

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Opinion No. 2018-UP-242 (S.C. Ct. App. filed June 13, 2018)

RECEIVED

SEP 17 2018

S.C. SUPREME COURT

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

v.

Andrew Marshall and Linda Marshall,.....Petitioners,

APPENDIX VOLUME I

Damon C. Wlodarczyk
P.O. Box 11412
Columbia, South Carolina 29211
Attorney for the Appellants

Gerald E. Reardon
1329 Blanding Street
Columbia, SC 29201
Attorney for Respondents Linda and George Estrada

Todd Ellis
7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
Attorney for Respondent Cristian Reye

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

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Linda Estrada, George Estrada, Tyrone Ruff, Khalilah Smith,
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v.

Andrew Marshall and Linda Marshall,.....Petitioners,

APPENDIX VOLUME I

Damon C. Wlodarczyk
P.O. Box 11412
Columbia, South Carolina 29211
Attorney for the Appellants

Gerald E. Reardon
1329 Blanding Street
Columbia, SC 29201
Attorney for Respondents Linda and George Estrada

Todd Ellis
7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
Attorney for Respondent Cristian Reye

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No.: 2016-001178

RECEIVED

APR 24 2017

SC Court of Appeals

RECEIVED

MAY 03 2017

SC Court of Appeals

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

v.

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

RECORD ON APPEAL VOLUME I

Damon C. Wlodarczyk
T. Lowndes Pope
P.O. Box 11412
Columbia, South Carolina 29211
Attorney for the Appellants

John S. Nichols
PO Box 7965
Columbia, SC 29202
Attorney for Respondents Linda and George Estrada

Gerald E. Reardon
1329 Blanding Street
Columbia, SC 29201
Attorney for Respondents Linda and George Estrada

Todd Ellis
7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
Attorney for Respondent Cristian Reye

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

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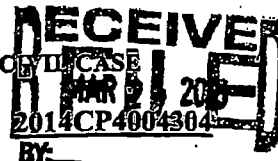
CERTIFICATE OF APPELLANT

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4004304



Linda Estrada

Andrew Marshall

George Estrada

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

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

Gerald Eugene Reardon

Damon Christian Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Shavette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada and George Estrada,
Plaintiffs,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

**CONSENT MOTION TO
CONSOLIDATE AND CONSENT
ORDER**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

RICHLAND COUNTY
FILED
2015 MAR 13 AM 10:56
JEANETTE W. FORBES
Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Cristian Reyes.

Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

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

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

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

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

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

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

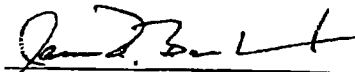
require testimony from Plaintiffs in the above captioned actions, Defendants and the same lay witnesses and expert witnesses.

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

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

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

AND IT IS SO ORDERED.



James R. Barber, III
Judge

Columbia, South Carolina

~~MARCH~~ 6,
~~February~~ __, 2015

WE SO MOVE:



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

WE CONSENT:

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



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

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

WE CONSENT:



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

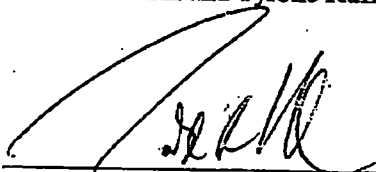
R. Nichols Riley, Jr., Esq.
Stanley Myers, Esq.
Moore Taylor Law Firm, P.A.
PO Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Plaintiffs Carletta Williams,
Khalilah Smith and Tyrone Ruff

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

WE CONSENT:

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

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



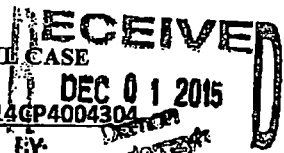
Todd Ellis, Esquire
Law Office of Todd Ellis
7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
803-732-0123
Attorney for Plaintiff Cristian Reyes

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4004304



Linda Estrada

Andrew Marshall

George Estrada

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

Motion for summary judgment denied.

INFORMATION FOR THE JUDGMENT INDEX

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

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		\$
		\$
		\$

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Circuit Court Judge

Judge Code 2110

Date

11/20/15

For Clerk of Court Office Use Only

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

Gerald Eugene Reardon

Damon Christian Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeannette W. Andrade

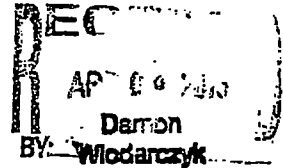
SCANNED

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-4004304



Linda Estrada

Andrew Marshall

George Estrada

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Linda Estrada	Andrew Marshall Linda Marshall	\$ 60,818.32
George Estrada	Andrew Marshall Linda Marshall	\$ 47,684.39
		\$

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

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

William E. McLean
Circuit Court Judge

2108
Judge Code

4/7/16
Date

For Clerk of Court Office Use Only

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

George Reardon

Damon Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

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

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-4005122

Khalilah Smith

Andrew Marshall

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Khalilah Smith	Andrew Marshall Linda Marshall	\$ 9,452.02
		\$
		\$

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

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

Spencer Kittler
Circuit Court Judge

21008
Judge Code

4/2/16
Date

For Clerk of Court Office Use Only

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

Ralph Riley

Damen Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen W. McQuade
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-4005123

Carletta Williams

Andrew Marshall

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Carletta Williams	Andrew Marshall Linda Marshall	\$ 8,683.00
		\$
		\$

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

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

Rae H. Galloway
Circuit Court Judge

2168
Judge Code

4/7/16
Date

For Clerk of Court Office Use Only

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

Ralph Riley

Darmon Wlodarczyk

ATTORNEY(S) FOR THE PLAINTIFF(S)

Shanellle W. K. Krida
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-4005124

Tyrone Ruff

Andrew Marshall

Linda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
<u>Tyrone Ruff</u>	<u>Andrew Marshall</u> <u>Linda Marshall</u>	\$ <u>17,104.00</u>
		\$
		\$

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

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

Richard J. Miller
Circuit Court Judge

2168
Judge Code

4/7/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 8 day of Apr, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 18 day of Apr, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Ralph Riley

ATTORNEY(S) FOR THE PLAINTIFF(S)

Damon Wlodarczyk

ATTORNEY(S) FOR THE DEFENDANT(S)
Jeanette W. McPherson
CLERK OF COURT

Court Reporter:

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-40724

APR 19 2016

BY: Dan WlodarczykChristian ReyesAndrew MarshallLinda Marshall

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
<u>Christian Reyes</u>	<u>Andrew Marshall</u> <u>Linda Marshall</u>	\$ <u>Ø</u>
		\$
		\$

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

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

Stella Hall
Circuit Court Judge

2166
Judge Code

4/7/16
Date

For Clerk of Court Office Use Only

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

Todd Ellis

ATTORNEY(S) FOR THE PLAINTIFF(S)

Damon Wlodarczyk

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Jeanette W. McBride

Court Reporter:

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

Plaintiff, Linda Estrada

60,818.32

Plaintiff, George Estrada

~~WASERMAN~~ CP
471,684.39

Plaintiff, Carletta Williams

8683.00

Plaintiff, Cristian Reyes

Ø

Plaintiff, Khalilah Smith

9,452.02

Plaintiff, Tyrone Ruff

17,104.00

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

April 7, 2016

Christ P. A.
Jury Forelady

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Plaintiffs,

vs.

Andrew Marshall and Linda Marshall

Defendants.

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

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

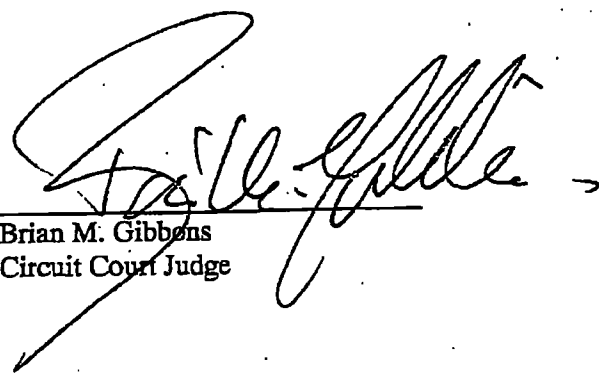
RICHLAND COUNTY
FILED
2016 MAY 24 AM 11:44
JERAMIE W. MCGRIDE
C.C.P. & G.S.

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

AND IT IS SO ORDERED.

Chester, SC

April 22, 2016


Brian M. Gibbons
Circuit Court Judge

SCANNED
21

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

LINDA ESTRADA and GEORGE
ESTRADA,

Plaintiffs,

-VS-

ANDREW MARSHALL and LINDA
MARSHALL,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.:

COMPLAINT
(JURY TRIAL DEMANDED)

2014 JUL - 8 AM 10:39
RECEIVED
CLERK OF COURT

Plaintiff would respectfully show:

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

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

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

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

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

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

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

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

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

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



GERALD E. REARDON
Attorney for Plaintiffs

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

Columbia, South Carolina

July 7, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 14-CP-40-

**COMPLAINT
(JURY TRIAL DEMANDED)**

PLAINTIFF, Complains of the Defendants as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

MOORE TAYLOR LAW FIRM, P.A.



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

West Columbia, South Carolina
August 19, 2014

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

PLAINTIFF, Complains of the Defendants as follows:

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

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

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

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

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

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

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

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

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

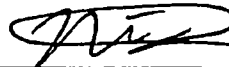
All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of Statutory and Common Laws of the State of South Carolina.

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

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

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

MOORE TAYLOR LAW FIRM, P.A.



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

West Columbia, South Carolina
August 19, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Docket Number: 14-CP-40-

**COMPLAINT
(JURY TRIAL DEMANDED)**

PLAINTIFF, Complains of the Defendants as follows:

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

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

7. The Plaintiff went to the emergency room on the night in question. The treating physician determined that the Plaintiff sustained injuries to his right wrist and lower back.
8. Upon discharge from the hospital the Plaintiff required a brace for his right wrist. The Plaintiff also received treatment from various medical providers due to the injury to his back.
9. The Plaintiff is permanently impaired due to the injury he received as a result of the deck collapsing on the Defendants Premises, and he is still experiencing pain in his right wrist and back on a daily basis.
10. The Plaintiff was an invitee while at the Premises. The Defendants owed the Plaintiff a duty of care to discover risk and take safety precautions to warn or limit a unreasonable risk on the Premises.
11. The Defendants owed the Plaintiff a duty of care as an invitee to warn the Plaintiff of any foreseeable risks associated with any condition which the Defendant had knowledge. The Defendants created a dangerous condition for the Plaintiff and other invitees by failing to properly inspect, maintain, and properly keep the deck in a safe and reasonable condition.
12. The Defendants were negligent and reckless in one or more of the following particulars:
 - a. In failing to properly inspect the deck;
 - b. In failing to warn of the dangerous conditions of the deck;
 - c. In failing to properly maintain the deck;
 - d. By allowing the deck to be constructed in violation of various building codes;
 - e. In failing to properly keep the deck in a safe and reasonable condition;
 - f. In failing to exercise a degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances then and there prevailing;
 - g. In such other ways as may be shown during the interim.

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

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

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

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

MOORE TAYLOR LAW FIRM, P.A.



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

West Columbia, South Carolina
August 19, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
CRISTIAN REYES

Plaintiffs,

-VS-

ANDREW MARSHALL and LINDA
MARSHALL,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-40-_____

COMPLAINT
(JURY TRIAL DEMANDED)

2014 NOV 18 AM 9:55
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

Plaintiff would respectfully show:

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

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

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

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

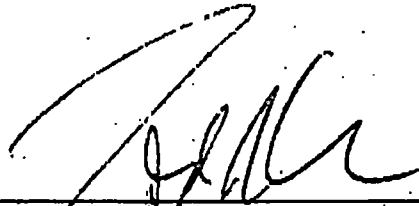
- a. In failing to warn of the dangerous conditions of the deck;

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

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

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

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



TODD ELLIS
Attorney for Plaintiffs

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

Irmo, South Carolina

November 13, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Linda Estrada and George Estrada,

Plaintiffs,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

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

IN THE COURT OF COMMON PLEAS

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

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

RICHLAND COUNTY
FILED

IN THE COURT OF COMMON PLEAS

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

IN THE COURT OF COMMON PLEAS

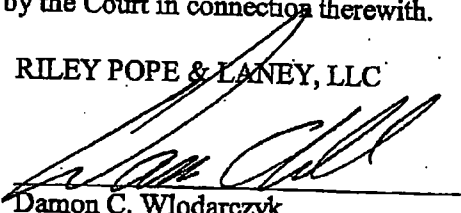
C/A NO.: 2014-CP-40-05124

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

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

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

RILEY POPE & LANEY, LLC



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

Columbia, SC
November 19, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada and George Estrada,
Plaintiffs,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Cristian Reyes.

Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

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

STANDARD

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

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

FACTS

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

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

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

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

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

ANALYSIS

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

"A licensee is a person whose presence is tolerated, a person not necessarily invited on the premises, but one who is privileged to enter or remain on the premises only by the property owner's express or implied consent." Sims v. Giles, 343 S.C. 708, 720, 541 S.E.2d 857, 863-64 (Ct. App. 2001). Social guests, whether invited by tenants or members of private clubs, are considered licensees in South Carolina. See Vogt v. Murraywood Swim & Racquet Club, 357 S.C. 506, 510, 593 S.E.2d 617, 619 (Ct. App. 2004); Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 441, 494 S.E.2d 827, 831 (Ct. App. 1997); see also Singleton v. Sherer, 377 S.C. 185, 199, 659 S.E.2d 196, 204 (Ct. App. 2008).

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

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

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

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

Therefore, '[s]ince a licensee is there for his own benefit, he *can be said to accept* the premises as they are and demand no greater safety than his host provides himself.'

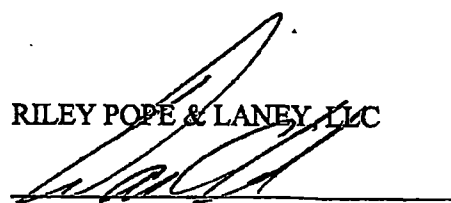
Sims, 343 at 720-21, 541 S.E.2d at 864 (internal citations omitted).

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

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

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

RILEY POPE & LANEY, LLC



Damon C. Włodarczyk
Attorneys for Defendants

Columbia, South Carolina
July 24, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada and George Estrada,

Plaintiffs,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

2014 DEC -5 PM 2:33
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Cristian Reyes.

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

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

STANDARD

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

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

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

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

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

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

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

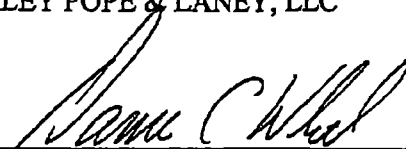
CONCLUSION

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

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

SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE

RILEY POPE & LANEY, LLC

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

Damon C. Wlodarczyk
Attorneys for Defendants

Columbia, South Carolina
November 5, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LINDA ESTRADA and GEROGE
ESTRADA,

Plaintiffs,

-VS-

ANDEREW MARSHALL and LINDA
MARSHALL,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-40-04304

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

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

Plaintiffs would respectfully answer Defendants' Interrogatories as follows:

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

ANSWER: *Linda Estrada*

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

George Estrada

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

Andrew Marshall

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

Linda Marshall

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

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

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



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

ANSWER: *Linda Estrada*

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

George Estrada

Medical Facility

Costs

***Richland County EMS
PO BOX 863
Lewisville, NC 27023***

\$597.38

***Palmetto Emergency Physicians
Joseph S. Myslinkski, MD
293 Greystone Blvd.
Columbia, SC 29210***

\$198.01

***Palmetto Health Richland
293 Greystone Blvd.
Columbia, SC 29210***

\$1,470.00

***Healthsource Solutions
Steven Hamvay, MD
715 Fashion Dr. Ste 3
Columbia, SC 29229***

\$3,553.00

***Pitts Radiology
2435 Forest Drive
Columbia, SC 29204***

\$60.00

Total

\$5,878.39

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

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

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

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

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

George Estrada

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



GERALD E. REARDON
Attorney for Plaintiff

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

Columbia, South Carolina

September 17, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LINDA ESTRADA and GEORGE
ESTRADA,

Plaintiffs,

-VS-

ANDREW MARSHALL and LINDA
MARSHALL,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-40-04304

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

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

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

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

RESPONSE: Blue Cross Blue Shield

-Explanation of Benefits (5-29-14)

1 Page

-Explanation of Benefits (4-23-14)

1 Page

-Explanation of Benefits (5-13-14)

1 Page

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

RESPONSE:

Linda Estrada

Richland County EMS

-Bill

1 Page

Palmetto Health Emergency Dept.

-Emergency Dept. Record

1 Page

-Emergency Dept. Record (Verified)

3 Pages

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

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

George Estrada

Richland County EMS

-Bill	1 Page

Palmetto Health Richland

-Bill	1 Page

Palmetto Health Emergency Dept

-Bill	1 Page

Healthsource

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

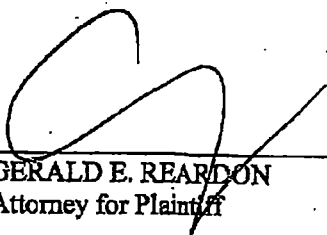
RESPONSE: *Will supplement.*

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

RESPONSE: *Will supplement.*

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

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



GERALD E. REARDON
Attorney for Plaintiff

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

Columbia, South Carolina

September 17, 2014.

Electrodiagnostic Medicine Consult

PATIENT NAME: Linda Estrada

DATE: 06/02/14

DOB: REDACTED (Identifier)

REASON FOR EVALUATION: right upper extremity pain and numbness

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

PAST MEDICAL HISTORY: negative for DM

Meds: see intake form

FHx: non-contributory

ROS: non-contributory

SHx: negative for EtOH negative for tobacco

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

NERVE CONDUCTION STUDIES:

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

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

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

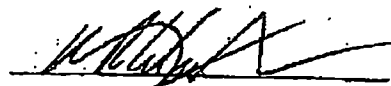
Right Triceps	normal	none	none	normal	normal
Right Pronator Teres	normal	none	none	normal	normal
Right Extensor Carpi Radialis	normal	none	none	normal	normal
Right First Dorsal Interosseous	normal	none	none	normal	normal
Right FCU	normal	none	none	normal	normal

IMPRESSION / SUMMARY:

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

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

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


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

Damon Wlodarczyk

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

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

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

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

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

With kind regards,

Damon

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

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IN THE COURT OF COMMON PLEAS

DOCKET NO: 2014-CP-40-04304

**Linda Estrada and George Estrada
Plaintiffs**

vs.

Andrew Marshall and Linda Marshall
Defendants

AFFIDAVIT OF ALLAN ABBATA

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

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

Affidavit of Mr. Allan A. Abbata P.E.
Page 1 of 3

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

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

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

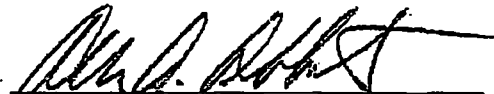
6. The bearing element (brick veneer wall) where expansion anchors were installed to support the deck girders failed to comply with proper engineering standard and building codes. The size and spacing of the fasteners was inadequate to comply with engineering and building code required design loads.

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

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

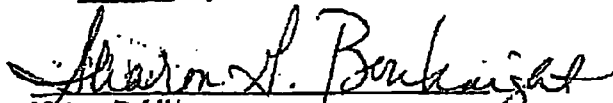
9. In my opinion to a reasonable degree of engineering certainty that the deteriorated and defective conditions that led to the deck collapse persisted over an extended period of time due to the failure to inspect, maintain, care and repair for the premises. The condition of the deck continued to deteriorate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

Further affiant sayeth not.


Mr. Allan A. Abbata P.E.

SUBSCRIBED and SWORN to before me

this 30th day of October, 2015


Notary Public

Expiration Date: 3-3-2020

Damon Wlodarczyk

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

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

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

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



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

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

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

v.

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

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

v.

Andrew Marshall and Linda Marshall,
Defendants.

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

v.

Andrew Marshall and Linda Marshall,
Defendants.



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



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

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



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

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



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1 Q: What treatment did the prescribe you?

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

9 Q: Okay.

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

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

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

23 Q: Okay.

24 A: And injections, I got injections.

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



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

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

9 A: No.

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

14 A: She lives in Winnsboro.

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

17 A: The accident? No.

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

20 A: Huh-uh (negative response).

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

24 (Off the record discussion)

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



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

5 A: No.

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

8 A: Thank you.

9 MR. REARDON: No questions.

10 (There being no further questions, the deposition
11 concluded at 2:54 p.m.)
12
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CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

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

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

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

v.

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

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

v.

Andrew Marshall and Linda Marshall,
Defendants.

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

v.

Andrew Marshall and Linda Marshall,
Defendants.



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

) 2014-CP-40-05124

V.

Andrew Marshall and Linda Marshall,
Defendants.

**DEPOSITION OF
GEORGE ESTRADA**

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

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



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

1 Q: Okay.

2 A: No, sir.

3 Q: Have you had any conversations with Ms.
4 Williams or Mr. Reyes or Khalilah Smith or
5 Tyrone Ruff about the accident or the deck
6 falling or your injuries these lawsuits since
7 that night?

8 A: No, sir.

9 Q: Okay. And have you spoken with Ms. Latisha
10 Ruff, now White, who was the renter, or Ms.
11 Sylvan Ruff about any of the incidents about
12 the deck?

13 A: No, sir.

14 Q: Okay. Prior to the deck falling, did you
15 notice any problems with it?

16 A: No.

17 Q: Did anyone, or has anyone since then, told you
18 about any problems with the deck other than
19 what we've learned through the lawsuit?

20 A: No, sir.

21 Q: Okay. All right. When the deck falls, what
22 happens to you?

23 A: As I said, we was playing the game and all of
24 a sudden I heard a noise, you know, but I
25 didn't see it from behind me. And I seen that



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

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

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

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

v.

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

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

v.

Andrew Marshall and Linda Marshall,
Defendants.

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

v.

Andrew Marshall and Linda Marshall,
Defendants.



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

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

DEPOSITION OF
TYRONE RUFF

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

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



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



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

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

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

13 A: Yeah. Whatever he told her.

14 Q: Okay. All right.

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

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

21 A: No. Nobody told us a problem.

22 Q: That's fine.

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



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1 knew.

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

3 MR. RILEY: No questions.

4 (There being no further questions, the deposition
5 concluded at 4:14 p.m.)
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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A #: 2014-CP-40-04304

Linda Estrada and George Estrada,)
Plaintiff,)

v.)

Andrew Marshall and Linda Marshall,)
Defendants.)

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

v.)

Andrew Marshall and Linda Marshall,)
Defendants.)

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

v.)

Andrew Marshall and Linda Marshall,)
Defendants.)

Tyrone Ruff,) 2014-CP-40-05124
Plaintiff,)

v.)

Andrew Marshall and Linda Marshall,)
Defendants.)



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

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

**DEPOSITION OF
CARLETTA WILLIAMS**

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

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



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



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

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

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

7 A: That was.

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

10 A: They did.

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

12 A: That was.

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

17 A: I don't remember.

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

22 A: They didn't request any bills.

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

24 A: Yes..

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



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

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

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

v.

Andrew Marshall and Linda Marshall,) DEPOSITION OF
Defendants.) KHALILAH SMITH

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

v.

Andrew Marshall and Linda Marshall,
Defendants.

Tyrone Ruff,) 2014-CP-40-05124
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.



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

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

DEPOSITION OF
KHALILAH SMITH

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

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



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



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

Linda Estrada and George Estrada,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Khalilah Smith,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Carletta Williams,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

) 2014-CP-40-05122

) DEPOSITION OF
) CRISTIAN REYES

) 2014-CP-40-05123

) 2014-CP-40-05124



CREEL COURT REPORTING, INC.
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1 fell?

2 A: It was a family gathering.

3 Q: Okay. What was your family relationship with
4 the people there?

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

6 Q: Okay. And Tasha White was the one that was
7 renting the house?

8 A: Yes, sir.

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

10 A: Shequan Ruff.

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

12 A: Yes.

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

14 A: Niece.

15 Q: Okay. Do you know -- did you ever go to the
16 house prior to this incident?

17 A: Yes.

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

19 A: I would almost say that I was somewhat living
20 there.

21 Q: Okay. Did you notice any problems with the
22 deck before it fell?

23 A: Not visual problems. I mean I've been on it a
24 couple of times but it just seemed kind of old,
25 so ...



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



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



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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Linda Estrada and George Estrada,

Plaintiffs,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carletta Williams,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

2016 APR 15 PM 4:14
RICHLAND CO. SC.
FILED
JEANETTE W. HODGINS
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cristian Reyes.

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

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

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

STANDARD

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

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

FACTS

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

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

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

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

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

ANALYSIS

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

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

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

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

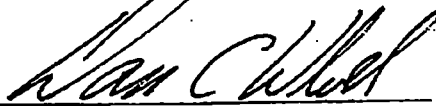
There is no evidence that either of the Defendants had actual knowledge of any dangerous condition regarding the property. To the extent a change in condition occurred regarding the band joint/rim joist due to wood rot or decay, the testimony was that the issue could not have been discovered except by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

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

CONCLUSION

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

RILEY POPE & LANEY, LLC

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

Damon C. Włodarczyk
Attorneys for Defendants

Columbia, South Carolina
April 15, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Linda Estrada and George Estrada,
Plaintiffs,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carletta Williams,
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Cristian Reyes.
Plaintiff,

v.

Andrew Marshall and Linda Marshall,
Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Khalilah Smith,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tyrone Ruff,

Plaintiff,

v.

Andrew Marshall and Linda Marshall,

Defendants.

IN THE COURT OF COMMON PLEAS

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

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

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

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

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

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

I. Plaintiffs' counter-affidavit was untimely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk
Attorneys for Defendants

Columbia, South Carolina
November 5, 2015

Damon Wlodarczyk

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

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

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

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

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

With kind regards,

Damon

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

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

DOCKET NO: 2014-CP-40-04304

Linda Estrada and George Estrada
Plaintiffs

vs.

Andrew Marshall and Linda Marshall
Defendants

)
)

)
)

)
)

)
)

AFFIDAVIT OF ALLAN ABBATA

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

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

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

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

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

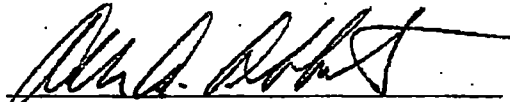
6. The bearing element (brick veneer wall) where expansion anchors were installed to support the deck girders failed to comply with proper engineering standard and building codes. The size and spacing of the fasteners was inadequate to comply with engineering and building code required design loads.

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

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

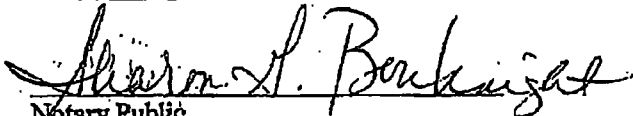
9. In my opinion to a reasonable degree of engineering certainty that the deteriorated and defective conditions that led to the deck collapse persisted over an extended period of time due to the failure to inspect, maintain, care and repair for the premises. The condition of the deck continued to deteriorate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

Further affiant sayeth not.


Mr. Allan A. Abbata P.E.

SUBSCRIBED and SWORN to before me

this 30th day of October, 2015


Notary Public

Expiration Date: 3-3-2020

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2014-CP-40-04304

LINDA ESTRADA, GEORGE ESTRADA,)
TYRONE RUFF, KHALILAH SMITH,)
CARLETTA WILLIAMS, CRISTIAN)
REYES,)
Plaintiffs,)

vs.)

TRANSCRIPT OF RECORD

ANDREW MARSHALL AND LINDA)
MARSHALL,)
Defendants.)

April 5-7, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE.

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

GERALD E. REARDON, ESQ.
JOHN S. NICHOLS, ESQ.
Attorney for the Plaintiffs (Estrada)

RALPH N. RILEY, JR., ESQ.
STANLEY L. MYERS, SR., ESQ.
Attorney for the Plaintiffs (Ruff, Smith & Williams)

TODD R. ELLIS, ESQ.
Attorney for the Plaintiff (Reyes)

T. LOWNDES POPE, ESQ.
DAMON C. WIODARCZYK, ESQ.
Attorney for the Defendant

CRYSTAL HOLMES
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

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

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Court's Exhibits)			
1	Jury Note	147	
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All Exhibits were retained by the Clerk of Court for Richland County.

P R O C E E D I N G S

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

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

THE COURT: Okay.

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

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

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

THE COURT: Yes, sir.

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

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

3 THE COURT: All right.

4 Anything on behalf of the Defense?

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

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

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

20 MR. RILEY: Thank you, Your Honor.

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

23 Anything else before we bring in the panel?

24 MR. REARDON: One second, Your Honor.

25 THE COURT: Okay.

1 (Pause).

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

15 THE COURT: All right.

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

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

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

8 THE COURT: All right.

9 MR. REARDON: All right.

10 THE COURT: All right. What else?

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

1 us.

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

5 MR. REARDON: Okay.

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

10 MR. REARDON: Sure.

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

17 THE COURT: Not investigators for the Defense?

18 MR. WLODARCZYK: No, sir.

19 MR. REARDON: Okay.

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

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

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

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

15 MR. REARDON: Yes, Your Honor.

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

17 MR. REARDON: That's correct.

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

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

22 THE COURT: She can testify to that.

23 MR. REARDON: Okay.

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

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

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

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

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

25 THE COURT: Okay.

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

3 THE COURT: Anything else?

4 MR. ELLIS: No, sir.

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

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

9 THE COURT: Do we have a different list?

10 THE CLERK: That's the new one.

11 THE COURT: This is the new one here?

12 THE CLERK: Yes, Your Honor.

13 BAILIEF: Your Honor, the jurors are seated.

14 THE COURT: Thank you very much.

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

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

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

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

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

22 (WHEREUPON, all jurors stood.)

23 THE COURT: Raise your right hand.

24 (WHEREUPON, the jury was duly sworn.)

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

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

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

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

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

13 THE COURT: All right. Thank you.

14 Yes, sir.

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

18 THE COURT: All right. Thank you.

19 Yes, sir, Mr. Ellis.

20 MR. ELLIS: May it please the Court.

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

24 Cristian, stand up for these folks.

25 (WHEREUPON, Mr. Reyes stood.)

1 MR. ELLIS: Thank you.

2 THE COURT: All right. Thank you.

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

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

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

11 JURY QUALIFICATIONS

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

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

21 (Jurors stand.)

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

23 PROSPECTIVE JUROR: 157.

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

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

2 THE COURT: The lawyer for Mr. Reyes?

3 PROSPECTIVE JUROR: Right.

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

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

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: And from Gamecock football.

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

12 PROSPECTIVE JUROR: No, sir.

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

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

21 (There was no response.)

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

1 involved in the case? If so please stand.

2 (Juror stands.)

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

5 THE COURT: Oh, yes, sir.

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

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

10 PROSPECTIVE JUROR: It would not, sir.

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

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

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

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

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

9 (There was no response.)

10 THE COURT: All right. No response.

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

14 (Jurors stand.)

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

17 Yes, sir, juror number?

18 PROSPECTIVE JUROR: Sixty-nine.

19 THE COURT: All right.

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

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

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

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

3 PROSPECTIVE JUROR: Not at all.

4 THE COURT: All right. Thank you.

5 Yes, sir?

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

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

10 PROSPECTIVE JUROR: No.

11 THE COURT: All right.

12 Yes, ma'am?

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

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

17 PROSPECTIVE JUROR: No.

18 THE COURT: All right. Thank you.

19 Yes, ma'am?

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

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

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: All right.

1 Yes, ma'am?

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

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

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Thank you.

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

10 (Jurors stand.)

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

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

14 PROSPECTIVE JUROR: Forty-four.

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

17 PROSPECTIVE JUROR: Yes, sir.

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

21 PROSPECTIVE JUROR: I will be fine, sir.

22 THE COURT: All right. Thank you.

23 Yes, sir?

24 PROSPECTIVE JUROR: No. 65.

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

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

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

5 PROSPECTIVE JUROR: No.

6 THE COURT: All right. Thank you.

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

12 (Jurors stand.)

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

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

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

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

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

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Okay. Thank you.

25 Yes, sir?

1 PROSPECTIVE JUROR: Juror No. 22.

2 THE COURT: Yes, sir.

3 PROSPECTIVE JUROR: I was a plaintiff in a case. I
4 was hit by a drunk driver about 20 years ago.

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

7 PROSPECTIVE JUROR: No.

8 THE COURT: All right.

9 Yes, sir?

10 PROSPECTIVE JUROR: Juror 304.

11 THE COURT: Yes, sir.

12 PROSPECTIVE JUROR: My wife had a claim against
13 Delta.

14 THE COURT: All right.

15 PROSPECTIVE JUROR: About four years ago.

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

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you.

20 Yes, ma'am?

21 PROSPECTIVE JUROR: I had a claim just recently for
22 the same accident. And my brother, also, had a claim for
23 a different accident.

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

25 PROSPECTIVE JUROR: 277.

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

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: All right.

5 And yes, sir?

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

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

11 PROSPECTIVE JUROR: No.

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

13 All right. Give me just a second.

14 (Pause.)

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

19 (There was no response.)

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

23 (There was no response.)

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

1 construction? If so, please stand.

2 (Jurors stand.)

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

5 Yes, sir?

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

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

10 PROSPECTIVE JUROR: No.

11 THE COURT: All right. Thank you.

12 Yes, ma'am?

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

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

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: All right.

19 Yes, sir?

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

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

24 PROSPECTIVE JUROR: No.

25 THE COURT: All right.

1 Yes, ma'am?

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

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

6 PERSPECTIVE JUROR: Absolutely not.

7 THE COURT: All right.

8 Yes, ma'am?

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

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

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Yes, ma'am?

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

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

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Thank you.

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

25 (Jurors stand.)

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

3 Yes, ma'am?

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

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

7 PROSPECTIVE JUROR: No.

8 THE COURT: Yes, ma'am?

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

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

13 PROSPECTIVE JUROR: (The witness nodded head.)

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

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: All right.

18 Yes, sir?

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

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

23 PROSPECTIVE JUROR: Not at all.

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

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

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

3 PROSPECTIVE JUROR: No.

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

6 MR. ELLIS: Nothing, Your Honor.

7 THE COURT: Any further from the Defense?

8 MR. WLODARCZYK: No, Your Honor..

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

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

20 (Laughter.)

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

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

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

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

4 (Pause.)

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

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

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

9 SELECTION OF THE JURY

10 MR. REARDON: Plaintiff strikes No. 11.

11 THE CLERK: Plaintiff strikes No. 11.

12 MR. WLODARCZYK: Defendant strikes No. 4.

13 THE CLERK: Defendant strikes No. 4.

14 MR. REARDON: Plaintiff strikes 13.

15 THE CLERK: Plaintiff strikes 13.

16 MR. WLODARCZYK: Defendant strikes No. 1.

17 THE CLERK: Defendant strikes No. 1.

18 MR. REARDON: Plaintiff strikes No. 9.

19 THE CLERK: Plaintiff strikes No. 9.

20 MR. WLODARCZYK: Defendant strikes No. 15.

21 THE CLERK: Defendant strikes No. 15.

22 MR. REARDON: Plaintiff strikes No. 10.

23 THE CLERK: Plaintiff strikes No. 10.

24 MR. WLODARCZYK: Defendant strikes No. 16.

25 THE CLERK: Defendant strikes No. 16.

1 Using the numbers 21 through 23, we're going to
2 strike an alternate. Starting with the Plaintiff.
3 MR. REARDON: Plaintiff strikes No. 23.
4 THE CLERK: Plaintiff strikes No. 23.
5 MR. WLODARCZYK: Defendant strikes No. 22.
6 THE CLERK: Defendant strikes No. 22.
7 Counsel, please allow me to review your strikes.
8 With the Plaintiff, I've got Juror No. 11, 13, 9, 10,
9 alternate 23.
10 MR. REARDON: That's correct.
11 THE CLERK: Defendant, I've got Juror No. 4, 1, 15,
12 16, alternate No. 22; is this correct?
13 MR. WLODARCZYK: That's correct, ma'am.
14 THE CLERK: Okay. If I call your juror name, go
15 ahead and grab your belongings and go ahead and prepare to
16 sit in the jury box.
17 Sylvia Richardson.
18 (Sylvia Richardson, a white female, was seated.)
19 THE CLERK: Melissa Hennessey.
20 (Melissa Hennessy, a white female, was seated.)
21 THE CLERK: Trythenia Smith.
22 (Trythenia Smith, a black female, was seated.)
23 THE CLERK: Alfreda Burkley.
24 (Alfreda Burkley, a black female, was seated.)
25 THE CLERK: Brady Staberg.

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

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

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

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

13 THE CLERK: Yes, Your Honor.

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

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

18 THE COURT: Yes, sir.

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

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

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

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

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

10 MR. WLODARCZYK: We're fine.

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

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

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

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

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

18 (Laughter.)

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

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

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

24 THE CLERK: Yes, Your Honor.

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

1 on.

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

4 THE COURT: Mr. Benjamin.

5 PROSPECTIVE JUROR: Yes, sir.

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

7 PROSPECTIVE JUROR: Yes, I am.

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

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

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

17 PROSPECTIVE JUROR: Okay.

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

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

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

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

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

4 THE COURT: Okay.

5 MR. ELLIS: Is that good?

6 THE COURT: Sounds good to me.

7 Mr. Wlodarczyk, is that good for you?

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

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

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

12 MR. REARDON: Yes.

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

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

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

21 MR. REARDON: Okay. Thank you.

22 THE COURT: All right. Bring them in.

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

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

1 THE COURT: All right. Thank you.

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

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

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

13 (WHEREUPON, the jury was sworn.)

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

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

17 Thank you, Madam Clerk.

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

20 (All jurors answered in the affirmative.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Mr. Reardon.

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

7 THE COURT: Yes, sir.

8 OPENING STATEMENT OF MR. REARDON

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 also.

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

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

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

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

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

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

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

6 THE COURT: Thank you, Mr. Reardon.

7 MR. REARDON: Thank you, Your Honor.

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

9 THE COURT: Yes, sir.

10 OPENING STATEMENT OF MR. RILEY

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

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

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

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

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

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

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

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

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

15 OPENING STATEMENT OF MR. ELLIS

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Thank you, Mr. Ellis.

18 OPENING STATEMENT OF MR. WLODARCZYK

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 THE COURT: All right. Thank you.

25 Plaintiffs ready to proceed with their first witness?

1 MR. ELLIS: Yes, Your Honor.

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

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

5 THE COURT: All right.

6 Mr. Marshall, come on around.

7 Thereupon;

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

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

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

14 THE COURT: All right.

15 THE WITNESS: Andrew Marshall.

16 DIRECT EXAMINATION

17 BY MR. ELLIS:

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

21 A That's fine.

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

23 A Right.

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

1 up. Will you do?

2 A Yes.

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

5 A That's correct.

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

8 A That's correct.

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

11 A Yes, it is.

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

14 A That's correct.

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

16 A That's correct.

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

19 A That's correct.

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

22 A That's correct.

23 Q It's off Leesburg Road?

24 A Uh-huh.

25 Q Is that a yes?

1 A Yes.

2 Q Okay. Great.

3 A Right.

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

6 A No.

7 Q Where are they, sir?

8 A They are in various areas in Columbia.

9 Q In the Columbia area?

10 A That's right.

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

12 A No.

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

16 A Yes.

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

19 A That's correct.

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

22 A That's correct.

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

25 A That's correct.

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

5 A That's correct.

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

9 A That's correct.

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

13 A The homes?

14 Q The rental homes, you own personally?

15 A Yes.

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

19 A Correct.

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

21 A The majority.

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

25 A That's correct.

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

4 A That's correct.

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

7 A That's correct.

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

10 A Correct.

11 Q Electricians?

12 A Correct.

13 Q HVAC?

14 A Correct.

15 Q Plumbers?

16 A (The witness nodded head.)

17 Q Correct?

18 A Correct.

19 Q And framers, correct?

20 A (The witness nodded head.)

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

23 A Correct.

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

1 A That's correct.

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

7 A That's correct.

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

10 A Correct.

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

13 A Correct.

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

18 A That's correct.

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

23 A As needed, right.

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

1 A That's correct.

2 Q You personally?

3 A (The witness nodded head.)

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

7 A I did.

8 Q But you oversaw the work?

9 A Yes.

10 Q You had to because you were the residential licensed
11 builder. In fact, the only thing that you do, that you
12 claim to do to inspect these houses that you own and rent
13 out to people is that you do a walk-through when you
14 change tenants; is that correct?

15 A That's correct.

16 Q And the full extent of what you did to walk through
17 this house that was built in 1977 to insure that it was
18 okay for Ms. White to move in and her tenants to be there
19 was to walk out onto the back deck; is that correct?

20 A Basically, true.

21 Q Right.

22 A Uh-huh.

23 Q So you did some plumbing work inside?

24 A Exactly.

25 Q But you walked out on the back deck and walked back

1 inside; is that right?

2 A (The witness nodded head.)

3 Q Sir?

4 A That's right.

5 Q Okay. And in the entire 19 years, the only that you
6 said you ever did, though, we could find no evidence of it
7 was that you replaced a couple boards, in 19 years on that
8 deck?

9 A That's right.

10 Q You never weatherproofed it, correct?

11 A Right.

12 Q You never painted it?

13 A Correct.

14 Q You never did anything to maintain that deck other
15 than to replace a couple of rotted boards; is that right?

16 A That's correct.

17 Q And that's only when the homeowner -- the tenant
18 called you out there on those boards?

19 A That's when we rented through the housing authority.

20 Q So the housing authority had to make you come out?

21 A That's during their inspection, they saw it.

22 Q You never put any weatherproofing on that deck?

23 A That's correct.

24 Q In fact, one time, you went under the house, but you
25 never looked to see how that deck was attached to the

1 home; did you?

2 A Well, going under house, you wouldn't see how the
3 deck is attached because the deck is on the exterior. And
4 going under the house, you are between the petition wall
5 and the deck.

6 Q Right.

7 A So you wouldn't see how it's attached.

8 Q But didn't look; is that correct?

9 A That's correct.

10 Q Okay. So did you know structurally -- did you know
11 that when you went under the house, there's no need for me
12 to go look because I can't see how it's attached?

13 A I had no need to do that.

14 Q You just didn't do it?

15 A I had no need to do it.

16 Q You've never had this house inspected, correct?

17 Never paid for any one to inspect this house?

18 A Correct.

19 Q In fact, even after this incident, you didn't pay for
20 anybody to inspect the house?

21 A Correct.

22 Q You didn't pay any expert who's going to testify in
23 this case; did you?

24 A No, I didn't.

25 Q As a licensed home builder, you're required to know

1 structural principles for building decks like the one on
2 this house; isn't that correct?

3 A That is correct.

4 Q You're supposed to know generally how do I support an
5 area of about 10 by 12 or 10 by 10 so it can handle a load
6 of people that will fit in that space; isn't that right?

7 A Yes, when they're built first.

8 Q When they're built, you're supposed to know that,
9 correct?

10 A Uh-huh.

11 Q In fact, as a licensed builder, you've built decks
12 before?

13 A No. No, I haven't.

14 Q Okay. Would you like me to get your deposition?

15 A I haven't build -- I have subbed it out to someone,
16 but I haven't built a deck.

17 Q Yes, sir. Let me clarify. How many have you subbed
18 out for folks to build?

19 A I have no idea.

20 Q Right. And in each of those cases, though, sir, you
21 were the one responsible to determine whether that deck
22 was built, correctly?

23 A True.

24 Q Isn't that right?

25 A True.

1 Q And you testified that you never, ever have built a
2 deck like this one before?

3 A True.

4 Q That's right. And the reason you didn't do that is
5 you've never built one where they didn't have four
6 supports, one at each of the corners of the deck, isn't
7 that correct?

8 A Correct.

9 Q You've never allowed your subcontractors to build
10 like that?

11 A Correct.

12 Q Right. And the reason is it's not good practical
13 construction principles, right?

14 A Right.

15 MR. ELLIS: Mr. Bailiff, will you stand for a minute?

16 BY MR. ELLIS:

17 Q How many legs on the bottom of this?

18 A Four.

19 Q There's not two on the front and, I assume, the
20 bailiff would lean back against the wall here; is it?

21 It's not?

22 A No.

23 Q Because the four make it more stable, right?

24 A True.

25 Q All right. How many legs on this table, if you can

1 see?

2 A Four.

3 Q Four. And there's four, even though it's up against
4 another desk, because the foundation, the basics of all
5 residential home building is create that foundation with
6 four gives you more stability, correct?

7 A Correct.

8 Q So you didn't ever make any modifications on that
9 deck, right?

10 A No, I didn't.

11 Q Despite the fact that you purchased that in 1997 and
12 that did not have two legs underneath the two corners
13 nearest to the house, correct?

