

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2010-CP-42-00462

ROBERT W. EDWARDS, JR., ...Appellant,

v.

LINDA N. JORDAN, ...Respondent.

RECORD ON APPEAL

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(864) 594-5300
Attorney for Appellant

Raymond A. Tate, Jr.
Post Office Box 2125
Anderson, South Carolina 29622
(864) 224-7111
Attorney for Respondent

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SC Court of Appeals

ORIGINAL

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 - CP- 42 - 00462

Robert W. EDWARDS, Jr.,

Linda N. JORDAN,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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 _____

IT IS ORDERED AND ADJUDGED: ☐ See order

☒ Statement of Judgment by the Court:

This matter is before this Court on motions of the plaintiff for JNOV, New Trial Nisi Additur or in the alternative New Trial Absolute. This was a civil action based in negligence tried before a jury. The jury returned a verdict in favor of the plaintiff but finding him to have contributed to his own injuries and the verdict reduced accordingly.

After consideration of the record, argument of counsel, and the applicable law, this Court finds that the plaintiff's motions should be and therefore are denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

Circuit Court Judge

2053

Judge Code

3/26/12

Date

For Clerk of Court Office Use Only

COMPUTER

5
This judgment was entered on the 29th day of Mar, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 29th day of Mar, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

William B. Darwin, Esq.
Post Office Box 1897
Spartanburg, South Carolina 29304

Raymond A. Tate, Esq.
Post Office Box 2125
Anderson, South Carolina 29622

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley
CLERK OF COURT, Hope M. Blackley
Natalie Bishop

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAR 29 PM 4:54
M. HOPE BLACKLEY

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4200462

CLERK OF COURT
SPARTANBURG COUNTY
2011 OCT 21 PM 3:28
M. HOPE BLACKLEY

Robert W. Edwards Jr. vs. Linda N. Jordan

CHECK ONE:

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a decision 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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: _____

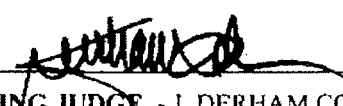
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

VERDICT FOR PLAINTIFF IN THE AMOUNT OF TWO THOUSAND NINE HUNDRED FIFTY TWO AND 60/100 (\$2,952.60) DOLLARS ACTUAL DAMAGES LESS 35% FAULT OF PLAINTIFF. TOTAL JUDGMENT TO BE ENTERED IN THE AMOUNT OF ONE THOUSAND NINE HUNDRED NINETEE AND 19/100 (\$1,919.19) ACTUAL DAMAGES

Dated at Spartanburg, South Carolina, this .

Court Reporter:


PRESIDING JUDGE - J. DERHAM COLE

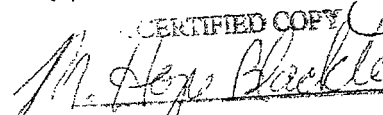
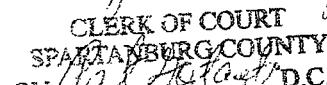
^{10/21/11} This judgment was entered on the , and a copy mailed first class this ^{10/21/11} to attorneys of record or to parties (when appearing pro se) as follows:

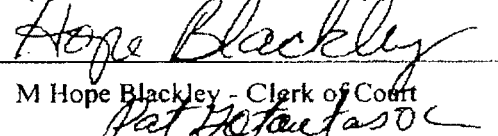
William B Darwin Jr Holcombe Bomar Gunn & Bradford,
PA P.O. Box 1897 Spartanburg, SC 29304

Raymond A Tate Doyle O'Rourke Tate & McDade, PA P.C
Box 2125 Anderson, SC 29622

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY:  D.C.
DATE: 10/21/11

M Hope Blackley - Clerk of Court


STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

ROBERT W. EDWARDS, JR.,)
)
Plaintiff,)

COMPLAINT

vs.)

C. A. No. 2010-CP-42-_____

00462

LINDA N. JORDAN,)
)
Defendant.)

(JURY TRIAL DEMANDED)

Plaintiff, complaining of Defendant, alleges as follows:

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina.
2. Defendant is a citizen and resident of Spartanburg County, South Carolina who resides at 1021 Woodburn Road.
3. Plaintiff is self-employed as a lawn care professional. For several months preceding the accident described below Plaintiff had performed various lawn care services at Defendant's property located at 1021 Woodburn Road.
4. On August 15, 2008, Plaintiff was spraying weed treatment while standing on a deck on Defendant's 1021 Woodburn Road property. Defendant had hired Plaintiff to perform this type of work and was aware that Plaintiff would need to have access to all areas of the outside of her home, including the deck area, to complete his work.
5. As Plaintiff stood on Defendant's deck, one or more of the deck's boards suddenly became detached and struck Plaintiff violently in the face, fracturing his nose and causing him to briefly lose consciousness.

6. The accident that Plaintiff suffered on Defendant's deck was caused by the negligent, grossly negligent, reckless, wilful, and wanton acts of Defendant in one or more of the following particulars:

- Failing to properly construct the deck;
- Failing to properly maintain the deck;
- Failing to repair the deck, after becoming aware of its unsafe condition;
- Failing to periodically inspect the deck, to ensure that it posed no hazard to Plaintiff or other persons whom Plaintiff invited onto her property;
- Failing to warn Plaintiff of the deck's dangerous condition; and
- Generally, failing to use that degree of care and caution that a person of reasonable prudence would have used, under the same or similar circumstances.

7. As a proximate result of Defendant's negligent, grossly negligent, reckless, wilful, and wanton acts as described above, Plaintiff has suffered various injuries and damages, including the following:

- Injuries to various parts of his body, including permanent injuries to his nose;
- Pain and suffering;
- Disfigurement;

- Loss of income;
- Medical expenses (present and future); and
- Loss of enjoyment of life.

8. Plaintiff is informed and believes he is entitled to judgment against Defendant for actual and punitive damages.

WHEREFORE, having fully pled, Plaintiff prays for judgment against Defendant for actual and punitive damages, for his costs incurred in bringing this action, and for such other and further relief as the Court deems just and proper.

HOLCOMBE BOMAR, P.A.



William B. Darwin, Jr.
Post Office Box 1897
Spartanburg, South Carolina 29304
(864) 594-5300

Attorneys for Plaintiff

January 28, 2010

Spartanburg, South Carolina

2010 JAN 27 PM 1:25

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Robert W. Edwards, Jr.,
Plaintiff,

vs.

Linda N. Jordan,
Defendant.

ANSWER

C.A. No.: 2010-CP-42-00462

JURY TRIAL

The Defendant, responding to the Complaint of the Plaintiff, would respectfully show unto the Court and allege:

FOR A FIRST DEFENSE

I.

Upon information and belief, Paragraphs 1 and 2 of the Complaint are admitted.

II.

In response to Paragraph 3 of the Complaint, it is admitted that the Plaintiff did gardening work around 1021 Woodburn Road and had worked at that location numerous times in the past.

III.

In response to Paragraph 4 of the Complaint, it is admitted that the Plaintiff had worked at 1021 Woodburn Road many times in the past and was well aware of the location.

IV.

In response to Paragraph 5 of the Complaint, the Defendant denies that the incident occurred specifically as alleged.

V.

Paragraph 6 of the Complaint is denied.

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VI.

This Defendant is without sufficient information or knowledge in order to respond to the allegations contained in Paragraph 7 of the Complaint.

VII.

Paragraph 8 of the Complaint is denied.

VIII.

Except as specifically admitted above, each and every allegation of the Complaint is denied.

FOR A SECOND DEFENSE

IX.

The preceding allegations are incorporated in and made a part of this defense.

X.

Even if the Defendant was negligent, grossly negligent, reckless, willful, and wanton, which is admitted solely for the purpose of this defense and no other, the negligence, gross negligence, recklessness, willfulness, and wantonness on the part of the Plaintiff was greater than that of the Defendant and combined and concurred with the negligence, gross negligence, recklessness, willfulness, and wantonness of the Defendant, if any, and contributed as a proximate cause to the injuries and damages sustained by the Plaintiff in the following particulars:

- (a) In failing to be aware of any dangers impending or otherwise;
- (b) In failing to act as a reasonable and prudent person would under the same or similar circumstances;
- (c) In failing to abide by the common and statutory laws of the State of South Carolina.

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XI.

The doctrine of comparative negligence is a complete defense to this action or, in the alternative, the amount of the Plaintiff's damages should be reduced by the percentage of his negligence.

FOR A THIRD DEFENSE

XII.

The preceding allegations are incorporated in and made a part of this defense.

XIII.

That the Plaintiff knowingly and voluntarily assumed the risk of known danger.

FOR A FOURTH DEFENSE

XIV.

The preceding allegations are incorporated in and made a part of this defense.

XV.

The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, as amended, and, therefore, should be dismissed as to this Defendant.

WHEREFORE, having fully answered, this Defendant prays that the Complaint against her be dismissed.

