntarily-committed patient in its custody, *Bishop v. S.C. Dep't Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998); (5) the South Carolina Department of Parole and Community Corrections has a duty to warn one to whom a specific threat of harm has been directed by a person being released from custody, *Rogers v. S.C. Dep't of Parole & Cmty. Corr.*, 320 S.C. 253, 464 S.E.2d 330 (1995)(no finding of specific threat). Finding no South Carolina case addressing the precise issue at hand, the court embarked on an ~~unprecedented and neoteric~~ ^{MB} juridical journey in facing this novel issue by visiting other jurisdictions for edification and enlightenment. After an exhaustive search this Court has failed to unearth a case in which a court has imposed upon a child of any age a general duty to protect his or her parent, regardless of age, from harm presented by the conduct of a third party or an instrumentality not within the custody and control of the child.

In each case in which a court found that there was a special relationship sufficient to give rise to an affirmative duty to protect or warn another from danger related to the conduct of a third party or an instrumentality not within the custody and control of the person upon whom the duty is imposed, the case turned on a finding that the person upon whom such duty was imposed either had a responsibility to supervise or an ability to monitor and control either the victim or the perpetrator or instrumentality of the act which gave rise to the injury. *E.g., Cunningham ex rel. Grice v. Helping Hands, Inc., supra; Roe v. Bibby, supra.* The cases, both within and outside of South

Carolina, reflect a reluctance to impose a duty to protect, warn and supervise an adult unless there is a clear indication of some incapacitation of normal faculties, a well-established authority relationship and/or a substantial risk of serious harm. *Id*; *Robinson v. Vivirito*, 217 N.J. 199, 86 A.3d 119 (2014)(school principal owes no duty of care to a third party who decides to use school property after hours for personal purposes and is injured by a stray animal that is neither owned nor controlled by school personnel); *Knight v. Merhige*, 133 So.3d 1140 (Fla. Dist. Ct. App.), *reh'g denied* (Mar. 26, 2014), *review dismissed*, 143 So.3d 919 (Fla. 2014), *and review denied*, 157 So.3d 1045 (Fla. 2014), *and review denied sub nom. Sitton v. Merhige*, 157 So. 3d 1048 (Fla. 2014)(Parents owe no legal duty to protect extended family members from the conduct of adult son, who shot and killed several family members at a holiday dinner as no special relationship existed that required parents to protect other adult family members from adult son's conduct); *Millea v. Erickson*, 849 N.W.2d 272 (S.D. 2014)(Babysitter's mother's boyfriend's adult son, who stopped by mother's and boyfriend's apartment, did not have a special relationship with child who died from positional asphyxiation so as to give rise to a duty to provide care or aid, despite contention that babysitter deferred to mother's boyfriend's son because of his age and quasi-stepbrother-like role to her); *Toribio v. Pine Haven, LLC*, 2014 WL 3865845 (D.N.J. Aug. 5, 2014)(no special relationship between decedent and decedent's friend's parents when decedent drowned while vacationing at a public lake with decedent's friend's parents); *Bridges v. Parrish*, 366 N.C. 539, 742 S.E.2d 794 (2013)(Parents were not liable for the criminal actions of their 52-year-old son who took gun from their home and used the gun to shoot his girlfriend); *Estate of Cilley v. Lane*, 2009 ME 133, 985 A.2d 481 (2009)(no special relationship between girlfriend and boyfriend where boyfriend accidentally shot himself and girlfriend failed to get timely medical assistance); *Ventura v. Picicci*, 227 Ill.App.3d 865, 592 N.E.2d 368 (1992)(defendant

not liable for adult son who shot plaintiff in defendant's house because no duty to control adult son); *Kosrow v. Smith* 162 Ill.App.3d 120, 113 Ill.Dec. 104, 514 N.E.2d 1016 (1987)(no negligence in failing to control the actions of a houseguest who drove a car while intoxicated); *Villacana v. Campbell*, 929 S.W.2d 69 (Tex. App. 1996), writ denied (Feb. 21, 1997)(finding no liability as to parents whose adult child murdered two people on the basis that parents had no special relationship with adult son or duty to control adult son); *Theobald v. Dolcimascola*, 299 N.J.Super. 299 (App. Div. 1997)(As a matter of law, friendship—standing alone—is an insufficient basis for imposing a special relationship upon two parties).

CES and Selective urge this Court to go where no court before it has gone and recognize a child-parent relationship is a special relationship sufficient to support a duty on the part of the child to protect his or her elderly parent from harm presented by the conduct of a third party or an instrumentality not within the custody and control of the child. They, likewise, urge this court to impose a duty on one to protect another from a dog owned by a third-party if it is foreseeable that the dog might injure the other person. This court declines both invitations as in neither situation is there a responsibility to supervise or an ability to monitor and control either the parent or the dog and there is no indication of some incapacitation of normal faculties, or a well-established authority relationship and/or a substantial risk of serious harm. To find either duty exists under the facts or circumstances of this case would expand the concept of duty in tort liability well beyond all reasonable limits⁸.

⁸ The imposition of such duties could potentially lead to limitless absurd results. Though the Court could catalogue examples of such absurd results for hundreds of pages, the Court will limit itself to but a handful of examples. For instance, Charles, Prince of Wales, age 67, would have a duty to protect and warn Queen Elizabeth II, Queen of the United Kingdom, Canada, Australia, and New Zealand, and Head of the Commonwealth as well as Queen Jamaica, Barbados, the Bahamas, Grenada, Papua New Guinea, Solomon Islands, Tuvalu, Saint Lucia, Saint Vincent and the Grenadines, Belize, Antigua and Barbuda, and Saint Kitts and Nevis, of and from all foreseeable harm; three of the eight United States Supreme Court Justices are age seventy-seven or older - Stephen G. Breyer, Associate Justice, is age 77 and will be age 78 on

Rabon and Rahall were mother and adult daughter, respectively. By all indications both were mentally and physically competent at the time of the Incident; there is no evidence that either was anything to the contrary. Rabon lived independently in a senior living apartment complex in Myrtle Beach separate from Rahall. Rabon was not and never has been in the custody or care of a guardian or conservator, and she is and was legally competent. There is no evidence to suggest that Rabon was unaware of Gunner's presence or that she was unable to understand and appreciate the injuries a full grown German Shepard is capable of. There is no evidence to suggest that Rabon was any more susceptible of being knocked down by a full grown German Shepard than any other person her size, which by all indications is well within normal limits, regardless of age. Simply stated, Rabon was perfectly capable of taking care of herself and there is nothing which indicates that Rahall was in a better position to take care of Rabon than was Rabon herself.

The relationship between Rahall and Rabon does not fall under any of the five exceptions listed above. Gunner was owned by CES. Rahall did not own, possess or control Gunner, and, in fact, had little to no interaction with Gunner. Gunner posed no specific threat to Rabon. Under Section 47-3-110(A), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, the party liable for

August 15th, Anthony M. Kennedy, Associate Justice is age 79 and will be age 80 on July 23, and Ruth Bader Ginsburg, Associate Justice is age 83 – and if CES' and Selective's position is adopted, their respective children would have a duty to protect and warn them from and of all foreseeable harm; Karis Jagger, age 45, Jade Jagger, age 44, Elizabeth Jagger, age 32, James Jagger, age 30, and Georgia May Jagger, age 24, each would have a duty to protect and warn Sir Michael Philip "Mick" Jagger, age 72, of and from all foreseeable harm; Susan Alice Buffett, age 62, Howard Graham Buffett, age 61, Peter Buffett, age 58, each would have a duty to protect and warn Warren Edward Buffett, age 85, of and from all foreseeable harm; and, assuming the winner of this year's presidential election wins a second term, at the end of the second term Hillary Rodham Clinton and Donald John Trump will be age 77 and 78, respectively, and Chelsea Victoria Clinton, then age 44, and Ivanka Marie Trump, then age 42, will each owe a duty to their respective presidential parents to protect and warn her or him of and from all foreseeable harm, even though her presidential parent has a secret service detail. As noted, the Court could continue on for hundreds of pages with equally absurd examples, listing, among others, members of Congress, leaders of other countries, captains of industry, military leaders, governors, legislators and judges. The notion that the children of many of the world's most powerful and influential people have a duty to protect and warn the very people charged with the safety and protection of the people of the world would expand the concept of duty in tort liability well beyond all reasonable limits. Further, the absurdity that one who owns a dog would seek to impose liability on the daughter of the victim for an injury caused by the dog on its owner's property while in its owner's control should not be lost on the court.

*Mick
however, owes
a duty to his
Newborn
infant.
NYTimes
7/16/16

a dog attack must be either the dog's owner or a person having the dog in his care or keeping.

Rahall undertook no duty to protect her mother nor did she negligently or intentionally create the risk of Gunner jumping on Rabon. Rahall left Rabon in the office, a place Gunner never entered, to speak to Kornahrens in the yard. Rabon of her own volition exited the office into the yard, where she encountered Gunner who jumped and knocked her down. Rabon was aware of Gunner's presence on the Property, and had visited the Property numerous times in the five years Rahall and Kornahrens had been together. *so must have known of the presence of a security dog.* Rahall had no notice that Gunner was a dangerous animal. There is no evidence Gunner was a dangerous animal or had any malicious intent when he jumped on Rabon. *Instead, Gunner was "overly friendly."* Neither Kornahrens nor any other CES employee warned Rahall to be cautious of Gunner or that non-employees were prohibited in the yard. Rahall could not warn her mother of a danger that she (or anyone else for that matter) did not know existed. *MB*

B. Rahall is Not Liable for Premises Liability Theory

CES seeks to impose liability on Rahall under a theory of premises liability. This position is patently meritless.

A premises liability action is one sounding in tort. *See Shipes v. Piggly-Wiggly St. Andrews, Inc.*, 269 S.C. 479, 238 S.E.2d 167 (1977). As in any other tort action, in order to prevail, a plaintiff in a premises liability case must establish by a preponderance of the evidence that: (1) the defendant owed the plaintiff a duty, (2) the defendant breached such duty and (3) the defendant's breach of such duty proximately caused the plaintiff damages. *Id.*

Generally speaking, "one who controls the use of property has a duty of care not to harm others by its use." *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997). "An owner of land possesses a general duty to warn others of latent hazardous conditions on his land. This duty arises from the owner's superior knowledge of conditions on the premises within

his control.” *Byerly v. Conner*, *supra* at 443, 415 S.E.2d at 798. Conversely, “one who has no control [over the property] owes no duty.” *Miller v. City of Camden*, *supra* at 314, 494 S.E.2d at 815.

[W]hen land is occupied by a lessee . . . the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee.

Byerly v. Conner, *supra* at 443, 415 S.E.2d at 798.

On the other hand,

‘[a] possessor of land, who leases a part thereof and retains in his own possession any other part which the lessee is entitled to use as appurtenant to the part leased to him, is subject to liability to his lessee and others lawfully upon the land with the consent of the lessee or a sub-lessee for bodily harm caused to them by a dangerous condition upon that part of the land retained in the lessor’s control, if the lessor by the exercise of reasonable care could have discovered the condition and the unreasonable risk involved therein and could have made the condition safe.’

Binnicker v. Adden, 204 S.C. 487, 492, 30 S.E.2d 142, 145 (1944)(quoting RESTATEMENT OF THE LAW OF TORTS § 360).

In the first place, an injury caused by a dog is not actionable under premises liability at common law as the dog is not a defective condition upon the land. Further, under Section 47-3-110(A), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, the party liable for a dog attack must be either the dog’s owner or a person having the dog in his care or keeping, regardless of where the attack occurs.

Second, CES and Kornahrens maintained possession and control of their respective portions of the Property at the time of the Incident⁹; Rahall had no right to possess or control any

⁹ Q. As I understand it, you own the building that the business is in?

portion of the Property. As an invited guest in the Apartment, Rahall had no legal right to possess or control the Property, especially the portion leased to CES. Rahall paid no rent, utilities or taxes on the Apartment. At all times, Rahall maintained a separate residence in Myrtle Beach. Though Rahall was allowed to visit the Apartment at the pleasure of Kornahrens, she had no legally recognized right in and to the Property. She had no legal right to remain there if asked to leave by Kornahrens. She had no right to quiet possession to the Property. She had no right to have another removed from the Property. As an invited guest in the Apartment,

A. I do.

Q. How long have you owned that building?

A. I guess about 30 some years.

Q. And you rent the first floor to Charleston Electric?

A. Yes, sir, first floor and everything in the yard. We got a building in our back also, a building in the back, supplies in and things like that

Q. And that's rented to the company as well?

A. Yeah, that's rented to the company. Everything on the ground is rented to the company.

Q. What does the company pay you for rent?

A. 3,000 -- I think it's 3,000, 3500 a month. I really don't know.

Q. Is there any type of lease agreement or written agreement?

A. No lease agreement.

Q. And then you live in the second floor apartment?

A. Yes, sir.

Kornahrens Dep. 9:6 – 10:4, Nov. 16, 2011. (emphasis added).

Kornahrens and CES clearly had a tenancy at will, as defined by Section 27-33-10(3), CODE OF LAWS OF SOUTH CAROLINA, 1976, and thus an enforceable lease agreement existed. *See generally, Bruce v. Durney*, 341 S.C. 563, 569-70, 534 S.E.2d 720, 724 (Ct. App. 2000) (An express agreement is not necessary to create the relation of landlord and tenant, but such relation may arise from the implied agreement of the parties, and may be established by proof of circumstances authorizing the inference that the parties intended to assume such relation toward each other).

Rahall owed no duty to another coming upon the Property. As Rahall neither owned the Property nor possessed a leasehold interest, she was at most a guest of Kornahrens. *See, Vogt v. Murraywood Swim & Racquet Club*, 357 S.C. 506, 511, 593 S.E.2d 617, 620 (Ct. App. 2004)(holding plaintiff was a licensee on grounds that he was a guest of a dues-paying member, who entered the swim club not by right, but by the permission of the member...that it is undisputed that he visited the pool only because members invited him and his presence at the pool was entirely permissive). Something more than physical presence on the land – even if frequent and for prolonged periods - is required to give rise to a duty in tort; one must have a legally recognized interest in the property sufficient to give rise to the right and ability to possess and control the property to the exclusion of members of the general public. *See Dunbar v. Charleston & W.C. Ry. Co.*, 211 S.C. 209, 44 S.E.2d 314 (1947). As a mere guest herself, Rahall owed Rabon, another guest, no duty as a matter of law.

While Kornahrens occupied the Apartment, the remaining portions – the two buildings and the yard – were leased to CES, and, thus in its exclusive possession and control. Where injury is caused by a dangerous or defective condition on the premises of real estate, the decision of whether a person has an affirmative duty to keep the premises in a safe condition or warn of dangers on the premises “depends in general upon his having control of the property.” *Dunbar v. Charleston & W.C. Ry. Co.*, *supra* at 216, 44 S.E.2d at 317 (1947). Consequently, “[o]ne who controls the use of property has a duty of care not to harm others by its use.” *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) (citing *Dunbar*, 211 S.C. at 216, 44 S.E.2d at 317; *Peden v. Furman Univ.*, 155 S.C. 1, 19, 151 S.E. 907, 913 (1930)). “Conversely, one who has no control owes no duty.” *Id.* (citing *Clark v. Greenville County*, 313 S.C. 205, 210, 437 S.E.2d 117, 119 (1993)). Neither Rahall nor Kornahrens owned or controlled the portion of

the Property leased to CES so with regard to the portion of the Property leased to CES, no duty attached to either. *See Bruce v. Durney*, 341 S.C. 563, 571, 534 S.E.2d 720, 725 (Ct. App. 2000) (holding a landlord is not liable for injuries caused by an animal kept by a tenant on leased property). As the Incident occurred in the yard, which irrefutably was in the exclusive possession and control of CES, assuming a premises liability claim was actionable, CES as owner and possessor of the yard was the only one who owed the duty to Rabon.

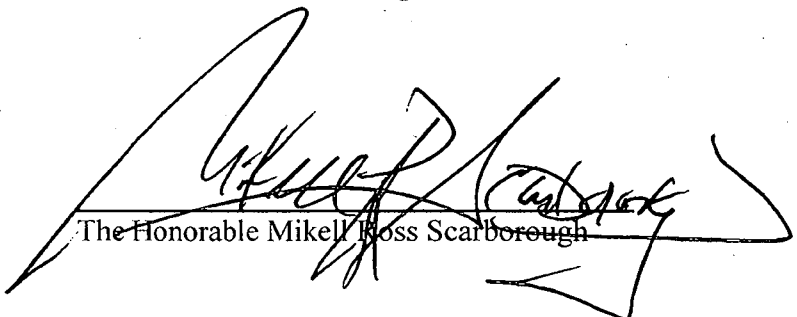
Conclusion

As discussed at length above, Rahall owed Rabon no duty to protect her from or warn her of any danger presented by Gunner. Accordingly, there can be no liability on the part of Rahall arising in negligence, and, thus, no common liability.

NOW, THEREFORE, based on the foregoing, ordered adjudged and decreed that judgment is hereby entered in favor of Defendant, Wanda G. Rahall, dismissing this matter.

AND IT IS SO ORDERED!

July 16, 2016
Charleston, South Carolina


The Honorable Mikell Ross Scarborough

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Charleston Electrical Services, Inc.)
and Selective Insurance Company of)
South Carolina as Subrogee of Charleston)
Electrical Services, Inc.,)

Plaintiffs,)

v.)

Wanda G. Rayhall,)

Defendant.)

Civil Action No. 2013-CP-10-_____

SUMMONS
(Jury Trial Requested)

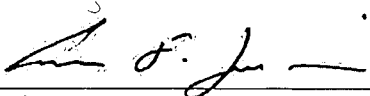
2013 JUL -3 PM 12:19
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscribers at their offices, 1611 Devonshire Drive, Post Office Box 8568, Columbia, South Carolina 29202, within thirty (30) days from the service hereof upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN

1611 Devonshire Drive

Post Office Box 8568

Columbia, South Carolina 29202

(803) 806-8222

Counsel for Plaintiffs

Columbia, South Carolina

July 2, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Charleston Electrical Services, Inc.)
and Selective Insurance Company of)
South Carolina as Subrogee of Charleston)
Electrical Services, Inc.,)

Plaintiffs,)

v.)

Wanda G. Rayhall,)

Defendant.)

Civil Action No. 2013-CP-10-_____

COMPLAINT
(Jury Trial Requested)

2013 JUL -31 PM 12:19
JULIE J. ARISTARCH
CLERK OF COURT

FILED

The Plaintiffs Charleston Electrical Services, Inc. and Selective Insurance Company of South Carolina as Subrogee of Charleston Electrical Services, Inc., complaining of the Defendant, would show herein as follows:

FOR A FIRST CAUSE OF ACTION

1. The Plaintiff Charleston Electrical Services, Inc. is a South Carolina corporation which transacts business in Charleston County, South Carolina.

2. The Plaintiff Selective Insurance Company of South Carolina is a South Carolina corporation authorized to engage in the business of insurance in the State of South Carolina. The Plaintiff Selective Insurance Company of South Carolina insured Charleston Electrical Services, Inc. under a commercial general liability policy.

3. Upon information and belief, the Defendant Wanda G. Rayhall is a citizen and resident of Horry County, South Carolina.

4. This cause of action is brought pursuant to the South Carolina Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10, *et seq.*

5. The Plaintiff Charleston Electrical Services, Inc. was sued by Elsie Mae Rabon for injuries that she sustained upon being attacked, knocked to the ground, and injured by a German Shepherd dog on the premises located at 60 Romney Street, Charleston, South Carolina on August 20, 2010. In settlement of that civil action, the Plaintiff Charleston Electrical Services, Inc. agreed to pay the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) to Elsie Mae Rabon in exchange for a full and final release of all liability executed by Elsie Mae Rabon on July 11, 2012. The Release executed by Elsie Mae Rabon extinguished the liability of the Defendant Wanda G. Rayhall. The action captioned *Rabon v. Charleston Electrical Services, Inc.*, Civil Action Number 2010-CP-10-10666, was dismissed by Stipulation of Dismissal filed July 31, 2012.

6. The Plaintiff Selective Insurance Company of South Carolina is subrogated to the rights of Charleston Electrical Services, Inc. and is entitled to seek the recovery of the sums paid in settlement of the civil action captioned *Rabon v. Charleston Electrical Services, Inc.*, Civil Action Number 2010-CP-10-10666.

7. The Defendant Wanda G. Rayhall is a tortfeasor liable for the injuries and damages sustained by Elsie Mae Rabon on August 20, 2012.

8. George E. Kornahrens is the owner and landlord of the premises located at 60 Romney Street, Charleston, South Carolina. He leased a portion of the premises to the Plaintiff Charleston Electrical Services, Inc. He also resided at the premises.

9. In August 2010, the Defendant Wanda G. Rayhall had been in a relationship with Kornahrens for several years and frequently stayed at or visited the premises located at 60 Romney Street, Charleston, South Carolina.

10. On August 20, 2010, the Defendant Wanda G. Rayhall brought Elsie Mae Rabon, who is her mother, to the premises and directed her into the yard where the German Shepherd

dog was located. The Defendant knew the dog would routinely jump on people. The Defendant further knew or should have known that the dog presented a significant risk of harm to Elsie Mae Rabon.

11. The Defendant Wanda G. Rayhall was negligent, willful, wanton, careless, grossly negligent and failed to exercise due care in the following particulars:

- (a) In directing Elsie Mae Rabon into the yard where she knew the German Shepherd dog was located;
- (b) In exposing Elsie Mae Rabon to the German Shepherd dog;
- (c) In allowing Elsie Mae Rabon in proximity to the German Shepherd dog;
- (d) In failing to properly supervise and protect Elsie Mae Rabon from harms she knew or should have known existed;
- (e) In allowing the dog to attack or otherwise jump on and knock down Elsie Mae Rabon;
- (f) In failing to properly warn Elsie Mae Rabon; and
- (g) In failing to use the same degree of care that a reasonable person would have used under similar circumstances.

12. The acts and omissions of the Defendant are the direct and proximate result of the injuries suffered by Elsie Mae Rabon, for which the Plaintiff was required to pay the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) to Elsie Mae Rabon in settlement of her claims.

13. The Plaintiff is entitled to the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) in contribution as the Defendant's pro-rata share of the settlement.

FOR A SECOND CAUSE OF ACTION

14. All allegations contained in Paragraphs 1 through 13 of the Plaintiff's Complaint are hereby incorporated into this cause of action as if fully set forth herein.

15. The reason that Elsie Mae Rabon visited the premises located at 60 Romney Street, Charleston, South Carolina was unrelated to the business of Charleston Electrical Services, Inc. Elsie Mae Rabon was present only because the Defendant brought her there for a visit.

16. The Plaintiff Charleston Electrical Services, Inc. had no fault for the injuries and damages claimed by the Plaintiff.

17. The injuries and damages sustained by Elsie Mae Rabon would not have occurred but for the acts and omissions of the Defendant as set forth in Paragraph 11 herein.

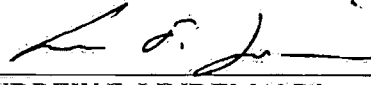
18. The liability of Charleston Electrical Services, Inc. to Elsie Mae Rabon was the direct and proximate result of the acts or omissions of the Defendant as set forth in Paragraph 11 herein.

19. The Defendant is responsible to indemnify the Plaintiff for the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) paid to Elsie Mae Rabon in settlement of her claims and in settlement of the civil action captioned *Rabon v. Charleston Electrical Services, Inc.*, Civil Action Number 2010-CP-10-10666, in addition to the attorney's fees and costs expended in defending that action.

WHEREFORE, the Plaintiffs pray for a judgment against the Defendants for the following:

- (a) The sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) for the contribution claim;
- (b) The sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) for the equitable indemnity claim;
- (c) For the attorney's fees and costs expended in defending Civil Action Number 2010-CP-10-10666;
- (d) For the costs of this action, and
- (e) For such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN

1611 Devonshire Drive

Post Office Box 8568

Columbia, South Carolina 29202

(803) 806-8222

Counsel for Plaintiffs

Columbia, South Carolina

July 2, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CHARLESTON ELECTRICAL)
SERVICES, INC. AND SELECTIVE)
INSURANCE COMPANY OF SOUTH)
CAROLINA AS SUBROGEE OF)
CHARLESTON ELECTRICAL)
SERVICES, INC.)

CIVIL ACTION NO.: 2013-CP-10-3901

Plaintiffs,

ANSWER OF DEFENDANT
WANDA G. RAYHALL

v.

WANDA G. RAYHALL,

Defendant.

2013 SEP 13 AM 11:34
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

WGB

TO: ANDREW F. LINDEMANN, COUNSEL FOR PLAINTIFFS AND TO PLAINTIFFS

Reserving all rights to amend this Answer within thirty days (30) pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant Wanda G. Rayhall (hereinafter referred to as the "Answering Defendant"), by and through its undersigned counsel, answers the Complaint of Charleston Electrical Services, Inc. and Selective Insurance Company of South Carolina as Subrogee of Charleston Electrical Services, Inc. (hereafter referred to as the "Plaintiffs") as follows:

1. The Answering Defendant denies each and every allegation of the Complaint not hereinafter specifically and expressly admitted, qualified or explained.

2. The Answering Defendant is without sufficient information to either admit or deny the allegations contained in Paragraphs 1 and 2 of the Complaint, and, as such, the Answering Defendant denies all allegations contained therein with strict proof demanded thereof.
3. The Answering Defendant admits the allegations contained in Paragraphs 3 and 4 of the Complaint.
4. The Answering Defendant is without sufficient information to either admit or deny the allegations contained in Paragraphs 5 and 6 of the Complaint, and, as such, the Answering Defendant denies all allegations contained therein with strict proof demanded thereof.
5. The Answering Defendant denies the allegations contained in Paragraph 7 of the Complaint and demands strict proof thereof.
6. The Answering Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 8 of the Complaint, and, as such, the Answering Defendant denies all allegations contained therein with strict proof demanded thereof.
7. The Answering Defendant admits the allegations contained in Paragraph 9 of the Complaint.
8. The Answering Defendant denies the allegations contained in Paragraphs 10, 11 (including subparts), 12, and 13 of the Complaint and demands strict proof thereof.
9. With respect to Paragraph 14 of the Complaint, each and every relevant and consistent admission, denial, modification or explanation set forth in Paragraph 1 through Paragraph 8 hereinabove is incorporated herein by reference as if full set forth herein verbatim.
10. The Answering Defendant denies the allegations contained in Paragraphs 15, 16, 17, 18, and 19 of the Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

11. Plaintiff has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and Plaintiff's claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

12. Plaintiff failed to mitigate its damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)

13. Plaintiff's claims may be barred by the doctrines of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Frauds)

14. Plaintiff's claims are barred by the statute of frauds.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations)

15. This Answering Defendant asserts that some or all of the claims against it are barred by applicable statutes of limitation or statutes of repose.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third-Parties)

16. Plaintiff's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Answering Defendant and not under its domain or control.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Join a Necessary Party)

17. Plaintiff has failed to join a party necessary to this litigation as required by Rule 19, SCRCF, and Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(7), SCRCF.

FOR A NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)

18. Any damage suffered by the Plaintiff is the direct and proximate result of its comparative and contributory negligence and Plaintiff's recovery should be barred or, alternatively, reduced proportionately to Plaintiff's comparative negligence.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

19. The Plaintiff has unclean hands and may not recover in indemnity.

FOR AN ELEVENTH DEFENSE AND BY WAY
OF AN AFFIRMATIVE DEFENSE THERETO
(Lack of Proximate Cause)

20. The Answering Defendant would show that any damages sustained by Plaintiff, which damages are denied, were proximately caused and occasioned by the acts and omissions of Plaintiff or others, said acts and omissions being the sole cause of Plaintiff's alleged damages, which are denied, Answering Defendants plead the intervening acts and omissions of Plaintiff or others as a complete bar to this action.

FOR AN TWELFTH DEFENSE AND BY WAY
OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation and Non-waiver)

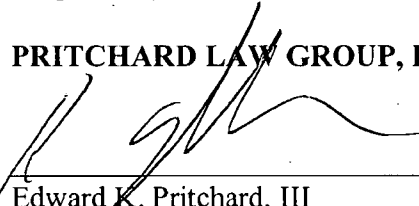
21. The Answering Defendant has not had an opportunity to conduct sufficient investigation or engage in adequate discovery regarding the circumstances of Plaintiff's claims. Therefore, the Answering Defendant specifically and expressly reserves and does not

waive its rights to assert any additional defenses as may be discovered through the course of written discovery, depositions and further investigation.

WHEREFORE, having fully answered the Complaint of Charleston Electrical Services, Inc. and Selective Insurance Company of South Carolina as Subrogee of Charleston Electrical Services, Inc., this Answering Defendant Wanda G. Rayhall prays that the same be dismissed with the cost of this action and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III
R. Casey Van Valkenburgh
P. O. Box 630
Charleston, SC 29402
129 Broad Street (29401)
(843) 722-3300 Telephone
(843) 722-3379 Facsimile
epritchard@pritchardlawgroup.com

Attorney for Defendant Wanda G. Rayhall

September 13, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Charleston Electrical Services, Inc.)
and Selective Insurance Company of)
South Carolina as Subrogee of Charleston)
Electrical Services, Inc.,)

Civil Action No. 2013-CP-10-3901

Plaintiffs,)

v.)

Wanda G. Rahall,)

Defendant.)
_____)

AMENDED COMPLAINT
(Jury Trial Requested)

FILED
2015 JAN 12 PM 1:27
JULIE L. ARMSTRONG
CLERK OF COURT
BY

The Plaintiffs Charleston Electrical Services, Inc. and Selective Insurance Company of South Carolina as Subrogee of Charleston Electrical Services, Inc., complaining of the Defendant, would show herein as follows:

FOR A FIRST CAUSE OF ACTION

1. The Plaintiff Charleston Electrical Services, Inc. is a South Carolina corporation which transacts business in Charleston County, South Carolina.

2. The Plaintiff Selective Insurance Company of South Carolina is a South Carolina corporation authorized to engage in the business of insurance in the State of South Carolina. The Plaintiff Selective Insurance Company of South Carolina insured Charleston Electrical Services, Inc. under a commercial general liability policy.

3. Upon information and belief, the Defendant Wanda G. Rahall is a citizen and resident of Horry County, South Carolina.

4. This cause of action is brought pursuant to the South Carolina Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10, *et seq.*

5. The Plaintiff Charleston Electrical Services, Inc. was sued by Elsie Mae Rabon for injuries that she sustained upon being attacked, knocked to the ground, and injured by a German Shepherd dog on the premises located at 60 Romney Street, Charleston, South Carolina on August 20, 2010. In settlement of that civil action, the Plaintiff Charleston Electrical Services, Inc. agreed to pay the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) to Elsie Mae Rabon in exchange for a full and final release of all liability executed by Elsie Mae Rabon on July 11, 2012. The Release executed by Elsie Mae Rabon extinguished the liability of the Defendant Wanda G. Rahall. The action captioned *Rabon v. Charleston Electrical Services, Inc.*, Civil Action Number 2010-CP-10-10666, was dismissed by Stipulation of Dismissal filed July 31, 2012.

6. The Plaintiff Selective Insurance Company of South Carolina is subrogated to the rights of Charleston Electrical Services, Inc. and is entitled to seek the recovery of the sums paid in settlement of the civil action captioned *Rabon v. Charleston Electrical Services, Inc.*, Civil Action Number 2010-CP-10-10666.

7. The Defendant Wanda G. Rahall is a tortfeasor liable for the injuries and damages sustained by Elsie Mae Rabon on August 20, 2012.

8. George E. Kornahrens is the owner and landlord of the premises located at 60 Romney Street, Charleston, South Carolina. He leased a portion of the premises to the Plaintiff Charleston Electrical Services, Inc. He also resided at the premises.

9. In August 2010, the Defendant Wanda G. Rahall had been in a relationship with Kornahrens for several years, was his fiancé, and routinely resided or lived at the premises located at 60 Romney Street, Charleston, South Carolina with Kornahrens.

10. On August 20, 2010, the Defendant Wanda G. Rahall brought Elsie Mae Rabon, who is her mother, to the premises and directed her into the yard where the German Shepherd

dog was located. The Defendant knew the dog would routinely jump on people. The Defendant further knew or should have known that the dog presented a significant risk of harm to Elsie Mae Rabon.

11. The Defendant Wanda G. Rahall was negligent, willful, wanton, careless, grossly negligent and failed to exercise due care in the following particulars:

- (a) In directing Elsie Mae Rabon into the yard where she knew the German Shepherd dog was located;
- (b) In exposing Elsie Mae Rabon to the German Shepherd dog;
- (c) In allowing Elsie Mae Rabon in proximity to the German Shepherd dog;
- (d) In failing to properly supervise and protect Elsie Mae Rabon from harms she knew or should have known existed;
- (e) In allowing the dog to attack or otherwise jump on and knock down Elsie Mae Rabon;
- (f) In failing to properly warn Elsie Mae Rabon; and
- (g) In failing to use the same degree of care that a reasonable person would have used under similar circumstances.

12. The acts and omissions of the Defendant are the direct and proximate result of the injuries suffered by Elsie Mae Rabon, for which the Plaintiff was required to pay the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) to Elsie Mae Rabon in settlement of her claims.

13. The Plaintiff is entitled to the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) in contribution as the Defendant's pro-rata share of the settlement and pre-judgment interest.

FOR A SECOND CAUSE OF ACTION

14. All allegations contained in Paragraphs 1 through 13 of the Plaintiff's Amended Complaint are hereby incorporated into this cause of action as if fully set forth herein.

15. The reason that Elsie Mae Rabon visited the premises located at 60 Romney Street, Charleston, South Carolina was unrelated to the business of Charleston Electrical Services, Inc. Elsie Mae Rabon was present only because the Defendant brought her there for a visit.

16. The Plaintiff Charleston Electrical Services, Inc. had no fault for the injuries and damages claimed by the Plaintiff.

17. The injuries and damages sustained by Elsie Mae Rabon would not have occurred but for the acts and omissions of the Defendant as set forth in Paragraph 11 herein.

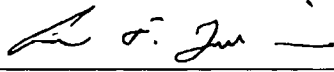
18. The liability of Charleston Electrical Services, Inc. to Elsie Mae Rabon was the direct and proximate result of the acts or omissions of the Defendant as set forth in Paragraph 11 herein.

19. The Defendant is responsible to indemnify the Plaintiff for the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) paid to Elsie Mae Rabon in settlement of her claims and in settlement of the civil action captioned *Rabon v. Charleston Electrical Services, Inc.*, Civil Action Number 2010-CP-10-10666, in addition to the attorney's fees and costs expended in defending that action, and pre-judgment interest.

WHEREFORE, the Plaintiffs pray for a judgment against the Defendants for the following:

- (a) The sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) for the contribution claim;
- (b) The sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) for the equitable indemnity claim;
- (c) For the attorney's fees and costs expended in defending Civil Action Number 2010-CP-10-10666;
- (d) For pre-judgment interest;
- (e) For the costs of this action, and
- (f) For such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Plaintiffs

Columbia, South Carolina

January 7, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CHARLESTON ELECTRICAL)
SERVICES, INC. AND SELECTIVE)
INSURANCE COMPANY OF SOUTH)
CAROLINA, AS SUBROGEE OF)
CHARLESTON ELECTRICAL)
SERVICES, INC.,)

CIVIL ACTION NO.: 2013-CP-10-3901

Plaintiffs,

v.

WANDA G. RAHALL,

Defendant

DEFENDANT, WANDA RAHALL'S
ANSWER TO PLAINTIFF,
CHARLESTON ELECTRICAL
SERVICES, INC. AND SELECTIVE
INSURANCE COMPANY OF SOUTH
CAROLINA, AS SUBROGEE OF
CHARLESTON ELECTRICAL
SERVICES, INC.'S AMENDED
COMPLAINT

FILED
2013 SEP -5 PM 4:16
CLERK OF COURT

TO: ANDREW F. LINDEMANN, COUNSEL FOR PLAINTIFFS, CHARLESTON ELECTRICAL SERVICES, INC. AND SELECTIVE INSURANCE COMPANY OF SOUTH CAROLINA, AS SUBROGEE OF CHARLESTON ELECTRICAL SERVICES, INC., AND TO PLAINTIFFS, CHARLESTON ELECTRICAL SERVICES, INC. AND SELECTIVE INSURANCE COMPANY OF SOUTH CAROLINA, AS SUBROGEE OF CHARLESTON ELECTRICAL SERVICES, INC.:

Reserving all rights to amend this Answer within thirty days (30) pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendant Wanda G. Rahall (hereinafter referred to as the "Defendant"), by and through her undersigned counsel, answers the Amended Complaint of Charleston Electrical Services, Inc. and Selective Insurance Company of South Carolina, as subrogee of Charleston Electrical Services, Inc. (hereinafter collectively referred to as the "Plaintiffs") as follows:

FOR A FIRST DEFENSE
(General Denial)

1. That Defendant denies each and every allegation of the Amended Complaint not hereinafter specifically and expressly admitted, qualified or explained.
2. That Defendant admits the allegations of Paragraph 1 and Paragraph 2 of the Amended Complaint, upon information and belief.
3. That Defendant admits the allegations contained in Paragraph 3 of the Amended Complaint.
4. That Defendant admits the allegations contained in Paragraph 4 of the Amended Complaint upon information and belief.
5. That Defendant admits the allegations of Paragraph 5 of the Amended Complaint.
6. That Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 6, and, therefore denies the allegations and demands strict proof thereof.
7. That Defendant denies the allegations contained in Paragraph 7 of the Amended Complaint and demands strict proof thereof.
8. That Defendant admits the allegations of Paragraph 8 of the Amended Complaint, upon information and belief.
9. That in responding to the allegations contained in Paragraph 9 of the Amended Complaint, Defendant denies the allegations as stated, demanding strict proof thereof. By way of further response Defendant admits only that she was the fiancée of Kornharens and periodically visited or stayed at an apartment located the at 60 Romney Street.
10. That in responding to the allegations contained in Paragraph 10 of the Amended Complaint, Defendant denies the allegations as stated, demanding strict proof thereof.

11. That Defendant denies the allegations contained in Paragraph 11, Paragraph 12 and Paragraph 13 of the Amended Complaint and demands strict proof thereof.
12. That in responding to Paragraph 14 of the Amended Complaint, each and every relevant and consistent admission, denial, modification or explanation set forth in Paragraph 1 through Paragraph 11 hereinabove is incorporated herein by reference as if full set forth herein verbatim.
13. That in responding to the allegations contained in Paragraph 15 of the Amended Complaint, Defendant denies the allegations as stated, demanding strict proof thereof.
14. That Defendant denies the allegations contained in Paragraph 16, Paragraph 17, Paragraph 18 and Paragraph 19, including the "Wherefore" paragraph of the Amended Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. Each and every relevant and consistent admission, denial, modification or explanation set forth in Paragraph 1 through Paragraph 15 hereinabove is incorporated herein by reference as if fully set forth herein verbatim.
16. Plaintiffs have failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and Plaintiffs' claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

17. Plaintiffs have failed to mitigate their damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)

18. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Frauds)

19. Plaintiffs' claims may be barred by the statute of frauds.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations)

20. That Defendant asserts that some or all of the claims against her are barred by applicable statutes of limitation or statutes of repose.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third-Parties)

21. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with Defendant and not under its domain or control.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Join a Necessary Party)

22. Plaintiffs have failed to join a party necessary to this litigation as required by Rule 19, SCRCp, and Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(7), SCRCp.

FOR A NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)

23. Any damage suffered by the Plaintiffs are the direct and proximate result of its comparative and contributory negligence and Plaintiffs' recovery should be barred or, alternatively, reduced proportionately to Plaintiff's comparative negligence.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

24. The Plaintiffs have unclean hands and may not recover in indemnity.

**FOR AN ELEVENTH DEFENSE AND BY WAY
OF AN AFFIRMATIVE DEFENSE THERETO
(Lack of Proximate Cause)**

25. That Defendant would show that any damages sustained by Plaintiffs, which damages are denied, were proximately caused and occasioned by the acts and omissions of Plaintiff or others, said acts and omissions being the sole cause of Plaintiffs' alleged damages, which are denied, Answering Defendants plead the intervening acts and omissions of Plaintiffs or others as a complete bar to this action.

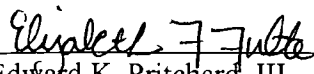
**FOR A TWELFTH DEFENSE AND BY WAY
OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation and Non-Waiver)**

26. That Defendant specifically and expressly reserves and does not waive its rights to assert any additional defenses as may be discovered through the course of depositions and further investigation.

WHEREFORE, having fully answered the Amended Complaint of Charleston Electrical Services, Inc., and Selective Insurance Company of South Carolina, as Subrogee of Charleston Electrical Services, Inc., Defendant Wanda G. Rahall prays that the same be dismissed with prejudice, together with the costs of this action and for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

PRITCHARD LAW GROUP, LLC



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Attorneys for Defendant, Wanda Rahall

February 3, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CHARLESTON ELECTRICAL)
SERVICES, INC. AND SELECTIVE)
INSURANCE COMPANY OF SOUTH)
CAROLINA, AS SUBROGEE OF)
CHARLESTON ELECTRICAL)
SERVICES, INC.,)

CIVIL ACTION NO.: 2013-CP-10-3901

Plaintiffs,

v.