14 A Correct. And in 1997, the codes would allow them to
15 anchor it to a house like that.

16 Q You just testified you knew it was not good
17 construction principles?

18 A 1997, sir.

19 Q Okay. So are you telling this jury that you made a
20 conscious decision, even though you knew it wasn't
21 construction -- it wasn't sound, that you could get away
22 with it because in '97 it was properly built?

23 A No, sir, the deck was sturdy when I bought it.

24 Q Sir?

25 A The deck was sturdy on the house when I brought it

1 and that's the way it remained.

2 Q So 19 years later, you have no responsibility for
3 making sure that deck is still sturdy?

4 A That's not what I said.

5 Q Well, I'm asking?

6 A No, sir.

7 Q Okay.

8 A I didn't say that.

9 Q As the owner of that property, Mr. Marshall, you have
10 been very honest, you are responsible for the tenants in
11 that property and their safety and the soundness of the
12 construction of that home, correct?

13 A Correct.

14 Q Mr. Marshall, I don't want to get into all of your
15 business, but give me a generality here, how much did ou
16 lease this home out to the Whites on a monthly basis?

17 A I have no idea. I do not deal with leases of the
18 homes at all.

19 Q Okay. Have you -- do you know the amount that you
20 charge any time that you've been leasing this in 19 years?

21 A No, sir, I don't know.

22 Q You have no idea what the rate was?

23 A What the rent was, no.

24 Q Is it \$300?

25 A I don't know.

- 1 Q Is it \$900?
- 2 A I don't manage the property, so I don't know.
- 3 Q You've never collected these checks before from these
- 4 folks?
- 5 A I don't collect the checks.
- 6 Q Okay. How long has this house been paid for from
- 7 when you purchased it?
- 8 A That, I don't know.
- 9 Q Who does that? Does your wife do that?
- 10 A She does.
- 11 Q She handles all of the books?
- 12 A Yes, she does.
- 13 Q All six houses?
- 14 A Exactly.
- 15 Q Do you know how many months that you've collected
- 16 rent on this house? 228 months, you've collected rent on
- 17 it?
- 18 A Uh-huh.
- 19 Q Do you know if that was at \$400 a month that you
- 20 would have made \$91,000 on this house in rent? Did you
- 21 realize that?
- 22 A Not really, no.
- 23 Q You don't own a mortgage on this house, correct?
- 24 A Correct.
- 25 Q So any money you get in rent, you've been pocketing?

1 A Yes.

2 Q Other than the taxes?

3 A (The witness nodded head.)

4 Q Correct, sir?

5 A And maintenance, yes, sir.

6 Q Well, you haven't painted it, the deck. You haven't

7 waterproofed it. And you've changed out a couple of

8 boards. Other than, at least, on the deck, it's been a

9 win-win for you; has it not?

10 A (There was no response.)

11 Q You agree that it's the homeowner's responsibility

12 to keep the house in working order safe for its tenants?

13 A Yes.

14 Q Your lease did not prohibit Ms. White from having

15 folks over at the house; did it?

16 A I don't deal with the leases at all.

17 Q Okay.

18 A My wife manages the property.

19 Q You never told them not to have folks over at the

20 house; did you?

21 A (There was no response.)

22 Q You personally?

23 A No.

24 Q And you never gave them any warning that said, hey,

25 you should only have three or four people on this back

1 deck; you didn't do?

2 A No.

3 Q When did you -- when did you research that when it
4 was built in '77, the locking in or bolting in the back
5 part of that deck into the house was proper under the
6 code?

7 A I haven't researched it. When studying the codes,
8 that was at that time was okay. And I'm not sure the deck
9 was built by whomever owned the home.

10 Q Yes, sir.

11 A I'm not sure. I don't know.

12 Q You're not even sure when the deck was built, really?

13 A I'm not sure.

14 Q Okay. But you haven't done it since this case is
15 pending?

16 A No.

17 Q All right. For 19 years, you've walked around that
18 house; haven't you?

19 A Yes.

20 Q For 19 years, you changed tenants, you did
21 walk-throughs and you saw that house when those tenants
22 changed out; is that correct?

23 A That's correct.

24 Q Mr. Marshall, you've been kind. I appreciate your
25 patience in answering my questions. Do you and your wife

1 feel responsible for this deck falling?

2 A No, I don't.

3 Q You don't?

4 A No.

5 Q Nothing you've told me in 15 or 20 minutes has told
6 me that you were going answer that way in any way
7 whatsoever.

8 MR. ELLIS: That's all --

9 MR. WLODARCZYK: Objection.

10 MR. ELLIS: That's all I have.

11 THE COURT: Well, let me see the lawyers up here real
12 quick.

13 (WHEREUPON, a bench conference was held off the
14 record, in the presence of the jury, but out of the
15 hearing of the jury.)

16 THE COURT: All right. Objection sustained as to
17 that last question.

18 Okay. Mr. -- who's going next, Mr. Riley or Mr.
19 Reardon?

20 MR. REARDON: I am, Your Honor.

21 THE COURT: All right.

22 DIRECT EXAMINATION

23 BY MR. REARDON:

24 Q Mr. Marshall, you were asked about city codes and
25 violations. In fact, you were told to replace these

1 boards on several occasions by the city, correct?

2 A No.

3 Q You remember when I asked you that in your
4 deposition? We asked whether you had any work done on the
5 house?

6 A The Housing authority.

7 Q Okay. The housing authority who's in charge of the
8 inspections over this premise told you to replace those
9 boards; is that correct?

10 A Just a few boards.

11 Q I don't care if it's 10 or 20, I'm just asking if
12 they told you --

13 MR. WLODARCZYK: Objection, Your Honor. He's
14 badgering the witness.

15 THE COURT: Overruled.

16 BY MR. REARDON:

17 Q I'm just asking you did they tell you to replace
18 those boards?

19 A Yes.

20 Q So the city housing authority told you to replace the
21 boards because were in a rotted condition; is that
22 correct?

23 A They were in a weathered condition.

24 Q Okay. Weathered, all right. Mr. Ellis asked you
25 whether you had done any decks before and you said no, you

1 had not. Do you recall that answer?

2 A Yes, I do.

3 Q Do you recall in your deposition when we asked you
4 whether you had done any decks before? We asked you
5 whether you had done any decks before and you said yes,
6 you had done some decks before?

7 A I subcontracted.

8 Q All right. Let me --

9 A I did not say -- did I say I physically built it?

10 Q Correct. I asked you, Okay, have you done decks
11 before?

12 Answer, I've done some, uh-huh..

13 Do you remember answering that question?

14 A No, I do not.

15 Q All right. Would you disagree with that answer?

16 A Yes, because my work is subbed.

17 Q I'm sorry?

18 A Because my work is subbed out to subcontractors.

19 Q Okay. So the answer you gave me back on June of 2015
20 was incorrect, you had not done decks before?

21 A Exactly.

22 Q Okay. Today, your answer is I've had decks done, but
23 they were subcontracted?

24 A Exactly.

25 Q All right. You mentioned you had never attached a

1 deck to a house like this before because you knew you
2 would not do that without having four supports; is that
3 correct?

4 A Did I answer that in my deposition?

5 Q No, I'm just asking you now.

6 A That's correct.

7 Q Let me show you Exhibit No. 10, do you recognize
8 these pictures? If you want it closer, tell me. Can you
9 see those?

10 A I See where the steps are, yes.

11 Q Does that appear to be the two poles, the two support
12 systems in place in this photo blown up?

13 A Yes.

14 Q And it looks like they're about two inches, maybe two
15 inches wide; is that correct?

16 A Yeah.

17 Q And if you look closely at it, do you see that
18 there's some issues with boards rotting attached to that
19 leg?

20 A The splitting doesn't mean that it's rotting.

21 Q Do you see where --

22 A It's splitting, that's not rot.

23 Q You see where it's splitting is probably a better --

24 A Uh-huh.

25 Q You can see that there's splitting done at the bottom

1 or the base of these legs; is that correct?

2 A The legs?

3 Q Yes, sir, you see splitting?

4 A Down at the base here (indicating) on the side?

5 Q Yes, sir. Yes, sir.

6 A Right on the side.

7 Q Yes, sir. Let me show you Exhibit No. 11, which is a

8 much closer picture of one of the legs that's holding up

9 this deck. If I can show you a picture -- there's two

10 photographs. You see that leg there holding up this deck?

11 A Uh-huh.

12 Q How many screws do you see in the bottom photograph

13 holding up this deck right here (indicating)?

14 A I really can't tell.

15 Q You can't see that?

16 A Is there two?

17 Q Look like there's one screw holding up this deck.

18 Does that look right to you?

19 A There's one over there, also.

20 Q You see two screws?

21 A Yes.

22 Q All right. Maybe two, one, if not two; is that what

23 you're telling me?

24 A Yeah.

25 Q Does it appear it's not connecting on the backside of

1 the photograph?

2 A There's one.

3 Q You see one there, yes, sir.

4 A Yes.

5 Q All right. So what we're showing the jury is you see
6 one screw holding up the deck on the left side and looks
7 like one screw on the right side; is that correct? So
8 there's a total of four screws holding up this entire
9 deck; is that correct? Is that what you're telling us?

10 A (There was no response.)

11 Q You have to answer yes or no?

12 A Okay. Yes, then.

13 Q Okay. All right. Now, you testified you would walk
14 out there and do a home inspection of the area. Did you
15 ever walk by and look at the different posts on the deck?

16 A I never went under the deck.

17 Q You never even looked at the deck outside of the
18 boards themselves?

19 A Only the top, right.

20 Q Only the top?

21 A Right.

22 Q So you never once either crawled under to inspect
23 potential rot issues; is that correct?

24 A That's correct.

25 Q Potential termite issues; is that correct?

1 A That's correct.

2 Q Potential screw issues, support issues; is that

3 correct?

4 A That's correct.

5 Q The only thing you would do is walk out on the deck

6 and turn around and say looks good to me?

7 A It's sturdy.

8 Q It was sturdy. How would you determine that?

9 A By being able to --

10 Q I'm sorry?

11 A By being able to handle the weight and the elasticity

12 of the wood.

13 Q Would you jump on it?

14 A Yes.

15 Q You would? Let me show you Exhibit No. 5, do you

16 recognize these as being stairs on that area?

17 A Yes.

18 Q Look real close and tell me how those nails look to

19 you, whether they're attached or they're pulling up,

20 whether the wood is rotted around it?

21 A It's weathered around it.

22 Q I'm sorry?

23 A I would say it's weathered.

24 Q It's weathered?

25 A Yes.

1 Q Okay.

2 A It's not rotted.

3 MR. REARDON: Let me show you Exhibit No. 5, ladies
4 and gentlemen, you can see the stairs and make your own
5 determination.

6 BY MR. REARDON:

7 Q If I look closer and point out to you areas of the
8 bottom of the stairs, would you agree these nails are
9 coming out of these stairs? Yes or no?

10 A I wouldn't say they were coming out.

11 Q You would not?

12 A No, I wouldn't.

13 Q When this deck did collapse, did you get a chance to
14 look at the different pieces of wood under the house, on
15 top of the house -- on the deck or around the deck as far
16 as the actual wood holding up this deck? Did you get a
17 chance to look at Exhibit No. 8 and see the pieces of wood
18 that held up this deck or was part of the deck? You
19 recognize that photograph?

20 A No, I don't recognize that photograph. That's
21 probably the one that was attached to the house.

22 Q If I asked you to look at that top photograph, would
23 you agree with me that is wood rot?

24 A On the inside, yes.

25 Q Yes, sir. Would you agree with me that if you went

1 up under the house and tapped on this wood, wood rot would
2 come out?

3 A No.

4 Q Have you ever done that before?

5 A Yes, but I don't -- with the way that board is set up
6 against there on the outside of it, you probably would
7 have gotten that.

8 Q What keeps wood from rotting on a deck between the
9 house and the deck?

10 A Flashing.

11 Q Explain to the jury what flashing it.

12 A That's a cover that keeps water from running down
13 directly on the wood.

14 Q There was no flashing on this deck; was there?

15 A No.

16 Q And as a licensed contractor, when you build
17 something out of wood, flashing is a key element to keep
18 the wood from rotting, correct?

19 A Correct.

20 Q Did you know there was no flashing?

21 A No, I did not.

22 Q How could you not know?

23 A Because I didn't take the boards up once the deck was
24 built.

25 Q You didn't look at the side of the house where the

1 wood was running into the house?

2 A Where the wood was running into house?

3 Q Yes, sir.

4 A If you looked at from a topical point, you would not
5 see that.

6 Q Okay. So it's your testimony that flashing would not
7 be obvious to a licensed home builder if he came and
8 looked at this deck prior to collapse; is that what you're
9 telling me?

10 A Unless you crawled up under there to see it.

11 Q If he crawled under the deck, he would see it?

12 A Exactly.

13 Q If he looked between the -- where the board is
14 against the wall, if he looked over the edge or looked
15 around, he would see flashing, right?

16 A Not necessarily.

17 Q What's flashing made out of?

18 A Aluminum.

19 Q Aluminum, okay. Did you ever provide any warnings to
20 any of your tenants that there was any issues with this
21 deck that you knew of?

22 A No, I didn't.

23 Q Looking at these photographs, would you agree with me
24 that there were several issues wrong with this deck?

25 A At the time, like I said, I inspected it from walking

1 on it, I didn't see any evidence of problems with it.

2 Q That wasn't my question. My question is looking at
3 these photographs now, between the stairs, the wood rot,
4 the attached boards, the no flashing, the two legs, would
5 you agree that there were a substantial amount of problems
6 with this?

7 A There possibly was.

8 Q No. It's a yes or no answer. Do you agree that
9 there were issues with this deck?

10 A There was.

11 Q Okay. And if you took the time to look at them,
12 would you agree this would be evident to somebody if they
13 crawled under the house or looked at the boards or looked
14 at the flashing or looked at the posts, these were areas
15 that were easily, easily obtained and understood and
16 recognized if you stared at them, if you looked at them
17 and inspected them?

18 A Not necessarily.

19 MR. REARDON: Thank you, Mr. Marshall.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. Mr. Riley?

22 MR. RILEY: No questions, Your Honor.

23 THE COURT: All right. Thank you.

24 Yes, sir.

25 (WHEREUPON, Defendant's Exhibit Nos. 1 through

1 25 were marked for identification.)

2 CROSS-EXAMINATION

3 BY MR. WLODARCZYK:

4 Q Mr. Marshall?

5 A Yes, sir.

6 Q I have here marked Defendant's 1 through 24. Just
7 take a second -- I know you've already been presented with
8 those photos, but if you could just flip through them and
9 identify if that's the deck at issue in this house?

10 A Yes, sir, it is.

11 Q Okay. And do those photographs represent what the
12 deck looked like after it collapsed?

13 A Yes, sir.

14 Q Okay. The photographs that were shown to you by
15 Plaintiff's counsel regarding the stairs and nails, was
16 that after the deck collapsed?

17 A That was after it collapsed.

18 Q Would you agree that -- tell me this, did the
19 photographs of the deck after it collapsed, did that show
20 what it looked like beforehand in terms of the condition
21 of the deck?

22 A No, sir, it did not.

23 Q Okay. You've owned this house for approximately 17
24 years. What maintenance did you do on the house?

25 A We did exterior painting and interior painting,

1 plumber and minor electrical.

2 Q Okay. Did you ever have to have the HVAC repaired or
3 replaced?

4 A Replaced, yes, we did.

5 Q Okay. Is that an expensive item to replace?

6 A Yes, it is.

7 Q Okay. But you had it done when there was a
8 complaint?

9 A No. When we were -- when we were told that we were
10 having problems with the unit, we replaced it so that we
11 could accommodate our tenants.

12 Q Okay. If you ever had a complaint from a tenant
13 regarding a matter of leaks, electrical, et cetera; would
14 you fix it?

15 A Yes, I would.

16 Q Had either you or your wife ever had any type of
17 legal action brought against you for breach of a lease
18 agreement and not maintaining the property?

19 A No, sir.

20 Q Okay. Have there been any complaints with the county
21 regarding you or your wife's actions as landlords on any
22 of your properties?

23 A No, sir.

24 Q You ever had any injuries of any of your tenants or
25 their guests prior to this case on any of your properties?

1 A No.

2 Q You ever had any debt collection actions on any of
3 your properties or you personally?

4 A No, sir.

5 Q Okay. Did you ever walk underneath the deck?

6 A No, I didn't..

7 Q Okay. It's my understanding from your testimony that
8 you have never constructed a deck similar to this where
9 it's mounted to the house and then supported on the far
10 end; is that correct?

11 A That's correct.

12 Q Okay. And you never personally constructed any
13 decks; is that correct?

14 A That's correct.

15 Q In fact, would you agree that most of the building
16 work that you did do was subcontracted out?

17 A Yes.

18 Q In all these years that the federal housing authority
19 would do inspections, were you ever made aware of any
20 problems with the structural soundness of this deck?

21 A Never.

22 Q Were you ever informed of any need to bolster the
23 side of the deck that's attached to the house with
24 additional supports?

25 A No, sir.

1 Q Yet, you were informed by that group to replace
2 certain boards when needed; is that correct?

3 A That's correct.

4 Q Aside from walking -- aside from walking on the deck,
5 did you ever notice any problems with the structural
6 soundness of it at any time prior to this deck collapse?

7 A No, sir.

8 Q Did you have any knowledge that the deck was mounted
9 with only three bolts?

10 A No, I did not.

11 Q Did you have any knowledge whether the bolts,
12 actually, passed through the entire house into a frame or
13 just drilled into the brick?

14 A I didn't have any knowledge.

15 Q Did you first learn about how the deck was, actually,
16 mounted to the house after it collapsed?

17 A That's when I found out.

18 Q Did you ever have any complaints from tenants or
19 their guests through the 17 years that you owned this
20 house regarding the deck?

21 A No, sir.

22 Q Any complaints about the soundness of the deck?

23 A No, sir.

24 Q Any concerns of people's safety while out there on
25 the deck?

1 A No, sir.

2 Q What did you do -- just a little bit of background
3 that you can tell the jury a little bit about yourself.
4 Where did you work before you retired?

5 A Department of Corrections.

6 Q And what did you do there?

7 A I was a teacher, an adult ed teacher.

8 Q How long did you work for the Department of
9 Corrections?

10 A Twenty-seven years.

11 Q And when did you decide to get your builder's
12 license?

13 A 1982, I believe it was.

14 Q Okay. What was the requirements to get your building
15 license at that point in time?

16 A To understand codes and law.

17 Q Okay. And is there any continuing education that's
18 required to maintain your license once you get it?

19 A No, sir, it's not.

20 Q And is it accurate, based on your prior testimony,
21 that when you took the exam to get your licenses that the
22 codes provided for decks to be built in this fashion?

23 A There were allowed at that time.

24 Q Okay. If you had ever been told by any person or
25 entity that there was a structural problem with this

1 deck --

2 A No, I haven't.

3 Q -- that posed a dangerous condition, what would you
4 have done?

5 A I would have made the corrections to it.

6 Q And, in fact, what is there now after the collapse of
7 the deck?

8 A There is a stoop with some steps there coming down to
9 the yard.

10 Q Okay.

11 MR. WLORDARCZYK: At this time, Your Honor, I would
12 like to move to introduce Defendant's Exhibit Nos. 1
13 through 25 into evidence.

14 THE COURT: All right. Is there an objection?

15 MR. ELLIS: No, Your Honor.

16 THE COURT: All right. Introduced.

17 (WHEREUPON, Defendant's Exhibit Nos. 1 through
18 25 were admitted into evidence.)

19 MR. WLORDARCZYK: Your Honor, I have no further
20 questions. I'd like to publish those photos to the jury.

21 THE COURT: All right. Permission to publish
22 granted.

23 Any redirect, Mr. Ellis?

24 MR. ELLIS: Just one moment, Your Honor.

25 THE COURT: Okay.

1 MR. ELLIS: Nothing further, excuse me. Thank you.

2 THE COURT: All right. Mr. Reardon, any redirect?

3 MR. REARDON: No, sir.

4 MR. RILEY: No, sir.

5 THE COURT: Anything else, Mr. Wlodarczyk?

6 MR. WLODARCZYK: Nothing, Your Honor.

7 THE COURT: All right. Thank you, sir. You may step
8 down.

9 Ladies and gentlemen of the jury, let's go ahead and
10 take about a 15, 20-minute recess, kind of refresh before
11 we get started on the rest of the afternoon. Don't talk
12 about the case. We'll see you in here momentarily.

13 (WHEREUPON, the jury left the courtroom at 3:08
14 p.m.)

15 THE COURT: All right. Before we break, Mr.
16 Wlodarczyk.

17 MR. WLODARCZYK: Yes, Your Honor, I believe the rules
18 of civil procedure regarding the trial, the fact that this
19 has been consolidated requires that one attorney do direct
20 and any objections and one attorney do the cross.

21 THE COURT: What rule is that?

22 MR. WLODARCZYK: Thank you.

23 THE COURT: You know the rule? Because I think Rule
24 611 of the evidence rules gives me the discretion to let
25 the trial run however I see fit.

1 MR. WLODARCZYK: And I take the position that the
2 Judge always has the discretion.

3 THE COURT: Well, what I'm thinking is to be
4 fundamentally fair to everybody, I'm torn with the idea,
5 since we do have three Plaintiffs lawyers, you know, to
6 give -- you know, whenever they're through with the
7 witness, then you go to cross-examine, and then the next
8 Plaintiff lawyer goes, and then you get to cross-examine
9 again if you want to, then the next one goes. We can do
10 it that way if you want to.

11 MR. WLODARCZYK: No, sir, I just prefer to do it all
12 at once.

13 THE COURT: Okay. That's what I thought. All right.
14 Well, thank you for noting your objection to it. For the
15 purpose of the record, I overrule your objection. I
16 believe it's fair the way I'm doing it.

17 All right. Anything else before we take a break?

18 MR. ELLIS: Nothing else, Your Honor.

19 MR. WLODARCZYK: Nothing from the Defendants, Your
20 Honor.

21 THE COURT: All right.

22 (WHEREUPON, a short recess was held.)

23 (WHEREUPON, Plaintiff's Exhibit Nos. 1 through
24 16 were marked for identification.)

25 THE COURT: All right. Y'all can bring the jury in.

1 BAILIFF: All right, Your Honor.

2 (WHEREUPON, the jury returned to the courtroom
3 at 3:31 p.m.)

4 BAILIFF: The jury is seated, Your Honor.

5 THE COURT: All right. Thank you very much. Where
6 is Ms. Bessellieu? Am I saying it the right way?

7 THE JUROR: Yes.

8 THE COURT: All right. I'm going to appoint you as
9 the forelady of the jury, ma'am. So next time that we
10 come in, you'll be seated where the forelady is and the
11 bailiffs will show you, okay?

12 As the forelady of the trial jury, you will be the
13 jury spokesperson here in court. You will also be the
14 sole person who can write on the verdict form. I will go
15 over that with you at the end of the trial. Although,
16 you're the only one who can write on the verdict form, you
17 can't write on it until it's a unanimous verdict. I will
18 go into more detail at the end of the trial. Thank you
19 very much for accepting that responsibility that you
20 didn't choose.

21 (Laughter.)

22 THE COURT: All right. Let's proceed with the next
23 witness.

24 You may call your next witness.

25 MR.. REARDON: I call Ms. Marshall, Your Honor.

1 THE COURT: All right.

2 Thereupon;

3 LINDA MARSHALL, after having been
4 duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box, please,
6 and state your name for the record.

7 THE WITNESS: Linda Marshall.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. REARDON:

11 Q Ms. Marshall, I'm Jerry Reardon. I'm going to ask
12 you a few questions, okay?

13 A Okay.

14 Q You are, in fact, married to your husband who's
15 seated over here and testified earlier, correct?

16 A Yes.

17 Q And y'all work together running this company that
18 rents home or builds home or constructs home; is that fair
19 to say?

20 A The company that does the remodeling and repairs, is
21 that the one you're referring to?

22 Q Is it two separate companies?

23 A No, no. I'm just asking.

24 Q I couldn't hear you.

25 A Because you said rents homes. We don't rent homes.

1 We personally have homes.

2 Q Is this a rental?

3 A I can't --

4 Q Where the house collapsed, was that a rental?

5 A Yes, that's a rental.

6 Q So you have homes that you rent is what I'm asking

7 you?

8 A Yes.

9 Q Okay. And I think at the time of your deposition,

10 you said there are about six homes that you rent out?

11 A Yes.

12 Q Is that still something that you do?

13 A Yes.

14 Q Okay. So you're in the rental business; is that fare

15 to say? Explain -- you tell us. Tell the jury.

16 A Well, the rental business, I wouldn't say rental

17 business, but yes, we do have some homes that we rent.

18 Q Okay. What else do you do? What other type of

19 business?

20 A We have the construction and real estate.

21 Q Okay. Well, tell me -- when you say real estate, I

22 think of folks that are either buying homes and either

23 them or buying homes and flipping them and selling them.

24 Is that what you do?

25 A Yes.

1 Q All right. So you do home buying and then selling?

2 A Yes.

3 Q Then home buying and renting?

4 A Well, we don't --

5 Q Like here, you bought this home and rented it?

6 A Yes.

7 Q All right.

8 A But not through the company.

9 Q Not through the company?

10 A No.

11 Q All right. Explain to us, I'm not following you.

12 A We have bought personal property that's separate from

13 the company.

14 Q Okay. So when you say six homes are being rented, is

15 that personally six homes?

16 A Personally.

17 Q What about the company, is there a company that

18 rents?

19 A No.

20 Q All right. Let's just focus on the six homes you

21 rent.

22 A Okay.

23 Q So there are six homes that you and your husband rent

24 out to other folks?

25 A Right.

1 Q In South Carolina?

2 A Right.

3 Q All right. I asked you in deposition what kind of

4 rental income you make with those six houses a year. Do

5 you recall me asking you that?

6 A Yes, and I said between 35 and 40.

7 Q Thirty-five to \$40,000 a year?

8 A Yes.

9 Q All right. And you, also, build homes?

10 A Remodel and repair.

11 Q Just remodel and repair?

12 A Yes.

13 Q Okay. All right. This home itself, we asked your

14 husband and he didn't know. What does it come -- what do

15 you charge for rent a month?

16 A Eight hundred.

17 Q All right. So \$800 a month. And you've had this

18 since I think -- for over 19 years?

19 A It's '97.

20 Q Would be 19 years in 2016; does that sound right?

21 I'll tell you, 19 years would put it into 2016 if you

22 brought it in '97; does that sound correct?

23 A Okay.

24 Q If you're charging \$800 a month, that would have

25 brought in an income of \$182,400; is that correct?

1 A That would be correct had the tenants always paid.
2 Q Oh, sure, sure. I'm sure some ran out on you; is
3 that correct?
4 A Exactly.
5 Q Okay. Now, I asked in your deputies, also, did you
6 do anything in regards to inspections of the deck. What
7 was your answer?
8 A That I visually inspected going from room to room.
9 Q Inside of the house?
10 A Yes.
11 Q Would you go outside?
12 A I would go outside as well.
13 Q Tell the jury what you would do in regards to
14 inspection of the deck outside the house?
15 A Walk outside and, you know, test -- well, you know,
16 kind of check to see whether any boards were weak and that
17 sort of thing. Or if we had nail pops and that sort of
18 thing. We, of course, do whatever was necessary.
19 Q All right. And I think I know the answer, but you
20 didn't crawl under there and inspect anything?
21 A I Did not.
22 Q Your husband is the fellow that would be in charge of
23 doing most of the maintenance on these six homes?
24 A Yes.
25 Q Okay. And you would be in charge of picking up money

1 from renters or in charge of the account; is that fair to
2 say?

3 A Yes.

4 Q And as far the deck collapsing, if I showed you all
5 these exhibits that I showed your husband, would you have
6 any opinion as to flashing, rot, four legs versus two
7 legs?

8 A No, I would not.

9 Q That's not your expertise or your specialty?

10 A No.

11 Q Okay. All right. All you know is that you got a
12 call that the deck did, in fact, collapse that night?

13 A Right.

14 Q And as far as the injuries or the people that were
15 involved -- let me rephrase that, do you know anything
16 about the Estradas and their medical care?

17 A No.

18 Q You're not a doctor or a nurse?

19 A No.

20 Q And you didn't attend with them to any of these
21 doctor appointments?

22 A No.

23 Q Have you talked to them since the deck collapsed?

24 A No.

25 Q Have you called to check on them?

1 A No.

2 Q Do you have any idea about the medical care they were
3 given or rendered?

4 A No.

5 Q Do you have any idea about their injuries?

6 A No.

7 Q Do you dispute that the set up that night of these
8 photographs showing there were multiple grills that had
9 been tipped over and that the deck, in fact, collapsed to
10 the ground?

11 A You can show me the photograph.

12 Q Sure.

13 A Now, the only thing that I was aware of was the
14 tenant, actually, told me that there was a grill out
15 there.

16 Q All right. As far as the actual night, though, you
17 wouldn't have any -- this Exhibit No. 6 showing the grill
18 and showing the deck collapsed, you don't have any opinion
19 as to whether that, in fact -- let me ask it this way. Do
20 you know whether that's what it looked like the night of
21 the collapse?

22 A I don't know.

23 Q Y'all came to the house that night, though, correct?

24 A No, my mother has Alzheimer's and I was not able to.

25 Q Okay. I was under the impression that either you or

1 your husband did go to the scene that night?

2 A He did go.

3 Q He went?

4 A Yes.

5 Q All right. I got you. And as far as any opinion as
6 to whether or not the house was properly inspected or
7 cared for, you're not offering any testimony about that?

8 A No.

9 Q Do you agree that a tenant has the responsibility to
10 keep the house in a working and safe condition?

11 A Yes..

12 Q Okay. Thank you. I said tenant. I meant landlord?

13 A And I didn't even notice that.

14 Q Okay. Thank you.

15 MR. REARDON: No further questions, Your Honor.

16 THE COURT: All right. Mr. Riley, Mr. Ellis?

17 DIRECT EXAMINATION

18 BY MR. ELLIS:

19 Q Ms. Marshall, you didn't give Ms. White any
20 instruction that she should not have people over at the
21 house; did you?

22 A I did not.

23 Q And you never told her don't have anybody out on this
24 deck?

25 A No.

1 Q And were you the one that drafted the lease between
2 most of these tenants?

3 A Yes.

4 Q And where did you find the terms of those leases?
5 Are you trained or skilled in that?

6 A I, generally, would go online and download them.

7 Q Look for things with terms on residential leases?

8 A Right.

9 Q And in those leases, it was, generally, the
10 landlord's responsible for major structural upgrades or
11 changes in the house; isn't that right?

12 A I'm not sure.

13 Q You don't know in the lease if it says that?

14 A I don't know the legal lease there, but as far as
15 maintaining the property, yes, it's our responsibility.

16 Q Right. So if there was a whole in the roof
17 (indicating), y'all would be responsible for it?

18 A Yes.

19 Q And the HVAC unit, like Mr. Marshall discussed, you
20 replaced that; is that correct?

21 A Yes.

22 Q So the structural changes in the house or needs in
23 the house were the responsibility of the landlord?

24 A Yes.

25 Q And small maintenance?

1 A Uh-huh.

2 Q Keeping the yard upgraded, maybe some painting?

3 A Yes.

4 Q That's the tenant's responsibility; is that your
5 recollection?

6 A Well, painted whenever necessary.

7 Q Right, but that was the switching of the tenants,
8 correct, so that you can market it again?

9 A Yes, generally.

10 Q Okay.

11 MR. ELLIS: That's all I have. Thank you.

12 THE COURT: Mr. Riley?

13 MR. RILEY: Nothing, Your Honor.

14 THE COURT: Cross?

15 MR. WLORDARCZYK: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. WLODARCZYK:

18 Q Ms. Marshall, just tell the jury a little bit about
19 yourself. Before you retired, where did you work?

20 A I worked for 35 years and retired from the Department
21 of Juvenile Justice.

22 Q When did you and your husband purchase your first
23 rental home?

24 A Our first rental home was probably in the early 80's.

25 Q And I understand you have children?

1 A Yes.

2 Q And are grown?

3 A They are.

4 Q Did you can put them through college?

5 A Yes, we did.

6 Q What do they do now?

7 A One is an electrical engineer and the other one is a
8 dentist.

9 Q Now, have you had any complaints from any of your
10 tenants from any of your properties that you did not make
11 repairs or take care of the property?

12 A Never.

13 Q Okay.. Did you have any complaints specific to this
14 property from any of your tenants regarding the condition
15 of the deck?

16 A No.

17 Q Okay. Were there ever any request to waterproof it
18 or paint the deck or claims that the deck may be unsafe?

19 A No.

20 Q It's my understandings, and tell me if I'm correct or
21 not, that this property was rented through section eight
22 at one point in time?

23 A It was.

24 Q And how much years approximately did you rent through
25 that program?

1 A Probably seven or eight years.

2 Q And if you can tell the jury just a little bit about
3 what a section eight housing program is, that you
4 understand it to be?

5 A It's whereby the rent is subsidized and in order for
6 the tenant to remain there, there has to be an inspection
7 given on the house every year. And whatever the -- is
8 found, defects or flaws to be found, they had to be
9 corrected in order to continue on that program. And they
10 would make a list of the repairs. And after doing the
11 repairs, then they would come back out and reinspect it.

12 Q And that's a federal program?

13 A That is federal and state, yes, sir.

14 Q And the -- go ahead.

15 A Each state has housing authority.

16 Q Okay.. In this particular instance, was the house
17 inspected annually by the housing authority for those
18 eight years that it was under that program?

19 A Yes.

20 Q And was that the first eight years that you,
21 actually, purchased this house?

22 A I think it was the first eight.

23 Q Okay. And just if you didn't state it, are tenants
24 present with the inspectors?

25 A Yeah, tenants were always there to point out if

1 anything that they felt needed to be done, therefore, we
2 had no control as to say well, don't report this or I'll
3 take care of it later.

4 Q And were you or your husband ever present to meet
5 with the inspectors when those inspections were done?

6 A We were never there.

7 Q Completely independent to your knowledge?

8 A Independent, yes.

9 Q And what would you get in terms of documentation to
10 say what needed to be repaired?

11 A They would send out a list of repairs that needed to
12 be made.

13 Q Okay.

14 A And they would give us a date that they had to be
15 done by.

16 Q Okay. And I believe your husband's testimony was
17 that based on those inspections that a few of the boards
18 had to be replaced; is that accurate?

19 A That is correct.

20 Q Okay. Did you ever receive any documentation from
21 the housing authority, the U. S. Government calling into
22 question the structural soundness of this deck?

23 A Never.

24 Q Did you ever receive any documentation from the
25 housing authority saying that the deck needed to be

1 removed or was a dangerous -- in a dangerous condition.

2 A No, never.

3 Q So is it accurate then that for eight years, from
4 1997, that the U. S. Government inspected this house
5 annually with a tenant and there was no complaints
6 regarding the deck other than to replace a couple of
7 boards?

8 A That's the only thing that was ever made mention of.

9 Q Okay. Did you have the opportunity to meet with
10 tenants at this particular property when you would collect
11 checks?

12 A Yes, I did.

13 Q Did you ever receive any complaints from the tenants
14 regarding the condition of the deck?

15 A Never.

16 Q Okay. Aside from the change over in tenants when you
17 would walk through the property, did you ever have the
18 opportunity to go inside the house or on the deck while it
19 was being rented?

20 A Yes, I have been in when she complained of a leak in
21 the bathroom. I think I went down to the basement because
22 the washing machine had a leak. And I went into the
23 kitchen, which is just -- the deck is right outside the
24 kitchen. I went in and collected rent one time.

25 Q Did you personally notice any problems during these

1 visits with the condition of the deck?

2 A No.

3 Q Okay. Prior to this deck following, was there
4 anything that gave you cause or concern that this deck was
5 unsafe?

6 A No.

7 Q Had you ever been notified by any party or entity
8 that the deck was -- that the deck was a dangerous -- in a
9 dangerous condition, what would have been done?

10 A Oh, had we been notified that something needed to be
11 done, we would have taken care of it right away. Because
12 I always tell my tenants, you know, call me because we
13 don't want anything to happen that concerns water. You
14 know, I don't care if you call me 2:00 or 3:00 o'clock in
15 the morning.

16 Q Okay. And do, in fact, your tenants call regarding
17 problems with the property -- various properties?

18 A Yes, we have gotten called late at night and my
19 husband will, generally, get out bed and take care of it,
20 you know, if it's deemed to be an emergency.

21 Q And it's my understanding that this deck collapsed
22 late at night as well; is that correct?

23 A Yes.

24 Q And your husband did, in fact, go out to the property
25 that evening?

1 A Yes.

2 MR. WLODARCZYK: Okay. Thank you, ma'am. I have no
3 further questions.

4 THE COURT: Any redirect?

5 MR. ELLIS: One second, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. ELLIS:

8 Q Ms. Marshall, the U. S. Housing Authority, you have
9 no idea what level of inspection or otherwise check-off
10 system they have in order to go through and approve that
11 facility to low-income tenants; do you?

12 A I do not.

13 Q Right. And the U. S. Housing Authority is not the
14 owner of that house and responsible to the tenants in
15 there; isn't that correct?

16 A Right.

17 Q You and your husband are?

18 A Right.

19 Q So you said for the first seven or eight years, I
20 think you said in your deposition --

21 A Uh-huh.

22 Q -- That it did -- it did rent to lower income
23 housings folks; is that correct?

24 A Right.

25 Q And you're not telling this jury that those

1 low-income housing folk are not equal in what they're
2 supposed to receive in regard to the protection from the
3 owner; is that correct, in protection for the house?

4 A I'm not following you on that. The inspection is
5 part of the house's program, regardless, we always checked
6 all of our houses where they mandated it or not. It was
7 just their standards that certain things had to be up to
8 snuff.

9 Q Like rotted boards?

10 A Uh-huh.

11 Q Electric outlets?

12 A Yes.

13 Q Isn't that correct?

14 A Right.

15 Q But not structural issues, that's your responsibility
16 as the owner of the building?

17 A Right, but if there had been something structural and
18 they saw it, they would have pointed it out.

19 Q Ms. Marshall, that's what I'm asking you. You don't
20 know that? That's not true?

21 A I said if they noticed it, they would have not
22 approved the tenant.

23 Q That's what I'm asking you. The first question I
24 asked you was do you know the standards that they have?

25 A I don't know the standards.

1 Q Okay. So you're just assuming they would have told
2 you that, right?

3 A I --

4 Q You're assuming?

5 A I am assuming they would have.

6 Q Right, but you, also, said that the ultimate
7 responsibility lies with you and your husband as the
8 owner?

9 A The ultimate responsibility, yes, but one would also
10 assume if they saw something, they would say something.

11 Q Okay. But your tenants assumed that if you saw
12 something, you would do something?

13 A Right. And we always did that.

14 Q Okay.

15 A We did not see anything.

16 Q Yes, ma'am. All right. And so we're straight, too,
17 when it was low income housing, that was for seven or
18 eight years; is that correct?

19 A That is correct.

20 Q So of the 19 years you've had that house, no one else
21 has done an inspection since that period of time, in seven
22 or eight years?

23 A No -- no one with the --

24 Q U.S. Housing?

25 A Huh?

1 Q U.S. Housing?

2 A No one who has been labeled as an inspector, no.

3 Q Okay. Well, I would like to know those who were not
4 labeled as inspectors?

5 A Well, that just would have been my husband doing his
6 walk-through.

7 Q Right. But of the 19 years, seven of them the U. S.
8 Housing Authority supposed did some inspection of the
9 property?

10 A Right.

11 Q But the remaining time, no one else has?

12 A Right, that's correct.

13 MR. ELLIS: That's all, Your Honor. Thank you.

14 THE COURT: Anything else, Mr. Wlondarczyk?

15 MR. WLODARCZYK: No, Your Honor.

16 THE COURT: All right. Thank you, ma'am. You can
17 step down.

18 All right. Plaintiff would call the next witness.

19 MR. REARDON: Your Honor, I call Linda Estrada to the
20 stand, Your Honor.

21 THE COURT: All right.

22 Thereupon;

23 LINDA ESTRADA, after having been
24 duly sworn, testified as follows:

25 THE CLERK: Thank you. Have a seat in the witness

1 box, please. State your name for the record.

2 THE WITNESS: My name is Linda Estrada.

3 DIRECT EXAMINATION

4 BY MR. REARDON:

5 Q Ms. Estrada, tell us where you live.

6 A I live at Montrooper Court, Columbia, South Carolina,
7 29223.

8 Q Where is that in relation to downtown?

9 A That's in Wildwood.

10 Q Wildwood, okay. And how old are you today?

11 A I'm 47.

12 Q Forty-seven. Who do you live with?

13 A My husband, George Estrada.

14 Q How long have you been married?

15 A Six years.

16 Q Have y'all had the ability to raise any children or
17 have any children?

18 A We raised two twins that were my niece's twins.

19 Q Okay. How long did you raise them?

20 A From the time they were two until 19.

21 Q What type of career did your husband, going back the
22 last 20, 30 years or so?

23 A He was in the Vietnam war and, also, he did like
24 electrical, went to college, two-year college for
25 electrician.

1 Q Okay. And did you grow up in Columbia?

2 A I did.

3 Q Did you go to high school in Columbia?

4 A I went to Columbia high.

5 Q All right. How about other schooling you might have
6 completed after high school?

7 A I went to a professional training institute, which
8 was a trade school. Since I got out of high school, I
9 didn't take the summer off, I just went straight to there
10 and I did medical assistant. And then I went to Midlands
11 Tech and I did phlebotomy and I, also, went for a surgical
12 tech, also, done my nursing classes, just waiting to do my
13 clinicals.

14 Q All right. Currently, where do you work?

15 A I work at Palmetto Health Baptist.

16 Q All right. And what do you do there?

17 A I'm a surgical technologist.

18 Q How long have you been doing that type of work?

19 A I've been in the hospital setting for 27 years.

20 Q All right. Let's talk about April 4th of 2014. That
21 appears to be a Friday; is that correct?

22 A That is correct.

23 Q Did you work that day?

24 A Yes, sir.

25 Q Did you and your husband have plans that evening?

1 A We planned to go to my brother's mother's birthday
2 party.

3 Q And is that at the home listed here in one of the
4 exhibits in front of us earlier?

5 A Yes, sir.

6 Q Exhibit No. 4?

7 A Yes, sir.

8 Q Is that Casbel -- 108 Casbel Court?

9 A Yes, sir.

10 Q Had you been to that home before?

11 A During Christmas, yes, sir, I did.

12 Q All right. As you can see from the photograph,
13 there's a front and a back side of the house. Had you
14 been outside the house prior to the night of this deck
15 collapse?

16 A No, sir.

17 Q What time did you arrive at the birthday party?

18 A 9:00, 9:00ish, 9:20.

19 Q That would have been you and your husband together?

20 A My husband and I both, yes.

21 Q Did you go in the front door or back door?

22 A We came in through the front door.

23 Q When you arrived, tell how, generally, how many folks
24 were there and what was going on?

25 A It was about 12 people. The mother was in the house

1 when we came to the door. Of course, we came in and we
2 spoke to everybody and told her happy birthday and kind of
3 sat and chat with her for a while. And then we went on
4 out to the deck.

5 Q Was there food, drinks, games, what was going on?

6 A Yes, we -- there was food in the house and birthday
7 cake was in the house. They had drinks in the cooler that
8 was on the outside on the deck.

9 Q Okay. And at some point, you said you did go out to
10 the deck. What time was that approximately?

11 A 10:00.

12 Q What time did the deck collapse?

13 A 11:40.

14 Q So between 10:00 and 11:40, were you positioned out
15 on the deck?

16 A Yes, I had been sitting for some time.

17 Q Would you go in and out of the house from that time
18 period or did you stay in one spot?

19 A I stayed in that one spot.

20 Q All right. I'm going to show you what's been marked
21 as Exhibit No. 6. Generally, can you tell us where you
22 would have been seated if this deck was up -- and maybe it
23 will help you to show both of them. Where were you seated
24 on this deck?

25 A On this deck, I would be sitting over here

1 (indicating) to the right of the outside. Right here in
2 this white chair where the grill is. Yeah, there.

3 Q Okay. So if I'm near the deck or on the deck, if I'm
4 looking, the right side of the deck would have been up
5 against the house, the left side of the deck would have
6 been farthest from the house. Was your chair originally
7 on the left side or the right side?