DOYLE, TATE & McDADE, P.A.

BY: 

RAYMOND A. TATE, JR.

S.C. Bar 005474

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Anderson, South Carolina 29622

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ATTORNEY FOR THE DEFENDANT

Feb. 25, 2010

JURY TRIAL DEMANDED

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
 ROBERT W. EDWARDS, JR.,	)	
	)	<u>PLAINTIFF'S MOTION FOR</u>
Plaintiff,	)	<u>JUDGMENT NOTWITHSTANDING</u>
	)	<u>THE VERDICT, A NEW TRIAL NISI</u>
vs.	)	<u>ADDITUR, OR A NEW TRIAL</u>
	)	<u>ABSOLUTE</u>
LINDA N. JORDAN,	)	
	)	
Defendant.	)	C.A. No. 2010-CP-42-00462
	)	
_____	)	

YOU WILL PLEASE TAKE NOTICE THAT Plaintiff Robert W. Edwards, Jr. ("Edwards"), moves under Rules 50(b) and 59(a) of the South Carolina Rules of Civil Procedure, for the following relief:

- (1) An order granting Edwards a judgment notwithstanding the verdict on the sole issue of comparative negligence; or
- (2) In the alternative, an order granting a new trial nisi additur; or
- (3) In the alternative, an order granting a new trial absolute.

Edwards' motion for a judgment notwithstanding the verdict on the issue of comparative negligence is based on the following grounds:

- a. Comparative negligence is an affirmative defense, and Defendant Linda N. Jordan ("Jordan") bore the burden of proving that defense. Youmans ex. Rel. Elmore v. S.C. Dept. Of Transp., 280 S.C. 263, 281-82, 670 S.E.2d 1, 10 (Ct.App. 2008).
- b. The verdict as to comparative negligence, finding Plaintiff thirty-five (35%) percent at fault, cannot be sustained by any reasonable interpretation of the evidence as presented by Jordan;

- c. Edwards repeats and realleges all grounds and arguments set forth in his motion for a directed verdict heard and ruled on by the Court; and
- d. Without waiving any ground or argument set forth in his motion for directed verdict, Edwards asserts he is entitled to a judgment notwithstanding the verdict on the issue of comparative negligence on the following grounds:
 - i. In her testimony at trial, Jordan stated she was not blaming Edwards for the accident or the injuries he sustained as a result of that accident;
 - ii. Edwards properly made a motion for a directed verdict as to comparative negligence at the close of Jordan's presentation of evidence on the grounds that no evidence was presented upon which a jury could find Edwards negligent concerning the accident and/or upon the grounds that Jordan waived or withdrew this defense. See, e.g., Larchick v. Diocese of Great Falls-Billings, 208 P.3d 836 (Mont. Sup. Ct. 2009) (upholding the district court's grant of summary judgment to plaintiff student on the issue of defendant school's affirmative defense of comparative negligence where, among other evidence, defendant's principal stated in his deposition that he "did not blame" the plaintiff for plaintiff's injuries);
 - iii. In his closing argument, counsel for Jordan reaffirmed to the jury that Jordan was not blaming Edwards for the accident or his injuries;
 - iv. Edwards properly renewed his motion for a directed verdict as to comparative negligence after counsel for Jordan stated in his closing argument on the grounds that no evidence was presented upon which a jury could find Edwards negligent concerning the accident and/or upon the grounds that Jordan waived or abandoned this defense. See Larchick;
 - v. Jordan presented no evidence supporting a jury charge concerning comparative negligence and/or Jordan waived or withdrew the right to this charge based upon statements made at trial; and
 - vi. Jordan presented no evidence supporting a verdict form that included comparative negligence as a choice and/or Jordan waived or withdrew the right to such a verdict form based upon statements made at trial.

Edwards' alternative motion for a new trial nisi additur is based on the following grounds:

- a. The jury awarded Edwards damages representing only his medical bills despite his presentation of evidence, including his testimony, concerning his pain and suffering;
- b. Jordan acknowledged that Edwards' injury would have been painful; and
- c. Based upon the evidence presented, the jury's failure to award Edwards any damages for his pain and suffering is so shockingly inadequate as to show that the jury acted from passion, caprice and prejudice rather than a reasoned evaluation of the evidence.

Edwards' alternative motion for a new trial absolute is based on the following grounds:

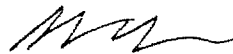
- a. The jury's failure to award Edwards any damages for his pain and suffering is so shockingly inadequate as to show that the jury acted from passion, caprice and prejudice rather than a reasoned evaluation of the evidence presented because:
 - i. The jury awarded Edwards damages representing only his medical bills despite his presentation of evidence, including his testimony, concerning his pain and suffering; and
 - ii. Jordan acknowledged that Edwards' injury would have been painful;
- b. The Court, sitting as the thirteenth juror, should grant a new trial as to liability and damages because the verdict as to comparative negligence and damages for pain and suffering was contrary to the weight of evidence. See, e.g., S.C. State Hwy. Dept. v. Townsend, 265 S.C. 253, 258, 217 S.E.2d 778, 781 (1975) ("There can be no doubt that a trial judge has the discretionary power to grant a new trial absolute or Nisi in a law case upon his disapproval of the verdict on factual grounds, and in this role he has been recognized and designated as the thirteenth juror.");
- c. The jury's failure to award Edwards any damages for his pain and suffering is contrary to the weight of evidence presented because:
 - i. The jury awarded Edwards damages representing only his medical bills despite his presentation of evidence, including his testimony, concerning his pain and suffering; and
 - ii. Jordan acknowledged that Edwards' injury would have been painful;

- d. Comparative negligence is an affirmative defense, and Jordan bore the burden of proving that defense. Youmans ex. Rel. Elmore v. S.C. Dept. Of Transp., 280 S.C. 263, 281-82, 670 S.E.2d 1, 10 (Ct.App. 2008).
- e. There is no evidence upon which a jury could reasonably find that Edwards was negligent because Jordan testified and counsel for Jordan stated in his closing argument that Jordan was not blaming Edwards for the accident or his injuries. See Larchick;
- f. Jordan waived or abandoned her defense of comparative negligence because Jordan testified and counsel for Jordan stated in his closing argument that Jordan was not blaming Edwards for the accident or his injuries. See Larchick;
- g. The Court erred in charging the jury on comparative negligence because Jordan testified and counsel for Jordan stated in his closing argument that Jordan was not blaming Edwards for the accident or his injuries;
- h. The Court erred in submitting to the jury a verdict form containing a choice for comparative negligence because Jordan testified and counsel for Jordan stated in his closing argument that Jordan was not blaming Edwards for the accident or his injuries.

These motions will be supported by the transcript of trial and any affidavits and legal memoranda which may be served and filed.

Respectfully submitted,

HOLCOMBE BOMAR, P.A.



William B. Darwin, Jr.
Post Office Box 1897
Spartanburg, South Carolina 29304
(864) 594-5300

Attorneys for Plaintiff

October 6, 2011
Spartanburg, South Carolina

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Robert W. Edwards,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2010-CP-42-00462
7 Linda N. Jordan,)
8 Defendant.) October 3 and 4, 2011
9) Spartanburg, South Carolina
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13
14

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

16 WILLIAM B. DARWIN, JR., ESQ.
17 Attorney for the Plaintiff

18 RAYMOND A. TATE, JR., ESQ.
19 Attorney for the Defendant
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter

25 **ORIGINAL**

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EXHIBITS

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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JURY QUALIFICATION

1 THE COURT: Good mornin', ladies and gentlemen of the
2 jury panel. My name is Durham Cole, I'm a resident judge here
3 in the 7th Circuit and I'm gonna be presiding over a term of
4 common pleas court in this courtroom this week just as Judge
5 Couch is across the hall and the first case that we have for
6 ya in this courtroom is a civil case and the title of the case
7 is Robert W. Edwards vs. Linda N. Jordan. Mr. Edwards is the
8 plaintiff, he's the one that has commenced the lawsuit and
9 Ms. Jordan is the defendant, she's the person against whom the
10 lawsuit has been commenced. This is what's referred to as a
11 negligence case specifically arising out of a premises
12 liability law and as soon as I find the complaint I'll go over
13 it with ya because this file's out of order. In his complaint
14 Mr. Edwards claims that back on or about August the 15th of
15 2008 that he was employed to do some work at the defendant's
16 residence located here in Spartanburg and that when he went to
17 the residence to perform that work he stood or walked upon a
18 deck that was on the property next to a pool and that while he
19 was walking on the deck one of the boards apparently was loose
20 or defective, it -- when he stepped on it, it flew up striking
21 him in the face causing him some personal injury. He claims
22 as a result of that event that the defendant was negligent in
23 some way. In other words, she failed to maintain her premises
24 in a reasonably safe condition for those persons that would be
25 expected to come onto the property for whatever purpose. He

JURY QUALIFICATION

1 claims that as a result of her failure to maintain the
2 premises in a reasonably safe condition he suffered some
3 injury, he incurred some losses and for which he is asking to
4 be compensated by way of a monetary award. Now in response to
5 those allegations the defendant denies that she was negligent
6 in any way, she simply asserts that it was simply an accident
7 and that if anyone was negligent it was the plaintiff who was
8 negligent, that he should have been lookin' out for himself
9 and if there was sumtin' defective there he should have seen
10 it, he should have made arrangements to avoid and therefore if
11 he suffered some injury or incurred some loss because of an
12 event occurring on her property then it was in fact his own
13 fault and not her fault as a result, so obviously as you can
14 see we have a dispute as to what the facts are and as to what
15 the responsibility is and that's why we're going to need
16 twelve of you jurors to decide the case. In other words,
17 you'll be listening to the testimony, you'll consider all the
18 evidence in the case and at the trial's conclusion you will
19 decide the facts from the evidence, you'll apply the law that
20 I will have provided ya and you will determine whether or not
21 the plaintiff is entitled to a recovery against the defendant
22 and if you determine that the plaintiff is entitled to a
23 recovery then you'll have to assess the monetary value to that
24 recovery and if if you determine that the plaintiff is not
25 entitled to a recovery then your verdict would be for the

JURY QUALIFICATION

1 defendant.