WANDA G. RAHALL,

Defendant

DEFENDANT, WANDA RAHALL'S
AMENDED ANSWER TO PLAINTIFF,
CHARLESTON ELECTRICAL
SERVICES, INC. AND SELECTIVE
INSURANCE COMPANY OF SOUTH
CAROLINA, AS SUBROGEE OF
CHARLESTON ELECTRICAL
SERVICES, INC.'S AMENDED
COMPLAINT

FILED
FEB 11 PM 3:51
CLERK OF COURT

TO: ANDREW F. LINDEMANN, COUNSEL FOR PLAINTIFFS, CHARLESTON ELECTRICAL SERVICES, INC. AND SELECTIVE INSURANCE COMPANY OF SOUTH CAROLINA, AS SUBROGEE OF CHARLESTON ELECTRICAL SERVICES, INC., AND TO PLAINTIFFS, CHARLESTON ELECTRICAL SERVICES, INC. AND SELECTIVE INSURANCE COMPANY OF SOUTH CAROLINA, AS SUBROGEE OF CHARLESTON ELECTRICAL SERVICES, INC.:

Defendant Wanda G. Rahall (hereinafter referred to as the "Defendant"), by and through her undersigned counsel, hereby amends her Answer to the Amended Complaint of Charleston Electrical Services, Inc. and Selective Insurance Company of South Carolina, as subrogee of Charleston Electrical Services, Inc. (hereinafter collectively referred to as the "Plaintiffs") as follows:

FOR A FIRST DEFENSE
(General Denial)

1. That Defendant denies each and every allegation of the Amended Complaint not hereinafter specifically and expressly admitted, qualified or explained.

2. That Defendant admits the allegations of Paragraph 1 and Paragraph 2 of the Amended Complaint, upon information and belief.
3. That Defendant admits the allegations contained in Paragraph 3 of the Amended Complaint.
4. That Defendant admits the allegations contained in Paragraph 4 of the Amended Complaint upon information and belief.
5. That Defendant admits the allegations of Paragraph 5 of the Amended Complaint.
6. That Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 6, and, therefore denies the allegations and demands strict proof thereof.
7. That Defendant denies the allegations contained in Paragraph 7 of the Amended Complaint and demands strict proof thereof.
8. That Defendant admits the allegations of Paragraph 8 of the Amended Complaint, upon information and belief.
9. That in responding to the allegations contained in Paragraph 9 of the Amended Complaint, Defendant denies the allegations as stated, demanding strict proof thereof. By way of further response Defendant admits only that she was the fiancée of Kornharens and periodically visited or stayed at an apartment located the at 60 Romney Street.
10. That in responding to the allegations contained in Paragraph 10 of the Amended Complaint, Defendant denies the allegations as stated, demanding strict proof thereof.
11. That Defendant denies the allegations contained in Paragraph 11, Paragraph 12 and Paragraph 13 of the Amended Complaint and demands strict proof thereof.

12. That in responding to Paragraph 14 of the Amended Complaint, each and every relevant and consistent admission, denial, modification or explanation set forth in Paragraph 1 through Paragraph 11 hereinabove is incorporated herein by reference as if full set forth herein verbatim.

13. That in responding to the allegations contained in Paragraph 15 of the Amended Complaint, Defendant denies the allegations as stated, demanding strict proof thereof.

14. That Defendant denies the allegations contained in Paragraph 16, Paragraph 17, Paragraph 18 and Paragraph 19, including the "Wherefore" paragraph of the Amended Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE
(Failure to State a Claim)

15. Each and every relevant and consistent admission, denial, modification or explanation set forth in Paragraph 1 through Paragraph 15 hereinabove is incorporated herein by reference as if fully set forth herein verbatim.

16. Plaintiffs have failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCPP, and Plaintiffs' claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

17. Plaintiffs have failed to mitigate their damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)

18. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third-Parties)

19. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with Defendant and not under its domain or control.

FOR AN SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Join a Necessary Party)

20. Plaintiffs have failed to join a party necessary to this litigation as required by Rule 19, SCRCP, and Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(7), SCRCP.

FOR A SEVETH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)

21. Any damage suffered by the Plaintiffs are the direct and proximate result of its comparative and contributory negligence and Plaintiffs' recovery should be barred or, alternatively, reduced proportionately to Plaintiff's comparative negligence.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

22. The Plaintiffs have unclean hands and may not recover in indemnity.

FOR A NINTH DEFENSE AND BY WAY
OF AN AFFIRMATIVE DEFENSE THERETO
(Lack of Proximate Cause)

23. That Defendant would show that any damages sustained by Plaintiffs, which damages are denied, were proximately caused and occasioned by the acts and omissions of Plaintiff or others, said acts and omissions being the sole cause of Plaintiffs' alleged damages, which are denied, Answering Defendants plead the intervening acts and omissions of Plaintiffs or others as a complete bar to this action.

FOR A TENTH DEFENSE AND BY WAY
OF AN AFFIRMATIVE DEFENSE THERETO
(No Sum Certain)

24. That Plaintiffs' entitlement to damages, if any, which is expressly denied, is not a sum certain amount and therefore Plaintiffs are barred from recovering prejudgment interest.

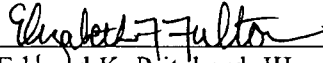
FOR AN ELEVENTH DEFENSE AND BY WAY
OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation and Non-Waiver)

25. That Defendant specifically and expressly reserves and does not waive its rights to assert any additional defenses as may be discovered through the course of depositions and further investigation.

WHEREFORE, having fully amended and answered the Amended Complaint of Charleston Electrical Services, Inc., and Selective Insurance Company of South Carolina, as Subrogee of Charleston Electrical Services, Inc., Defendant Wanda G. Rahall prays that the same be dismissed with prejudice, together with the costs of this action and for such other and further relief as this Honorable Court may deem just and proper.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,
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Attorneys for Defendant, Wanda Rahall

February 9, 2015
Charleston, South Carolina

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 Charleston Electrical Services, Inc., and Selective
4 Insurance Company of South Carolina as Subrogee of
Charleston Electrical Services, Inc.,

5 Plaintiffs,

6 vs.

CASE NO. 2013-CP-10-3901

7 Wanda G. Rahall,

8 Defendant.
9
10
11

12 Hearing before the Honorable Mikell R.
13 Scarborough, reported by Christine A. Smith, Court
14 Reporter and Notary Public, at 10:33 a.m. on
15 June 17, 2016 at 100 Broad Street, Charleston,
16 South Carolina.
17

18 **COPY**
19
20

21 Christine A. Smith, Court Reporter

22 Master-in-Equity

P.O. Box 30276

23 Charleston, South Carolina, 29417

(843) 958-5071

24 casmith@charlestoncounty.org
25

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

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25

P R O C E E D I N G S

1
2
3 THE COURT: This morning we have this case:
4 Charleston Electrical Services, Inc., versus Wanda
5 Rahall. It's Case No. 2013-CP-10-3901. For the
6 Plaintiffs, Andrew Lindemann?

7 MR. LINDEMANN: Yes, Your Honor.

8 THE COURT: Mr. Lindemann, good morning, sir.

9 MR. LINDEMANN: Good morning.

10 THE COURT: For the Defendant?

11 MR. PRITCHARD: Edward Pritchard.

12 THE COURT: Mr. Pritchard?

13 MS. FULTON: Liz Fulton.

14 THE COURT: Ms. Fulton, very good. I have
15 received you-all's joint stipulation of facts, and I
16 have reviewed it. I've also been through the file a
17 couple of times just to get familiar with it. We've
18 got a contribution claim and an equitable
19 indemnification claim; is that what we've got?

20 MR. LINDEMANN: That's correct, Your Honor,
21 and actually we're withdrawing the equitable
22 indemnity claim to make this a little easier and more
23 straightforward, so it's just a contribution claim.

24 THE COURT: Well, that took care of one issue
25 I had. Clearly they were mutually exclusive

1 remedies; were they not?

2 MR. LINDEMANN: That's correct. Yes, sir.

3 THE COURT: So under the Statutory Uniform
4 Contribution Amongst Tortfeasors, is that where we're
5 going?

6 MR. LINDEMANN: That's correct, Your Honor.

7 THE COURT: And you-all's claim would be then
8 based upon the amended Complaint for up to \$100,000;
9 is that right?

10 MR. LINDEMANN: That's correct.

11 THE COURT: Very good. Now, on the joint
12 stipulation of facts you-all have reserved the right
13 to argue some facts; is that right?

14 MR. PRITCHARD: Correct.

15 MS. FULTON: Correct.

16 MR. LINDEMANN: That's correct.

17 THE COURT: All right.

18 MR. PRITCHARD: We have some deposition
19 transcripts that we want to put into our part of the
20 joint stipulations. How would you like for us to go
21 about doing that? Do you want us to mark them as
22 exhibits? Just introduce them?

23 THE COURT: Let's mark them as exhibits just
24 to keep the record clear, and there was a reservation
25 of rights, and there could be an objection to it, so

1 let's figure that out as well. I understand from our
2 meeting last week that if we were going to do this
3 that it's basically a joint stipulation of facts, and
4 we're not going to put witnesses up? We're just
5 going to argue the law basically is what we're going
6 to do here today?

7 MS. FULTON: Yes.

8 MR. PRITCHARD: And Ms. Fulton has prepared a
9 masterful trial brief of champions that I would hate
10 to deprive you of the opportunity to read.

11 THE COURT: I'm happy to -- I heard there was
12 a dog and pony show.

13 MR. PRITCHARD: She wants to hand it up.

14 THE COURT: We have a screen up here, too, if
15 you want to shoot it up on the screen.

16 MS. FULTON: I tested it yesterday and I think
17 it's easier to see --

18 THE COURT: Do I need to lower the lights?

19 MR. PRITCHARD: And mood music.

20 THE COURT: We'll get to that. And then
21 Mr. Lindemann, just to cover this, I knew that -- you
22 may or may not have known this before you got here,
23 but it's a big day in Charleston. It's the
24 anniversary of the Mother Emmanuel shooting, so I got
25 the message that you were running late.

1 MR. LINDEMANN: I ended up getting here just
2 on time. When I ran into all those blocked streets I
3 figured I would get somebody to call to let you know.

4 THE COURT: I don't know how long that's going
5 on for, but when you leave to go back to Columbia you
6 might try Coming Street because they won't block
7 that. That would be my advice to you.

8 MR. LINDEMANN: I appreciate that.

9 THE COURT: And that's going on all weekend, I
10 think, at least today and tomorrow.

11 Anything else that we need to -- I did have
12 this one question? I wanted to make sure that Wanda
13 Rahall's name is spelled correctly. It has a "Y" in
14 it, or no "Y" in it?

15 MR. LINDEMANN: No, "Y".

16 THE COURT: Do we have need to correct the
17 caption on that basis then? Sometimes I see it with
18 a "Y" and sometimes not.

19 MR. LINDEMANN: I believe we corrected it with
20 the amended complaint.

21 THE COURT: The joint stipulation of facts has
22 the "Y", which is why I asked that.

23 MS. FULTON: Yes, that's my fault. Yes, the
24 amended Complaint does not.

25 THE COURT: It does not, you're right. Okay.

1 I see it spelled two ways.

2 MR. LINDEMANN: Your Honor, if I could, I have
3 a pretrial brief as well. I have provided a copy
4 to Defendant's Counsel.

5 MR. PRITCHARD: As a favor I would like you to
6 spell it correctly.

7 THE COURT: I'm with you. Very good. I have
8 some pretrial briefs. If you-all would have gotten
9 me these yesterday I would have read them. I'm not
10 going to read them now. We'll get started now.
11 Okay?

12 MR. LINDEMANN: Your Honor, if I could just
13 say that as far as the depositions go -- obviously
14 I'm the Plaintiff here, which is a little unusual for
15 me. If I call myself the Defendant, please excuse
16 me.

17 THE COURT: That's all right.

18 MR. LINDEMANN: Your Honor, obviously we've
19 agreed to the stipulation of facts. I also have some
20 deposition excerpts from Wanda Rahall's depositions.
21 As Your Honor has gathered from what you've looked at
22 in the file, there was an underlying case that was
23 brought by Elsie Rabon against Charleston Electrical
24 Services. Three depositions were taken in that case:
25 John Oakley, George Kornahrens, and then Ms. Rahall.

8
1 Then we took another deposition of Ms. Rahall
2 specifically in this case.

3 What I have for my case-in-chief, Your Honor,
4 is I actually just have excerpts from the two Rahall
5 depositions. If I could hand up to the Court or have
6 marked, however you wish? I did note -- my paralegal
7 is on vacation this week, which is always crippling,
8 and I noticed when I got here that Page 30 of
9 Ms. Rahall's first deposition, her November 16, 2011
10 deposition did not copy.

11 I do quote the portion of that page in my
12 brief that I'm relying on. I understand -- I believe
13 Defense Counsel is going to hand up the entire
14 deposition, so that would cover me as far as Page 30.
15 If I could just make that note for the record?

16 THE COURT: That's the November 16, '11
17 deposition?

18 MR. LINDEMANN: That's correct, yes, sir.

19 THE COURT: Let me just tell you, one of the
20 things I was reviewing this morning was -- I believe
21 this was part of the Defendant's Motion for Summary
22 Judgment and included those. So it's in here. I'll
23 be happy to place it in there if you would like?

24 MR. LINDEMANN: That would be fine, just as
25 long as it's in the Court's record.

1 THE COURT: You-all are going to have it
2 anyway, right?

3 MS. FULTON: That's fine.

4 MR. LINDEMANN: I made is on the record that
5 Page 30 is to be included in the Plaintiff's
6 case-in-chief.

7 THE COURT: Okay. I've got it. Let's go
8 ahead and mark those. Those are both Ms. Rahall's
9 depositions?

10 MR. LINDEMANN: That's correct.

11 THE COURT: One from '11 and one from this
12 action?

13 MR. LINDEMANN: That's correct, Your Honor.

14 (PLF. EXH. #1, Deposition Transcripts in
15 Notebook, were marked for identification.)

16 MR. LINDEMANN: And as far as the other
17 depositions are concerned, Your Honor, I don't have
18 any specific objections to them. I think part of the
19 reason -- what I expressed to Defense Counsel is that
20 part of the reason we agreed to the joint stipulation
21 I thought was to save Your Honor from having to read
22 those depositions from the previous case. There's a
23 lot of extraneous matter dealing with Ms. Rabon's
24 injuries that really don't pertain to this
25 contribution action.

1 THE COURT: Okay.

2 MR. LINDEMANN: So that's one of the reasons
3 why I didn't want to stipulate that they were all
4 relevant. There is a lot of irrelevant matter. Of
5 course, trying the case in front of the Court instead
6 of the Jury you obviously can make determinations for
7 yourself as to what is pertinent.

8 THE COURT: What is relevant and what is not?

9 MR. LINDEMANN: But if I could just make that
10 statement. That's why I didn't stipulate to it being
11 entirely relevant because there's a lot of stuff in
12 there that's not.

13 THE COURT: Okay. And those depositions, are
14 those the full depositions, or are these excerpts?

15 MS. FULTON: They're the full depositions.

16 THE COURT: All right. And then joint
17 Exhibits 1, 2, and 3 were the same exhibits attached
18 to the joint stipulation of facts, correct?

19 MS. FULTON: Yes.

20 THE COURT: All right. Well, with that
21 covered then do you have anything else before we get
22 started?

23 MR. LINDEMANN: No.

24 THE COURT: I'm glad to hear arguments from
25 you.

1 All right. Mr. Lindemann?

2 MR. LINDEMANN: Thank you, Your Honor.

3 Obviously, that presents the evidence in the case.
4 Your Honor, just to summarize the facts briefly for
5 Your Honor, if you've read the summary judgment memos
6 you've probably gotten the gist of it. There's a few
7 additional details that we were able to get from
8 Ms. Rahall's deposition that we took a month or so
9 ago.

10 THE COURT: Okay.

11 MR. LINDEMANN: Just to summarize, as I
12 indicated, this is a contribution action. We are
13 withdrawing the equitable indemnity claim. I
14 represent Charleston Electrical Services as well as
15 their general liability carrier, which was Selective
16 Insurance Company of South Carolina who subrogated to
17 their rights, subrogated pursuant to the Contribution
18 Act as well as common law and actually we stipulate
19 to that as well, so there is no question about it.

20 This case arises from the underlying case,
21 which was brought by Elsie Mae Rabon, which is
22 Ms. Rahall's elderly mother who just recently passed
23 away. Ms. Rabon brought a lawsuit against Charleston
24 Electrical Services back in 2010. It involved an
25 accident that happened or an incident that happened

1 on August 20, 2010 at 60 Romney Street here in
2 Charleston.

3 60 Romney Street is a collection of buildings
4 which housed not only Charleston Electrical Services,
5 but there's also an upstairs apartment where
6 Mr. Kornahrens -- I think I did better that time --
7 Mr. Kornahrens lived in that particular apartment.
8 He actually owned all of the premises. He used to
9 operate Charleston Electrical Services, and then
10 ultimately turned the business over to his
11 son-in-law -- no, his stepson, who is John Oakley.

12 Mr. Oakley ran the business there.

13 Mr. Kornahrens continued to work for the business and
14 as I indicated he resided on the premises. This case
15 revolves around the fact that there was a dog, a
16 German shepherd that was kept on the premises, named
17 Gunner. When you hear Gunner, that's the German
18 shepherd. The German shepherd was typically during
19 the day chained in the back yard, but often he would
20 be let loose.

21 On this particular occasion -- I'll get to the
22 facts in a little bit more detail, but on this
23 particular occasion Ms. Rabon came into the backyard
24 area where the dog was, the dog jumped on her -- not
25 in an attack so to speak. The dog was always

1 described as overly friendly, but he was a good-sized
2 German shepherd and she was a little frail elderly
3 woman. I think she was in her late 70s at the time.
4 He knocked her down. She broke her hip, broke her
5 ankle. Those are the injuries that she was claiming
6 in the underlying lawsuit.

7 Ultimately at mediation we settled that case
8 for \$200,000. It's not necessary for me to prove
9 that that was a reasonable settlement because that's
10 been stipulated to. The medicals, for what it's
11 worth, were in the \$80,000 range.

12 So ultimately what happened in that particular
13 case, Charleston Electrical settled the case. We
14 attempted to third-party in on indemnity grounds
15 because you can't bring a contribution action until
16 there's actually payment. Ms. Rahall did not
17 participate in any type of settlement. Ultimately
18 when we settled with Ms. Rabon we exhausted the
19 liability of Ms. Rahall so that we could pursue this
20 as a contribution action, and then we did bring a
21 contribution action in a timely manner, and that's
22 what brings us here today, Your Honor.

23 The theory of the case against Ms. Rabon (sic)
24 is that she had a duty to protect --

25 MR. PRITCHARD: Ms. Rahall.

1 MR. LINDEMANN: Ms. Rahall, I'm sorry.

2 THE COURT: Thank you. Ms. Rahall and
3 Ms. Rabon are mother/daughter, right?

4 MR. LINDEMANN: That's right. That's right.
5 I'll try to be more careful. It's easy to confuse
6 the two. Ms. Rabon is the mother. Ms. Rahall is the
7 daughter.

8 Anyway, our theory of the case is that
9 Ms. Rahall, the daughter, had a duty under these
10 circumstances to protect and warn her mother about
11 the fact that the German shepherd was in the back
12 yard area and to prevent her from coming into that
13 particular area of the premises.

14 To back up a little bit, one of the reasons we
15 contend that she has a duty of care is that
16 Ms. Rahall herself resided on the premises. Now,
17 that's an issue of contention in this case because
18 Ms. Rahall also has a home in Myrtle Beach and did at
19 this particular time.

20 She had been dating and actually was engaged
21 for four years -- prior to this incident -- engaged
22 to Mr. Kornahrens, and they lived together at the
23 apartment on the premises. They also spent some time
24 at her house in Myrtle Beach. She testified in her
25 deposition, and those excerpts are in the record,

1 that she spent approximately 70 percent of her time
2 in Charleston living at 60 Romney Street. She had a
3 key to the premises. She could come and go as she
4 pleased. I acknowledge that she didn't pay rent or
5 pay taxes or pay insurance on the property. She is
6 not an owner of the property.

7 What is key here, Your Honor, is the
8 premises/liability case law in South Carolina talks
9 about the duty of care being owed -- not necessarily
10 by the owner of the property but also by the
11 possessor. That makes sense if you think about it.
12 People in a leasehold situation would have a duty --
13 basic premises liability duties.

14 To use a personal example, my house is titled
15 in my name. My wife lives there. She doesn't avoid
16 duties of care that are owed by people who possess or
17 occupy land simply by the fact that she's not on the
18 deed.

19 So the key here is whether or not someone
20 qualifies as a possessor or occupier. We contend
21 that based on the evidence that we have presented,
22 which is Ms. Rahall's own testimony, that she
23 qualifies as a possessor or occupier. She spent, as
24 I indicated 70 percent of her time on those premises.
25 She had a key. She described it as a place where she

1 lived. One of the quotes I have in the pretrial
2 brief, which is from Page 30, the page that I said
3 was missing, I asked a question:

4 "Q. So on August 20th, 2010 Ms. Rabon
5 would have been a social guest?

6 A. Yes.

7 Q. She was staying as a guest with you
8 and George?

9 A. Yes. She always stays with us at
10 60 Romney Street. That's where we
11 live, me and George.

12 Q. So when she came to visit she stayed
13 with you?

14 A. Yes, always."

15 So she described it as a place where she
16 lived. So again, I think one of the issues that the
17 Court is going to have to resolve is whether or not
18 she owes a duty, and if she owes a duty I would
19 submit to the Court that she qualifies as an occupier
20 or possessor under the Premises Liability Law in
21 South Carolina, and I would submit that the evidence
22 in the record fully supports that.

23 Along those same lines, Your Honor, our --
24 there are two bases for us arguing that she has a
25 duty. Number one, that she has a duty to protect and

1 a duty to warn based upon what I've just indicated
2 under basic Premises Liability Law, which for a
3 social guest, and Ms. Rabon clearly qualifies as a
4 social guest, there is a duty on the part of a
5 possessor -- and I'm citing the Neil versus Byrum
6 case which is in our pretrial brief -- to use
7 reasonable care to warn a social guest of any
8 concealed dangerous conditions or activities which
9 are known to the possessor or of any change in the
10 condition of the premises which may be dangerous to
11 him or which may reasonably be expected -- or which
12 he may reasonably be expected to discover.

13 We contend that there's a duty of care that
14 was owed because the situation with Gunner being in
15 the back yard, being loose, being obviously a risk of
16 harm to an elderly woman. Ms. Rahall testified that,
17 number one, her mother had never been exposed to this
18 dog, had never met the dog as she put it, while
19 Ms. Rahall having lived there was very acquainted
20 with the dog.

21 She indicated that she knew that the dog was
22 overly friendly as she put it, would jump up on
23 people, would put his paws up on people. It had
24 happened to her numerous times herself. She
25 indicated in her last deposition that it just

1 happened to her a couple of times the previous week.
2 So she was well aware of the dog's propensity to do
3 that. Although they said the dog didn't actually
4 attack or bite anybody, the dog would jump on people
5 and of course, that would be hazardous to an elderly
6 woman as it turned out that it was.

7 So again, part of our argument is based upon
8 that duty exists under Premises Liability Law, a duty
9 that is owed by an occupier/possessor to a social
10 guest.

11 The other argument is --

12 THE COURT: You cited Neil v. Byrum?

13 MR. LINDEMANN: Yes, sir.

14 THE COURT: I just found it. I'm sorry.

15 Okay.

16 MR. LINDEMANN: And Neil v. Byrum is cited.
17 If you look at other cases dealing with licensee
18 situations, Neil v. Byrum is still cited repeatedly
19 by our Appellate Courts. This is a leading case on
20 the duty of care that is owed to a licensee or a
21 social guest.

22 THE COURT: I've got it.

23 MR. LINDEMANN: So in essence, Your Honor, as
24 I indicated, the duty of care arises under Premises
25 Liability Law, but it also arises because of a

1 special relationship. Our Courts have recognized
2 that there is no general duty to control or warn
3 another of a potential risk of harm, but there are
4 five exceptions to that, and one of the five
5 exceptions to that is where the Defendant has a
6 special relationship to the victim.

7 In this particular case, Your Honor, a
8 mother/child relationship, in particular an adult
9 child with an elderly mother, we would submit
10 constitutes such a special relationship where she
11 would have a duty to protect and a duty to warn her
12 elderly mother of any type of dangerous condition
13 that was on the premises.

14 So there are two different theories.
15 Obviously the Court has to find a duty under one of
16 them but those are alternative theories. We believe
17 that a duty arises under both of those theories,
18 Your Honor.

19 Turning to the facts of the case and the
20 breach of the duty of care, what occurred in this
21 particular matter is this particular dog was bought
22 in January of 2010. The incident itself happened in
23 August -- August 20, 2010. The testimony is that
24 Ms. Rabon, the mother, had not visited since that dog
25 had been purchased.

1 She was aware of just having conversations
2 that Mr. Kornahrens had bought the dog for the
3 business and that there was a new dog on the
4 premises, but she didn't know anything about it.
5 Ms. Rahall testified that she had never warned her
6 mother about the dog's propensities about being
7 overly friendly, jumping on people, never warned her
8 about any of those things beforehand.

9 There is no question, as I indicated, that
10 Ms. Rabon had never "met" the dog before this
11 incident occurred. Ms. Rabon came into town the
12 night before. It was a Thursday night. She did not
13 meet the dog, did not see the dog. They went to
14 dinner, went to sleep.

15 The next day they woke up. Ms. Rabon
16 accompanied her daughter to a doctor's appointment
17 here in Charleston at a chiropractor. On the way
18 back to the premises they stopped and got a soft
19 drink. The old woman had a sweet tea from a fast
20 food restaurant. They went back to the premises.
21 They were going to find Mr. Kornahrens to take him to
22 lunch.

23 Mr. Kornahrens was in the back yard of the
24 premises. Ultimately what happened is Ms. Rahall
25 walked in, walked through the front store part of

1 Charleston Electrical Services and walked to the back
2 yard. Her mother didn't follow her. Her mother
3 stopped to talk to one of the employees there.

4 Ultimately, Ms. Rahall found Mr. Kornahrens in
5 the back. They were talking for a short period of
6 time. She estimated, I think, three or four minutes.
7 Ultimately there came her mother walking out the
8 door. Before they could do anything the dog had not
9 been restrained at that point in time. He had been
10 let off his leash. He came -- they didn't know where
11 he was at, but he came and did exactly what they
12 feared. He jumped up, put his paws on the old lady,
13 and she fell over and broke her hip.

14 So ultimately our argument is -- our
15 contention is that Ms. Rahall had a duty to take some
16 action to warn her mother or prevent her mother from
17 coming into the back yard of the area without making
18 sure that the dog was at least restrained.

19 Now, in her recent deposition Ms. Rahall
20 testified that when she first went into the back yard
21 she didn't realize the dog was not restrained, but
22 before the incident happened she did notice the chain
23 did not have the dog on it, and she still at that
24 point didn't do anything -- go back inside or warn
25 her mother or take any action whatsoever.

1 It's undisputed based upon her testimony that
2 she took absolutely no action, so if there is a duty
3 and the Court finds that there is a duty, I would
4 submit that it is undisputed that there is a breach
5 of that duty because she has testified that she
6 didn't warn her. She didn't protect her. She never
7 told her to stay inside. She never told her to stay
8 away from the back yard. She never warned her about
9 the dog or its propensities, and she didn't do
10 anything to make sure that the dog was restrained
11 before her mother came outside looking for her.

12 So that's basically the liability issues in a
13 nutshell, Your Honor. Ultimately, as I indicated, we
14 have brought a claim for contribution under the
15 Uniform Contribution Among Tortfeasors Act, Your
16 Honor. The act itself provides -- and this is a
17 legal issue that apparently Your Honor will have to
18 deal with.

19 The act itself provides a right of
20 contribution for joint tortfeasors who have paid more
21 than their pro rata liability of a common liability.
22 So the Contribution Act itself talks about pro rata
23 liability. What I just read for you is -- number
24 one, it's actually in the -- give me one second.

25 It's actually in the act itself. It's

1 15-38-20(b). It says, The right of contribution
2 exists only in favor of a tortfeasor who is paid more
3 than his pro rata share of the common liability. His
4 total recovery is limited to the amount paid by him
5 in excess of his pro rata share.

6 Ultimately, Your Honor, the issue in this case
7 is going to be, What is a pro rata share? Section
8 15-38-30 describes the factors to be considered when
9 determining a pro rata liability of tortfeasors, and
10 it says as follows: In determining the pro rata
11 shares of tortfeasors and their entire liability,
12 one, their relative degrees of fault shall not be
13 considered; two, if equity requires the collective
14 liability of some as a group shall constitute a
15 single share; and three, principals of equity
16 applicable and contribution generally shall apply.

17 Those are the provisions that apply to
18 determine a pro rata liability. Pro rata liability
19 is simply determining the number of tortfeasors using
20 that number as a denominator and then dividing the
21 total of the common liability. In this case the
22 common liability is \$200,000. That's been stipulated
23 to as being a reasonable amount. In this particular
24 case there are two tortfeasors so the math is simple.
25 It's one half of \$200,000. We contend the pro rata

1 liability for Ms. Rahall in this case would be
2 \$100,000.

3 That's the way the Contribution Act has always
4 been applied. That's applying the language of the
5 case. What I think is creating some confusion, as I
6 anticipate the arguments to you will be, is that in
7 2005 the general assembly made some changes regarding
8 joint and several liability when you have cases
9 involving multiple Defendants. For whatever reason
10 they stuck that in the middle of the Contribution
11 Act. That's 15-38-15.

12 It really doesn't belong in the Contribution
13 Act, and it doesn't deal specifically with
14 contribution, but it's there, and of course this
15 isn't the only issue that this is giving rise to.
16 There are a lot of issues that 15-38-15 have given
17 rise to.

18 If you look at 15-38-15, that's what -- I know
19 in looking at previous arguments in this case and
20 looking at the pretrial brief that's been submitted
21 by the Defendant, their argument is that contribution
22 of -- Ms. Rahall's contribution should be her
23 percentage of fault, so the Court would need to
24 determine her percentage of the overall fault, and
25 therefore we would only be able to recover that

1 percentage of the \$200,000. That's not the way
2 contribution works. In fact, if it did when the
3 general assembly adopted 15-38-15 they would have
4 amended or repealed the two sections I just
5 described.

6 THE COURT: Wait. Under 20 and 30?

7 MR. LINDEMANN: Under 20 and 30.

8 THE COURT: All right.

9 MR. LINDEMANN: Because 20 and 30 still talk
10 about it being pro rata, not apportioned, not
11 equitable share. Pro rata share. In a pro rata
12 share you basically take the number of tortfeasors as
13 I indicated and use that as the denominator and
14 divide the common liability between them and try that
15 number.

16 To the extent there's any question about that
17 one of the cases that I've cited to the Court in my
18 memo, which I will admit is a pre-2005 case is the
19 Southeastern Freight Lines case, which Your Honor may
20 remember that. I hate this case because
21 unfortunately my name is on it, but this is the case
22 from the early '90s that busted the Tort Claims Act
23 caps.

24 Just to give you a thumbnail sketch of that
25 case, because it illustrates how contribution -- how

1 pro rata works in a contribution case. In that
2 particular case Judge Ralph K. Anderson was actually
3 the trial Judge, and what had happened there -- there
4 was a wrongful death settlement for \$400,000, and
5 Southeastern Freight Lines paid that entire amount,
6 obtained the extinguishment of the liability of both
7 the City of Hartsville and the South Carolina
8 Department of Transportation and then brought what
9 was purely a contribution claim against those two
10 governmental entities.

11 Judge Anderson, in order to avoid having to
12 retry the case, actually had the Jury determine
13 percentages of fault so that ultimately the Appellate
14 Court could decide whether or not there were the
15 percentages of fault that govern in a contribution
16 claim or whether it was truly pro rata, where in that
17 case you had three different tortfeasors, each of
18 them would be responsible for one-third of \$400,000.

19 If you read that case -- I have a copy I can
20 hand up to Your Honor. What ultimately happened is
21 the Jury apportioned fault, 70 percent against
22 Southeastern, 20 percent against the City of
23 Hartsville, and 10 percent against the DOT.

24 So if you would have gone by the apportioned
25 allocation there out of \$400,000 the City would have

1 only been responsible for \$80,000. The DOT would
2 have been responsible for 40. At that particular
3 time the Tort Claims Act caps were \$250,000. If you
4 applied those percentages there would be no issue
5 because that would be \$120,000 and would come within
6 the caps.

7 Ultimately what the South Carolina Supreme
8 Court determined is that you do apply a pro rata so
9 that each of those entities was responsible for
10 one-third, \$133,000 and some change. If you add
11 those together it comes up to 266. It exceeded the
12 250, and ultimately what the Supreme Court said is
13 when the general assembly adopted the Contribution
14 Act they intended to repeal the monetary caps of the
15 Tort Claims Act. It's still hard for me to believe,
16 but that's the decision. Ultimately there were no
17 caps for a number of years until they were
18 reinstated. That case is illustrative of showing how
19 a Contribution Act claim works.

20 THE COURT: So it's done pro rata as opposed
21 to based on percentages?

22 MR. LINDEMANN: That's right. So what I'm
23 submitting to this Court is ultimately if Your Honor
24 finds Ms. Rahall liable you don't have to determine a
25 percentage. If you find her liable in any percent,

1 even 1 percent, ultimately she is responsible under
2 the Contribution Act for her pro rata liability.

3 THE COURT: Let me ask this question because
4 it was one that came to my mind yesterday when I was
5 looking at this case. Mr. Kornahrens has not been
6 sued in this matter, and clearly he was the owner of
7 the real estate, correct?

8 MR. LINDEMANN: That's correct.

9 THE COURT: How did he get omitted out of this
10 thing?

11 MR. LINDEMANN: Well, Mr. Kornahrens was also
12 employed by Charleston Electrical. Of course he was
13 acting within the scope of his employment at that
14 particular time because he was in the back yard and
15 he was working. Ultimately, he and Charleston
16 Electrical are one.

17 THE COURT: I've got you. That explains that.
18 That makes sense to me.

19 MR. LINDEMANN: Just to --

20 THE COURT: He was the former owner of
21 Charleston Electrical; is that right?

22 MR. LINDEMANN: He was the former owner. He
23 was no longer the owner, although what I just did
24 with my copy of the Contribution Act --

25 THE COURT: He served in some corporate

1 capacity, right?

2 MR. LINDEMANN: He did. And the second factor
3 in 15-38-30 that I read to Your Honor is that you can
4 treat certain parties as a group if they're related.
5 So the theory there -- we didn't pursue that because
6 ultimately his share would be the same as Charleston
7 Electrical. Charleston Electrical would be
8 responsible. If Mr. Kornahrens was at fault,
9 Charleston Electrical, through vicarious liability
10 would be responsible for him. So it's the same
11 share.

12 THE COURT: It's his involvement with the
13 corporation?

14 MR. LINDEMANN: That's it exactly. So that
15 was the reasoning for that.

16 THE COURT: I think that Joint Exhibit No. 1
17 was his letter to Mr. Rabon (sic) sort of explaining
18 his position relative to the corporation and why the
19 dog was there and that type of thing?

20 MR. LINDEMANN: That's correct, Your Honor.
21 That's correct. So ultimately that's a legal issue
22 that's going back to the whole pro rata basis.
23 That's a legal issue for Your Honor to address and it
24 might be better for me to listen to their arguments
25 on why 15-38-15 does apply and then be able to

1 respond to that if I can, Your Honor. We contend
2 that this is governed by 15-38-20 and 30 which would
3 clearly not be repealed by the General Assembly. It
4 clearly used the words pro rata. That's the way
5 contribution acts and cases have always been applied
6 and have been applied since 2005, Your Honor.

7 We contend, just to summarize real quickly,
8 that the duty of care -- two different theories for
9 the duty of care. There was clearly a breach in the
10 duty, and I think that's undisputed because
11 Ms. Rahall testified she did nothing, absolutely
12 nothing to warn or stop her mother or explain to her
13 mother what the potential harm could be.

14 Ultimately then if Your Honor finds her even
15 partially at fault that then results in her having
16 pro rata liability, which in this case would be
17 \$100,000, Your Honor. Thank you.

18 THE COURT: Thank you. All right.

19 Mr. Pritchard?

20 MR. PRITCHARD: May it please the Court,
21 Your Honor?

22 THE COURT: All right, sir.

23 MR. PRITCHARD: Your Honor, before I launch
24 into the argument, I just want to say this. I want
25 you to think about it a minute. The guy who owns the

1 dog is suing the daughter of the victim when his dog
2 attacks the victim on his property. Think about
3 that.

4 I mean, you're being asked to go somewhere
5 where no Court has ever gone before. Okay? Not even
6 close. You're being asked to take multiple quantum
7 leaps to define liability. I'm going to let
8 Ms. Fulton argue the Contribution Act, but I think
9 it's pretty well settled that before you can even get
10 to the Contribution Act that one has to have a
11 tortfeasor.

12 In order to have a tortfeasor one must first
13 have a duty, and duty is not a question of evidence.
14 It is a question of law. Is there a recognized duty?
15 So where I'm going to go with this first is I'm going
16 to talk to you about Premises Liability.

17 The property in question -- we have it here,
18 Your Honor, on the board so you can see it
19 (indicating). This is Charleston Electrical
20 Services. Okay?

21 THE COURT: Yes.

22 MR. PRITCHARD: It's at the corner of Nassau
23 and Romney Street in an industrial area. Okay? The
24 apartment -- Liz, am I correct -- is right here on
25 the second floor (indicating).

1 MS. FULTON: Yes.

2 MR. PRITCHARD: As you can see the exterior of
3 the property is being used by the business. Trucks
4 are there. That's a warehouse in the back. This is
5 the storefront, customer parking, all that sort of
6 thing. All right? Now, at some point way back when
7 to make sure that the neighbors were kept honest they
8 went and got a guard dog and would let him loose at
9 night, and would let him loose when people weren't
10 around. When the employees were around they would
11 chain the dog up just so he wouldn't get out and mill
12 around and whatnot. There have been several
13 generations of guard dogs, the most recent of which
14 is now Gunner.

15 This property is owned by Mr. Kornahrens. He
16 was originally the owner of this business. About
17 20 years ago he sold this business to his stepson who
18 now operates the business. As a part of the sale
19 Mr. Kornahrens leases the entire premises except the
20 apartment to the business, Charleston Electrical
21 Services. Charleston Electrical Services is the
22 owner of this property for purposes of Premises
23 Liability. Byerly versus Connor says specifically
24 that when land is occupied by a lessee the law of
25 property with regard to the lessee, the lease is

1 equivalent to a sale of the premises for the term of
2 the lease. In the absence of an agreement to the
3 contrary the lessor surrenders possession and control
4 of the land of the lessee. After the premises is
5 surrendered in good condition the lessor typically is
6 not responsible for hazardous conditions which
7 thereafter developed or were created by the lessee.
8 Okay?

9 So it's undisputed -- there's been testimony
10 of the lease.

11 "Q. About how long have you owned that
12 building?

13 A. I guess about 30 years.

14 Q. And you rent the first floor to
15 Charleston Electrical?

16 A. Yes, sir. The first floor and
17 everything in the yard. We've
18 got a building in our back, and
19 also the building in the back with
20 supplies and things like that.

21 Q. And that's rented to the company
22 as well?

23 A. Yeah. That's rented to the company.
24 Everything on the ground is rented
25 to the company.

1 Q. What does the company pay you for
2 rent?

3 A. \$3,000. I think it's \$3,000, \$3,500
4 a month. I really don't know.

5 Q. Is there any type of lease agreement?

6 A. No. It's not written. It's verbal,
7 but it's been in place for 20 years."

8 So this attack irrefutably occurred in the
9 yard, which is the premises owned and occupied by
10 Charleston Electrical Service, ironically the
11 Plaintiff here, by Charleston Electrical Service's
12 dog, Gunner. Okay?

13 So you're essentially being asked to impose a
14 duty on a visitor to a premises if the owner's dog
15 attacks another visitor. That's exactly what you're
16 being asked to do here. I don't think -- there is no
17 Court that has ever gone here before. Okay?

18 So the other problem is -- first off, neither
19 Mr. Kornahrens nor Ms. Rahall, under any set of
20 circumstances can be viewed as the owner of this
21 yard. No way, no how. The second problem is,
22 Ms. Rahall doesn't even have a lease in the
23 apartment.

24 Now, there's all this testimony about how
25 often she stays there and all that and the other.

1 All right? I want you to think about this a minute.
2 How many hours a week do you spend back in that
3 chambers back there?