8 A On the right side.

9 Q All right. Where was George sitting at the time of
10 -- before the deck collapsed?

11 A He was on the opposite side of me. It would be the
12 left closest to the steps.

13 Q Using these steps as an example, is he somewhere near
14 this area (indicating)?

15 A No, further up.

16 Q Further up.. So if I used these photographs here, he
17 would have been positioned where?

18 A He would be right here on the side (indicating).

19 Q Okay. So the far right side of the deck?

20 A That is correct.

21 Q Was he in a chair or was he standing, where was he?

22 A He was sitting on the cooler.

23 Q All right. So you were in a chair at that point in
24 time prior to the deck collapse. What were you doing?

25 A I was just sitting there just having a drink.

1 Q Okay. What was the lighting like in this area?

2 A It was dark. The only light we had was kind of like
3 the light that was coming from the inside of the house.
4 And it was, I think it's a light pole further out in the
5 yard.

6 Q Like a street lamp type thing?

7 A Yes, yeah. Yes.

8 Q Okay. All right. Before the deck collapsed, had you
9 had any conversations about the condition or any dangers
10 of the deck?

11 A No.

12 Q All right. So you're sitting in your chair, tell
13 this jury what happens?

14 A I'm sitting in the chair and we're talking. My
15 nieces are on the porch and just talking back and forth,
16 just having a good time. And they were sitting in front
17 of me playing a little game on the porch. And the next
18 thing I know, the deck collapsed without warning. We
19 didn't hear any sounds, any cracks or anything. It just
20 went down. It was two little babies on the porch jumping
21 up and down. The main concern when the porch fell is the
22 grill slid, hit me on my elbow, fractured my elbow. And
23 we were just screaming for the kids. I told them not to
24 get me, just look for my husband because he had just had
25 an amputation of his right toe. So I just wanted them to

1 kind of get him and then they kind of helped me out.

2 Q If I look at Exhibit No. 1, it appears that there is
3 a -- looks like a window, is that, in fact, the door?

4 A That is the door.

5 Q And so there appears to be the deck down below the
6 door, did it drop from the area --

7 A Yes.

8 Q -- of the door down to the floor?

9 A Yes.

10 Q All right. If I go back to Exhibit No. 6, I see a
11 chair. Is that the white chair you're talking about?

12 A That's the chair and that's where the grill slammed
13 into my right elbow (indicating) and slammed me up against
14 the house.

15 Q It appears that the chair is trapped under a piece of
16 wood. Is that part of the grill?

17 A That is.

18 Q And there's another grill to the left. Did that
19 grill strike you or is that a different grill?

20 A That one just kind of kept me from being able to get
21 out, also. I couldn't get out. I was kind of trapped
22 until somebody could get me out.

23 Q Okay. Once it collapsed, what do you do, how do you
24 get up? What position --

25 A I just screamed and told them to just get my husband.

1 And they helped my husband up. And then my niece and my
2 nephew, Tyrone, came and got me after they got him safe.

3 Q Did any of those grills have anything inside of them?
4 What I mean by that is charcoal, fire, anything inside of
5 it?

6 A Yes, the grill that fell forward had charcoals. It
7 still was lit. It was still burning, so they, actually
8 burnt a hole into the wood.

9 Q Was there any issue with ashes or soot?

10 A Yeah, there was ashes all over my clothes, all over
11 my pocketbook. It knocked me so hard, it even knocked my
12 wig off.

13 Q Okay. All right. Were you helped off of the deck?

14 A Yes, the steps was broken.

15 Q So if we look at the steps coming down, they appear
16 to have fallen down onto the ground. How did you get from
17 the deck down to the steps?

18 A My nephew helped me down because my elbow was hurt so
19 bad, I couldn't even brace or anything with it.

20 Q Okay. Where was George when you started walking
21 towards the stairs to go down?

22 A They had gotten him down. He was sitting in the
23 chair.

24 Q So were you both able to get off of the deck before
25 it collapsed again or had any other issues?

1 A Yes.

2 Q All right. When you got off the deck, what was
3 everybody else you doing?

4 A They was just sitting there kind of, you know, in a
5 daze, like, what happened, what caused it? And then 15
6 minutes later, we saw the ambulance and a bunch of lights.
7 Then I saw Mr. Marshall when he came and said how many of
8 y'all was on the deck and how did y'all break my deck
9 down.

10 Q Did EMS come there and take you from the scene?

11 A No.

12 Q Did EMS come?

13 A Did EMS, yes.

14 Q Okay.

15 A EMS did, yes.

16 Q Where did they take you?

17 A To Palmetto Health Richland.

18 Q Was George in the ambulance with you?

19 A That is correct.

20 Q All right. How were you doing inside the ambulance?
21 What problems were you having?

22 A I had -- my elbow was hurting really bad, both of my
23 knees were hurting -- well, at the time, just my leg I
24 could, actually, see and feel at that time that was
25 scraped, then my wrist, my left wrist.

1 Q How did you go -- how did you hurt your knees?

2 A Trying to get upon my own, I fell forward and fell on
3 both of my knees.

4 Q Okay. Are you right-handed or left-handed?

5 A I'm right-handed.

6 Q Is this your dominate arm that was injured?

7 A That is correct.

8 Q You went to the ER that night along with George.

9 Tell me what the ER did for you. Don't tell me what the
10 doctor, just tell me what they did for you.

11 A When I went there, they gave -- we sat in the room
12 for a while until they could get an x-ray because they had
13 a lot of people there. And I had an x-ray of my right
14 elbow and my left leg that they could see that was
15 physically scraped. I had a bruise on it.

16 Q Did you go home in the early hours of the morning
17 that night?

18 A Yes, we did.

19 Q And how were you doing over the next 48 hours?

20 A Just really sore and just hurting really bad, just my
21 elbow was really, really the worst out of all.

22 Q Did you have any issues with any other parts of your
23 body, shoulders, neck, back, legs?

24 A My neck and my lower back.

25 Q When did that become an issue?

1 A It became an issue the next day.

2 Q Okay. Now, it appears from the medical records and
3 the bills that you went to MedCare about seven days later?

4 A Yes.

5 Q Is that fair to say?

6 A Yes.

7 Q What is MedCare?

8 A MedCare is what they call sometimes a doc in the box.
9 It's one of those places you can go if you don't have a
10 doctor or no place else is opened or if you can't go to
11 your doctor.

12 Q What did they do for you there?

13 A I went there and they took x-rays and they said my
14 elbow was fractured.

15 Q Okay. And did make an appointment to followup with
16 an orthopedic in town?

17 A I did.

18 Q And can you tell me who that was?

19 A USC Sports Medicine.

20 Q All right. Did you also followup and make an
21 appointment with Health Source Chiropractic Care on or
22 about April 17th?

23 A I did.

24 Q What issues were you having as far as body parts when
25 you went to see them?

1 A Neck and back pain.

2 Q Did you have any issues with your elbow or knee?

3 A Yes.

4 Q Okay. Were they treating your elbow and knee or were
5 they treating your back and your neck?

6 A They was treating my back and my neck.

7 Q Now, why did you choose Health Source.

8 A I chose Health Source because I was trying to find
9 somewhere close by the house, so I asked you if you know
10 anything that was close to my house where I could go.

11 Q My office gave you a referral?

12 A Yes.

13 Q Okay. And did you, in fact, make an appointment to
14 go to Health Source?

15 A Yes.

16 Q Tell me a little bit about the treatment that Dr.
17 Hamvay provided for you beginning on April 17th at his
18 office in Northeast Columbia.

19 A He would do adjustment on my back and neck and
20 massages and he would have me do types of physical
21 therapy.

22 Q You did work with him and his staff?

23 A I did.

24 Q What would you generally say would the amount of time
25 you spent going there for each treatment? How long would

1 it last?

2 A I think about two hours a day.

3 Q Okay. And did you continue to treat with the hot
4 packs, adjustment, ultrasound and exercises from April the
5 17th until June the 9th?

6 A Yes.

7 Q How were doing overall as, say, June 9th when he
8 released you?

9 A I was still really sore and in a lot of pain.

10 Q Where were you hurting?

11 A My neck, m back and my elbow.

12 Q All right. You had been in an accident sometime back
13 in, was it February?

14 A Yes, February 22nd.

15 Q All right. And did you, in fact, receive similar
16 treatment with a doctor in Columbia back in February?

17 A Yes.

18 Q All right. And this accident here, did it aggravate
19 or did it cause a different injury? Tell us a little bit
20 about it.

21 A When I went -- when I had my car accident in
22 February, I was getting treated for my neck and my upper
23 back.

24 Q Okay.

25 A In between my shoulder blades. And when I had this

1 accident, when I fell off this deck, it made it worse.
2 Because it had just been a month, so I was just starting
3 to heal a little bit. But when the deck collapsed, it
4 made it worse.

5 Q You eventually made an appointment with USC
6 Orthopedics; looks like, on May the 15th; does that sound
7 right?

8 A Yes, sir.

9 Q Did you go, in fact, to see Dr. Westerkam?

10 A I did.

11 Q What did he do for you on those open -- his first
12 visit?

13 A He did x-rays, did x-rays and stuff and then he
14 wanted to do a never study on my arm.

15 Q Did you, in fact, have a nerve conduction test done
16 on your arm on June the 2nd?

17 A I did.

18 Q Did you, also, have an MRI of your arm done on June
19 the 10th?

20 A Yes, sir.

21 Q Did you continue to treat with him up through June
22 and then into August, into September, and then, finally,
23 released in October?

24 A Yes, sir.

25 Q All right. And that would have been Dr. Westerkam?

1 A Yes.

2 Q Did he do anything to your elbow to help with the
3 injury you sustained?

4 A I had injections in my elbow. I had to wear an elbow
5 brace.

6 Q Let me show you what's been marked as Exhibit No. 7.
7 Is that, I guess, the inside of your elbow?

8 A Yes, that's the inside.

9 Q Was that sustained in this accident?

10 A Yes.

11 Q Okay. And it was, in fact, a fractured elbow?

12 A Yes.

13 Q Did you wear a sling for some period of time?

14 A He just gave me a brace and he told me I needed to
15 have surgery.

16 Q All right. As far as the elbow is concerned, did you
17 have any problems from your elbow down to your hands due
18 to this fall?

19 A Yes, I have nerve damage, so these two fingers, they
20 numb.

21 Q They're numb?

22 A Yes.

23 Q Tell me about that. How often does it happen? What
24 do you do for it?

25 A That's constantly. Those two fingers stay numb. It

1 has a pinched nerve.

2 Q And you've had injections?

3 A Yes.

4 Q You've taken medication?

5 A Yes.

6 Q Surgery was ordered?

7 A Yes.

8 Q But you have not had the surgery?

9 A No, I'm the sole provider for my family. My husband
10 doesn't work anymore. I'm the only one that work. So for
11 me to have this surgery done on my elbow, I would be out
12 for two months.

13 Q And are you working five, six days a week now?

14 A Yes.

15 Q And are you working early mornings for surgery or
16 late afternoon? What do you do?

17 A I work early morning, 6:30 a.m. to 3:15.

18 Q Did you, in fact, go to work today?

19 A Yes, sir.

20 Q You've been released since October of 2014, haven't
21 had any surgery, but still having problems?

22 A Yes.

23 Q Tell the jury how often you have the problems, how it
24 affects your daily life?

25 A I have problems with my elbow everyday. Simple

1 things, just vacuuming, pumping the gas for your car,
2 opening -- I'm a surgical technologist, so I have to
3 present surgical instrumentation to the sterile field.
4 Just moving patients from one stretcher to the OR bed is a
5 problem for me, but I still have to deal with it everyday.

6 Q Do you believe the numbness and pain symptoms you're
7 having now are permanent?

8 A Yes.

9 Q Let me show you what's been marked as Exhibit No. 1.
10 Are these, in fact, your bills from this deck collapse?

11 A Yes.

12 Q And the total \$10,818.32?

13 A Yes, sir.

14 Q Are all of these directly related to this deck
15 collapse?

16 A Yes.

17 Q Were you given any warning about the deck set up or
18 the issues with the deck prior to going to this residence?

19 A No, sir.

20 Q Did ever have a chance to walk around outside the
21 deck and inspect it in any way?

22 A No, sir.

23 Q You were released from Dr. Hamvay's office back on
24 June the 9th, and you indicated you still have problems
25 with that. When do you -- do you feel like it's resolved

1 50 percent, 80 percent, give us an idea?

2 A I think it's better than what it was. I think it's
3 resolved itself, at least, maybe 40 percent or better.

4 Q And are you doing anything currently for the neck and
5 back patient?

6 A I take ibuprofen everyday.

7 Q Do you do anything else for it?

8 A No, sir.

9 Q Okay. Have you lost the ability to do certain things
10 that you were doing before the accident that you're not
11 doing now?

12 A Well, I used to work out some and go to the gym and
13 lift weights or try to do the treadmill, but it just
14 irritates my elbow so much, I just don't go.

15 Q As far as activities around the home, are you still
16 about to do them?

17 A Yes, sir, I'm able to do them, but with pain.

18 Q Did you ever have any issues with your elbow prior to
19 this?

20 A No.

21 Q Now, you also had an MRI done of your knee; is that
22 correct?

23 A Yes, sir.

24 Q Was that your left or your hand?

25 A I had it done on my left and my right.

1 Q All right. Are you still having issues with your
2 knees?

3 A Yes.

4 Q All right. Tell me about those?

5 A My knees stay swollen a lot. The back of my
6 hamstring on my right leg, it just stays in knots and it
7 really hurts from the swelling. I stand up a lot, that's
8 my job being a surgical technologist. As a surgical tech,
9 you assist the doctors all day, so I'm constantly in pain.

10 MR. REARDON: Okay. Thank you very much. Answer any
11 questions they have for you.

12 THE COURT: Y'all have any other questions before Mr.
13 Wlodarczyk?

14 MR. RILEY: None, Your Honor.

15 THE COURT: All right. Mr. Wlodarczyk.

16 MR. REARDON: Your Honor, just for the record, those
17 exhibits, I move those into evidence..

18 THE COURT: All of the exhibits have been submitted.

19 MR. REARDON: Thank you, Your Honor.

20 (WHEREUPON, Plaintiff's Exhibit Nos. 1 through
21 15 were admitted into evidence.)

22 CROSS-EXAMINATION

23 BY MR. WLODARCZYK:

24 Q Good afternoon, Ms. Estrada.

25 A Good afternoon.

1 Q We had an opportunity to meet a while ago at your
2 deposition. I just have some follow-up questions. Your
3 accident in February of 2014, you were represented by Bill
4 Green in that matter?

5 A That is correct.

6 Q And he gave you a different chiropractor to go to to
7 get treated for those injuries?

8 A He did.

9 Q I believe in your deposition, you stated that it was
10 the similar pain, it just was aggravated following this
11 collapse; is that correct?

12 A That is correct.

13 Q Okay. Now, your attorney asked you if you were
14 released by Dr. Westerkam in October of 2014. It's my
15 understanding from your prior testimony and your doctor's
16 testimony that you, in fact, have not been released from
17 Dr. Westerkam?

18 A I have not been released by him? I have been
19 released by him. He sent me to another doctor, which is
20 Dr. -- the one that did the MRI on my leg.

21 Q And when was -- when were you released?

22 A I don't remember the exact date.

23 Q Your last visit with him was in October of 2014; is
24 that correct?

25 A I'm not exactly sure on the date.

1 Q Okay. Is it accurate that Dr. Westerkam recommended
2 that you get some physical therapy?

3 A No. Dr. Maxway (ph) did.

4 Q Same practice, though; is that correct?

5 A Yes, sir.

6 Q The orthopedist. Did you, in fact, go that physical
7 therapy?

8 A The physical therapy, no, sir, because my husband was
9 in the hospital. He's been sick and I haven't been able
10 to go.

11 Q I am going to give you a copy of your deposition just
12 to let you see if you can refresh your recollection about
13 what you told me.

14 MR. REARDON: What's the question, Your Honor?

15 MR. WLODARCZYK: Discharge.

16 BY MR. WLODARCZYK:

17 Q I would direct you to the portion I'd like you to
18 look at.

19 A Okay.

20 Q Page 26, you and I were discussing your visits with
21 the orthopedist. And you can take a moment just to read
22 through that page and just familiarize yourself with our
23 conversation. Is it accurate that we were talking about
24 your orthopedist at that point in time?

25 A Yes.

1 Q Okay. And I asked you how many visits did you have
2 with the orthopedist and you told me four; is that
3 correct?

4 A Yes.

5 Q And at the time, you thought your last visit was
6 August of 2014?

7 A Okay.

8 Q And then I asked you if you were discharged by your
9 doctor, and you said no; is that correct?

10 A Yes, I did say that.

11 Q Okay. That's what I wanted to make sure. And you
12 never did get any physical therapy that was recommend by
13 your orthopedist; is that correct?

14 A He today me I could take physical therapy if I didn't
15 want to do the surgery. And I did not have the physical
16 therapy done because my husband was in and out of the
17 hospital.

18 Q Okay. But you're still complaining of problems
19 related to your elbow?

20 A Yes.

21 Q And you have never returned to the orthopedist for
22 any new prescriptions for physical therapy; is this
23 correct?

24 A I can't take any kind of prescription medicine
25 because of the type of job I do. But yes, I could have

1 gone to physical therapy.

2 Q I think I misspoke. Doctor to get an order for
3 physical therapy, not a prescription for a pain killer or
4 anything like that. You never returned to the
5 orthopedist, either followup of your complaints with your
6 elbow or to see if you could go to physical therapy after
7 your husband was out of the hospital?

8 A My main reason for not doing that other than my
9 husband going back and forth to the hospital, like I said
10 earlier, I'm the sole provider for my husband. So each
11 time I go to the doctor, that accrues a bill for me that I
12 can't afford to pay right now.

13 Q And you haven't presented any lost wages as a part of
14 your testimony and your medical bills; is that correct?

15 A No, I did not. I missed one day.

16 Q One day?

17 A The only reason why I missed one day is because I had
18 just been in the accident prior and I had been out for a
19 week or so and I did not want to lose my job by
20 continuously just taking a day off. Even though I was in
21 pain, I worked through that pain. I didn't want to, but I
22 had to.

23 Q What's your work schedule again?

24 A At this job?

25 Q At the job that you were working at approximately at

1 time of this incident?

2 A What time was I working there? It was different
3 hours. If I was scheduled to be in the OR, I had two days
4 of the OR, which I would have to be there at 6:00 a.m. to
5 3:30. If I was doing local procedures, I would have to be
6 there at 8:00 in the morning to 4:30 in the afternoon.

7 Q Okay. And is it accurate that you never followed up
8 with a physical therapist to find out if they could work
9 around your schedule?

10 A No, I did not call them back.

11 Q You don't have any information or knowledge about
12 what was done or not done to this deck prior to it
13 following down; is that correct?

14 A No, I don't know.

15 Q And you don't know if boards were replaced or not
16 replaced?

17 A No, sir.

18 Q No one represented to you that the deck was in good
19 condition or poor condition; is that correct?

20 A No, sir.

21 Q Okay. It's accurate that you were out there with
22 approximately 10 people for about two hours; is that
23 correct?

24 A Yes, sir.

25 Q And you weren't going back and forth, you were just

1 seated enjoying the evening, correct?

2 A That is correct.

3 Q And with all those people out there, you didn't have
4 any concerns about the deck or it didn't appear to be any
5 problems until finally, it just gave way?

6 A Exactly, yes.

7 Q You don't have any information regarding how it was
8 mounted, whether it was correct or incorrect or supports
9 or anything along those lines?

10 A No, sir.

11 Q Okay. I was not privy to see you show where you were
12 seated, but if you could direct me to which -- I believe
13 it's this one. It's your testimony that you were seated
14 near this chair, but up where the deck would have been?

15 A Uh-huh, yes, sir.

16 Q I was asking you some questions about the locations
17 of the Plaintiffs, one of which was Mr. Reyes. Do you
18 know Mr. Reyes or recognize him here today?

19 A Yes.

20 Q I represent that Mr. Reyes says that he was, also,
21 standing by the sliding glass door, but when I asked you
22 whether he was on the deck, you indicated that he was not
23 when it collapsed; is that correct?

24 A No, he wasn't.

25 Q Okay. In fact, you were adamant or, at least, very

1 confident that he was in the house when the deck fell; is
2 this correct?

3 A Yeah, you just said he was standing by the sliding
4 door, yes, sir.

5 Q On the inside?

6 A Yes, sir.

7 Q Are you aware that he sought medical treatment
8 following --

9 A Yes, I saw him at the hospital after while we were
10 there.

11 Q Okay.

12 A When we were leaving.

13 Q Go ahead. Did you question him as to why he was
14 there or anything like that?

15 A I had no reason to.

16 Q Have you had any conversations with him about why he
17 was there?

18 A No, sir.

19 Q Okay. Do you know Ms. White, who was tenant at the
20 house?

21 A That's my niece.

22 Q Okay. And it's my understanding that he was dating
23 her daughter?

24 A That is correct.

25 Q Did they make any comments about why he would go to

1 the hospital for injuries if he wasn't on the deck when it
2 fell?

3 A No, sir.

4 Q And is it accurate that the position that you were in
5 by the end of the deck, next to the sliding glass door for
6 two hours, that you would have been in a position to see
7 if someone -- if he was standing there at the sliding
8 glass door when the deck collapsed?

9 A Yes.

10 Q In fact, he would have likely been right in front of
11 you, from my understanding of where you were seated?

12 A Yes, sir.

13 Q And you are absolutely sure he was not on the deck
14 when it collapsed?

15 A I did not see him on the deck.

16 MR. WLODARCZYK: Thank you. I don't have anything
17 further.

18 THE COURT: All right. Any redirect?

19 MR. REARDON: Just real quick, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. REARDON:

22 Q Ms. Estrada, the numbness that you had in your hand
23 and fingers were noted on your original 5/15 record when
24 you went to see your doctor; is this correct, when you
25 went to see an orthopedist?

1 A Yes.

2 Q You had the same symptoms?

3 A Yes.

4 Q Same problems?

5 A Yes, sir.

6 Q Went through the medications?

7 A (Witness nods head.)

8 Q Took the injections?

9 A Yes.

10 Q And you're still having the same problem; is that

11 correct?

12 A Yes, sir.

13 Q It has not resolved?

14 A No, sir.

15 Q Okay. As far as your knees are concerned, you told

16 the doctors about the knee injuries?

17 A Yes, sir.

18 Q And they did the MRIs?

19 A Yes, sir.

20 Q And they treated you for the injury?

21 A Yes, sir.

22 Q And you're still have problems there, also?

23 A Yes, sir.

24 MR. REARDON: Okay. Thank you.

25 No further questions, Your Honor.

1 THE COURT: All right. Thank you, ma'am. You can
2 step down.

3 All right. Ladies and gentlemen of the jury, that's
4 going to be it for today. I have a matter I need to take
5 care of prior to driving all the way back to Chester, so
6 we're going to have to end a little bit early today. I
7 want you in your jury room tomorrow at 9:15 tomorrow
8 morning. That way, we can take care of any legal issues
9 with the lawyers and we can promptly start at 9:30. So be
10 in your jury room tomorrow at 9:15 and then we'll get
11 started no later than 9:30 out here.

12 Okay. Thank you very much. You're free to leave.
13 Do not talk about the case, not even with each other.
14 Don't try to find any independent news stories, if there
15 are any about it. Don't Google names of lawyers or the
16 names of witnesses here. Remember, your verdict is only
17 from the testimony given at that witness stand and from
18 the evidence presented in this courtroom during this
19 trial. So don't do any independent research, okay. You
20 have to rely on me as the judge of the law and what you
21 hear only in this courtroom, okay. Thank you very much.
22 We'll see you in the morning.

23 (WHEREUPON, the jury left the courtroom at 4:22
24 p.m.)

25 THE COURT: All right. Anything else today?

1 MR. WLODARCZYK: No, Your Honor.

2 MR. REARDON: No.

3 MR. RILEY: No, Your Honor.

4 THE COURT: All right. I'll see y'all in the
5 morning.

6 APRIL 6, 2016

7 (WHEREUPON, Court's Exhibit No. 1 was marked for
8 identification.)

9 THE COURT: All right. I got a note from the jury.
10 I'll read it to you. This is from Ms. Bessellieu, who I
11 appointed as the forelady yesterday. It says, This is
12 Juror No. 21. Yesterday evening, I realized that I knew
13 or, rather, had met the Defendant, Mr. Marshall one or two
14 years. A close personal friend had recommended him to
15 possibly do some work on my house. I did not recognize
16 Mr. Marshall when I saw him yesterday nor did I remember
17 his name. In reviewing tax sheets last night, I came
18 across a paper with his name and phone number on it and
19 that's when I recalled meeting him. Although he came to
20 my home to look at my roof and discover my concerns, or
21 whatever, I can't really make that word our -- or discuss
22 my concerns, I did not call back or proceed with an
23 estimate. It also turns out that he knows one of my
24 relatives as he recognized my last name.

25 What y'all want to do?

1 MR. ELLIS: Judge, how would she know that he
2 recognized the last name of one --

3 THE COURT: I'm just reading the note to you. I
4 could ask her about it. It also turns out that he knows
5 one of my relative as he recognized --

6 MR. ELLIS: Relative?

7 THE COURT: Yeah.

8 MR. ELLIS: So she spoke with a relative about it?

9 THE COURT: I guess so. As he recognized my last
10 name. It says my, looks like my. I'll let y'all look at
11 it.

12 MR. ELLIS: Yes, sir.

13 THE COURT: How do y'all want to proceed? I mean, I
14 can bring her out here and question her and go from there
15 or, of course, we can go forward with 11 and I can
16 reappoint a foreperson.

17 MR. WLODARCZYK: The Defendant's position is that we
18 just ask the Court to see if it would create a bias just
19 like we do any other juror. If she says yes, strike her,
20 if not, I don't think there's any prejudice.

21 THE COURT: Uh-huh.

22 MR. REARDON: Your Honor, our position is if she's
23 met with him, dealt with him -- tax receipts doesn't make
24 any sense. If she didn't hire him, why does she have tax
25 receipts? I guess I would like to question her, Your

1 Honor.

2 MR. ELLIS: She's done something she shouldn't have
3 done, researched, and she knows him. You asked her not to
4 do that. She should, at least, come back and ask. I'm
5 not mad at her, but those things involved, seems like it
6 would be inappropriate for her to continue. I mean,
7 that's a conflict.

8 THE COURT: Well, let me get her out here and talk to
9 her.

10 THE CLERK: Jury No. 21, please.

11 MR. WLODARCZYK: Judge, I just rather strike her.. I
12 mean, if we start questioning her about it.

13 THE COURT: You'd rather just go ahead and strike
14 without questioning?

15 MR. REARDON: I want to make sure she didn't go back
16 and tell the rest of the gang either. If she's sitting
17 back there oh, I know him and he did this --

18 THE COURT: We can do that. Y'all agree to go with
19 11?

20 MR. ELLIS: Yes, sir.

21 MR. WLODARCZYK: Yes, sir.

22 THE COURT: Okay.

23 MR. WLODARCZYK: But not 10. If we lose another one
24 --

25 THE COURT: Well, 11 is the limit.

1 (WHEREUPON, Leslie D. Bessellieu, Juror No. 21,
2 entered the courtroom.)

3 THE COURT: Ms. Bessellieu, come on down. I received
4 your note, ma'am. You're not in trouble. You can come on
5 over here. I just want -- any time I receive a note from
6 a particular juror, I have to question the juror --

7 THE JUROR: Uh-huh.

8 THE COURT: -- just to make -- better safe than
9 sorry. All right, I received your note.

10 THE JUROR: Uh-huh.

11 THE COURT: Tell me what -- the situation again, how
12 you recognize Mr. Marshall and then, you know, what lead
13 you to this discovery and writing the note.

14 THE JUROR: Sure. I can't say that I recognized him
15 when I saw him yesterday, but, like I said, yesterday
16 evening when I went home, I was looking for some paperwork
17 and I ran across his name and number. I had a friend -- a
18 very good friend of mine had recommended him to do some
19 work. And we met. And I didn't recognize him because I
20 think when he came to my house, he had the cap on or
21 something.

22 THE COURT: Okay.

23 THE JUROR: But either way, when he entered the
24 courtroom yesterday, it didn't jog my memory. It wasn't
25 until I got home that I thought about it.

1 THE COURT: The last sentence, it says, It also turns
2 out that he knows one of my relatives.

3 THE JUROR: So yeah, I remembered a conversation that
4 we had on the phone about my last name.

5 THE COURT: During the time he was going to give you
6 an estimate?

7 THE JUROR: Right. Right, a couple years ago,
8 uh-huh.

9 THE COURT: Okay. So he recognized your last name?

10 THE JUROR: Right.

11 THE COURT: All right. Now, did you discuss this
12 possible conflict with any other jurors back there in the
13 jury room?

14 THE JUROR: No. Huh-uh.

15 THE COURT: You haven't had any discussion with the
16 jury about --

17 THE JUROR: No no.

18 THE COURT: -- this possible conflict?

19 THE JUROR: Correct.

20 THE COURT: Okay. All right. Well, thank you,
21 ma'am. Thank you again for your jury service. I think
22 what we're going to do then -- because I'm going to go
23 ahead and relieve you from further being on the trial --
24 on the trial jury. Just head on back down to the jury
25 assembly room. So you're relieved from the trial jury of

1 this case.

2 THE JUROR: Okay.

3 THE COURT: Thank you very much. Just hand your tag
4 to the bailiff and you can head on back downstairs. You
5 got everything you need from the jury room?

6 THE JUROR: Yes. Yes. Thank you.

7 THE COURT: Don't let her back in the jury room.

8 Okay. Thank you.

9 (WHEREUPON, Leslie D. Bessellieu, Juror No. 21,
10 left the courtroom.)

11 MR. WLODARCZYK: I've got one more matter to take up,
12 too.

13 THE COURT: All right. Mr. Wlodarczyk.

14 MR. WLODARCZYK: Thank you. Your Honor, I put a case
15 and a post-charge on your bench there to the right. This
16 came up -- I was getting ready to look at charges last
17 night in light of Mr. Ellis's examination of my witness
18 regarding --

19 MR. REARDON: Your Honor, before -- is there
20 something you handed up I didn't get?

21 MR. WLODARCZYK: I put one on there. Just the charge
22 of the case.

23 MR. ELLIS: We're arguing charges?

24 MR. WLODARCZYK: No no.

25 MR. REARDON: You're arguing the charge to him?

1 MR. WLODARCZYK: No, no. I'm -- I'll get to it.

2 MR. ELLIS: What are you doing?

3 MR. WLODARCZYK: All right. I'm making a motion to
4 limit the scope of Mr. Abatta's expert testimony for this
5 afternoon. And the reason why I want to make that motion
6 at this point in time is based on Mr. Ellis's examination
7 of my witness. Specifically, in regards to your
8 responsibilities to your tenant, what landlord does with
9 maintenance, did he do any maintenance on this property.

10 And then last night going through these -- looking
11 for proposed charges, I discovered what's attached, which
12 is Ralph Anderson's proposed charge as well as the
13 accompanying case, which, actually, involves Mr. Jake
14 Moore's law firm, which it states that a licensee has no
15 duty to search out defects. In other words, in this case,
16 the Marshalls had no duty to inspect. It, also, says they
17 have no duty to make any repairs to make the premises
18 safe.

19 I think what has happened, whether or not
20 intentionally or not, is that we're trying -- or, at
21 least, the Plaintiffs are trying to create this as a
22 landlord/tenant act, where there would be different
23 duties, or, perhaps, even invitee situation, where there
24 would be enhanced duties.

25 In this particular case, these are social guests. It

1 doesn't matter that this is a rental problem or not. The
2 only duty owed according to the case law is treating this
3 home as if the Marshalls lived there. They owe no greater
4 duty to the Plaintiffs than they owe to themselves. So
5 you can't bootstrap on saying well, you have these duties
6 to Ms. White, who was a tenant, and you should have done
7 these duties to Ms. White based on the residential
8 landlord/tenant act. And had you done those duties to
9 Ms. White under the residential landlord/tenant act, this
10 issue wouldn't have happened for our insurer.

11 I think that's the argument. I think that's improper
12 because, ultimately, the Court in determining the directed
13 verdict motion at the end of this case is going to have to
14 provide what the legal duty is. And the legal duty is,
15 specifically, as set forth in that charge is to give a
16 warning only of any dangerous condition which they know
17 of. And the second duty is if there's a change in the
18 conditions, which they could reasonably discover as
19 dangerous, to give a warning at that point.

20 I anticipate, based on my deposition and based on
21 what was presented during the summary judgement arguments,
22 that Mr. Abatta is going to be solicited to an opinion as
23 to is there a better way of constructing the steps? You
24 know, should it have had four pillars instead of two
25 pillars? Should it have had X, Y, Z? Should it have been

1 maintained better? Should it have had paint on it or
2 weather stripping? None of those issues go to the two
3 duties that are going to be presented to the Court.

4 Regarding the first one, the testimony that Mr. and
5 Mrs. Marshall have presented and what had been emphasized
6 is that nothing had been done to this deck aside from a
7 couple of boards being replaced in 35 years. So there's
8 no change in condition with regard to the construction of
9 the deck. Whoever constructed it, properly or improperly,
10 whenever it was done, it was certainly done before they
11 purchased the house in 1997, it has not changed.

12 So they can't come in now and say well, Mr. Marshall
13 should have known because he's a building -- or builder,
14 licensed builder that the deck was improperly constructed
15 or could have defects, that he should have taken extra
16 steps to inspect it because that's not a duty that's
17 going to be charged. It's not whether he had knowledge of
18 the defect or the dangerous condition or should have to
19 have knowledge or should have reasonably had knowledge.
20 It is did he have knowledge. And the testimony to this
21 Court is he had no knowledge.

22 It would be completely improper to allow an expert to
23 come in now and hypothesize as to what Mr. Marshall should
24 have known had he done a reasonable inspection, which,
25 again, there is no duty to inspect with regard to a

1 licensee or a social guest.

2 THE COURT: All right.

3 MR. WLODARCZYK: Second part of it, Your Honor, I
4 think the only argument that Mr. Abatta can testify to is
5 a change in condition. That change being whether or not
6 the wood rotted, which then resulted in the collapse. So
7 I would ask that that be the sole issue of his
8 examination.

9 THE COURT: Okay.

10 MR. ELLIS: I would say first, before we got into the
11 two stems, Your Honor, with regard to what the law is on
12 licensees, it came from the malice of the Defendants as to
13 what their duties were with regard to the folks that there
14 were on the night of the collapse. He can't change that
15 just because the law states another duty. They should
16 have testified to the fact that they had a responsibility
17 to Ms. White and her guests that night. So therefore,
18 anything that might have been prevented based on his
19 argument, they testified, Mr. Marshall did at the time,
20 and, really, Ms. Marshall did, about their duties and
21 responsibilities to the guests of that house on that
22 evening. We can't take that away. So either they had a
23 personal responsibility or from the Defendant's mouth
24 alone, they've created that duty. It's there. The jury
25 can consider that.

1 And with regard to the expert, I'll let Mr. Reardon
2 speak to what the standards are.

3 THE COURT: Okay.

4 MR. ELLIS: But I would say the testimony from the
5 witness stand has opened that door.

6 THE COURT: Okay. Mr. Reardon.

7 MR. REARDON: May it please the Court. If you look
8 at the two issues, number one, to use reasonable care to
9 warn of any concealed dangerous conditions or activities
10 which are known to the possessor. The evidence that we
11 presented -- is going to be presented to the experts,
12 they're going to say it is very obvious that the condition
13 of this deck from these photographs taken the day of or
14 the day after, I should say, present to them several
15 dangers. A danger would be the actual set up, the rotting
16 condition, the screws are not attached to the bottom.

17 If you look at the photographs -- if he turns a blind
18 eye to it, a jury can say he just did not know. For him
19 to get up on the stand and say I don't know, sure,
20 anybody's going to say that, but it's still a jury
21 question as to whether or not he knew or didn't know.
22 They have to make that decision. I don't -- if you don't
23 take reasonable care to warn -- if you give no warning, he
24 testified he gave no warning, then you can't say he took
25 the reasonable care to warn. So if he doesn't give a

1 warning and doesn't do an inspection, how can he ever warn
2 of any concealed dangerous conditions which are known to
3 him. So I think a jury's got to decide did he, in fact,
4 decide not to warn. And if, in fact, they believe he did
5 know -- and if you look at the photographs of the deck
6 that he is in charge of, it's pretty obvious that the
7 dangerous conditions were present at the time of the deck
8 collapse. If you don't believe that part, then it goes
9 back to the second part about the condition -- the change
10 of the condition which may be dangerous and reasonably
11 expects to discovery.

12 Once again, he's testified -- when I showed him the
13 picture, yes, that's his deck, yes, that's the condition
14 on the day. Whether he knows or not it's dangerous is
15 going to be a jury question. It's reasonable to discover
16 these defects. It's reasonable to conclude this is a
17 dangerous condition --

18 THE COURT: Is it reasonable to discover the defects
19 when he was called out there to replace rotten boards
20 before?

21 MR. REARDON: Sure.

22 THE COURT: Was it reasonable for him to then further
23 inspect the deck? I guess that's what I'm getting into.

24 And I'm going to let you address that, Mr.
25 Wlodarczyk.

1 MR. REARDON: Along that line, when I asked him, What
2 would cause deck rot? What would you do to prevent it?

3 Flashing.

4 Isn't flashing a key part of building houses?

5 Yes, it is.

6 Doesn't every residential builder known to put
7 flashing down when you have a deck?

8 That's true.

9 When he's out there replacing boards, he can see
10 there's no flashing. When he was under the house, he said
11 he could see there was no flashing. He's been under the
12 house, at least, once to replace stuff for air
13 conditioning. He's walked around the deck. He's seen the
14 deck. The jury is going to conclude that a residential
15 builder should know flashing should be out there and if
16 you don't have flashing, the deck is going to rot. My
17 expert is going to say that based on those photographs,
18 you can tap that and rot is going to fall out. There's is
19 substantial wood rot on all sides of that board.

20 The original testimony he's talking about from Mr.
21 Abatta, he was only given five photographs. 85 new
22 photographs were produced right after his deposition and
23 he's going to come here and say, my gosh, I had no idea
24 that there was so much rot. And, also, I believe the
25 photographs that they produced and the testimony they're

1 going to provide is not correct either. He's going to
2 correct that during his testimony.

3 I think it's a jury question and I think you have to
4 wait and see what he says. To limit his testimony based
5 on that in this case, I think is going to limit the jury's
6 ability to make a decision if he knew about the defects
7 and whether he took the reasonable care to discover the
8 defects.

9 THE COURT: All right. I'm going to deny your motion
10 at this time, Mr. Wlodarczyk. Give me an opportunity to
11 -- of course, you can renew your objection at the
12 appropriate time and I'll make a more definitive ruling.
13 At this point in time, I haven't heard -- I don't know
14 exactly what he's doing to say. If he starts going into
15 something that you think is beyond the scope of what a
16 licensee duty -- owed to a licensee, make your objection
17 then and we'll deal with it then. That will give me more
18 of an opportunity to read everything that's going on.

19 MR. WLODARCZYK: I don't think it will be until this
20 afternoon anyway.

21 THE COURT: Okay. That's fine. We'll revisit it.
22 So I'm denying your motion without prejudice at this time
23 for you to renew it at the appropriate time.

24 MR. WLODARCZYK: Thank you.

25 THE COURT: Anything else before we bring the jury

1 in?

2 MR. ELLIS: Nothing.

3 THE COURT: All right. Let's bring them in.

4 (WHEREUPON, the jury returned to the courtroom
5 at 9:43 a.m.)

6 BAILIFF: Your Honor, the jury is present.

7 THE COURT: Thank you.

8 Morning, ladies and gentlemen. You may notice that
9 y'all are one less than what you were when we started.
10 Nothing Ms. Bessellieu did wrong, just the Court had to --
11 there was a possible conflict and she brought it to the
12 Court's attention, so better safe than sorry. I just let
13 her go back downstairs to the jury pool downstairs. So
14 she's no longer on the trial jury for the remainder of
15 this case, so that leaves up with 11. So now y'all are
16 the jury, okay. And I'll keep looking at you and see
17 who's paying really good attention and consider who I'm
18 going to appoint as the foreperson here momentarily.

19 So thank you again. I hope you had a good evening
20 last night. We'll jump right into this morning.

21 Y'all may call your next witness.

22 MR. REARDON: I call George Estrada to the stand.

23 THE CLERK: Raise your right hand, please.

24 Thereupon;

25 GEORGE ESTRADA, after having been

1 duly sworn, testified as follows:

2 THE CLERK: Thank you. Have a seat in the witness
3 stand, please. State your name for record, spelling your
4 last.

5 DIRECT EXAMINATION

6 BY MR. REARDON:

7 Q State your full name.

8 A George Estrada.

9 Q Spell your last name.

10 A Estrada, E-S-T-R-A-D-A.

11 Q Mr. Estrada, how old are you today?

12 A Sixty-three years old.

13 Q Okay. And where were you born?

14 A Cuba.

15 Q Where you grow up?

16 A United States of America.

17 Q Where?

18 A I grew up in -- up north some.

19 Q What did you do as far as education, high school --
20 where you complete high school?

21 A I graduated from high school from Washington Lee High
22 School in Arlington, Virginia.

23 Q What did you do after school in regards to your
24 career or service? Tell us about that.

25 A I joined the Army.

1 Q All right. Did you volunteer?

2 A Yes, sir.

3 Q All right. What years were you in the Army?

4 A I was in the Army from '70 to '74.

5 Q All right. And where were you performing your duties

6 as a soldier?

7 A I was sent to Vietnam. I was a member of the 101st

8 Air Borne Division, a ranger, infantry front line.

9 Q Did you, actually, serve in the --

10 A Yes, two duties.

11 Q Were you injured in Vietnam?

12 A Yes, sir, I did.

13 Q Tell us about that.

14 A I was shot on my left arm (indicating). As a result,

15 they had to put two metal brackets on both sides to save

16 my arm.

17 Q Okay. Were you sent home after you were shot?

18 A I was sent to Germany to put a cast on and then they

19 sent me home.

20 Q Okay. Are you still having issues with that arm as a

21 result?

22 A Very much. I don't have the same results that I have

23 with my right.

24 Q Okay. Thank you for your service.

25 A Thank you.

1 Q When you came back home, did you do any post-war
2 education?

3 A Yes, sir. I went to college at Midlands Tech
4 College. I have an associate degree in electronic
5 technology. I, also, graduated from the criminal justice
6 academy.

7 Q What kind of work did you do in the last 30 years or
8 so?

9 A Electronics and police work.

10 Q Okay.

11 A Both of them.

12 Q Tell me what type of work in electronics and police
13 work.

14 A Well, I was involved in consumer electronics, you
15 know, fixing televisions, cameras for banks, you know.

16 Q Okay.

17 A Yeah.

18 Q What about your police service?

19 A I worked a little bit for the highway patrol and then
20 I went back to booking. And I was in charge of booking
21 department in Florence, South Carolina, Effingham.

22 Q Okay. April 4th of 2014, we all know you were there
23 that night, your wife told us. Tell us where you were on
24 this deck prior to it collapsing?

25 A I was sitting on the cooler just talking and -- on

1 the end of the cooler, top of the cooler.

2 Q Okay. Where would this cooler have been in this

3 photographs?

4 A Right there by the deck.

5 Q All right. Point to it.

6 A Right in that area (indicating).

7 Q So you're pointing to the corner of the deck?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q And that would be closest to the stairs?

12 A That's right.

13 Q You were sitting on the cooler?

14 A Yes, sir.

15 Q All right. What were you doing while you were

16 sitting on that cooler?

17 A I was just talking, listening to music and we decided

18 we would play some games, you know.

19 Q Okay.

20 A And I was enjoying playing a game and --

21 Q Any issues up until the time the deck collapsed with

22 the deck?

23 A Nope.

24 Q Anybody warn you of any conditions?

25 A No, sir.

1 Q All right. So you're seated on this cooler, tell us
2 what happens next.

3 A So I was sitting on the cooler, I seen everybody
4 panic and I turned to my left, I saw that big grill coming
5 at me. That's the one they just got through cooking, you
6 know, and it had hot charcoal. And very fast, I put my
7 left hand to block the grill from me because my feet was
8 -- my foot was amputated, the toe. And it through me to
9 the side where, you know, it caused me problem to get off
10 the floor.

11 Q All right. Let me go back. So you're on the cooler,
12 the deck collapsed, which way do you fall, to the right or
13 to the left?