2 Now before we begin with the jury selection I've got some
3 questions that I'm gonna be asking ya and the purpose of the
4 questions is to determine whether or not there's some reason
5 why any one of you jurors should not be selected to
6 participate in the trial of this particular case. In other
7 words, do ya have a reason why you could not be fair and
8 impartial if selected and so as these questions are asked
9 should you have such a reason then you'll let me know of that
10 fact and we'll determine whether you ought to be excused.

11 First thing I'm gonna do is introduce some people to ya. The
12 purpose of the introduction is to let you know who's involved
13 in the case, who the parties are, who the lawyers are, who the
14 potential witnesses are and the reason that I'm introducing
15 these people to ya is because I need to find out if you have
16 any connection with any of these people: Are you related to
17 them by blood or marriage, do you go to church with 'em, do
18 you go to school with 'em, do you work with 'em, do ya
19 socialize with 'em, have you met them somewhere, do you know
20 them in any fashion whatsoever and so as these people are
21 introduced to you if you do have any connection whatsoever,
22 I'll ask you to stand and we'll address that connection and
23 determine whether or not it would affect your judgment in the
24 case.

25 Now first of all as I've told ya the plaintiff, the

JURY QUALIFICATION

1. person who's brought the lawsuit, is Robert W. Edwards.

2. Mr. Edwards, if you'll please stand and face the jury panel.

3. (Whereupon, the plaintiff stood.)

4. THE COURT: This is Mr. Edwards. Alright, thank you, be
5. seated.

6. (Whereupon, the plaintiff complied.)

7. THE COURT: Kip Darwin, William B. Darwin (stood), is
8. representing the plaintiff, he's a lawyer in the Holcombe
9. Bomar Law Firm. The person against whom the lawsuit has been
10. brought is Linda Jordan. Ms. Jordan, if you'll please stand
11. and face the jury panel.

12. (Whereupon, the defendant stood.)

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

14. (Whereupon, the defendant complied.)

15. THE COURT: Representing Ms. Jordan is Ron Tate (stood)
16. her lawyer.

17. MR. TATE: Ray, excuse me.

18. THE COURT: Ray Tate, excuse me. Ray Tate, her lawyer.
19. He'll be assisting her in the trial of the case. Potential
20. witnesses in addition to Mr. Edwards and Ms. Jordan include
21. Courtney Pavlovich, ---

22. MR. DARWIN: Ms. Pavlovich is here.

23. THE COURT: --- Pavlovich, Bobby Pearson.

24. MR. TATE: He's not here, Your Honor.

25. THE COURT: He's not present.

JURY QUALIFICATION

1 MR. TATE: We're gonna -- Mr. Darwin's gonna publish his,
2 uh, ---

3 THE COURT: Deposition.

4 MR. TATE: --- deposition.

5 THE COURT: Alright, Robert, also known as Bobby Pearson,
6 Christopher Rucker who's a medical doctor, ---

7 MR. DARWIN: We're gonna play a video of Dr. Rucker.

8 THE COURT: --- his testimony will be provided by way of
9 a videotape deposition. Are there any other potential
10 witnesses?

11 MR. DARWIN: That's all I know of.

12 THE COURT: Alright, those are the witness and those are
13 the lawyers so does anybody on the jury panel know anybody
14 involved in the case, that includes the lawyers as well as any
15 members of their respective law firms? Do you know the
16 lawyers or some member of their firm or do ya know either of
17 the parties or and/or do ya know any of the potential
18 witnesses, if so please stand? Alright, I'll start with you,
19 ma'am. If you'll give me your name, your juror number please
20 and then tell me how that question relates to you.

21 JUROR NUMBER 159: Alright, my name is Joan Vermont. I'm
22 Juror Number 159 and I've worked with Mr. Edwards before.

23 THE COURT: Alright, and would that fact have any bearing
24 upon your decision in the case?

25 JUROR NUMBER 159: No, sir.

JURY QUALIFICATION

1 THE COURT: Alright, thank you, you may be seated. Yes,
2 sir.

3 JUROR NUMBER 89: Joseph Kurkjian, 18 -- I'm sorry, 89,
4 and I know Courtney and goes a long social history, go way
5 back.

6 THE COURT: Alright, and would that have any bearing upon
7 your decision in the case?

8 JUROR NUMBER 89: Yes, I think it would.

9 THE COURT: You think it may? Alright, we'll excuse
10 Juror Number 89 from service. Don't don't leave yet, just
11 stay with me ---

12 JUROR NUMBER 89: I'm sorry.

13 THE COURT: --- and well let you go in just a few
14 minutes. Um, ---

15 THE CLERK: What number?

16 THE COURT: Eighty-nine. Anybody else need to respond to
17 that question?

18 (No response.)

19 THE COURT: Does anyone have a child who attends
20 Carlisle-Foster's Grove Elementary School?

21 (No response.)

22 THE COURT: No. Has any member of the jury panel ever
23 been a plaintiff or a defendant? In other words, did you
24 bring a lawsuit or did someone bring one against you arising
25 out of any type of an event where fault was being alleged

JURY QUALIFICATION

1 against another party or against you and compensation,
2 monetary compensation was being sought? Has anyone been
3 involved in any type of lawsuit as a defendant or as a
4 plaintiff, if so please stand? Alright, tell me your name and
5 number please, sir.

6 JUROR NUMBER 118: Martin Nietlispach, Juror 118.

7 Uh, I was involved ---

8 THE COURT: And what kinda case was it?

9 JUROR NUMBER 118: It was a car accident.

10 THE COURT: And were you the -- did you bring the lawsuit
11 or someone bring it against you?

12 JUROR NUMBER 118: Yes, I did.

13 THE COURT: You brought the lawsuit against somebody ---

14 JUROR NUMBER 118: Yes.

15 THE COURT: --- else?

16 JUROR NUMBER 118: Yes, sir.

17 THE COURT: And is there anything about that experience
18 that you have had that would affect your judgment in this
19 case?

20 JUROR NUMBER 118: No, sir.

21 THE COURT: Alright, thank you, you may be seated. Yes,
22 ma'am.

23 JUROR NUMBER 91: Shirley Laws, 91. I've been involved
24 in a car accident.

25 THE COURT: Alright. Did you bring the lawsuit or

JURY QUALIFICATION

1 somebody bring it against you?

2 JUROR NUMBER 91: I brought it against someone else.

3 THE COURT: Alright, would that experience have any
4 bearing upon your decision in this case?

5 JUROR NUMBER 91: No, sir.

6 THE COURT: Thank you, be seated. Anyone else?

7 (No response.)

8 THE COURT: I told you a little bit about what the case
9 is about but what I told you is not meant to be a full
10 recitation of the facts but I wanted to give you an idea as to
11 what the context of the case was so that you'd have an
12 understanding of it. Is there any member of the jury panel
13 who's ever had a similar type of an event occur at your
14 residence or it oc -- happened to you at someone else's
15 residence where you went to someone's home or residence and
16 something occurred there that caused you injury or caused
17 someone else injury and where they sought monetary
18 compensation? Anyone ever been involved in any type of
19 similar event, if so please stand?

20 (No response.)

21 THE COURT: Is there anything about the nature of the
22 case itself that would affect any juror's ability to be able
23 to be fair and impartial if selected in this case?

24 (No response.)

25 THE COURT: Has anyone ever suffered a broken nose or

JURY QUALIFICATION

1 received medical treatment for a deviated septum, if so please
2 stand?

3 (No response.)

4 THE COURT: Does any juror know of any reason whatsoever
5 why you think you could not be fair and impartial if you were
6 called upon to decide the verdict in this case, if so please
7 stand? If you have any reason whatsoever why you cannot be
8 fair or you cannot be impartial if so please stand.