4 THE COURT: I don't know. Are you asking me?

5 MR. PRITCHARD: Yes, I'm asking you. 30 or 40
6 hours a week.

7 THE COURT: I would hope I'd spend more time
8 there than I do here.

9 MR. PRITCHARD: Every week.

10 THE COURT: Every week is different.

11 MR. PRITCHARD: This is your courtroom.
12 You're in charge of all of this, right?

13 THE COURT: No. No. No. If you ask the
14 Clerk of Court she will tell you she's in charge.

15 MR. PRITCHARD: That's where I'm going with
16 it. If I trip you're the occupier. If I trip or
17 Ms. Fulton trips are you responsible for that? I
18 don't think so. That's exactly what the result -- if
19 you reach the result he's going for today, that's
20 exactly where we're going with this.

21 THE COURT: I do warn people about the trip-up
22 step over there, though. I do do that.

23 MR. PRITCHARD: You don't have to, but if you
24 want to you can.

25 THE COURT: No. But I try to avoid liability

1 where I can.

2 MR. PRITCHARD: The point is, if you accept
3 this argument that's where it's going. You're now
4 responsible for everything that goes on back in that
5 Chambers. All right? I don't think the law goes
6 that far. I don't think it comes anywhere close to
7 it. She had her own residence. She maintained it.
8 She many have spent more time here, but let's think
9 about this.

10 THE COURT: Don't they have to put her in some
11 sort of ownership or care, custody, and control?
12 Isn't there some criteria to get to that point?

13 MR. PRITCHARD: Yes. You have to have some
14 way to possess and control the property. Now, let's
15 think about it. As his girlfriend who stays there,
16 she's a social guest at the end of the day.

17 They have since broken up. She doesn't go
18 back in there anymore because he told her to get out.
19 Now, let's say she chose to go run down the hall and
20 say, Hey, Family Court, he kicked me out. I've got
21 some rights. They're going to say, one, you weren't
22 married so we don't have jurisdiction, and two --
23 you've got nothing.

24 If she went to a Magistrate Court they'd say,
25 You've got nothing. If I trespassed on the property

1 and she told me to get off I would say, Sorry. And
2 if she went to the Magistrate Court they would say,
3 You've got nothing. She doesn't have a right to
4 possess and control that property. There is no legal
5 right whatsoever as the girlfriend of the occupant of
6 that apartment that she has to do anything with
7 regard to that property. Period.

8 She can't lease it out. She can't sublease it
9 out. She can do nothing. So think about it. If you
10 were to adopt this argument you are imposing on any
11 guest who hangs out a lot somewhere, or Liz, who
12 hangs out in my office a lot -- more than she would
13 like. She's not responsible for people coming in the
14 building. That's not her function. She doesn't own
15 it. She just happens to be there a lot -- okay --
16 probably more than she is at her own home, but that
17 doesn't impose legal liability on her.

18 So you have a two-fold problem. One, it
19 didn't happen in the area where the boyfriend was the
20 owner and possessor, and two, she wasn't even the
21 owner and possessor of that limited space within the
22 property. You just can't get there from here.

23 Second of all --

24 THE COURT: Both ownership and location is
25 significant to your argument?

1 MR. PRITCHARD: Yes. Yes. Second off, the
2 dog is not a feature of the property. I'll give you
3 a very timely and recent example. Two weeks ago
4 today, in fact, in the case of Harwood versus
5 McQueen, Judge Russo granted our Motion to Dismiss.
6 The facts in that case are thus: You have a
7 17-year-old son who gets into an altercation with
8 another 19 year old. He basically knocked the hell
9 out of him with a brush that he was using to scrub
10 the truck. He bopped the kid's head up pretty badly.

11 The esteemed Carl Pierce brought suit against
12 the father and the son saying that the father knew of
13 the child's propensity for violence and failed to
14 warn this young man of his son's propensity towards
15 violence. Russo said, Unfortunately it's a Form 4
16 order. But basically Russo said, The son is not a
17 feature of the real property.

18 Indisputably, Mr. McQueen is the owner of that
19 property, but the Court said, Sorry. That's not a
20 feature of and to or relating to the premises.
21 Neither is the dog. It's not a feature of the
22 property. That's why we have the dog bite statute
23 which is entirely separate and apart from Premises
24 Liability.

25 Gunner has nothing to do with that property.

1 All right? So there is no way to get there for a
2 Premises Liability analysis unless you are going to
3 completely rewrite the law. No Court has backed up
4 any of this anywhere.

5 The second argument that advanced is a special
6 relationship. Now, there is no evidence that
7 Ms. Rabon was mentally incompetent. There's been no
8 judicial finding that she was incompetent. There's
9 been no determination that she had special needs or
10 anything of that nature. She was a bit elderly, but
11 so is my mother. I wouldn't presume to tell her
12 anything. Okay? And she wouldn't listen if I did.
13 The same goes with my father, by the way. They would
14 probably do it to spite me. Okay?

15 I have no more control over my mother than
16 she's got over me actually. I mean, you know, it is
17 what it is. So to suggest that somehow I have a duty
18 to protect her from known harms because she happens
19 to be in her 70s, no Court has gone there either.

20 There's got to be something a lot more than a
21 mother/son relationship. I mean, she doesn't have to
22 warn me either. She probably wouldn't. She probably
23 would let it happen. Anytime I know of some danger I
24 have to somehow tell my mother about it? I don't
25 think so. Hey, Mama -- I mean, I don't.

1 There is no relationship that justifies a
2 position of a legal duty to warn and protect. Now,
3 as a human being am I going to? Obviously. But it's
4 not like having a small child or a vulnerable adult.
5 Ms. Rabon was not. I'm not sure even with a
6 vulnerable adult that a Court's gone there yet, but
7 you have not had a finding of a vulnerable adult in
8 this determination.

9 Certainly Ms. Rahall didn't put her in a
10 situation. Now, there's been some testimony about
11 Ms. Rahall knowing that the dog was out there,
12 et cetera, and so forth. When I go to Disney World I
13 know there are gators in the pond now, but that isn't
14 my problem. Mom, stay away from water. Right. I
15 don't have to go there. Just because I know that
16 there are gators in the pond -- now, a two year old
17 is another story, but the mama? Huh-uh.

18 So Gunner was out there in the yard. Well
19 certainly -- we know that Ms. Rabon knew that Gunner
20 was a German shepherd. Now, there's been testimony
21 that Ms. Rahall did not tell Ms. Rabon to stay -- not
22 to go in the yard, and that's in the brief right here
23 (indicating) according to -- somewhere in his brief
24 he says that there's testimony that she didn't tell
25 her not to go in the yard, and that is in the

1 deposition testimony. However, there's nothing in
2 the deposition testimony with a follow-up question
3 of, Did you tell your mother to stay here and wait on
4 you?

5 There's a big difference between, Did you tell
6 her not to go in the yard? And did you say, Sit
7 here? If you ask the question, Did you tell her not
8 to go in the yard? No. Well, did you tell her to
9 wait on you here? Yeah. You didn't ask the
10 question. It's not in the transcript.

11 THE COURT: She did say to wait here?

12 MR. PRITCHARD: I don't know. We don't know.
13 We don't know. Okay?

14 THE COURT: All right.

15 MR. PRITCHARD: But I think the burden is on
16 him to prove that that didn't happen. He says in his
17 brief, Page 3, after a few minutes Rabon came outside
18 looking for Rahall and Kornahrens. She did that on
19 her own of her own volition. She knew that dog was
20 out there. She knew it was a German shepherd. I
21 mean, it was an unfortunate incident to be sure, but
22 come on. He's trying to make Ms. Rahall, an insurer,
23 responsible for every conceivable situation out
24 there.

25 THE COURT: There have been dogs on the

1 premises for 20 years, right?

2 MR. PRITCHARD: 20 years, and Mama's been
3 there many times. The premises was open to the
4 public by the way. It's a commercial venture. So we
5 don't have any signs up or postings or anything.
6 This was Charleston Electrical's property. They are
7 the ones that owned the dog and let the dog loose on
8 their property.

9 Now, there was a discussion earlier about my
10 wife lives there and my wife adopts the duty under
11 Premises Liability by virtue of her living there.
12 Mr. Lindemann made that argument that his wife would
13 be, but again, if Mr. Lindemann tried to kick her out
14 of the house she would go right down to Court and the
15 Family Court would have something to say about it.
16 He couldn't have her evicted, but all Mr. Kornahrens
17 had to do was say, Get out, which he did, and
18 Ms. Rahall had no choice. You can't do that to your
19 wife because there is a recognized legal relationship
20 which changes the game dramatically. Our law is
21 crystal clear on that. You can't treat a wife and a
22 girlfriend the same.

23 THE COURT: On that same line of thinking, if
24 they were married you would say that she would be in
25 a different position; is that correct? Legally?

1 MR. PRITCHARD: Yes. Yes. Legally she would
2 be in a different position. Now, it still needs to
3 be liable because it didn't happen on a premises that
4 they would have controlled, but that's another
5 argument entirely. So I don't see how you can get
6 there from here so to speak, from a tortfeasor
7 standpoint.

8 She is not a tortfeasor under any set or
9 scenario. She didn't own the dog. It wasn't her
10 property. The guy that owned the dog wants you to
11 get in on the contribution for an attack -- attack is
12 kind of a bad word really.

13 THE COURT: There was no evidence the dog was
14 attacking. The dog was just playful and jumped up on
15 her, right?

16 MR. PRITCHARD: No. No. Back to my mother,
17 okay? My mother has a Wheaton terrier. Okay? I
18 don't know if you know what a Wheaton terrier is, but
19 don't get one.

20 THE COURT: No, I wouldn't get one.

21 MR. PRITCHARD: The dog's obnoxious.

22 THE COURT: I've had my terrier.

23 MR. PRITCHARD: The dog jumps up all the time.
24 All right? If the dog knocks me down at the Battery
25 my mother isn't responsible -- well, she is because

1 it's her dog. You get the point. I mean, if
2 somebody else's dog knocks me down at the Battery
3 because she's been down there seeing this same dog
4 jump on people and she doesn't warn me, Oh, my gosh,
5 look out for Mr. Smith's dog. She's not legally
6 responsible for that. Now, come on.

7 I'm going to let Ms. Fulton argue the
8 contribution.

9 THE COURT: Ms. Fulton?

10 MS. FULTON: All right. Mr. Lindemann has
11 already brought up -- we've got three portions of the
12 statute here: 15-38-20, which establishes the right
13 for contribution, 15-38-30, which prior to 2005
14 dictated how contribution was allocated, which under
15 15-38-30 it's pro rata, of course assuming you pay
16 more than your pro rata share. Then there's the
17 fallback provision that, I believe, applies.

18 In 2005, the legislature amended the
19 Contribution Statute to include 15-38-15. I'm sorry
20 to -- I'm going to read it into the record just so
21 you can kind of hear it and see why I do believe it
22 applies here.

23 THE COURT: Okay.

24 MS. FULTON: So in an action to recover
25 damages resulting from personal injury, if

1 indivisible damages are determined to be proximately
2 caused by more than one Defendant, joint and several
3 liability does not apply to any Defendant whose
4 conduct is determined to be less than 50 percent of
5 the total fault.

6 So what we're here today to determine first
7 is: Was Ms. Rahall commonly liable? Was she also
8 negligent in this action, in this underlying action?
9 First we have to find that, and now we're asking Your
10 Honor -- well, what percentage? This is not joint.
11 This is contribution.

12 So under this statute it says,
13 Apportionment -- 15-38-15(b) says, Apportionment of
14 percentages of fault among Defendants is to be
15 determined as best via Subsection C, which says, The
16 Jury or the Court if there is no Jury shall one,
17 specify the amount of damages, and then determine the
18 percentage of fault if any. Now, what we have here
19 is a settlement, so basically the amount has already
20 been determined. So we can just go and ignore
21 15-38-15(c)(1).

22 So now what you have here is you have a
23 number; \$200,000, that was determined. Based on what
24 you know about these indivisible damages what portion
25 is Ms. Rahall responsible for? Mr. Lindemann has

1 continually said, Well, why didn't the legislature
2 repeal 15-38-30 if they didn't want that to exist
3 anymore? I don't know, but the Court kept it in.
4 The Court has interpreted 15-38-15, and they have
5 said it applies to things after 2005.

6 In this Court you heard a case, Montclair
7 Property Owner's Association versus Church Creek
8 Construction, and that was a contribution action.
9 What that came down to was they wanted and you
10 recognized that had this construction happened after
11 2005, 15-38-15 would have applied because you've got
12 a settlement and now we're trying to decide, okay,
13 based on -- I think the argument there was that the
14 general contractor was trying to say, No. I only did
15 65 percent of the work or 35 percent of the work, so
16 that's all I should be responsible for. You didn't
17 even get to that argument because this happened
18 before 2005 so it was a pro rata argument.

19 Likewise, last year in 2015, in a case that I
20 believe Mr. Lindemann was a part of, Fay versus Grand
21 Strand Regional Medical Center, the number is 412
22 S.G. 185, 771 S.E. 2d 639.

23 MR. PRITCHARD: Slow down a little bit.

24 MS. FULTON: That's a Court of Appeals case.

25 THE COURT: She's trying to take that down.

1 I've got it. I'm looking at the notes.

2 MS. FULTON: They again thought there was kind
3 of a disagreement on whether or not 15-38-15 would
4 apply. The Court said -- I guess there had been some
5 sort of agreement to do it, but then that agreement
6 was not enforceable, and again, since the underlying
7 incident where they wanted to argue contribution
8 happened before 2005, they said no, but noted in the
9 opinion in 2005 the general assembly enacted an
10 amendment to permit apportionment of fault among
11 multiple tortfeasors.

12 So Mr. Lindemann wants to say that not only
13 was Charleston Electrical Services liable as a
14 tortfeasor but so was Ms. Rahall. If you find that
15 then you've got to look to 15-38-15 and say, Okay,
16 well, then this is the percentage. I don't see where
17 in the world -- even assuming that you didn't do that
18 and you went with 15-38-30, I don't know how equity
19 would allow you to find that if Ms. Rahall, who
20 didn't own the dog, who didn't own the premises, who
21 was a social guest on the premises -- since it was a
22 business -- for some reason I don't know how she
23 would be on the hook for 50 percent under the rules
24 of equity, but regardless, the Court has said, You've
25 got 15-38-15. That's what we're supposed to use now.

1 THE COURT: All right.

2 MS. FULTON: And I'm just going to throw in
3 one other little nugget of 15-38-15. Subsection F
4 says that contribution is not going to -- you can't
5 even get contribution if your conduct -- if the party
6 seeking contribution acted intentionally, willfully,
7 or recklessly. It is undisputed that under the Dog
8 Bite Statute, Charleston Electrical Services is
9 responsible for this accident. Violation of the
10 statute is per se evidence of willful and reckless
11 conduct.

12 So going to that part again, I don't see how
13 you can get contribution under any circumstances in
14 this case.

15 THE COURT: Is that because of the strict
16 liability?

17 MS. FULTON: Yes, Your Honor. It's a
18 violation of statute.

19 THE COURT: Let me just ask before before you
20 finish, Ms. Fulton. Under the Dog Bite Statute if
21 the joint tortfeasor is liable, strictly liable,
22 100 percent liable, vicariously liable, we get back
23 to the issue is Mr. Kornahrens and his relationship
24 to the corporation?

25 MS. FULTON: You're right. The way this

1 actually happened -- the testimony is, Mr. Kornahrens
2 left the dog off the chain. At that time
3 Mr. Kornahrens was an employee of Charleston
4 Electrical Services. He is the proximate cause of
5 this accident. He created the dog being loose to
6 then run up and jump on Ms. Rabon.

7 MR. BRITCHARD: We would like to end with the
8 sight of the esteemed Inspector Closeau.

9 THE COURT: Okay. Go ahead.

10 (Whereupon, a video was played for the Court.)

11 THE COURT: Very good. Thank you.

12 Mr. Lindemann, after that levity come on back.

13 MR. LINDEMANN: I have no video, Your Honor.
14 I'm sorry. Let me go backwards. Let me deal with
15 the Contribution Act issue first, the legal issue.
16 If you look at 15-38-15 that deals with a situation
17 where you have a case with multiple Defendants. We
18 have a contribution case here. We don't have
19 multiple Defendants.

20 This is how you handle a case that has
21 multiple Defendants when you're trying the case
22 whether or not you can get apportionment or not.
23 Okay? And 15-38-15 adopted apportionment, which
24 previously everything was joint and several. So
25 after 15-38-15 you're only joint and several if

1 you're more than 50 percent at fault. So it deals
2 with situations where you have multiple Defendants.
3 It doesn't deal with a Contribution Act case such as
4 this. There's a case called Fagman (phonetic) versus
5 Kmart that I can get you the cite on. It's a Federal
6 decision from Judge Harwell where he deals with
7 whether or not whether 15-38-15 should allow
8 apportionment between people who are not Defendants.
9 There are tortfeasors who have either been released
10 or haven't been sued.

11 His ruling has been that it does not apply
12 except where you have multiple Defendants. So
13 15-38-15 doesn't govern a contribution claim such as
14 this. It deals with situations where you have
15 multiple Defendants who are joint tortfeasors who
16 potentially have common liability as to how you
17 handle that in an actual trial.

18 In this particular case we're beyond that. We
19 didn't try that particular case. In fact, Ms. Rahall
20 wasn't even a Defendant in that case because the
21 Plaintiff didn't sue her. I brought her in for
22 purely indemnity claims and reserved -- we couldn't
23 bring the contribution claim until we did what we did
24 and settled the case.

25 THE COURT: That indemnification claim was

1 actually brought in the underlying action, right?

2 MR. LINDEMANN: It was.

3 THE COURT: And then it resolved --

4 MR. LINDEMANN: We couldn't get it settled
5 because she wouldn't contribute to any type of
6 settlement and so therefore brought it to this point.

7 THE COURT: That's similar to that Montclair
8 case.

9 MR. LINDEMANN: So the other point, that very
10 last point Ms. Fulton made relying on Subsection -- I
11 think it's (f) of 15-38-15 which says, This section
12 does not apply to a Defendant whose conduct is
13 determined to be willful, wanton, reckless, grossly
14 negligent, or intentional.

15 Again, 15-38-15 doesn't have anything to do
16 with this. That limits it to this section. Quite
17 frankly, the right of contribution has a similar
18 provision in it. If you look at 15-38-20(c) it says,
19 There's no right of contribution in favor of any
20 tortfeasor who has intentionally caused or
21 contributed to the injury or wrongful death.

22 That doesn't apply in this particular case
23 because there's no allegation that we intentionally
24 caused any harm to Ms. Rabon. It didn't include all
25 the other parts about willful reckless, grossly

1 negligent. The reason for that is because, again,
2 15-38-15 doesn't apply to a contribution claim.
3 Rather 15-38-20(c) does. That doesn't apply in this
4 case. Number one, they didn't plead it. Number two,
5 they didn't show that there was any intentional
6 conduct, and I think you can tell from the facts
7 clearly that there was no intent to harm.

8 THE COURT: How do you justify then under the
9 Dog Bite Statute, under the issue of strict
10 liability? Is that not even further, or is that not
11 covered in the statute?

12 MR. LINDEMANN: First of all, liability is no
13 fault. So you're liable regardless if you have any
14 fault, so the bottom line is, you don't need to show
15 negligence even. You certainly don't have to show
16 intentional conduct. I do disagree with her. I
17 don't think violation of a strict liability statute
18 is evidence of gross negligence. It's just the
19 opposite. Strict liability does not require any
20 showing whatsoever of fault.

21 If these circumstances occur, i.e., our dog
22 jumped out -- the way the South Carolina Appellate
23 Courts have defined the word, attack, made this an
24 attack even though there was no, obviously, ill will
25 intended by this dog. Everybody agreed too that, but

1 it fell within that particular statutory scheme. You
2 shouldn't have to prove fault.

3 So even a violation of that statute is not
4 evidence of gross negligence, recklessness,
5 willfulness, et cetera. You know, one of the things
6 that she's cited to -- Ms. Fulton made it sound like
7 we have case law in South Carolina that says 15-38-15
8 applies to a pure contribution claim, and there isn't
9 any such case law.

10 The Fay case that she cited was a medical
11 malpractice case. I handled the appeal. I didn't
12 handle the trial. Ultimately in that particular case
13 the only reason why 15-38-15 was even cited is it
14 arose prior to 2005, the medical malpractice did.

15 At the request of the parties, Judge Baxley
16 allowed the Jury to apportion fault between the
17 Defendants. My doctor got hit with 6 percent. The
18 hospital got hit with 94 percent. Excuse me. It was
19 90 percent and the Plaintiff, himself, got hit with
20 4 percent.

21 So ultimately we tried to get the Court to
22 apply those percentages. Judge Baxley made the
23 decision at trial that even though he had allowed the
24 Jury to apportion he was -- it was a pre-2005 case.
25 He wasn't going to apply 15-38-15.

1 So all Fay says is it's not a contribution
2 claim. It's a malpractice. All Fay says along those
3 lines is that 15-38-15 only applies to any cause of
4 action that arose after July 1, 2005. It's not any
5 type of precedent in this particular case. Another
6 case she cited to --

7 THE COURT: Absent some agreement it says,
8 right?

9 MR. LINDEMANN: That's right. We thought we
10 had an agreement. Unfortunately it was done in
11 Chambers. We couldn't prove it. There are a lot of
12 layers to that. The bottom line is my doctor, who
13 was only 6 percent at fault, got stuck with 50 percent
14 of that particular verdict.

15 Then the other case she cites in her
16 memorandum -- I'm not familiar with it apparently.
17 It's a Circuit Court decision. The Montclair
18 Property Owner's Association case, the way it's
19 described here it doesn't sound like it's indicating
20 that in a contribution action post 2005 you would
21 apply 15-38-15, but I don't know what it says.

22 THE COURT: Just so you know, that's my case,
23 and it was one that predated the statute.

24 MR. LINDEMANN: So you wouldn't even have
25 reached that issue?

1 THE COURT: That's right.

2 MR. LINDEMANN: And for what it's worth, Your
3 Honor, let me just hand up a case called -- while
4 we're giving you unpublished decisions -- Nationwide
5 versus Eagle Window and Door, which is a 2016
6 decision of the Court of Appeals. It is unpublished
7 from April 6th of this year.

8 In this particular case, if you flip over to
9 Section 7 of the opinion, they talked about
10 contribution, and they address the same sections that
11 I just did -- and 30. That's a 2016 case. So it's
12 not like the Court of Appeals believes that somehow
13 15-38-15 has made those particular sections, 20(a)
14 and 30, obsolete or implicitly repealed.

15 Bottom line is, it does actually make sense
16 because what the statute talks about is pro rata.
17 Pro rata is pro rata. If the intent was for 15-38-15
18 to change it to some sort of equitable allocation,
19 the general assembly clearly would have changed those
20 particular provisions to make that so, and they have.

21 So I would submit to Your Honor that whereas
22 it might seem unfair that it's pro rata, even if
23 she's just slightly at fault, that she's responsible
24 for a pro rata share -- I mean, there's probably a
25 public policy reason behind that. It's certainly an

1 encouragement to parties who are tortfeasors to
2 participate in settlements rather than wait for a
3 contribution action to be brought against him. So it
4 does sort of act as an incentive to participate in
5 global settlements and situations where you have
6 multiple tortfeasors.

7 THE COURT: Right.

8 MR. LINDEMANN: Going back to the actual
9 merits of the negligence claim --

10 THE COURT: Isn't that sort of the crux of
11 this? There's got to be a duty on the part of
12 Ms. Rahall in order for her to qualify as a
13 tortfeasor? I don't think there's a whole lot of
14 issue about the breach of the damages. It's the duty
15 that arises, correct?

16 MR. LINDEMANN: That's correct. The
17 description of Ms. Rahall as a visitor herself, she
18 was not a visitor herself. She was not a social
19 guest when she's living there, has property there.
20 She stays there 70 percent of the time. She
21 described in her own testimony, that is where I live.
22 Now, the fact that she doesn't own the premises, that
23 doesn't make a difference. If you know that those
24 premises have a dangerous condition, and you are a
25 possessor or an occupier, which I would suggest that

1 those terms would suggest more than just a casual
2 connection to the property, that you have an
3 obligation.

4 I don't believe that the analogy of Your Honor
5 in Chambers is applicable, however, I would submit
6 this. If Your Honor, while you're in Chambers knows
7 of a dangerous condition and ultimately somebody gets
8 hurt, I mean it's potential that your knowledge can
9 be imputed to Charleston County Clerk of Court just
10 as at the Piggly Wiggly when a clerk is aware that
11 there are grapes or something spilled on Aisle 6 --
12 his knowledge is imputed to the employer.

13 So the simple fact that if this goes here and
14 somebody who is there on the premises on a regular
15 basis, that's just not a valid analogy because you
16 still have a duty of care. Ultimately you could be
17 sued for it. Of course, no one's going to sue you
18 because you can't under the Tort Claims Act. You
19 would sue the employer, and in this particular case
20 you would sue the Clerk of Court.

21 There's no reason that you couldn't sue unless
22 there's immunity such as in that situation, that you
23 couldn't sue someone who's an occupier. There's no
24 case law that says that that doesn't arise.

25 This idea that Mr. Pritchard started with,

1 suggesting that there are quantum leaps to find
2 liability as he said because this is one family
3 member suing another family member. There's no
4 immunities for family members. Years ago I defended
5 a grandfather who was sued by his grandson. It's not
6 a great case to have in front of a Jury, but the
7 bottom line is there's nothing that prevents that.
8 If a family member is a tortfeasor -- we see it all
9 the time in wreck cases.

10 THE COURT: They generally try better with
11 nonjury than jury; do they not?

12 MR. LINDEMANN: That's certainly true. The
13 bottom line is, Your Honor -- we see it all the time
14 in wreck cases -- if my daughter is in my car and I
15 get into a wreck and it's my fault that she's injured
16 she can sue me, you know, and certainly that happens
17 all the time. It's not the most pleasant case to
18 have, but it happens. So there's no immunity to it.
19 There's no great stretch to it.

20 In this particular case Ms. Rahall, I would
21 submit, through both theories that I've presented to
22 the Court, had a duty of care. She had a duty to
23 warn and protect her elderly mother. Her elderly
24 mother doesn't have to be special needs. She doesn't
25 have to be incompetent in order for that duty to

1 attach. There's a special relationship there.
2 Ultimately she had the ability to prevent this from
3 happening and she didn't do it. She admits she
4 didn't take any action whatsoever.

5 A couple of last points, and I'll let this
6 rest. The suggestion that a dog being on the
7 premises somehow doesn't give rise to Premises
8 Liability cases -- before we had the Strict Liability
9 Statute that's exactly how dog bite cases were
10 brought. They were brought as Premises Liability
11 cases.

12 I would also point out to Your Honor --
13 there's a case called Doe versus Batson where a
14 mother got sued for the fact that her son was
15 bringing young boys back to her house and molesting
16 them. She was sued for not warning them.

17 Ultimately in this particular case, it went to
18 the Court of Appeals twice. I think it may have gone
19 to the Supreme Court once as well. Ultimately, in
20 2004, the Court of Appeals upheld a summary judgment
21 in favor of the mother, but let me explain.

22 The Court actually addressed it as a Premises
23 Liability case. They said -- I'll hand this up in a
24 second. I only have one copy unfortunately. It
25 says, The landowners' duty towards a person depends

1 on the persons' status. The Does conceded James and
2 Jason were licensees for purposes of their Premises
3 Liability claim against Batson. Batson was the
4 mother of the perpetrator. So then they go on --
5 they say accordingly Batson owed James and Jason a
6 duty to warn of any concealed dangerous conditions or
7 activities known to her or of any change in the
8 condition of the premises that might have been
9 dangerous to them in which she may reasonably have
10 been expected to discover citing, Neil versus Byrum.

11 So it does apply to when you have dangerous
12 conditions on the property. They don't have to be
13 physical. It doesn't have to be a pothole. It can
14 be a dangerous activity.

15 THE COURT: Batson --

16 MR. LINDEMANN: You have cases all the time
17 with dangerous activities.

18 THE COURT: Batson would have been the owner
19 of that house, though, right?

20 MR. LINDEMANN: Batson was the owner of the
21 house, right. What I'm addressing in this particular
22 case is contention that because this is a dog the dog
23 isn't something -- that's a dangerous condition on
24 the premises. So in this particular case it's the
25 son who was the dangerous condition on the premises.

1 Ultimately, just to clarify, the Court upheld
2 the summary judgment because they found that
3 Ms. Batson had no knowledge that these activities
4 were going on in her home and therefore had no duty
5 to act.

6 In our case, Ms. Rahall clearly indicates she
7 had knowledge of Gunner's propensity to jump on
8 people.

9 THE COURT: I'll take that.

10 MR. PRITCHARD: Is that the Court of Appeals
11 opinion?

12 THE COURT: I don't know.

13 MR. PRITCHARD: If you're hand that up also
14 handing up the Supreme Court opinion where they
15 vacated it.

16 THE COURT: That was vacated?

17 MR. PRITCHARD: Yes. I would ask that that
18 please be handed up, too.

19 MR. LINDEMANN: I'm not aware of that, but
20 I'll be happy to provide that to the Court. I think
21 the Court of Appeals -- the Supreme Court decision
22 was from 2000.

23 MR. PRITCHARD: It was vacated.

24 THE COURT: I'll check it. I'll check it.

25 MS. FULTON: Your Honor, I --

1 THE COURT: Just one second. Just one second.
2 I want to make sure he's finished. The other one you
3 mention was a Kmart case that Judge --

4 MR. LINDEMANN: Yes. I'll give you the
5 supplements. The Kmart case is Fagman versus Kmart
6 Corporation. It's a 2013 decision from Judge Ron
7 Harwell. It's 2013 Westlaw 6901607.

8 THE COURT: All right. I would like to see
9 that one. Thank you. Okay.

10 MR. LINDEMANN: With the Court's indulgence --

11 (Brief pause.)

12 Lastly, Your Honor, going back to the
13 occupier/possessor, the case law doesn't talk about
14 owner. It doesn't talk about anyone who has a legal
15 interest in the property. That's what Mr. Pritchard
16 is focused on, people who have legal interest. You
17 don't have to have an ownership or legal interest as
18 a matter of law. You have to have, obviously,
19 something more than just a tangential relationship to
20 the premises. If you're an occupier -- I would
21 submit that clearly if you lived there 70 percent of
22 the time and you say you lived there, you have
23 clothes there, and you have a key to the premises,
24 you're more than just a social visitor or a social
25 guest. You are an occupier or a possessor and

1 therefore would have that duty of care. Thank you.

2 THE COURT: Thank you. Anything?

3 MS. FULTON: I would like to address Doe
4 versus Batson. That opinion was vacated, and then in
5 2014 the Court of Appeals decided Roe versus Bibby.

6 THE COURT: Roe v. Bibby?

7 MS. FULTON: Roe v. Bibby, 410 S.C. 287, 763
8 S.E. 2d 645. Now, what's interesting about Roe v.
9 Bibby is they explicitly discuss Doe versus Batson.
10 The reason Doe versus Batson was reversed and vacated
11 is because there just wasn't enough evidence on the
12 record. Now, in Roe versus Bibby the Plaintiffs were
13 attempting to sue the wife of a child molester
14 arguing under a Premises Liability Theory she had a
15 duty to warn the children coming into her home of her
16 husband's past sexual history.

17 The Court of Appeals said, No. That is not a
18 duty we recognize under Premises Liability Theory.
19 Give me just a moment.

20 First they mention there is no special
21 relationship, so if you don't have a special
22 relationship between a husband and wife, you
23 certainly don't have one between an adult daughter
24 and a mother.

25 THE COURT: What was the cite on Roe? The

1 South Carolina cite, if you've got it?

2 MS. FULTON: 410 S.C. 287. Now, I will
3 clarify, this case has been pending before the
4 Supreme Court for about two years, but no opinion has
5 been reached.

6 THE COURT: All right.

7 MS. FULTON: They found there was no duty to
8 warn under the Premises Liability Theory.

9 MR. LINDEMANN: Your Honor, if I could, and
10 again, I'll go back and double check Doe versus
11 Batson because I certainly didn't intend to give Your
12 Honor a vacated decision.

13 THE COURT: Mr. Fishburne found the order
14 vacating that, and that was in 2001.

15 MR. LINDEMANN: Yes. That's what I was going
16 to hand up. Doe had gone to the Court of Appeals
17 previously, and it was the portion of their first
18 decision that was vacated. That's the Supreme Court
19 decision from 2001 that vacated it in part.
20 Ultimately it went back to the lower Court on remand
21 and then went back to the Court of Appeals in 2004.
22 That's what I handed up to Your Honor. To my
23 knowledge that 2004 decision was not ever vacated. I
24 will certainly double check that. My intent was not
25 to give you a vacated decision.

1 THE COURT: That's fine. Thank you. Anything
2 further?

3 MR. PRITCHARD: Yes.

4 THE COURT: I'm ready to wrap this up.
5 You-all are going to be sending me proposed orders
6 anyway.

7 MR. PRITCHARD: The relationship has to be
8 some legally recognized relationship. You've got to
9 have the right to possess and control the premises,
10 simple as that. Using you as an example again --

11 THE COURT: Don't do that. Bad idea.

12 MR. PRITCHARD: No. It's a great idea because
13 you are in absolute control of this area contrary to
14 what Julie says. If you want me out of here you can
15 have me ordered out of here and he (indicating) will
16 take me out of here under force of law.

17 THE COURT: That's true.

18 MR. PRITCHARD: You have the right to hold me
19 in contempt, or anybody else in here, in contempt.
20 You have the right to issue an order back there
21 saying, Nobody is to go past that door without your
22 express approval, and if somebody does so he's going
23 to come get them. He's got the right to do it under
24 force of law.

25 Ms. Rahall couldn't remove anybody from that

1 premises if she wanted to. She had absolutely no
2 legal right or authority to remove anyone from that
3 premises. It was open to the public. It belonged to
4 Charleston Electrical Services. She couldn't remove
5 anybody from the apartment. Now, my wife could, but
6 my girlfriend -- I don't have one -- but my
7 girlfriend couldn't. Okay?

8 So my best buddy who hangs out there all day
9 can't because they don't have a legally recognized
10 interest into that property which gives them
11 exclusive possession and control, and right to
12 control the property. They can't do anything with
13 regard to that property, and there has to be
14 something there in order to give rise to a duty
15 because otherwise -- you get any testimony -- oh,
16 yeah. He comes by every day. Now suddenly he's a
17 possessor and occupier of land? Come on. Think
18 about how wide open this is going to become if you
19 adopt this position.

20 THE COURT: I understand your argument. All
21 right. Here's what I want you-all to do. It's my
22 usual practice to -- and I appreciate you-all taking
23 the time and effort to put an end to the case and
24 joint stipulation of facts is helpful because I can
25 tell you that I put some of my law clerks to work on

1 this one yesterday, and I got two different opinions.
2 So I was staffing it, like I said, yesterday. So we
3 have two different and contrary rules, but it's
4 morphed out of an indemnification case into a
5 contribution case. We spent more time talking about
6 indemnity than we did contribution yesterday.

7 What I would like you-all to do is to put
8 together proposed orders. I generally ask for those
9 in 30 days. Unless you-all are going to be taking
10 vacation between now and then --

11 MR. PRITCHARD: What's a vacation?

12 THE COURT: Good. Good. I would like you-all
13 to get it here on or about the 8th of July. I can
14 hold it to the following Monday or something. The
15 reason is I'm going to be going on vacation not that
16 week but the following week. I would like to get it
17 in here. It's my practice to give you-all an answer
18 within 30 days of that. Okay?

19 MR. PRITCHARD: So July 8th?

20 THE COURT: July 8th or 11th, I think might be
21 that following Monday. That will be fine with me. I
22 will be in here, but I would like to get it in here
23 so I can take a look at it while I'm gone unless I'm
24 real clear by then, which I don't know if I will be.

25 It's an interesting argument. I find the

1 Contribution Statute to be very confusing to be
2 honest with you. Okay?

3 MR. PRITCHARD: It's a good thing you don't
4 have to get there.

5 THE COURT: It helps me to get out of the
6 indemnification issue, so I can probably go with
7 that. That was probably a wise decision, I think,
8 based on yesterday.

9 Anything further that I need? I would just
10 ask you-all to cite that. You-all have given me the
11 cases. If there's a question about what those cases
12 are, the cites or anything, we'll have that for you.
13 Okay?

14 MR. PRITCHARD: Great.

15 THE COURT: Very good. Thank you-all for
16 coming in. Mr. Lindemann, have a safe trip back.

17 (The proceedings were concluded at 11:54 a.m.)
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19
20
21
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25

FULL AND FINAL RELEASE

This Release is made as of this 11th day of July 2012, by Elsie Mae Rabon in favor of those parties released herein.

Selective Insurance Company of South Carolina has agreed to pay the amount of Two Hundred Thousand and No/100 Dollars (\$200,000.00), the receipt and adequacy of which is hereby acknowledged, in exchange for a full and final settlement and release of any and all claims by Elsie Mae Rabon against those parties released herein.

Elsie Mae Rabon, on her own behalf and on behalf of their heirs, executors, administrators and assigns, hereby releases and forever discharges Charleston Electrical Services, Inc., John Oakley, George E. Kornahrens, Wanda Rayhall, Selective Insurance Company of South Carolina, and each of their current and former agents, servants, employees, officials, insurers, and the heirs, successors and assigns of each of the foregoing, and all other persons, corporations, and governmental entities, of and from any claims, suits, demands, and/or causes of action for damages and/or injuries arising from or in any manner the result of any alleged acts or omissions by those released herein as alleged in the Complaint bearing Civil Action Number 2010-CP-10-10666 or which could have been alleged in said Complaint, arising out of or in any respect related to the fall sustained by Elsie Mae Rabon at the premises located at 60 Romney Street, Charleston, South Carolina on or about August 20, 2010, and related in any respect to Elsie Mae Rabon's presence at those premises and her interaction with a dog at those premises.

It is understood and agreed that the above mentioned settlement amount is accepted in full settlement and satisfaction of all claims against the parties released herein.

It is further understood and agreed that this Release applies to all damages and/or injuries including those known and unknown, including those foreseen and unforeseen, and including but not limited to physical injury, psychological injury, mental anguish, humiliation, pain and suffering, physical impairment and disfigurement, lost wages, medical expenses, economic loss, property damage, impairment of earning capacity, loss of enjoyment of life, loss of consortium and services, interest and attorney's fees.

It is understood and agreed that the injuries and damages sustained by Elsie Mae Rabon may be permanent and progressive, and that recovery therefrom is uncertain and indefinite, and that all of the injuries, damages and losses may not now be fully known, and may be more numerous or more serious than now is expected and in making this Release, it is understood and agreed that Elsie Mae Rabon relies wholly upon her own judgment of the future development, progress, and result of the said injuries, known or unknown, and that she has not been influenced to any extent whatsoever in making this Release by any representations or statements regarding the said injuries, damages or the legal liability therefore, or regarding any other matters made by the parties who are hereby released, or by any person or persons representing such parties.

It is further understood and agreed that those released herein are not responsible to satisfy any liens and/or subrogation interests of any health care providers or insurance providers. As a

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result, Elsie Mae Rabon agrees to indemnify and hold harmless those released herein from any claims for medical expenses and/or liens or any other expenses or liens arising out of or from in any respect the August 20, 2010 accident.

Elsie Mae Rabon represents and warrants that she is a Medicare beneficiary. As a current beneficiary, Elsie Mae Rabon acknowledges that she has duly considered Medicare's interests in accordance with applicable law and is responsible for identifying any existing Medicare liens or conditional payments relating to the August 20, 2010 accident, and remains responsible for advising Selective Insurance Company of South Carolina of the amount of such liens or conditional payments, including providing a copy of the Centers for Medicare & Medicaid Services' ("CMS") Final Demand Letter before any of the proceeds of the settlement are disbursed.

Elsie Mae Rabon agrees that this settlement includes payments intended to repay CMS for the conditional payments it made to Elsie Mae Rabon for alleged medical conditions and treatment related to the August 20, 2010 accident. Elsie Mae Rabon warrants that she will ensure that all such liens are satisfied from the proceeds of the settlement funds if such liens have not been satisfied prior to the date of settlement. Elsie Mae Rabon acknowledges that the payment of settlement funds is expressly conditioned upon her agreement to reimburse CMS for any funds that CMS would otherwise be entitled to recover under the Medicare Secondary Payer ("MSP") statute, 42 U.S.C. § 1395y(b)(2). Elsie Mae Rabon further agrees to provide Selective Insurance Company of South Carolina with proof that all conditional payments or Medicare liens have been satisfied.

In addition, to the extent that Elsie Mae Rabon has claimed and may require future medical care, Elsie Mae Rabon agrees that such claim is settled herein, and she further understands that Medicare may require a Medicare Set-Aside to pay for any future medical treatment related to the August 20, 2010 accident. In the event that Medicare requires a Medicare Set-Aside, Elsie Mae Rabon agrees and understands that the Set-Aside must be funded and satisfied out of these settlement proceeds. Elsie Mae Rabon further agrees to provide Selective Insurance Company of South Carolina with proof that any requirement of a Medicare Set-Aside has been satisfied.