14 A To the right.

15 Q Do you land on your right side?

16 A Yes.

17 Q When you look up, that's when the grill is coming
18 towards you?

19 A Yes, it was sliding toward me and it still had the
20 hot charcoals in it.

21 Q So what did you do?

22 A I stuck my left arm out to hold the grill.

23 Q Okay. Is this the grill we're talking about on the
24 bottom picture here?

25 A That's correct.

1 Q There appears to be a box, is that the game you were
2 playing?

3 A Yes.

4 Q So this cooler here -- I'm sorry, this grill here and
5 this is the game board you were playing on at the time?

6 A Yes, sir.

7 Q So you were somewhere in that area?

8 A Yes, sir.

9 Q Okay. When the grill comes to a rest, is your arm on
10 the grill?

11 A Still, yeah, until they came for help.

12 Q Who helped you up?

13 A Mr. Ruff.

14 Q And what did they do with you?

15 A They brought me down the steps and sat me down in a
16 chair.

17 Q All right. You mentioned your foot had been
18 amputated, tell us about that. What part of your foot was
19 amputated?

20 A My right toe.

21 Q Which toe, the big toe?

22 A The big toe, yes.

23 Q Is that because you have diabetes?

24 A Yes, correct.

25 Q Okay. So you're helped off the deck, you're put down

1 in a chair; is that correct?

2 A Yes.

3 Q At some point, does EMS arrive?

4 A Yes.

5 Q Do they put in the back of an ambulance?

6 A My wife and I, yes.

7 Q Take you to the hospital?

8 A That's correct.

9 Q Are you examined at the hospital?

10 A Yes, sir.

11 Q What problems are you having at this point?

12 A I'm having some very bad problems with my shoulder

13 ligaments, you know.

14 Q What about your foot? Any injuries to your foot?

15 A I had a contusion on my foot.

16 Q Okay. A contusion on which foot, your right foot?

17 A Yes.

18 Q All right. Were you treated and released that night?

19 A That's correct.

20 Q All right. How were you doing over the next several

21 days?

22 A I was in pain, you know, my back, my neck started

23 hurting.

24 Q Okay.

25 A Real bad.

1 Q At some point, did you seek care with Health Source
2 Chiropractic Care?

3 A That's correct.

4 Q It appears you went there April 17th. Did you go
5 there with your wife?

6 A Yes.

7 Q All right. How is it you chose Health Source?

8 A Well, my wife, she's the boss. She take care of
9 everything. I don't drive, so, you know.

10 Q Do you drive?

11 A No.

12 Q So she's the boss, she chose the place?

13 A That's correct. She does everything.

14 Q Okay. All right. Let's talk about your treatment
15 there. It looks like you treated from April 17th to June
16 the 9th for the first round of treatment?

17 A Yes, sir.

18 Q What did they do for you?

19 A Well, they did extensive massaging. They did
20 electrical electrodes, you know.

21 Q Yeah.

22 A And there was other machines that I don't recall the
23 names.

24 Q Did they do hot packs?

25 A Hot packs, yes.

1 Q Cold packs?

2 A Yes, sir.

3 Q Electrical stimulation?

4 A Yes, sir.

5 Q Ultrasound?

6 A Yes, sir.

7 Q And adjustments?

8 A Yes, sir.

9 Q All right. You treated for about three months. How
10 were you doing when you left after your first round of
11 care in June?

12 A I was doing pretty fairly okay, but then, all of a
13 sudden, I started having, you know, back pains and neck
14 pains again.

15 Q Was he treating your back, neck and shoulder?

16 A All of that, yes, sir.

17 Q All right. Did you have any more problems with the
18 foot? I mean, were you released from the -- when you got
19 released from the hospital, they didn't treat your
20 amputation?

21 A Yeah, everything was okay on the shoulder.

22 Q All right. You go back to see him again in November,
23 so about five months later, why did you go back?

24 A Because I thought that I was getting a little bit
25 better, but -- you know, doing the exercises and stuff

1 like that, but then, all of a sudden, I started having
2 some problems, you know, sleeping. I couldn't sleep on my
3 left side any more because it hurt so bad. Less than a
4 minute, I had to turn back up (indicating) to sleep or to
5 the right (indicating), you know.

6 Q Okay. Any issues with lifting, household work, those
7 kind of things.

8 A Oh, I had to eliminate all that. Sometimes, I have
9 to have my wife help me put to put a shirt on.

10 Q Okay. You went back from November until January and
11 got released in January, how were you doing in January, in
12 January of 2014 -- 2015?

13 A I was doing the same.

14 Q Okay. You have not been back since January of 2015;
15 is that correct?

16 A Excuse me?

17 Q You have not been back since January of 2015?

18 A No, sir.

19 Q You've been released from the doctor's care?

20 A That's right.

21 Q What problems are you currently having with your left
22 shoulder?

23 A Very much so. You know, like I said, I'm having
24 problems sleeping at night when I turn to the left. I
25 can't even lift heavy weights anymore. You know, my

1 chores in the house that I used to do, I can't hardly do
2 anymore.

3 Q Okay. Do you have take over-the-counter pain
4 medicines?

5 A No, I take Tylenol sometime, you know.

6 Q All right. You were referred to an orthopedic; did
7 you go?

8 A Moore Clinic.

9 Q What did he recommend?

10 A Well --

11 Q Don't tell me what he said, just what was
12 recommended?

13 A MRI.

14 Q Did you undergo the MRI?

15 A No, I couldn't because I have a metal bracket in my
16 arm.

17 Q So because of the metal bracket in your arm, you
18 could not undergo the MRI?

19 A Yes, sir.

20 Q All right. That would have been the last treatment
21 you had for that shoulder?

22 A Yes, sir.

23 Q Do you believe the problems you're having now, the
24 pain in your shoulder, the pain in your back, the pain in
25 your neck are now permanent?

1 A Pretty much so.

2 Q Is that yes?

3 A Yes.

4 Q Did you have any issues with that shoulder prior to

5 this accident?

6 A Not at all.

7 Q You never had surgery on your shoulder?

8 A No.

9 Q Did you have surgery on the arm up until the top of

10 your forearm?

11 A That's correct, to my shoulder.

12 Q Let me show you what's been marked as Exhibit No. 2.

13 Are these your medical bills?

14 A Yes, sir.

15 Q All right. Are these all related to this deck

16 collapse only?

17 A Yes, sir.

18 Q Did you have any conversations with the owners of

19 this house after the deck collapsed?

20 A No, sir.

21 Q Did you see him at the scene the night of the

22 collapse?

23 A The night, yes.

24 Q Have you heard from them since?

25 A No.

1 Q Have they called to check on you?

2 A No, sir.

3 Q Have they offered to take you to a doctor?

4 A No, sir.

5 Q Have they done anything for you?

6 A No, sir.

7 Q Thank you.

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

9 THE COURT: All right.

10 Anybody else?

11 MR. ELLIS: I do, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. ELLIS:

14 Q Mr. Estrada, Todd Ellis.

15 A Yes, sir.

16 Q Approximately, how many folks were on that deck at
17 the time of this collapse? I'm not sure I've heard that.

18 A Probably about 10 or 11, something like that.

19 Q Not exactly sure?

20 A Yeah, I'm not exactly sure.

21 Q But it was very crowded; is that correct?

22 A Little bit, yes.

23 Q Do you know if, in fact, Cristian Reyes was on the
24 deck at the time that it collapsed?

25 A I don't remember seeing him at the time it collapsed,

1 but I saw him afterwards.

2 Q Are you sure he was not on there or you just don't
3 know?

4 A I just don't know.

5 Q Okay. Thank you.

6 A Uh-huh you're welcome.

7 THE COURT: All right. Mr. Wlodarczyk.

8 CROSS-EXAMINATION

9 BY MR. WLODARCZYK:

10 Q Good morning, Mr. Estrada. How are you today?

11 A Good morning, sir.

12 Q I had the opportunity to meet you before and talk to
13 you. I just have a few questions. I won't take much of
14 your time.

15 A Yes, sir.

16 Q Just to confirm, you didn't have any knowledge about
17 the conditions of the deck or any problems with the deck
18 or any repairs that were or were not made to the deck
19 prior to it falling; is that correct?

20 A No, sir.

21 Q Nobody made any representations to you prior to it
22 falling that the deck was safe or not safe; is that
23 correct?

24 A No, sir.

25 Q As far as you know, you didn't notice any problems

1 with deck in terms of being, I don't know the term,
2 slimsy, bouncy, squishy, anything that would make you
3 think that it was giving way until it fell?

4 A No, sir.

5 Q Okay. My understanding is your wife, I think,
6 testified yesterday that she was sitting in the chair that
7 was on the far side of the deck next to the door; is this
8 correct?

9 A That's correct.

10 Q And you were sitting almost adjacent to her on the
11 cooler that was by the stairs; is that correct?

12 A That's correct.

13 Q Were you facing her or towards her, could you see
14 her?

15 A I could see her some, yeah.

16 Q Now, Mr. Reyes, I will represent to you, testifies in
17 his deposition that he was standing in front of that
18 sliding glass door when the deck gave way. Would you
19 agree with me that if he was standing -- I apologize, this
20 is probably better. If your wife is standing on the left
21 side as we're looking and you were on the right side and
22 Mr. Reyes is somewhere in this door area that he would
23 have been in your field of vision when the deck collapsed?

24 A Like I said, I don't recall seeing Mr. Reyes when the
25 deck collapsed, but I saw him afterwards.

1 Q Okay. But my point is if someone was standing there,
2 you would have been able to have seen that person standing
3 in --

4 MR. ELLIS: Objection.

5 THE WITNESS: But I wasn't looking that way.

6 MR. ELLIS: Objection, Your Honor, calls for
7 speculation. He asked him whether he saw him or not, now
8 he's saying should he have been able to see him.

9 MR. WLODARCZYK: I said see him.

10 THE COURT: Just reword it.

11 MR. ELLIS: So in other words you're speculating.

12 MR. WLODARCZYK: Hypothetical.

13 THE COURT: Go ahead.

14 BY MR. WLODARCZYK:

15 Q So you did not see him at any point in time on the
16 deck that night?

17 A No, sir.

18 Q You did see Mr. Ruff, correct, prior to the fall?

19 A Sure.

20 Q You saw Ms. Smith?

21 A Sure.

22 Q Ms. White?

23 A Sure.

24 Q Ms. Williams?

25 A Yeah.

1 Q She was there, too, right? You remember seeing all
2 those people on the deck beforehand?

3 A Yeah, we were playing games, you know.

4 Q But at no point in the two hours that you and your
5 wife were on the deck you recall seeing Mr. Reyes on the
6 deck?

7 A I don't recall seeing him, but I saw him after that.

8 Q Good. Okay. You get free medical treatment through
9 the VA; is that correct?

10 A Yes.

11 Q Due to your service?

12 A Right.

13 Q And I understand from your prior testimony, you have
14 never seen anybody, any doctor or health care provider
15 through the Veterans Administration for any problem
16 related to this accident?

17 A That's correct.

18 Q Okay. In fact, this accident happened April 4th; is
19 that correct?

20 A That's correct.

21 Q All right. And you were going to the chiropractor --
22 your first visit was April 17th?

23 A Yes, something like that.

24 Q And in between that date on April 17th, you and your
25 wife went to Mr. Reardon's office; is that correct?

1 A Yes.

2 Q And he is the one that recommended you go to the
3 chiropractor?

4 A Yes.

5 Q Okay. Considering the shoulder injury, the pain it's
6 causing you, how come you haven't seen any of your VA
7 doctors or made a complaint with the VA for any type of
8 treatment?

9 A Well, if I explain it, please?

10 Q Sure.

11 A First of all, VA won't pay for this because it didn't
12 happen, you know.

13 Q What didn't happen?

14 A I mean, this right here, the VA won't pay for.

15 Q Okay. They paid for your diabetes with regard to
16 your --

17 A Yeah, whatever is personal that I have, yes, as far
18 as diabetes, all that stuff.

19 Q But that's not service related?

20 A What?

21 Q Your diabetes?

22 A No.

23 Q But you still get treatment for it?

24 A Of course.

25 Q So why -- what's the difference between getting

1 treated for a nonservice-connected injury of diabetes and
2 your shoulder?

3 A Well, first of all, as we stated earlier, the
4 ligaments are damaged in here, supposedly, you know,
5 that's what the orthopedic told me at Moore Clinic. But
6 they can't go any deeper in there to look and see what it
7 is, so VA would have done the same thing.

8 Q But you haven't even consulted with the VA?

9 A No, sir.

10 Q So you don't know what could be done?

11 A That's right.

12 Q Thank you, sir.

13 MR. WLODARCZYK: I don't have further questions.

14 THE COURT: Any redirect, Mr. Reardon?

15 MR. REARDON: Just real quick, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. REARDON:

18 Q We've all heard about the VA, how long does it take
19 to get an appointment at the VA to see a doctor?

20 A You see a doctor today, then it might be six months
21 before you see him again.

22 Q A tremendous delay; is that correct?

23 A That's correct.

24 Q You mentioned they won't pay where there's an
25 accident claim where somebody else is at fault, correct?

1 A That's right.

2 Q Because what -- the deck collapsed under the Marshall
3 home, you would have to file that an injury occurred as a
4 result of someone else's negligence, correct?

5 A That's correct.

6 Q Thank you.

7 THE COURT: Anything further?

8 MR. ELLIS: No, sir.

9 THE COURT: All right. Thank you, sir. You can step
10 down.

11 Call your next witness.

12 THE WITNESS: Thank you, Your Honor.

13 MR. RILEY: Your Honor, before our next witness, we
14 have an issue we need to take up outside the presence of
15 the jury.

16 THE COURT: All right. Thank you, ladies and
17 gentlemen. We will take a quick break. Don't talk about
18 the case. Head on back to your jury room.

19 (WHEREUPON, the jury left the courtroom at 10:04
20 a.m.)

21 THE COURT: All right. Yes, sir.

22 MR. RILEY: Can we get Mr. Ruff on the stand, Your
23 Honor?

24 THE COURT: Oh, okay.

25 While the jury is out, I like to talk out loud while

1 I'm thinking sometimes. Is there an issue as to licensee
2 versus invitee in this case?

3 MR. WLODARCZYK: I don't know if there's any evidence
4 that they were invitees. They all admit they were at the
5 party as social guests. The case law I cited says that a
6 guest --

7 THE COURT: I'm reading this case. This case is
8 about a guy who was on somebody's land without them.
9 knowing about it to chase a raccoon. And he was
10 classified as a licensee. So, you know, the fact pattern
11 of this case that you handed up is very different than --

12 MR. WLODARCZYK: And I did not --

13 THE COURT: -- this case.

14 MR. WLODARCZYK: I did not submit that for --

15 THE COURT: I understand.

16 MR. WLODARCZYK: But I think the social guest
17 standard is clear that they're licensees of --

18 THE COURT: And, normally, you're absolutely correct.
19 I was just reading the whole invitee section of it.

20 Is there any argument from the Plaintiffs that this
21 is more of an invitee situation versus a licensee?

22 MR. WLODARCZYK: I think that case is only for one
23 case and only has to do with the duty to inspect or
24 repair.

25 THE COURT: Right.

1 MR. WLODARCZYK: Everything else is a --

2 MR. REARDON: Your Honor, give us a minute. You're
3 asking us whether he's a licensee versus invitee?

4 THE COURT: Yeah.

5 MR. ELLIS: Your Honor, there is a case out there
6 that states, obviously, that he's in the business of
7 renting homes, so the tenant is possibly an invitee. The
8 issue is just expand to his guest. You rent the house
9 with the anticipation that your tenant will then be able
10 to have with no prohibition, which they said from the
11 stand, guests over at his home. It could fall in the
12 invitee.

13 THE COURT: Well, that's why I asked the question.

14 MR. ELLIS: That's what I thought.

15 THE COURT: This unique fact pattern where it's not
16 the owner of -- the owner was not the person hosting the
17 party.

18 MR. ELLIS: That is correct.

19 THE COURT: The tenant was hosting the party. That's
20 why I asked the question, so.

21 MR. ELLIS: I know.

22 THE COURT: I'm just thinking out loud.

23 MR. ELLIS: We're trying to give you more concrete
24 theory on that. We've done research on it preparing for
25 the charges.

1 THE COURT: Okay. We'll talk about it later. I'm
2 just letting y'all know what I'm thinking about.

3 MR. WLODARCZYK: I would just say, practically, if
4 the tenant was considered the owner, then the guest would
5 still be social guests.

6 THE COURT: I understand what you're saying. Right.
7 I got you. I just want to know where we going with this.
8 I want to have a charge conference this afternoon as well.

9 MR. WLODARCZYK: Okay.

10 THE COURT: So y'all try to have this in request for
11 charge.

12 MR. WLODARCZYK: A scheduling matter, I think we can
13 get done with most of the Plaintiffs, not all of the
14 Plaintiffs this morning. I think that we can get done
15 with my expert this afternoon. Mr. Reardon may call him,
16 call my expert. I have no problem -- you know, we go to
17 5:00, finish up. If we can just agree to do charge and
18 closing in the morning --

19 THE COURT: Yeah, we're definitely going to charge
20 and close in the morning.

21 MR. WLODARCZYK: Okay.

22 THE COURT: I just want y'all's request to charge
23 this afternoon.

24 MR. REARDON: Okay.

25 THE COURT: So y'all -- we can try to put something

1 together during breaks this afternoon.

2 MR. WLODARCZYK: I was going to propose a special
3 jury verdict form. Do you want me to submit --

4 THE COURT: He's working on that right now. Why
5 don't y'all look at what he's going to be working on --

6 MR. ELLIS: Do it now?

7 THE COURT: -- and then y'all can amend from there,
8 unless you have one.

9 MR. ELLIS: After he finishes?

10 THE COURT: Yeah.

11 Okay. Are we ready?

12 MR. RILEY: We're ready, Your Honor.

13 THE COURT: Okay. Bring them in.

14 (WHEREUPON, the jury returned to the courtroom
15 at 10:10 a.m.)

16 BAILIFF: Your Honor, the jury's present.

17 THE COURT: All right. Thank you, ladies and
18 gentlemen.

19 All right. Yes, sir.

20 MR. RILEY: Thank you, Your Honor.

21 Thereupon;

22 TYRONE RUFF, after being duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. RILEY:

1 Q Mr. Ruff, would you please introduce yourself to the
2 jury?

3 A I'm Tyrone Ruff.

4 Q And how old you are?

5 A Thirty-two.

6 Q Are you a resident of South Carolina?

7 A That's correct.

8 Q Where did you grow up?

9 A Right here in Columbia.

10 Q Were you previously married to Carletta Williams?

11 A Yes, I was.

12 Q Do you have any children together?

13 A Yes, I do.

14 Q How many?

15 A I have three.

16 Q You support your children?

17 A Yes, I do.

18 Q What kind of work did do you in April of 2014?

19 A Well, I was cooking at McDonald's at night from 4:00
20 to 12:00 and I worked for Miller Painting in the morning
21 from 7:00 to 3:00.

22 Q How long had you been employed at those jobs at that
23 time?

24 A A little over a year.

25 Q Were you living in Richland County on April 5th,

1 2014?

2 A Richland County, no. I was living in Lexington
3 County.

4 Q But you were still working at McDonald's and
5 painting?

6 A That's correct.

7 Q How do you know Latasha White? She was the tenant
8 that lived at the Marshalls' home on April 5th, 2014.

9 A That's my older sister.

10 Q You understand she rents that home from the
11 Defendants?

12 A Yes, I do.

13 Q Were you at her house on April 5th, 2015?

14 A That's correct.

15 Q Why were you there?

16 A I was there for my mother's birthday party.

17 Q Had you been to her house before?

18 A Yes, I have.

19 Q What time did you arrive that evening?

20 A Arrived about 9:00.

21 Q Generally, tell the jury what you did when you
22 arrived at the home.

23 A When I arrived there, I escorted my family to the
24 house and greeted my mother, told her happy birthday. The
25 kids got their hugs, walked down to the hall to the rest

1 of the kids. Me and my wife went outside where all of the
2 laughing was going on. They was grilling and playing
3 games and that's when we started playing games as well.

4 Q Let me kind of clear something up. You said you went
5 outside, was that outside on the deck?

6 A That's outside on the deck, correct.

7 Q You said people were grilling and playing games out
8 there on the deck?

9 A You're, also, correct.

10 Q How long do you think you were on the deck before it
11 collapsed?

12 A Probably about an hour and 30 minutes, something like
13 that.

14 Q I'm going to show you what has previously been marked
15 as Plaintiff's Exhibit No. 4. And I'd like for you to
16 point in that top picture there where you were sitting on
17 that deck when it collapsed?

18 A I was located right here (indicating) kind of against
19 the door near the steps.

20 Q All right. So you would be right here (indicating)
21 where the steps met the deck right by that door?

22 A That's correct.

23 Q I'm going to show you what's Plaintiff's Exhibit No.
24 5. In that picture that shows a closer view of where the
25 steps meet that deck, where would you have been sitting?

1 A The location right there to the far left if you
2 coming outside the door.

3 Q Where was Carletta sitting at the time?

4 A She was sitting right beside me right on the stop of
5 the steps.

6 Q Okay. So both you and Carletta at the time it
7 collapsed were seated right there where those steps meet
8 the deck?

9 A That is correct.

10 Q Thank you. Were you surprised when the deck
11 collapsed?

12 A I surely was.

13 Q Was there any warning before it collapsed?

14 A No, there was no warning at all.

15 Q Was there any warning given to you about the
16 condition of the deck?

17 A There was absolutely none.

18 Q Did anybody do anything on that deck to make it
19 collapse that night?

20 A Not to my knowledge. I seen nothing.

21 Q Was anybody jumping on the deck?

22 A No, we wasn't.

23 Q Was anybody dancing on the deck?

24 A No, there wasn't.

25 Q Were there people wrestling on the deck?

1 A No, there wasn't.

2 Q You didn't see anything happen on that deck that
3 would cause it to collapse done by anybody else?

4 A Nothing.

5 Q What did you do after that deck collapsed?

6 A After that deck collapsed, I was in shock. I was in
7 V shape stuck for a minute. Uncle George, like he said,
8 he testified he had just got his toe amputated, so he came
9 towards me. I was trying to hold him because he had the
10 grill, you know what I'm saying. My wife, she was right
11 there on the steps that had collapsed. So I'm stuck
12 between everybody, you know what I'm saying. So at the
13 same time I'm trying to get my uncle, then worry about my
14 wife, then little girl over there trapped and my little
15 boy, he was right there. So I was trying to get myself up
16 so I'd be able to help them, you know what I'm saying. So
17 I tried to help my wife up and help Mr. George up and get
18 to my auntie, Linda Estrada.

19 Q So to summarize what you said, you were shocked?

20 A Yes, I was real shocked.

21 Q You saw people who needed help?

22 A Exactly.

23 Q You provided help to them?

24 A Exactly.

25 Q Were you drinking that night?

- 1 A No, I wasn't drinking.
- 2 Q Were you hurt as a result of the deck collapsing?
- 3 A Yes, I was hurt.
- 4 Q Tell the jury what injuries you had immediate after
5 that deck collapsed?
- 6 A Well, immediately, first injury came was my right
7 wrist. It started to swell. After I got everybody off
8 the deck, I realized when I sat myself down my wrist
9 started to swell up and I started feeling throbbing pain
10 from my back.
- 11 Q So your right risk was hurting you?
- 12 A That's correct.
- 13 Q And your back was hurting you?
- 14 A That's correct.
- 15 Q Did you get any medical treatment that night?
- 16 A I did.
- 17 Q Where did you go?
- 18 A I went to Palmetto Health.
- 19 Q How did you --
- 20 A Palmetto Baptist.
- 21 Q You went to Palmetto Baptist ER?
- 22 A That's correct.
- 23 Q How did you get there?
- 24 A Personal transportation.
- 25 Q What type of transportation?

1 A A car.

2 Q Who drove you?

3 A I drove.

4 Q Why did you have to take a car?

5 A I had to take a car because there wasn't enough EMSs

6 at the moment and they said it was going to be a minute.

7 because they was already packed.

8 Q So they didn't have enough ambulances for you to ride

9 in?

10 A That's correct.

11 Q What did Baptist Hospital do for your injuries?

12 A Can you repeat that, sir?

13 Q What did Baptist Hospital do to treat you for your

14 injuries?

15 A Well, first thing, they got me in there and got to

16 doing the x-rays on my right wrist and then wanted to do

17 x-rays on my lower back.

18 Q Were you given any medication?

19 A I was. I was given multiple medications and I, also,

20 received a brace for my right wrist.

21 Q Were you released that evening?

22 A I was released that same night, yes, sir.

23 Q Now, this pain you had, what happened to it after you

24 left the ER?

25 A After the ER, I mean, I still had the same pain. All

1 they gave me was some -- they gave me some medication at
2 that moment in time and told me to get a prescription
3 filled.

4 Q Did you get any treatment at Lexington Urgent Care at
5 any time?

6 A Yes, I did. It was, actually a follow-up because I
7 my pain had increased. Due to it being overnight, my pain
8 had increased, so I went to get some help with my pain.
9 They also did x-rays for my right wrist and for my lower
10 back. And they, also, gave me more medications, gave me
11 tons of medication, actually. Then they gave me -- told
12 me to get an MR -- MRI.

13 Q Was there any problem scheduling that MRI?

14 A Yes, it was. It was a big problem because I ain't
15 had no insurance.

16 Q Was a referral required for that MRI?

17 A Yes, it was.

18 Q Was it difficult to find a physician to give you that
19 referral?

20 A Yes, it was. Actually, I called -- to be honest with
21 you, me and my wife -- for mine, we called everybody in
22 Lexington County, Richland County for me. Everybody said
23 they don't do MRIs and they told me they couldn't do it
24 unless I had insurance. So I been trying to see if they
25 could bill me later and they was like they can't do it

1 like that. So I had to go through -- find another way to
2 get help.

3 Q What facility referred you for the MRI?

4 A Riley Family Practice.

5 Q Do you have a primary care physician?

6 A No, I don't.

7 Q You don't have a family physician?

8 A No, sir.

9 Q So you had to seek on what family physician to use?

10 A I surely did.

11 Q Now, after this MRI, what other type of treatment did
12 you get?

13 A After my MRI, I went to therapy.

14 Q Physical therapy?

15 A Yes, that's correct.

16 Q Approximately, how long did you treat with a physical
17 therapist?

18 A About six weeks -- probably about a month.

19 Q About a month?

20 A Yeah, a month.

21 Q What did the physical therapist do for you?

22 A The physical therapist gave me electrical shocks,
23 cold pack, massage pack. He did physical therapy or
24 exercises with me. He did a lot of things with my back.

25 Q So they provided cold packs and hot packs?

1 A Yes, sir.

2 Q Massages?

3 A Yes, sir.

4 Q And adjustments?

5 A Yes.

6 Q You believe all of your treatment was reasonable and
7 necessary?

8 A Yes, it was.

9 Q Now, you were released from the physical therapist
10 July 10th, 2014. What is your condition like today?

11 A I mean, today, I mean too much heavy weight on my
12 right wrist, it give me like immediately pain, but on my
13 back, I still have an occasional pain on that, so I have
14 to be careful how I move around. Because I, also, was
15 advised to put a pillow between my legs -- that's the way
16 I have to sleep, pillow between my legs due to the pain in
17 my back. So I have a pillow back there and a pillow up on
18 my stomach, so all that, you know, change different when
19 you sleeping.

20 Q What type of activities do you enjoy doing with your
21 children?

22 A I mean, I have three little boys all under the age of
23 10. And I like really having fun, like laughing a lot, so
24 we be like crawling on the ground like dogs, barking at
25 the kids, chasing the kids around. Being able to pick

1 them up and play and wrestle, stuff like that, you know
2 what I'm saying.

3 Q Were you able to partake in any of those activities
4 for approximately a month after this incident?

5 A Yes, I couldn't do nothing. You know, I couldn't do
6 none of that.

7 Q Now, I think you also testified that you worked for
8 Miller Painting at this time?

9 A That is correct.

10 Q What arm is your dominate arm?

11 A My dominant arm is my right arm.

12 Q Were you able to paint due to this wrist injury?

13 A No, I could not.

14 Q I'm going show to you what's previously been marked
15 as Plaintiff's Exhibit No. 13. It's a packet of your
16 medical bills that total \$12,140. Do you recognize that?

17 A Yes, I do recognize each and every last one of them.

18 Q And those bills were incurred as a part of this
19 incident?

20 A That's exactly correct.

21 Q Those bills are still owed today?

22 A That's exactly correct.

23 Q And it's all related to the treatment for the
24 injuries that you sustained as a part of this deck
25 collapsing?

- 1 A Absolutely, that is correct.
- 2 Q So do you have any lost wages as a part of this
- 3 claim?
- 4 A Yes, I do.
- 5 Q How many days were unable to work, three?
- 6 A Well, yes, that's what happened at first.
- 7 Q And that was three shifts at McDonald's?
- 8 A Yes, sir.
- 9 Q How much did you make per hour at McDonald's?
- 10 A Seven twenty-five, sir.
- 11 Q How long were your shifts?
- 12 A My shoplift last from 3:00 -- I mean, from 4:00 to
- 13 12:00.
- 14 Q So eight-hour shifts?
- 15 A That's correct.
- 16 Q So you made \$170 -- over those three days, you lost
- 17 out \$174; is that correct?
- 18 A That's correct.
- 19 Q How much were you paid by Miller Painting?
- 20 A Ten dollars.
- 21 Q You missed one day of work as part of this?
- 22 A Yes, sir.
- 23 Q And that was a hundred dollars worth of wages?
- 24 A Yes.
- 25 Q Are you asking the wages be paid --

1 A That is correct.

2 Q -- as part of this case?

3 MR. RILEY: Thank you, Your Honor. I have no further
4 questions of this witness.

5 THE COURT: All right. Any other lawyer over here
6 have any questions?

7 MR. ELLIS: Yes, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. ELLIS:

10 Q Tyrone, I'm Todd Ellis. Approximately how many
11 people do you think were on the deck that night at the
12 time of the incident?

13 A We was so excited and having so much fun, so had to
14 be, at least, probably a total of nine, 10, maybe.

15 Q Describe the condition after it fell. Was it
16 chaotic, was it loud?

17 A It was very loud. Actually, it was crazy, like, you
18 know what I'm saying. Everybody was panicking. We didn't
19 know what danger we was really in, you know what I'm
20 saying. You know, the deck collapse, you just -- you come
21 here to have fun. It's like I'm sitting in this chair
22 right now and this chair drop, I'm not expecting that. So
23 it really threw everybody off.

24 Q Was it chaotic?

25 A Yeah, it was very chaotic.

1 Q Were people crying?

2 A They was crying, they was screaming.

3 Q Screaming?

4 A Yes, sir.

5 Q Did you happen to see my client at all, Cristian
6 Reyes, that night?

7 A Yeah, I seen him that night.

8 Q How about on the deck at the time or before the time
9 of the collapse?

10 A Yeah, I seen him on the deck. I seen him on the
11 deck. He came out and played tic-tac-toe. There was a
12 tic-tac-toe game out there, too. So everybody went back
13 and forth. It wasn't so much room, so most people, they
14 was on the ground or they was in the house. But like I
15 said, we was sitting down and we was on coolers.

16 Q Okay. Thank you.

17 THE COURT: All right. Mr. Wlodarczyk.

18 CROSS-EXAMINATION

19 BY MR. WLODARCZYK:

20 Q Good morning, Mr. Ruff.

21 A Good morning to you.

22 Q I have just a few questions. You were sitting on the
23 stairs with your wife; is that correct?

24 A Actually, I was sitting on the deck and my wife was
25 sitting on the stairs.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No.: 2016-001178

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SC Court of Appeals

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SC Court of Appeals

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

v.

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

RECORD ON APPEAL VOLUME II

Damon C. Wlodarczyk
T. Lowndes Pope
P.O. Box 11412
Columbia, South Carolina 29211
Attorney for the Appellants

John S. Nichols
PO Box 7965
Columbia, SC 29202
Attorney for Respondents Linda and George Estrada

Gerald E. Reardon
1329 Blanding Street
Columbia, SC 29201
Attorney for Respondents Linda and George Estrada

Todd Ellis
7911 Broad River Road, Suite 100
Irmo, South Carolina 29063
Attorney for Respondent Cristian Reye

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

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CERTIFICATE OF APPELLANT

1 Q Where was your back?

2 A My back was against the door.

3 Q Okay. The sliding glass door?

4 A That is correct.

5 Q Okay. And which way were you looking?

6 A I was looking the same direction I'm looking now.

7 Q So my understanding of the way, if the sliding glass
8 door is behind, the deck goes out that way, you would have
9 seen -- or Ms. Estrada would have been on your right and
10 Mr. Estrada would have been on your left; is that correct?

11 A That would have been correct.

12 Q Okay. Was there anyone next to you that you can
13 recall?

14 A Actually, there was multiple people. That's why I
15 stated it was about nine or 10 people other than the three
16 people you named.

17 Q Do you know if Mr. Reyes was standing next to you?

18 A No, he wasn't standing next to me, but, like I said,
19 he did come back and forth to play the tic-tac-toe game.

20 Q And my understanding from your prior testimony is you
21 don't have any recollection of whether he was out on the
22 deck when it fell; is that correct?

23 A That's correct.

24 Q Okay. Just to go over some basic things. No one
25 told ou about the condition of the deck, whether it was

1 safe or not safe; is that correct?

2 A That's correct.

3 Q Nobody told you if there were repairs made or not
4 made; is that correct?

5 A That is correct.

6 Q And up until the point that the deck fell, there was
7 no indication of it having any problems with stability or
8 being unsound in your opinion; is this correct?

9 A That is correct.

10 Q All right. Thank you very much, sir.

11 A You're welcome.

12 THE COURT: All right. Anything else?

13 MR. RILEY: Nothing, Your Honor.

14 THE COURT: All right. Thank you.

15 Ladies and gentlemen of the jury, let's take a brief
16 recess. I have to run to the restroom and I wasn't able
17 to last time when y'all were able to. So let's take about
18 a 10-minute break. I've got to go upstairs. My office is
19 upstairs. Don't talk about the case. Thank you.

20 (WHEREUPON; the jury left the courtroom at 10:26
21 a.m.)

22 THE COURT: All right. I will be right back.

23 MR. WLODARCZYK: Thank you, Judge.

24 (WHEREUPON, a short recess was held.)

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

1 MR. WLODARCZYK: We've got one issue, Judge.

2 THE COURT: Okay.

3 MR. WLODARCZYK: Mr. Reyes has a conviction for
4 larceny and burglary. I'd like to introduce that. I
5 think it goes to his character. I just wanted a ruling.
6 I understand Mr. Ellis probably opposes it.

7 MR. ELLIS: Your Honor, I'd assert under 609 and Rule
8 403 that there's more prejudice than probative allowing it
9 in the case. Mr. Reyes is 23 years old. I think -- I
10 don't know what page you've got, but the guilty plea was
11 several years ago. It was not before he was 18 years of
12 age, but it was a period of time, which I think is in the
13 Court's discretion that shows it's not appropriate. And
14 we argue that it's more prejudicial than probative for the
15 matter before you.

16 THE COURT: I'm going to allow the Defense to
17 cross-examine him about that. I do think it goes to his
18 -- the issue of credibility. Those are crimes of
19 dishonestly or false statement under 609, which I think
20 are allowable under the rules. I will allow the Defense
21 to cross-examine him on it.

22 MR. ELLIS: Thank you, Your Honor.

23 THE COURT: Certainly, you can ask him about it as
24 well, which I anticipate you doing to soften the blow when
25 he ask the question.

1 Okay. Anything else?

2 MR. RILEY: Still waiting on a client, Your Honor.

3 THE COURT: Yeah, that's fine. Is that the one
4 that's not here?

5 MR. RILEY: He's here. He's down in the holding cell
6 using the restroom.

7 THE COURT: Okay. What about the one who's --

8 MR. RILEY: I just made contact. She had planned on
9 being here at 11:00 and she's planning on being here at
10 11:00 still as of two minutes ago.

11 THE COURT: Okay. Do you know what the operative
12 case number is now that it's been consolidated? Is it
13 4304?

14 MR. RILEY: Yes, sir.

15 THE COURT: So on the verdict form, it should list
16 all the Plaintiffs' names with the caption of 4304.

17 All right. Y'all ready?

18 MR. RILEY: We're ready now.

19 THE COURT: All right. Let's bring them in.

20 (WHEREUPON, the jury returned to the courtroom
21 at 10:43 a.m.)

22 BAILIFF: Your Honor, the jury's present.

23 THE COURT: All right. Thank you very much.

24 Ma'am, what's your last name?

25 THE JUROR: Mine?

1 THE COURT: Yes, ma'am.

2 THE JUROR: Putnam.

3 THE COURT: All right. Ms. Putnam, you are going to
4 be the forelady of the trial jury now. You will be the
5 jury spokesperson here in court. You will, also, help
6 moderate the deliberations when you do get the case to
7 deliberate. And, lastly, you will be the one who will
8 fill out the verdict form. And you're the only one
9 authorized to fill out the verdict form, but you cannot do
10 it, however, until there's been a unanimous verdict, okay?

11 THE JUROR: Yes, sir.

12 THE COURT: Thank you very much, Ms. Putnam, for your
13 choice to be the forelady.

14 All right. Let's proceed with the next witness.

15 MR. RILEY: Thank you, Your Honor. I call Carletta
16 Williams as our next witness.

17 THE COURT: All right. Ms. Williams.
18 Thereupon;

19 CARLETTA WILLIAMS, after having
20 been duly sworn, testified as follows:

21 THE CLERK: Thank you. Have a seat in the witness
22 box, please. State your name for the record.

23 THE WITNESS: Carletta Williams.

24 DIRECT EXAMINATION

25 BY MR. RILEY:

- 1 Q Ms. Williams, how old are you?
- 2 A I'm 31.
- 3 Q Where do you live?
- 4 A Columbia, South Carolina.
- 5 Q Where did you grow up?
- 6 A Columbia.
- 7 Q Were you previously married to Tyrone Ruff?
- 8 A Yes.
- 9 Q How many children do y'all have together?
- 10 A We have three.
- 11 Q Do you help support your children?
- 12 A I do.
- 13 Q What type of work do you do?
- 14 A I'm a CNA. I do home healthcare for Home Community
- 15 Long Term.
- 16 Q Describe for the jury what your duties as a CNA
- 17 require you to do?
- 18 A If lift my client. I wash them, feed them, clean up,
- 19 supervise.
- 20 Q So you provide care to them because they're unable to
- 21 provide that care to themselves?
- 22 A That's correct.
- 23 Q How long have you been doing that type of work?
- 24 A Eight years plus.
- 25 Q Who were you working for in April of 2014, what

1 company?

2 A Rest Assured.

3 Q And how long had you worked at Rest Assured?

4 A Probably about four, four years.

5 Q And you were living in Richland County in April of
6 2014?

7 A I was living in Lexington County.

8 Q How do you know Latasha White?

9 A That's my former sister-in-law.

10 Q Did you understand at the time of this incident, she
11 was renting 108 Casbel Court, the incident location, from
12 the Defendants (indicating) Andrew and Linda Martin?

13 A Yes.

14 Q Why did you go to Ms. White's home on that particular
15 day?

16 A It was my mother-in-law's birthday and they was
17 having her a cookout.

18 Q Had you been to Ms. White's house before at this
19 location?

20 A I had.

21 Q What time did you arrive?

22 A Around 9:00.

23 Q Describe for the jury, generally, what you did when
24 you arrived at the home that evening?

25 A When we came in, we gave everything a hug, sent the

1 kids down the hallway and then we went into the kitchen
2 and out onto the deck.

3 Q What was everyone doing on the deck, generally?

4 A Talking, playing games, cooking on the grill.

5 Q Now, we heard testimony that the deck collapsed
6 sometime around 11:30, 11:40, around that time. How long
7 do you think you were on that deck before it collapsed?

8 A Around an hour, hour and a half.

9 Q Now, I'm going to show you what's previously been
10 marked as Plaintiff's Exhibit No. 5. I would like for you
11 to look at this exhibit and look at that top picture and
12 please show the jury where you were at the time that deck
13 collapsed?

14 A I was sitting here (indicating).

15 Q On the steps?

16 A Uh-huh.

17 Q So you were sitting right on these steps right here
18 where it meets the deck?

19 A I think Tyrone Ruff was sitting here and I was
20 sitting here because I was sitting -- he was sitting here
21 and I was sitting here because I was sitting between his
22 legs, so.

23 Q Okay. Was there any warning before this deck
24 collapsed?

25 A Not at all.

1 Q Is it safe to say you were surprised that the deck
2 collapsed?

3 A Very surprised.

4 Q Was Khalilah Smith, also, on that deck?

5 A She was.

6 Q Describe for the jury what you did the moment that
7 deck collapsed?

8 A The moment the deck collapsed, I mean, it took me by
9 surprise. Once my ex-husband had helped me up, I was
10 panicking looking for my son. He was on the deck, also,
11 so I didn't know if he fell in between where the deck
12 fell. I didn't know if the grill fell on him. I didn't
13 know nothing, so my concern was to find where my son was.
14 And so when I found him, he was underneath where the grill
15 was at and, you know, ashes and stuff had fell on him.
16 You know, he wasn't burnt or anything.

17 Q But, initially, you were concerned about your son?

18 A Very concerned about my son.

19 Q And I think you testified it was difficult for you to
20 get up because of the way you fell?

21 A Right. And Tyrone helped me get up.

22 Q Did you see anyone do anything to make that deck
23 collapsed?

24 A Not at all.

25 Q So you weren't dancing on the deck?

1 A No.

2 Q No one was jumping on the deck?

3 A No.

4 Q What type of injuries, if at all, did you have
5 immediately after this deck collapsed?

6 A I had big -- like on my right side, because I fell on
7 the right side, my right side was hurting. And I had like
8 a big bruise on my right side.

9 Q So your testimony is you had pain when you were hit
10 in the lower back area?

11 A Right.

12 Q Immediately after the fall?

13 A (The witness nodded head.)

14 Q Did you seek any medical treatment?

15 A I did.

16 Q Where did you go?

17 A That night, I went to Palmetto Baptist. I, also,
18 went to Lexington Urgent Care and the chiropractor.

19 Q Let's talk about each of those. How did you get to
20 Palmetto Baptist that evening?

21 A Mr. Ruff drove us.

22 Q Why did he drive you as opposed to riding in the
23 ambulance?

24 A At the time, they said had done sent out as many
25 ambulances as they could and that it was going to be a

1 while. That if you could take yourself that you should.

2 Q So you wanted to leave that ambulance for other
3 people and you got --

4 A I mean, it was packed, so everybody had gone.

5 Q So when you were at the ER that night, what did they
6 do to treat you for your injuries?

7 A They gave me medication.

8 Q How did you feel in the days after leaving Palmetto
9 Baptist Hospital?

10 A In a lot of pain. It was difficult to sleep. And I
11 had three small kids, so I can't constantly take that
12 medication and be tired and sleepy. I have to take care
13 of them. I couldn't work.

14 Q How old are your children?

15 A I got -- at that time?

16 Q At that time, that's fine.

17 A I got a nine-year-old now, so -- I got a nine, seven
18 and four.

19 Q Very energetic?

20 A Very.

21 Q Now, at some time, did you seek other treatment for
22 the pain you were having in your hip and lower back?

23 A I did.

24 Q Before we talk about that, let's go back to that
25 bruising that you had. Describe the color of that

1 bruising for the jury.

2 A It was like bluish-purple, like the size of a sheet
3 of paper, a normal-sized sheet of paper.

4 Q About the size of this sheet of paper?

5 A Yes.

6 Q How long did that bruise last?

7 A Probably about a week, maybe a week and a half.

8 Q Now, at some point, you did seek subsequent
9 treatment, correct?

10 A I did.

11 Q Where did you seek subsequent treatment, at the
12 chiropractor?

13 A Yes.

14 Q What did he do for you?

15 A Back adjustments, massages and cold compress. I
16 think they did an x-ray.

17 Q And you treated with him for approximately one month?

18 A Yes.

19 Q And then you were released?

20 A Yes.

21 Q How did you feel when you were released?

22 A I mean, it was better than it was.

23 Q Were you still in pain?

24 A Slightly.

25 Q But it was better?

1 A It was.

2 Q But you didn't stop treating with him until July of
3 -- July 17th, 2014, correct?

4 A Correct.

5 Q So that would have been five months after the
6 accident?

7 A Uh-huh.

8 Q Or the collapse?

9 A Yes, I'm sorry.

10 Q How did you find out about the chiropractor at
11 Midlands Health Center?

12 A Someone from the firm. I don't have a primary
13 doctor.

14 Q So you were asking for medical advice?

15 A I was.

16 Q And you were referred by someone at our firm?

17 A Yes.

18 Q I'm going show you what's previously been marked as
19 Plaintiff's Exhibit No. 12. It's the packet of your
20 medical bills. Are these medical bills still owed?