9 (No response.)

10 THE COURT: Any other questions requested by the
11 plaintiff?

12 MR. DARWIN: No, sir.

13 THE COURT: The defendant?

14 MR. TATE: No, Your Honor.

15 THE COURT: Alright, draw us a jury please, ma'am. Since
16 you've just been involved in jury selection you know how that
17 works. The list'll be prepared and each lawyer will have an
18 opportunity to look over the list to strike certain jurors.
19 Each side gets to strike 4 from a list of 20, that leaves 12,
20 those 12 will decide the case so it'll take us just a few
21 minutes to get the list prepared and then a few more minutes
22 for the lawyers to discuss their strikes with the -- their
23 clients and then we'll select the twelve of you who will serve
24 and then we'll probably break for lunch and begin with the
25 trial after lunch. Were ya told about the strikes, ya know,

JURY QUALIFICATION

1 when the, when when the list is made, the lawyers strike 4
2 from the list, their numbers are 1 through 20? Those are not
3 your actual juror numbers. The reason for that is some people
4 get upset when they get stricken, they get their feelins'
5 hurt, some people become too excited or exuberant not having
6 to serve so we try not to let you know that fact so that you
7 won't be able to become overjoyed or have your feelings hurt
8 if you're not picked but the twelve who are picked you'll know
9 that because you'll be having a seat in the jury box to your
10 right and to my left.

11 Alright, what we're gonna do we're gonna take about ten
12 minutes, that should or maybe fifteen but take a few minutes,
13 let the lawyers look over the list and then I'll come back and
14 we'll select those of you who are going to be selected. Feel
15 free to stand up, stretch, talk if you like to, if you need to
16 use the restrooms, you know where they are or if ya don't, ask
17 the bailiff, they'll show you where they are but please be
18 back here in the courtroom at ten minutes till one, at ten
19 minutes till one, okay, and we'll be at ease while they look
20 over the list.

21 (Whereupon, a recess was taken.)

22 THE COURT: Ya'll ready to strike?

23 MR. DARWIN: Yes, sir.

24 THE COURT: Alright, beginning with the plaintiff.

25 MR. DARWIN: Plaintiff strikes Number 15.

JURY QUALIFICATION

1 THE COURT: Plaintiff strikes 15. Defendant?
2 MR. TATE: Defendant strikes Number 12.
3 THE COURT: Defendant strikes 12. Plaintiff?
4 MR. DARWIN: Plaintiff strikes 3, Your Honor.
5 THE COURT: Plaintiff strikes 3. Defendant?
6 MR. TATE: Defendant strikes 17.
7 THE COURT: Defendant strikes 17. Plaintiff?
8 MR. DARWIN: Plaintiff strikes Number 7.
9 THE COURT: Plaintiff strikes 7. Defendant?
10 MR. TATE: Defendant strikes Number 13.
11 THE COURT: Defendant strikes 13.
12 MR. DARWIN: Plaintiff strikes Number 5.
13 THE COURT: Plaintiff strikes 5.
14 MR. TATE: Defendant strikes Number 19.
15 THE COURT: Defendant strikes 19. Now for the alternate:
16 21, 22 and 23.
17 MR. DARWIN: Plaintiff strikes 21, Judge.
18 THE COURT: Plaintiff strikes 21.
19 MR. TATE: Defendant strikes 22.
20 THE COURT: Defendant strikes 22, okay.
21 THE CLERK: When your name and number's called, please
22 bring your things and have a seat in the jury box. Juror
23 Number 112, Terry Moates.
24 (Terry Moates, a black male, came forward)
25 THE CLERK: Juror 154, Reena Tucker.

JURY QUALIFICATION

1 JUROR NUMBER 154: That's Renee.

2 THE CLERK: Renee, sorry.

3 (Reena Tucker, a black female, came forward.)

4 THE CLERK: Juror 130, Doretha Prysock.

5 (Doretha Prysock, a black female, came forward.)

6 THE CLERK: Juror 128, Robert Price.

7 (Robert Price, a white male, came forward.)

8 THE CLERK: Juror 166, Tanesha West.

9 (Tanesha West, a black female, came forward.)

10 THE CLERK: Juror 102, Tonya Mcdowell.

11 (Tonya Mcdowell, a black female, came forward.)

12 THE CLERK: Juror 18, Durand Browning.

13 (Durand Browning, a black male, came forward.)

14 THE CLERK: Juror 29, James Chapman.

15 (James Chapman, a black male, came forward.)

16 THE CLERK: Juror 75, Willard Hollifield.

17 (Willard Hollifield, a white male, came forward.)

18 THE CLERK: Juror 32, Doris Clayton.

19 (Doris Clayton, a white female, came forward.)

20 THE CLERK: Juror 59, Joel Gilreath.

21 (Joel Gilreath, a white male, came forward.)

22 THE CLERK: Juror 45, Robert Fellner.

23 (Robert Fellner, a white male, came forward.)

24 THE CLERK: The alternate, Juror 53, Adam Freseman.

25 (Adam Freseman, a white male, came forward.)

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1 THE CLERK: Jury selection's been completed, Judge.

2 THE COURT: Alright, those who have been selected I'll
3 ask you to please go with the bailiff to a jury room and I'll
4 bring you back in just a few minutes.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Are there any matters that need to be
8 addressed regarding jury selection by the plaintiff?

9 MR. DARWIN: None, Your Honor.

10 THE COURT: By the defendant?

11 MR. TATE: No, Your Honor.

12 THE COURT: Alright, those not selected you're excused
13 for the balance of today. Call back after six o'clock this
14 evening, you were told about the numbers on the pamphlet.
15 Call that 1-800 number after six o'clock this evening to
16 receive further reporting information, okay? Thank you for
17 your participation, have a good afternoon.

18 (Whereupon, the remainder of the jury panel exited the
19 courtroom.)

20 THE COURT: Alright, bring the jury in, please.

21 (The following takes place in the presence of the jury.)

22 THE COURT: As I indicated to ya earlier, we're gonna
23 break for lunch now. Keep in mind that during the course of
24 the trial you're not permitted to talk about the case, you
25 can't even discuss it with your fellow jurors. You can only

MOTIONS AND MATTERS

1 talk about the case during jury deliberations and that won't
2 be until the end of the trial after all of the evidence has
3 been received, I've instructed you on the law and asked you to
4 begin your deliberations so until that time comes, no
5 discussion about the case. Also, you can't conduct any
6 research or do your own investigation into any issue that
7 might arise during the course of the trial; you have to base
8 your decision upon what you see and hear during the trial.
9 You can't supplement that knowledge by conducting outside
10 research or do you -- doing your own investigation into any
11 issue. We'll excuse ya now for lunch, do have a good lunch.
12 Please report to your jury room, that room that you've just
13 been shown to, report to that jury room at 2:30, at 2:30 this
14 afternoon. You're not sure how to get back there talk to the
15 bailiff, they'll provide you with those instructions. We'll
16 see ya at 2:30, have a good lunch.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: Any matters to address before we recess for
20 lunch?

21 MR. DARWIN: Not that I can think of, Judge.

22 MR. TATE: No, Your Honor.

23 THE COURT: Alright, court's in recess until 2:30.

24 (Whereupon, a recess was taken.)

25 THE COURT: Alright. Any matters to address before the

MOTIONS AND MATTERS

1 jury comes in?

2 MR. DARWIN: None that I'm aware of, Judge.

3 MR. TATE: None, Your Honor.

4 THE COURT: Alright, bring 'em in. Ask Mr. Fellner,
5 Mr. Fellner ---

6 THE BAILIFF: Yes.

7 THE COURT: --- take the foreperson's seat.

8 (The following takes place in the presence of the jury.)

9 THE COURT: Good afternoon, ladies and gentlemen, we are
10 ready begin with the trial of the case for which you have been
11 selected. Mr. Fellner, I'm gonna ask you to serve as the
12 foreperson of the jury. As the foreperson you'll have three
13 specific duties that none of the other jurors will have;
14 number one, you'll be asked to serve as the spokesperson for
15 the jury and so if durin' this trial something arises that
16 needs to be brought to my attention: you or a fellow juror has
17 some difficulty, problem or question, either let me know
18 directly or through the bailiff and I'll address any issue or
19 answer any question that you may have; secondly, you'll be
20 asked to preside over jury deliberations and you'll do that at
21 the trial's conclusion after the evidence has been received
22 and I've instructed you on the law that's applicable in the
23 case but when the time does come for those deliberations, it
24 will be you who'll be who will be called upon to preside over
25 the deliberations in the jury room simply to ensure that they

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1 are carried out in some orderly fashion and; thirdly, you'll
2 be asked to actually write the verdict or the decision of the
3 jury, you'll do that on a form that I'll provide ya before you
4 go back to deliberate on which you will indicate the jury's
5 unanimous decision. Now the foreperson has those specific
6 duties that I've just indicated, that doesn't mean that he's
7 any more important than any of you other jurors and he doesn't
8 get paid any more than you gonna get paid, someone has to be
9 delegated those responsibilities that I have just indicated
10 and I have delegated those to Mr. Fellner in appointing him as
11 the foreperson, but all of you jurors are equally important so
12 far as the ultimate decision in this case is concerned because
13 the verdict has to be unanimous, all twelve of you must be in
14 agreement.