It is agreed that this settlement does not represent any attempt to shift the responsibility to Medicare for payment of medical expenses related to the August 20, 2010 accident.

Elsie Mae Rabon further agrees to fully satisfy and indemnify and hold harmless the parties released herein and their attorneys from any and all claims by CMS related to this settlement including but not limited to penalties, liens, conditional payments, demands, and actions in law or equity, arising out of the enforcement of the MSP statute including but not limited to any alleged failure to satisfy all Medicare liens or conditional Medicare payments and any action by CMS alleging that its interests were not considered in this settlement. Elsie Mae Rabon further agrees to waive any and all future actions against the parties released herein including but not limited to any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

It is further understood and agreed that this settlement is a compromise of a disputed claim and the payments are not to be construed as an admission of liability on the part of those released

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herein, by whom liability is expressly denied. It is acknowledged and understood that the settling parties have settled this litigation only to buy their peace from the inconvenience, expense, and uncertainties of continued litigation.

It is agreed that the civil action bearing Civil Action Number 2010-CP-10-10666, which is pending in the Charleston County Court of Common Pleas, is to be dismissed with prejudice and forever ended as to the claims brought by Elsie Mae Rabon. Elsie Mae Rabon authorizes and directs her counsel to execute and file such documents and papers as necessary to dismiss her Complaint with prejudice.

It is understood that the terms of this Release are contractual and not a mere recital. Elsie Mae Rabon specifically agrees that this Release and the settlement reached by the parties are to be construed and enforced in accordance with South Carolina law as applicable.

Elsie Mae Rabon states that she has reviewed the contents of this Release with her attorney, and that she understands the contents thereof and that it is a full and final release of all claims against those released herein. She further understands and agrees that this Release may be asserted as a defense in any subsequent legal action that she or anyone else may bring or attempt to bring on her behalf against those released herein, and that this Release would bar any recovery in any such action.

Elsie Mae Rabon further states that she has read carefully the foregoing Release and knows the contents thereof and has signed the Release as her own free will and act.

WITNESSETH:

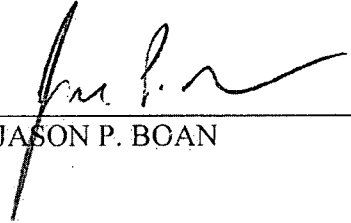
Jim P. Boan
Peggy J. Alford

Elsie Mae Rabon (SEAL)
ELSIE MAE RABON

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I hereby certify that the above Release was read by me and approved as to form and substance. I further certify that the legal effects of the Release have been explained to Elsie Mae Rabon by me and that she did freely and voluntarily execute same with full knowledge of the contents and the effects thereof.

I further certify that any and all liens or subrogation rights, including the payment of outstanding medical bills and any Medicare or Medicaid liens, which might be applicable to this settlement shall be satisfied by me and that the proceeds from this settlement shall be held in trust until such time as all liens or subrogated rights have been satisfied using these settlement funds.



JASON P. BOAN

Surfside Beach, South Carolina

July 11, 2012

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CHARLESTON ELECTRICAL)
SERVICES, INC. AND SELECTIVE)
INSURANCE COMPANY OF SOUTH)
CAROLINA AS SUBROGEE OF)
CHARLESTON ELECTRICAL)
SERVICES, INC.)

CIVIL ACTION NO. 2013-CP-10-3901

**PLAINTIFFS AND
DEFENDANT'S JOINT
STIPULATION OF FACTS**

Plaintiffs,

v.

WANDA G. RAYHALL,

Defendant.

COMES NOW the parties to the above-captioned action, by and through their undersigned counsel, who hereby stipulate and agree in good faith to the following relevant facts:

PARTIES, VENUE AND JURISDICTION

1. Plaintiff, Charleston Electrical Services, Inc. (hereinafter referred to as "CES"), is a South Carolina corporation with its principal place of business located at 60 Romney Street, Charleston, South Carolina 29403 (hereinafter referred to as the "Premises").

2. At all times relevant hereto, the Premises was owned by George Kornahrens (hereinafter referred to as "Kornahrens").

3. CES was originally owned by Kornahrens, until his stepson, John Oakley (hereinafter referred to as "Oakley"), assumed control, in 1994.

4. Plaintiff, Selective Insurance Company of South Carolina (hereinafter referred to as "Selective") is a South Carolina corporation authorized to engage in the business of insurance.

in the State of South Carolina, and insured CES under a commercial general liability policy in effect on August 20, 2010, which is the date of the incident.

5. Defendant, Wanda Rahall (hereinafter referred to as "Rahall") is a citizen and resident of Horry County, South Carolina, and at all times relevant hereto, owned a home located at 38 Chapin Circle, Myrtle Beach, South Carolina.

6. At all times relevant hereto, Rahall was Kornahrens' fiancée.

7. Plaintiffs have brought an action for contribution and equitable indemnity against Rahall arising from a settlement paid by CES to Elsie Mae Rabon (hereinafter referred to as "Rabon") in exchange for a full and final release of liability against CES, Rahall and Kornahrens in settlement of the civil action captioned *Rabon v. Charleston Electrical Services, Inc., Civil Action No. 2010-CP-10-10666*, (hereinafter referred to as the "underlying Action"). A copy of the settlement agreement is attached hereto as **Joint Exhibit 1**.

8. Selective is subrogated to the rights of CES.

9. The parties agree that the settlement reached in the underlying Action was fair and reasonable.

10. The parties agree that this court has jurisdiction over the parties and the subject matter of this action, and venue is proper in Charleston County. The parties have consented to a trial before the Charleston County Master in Equity.

Procedural History

11. On December 31, 2010, Rabon initiated the underlying Action against Charleston Electrical Services, Inc., alleging negligence and strict liability, pursuant to S.C. Code Section 47-3-110, both of which were the proximate cause of Rabon's injuries she sustained after a dog jumped on her.

12. On May 24, 2011, CES initiated a third party action against Kornahrens and Rahall, seeking indemnification should CES be found liable for Rabon's injuries.

13. On November 16, 2011, depositions of Oakley, Kornahrens and Rahall were taken in the underlying Action. The parties reserve the right to submit excerpts of those depositions but reserve the right to raise objections to deposition designations by the opposing party.

14. On July 11, 2012, CES agreed to pay Rabon the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) in exchange for a full and final release of all liability. Rabon executed the Release, which extinguished liability as to CES, Selective, Rahall and Kornahrens.

15. The underlying Action was dismissed by Stipulation of Dismissal on July 31, 2012. Only Rabon's claims against CES were dismissed with prejudice. A copy of the Stipulation of Dismissal is attached hereto as **Joint Exhibit 2**.

16. On July 3, 2013, CES and Selective instituted the present action. They amended their Complaint on January 7, 2015.

17. On May 26, 2016, Rahall was deposed again. The parties reserve the right to submit excerpts of that deposition but reserve the right to raise objections to deposition designations by the opposing party.

Facts of the Underlying Action

18. While Kornahrens did own the Premises, he retained no ownership interest in CES after selling it to Oakley. At all times relevant hereto, Kornahrens was a full-time salaried employee of CES, with the title of business manager.

19. The Premises, which is fenced in its entirety, is comprised of two buildings separated by a parking lot/yard area (hereinafter referred to as the "yard"). A satellite image of the premises is attached hereto as **Joint Exhibit 3**.

20. The main building is comprised of a second floor apartment (hereinafter referred to as the "Apartment"), an office space and a warehouse on the first floor. The back building consists of more warehouse space.

21. Kornahrens maintained the Apartment as his residence. He leased the remainder of the Premises – the downstairs of the main building, yard and back building – to CES.

22. There are two separate entrances in to the main building. One door leads into the office space. The other door leads to the Apartment, accessible by a flight of stairs. Within this stairwell is a connecting door that leads in to the office space.

23. The connecting door was typically only locked to keep people from entering the stairwell. The key to the Apartment door also opened the connecting door between the office space and the stairwell.

24. At all times relevant hereto, CES was open to the public, to business invitees, friends and family during its regular business hours.

25. The Premises is located in an industrial area on the Charleston peninsula, and over the years, CES had issues with criminal activity at night.

26. CES acquired a dog for the Premises. For the twenty years prior to the incident, CES has owned various dogs (no more than one at a time) on the Premises.

27. In 2005, Kornahrens and Rahall began a romantic relationship, ultimately becoming engaged, although they never married.

28. Throughout her relationship with Kornahrens, Rahall continued to own a home in Myrtle Beach, South Carolina.

29. Rahall did not pay rent, utilities, or taxes on the Apartment.

30. Rahall did keep clothes and personal items in the Apartment.

31. Rahall was given a key to the Apartment by Kornahrens. The key only provided access to the exterior door that led to the Apartment and the connecting door in the stairwell. Rahall was not given a key to access the exterior door that led directly into the office space of CES. Rahall was able to come and go as she pleased from the Apartment.

32. Occasionally, Rahall's mother, Elsie Mae Rabon, would visit Charleston. During these visits, Rabon stayed at the Apartment.

33. Rahall was not an agent or employee of CES.

34. On January 30, 2010, CES purchased "Gunther Wolfgang Amadeus Vom Banach" aka "Gunner," a full-blooded German shepherd, from Tarrah J. Andre for two hundred (\$200.00) dollars.

35. Shortly thereafter, Rahall told Rabon about CES's purchase of Gunner.

36. Every morning, Gunner was fed and chained up in the yard prior to the arrival of CES's employees, in order to prevent Gunner from running through the gates. Once the gates closed, Gunner would be released from the chain, typically around 8:30 am. He would then be chained again between 3:30 pm and 5:30 pm, the time the employees returned their company vehicles to the yard.

37. On Thursday, August 19, 2010, Rahall drove Rabon to Charleston, South Carolina for a visit. Rabon was invited to and did stay at the Apartment. Rahall and Rabon arrived late that afternoon and met Kornahrens in the office, but they did not enter the warehouse or the yard.

38. On Friday, August 20, 2010, Rabon accompanied Rahall to a doctor's appointment at Alpha Care. After the appointment, Rahall and Rabon stopped to purchase Rabon a sweet tea from a fast food restaurant, before heading back to the Premises.

39. Rahall and Rabon arrived at the Premises around lunch time. Upon their arrival, Rahall and Rabon entered the first floor office area of CES. Rahall exited the office space, crossing through the warehouse into the yard of CES to locate Kornahrens so that Rahall, Rabon, and Kornahrens could go out for lunch. Neither Rahall nor Rabon entered the Apartment when they returned to the Premises.

40. Prior to Rahall's arrival in the yard, Gunner was unchained by Kornahrens.

41. After some time passed, Rabon decided to look for Rahall and Kornahrens, exiting through the office and warehouse toward the yard.

42. As Rabon approached the yard, Gunner, in his excitement, jumped onto Rabon, pushing her to the ground. Kornahrens and Rahall observed the incident, but neither were able to prevent Gunner from jumping on to Rabon from where they were standing.

43. Rabon was then transported from the Premises by EMS for medical care.

44. Rahall, along with Kornahrens and Oakley, were aware that Gunner had previously jumped on people. Gunner was characterized as a playful and "overly friendly" dog.

45. Prior to August 20, 2010, Rabon had never interacted with Gunner, although Rabon knew that CES had a dog on the property and was aware that Gunner had replaced the prior dog.

46. Although Rabon was an elderly woman, who at all relevant times hereto resided in a senior living apartment complex, she had not prior to August 20, 2010 been in the custody or care of a guardian or conservator.¹

47. In 2014, Rahall and Kornahrens ended their relationship.

¹ Rabon passed away on November 27, 2015.

The parties stipulate to the above facts. None of the parties waive the right to submit additional evidence for consideration by the Court along with their respective legal memoranda and arguments to the Court.

Jointly Submitted By:

DAVIDSON & LINDEMANN, P.A.

Andrew F. Lindemann, Esq.
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Attorney for Plaintiffs

June 16, 2016
Charleston, South Carolina

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liz@pritchardlawgroup.com
Attorneys for Defendant, Wanda Rahall

JOINT EXHIBIT 1

JUL 16 2012 10:37 AM

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It is understood and agreed that the above mentioned settlement amount is accepted in full settlement and satisfaction of all claims against the parties released herein.

It is further understood and agreed that this Release applies to all damages and/or injuries including those known and unknown, including those foreseen and unforeseen, and including but not limited to physical injury, psychological injury, mental anguish, humiliation, pain and suffering, physical impairment and disfigurement, lost wages, medical expenses, economic loss, property damage, impairment of earning capacity, loss of enjoyment of life, loss of consortium and services, interest and attorney's fees.

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result, Elsie Mae Rabon agrees to indemnify and hold harmless those released herein from any claims for medical expenses and/or liens or any other expenses or liens arising out of or from in any respect the August 20, 2010 accident.

Elsie Mae Rabon represents and warrants that she is a Medicare beneficiary. As a current beneficiary, Elsie Mae Rabon acknowledges that she has duly considered Medicare's interests in accordance with applicable law and is responsible for identifying any existing Medicare liens or conditional payments relating to the August 20, 2010 accident, and remains responsible for advising Selective Insurance Company of South Carolina of the amount of such liens or conditional payments, including providing a copy of the Centers for Medicare & Medicaid Services' ("CMS") Final Demand Letter before any of the proceeds of the settlement are disbursed.

Elsie Mae Rabon agrees that this settlement includes payments intended to repay CMS for the conditional payments it made to Elsie Mae Rabon for alleged medical conditions and treatment related to the August 20, 2010 accident. Elsie Mae Rabon warrants that she will ensure that all such liens are satisfied from the proceeds of the settlement funds if such liens have not been satisfied prior to the date of settlement. Elsie Mae Rabon acknowledges that the payment of settlement funds is expressly conditioned upon her agreement to reimburse CMS for any funds that CMS would otherwise be entitled to recover under the Medicare Secondary Payer ("MSP") statute, 42 U.S.C. § 1395y(b)(2). Elsie Mae Rabon further agrees to provide Selective Insurance Company of South Carolina with proof that all conditional payments or Medicare liens have been satisfied.

In addition, to the extent that Elsie Mae Rabon has claimed and may require future medical care, Elsie Mae Rabon agrees that such claim is settled herein, and she further understands that Medicare may require a Medicare Set-Aside to pay for any future medical treatment related to the August 20, 2010 accident. In the event that Medicare requires a Medicare Set-Aside, Elsie Mae Rabon agrees and understands that the Set-Aside must be funded and satisfied out of these settlement proceeds. Elsie Mae Rabon further agrees to provide Selective Insurance Company of South Carolina with proof that any requirement of a Medicare Set-Aside has been satisfied.

It is agreed that this settlement does not represent any attempt to shift the responsibility to Medicare for payment of medical expenses related to the August 20, 2010 accident.

Elsie Mae Rabon further agrees to fully satisfy and indemnify and hold harmless the parties released herein and their attorneys from any and all claims by CMS related to this settlement including but not limited to penalties, liens, conditional payments, demands, and actions in law or equity, arising out of the enforcement of the MSP statute including but not limited to any alleged failure to satisfy all Medicare liens or conditional Medicare payments and any action by CMS alleging that its interests were not considered in this settlement. Elsie Mae Rabon further agrees to waive any and all future actions against the parties released herein including but not limited to any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

It is further understood and agreed that this settlement is a compromise of a disputed claim and the payments are not to be construed as an admission of liability on the part of those released

E. M. R.
JPB
POA

herein, by whom liability is expressly denied. It is acknowledged and understood that the settling parties have settled this litigation only to buy their peace from the inconvenience, expense, and uncertainties of continued litigation.

It is agreed that the civil action bearing Civil Action Number 2010-CP-10-10666, which is pending in the Charleston County Court of Common Pleas, is to be dismissed with prejudice and forever ended as to the claims brought by Elsie Mae Rabon. Elsie Mae Rabon authorizes and directs her counsel to execute and file such documents and papers as necessary to dismiss her Complaint with prejudice.

It is understood that the terms of this Release are contractual and not a mere recital. Elsie Mae Rabon specifically agrees that this Release and the settlement reached by the parties are to be construed and enforced in accordance with South Carolina law as applicable.

Elsie Mae Rabon states that she has reviewed the contents of this Release with her attorney, and that she understands the contents thereof and that it is a full and final release of all claims against those released herein. She further understands and agrees that this Release may be asserted as a defense in any subsequent legal action that she or anyone else may bring or attempt to bring on her behalf against those released herein, and that this Release would bar any recovery in any such action.

Elsie Mae Rabon further states that she has read carefully the foregoing Release and knows the contents thereof and has signed the Release as her own free will and act.

WITNESSETH:

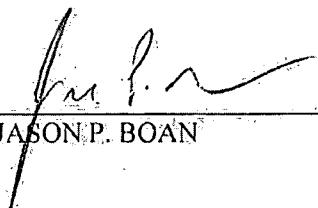
James P. Board
Reyes J. Alford

Elsie Mae Rabon (SEAL)
ELSIE MAE RABON

POA
E.M.R.
JTB

I hereby certify that the above Release was read by me and approved as to form and substance. I further certify that the legal effects of the Release have been explained to Elsie Mae Rabon by me and that she did freely and voluntarily execute same with full knowledge of the contents and the effects thereof.

I further certify that any and all liens or subrogation rights, including the payment of outstanding medical bills and any Medicare or Medicaid liens, which might be applicable to this settlement shall be satisfied by me and that the proceeds from this settlement shall be held in trust until such time as all liens or subrogated rights have been satisfied using these settlement funds.



JASON P. BOAN

Surfside Beach, South Carolina

July 11, 2012

POA
EmK
JPB

JOINT EXHIBIT 2

01/30/80 NCSD

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Elsie Mae Rabon,
Plaintiff,

Civil Action No. 2010-CP-10-10666

v.

Charleston Electrical Services, Inc.,
Defendant-Third Party
Plaintiff,

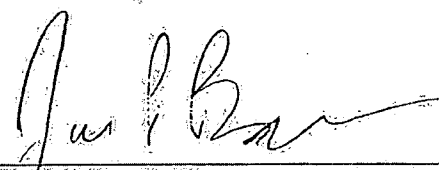
STIPULATION OF DISMISSAL

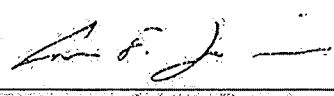
v.

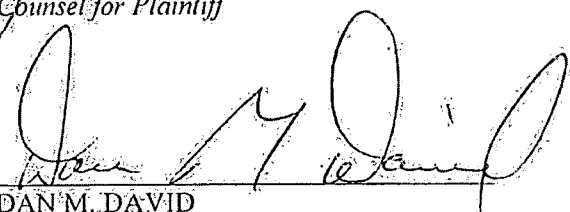
George E. Kornahrens and Wanda
Rayhall,
Third-Party Defendants.

FILED
2012 JUL 31 PM 2:47
JESSIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Rule 41(a)(1), SCRPC, the Plaintiff Elsie Mae Rabon hereby dismisses with prejudice her Complaint against the Defendant Charleston Electrical Services, Inc. In addition, the Defendant Charleston Electrical Services, Inc. dismisses without prejudice its Third-Party Complaint against the Third-Party Defendants George E. Kornahrens and Wanda Rayhall.


JASON P. BOAN
Counsel for Plaintiff


ANDREW F. LINDEMANN
Counsel for Defendant/Third-Party
Plaintiff Charleston Electric Services, Inc.


DAN M. DAVID
Counsel for Third-Party Defendants

FILED 08/06/12

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Elsie Mae Rabon,
Plaintiff,

Civil Action No. 2010-CP-10-10666

v.

Charleston Electrical Services, Inc.,
Defendant-Third Party
Plaintiff,

CERTIFICATE OF SERVICE

v.

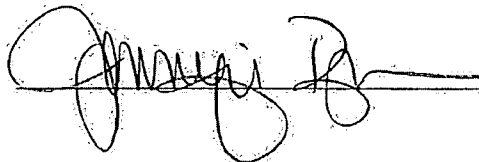
George E. Kornahrens and Wanda
Rayhall,
Third-Party Defendants.

FILED
2012 JUL 31 PM 2:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendant-Third Party Plaintiff, Charleston Electrical Services, Inc., does hereby certify that service of the Stipulation of Dismissal in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 27th day of July 2012:

Jason P. Boan, Esquire
Boan Law Firm, LLC
Post Office Drawer 15849
Surfside Beach, South Carolina 29587

Dan M. David, Esquire
Post Office Box 32097
Charleston, South Carolina 29417



JOINT EXHIBIT 3

Google Maps 60 Romney St



Imagery ©2016 Google, Map data ©2016 Google 20 ft



60 Romney St
Charleston, SC 29403



At this location

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Charleston Electrical Services, Inc.)
and Selective Insurance Company of)
South Carolina as Subrogee of Charleston)
Electrical Services, Inc.,)

Civil Action No. 2013-CP-10-3901

Plaintiffs,)

PLAINTIFFS' PRE-TRIAL BRIEF

v.)

Wanda G. Rahall,)

Defendant.)
_____)

BACKGROUND

This is an action for contribution and equitable indemnity. The Plaintiff Charleston Electrical Services, Inc. ("CES") was sued by Elsie Mae Rabon for injuries that she sustained upon being attacked, knocked to the ground, and injured by a German Shepherd dog on the premises located at 60 Romney Street, Charleston, South Carolina on August 20, 2010. In settlement of that civil action, the Plaintiff CES agreed to pay the sum of \$200,000.00 to Elsie Mae Rabon in exchange for a full and final release of all liability executed by Elsie Mae Rabon on July 11, 2012. The Release executed by Elsie Mae Rabon extinguished the liability of the Defendant Wanda G. Rahall. The action captioned *Rabon v. Charleston Electrical Services, Inc.*, Civil Action Number 2010-CP-10-10666, was dismissed by Stipulation of Dismissal filed July 31, 2012. The Plaintiff Selective Insurance Company of South Carolina is subrogated to the rights of CES.

This action arises out of events occurring on August 20, 2010, when Elsie Rabon, the

elderly mother of the Defendant Wanda Rahall, was visiting her daughter and her daughter's fiancée, George Kornahrens, and was injured when she was jumped upon and pushed down by Gunner, a German Shepherd on the premises.

CES is located at 60 Romney Street. Kornahrens was the owner of those premises. He leased a portion of the premises to CES, but he also resided in an apartment at the premises together with the Defendant Rahall. In her deposition, Rahall testified that she and Kornahrens had been "together" since May 2005, and that they had been engaged for the previous four years. *See*, Rahall Depo. I, p. 7. Rahall testified that during 2010, she resided at 60 Romney Street "all the time" but then further explained that she had "really been staying here I would say 70 percent of the time since 2008." *See*, Rahall Depo. I, p. 8. Rahall also described 60 Romney Street as "where we live, me and George." *See*, Rahall Depo. I, p. 30. In addition, Rahall had her own key to the apartment and was able to come and go as she pleased. *See*, Rahall Depo. II, p. 10, 33. She also permanently kept clothes and other personal effects at the apartment. *See*, Rahall Depo. II., p. 12.

On August 20, 2010, Elsie Rabon was a social guest at 60 Romney Street. The Defendant Rahall testified as follows:

Q. So on August 20th, 2010, [Rabon] would have been a social guest?

A. Yes.

Q. She was staying as a guest with you and George at –

A. Yeah, she always stays with us at 60 Romney Street. That's where we live, me and George.

Q. So when she came to visit, she'd stay with you?

A. Yes. Always.

See, Rahall Depo. I, p. 30.

On August 20, 2010, Elsie Rabon was visiting her daughter and Kornahrens. Rabon had arrived the day before (August 19), but had no interaction with the dog on that date. *See*, Rahall Depo. I, p. 14. According to Rahall, Rabon knew that Kornahrens had a new dog, but she had not been around that particular dog. *See*, Rahall Depo. I, pp. 13-14. Rabon has never seen the dog before. *See*, Rahall Depo. II, p. 14. Rahall, on the other hand, was very familiar with Gunner. She was aware that Gunner was "overly friendly" and that he would routinely jump on people – with that occurring even daily. Rahall testified that the dog had done the same to her several times and that she had frequently seen the dog jump up on other people before the August 20, 2010 incident. *See*, Rahall Depo. I, pp. 11-12. In fact, the dog had jumped up on her "a couple times the week before." *See*, Rahall Depo. II, p. 19.

On August 20, 2010, Rahall had a 10:00 a.m. medical appointment at a chiropractor. Her mother accompanied her to that appointment. Afterward, they returned to 60 Romney Street to get Kornahrens to go to lunch. Rabon and Rahall entered the premises. Rahall went to look for George and found him outside in the backyard where the dog was kept. After a few minutes, Rabon came outside looking for Rahall and Kornahrens. Rahall had not told her mother not to come outside nor warned her of the dog's tendency to jump on people or to be "overly friendly." The dog had been released from his chain before they arrived. After Rabon came into the backyard, Gunner jumped up on Rabon and knocked her to the ground. As a result of that fall, Rabon sustained serious injuries including a broken hip and injured ankle. *See*, Rahall Depo. I, pp. 15-16, 21.

Rahall testified that she did not direct her mother not to come into the backyard behind the premises, nor did she take any action to prevent her from doing so. That is true even after she realized that Gunner was not chained. She had likewise not warned Rabon about the dog's

tendencies or that it was "over friendly" or in general to be careful around the dog. *See*, Rahall Depo. II., pp. 18-23. She took no action at any point to warn or protect her mother from what she should have recognized as a dangerous condition on the premises.

DISCUSSION

The liability of the Defendant Wanda Rahall for the injuries sustained by her mother, Elsie Rabon, is governed by premises liability law. Rabon was a social guest or licensee present on the 60 Romney Street premises in order to visit Rahall and her fiancée, George Kornahrens, both of whom resided there. Under South Carolina premises liability law, the possessor of property "owes a licensee a duty to use reasonable care to discover the licensee, to conduct activities on the land so as not to harm the licensee, and to warn the licensee of any concealed dangerous conditions or activities." *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196, 204 (Ct. App. 2008). The South Carolina Supreme Court has explained:

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

- (a) To use reasonable care to discover him and avoid injury to him in carrying on activities upon the land.
- (b) To use reasonable care to warn him of any *concealed dangerous conditions* or activities which are known to the possessor, or of any change in the condition of the premises which may be dangerous to him, and which he may reasonably be expected to discover.

Neil v. Byrum, 288 S.C. 472, 343 S.E.2d 615, 616 (1986), *citing Frankel v. Kurtz*, 239 F.Supp. 713, 717 (W.D.S.C. 1965). (Emphasis in original).

The Defendant Rahall argues that she did not owe any duty of care to Elsie Rabon because she had no ownership interest in CES or in the 60 Romney Street premises. She further suggests that, like her mother, she also was a social guest at the premises. That is contrary to the evidence from Rahall's own sworn testimony, as discussed above. To reiterate, Rahall testified that 60 Romney Street was "where we live, me and George." *See*, Rahall Depo. I, p. 30. She also testified that during 2010, she resided at 60 Romney Street "all the time" but then further explained that she had "really been staying here I would say 70 percent of the time since 2008." *See*, Rahall Depo. I, p. 8. Rahall never described herself as a social guest on the premises or someone who only occasionally was there. Thus, consistent with premises liability law, Rahall qualified as a "possessor" or "occupier" of the property, and thus, owed a duty of care to her mother, as a social guest, as the law requires.

The Plaintiffs have further shown that Gunner constituted a dangerous condition on the premises and that Elsie Rabon had not previously been around the dog and was unaware that the dog posed a danger to her. Likewise, the evidence shows that Rahall knew that the dog was "over friendly" and would routinely jump on people. She saw it on a daily basis and had that occur to herself as well – a "couple times" just the previous week. Rahall therefore knew or should have known that the dog presented a risk of harm to Elsie Rabon and should have taken steps to warn Rabon and/or prevent her from coming outside where the dog was located. Rahall also should have made certain that Gunner was chained or otherwise restrained before allowing her mother to walk outside. Even after noting that Gunner was not chained, Rahall took to action to warn or protect her mother. She did not make certain she stayed away from the yard or warn her of the dog's presence and that he was unrestrained.

In addition to owing a duty of care as a "possessor" or "occupier" of the promises, the

Defendant Rahall also owed a duty of care to her mother based upon a "special relationship." "Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger." *Doe v. Wal-Mart, Inc.*, 393 S.C. 240, 711 S.E.2d 908, 911 (2011). The Supreme Court, however, has recognized five exceptions to this general rule, and one of those exceptions is "where the defendant has a special relationship to the victim." *Faile v. S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). Here, the evidence reflects a "special relationship" between Rahall and Rabon. Rabon was Rahall's elderly mother who was invited to the premises for a visit. Rabon had been living in an assisted living facility for a number of years. Rabon would not have been at the premises but for that mother-daughter relationship. Rahall had the ability to monitor, supervise and control her mother's action on the premises and could have prevented her from entering the backyard of the premises where the dog was located. Clearly, based upon the "special relationship" between them, Rahall owed a duty to protect Rabon from the risk of harm posed by going into the backyard where Gunner was located. At the very least, she owed her mother a duty to warn her that the dog would routinely jump on people and could potentially injure her mother when not restrained. However, she breached that duty by taking absolutely no action to warn or protect her mother from the risk of harm posed by the German shepherd. In short, the evidence supports a findings that Rahall was at fault for the accident that resulted in injury to Rabon. The evidence supports a finding of, at a minimum, some degree of partial fault.

The Plaintiffs' primary claim is for contribution. The Uniform Contribution Among Tortfeasors Act provides "a right of contribution for joint tortfeasors who have paid more than their pro rata liability of a common liability." *Southeastern Freightlines v. City of Hartsville*, 313 S.C. 466, 443 S.E.2d 395, 397 (1994). "The Act further provides that relative degrees of

fault are not to be considered in determining the pro rata liability of tortfeasors." *Id.* In fact, Section 15-38-30 expressly states that "[i]n determining the pro rata shares of tortfeasors in the entire liability (1) their relative degrees of fault shall not be considered." S.C. Code Ann. § 15-38-30.

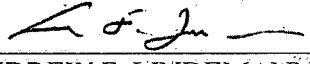
The *Southeastern Freightlines* is illustrative of how these provisions are to be applied. In that case, the plaintiff settled a wrongful death case for \$400,000, and then brought a contribution action against the City of Hartsville and the South Carolina Department of Transportation (DOT). The contribution action was tried and the jury apportioned fault as follows: Southeastern 70%, City 20% and DOT 10%. The defendants argued that the City was liable for \$80,000 and the DOT for \$40,000, consistent with the apportioned verdict. The plaintiff argued that the City and DOT were each liable for their pro-rata share, that being \$133,333.33 each for a total of \$266,666.67. At the time, the Tort Claims Act (TCA) cap was \$250,000 per incident. Therefore, for the City and the State to be liable for \$266,666.67, that would exceed the TCA cap. In response, the trial judge, as later affirmed by the Supreme Court, ruled that the TCA cap was impliedly repealed and he entered judgment for \$266,666.67. If the City and DOT were liable only for the apportioned verdict, then they would have been liable for a total of \$120,000 and the TCA caps would have been unaffected. The Supreme Court upheld that verdict and as a result, both the City and DOT paid 1/3 of the \$400,000, which was their pro rata liability.

In the present case, Rahall's pro rata liability is one-half of the \$200,000 paid settlement. The parties have stipulated that the settlement amount was reasonable. Contrary to Rahall's anticipated position, there should be no consideration given to Rahall's degree or percentage of fault. If Rahall is at fault – even to a small degree – then she is liable for her pro rata share of the

common liability, which was \$200,000. As a result, the Plaintiffs seek a judgment for that pro rata share, which is \$100,000. That amount is also a sum certain and easy to calculate, and for that reason, the Plaintiff are also entitled to pre-judgment interest from the date of the settlement.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Plaintiffs

Columbia, South Carolina

June 17, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

ELSIE MAE RABON,

Plaintiff,

vs.

CASE NO. 2010-CP-10-10666

CHARLESTON ELECTRICAL SERVICES, INC.,

Defendant/Third-Party Plaintiff,

vs.

GEORGE E. KORNAHRENS and WANDA RAHALL,

Third-Party Defendants.

DEPOSITION OF: GEORGE E. KORNAHRENS

DATE: November 16, 2011

TIME: 2:22 PM

LOCATION: Law Offices of Dan M. David
147 Wappoo Creek Drive, Suite 101
Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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(803) 731-5224	(864) 234-7030	(704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 ELSIE MAE RABON:

4

BOAN LAW FIRM, LLC

5

BY: JASON P. BOAN

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PLAINTIFF CHARLESTON ELECTRICAL

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21

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22

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Charleston, SC 29412

25

(843) 571-1893

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dan@charlestonlegal.com

27

ALSO PRESENT:

28

Wanda Rahall

29

30

(INDEX AT REAR OF TRANSCRIPT)

31

32

33

34

35

36

1 STIPULATION

2 It is stipulated by and among Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent waives reading
9 and signing of this deposition.

10 * * * * *

11 GEOREG E. KORNAHRENS

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. LINDEMANN:

15 Q. Mr. Kornahrens, we met a little while
16 ago. My name is Andrew Lindemann. I'm an attorney
17 for Charleston Electrical Services, Inc. in this
18 lawsuit involving the incident with Gunner, the
19 dog.

20 A. Yes, sir.

21 Q. I know you just sat through the
22 deposition of John Oakley; isn't that right?

23 A. Um-hum.

24 Q. All right. What we're going to do is
25 something very similar, we're going to take your

1 deposition, which essentially I'm going to be
2 asking you some questions about your background,
3 your knowledge of the incident involving Miss Rabon
4 that is at issue in this lawsuit.

5 A. All right.

6 Q. If at any time I ask you a question
7 that you don't understand, please stop me, tell me
8 you don't understand my question so that I get a
9 chance to restate it in such a way that you
10 understand it. Will you do that, please?

11 A. Yes, sir.

12 Q. All right. If you answer a question,
13 we will assume you understood the question, is that
14 fair?

15 A. That's right.

16 Q. All right. As you're doing a good job
17 of, please try to give verbal answers. Sometimes
18 this can get conversational and you just nod your
19 head but the Court Reporter can't take down a head
20 nod.

21 A. I'm kind of hard of hearing.

22 Q. Well, and if you don't hear me --

23 A. All right. Go ahead.

24 Q. -- definitely make sure you tell me,
25 okay?

1 A. I'll try to do the best I can for you.

2 Q. All right. I appreciate it. I'll try
3 not to keep you terribly long. And that's the last
4 point, if you need to take a break for any reason,
5 you tell me and we'll be happy to take a break,
6 okay?

7 A. All right.

8 Q. What is your current address, sir?

9 A. My address?

10 Q. Your address.

11 A. 60 Romney Street, second floor.

12 Q. And how long have you lived there?

13 A. I've lived there about 10, 12 years,
14 something like that.

15 Q. And who do you live with?

16 A. Live by myself.

17 Q. And are you currently employed?

18 A. Charleston Electrical Services.

19 Q. And what do you do for them?

20 A. I'm a business manager.

21 Q. And how long have you worked for
22 Charleston Electrical Services?

23 A. Oh, 20 some years.

24 Q. When did you start with them?

25 A. I've had the business -- I've been in

1 Charleston Electrical Services 40 some years.

2 Q. Okay.

3 A. And I give the business to Johnny 20
4 some years ago.

5 Q. By Johnny, you're referring to
6 Mr. Oakley?

7 A. He's my stepson.

8 Q. Okay. So you actually started the
9 business years ago?

10 A. Oh, yeah, a long time ago.

11 Q. What is your date of birth, by the way?

12 A. [REDACTED]

13 Q. Say that for me one more time.

14 A. [REDACTED]

15 Q. And so you started the business when
16 did you say, over 40 years ago?

17 A. Over 40 years ago.

18 Q. And it had a somewhat different name at
19 that time?

20 A. It started out as Charleston Electric
21 Company.

22 Q. And after Mr. Oakley took over
23 ownership, it was changed?

24 A. Before he took over we had embezzlement
25 in the company and a lot of tax stuff and they was

1 ready to close us down so we had to go back in
2 business again. We started as Charleston
3 Electrical Services, Incorporated.

4 Q. And do you recall when that was?

5 A. 20 some years ago. About 30 years ago.
6 20 some years ago. I really don't know.

7 Q. Well, tell me how the company was then
8 transferred from you to Mr. Oakley.

9 A. Well, I was in -- I was in -- I guess I
10 was in -- I was going to lose the company or give
11 it away because there wasn't no value left in the
12 company so I gave it to Johnny.

13 Q. And he was working for you at the time?

14 A. Yeah, he was a helper. And he was my
15 son -- my stepson, the only one I could give it to.

16 Q. So he was your stepson at that time?

17 A. Yeah.

18 Q. When were you married to his mother?

19 A. About the same length of time, 20 years
20 ago.

21 Q. And how did that marriage end?

22 A. Divorce.

23 Q. Divorce? And when was that divorce?

24 A. Oh, I guess that was six or seven years
25 ago. My mind don't go too --

1 Q. I understand. Do you have any
2 ownership in the business?

3 A. No, I don't have any ownership.

4 Q. What are your duties as business
5 manager?

6 A. Well, I open the place every morning,
7 close it at night and I go get the mail, make
8 deposits, take off drawings, quoting jobs and
9 running to the supply house, make sure get
10 materials so the trucks going out in the mornings.

11 Q. Is there some type of job description
12 that you have, a written job description?

13 A. Yeah, I notarize all the papers and all
14 that comes in there, notary. Everything that comes
15 in I notarize, I do that for them and telephone
16 calls, taking service calls.

17 Q. Did you do anything in the field?

18 A. I don't do it anymore, no.

19 Q. Are there certain hours that you work?

20 A. No, sir, just work about ten hours a
21 day.

22 Q. Okay. So you are full-time?

23 A. Yeah, full-time.

24 Q. And how are you paid?

25 A. Paid weekly.

1 Q. Is that by the hour or a salary?

2 A. No, salary.

3 Q. And what is your salary?

4 A. I think it's 1200 a week now. I think
5 that's right. I'm not sure.

6 Q. As I understand it, you own the
7 building that the business is in?

8 A. I do.

9 Q. How long have you owned that building?

10 A. I guess about 30 some years.

11 Q. And you rent the first floor to
12 Charleston Electric?

13 A. Yes, sir, first floor and everything in
14 the yard. We got a building in our back also, a
15 building in the back, supplies in and things like
16 that.

17 Q. And that's rented to the company as
18 well?

19 A. Yeah, that's rented to the company.
20 Everything on the ground is rented to the company.

21 Q. What does the company pay you for rent?

22 A. 3,000 -- I think it's 3,000, 3500 a
23 month. I really don't know.

24 Q. Is there any type of lease agreement or
25 written agreement?

1 A. No lease agreement.

2 Q. And then you live in the second floor
3 apartment?

4 A. Yes, sir.

5 Q. Is there more than one apartment on the
6 premises?

7 A. Only one.

8 Q. Tell me about Miss Rahall sitting there
9 next to you. What is your relationship with her?

10 A. Who's that?

11 Q. Wanda Rahall.

12 A. I met her about seven years ago and she
13 hung on to me.

14 Q. Where did you meet Miss Rahall?

15 A. Well, we met -- I met her down in
16 Nassau.

17 Q. And what's your relationship with her?

18 A. Man and wife. No, I was just teasing
19 you. I been going with her for a good while.

20 Q. So basically your girlfriend?

21 A. Yeah.

22 Q. Okay. And how long have you had that
23 relationship with her?

24 A. About seven years.

25 Q. I take it you know Miss Rabon, Elsie

1 Rabon who is the plaintiff?

2 A. Oh, yeah.

3 Q. You know her through Miss Rahall?

4 A. That's right.

5 Q. Did you know her before you met

6 Miss Rahall?

7 A. No, I didn't.

8 Q. Tell me what your relationship is with

9 Miss Rabon.

10 A. Friend.

11 Q. A friend? How often do you see her?

12 A. I see her about twice a month.

13 Q. Is that still at the present time?

14 A. That's on the weekends. We go down --

15 I go to Myrtle Beach and visit with Wanda and we

16 take her out to lunch and things like that.

17 Q. And where does Miss Rahall live?

18 A. She lives in I guess an old folks home

19 I guess is what you call it.

20 Q. No, I meant Miss Rahall.

21 A. Oh, her.

22 Q. Yeah. I'm guessing she's not in an old

23 folks home.

24 A. She lives on -- what is it? I forget

25 the name of the place now. Ain't that something?

1 The Dunes.

2 Q. Oh, out in The Dunes?

3 A. Yeah, she lives at The Dunes Club.

4 Q. Okay. Does she ever stay with you at
5 the Romney Street address?

6 A. On weekends.

7 Q. On the weekends? Is that the way it
8 was back in 2010?

9 A. Yeah.

10 Q. What is your educational background,
11 sir?

12 A. High school, vocational school. I
13 graduated from Murray Vocational School in the
14 drafting room.

15 Q. Where is that school?

16 A. That was back in -- Charleston. It's
17 no more a vocational school now but back in '44, I
18 think it was. I graduated in '44.