21 A They are.

22 Q Do you recognize them as being your medical bills --

23 A Yes.

24 Q -- that you received? Are they related to this
25 accident?

1 A They are.

2 Q Or incident. Did you miss any work as a result of
3 this deck collapsed?

4 A I missed two weeks.

5 Q Two weeks. How much hours per week do you work?

6 A I work 25 -- well, at that time.

7 Q What were you being paid at that time per hour?

8 A Nine fifty.

9 Q If I told you that that math adds up to \$475, would
10 you dispute that?

11 A No.

12 Q Are you claiming \$475 in lost wages as part of this
13 case?

14 A Yes.

15 Q Now, during those months of treatment and pain, was
16 it difficult for you to partake in activities with your
17 children?

18 A Yes.

19 Q Ms. Williams, I thank you for your testimony in this
20 case. Please answer any questions the Defense counsel may
21 have for you.

22 MR. ELLIS: May it please the Court?

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. ELLIS:

1 Q Ms. Williams, I'm Todd Ellis. I'm going to ask you
2 some of those same questions. Do you recall
3 approximately how many people were on the deck at the
4 time it collapsed?

5 A Probably like 10.

6 Q About 10. Were people coming on and off the deck all
7 night long?

8 A They was.

9 Q All right. And I missed, I couldn't see, if you
10 could tell me again, too, you said you were on the stairs?

11 A Yes.

12 Q And so which way would you have been facing at the
13 time in which the deck, actually, collapse?

14 A Well, at that time, we was playing a game, so kind of
15 like right there (indicating).

16 Q You would have been facing the edge of the deck right
17 here?

18 A (The witness nods.)

19 Q You have to answer?

20 A That's correct. I'm sorry.

21 Q Yeah, that's okay. All right. And do you remember
22 seeing Cristian Reyes that night?

23 A I seen him that night, yes.

24 Q Do you know if he was on the deck at the time of the
25 accident?

1 A No.

2 Q You don't know?

3 A I don't recall him being on the deck.

4 Q You don't recall him being on the deck?

5 A No.

6 Q Can you name every person that was on the deck?

7 A I cannot.

8 Q At the time of accident?

9 A (Witness shakes head.)

10 Q Okay. Thank you, ma'am.

11 A You're welcome.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. WLODARCZYK:

15 Q Good morning, Ms. Williams. How are you?

16 A Fine.

17 Q I just want to clarify. I understand from your
18 deposition you're not having any more problems; is that
19 correct?

20 A No.

21 Q Okay. No, you're not having any problems?

22 A I'm not having any problems.

23 Q Okay. Thanks. And the same question I've asked the
24 Co-plaintiffs, prior to the deck collapsing, you didn't
25 have any information about any repairs that were done or

1 were not done to the deck; is that correct?

2 A That's correct.

3 Q And you didn't have any knowledge about any problems
4 with the stability or the structure or being able to hold
5 the people on the deck prior to it falling; is that
6 correct?

7 A That's correct.

8 Q And you, actually, had been out to this property
9 beforehand; is that, also, correct?

10 A That's correct.

11 Q And that's because it used to be your former
12 sister-in-law?

13 A Correct.

14 Q And you had been on this deck prior to this night?

15 A I've been out there before, yes.

16 Q And those prior occasions, did you notice anything
17 that brought your attention to any problems that might
18 have resulted in this fall?

19 A It was brief walking on, maybe sit something down on
20 the deck and come back in. It was never that kind of
21 situation where it was a function or anything like that.

22 Q Did you ever feel unsafe on the deck prior to it
23 falling?

24 A No.

25 Q Okay. Mr. Ellis asked you about Mr. Reyes. During

1 your deposition I asked you about several of the folks and
2 one of my questions was if you remembered that Mr. Reyes
3 was on the deck. Do you recall my asking you that
4 question?

5 A I do.

6 Q And do you recall that your response was, Do I to
7 answer that?

8 A I do.

9 Q Okay. What was -- why did you not want to answer
10 that question?

11 A I mean, because he wasn't on deck, he said he was on
12 the deck, but he wasn't up there.

13 Q At that point in time when I took your deposition,
14 you knew he wasn't on the deck when the deck fell; is that
15 correct?

16 A I can't recall him being on the deck, no.

17 Q But at the time of the deposition, you specifically
18 stated he was not --

19 A No, was wasn't on the deck, correct.

20 Q All right. And, in fact, you informed me that -- I
21 asked you where he was and you said in the house; is that,
22 also, correct?

23 A Uh-huh, yes.

24 Q Okay. So there's no confusion at the time when I
25 took your deposition where Mr. Reyes was in your opinion;

1 is this correct? He was in the house?

2 A Correct.

3 Q And I, also, understand that I asked you, Well, how
4 did you know that? And I believe your response was,
5 Because he came out afterwards, after everybody was
6 getting off the deck, to your recollection?

7 A Correct.

8 Q All right. Thank you for your time, ma'am.

9 THE COURT: All right. Redirect?

10 MR. REARDON: None, Your Honor.

11 MR. RILEY: None, Your Honor.

12 THE COURT: All right. Thank you, ma'am. You may
13 step down.

14 The Plaintiff can call their next witness.

15 MR. ELLIS: Your Honor, can we approach?

16 THE COURT: Yes, sir.

17 (WHEREUPON, a bench conference was held off the
18 record, in the presence of the jury, but out of the
19 hearing of the jury.)

20 MR. ELLIS: Your Honor, we call Cristian Reyes.

21 THE COURT: Okay. Mr. Reyes.

22 Thereupon;

23 CRISTIAN REYES, after having been
24 duly sworn, testified as follows:

25 THE CLERK: Thank you. Have a seat in the witness

1 box, please. State your name for the record.

2 THE WITNESS: Cristian Reyes..

3 DIRECT EXAMINATION

4 BY MR. ELLIS:

5 Q Cristian, how long have I known you probably?

6 A Roughly, I'm 23 now, about, 18, 19 years.

7 Q Right. And I've done some work for your mom; is that
8 right?

9 A Yes, sir.

10 Q All right. What took you to the house in April of
11 2015? Why were you there that night?

12 A It was a birthday party for my ex-girlfriend's
13 grandmother.

14 Q Okay. That's a lot. So Ms. White was the tenant of
15 that house; is that correct?

16 A Yes, sir.

17 Q All right. And you were dating her daughter?

18 A Yes, sir.

19 Q And what's her name?

20 A Shaquan Ruff.

21 Q How long have you and Shaquan been seeing each other
22 at that time?

23 A On and off or?

24 Q Whatever.

25 A On and off, I would say, almost two years.

1 Q Okay. Had you had an occasion when you were seeing
2 her to stay at this house at Casbel Court?

3 A I was there a lot.

4 Q A lot?

5 A Yeah.

6 Q In fact, you were almost living there in some ways,
7 correct?

8 A Yes, sir.

9 Q All right. Now, there's -- first of all, let me ask
10 you this, were on that deck when it fell that night?

11 A Yes.

12 Q All right. Now, who is Ms. Williams to your
13 ex-girlfriend?

14 A I guess aunt-in-law.

15 Q Aunt-in-law. And how about this gentleman, Tyrone?

16 A Uncle.

17 Q He's the uncle. And how about the Estradas, are they
18 related to that young lady in any way?

19 A Yes.

20 Q All right. And are you broken up with that young
21 lady?

22 A Yes.

23 Q Okay. Do you -- if you would, tell the jury -- might
24 be best on this picture. I want to let you use either one
25 of them?

1 MR. ELLIS: Your Honor, may have him come up?

2 THE COURT: Yes, sir.

3 MR. ELLIS: It's pretty important based on the
4 testimony.

5 THE COURT: Sir, come on around.

6 BY MR. ELLIS:

7 Q Of course, you can use any of the pictures, but
8 describe if you would where you were when the deck fell
9 that night?

10 A There (indicating).

11 Q Speak up if you can.

12 A Like right here (indicating).

13 Q Okay. So you're pointing to the middle of what, I
14 assume, were sliding glass doors; is that correct?

15 A Yes.

16 Q Had you been in and out of those sliding glass doors
17 that night?

18 A Yes.

19 Q Were you standing or sitting?

20 A I was sitting.

21 Q You were sitting at the time when the deck, actually,
22 fell; is this correct?

23 A Yes.

24 Q And have you heard the testimony of the other folks
25 here about approximately where they were?

1 A Yes, sir.

2 Q Do you have a general recollection of them being in
3 the area in which they described?

4 A Not George Estrada or Linda Estrada.

5 Q Okay. You don't remember them being in that area?

6 A No.

7 Q But do you remember Tyrone and the Williams lady
8 being where she was?

9 A Yes.

10 Q All right. You don't mean that the Estradas are
11 telling something improper; do you, you just don't recall?

12 A I don't recall.

13 Q All right. And were you sitting down leaning against
14 those glass doors at the time the deck went down?

15 A No, I was leaning like pushing towards the glass.

16 Q You can take the stand now unless you want to tell
17 anything else that's helpful. I'll call you back down if
18 I need to.

19 A All right.

20 Q Had you been there all of that evening to the party?

21 A Yes, I was there since about 6:00 or 7:00.

22 Q Six or 7:00. And were you, actually, speaking with
23 someone or doing anything at the time that the deck fell?

24 A I mean, everybody was drinking, taking shots.

25 Q And so there was some drinking going on and shots

1 being taken?

2 A Yes.

3 Q And you were part of that as well?

4 A Yes.

5 Q All right. Now, I've heard from eight to 11,
6 approximately, people on that deck at the time it
7 collapsed. Do you have a number or knowledge, what is
8 your belief?

9 A No, I don't have an approximate number, but I gave
10 them a between number around like 15, 20.

11 Q You think it could have been 15 or 20 people on the
12 deck?

13 A Yes. It's just an approximate number.

14 Q All right. And if you would, describe to the jury
15 what happened with your body, the reaction at the time in
16 which that deck fell?

17 A My reaction when the deck fell was I was, basically,
18 shocked. And it was like everything shifted.

19 Q Shifted?

20 A Yeah, like the whole deck shifted one way and started
21 falling.

22 Q As a matter of fact, the deck dropped in the area
23 exactly -- all that entire side towards the house is where
24 the deck fell; is that correct?

25 A Yes.

1 Q And you were sitting in a chair right in that area?

2 A Yes.

3 Q Did you stay in the chair all the way to the ground?

4 A No.

5 Q Okay. What happened?

6 A When it fell, the exact moment, the doors weren't
7 closed.

8 Q The doors were not closed?

9 A No, I'm the one that closed the door.

10 Q After the incident?

11 A After the incident.

12 Q Okay. So when you fell, did you fall slightly into
13 the house?

14 A Yeah.

15 Q Okay. So you fell towards that glass way as well
16 when the deck collapsed?

17 A Yes.

18 Q Did you fell anything? Did you hurt -- did any part
19 of your body hurt immediately right afterwards?

20 A Not immediately.

21 Q Not immediately. Okay. Describe to scene to the
22 jury, if you would, after the deck collapsed?

23 A I was very chaotic. It was a lot of screaming.
24 Everybody looking for people. Everybody wondering what's
25 going on.

1 Q Did you --

2 A Everybody was trying to get off the deck.

3 Q I'm sorry. Did you assist in that regard trying to

4 get people or get medical services there?

5 A Yes, because as the door wasn't closed, I climbed

6 back in the house. And they was looking for their

7 children and I was the one pulling the kids in.

8 Q Okay. All right. Did you, in fact, seek medical

9 treatment that night, the evening of the incident?

10 A Yes, sir.

11 Q But you didn't go in one of the ambulances?

12 A No, sir.

13 Q All right. When, between the time the collapse of

14 the deck, did you go to the hospital?

15 A After the ambulance left.

16 Q Say again, I'm sorry?

17 A After the ambulance left.

18 Q After the ambulance left. What started feeling bad?

19 A My neck and my back.

20 Q Your neck and your back. Anything else?

21 A And my knee.

22 Q Have you had problems with your knee before?

23 A Yes, sir.

24 Q From what incident did you have a problem with your

25 knee?

1 A A moped accident.

2 Q You don't have to lean into the mic. Thank you for
3 speaking up, but I can hear you. So what was the previous
4 incident you had with your knee?

5 A A moped incident.

6 Q A moped incident, that's right. And when you got to
7 Palmetto Health Richland, what did the doctors do for you,
8 if anything?

9 A They gave me a pain pill and laid me down. And then
10 they prescribed me medicine and let me go.

11 Q Did someone, actually, observe you or look at you?
12 Did they do a checkup of you?

13 A On my knee.

14 Q Cristian, do you have a primary physician?

15 A No.

16 Q Did your momma send you to me?

17 A Yes.

18 Q Afterwards as well. Did you ask me for medical
19 service or who could provide those?

20 A Yes, sir.

21 Q Did I send you to Dr. Carew.

22 A Yes.

23 Q And that's over at Health Source; is that correct?

24 A Yes.

25 Q Now, did Health Source do a good job for you?

1 A They did an excellent job.

2 Q And did they -- what did they treat you for? What
3 was bothering you at the time?

4 A My knee, my lower back and, like, my neck about right
5 here (indicating).

6 Q The high part of your neck?

7 A Yes.

8 Q All right. And I see from April 24th until
9 July 29th, you had a variety -- you had 16 appointments
10 with them; is that correct?

11 A Yes, sir.

12 Q And you were seeking physical therapy or treatment;
13 is that right?

14 A Yes, sir.

15 Q And how long approximately were you there when you
16 went on those appointments?

17 A I'd say about -- depending on if it was crowded or
18 not.

19 Q Okay..

20 A It was, I would say, about almost three hours.

21 Q Depending on what time you started?

22 A Yes.

23 Q And what kind of work did they do to you?

24 A They use some type of gel and massage my knee with
25 it, some type of instrument and they was, basically, doing

1 like a spine alignment and adjustment.

2 Q They use cold packs and hot packs?

3 A Yes. And I guess, what it was, the chair that you
4 sit in and it vibrates.

5 Q Realigns you and vibrate and massage?

6 A Yes.

7 Q Okay. And in between those visits, would you start
8 the fell worse or did you feel good after the visit and
9 have to go back?

10 A No, I was feeling better.

11 Q You were feeling better?

12 A Like toward the end of the treatment, I was feeling
13 better.

14 Q All right. And as of today, you're not claiming to
15 this jury that you're permanent injured; is that right?

16 A No, sir.

17 Q Right. You're feeling better today; is that correct?

18 A Yes, sir.

19 Q So approximately -- that was a three-month period of
20 time. Approximately, how long were you feeling bad as a
21 result of this fall, this incident?

22 A Roughly, about a month.

23 Q A little more than month? You mean a month after you
24 finished treating?

25 A Oh, after the treatment?

1 Q Yeah.

2 A No, it was close to the end.

3 Q Close to the end, you were fine?

4 A Yes, sir.

5 Q All right. And what was feeling bad about your back
6 and your knee? On a daily basis, describe it.

7 A Like my knee, I guess it was aggravated, because it
8 already had been hurt already and I never seek treatment
9 about it. Because when I went to the hospital, they was,
10 basically, telling me my knee was too swollen, they
11 couldn't do x-rays. And as time went on, I never went
12 back to get it checked out because it was feeling better.

13 Q And how about your back and neck, on a daily basis,
14 what was bothering you with that?

15 A Kind of hurt from time from time when I laid down.

16 Q Just stiffness or was it --

17 A Yeah, stiffness and kind of sharp pain, depending on
18 what I was doing.

19 Q All right. I'm going to show you what's been marked
20 as Plaintiff's Exhibit No. 3 and ask you to take a look at
21 it. It that a stack of your medical bills and then a
22 summery of your medical bills that my office and you put
23 together?

24 A Yes.

25 Q All right. And between Palmetto Health and Health

1. Source and Dr. Carew, what is the total amount of your
2. medical bills?

3. A \$4,950.01.

4. Q \$4,095.01?

5. A Yeah.

6. Q And, certainly, are you asking this jury to return a
7. verdict for you and, at least, pay the medical bills, if
8. not more than I would talk about later. You want those
9. recovered; is that correct?

10. A Yes, sir.

11. Q All right. Now, Cristian, obviously, counsel has
12. spent a lot of time asking folks where in the world you
13. work and your credibility is at stake in this trial.

14. A Yes.

15. Q Are you telling this jury you were on that deck when
16. it fell?

17. A Yes.

18. Q All right. And you were injured as a result of that;
19. is that correct?

20. A Yes, not as badly as everybody else, but I was.

21. Q Okay. Now, also, Cristian, you've made some mistakes
22. in your past, which is going to impact whether this jury
23. thinks you're credible or not; haven't you?

24. A Yes.

25. Q Did you pled guilty to a charge in last five years or

1 so?

2 A Yes, sir.

3 Q What were those charges?

4 A It was grand larceny and burglary second nonviolent.

5 Q Was that in Richland County?

6 A Forrest Aches.

7 Q All right. You're 23 years old, was this in your
8 early 20's or before that?

9 A I was arrested for it in 2012, early 2012.

10 Q All right. Do you regret all those circumstances?

11 A Yes, it makes me hard to get a job because I feel
12 like just because somebody has gotten in trouble that
13 doesn't define how they are as a person.

14 Q Does that define how you testify here today?

15 A No.

16 Q Are you being truthful?

17 A Yes.

18 Q All right. Please answer any questions anyone has.

19 A All right.

20 THE COURT: All right. Mr. Wlodarczyk.

21 MR. WLODARCZYK: May it please the Court?

22 CROSS-EXAMINATION

23 BY MR. WLODARCZYK:

24 Q Mr. Reyes, I'm just a little bit confused. Did you
25 say you fell into the house or --

1 A No, I said I was sitting in the chair, but I got up
2 and I climbed into the house.

3 Q Okay. Could you show me? I was on the opposite
4 side. Can you show me where you were sitting?

5 MR. WLODARCZYK: May he step down?

6 THE COURT: Yeah, step down.

7 THE WITNESS: Right about there (indicating).

8 BY MR. WLODARCZYK:

9 Q And you were, actually, against the door; is that
10 correct?

11 A Yeah.

12 Q You have a seat.

13 A (The witness complies.)

14 Q And your back was against the door?

15 A Yeah.

16 Q Okay. Now, you heard Ms. Estrada testify that she
17 was in the seat that was right here facing towards the
18 stairs (indicating). Do you remember that testimony?

19 A Yes.

20 Q Do you remember her stating that -- specifically
21 stating that you were not on the deck when it fell, that
22 you were in the house? Do you remember that?

23 A Yes.

24 Q You think she was mistaken or do you think she was
25 lying?

1 A I believe she was mistaken.

2 Q Okay.

3 A There was a lot of chaos going on.

4 Q There was no chaos going on before the deck fell,
5 though?

6 A Exactly.

7 Q Is that correct?

8 A Just like Tyrone Ruff stated, I was on the deck
9 playing games and interacting.

10 Q And you heard him say that he did not remember seeing
11 you at the time the deck fell; is that correct?

12 A Yes.

13 Q Okay. And based upon where he said he was seated,
14 you should have been immediately to his right; you
15 understand that?

16 A Yes..

17 Q So he's mistaken as well because he was just not
18 paying attention; is that your position?

19 A Yes.

20 MR. ELLIS: Your Honor --

21 Excuse me, Counsel.

22 I'm going to object. He's pitting the witnesses
23 against each other. If he wants to ask Mr. Reyes whether
24 he was on the deck. He still hasn't done that three
25 minutes into it.

1 THE COURT: All right. Overruled.

2 BY MR. WLODARCZYK:

3 Q And you heard about Mr. Estrada's position on the
4 deck; is that correct?

5 A Yes.

6 Q And he could not recall if you were there at the time
7 it fell?

8 A Yes.

9 Q And Ms. Williams, also, specifically stated you were
10 not on the deck when it fell, but in the house; is that
11 correct?

12 A Yes.

13 Q You believe that she's just mistaken or lying?

14 A Mistaken.

15 Q So the issue that you dated their former family
16 member and that went south, that wouldn't have anything to
17 do with their testimony; is that correct?

18 A Don't know.

19 Q Okay. But it's just your opinion that they just
20 weren't paying attention and somehow you were not seen by
21 them?

22 A Yes, sir.

23 MR. WLODARCZYK: Thank you, Mr. Reyes.

24 THE COURT: Any redirect?

25 MR. ELLIS: Nothing, Your Honor.

1 THE COURT: Thank you, sir. You may step down.

2 Mr. Riley, call your next witness.

3 MR. RILEY: Your Honor, I call Khalilah Smith.

4 THE COURT: All right, Ms. Smith. Come on around.

5 THE CLERK: Raise your right hand.

6 Thereupon;

7 KHALILAH SMITH, after having been
8 duly sworn, testified as follows:

9 THE CLERK: Thank you. Have a seat in the witness
10 stand, please. State your name for the record.

11 THE WITNESS: Khalilah Smith.

12 DIRECT EXAMINATION

13 BY MR. RILEY:

14 Q Ms. Smith, were you on this deck on April 4th, 2014,
15 when it collapsed?

16 A Yes.

17 Q Were you injured?

18 A Yes.

19 Q As a result of those injuries, did you file a lawsuit
20 against the Defendants?

21 A Yes.

22 Q Was your trial for that case set for this week?

23 A Yes.

24 Q And you haven't been here until now; have you?

25 A Correct.

1 Q I would like for you explain to the jury where you've
2 been up until now.

3 A Taking care of my mom. My mom had a cyst that was
4 growing in her nervous system, so they had to do spinal
5 surgery. So I have to care for my mom. My mom cannot
6 walk. I have to make sure that she get bathed, feed her,
7 all of the above. I knew I was supposed to come in here,
8 but my mom's health is very serious. She has no one else
9 there to care for her, but me. So I did not attend court
10 because I had to take care of my mother. I apologize, but
11 my mother's health is more important. And she's there now
12 by herself because I had to come into here.

13 Q The surgery that you referenced, when did that take
14 place?

15 A That started April the 1st.

16 Q There's no anybody else to care for her?

17 A No one else.

18 Q She can't be left for an extended period of time and
19 days on end?

20 A At all, because she can't -- she'll urinate on
21 herself, you know. She can't do anything, nothing, but
22 just lay in the bed. And I had to take her back to the
23 emergency room again and they have to give her new
24 medication. So now she's -- she's not even feeling her
25 legs period.

1 Q How important is this case that we're here talking
2 about to you?

3 A It's very important because I was injured, but my
4 mother is on life and death, you know, that's more
5 important than anything. That's my mother.

6 Q But for your mother's health condition or recent
7 health condition, would you have been here for this entire
8 trial?

9 A Yes.

10 Q Are you asking the jury to forgive you for your
11 presence not being here due to your mother's condition?

12 A Yes, please do.

13 Q Where do you live?

14 A 3913 Gonzales Avenue with my mother now because I
15 have to care for her.

16 Q Where did you grow up?

17 A Saxon Homes off of Harden Street.

18 Q Are you married?

19 A Yes.

20 Q Do you have any children?

21 A Yes, I have three boys.

22 Q Do you support those three boys?

23 A Yes, I do.

24 Q How old are they?

25 A Eleven, ten and three.

1 Q What kind of work do you do?

2 A Well, I'm self-employed. At the time of the
3 accident, I had a cleaning service, but I let that go
4 because I have a management company now where I do
5 promotions, marketing, club promotions. And I'm making
6 more funds doing that, so I'll stick with that now.

7 Q Were you living in Richland County at the time of
8 this accident?

9 A At the time of the accident, no, I was in Gaston.

10 Q How do you know Latasha White?

11 A That's my sister.

12 Q You understand that she rents the house at 108 Casbel
13 Court, which is what we're here talking about today, from
14 the Defendants, Andrew and Linda Marshall?

15 A Yes.

16 Q Were you at her home on April 4th, 2014?

17 A Yes.

18 Q Why were you there?

19 A It was my sister's mom's birthday.

20 Q Had you ever been to her house before?

21 A Yes.

22 Q Generally, what time did you arrive that evening?

23 A Probably about 9:00, maybe.

24 Q Explain to the jury what you did when you arrived?

25 A I walked in, walked the kids in, we came through the

1 front door. We went through the living room, went to the
2 kitchen where the family was. More of the family was
3 outside on the balcony because they had the grill going.
4 They were playing cards and stuff, you know, a little
5 drinking, having a nice time. So I went out there and
6 stood out on the deck with my son. I had my son in my
7 arms.

8 Q How long do you think you were on that deck -- just
9 your estimation, but how long were on that deck before it
10 collapsed?

11 A I think it been like 30, 45 minutes.

12 Q Was there any warning before this deck collapsed?

13 A No, not at all.

14 Q Is it safe to say you were surprised when it
15 collapsed?

16 A I was very surprised.

17 Q What were you doing at the time it collapsed?

18 A I was stand up, I was holding my baby. Like I said,
19 everyone was playing cards and, you know, just talking
20 amongst each other, having a nice time, music playing,
21 cooking on the grill. Because I remember my aunt's
22 husband was sitting in the chair. Because I know his legs
23 was bad and he was sitting in the chair and my aunt was
24 over by him. I was standing on the deck more by the slide
25 door. Not directly in front of the slide door, but maybe

1 over to the left because I was standing up holding my son
2 there.

3 Q So you were holding your son at the time this
4 collapsed?

5 A Uh-huh.

6 Q I'm going to show you what's been marked as
7 Plaintiff's Exhibit No. 4. It is a picture of the home in
8 question and the deck that was formally attached before it
9 collapsed?

10 A Uh-huh.

11 Q I would like for you to point to that top picture and
12 show the jury where you were standing with your child at
13 the time it collapsed?

14 A I was like over here on the side by this door.

15 Q You were standing by the door?

16 A Uh-huh.

17 Q I'm going to show you what's been marked Plaintiff's
18 Exhibit No. 5?

19 A Okay.

20 Q Show the jury where you would have ended up in that
21 top picture. You see that slant after the collapse, where
22 would you have been?

23 A Over on this end here. (indicating).

24 Q So up against the brick wall?

25 A Against the brick wall, yeah.

1 Q Did you see anyone on that deck do anything to make
2 this deck collapse?

3 A No.

4 Q Tell me what you did immediately after the deck
5 collapsed?

6 A When it collapsed, to be honest with you, I was so
7 worried about my son and my nephew, which is Carletta's
8 son, that's my brother, Tyrone. I heard my nephew
9 screaming. I'm going to pull my nephew from under the
10 grill because he had smoke and the grill was hot. I had
11 my son in my arms. I believe my brother -- someone
12 grabbed my son and I had my nephew's arm because he was
13 underneath everything. So I pulled him up by his arm and
14 that's when they grabbed him and took him and checked to
15 make sure he was okay.

16 Because when the deck fell, where I was standing at,
17 everything -- I mean, the grill, tables, everything was
18 just coming towards everyone that was on the deck. So
19 when that deck fell, my head and back everything hit the
20 brick wall. So I'm -- you know, when I went down, like I
21 said, I had my baby in my arms when I heard my nephew
22 scream because he was crying. And I heard that voice and
23 I just reached out, Oh, Lord, oh, Lord, and I grabbed him
24 and pulled him up. And I don't know whether it was his
25 arm or his leg. He might have been upside down. It

1 probably was his leg or his arm. I know I grabbed a leg
2 or an arm and I had my nephew. Because that grill fell
3 directly on him, all of the coal and everything, he was
4 covered with it. I just panicked.

5 Q So your first concern was your son?

6 A For my son, yes.

7 Q After you were able to determine --

8 A Uh-huh.

9 Q -- the condition of your son --

10 A Uh-huh.

11 Q -- how did you feel?

12 A Honestly, I was like -- when the ambulance came and
13 they checked him and everything, checking him to make sure
14 nothing was broken and they was like he's fine and
15 everything. They did our vital signs and checked us and
16 was like, okay, everything seems to be okay and all. Like
17 I said, thinking of me and my hurt, my main concern was my
18 son because my son was crying, too. I just wanted to make
19 sure he was okay. And when the ambulance, you know, told
20 me that he was fine, nothing was broken, everything was
21 okay. I said, okay, they checked us out, cool, I'm going
22 home, take him and wash him off and get him settled in.

23 Q Were you ever in any type of pain after this
24 incident?

25 A Yes, after the incident, I was. Because at the time,

1 like I said, I was so worried about my baby, you know, and
2 his well being and making sure he was okay. I'm an adult,
3 he's a child. I can deal with that feeling that I'm
4 feeling, you know, but the baby, he can't. So my mind was
5 there. And maybe about three days afterwards, I was
6 feeling pain. I didn't go. It got a little worse within
7 like five or six days and I went to the emergency room. I
8 was like something's not right. I'm hurting in my neck
9 and my back, I need to be checked out. So I went to
10 hospital. They checked me out. They said that --

11 Q Don't say what they said.

12 A Okay.

13 Q Let's talk about the treatment that you got in that
14 facility.

15 A Okay. Well, treatment, they, basically, checked me.
16 They gave me some pain medicine. I think it was
17 Oxycodone, I'm not sure. I know they gave me some strong
18 pain medicine for my back.

19 Q And that treatment, was it Lexington Medical Center?

20 A Yes.

21 Q Okay. And that was approximately six days after this
22 deck collapsed?

23 A Uh-huh.

24 Q What did you try to do, if anything, prior to seeking
25 care at Lexington Medical Center and incurring bills as a

1 result?

2 A What -- I mean, I couldn't do anything because, I
3 mean, I was having pain. I would just take, you know,
4 like Icy Hot, ice packs put on my back and see if that
5 worked, take, you know, over-the-counter Motrin. That was
6 before I went to hospital and everything. And that wasn't
7 working, the pain was still occurring, so I just went to
8 the hospital. And they gave me, like I said, something
9 stronger and that was working, that was helping for the
10 pain.

11 Q So before you incurred medical bills and incurred
12 that costs --

13 A Uh-huh.

14 Q -- you tried to avoid that by treating yourself with
15 over-the-counter remedies?

16 A Yeah, I mean, because the hospital is high. I wasn't
17 making money like that. I couldn't work a lot of time, so
18 I was losing out.

19 Q How did you feel after you left Lexington Medical
20 Center over the next couple of days?

21 A Next couple of days, it was still hurting. You know,
22 like I said, when I had the medication, I wasn't really
23 feeling it like that. But I took my medication and it was
24 still hurting. So right then and there, I'm like, I got
25 to go see a chiropractor. Somebody going to have to tell

1 me something because something's not right.

2 Q So you sought treatment at Midlands Health Center?

3 A Yes, I did.

4 Q Why did you go to Midlands Health Center?

5 A I had a prior accident a few years back and my
6 attorney, Stanley Meyers, actually, referred me there.
7 And I had treatment there before and they did a wonderful
8 job, so I just decided to go back to the same place that
9 treated me before.

10 Q Approximately, how long did you treat with the
11 Midlands Health Center?

12 A I had maybe about between 11 to 14 treatments or so.

13 Q Is that over a roughly one-month period of time?

14 A Yes. Yes.

15 Q How did you feel after the treatment?

16 A After the treatment, you know, it felt a little
17 better. You know, I mean, it hurt when they were pushing
18 down, of course, you're going to get that. But, I mean,
19 after the treatment it -- you know, I still have pain. It
20 still does hurt. But like I said, I just use Icy Hot, a
21 back brace or whatever I can to help me with the pain, so.

22 Q But you did feel better after attending that
23 treatment?

24 A Yes, I did.

25 Q And you aren't claiming any permanent injury here

1 today; are you?

2 A No, not at all.

3 Q Now, you finished treating with the Midlands Health
4 Center on May 21st?

5 A Uh-huh.

6 Q So it's your testimony that roughly six weeks after
7 this -- after the deck collapsed, the pain got better, but
8 it was still there a little bit?

9 A Exactly.

10 Q Now, this treatment you received from the Midlands
11 Health Center and Lexington Medical Center, were you
12 billed for that treatment?

13 A Yes.

14 Q I'm going to show what's previously been marked as
15 Plaintiff's Exhibit No. 15 entered into evidence, is that
16 your medical bills and a summary of the total for this
17 incident?

18 A Yes.

19 Q All of this treatment is related to the injuries you
20 sustained as part of the deck collapsing on April 4th,
21 2014?

22 A Yes.

23 Q Do you still owe these bills at this time?

24 A Yes.

25 Q What type of problems did you have or how did this --

1 these injuries change your life over those six weeks
2 following the deck collapse?

3 A Well, I couldn't -- you know, I couldn't really work.
4 Like I said, I had a cleaning service. You know, that's
5 going to require bending, reaching, pulling. I couldn't
6 do it because I was having issues with my back. So for a
7 period of time, you know, the customers and everything I
8 had, I ended up losing my customers. I couldn't go to
9 work, so that's why I gave up my cleaning service and
10 started something else, to where I could generate money, to
11 take care of my kids.

12 Q But there was some time you did work through the
13 pain, right?

14 A Yeah, I did work through the pain from time to time
15 as much as I could, but.

16 Q And I just want to make it clear, you aren't claiming
17 any lost wages here today; are you?

18 A No.

19 Q What about your children? You've got four -- three
20 boys, young in age, I'm sure they like to play. Were you
21 able to play with them?

22 A No, I couldn't do the usual activities that I do with
23 them and stuff like that.

24 Q What activities?

25 A Well, my kids played baseball, you know. They played

1 ball. My oldest son, he does football. My baby, you
2 know, I usually take him to the park and stuff, but with
3 my back, I couldn't stand to push the swing too much.
4 Couldn't just stand up a lot. I couldn't do a lot that I
5 usually do with my kids, so I just had to slack down a
6 little bit.

7 Q Do you feel the Defendants, Andrew and Linda
8 Marshall, are responsible for deck collapsing incident?

9 A Yes.

10 Q Ms. Smith, I thank you for your testimony. Please
11 answer any questions the other counsel may have.

12 THE COURT: Mr. Ellis.

13 MR. ELLIS: Thank you.

14 DIRECT EXAMINATION

15 BY MR. ELLIS:

16 Q Ms. Smith, briefly, I'm Todd Ellis. I'm sorry about
17 your momma.

18 A That's okay. Thank you.

19 Q Do you recall approximately how many people were on
20 that deck at the time that deck fell?

21 A About 10 or 15 people, 15.

22 Q It was very crowded; is that correct?

23 A Yes.

24 Q Were you here at the time my client, Cristian Reyes,
25 was testifying just before you came on? Were you here by

1 any chance? Did you walk into the room?

2 A Uh-huh.

3 Q Do you have a recollection of Mr. Reyes being
4 anywhere on that deck?

5 A I never seen him on the deck.

6 Q Excuse me?

7 A I never saw him on the deck.

8 Q You're not sure or you just didn't see him on the
9 deck?

10 A I -- I don't remember seeing him.

11 Q Of the 10 or 15 people, could you name out any other
12 folks?

13 A Yeah, I sure could -- was there, Carletta was there.
14 They was on the staircase. I was standing by the brick
15 wall, the glass door. My aunt and her husband, they were
16 standing towards the left -- because the grill was here on
17 the right because I remember he was sitting in the chair.
18 Somebody had to help him up when they fell. My sister,
19 Tasha, she was on the deck there. My niece, Sha-Sha, she
20 was on the deck. Who else was there?

21 Q Well, it's not a test. I didn't mean you have to
22 answer everybody.

23 A Yes.

24 Q Okay. Do you recall seeing him after the deck fell,
25 Mr. Reyes?

1 A Uh-huh.

2 Q Okay.

3 A I think he was beside me when the ambulance came.

4 Q Okay. Thank you.

5 A Uh-huh.

6 THE COURT: All right. Mr. Wlodarczyk.

7 CROSS-EXAMINATION

8 BY MR. WLODARCZYK:

9 Q Good morning, Ms. Smith. I'll be brief so you can
10 get out of here and get back to your mother. I had an
11 opportunity to meet you during your deposition?

12 A Yes, sir.

13 Q My understanding is you've had the opportunity to be
14 at this house on prior occasions; is that correct?

15 A Yes.

16 Q And you were on this deck prior to -- on prior
17 occasions before it fell?

18 A Yes.

19 Q And my understanding is on those times, you never
20 noticed any problems with the deck; is that correct?

21 A Correct.

22 Q Okay. It never appeared unsafe or dangerous in your
23 opinion prior to the fall; is that correct?

24 A Correct.

25 Q Okay. And no one ever reported to you problems with

1 the deck prior to it falling?

2 A No, sir.

3 Q All right. You don't have any information regarding
4 any repairs that were made or not made or any care that
5 was done or not done; is that correct?

6 A Correct.

7 Q And just briefly, Mr. Meyers that you referred to as
8 your attorney, he's also the same attorney at Mr. Riley's
9 firm; is that correct?

10 A Yes.

11 Q Okay. Thank you for your time, ma'am.

12 THE COURT: All right. Thank you, ma'am. You can
13 step down. You're, also, free to leave.

14 THE WITNESS: Thank you, sir.

15 THE COURT: All right. Y'all have any other
16 witnesses prior to lunch?

17 MR. REARDON: May we approach?

18 THE COURT: Yeah.

19 (WHEREUPON, a bench conference was held off the
20 record, in the presence of the jury, but out of the
21 hearing of the jury.)

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, it's my understanding we have one more witness. I
24 think it's going to be by way of video or television-type
25 deal. We've got to get all that set up and everything.

1 So rather than have y'all just sit out here and look at
2 us, we'll take a break. Go back to your jury room.
3 Don't talk about the case, okay.

4 (WHEREUPON, the jury left the courtroom at 11:36
5 a.m.)

6 THE COURT: Y'all pass this around. This is the
7 first proposed verdict form from me. Y'all check it
8 around -- provided they survive directed verdict. Y'all
9 look at it. That's about as simple as I know to make it
10 and I welcome any comments.

11 All right. We're in recess. I'll be right back.

12 (WHEREUPON, a short recess was held.)

13 THE COURT: All right. Let's bring the jury in.

14 (WHEREUPON, the jury returned to the
15 courtroom at 12:00 p.m.)

16 THE BAILIFF: Your Honor, the jury is present.

17 THE COURT: All right. Thank you.

18 Ladies and gentlemen of the jury, you can tell by
19 that screen in front of you that the next witness is going
20 to be by way of a video. And let me talk to you briefly
21 about what a video deposition is.

22 A deposition is normally a document that the lawyers
23 use or you use in court, but sometimes, we do what's
24 called a video deposition, which contains sworn testimony
25 given by a witness outside of court in the presence of

1 lawyers for each party who can ask questions of the
2 witness. Now, if any objections are made at the
3 deposition, I will rule on them when the case is up here
4 for trial.

5 Now, this testimony, although it may be from a TV or
6 from a video is entitled to the same consideration, that
7 is to be judged as to its credibility and weighed by you
8 in the same way as if the witness was, actually, present
9 and gave the testimony about to be presented to you by way
10 of the video. It's for you, the jury, to determine the
11 effect, value, weight and truth of the testimony given in
12 the deposition. And, quite frankly, lawyers on both
13 sides, defense and plaintiff's sides, typically, video
14 deposition doctors because we all know how busy doctor's
15 schedules are. We, also, know how expensive doctors can
16 be as well. So this is a more economical way and a better
17 way to present evidence to you for depositions like this.
18 So please pay close attention as the video deposition is
19 published.

20 MR. REARDON: Thank you, Your Honor.

21 THE COURT: Mr. Reardon.

22 MR. REARDON: Dr. William Randall Westerkam.

23 (WHEREUPON, Dr. William Randall Westerkam's
24 video deposition was played for the jury.)

25 MR. REARDON: That's all.

1 THE COURT: All right. Thank you.

2 Ladies and gentlemen, we're going to go ahead and
3 break for lunch. It's now almost 12:30, 12:25. Let's go
4 ahead and reconvene -- I want you back in your jury room.

5 What time do y'all have your next witness coming,
6 2:00?

7 MR. REARDON: 1:30 is fine.

8 THE COURT: Well, I want to give some of them -- is
9 2:00 o'clock, okay?

10 Will that give y'all enough time? Is anybody going
11 to go home for lunch? I want to give y'all enough time if
12 y'all live in outlying areas to go home. How about 1:45?
13 That's an hour and 15. I want to try to move this thing.
14 1:45, y'all be back in your jury room. Don't talk about
15 the case.

16 (WHEREUPON, the jury left the courtroom at 12:23
17 p.m.)

18 THE COURT: All right. We'll see y'all back
19 shortly.

20 MR. WLODARCZYK: Do you need anything from us?

21 THE COURT: If you already have something, you can go
22 ahead and hand it up. I've kind of got a charge,
23 basically, already kind of unless y'all want something
24 specific.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: All right. Anything else before we bring
2 the jury in?

3 MR. WLODARCZYK: Any change on my previous motion,
4 Your Honor?

5 THE COURT: You ready for the ruling?

6 MR. WLODARCZYK: Might as well..

7 THE COURT: All right. Motion to exclude denied.

8 MR. WLODARCZYK: Very good..

9 THE COURT: I find that it is a matter -- a factual
10 matter dealing with credibility rather than admissibility,
11 so I'm going to allow the testimony of the Plaintiff's
12 expert over objection. Your objection is noted and you're
13 preserved on the record.

14 MR. WLODARCZYK: Thank you.

15 THE COURT: All right. Let's bring the jury in.

16 (WHEREUPON, the jury returned to the courtroom
17 at 1:50 p.m.)

18 THE BAILIFF: Your Honor, the jury is present.

19 THE COURT: All right. Plaintiffs can call their
20 next witness.

21 MR. REARDON: Your Honor, I call Alan Abatta to the
22 stand, please.

23 THE COURT: All right.

24 Thereupon;

25 ALAN ABATTA, after having been duly

1 sworn, testified as follows:

2 THE CLERK: Have a seat in the witness box, please.

3 State your name for the record.

4 DIRECT EXAMINATION

5 BY MR. REARDON:

6 Q State your full name.

7 A Alan A. Abatta.

8 Q Alan, how old are you?

9 A Sixty-six.

10 Q And, Alan, where do you live?

11 A I live at 112 Random Lane, Lexington, South Carolina.

12 Q Where do you work?

13 A I work for the Warner Group.

14 Q What are they?

15 A They are consulting engineers that do forensic
16 engineering work.

17 Q Are you an engineer?

18 A I am.

19 Q What is your educational background?

20 A I'm a civil engineer. I have a BS in civil
21 engineering.

22 Q And how long have you been a professional engineer?

23 A I've been doing engineering work for 45 years.

24 Q Are you licensed in South Carolina?

25 A I am licensed in South Carolina.

1 Q Do you practice in South Carolina?

2 A I do.

3 Q Do you practice in other states?

4 A I do, yes.

5 Q You are licensed in other states?

6 A I'm licensed right now currently in 12 states.

7 Q Okay. Do you know the fellow sitting in the back row
8 over here, Luis Mariaca?

9 A Yes.

10 Q How do you know him?

11 A We do fairly similar type of work.

12 Q Do you work together on cases?

13 A Occasionally, we do, yes.

14 Q Do you work against each other on cases?

15 A Yes, we would.

16 Q And y'all are both engineers?

17 A Yes, we are.

18 Q All right. Have you had the opportunity to review
19 photographs that have been produced by the Marshalls and
20 by Defense counsel regarding a deck that collapsed back in
21 2014 in Hopkins?

22 A I have, yes.

23 Q All right. And did you arrive at particular
24 conclusions as to why the deck collapsed and the cause of
25 the deck collapse, any errors or omissions or violations

1 that may have occurred?

2 A Yes, basically, what I reviewed was just the
3 photographs because a site inspection was not able or
4 capable of doing that it because it was already down at
5 that point..

6 Q Okay. You would receive this information after the
7 deck collapse and once litigation began?

8 A That's correct.

9 Q And I produced photographs, they produced photographs
10 and that's how you determined your conclusions?

11 A That's correct.

12 Q Okay. All right. And are these opinions you're
13 going to render today based on engineering certainty,
14 engineering principles and building codes?

15 A They are.

16 Q All right.. Let's first talk about how this deck was
17 attached to the home. Can you --

18 MR. WLODARCZYK: Your Honor, just one minute. I
19 don't have any objection, but he needs to be qualified as
20 an expert..

21 THE COURT: All right.

22 MR. REARDON: I think we both agree -- that's fine.
23 Your Honor, I'd offer Mr. Abatta as an expert in the field
24 of engineering.

25 THE COURT: All right. He's qualified as an expert

1 in the field of engineering.