15 Mr. Freseman, you've been selected as an alternate juror
16 and the function of an alternate is to take the place of one
17 of the original twelve. If during the trial one of these
18 twelve cannot continue to serve for some reason: if one's
19 called away or an illness or some emergency prevents them from
20 continuing then you would be called upon to take that person's
21 place, in that event you would become the twelfth juror and if
22 that were to occur then you would participate throughout the
23 trial including the jury deliberations. If, however, when the
24 time does come for jury deliberations, the original twelve are
25 able to participate then your service ends and you don't

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1 participate any further-and that's because the decision of the
2 jury is that of twelve and no more than twelve can participate
3 in that deliberation process but it is important that you pay
4 just as careful attention as we ask of all of the jurors in
5 this case because it does occur from time to time for one
6 reason or another one of these twelve may be unable to
7 continue, in that event you become the twelfth so we do
8 appreciate your participation as an alternate juror just as we
9 appreciate the participation of each of you jurors who have
10 been selected for the purpose of deciding the verdict in this
11 particular case. You may swear the panel.

12 THE CLERK: Please stand and raise your right hands.

13 (Whereupon, the jury panel was sworn.)

14 THE CLERK: Thank you, you may be seated.

15 THE COURT: Now as you know each of you have been
16 selected to decide the verdict in the case of Robert W.
17 Edwards, Jr., who's the plaintiff, vs. Linda N. Jordan, who is
18 the defendant. As I told ya, the plaintiff is the person who
19 brings the lawsuit, the defendant is designated as the person
20 who the lawsuit has been brought against. In this case as I
21 also told ya it arises out of a a situation where the
22 plaintiff claims that he was on the defendant's premises, a
23 residence, property, and that while he was there there was a
24 dangerous and a defective condition on the property, that the
25 defendant did not correct that defect before an accident

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1 occurred or the defendant did not warn the plaintiff of the
2 existence of that condition and that defective condition
3 caused him harm and injury for which he received medical
4 treatment and incurred other expenses and for which he is
5 seeking monetary compensation for those injuries that he
6 claims was the fault of the defendant. In response to those
7 claims, the defendant denies that she was at fault in any way,
8 denies that she was negligent any way and therefore denies
9 that she is responsible for any injury that might have been
10 sustained or been incurred by the plaintiff and therefore the
11 verdict should be for the defendant and of course that's why I
12 say you've been selected because there's a dispute as to the
13 facts, there's a dispute as to who is responsible and there is
14 a dispute as to what injuries or losses were caused by any
15 event that the plaintiff incurs back in in August of 2008.

16 The way the trial will proceed is that in a moment the
17 lawyers are going to address you in what are called "opening
18 statements." There are two occasions in the trial of a case
19 where the lawyers are permitted to address the jury and that
20 is at the beginning of the trial before any evidence has been
21 introduced then again at the conclusion of the trial after all
22 of the evidence has been received but please understand and
23 keep in mind that the lawyers' statements are not evidence,
24 you're not to rely upon the lawyers' statements as being any
25 evidence upon which you will base your determination of fact

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1 or your decision in a case and that's because the lawyers are
2 aren't witnesses to anything, they don't know anything about
3 this case of their own personal knowledge or perception like
4 witnesses will be testifying to and the lawyers won't be
5 taking the witness stand, they won't be placed under oath,
6 they won't be subject to direct and cross-examination like
7 each of the witnesses will be and so what they tell ya in
8 their statements is not to be considered by you as evidence in
9 the case. The evidence comes in during the course of the
10 trial either by way of witness's testimony or by the
11 introduction of some other type of an exhibit but even though
12 the lawyers' statements are not evidence, you should listen to
13 what they have to say because those statements do serve a
14 purpose and the opening statements will serve to provide you
15 with a basic understanding as to what this case is about from
16 both the perspective of the plaintiff and of the defendant so
17 that you'll have some context in which to place the evidence
18 that we will be receiving shortly thereafter. The closing
19 statements will occur after all the evidence has been received
20 and again, while those statements are not evidence it affords
21 the lawyers an opportunity to discuss with you the evidence
22 that you have seen and heard during the course of the trial
23 and through that discussion each will have an opportunity to
24 try to persuade you or to convince you that the evidence in
25 the case does or does not support a particular decision and

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1 it's in between those opening and the closing statements that
2 we actually receive the evidence upon which you will base your
3 decision and your determination of fact.

4 The plaintiff has brought the lawsuit and therefore the
5 plaintiff bears the burden of proving his entitlement to a
6 recovery. After the plaintiff has presented his evidence, the
7 defendant has the same opportunity to testify and to present
8 evidence if they wish to. After all of the evidence has been
9 received and after you've heard the final summations of the
10 lawyers, I'll then instruct you fully on the law as it relates
11 to the civil law generally and burdens of proof and such as
12 that and also as it relates to this particular type of cause
13 of action specifically and after you receive that legal
14 instruction you'll then be asked to go back and begin with
15 your deliberations. Through that process you'll examine all
16 the evidence: You will assess and evaluate credibility of
17 witness testimony, you'll determine what the facts are and
18 once you decide those facts you'll then apply the law that I
19 will have provided ya and you will determine whether or not
20 the plaintiff has proven an entitlement to a recovery and if
21 he has then you will determine the monetary amount that he is
22 to receive and if you find that the plaintiff has not proven
23 an entitlement to a recovery then your verdict would be for
24 the defendant.

25 Now all that we're gonna ask for ya to do throughout the

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1 course of the trial is to pay careful attention to every
2 witness that testifies, give every witness the same degree of
3 attention. That of course doesn't mean that you'll give every
4 witness's testimony the same degree of weight because that's
5 one of your prerogatives as a juror in deciding the facts of a
6 case. You can believe everything that a witness testified to,
7 you may choose to believe none of it. You may believe some
8 portion of a witness's testimony and reject some other portion
9 of that same witness's testimony. You can believe one witness
10 as opposed to several or several as opposed to one but in
11 order for you to be in a proper position to be able to fairly
12 evaluate and to assess a witness's testimony in light of not
13 just that witness's testimony but in light of all of the
14 testimony and all of the evidence in the case, you have to
15 give every witnesses the same degree of attention so that you
16 will be in a proper position considering all of the evidence
17 to determine what the true facts are to be and of course it's
18 also important that you keep an open mind throughout the
19 course of the trial and that just means that you are not to
20 begin making up your minds or formulating your opinions as to
21 what you think the ultimate decision in the case ought to be
22 until all of the evidence has been received, until I have
23 instructed you on the law that's applicable in the case and
24 until you've been asked to go back and begin with your
25 deliberations, that is the process that is designed for you

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1 twelve jurors to arrive at a fair and just decision in this
2 case and in any case for that matter so I do wanna thank you
3 in advance for your participation as well as for your careful
4 attention. I would ask that you please give the lawyers your
5 attention now as they give you their opening statements.

6 MR. DARWIN: May it please the Court.

7 THE COURT: Mr. Darwin.

8 MR. DARWIN: Mr. Foreman, ladies and gentlemen, good
9 afternoon. My name's Kip Darwin, I'm from Spartanburg, been
10 practicin' law here for 21 years now. Let me introduce ya to
11 who's seated at the table with me. This (indicating) is Bobby
12 Edwards, he just turned 40-years-old. He's from Spartanburg,
13 he grew up here, he went to school up until the 10th grade.
14 He comes from a single parent, mainly his mom raised him.
15 When he was in 10th grade he was goin' to Spartan High School,
16 he had to drop outta school so he could help support his
17 family. He's been workin' since junior high, working with his
18 hands. He's a landscaper, he's had a landscape business for
19 quite a while now here in Spartanburg. It was known as
20 Edwards Lawn Care back when this accident happened, it's now
21 known as Sunshine Landscape. Seated behind Bobby is his
22 fiancée, Courtney Pavlovich. She's 31-years-old, she told me
23 the other day to say that. She came here from West Virginia
24 six years ago. She's a physical therapist, works in different
25 facilities here in town and she'll talk some about the

OPENING STATEMENTS

1 injuries Mr. Edwards sustained in this August 15th 2008
2 accident.