19 Q. All right. Any military service?

20 A. Yes, sir, Coast Guard.

21 Q. I'm sorry, I missed that.

22 A. U.S. Coast Guard.

23 Q. Oh, Coast Guard, okay. How long were
24 you in the Coast Guard?

25 A. Two years.

1 Q. When was that?

2 A. That was from '44, -- no, '45, '46.
3 Got out in '47 I think it was. I really don't
4 know.

5 Q. So mid '40s?

6 A. Yeah. You got it.

7 Q. All right. Any type of criminal
8 record?

9 A. No, sir.

10 Q. Okay. Do you have any relatives here
11 in Charleston County?

12 A. Oh, yeah, all of them.

13 Q. All of them?

14 A. Kornahrens.

15 Q. How about other last names, any other
16 last names?

17 A. Well, my mother was Jackson but most of
18 them died now.

19 Q. Well, I'm more concerned about ones who
20 are living. And the reason I'm asking this is if
21 this case ever goes to trial, I want to know for
22 jury selection.

23 A. Well, I mean, a lot of the Kornahrens
24 got married, got different denominations. I mean,
25 I don't know all the names.

1 Q. Sure.

2 A. But my daughter married a Hoge.

3 Q. Does your daughter live here in
4 Charleston County?

5 A. Yeah.

6 Q. What's her name?

7 A. Diane. Diane Hoge.

8 Q. How do you spell Hoge?

9 A. H-O-U-G-E, I think, isn't it?

10 MS. RAHALL: H-O-G-E.

11 THE WITNESS: G-E.

12 BY MR. LINDEMANN:

13 Q. Okay. Any other children here in
14 Charleston County?

15 A. Oh, yeah, I got my son, Eddie
16 Kornahrens, Jr. He married -- who did he marry?
17 My mind, I tell you, I can't think.

18 Q. How many children do you have total?

19 A. Five.

20 Q. Give me -- and they all live here in
21 Charleston County?

22 A. Yeah.

23 Q. Give me all their names.

24 A. Cynthia Kornahrens, we call her Cindy.
25 She married David Dawson. He died last year.

1 Married for a good many years. Then there was
2 Beverly Dean and she married Van Cris, C-R-I-S, I
3 guess. And then there's Tammy then, Tammy Tanner.
4 She's bipolar. I take care of her. And Eddie. He
5 married -- I don't know what that girl's name was
6 he married.

7 Q. Eddie is your son?

8 A. Yeah.

9 Q. Any brothers or sisters living in
10 Charleston County?

11 A. Yeah, I got a brother, William
12 Kornahrens, and I forget who he married. He
13 married somebody. He was married twice. I can't
14 think of that girl's name.

15 Q. Any other brothers and sisters?

16 A. My sister is Margaret DeStefano,
17 married A.J. DeStefano.

18 Q. I'm sorry, I missed that.

19 A. DeStefano.

20 Q. Stefano?

21 A. DeStefano.

22 Q. Oh, DeStefano, okay.

23 A. Isn't that right?

24 MR. DAVID: He's my neighbor.

25 THE WITNESS: Is he your neighbor?

1 Yeah, next-door to you.

2 BY MR. LINDEMANN:

3 Q. All right, other than the one brother
4 and one sister, is that it?

5 A. That's right, one brother and one
6 sister.

7 Q. Okay. Well, I'll get off of the family
8 questions now.

9 A. Yeah, you got it. Ain't got time.

10 Q. Let's talk about the dog, Gunner.

11 A. Yeah.

12 Q. I see his name is spelled like Gunther
13 but you all called him Gunner?

14 A. I don't know what they called him.

15 Q. What did you call him?

16 A. I called him Dog.

17 Q. Dog? Well, I'll call him Gunner so
18 that we're talking about the same dog, okay? Tell
19 me how you ended up getting Gunner.

20 A. Well, the dog that I had before over at
21 Charleston Electric Company had before was a black
22 Shepherd. Someone give us the dog. And he was a
23 real good dog, we had him for a good many years and
24 all of a sudden developed heartworms. And we took
25 him over to the vet several times to get him some

1 shots and what have you and got so bad that
2 Dr. Patrick said the best thing to do, put him to
3 sleep so we put him to sleep.

4 And the reason we did that is on
5 account of the theft around there. The
6 neighborhood we live in is a lot of black people in
7 the project and what have you and they used to come
8 over the fence and tear up the trucks and tear
9 up -- just steal the copper wire out of the bins
10 and things like this. And I put security lights
11 all the way around, you know, cameras. I had a
12 camera in there and I tried to catch them. I had a
13 camera on my security things all the way around the
14 fence, eyes, you know, anybody break the eye, set
15 off the alarm. I did everything in the world to
16 try to stop them but the only thing that stopped
17 them was the dogs. Put the dogs in there, never
18 had no more problems.

19 Q. Okay. And so after the previous dog
20 died, you went and got Gunner?

21 A. Yeah, we had -- I had -- the Charleston
22 Electric Company had about five or six dogs in
23 there. They either got out and -- got out and
24 left, went down the road and you couldn't catch
25 them, you had to get another one, some of them

1 died. Had a good many dogs in there.

2 Q. Ever have more than one at a time?

3 A. No. Only had one.

4 Q. Where did you get Gunner from?

5 A. I bought him from -- we were looking in
6 the newspaper. Wanda and I was looking in the
7 newspaper trying to replace the dog that put to
8 sleep. And we talked to Johnny about it, you know,
9 replacing the dog. And I said, we better do
10 something because people maybe get over that fence
11 again so I think the best thing to do was get the
12 dog and so we agreed on that. And we found one in
13 the newspaper and a lady on Johns Island had the
14 dog there.

15 She wasn't home when we went there but
16 had a big yard and he was running around in the
17 yard. And I said, that may be the thing we need
18 right there. And so she happened to come in right
19 before we left and we talked to her. She wanted
20 500 dollars for the dog and I didn't want to give
21 her that, I'll give you two and she took it. She
22 gave me a little note saying that she sold it to
23 Charleston Electric Company. And so I put the dog
24 in the back seat, drove on home and never had a
25 problem with him. But the dog -- the dog had a

1 tendency to bark a lot, I mean really bark.

2 Q. Okay.

3 A. And so I went out and -- somebody told
4 me to go out and buy this thing and put it on his
5 neck, he bark and shock him, keep him from barking.

6 Q. Did that work?

7 A. It worked. It worked good.

8 Q. Any other problems other than barking?

9 A. No, never had no problem. The dog
10 never bit anybody, was very playful, throw the
11 ball, he'd go get the ball, bring it back. In
12 fact, the man that owned the dog, the man and the
13 lady that owned, he used to come out there once or
14 twice a year and bring the ball and play with the
15 dog.

16 Q. Did you ever play with the dog?

17 A. I played with him. I mean, I'd throw
18 the ball, he'd go get the ball and come back. The
19 dog jumped up on top of me several times, put his
20 paws up there. Put him down and say sit, he'd sit.
21 He'd never bite you.

22 Q. Did he ever hurt anybody before
23 Miss Rabon?

24 A. Never hurt a soul that I knew of.

25 Q. And never bit anybody, right?

1 A. No, never bit anybody.

2 Q. Would the dog ever attack or was it
3 ever vicious to anybody?

4 A. No.

5 Q. Did you have anybody ever try to enter
6 the fence at night?

7 A. That I don't know but, I mean, you
8 heard him bark and you looked down there and there
9 wouldn't be nobody there, they'd be gone.

10 Q. So his response was to bark?

11 A. Yeah. He did what he was supposed to
12 do.

13 Q. And you're not aware of anybody who's
14 ever been bitten by the dog?

15 A. No, sir.

16 Q. Now, I understand the day of
17 Miss Rabon's accident was August 20th, 2010, is
18 that right?

19 A. I think so.

20 Q. All right. Do you recall what day of
21 the week that was?

22 A. I think it's -- I don't know. I think
23 it may have been on a Friday. I think it was a
24 Friday, yeah.

25 Q. And tell me what was the reason for

1 Miss Rabon being at 60 Romney Street?

2 A. She came down with Wanda for a visit.
3 I think she just got out of the hospital and she
4 came down for a visit, Wanda and myself. And we
5 went out to -- I think she had to go to the doctor.
6 Wanda had to go to the doctor to do something and
7 she went with her. And on the way back they
8 stopped at Hardee's and got a tea or something in a
9 cup. And that's when -- when Wanda came back to
10 see what I was doing in the backyard, then her
11 mother came in behind her and that's when the dog
12 came out of the shop and jumped on her.

13 Q. Okay. So let me make sure I understood
14 all that. So earlier that day Miss Rabon was off
15 with Wanda for a doctor's appointment?

16 A. Um-hum. That's correct.

17 Q. And so then they both came by 60 Romney
18 Street to see you?

19 A. No, they was -- they was staying up
20 there but they came back to Romney Street, they was
21 planning on going to lunch together.

22 Q. Oh, okay. So both of them were staying
23 there at the time?

24 A. That's right.

25 Q. And how long were they staying there

1 for?

2 A. Just Saturday, go back Sunday.

3 Q. Basically over the weekend?

4 A. Yeah.

5 Q. And when they returned, where were you?

6 Where were you when they came back to the premises?

7 A. I was in the backyard straightening up
8 some of the pipe and things. I got to be doing
9 something all the time.

10 Q. So you were in the --

11 A. Outside the building in the backyard
12 straightening up pipe and things like that.

13 Q. Okay.

14 A. Like Johnny said -- like Johnny says,
15 the dog usually on a chain. Had to do that because
16 if you didn't put him on the chain, soon as the
17 gate open, take you half a day to go all around --
18 one time I found him two miles away from the
19 business.

20 Q. Wow. How did you find him?

21 A. Want to run, run, run. And so we
22 got -- all you do, open the door, he'd jump right
23 in. You didn't have to run him down, I'd open the
24 door and he'd jump right in the truck, bring him
25 back. But finding him was the thing. And so we

1 decided we'd put him on a chain, you know, in the
2 mornings. Everybody go leave, run in the yard and
3 do what he wanted to do.

4 But this day was a very hot day and we
5 got a big, huge fan in the warehouse that sucks the
6 air in and goes back out and kind of cool in there.
7 And when we unloosened the dog that morning, he
8 went into the warehouse to get cool, I guess, but
9 we didn't realize he was in that building but he
10 was. And when Wanda's mother and her came in the
11 backyard, he wanted to come out to play. And
12 before I could say anything, he done jumped on her
13 and threw her down. Being playful.

14 Q. So the place where she fell was
15 actually out in the yard?

16 A. Right in the asphalt. On the asphalt.

17 Q. It was not in the warehouse?

18 A. No, not in the warehouse.

19 Q. And who actually saw her fall?

20 A. Just Wanda and myself.

21 Q. Okay. Anyone else around?

22 A. No, I went out and got -- I got the
23 secretary to come back with a chair and we put her
24 in the chair and got her out of the heat, bring her
25 inside the building into the air condition and

1 called EMS.

2 Q. And how long had the dog been off the
3 chain at that point?

4 A. I imagine he was off three, four hours.

5 Q. Okay.

6 A. We didn't keep him chained up all day.
7 It was too hot out there.

8 Q. I had a question and it just escaped.

9 A. You like me.

10 Q. When is the last time you saw the dog
11 before you actually saw him jump on Miss Rabon?
12 How long before was it that you saw him?

13 A. I didn't -- I didn't see the dog until
14 she walked out because, like I said, he was in the
15 building.

16 Q. Oh, okay. And you didn't know he was
17 in the building?

18 A. I didn't know he was in the building.
19 I thought he might be around the corner or
20 something. He never did that before to no one.

21 Q. Had Miss Rabon ever been to your place
22 before?

23 A. Yes, sir.

24 Q. Had she ever been around the dog
25 before?

1 A. Not that dog.

2 Q. Not that dog?

3 A. Hum-um.

4 Q. And why is that? Why had she not been
5 around that dog?

6 A. Well, she hadn't been there in three or
7 four months and the other dog had died and she been
8 around that black dog a good bit.

9 Q. Do you know whether she knew there was
10 a dog on the premises?

11 A. Oh, yeah, she knew the dog was there.

12 Q. How about Miss Rahall, had she ever
13 been around the dog?

14 A. No, sir.

15 Q. No?

16 A. No, no dog.

17 Q. All right, explain that to me. Why is
18 it that she had never been around --

19 A. Like I said, that's the first time she
20 seen the dog.

21 Q. No, no, I was asking -- I'll call her
22 Wanda. How about Wanda?

23 A. Oh, Wanda. Oh, I thought -- I'm
24 thinking -- yeah, Wanda's been around the dog a
25 good bit.

1 Q. Okay. So she wasn't scared of the dog
2 or anything like that?

3 A. No. No, she been around that dog a
4 good bit.

5 Q. Did she ever play with the dog?

6 A. I think she petted him and things like
7 that. He never hurt anybody that I know of.

8 Q. You said that the dog would
9 occasionally put its paws on your -- what, on your
10 chest or on your shoulders?

11 A. Yeah, he did that several times to me.

12 Q. Did you ever see him do it to anyone
13 else?

14 A. Oh, yeah, some of the workers. You
15 know, you push him off and he'd sit down.

16 Q. How about Wanda, did he ever do it to
17 her?

18 A. I don't think so. I think he knew
19 Wanda would slap him.

20 Q. Had you ever seen the dog knock anyone
21 down before?

22 A. Never have. He run from the cat. The
23 cat would go over there and lick him and he'd run
24 away from the cat.

25 Q. That sounds like my house, the cats run

1 the place.

2 A. Yeah. Wasn't much of a watchdog.

3 Q. How many cats were there?

4 A. I got one. I only had one. I got her
5 for 17 years.

6 Q. Did the dog ever go inside other than
7 that day into the warehouse?

8 A. Yeah, he came in. He came in there,
9 you know, follow people around, mope around like
10 anybody else would be but he never did do anything,
11 went back outside.

12 Q. Would he ever go in the office part of
13 the building?

14 A. No, not in the office part.

15 Q. How about your apartment, did you ever
16 have the dog in your apartment?

17 A. Never been in the apartment. Took him
18 down to the vet on a leash, walk him down. It was
19 only about two blocks away from us.

20 Q. Did you ever take him for walks around
21 the neighborhood?

22 A. No.

23 Q. So the only times he would get out of
24 the premises was to go to the vet?

25 A. That's right. And right back.

1 Q. What's that?

2 A. Right back when he got out.

3 Q. When Miss -- the incident involving
4 Miss Rabon, about what time of day was it?

5 A. I think it was around eleven o'clock.
6 Is that right?

7 MS. RAHALL: About 12:00.

8 THE WITNESS: Twelve o'clock?

9 BY MR. LINDEMANN:

10 Q. Your memory is 11:00, her memory is
11 12:00? She'll get her chance to answer the
12 question.

13 A. I don't look at time.

14 Q. Late in the morning?

15 A. Right around noontime. 11:30, twelve
16 o'clock, somewhere around there.

17 Q. Let me backtrack on something. You
18 said that Wanda and her mother had come back from
19 going to the doctor?

20 A. She mentioned the doctor, Wanda did.
21 Wanda went to the chiropractor I think it was.

22 Q. Okay.

23 A. And then on the way back she tell me
24 they stopped at Hardee's and got a tea or something
25 in a cup and came on back to the shop.

1 Q. Tell me what you know about what
2 happened after they came back to the shop. Where
3 did they go?

4 A. Well, I was in the backyard, like I
5 said. I was in the backyard. Next thing I knew,
6 Wanda walked out there and told me that she just
7 got back from the chiropractor, the doctor. And
8 wasn't three or four minutes, then her mother
9 walked out there and started talking to me and the
10 three of us standing there together and the dog
11 came flying out the door and jumped on her and also
12 Wanda. Wanda got away from him.

13 Q. So Wanda was still outside talking to
14 you when her mother walked out?

15 A. Um-hum.

16 Q. Okay. And the three of you were
17 standing there talking?

18 A. Right.

19 Q. Was that the first time that day that
20 you saw her mother?

21 A. What now?

22 Q. Was that the first time that day that
23 you saw her mother?

24 A. I saw her mother?

25 Q. Her mother, Miss Rabon. Was that the

1 first time you saw her that day?

2 A. I saw her before we left the house.

3 Q. So she had already been staying the
4 previous night?

5 A. Um-hum. Yeah.

6 Q. Was Miss Rabon carrying anything?

7 A. A cup, a cup of ice tea.

8 Q. Any food?

9 A. No food.

10 Q. Did she do anything to alert the dog or
11 cause the dog to become playful?

12 A. She didn't even see that dog. I didn't
13 either.

14 Q. Okay. When you say you didn't see the
15 dog, you didn't see the dog until after he had
16 already jumped up on her?

17 A. No, came out the door. There's no
18 farther -- maybe 10, 15 feet from the door, that's
19 where the dog came out.

20 Q. Did the dog -- when the dog -- so the
21 dog jumped up on her?

22 A. Yeah, two paws, just boom.

23 Q. Okay.

24 A. Push her down.

25 Q. So the way you're describing, she can't

1 pick that up on the --

2 A. Had two paws up on her shoulders.

3 Q. Two front paws up on the shoulders?

4 A. And pushed her down.

5 Q. To her front or to her back?

6 A. Front.

7 Q. Did it push her then backwards?

8 A. Pushed her to the side.

9 Q. And how close were you standing to her
10 when that happened?

11 A. Oh, I don't know, maybe five feet.'

12 Q. How close was Wanda standing to her?

13 A. Right next to her. Hit her too.

14 Q. Did either of you try to catch
15 Miss Rabon before she fell?

16 A. Yeah, I tried but, I mean, too late.

17 Q. Okay. How about Wanda, was she able to
18 catch her?

19 A. She was trying too. I tried to get --
20 you know, I told the dog. The dog sat down then.
21 I went to holler at him and he sat right down and
22 looked at me.

23 Q. So you said she fell on her side?

24 A. I think she fell on her left-hand side,
25 I think.

1 Q. Her left side. Okay. Did she say
2 anything after she fell?

3 A. No, she didn't say nothing. Whoa,
4 whoa, whoa, I'm hurting.

5 Q. So she appeared to be hurt?

6 A. Yeah.

7 Q. What did she say was hurting?

8 A. She sat down in -- back here hurting.
9 So I wouldn't let her move until I went inside and
10 got the secretary to get a chair and help me put
11 her in the chair and towed her in by the chair into
12 the cool and then called EMS.

13 Q. Okay. And EMS took her to the
14 hospital?

15 A. Um-hum.

16 Q. Did you go to the hospital as well?

17 A. Yes.

18 Q. What hospital did she go to?

19 A. Roper.

20 Q. And how did she appear after the
21 incident? Did she appear to be in pain of any
22 kind?

23 A. Oh, yeah, a lot of pain.

24 Q. What did she say? How do you know
25 that, let me ask you that.

1 A. She told me.

2 Q. She told you?

3 A. Been hurting.

4 Q. Going back to where the dog actually
5 put his paws on her, did the dog snarl or was it
6 vicious in any way?

7 A. No. Sure wasn't.

8 Q. Would you describe it as an attack or a
9 playful maneuver?

10 A. Playful.

11 Q. Playful?

12 A. Yeah.

13 Q. Okay. Is there anything you could have
14 done to have stopped it?

15 A. No. I don't think anybody could have
16 stopped that. It was a pure accident.

17 Q. Had Mrs. Rabon ever been in the
18 backyard before, in the fenced-in yard?

19 A. She might have been there one time or
20 something like that, I don't -- I really don't -- I
21 can't remember that.

22 Q. But you feel confident that she knew
23 there was a dog back there?

24 A. I don't know whether she remembered
25 that or not.

1 Q. Oh, you don't know that?

2 A. I don't know whether she knew that or
3 not.

4 Q. How about the previous night while she
5 was staying there, did the dog ever bark?

6 A. No, she didn't -- she didn't go in the
7 yard. Bark?

8 Q. Yeah, did the dog bark?

9 A. That dog bark all the time.

10 Q. Okay. So if she was staying in your
11 apartment, would she hear the dog bark?

12 A. The dog barking.

13 Q. So more than likely would it be fair to
14 say she knew there was a dog?

15 A. Well, it could have been the dog
16 next-door too because they had a dog over there too
17 barking all the time.

18 Q. Did you all ever talk about there being
19 a dog?

20 A. I told her, yeah. She knew I had a
21 dog.

22 Q. She knew you had a dog?

23 A. Yeah.

24 Q. Okay. Did you ever give her any
25 warnings to stay out of the backyard and away from

1 the dog?

2 A. No, I didn't give no warning.

3 Q. Did you all ever have any beware of dog
4 signs or anything along those lines posted?

5 A. No, sir.

6 Q. Not even on the fence outside?

7 A. Not on the fence either.

8 Q. Have you seen Miss Rabon recently?

9 A. Yes, sir.

10 Q. How is she doing?

11 A. Well, she's doing fairly good, I
12 reckon.

13 Q. All right. And what kind of injuries
14 did she sustain from your knowledge from the
15 incident with the dog?

16 A. I think the hip broken in three places
17 as I'm told.

18 Q. How did she get around after that?

19 A. Not too good.

20 Q. Okay. Did she have to use any type of
21 walker?

22 A. Walker, um-hum.

23 Q. Is she still using a walker?

24 A. I bought her a wheelchair and all.

25 Q. Does she still use a walker?

1 A. From time to time I think.

2 Q. Does she still ever use a wheelchair?

3 A. Don't use the wheelchair no more.

4 Q. How about any type of cane?

5 A. I don't know whether she's got a cane
6 or not.

7 Q. Have you ever seen her walk with a
8 cane?

9 A. No.

10 Q. Has she ever stayed at your apartment
11 since that -- since last August?

12 A. No, sir.

13 Q. Has she been back to 60 Romney Street
14 for any reason?

15 A. No, sir.

16 Q. So you've only seen her in Myrtle
17 Beach?

18 A. That's right.

19 Q. Have you seen her since then walk
20 without a walker?

21 A. Yes, I've seen her walking around
22 without her walker but she's not walking very good.

23 Q. I understand. Are you aware of any
24 other health problems that she has?

25 A. No, sir.

1 Q. So other than this accident and the
2 injured hip, she's doing fine otherwise?

3 A. I'm no doctor but I think she's doing
4 pretty fairly.

5 Q. To your knowledge?

6 A. To my knowledge.

7 Q. How often do you see her these days,
8 still twice a month?

9 A. I see her a couple times a month.

10 Q. Okay. Let me ask you about something.

11 (DFT. EXH. 1, Letter dated 3/25/11 to
12 Jason Boan, Attorney-At-Law, from George
13 Kornahrens, Assistant Manager, was marked for
14 identification.)

15 BY MR. LINDEMANN:

16 Q. Let me show you what we've marked as
17 Exhibit Number 1. Let me ask you about that
18 letter. Tell me why you wrote that letter.

19 A. Why I wrote it?

20 Q. Yes.

21 A. Who did I write it to?

22 Q. Well --

23 A. That's Jason, yes. He's the one
24 representing Wanda's mother.

25 Q. And why did you write him that letter?

1 A. To explain to him what went wrong that
2 day or what went right.

3 Q. But why did you feel the need to write
4 that letter? Were you asked for that letter?

5 A. No, I thought got to do that. He hired
6 a lawyer so I wanted to let the lawyer know how I
7 felt about what happened.

8 Q. Okay. Did you know at the time you
9 wrote that letter that there was already a lawsuit
10 filed?

11 A. No, sir. Didn't know anything about a
12 lawsuit.

13 Q. Okay. Prior to today have you met
14 Mr. Boan before?

15 A. No, sir. First time I seen him.

16 Q. Ever speak to him before?

17 A. No, sir.

18 Q. How did you decide what to put in the
19 letter?

20 A. I tried to tell you the truth.

21 Q. Let me put it this way. Did anybody
22 suggest to you what to write?

23 A. No. I wrote it myself.

24 Q. Did anybody tell you what types of
25 things to put in there, what types of questions to

1 ask?

2 A. No.

3 Q. Let me ask you about -- when you get
4 done with that.

5 MR. DAVID: I'm sorry.

6 MR. LINDEMANN: No, that's fine. If
7 you need to look at it, that's fine.

8 MR. DAVID: That's okay.

9 BY MR. LINDEMANN:

10 Q. On the second page, Mr. Kornahrens, the
11 sentence that starts Charleston Electric Services
12 is a business that is open to the public?

13 A. Um-hum.

14 Q. Do you see that?

15 A. Yes, sir.

16 Q. And tell me why you included that
17 paragraph in the letter.

18 A. Well, I wanted to let everybody know
19 that that door was open to anybody comes in there,
20 all kind of people comes in from time to time and
21 walks through the building and there's no
22 restriction on our part to keep them out of the
23 building. I mean, such as maybe the people
24 next-door running a carpenter shop. At various
25 times they come in, walk right on through the

1 warehouse, come in the backyard to see me or talk
2 to Johnny or what have you and that's the reason I
3 put it in there. I mean, it was open to the
4 public. All walks alike walks in that door wanting
5 to know how to get to certain places, they get
6 lost. You'd be surprised the people that come in
7 there.

8 Q. And why do you think this was important
9 to put in the letter?

10 A. Well, I just wanted you to know that on
11 account of her getting hurt. It's open to the
12 public. Anybody else could have got hurt also.

13 Q. And she wasn't -- by she, I mean
14 Mrs. Rabon wasn't a customer of the business, was
15 she?

16 A. No, no.

17 Q. She was there as your guest?

18 A. As I say, anybody -- any one of my
19 guests. We have get-togethers throughout the year,
20 you know, various people come in and have little
21 get-togethers in the back of the warehouse, the
22 door be open. The door was open and could have
23 happened to one of those.

24 Q. But you agree with me she was there as
25 your guest?

1 A. Yeah.

2 Q. She wasn't there for anything related
3 to the business?

4 A. No, not related to the business.

5 (DFT. EXH. 2, Letter dated 9/21/10 to
6 Melinda at Selective Insurance Company of America
7 from George E. Kornahrens, Business Manager, was
8 marked for identification.)

9 BY MR. LINDEMANN:

10 Q. Let me show you a second letter. Is
11 everything -- did you just get a chance to read
12 that September 21st, 2010 letter?

13 A. Yeah, I read it.

14 Q. Is that a letter that you prepared?

15 A. Yes, sir.

16 Q. Is that your signature at the bottom?

17 A. Yes, sir.

18 Q. Is everything in that letter correct?

19 A. As far as I know.

20 Q. In this letter you indicated that you
21 let the dog loose from its chain about five minutes
22 before the incident?

23 A. Maybe so. I didn't have time. I just
24 wrote that thing like that because I don't know
25 what time I let him loose.

1 Q. Earlier I think you told me that you
2 hadn't seen the dog for like three or four hours?

3 A. Yeah, down in there, something like
4 that. I forget when let him loose.

5 Q. So you're not certain which is correct?

6 A. Humm?

7 Q. You're not certain which is correct,
8 whether it was five minutes before or three hours
9 before?

10 A. I didn't let the dog loose to start
11 with, someone else did.

12 Q. Okay.

13 A. I think one of the workers did.

14 Q. In this letter you say -- read along
15 with me. It says -- about halfway through it says,
16 about five minutes before both of them came, I let
17 the company's dog loose from its chain so it could
18 go in the building to cool off.

19 A. Um-hum.

20 Q. Is that not correct?

21 A. That's what I said then.

22 Q. Is that -- that's definitely what you
23 wrote. Is that correct?

24 A. That's what I wrote.

25 Q. Is that correct?

1 A. That's what I wrote but it might not
2 have been correct as far as the time is concerned.

3 Q. And is it your testimony today that
4 somebody else let the dog off the chain?

5 A. May have been. I don't -- so far back,
6 my memories don't -- I can't remember things like
7 that.

8 Q. Okay.

9 A. Must have been more than five minutes
10 because Wanda came in first. The dog was out then.

11 Q. Now, I have been provided some
12 documents about the dog, American Kennel Club
13 records for the dog as well as these letters. I
14 got those from Mr. Boan. Do you know how he got ,
15 those?

16 A. Mr. Who?

17 Q. The lawyer for Miss Rabon.

18 A. No.

19 Q. You don't know how he got those?

20 A. What?

21 Q. The documents I was talking about.

22 A. These here?

23 Q. Those letters as well as documents
24 regarding the dog.

25 A. Which one do you want? This one here. I

1 sent to him.

2 Q. I know you sent that one to him. What
3 I'm asking you is -- here, I'll show you. I've got
4 some records here regarding the dog. You can take
5 a look and flip through those.

6 A. All right. This first letter is
7 correct.

8 Q. All right. I'm asking you just to look
9 at the documents for right now.

10 A. Um-hum. This is where they sold the
11 dog.

12 Q. Okay.

13 A. Yeah, that right there.

14 Q. Just look at them, Mr. Kornahrens, and
15 then I'll ask you a question about them.

16 A. Okay. Oh, that must have come out of
17 that manual that she give me, is that correct?

18 Q. I don't know. I don't know where that
19 came from. That was going to be my question to
20 you, is where did these documents come from?

21 A. They came from a big manual that the
22 lady had on the dog and I give the manual to the
23 gentleman that I give the dog to.

24 Q. All right. So these papers on the dog,
25 you gave those to the person you gave the dog to?

1 A. Yeah, he got a whole big manual.

2 Q. And who did you give --

3 A. I think -- she told me yesterday that I
4 was going to get the manual and bring here. I
5 called the owner of the dog and he said that he
6 would give me the manual. She said she already
7 give -- took pictures of it. I didn't know that.
8 Wanda. Wanda took the pictures of the whole
9 manual.

10 Q. Did you give these documents to anyone
11 other than the person you gave the dog to?

12 A. No, sir. Sure didn't.

13 Q. What's the name of the person you gave
14 the dog to?

15 A. You got that? I talked to him last
16 night about it (indicating).

17 Q. You don't need to go through those
18 anymore.

19 A. Okay.

20 Q. I guess just for the record, Neat Hoft
21 is the guy's name?

22 A. That's what he told me.

23 Q. N-E-A-T, first name, H-O-F-T, second
24 name.

25 A. Neal.

1 Q. Oh, Neal.

2 A. Neal, isn't it?

3 Q. Looks like a T to me. Why don't you
4 read it into the record, if you would.

5 A. I think it's Neal.

6 MR. DAVID: Just for the record, you
7 gave me this today.

8 THE WITNESS: Neal, yeah.

9 MR. DAVID: And you think his name is
10 Neal Hoft?

11 THE WITNESS: Yeah.

12 MR. DAVID: His cell phone number is
13 214-080-4009 (sic)?

14 THE WITNESS: 214-0809.

15 MR. DAVID: All right.

16 BY MR. LINDEMANN:

17 Q. And when did you give the dog to
18 Mr. Hoft?

19 A. Oh, I imagine it was three or four days
20 after the accident.

21 Q. And why did you do that?

22 A. Or am I wrong? I done forgot.

23 Q. Why did you do that?

24 A. Because I didn't want it to happen
25 again. I figured get rid of the dog and I'd get me

1 another dog, you know, the company one.

2 Q. And you were going to get another dog?

3 A. I said I was going to get another one.

4 Q. Whatever happened with that, did you
5 get another one?

6 A. Didn't do it. Johnny said he didn't
7 want to fool with the dogs anymore.

8 Q. Was Wanda ever an employee of
9 Charleston Electric?

10 A. No, sir.

11 MR. LINDEMANN: I think that's all the
12 questions I have. Thank you, sir.

13 MR. DAVID: I don't have any questions.

14 EXAMINATION

15 BY MR. BOAN:

16 Q. George, my name is Jason Boan. As
17 you're aware, I represent Elsie Rabon in a personal
18 injury claim that's been filed against Charleston
19 Electrical Services.

20 A. Yes.

21 Q. You were brought into this not by us
22 but by somebody else suing you and alleging that
23 certain actions you took individually are the cause
24 or part of the cause for Miss Elsie's injuries.
25 That being said, I would like to ask you a few

1 things about what happened. Did anybody see what
2 happened other than you, Elsie and Wanda?

3 A. No.

4 Q. Nobody else was present?

5 A. Nobody.

6 Q. Okay. Did you see anything that
7 Miss Elsie Rabon did to cause Gunner to jump up on
8 her?

9 A. No, sir.

10 Q. Have you ever seen Gunner attack
11 anybody?

12 A. No, sir.

13 Q. But you have seen him on occasion jump
14 up on someone?

15 A. Oh, yeah, myself included.

16 Q. How do you know what the dog's
17 intentions are when he jumps up on someone?

18 A. Well, I don't know. He didn't --
19 didn't show me his teeth so I figured he was all
20 right.

21 Q. In your stepson's deposition, I asked
22 him about Exhibit -- Madam Court Reporter, Number
23 2, I believe it is, could you show George that
24 exhibit?

25 George, that's Plaintiff's Exhibit

1 Number 2 to John Oakley's deposition, something
2 that John said he had never seen before. Have you
3 ever seen that before?

4 A. Yeah, she sold the dog to me, Johns
5 Island.

6 Q. Is that the receipt from the purchase
7 of the dog?

8 A. Absolutely.

9 Q. Okay. It has been alleged that Elsie
10 is somewhat -- comparatively at fault for what
11 happened, that she played some role in the causing
12 of the injury that she sustained. Do you know of
13 anything she did to cause what happened to her?

14 A. Absolutely not.

15 Q. Were you working at the time she came
16 to see you?

17 A. No, standing up there talking to Wanda.

18 Q. Were you straightening up pipes?

19 A. Yes, pipes and wire and things back in
20 the back.

21 Q. Were you out in the backyard doing
22 anything for your own house or your own personal
23 benefit?

24 A. No, company.

25 Q. Were you still on the clock, so to

1 speak?

2 A. Yeah.

3 Q. And were they there to visit you during
4 business hours?

5 A. That's correct.

6 Q. Dog never comes into your apartment?

7 A. Never been in my apartment, never been
8 in the office.

9 Q. And other than you going to get him
10 because he escaped or you taking him to and from
11 the vet, he never really left outside that fence?

12 A. Never been outside that fence.

13 Q. Any other purpose for that dog existing
14 other than to act as a security dog for Charleston
15 Electrical Services?

16 A. That's all we got him for.

17 Q. There was a letter that you had written
18 to Melinda Sinclair. Why did you write that
19 letter?

20 A. What letter?

21 Q. Let me show you real quick. It's noted
22 as Defendant's Exhibit Number 2. There was two
23 letters you wrote.

24 A. Yeah.

25 Q. One was directed to my office, one was

1 directed to Melinda Sinclaire. Who is that?

2 A. I think Johnny asked me to write a
3 letter to them to try to enlighten them what went
4 on because I was back there. He didn't -- he
5 wasn't there. He said you should write the letter
6 to them so I think that's what it was.

7 Q. And that letter's truthful and honest
8 to the best of your knowledge?

9 A. Best of my knowledge.

10 Q. And the same way with the other letter
11 that was written to my office, it's truthful and
12 honest to the best of your knowledge?

13 A. Right, best of my knowledge.

14 Q. Is there any restrictions at Charleston
15 Electrical Services that prohibits guests from
16 coming to visit employees at the business?

17 A. No, sir. Not that I know of.

18 Q. And you would know because you've owned
19 it as long as anybody, right?

20 A. Right.

21 Q. You've been an employee there longer
22 than anybody as best you know, correct?

23 A. Yes, sir. People comes and goes in
24 that place daily.

25 Q. And there's no signs on any of the

1 doors leading to the outside that says beware of
2 dog or do not enter?

3 A. No, sir. In fact, we had the OSHA man
4 in the other day on another occasion and he messed
5 with the place and give us the okay, didn't need no
6 sign. So the OSHA man came in and gave us the
7 okay. A few miscellaneous things we had to do.

8 MR. LINDEMANN: George, that's all the
9 questions I have.

10 THE WITNESS: Thank you.

11 EXAMINATION

12 BY MR. LINDEMANN:

13 Q. A couple follow-ups, Mr. Kornahrens.
14 Mr. Boan asked you whether you were on the clock.
15 Did you actually punch a time clock?

16 A. No.

17 Q. Okay.

18 A. I get up five o'clock every morning and
19 I'm out there at six o'clock every morning opening
20 the doors, putting the coffee pot on, feed the
21 cats, the dogs, get everything ready to go. When
22 they walk in the door at 7:30, they ready to go.
23 When they leave, then I lock up everything, all the
24 doors locked up, I goes upstairs.

25 Q. All right. And so did you keep track

1 of your hours in any way?

2 A. No, sir, don't keep track of them.

3 Q. You were paid by salary?

4 A. Salary.

5 Q. Did you ever take a lunch hour?

6 A. I go eat every day.

7 Q. All right. Did you go out to eat?

8 A. Yes, sir.

9 Q. Or did you go up to your apartment to
10 eat?

11 A. Sometimes. Sometimes I go out to eat.

12 Q. So sometimes during the day you'd go to
13 your apartment?

14 A. Sometime. Very rarely.

15 Q. Back to Miss Rabon at the time of the
16 incident with Gunner. You told me she was holding
17 a ice tea in her hands, right?

18 A. That's what I was told, it was ice tea.
19 Might have been a drink, I don't know.

20 Q. She was holding a drink?

21 A. Yes, sir.

22 Q. A drink from a fast-food restaurant in
23 her hands?

24 A. Yes, sir.

25 Q. Was she holding anything else?

1 A. No, sir. That I seen.

2 MR. LINDEMANN: That's all I have.

3 Thanks.

4 MR. BOAN: Nothing further from me.

5 MR. DAVID: No questions.

6 MR. BOAN: The deposition is concluded.

7 Thank you.

8 (WHEREUPON, the proceedings concluded
9 at 3:23 PM.)

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1 CERTIFICATE OF REPORTER

2 I, Terri L. Brusseau, Registered
3 Professional Reporter and Notary Public for the
4 State of South Carolina at Large, do hereby certify
5 that the foregoing transcript, Pages 1 through 56,
6 is a true, accurate and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 2nd day of December, 2011 at
12 Charleston, Charleston County, South Carolina.

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Terri L. Brusseau,
Registered Professional Reporter,
Certified Realtime Reporter
My Commission expires
March 24, 2016.

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3	GEOREG E. KORNAHRENS	3	11
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11	9/21/10 to Melinda at		
	Selective Insurance Company of		
12	America from George E.		
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Charleston Electrical Services, Inc.

P. O. Box 21348
Charleston, SC 29413
Phone (843)722-8304 Fax (843)577-2140

March 25, 2011

Jason Boan, Attorney at law
1500 Hwy 17 N.
Surfside Beach, SC 29575
Attn: Jason Boan

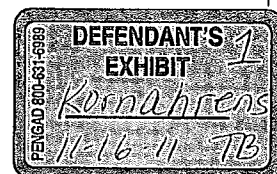
RE: Elsie Rabin vs.
Selective Insurance

Dear Mr. Boan:

To set the record straight, I George E. Kornahrens do live at 60 Romney Street, Charleston, SC 29403, 2nd floor. I have owned this building for thirty (30) years and I am the Business Manager for Charleston Electrical Services, Inc. The downstairs and warehouse are being leased to Charleston Electrical Services, Inc. to conduct their business.

On August 20, 2010, Wanda Rahall and her mother, Elsie Rabin, who were visiting me, came through the back door of the warehouse looking for me. The dog, Gunther, was so excited to have visitors; he jumped on Ms. Rabin, knocking her down. I ran inside and got a chair and Wanda and I put Ms. Rabin in the chair and brought her inside the building and called EMS. She was transported to and admitted to Roper Hospital here in Charleston. I believe we took the necessary steps to get Ms Rabin medical care as soon as was possible.

Over the years, we (Charleston Electrical) have had a good bit of trouble with our vehicles in the back yard, being broken into and having to file insurance claims to recoup our losses. Our solution was to get a dog. We have had numerous dogs in the last twenty years, without incident. Because of the dogs, we have not had any more break-ins, thereby saving money on our insurance premiums and saving our insurance company from having to pay out for claims. All of our dogs have been owned by Charleston Electrical Services. All of the bills for Gunther's veterinary visits were paid by Charleston Electrical services. All of the dog food and supplies were furnished by Charleston Electrical Services. Almost all of the employees of Charleston Electrical Services, over the years, have played with the dogs and participated in their care. Gunther was a company dog. This incident was an accident. Even 100 pound dogs are playful and do not realize how fragile some of us humans are



Mar. 25. 2011 2:59PM CHARLESTON ELECTRICAL

No. 1058 P. 2/2

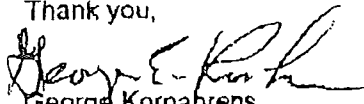
Wanda Rahall and I, nor any of Charleston Electrical Services, are responsible for the actions of the dog. There was no malice involved from the dog, nor from any one at Charleston Electrical Services, Inc..

Charleston Electrical Services, Inc. is a business that is open to the public. We have regular people come in our doors every day. Salesmen, deliverymen, contractors, insurance agents, preachers, and family members all come through our doors on a daily basis.