2 Ladies and gentlemen, let me briefly speak to you
3 about expert witnesses. Normally, when a witness
4 testifies at trial, they have to testify about what they
5 saw, heard or smelled or something of that sort; however,
6 there's an exception for people we call expert witnesses.
7 A person who's qualified as an expert in a particular
8 field because of their training or their knowledge or
9 their experience is allowed to testify in the form of an
10 opinion, okay. Just because an expert gives an opinion
11 doesn't mean you to have accept that opinion. You simply
12 use that in consideration of all of the evidence and give
13 it the weight and credibility you believe it deserves.

14 MR. REARDON: Thank you, Your Honor.

15 BY MR. REARDON:

16 Q I'm going to hand you something, if you would the
17 help us with --

18 A Sure.

19 Q -- your opinions based on this, sir, generally.
20 Here's a pen here and just hold that for a second.

21 MR. REARDON: Your Honor, can he step down?

22 THE COURT: Yes.

23 BY MR. REARDON:

24 Q You speak loud enough, we'll let you out. If you
25 would tell us, generally, mark maybe the area of the

1 house for the jury to understand, where the stairs are,
2 where the deck is and give us an idea what we're talking
3 about?

4 A I can do that, yes. So this is the outline of the
5 house here. There is a wooden deck that was built on the
6 outside of the house here (indicating). This side here
7 running up to the deck (indicating). This is really the
8 north side of the house, the south side, east and west
9 (indicating). There is a what I would determine as what
10 we call a ledger board that's applied or attached to the
11 house with fasteners. That ledger board is the cause of
12 this collapse.

13 I feel at this point on the south side of the house,
14 the board from a series of wood rotting disconnected from
15 the fastener causing a lateral force in the deck to move
16 in this direction (indicating) pulling the other two out
17 of the wall.

18 Q Alan, for the jury's purpose since they have not seen
19 the deck, how many fasteners are holding up this deck?

20 A There's three fasteners.

21 Q So there's three fasteners holding up the ledger
22 board and the entire deck?

23 A That's correct.

24 Q Are there two --

25 A On this end.

1 Q I'm sorry.

2 A On the other end, we have two posts. There's a post
3 here and a post here. That's connected as well.

4 Q And if I were to show you a photograph marked as
5 Exhibit No. 10 Exhibit No. 11 -- you can sit back down.

6 Thank you.

7 A (The witness complies.)

8 Q This appears to be a photograph of a post. Is that
9 the post we're talking about?

10 A That is the post, yes, sir.

11 Q And that's photograph No. 10. Then photograph No.
12 11; is that, also, the post?

13 A That is. One on each end of the deck.

14 Q And does No. 11, the one to my right, show how it is
15 fastened on the deck onto the post?

16 A If I -- it's hard to see any fasteners at all, but I
17 think in the report it said that there was screw
18 fasteners.

19 Q Okay. And how many did you see or how many did the
20 report indicate were holding up this deck?

21 A I see maybe one.

22 Q All right. What would you expect when you have two
23 leg or two posts holding up a deck of this nature, how
24 many should be into the deck itself and how would you
25 attach it based on engineering standards?

1 A I would say, at least, four fasteners per post and
2 you would need to have a more positive connection other
3 than the screws. It would have to be a bolted connection.

4 Q Is this a code violation to have only two posts and
5 then having three fasteners into the wall as this was
6 built, whether it's 25, 35 or 45 years ago?

7 A The posts are within code, but the fastening to the
8 wall is not within code. It's nailed into it. This
9 ledger board I just mentioned and that's against code.

10 Q And that is a code violation at all points in time,
11 that didn't change in the last 20 years or 30 years?

12 A That's correct.

13 Q All right. As far as the actual posts are concerned,
14 it's your testimony it should be, at least, four screws
15 going into the post on all four corners and rest flat onto
16 the decking itself?

17 A That's correct, yes.

18 Q All right.

19 A And these bolts would prevent lateral movement of the
20 deck.

21 Q Okay. Is there flashing that's added to a deck when
22 it's built or attached to a home?

23 A There should be if it's by code. Again, flashing is
24 required when you place the ledger board onto your house.

25 Q If I'm using this graph, could you tell us generally

1 where the flashing would be on this deck?

2 A So the flashing would go on the wall of a house and
3 then drape over the top of the ledger board and then down
4 to face the ledger board. If I would to draw it in a
5 section view -- if you don't understand, like a section
6 view of this area. I can probably draw it around here.
7 You have your -- the wall of the house and then you have
8 this ledger board that's nailed or fastened into the wall.
9 And then your flashing would go over the top of the ledger
10 board and down facing the ledger board.

11 Q And what is the purpose of flashing?

12 A Flashing prevents water from getting in behind the
13 wall of the building and the ledger board.

14 Q And is flashing used not only decks, but other parts
15 of the exterior of the house?

16 A Yes, they are. Your roof has flashing for the same
17 purpose, to prevent water from getting inside your home.

18 Q Is it obvious to a residence builder, a licensed
19 residential building that flashing should be included on a
20 deck to prevent this issue of rotting or water
21 accumulating?

22 A In my professional opinion, I believe that is true,
23 yes. You should know that.

24 Q What is flashing made out of?

25 A Flashing is usually made out of a metallic material.

1 Q In the pictures you've seen and the way this deck is
2 built, would the flashing be visible to an inspector, a
3 person walking on the deck, a residential builder?

4 A Yes, because it's -- the exterior of the house is
5 brick, so your flashing -- excuse me, let me stand up
6 again. Your flashing goes into the brick here. What you
7 call a rivulet, that goes into the brick above the deck.
8 The deck goes here (indicating), so the flashing is above
9 to deck. So you would see the flashing at that point.

10 Q Okay. We've heard testimony of all different types
11 of folks on this deck. Can you give the jury an idea of
12 what -- I think it was a 10 by 10 deck. How much weight
13 is this deck supposed to support based on the design and
14 calculations that you perform?

15 A Okay. Well, typical building codes require that an
16 outdoor deck carry 40 pounds per square foot loading, live
17 loading. And then based on the materials that you use for
18 building the deck, another 10 pounds. So a total of 50
19 pounds per square foot. Over the size of this deck, being
20 a 10 by 10 deck, that would be a total weight of 5,000
21 pounds.

22 Q So we're clear, it should hold 5,000 pounds, but
23 whether it's grills or whatever else is out there?

24 A Whatever is out there, that's correct.

25 Q Okay. All right.

1 A And if you're from the north, it would be snow.

2 Q Okay.

3 (Laughter.)

4 Q Tell the jury why and how this deck collapsed. And
5 if you need to come down and show based on either your
6 graph here or photographs here.

7 A I will probably -- let this preface what I'm going to
8 tell you next.

9 Q Can you do it from there?

10 A I can't do it from here as well.

11 Q No. Go ahead. That's fine.

12 A In my opinion, what happened here is that because we
13 already know that the ledger board had some wood rot in
14 it, the report said that, and photographs -- if you want
15 to show the photographs.

16 Q Tell us and I will show them.

17 A Okay. It showed rotting to be on this side. But
18 because there's no flashing, I'm assuming there was
19 rotting across this whole thing. It would make sense
20 because the water doesn't just stay in one area. It goes
21 across the whole ledger board. So what I'm seeing is that
22 the board, this two-by-ten or two-by-eight board was
23 rotted at the point where it's fastened. The board pulled
24 through the fastener, fell down, and thereby causing the
25 other part of the board to come out of the wall.

1 Q Let me show you Exhibits No. 8 and No. 9. We'll
2 start with No. 8. Can you tell this jury what this show
3 here?

4 A So this is the ledger board right here and it goes
5 down the whole length of the home. These are what we call
6 band joists that are holding up the deck. What I see here
7 is more than rot. This is more like a punk wood. That
8 indicates over time -- and I'm talking about a couple
9 years here, maybe three, maybe five, where water has
10 infiltrated here and just caused it to decay or
11 deteriorate at that point. There's other signs of water
12 damage in the cracking of the members themselves.

13 Q Let me show you what's been marked as Exhibit No. 9,
14 being the stair casing. Does that show you any idea -- or
15 bottom and top, as to whether there's any rotting or decay
16 in these photographs?

17 A Okay. So -- and again, this is like the same picture
18 we saw there, basically. This ledger being right here.
19 You can see where the wood is split off from the decking.
20 There's nails sticking through here, so the wood is gone.

21 Q Okay.

22 A On the stairs here, the stringer, the stair stringers
23 that support the steps of the stairs, there's no support
24 underneath at this point. So when you step on it, it's
25 going to run flat down and cause cracking as well.

1 Q All right. As far as the boards pulling out -- I'll
2 refer from the right side to the left side. So we start
3 from the right, the boards are pulling out and then the
4 middle and then the left side. So it's a sequence; is
5 that correct?

6 A Yeah, some type of sequence. I'm assuming -- my
7 opinion is that it started on the right side and worked
8 it's way across. Because once you lose your holding
9 power, it's like a three-legged stool, you take one leg
10 out, it's not going to hold the stand up. It's just too
11 much weight.

12 Q In the photographs that you looked at, did you see
13 one that showed where the fastener was still in the wall
14 and then another photograph where the fasteners were not
15 in the wall?

16 A I did.

17 Q What does that tell you?

18 A What that tells me is that, again, on the right-hand
19 side, that fastener was still in the wall --

20 Q For the jury's purpose --

21 MR. REARDON: These are all marked as one. Did you
22 mark them?

23 THE COURT: Introduced as the next in order.

24 MR. REARDON: Exhibit No. 16, Your Honor.

25 (WHEREUPON, Plaintiff's Exhibit No. 16 was

1 admitted into evidence.)

2 BY MR. REARDON:

3 Q Exhibit No. 16 shows -- tell us what that is.

4 A So this is the fastener -- looking at it this way;
5 this is the fastener that I'm talking about on the
6 right-hand side. It's still in the wall, so it's still
7 connected. But what you see here is rusting down the
8 fastener. This is where the wood piece would have been.
9 The wood piece is gone because it pulled through -- it
10 pulled through the fastener. That's the one that's on
11 this side.

12 Q That would have been the first bolt on the right-hand
13 side; is that correct?

14 A That's correct.

15 Q And based on -- I mean, your opinion is because the
16 bolt is still in the wall that the wood pulled off of the
17 bolt because it was decaying or deteriorating?

18 A Or it pulled right through it.

19 Q Okay.

20 A I mean, it could have gone vertically or
21 horizontally.

22 Q All right. What conditions did you see were changing
23 over a period of time in this deck that would have given
24 rise to either an inspector or a home owner to realize
25 that it was beginning to deteriorate and rot?

1 A Well, there was some -- excuse me, the stairs -- the
2 steps gave it away a lot because they seemed to be
3 subjected to a lot of wear and tear. You can tell when it
4 happens. When you get moisture on wood, it just tends to
5 crack.

6 Q If I'm showing No. 5, where would you say it would
7 give rise?

8 A Yeah, on the stringer and on the treads here.

9 Q So the bottom photograph on No. 5, the outside of
10 each of the steps and then the stringer which holds the
11 steps in place?

12 A Right.

13 Q Do you see rot there?

14 A I do see rot there, yes.

15 Q Do you see any regarding the actual nails that are
16 there?

17 A Maybe not technically rot, but deterioration, I would
18 say.

19 Q Let me show you Exhibit No. 11. If we look at
20 Exhibit No. 11, do you see an issue with screws -- or, I'm
21 sorry, nails coming out or wood cracking in this
22 photograph?

23 A Well, you do see the nails from the railing.

24 Q Okay. And that would be the top of Exhibit No. 11?

25 A Yes, that's correct.

1 Q All right. Did you get a chance to read -- let me go
2 back, if Mr. Marshall had done -- as a licensed builder
3 had looked at this deck and done any sort of visual
4 inspection or, actually, going under the house for an
5 inspection, would he have, number one, figured out that it
6 was deteriorating?

7 A The only way you could really tell if it wasn't
8 visible from the outside was by doing some, you know,
9 sound testing or poking with a sharp object, which,
10 normally, inspectors do to determine if you have wood rot
11 or not.

12 Q So the wood rot itself -- in order to determine the
13 wood rot, you would have had to tap underneath it?

14 A Right, or right on it. Hit it with a hammer or some
15 kind of a sharp instrument.

16 Q If you had looked at the deteriorating circumstances
17 of the boards, the steps, the areas where --

18 A Railing.

19 Q The railing, would that have lent Mr. Marshall, a
20 license builder, an opportunity to realize the deck was
21 deteriorating?

22 A In my opinion, yes, he should have done that.

23 Q Did you get a chance to read the opinion of Luis
24 Mariaca?

25 A From his deposition?

1 Q Yes.

2 A I did go through it, yes.

3 Q Okay. In his opinion, he believes that it fell from
4 the other side, that it started on the left, then fell to
5 the right; is that correct?

6 A That's what he's opining, yes.

7 Q And he believes that it was not due to rot, it was
8 due to the design of the deck; is that correct?

9 A That's correct.

10 Q Okay. Do you disagree with that?

11 A I do disagree with that.

12 Q And engineers disagree?

13 A They do at times, sure.

14 Q You both work together on some cases and agree, and
15 other cases, you don't; is that correct?

16 A That's correct.

17 Q All right. Is it your opinion that a person
18 qualified to be residential licensed builder should have
19 recognized, number one, that there was no flashing?

20 A Yes.

21 Q Number two, that the deck was deteriorating?

22 A Yes.

23 Q Number three, that there was water beginning to
24 accumulate in areas on the deck, whether it was steps,
25 boards under the deck itself?

1 A Yes.

2 Q And it's your opinion that the deck gave out due to
3 the rotting and deterioration of the deck?

4 A One hundred percent.

5 MR. REARDON: Thank you very much.

6 THE COURT: All right. Mr. Ellis.

7 DIRECT EXAMINATION

8 BY MR. ELLIS:

9 Q Mr. Abatta, I'm Todd Ellis. I present Cristian
10 Reyes, one of the Plaintiffs in the case. Let me ask you
11 one more thing. As a layperson, when I pick up this
12 chair and it's got four posts on it, I know that if only
13 the front two are there and not the back two, that chair
14 is not going to support my weight or anybody else's
15 weight. I understand that.

16 A That's correct.

17 Q As a residential builder, a licensed residential
18 builder, forget about whether he's inspecting, forget
19 about whether he's going by with an eye and it says I'm
20 looking specifically for defects in this case, when you
21 walk by it, should Mr. Marshall have known that that wood
22 could contribute with water deterioration and decay, the
23 lack of four posts, two on the back, could cause a greater
24 risk that it could fall?

25 A I would say so, yes.

1 Q In fact, almost anyone walking by there without
2 inspection, knowing that no two back poles existed, should
3 know that that could lead to a greater danger to that
4 deck?

5 A Yes, sir.

6 Q Just to be clear, at no time, no time, was it ever
7 proper within the codes or otherwise construction -- in a
8 contractual manner professionally to build a deck where
9 you latch those with anchors into the wall, at no time?

10 A That's right.

11 Q There had to be four posts? It could be anchored
12 thereafter, but there had to be four posts?

13 A I would say yes, and I would just like to clarify
14 that. If he had attached that ledger board to some
15 substantial framing of the house, it would have been a
16 different story.

17 Q And that was not the case?

18 A That was not the case.

19 Q Again, could a residential licensed builder walk by
20 and see that?

21 A I believe so. Or, at least, go in the crawl space
22 and look.

23 MR. ELLIS: Okay. Thank you.

24 THE COURT: All right. Mr. Wlodarczyk.

25 CROSS-EXAMINATION

1 BY MR. WLODARCZYK:

2 Q Good afternoon, Mr. Abatta. How are you doing
3 today?

4 A Good.

5 Q Mr. Abatta, I just want to clarify something, it is
6 not impermissible to build the deck as it was designed for
7 this house 30 years ago, that's not your opinion is it,
8 correct?

9 A No, that's --

10 Q Well, let me rephrase that.

11 A Yes, that's kind of a --

12 Q If you had a deck 10 by 10 that had -- that was
13 measured for the load and that was mounted to the house
14 through the ledger board with four bolts or three bolts
15 that went through and through that attached the backside
16 of the house where there would be another girder, is that
17 the correct terminology, girder, another piece of wood on
18 the backside of the house?

19 A Yes.

20 Q It with be proper; is that correct?

21 A It would be proper as long as there was a positive
22 attachment to it from the joist girders to the ledger
23 board.

24 Q So the problem with this particular deck is not the
25 fact that the design itself was in violation of code, it

1 was the fact that whoever built this deck didn't use the
2 correct fasteners and didn't make sure that there was a
3 supporting member on the backside of the house when they
4 connected it; is that correct?

5 A Yes.

6 Q And I just want to -- I have a number of photographs
7 that were provided to you, about 90 something photographs,
8 did you get those and review those?

9 A I did, yes.

10 Q Aside from what you've testified to here today in
11 regard to these specific photos, are you alleging that any
12 other part of this deck due to weather or whatever, aside
13 from the ledger board, caused or contributed this deck to
14 collapse?

15 A No.

16 Q So the bottom of the stairs that you were discussing
17 that did show some deterioration, that, in itself, did not
18 cause the deck to collapse; is that correct?

19 A That's correct.

20 Q Nails popping, that was identified, that didn't cause
21 this deck to collapse?

22 A That's correct.

23 Q The way it was mounted to the posts of the far end of
24 the deck, that didn't have anything to do with this deck
25 collapsing; is that correct?

1 A The ultimate?

2 Q Yes.

3 A Ultimately, it did, yes.

4 Q Okay. And how -- how is that?

5 A Not having a positive attachment from the posts to

6 the deck. You can't attach it by wood screws.

7 Q Okay. But my understanding is if this issue hadn't

8 happened, nothing would have happened on the back end of

9 the deck; is that accurate?

10 A That's correct.

11 Q It would have still been up?

12 A I would have been.

13 Q So that narrows down what we need to talk about. My

14 understanding is that ledge board that you're referring to

15 has girders on either side, left and right side; is that

16 correct?

17 A That's correct.

18 Q During your prior testimony, we discussed this,

19 there's no way that someone just standing there outside of

20 the deck could look past the girder and see the ledger

21 board; is that correct?

22 A That's not correct.

23 Q That's not correct?

24 A No, you can go underneath the deck and see the ledger

25 board..

1 Q That wasn't my question. I'm saying if you're just
2 standing out on either the left or the right side --

3 A Okay.

4 Q -- of the deck looking at it --

5 A Right side standing at it, yes, you could see the
6 ledger board.

7 Q Okay. And if I ask a question, please, let me know
8 if it doesn't make sense to you. I'll be happy to restate
9 it. I have here what's specifically marked Defendant's
10 13. If you can identify what's in that photograph, sir.

11 A This would be -- we're looking at the backside of the
12 ledger board and the left side of the girder.

13 Q Okay. All right. And that is the area that shows
14 the wood rot that was in the ABS report; is that correct?

15 A That's correct.

16 Q And isn't it true that the only identification of
17 wood rot in the ABS report was at that particular area?

18 A As far as the report is concerned, that is correct.

19 Q And you don't have any other information other than
20 what's in the report; is that correct?

21 A That's correct.

22 Q All right. You said that you know Mr. Mariaca.
23 Basically, your opinion of him, would he be one to not
24 notate wood rot throughout an entire area or intentionally
25 omit information from his report?

1 A I would hope not.

2 Q Just based on your information, what you know about
3 him, would you think that he would do something like that?

4 A No.

5 Q Okay. Is there any reason to do something like that
6 in your profession generally?

7 A No.

8 Q You don't do anything like that either; do you?

9 A Absolutely not.

10 Q Exactly. Now, would you agree with me -- and I will
11 use this so the jury can see it at the same time. But as
12 we spoke, the girder on that side, the wood rod side would
13 have concealed this area with wood rot from the side as
14 you're looking at it?

15 A Yes. Yes, it would.

16 Q So either a layperson or somebody with a builder's
17 license, if they are standing there or just walking by and
18 looked at it, you would not notice there was any rot or
19 decay; is that correct?

20 A That's correct.

21 Q Okay. Would you, also, agree that there doesn't
22 appear to be any decay on the bottom of this ledger board?

23 A Toward the bottom, no, there is none.

24 Q Okay. So if you're underneath the deck and you're
25 looking up, what would you see? Would you see wood decay

1 if there's no decay on the bottom?

2 A You would not.

3 Q Okay. So if I understand your testimony, because the
4 stairs that were in contact with the ground showed some
5 deterioration and there was some popping nails, a
6 homeowner should do some type of scientific testing to
7 determine if there are additional problems? Scientific, I
8 just mean, using a hammer to make sound testing, et
9 cetera?

10 A I'm a homeowner, if I had a deck like this, I would
11 be doing some sound testing.

12 Q Okay.

13 A Where I would think rot would occur. And with no
14 flashing, I would say that rot would occur at that point.
15 So you would go underneath your deck, tap on that board
16 and hear a sound or you would poke it with something and
17 see if it soft and punky.

18 Q Okay.

19 A And that would tell you if you have wood rot or not.

20 Q And do you have any evidence that had that been done,
21 this particular area would have revealed anything?

22 A It absolutely would have revealed it, yes.

23 Q You're an engineer, correct?

24 A That's correct.

25 Q So you may have a different perspective on things

1 than the average homeowner; is that accurate?

2 A Yes; that's possible.

3 Q Okay. So we established that you can't see it from
4 the sides and you can't see it from the bottom and you
5 don't have actual empirical evidence that there was wood
6 rot along the entire ledger board; is that accurate?

7 A Yes.

8 Q Okay. Now, explain something. If wood rot caused or
9 contributed to this deck collapsing, why is the bolt stuck
10 in there?

11 A Because -- because of the fact that it had to take
12 additional force and once the other one let go -- you
13 know, once the other side on the -- again, on the right
14 side, once that let go, the rest -- the additional forces
15 had to come into these two bolts on the other side.

16 Q Okay. What I'm concerned about is, based on the
17 report, the only information you have is wood rot here.
18 You would agree with me that you have no information about
19 the other side with regard to rot?

20 A Right. But I did make an assumption that because of
21 the wood rot there and no flashing that water is just not
22 going to fall down in one area. It's going to fall across
23 the whole board.

24 Q Okay. But would you, also, agree that this area of
25 wood rot is not pervasive? I mean, it stops --

1 obviously, it stops in the photograph; does it not?

2 A No, sir, it's continuance.

3 Q So you're saying there's damage that goes all the way
4 down past where the anchor is, that's your opinion?

5 A That's my opinion, yes.

6 Q Okay. Okay. Without assuming, let's just go with
7 what's, actually, in the report and photographs, okay?

8 A Okay.

9 Q That --

10 A I still think in that photograph, you can see wood
11 rot.

12 Q I agree. I'm just saying you're assuming something
13 that's not in the report or in the photograph; is that
14 correct?

15 A I'm basing it on the photographs that I saw.

16 Q Okay. And did you read Mr. Mariaca's report?

17 A I did.

18 Q Not his report, his deposition?

19 A Deposition, yes.

20 Q Didn't he give a very detailed explanation of how it
21 pulled out from this side immediately. There was cracks
22 in the brick work. And described how it went through the
23 entire series --

24 A Well, when you have additional load going on, it's
25 going to crack the brick probably, yes.

1 Q So why isn't the second bolt in the building?

2 A Well, from the laws of physics and knowing the
3 condition, how you would look at the ledger beam, if you
4 get an analysis on it, the middle one has a negative
5 reaction to it because of the reaction of each side of the
6 ledger beam. So that puts a force upward instead of
7 downward on that on that fastener, the center fastener.

8 Q And you see wood rot throughout that entire ledger
9 beam in that bottom photograph; is that correct?

10 A I do, yes.

11 Q That's your opinion?

12 A That's my opinion.

13 Q And, of course, the jury is going have all these
14 photographs back and can come to their own determination
15 about your opinion. Let me ask you some other questions.
16 Flashing. And you said it before, I just want to clarify
17 it, flashing, the purpose of it is not to keep wood from
18 decaying, it's to keep water from going into your house;
19 isn't that correct?

20 A It's to keep water from attacking whatever you're
21 trying to cover.

22 Q Getting into your house, correct?

23 A That's on the roof, yes. But in this case here,
24 you're trying to prevent the water from going behind the
25 ledger board and the brick.

1 Q Correct. So you have house, you have flashing, you
2 have ledge board; is that how I understand it?

3 A No.

4 Q Okay. How do I understand it?

5 A May I stand up?

6 Q Yes.

7 A Okay. So, again, the flashing starts above the deck
8 here (indicating), comes down the brick wall, over across
9 the top of the ledger board, then down the face of the
10 ledge board. So that you don't get any water hitting this
11 area, the wall of the house and the ledger board.

12 Q Do you know what the condition of the deck was prior
13 to it falling?

14 A Other than what I saw in the pictures, I do not.

15 Q Is it possible that the crack that you're discussing
16 and the popping nails came from the back of the deck,
17 though?

18 A It's definitely possibly.

19 Q Isn't it more likely than not that nails popped out
20 and boards cracked as a result of the fall and that's just
21 the way it was?

22 A In some cases, some instances, water will do. Water
23 will tend to pop nails out of wood.

24 Q Did you read any of depositions of the Plaintiffs in
25 preparation for rendering your expert opinion?

1. A Did not.

2 Q Okay. In fact, you were retained -- or your office
3 was retained about, what, October of 2015?

4 A I believe so. I think that's the date, yes.

5 Q And as we discussed, you received an e-mail from Mr.
6 Reardon's office, basically, saying look at this report
7 and tell me if there's building code violations and wood
8 rot that caused this to collapse; is that correct?

9 A That's correct.

10 Q So you're marching orders going into this whole thing
11 a year or so after the litigation was filed was to
12 specifically find issues contrary to Mr. Mariaca's report?

13 A Not contrary to it because there are some building
14 code issues here as well.

15 Q Okay. Okay. But my point is, do you normally go
16 into an investigation with specific instructions to try to
17 find something or do you normally go into an investigation
18 with an open mind and then you render an opinion?

19 A I do that, yes. I go with an open mind not having
20 any bias at all, and then looking at the facts, then
21 determining what happened.

22 Q And no matter how great we all are, if someone
23 suggest that we're trying to look for something, not
24 saying that you can't find it, but you're specifically
25 trying to focus on it, correct?

1 A I'm not being persuaded to do that. I'm going to do
2 it based on what I see in the pictures in this case.

3 Q But had Mr. Reardon sent you an e-mail saying look at
4 this report and tell me if there was anything else that
5 may have caused or contributed to this fall, this collapse
6 could have had a different result?

7 A Could you repeat that question, please?

8 Q In other words, if someone had said look at the
9 report, look at the photos, tell me if you agree with this
10 opinion, tell me if there's something else that caused
11 this deck to collapse, you could have had a different
12 result?

13 A Yes.

14 Q The testimony of this trial from all of the
15 Plaintiffs was that up --

16 MR. REARDON: Your Honor, I don't think he can
17 testify to what the Plaintiffs said.

18 MR. WLODARCZYK: I can paraphrase.

19 THE COURT: All right. Stay within the record. Go
20 ahead.

21 BY MR. WLODARCZYK:

22 Q I don't believe that there is any testimony in this
23 case of any problems with the deck until it collapsed.
24 And I think we discussed that during the deposition. I
25 think we had several folks up here saying there were 10

1 plus people on this deck. There was no signs that it
2 wiggled or shook or was spongy or gave way up until it
3 just fell, okay. Just a layperson, homeowner, if you're
4 walking on a deck, walking around a deck, what would have
5 given that homeowner the idea that this deck was
6 dangerous?

7 A Well, if he had -- if there was some lateral movement
8 and he walked across it, that would be an indication.

9 Q There's no evidence of any movement whatsoever?

10 A Other than -- I don't think anybody would have.

11 Q Okay. So licensed builder or homeowner, you're
12 walking on a deck, nothing is giving way. Other people
13 are walking on the deck, there's nothing giving way.
14 There's no reports of any problems. That person would
15 have no basis to think that this particular deck was
16 dangerous; is that correct?

17 A That's correct.

18 Q Okay. And it's my understanding that only because of
19 some other areas that showed some wear and tear, that
20 should have given a person knowledge to go and do further
21 inspections, specifically, sound testing?

22 A That's always good for wood decks, to do inspections,
23 at least, once a year.

24 Q Is that the same as for a layperson without any --
25 would you expect that for a layperson who doesn't have any.

1 building experience?

2 A I can't answer that only because I'm not just a
3 regular layperson.

4 Q So you would expect a layperson to know that if the
5 bottom of their stairs that are in contact with water and
6 the ground shows some decay that they should hire an
7 engineer or inspector to come to their house and inspect
8 it to make sure it's not going to collapse?

9 A No, I can't say that.

10 Q If you will bear with me one minute while I check
11 with Mr. Mariaca and I'll be right with you.

12 (Pause.)

13 BY MR. WLODARCZYK:

14 Q I just want to clarify. Which side of the ledger
15 board was rotten which initially gave way in your
16 opinion?

17 A The right side.

18 Q The right side. The side near the stairs?

19 A Near the stairs.

20 Q Okay. And the photos of the other side, the left
21 side, that's furthest away from the stairs?

22 A That's correct.

23 Q Okay. Thank you. I have no further questions.

24 THE COURT: All right. Any redirect?

25 MR. REARDON: Yes, sir.

REDIRECT EXAMINATION

BY MR. REARDON:

Q Mr. Abatta, I want to ask you questions about the conditions of this deck. Would you agree nails popping off like we talked about in the photographs of the deck -- and I'm talking about areas on the deck, areas around the deck, areas supporting the deck. When you see nails that are coming out, that are popping up and stairs are loose, would you agree with me that's a dangerous situation, it's a dangerous deck for things to happen like that?

A I would agree with that, yes.

Q And the reason those things occur is what?

A Water.

Q Water. Okay. So if you're in the business of building homes?

A Yeah.

Q Building decks, surely, you would know when nails are popping out and wood is cracking that water has gotten in there, whether it's right side, left side, middle or top, water is getting into the deck?

A That's correct.

Q Water doesn't sit at one spot?

A No.

Q It moves throughout the deck?

1 A That's correct.

2 Q All right. A residential builder when he builds a
3 home uses flashing in area to keep water out; is that
4 correct?

5 A That's correct.

6 Q Wood rots, correct?

7 A That's correct.

8 Q If you don't put on a coat of weather coating and
9 don't do anything to protect the wood with flashing,
10 what's going to happen to the wood?

11 A It will eventually rot.

12 Q Okay. So it's your testimony you check your deck
13 once a year. Other laypersons ought to do it in order to
14 make sure that rotting is not occurring; is that correct?

15 A That's correct.

16 Q It would be like changing my oil every 25,000 miles;
17 is that correct? You're maintaining it; is that correct?

18 A That's correct.

19 Q If I take this as a whole and I'm looking at the deck
20 at the time it collapsed and I'm looking at the stairs and
21 I'm looking at the wood, I'm looking at no flashing, would
22 a residential builder understand this deck at some point
23 is going to rot and potentially collapse?

24 A That's correct.

25 Q All right. That's all. Thank you.

REDIRECT EXAMINATION

1
2 BY MR. ELLIS:

3 Q When you're -- and you can look at it closer if you
4 need to. I don't think you will need to here. We're not
5 talking about a residential licensed builder having to do
6 an inspection. He walks by this deck, he should see all
7 of those defects you've talked about which led to water
8 decay and the deck collapsing; is that correct, just
9 walking by it?

10 A That's correct.

11 MR. ELLIS: That's all I have.

12 THE COURT: All right. Thank you, sir. You can step
13 down.

14 Plaintiff would call their next witness.

15 MR. REARDON: Your Honor, the Plaintiff rest.

16 THE COURT: The Plaintiff rest.

17 Ladies and gentlemen of the jury, let's go ahead and
18 take a break, that afternoon break. Don't talk about the
19 case. I'll get you out here momentarily, okay? Thank
20 you.

21 (WHEREUPON, the jury left the courtroom at 2:36
22 p.m.)

23 THE COURT: Mr. Wlodarczyk.

24 MR. WLODARCZYK: Thank you, Your Honor. Your Honor,
25 at this time, the Defendants move for a directed verdict

1 on the issue of liability. I hand, Your Honor, the
2 duties.

3 The testimony was clear, they're increasing the
4 burden to the homeowner to try to get around the fact that
5 there is no duty to seek out defective conditions on this
6 property. The construction of the deck itself is not at
7 issue. It does not present any dangerous condition in
8 terms of there has not been any change in conditions in
9 this property. The sole issue is whether -- as Mr. Abatta
10 stated, is whether the alleged wood decay was the
11 contributing factor to the deck collapse.

12 He testified, specifically, that before the deck
13 fell, you would not be able to see it to the left, would
14 not be able to see it to the right. And based on the fact
15 that there was no decay underneath, you would not be able
16 to see it even if you had the duty to go underneath and do
17 an inspection. Which in this case, it doesn't matter if
18 he is a residential or if he was physical engineer or if
19 he had any other qualifications. There's is simple no
20 obligation on a possessor of land to go out and find
21 problems with something just because there's some boards
22 that look weathered or your stairs are decaying. It's
23 simply not the law. And I don't see how there's any way
24 based on what has been presented that a jury, other than
25 through these allegations there is somehow a heightened

1 standard, they're going to be able to find that there was
2 any actual reasonable knowledge to determine that this was
3 dangerous.

4 I mean, the testimony is oh, there's nails popping
5 out. Did that cause this deck to collapse? No. Is that
6 dangerous? No. The boards are splitting. Did that cause
7 this deck to collapse? No. Did that -- was that
8 dangerous? No. So what was it? What was this rot
9 besides the fact that you can't see it? It's a ledger
10 board. You can't see it from either way and that was the
11 sole reason. Well, how do you determine that? Well, if I
12 was doing what I would do, I would get a hammer and I
13 would sound testing and things like that and a residential
14 builder should do that. Well, that's just not the
15 standard. There's just no evidence, Your Honor.

16 And we can, certainly, have another expert to come up
17 and put forth a different opinion, but there has to be
18 some evidence to put that my client reasonably did not
19 recognize the dangerous condition. And the only evidence
20 of a dangerous condition in this house has to deal with
21 the bolts, improper mount. And there's no testimony that
22 he went under the deck and looked at that. And that's a
23 construction area. So if he doesn't have actual
24 knowledge, it's not an issue. There's no he should have
25 known that based on the number of bolts. It's just not a

1 requirement.. So the change in condition, the wood rot.
2 And there's just no evidence that he would have --

3 THE COURT: There's no evidence. I agree with you..
4 I understand your argument as to actual knowledge. But we
5 have the constructive knowledge issue of the change in
6 condition. Talk to me about that.

7 MR. WLODARCZYK: Constructive -- well, we know there
8 was a change in condition from the time that the deck was
9 built. And we know that based on his testimony --

10 THE COURT: Forty years old.

11 MR. WLODARCZYK: He says three to five years --

12 THE COURT: Or 20 years.

13 MR. WLODARCZYK: -- to take that amount of rot. So,
14 you know, there is testimony of that. The question is, is
15 could he have determined that there was an issue without
16 being able to see it? And there's no testimony of that.
17 The testimony is well, there were other areas of the deck
18 that had nothing to do with this collapse, and based upon
19 that, based upon says well, there's a corner that's on the
20 opposite side of where the actual issue was, he should
21 have gone further and done an inspection. And that's what
22 the law does not provide.

23 There's no duty -- there's no case law that says, you
24 know, I have to go out and search my property to find
25 hidden dangers to make it safe. There's no duty that I

1 have to repair the property. You have to be -- and from
2 what I've read -- and there's a case cited in the jury --
3 the jury charge that I presented Your Honor, I believe
4 it's the first one, the 1965 case. It talks about ditches
5 being dug and things -- that's the change in condition. I
6 mean, I don't think we're dealing with a -- you know, if
7 somebody goes on your property and digs a hole and you're
8 walking around and you should see it because it's a big
9 hole in your yard and you're oblivious, which is kind of
10 the argument here, you're just willfully not looking at
11 it, that is where the issue comes in with number two about
12 may reasonably be expected to discover. That's how you
13 mesh the fact that you don't have a duty to inspect; and
14 yet, if there's a change in condition, you have to -- you
15 can't be a blind eye. And they use some more -- it's a
16 1965, there's a little bit more harsher language of
17 failing to use common sense. But in this particular case,
18 everything that was said by their expert is that based on
19 something else that did not cause or contribute to this
20 deck collapsing, he should have done an inspection.

21 THE COURT: Should he have reasonably been expected
22 to discover the rotting deck, a 20-year-old deck, when he
23 replaced rotting boards on it?

24 MR. WLODARCZYK: There was testimony -- the only
25 testimony about that condition of the deck came from the

1 Marshalls. They said they had no knowledge of any
2 problems with the deck.

3 THE COURT: Other than the boards that he had
4 replaced.

5 MR. WLODARCZYK: The two boards that the U. S.
6 Government said you have to replace, which were on the far
7 right side.

8 THE COURT: And that's what I'm asking, is that --
9 that's evidence of a change in condition, okay. So the
10 question is, okay -- I mean, I think that's what the jury
11 could possibly find. I'm following you. I'm following
12 you. I'm sitting here looking at --

13 MR. WLODARCZYK: The argument is kind of simple --

14 THE COURT: I'm looking at the case you handed up as
15 well as the law because I think you hit it right on the
16 head as far as actual notice is concerned for licensees,
17 okay. But, you know, the law is, also, that -- let me
18 just read this to you, The defendant has a duty -- this is
19 straight out of the charge book.

20 And, of course, Mr. Reardon and y'all, I want steal
21 your thunder. I know y'all are going to address it.

22 A licensee is a person who enters the premises of
23 another with the owner's consent. A social guest is a
24 licensee. Straight out of the charge book. The defendant
25 -- a defendant has the duty to use reasonable care to

1 avoid injuring a licensee when carrying on activities on
2 the premises. In addition, a defendant has the duty to
3 use reasonable care to warn a licensee of any concealed
4 dangerous condition or activity which are known to the
5 defendant or of any change in the condition of the
6 premises which may be dangerous and which the defendant
7 should have reasonably been expected to discover; however,
8 the owner of the property has no duty to search out and
9 discover dangers or defects or to otherwise make the
10 premises safe for a licensee. The owner has a duty to
11 warn a licensee of hidden or concealed dangers of which he
12 has actual knowledge.

13 So it's kind of hybrid constructive, the way I'm kind
14 of looking at it, dealing with just the change in
15 condition.

16 MR. WLODARCZYK: The problem is, Judge, is that when
17 he prepared the boards, we have the testimony that it was
18 done while under the U. S. Housing Authority. The
19 testimony was that that was the first seven to eight years
20 of the house. The testimony from the expert was that this
21 occurred in the past three to five years. So when he
22 repaired the boards, based on their own expert's
23 testimony, this didn't occur. There wasn't a change in
24 condition. Had he done it, presuming on what their own
25 expert said, there wouldn't have been anything there

1 because this only happened in the past three to five
2 years. And that's their expert's testimony.

3 THE COURT: Okay. Got you.

4 Mr. Reardon.

5 MR. REARDON: May it please the Court, Your Honor.
6 Let me start with that one argument right there. He
7 testified he replaced several boards in the first five
8 years because they were rotting. Now, fast forward the
9 next 14, he had done darned it and he looked at it. So
10 you're talking about a man who's on notice that he's had
11 it for the first five years, this house, and he's already
12 replaced, at least, five different boards. He said three,
13 maybe five, he wasn't sure. So in five years time, that
14 means every report that's come through in those first five
15 years, he's had to do work on it. So now you fast forward
16 14 more years where there's no longer an inspection being
17 done by the housing authority and he hasn't done any.

18 So he is on notice that deck was rotting from the
19 first day they come out there. And the first five years
20 they're coming out there, they're telling him to replace
21 these boards. He replaced them those first five years and
22 then he just stops. He says I'm home free. I don't have
23 to worry anymore about the housing authority. I'm not
24 going to do anything else again. I'm going to make my
25 money on the house. I'm going to ignore the circumstances

1 of the house. Our own engineer says it is very obvious
2 from looking at this deck that the rot is everywhere, it's
3 falling apart and that it's open and obvious to anybody
4 that's inspecting this premise that the conditions are
5 changing. The flashing is a substantial issue. The nails
6 are a substantial issue. The boards being pulled up. The
7 mounting is a substantial issue. You add all of those
8 together, if any individual is doing anything in those 14
9 years, he would realize at that point that he has to do
10 something, that it is rotting, the conditions are
11 changing. It's like driving around on a tire that wears
12 out. You can look at the tire and know it's getting thin,
13 it's wearing out, it's going to blow, it's just a matter
14 of when. He looks at it. He knows it's deteriorating
15 based on the circumstances, based on this history. He
16 ignores it and, eventually, it falls down, just like a
17 tire that blows up.

18 So again, it's open and obvious. I still think he
19 had actual knowledge. He can tell us he didn't, but a man
20 that comes out there and looks at a deck that's a home
21 builder. He has lots of knowledge about the flashing and
22 the set up of the deck. So I think he -- we satisfy the
23 first one, he had actual knowledge. If we don't get to
24 that one, we go back to the second one as to change of
25 condition. The testimony was from our expert that the

1 conditions changed over time. Whether it's three years,
2 five years or the last 15 years, there was substantial
3 changing. And he said those combined did cause an
4 awareness for somebody who was inspecting the deck.

5 Lastly, Your Honor, in my original brief against a
6 memorandum in opposition to summary judgment, I cited the
7 case of Vaughan V. Town of Lyman, 370 S.C. 436, where a
8 city volunteer -- city employee voluntarily undertook an
9 inspection to repair a sidewalk not owned by the city and
10 a result of them taking over this and doing and inspection
11 and doing work on that sidewalk, they now have to do so in
12 a safe and proper manner. They're now on notice that
13 they're responsible for taking care of that area. Just
14 like this deck here, he voluntarily replaced these boards.
15 They said he had no duty. He did replace the boards at
16 some point. I think he's on notice there, also. So I
17 think he falls under that area. If we can't satisfy the
18 first two, we can look at the Lyman case and I think it's
19 pretty obvious that he undertook that duty.

20 THE COURT: Any reply?

21 MR. WLODARCZYK: Yes, Your Honor. Mr. Reardon,
22 unfortunately, looked at the case that just kind of
23 generally touched on the issue of voluntary undertaking
24 and didn't go back and search the voluntary undertaking
25 law as to summary judgment. The Lyman case was an issue

1 about summary judgment if you, actually, read the citation
2 in the Lyman case with the City of Columbia. The
3 voluntary understanding -- if you give me a second to find
4 it. There was a reason why I was asking the individuals
5 about did you have any notice, did anybody report
6 anything.

7 Essentially, there's two parts into it. And I
8 believe it was a federal case that was citing South
9 Carolina law. The voluntary undertaking says that if you
10 voluntarily undertake to do something, you can't increase
11 the risk. And there's absolutely no evidence that
12 replacing the boards resulted in this deck collapsing.
13 The second one is that the person that got injured relied
14 upon the fact that something was done and, therefore,
15 thought it was safe. None of these people, as I asked
16 them, knew what Mr. Marshall did or did not do on that
17 deck. So, therefore, because the replacing boards is not
18 an increased risk and because there was no reliance upon
19 it, the -- that particular duty does not apply. Moreover,
20 that's in an situation which states that under the common
21 law, there is no duty to act. And, therefore, if you
22 voluntarily undertake it, you're subject to these
23 restrictions.

24 In this particular situation, as with licensees,
25 renters, invitees, there is a common law duty. The law

1 tells us exactly what we have to do. So there are two
2 separate situations. I'll get the cases -- I'm sure some
3 other people want to talk, and then I'll cite those cases
4 to you which, actually, says this is inapplicable because
5 there's no increased risks and their reliance.

6 THE COURT: Okay. All right. Well, I don't need to
7 hear any other argument. I'm going to deny your motion
8 for directed verdict. I find there are enough factual
9 issues to justify the case going to the jury.

10 All right. What else.

11 MR. REARDON: Nothing from the Plaintiff.

12 MR. ELLIS: Nothing. We rest, Your Honor.

13 THE COURT: All right. The Plaintiff has rested.

14 MR. ELLIS: Can Mr. Abatta leave -- well, we'll keep
15 him.

16 MR. WLODARCZYK: We're ready to go.

17 THE COURT: What do you have?

18 MR. WLODARCZYK: We just got one, Mr. Mariaca.

19 THE COURT: Then after that, we'll have --

20 MR. WLODARCZYK: If I can just have --

21 THE COURT: Is that three or four?

22 MR. REARDON: It's three, Your Honor.

23 MR. WLODARCZYK: If I can just have a restroom break?
24 I think his testimony will take 15, 20 minutes.

25 THE COURT: Okay. You need a break now?

1 MR. WLODARCZYK: Yeah, I just need a restroom --

2 THE COURT: Okay. That's good. Do that. All right.
3 Let's do 10 minutes then.

4 (WHEREUPON, a short recess was held.)