3 Mr. Edwards was injured on Ms. Linda Nicha Jordan's
4 property on Woodbern Road, 1021 Woodbern Road in the Converse
5 Heights neighborhood. He'd been doing landscaping work for
6 her for about six months before this accident happened,
7 cutting her grass, trimming bushes, spraying for weeds, that
8 typa thing. He was on -- he would go out there about once a
9 week and spend about an hour or so on her property doin'
10 different types of work like that, puttin' down sod, things
11 like that. She has an extensive decking system in her back
12 yard, it si -- her yard sits at the bottom of a fairly steep
13 embankment, it sits right next to Lawson's Fork Creek.
14 Mr. Edwards had gone out there before and had had, and and
15 Ms. Jordan will admit this, that Mr. Edwards to do his job on
16 the property had to get on part of this decking system. Most
17 of this decking or a lot of it in walkways sits right just a
18 few inches above the ground and it's a fairly elaborate system
19 of walkways. For him to do his job properly out there, he had
20 to be on this decking system so that he could spray for weeds
21 that would grow in the mulch and so that he could spray the
22 different types of plants and trim 'em and blow the deck and
23 that typa thing, she knew that. He had her permission to do
24 that. Under the law he's known as what's called an "invitee",
25 that means he -- means he's there with permission, he's not a

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1 trespasser or anything like that. He had been on this deck
2 before that day a number of times, there's no dispute about
3 that, but this deck was an accident waitin' to happen.

4 Ms. Jordan had purchased this property in 1988 and she
5 had never done any repairs to it and never done any
6 maintenance other than pressure washin' it, never had
7 inspected or at least we've never been provided any inspection
8 reports for it. Unbeknownst to Mr. Edwards what was goin' on
9 with that deck over the years after the continued exposure to
10 rain, ice, snow, flooding, different things had happened to
11 it, the the planks were rotting away and the screws were
12 rusted and he was spraying along the the deck area one section
13 of the walkway and he stepped on the end of one of these large
14 plank boards, he said he recalls it being a 2 by 6 plank
15 board, thick board, it sprung up and flew in his face and
16 broke his nose, broke two bones in his nose and deviated his
17 septum. A doctor or ear, nose and throat doctor here in town
18 named Christopher Rucker has repaired the nasal bones; what he
19 hasn't done yet is repair the deviated septum. The board hit
20 Bobby real hard on the right side of his face and pushed the
21 nose to the left so Dr. Rucker and his office after putting a
22 needle and a syringe and and deadening Bobby's nose, and he'll
23 describe that in a very short video deposition, straightened
24 these bones as best he could and the nose with Bobby lyin'
25 down in a chair in his office wide awake but what he couldn't

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1 do was straighten out that septum and the, and the problems
2 Bobby's havin' now are some congestion in the nose. He's not
3 disabled. He works at least six days a week, sometimes seven.
4 He works ten to twelve hour days. He's not comin' into court
5 thinkin' this is a case he's gonna retire on but he did suffer
6 a painful injury, injury that was painful for a few weeks and
7 then afterwards he's got this residual congestion at some
8 point he's gonna have to get it taken care of with a
9 septoplasty. Ms. Jordan will testify, I believe, that he's a
10 truthful fella, she's obviously satisfied with his work
11 because he still does work on the property but this situation
12 here was a dangerous situation that he wouldn't have known
13 about but a property owner would have had the ability to know
14 about and correct. Under South Carolina law, and at the end
15 the case the judge will charge ya on the law, a property owner
16 assures and invitee like Bobby that they'll take reasonable
17 care to protect him and to make him safe, that didn't happen
18 so at the end of the this trial we're gonna ask ya'll to
19 return award for Mr. Edwards. Thanks.

20 MR. TATE: May it please the Court.

21 THE COURT: Mr. Tate.

22 MR. TATE: Good afternoon, ladies and gentlemen of the
23 jury, my name's Ray Tate. As ya'll know now, I represent
24 Linda Linka -- Linda Nicha Jordan, her name goes by Nicha.
25 You heard on August the 15th 2008 plaintiff stepped on a board

OPENING STATEMENTS

1 and broke his nose. Now you'll also hear the plaintiff say
2 that he was -- he had walked on that decking and knew about it
3 a a thousand times or so, I know he talks about about that but
4 a lotta times. He was sayin' they put mulch on the deck,
5 wheelbarrows, all sorts of things. It it it was obvious what
6 what was a weathered deck, it was obvious, he knew about it
7 and you'll hear this too as much as Nicha or the fella she
8 lives with, Bobby Pearson. In other words, there was no
9 hidden danger or anything that she shoulda known about or
10 could have known about that he didn't know about, that's
11 that's essentially what it is. We're sorry that it happened,
12 certainly hated he broke his nose but things happen even to
13 good people. Nicha's here because she's a good person too and
14 she wants what's right and what's right is for ya'll to hear
15 the evidence, give both sides a fair shake and come back with
16 a just a verdict that ren -- renders justice and speaks the
17 truth. The truth is it was a bad thing that happened but it
18 was not Nicha's fault, that is the underlying thing that it
19 was not Nicha's fault, there's nothing that was hidden about
20 that, again, he knew mu -- as much about it or more than she
21 did because he worked out there once a, once a week for six
22 months, wasn't any kind of a trap or anything like that, it
23 was just he had a big tank on his back and stepped on the
24 board, it came up and hit him in the nose. If you'll be fair
25 to both sides, I think at at the end you'll render a verdict

1 for the defendant and lastly, I'd just like to thank you for
2 being here. As I think Judge Cole said, uh, ya'll were
3 summoned in the mail or something and ya'll didn't just come
4 in off the street but our our system wouldn't work without you
5 and while it has its flaws and critics, it is indeed the best
6 system in the world. Thank you very much.

7 THE COURT: Mr. Darwin.

8 MR. DARWIN: I call Ms. Jordan as my first witness,
9 Judge.

10 LINDA NICHA JORDAN, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. DARWIN:

13 Q. You settled in now, Ms. Jordan?

14 A. Yes, ---

15 Q. Okay.

16 A. --- I was caught in ---

17 Q. Sometimes that mic can be tough unless it's right near
18 you so if I need to tell you to speak up, I'm not scolding
19 you, okay?

20 A. Okay.

21 Q. You lived at 1020 ---

22 THE COURT: Excuse me just a minute. You you can move
23 that microphone if you need to.

24 THE DEFENDANT: Can ---

25 MR. DARWIN: It's flexible.

1 THE DEFENDANT: --- can you hear me?

2 BY MR. DARWIN:

3 Q. I can, I can hear you.

4 A. Okay.

5 Q. You've lived at 1021 Woodbern Road since 1988, is that
6 correct?

7 A. That's correct, yes.

8 Q. And Bobby Pearson is your boyfriend and he's lived there
9 since the year 2000, correct?

10 A. That is correct, yes.

11 Q. In 2008 you and Bobby Pearson, I'm gonna have to say the
12 last name to make sure we don't get the Bobby's confused,
13 agreed to hire Mr. Edwards here to do your lawn care, is that
14 right?

15 A. Yes.

16 Q. About six months before this accident he started working
17 on your yard, is that right?

18 A. Yes.

19 Q. And you've been very satisfied with the work he's done,
20 haven't you?

21 A. Yes, very much.

22 Q. As a matter a fact, you got some other projects planned
23 that you want him to do.

24 A. Yes.

25 Q. Now you've had some interactions with Bobby Edwards and

1 you consider him to be a truthful person, don't ya?

2 A. Yes, I do.

3 Q. And you heard my description of this accident. You don't
4 blame Mr. Edwards for this accident at all, do you?

5 A. No, I don't.

6 Q. The deck that was there when you bought the property you
7 don't know how long it had been there, do you?

8 A. No, I don't.

9 Q. When when you bought the house in 1988, it was there.

10 A. Right.

11 Q. And you have never done any work to the deck, have you?

12 A. No, not at that time.

13 Q. And not up until the time of his accident.

14 A. Um, ---

15 MR. TATE: Object -- objection, Your Honor. She said she
16 had not ever done any work, uh, ---

17 THE DEFENDANT: To repair, ---

18 THE COURT: She said ---

19 THE DEFENDANT: --- I mean, ---

20 THE COURT: --- not at that time so he's just asking up
21 until the time of the accident. Go ahead.

22 BY MR. DARWIN:

23 Q. Alright.

24 A. We've had deck removal done. I can't specifically say
25 that was done prior to that but there had been a portion of

1 the deck that was removed at one time. The decking area
2 surrounded a large pool ---

3 Q. Yes, ma'am.

4 A. --- and the pool collapsed when it was being repaired and
5 so the area was filled in with dirt and well packed down and I
6 turned it into a water garden and a grass area with shrubbery
7 and Bobby maintained the shrubbery inside there as well.

8 Q. And there was shrubbery right next to that section of
9 walkway where he had his accident where that board flew up and
10 hit him in the face, right?