This is the first major claim we have filed with our insurance company after being with them for many years. We just cannot understand what is taking so long to settle this case. It was an accident and accidents happen every day.

If you have any questions, please contact me office at 843-722-8306 or via email at charlestonelectr@bellsouth.net.

Thank you,


George Kornahrens
Business Manager

Charleston Electrical Services, Inc.

P. O. Box 21345
Charleston, SC 29413
Phone (843)722-8304 Fax (843)577-2140

September 21, 2010

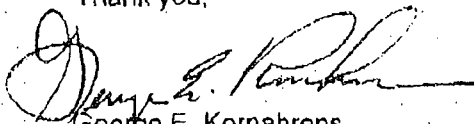
Selective Insurance Company of America
P.O. Box 408
Isle of Palms, SC 29451
Attention: Melinda Sinclair

RE: Claim #21010307
August 20, 2010
Incident at 60 Romney Street, Charleston, SC

Dear Melinda:

On Friday, August 20, 2010, I, George E. Kornahrens, Business Manager of Charleston Electrical Services, Inc., was in the backyard of Charleston Electrical Services, Inc. located at 60 Romney Street, Charleston, SC. Wanda Rahall, my friend, joined me back there after just coming back from a doctor's appointment and picking up some tea from a fast food store. Her mother, Elsie Rabin, was here also and was just coming into the backyard to see myself and Wanda. About 5 minutes before both of them came, I let the company's dog loose from his chain, so he could go in the building to cool off. When Elsie came into the backyard, the dog saw her and wanted to play. The dog came out of the building, saw Elsie, stood on his hind legs and pushed Elsie down. I saw this happen out of the corner of my eye and immediately pushed the dog away from Elsie. It was a very hot day, so we wanted to get Elsie inside the building. Wanda and I picked her up and I went into the building to get a chair and my secretary, Francie Castle, to assist in getting Elsie inside the building. We sat Elsie in the chair and put the chair on a small table with wheels so we could wheel her in the building. Once we got her in the building, out of the heat, we call 911 EMS. They came pretty quickly and took her to Roper Hospital.

Thank you,



George E. Kornahrens
Business Manager



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

ELSIE MAE RABON,

Plaintiff,

vs.

CASE NO. 2010-CP-10-10666

CHARLESTON ELECTRICAL SERVICES, INC.,

Defendant/Third-Party Plaintiff,

vs.

GEORGE E. KORNAHRENS and WANDA RAHALL,

Third-Party Defendants.

DEPOSITION OF: JOHN M. OAKLEY

DATE: November 16, 2011

TIME: 1:09 PM

LOCATION: Law Offices of Dan M. David
147 Wappoo Creek Drive, Suite 101
Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 APPEARANCES OF COUNSEL:

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13 SERVICES, INC.:

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21 GEORGE E. KORNAHRENS and WANDA RAHALL:

22 DAN M. DAVID
23 147 Wappoo Creek Drive, Suite 101
24 Charleston, SC 29412
25 (843) 571-1893
dan@charlestonlegal.com

ALSO PRESENT:

George E. Kornahrens
Wanda Rahall
(INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION

2 It is stipulated by and among Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent does not waive reading
9 and signing of this deposition.

10 * * * * *

11 JOHN M. OAKLEY

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. BOAN:

15 Q. Mr. Oakley, my name is Jason Boan. I'm
16 an attorney in Horry and Georgetown Counties. I
17 have the pleasure of representing Miss Elsie Rabon
18 in a matter that's been filed in a Charleston
19 County court. Your deposition has been scheduled
20 here with proper notice to the attorneys and the
21 parties and we're here today to conduct the
22 deposition mostly just to find the facts out of the
23 case to hear what each party might testify to if
24 the matter went to trial. Have you ever had your
25 deposition taken before?

1 A. Yes, sir.

2 Q. You know a little bit about how the
3 process is?

4 A. Yes, sir.

5 Q. Let me just lay a few little
6 foundational rules. First of all, I don't want you
7 to answer a question that you don't understand. If
8 I say something that doesn't make any sense or use
9 language or words that you don't understand, please
10 ask me to rephrase my question.

11 A. Yes, sir.

12 Q. I'm going to assume if you answer a
13 question that you understood it. Is that fair?

14 A. Yes, sir.

15 Q. Secondly, this is -- we've scheduled
16 them about an hour apart. I don't know how long
17 they're going to take, it's not going to take a
18 long time, but if you need the restroom or want a
19 break, you are more than welcome to during the
20 process of this to let me know with the permission
21 of the other attorneys and the Court Reporter, we
22 can go off the record and you can go use the
23 restroom or get a drink, whatever.

24 A. Okay.

25 Q. Ready to start?

1 A. Sure.

2 Q. Okay. Give me the benefit of your
3 address.

4 A. My personal address?

5 Q. Yes, sir.

6 A. [REDACTED].

7 Q. And who lives at that address?

8 A. Me, my wife and my three daughters and
9 my dog.

10 Q. What are the ages of your daughters?

11 A. 17, 11 and 7.

12 Q. And do you have any other relatives in
13 this county that carry the last name other than
14 Oakley?

15 A. I got my mother and my brother.

16 Q. What are their last names?

17 A. Maria Kornahrens and Frank Joseph
18 Oakley.

19 Q. May sound odd why I'm asking that but
20 we may have to pick a jury at some time in the
21 future and I don't want to put your relatives on
22 the jury panel. There's no other relatives that
23 you have in this county that would have the last
24 name other than Kornahrens and Oakley?

25 A. No, sir.

1 Q. Okay. Are you a member of any social
2 organizations?

3 A. I'm a member of the Rifle Club, that's
4 about it.

5 Q. Are you a member of a church?

6 A. We go to church periodically but -- a
7 Catholic church, yes, sir.

8 Q. What church is that?

9 A. It's Christ Our King.

10 Q. Take no offense, everyone's always
11 asked this, do you have any criminal record?

12 A. No, sir.

13 Q. Ever been arrested for anything?

14 A. Yes, sir.

15 Q. What have you been arrested for?

16 A. Possession of marijuana.

17 Q. That charge dismissed?

18 A. Yes, sir.

19 Q. Ever been involved in any lawsuits on a
20 personal level?

21 A. No, sir.

22 Q. Never been sued?

23 A. No, sir.

24 Q. Never sued anybody?

25 A. Excuse me, I have been sued for partial

1 land that belonged to me and my brother that had
2 pipes running through another parcel of land that
3 belonged to another individual and he sued us
4 because he thought the pipes needed to be removed.

5 Q. You had indicated you had had your
6 deposition taken before. Was it in that action?

7 A. That and another incident with our
8 company.

9 Q. Okay. We'll get to the company in a
10 few minutes. Does your wife work?

11 A. She does.

12 Q. Where does she work at?

13 A. The Medical University.

14 Q. What does she do there?

15 A. She's an MRI director.

16 Q. Is she a member of any social groups?

17 A. No, sir.

18 Q. A garden club, book club?

19 A. No, sir.

20 Q. How far did you go in school?

21 A. I ended up getting my GED and going to
22 Trident Technical College, was studying to be a
23 draftsman when AutoCAD came out and went into the
24 electrical field.

25 Q. And what is your experience in the

1 electrical field?

2 A. This is my 22nd year in the electrical
3 business.

4 Q. I guess I should ask, how old are you?

5 A. 44.

6 Q. And what does your professional resume
7 consist of in the electrical field?

8 A. I have my electrical license and
9 working in the field for 22 years.

10 Q. How long have you been involved with
11 Charleston Electrical Services?

12 A. 22 years.

13 Q. Has all your employment experience been
14 through Charleston Electrical Services?

15 A. Pertaining to electrical?

16 Q. Um-hum.

17 A. Yes, sir.

18 Q. And what is your job title with
19 Charleston Electrical Services?

20 A. I'm president.

21 Q. And what other titles have you held
22 prior to that title?

23 A. Journeyman.

24 Q. Anything else?

25 A. Helper.

1 Q. What's the distinction between a
2 journeyman and a helper?

3 A. A helper is someone who comes on to
4 learn the electrical field with no knowledge of the
5 electrical business in the beginning.

6 Q. Kind of like an apprentice?

7 A. Yes, sir.

8 Q. And then journeyman is the next step
9 up?

10 A. Journeyman is the one who is teaching
11 the helper and pretty much running the job.

12 Q. I've heard the phrase master
13 electrician. Does that apply in your business?

14 A. I'm a master electrician now.

15 Q. Any other job titles you've held with
16 the corporation other than that?

17 A. No, sir.

18 Q. Has the business been incorporated as
19 long as you've been involved with it?

20 A. No, sir.

21 Q. When did the business become
22 incorporated?

23 A. After -- Charleston Electric filed for
24 bankruptcy and Charleston Electrical Services
25 incorporated, became a new business.

1 Q. Approximately what year was that?

2 A. 1992.

3 Q. And since 1992 has it acted as an
4 incorporated business?

5 A. Yes, sir.

6 Q. And when you say you're the president,
7 is that by virtue of the bylaws and the way the
8 corporation is set up through its corporate
9 documents?

10 A. Yes, sir.

11 Q. What type of work does Charleston
12 Electrical Services do?

13 A. Commercial residential service.

14 Q. All electrical?

15 A. Yes, sir.

16 Q. No plumbing?

17 A. No, sir.

18 Q. No construction? Just the wires and
19 the connections and that sort of thing?

20 A. Yes, sir.

21 Q. Are there any other presidents other
22 than yourself?

23 A. No, sir.

24 Q. Who are the owners of the corporation?

25 A. Me.

1 Q. Are you the sole owner of the
2 corporation?

3 A. Yes, sir.

4 Q. Are there any other shareholders?

5 A. No, sir.

6 Q. Anybody you answer to?

7 A. No, sir.

8 Q. How many employees do you have?

9 A. 15.

10 Q. How many of those work in the field?

11 A. 12.

12 Q. And does that 15 include yourself or
13 are you separate from the 15?

14 A. I'm separate.

15 Q. So there's three others that -- how
16 would we describe what the job is of those other
17 three individuals?

18 A. There's Mr. Kornahrens, who is the
19 business manager, and Deborah Cobb, who basically
20 takes care of accounting and answers the telephone,
21 takes service calls, building, et cetera, and then
22 I'm in the office bidding jobs and out in the field
23 making sure jobs are getting completed correctly
24 and I help endeavor with building.

25 Q. And who is Francie?

1 A. Francie Castle is a retired employee of
2 Charleston Electrical Services, Incorporated.

3 Q. When did she retire?

4 A. Last year.

5 Q. Anybody else work inside the office
6 other than George --

7 A. No, sir.

8 Q. -- and Deborah and occasionally
9 yourself since you go -- do you have an office
10 inside the dwelling?

11 A. Yes, sir.

12 Q. Do you all own or rent the premises?

13 A. Rent.

14 Q. And who do you rent it from?

15 A. Mr. Kornahrens.

16 Q. Is that by a written lease agreement?

17 A. Not that I know of. I've never seen a
18 written lease agreement.

19 Q. Okay. Tell me about any other lawsuits
20 that the corporation is presently involved in.

21 A. Nothing that I can think of.

22 Everything is clear now.

23 Q. Okay. Going back in time, what was the
24 most recent lawsuit other than this lawsuit that
25 the corporation's been involved in?

1 A. We had a woman that one of our
2 employees ran into the back of that was trying to
3 sue us.

4 Q. Any other litigation -- what litigation
5 occurred before then, if any?

6 A. None that I can remember.

7 Q. Has your company ever sued anybody --

8 A. No.

9 Q. -- other than Wanda and George?

10 A. No, sir.

11 Q. Wanda and George are the only
12 individuals that your company has ever sued?

13 A. Yes, sir, I guess. I mean, I'm not
14 really sure what kind of question that is because I
15 personally didn't know that my company was suing
16 Wanda and George.

17 Q. Do you know that now? That's not
18 something --

19 A. That's the first time. I mean, I
20 thought it was the insurance company. I didn't
21 know it was my company personally that was suing
22 them. I didn't know that.

23 Q. Does your company have any written
24 procedure manuals or policy manuals that are in
25 place governing either the corporation or the

1 employees of the corporation?

2 A. Safety. We got a lot of safety
3 procedures.

4 Q. Are they in a book?

5 A. Yes, sir.

6 Q. All right. And who would have a copy
7 of that book?

8 A. Every single employee. Every van that
9 we have has a copy of it. There's one in our
10 office at all times, there's one on my desk, one on
11 Mr. Kornahrens' desk.

12 Q. And does it include information for
13 employees, direct them on how to perform certain
14 jobs?

15 A. Yes, sir. Absolutely.

16 Q. Does it focus on things other than just
17 electrical issues?

18 A. Yes, sir, absolutely.

19 Q. Does it address coming and going from
20 the building, use of vehicles and things like that?

21 A. I'm not sure about that. I just know
22 it focuses mainly on safety.

23 Q. Other than safety regarding electrical
24 issues, what kind of safety would it focus on?

25 A. Wearing hardhats, wearing safety

1 glasses, wearing vests, wearing steel-toed boots.

2 Q. And do those rules apply at all times
3 they're employed by you?

4 A. Yes, sir.

5 Q. And that begins from the time they come
6 to the premise to the time they leave and go to a
7 job site and if they come back to the premise?

8 A. It begins -- as far as steel-toed boots
9 go, they wear them all the time. The safety gear
10 they put on when they reach the job site.

11 Q. Do you have safety meetings?

12 A. Yes, sir, once a month.

13 Q. Who conducts those?

14 A. I do.

15 Q. Does all 15 employees attend or just
16 the 12 from the field?

17 A. Just the -- Mr. Kornahrens and I and
18 the 12 from the field. Deborah's -- she's in and
19 out. She's in the office answering the phone while
20 we're having safety meetings.

21 Q. Does any of the procedure manuals or
22 rule books address the dog that is at issue in this
23 case?

24 A. Not that I know of, no, sir.

25 Q. The dog that was at issue in this case,

1 was his name Gunther?

2 A. Gunner, yes, sir.

3 Q. Gunner, excuse me. Gunner. Is there
4 any procedures or rules that are in place regarding
5 Gunner?

6 A. One rule was to -- when the gates are
7 open to make sure he's on a chain to keep him from
8 leaving the premises.

9 Q. Is that something that was an oral
10 instruction to the employees or was that something
11 that's written down?

12 A. It was an oral instruction given by
13 Mr. Kornahrens and myself.

14 Q. Were there any other rules or
15 restrictions regarding -- from the corporation that
16 governed Gunner?

17 A. Not that I can remember at this moment,
18 no, sir.

19 Q. Okay. I want to back up to the
20 property. You indicated before that it was a
21 lease --

22 A. Yes, sir.

23 Q. -- from George but there was no written
24 lease?

25 A. No, sir.

1 Q. Is there anything that the two of you
2 all have as landlord and tenant that restricts your
3 use of that property?

4 A. We use the bottom floor and he lives on
5 the top floor. We don't -- you know, we don't use
6 the top floor at all.

7 Q. Any restrictions on having a dog there?

8 A. No, sir.

9 Q. All right. Are there any restrictions
10 on who's allowed to come on and off of Charleston
11 Electrical Services' premises?

12 A. No, sir. Not -- you know, not that we
13 have on written -- you know, written on paper, no,
14 sir.

15 Q. Well, is there something that you have
16 that your employees are told about or know about?

17 A. No, sir.

18 Q. Is there any restrictions that would
19 prohibit an employee from having a family member or
20 friend on site?

21 A. We've never had that problem to have to
22 initiate that restriction. We've always had our
23 employees come without their family except for on a
24 Christmas party we have every year and that's the
25 only time they bring their family.

1 Q. What about your wife and children, do
2 they ever come to Charleston Electrical Services?

3 A. Very seldom. I think we visited the
4 office one time this year with my wife and my
5 children.

6 Q. One time this year they came to
7 Charleston Electrical Services?

8 A. Yes, sir, when I came to feed the
9 animals.

10 Q. Was that any kind of problem?

11 A. No, sir.

12 Q. It wasn't a violation of the corporate
13 rules, was it?

14 A. No, sir, it was a Saturday.

15 Q. And there's nothing that would --
16 there's nothing in place with regard to the
17 corporate structure that would say you or any other
18 employee couldn't bring their family onto the
19 premise?

20 A. No, sir.

21 Q. I want to ask some questions about the
22 dog itself.

23 (PLF. EXH. 1, Black and white
24 photograph, was marked for identification.)

25 BY MR. BOAN:

1 Q. I'm showing you Plaintiff's Exhibit
2 Number 1.

3 A. Yes, sir.

4 Q. Is that a picture of Gunner?

5 A. Yes, sir, it sure is.

6 Q. What breed is Gunner?

7 A. A German Shepherd.

8 Q. Is he mixed breed or full blood?

9 A. Full-blooded.

10 Q. How do you know that?

11 A. Through Mr. Kornahrens telling me so.

12 Q. Ever seen any paperwork or have any
13 other information that would corroborate it other
14 than George?

15 A. All I know is Mr. Kornahrens had all
16 the paperwork. I personally never looked at it.

17 Q. How long has Gunner been involved with
18 Charleston Electrical Services?

19 A. Less than a year.

20 Q. What was the nature of his relationship
21 with the business?

22 A. To help protect our outside area from
23 theft.

24 Q. Had there been a problem with theft?

25 A. Years ago, maybe three or four years

1 ago we had some theft.

2 Q. And was Gunner purchased as a security
3 dog for the business?

4 A. Yes, sir.

5 Q. And I think it was admitted in the
6 request to admit but make sure we're accurate about
7 that. Charleston Electrical Services acknowledges
8 being the owner of Gunner, isn't that correct?

9 A. Correct.

10 Q. Do you know of any other history of the
11 dog other than his breed?

12 A. Only what Mr. Kornahrens has told me.

13 Q. Now, Mr. Kornahrens is an employee of
14 the business, correct?

15 A. Yes, sir.

16 Q. He's the business manager?

17 A. Yes, sir.

18 Q. Is there any information that you feel
19 that he has withheld from you or kept from you?

20 A. No, sir.

21 Q. Okay. Has there been any prior
22 incidences with this dog jumping on, biting or
23 attacking anybody else?

24 A. No, sir.

25 (PLF. EXH. 2, Handwritten receipt, was

1 marked for identification.)

2 BY MR. BOAN:

3 Q. This is marked as Plaintiff's Exhibit
4 Number 2, Mr. Oakley. Have you ever seen what this
5 document purports to represent?

6 A. I've seen that document. I believe
7 this woman came into our office and wrote this
8 receipt to Mr. Kornahrens. I was out -- walking
9 out the door when she walked in.

10 Q. Is it possible that that receipt was
11 written at the time that the transaction occurred?

12 A. I'm not sure.

13 Q. Let me show you another document, make
14 sure we're not getting them confused. Let's mark
15 these two as Plaintiff's 3.

16 (PLF. EXH. 3, Letter dated 6/17/11 to
17 Dan M. David, Attorney-At-Law, from John M. Oakley,
18 President, with attached receipt, was marked for
19 identification.)

20 BY MR. BOAN:

21 Q. Now I want to show you another
22 document. This is Plaintiff's Number 2. These two
23 documents are Plaintiff's Exhibit Number 3.

24 A. Yes, sir.

25 Q. All right. Let's go to Plaintiff's

1 Exhibit Number 3.

2 A. Yes, sir.

3 Q. It's a letter that appears to be
4 written by John M. Oakley as president of
5 Charleston Electrical Services to Mr. David here in
6 the office, is that correct?

7 A. It's signed by me, yes, sir.

8 Q. And Tarah -- it says: Dear Dan, Miss
9 Tarah J. Andre stopped by the office to pay a visit
10 to the dog.

11 A. Um-hum.

12 Q. Is she the former owner of the dog?

13 A. One of them, yes, sir.

14 Q. Was there any motive or was it just
15 sheer coincidence that she stopped by to visit?

16 A. Mr. Kornahrens told me that she just
17 wanted to see the dog.

18 Q. And this little handwritten document
19 that's attached to Plaintiff's Exhibit Number 3
20 that lists Tarah Andre and a phone number --

21 A. Yes, sir.

22 Q. -- did she write that?

23 A. I believe so. She came in to visit
24 Mr. Kornahrens and he told me that she wrote that
25 when she was there visiting him. I was walking out

1 the door.

2 Q. And is that an accurate statement that
3 she wrote from your perception of the facts of this
4 case?

5 A. Yes, sir. I've never seen this one.
6 That's the first time I've seen this one.

7 Q. This one you've never seen?

8 MR. LINDEMANN: Exhibit 2.

9 THE WITNESS: Yeah. This is the first
10 time I've seen this one.

11 BY MR. BOAN:

12 Q. And that -- John is indicating he has
13 never seen Plaintiff's Exhibit Number 2 before.
14 All right.

15 The dog during its time on -- as
16 security guard went to the vet, didn't he?

17 A. Yes, sir.

18 Q. And what vet would he have gone to?

19 A. Dr. Patrick.

20 Q. And who would have paid the bill
21 associated with his visit?

22 A. Charleston Electric.

23 Q. Okay. Who at Charleston Electric was
24 in charge of the security dog?

25 A. Mr. Kornahrens and everyone there was

1 basically overseeing the dog, trying to help
2 oversee the dog.

3 Q. And does that include the field ops as
4 well as the office people?

5 A. One field op and Mr. Kornahrens and
6 myself.

7 Q. Which field op?

8 A. Armando Gonzalez.

9 Q. Is Armando still an employee?

10 A. Yes, sir.

11 Q. What are Armando, George and the other
12 people that have anything to do with the dog, what
13 are their duties?

14 A. Armando is our chief electrician,
15 longer than anybody and he -- if we're not around
16 the office on the weekends, he'd come and help feed
17 animals.

18 Q. I heard that Armando was the chief
19 electrician and had been there the longest. I
20 missed maybe the answer to the question I was
21 looking for. What are the duties that the handlers
22 of the security dog have for the corporation?

23 A. To chain the dog up in the morning
24 before the gates open, feed the dog, release the
25 dog after the gate's closed.

1 Q. Was there any other duties for any
2 other employees of the corporation related to the
3 dog?

4 A. Mr. Kornahrens took the dog to the vet.

5 Q. Was there anybody in charge of playing
6 with the dog or taking the dog off premises for
7 walks or anything along those lines?

8 A. As far as taking off premises, I'd say
9 Mr. Kornahrens basically but I don't remember
10 him -- recall him taking him off premises much
11 except to walk him down to the vet.

12 Q. Tell me what an average day in the
13 dog's life would consist of from morning until the
14 next morning.

15 A. Basically what I said, release him off
16 the chain and he would roam around the premises
17 until it was time to come back in and he'd be put
18 back on the chain and then when everybody left,
19 he'd be released again.

20 Q. Okay. On average, what time would he
21 be put on a chain in the morning?

22 A. I'd say seven o'clock.

23 Q. And on average, what time would he be
24 released off of the chain in the evening?

25 A. In the evening or in the morning?

1 Q. Excuse me. He was released -- he was
2 put on the chain at 7:00 in the morning?

3 A. Um-hum.

4 Q. What time would he be released off the
5 chain next?

6 A. 8:30.

7 Q. And that is in the morning or in the
8 evening?

9 A. In the morning.

10 Q. Where would he be released off the
11 chain to?

12 A. In the yard.

13 Q. And he would work in the yard after
14 everybody was in and out?

15 A. Um-hum.

16 Q. So basically from 7:00 to 7:30 the
17 people were coming in and going out?

18 A. Going out.

19 Q. And then at 8:30 he would be left to
20 secure the area until -- when would he go back on
21 the chain?

22 A. 3:30.

23 Q. And might when he be released again?

24 A. 5:30.

25 Q. Was there any other reason that he was

1 kept on a chain other than fear that he might
2 escape?

3 A. No, sir.

4 Q. So once the gate was closed and he was
5 off his chain, he had free roam of the premises?

6 A. Of the yard, yes, sir.

7 Q. When would he be fed?

8 A. In the morning.

9 Q. What was this dog's demeanor like?

10 A. Very playful and just I'd say playful.

11 Q. What made you think he was playful?

12 A. He used to always would come up to you
13 and want to play, play ball or put his paw up to
14 you.

15 Q. And was that to you or to other
16 employees, Armando and George?

17 A. I'd say to all three of us.

18 Q. Was he playful with people that he
19 didn't know?

20 A. I can't really remember, to be honest
21 with you.

22 Q. What about Wanda, do you know of any
23 relationship between Wanda and the dog?

24 A. No, sir.

25 Q. How did the dog react around Wanda?

1 A. I never really saw Wanda around the dog
2 much, to be honest with you.

3 Q. What about Francie?

4 A. Neither. Neither Wanda or Francie, I
5 never saw them around the dog much.

6 Q. Ever seen the dog jump up on George?

7 A. I've seen him put his paws on George,
8 yes.

9 Q. Have you ever seen him put his paws on
10 anybody else?

11 A. Not that I can remember.

12 Q. Ever seen him jump on anybody else?

13 A. He's never jumped on me. I can't
14 really say yes or no on that. I can't remember.

15 Q. When your children and your wife came
16 to visit, did they have any interaction at all with
17 the dog?

18 A. No, sir.

19 Q. Any reason for that?

20 A. Very seldom have my children and my
21 wife come to the office. Only for the Christmas
22 party every year. And if they did come, they went
23 straight to Mr. Kornahrens' office and jumped in
24 his lap.

25 Q. Okay. Has anybody ever told you of any

1 other occasions where the dog has jumped on someone
2 other than George?

3 A. No.

4 Q. Or put his paws on someone other than
5 George?

6 A. No, sir, that I can remember.

7 Q. What about the situation with Elsie,
8 how did that come to happen?

9 A. I'm totally -- you know, I'm in the
10 blind on that. I wasn't there, I don't know
11 exactly what happened at all.

12 Q. Do you have any testimony that you
13 would present as to how you think it happened?

14 A. No, sir, because I wasn't there so I
15 couldn't tell you anything.

16 Q. Has anybody told you how it happened?

17 A. Mr. Kornahrens has told me.

18 Q. What did George tell you about how it
19 happened?

20 A. He told me that Wanda had came to visit
21 and that Miss Rahall had just gotten out of the
22 hospital so she brought her to see George and -- or
23 Miss Rabon, excuse me. And she walked into the
24 back and Miss Rabon followed her. And when they
25 got into the back, the dog was being playful and

1 pushed her down.

2 Q. Any idea how he pushed her down?

3 A. No, sir. That's the whole extent of
4 what Mr. Kornahrens has told me.

5 Q. Was there anything unusual about Wanda
6 being on the premise of Charleston Electrical?

7 A. No, sir. I mean, she -- she's
8 Mr. Kornahrens' girlfriend. She had been there,
9 you know, on the weekends. She spends a lot of
10 weekends there.

11 Q. And has she ever been inside the office
12 of Charleston Electrical Services?

13 A. Sure, she's been in there.

14 Q. Inside the business itself?

15 A. Inside the office she has.

16 Q. And does she have a right to be there?
17 She's not a trespasser when she goes in there, is
18 she?

19 A. No, sir.

20 Q. Is it either because she is there
21 visiting George or could it be because she's there
22 helping the business?

23 A. Mainly visiting George. She's answered
24 the phone for us a few times.

25 Q. Anything else she's ever done on behalf

1 of your business?

2 A. No, sir.

3 Q. With regard to Miss Elsie Rabon, was it
4 anything wrong with her being there on the
5 Charleston Electrical Services premise?

6 A. I wasn't there so I don't know exactly
7 what happened.

8 Q. You don't believe she was there
9 trespassing, do you?

10 A. No. No.

11 Q. She was there either as the invited
12 guest of Wanda or George?

13 A. She was visiting Mr. Kornahrens because
14 he had just gotten out of the hospital and she's
15 real close to Mr. Kornahrens so she came to see him
16 is what I was told.

17 Q. Any warning signs that Gunner's
18 displayed in the past that might make you know that
19 he would be inclined to jump on someone or put
20 their paws on them?

21 A. He's very, very playful, like I said
22 earlier.

23 Q. Did you ever know of him to have been
24 previously trained as a security guard?

25 A. I know that he's a canine dog from what

1 Mr. Kornahrens told me.

2 Q. What does a canine dog mean to you?

3 A. A dog that can smell drugs and, you
4 know, run to a car where there's drugs at and find
5 them for a police officer.

6 Q. What about his ability to act as a
7 security guard?

8 A. I -- that's the only thing I know about
9 the dog, is canine, trained canine.

10 (PLF. EXH. 4, Letter dated 9/21/10 to
11 Melinda at Selective Insurance Company of America
12 from George E. Kornahrens, Business Manager, was
13 marked for identification.)

14 BY MR. BOAN:

15 Q. Showing you what's been marked
16 Plaintiff's Exhibit Number 4. It's a letter that
17 George has written.

18 And Andrew, if either of you all would
19 like to see it, I think I've given it to both you
20 all but if you want to see it.

21 Have you had a chance to read
22 Plaintiff's Exhibit Number 4?

23 A. Um-hum.

24 Q. Is that a synopsis of what George told
25 you happened?

1 A. Basically.

2 Q. Is there anything different that he's
3 told you on another occasion that's not contained
4 in that letter?

5 A. Not that I can see, no, sir.

6 Q. Is that the best you know an accurate
7 and truthful explanation of what happened?

8 A. Yes, sir.

9 Q. Has Wanda or my client, Elsie, spoke
10 with you about this situation since the incident
11 occurred?

12 A. Wanda said a few things but I've been
13 reluctant to even talk about it with her.

14 Q. Is there anything of note that she's
15 told you?

16 A. Something about another attorney before
17 you.

18 Q. Okay. Anything that might be relevant
19 to the incident that happened? Did she -- has she
20 ever described the incident as happening any
21 different --

22 A. No, sir.

23 Q. -- than the way it's been described
24 here?

25 A. No, sir. No, sir. The only other

1 thing we've talked about is how her mother is
2 doing.

3 Q. And from what you know, how is she
4 doing?

5 A. I know she's not in the best of health,
6 I know that, but that's about it. That's about all
7 I know.

8 Q. I want to ask you about a few things
9 that were raised in your answer. Charleston
10 Electrical Services filed an answer to the
11 complaint that was alleged alleging they were
12 liable and in its answer one of the defenses was
13 comparative negligence. I'm not going to ask you
14 to know what comparative negligence is, I just want
15 to point out that there was a defense that alleges
16 that Elsie failed to use reasonable care to protect
17 herself from harm and that she assumed the risk of
18 injury. Do you have any evidence that you would
19 allege or testimony that you would provide that
20 would show that Elsie in some way is responsible
21 for what happened to her?

22 A. No, sir.

23 Q. There is also an alleged defense that
24 my client provoked the attack. It alleges,
25 Paragraph 25 of the answer, that the defendant

1 alleges provocation as a complete bar to the
2 plaintiff's claim. Do you have evidence or
3 testimony of anything that Elsie did to provoke
4 Gunner?

5 A. No, sir.

6 Q. Then your answer also requests that
7 damages be apportioned between all of the
8 tortfeasors, meaning you, George and Wanda. What,
9 if any, testimony would you provide regarding Wanda
10 or George's responsibility for what happened to
11 Elsie?

12 A. I really don't know how to answer that,
13 to be honest with you. I mean, I wasn't there so I
14 couldn't answer that question, to be totally honest
15 with you.

16 Q. It says in your answer that the
17 Defendant Charleston Electrical Services -- excuse
18 me, that to the extent that the Defendant
19 Charleston Electrical Services held liable to the
20 Plaintiff in this action, such liability, if any,
21 would be the direct and proximate results of acts
22 or omissions of third-party defendants in exposing
23 the plaintiff to the German Shepherd and in failing
24 to prevent the German Shepherd from knocking down
25 the plaintiff as alleged.

1 A. I can't answer that question either. I
2 mean, that's -- once again, I wasn't on the
3 premises, I don't -- you know, I can't answer that
4 question..

5 Q. If George just let the dog off the
6 chain like he does every other day and subsequently
7 the dog jumps on someone, the fact that he let the
8 dog off the chain isn't his fault, is it?

9 MR. LINDEMANN: Object to the form.

10 THE WITNESS: I --

11 BY MR. BOAN:

12 Q. As an employee of Charleston Electrical
13 Services, that's one of the things he does, him or
14 Armando or yourself do each day regarding the dog,
15 correct?

16 A. Yeah. Yes, sir.

17 Q. And I think you said earlier that
18 there's no rules specifically regarding when and
19 how the dog's left off the chain that are in
20 writing?

21 A. No, sir.

22 Q. And everything else would just be a
23 course of practice, correct?

24 A. Yes, sir.

25 Q. And his normal practice in the

1 afternoons is -- or Armando's or yourself is to
2 release the dog off the chain?

3 A. Yes, sir, after -- yeah, after all the
4 employees are gone and the gates are closed.

5 Q. And the reason --

6 A. One of the three of us would do that.

7 Q. And the reason for that is, I'm
8 guessing, tell me if I'm wrong, that you don't want
9 to chain a dog up forever, not fair to keep the dog
10 chained up for overnight?

11 A. Absolutely not. The reasoning though
12 was to keep the dog from running out of the gate.
13 That was the initial reason and the other reason.

14 Q. So long as --

15 A. I think there's a combination of
16 reasons.

17 Q. So as long as the gate was closed, was
18 there any reason that George should not have let
19 the dog off the chain?

20 A. Not to my knowledge.

21 Q. And it's also alleged that Wanda was
22 partially at fault as well. Am I correct to say
23 you don't have any testimony that would explain or
24 allege that Wanda is at fault for what happened
25 here?

1 A. Once again, I don't know what happened,
2 okay? I didn't see what happened.

3 Q. John, have you understood my questions?

4 A. Yes, sir.

5 Q. Answered them truthfully?

6 A. Yes, sir.

7 Q. To the best of your knowledge?

8 A. Yes, sir.

9 Q. Anything else you would like to add
10 before I conclude my part of the deposition?

11 A. No, sir.

12 MR. BOAN: All right. I'm going to
13 conclude with the reserve to reopen it at the end
14 of the other lawyers asking questions.

15 And Miss Court Reporter, I'll turn it
16 over to whichever attorney wants to go next,
17 probably Dan.

18 EXAMINATION

19 BY MR. DAVID:

20 Q. How long have you known Mr. Kornahrens?

21 A. I'd say right about 25 years, 26 years.

22 Q. He was married to your mother?

23 A. Yes, sir.

24 Q. And how long have you known Wanda?

25 A. Eight years, nine years.

1 Q. They have been boyfriend/girlfriend for
2 awhile?

3 A. Yes, sir.

4 Q. She spends a good portion of her time
5 at Mr. Kornahrens' apartment?

6 A. Yes, I'd say every -- every weekend she
7 comes on Thursday or Friday and stays the weekend
8 usually.

9 Q. Is the apartment that Mr. Kornahrens
10 lives in over the place of business that you have?

11 A. It is.

12 Q. And I believe the address is 60 Romney
13 Street?

14 A. It is.

15 Q. And is there an entrance to
16 Mr. Kornahrens' place of business on Romney
17 Street -- excuse me, to your place of business on
18 Romney Street?

19 A. There is.

20 Q. And is there a door, typical door that
21 you --

22 A. Two doors, one to his place and one to
23 ours.

24 Q. That was my next question. There's a
25 door solely to his apartment?

1 A. Yes, sir.

2 Q. And so he's pretty much on the premises
3 24/7 unless he's out of town?

4 A. That's correct.

5 Q. And is the entire building enclosed in
6 a fence?

7 A. No, sir.

8 Q. So that part of the building is
9 adjacent to the street on Romney Street?

10 A. The two doors in the front.

11 Q. Okay. About how far is it set back off
12 of Romney Street?

13 A. 20 feet, 30 feet.

14 Q. And there is a driveway or an entrance
15 that would have a gate that we've talked about that
16 had to be opened or closed in order for the trucks
17 to come in and out?

18 A. For the trucks.

19 Q. Yes, sir.

20 A. Yes.

21 Q. And is that also on Romney Street,
22 would you enter from Romney Street?

23 A. One is on Romney Street.

24 Q. And where would the other one be?

25 A. The other one's on Nassau. I knew it

1 was Nassau, that's all I can remember.

2 Q. Nassau Street?

3 A. Nassau.

4 Q. And in relation to the Post & Courier
5 building downtown, do you know where that is?

6 A. Um-hum. Of course.

7 Q. About where would your place of
8 business be located?

9 A. About a quarter mile.

10 Q. Which way?

11 A. West.

12 Q. And it would be between Meeting Street
13 and --

14 A. It's east, excuse me. I said west but
15 it's east. Excuse me.

16 Q. It would be back towards Broad Street?

17 A. Yes, sir.

18 Q. So it would be what, two or three
19 blocks back from the --

20 A. A few more blocks than that, but yeah.
21 Yes, sir.

22 Q. And it would be -- if you were heading
23 towards the Battery, which would be heading east,
24 the property would be to the left?

25 A. To the left? You're talking about the

1 paper -- the newspaper?

2 Q. No, sir, I'm talking about the -- your
3 business, Charleston Electric.

4 A. If you were heading east towards the
5 Battery, you'd be leaving our property. I'm
6 confused on that question.

7 Q. I tell you what I'd like for you to do.
8 If you would draw for me on that sheet of paper.

9 A. This is our business right here.

10 Q. Okay.

11 A. The News & Courier is over here.
12 That's all you got to do.

13 Q. Okay. Where is Romney Street on your
14 drawing?

15 A. Romney Street is right in front of our
16 building.

17 Q. Would you draw that for me?

18 A. Here's Romney Street, here's Nassau
19 Street, here's a gate, here's a gate and then
20 there's two doors here, one for our office, one for
21 Mr. Kornahrens' apartment and one big roll-up door
22 that goes into our warehouse.

23 Q. Where would the rest of the fence, how
24 much of that area is enclosed?

25 A. The fence is just like this right here

1 and it comes to right here. So all this is open to
2 the public and there's a big parking lot right in
3 front.

4 Q. Would you put a double line for me
5 where the fence is so that we will know what that
6 is? And would you put an X for me where the
7 roll-up door is where you would --

8 A. There's two roll-up doors, one back
9 here and this one right here. This is a roll-up
10 door.

11 Q. What about the gate that you would come
12 in off of Romney Street?

13 A. The gate off of Romney Street is like
14 right here.

15 Q. Okay. Put an X there for me. And
16 there's also a gate on Nassau Street I think you
17 said?

18 A. Yeah, right here.

19 Q. So that the dog is generally inside
20 that area whenever the dog is chained and when the
21 dog is off the chain?

22 A. Um-hum.

23 Q. Inside that fenced area?

24 A. Um-hum.

25 Q. But to get to and from your place of

1 business, you can enter on Romney Street without
2 going through the fenced-in area?

3 A. That is correct.

4 Q. And you can also get to Mr. Kornahrens'
5 place by entering from Romney Street without going
6 in the back?

7 A. Without going in the back or going
8 through the business.

9 Q. Okay. Tell me why you had the dog.

10 A. Theft.

11 Q. In other words, you had a lot of people
12 breaking into your vehicles and stealing tools and
13 equipment --

14 A. That's correct.

15 Q. -- that was located inside the fenced
16 area?

17 A. Correct.

18 Q. Now, at night would you lock the gates
19 to get --

20 A. During the day and at night. As soon
21 as the vans rolled out, the gates locked.

22 Q. And that again was to protect the
23 gates, someone coming in and stealing your
24 property?

25 A. That's correct.

1 Q. And on a number of instances since you
2 have owned the business there have been break-ins
3 where people vandalized your equipment and stole
4 tools and various other items out of the trucks?

5 A. Three incidents that I'm aware of where
6 they came in during a period of time, maybe I guess
7 it's been six years ago where they came in, broke
8 the windows in the vehicles and stole the tools.

9 Q. Now, I think that you said that you had
10 worked there approximately 22 years?

11 A. That's right.

12 Q. During most of those 22 years did
13 Charleston Electrical Services or Charleston
14 Electric, whatever the name was at the time, did
15 they have a dog on the premises?

16 A. We had a dog when I first started
17 working there, we sure did.

18 Q. And that was 22 years ago?

19 A. Yes, sir.

20 Q. Now, you tell me that Mr. Kornahrens
21 was married to your mom. And did you ever visit
22 them prior to your going to work there?

23 A. No, sir, I went straight to work for
24 him when I got out of college and that's when I was
25 visiting. I mean, I didn't know him until I really

1 started working for him.

2 Q. Okay. But when you started working,
3 there was another dog that was there?

4 A. There was.

5 Q. Okay. Did you ever have any
6 conversations with him about this first dog
7 whenever you went to work there?

8 A. No, sir, not that I can recall.

9 Q. Do you recall what happened to the
10 other dog?

11 A. Just died. The dog died.

12 Q. Heartworms or whatever?

13 A. I can't remember, to be honest with
14 you.

15 Q. But he died?

16 A. Right.

17 Q. And after a period of time did
18 Mr. Kornahrens discuss with you the possibility of
19 getting another dog?

20 A. No, sir, he just went out and got a
21 dog. I was working for him at that time.

22 Q. The dog that you have that we're
23 talking about here today, he had -- he owned that
24 dog prior to your going to work there?