5 THE COURT: All right. Anything else before we
6 bring the jury in?

7 MR. WLODARCZYK: No, sir.

8 THE COURT: All right. Bring them on in.

9 (WHEREUPON, the jury returned to the courtroom
10 at 3:02 p.m.)

11 THE BAILIFF: The jury is present, Your Honor.

12 THE COURT: Are you ready to proceed, Mr. Wlodarczyk?

13 MR. WLODARCZYK: Yes, Your Honor.

14 THE COURT: Call your first witness.

15 MR. WLODARCZYK: I call Parker Shields.

16 THE COURT: All right. Mr. Shields, come on around.

17 Thereupon;

18 PARKER SHIELDS, after having been
19 duly sworn, testified as follows:

20 THE CLERK: Have a seat in the witness box, please.

21 DIRECT EXAMINATION

22 BY MR. WLODARCZYK:

23 Q Afternoon, Mr. Shields.

24 A Afternoon.

25 Q Can you tell the jury a little bit about yourself?

1 A My name is Parker Shields. I went to Clemson
2 University for my Bachelor's and Master's Degree. I
3 graduated with my Bachelor's in 2011, Master's Degree in
4 2013. Both of them in civil engineering. And I currently
5 work for Applied Building Sciences and an engineer in
6 training.

7 Q Explain to the jury what an engineer in training is.

8 A It is an engineer that is not yet professionally
9 licensed. Going through the licensing process generally
10 takes about four years after completing your degree.

11 Q And when are you taking your exam to be a
12 professional engineer?

13 A In two weeks.

14 Q Okay. And how long have you been with ABS?

15 A Collectively, including internships, about three
16 years.

17 Q Okay. And do you work under the supervision of a
18 licensed engineer when you do your investigations?

19 A Yes, sir.

20 Q Okay. And in this particular instance, who were you
21 working on?

22 A Luis Mariaca.

23 Q He's present here today?

24 A Yes, sir.

25 Q It's my understanding that you were the one that was

1 present taking these that we're looking at today; is that
2 correct?

3 A That's correct.

4 Q Okay. I will be very brief with my questions. As it
5 related to the bottom of Exhibit 4, Plaintiff's Exhibit 4,
6 what does that photo show?

7 A That photo shows the -- what I'm calling the rear
8 side of the band joist, which would be the side of joist that
9 was against the brick veneer of the house.

10 Q Okay.

11 A And it's showing the south end of that joist. So if
12 you were looking at the rear of the house, it would be the
13 left side here (indicating).

14 Q Okay. And would you agree that that photo does show
15 some wood decay, wood rot on the left side?

16 A Yes, I agree.

17 Q Okay. Did you note any other wood rot or wood decay
18 on that beam throughout the entire deck?

19 A I did not.

20 Q Okay. And you were present and walked around the
21 entire deck and photographed it? How long were you there?

22 A Well, I can't say exactly. I'd have to check the
23 invoice. But I would say I was, at least, an hour.

24 Q Okay.

25 A Probably more.

1 Q Okay. And had there been wood rot or wood decay
2 similar to what's shown in that photograph on the other
3 end or throughout the beam, would you have noted it?

4 A Yes, I would have.

5 Q Would you have photographed it?

6 A Yes, most likely.

7 Q Okay.

8 MR. WLODARCZYK: I have no further questions.

9 THE COURT: Any questions for this witness?

10 CROSS-EXAMINATION

11 BY MR. ELLIS:

12 Q Mr. Shields, I'm Todd Ellis. Just a couple of
13 questions for you. I'm not an engineer. I haven't been
14 to Clemson University for educational purposes, by any
15 means, but is there anything that is between the left
16 side of this deck where you claim that that picture
17 indicates there's wood decay and the middle and the right
18 that would stop water from penetrating in that area?

19 A Penetrating what exactly?

20 Q In the wood, into the base of the house, into the
21 foundation? Is there anything mechanically, structurally,
22 is there a piece of equipment that I'm not aware of, is
23 there flashing, is there anything that would keep water
24 from running from the left to the right of the base of
25 that deck?

1 A No, I don't believe so.

2 MR. ELLIS: That's all I have.

3 THE COURT: Any redirect -- oh, I'm sorry. Go ahead.

4 CROSS-EXAMINATION

5 BY MR. REARDON:

6 Q You took photographs of the entire area. How come
7 there were no photographs taken from the right side to
8 the left side?

9 A There could be. I don't recall, but I, typically,
10 only take photographs of observations relevant to the task
11 at hand, which was determine, in this case, the cause of
12 this collapse.

13 Q Okay. And you were hired by the Marshalls to go out
14 there and investigate why this fell?

15 A No, that's not correct. I believe we were hired by
16 State Farm.

17 Q Thank you.

18 THE COURT: All right. Any redirect?

19 MR. WLODARCZYK: No, Your Honor.

20 THE COURT: All right. Thank you, sir. You can step
21 down.

22 Call your next witness.

23 MR. WLODARCZYK: Your Honor, can we take a matter up?

24 THE COURT: Yeah.

25 MR. WLODARCZYK: Out of the jury's presence.

1 THE COURT: Okay. Ladies and gentlemen of the jury,
2 if you'll head back to your jury room. I have a matter I
3 need to take up with the lawyers.

4 (WHEREUPON, the jury left the courtroom at 3:10
5 p.m.)

6 THE COURT: All right. Mr. Wlodarczyk.

7 MR. WLODARCZYK: Your Honor, I don't know why
8 Mr. Reardon asked him who he was hired by, but, obviously,
9 he knew was hired by State Farm. I watched the jury's
10 faces. I mean, it's grounds for a mistrial. I hate to do
11 it in the last end of it. But, again, Your Honor, ruled
12 beforehand there was going to be no introduction of
13 insurance questions --

14 MR. ELLIS: You should have told your witness that.
15 Mr. Reardon, let me hear from you.

16 MR. REARDON: Your Honor, his question to my engineer
17 was did Mr. Reardon hire you to go out there and make up
18 this -- give a report that said the deck collapsed because
19 of A and B. I was asking the exact same question, did you
20 get hired by Mr. Wlodarczyk to go out there and give an
21 opinion as to why the deck fell. He says, No, State Farm
22 hired me. I didn't interject that to the jury. I wanted
23 to know why he went out there and whether he was given
24 marching order, as he said to the jury earlier, that I had
25 said something in my e-mail that was improper to make an

1 opinion be developed by my expert. So I was asking the
2 exact same question, were you hired by Mr. Wlodarczyk to
3 go out there to give an opinion that this deck collapsed
4 because the Marshalls did nothing wrong. That was my only
5 question.

6 THE COURT: Hold that thought.

7 Do you have realtime?

8 THE COURT REPORTER: Yes, sir.

9 THE COURT: Can you go back and tell me how it went
10 about?

11 Because there's a difference to me with a specific
12 question versus a witness blurting it out.

13 (Pause.)

14 THE COURT: And besides, I can always issue a
15 curative instruction if I need to. We can deal with that
16 in a moment.

17 (WHEREUPON, the question and answer was read
18 back by the court reporter.)

19 THE COURT: Motion for mistrial denied.

20 Now, having said that, I can -- I have a specific
21 instruction -- the word insurance has come up once. That
22 was dealing with health insurance, as I recall.

23 MR. WLODARCZYK: Right.

24 MR. REARDON: Right.

25 THE COURT: I recall that. Now, of course, everybody

1 knows State Farm is an insurance company. I have an
2 instruction I can give about insurance being mentioned
3 during the trial. Y'all are probably familiar with it.
4 Do you want me to give that? Typically, it's my
5 experience that defense lawyers don't want it.

6 MR. WLODARCZYK: We don't want to rehash the issue.
7 I just wanted to make my motion for the record.

8 THE COURT: Sure. Sounds good. All right. Motion
9 denied. You're covered. They'll come back in here and
10 you can call your last witness.

11 Bring them in.

12 (WHEREUPON, the jury returned to the courtroom
13 at 3:13 p.m.)

14 THE BAILIFF: Your Honor, the jury is present.

15 THE COURT: Thank you very much.

16 Sorry about that, ladies and gentlemen. Thank you
17 very much.

18 All right. Mr. Wlodarczyk, you may call your next
19 witness.

20 MR. WLODARCZYK: Thank you, Your Honor. I call
21 Mr. Mariaca.

22 THE COURT: All right. Sir, come on around.
23 Thereupon;

24 LUIS MARIACA, after having been
25 duly sworn, testified as follows:

1 THE CLERK: Thank you. Have a seat in the witness
2 box, please. State your name for the record.

3 THE WITNESS: Luis Mariaca.

4 DIRECT EXAMINATION

5 BY MR. WLODARCZYK:

6 Q Mr. Mariaca, please, tell the jury about your
7 educational background?

8 A I have a Bachelor's Degree in civil engineering from
9 Bradley University. I have a Master's Degree in civil
10 engineering, also, from Bradley University in 1983. I
11 have continuing education past the Master's at USC.

12 Q And who are you currently employed with?

13 A Applied Building Sciences.

14 Q And you and Mr. Abatta do similar work; is that
15 correct?

16 A That's correct.

17 Q Are you a licensed professional engineer?

18 A I am.

19 Q And when did you obtain your license?

20 A My license about five years after my degree.

21 Q Okay. And have you testified as an expert before in
22 court?

23 A I have.

24 Q Okay. In the field of engineering?

25 A Yes.

1 Q And have you given depositions as an expert in
2 engineering before?

3 A I have.

4 Q Approximately how many depositions have you given?

5 A The past 27 years, approximately 100.

6 Q Okay. How many times have testified in court
7 approximately?

8 A Between 10 and 15 times.

9 MR. WLODARCZYK: Your Honor, at this time, we'd move
10 to have Mr. Mariaca admitted as a --

11 MR. REARDON: No objection.

12 THE COURT: All right. Without objection, he's
13 qualified as an expert in the field of engineering.

14 Ladies and gentlemen, you recall I told you about
15 expert testimony earlier, okay?

16 You're qualified.

17 BY MR. WLODARCZYK:

18 Q Mr. Mariaca, I would like to kind of leave this up
19 to you. The jury's heard a lot of information and
20 they've looked at photos. But your firm performed an
21 inspection on this property regarding this deck collapse;
22 is that correct?

23 A That's correct.

24 Q Okay. And Mr. Shields was the one that was out at
25 the premises taking photographs, making notations and

1 provided a report to you; is that correct?

2 A Yes, that is correct.

3 Q Okay. And in your position as the professional
4 engineer, it was your responsibility to make sure the
5 report was correct and you agreed with the conclusion; is
6 that also correct?

7 A Yes, I reviewed the report, signed and sealed it.

8 Q Okay. And as a result of the investigation, did you
9 reach a conclusion as to what was the cause of the deck
10 collapse?

11 A I did.

12 Q Okay. If you would just tell the jury the basis of
13 the information that you had, and then I'll ask you about
14 -- and then you can just tell the jury your conclusion as
15 well.

16 A Okay. There were three anchor bolts used to support
17 the inboard side of the deck to the house. The anchors
18 were attached to the brick veneer. Brick by definition as
19 a veneer is not a structural member. It is not designed
20 to carry any loads. By the fact that it was built and
21 attached to the brick veneer, we had a defective design or
22 a defective construction. The brick, although has
23 strength, is not required to carry any load. In this
24 case, the load that you have on the deck is substantial.
25 The way it should have been supported is on a structural

1 member, typically, inboard of the brick. So you have the
2 brick, that's just a veneer to keep weather out. Inboard,
3 inside, you have the framing, wood framing to which the
4 deck should have been attached with these anchors.

5 Q How -- how is the only way to determine if there
6 would be an inboard member to attach to inside of the
7 house?

8 A It would be to crawl under the house in the crawl
9 space or to open it up through the brick, because
10 sometimes the crawl space, it's concealed. It's not easy.
11 That would be two ways to do it.

12 Q Okay. And what methods -- if you have the two
13 members in order to secure it, what elements do you use
14 to, actually, make it secure?

15 A Okay. Mr. Abatta mentioned bolts. You use bolts
16 with nuts. They go through both structural members. The
17 band board, the joist band board, that was being called
18 ledger, to the structural member inside the house through
19 bolts with nuts and it secures it.

20 Q Okay. Did you reach a conclusion with a degree of
21 engineering certainty as to what the ultimate cause of the
22 collapse was?

23 A Yes, I did.

24 Q Okay. And that was the failure to have proper
25 bolting going through the entire and securing member on

1 the back side; is that accurate?

2 A That's the way it was built. The reason it failed is
3 because the brick spalled and failed on the left-hand
4 side.

5 Q Okay.

6 A In the middle, the anchor pulled out. On the
7 right-hand side, the anchor bolt fractured and pulled out
8 partly. So by looking at the anchors, we can tell that
9 the anchors either did their job or failed or the brick
10 veneer did its job or failed by the spalling of the
11 fractured mechanism.

12 Q I'm going to show you a photograph. I want you to
13 explain it a little bit in more detail to the jury. Would
14 you agree that your opinion as to the sequence of the
15 collapse is opposite to Mr. Abatta's?

16 A That's right, it's opposite.

17 Q Mr. Abatta's position is that there was wood rot
18 throughout the beam, that the collapse started on the side
19 nearest the stairs, and then ended on the side closest to
20 where you're sitting; is that correct?

21 A That's correct.

22 Q I've got three photographs. I think Defendant's 22,
23 23, and 25. I'm going to let you look at these. My
24 understanding, I'm putting them in sequence, is -- you
25 take a look at them. The one closest to me would be the

1 left side of the deck. The center one would be the center
2 deck. And then the right closest to you would be the
3 right side of the deck. Is that correct?

4 A That's correct.

5 Q Now, explain what is seen in those photographs to
6 show -- or to explain to the jury how you came to your
7 conclusion.

8 A This is left hand side right here (indicating). And
9 you see this other photograph that shows the brick's
10 falling. This is an anchor bolt, an expansion anchor
11 bolt, so it's got sleeves. And when you drive the anchor
12 into the sleeves, it expands. And that anchors that
13 fastener. When you have a load on the anchor and it
14 fails, you keep on loading it up, overload it, if you
15 will, this brick shows spalling, it fails. The anchor
16 remained attached to the band board and pulled out of
17 here.

18 Q And just to briefly interpret you, the anchor that
19 you're referring to that remained attached is in this
20 photograph as well?

21 A That's correct.

22 Q And that's where the wood rot is shown in the
23 photograph; is that correct?

24 A That's where the wood rot has been documented.

25 Q Okay.

1 A The left side where it says the center anchor, you
2 can see one-half, it's two halves of the sleeves, the
3 expansion sleeves, the bolt itself pulled out. This is
4 the right-hand side, the anchor bolt remained attached to
5 the brick. And there's photographs that show it bent and
6 then fractured. So this bolt did its job. This bolt did
7 its job until the brick gave way. This bolt didn't fail,
8 it did its job until it was pulled away.

9 Q And you're certain of that opinion within a
10 reasonable degree of engineering certainty; is that
11 correct?

12 A Correct. The matching evidence is on the band board.
13 Specifically, that lower picture that shows the anchor
14 still attached to the wood. Even though that is the
15 rotted end of the wood, the wood was sufficiently sound to
16 hold onto that bolt and not cause it to fail. If the wood
17 didn't decay, it rotted, the wood would have failed and
18 the anchor bolt would have remained on the wall.

19 Q There's no evidence of the wood failing in the
20 photograph; is there, as far as you can see?

21 A No, there isn't.

22 Q What's your opinion on flashing, the purpose of it
23 and -- versus what Mr. Abatta said?

24 A Flashing is provided throughout a house to prevent
25 water intrusion to the interior, what is called the heated

1 space or the sensitive members, which is untreated wood.
2 So direct any water that would otherwise penetrate into
3 the interior and direct it to the outside, to the
4 exterior.

5 Q Even if flashing was attached, is it possible for the
6 wood to still suffer water damage?

7 A Wood decks are used all of the time in residential
8 construction. The deck wood is exposed to water. Water
9 itself is not going to cause decay unless the wood is not
10 protected, either through paint or if it's not treated.
11 Now, if you have water in contact with wood for prolonged
12 amount of time, then you're going to have some
13 deterioration even if it's protected. So an example would
14 be, the stringers of the stairs that are in contact with
15 the ground. That's continuous moisture contact. That
16 will be the first location where the wood will start
17 decaying. In the deck, it's exposed to the elements. If
18 it's painted and maintained, it has long-lasting service.

19 Q Would you also agree with Mr. Abatta the fact that
20 merely observing either on the top or the sides of this
21 deck that one would not see the wood rot that is
22 identified in those photographs -- or in that photograph?

23 A Based on my discussions with Parker and the
24 photographs that I reviewed, the rot is on the inside face
25 that's in contact with the brick veneer. So from the

1 left, it is concealed by the joist girders. On the top,
2 it's concealed by the boards, the wood boards. The bottom
3 is not damaged. Only that face that we see in the
4 photograph has the decay and deterioration. So it is not
5 visible to the casual observer or guest or owner by
6 walking on the deck unless it's pulled out or unless you
7 bore through it and expose it.

8 Q And would you also agree that regarding there was no
9 evidence of the deck giving way or lateral moving or
10 wobbly or feeling spongy, would any person have reason to
11 believe that it was structurally unsound?

12 A No, there's no way to tell.

13 MR. WLODARCZYK: Thank you, sir. Answer any
14 questions these attorneys may have.

15 CROSS-EXAMINATION

16 BY MR. REARDON:

17 Q You and Mr. Abatta are working currently on one case
18 together; is that correct?

19 A Yes, we are.

20 Q This is just two engineers with different opinions;
21 is that correct?

22 A Yes, sir.

23 Q As far as his background and his engineering, you
24 would agree he's a good engineer?

25 A Yes.

1 Q Okay. Flashing prevents rotting; is that fair to
2 say?

3 A Flashing prevents water intrusion that can lead to
4 rotting.

5 Q And if you don't have something to protect the area
6 that we've referred to throughout this trial, whether it's
7 the stairs, whether it's the deck, or whether it's the
8 beam against the wall, it is not something there to
9 protect it, wood is going to rot when it is exposed to
10 raining; is that correct?

11 A No, that is not correct.

12 Q That's not correct?

13 A No.

14 Q I thought you just told us that if you don't do
15 something to protect wood on wooden decks, it's going to
16 rot or going to be exposed and have issues. Did I
17 mischaracterize your summary?

18 A You're insinuating by the question that this deck
19 would have been susceptible to the rot.

20 Q Let me start over. You testified -- I believe you
21 said that you needed to protect a deck from rain, whether
22 that was paint, correct?

23 A Yes.

24 Q Weathering, whether you put weather coating on it?

25 A Correct.

1 Q In this case, flashing in an area where water may run
2 down onto the loading board; is that correct?

3 A No.

4 Q No. Okay, so not flashing?

5 A Flashing prevents water from entering the house. So,
6 for example, when you have a deck that's level with the
7 French doors, that's a location that's sensitive where you
8 can have water intrusion. You don't use flashing to
9 protect wood, otherwise, the entire deck would be covered
10 in the flashing. It is only to protect the house and
11 water intrusion through an opening, like a French door or
12 a window that you would have flashing.

13 Q Is it your testimony there should be nothing over or
14 above this board that's holding the three bolts into the
15 house to protect it from rain?

16 A This deck is about eight inches below the French
17 doors.

18 Q Okay.

19 A So this photograph that shows the paint, the red
20 paint of the deck, so a step up, there's no risk of water
21 entering the house. So there's no real need to put
22 flashing at French doors and so forth.

23 Q Why do you suppose then there's rot on one side of
24 these boards?

25 A That looks like you have water intrusion at that

1 enter and it's a continuance contact of moisture at one
2 end.

3 Q How do you prevent that?

4 A You paint the wood or you have treated wood.

5 Q There was testimony that Mr. Marshall never painted
6 and never once put on any coating on his deck. Would that
7 lead you to believe that this deck is going to have issues
8 with rain and with rot?

9 A You -- there's a duty to maintain. You have to
10 maintain the property, paint it on a regular basis. That
11 is not a permanent condition.

12 Q There was testimony for about five or seven years the
13 housing authority did inspections, but after those five
14 years or seven years, no other inspection was done for the
15 next 12 years, no written inspections, no getting under
16 the house inspections, no weathering, no painting. Would
17 you agree then at that point, Mr. Marshall violated or
18 caused his deck to be in a condition that may cause injury
19 or a collapse?

20 A Usually, the maintenance on the decks are the boards
21 that are exposed to water. There's a duty for property
22 owners, homeowners --

23 Q Okay.

24 A -- to maintain the decks. I don't think there's a
25 duty to go looking for damage you would be able to see

1 unless you were given some type of a clue or warning to go
2 looking for it.

3 Q Let me show you Exhibit No. 5. Would you agree with
4 me that these stairs are in bad condition as far as
5 weathering, wear, tear, decay?

6 A I see decay at the bottom of the stringers. --

7 Q Okay.

8 A -- that come in contact with the ground.

9 Q Do you see any paint on those stairs?

10 A No, I don't.

11 Q Do you see any weather strips, weather coats,
12 anything on those stairs?

13 A No, I don't.

14 Q Did you see any of that on any of the deck when you
15 did your inspection and looked at these photographs?

16 A Yes, I think parts of the top surface boards have
17 paint that appear to be weathering.

18 Q Which boards are you referring to?

19 A The deck boards.

20 Q You think the deck boards were painted?

21 A Weathering, they show weathering.

22 Q Would you agree then, if there was no painting and no
23 protection put on it for 12 years that you're going to see
24 signs of rotting, you're going to see signs of decay on a
25 deck that's exposed to the elements?

1 A Yes, if it's not treated wood and the paint is
2 weathering, yes.

3 MR. REARDON: Thank you very much.

4 THE COURT: Any redirect examination or anybody else
5 from over here?

6 REDIRECT EXAMINATION

7 BY MR. WLODARCZYK:

8 Q Can you tell by the photographs whether this is
9 pressure treated wood or not?

10 A No.

11 MR. WLODARCZYK: Thank you, sir. No further
12 questions.

13 THE COURT: All right. Thank you, sir. You can step
14 down.

15 All right. The Defense can call its next witness.

16 MR. WLODARCZYK: That concludes our case, Your Honor.

17 THE COURT: Anything in reply from the Plaintiffs?

18 MR. REARDON: No, Your Honor.

19 MR. ELLIS: None.

20 MR. RILEY: Nothing.

21 THE COURT: All right. Thank you.

22 Ladies and gentlemen of the jury, we have now ended
23 the testimony and evidence phase of the trial. Given the
24 hour, it's 3:30, and, of course, I'm driving back and
25 forth from Chester this week, what I want to do -- and I'd

1 rather y'all listen to the lawyers and closing arguments,
2 plus the law that I give you tomorrow on a fresh, rested
3 mind, so we're going to go ahead and break for today,
4 okay. I want you back in your jury room tomorrow morning
5 at 9:30. We're going to have lunch for you, so don't
6 worry about lunch plans tomorrow and stuff. While you
7 deliberate, you'll be able to eat here at the courthouse.
8 It'll be good, too. Anyway, that's what your tax dollars
9 pay for, I guess.

10 Thank you so much for your service so far. Do not do
11 any independent research on the case. Don't talk to
12 anybody else about the case. Remember, you cannot discuss
13 this case until you've heard everything, and that will be
14 tomorrow after the closing arguments and after the jury
15 charge, okay. Thank you very much. Have a wonderful
16 evening.

17 (WHEREUPON, the jury left the courtroom at 3:34
18 p.m.)

19 THE COURT: All right.

20 MR. WLODARCZYK: Just for the record, renew motion
21 for directed verdict on the same grounds.

22 THE COURT: All right. You're protected, motion
23 denied.

24 MR. WLODARCZYK: Thank you.

25 THE COURT: All right. Let's talk law and charge.

1 Let me kind of -- let's -- you can hand up something
2 specific, but let me tell you what I intend on charging
3 and then if y'all want to supplement, we'll go from there,
4 or if you want to hear what I'm going to say, we'll do
5 that.

6 All right. Of course, credibility, expert witnesses.
7 Y'all want me to charge prior inconsistent statements?

8 MR. REARDON: I didn't hear anything in regards to
9 that.

10 THE COURT: Couple of you went through what was said
11 in your deposition, but we don't have to, that's fine.
12 Preponderance of the evidence. I charge the mere fact
13 that an accident occurs which results in an injury does
14 make the defendant responsible. The plaintiff must prove
15 the defendants were negligent. Okay, I do charge that. I
16 kind of crafted my own negligence charge to make it simple
17 to understand, okay. And on the duty part, that's when I
18 got to premises liability.

19 Let me read to y'all what I've crafted on this
20 premises liability dealing with licensees, which I believe
21 that your clients are under the law, and taking into
22 consideration what Mr. Wlodarczyk handed up earlier.

23 The Plaintiffs claim that an unsafe condition on the
24 Defendant's premises injured the Plaintiffs. In order to
25 recover damages for the injuries -- or their injuries, the

1 Plaintiffs must first prove by a preponderance or greater
2 weight of the evidence that an unsafe condition existed on
3 the Defendant's premises. Next, the Plaintiff must show
4 that the Defendant had actual notice of the unsafe
5 condition. Just because an unsafe condition existed, this
6 is not enough in and of itself to show that the Defendant
7 had notice of the unsafe condition.

8 A licensee is a person who enters the premises of
9 another with the owner's consent. A social guest is a
10 licensee. The Defendant has the duty to use reasonable
11 care to avoid injuring the licensee in carrying on
12 activities on the premises. In addition, the Defendants
13 have the duty to use reasonable care to warn a licensee of
14 any concealed dangerous conditions or activities which are
15 known to the Defendant or of any change in the condition
16 of the premises which may be dangerous in which the
17 Defendant should have reasonably been expected to
18 discover. However, the owner of property has no duty to
19 search out or discover dangers or defects or otherwise
20 make the premises safe for licensee. The owner has a duty
21 to warn a licensee of hidden or concealed dangers of which
22 the owner has actual knowledge.

23 MR. ELLIS: Your Honor, the only -- I'm sorry.

24 MR. WLODARCZYK: Go ahead. You're first, you're the
25 Plaintiff.

1 MR. ELLIS: The only thing I saw about that is I
2 think that duplicates the actual notice standard. It's a
3 two-tier test, which you read earlier today and you read
4 it again. At the beginning of that charge, you charge
5 about actual notice, then you go into a licensee law. I
6 think it's just more appropriate with just the licensee
7 law.

8 THE COURT: Okay. Charge unsafe condition and then
9 go straight to licensee?

10 MR. ELLIS: Yes, Your Honor.

11 THE COURT: All right. Anything on that?

12 MR. WLODARCZYK: The only issue is I think the
13 standard is dangers rather than unsafe. I think something
14 can be less than dangerous and still be unsafe. But
15 dangerous seems to be used throughout the case law, so I
16 would ask that. And I don't know if we need to, actually,
17 charge about activities -- I'm sorry, the carrying on
18 activities, have the duty not to hurt people because I
19 don't think that applies to this case. Just be having the
20 knowledge of change of condition.

21 THE COURT: I see what you're saying.

22 MR. REARDON: I had a question as to the second part
23 of the charge, Your Honor. It appears that the law is A
24 and B, and then it goes on to say in other words. I don't
25 know where that came from. Is that part of Anderson's

1 charge? That's not quoted in any of those cases. I
2 looked at it, but I could be wrong.

3 THE COURT: Yeah, it's on Page -- look at the case --
4 it's on Page 10, the duty owed to a licensee differs from
5 the duty owed to an invitee.

6 MR. REARDON: That's the law of negligence?

7 THE COURT: There's no duty to search out and
8 discover dangers or defects.

9 MR. ELLIS: In other words, it's a part of that case.

10 MR. REARDON: Your Honor, I will look at it. I don't
11 think that's -- again, I'm just wondering, is that quoted
12 in the actual case of Landry or is that just the
13 negligence --

14 THE COURT: It looks like --

15 MR. REARDON: I'd like to know if that's the correct
16 application to this case.

17 THE COURT: Let's go back to what I'm going to read
18 -- or what I'm thinking about reading. All right. I
19 define unsafe. You have to prove there was an unsafe
20 condition. Okay. That's clearly a jury issue. I mean,
21 in other words, you have to prove the duty. Of course,
22 proving the duty is under the whole theory of negligence,
23 okay. So a licensee is a person who enters -- the
24 Plaintiffs are licensees. The Defendants have the duty to
25 use reasonable care to warn a licensee of any concealed --

1 you like -- you want to say unsafe?

2 MR. WLODARCZYK: I like dangerous, Your Honor.

3 THE COURT: Concealed dangerous condition or
4 activity.

5 MR. WLODARCZYK: That's what I like.

6 THE COURT: Concealed dangerous condition or
7 activities, which are known to the Defendant or of any
8 change in the condition of the premises which may be
9 dangerous and which the Defendant should have reasonably
10 been expected to discover.

11 MR. ELLIS: Yes, sir.

12 THE COURT: That's the law.

13 MR. REARDON: Right.

14 THE COURT: Okay. Now, I have added -- maybe y'all
15 don't want me to, but I think I'm going to, and y'all can
16 argue that, but I have added the following. However, the
17 owner of property has no duty to search out and discover
18 dangers or defects or to otherwise make the premises safe
19 for a licensee. I'll offset that by saying, also, from
20 that case, the owner has a duty to warn a licensee of
21 hidden or concealed dangers of which the owner has actual
22 knowledge.

23 MR. ELLIS: I mean, Your Honor, I think that's
24 reasonable, except that in the first part of what you
25 wrote, to make the property safe for licensees. I like

1 just the actual -- doesn't have the duty to search out or
2 -- I think that's --

3 THE COURT: Just leave search out and leave it there?

4 MR. ELLIS: Leave just search out or the other phrase
5 you used. Don't say to make the premises --

6 MR. WLODARCZYK: I'm kind of lost now, Judge.

7 THE COURT: Here's what Mr. Ellis has to say. Let's
8 all follow along. We're all learning. All right. The
9 Defendants have the duty to use reasonable care to warn
10 licensees of any concealed dangerous conditions, which are
11 known to the Defendant, or of any change in the condition
12 of the premises which may be dangers and for which the
13 Defendant should have reasonably been expected to
14 discover. However, the owner of property has no duty to
15 search out and discover dangers or defects or to,
16 otherwise, may the premises safe for licensee, period.

17 MR. ELLIS: That's what I don't like, or otherwise
18 make the premises safe for licensee. I think that's not
19 -- why don't you just stop it at has no duty to search out
20 --

21 THE COURT: Discover dangers or defects, period.

22 MR. ELLIS: Then go to your other qualifications.

23 THE COURT: Then go to owner has the duty to warn a
24 licensee of hidden or concealed dangers of which he has
25 actual knowledge.

1 MR. ELLIS: Correct, that's what I think.

2 MR. WLODARCZYK: That's their whole argument, Your
3 Honor, is that they had to make the premises safe in terms
4 of all the actions, the weathering, the painting or
5 putting extra supports. That's the whole charge -- I
6 mean, that's the whole.

7 MR. ELLIS: I just think it's flat out clear that if
8 you say they don't have a duty to search and inspect,
9 period, and then go on the other. If you say to make the
10 premises safe for licensees, that's improper. That's not
11 even the law. I understand how it's qualified in that
12 sentence.

13 MR. WLODARCZYK: That's in the case, Your Honor.

14 MR. ELLIS: Where is it?

15 THE COURT: All right.. Anything else?

16 MR. ELLIS: No, sir.

17 THE COURT: All right. I'm going to charge it the
18 way I just read it.

19 Now, anything else as far as negligence or premises
20 liability y'all wish for me to charge? You know, think
21 about the jury. These aren't lawyers, trying to make it
22 as simple as possible.

23 All right. Moving on to damages then. Talk to me
24 about the -- this case, the proper elements of established
25 by preponderance of the evidence the following, past and

1 future physical pain and suffering, past and future -- was
2 there any testimony about mental and emotional pain and
3 suffering? I don't recall much, if any.

4 MR. REARDON: They said they were upset.

5 THE COURT: Okay. I'm going to get rid of that.
6 Anxiety, I don't remember any testimony about that; do
7 y'all?

8 MR. ELLIS: Yes, Your Honor. At the time of the
9 collapse, obviously, they had anxiety over their friends
10 --

11 THE COURT: Yeah. I got your medical expenses, lost
12 wages. Do y'all want me to charge economic versus
13 noneconomic damages? You want it?

14 MR. REARDON: No.

15 THE COURT: You don't care about economic damage, I
16 ain't going to charge it. Medical bills, I charge the
17 general rule. Pain and suffering, the same one that we
18 always hear. Preexisting injury, you brought up. Now,
19 which specific Plaintiff were you --

20 MR. WLODARCZYK: That was -- I believe Ms. Estrada
21 said that she had an accident two months prior. And then
22 we'd also like a mitigation charge for her on the physical
23 therapy issue failure to follow through.

24 THE COURT: You got a charge you want me to consider?

25 MR. ELLIS: Mitigation on failure to what?

1 MR. WLODARCZYK: Failure to follow through with
2 recommended therapy.

3 THE COURT: All right. So on the preexisting injury,
4 the Defendants claim that the Plaintiff, Ms. Estrada, had
5 a preexisting injury or condition prior to the date that
6 she claims the Defendant -- when she was injured. I'll
7 reword that. Is she the only Plaintiff that y'all are
8 claiming that on?

9 MR. WLODARCZYK: Yes, sir.

10 THE COURT: And I'll talk about aggravation of an
11 underlying condition --

12 MR. REARDON: If we're going do Ms. Estrada, I think
13 it's got to be she had previous injury, I don't know if it
14 was neck or back, but there was no elbow, there was no
15 knee injury. I don't know which one he's claiming.

16 MR. WLODARCZYK: Just the back.

17 MR. REARDON: Okay. Label it just the back, Your
18 Honor.

19 THE COURT: Preexisting back injury. I'll reword
20 that better.

21 MR. WLODARCZYK: All right.

22 THE COURT: Loss of enjoyment of life. I don't
23 remember any specific thing about that, or was there?

24 MR. REARDON: They testified that they have
25 difficulty doing things now as a result of the accident.

1 Pain when she --

2 THE COURT: All right. Speculative damages, charge
3 that. I'm going to talk about, of course, the sympathy,
4 the mercy, caprice, passion, all that. Can y'all think of
5 anything else?

6 MR. REARDON: Permanent injuries. I'm going to
7 introduce life expectancy on both my clients.

8 THE COURT: I have one on life expectancy charge.
9 Anything else?

10 MR. WLODARCZYK: Nothing from the Defendants, Your
11 Honor.

12 THE COURT: Okay. We'll go over it again tomorrow
13 morning, obviously, before we start.

14 Can y'all think of anything else?

15 MR. REARDON: No.

16 THE COURT: All right. Great. We'll be in recess
17 then until tomorrow morning. Y'all want to be here about
18 9:15.

19 MR. WLODARCZYK: Everybody is doing an opening and a
20 closing? How about the rebuttal?

21 THE COURT: Yeah, we'll talk about that. Again,
22 remember what I said at the outset, I hate limiting
23 lawyers because that's what y'all do all the time, but, I
24 mean, with four, I mean, come on.

25 What you want to do?

1 MR. WLODARCZYK: I want it done. Plaintiffs, I'll
2 go, then they can rebut.

3 THE COURT: So you're okay -- the question is in
4 opening then, you're okay with each one of them doing
5 there opening, then you're doing your one and done and
6 then each of them getting to rebut again?

7 MR. WLODARCZYK: I would not deprive Mr. Ellis an
8 opportunity to speak to the jury.

9 THE COURT: Okay. Sounds good. We'll see y'all in
10 the morning.

11 (WHEREUPON, Court was adjourned for the day to
12 be reconvened on Thursday, April 7, 2016.)

13 THURSDAY, APRIL 7, 2016

14 THE COURT: All right. Y'all ready? Y'all ready
15 for the jury?

16 MR. REARDON: Yes, sir.

17 MR. WLODARCZYK: Yes, sir.

18 MR. ELLIS: Yes, sir, Your Honor.

19 THE COURT: All right.

20 (WHEREUPON, the jury returned to the courtroom
21 at 9:39 a.m.)

22 THE BAILIFF: Your Honor, the jury is present.

23 THE COURT: All right. Good morning, ladies and
24 gentlemen. I hope you had a nice evening. We're going to
25 jump right into it this morning. Remember, yesterday, we

1 finished the testimony and evidence phase of the trial.
2 We're now going to move into closing arguments with the
3 lawyers having an opportunity to summarize the case from
4 their respective points of view to you. At the conclusion
5 of the arguments, we'll take just a little brief recess to
6 freshen up. I'll bring you back out here and I will then
7 charge you the law as it pertains to the issues which have
8 arisen in this case and that's the law that you must go by
9 in reaching your verdict. Please pay close attention to
10 everything that's said to you this morning. Thank you
11 very much.

12 Gentlemen.

13 CLOSING ARGUMENT BY MR. ELLIS

14 MR. ELLIS: Good morning. Well, I told you at the
15 beginning of the trial I wasn't going to thank you for our
16 service because everybody says that and you were required
17 to be here. You got that green little slip that made you
18 serve. But I told you it was, also, one of the most
19 important duties an American citizen can have, is to serve
20 on the jury. This country was founded on the ballot box
21 and this jury box. And I ask you to do really two things,
22 use your common sense and pay attention. And I can thank
23 you now because you've done that. I know you'll be
24 shocked to know that the lawyers watch the jurors just
25 like the jurors watch the witnesses and the lawyers. And

1 y'all paid attention, listened to the evidence, followed
2 the instruction of the Court. And you can go home and
3 into your community and say I served and you served well.
4 So I thank you for that.

5 The next thing, if you remember at the beginning of
6 this trial, you've seen a lot of folks since that time, is
7 I told you to remember a theme, remember a story about my
8 brother, Mark Ellis; Greensboro, North Carolina. He knew
9 he had to take the trash out on every Wednesday in our
10 little home in Greensboro. He knew that it was his duty
11 to make sure the trash inside got in the outside buckets
12 and those outside buckets got to the curb. He knew to
13 watch that. My mom would write him notes, put them in his
14 book bag, sometime leave it on the door. But my bother
15 found a way in Greensboro to go past that door or the
16 other door, to not look at the trash cans inside and,
17 certainly, even on Wednesday not take them out to the
18 curb. Then he would say I forgot or I didn't see it. I
19 didn't have actual notice that we needed to take the trash
20 out. That's what Mark was all about at that time when he
21 did that. That's what this case is all about. And I
22 think y'all have seen that.

23 It is about the difference between going I have
24 actual knowledge and looking underneath a porch, behind a
25 wall, to look at one single bolt to see that that bolt is

1 about to give way and the difference between that because
2 of wood rot and the deck fails. The difference between
3 that notice and the notice that we've heard over and over
4 again about the condition of this deck and then turning a
5 blind eye. Turning a blind eye. Failing to follow
6 reasonable bread crumbs to a trail of conclusions that
7 this deck was going to fail and hurt the people that are
8 here before you today. And I think that's what you'll
9 discussion and quickly move on from when you get in your
10 jury room. The process is easy. The Court has led you
11 along the way. These wonderful bailiffs will do the same.
12 It's not going to be hard.

13 After you hear the closing arguments, the Judge will
14 let you have that break and he'll come back and read you
15 the law. And you are the sole, sole finders of the facts
16 when you apply those facts to the law in this case. We
17 want you to do that. We're confident the Judge is going
18 to read you the law as it is. We're confident that you'll
19 apply those facts and find a verdict for our clients.

20 Now, what else happens? We talked about that burden
21 of proof, didn't we, at the beginning of the case? The
22 Plaintiffs in this case two years ago, two years ago,
23 rightfully and with pride took that burden on. And in a
24 civil case, it is their burden, our burden, to prove the
25 case. But unlike a criminal case where the defendant has

1 to be convicted on a reasonable doubt, reasonable doubt
2 theory and test, in a civil case of this nature, the Court
3 will point out to you it's the preponderance of the
4 evidence. Now, that sounds alike. What's the difference,
5 Mr. Ellis, between preponderance of the evidence and
6 reasonable doubt? It's pretty easy.

7 If you think about it in the scales of justice, you
8 know, the scales of justice are blind. They have a
9 blindfold over her. We've all seen that image of the
10 scale of justice holding two scales. Well, preponderance
11 of the evidence means that for the Plaintiffs to prevail,
12 they must only slightly have that scale go in their favor
13 to prove it more by the preponderance of the evidence
14 during that time. So when you go back and deliberate, you
15 must find that we've proven our case by the preponderance
16 of the evidence. If they stay the same, we haven't met
17 the burden. If they go in the Defendant's favor, we
18 haven't met that. We don't think you're going to find
19 that, but we rightfully and with pride take on that
20 burden. It's been two years that they've had this case
21 before them and they've tried to come here to prove that
22 to you today. And I think that you'll find they've done
23 that.

24 Now, what are you going to consider? The law. Be
25 real careful here, real careful. A lot of people are

1 going to talk about the law here in this short period of
2 time that we close, but the Judge is the one that tells
3 you exactly what the law is.

4 Now, I knew you'd be surprised, I don't get this.
5 Why -- you may be thinking to yourself, why are we here?
6 All those admissions by the Marshalls regarding that they
7 owned it, that they had the duty to maintain the deck,
8 that they were there picking up checks, that they never
9 painted, they never weathered the deck. They never did
10 all those things that they had a duty to maintain that
11 process. The deck falls, people are hurt. How are these
12 lawyers, how are these people not getting this resolved?
13 Well, the difference is there's an argument over what the
14 law says or how these facts apply to the law. So y'all
15 need to be careful when you consider how these facts apply
16 to the law. And here's what I want to explain to you.

17 First of all, someone has to be negligent. Y'all
18 have heard that term before, negligent. That means they
19 have to have a duty, which they do under South Carolina
20 law. The Marshalls, as owners of that property, have a
21 duty without regard to the folks who were there at the
22 party that night in April of 2014 because they had rented
23 that property for commercial benefit and those folks that
24 were there are licensees under South Carolina law. That's
25 why they're licensees because that's what the law says the

1 definition is. They're social guests. And a licensee,
2 they have a duty to them to not have -- to make sure they
3 guard against unreasonable dangerous conditions that they
4 knew about or should have reasonably had knowledge to know
5 about or there was a change of condition which led to --
6 they should have notified those guests. Okay, that's the
7 law. That's the law. You're going to see them argue that
8 same standard. The Judge is going to read that out in so
9 many words. I paraphrased, I didn't read it right off the
10 law book, but that's what it is. We argue to you for two
11 reasons you should easily find that the Marshalls had a
12 duty to know about, make the repair and to protect these
13 folks from that collapsing deck.

14 There's a couple of facts that I want to point out to
15 you. 19 years they owned that property, without dispute,
16 19 years. There was a period of time between five and
17 seven years in which that was a section eight housing
18 piece of property. In other words, they were enrolled in
19 a program which allowed the U.S. Housing Authority to
20 place folks with low income into that home. And as a
21 result of that, you heard what happened. Mr. Marshall sat
22 right here in this witness stand and said they made me
23 change some boards. They made me make changes. Five to
24 seven years, he was on notice from the U.S. Housing
25 Authority to make changes to that deck. But what you

1 didn't hear, folks, and that when you're in that room, it
2 might be the first thing that you think about as to who's
3 liable in this case. And that's this, how come after
4 those years that they had it with the section eight
5 housing program and those folks came in and made them make
6 repairs, there was not one thing done to that deck after
7 that period of time.

8 Why? Why did the Marshalls continue to make
9 replacements on the board on the deck? Why did the
10 Marshalls not weather the deck? Why did the Marshalls not
11 paint the deck? Why? Because guess what, that took away
12 from that \$180,000 they made in renting that facility for
13 19 years. Because that came out of their pocket. I'm not
14 going to maintain it anymore or I'm not going to do what's
15 obvious to me. And, y'all, that's the reality of it.
16 Does that make them evil? I don't think so. Does that
17 make them liable for not having maintained that property
18 and done what they knew needed to be done on that
19 property? You darn right, it does. You darn right, it
20 does. That's the law. The law.