11 A. Yes, there hydrangeas and nandinas planted there ---

12 Q. He had ---

13 A. --- and ---

14 Q. Go ahead.

15 A. No, and daylilies on the other side.

16 Q. He had your permission to be there that day, didn't he?

17 A. Bobby came whenever it was necessary on a weekly visit to
18 maintain our lawn.

19 Q. And you knew he would be getting on that deck in the
20 walkway there, didn't ya?

21 A. Yes, Bobby walked on the deck as well as we did
22 ourselves.

23 Q. And I've described it correct that certain sections are
24 just a few inches off the ground, is that right?

25 A. That is correct because of the the landfill and for that

1 portion of the pool so it it was pretty even, just a couple a
2 inches difference there on ---

3 Q. And ---

4 A. --- one side.

5 Q. --- and you would agree with me that those boards were
6 supposed to be nailed down and not pop up like that, wouldn't
7 you?

8 A. I would agree. Yes, they had deck screws in there.

9 Q. So so they were in poor condition when Bobby's accident
10 happened, correct?

11 A. I was unaware that they were in poor condition but as
12 Bobby stated that the plank came up and hit him in the face.
13 I was unaware that they were in that kind of condition to
14 cause that kind of an accident.

15 Q. But you would agree with me they were in poor condition
16 or this would not have happened, is that fair?

17 A. That the plank came up and hit him in the face, ---

18 Q. Yes, ma'am.

19 A. --- that's all I can tell ---

20 Q. --- the plank ---

21 A. --- you on that.

22 Q. --- that was supposed to be nailed down hit him in
23 the ---

24 A. Yes.

25 Q. --- face. Okay.

1 A. Yes.

2 Q. So you would agree with my statement that the plank and
3 the screws or nails were in poor condition, is that fair?

4 A. They must have been, yes.

5 Q. Alright, now ---

6 A. They ---

7 Q. Go ahead.

8 A. Just to clarify that though because we're talkin' about a
9 board that's probly five feet across and they would be nailed
10 at the end and we walk down the center of the walkway whereas
11 my understanding is that Bobby stepped on the very edge and
12 with his weight and carrying equipment that would be kind of
13 an abnormal stress on any kind of board or plank if you're
14 just stepping on the end of it like that.

15 Q. But but if that board was in good condition and was
16 properly nailed down, the plank shouldn't fly up and hit him
17 in the face, should it?

18 A. Certainly hope not, no.

19 Q. Alright. Now you tore out that section of the walkway
20 where Mr. Edwards had his accident within a month or so of the
21 accident, is that right?

22 A. That's correct.

23 Q. And some pictures were taken of that section before it
24 was torn out, is that right? Let me show you, I've just been
25 provided some Xerox copies, ---

1 A. Okay.

2 Q. --- do you recognize these (indicating) three sheets of
3 paper?

4 A. Because the deck surrounded the entire pool area, I can't
5 tell you from looking at this photograph where on the deck
6 that actually was. I can tell you this (indicating) looks --
7 that is pretty accurate to the amount of drop from the board
8 down to the ground.

9 Q. Well let let me mark this one right now so we'll know
10 which one you are ---

11 A. Okay.

12 Q. --- referring to 'cuz I've handed you three.

13 MR. DARWIN: You wanna see? Offer this as Plaintiff's 1,
14 Judge.

15 THE COURT: It's admitted.

16 MR. DARWIN: Okay.

17 (Photograph marked Plaintiff's Exhibit No. 1 for
18 identification and admitted into evidence.)

19 MR. DARWIN: Thank you.

20 BY MR. DARWIN:

21 Q. What you were tellin' me about this picture that we'll
22 present to the jury in a minute that this shows the distance
23 that this section of walkway was off the ground, it's just a
24 few inches like I told 'em, correct?

25 A. That is correct and that would be true on the inside

1 part. On the opposite of where this accident occurred, it
2 drops in a more steeper incline. In other words, it would be
3 full where dirt came up to this (indicating) level then would
4 be the walkway and then on the backside of there (indicating)
5 it drops down where there are daylilies and there rocks so
6 that part is a little bit steeper incline and it is not
7 general practice to walk down in that area, do you understand
8 what I'm saying, with the walkway on the left side was filled
9 with dirt so there was probly about a four inch drop but on
10 the, on the other side of the walkway it drops down a little
11 bit steeper incline and there are rocks there for and keep it
12 from from washing I guess the rocks and daylilies and some
13 shrubbery there ---

14 Q. Well ---

15 A. --- on the, on the other side.

16 Q. --- well do you know which side Bobby was walkin' on?

17 A. I do not; I was not there.

18 Q. Okay, but but regardless of which side you would expect
19 him to be all around and on top of that walkway to do his job,
20 is that fair?

21 A. He would be on the walkway. I certainly wouldn't
22 expecting him to be at the very edge to step on the the edge
23 of the plank that was hanging off.

24 Q. Well do we have any pictures of that plank that was
25 hanging off?

1 A. No.

2 Q. I I asked for, when when this lawsuit was filed, I asked
3 for pictures, any ---

4 A. Um-hum.

5 Q. --- pictures you would have of the walkway and and
6 learned that it had already been torn out but I I was provided
7 these Xerox copies but I don't have any color copies. Do you
8 have any color copies of this deck at all from back in this
9 2008 time period?

10 A. No, I would not.

11 Q. 'Cuz I I can't make out anything on that, ---

12 A. No, ---

13 Q. --- can you?

14 A. --- I could tell you those are daylilies and that's some
15 kind of a tea shrub.

16 Q. Uh, that -- what's that (indicating)?

17 A. I don't know what the spots are.

18 Q. Uh, is it an animal or some -- okay. And and how 'bout
19 this (indicating)?

20 A. That is what the deck looks like.

21 Q. Looked like then or looks like now?

22 A. Corr -- both. I ---

23 Q. Alright.

24 A. --- mean, the decking is still out there for a portion,
25 like I said it's a, it's a walkway and there -- the walkway is

1 still there from the house to what we call the pool house so
2 that walkway still exists. What was removed was the width
3 part of the walkway as well as what had been the opposite side
4 of the walkway so all a that has been removed and then the
5 purpose of that that was to establish a new entrance to into
6 this outdoor building that would be safer to get into.

7 Q. Well it was taken out in part because it was dangerous,
8 right?

9 A. Well it was taken out, yes after Bobby was hurt there,
10 yes.

11 Q. But now is it your testimony that the remaining decking
12 that's out there is in the same condition as that walkway that
13 Bobby was on?

14 A. It's about the same, yes. It's solid, it's safe and it
15 is weathered but I walk on it every day to go out and feed the
16 birds.

17 Q. All the remaining decking is solid and safe?

18 A. Yes. Now there are little holes that that the chipmunks
19 have made and things like that but gen -- I mean, in general
20 it is in good condition, it's just weathered ---

21 Q. Let me get the ---

22 A. --- but it was treated timber so it has been able to last
23 a long time. I mean, they're 2 by 4s.

24 MR. DARWIN: Alright, Judge, we'll mark these next two as
25 Plaintiff's 2 and 3.

1 (Photographs marked Plaintiff's Exhibit Nos. 2 and 3 for
2 identification.)

3 MR. DARWIN: Thank you.

4 COURT REPORTER: You're welcome.

5 BY MR. DARWIN:

6 Q. Alright, I'm gonna show you some color photographs that
7 were taken in March of this year ---

8 A. Uh-huh.

9 Q. --- and let me know if these show your your decking as it
10 exists now or at least a good bit of it. Just take your time
11 and look through those for me.

12 (Whereupon, the defendant complied.)

13 A. Yes, this is what the deck looks like at this time.

14 Q. What you may want to, I -- you can do it however you want
15 to, Ms. Jordan, but you may wanna look through all of 'em just
16 to make sure you recognize that as being various sections ---

17 A. Correct.

18 Q. --- of the decking and then ---

19 A. Okay.

20 Q. --- we'll mark 'em all.

21 (Whereupon, the defendant examined the photographs.)

22 A. Okay, yes these are my deck. I don't know exactly where
23 that (indicating) one is but I do know this (indicating) is
24 where the chipmunk goes.

25 Q. Chipmunk goes to the same spot all the time?

1 A. Yeah.

2 Q. Pet chipmunk, okay.

3 A. Right here (indicating).

4 Q. We'll mark all these in sequence as the next set.

5 (Photographs marked Plaintiff's Exhibit Nos. 4 through 19
6 for identification.)

7 Got 'em all? This nice lady here can only do one thing
8 at a time so she has to put the stickers on, she can't be
9 typin'. Alright, now so your testimony is the remaining
10 decking out there is safe and secure.

11 A. Yes.

12 Q. Okay. If I can get you to step down for me, Ms. Jordan,
13 for a second, I'm gonna show you enlargements of some of these
14 photographs we marked. You can and we'll just come down.

15 (Whereupon, the defendant left the stand.)

16 This (indicating) is one of the pictures that that we
17 marked. You would consider that (indicating) to be safe?

18 A. That's enlargement but yeah, it's just a little place.

19 Q. Okay. How 'bout, how 'bout this one right here
20 (indicating)? Would you consider that to be safe?

21 A. Yes, because that's on the edge where you wouldn't step.

22 Q. Or do you see here (indicating), would you agree that
23 (indicating) plank is rotted and these (indicating) nails are
24 rusted?