25 A. No, sir.

1 Q. Okay. So whenever you first went to
2 work there, he bought a dog and he had that dog for
3 a number of years?

4 A. That's right.

5 Q. And that at some point in time that dog
6 died?

7 A. That's correct.

8 Q. After that dog died and after you began
9 working there, I believe that you told us that you
10 have owned this company since 1992?

11 A. That's when it was put into my name,
12 yes, sir.

13 Q. Okay. Are you the registered agent?

14 A. Yes, sir.

15 Q. And you are the full and sole
16 stockholder?

17 A. Yes, sir.

18 Q. You own the corporation?

19 A. Yes, sir.

20 Q. Would you agree with me?

21 A. Yes, sir.

22 Q. Did Mr. Kornahrens ever talk with you
23 about getting another dog after you owned --

24 A. We got another dog. That dog that
25 we're talking about, we've had probably four dogs

1 before Gunner.

2 Q. Okay.

3 A. Three to four dogs I'd say.

4 Q. And have you ever objected to having a
5 dog or did you think that was a sound business
6 thing to do?

7 A. No, we always kept a dog to keep theft
8 from...

9 Q. Are there other people in the
10 neighborhood or in the area that have similar
11 businesses that also have dogs?

12 A. That's correct.

13 Q. And I believe that company is located
14 directly across the street?

15 A. Yes, sir. Palmetto Construction.

16 Q. And it's your belief that in having the
17 dogs in the backyard or in your service area there
18 that's enclosed in the fence that it cuts down on
19 theft?

20 A. Absolutely.

21 Q. And this dog Gunther that we're talking
22 about, did Mr. Kornahrens ever tell you that he
23 thought it would be a wise thing for you all to get
24 another dog?

25 A. Our dog died and it wasn't two or three

1 weeks later Mr. Kornahrens, and I believe Wanda was
2 with him, I'm not sure, were looking for a dog but,
3 I mean, he -- I left on a Friday, came back on
4 Monday and he had a dog.

5 Q. Did you object to him having the dog?

6 A. No, sir.

7 Q. And did the company pay for the dog?

8 A. I never saw him get reimbursed but he's
9 told me that he has been reimbursed.

10 Q. Now, when the dog went to the vet, did
11 the company pay for that vet bill?

12 A. Yes, sir.

13 Q. Did the dog -- did the company buy food
14 for the dog?

15 A. Yes, sir.

16 Q. And that was done by buying food at
17 Sam's, I believe?

18 A. Yeah. Mr. Kornahrens would go buy
19 food, toilet paper, paper towels, cat food, trash
20 bags, et cetera.

21 Q. Whatever the company needed generally
22 on a monthly basis, Mr. Kornahrens would go and buy
23 it for the company?

24 A. That's correct.

25 Q. Now, have you ever met Wanda's mother

1 before, the plaintiff in this case?

2 A. Yes, sir.

3 Q. And have you met her or seen her on
4 more than one occasion?

5 A. Maybe three times.

6 Q. And those occasions that you saw her,
7 was she visiting Wanda at Mr. Kornahrens'?

8 A. No, only one occasion that I know of
9 and the other two we were in Myrtle Beach, me and
10 my family, and we went to dinner twice, once at a
11 Mexican restaurant, once at a Japanese restaurant.

12 Q. Did you know that she, Wanda's mother,
13 was coming by to visit Mr. Kornahrens?

14 A. No, sir. I didn't know anybody was
15 coming.

16 Q. You said you didn't know that anyone
17 was coming to visit with him?

18 A. Not that day, no, sir.

19 Q. How about just on a regular basis, was
20 it okay for Mr. Kornahrens to have guests come and
21 visit him?

22 A. Sure.

23 Q. I mean, that was his home, right?

24 A. Yes, sir.

25 Q. And during the time that he's lived

1 there, which has been the entire time that you've
2 worked there?

3 A. No, sir, that's not correct.

4 Q. Okay. Help me out a little bit. How
5 long has he lived there?

6 A. 12 years maybe.

7 Q. Okay. So about half of the time that
8 you've worked at the company?

9 A. Maybe even a little less than that.
10 Might have been like ten years.

11 Q. During the time frame that he's lived
12 there, whatever time that has been, he has had
13 people visit on and off?

14 A. Yes, sir.

15 Q. Okay. And on a daily basis, he works
16 downstairs in the company?

17 A. That's right.

18 Q. And he helps to write contracts and
19 schedule work and general things that a business
20 manager in an electrical contractor's office would
21 do?

22 A. That's true.

23 Q. And would you say that Mr. Kornahrens
24 has a good bit of experience in what he does?

25 A. I would say a great deal of experience.

1 That's where I learned everything I know.

2 Q. And you still see him on a regular
3 basis?

4 A. Every day.

5 Q. And you were not present whenever any
6 of this happened to the plaintiff in this case?

7 A. No, I was on my way to Summerville to a
8 job site.

9 Q. Heard about it at a later time?

10 A. Yes, sir.

11 Q. Did you hear about that from
12 Mr. Kornahrens or did you hear about that from
13 Wanda?

14 A. Neither.

15 Q. Who did you hear about it from?

16 A. Francie Castle.

17 Q. And can you tell me what Francis told
18 you -- is it Francie?

19 A. Yeah. She told me that Wanda was
20 walking out back and her mom was standing in the
21 front and then she decided to walk back there too.
22 And when she got back there, Wanda was with George
23 and the dog had pushed her down and that the
24 ambulance was taking her away is what she told me
25 over the phone.

1 Q. Okay. When you say that she was out
2 front, by that do you mean the front of the
3 building?

4 A. Yes, sir. Well, in the front office.

5 Q. She was inside the building in the
6 office part of the building?

7 A. Yes, sir, and talking to Francie.

8 Q. Okay.

9 A. What Francie told me.

10 Q. In the building there is a front area
11 that you would enter from Romney Street that you
12 would typically consider your office where you have
13 files and those type things, copy machines, that
14 type thing?

15 A. There's a little foyer, small foyer,
16 and then you got the office where the files and the
17 computers all are.

18 Q. And then you have another door that you
19 would walk out into the --

20 A. Two doors. Three doors.

21 Q. That would take you out into the
22 storage area or?

23 A. Correct. You go through -- those
24 two -- two of those doors stay open all the time,
25 one door is shut.

1 Q. Is the entire building air conditioned?

2 A. No, sir.

3 Q. So if two of those doors are open all
4 the time, the office would not be air conditioned?

5 A. The office is air conditioned. The
6 warehouse door's closed at all times.

7 Q. All right. So that whenever you tell
8 me that two of the doors are open, where do those
9 two doors lead to?

10 A. One of them goes from the foyer to the
11 hallway and then the other one goes from the
12 hallway to an office before the warehouse.

13 Q. So you got the door coming in from
14 Romney Street, you got a foyer?

15 A. With a door.

16 Q. With a door. The office area, another
17 door and then the warehouse?

18 A. Yes, sir.

19 Q. Okay. So in order for Mrs. Rabon to
20 get to the area where she fell or was pushed by the
21 dog, she had to go through at least three doors?

22 A. Two doors that were open and one that
23 was closed, correct.

24 Q. Three entranceways, I guess?

25 A. Correct.

1 Q. And were they doors that were open in
2 this warehouse area to the place in the back?

3 A. I'm not sure.

4 Q. And when I say place in the back --

5 A. I'm not sure if the door was open or
6 not. I know Mr. Kornahrens from what he told me
7 was in the back working.

8 Q. So would the door have been the --

9 A. Typically it would have been open if he
10 was back there working.

11 Q. And that would have been the roll-up
12 doors that we talked about?

13 A. No. No, sir. That would have been the
14 back door beside the roll-up door which is right
15 here.

16 Q. Okay. So in order for the dog to have
17 gotten in the area where this accident occurred,
18 there would have had to have been a door that would
19 have been opened to the outside of the -- to the
20 fenced-in area?

21 A. I would think so. I mean, once again,
22 I wasn't there so I can't tell you for sure.

23 Q. Well, typically the dog would not be in
24 the warehouse area?

25 A. No.

1 Q. Unless there was a door open?

2 A. The dog doesn't even go in the
3 warehouse, the dog stayed outside.

4 Q. So typically the dog would be outside
5 in the fenced-in area?

6 A. Yes, sir.

7 Q. But to the best of your knowledge this
8 accident occurred inside the warehouse area?

9 A. I don't know where it occurred. I
10 thought it was outside.

11 Q. Okay. All right.

12 A. That's what I was told at least.

13 Q. So it would have been outside where the
14 dog would have been rather than on the inside of
15 the warehouse area?

16 A. That's right.

17 Q. Okay. That's what you were told?

18 A. Yes, sir.

19 Q. You really do not have any independent
20 knowledge of your own?

21 A. No, sir. I was told that by Francie
22 Castle and Mr. Kornahrens.

23 Q. Other than the typical day-to-day
24 operation that you are -- Mr. Kornahrens would have
25 done in the handling of the dog, is there anything

1 that you're aware of that Mr. Kornahrens would have
2 done differently that day that could have led to
3 this accident?

4 A. No, sir.

5 MR. DAVID: I don't think I have
6 anything further.

7 MR. LINDEMANN: I have no questions.

8 MR. BOAN: I've got a few.

9 EXAMINATION

10 BY MR. BOAN:

11 Q. What happened to Gunner? Where is he
12 at now?

13 A. Mr. Kornahrens gave him away.

14 Q. Gave him to who?

15 A. Oh, I can't think of the gentleman's
16 name, to be honest with you.

17 Q. Why?

18 A. Because he gave him to the gentleman.
19 I didn't have anything to do with that portion of
20 it.

21 Q. Never discussed it with him?

22 A. No. He gave him away.

23 Q. You all never had a conversation about
24 what should happen to Gunner?

25 A. Not really. You know, I just know that

1 he knew somebody that wanted the dog and he gave it
2 to him.

3 Q. You didn't ask him to give the dog
4 away?

5 A. No, sir.

6 Q. Have you replaced the dog?

7 A. No, sir.

8 Q. Earlier when I asked who had told you
9 what happened, you indicated George and Dan's
10 questions you indicated Francie also told you what
11 happened. Has anybody else other than George or
12 Francie told you what happened?

13 A. No, sir.

14 Q. Okay. Are there any other witnesses
15 that you're aware of -- let me ask you this. Did
16 Francie say she witnessed what happened?

17 A. No, sir. She was in her office and all
18 she witnessed was Miss Rabon leaving her office and
19 walking back after Wanda left and walked back.

20 Q. It would be reasonable to conclude that
21 she wouldn't have any firsthand knowledge of
22 whether or not Elsie provoked Gunner?

23 A. No.

24 MR. LINDEMANN: Object to the form.

25 THE WITNESS: She was going on what was

1 told to her by Mr. Kornahrens. So basically the
2 whole story was told by Mr. Kornahrens to Francie
3 and she related to me because Mr. Kornahrens was
4 going to the hospital with Miss Rabon and
5 Miss Rahall.

6 Q. Did Francie ever reduce anything to
7 writing or make a writing about what happened?

8 A. Not to my knowledge.

9 Q. You indicated the dog's kept outside of
10 the building in the fenced-in area and that
11 Miss Rabon, to get to that point, would have had to
12 go through several doors before she actually enters
13 into the outside area?

14 A. Absolutely.

15 Q. On any of those doors are there do not
16 enter signs?

17 A. To my knowledge, I can't remember, no,
18 sir.

19 Q. Well, you've been working there 22
20 years --

21 A. I don't think so.

22 Q. -- so you would know if there are signs
23 on the door, wouldn't you?

24 A. No, sir. I'm not positive but I don't
25 think there is any.

1 Q. Okay. And there's no --

2 A. There are signs but I can't remember
3 what they say.

4 Q. Are there any warning signs that says
5 if you go out this door --

6 A. No.

7 Q. -- you are at risk of a dog jumping on
8 you or Gunner wanting to play with you?

9 A. No, we only have them -- we've only had
10 the dog for I guess three months at the most.

11 Q. Okay. Is there anything that goes out
12 that back door that would -- that when you leave
13 out inside of the building to go to the outside
14 where the dog is, is there anything out there that
15 is uniquely George or Wanda's individually?

16 A. No, sir.

17 Q. Everything back there is corporation
18 property and premise?

19 A. No, I can't say that. There's a boat
20 that belongs to Mr. Kornahrens, you know, he's got
21 some personal property back there.

22 Q. Any reason to believe Wanda was --
23 excuse me, Elsie was headed that way because of the
24 boat or --

25 A. You know, once again, I wasn't there.

1 I can't tell you.

2 Q. Did you ever ask anybody why she was
3 back there?

4 A. No, sir.

5 Q. Do you know if anybody's ever asked
6 that question?

7 A. No, sir.

8 Q. Do you have any answer?

9 A. I got what Miss Castle told me, that
10 Wanda walked back there to see George and talked to
11 Miss Rabon, talked to Francie and then she walked
12 back there also behind Wanda.

13 Q. And since Francie was still there and
14 George was still there, it was probably during
15 business hours?

16 A. That's correct.

17 MR. BOAN: That's all the questions I
18 have of this witness.

19 (DFT. EXH. 1, Hand-drawn diagram, was
20 marked for identification.)

21 (WHEREUPON, the proceedings concluded
22 at 2:14 PM.)

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SIGNATURE OF DEPONENT

DEPONENT: JOHN M. OAKLEY
DEPOSITION DATE: November 16, 2011
REPORTER: TERRI L. BRUSSEAU, RPR, CRR
CASE CAPTION: ELSIE MAE RABON vs. CHARLESTON
ELECTRICAL SERVICES, INC.

(Please return both Signature of Deponent pages)

I, the undersigned, JOHN M. OAKLEY, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

1
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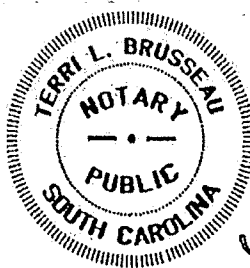
SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: November 16, 2011
REPORTER: TERRI L. BRUSSEAU, RPR, CRR
CASE CAPTION: ELSIE MAE RABON vs. CHARLESTON
ELECTRICAL SERVICES, INC.

PAGE	LINE	CHANGE	REASON

John M. Oakley 12/12/11
JOHN M. OAKLEY Date

I, Terri L. Brusseau, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Terri L. Brusseau

Terri L. Brusseau,
Registered Professional Reporter,
Certified Realtime Reporter
My Commission expires
March 24, 2016.

1 CERTIFICATE OF REPORTER

2 I, Terri L. Brusseau, Registered
3 Professional Reporter and Notary Public for the
4 State of South Carolina at Large, do hereby certify
5 that the foregoing transcript, Pages 1 through 65,
6 is a true, accurate and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 2nd day of December, 2011 at
12 Charleston, Charleston County, South Carolina.

13

14

15

16

17

Terri L. Brusseau,
18 Registered Professional Reporter,
Certified Realtime Reporter
19 My Commission expires
March 24, 2016.

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	I N D E X	Page	Line
1			
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3	STIPULATION	3	11
4	JOHN M. OAKLEY	3	11
5	EXAMINATION	3	13
6	BY MR. BOAN		
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8	BY MR. DAVID		
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12	CERTIFICATE OF REPORTER	64	1
13	E X H I B I T S		
14	PLF. EXH. 1, Black and white	18	23
15	photograph		
16	PLF. EXH. 2, Handwritten	20	25
17	receipt		
18	PLF. EXH. 3, Letter dated	21	16
19	6/17/11 to Dan M. David,		
20	Attorney-At-Law, from John M.		
21	Oakley, President, with		
22	attached receipt		
23	PLF. EXH. 4, Letter dated	32	10
24	9/21/10 to Melinda at		
25	Selective Insurance Company of		
	America from George E.		
	Kornahrens, Business Manager		
	DFT. EXH. 1, Hand-drawn	61	19
	diagram		



To Charleston Electrical
Services

Sold Jan 30th 2010

Gunther Wolfgang Amedaus
vom Banach

for \$200.00 paid in full

Tarah J Ande



Charleston Electrical Services, Inc.

P. O. Box 21345
Charleston, SC 29413
Phone (843)722-8304 Fax (843)577-2140

June 17, 2011

Dan M. David
Attorney At Law
147 Wappoo Creek Dr. Ste 101

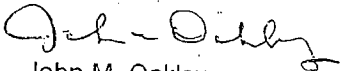
RE: Owner of the dog Wolfgang Amadaus Vom Banach

Dear Dan,

Mrs. Tarah J. Andre stopped by the office today to pay a visit to the dog . As you can see by the attached note the dog was sold to Charleston Electrical Services as of February 2010. Mrs. Andre said she would be willing to speak with you and her number is in the attached note.

This should clear George E. Kornahrens of ownership of the dog.

Thank you,


John M. Oakley
President



6/17/11

Tarah Andre



Sold Gunther Wolfgang Amadeus
Vom Barnack to Charleston
Electrical Services for \$200.00
February 2010

Tarah J Andre

Charleston Electrical Services, Inc.

P. O. Box 21346
Charleston, SC 29413
Phone (843)722-8304 Fax (843)677-2140

September 21, 2010

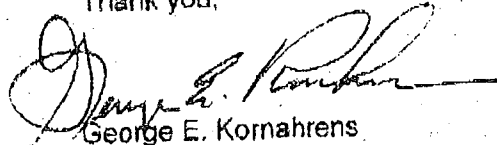
Selective Insurance Company of America
P.O. Box 408
Isle of Palms, SC 29451
Attention: Melinda Sinclair

RE: Claim #21010307
August 20, 2010
Incident at 60 Romney Street, Charleston, SC

Dear Melinda:

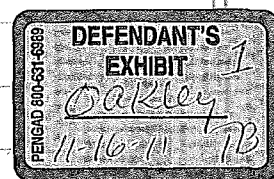
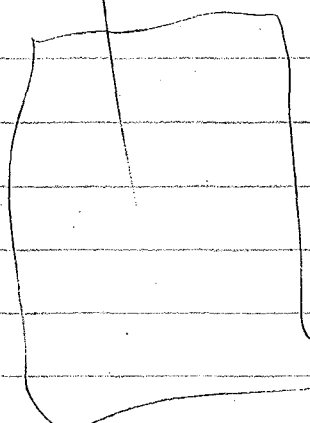
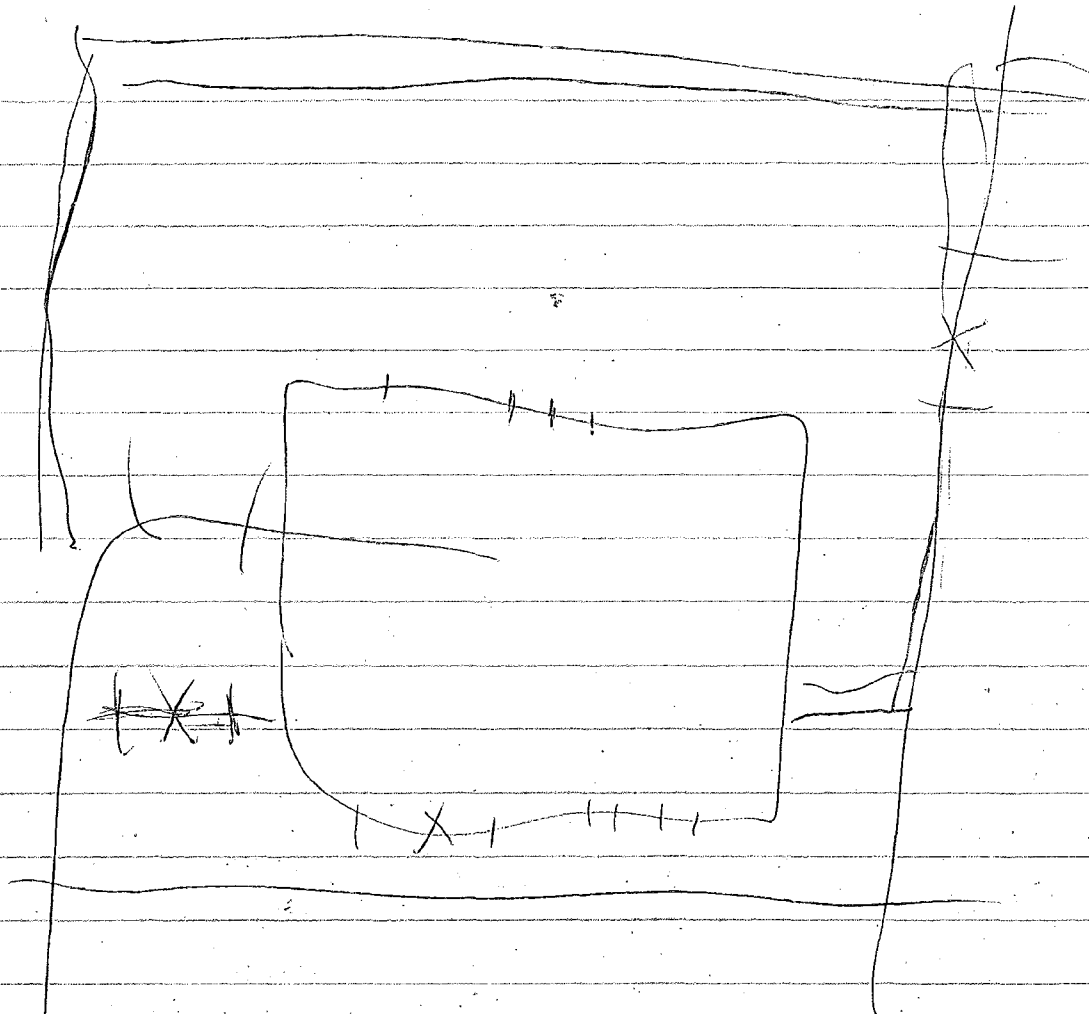
On Friday, August 20, 2010, I, George E. Kornahrens, Business Manager of Charleston Electrical Services, Inc., was in the backyard of Charleston Electrical Services, Inc. located at 60 Romney Street, Charleston, SC. Wanda Rahall, my friend, joined me back there after just coming back from a doctor's appointment and picking up some tea from a fast food store. Her mother, Elsie Rabin, was here also and was just coming into the backyard to see myself and Wanda. About 5 minutes before both of them came, I let the company's dog loose from his chain, so he could go in the building to cool off. When Elsie came into the backyard, the dog saw her and wanted to play. The dog came out of the building, saw Elsie, stood on his hind legs and pushed Elsie down. I saw this happen out of the corner of my eye and immediately pushed the dog away from Elsie. It was a very hot day, so we wanted to get Elsie inside the building. Wanda and I picked her up and I went into the building to get a chair and my secretary, Francie Castle, to assist in getting Elsie inside the building. We sat Elsie in the chair and put the chair on a small table with wheels so we could wheel her in the building. Once we got her in the building, out of the heat, we call 911 EMS. They came pretty quickly and took her to Roper Hospital.

Thank you,



George E. Kornahrens
Business Manager





STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

ELSIE MAE RABON,

Plaintiff,

vs.

CASE NO. 2010-CP-10-10666

CHARLESTON ELECTRICAL SERVICES, INC.,

Defendant/Third-Party Plaintiff,

vs.

GEORGE E. KORNAHRENS and WANDA RAHALL,

Third-Party Defendants.

DEPOSITION OF: WANDA G. RAHALL

DATE: November 16, 2011

TIME: 3:27 PM

LOCATION: Law Offices of Dan M. David
147 Wappoo Creek Drive, Suite 101
Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 APPEARANCES OF COUNSEL:

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13 SERVICES, INC.:

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19 alindemann@dml-law.com

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21 GEORGE E. KORNAHRENS and WANDA RAHALL:

22 DAN M. DAVID
23 147 Wappoo Creek Drive, Suite 101
24 Charleston, SC 29412
25 (843) 571-1893
dan@charlestonlegal.com

ALSO PRESENT:

George E. Kornahrens

(INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION

2 It is stipulated by and among Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent waives reading and
9 signing of this deposition.

10 * * * * *

11 WANDA G. RAHALL

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. LINDEMANN:

15 Q. Miss Rahall, I know we met a little
16 while ago and you sat through two of these
17 depositions now. My name is Andrew Lindemann. I
18 represent Charleston Electric Services in a lawsuit
19 that was brought by as I understand it your mother
20 involving an incident that occurred back in August
21 of last year.

22 What we're doing today is taking your
23 deposition similar to what the two previous
24 depositions were. I'm going to ask you some
25 questions about your background and about your

1 knowledge of the events that are involved in this
2 lawsuit. If at any time I ask you a question you
3 don't understand, please stop me, tell me you don't
4 understand my question so I can restate it. Will
5 you do that, please?

6 A. Yes.

7 Q. All right. If you answer a question, I
8 will assume you understood the question, is that
9 fair?

10 A. Yes.

11 Q. You're doing a great job, try and say
12 yes or no rather than uh-huh or uh-uh or nodding of
13 your head so that the Court Reporter doesn't have
14 to try to interpret that answer, okay?

15 A. Okay.

16 Q. Last but not least, if you need to take
17 a break for any reason, you let me know, we'll be
18 happy to do that. Hopefully this won't be too
19 terribly long.

20 What is your current home address,
21 ma'am?

22 A. [REDACTED]

23 [REDACTED].
24 Q. And with whom do you live there?

25 A. By myself.

1 Q. All right. I understood from
2 Mr. Kornahrens' deposition that you live out in The
3 Dunes, which I assume was on Isle of Palms. That's
4 not correct?

5 A. No, I'm in Myrtle Beach in The Dunes
6 Club.

7 Q. Oh, okay. It's The Dunes Club in
8 Myrtle Beach. Okay. So that's my misconception.
9 How long have you lived out in Myrtle Beach?

10 A. I was born in Conway so I've lived
11 there all my life.

12 Q. Okay. Are you employed?

13 A. No, I just help George.

14 Q. Have you previously been employed?

15 A. Yes. I actually have my license,
16 oceanside consultant. I help my sister in real
17 estate part-time or I had been over a couple years.

18 Q. So you have your real estate license?

19 A. No, just a consultant license.

20 Q. Oh, consultant license. How long have
21 you had that?

22 A. Three years maybe.

23 Q. And what's your sister's name?

24 A. Betty Burleson.

25 Q. And she has a real estate firm?

1 A. Yes.

2 Q. And where is that?

3 A. In Myrtle Beach.

4 Q. What's the name of it?

5 A. Beach Water Realty.

6 Q. And what do you do for her?

7 A. Make calls, telephone, go with her and
8 talk with people.

9 Q. Have you ever held any other
10 employment?

11 A. Yes, before I met George I had a
12 motel -- I was in the motel business for awhile in
13 Myrtle Beach.

14 Q. Okay. And ownership of a motel,
15 management, what?

16 A. Ownership.

17 Q. What motel did you own?

18 A. Well, I had three. I started with
19 Dolphin Motel in the '80s and I leased it with an
20 option for a couple years. And then I purchased
21 the Parker House Motel and I had it for several
22 years. And then I bought By the Sea Motel and I
23 had that for several years.

24 Q. All right. But you're no longer in the
25 motel business?

1 A. No, sir. I got out in 2004.

2 Q. All right. Tell me how you met George.

3 A. I met George Memorial Day 2005. There
4 was a junket with MES Travel to Nassau and I met
5 him in Nassau at the Crystal Palace Hotel through
6 some friends that also had been knowing George for
7 many years. My friend, Tom Davis, which is who we
8 rent from, the real estate office, my sister, and
9 so I met him, George, through Tom Davis and his
10 wife and family and friends.

11 Q. If you would, I know I asked him, but
12 describe for me what your relationship is with him.

13 A. Well, we actually engaged, so fiancée I
14 guess you can say. We actually been engaged for
15 four years. And we've been together since May of
16 2005 so this May will be seven years that we've
17 been together. And ever since I've met George I've
18 been with him pretty much all the time.

19 Q. And you've been engaged for the last
20 four years?

21 A. Yes.

22 Q. All right. Any wedding plans?

23 A. Not right now.

24 Q. How often do you -- are you together
25 with George? And it's not as important for me to

1 know that today as in let's say the summer of 2010,
2 that time frame.

3 A. Well, 2010, I was there all the time.
4 And the reason why is because he had a heart attack
5 in 2008 and was in the hospital for a period of
6 time. And then later in 2008, he had some health
7 problems and issues that -- temporal arteritis
8 (ph), I don't say it correctly, and he was
9 hospitalized with that so I've really been staying
10 here I would say 70 percent of the time since 2008.

11 Q. And when you stay in Charleston, do you
12 stay at the --

13 A. 60 Romney Street.

14 Q. Okay. What is your date of birth?

15 A. [REDACTED].

16 Q. And your educational background?

17 A. High school.

18 Q. What high school?

19 A. Conway High School.

20 Q. What year did you graduate?

21 A. '78.

22 Q. Have you previously been married?

23 A. Yes.

24 Q. How many times?

25 A. Just one.

1 Q. How did that marriage end?

2 A. I was just young.

3 Q. End in divorce?

4 A. In divorce, yes, sir.

5 Q. Who were you married to?

6 A. Chuck Rahall.

7 Q. Do you have any relatives in Charleston
8 County?

9 A. No, sir.

10 Q. Tell me what you know about the dog
11 Gunner.

12 A. The dog Gunter, as George said, in
13 December 2009, the other dog that they had for --
14 they had it when I came there so probably five or
15 six years, was named Midnight and had heartworms
16 real bad and was sick for months and months and
17 months so Dr. Patrick decided it was best to put
18 him down in December 2009. And so after a few
19 weeks George missed the dog, he started looking in
20 the newspaper for another dog, German Shepherd, and
21 we made some phone calls to several people. They
22 had already sold the dog from the newspaper.

23 And this particular one, said it was at
24 such and such address so George wrote the address
25 down or we wrote the address down. I think it was

1 on a Saturday afternoon. We went to ride by and
2 saw the dog in the fence. There was nobody home.
3 And about that time was getting ready to leave,
4 someone was driving up, which was the owner of the
5 dog that George got the dog from. And she had a
6 small baby and she was there and she said, yeah,
7 this is the dog. I think she wanted 4 or 500
8 dollars. And George said, you know, that's a lot,
9 I want to come by and see the dog. George said,
10 why are you selling the dog?

11 She said she was selling the dog
12 because they were in a small home with a fence but
13 they were having hardship and they were moving --
14 in the process of moving to an apartment and they
15 were not allowed to have the dog. They hated to
16 get rid of the dog, they wanted to keep the dog but
17 due to their situation with her and her husband
18 going to an apartment, they said they'll sell it to
19 a good home.

20 We stayed there and talked to her and
21 George talked to her for a long time about the dog
22 and the background situation. The book and et
23 cetera came with the dog. George said, well, how
24 about 200? So George and her agreed on 200 for the
25 dog cash. She wrote the receipt I think on a

1 business card or something, Charleston Electric,
2 for the dog. She said, would you mind if we
3 continue to go by and visit the dog? And George
4 said, I would be happy for you to. So we took the
5 dog home that day in the truck.

6 Q. Were you present for the conversation
7 when the previous owner was explaining the history
8 of the dog?

9 A. Yes.

10 Q. All right. Was there anything that was
11 relayed to you that caused you any concern about
12 the dog?

13 A. No.

14 Q. Are you aware of any history that the
15 dog had for attacking people, biting people,
16 anything along those lines?

17 A. No, just friendly, overfriendly, and it
18 jumped on the employees and George and myself.

19 Q. And how frequently would you say the
20 dog would jump on people?

21 A. Probably daily. The workers came in
22 every morning at 7:00, 7:15.

23 Q. And it was clear to you that it was
24 because the dog was friendly or overfriendly as you
25 put it?

1 A. Friendly and overfriendly, yes.

2 Q. All right. And the dog actually did
3 that to you as well?

4 A. Yes.

5 Q. All right. How frequently did that
6 happen with you?

7 A. Well, I wasn't in the backyard a lot.
8 I did go back there to see George to go to lunch or
9 go somewhere or something. I mean, I am in and out
10 of there. Probably with myself just a few times
11 because he had just purchased the dog I think the
12 end of January, first of February of 2010.

13 Q. And those few times that it happened,
14 that was before the incident with your mother?

15 A. Yes.

16 Q. But you'd seen the dog do it other
17 times to other people?

18 A. Yes.

19 Q. And you never got the impression the
20 dog was meaning any harm by it?

21 A. No.

22 Q. Did you ever see the dog actually knock
23 someone down or knock someone over?

24 A. No.

25 Q. How about since you brought the dog

1 home, are you aware of any instances before the
2 incident involving your mother where the dog harmed
3 anyone?

4 A. No.

5 Q. Are you aware of any instances where
6 the dog beared its teeth, growled, acted in a
7 vicious manner in any way?

8 A. No.

9 Q. Prior to the incident occurring on
10 August 20th, 2010 involving your mother, was your
11 mother aware of the dog being in the backyard?

12 A. Yes.

13 Q. And how do you know that?

14 A. Because when the dog Midnight died or
15 they put to sleep, Dr. Patrick, 2009, December
16 2009, me and George had talked or George had talked
17 about buying the dog so we was in the newspaper so
18 she knows. And we was talking on the phone and
19 said George is looking for another German Shepherd.
20 We actually even asked a couple people in Myrtle
21 Beach or George did for a German Shepherd. He
22 wanted just a German Shepherd. So we had asked our
23 mom. When we got the dog, George was excited and
24 everything because the dog was beautiful and George
25 was just happy to find a full-blooded German

1 Shepherd so we were just talking to actually our
2 family and friends that George got a new dog.
3 Charleston Electric got a new dog.

4 Q. And that would include your mother?

5 A. Yes.

6 Q. Had your mother ever been around the
7 dog before?

8 A. That particular dog, no, she had not
9 been to visit.

10 Q. Now, on that particular -- well,
11 August -- I have not looked. Is August 20th a
12 Friday?

13 A. It was a Friday, yes.

14 Q. It was a Friday. And tell me what --
15 take me through that day chronologically what
16 happened that day.

17 A. Well, she came on Thursday and it was
18 late Thursday afternoon. But we was in the office
19 Thursday afternoon when George was locking up and
20 things when she got there on Thursday, the 19th of
21 August, 2010. We did not go in the backyard that
22 particular day. We was getting ready to lock up
23 and everything so we went to get something to eat.
24 We got something to eat, we come back, we go
25 upstairs. And then in the morning, which was

1 Friday morning, we get up, we come back in the
2 office and talk to George, have coffee.

3 And I had a doctor's appointment at the
4 chiropractor's office at 10:00 so I stayed there
5 45, 50 minutes, in time to drive back and forth
6 here to Folly Road. My mom -- when we left, it was
7 Thursday. She said, well, let's stop and get
8 something. Well, we went back to the shop and we
9 stopped at Hardee's and I think I got a coke and
10 she got a sweet tea, just something to drink only
11 because we was going back and by that time it was
12 probably ten to 12:00, quarter to 12:00, 12'ish.
13 Close to noontime. George usually eats lunch at
14 12:00 so we were going to go to lunch.

15 So we go into the office and I go all
16 the way to the back to George's office, he's not
17 there. So I asked Francie, so where is George?
18 She said, oh, he's probably in the backyard because
19 he's back there all the time working with the wire
20 and skinning wire and things like that. So I go to
21 the back. So I go to the back and maybe I was
22 there five or seven or eight minutes and ask him
23 what he's doing, we going to go to lunch.

24 About that time my mom walks out the
25 door. When she walks out the door, there's the

1 dog. And I think George just said he had let him
2 off the chain, he was like wild and, you know, just
3 friendly, overfriendly again and just -- it
4 happened so fast. It was just -- it was just an
5 accident. We turned around and there was nothing
6 that me and George could actually do to even try to
7 grab her. Like he said, the distance probably
8 from -- you know, from him, four or five feet.

9 And then the dog just came from nowhere
10 and put both paws up and one of the paws just
11 pushed her down to the ground. And when she did,
12 she started screaming, oh, oh, like that. And when
13 she went to try to move, she couldn't move or
14 anything and it was like, oh, my God, what
15 happened, you know. At first we thought she had
16 just fell. And she said, no, it's my back. And
17 then she said, it's my hip. And it's like, oh, my
18 God. And George said, you better call the EMS. I
19 said, yes, we better call. She said, yeah, I can't
20 move, don't touch me, I can't move.

21 So she was down on the ground maybe --
22 I don't know how long, maybe 20 -- 20 minutes or so
23 and, you know, going to move her and she said, no,
24 don't touch me, I can't move. Francie -- George
25 goes running in, tells Francie to call 911. She

1 did. She comes running out. She said, what
2 happened? We told her that the dog knocked her
3 down and we got to try to help her up. But my mom
4 kept saying, don't move me. So George goes in and
5 gets a chair and he has like a roller -- a platform
6 that has wheels on it, a roller. He puts the chair
7 on the roller and we tried to lift her up, me and
8 George and Francie. And when he go to try to lift
9 her in the chair, she's just screaming in so much
10 pain. And by that time the EMS was there.

11 So the EMS comes with the bed and the
12 stretcher and they took her from there. And she
13 was in so much pain they had to give her morphine
14 right then, she was in so much pain, she couldn't
15 move. And they worked on her probably about a half
16 an hour at least there at the shop. You'll see
17 that on the records from Roper Hospital that the
18 time the ambulance was there, probably a total of
19 at least maybe 50 minutes to an hour, 45 minutes to
20 an hour, 50, something like that. But she was in a
21 lot of pain. They rushed her to Roper.

22 Me and George went to Roper. We stayed
23 at Roper the whole entire time and they called in
24 for X-rays and things like that and we had to wait.
25 But me and George stayed with her and that's when

1 they came back and said her hip was broken in three
2 different places, she has to have major surgery
3 now. And so it was all just scary to us. And they
4 said, we have to admit her now, there's no choice.
5 And we didn't have any doctors and we didn't know
6 any doctors up here so it was Dr. MacIntosh which
7 was on call at Roper Hospital on that particular
8 day.

9 Q. All right. Let me -- I appreciate that
10 summary. Let me back you up and ask you a few
11 follow-up questions. You indicated I think that
12 once you got back to the shop, you walked outside
13 and that was without your mother, is that right?

14 A. Yes. I walked out to see George to
15 find out where George was at and Francie said he
16 was in the back of the shop and I went to the back
17 of the shop, yes.

18 Q. And your mother did not follow you at
19 that point?

20 A. No, not at that -- I thought she was
21 but I looked back but I guess she was talking to
22 Francie in the office because, you know, I thought
23 she was right behind me.

24 Q. And you said you went outside and
25 talked to George for several minutes before your

1 mother actually came outside?

2 A. Yes.

3 Q. Where was the dog when you first came
4 outside?

5 A. I personally -- when I came out there,
6 I don't know where the dog came from. I mean, all
7 of a sudden I walked out and -- well, when I walked
8 out, I didn't see the dog. When I was there for
9 two or three minutes, there comes my mom, all of a
10 sudden there comes the dog. I personally don't
11 know where the dog came from at that moment, it
12 happened so fast.

13 Q. And tell me exactly what the dog did.

14 A. She had the tea in her hand. I
15 personally think the dog came to smell the tea or
16 whatever she had is what I personally. She did not
17 have any food because we were going to go get
18 George and go to lunch. When she had the tea in
19 her hand -- because I didn't have anything in my
20 hand. When she had the tea and wherever -- George
21 had just let the dog, my understanding, just off
22 the chain just, you know, as he said in the letter,
23 maybe five or ten minutes before and I know that
24 was, you know, close to lunch. She came out and
25 then all of a sudden the dog just came from -- I

1 don't know where the dog came from. And he just
2 jumped on her, both paws on the front and basically
3 just sort of weighed and pushed her down because my
4 mom is small and then I'm not sure how much that
5 dog weighed but I think about 120 pounds or
6 something like that.

7 Q. And how big was your mother?

8 A. She weighed probably about 140 to 150
9 pounds maybe.

10 Q. How tall is she?

11 A. Five five.

12 Q. Prior to that had she had any type of
13 health problems?

14 A. Well, she got high blood pressure and
15 she had some heart -- irregular heartbeat prior to
16 that, but hip and orthopaedics, no.

17 Q. So no problems standing, no problems
18 walking?

19 A. No, uh-uh, no, not at all.

20 Q. Had your mother ever been in the
21 backyard at the shop before?

22 A. Yeah, sure, um-hum.

23 Q. Had she been around the dog, the
24 previous dog?

25 A. The previous dogs, yes, um-hum.

1 Q. So she would have been aware that there
2 was a dog out there?

3 A. Yes.

4 Q. Did you tell your mother not to come
5 outside?

6 A. No.

7 Q. Do you know of anybody who told her not
8 to go outside?

9 A. No. She had been out there before, our
10 family and friends, George's children's been there.

11 Q. So you had no concerns about the dog
12 harming her?

13 A. No.

14 Q. Tell me about the medical treatment
15 that she got at Roper. You indicated that she was
16 X-rayed three -- the hip was broken in three
17 places. Which hip was it, by the way?