21 One of the most telling things, almost shocking
22 things I heard and y'all picked it up was from their
23 expert who sat there and described that he believed that
24 the deck had failed because the joint on the left side had
25 rotted (indicating) and that anchor came out causing it to

1 fall. When our expert, of course, said that the anchor on
2 this side (indicating) pulled away from the deck that
3 started a collapse on this side, which then rolled over to
4 these three anchors all together. But what was telling
5 was when Mr. Reardon questioned their expert and he says
6 don't they have a duty to maintain that property --
7 actually, he didn't ask it that way. He asked, Aren't
8 they supposed to weather it? Aren't they supposed to
9 paint it? Aren't they supposed to do all those things
10 that keep the wood from rotting because of water? That
11 witness said, They have a duty to maintain that property.
12 Their own expert. Their own expert admitted everything
13 that we were just trying to tell y'all throughout this
14 trial. And that was the responsibility that was on the
15 Marshalls.

16 And what do we mean by that, to maintain? They're
17 going to tell you this, they're going to tell you that
18 actual knowledge of the dangerous condition meant that
19 Mr. Marshall had to climb under that deck (indicating),
20 look at the back board, find out that it was rotted there
21 and know of that before he had a duty to do it. What they
22 want you to believe, folks, and what they want you to
23 understand is they want you to see these -- this evidence
24 (indicating) of cracking and splitting wood, of nails
25 coming out, of water damage all over the property. They

1 want you to ignore the weathering of this deck, no paint,
2 no weather proofing, no stripping, no flashing, the rot
3 that is obvious. And they want you to say there's no way,
4 no way that Mr. Marshall with his skills as a licensed
5 residential builder could have even walked by that deck
6 and known, you know what, I may have problems with this
7 thing. This thing may be rotting.

8 It doesn't work that way. The law says you have to
9 have reasonable, reasonable notice of this. And
10 Mr. Marshall -- for goodness sake, God give him credit,
11 the man has worked for the state and then went out on his
12 own and got his own trade to be a residential licensed
13 builder. But you can't take your hat on and off. He
14 can't just be the landlord that's not a residential
15 builder when he walks by that deck. He told you he has a
16 duty to understand construction principles, to know and
17 approve the work of subcontractors. The State of South
18 Carolina ensures that he is licensed and responsible for
19 the properties in which he worked on. You can't turn a
20 blind eye. Failure to follow all of these signs and
21 symptoms and say, you know what, I just didn't see that
22 one bolt behind that one piece of wood because I didn't go
23 under the house. You have to follow the signs that were
24 there in order to do it.

25 And the other thing I want you to look at closely.

1 This is one of the small ones, but you'll have a chance to
2 look at all this. And look at everything the Defendant
3 says to look at. But this is Exhibit 25, okay. And their
4 expert said this anchor was the cause of it, that the
5 right anchor, actually, broke and did what it was supposed
6 to do. Look at this picture, folks. This picture is the
7 anchor on this side, which our expert said because of the
8 rot pulled through the wood and caused the collapse
9 initially. Well, even under their theory, we're right.
10 Look at that. That anchor is still in the wall. The part
11 of bolt that goes into the wood pulled through the wood.
12 I don't know how anyone could conclude otherwise. It was
13 shocking to see a Defense expert try to say this is the
14 anchor that caused it. The right anchor is still in the
15 brick veneer. It pulled through the wood because the wood
16 was rotted from water damage over 19 years. Over 14 years
17 since he had done anything to the deck.

18 So liability, folks, in our minds, in the Plaintiff's
19 minds, you can quickly move past that in our minds. We
20 think you're reasonable. We know you're reasonable
21 people. You're peers of these folks and us. You're going
22 see that quickly and move onto what we call the damages
23 phase.

24 So you're to have a verdict form in front of you that
25 says do you find that the Defendants were negligent and

1 responsible for the damages, if any, that these Plaintiffs
2 received? You can simply check off yes, move to the next
3 phase on that verdict form, which says, was it causally
4 related to the damages? The damages that these folks
5 suffered, were they causally related? And I can tell you
6 that I believe this is what you should consider. You'll
7 have all these forms individually, but these are the
8 summery of the medical bills for each of the parties
9 involved in the case. You won't have this back with you,
10 but you'll have the individual medical bills that you can
11 look at that.

12 Now, how do you determine damages? What do you do?
13 And at this point, I got to bring up one big issue that we
14 all know about. It's the big elephant in the room. There
15 was a question whether my client, Cristian Reyes, was on
16 the deck. There was a question. Certainly, counsel is
17 going to argue that as well. I've got a couple things for
18 you there. Number one, he described that when the thing
19 fell, he was right by the sliding glass doors. He fell
20 straight down, crawled back up into the house. I will
21 tell you that the Plaintiffs in a chaotic situation,
22 people screaming, a grill sliding down, falling coals on
23 everyone, 10 or 15 people on there, they were mistaken.
24 They were mistaken. Cristian Reyes was on that deck and
25 he was injured.

1 The other thing is, is that Mr. Riley's client, Ms.
2 Smith, who was not here today. Obviously, she's got her
3 mother. We're all sympathetic to that. She said
4 Shay-Shay was on the deck. That's his girlfriend at the
5 time. Why would he not be where his girlfriend was at the
6 time? She was on the deck.

7 Here's the other thing, don't you think a collapse of
8 the deck that everybody described as shock, anxiety, fear,
9 everybody was confident in some ways that Mr. Reyes was
10 not on that deck until I asked them to name everyone on
11 that deck. Then they weren't very confident. And that's
12 reasonable. I'm not calling anybody a liar. I'm not
13 telling you that they mislead. I'm not saying that the
14 personal relationship where he no longer is dating the gal
15 that they're all related to had any influence on this
16 whatsoever. But Cristian Reyes was there and he was
17 injured like everyone else. Mr. Reyes was on that deck on
18 that evening.

19 And the other thing is this, folks, I don't know what
20 you're going to return. I'm going to make some
21 suggestions to you on this with regard to damages and what
22 the law says, but does someone go to the hospital at 2:00
23 in the morning, check out my physicians, hire an attorney,
24 incur costs, incur medical bills, see a chiropractor 16
25 times over a three-month period of time just for the

1 purposes of doing that? They put that at risk. Nobody
2 does that. Nobody does that. Mr. Reyes was there.

3 So what do you do with these damages? That's the
4 beauty of your role. Like applying the facts, you all get
5 to find out what you're supposed to -- what these folks
6 are entitled to. It's your decision and your decision
7 solely. I can tell you that medical bills, and the Judge
8 is going to charge you, are part of damages that a
9 plaintiff can retain in a case. They should be entitled
10 to their medical damages. And I would argue that all of
11 these folks should get their medical damages.

12 But that's not just the law. A finding by you all
13 that just the medical damages are to be received by the
14 Plaintiffs in the case, you know what that does? This is
15 what this does. This is a walk out of the courtroom by
16 everybody on the Defense side and they go (indicating)
17 (indicating) good job, we got them again. They only gave
18 the medical bills. That's not what the law says and
19 that's not -- that would not deter any of these activities
20 from happening again. Not at all. What they're entitled
21 to receive is pain and suffering and other medical
22 damages, including what Mr. Reardon and Mr. Riley are
23 going to talk about, permanent damages.

24 Mr. Reyes, my client, doesn't have any permanent
25 damages. He said he's fine now. So after that four-month

1 period of time, the three months he received treatment and
2 a month thereafter, he was fine. He's not having any
3 problems. I'm not arguing to you that he should receive
4 damages for a lifetime. And they're going to explain a
5 little bit further on the damages to you going forward.
6 But the beauty is you get to use a multiplier about what
7 pain and suffering is. And what I can you is that four
8 times the medical bills for each of those folks. Is that
9 reasonable? That's totally up to you.

10 Now, how would you determine that? You might break
11 it down on a daily basis. If I've got a back problem and
12 I can't bend over to brush my teeth without pain, how much
13 is that worth? How much is that worth? It's not the
14 medical bills. If I've got a shoulder and a neck problem
15 where I can't lift my kid up in the backyard and play with
16 him, how much is that worth on a daily, monthly, weekly
17 basis? I would argue that the reasonable way and easiest
18 way for y'all to do that is to take a multiplier. You go
19 to Mr. Reyes's medical bills and you say, listen, he had
20 three months where he was hurting and went to see the
21 doctor and another month there afterward. He's fine now.
22 What is that worth is that? Is that worth those three
23 months? Three times that during that time, two times
24 that, four times that? That's up to you. But I can tell
25 you the law says you must award it because you don't have

1 an injury caused by these folks without pain and
2 suffering..

3 Now, a lot of people think you hear pain and
4 suffering related to death cases. People who suffered
5 right before they died at the expense of someone else.
6 And, certainly, there is in that case, but you don't award
7 that solely in the times in which someone is lying in a
8 hospital bed with IVs in their arms. Pain and suffering
9 is discomfort, emotional distress related to that, that
10 issue, the pain that is caused. No matter what the level
11 is, it's still caused by the third party and the law says
12 you must award that.

13 So we get the liability. I think you quickly move
14 past that. You check that on the jury verdict form and
15 you get to the damages and you make the calculations. I
16 suspect and ask you to listen to Mr. Riley and Mr. Reardon
17 further about damages to determine for their clients and
18 what they should be. You should go back -- you will have
19 a way to check off that each of these folks are entitled
20 to damages and then a space to put on there what those
21 damages are. And you can calculate that down any way that
22 you wish to, but I would look at it in those forms. You
23 can look at it on a daily basis. Is it worth \$100 a day,
24 \$200 a day to have a bad back, to lay in the bed, to be
25 feeling bad because somebody else hurt you? That's up to

1 you. Look at those issues and make those determinations.
2 We trust you on that. This system is great.

3 And then the next, you know, that you need to
4 understand in this entire case is what did you not hear
5 and what's logical. I have no problem, in fact, I think
6 it's fantastic that the Marshalls have got six residential
7 homes that they rent out. And they service those homes.
8 And, certainly, he's done that, fixed bathrooms and
9 painted the walls occasionally. And that takes work and
10 there's costs related to it. And sometime they don't get
11 paid by tenants. That's all the risk you have when you go
12 in a business like that. But they made \$182,000 over 19
13 years on this house alone. And then you take off what
14 maybe they didn't collect. And how much money did they
15 put back in for boards and minor plumbing changes and pain
16 on occasion? I don't know. That's a lot of money. All
17 of that can be decided by you.

18 I thank you on behalf of my client and on behalf of
19 the judicial system for taking part in this process. If
20 you please would listen to Mr. Reardon and Mr. Riley.
21 Thank you.

22 THE COURT: Thank you, Mr. Ellis.

23 Mr. Riley.

24 MR. RILEY: Thank you, Your Honor. May it please the
25 Court?

1 THE COURT: Yes, sir.

2 CLOSING ARGUMENT BY MR. RILEY:

3 MR. RILEY: Two years ago, when Tyrone, Carletta and
4 Khalilah filed a lawsuit in this case, they put three
5 words at the top of page below the heading, jury trial
6 requested. They put those three words at the top of that
7 page because they wanted all of you. They knew that one
8 day, it could be very likely they could end up in this
9 courtroom with 12 of their peers deciding their case and
10 that's what they wanted.

11 It's often said that jurors spend a lot of time
12 watching attorneys during the trial. Well, the attorneys
13 watched the jurors, too, and I've watched all of you this
14 week. I've watch all of you pay close attention to all of
15 the evidence that's been presented. You paid attention to
16 all of the photographs. You watched all the witness
17 testimony in detail. Tyrone, Carletta and Khalilah thank
18 you for giving them their day in court.

19 Tyrone, Carletta and Khalilah are all good people.
20 They're good parents. They're hard-working people.
21 They're responsible people. Tyrone and Carletta have
22 three children together. Tyrone worked two jobs in April
23 of 2014. He worked at McDonald's and Miller Painting to
24 provide for his children. Carletta works with people and
25 helps people that are unable to help themselves. She

1 helps feed them. She helps clothe them. She helps bathe
2 them. Without Carletta, those people wouldn't be able to
3 survive on a daily basis. She's got a good heart. She's
4 a good person.

5 Khalilah is, also, a mother of three. She's a small
6 business owner. She decided rather than work for someone
7 else to start her own business, a dream. She cleans
8 houses. And now she manages people and helps their dreams
9 come true in the entertainment industry.

10 Now, you might not agree with how Carletta, Tyrone
11 and Khalilah and everybody else in this courtroom
12 celebrate birthdays. You might not agree with some of
13 their life choices or what they do with their lives, but
14 their character is not on trial here today. Tyrone,
15 Carletta and Khalilah are totally innocent. They did
16 nothing to cause their injuries that they sustained at 108
17 Casbel Court on April the 5th, 2014.

18 Now, Mr. Ellis did a great job of talking about all
19 of the facts that pertained to liability and how you apply
20 them to the law. I told you at the beginning of this
21 trial that I didn't want to waste your time, that I
22 thought it was important. I don't want to spend a lot
23 have time rehashing what he talked about, but I do want to
24 highlight a few things.

25 When I got to thinking about what this case is about,

1 I was reminded of my high school principal. He was a huge
2 Beatles fan. He always had Beatles quotes in his office.
3 I sometimes ended up in his office. He always told me
4 this quote that was behind his desk. And it was, Life is
5 easy with closed eyes, by John Lennon. That's what this
6 case is about. Andrew and Linda Marshall closed their
7 eyes. They never did any inspections. They didn't want
8 to know what was wrong with that deck. They, essentially,
9 buried their heads in the sand like an ostrich.

10 You've heard a lot of testimony this week about how
11 Mr. Marshall never crawled up under that deck. You saw
12 Mr. Ellis get down on the floor here just a minute ago and
13 talk about how he never got down there. Well, I want to
14 highlight one thing. This deck is almost three or
15 four feet off the ground. It's almost the height of the
16 railing of this jury box you see right here. It didn't
17 require him to get on his back or his hands and knees.
18 All he simply had to do was this (indicating). He's an
19 expert within the building community. He's not a
20 layperson. He's a licensed contractor. He knows the
21 codes. He knows what's needed to make the structure safe.
22 You heard the experts testify. You heard Mr. Marshall
23 testify. No flashing to protect the span joists running
24 across the back of the deck. It didn't take a close-up
25 inception to know that there was no flashing. It just

1 took the casual look, a look he never made.

2 He testified that at some point, he added these
3 steps. He said he got a subcontractor to do it, like he
4 always does. As a contractor, he's required to help the
5 subcontractor plan the building of the steps. He's
6 responsible for their work. And he's required to check
7 after them after they do the work. Look where the steps
8 are located. How could he have possibly checked behind
9 those contractors and assured they did a good job
10 attaching those steps without simply just bending under
11 and looking? If he did that, how could he not see the
12 flashing? How could he not see the anchoring system? How
13 could he not see the defect in this case? It's just
14 doesn't make sense.

15 The law requires the landowner to warn any changes of
16 condition of his property that may be dangerous to his
17 social guests. And that's what all these people that sit
18 at this table were that evening, they were social guests
19 under the laws, licensees.

20 He must also reasonably be expected, reasonably be
21 expected to discover those defects and dangerous
22 conditions. The evidence in this case is overwhelming
23 that he didn't act reasonably. He just didn't do
24 anything. Mr. Andrew Marshall admitted up here on this
25 stand (indicating), one of the last questions he answered

1 was asked of him, he admitted that he was responsible for
2 providing a safe home to his tenants. He knew that. And
3 if you look at the evidence in this case, it is
4 overwhelming that even if he knew that responsibility, he
5 didn't accept it. He did not provide a reasonably safe
6 home for his tenants and their guests.

7 I don't think the Marshalls are evil people. I think
8 they're fine people. That doesn't mean their not liable,
9 though. It doesn't mean that they didn't do something
10 wrong. And in life, a lot of good people make mistakes.
11 But when you make mistakes, there's consequences and you
12 must pay for those consequences when you make mistakes.

13 We're talked enough about liability. I think all of
14 y'all are very smart, very intelligent people who paid
15 attention. It's obvious that the Marshalls are liable for
16 the injuries that have been sustained by Khalilah, Tyrone
17 and Carletta. What I want to spend the majority of the
18 time that I left with you is talking about damages.

19 The Judge in a moment will tell you the types of
20 damages that can be awarded in a case such as this. I
21 watched all of you on Tuesday move from the first two rows
22 out there to this jury box (indicating). Your first task
23 before you sat down was to raise your right hand and swear
24 under oath to do justice as a juror, to uphold the law, to
25 uphold the law given to you by the Judge.

1 Now, some of you may have personal beliefs about what
2 types of damages should be awarded in this case, what type
3 of amounts should be awarded. You could have prejudged
4 that before you walked in here. If you allow that to
5 taint your mind when you go back in that room, you're not
6 doing justice. That is not the oath that you took. The
7 oath requires that you put those personal beliefs aside
8 and focus on the facts of this case and focus on the law.
9 There is no such thing as a small verdict or a high
10 verdict. There's only unjust verdicts and just verdicts.
11 And in order to deliver a just verdict, it must be a
12 hundred percent. You must follow the law a hundred
13 percent.

14 The first type of damage the Judge will tell you
15 about are actual damages. They're damages that are
16 intended to make a party whole in order to compensate them
17 for what they lost. In this case, it's obvious that the
18 medical bills are actual damages. Those amounts are owed.
19 Carletta, Tyrone, Khalilah, they all testified that they
20 required medical care. They went into detail about the
21 medical care they received. The facilities that
22 administered it to them. They all testified that the
23 treatment improved their injuries. That it was
24 reasonable, that was necessary. Defense counsel never
25 disputed those amounts, never disputed the treatment.

1 These damages are agreed to, they're undisputed and
2 they're owed. And your oath that you took to do justice
3 requires that you award those amounts. You won't have
4 that board back with you in the jury room. We put their
5 medical records into evidence and there's a summary on
6 top. It would be very easy for you to calculate those.

7 Now, Carletta and Tyrone, also, had lost wages as
8 part of this case. They're very small. It's not a big
9 part of the claim, but they're owed. They testified that
10 they lost work as a result of these injuries. Tyrone lost
11 three days. Three days at McDonald's, three shifts, 7.25
12 per hour, eight hours. If you add up all three of those
13 days, it comes out to \$174. He testified that he missed
14 one day of work at Miller Painting. At Miller Painting,
15 he made \$500 per week. Five days of working, that's a
16 hundred dollars per day. You take that one day, it's a
17 hundred bucks. So Tyrone has lost wages of \$274.

18 Again, defense counsel never questioned them about
19 that. He doesn't dispute that. He understands they're
20 owed. He understands they're reasonable. And he
21 understands your oath requires you to, also, give them
22 those damages as well.

23 The next type of damage I want to talk you about is
24 pain and suffering. The Judge is going to explain to you
25 what that is. It's compensation that someone is owed when

1 they're injured due to someone's negligence. It's
2 compensation to compensate them for the pain and suffering
3 they experienced as a result of their injuries. Carletta
4 and Khalilah testified they were in pain for approximately
5 a month after this incident. They don't have any
6 permanent injuries. They were lucky. They acknowledge
7 that. They're not trying to hide anything from you.
8 They're not coming in here claiming permanent injuries for
9 the rest of their lives. They're honest. But just
10 because they don't have broken bones, torn tendons,
11 permanent injuries doesn't mean there wasn't any pain.

12 I expect defense counsel will get up here in just a
13 few minutes and tell you that their injuries weren't that
14 bad. They didn't have any broken bones. They don't have
15 any permanent injuries. They weren't in that much pain.
16 I ask you how could he possibly know? He didn't have
17 those injuries. He didn't lose the sleep. He wasn't the
18 one that wasn't able to push his kid in the swing. He
19 wasn't the one that was unable to go to work. He didn't
20 have to go to the various medical providers to get help.
21 He wasn't the one that didn't know what was wrong with him
22 for a period of time. For a long time, Carletta, Tyrone
23 and Khalilah didn't even know what was wrong with them.
24 They continued to get checked out and they were better and
25 they were relieved of it. But he didn't experience that.

1 He couldn't possibly know.

2 Now, Mr. Ellis told you that only awarding actual...
3 damages in this case without pain and suffering would be
4 somewhat of a victory for the Marshalls. I agree. If you
5 do that, they will simply go on with their life, continue
6 renting their houses. Defense counsel will go back to his
7 office, starting working on another file. And they will
8 soon forget what happened here today. I tell you three
9 people who won't forget, Tyrone, Carletta, and Khalilah.
10 They won't forget. This will live with them forever.
11 It's up to you to show them that you will not allow a
12 landowner to bury his head in the sand. It's up to you to
13 award a hundred percent of justice in this case. Do not
14 allow the Marshalls to simply turn a blind eye in exchange
15 for \$188,000 worth of property.

16 Now, the Judge is going to tell you and I'll tell you
17 these damages of pain and suffering are difficult to
18 calculate. It's up to you. I can't tell you what amount
19 is appropriate. You must determine what amount is
20 appropriate. What if your neighbor, what if someone you
21 know was on this deck? What if they were holding their
22 child when it collapsed without warning? What if their
23 child was covered in ashes? What if their child was hit
24 with hot embers? What if their child witnessed grills
25 coming at them without anything stopping them? What if

1 those same people had injuries they didn't know what was
2 wrong with them? What if they couldn't work? What if
3 they couldn't play with their children? What would it be
4 worth to them? I have no idea, that's up for you.

5 I can suggest to you that a range could be \$15,000.
6 Maybe that's too high. Maybe \$10,000 is too low for pain
7 and suffering on top of their medical bills. Maybe Tyrone
8 deserves a little bit more because he hurt for three
9 months instead of one. That's up to you. Maybe you just
10 use a simply multiplier, multiply it times three, times
11 five. I can't tell you what to use. But I can tell you
12 that they're owed and I can tell you that you should
13 consider them. And I can tell you that your oath requires
14 you to consider them and award them. I promise you this,
15 whatever amount you come up with when you go back into
16 that room, Tyrone, Khalilah and Carletta will be happy
17 with it. They will think it's fair. They will think it's
18 just because you did it for them. That's all they want.
19 And they have confidence in you. They know that you will
20 do your job. They know that you will uphold your oath.
21 They're confident.

22 Finally, there's one other type of damage, loss of
23 use and enjoyment. Tyrone, Carletta, Khalilah all
24 testified to activities they missed out on due to these
25 injuries. Khalilah said she couldn't push her children in

1 the swing. Tyrone said he couldn't play with his kids,
2 couldn't participate in basketball. He couldn't do the
3 hobbies that he likes to do. Carletta couldn't clean her
4 house. She couldn't play with her children. It wasn't
5 for a long period of time, but it was a certain time. It
6 was a month for Khalilah and Carletta. It was three
7 months for Tyrone. And thank goodness, they're better.
8 Thank goodness they can do those activities that they
9 missed out on for that period of time today. That doesn't
10 mean that compensation should not be considered and
11 awarded for the time that they lost as a result of the
12 negligence of Andrew and Linda Marshall. Again, this
13 damage is just as difficult to calculate as the pain and
14 suffering. I will submit to you that the loss of use and
15 enjoyment in this case is probably less than the pain and
16 suffering. Maybe it's half of that. They were unable to
17 do certain things, but they were able to do many things.
18 It's not like they were paralyzed. But I can tell you
19 that compensation is owed for loss of use and enjoyment.
20 Maybe it's \$5,000 for Khalilah and Carletta. Maybe it's
21 \$10,000 for Tyrone. Maybe it's 7,500, I have no idea. I
22 can tell you that your oath requires you to consider it.
23 All I'm asking you to do when you go back to that room is
24 administer the oath that you accepted, the oath to do
25 justice.

1 Martin Luther King said injustice anywhere is a
2 threat to justice everywhere. Show Tyrone, Carletta and
3 Khalilah when I tell them that you administered your oath
4 to do justice. Show them that you will not allow Andrew
5 and Linda Marshall to turn a blind eye in exchange for
6 high profits. Show them that you will not allow Andrew
7 and Linda Marshall to go through life easy with closed
8 eyes. Thank you.

9 THE COURT: All right. Thank you.

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

11 THE COURT: Yes, sir.

12 CLOSING ARGUMENT BY MR. REARDON

13 MR. REARDON: I should have done that before, I'm
14 sorry. Let me start with a couple of things. I
15 understand you've heard all about liability, but let me
16 tell you two quick things. In my opening statement, I
17 told you decks are not made to collapse, decks are made to
18 stand up. You're going to see all of these pictures. The
19 old adage that a picture is worth a thousand words, they
20 all tell the same thing. It doesn't matter what picture I
21 pick up today, you're going to conclude there's rot
22 everywhere throughout this deck. It's not in one spot,
23 not in one area. You heard testimony we don't think it
24 rotted on the left, only rotted on the right. Rot was
25 everywhere and you will see that in the pictures.

1 You're going to hear them say that no, the bolt is
2 what gave out, had nothing to do with the rot. They want
3 you to believe that this deck -- this house was built back
4 in the 70's, along with this deck. They want you to
5 believe for 45 years this deck was okay and, suddenly, the
6 bolt broke in half and the entire deck fell off. I tell
7 you, that's crazy. If you will look at the photographs,
8 you'll only have one conclusion, that it was rot
9 throughout the entire deck. Everybody agrees based on
10 those photographs, based on the elements that were there
11 that 20 years that he did nothing to protect the deck. We
12 wear rain jackets in the rain. You put covers across the
13 grills outside your house in the rain to protect from
14 elements. Everybody agrees that was not done in this
15 case.

16 Damages, you heard much about that. I want to tell
17 you about my clients. You saw both of my clients, Linda
18 and George Estrada. And both of them were as honest as
19 the day is long. I don't think you had issue with any of
20 them. I didn't hear defense counsel raise any cane about
21 their credibility, what they do, where they're from, who
22 they are. We have George, a war hero. He told you he got
23 his arm blown off in Vietnam. He showed you his arm.
24 He's got metal in his arm and has got a hole in his arm.
25 So if anybody questions his toughness or his credibility,

1 I ask you to shake your head and say there's no reason to.
2 He was honest. He's a tough son of a gun. He had an
3 injury in this case and I'll tell you a little bit about
4 it. Linda said she's worked for 30 years, almost 40 years
5 in the different healthcare industry. Trained, went to
6 school, and is a hard-working providing woman for his
7 wife. She's the only person that provides income in that
8 house at this point.

9 If you look at the damages, you're going to try to
10 decide what is everybody -- what are they entitled to
11 under the law. I would start with Linda. Linda had the
12 most serious injury of anybody you heard from here in the
13 last two days. I had a deposition taken of Dr. Westerkam.
14 You heard the video here for about 20 minutes yesterday
15 talking about what injuries did she have. She had a
16 broken elbow and she has nerve damage in her arm, which
17 runs down into both of her fingers and causes her numbness
18 and causes her pain. There was not a single thing in that
19 deposition that brought any question as to her injuries.
20 I asked the doctor, and I will quote to you, I asked the
21 doctor, I said, Is this going to be a permanent injury?
22 His quote was, The longer the symptoms last, the most
23 likely they are to continue to last.

24 Most likely -- more likely, that's what we're talking
25 about today. We're not asking you to come back with a

1 number of mathematical certainty. This isn't CSI where we
2 have all of these different scientists coming in. What is
3 more likely than not? What makes the most sense in this
4 case? She told you, she went to the doctor. She had an
5 MRI done. She had an EMG done. She complained of pain
6 and suffering and injuries to her arm to her doctor, to
7 her husband and to her job.

8 So now what is she entitled to for those injuries?
9 You can look at things different ways. And they both
10 testified they had permanent injuries. And I believe that
11 that, in fact, is correct based on their testimony, based
12 on the doctor's testimony and based on the damages. So
13 the Judge is going to charge you that these folks have
14 numbers as far as how long they're supposed to live. I
15 know it's crazy, but there's a book out there, a life
16 expectancy chart, that will tell you how long you're
17 supposed to live going forward.

18 Unfortunately, George, you're only expected to live
19 another 18.29 years and then you're supposed to not be
20 here any longer. So you're not supposed to be here as
21 long as your wife, who has 35 years left to live based on
22 these expectancy charts. It's unfortunate that we've got
23 to break down the days and weeks of your life, but this is
24 what the Judge is going to charge you. That's 951 weeks,
25 6,675 days. Linda is 1842 weeks, 12,900 days. The Judge

1 is going to charge you if you find that they have
2 permanent injuries in this accident, you must use those
3 numbers to determine what their injury is worth.

4 You've heard both -- two lawyers so far talk about
5 how you assign a number. The easiest way is to figure out
6 what is a person's injury worth per hour, per day or per
7 week. I just put numbers out there to help you out. If
8 you gave George a hundred dollars, just a hundred dollars
9 a week to have injuries to the shoulder that he has to use
10 everyday, injuries that he has to overcome with lifting,
11 helping his wife, doing things around the house. A
12 hundred dollars a day is \$95,000. You say \$50 a week.
13 You say I'm going to only give you \$50 a week, George,
14 that's all you're entitled to. That's \$47,000. I think
15 that's very respectful for a person who's going to have
16 this for the rest of their lives for the last 18 point 29
17 years of his life.

18 If you look at Linda, hers is much more substantial
19 with nerve injury and with a broken elbow. I used \$10 a
20 day or \$20 a day. At \$10 a day, to live with the pain in
21 her elbow and the numbness in her fingers -- she testified
22 she drops things at work. She has problems lifting milk
23 around the house, doing things around the house. For only
24 \$10 a day, that's \$129,000. If you use \$20 a day, that's
25 \$258,000 for that time period. Or you could break it down

1 to hours or week. Again, if you gave a minimum wage of
2 \$10 an hour. She's forced to have this job, to be in
3 pain, to have permanent injuries to her arm. What is that
4 worth if it's worth minimum wage? At \$10 an hour -- and
5 you can just use the work week, just use 40 hours a week.
6 You don't have to say 24 hours a day. Just use a work
7 week, at 40 hours a week at \$10 an hour, that's \$400 a
8 week. For the remaining weeks of her life, that's
9 \$700,000. I agree that's probably too much money in a
10 case like this. However, I'm telling you, when you have a
11 permanent injury, the Judge is going to instruct you, you
12 must consider the life expectancy of 35 years and 18
13 years. So consider that when you go back to your jury
14 room.

15 It's easy to get up here and throw numbers around.
16 You're going to hear Defense counsel say oh, they weren't
17 in that much pain. They should be okay. But as you
18 heard, he didn't live through this. The Marshalls didn't
19 live through this. They were there simply to enjoy a
20 birthday party with their family members. They didn't ask
21 this to happen. Liability is very clear based on any
22 photograph you take and all the testimony you heard,
23 including their own expert, who concluded the landowner is
24 responsible -- a homeowner is responsible.

25 They've denied liability for two years. They said,

1 Jerry, file your lawsuit. Come in front of 12 people, now
2 we're down to 11, and ask them to come back with a verdict
3 to make us responsible, to make us pay you for these
4 injuries. We're not going to pay it the voluntarily.
5 We're not going to settle out of court. Y'all make them
6 do it. Today is your day to do just that. Tell them they
7 are responsible for these injuries. Tell them they are
8 responsible for this deck. Tell them they're responsible
9 for folks that come to a house they rent out for 800 bucks
10 a month and make \$182,000 on and spend not a dime on the
11 deck for over 12 years.

12 I could go on and on, but I'm not going to. Mr.
13 Wlodarczyk is, actually, going to come talk to you about
14 some of these issues, then I get a chance to come back one
15 more time and conclude this case. I ask you again to
16 consider what you've heard, look at the elements, consider
17 the damages and come back with a verdict. We appreciate
18 your time. We know y'all rather be somewhere else, but
19 again, this is very, very important day. It's the last
20 day they will ever be in court for these injuries for this
21 case. They can't come back in five years or 10 years or
22 20 years and say, look, I'm still having issues. I want
23 more surgery. I need more medical treatment. They don't
24 get it. There's no more to come back.

25 And the last thing, I should have mentioned earlier,

1 Ms. Estrada was very honest with you when she told you
2 she had a car accident two months prior to this. You're
3 going to hear should you reduce some of these bills on Ms.
4 Estrada for the \$10,000. You will see 5,000, 4,000 was
5 chiropractic care, if you feel like that's not a hundred
6 responsible for the chiropractic care and you want to
7 reduce that 10 percent or 15 percent, that's up to y'all.
8 Y'all can reduce that part of the bill. The rest of them
9 are a hundred percent related. Dr. Westerkam said in his
10 deposition, I asked him for evidentiary purposes, Are
11 these injuries related? Yes, they are. Are the medical
12 bills related? Yes, they are. Are the problems she has
13 related to this fall? Yes, they are. It's clear.
14 Liability is clear, the damage is clear. All we need now
15 is 11 folks to come here in Richland County and award a
16 verdict to make the Marshalls understand this is an
17 important day for us and an important day for the
18 community. Thank you.

19 THE COURT: All right. Thank you, Mr. Reardon.

20 MR. REARDON: Thank you, Your Honor.

21 THE COURT: Mr. Wlodarczyk.

22 MR. WLODARCZYK: May it please the Court?

23 THE COURT: Yes, sir.

24 CLOSING ARGUMENT BY MR. WLODARCZYK

25 MR. WLODARCZYK: All of my photos are pinned up

1 there, so if they start flying all over the place, I
2 apologize.

3 MR. WLODARCZYK: Ladies and gentlemen, it's been a
4 pleasure being before you. A lot of people think being a
5 trial lawyer means that you're always in the courtroom
6 getting to talk to juries and Law & Order and arguments,
7 but, honestly, it's about two years of paperwork and
8 meeting some fine people that probably didn't deserve to
9 get this happen to them. I'm not saying they did anything
10 wrong in this case. They were just at a party. They were
11 sitting on a deck and the deck collapsed and they're
12 claiming they're hurt.

13 I find it interesting that everybody says well, the
14 Marshalls are just good people. I don't think they're
15 evil, but yet, they'll put the almighty dollar above the
16 safety of individuals. You haven't heard any evidence
17 about them willfully putting their head in the sand. You
18 didn't hear any evidence that they just turned a blind eye
19 and refused to look at this deck and inspect it. What you
20 heard is they had six properties dating back to the 80's.
21 What you heard is there's never been a claim against them
22 or a complaint by any of their tenants. You heard that
23 when a tenant called at any hour about a problem, they'd
24 go out and take care of it. In fact, when they got a call
25 from the tenant in this action, Mr. Marshall went out

1 there that night. He was there when the ambulances were
2 still there and they said ambulance was there within 15
3 minutes. Is that somebody who just doesn't care?

4 There was testimony that when the HVAC broke, they
5 replaced it. They had the house painted. When there was
6 an electrical or plumbing problem, they got everything
7 fixed. They got things fixed that needed to be fixed.
8 When they were told that boards needed to be replaced by
9 the U. S. Government, they replaced them without question.

10 Before we get into the real issue I think that we're
11 here about, the liability issue, I just want to address
12 two quick things. First of all, according to three people
13 who were there that night, Mr. Reyes was not on the deck.
14 I don't know if he was on that deck. The attorneys don't
15 know if he was on that deck. The Marshalls don't know if
16 he was on the deck. Ms. Estrada, Ms. Smith and
17 Ms. Williams didn't say they didn't see him, maybe he was
18 buried in the crowd. They said no, he wasn't on the deck.
19 Ms. Estrada said he was in the house. Ms. Williams said
20 in the house. Ms. Smith said he wasn't on the deck. And
21 then, she went on to name, I think, almost everybody that
22 was on the deck. She named, at least, 10 people. We've
23 got six Plaintiffs, less one, so five Plaintiffs and the
24 rest of the people that she named. She wasn't confused at
25 all. She didn't have to struggle to think who was on or

1 off the deck.

2 Also, you've got to keep in mind what Mr. Reyes said.
3 He didn't see Mr. Estrada or Ms. Estrada out there. Yet,
4 he's standing in this doorway. We know Ms. Estrada was in
5 the chair, which would have been right to his right. We
6 know Mr. Estrada was on the cooler by the stairs. That's
7 not in dispute. Everybody else -- every other Plaintiff
8 knows where every other Plaintiff was, except nobody here
9 can say where Mr. Reyes was, except in the house.

10 Mr. Reyes says that well, he was sitting in a chair
11 in front of the deck. We know Ms. Smith was standing with
12 her child, purportedly, right next to him. And she was
13 confident he wasn't there. To Mr. Reyes's other side
14 would have been Mr. Ruff and Ms. Williams. He didn't see
15 him. Granted, he said he didn't know if he was in the
16 house or not, he just didn't see him there. Saw him out
17 earlier.

18 Finally, Mr. Reyes's own story doesn't match up. He
19 says he was sitting in a chair that collapsed. He used
20 the chair to climb up to get in the house. How many
21 chairs you see on that deck? You know who was sitting in
22 the chair, Ms. Estrada. Everybody said that. We know
23 where the chair was, it was right next to the grill. The
24 grill was on the right. She was sitting there. How come
25 there's only one chair? The deck fell down, everything

1 came towards the house. Obviously, someone took that
2 picture right after the deck fell. One chair where
3 Ms. Estrada was sitting, wasn't even close to the door
4 where he could climb up in (indicating). If that's not
5 evidence that he wasn't there in addition to three live
6 witnesses who were there, two of which say he was in the
7 house. That's the credibility issue that you all have to
8 decide.

9 I'm going briefly touch on medical bills. I'm not
10 telling whether these people had pain or didn't have pain,
11 that's not my place. I wasn't there. I didn't go through
12 it, just like counsel said. And I wouldn't begin to argue
13 whether they had back pain or neck pain. The only thing I
14 find curious is you have six Plaintiffs with three
15 different law firms, who went to the emergency room, no
16 doubt about that, but then they all get sent to
17 chiropractors, various ones. And maybe that's the way
18 things are done. Ms. Estrada said in her accident before,
19 she went to a different attorney and got sent to a
20 different chiropractor. And Ms. Smith said the reason why
21 she went to the same chiropractor from her previous injury
22 is because the same law firm had used that one in the
23 past. But that's just something that you have to discuss.
24 I just find it curious.

25 Regarding the permanent injury issue, I understand

1 Ms. Estrada has the elbow issues. It's not in dispute the
2 doctor said there was a fracture and there was some nerve
3 damage, we know that. The problem is that they're seeking
4 hundreds of thousands of dollars in permanent injury,
5 saying it's never going to heal. What do recall from Dr.
6 Westerkam's video deposition? Mr. Reardon said, What are
7 some ways that he might be able to fix this issue? He
8 said, Well, maybe it will resolve on its own, maybe get
9 physical therapy. It may require surgery. What we know
10 is that Ms. Estrada was prescribed physical therapy by
11 that office, which she never went to. And I understand
12 she said she was the sole provider of her family and I
13 appreciate that, and she couldn't take off of work. Yet,
14 she was able to go to three months of chiropractic
15 treatment and not miss a day. She's missed one day of
16 work. Three months of chiropractic treatment she could
17 attend because she was sent by her attorney, but when the
18 orthopedic surgeon says PT may fix this, she didn't do it.

19 In South Carolina, there's a legal obligation for a
20 person to do what's called mitigator damages. In other
21 words, if there's a way to fix, you should, at least,
22 consider it. Surgery may not be an option. Some people
23 don't want surgery. And I can understand the argument
24 saying, you know, surgery was the only option and she
25 didn't want to do it. You could easily decide no, that's

1 not reasonable. That would not mitigate damages. But
2 we're talking about physical therapy, which is,
3 essentially, like the chiropractic treatment, just working
4 different areas. Didn't even contact the physical
5 therapist to see if they could work around her work
6 schedule. No attempt made. She said she was released
7 from her physical, and yet, Dr. Westerkam said she was
8 not. She just stopped showing up. The last appointment
9 was in October. Never released. There has been no other
10 followup with any other provider since October of 2014
11 regarding this elbow issue. No further missed work. No
12 attempts to try to get some PT. And I submit to you
13 that's a decision for you to make whether or not that's a
14 permanent injury.

15 Regarding Mr. Estrada, the only issue I have is that
16 he does get care through the VA. And, apparently, there's
17 been no attempt to even mention the issue to a doctor. He
18 says well, it's not covered under the VA when alleging
19 there's a negligence action. But I ask you, is it
20 reasonable if you have an injury and going to a doctor
21 that you wouldn't, at least, mention it to the doctor just
22 in passing? And that's a decision for you, again,
23 regarding the permanent injury.

24 The issue we have and why we are here is not the
25 extent of the injuries or the medical damages claim, but

1 liability against the Marshalls. Now, from what I've
2 heard, Mr. Ellis and some of the other attorneys, they
3 touched on liability. Nobody, actually, told you what the
4 law is the Judge is going to charge you. He told us the
5 law yesterday so we can get prepared for this. I'm going
6 to charge you with that law. You heard Mr. Ellis say,
7 well, you had an expert up there saying these are what
8 your duties are, these are what your legal duties are.
9 You had Mr. Marshall up there, you know, asking him
10 questions, what are you legal duties to your tenants?
11 This is not a landlord/tenant case.

12 The Judge will tell you -- and if anything is up
13 there that's incorrect from what the Judge says,
14 obviously, listen to the Judge, but we got a chance to
15 look at it and I think it's going to be word for word what
16 you hear in terms of what the legal obligations are for
17 the Marshalls.

18 There are various duties in South Carolina. If you
19 are a tenant, there are greater duties. Not one of these
20 people here is a tenant. The tenant, Ms. White, has not
21 filed a lawsuit. She was not here to testify. In fact,
22 she's a family member of these folks. If the Marshalls,
23 were so horrible in maintaining their property and just
24 turning a blind eye, why isn't Ms. White here to say that?
25 Because the evidence is every time she had a problem, she

1 would come -- or they would come and take care of it.

2 As stated, when you're visiting a place, it doesn't
3 matter if it was my house, the Judge's house, you're
4 considered a social guest in South Carolina. And social
5 guest in South Carolina, there's certain obligations.

6 I'm going to start off with the first one. There's,
7 actually, only two that is at issue here. To use
8 reasonable care to warn of concealed dangerous conditions
9 which are known to the Defendant. Known. Now, courts
10 have all kind of crazy ways to create duties. You can say
11 known or should have known or should have been discovered
12 through reasonable diligent search, things like that. And
13 if the duty of a known damage would -- if that involved
14 should have known or would have known had you done this,
15 it would say it. Because the Judge is going to read you
16 word for word what the law is. And I represent to you
17 that's what is going to be read to you, in addition to a
18 whole lot of other stuff.

19 So let's talk about that. Did they have knowledge of
20 a dangerous condition, actual knowledge? The testimony
21 was from Mr. Marshall and Ms. Marshall that throughout the
22 entire history of this house, they had no knowledge there
23 was any structural defect with this deck. That's the
24 testimony. They walked on the deck. They walked around
25 the deck. Tenants walked on the deck. The U. S.

1 Government came and inspected the deck. The Plaintiffs
2 have been on the deck. Some of the Plaintiffs have been
3 on the deck before. Not one complaint. If there was a
4 complaint of some problem with the deck prior to it
5 collapsing, I would argue to you, then, yeah, there's a
6 question for you all to resolve. You've got to determine
7 whether or not they had -- they turned a willful eye and
8 whether they legitimately did not have knowledge or
9 they're just lying. But here, there's no such evidence.
10 None.

11 The U. S. Government came out for eight years and
12 they met with the tenants who were there, filled out forms
13 and sent it to the Marshalls. Not one time did they ever
14 receive any information that there was any structural
15 concerns with the deck. In fact, the experts testified
16 the way the deck was constructed, at least, the design
17 would have been up to code but for not using the correct
18 bolts -- or the correct number of bolts. So the fact is
19 that there wasn't four pillars or didn't look under the
20 deck and see how many posts there are. Not apparent.
21 That's just the way it is. We know the Marshalls never
22 went under the deck. That's a fact.

23 One thing you're going to be charged with, one thing
24 that was completely omitted from all the Plaintiffs'
25 arguments, there is no duty to a social guest to search

1 out and discover dangers or defects. There is no duty to
2 inspect. The Marshalls still did maintenance like they
3 were supposed to, but there is no legal obligation in the
4 State of South Carolina for the Marshalls to do under the
5 deck and inspect how it was mounted, to conduct any type
6 of testing to determine if it was the correct structure.
7 We're only talking about construction of the deck. We'll
8 talk about the water issue after that. There's no duty.
9 Everything that you have heard in testimony from both
10 experts is that without some type of lateral movement on
11 the deck, without some type of shaking, without some type
12 of sponginess, there would be no reason for anything,
13 ordinary person or someone with experience, to know that
14 there was a problem with the structural soundness of this
15 deck.

16 And I think Plaintiffs probably know that issue is
17 not a winner. Because their expert went on to say well,
18 it's wasn't the structural design of it so much. It could
19 have used an extra bolt or two. The bolts were probably
20 wrong, but in my professional opinion, it was wood rot.
21 Why did they do that? Why not say I agree with Mr.
22 Mariaca and, you know, it was poorly constructed? Well,
23 if they agree with Mr. Mariaca, then they're out of court
24 because you took the actual knowledge issue and just lose.

25 So we had to go under the second obligation, to use