18 A. The left hip.

19 Q. And she had never had any history of
20 hip problems before, is that right?

21 A. No.

22 Q. Okay. And so she ended up having
23 surgery that day?

24 A. Well, it started to swell by the time
25 she was in the ambulance and then the ER. I don't

1 think we actually even got to her room until like
2 7:00 PM and then the swelling had took over a
3 little bit, they wasn't able to do surgery until --
4 well, they were supposed to do it the next day but
5 then MacIntosh had an emergency and they did it the
6 following day so it was two days later before they
7 actually did the surgery. They put a rod and three
8 pins in her leg.

9 Q. How long was she in Roper Hospital?

10 A. I think seven days.

11 Q. Any additional surgery since then?

12 A. No.

13 Q. Are any scheduled?

14 A. No.

15 Q. And your mother is currently living in
16 Myrtle Beach?

17 A. Yes.

18 Q. After she got out of Roper, where did
19 she go?

20 A. They transported her by ambulance to
21 the Myrtle Beach Manor, which is a nursing home
22 facility for rehab and et cetera, so she stayed in
23 there for I think 20 or 30 days.

24 Q. And then where did she go from there?

25 A. Then she come and stayed with me for

1 four months.

2 Q. And she stayed with you where, your
3 residence in Myrtle Beach?

4 A. Yes, uh-huh. And then George, he drove
5 down to visit us. He come down on the weekends to
6 Myrtle Beach.

7 Q. Now, prior to the accident you
8 indicated you were staying up here about 70 percent
9 of the time, is that right?

10 A. Yes. Um-hum, yes.

11 Q. So I guess it sort of flip-flopped at
12 that point?

13 A. Yes.

14 Q. George came and visited you?

15 A. Yeah, once that happened with my mom,
16 then George started going to Myrtle Beach. Yeah,
17 he would go two or three weekends and skip a
18 weekend and sometimes they work on Saturdays and he
19 wasn't able to come.

20 Q. And you did that for four months?

21 A. She stayed with me for four months.

22 Q. Where did she go after those four
23 months?

24 A. After that she wanted to go back to her
25 place. She lives like in a senior citizen

1 apartment complex there in Myrtle Beach.

2 Q. Is that where she was living before the
3 accident?

4 A. Yes. She's been there 12 years.

5 Q. What was the name of the place?

6 A. Jefferson Place Apartments. There's 42
7 apartments there.

8 Q. Is it actually an assisted living
9 complex?

10 A. No, actually it's individual. You have
11 one bedroom --you know, four rooms, one bedroom,
12 the living room and then the kitchen and the bath
13 so you're individually on your own there.

14 Q. Do people like check in on you?

15 A. Oh, yes.

16 Q. Like provide you meals and custodial
17 services, that sort of thing?

18 A. Yes.

19 Q. And you said she had been living there
20 for about 12 years already?

21 A. Um-hum.

22 Q. How old is your mother?

23 A. Let's see, she's 79. I think she'll be
24 79.

25 Q. Is your father deceased?

1 A. Yes.

2 Q. When did he die?

3 A. May will be 15 years.

4 Q. So that is 1997? Yeah. Does that
5 sound about right?

6 A. That sounds about right.

7 Q. Do you have any siblings?

8 A. Yes, one brother and one sister.

9 Q. Where do they live?

10 A. My sister, Betty Burleson, lives in
11 Myrtle Beach.

12 Q. You already told me about her. How
13 about the brother?

14 A. My brother lives in Conway.

15 Q. What's his name?

16 A. Ed Rabon.

17 Q. First name is what?

18 A. Ed. Edward.

19 Q. Oh, Edward, okay.

20 A. Actually, he has an Aynor address
21 because they changed to 911 so it's actually an
22 Aynor address now but it's right outside of Conway
23 on 701.

24 Q. Do I understand correctly that your
25 brother Ed knows Jason somehow or is somehow

1 connected with him, is that right?

2 A. Yeah, I guess he knows Jason from the
3 past.

4 Q. You don't know that connection?

5 A. No.

6 Q. Who takes care of your mother's
7 personal affairs, finances?

8 A. Me and my sister.

9 Q. And by that I mean you essentially help
10 her, she's competent, correct?

11 A. Um-hum.

12 Q. So you're essentially helping her as
13 her children?

14 A. Yes, um-hum.

15 Q. Any other health issues your mother's
16 having currently?

17 A. No.

18 Q. Are there any health issues that she's
19 having related to her hip?

20 A. Well, she was having a little bit of
21 back problems from her hip from the fall from maybe
22 her hip and her back.

23 Q. Is she still undergoing any type of
24 medical care for anything related to the fall?

25 A. Well, they wouldn't pay for the therapy

1 and stuff so she needs some more therapy but she's
2 just been doing it on her own. But under doctor's
3 care right now, no, she just goes back to the
4 doctor in Myrtle Beach to orthopaedic that they
5 send her to for checkups and things like that.

6 Q. Who is her orthopaedist?

7 A. Dr. Chamber, the one in Myrtle Beach.

8 Q. And who does he practice with?

9 A. He merged end of the year and I think
10 it's called Strand Orthopaedics.

11 Q. Since August of 2010, did she have any
12 problems other than to the left hip that resulted
13 from this fall?

14 A. No. The left hip and the back, that
15 was it.

16 Q. Tell me about the back issue.

17 A. Well, when she fell, I guess she also
18 hurt her back and then the surgery from the hip.

19 Q. And specifically what portion of the
20 back?

21 A. The lower back.

22 Q. Has she been treated for that?

23 A. Yes, seeing Dr. Sarb, a lady named
24 Sarb, S-A-R-B.

25 Q. What kind of a doctor is Dr. Sarb?

1 A. Neurologist. She's had like two shots
2 and -- lower back for pain.

3 Q. How frequently do you see your mother
4 currently?

5 A. I see her all the time when I'm not
6 with George so when I'm here, of course, but I talk
7 to her daily.

8 Q. Okay. The present time, how often are
9 you in Myrtle Beach?

10 A. Well, the past three weeks I was there
11 spending time with her and doing some things at
12 home, but prior to that, since 2008, I was thinking
13 maybe like two weeks and then go home for two or
14 three days and then come back and stay for a week
15 or two weeks and then go back home. So I guess
16 maybe two weekends out of the month over the past,
17 you know, year or something.

18 Q. Okay. Any time you go home, you see
19 your mother?

20 A. Always.

21 Q. Were you ever employed by Charleston
22 Electrical Services?

23 A. I've never been actually employed by
24 Charleston Electric but I've been working there
25 ever since I met George. And, you know, I work

1 there all the time and help George and answer the
2 phone all the time but I do get paid the 600
3 dollars per year for outside services. They give
4 me that each year. And I go to the bank and the
5 post office and whatever needs to be done. As I
6 said, answer the phone. I run errands for them all
7 the time. They do buy my gas and the service on my
8 van and my car. They do all that paid by
9 Charleston Electric and the gas every week is paid
10 by Charleston Electric.

11 Q. But you're not officially an employee?

12 A. No.

13 Q. But you run errands, help out in the
14 office?

15 A. Yes.

16 Q. How frequently do you do that?

17 A. When I'm here, every day.

18 Q. Were you doing that back in August of
19 2010?

20 A. Yes.

21 Q. On the day of your mother's fall, had
22 you done any of those type of services on that day?

23 A. That day, no, because I got up and went
24 to the doctors, so that particular day, no.

25 Q. Just so I'm clear, your mother went

1 with you to the doctor, right?

2 A. Yes.

3 Q. Did you ever declare any income from
4 Charleston Electric Services on any tax returns?

5 A. No, sir.

6 Q. Okay. Give me one second. I might be
7 through. Am I correct that your mother never did
8 any type of work for Charleston Electric, is that
9 right?

10 A. That's right, no.

11 Q. So on August 20th, 2010, she would have
12 been a social guest?

13 A. Yes.

14 MR. BOAN: Object to the form of the
15 question.

16 BY MR. LINDEMANN:

17 Q. She was staying as a guest with you and
18 George at --

19 A. Yeah, she always stays with us at 60
20 Romney Street. That's where we live, me and
21 George.

22 Q. So when she came to visit, she'd stay
23 with you?

24 A. Yes. Always.

25 MR. LINDEMANN: All right. I have no

1 further questions. Thank you.

2 MR. BOAN: I've got no questions.

3 MR. DAVID: No questions.

4 MR. BOAN: All right. We are
5 concluded.

6 (WHEREUPON, the proceedings concluded
7 at 4:01 PM.)

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1 CERTIFICATE OF REPORTER

2 I, Terri L. Brusseau, Registered
3 Professional Reporter and Notary Public for the
4 State of South Carolina at Large, do hereby certify
5 that the foregoing transcript, Pages 1 through 33,
6 is a true, accurate and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 2nd day of December, 2011 at
12 Charleston, Charleston County, South Carolina.

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Terri L. Brusseau,
Registered Professional Reporter,
Certified Realtime Reporter
My Commission expires
March 24, 2016.

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I N D E X

Page

Line

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STIPULATION

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WANDA G. RAHALL

3

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EXAMINATION

3

13

4

BY MR. LINDEMANN

CERTIFICATE OF REPORTER

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E X H I B I T S

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(No exhibits proffered)

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1 STATE OF SOUTH CAROLINA THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
3
4 CHARLESTON ELECTRICAL SERVICES,) C/A NO.: 2013-CP-10-3901
5 INC., AND SELECTIVE INSURANCE)
6 COMPANY OF SOUTH CAROLINA AS) DEPOSITION OF:
7 SUBROGEE OF CHARLESTON ELECTRICAL) WANDA G. RAYHALL
8 SERVICES, INC.)
9 PLAINTIFF,) MAY 26, 2016
10 v.)
11 WANDA G. RAYHALL,)
12 DEFENDANT.)
13

14 DEPOSITION ON THE ORAL EXAMINATION OF WANDA G.
15 RAYHALL, REPORTED BY JERRY MABRY, COURT REPORTER AND NOTARY
16 PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA; SAID DEPOSITION
17 TAKEN PURSUANT TO NOTICE AND IN ACCORDANCE WITH THE SOUTH
18 CAROLINA RULES OF CIVIL PROCEDURE AT THE RICHARDSON, PLOWDEN &
19 ROBINSON, P.A., 2103 FARLOW STREET, SUITE B, MYRTLE BEACH,
20 SOUTH CAROLINA ON THURSDAY, MAY 26, 2016; SCHEDULED FOR 11:00
21 A.M. AND COMMENCING AT 11:16 A.M.
22
23
24
25

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

ANDREW F. LINDEMANN, ESQUIRE
DAVISON & LINDEMANN, P.A.
1611 DEVONSHIRE DRIVE
COLUMBIA, SOUTH CAROLINA 29202

REPRESENTING THE DEFENDANT:

ELIZABETH F. FULTON, ESQUIRE
PRITCHARD LAW GROUP, LLC
129 BROAD STREET
CHARLESTON, SOUTH CAROLINA 29401

ALSO PRESENT: NONE

C O N T E N T S

(DEPOSITION OF WANDA G. RAYHALL)

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E X H I B I T I N D E X

EXHIBITS: IDENTIFIED AT PAGE:
(NONE PROFFERED)

L E G E N D

DASHES [--] INDICATES INTERRUPTION; INCOMPLETE
PHRASES; UNFINISHED SENTENCES.
[sic] WRITTEN AS SAID.
[ph] WRITTEN PHONETICALLY.

1 This deposition is taken in accordance with the
2 South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent and
4 respective counsel that the reading and signing of the
5 deposition by the deponent is expressly waived.

6 WHEREUPON:

7 WANDA G. RAYHALL, being duly sworn and cautioned
8 to speak the truth, the whole truth and nothing but the
9 truth, testifies as follows:

10 MR. LINDEMANN: Ms. Rayhall, how are you?

11 THE WITNESS: Good.

12 MR. LINDEMANN: Before we start, just
13 wanted to put a couple of Stipulations
14 on the record that Ms. Fulton and I
15 talked about. And obviously your
16 deposition was taken in the lawsuit that
17 your mother brought against Charleston
18 Electric Service, the 2010 lawsuit.

19 What we have agreed and my understanding
20 is Judge Scarborough has agreed to this
21 as well. This was a staff conference
22 that I had another lawyer in my office
23 attend. This deposition today is not
24 intended to rehash everything that was
25 in the prior deposition. I will do my

1 very best not to rehash anything and
2 actually go into some new information
3 and we have an agreement, as I
4 understand it, for purposes of the trial
5 in this case, we will use the deposition
6 from the 2010 case. Is that correct?

7 MS. FULTON: That is correct.

8 MR. LINDEMANN: In addition to that, one
9 of the issues is the reasonableness of
10 the settlement that was reached between
11 Selective Insurance Company and your
12 mother. I know you were part of that
13 process at the time and we are stipu-
14 ating for purposes of this lawsuit that
15 was a reasonable settlement, is that
16 correct?

17 MS. FULTON: That is correct.

18 MR. LINDEMANN: That saves me from
19 having to ask you all about your
20 mother's injuries and medical bills.
21 That cuts out a good thirty minutes here
22 today so that's why we're doing that.

23 THE WITNESS: Okay.

24 DIRECT EXAMINATION

25 BY MR. LINDEMANN:

1 Q. Let me just get a little bit of background
2 since it's been about four and a half years since I've
3 seen you. Are you currently living in Myrtle Beach?

4 A. Yes.

5 Q. Are you married?

6 A. No.

7 Q. Are you still in a relationship with George
8 Kornahrens?

9 A. No.

10 Q. When did that end if I may ask?

11 A. January 2014.

12 Q. What was the reason for that relationship to
13 end?

14 A. Well, he told me he was going back to his ex-
15 wife, but I guess he went back to his ex-girl-friend.

16 Q. So, he broke off the engagement?

17 A. Yes.

18 Q. And as I understand it, you were actually
19 engaged to him, correct?

20 A. Yes.

21 Q. Are you still in contact with him at all?

22 A. No.

23 Q. I also understand in our discussion before
24 the deposition started that your mother has now passed
25 away, is that correct?

1 A. Yes. November the 27th 2015.

2 Q. I apologize for that but I did want to
3 establish that for the record as well. Are you
4 currently employed anywhere?

5 A. I'm helping my sister at Beach Water Realty
6 part time. I've just started back trying to help her
7 work because, you know, for four months I was having a
8 hard time trying to go through some of my mom's
9 personal items and things like that from passing away.
10 So, now I am helping my sister part time.

11 Q. I know you've had some health issues of late
12 as well?

13 A. Yes.

14 Q. Are you taking any type of medication that
15 would affect your ability to give truthful testimony
16 here today?

17 A. I am taking some medication but, no, I don't
18 think so.

19 Q. You feel okay today?

20 A. Yes.

21 Q. To give testimony?

22 A. Yes. It's medication for depression. I'm
23 depressed, you know, from my mom and thyroid problems
24 and allergy.

25 Q. I apologize that you're going through all of

1 that. I appreciate your giving me the time this
2 morning and like I said, off the record, I will try to
3 go as quickly as we possibly can.

4 I want to go into a little bit more detail of
5 the living arrangements that you had back in August of
6 2010. As I recall, August 20th of 2010 is the date
7 that your mother's accident with the dog happened?

8 A. Yes.

9 Q. At that particular time, you were at 60
10 Romney Street in Charleston, correct?

11 A. Yes.

12 Q. And that's where the incident occurred?

13 A. Yes.

14 Q. Can you describe for me exactly how that
15 property is situated? My understanding is there was an
16 establishment of Charleston Electric, but there was
17 also an apartment on the premises, is that right?

18 A. Yes. We lived upstairs in an apartment at 60
19 Romney Street.

20 Q. By we, you're referring to you and George?

21 A. Me and George Kornahrens, yes.

22 Q. I never can pronounce his last name. Do you
23 mind if I call him George? I don't know what it is but
24 that is one name that I just have not been able to
25 master. So, again, the lay-out. It was a two story

1 structure?

2 A. Two story. Charleston Electric was down-
3 stairs, the apartment was upstairs. They was basically
4 two doors; one goes straight up to the stairs or the
5 second floor where the apartment was that we lived and
6 then the front door to go to the office, the shop, and
7 et cetera, but we hardly ever used the other door other
8 than like groceries. We always used the front door,
9 which is Charleston Electric front door. All of us,
10 including George.

11 Q. So, just to make sure I understand what you
12 just told me, there was a separate entryway to the
13 apartment separate from the premises of Charleston
14 Electric?

15 A. Yes. There's two doors in the front. It's
16 all basically together but there's one door that's a
17 foot apart from the other door. You can use either
18 door.

19 Q. And they were both on the front of the
20 building?

21 A. Yes.

22 Q. And the door on your left, would that take
23 you to your apartment?

24 A. Yes.

25 Q. And it would only take you to the apartment,

1 correct?

2 A. And then you can just cut to the right and be
3 in the office. It's just like from me to Liz to the
4 office. It's not like it's totally away. Let's just
5 say we're going this way, that takes you to the
6 apartment and this way takes you to the office, no,
7 it's not like that.

8 Q. So, going through either door could take you
9 both to the office as well as to the apartment?

10 A. You're literally in the office, yes.

11 Q. Did you have a key to either of those doors?

12 A. Yes. I had a key to the apartment door.

13 Q. So, you could come and go as you pleased?

14 A. Yes.

15 Q. How long have you had your own key to the
16 apartment door?

17 A. Probably May 2005 since that's when me and
18 George had started dating. The end of May 2005.

19 Q. How long were you actually living at 60
20 Romney Street?

21 A. That wasn't my home address. My home address
22 is here, [REDACTED]. I was there on weekends.

23 Q. Were you there every weekend?

24 A. No, not every weekend. A lot of weekends, he
25 came here.

1 Q. But most of the time you were either with
2 George here in Myrtle Beach or there at 60 Romney
3 Street?

4 A. Yeah. Pretty much ten years.

5 Q. So, would you ever be there during the week?

6 A. Yes, there's times. If he had doctor's
7 appointments when he was sick and going through some
8 health issues, I would be there. A lot of times during
9 the week to stay over Sunday and go to church and take
10 him to his doctor's appointments if they would fall on
11 Monday or Tuesday morning. We tried to work it around
12 that.

13 Q. I understand from your previous testimony
14 that you estimated that you would be at the Romney
15 Street address about seventy percent of the time from
16 2008 through August, 2010?

17 A. Later. Later I was there more than I was in
18 2005.

19 Q. Seventy percent, do you agree with that
20 estimate today?

21 A. Yes.

22 Q. Did you actually keep clothing permanently at
23 that address?

24 A. Well, as far as pack your shoes up, your
25 Sunday clothes every week, so, yes, I kept clothes

1 there.

2 Q. And other personal items; toiletries and that
3 sort of thing?

4 A. Yes.

5 Q. So, you didn't live out of a suitcase when
6 you came to Romney Street?

7 A. Well, I was in the beginning but then when
8 George got sick, like you said, I'm not sure what date,
9 2008 or '09 or something, I was there a little bit more
10 during the week and more clothes, but I was when I
11 first started, basically out of a suitcase on the
12 weekends.

13 Q. Well, let me specify that question a little
14 bit better. How about in 2010?

15 A. 2010 I had clothes there.

16 Q. So, when you would come stay at Romney
17 Street, you didn't need to bring personal effects, you
18 already had them there?

19 A. Yes.

20 Q. Did you have any other personal property that
21 you would keep there? Books, you know, kitchen
22 housewares, that sort of thing?

23 A. No. All that belonged to George.

24 Q. But you indicated that you had a key and that
25 you could come and go as you pleased?

1 A. Yes.

2 Q. On the day your mother was injured, I
3 understand that was a Friday?

4 A. Friday.

5 Q. And that she had previously come to 60 Romney
6 Street the previous evening, correct?

7 A. Yes. That was on a Friday and we had gotten
8 there on Thursday afternoon.

9 Q. Did she come up there by herself or did she
10 come with you?

11 A. No, she come with me. She didn't drive.
12 She's never driven.

13 Q. She's never driven?

14 A. Never driven.

15 Q. You indicated I think previously that you
16 arrived with her that night, the Thursday night?

17 A. Yes. Probably about six o'clock, yeah. It
18 was five or six.

19 Q. Prior to that time, had she had any type of
20 interaction with Gunner, the German shepherd?

21 MS. FULTON: I'm going to object to this
22 because I think this has been discussed
23 before. Just putting it on the record.

24 MR. LINDEMANN: Sure. I think you're
25 probably right. I do want to elaborate

1 on some of the issues of the accident.

2 BY MR. LINDEMANN: (RESUMING)

3 Q. Let me ask you to make sure I have the back-
4 ground. It's my understanding that she had not had any
5 interaction with Gunner prior to that particular visit,
6 is that right?

7 A. Never seen him before.

8 Q. How long had you and George had the dog?

9 MS. FULTON: Object to the form.

10 A. George had the dog probably like a month.

11 Q. Now, you had been around the dog?

12 A. I had been around the dog.

13 Q. And I know we talked about that in the prior
14 deposition.

15 A. I was with George when he bought the dog.

16 Q. Now, as far as we had talked about the layout
17 of the door and the apartment, can you describe the
18 back of the building to me? The backyard essentially.

19 A. When you go into the office, there's a
20 doorway to the left which is basically the warehouse
21 and then there's a door and my mama was standing at the
22 door. We were going to eat. Twelve thirty, give or
23 take and I asked Francine, the secretary, I said,
24 "Where is George?" because we thought he was in his
25 office and he said, "I'm back here."

1 So I went there and then he was busy scraping
2 some wire. So, it was maybe like seven or eight
3 minutes and Mama was talking to Francine, and so I
4 guess she thought that maybe we went out the side or
5 something. We was hungry. We all were hungry. We
6 were going to eat so she stepped there and that's when
7 Gunner just basically over friendly and, you know,
8 jumped on her.

9 Q. I'm gonna get to that in a little bit more
10 detail. As far as the layout is what I was looking
11 for. Can you describe for me -- I don't think we went
12 into that in the first deposition. What exactly the
13 backyard or the back of that building consisted of?

14 A. Okay. So, walk into the office and turn left
15 into the hallway. That's the shop area, the doorway
16 and then in the back is where the trucks and the
17 ladders and just supplies and maintenance for an
18 electrical company.

19 Q. Was it a paved area? Was it grass? I mean,
20 what did it look like?

21 A. Well, it's just like paved but it's sort of
22 rough. It hasn't been re-paved or anything for years.

23 Q. So, there would be vehicles back there.
24 Would there be other type of supplies or equipment?

25 A. Well, at that time there weren't really any

1 vehicles `cause they were all on the road `cause the
2 guys usually leave around eight in the morning.

3 Q. You mean at the time of the accident?

4 A. At the time of the accident around twelve
5 thirty when we were back there in the back to get
6 George.

7 Q. As far as the dog is concerned, how was the
8 dog typically kept during the day?

9 A. Well, George puts the chain on him during the
10 day. You know, I think that's what happened. He had
11 just let him off the chain and he had been locked up,
12 chained up for a couple of hours and he was just, you
13 know, it was just a freak accident.

14 He's a friendly dog. Didn't mean to do it
15 and they didn't know much about the dog. They just got
16 the dog, you know.

17 Q. Now you said, as far as your mother is con-
18 cerned, you and her had just come from a doctor's
19 appointment?

20 A. Yes. I went to the chiropractor.

21 Q. And she was holding?

22 A. A Hardee's cup. We had stopped by `cause she
23 was thirsty and we got her a tea and she had some tea
24 in her cup. I didn't get anything to drink, just her.

25 Q. And she stopped and talked to Francine?

1 A. Stopped and talked to Francine, you know,
2 prior maybe seven minutes and I thought George was in
3 the office and I went to the back and he said, "I'm out
4 here." you know, he heard my mouth, so he said, "It's
5 gonna be a minute." So, I went out.

6 Then my mom came and she had the drink and
7 that's when the dog, I guess, was smelling the drink,
8 maybe wanted food or smelling the drink, you know, to
9 see what she had. She's small and so with the big
10 paws, the dog's so big and just went on her shoulders
11 and just pulled her down.

12 Q. And that actually took place out in the
13 backyard?

14 A. There at the back door, yeah.

15 Q. Had she actually walked out the back door?

16 A. Well, it happened so fast. The dog was in
17 the shop and she was in the office, which is the shop
18 that just goes out one door and the dog was there and
19 the dog just came out of nowhere and all of a sudden
20 there's the dog.

21 Q. Okay. So I understand where it took place,
22 she had actually walked through the doors to the
23 backyard?

24 A. Right outside. Yeah, maybe a step outside,
25 two steps outside.

1 Q. How close was she to you?

2 A. Probably like me and Liz.

3 Q. So, probably two or three feet?

4 A. Yeah.

5 Q. Had you directed your mother not to come
6 outside?

7 A. No. We was just, you know, everybody was
8 hearing everybody's voices getting read to go eat, you
9 know. They're out there all the time. I mean, they
10 have people from church go out there. They still go
11 out there. They been going out there ever since I been
12 going there.

13 Prior to, you know, George been there for
14 about forty years and people come off the street
15 looking for George and go back there and talk to
16 George, you know. It's never been a problem before.

17 Q. Had you -- did you give your mother at any
18 point before you got there the previous evening, on the
19 th before she fell, did you give her any warnings
20 about Gunner being overly friendly?

21 A. No.

22 Q. Were there any discussions at all between you
23 and your mother as far as the dog?

24 A. No. We love animals. She loves animals, I
25 love animals. Never thought. I never thought anything

1 about to give anybody a warning. Not just her,
2 anybody.

3 Q. Were you aware from your own experience the
4 dog was, as you described, overly friendly, right?

5 A. That's a German shepherd.

6 Q. Is the answer yes?

7 A. Yes.

8 Q. And you knew that the dog would jump up on
9 people?

10 A. Not necessarily jump up, but --

11 Q. Well, you had seen the dog jump up on people,
12 correct?

13 MS. FULTON: Object to the form.

14 A. Friendly. He's friendly. Over friendly, I'd
15 say.

16 Q. Part of being overly friendly was he would
17 get up on his rear feet and put his paws on you?

18 A. Well, I don't know if he would actually jump
19 up the way he did with my mama on her shoulders. He
20 would jump on the knees, this part of a person.

21 The employees for instance that was working
22 for George. He did jump up on me a couple times the
23 week before only because I was out there trying to feed
24 him, you know, or take the water hose and put some
25 water if they wasn't much there or something like that.

1 But, you know --

2 Q. But you didn't do anything to warn your
3 mother about the over friendliness of the dog, is that
4 correct?

5 A. Warn --

6 MS. FULTON: Object to the form. This
7 is covered in the original deposition.

8 Q. Go ahead and answer please. We'll worry
9 about the objections later on.

10 A. Warn her about the dog?

11 Q. Uh-huh. (Affirmative response).

12 A. No. Why should I? Like I said, I mean, he's
13 there for everyone.

14 Q. Did you take any steps whatsoever to keep
15 your mother from coming outside?

16 MS. FULTON: Object to the form.

17 A. No. They was open to the public. There has
18 never been any signs for anyone even when they had the
19 other German Shepherd that they had to put down in
20 December. It was sick and they had to put that German
21 Shepherd down. Got this to protect the yard and the
22 trucks and things like that as was in the deposition
23 before for me George.

24 Q. Did you warn or instruct your mother not to
25 carry any type of food or drink outside?

1 MS. FULTON: Object to the form.

2 A. No, sir.

3 Q. Before your mother walked outside, did you do
4 anything to make certain that Gunner was chained?

5 MS. FULTON: Object to the form.

6 A. George had just let him off the chain but I
7 did not know. We thought Gunner was still on the chain
8 because he was gonna usually let him off before he
9 leaves or something like that after everyone is out of
10 the backyard of the shop.

11 He had just let Gunner off. We come in and
12 go get George for lunch at twelve thirty. In seven or
13 eight minutes, Mama, she come basically to the back of
14 the shop, the doorway, to see where we were at and
15 hungry, and George said, "Just a minute." And bamm, it
16 happened in less than a minute. It was just --

17 Q. Where was Gunner kept when he was on his
18 chain?

19 A. George had him in the shop yard.

20 Q. Would it have been in an area where once you
21 walked outside and during that five to seven minutes
22 that you were talking to George, that you would see
23 where the chain was?

24 A. It was chained up over next to that tree.

25 Q. How close was that where you were talking to

1 George?

2 A. Just a few steps. But, if he was still
3 chained, he wouldn't been able to get to her because
4 she basically was just two steps from the doorway of
5 the shop and the dog was chained in the middle there.

6 Q. But it was within eyeshot of where you were
7 standing with George?

8 A. Yeah. Maybe four or five steps, something.
9 Yeah, the back of the shop is, you know, not too large
10 back there. Fits seven or eight trucks, so, I mean,
11 it's not small either.

12 Q. So, while you were talking with George, did
13 you notice that Gunner was not on his chain?

14 A. Yeah, but it was only less than a minute and
15 there he was.

16 Q. Do you know where he came from?

17 A. No. I guess he had just unchained him so he
18 was in the backyard.

19 Q. But he unchained him before you got there?

20 A. Yes. He unchained him before I walked out
21 the door.

22 Q. And that's what he told you after the fact?

23 A. Yeah. There was the dog and you know --

24 Q. But you knew he was unchained because you saw
25 the chain and he wasn't on it?

1 A. One minute.

2 Q. And that was before he jumped on your mother?

3 A. A minute.

4 Q. Knowing that he was free, did you take any
5 steps whatsoever to either warn or protect your mother
6 from any contact with Gunner?

7 MS. FULTON: Object to the form.

8 A. No.

9 Q. Is there anything that you did once Gunner
10 came out -- once your mother was outside and Gunner
11 approached to try to keep Gunner away from your mother?

12 A. It happened so fast. Less than one minute.
13 We turned around and he had her on the ground.

14 MR. LINDEMANN: Give me one second.

15 THE WITNESS: Uh-huh.

16 MR. LINDEMANN: I think that's all the
17 questions I have. I told you it
18 wouldn't be long.

19 CROSS-EXAMINATION

20 BY MS. FULTON:

21 Q. I have a few questions. Did you pay rent to
22 George for staying at 60 Romney Street?

23 A. No.

24 Q. Did you pay any utilities?

25 A. No.

1 Q. Did you pay cable?

2 A. No.

3 Q. If George did not want you to stay at 60
4 Romney Street, would you have to follow that
5 instruction and not stay there?

6 A. Yes.

7 Q. And at all times, you've maintained your own
8 residence here in Myrtle Beach?

9 A. Yes.

10 Q. And George maintained his own residence at 60
11 Romney Street, correct?

12 A. Yes.

13 Q. So, is it fair to say that you were a guest
14 of George?

15 MR. LINDEMANN: Object to the form.

16 A. Yes.

17 Q. And that you were at the pleasure of George?

18 MR. LINDEMANN: Object to the form.

19 A. Yes.

20 Q. Now, I think you said earlier that the dog,
21 Gunner, jumped up on your mother in the yard, is that
22 correct? Or when you say "yard," whose is that?

23 A. The yard belongs to George Kornahrens, the
24 owner of the property and John Oakley rents the shop
25 property area from George Kornahrens.

1 Q. And John Oakley is the president of
2 Charleston Electrical Services?

3 A. Yes.

4 Q. So, the yard is under the control of
5 Charleston Electrical Services?

6 MR. LINDEMANN: Object to the form.

7 A. Yes.

8 Q. And you said it was sort of like a parking
9 lot where they kept the trucks and materials?

10 A. Yes.

11 Q. So, you couldn't park your car back there?

12 A. No.

13 Q. Nobody parked their car back there except
14 Charleston Electrical trucks?

15 A. Right.

16 Q. So, it was part of Charleston Electrical
17 Services business?

18 MR. LINDEMANN: Object to the form.

19 A. Yes.

20 Q. And that's where Gunner jumped on your mom,
21 correct?

22 A. Yes.

23 Q. I think you testified to this prior, who
24 owned Gunner?

25 A. Charleston Electric.

1 Q. And George bought Gunner, correct?

2 A. Yes. I was with George thirty days prior to
3 buying Gunner. He had been looking in the newspaper,
4 he and John, for a new shop dog. And the lady had
5 Gunner for sale and we went over one Saturday and
6 George went over and talked to the lady, but I was with
7 George -- in the company truck with George and he said,
8 "Okay. I think I'll take him."

9 And he paid her and the receipt was to
10 Charleston Electric Services, and gave her \$200.00 for
11 the dog for Charleston Electric Services.

12 Q. It wasn't your dog, was it?

13 A. No.

14 Q. Because you have your own dogs, right?

15 A. Right.

16 Q. You have little dogs, don't you?

17 A. Yes, ma'am. I have two little dogs.

18 Q. Were you an employee of Charleston Electrical
19 Services?

20 A. No.

21 Q. You didn't have any ownership interest in
22 Charleston Electrical Services?

23 A. No.

24 Q. That was all George, correct?

25 A. All George and John Oakley.

1 Q. And you were engaged to George?

2 A. Yes.

3 Q. At the time you went to meet George to go to
4 lunch, was he working?

5 A. Yes.

6 Q. And who does he work for?

7 A. Charleston Electric Services, John Oakley.

8 Q. At one time he owned Charleston Electrical
9 Services?

10 A. Yes, he did.

11 Q. And then he sold it to John?

12 A. He's had it probably about forty years and he
13 sold it, I think, to John in like 1995 and they swapped
14 it around and John -- yes.

15 Q. Is there any sort of family relationship
16 between George and John?

17 A. Yes. That's his stepson by marriage, by his
18 second marriage to Leigh Oakey.

19 Q. And George had the papers for the dog?

20 A. Yes.

21 Q. At the apartment of 60 Romney Street, it was
22 separate from the shop, correct?

23 A. Yes.

24 Q. George was employed with Charleston
25 Electrical Services?

1 A. Yes.

2 Q. But the warehouse, the office, the yard, that
3 was all under the control of Charleston Electrical
4 Services?

5 A. Yes.

6 Q. You said you had a key to 60 Romney Street
7 but that was just to get into the apartment?

8 A. Yes.

9 Q. You couldn't go into Charleston Electrical
10 Services whenever you wanted?

11 A. I never had a key.

12 Q. Basically if George or John didn't want you
13 there, you had to listen to them?

14 A. Yes.

15 Q. I never had the pleasure of meeting your mom,
16 but in August of 2010, was she competent or was she --

17 A. She was in great health. Enjoying life,
18 walking, doing things and she was in great health.

19 Q. Why did she come down to Charleston with you
20 that weekend?

21 A. Because George was supposed to come to Myrtle
22 Beach and he had some jobs and he was gonna have to
23 work a half a day on Saturday and he said, "Why don't
24 you just come and bring your mom." She's been there,
25 you know, many times.

1 I mean, she's probably -- at that time in
2 2010, we were seeing each other five years and she had
3 been over there at least five or six times prior to.
4 So, it was not like it's her first time.

5 George invited her to come down for us to go
6 out to dinner. I mean, she enjoyed The Battery and
7 things like that.

8 Q. She could be left on her own, correct?

9 A. Oh, yeah.

10 Q. You weren't responsible for taking care of
11 her?

12 A. Oh, no. She'd go up and down the steps and
13 everything. She was doing wonderful.

14 Q. She lived on her own in Myrtle Beach?

15 A. Oh, yes.

16 Q. So, you weren't under any sort of Power of
17 Attorney or conservatorship for your mom?

18 A. No. Not at that time.

19 Q. Not at that time?

20 A. No.

21 Q. Did that change?

22 A. Well, after she -- well, with her hip
23 breaking and things like that, it's only what year it
24 was for the Power of Attorney but back then she was
25 living on her own and doing everything.

1 Q. Did you have anything to do with Gunner?

2 A. No, ma'am.

3 Q. He wasn't your dog?

4 A. No, ma'am.

5 Q. You didn't feed him?

6 A. Well, I would put some water out there 'cause
7 there wasn't much water and it's hot out there. It was
8 in August. I'd do that to anybody on the street
9 because I love animals.

10 Q. Right. But you've never seen him bite
11 anybody?

12 A. Oh, no. He was just really a friendly, over-
13 friendly dog. Just a freak accident, that's all.

14 Q. Do you think he was dangerous?

15 A. No, absolutely not. He was just friendly.

16 MS. FULTON: I think that's all the
17 questions I have. I'm sure Andrew might
18 have a few in response.

19 REDIRECT EXAMINATION

20 BY MR. LINDEMANN:

21 Q. I just have a few. You mentioned that you
22 had your own two dogs?

23 A. Two small Chihuahua, yeah.

24 Q. Did they come to 60 Romney Street with you?

25 A. Well, one of them was George's. I still got

1 him now, but one of them was George's, when I met him
2 he had a Chihuahua named Baby. He had got it maybe a
3 year and then I met him and then his daughter, Tammy,
4 has got the full-blooded Chihuahua.

5 So, we went gambling a couple of times and
6 all of a sudden we had a little baby. I said, "Well,
7 that's gonna be my dog." So, Tammy had the daddy dog,
8 George had Baby, which was the mama dog. I got the kid
9 dog. But now, I got both of the dogs.

10 Q. When you were living with George at 60 Romney
11 Street, would those Chihuahuas live in the apartment
12 with you?

13 MS. FULTON: Object to the form.

14 A. Oh, yes. They would be there every minute.
15 They traveled back and forth and there was times I'd
16 leave them there if I was coming back for a few days or
17 vice versa. George would even bring them down in the
18 truck if I wasn't coming and he was coming to Myrtle
19 Beach to visit me and my mom.

20 Q. So, they were your two dogs together at that
21 point in time?

22 A. Yes.

23 Q. And after your breakup with George, you just
24 had, for lack of a better word, custody of both?

25 A. Yes. I wouldn't trade it for the world.

1 Q. I'm a little confused about the whole key
2 issue so let me just make certain I understand. I
3 understood that both doors at the front of the building
4 would access both the apartment as well as the store,
5 is that right?

6 A. Yes.

7 Q. And you had a key to at least one of those
8 doors?

9 A. Yes. I had the key to the apartment door.

10 Q. But when you came through that door, you
11 could access the shop, correct?

12 A. Well, there's a door inbetween there if you
13 locked it, but George pretty much kept it open all the
14 time. If we go out of town and we go to Myrtle Beach,
15 he would lock that door because he didn't want anybody
16 going in the apartment or the office, vice versa. So,
17 there is a door right in between -- a little small door
18 that locks.

19 Q. And describe that for me. If you walked in
20 the door that you had a key to, were they like stairs
21 to the apartment?

22 A. Yes. Straight up, Uh-huh. (Affirmative
23 response).

24 Q. Straight up in front of you?

25 A. Yes.

1 Q. And to the left what was there?

2 A. That was just the wall.

3 Q. Just a wall. And to the right?

4 A. It's a small door that does have a lock on
5 it. It goes into the office.

6 Q. And that office door would typically be left
7 open?

8 A. It was left open most of the time, yeah.

9 Q. But it could be closed and locked?

10 A. Yes.

11 Q. And you did not have a key to that door?

12 A. No.

13 Q. But you had the ability to come and go as you
14 pleased to the apartment?

15 A. Yes.

16 Q. And it was that way in 2010?

17 A. Yes. It's been there since I was there in
18 2005. Actually all of `em had the run of the office.
19 People, public come in. People from the church come
20 in. His friends. You know, George's office was all
21 the way in the back, you know.

22 The door was left open and so forth. The
23 door is mainly there at nighttime for safety and then
24 also when we went traveling or come to Myrtle Beach or
25 vice versa. We closed that mainly so nobody could go

1 up to the apartment.

2 Q. At the top of the stairs, was there another
3 door to the apartment?

4 A. Yes.

5 Q. Was that a door that could be locked?

6 A. Yes.

7 Q. Did you have a key to that door?

8 A. Yes. That was the same key to the front
9 door. Same locks, uh-huh. (Affirmative response).

10 Q. Give me one second because I'll think of many
11 questions on my ride back to Columbia.

12 A. Well, that's okay. If you want to take a
13 break, that's fine. I want to try to answer your
14 questions.

15 MS. FULTON: No, Wanda. No, no, no.
16 You're being too nice.

17 THE WITNESS: I just want to get it over
18 with.

19 MR. LINDEMANN: That's all I have.
20 Thank you.

21

22

23

24

25

1 SOUTH CAROLINA

2 CERTIFICATE

3 COUNTY OF HORRY

4 I, Jerry S. Mabry, a Notary Public and Verbatim
5 Reporter, in and for the State of South Carolina, do
6 hereby certify that WANDA G. RAYHALL was duly sworn prior
7 to the taking of this deposition and that the foregoing
8 thirty-four (34) pages constitute a true and accurate
9 transcript of said witness and as taken down and
10 transcribed by me.

11 I further certify that the persons were present
12 as stated in the caption.

13 I further certify that I am not of counsel for
14 nor in the employ of any of the parties to this action,
15 nor am I interested either directly or indirectly in the
16 results thereof.

17 I further certify that I am not related by
18 blood or marriage to any of the parties to this action.

19 This the 31st day of May, 2016.

20 
21

22 JERRY S. MABRY, COURT REPORTER

23 MY COMMISSION EXPIRES:

24 DECEMBER 3, 2022.
25

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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August 11, 2017

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellants certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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