25 A. Oh, I agree, yes.

- 1 Q. But you still consider that safe, a safe condition?
- 2 A. It doesn't look like it but again, I walk on it all the
- 3 time and it doesn't wobble or or move so ---
- 4 Q. And you don't warn anybody about it who's gettin' on it
- 5 like the air-conditioning repairman, anybody and say, Be
- 6 careful on this stretch of the deck it it's dangerous, ---
- 7 A. No, I don't.
- 8 Q. --- a man got hurt out here on a similar section?
- 9 A. No, ---
- 10 Q. You don't ---
- 11 A. --- because ---
- 12 Q. --- tell anybody about that.
- 13 A. --- that section's been removed.
- 14 Q. This -- no, ma'am, this (indicating) is still here. This
- 15 is 2011.
- 16 A. Yeah, yeah, but where he was injured has been removed.
- 17 That's (indicating), you know, I don't know where that is on
- 18 the deck.
- 19 Q. It's it's part of your deck though we have ---
- 20 A. Okay.
- 21 Q. --- agreed, correct?
- 22 A. Yeah.
- 23 Q. Okay. Hold on just a second, I won't make you stand up
- 24 here too long.
- 25 A. That's okay.

- 1 Q. Would you consider this (indicating) section safe?
- 2 A. I think the holes are kind of small like certainly the
- 3 size, the size of the nail indicates that's pretty, it's not
- 4 that large.
- 5 Q. Does this not suggest to you though that the wood is
- 6 rotting away?
- 7 A. On that particular board, yes.
- 8 Q. Okay. How 'bout this (indicating), ma'am? Would you
- 9 consider that (indicating) to be safe?
- 10 A. That one does need to be replaced, yes.
- 11 Q. You would consider that to be in dangerous condition?
- 12 A. Yes.
- 13 Q. Okay. Would you also consider this (indicating) to be a
- 14 dangerous condition on your property parta the decking?
- 15 A. Well actually where this one is this is the board that
- 16 goes up here (indicating) and that goes across it and that's
- 17 where my chipmunk goes in and out.
- 18 Q. This (indicating) is the chipmunk area?
- 19 A. Yes.
- 20 Q. Well I didn't know that was a chipmunk area, ---
- 21 (Defendant laughs.)
- 22 --- so that explains that area right there (indicating).
- 23 A. See how it's well rounded through there (indicating), ---
- 24 Q. Yes, ma'am, but ---
- 25 A. --- he's done a good job but yes, ---

1 Q. --- but ---

2 A. --- that board needs --- it's ---

3 Q. --- that's damaged too.

4 A. --- that one's shabby.

5 Q. That's (indicating) another area from the one we were
6 just talkin' about.

7 A. Yes.

8 Q. Okay. Would you agree that this (indicating) area is
9 dangerous?

10 A. That board needs to be replaced as well.

11 Q. It looks like somebody, it ---

12 A. Yeah, ---

13 Q. --- it -- but ---

14 A. --- the deck screws.

15 Q. --- there's no -- who who did that?

16 A. We went back and when we we put in some new decking, a
17 larger section and we went back and put deck screws in.

18 Q. Oh, so so that was done out of recognition that these
19 nails weren't holding the boards securely enough? You can
20 have a seat.

21 A. Yes.

22 Q. You go go -- you can sit if you need to.

23 A. Yeah.

24 (Whereupon, the defendant returned to the stand.)

25 Q. Well you would agree with me that this (indicating) shows

1 the the wood rotting away as well, correct?

2 A. Yes.

3 Q. Alright. Well now tell me, I asked your lawyer for
4 copies of any repair estimates you had since 1988, any
5 inspection reports, any repair bills for this deck, anything
6 to show that you exercised reasonable care in taking care of
7 this deck and I got nothin', do you not have any documents
8 like that?

9 MR. TATE: I would object to the que -- question, Your
10 Honor. Uh, ---

11 THE COURT: Sustained. Just ask her ---

12 BY MR. DARWIN:

13 Q. Okay, do ya have any records, any repair estimates,
14 bills, inspection reports, anything relating to this deck?

15 A. No, because the deck work has been done by friends so no,
16 I don't have any records.

17 Q. Thi -- this wasn't professionally done was it, ma'am,
18 these these (indicating) screws that were put in around where
19 these (indicating) nails are?

20 A. No.

21 Q. Alright. Your your backyard flooded before Mr. Edwards'
22 accident, didn't it?

23 A. Yes, I live in a floodplain.

24 Q. Yes, ma'am. And since these boards are right next to the
25 ground they get covered up with water when it floods.

1 A. It did on occasion. Usually the flooding has stopped
2 before that decking area though.

3 Q. At one point you even took some pictures of your backyard
4 because of all the flood damage it sustained, didn't you?

5 A. Yes, but once again that was in the lawn area and not at
6 the deck.

7 Q. But you don't -- you haven't brought any of those
8 pictures with you to court?

9 A. Of the flooding, no, ---

10 Q. Yes, ma'am, in the back ---

11 A. ---- no.

12 Q. --- yard?

13 A. No. And I will say that in looking at this picture of
14 the walkway that you can see it's pretty extensive decking
15 around there but not all the boards look as weathered as that
16 as the ones in the -- that have been highlighted.

17 Q. You think you would be in a better position as a
18 homeowner for twenty years, particularly you and Mr. Pearson,
19 than than Mr. Edwards to see problems with this deck, don't
20 you?

21 A. As a homeowner well I -- we've all walked on the deck and
22 Bobby has been out on the deck numerous times. When he blows
23 the deck he has to walk the deck area as well as the walkway.

24 Q. Yes, ma'am, but do you, goin' back to my question, do you
25 think you and Mr. Pearson would know more about the condition

1 of this deck than Mr. Edwards would livin' there day in and
2 day out and you've been there twenty years when this happened,
3 twenty-one years now, ---

4 A. Um, ---

5 Q. --- twenty-three years?

6 A. So repeat your question ---

7 Q. Yes, ma'am.

8 A. --- again.

9 Q. You you would be in a much better position, wouldn't you,
10 ma'am, to know the condition of this deck than Mr. Edwards
11 would be.

12 MR. TATE: Objection, Your Honor, we're talkin' about one
13 board or two boards, not the entire deck.

14 MR. DARWIN: I ---

15 THE COURT: Well you'll be able to examine her if you'd
16 like.

17 MR. TATE: Alright.

18 THE COURT: Overruled.

19 THE DEFENDANT: I think is our observation that when we
20 determine that something is unsafe then we have tried to
21 address it. In other words, from the photos those are not
22 high traffic area places to bring concern to us.

23 BY MR. DARWIN:

24 Q. All these photos that I held up when you were off the
25 witness stand none of these are high traffic areas? These are

1 (indicating) parts of the deck that aren't used?

2 A. Um, well once again I don't know where that (indicating)
3 one is but I think if you look at this, um, ---

4 Q. You ---

5 A. --- the other photo, you wouldn't find that kind of
6 evidence on the majority of this decking.

7 Q. Well and and there's some areas, aren't there, were there
8 nails are sticking up? Have you seen that at various parts?

9 A. I don't recall that. Right now I know of one board that
10 is warped from but that's new boarding.

11 Q. Step down for me one more time if you would ---

12 A. Okay.

13 Q. --- please, ma'am.

14 (Whereupon, the defendant left the stand.)

15 This right here (indicating) would certainly be a high
16 traffic area, wouldn't it? Isn't that your door?

17 A. It is ---

18 Q. Isn't isn't there a nail stickin' up right there
19 (indicating)?

20 A. There is a nail there.

21 Q. Would you consider that to be dangerous?

22 A. Um, it should be addressed. To me; number one, we don't
23 use this door, this is a back door and; number 2, it's kind of
24 under the shadowy glare of that (indicating) so you would be
25 walking down the center and step up hopefully into this

1 (indicating) area but yes, that nail needs to be ---

2 Q. And it leads to a ---

3 A. --- addressed.

4 Q. --- doorway?

5 A. Yes, ---

6 Q. Okay.

7 A. --- but like I said an unused doorway.

8 Q. It's your testimony though, isn't it, ma'am, that the
9 section of the walkway where Mr. Edwards' accident occurred
10 was in the same condition as the photographs I've just shown
11 you.

12 A. They were all of that same age, yes.

13 Q. And same condition.

14 A. Probly.

15 Q. Okay. When you, when you took the pictures of the
16 flooding in your backyard before 2008, how many pictures did
17 you take? Was it a lotta pictures?

18 A. It was -- yes, there were significant pictures because
19 like I said it it -- the flooding flooded the lower yard right
20 up into that back deck.

21 Q. And that's that's that year that Lawson's Fork
22 Creek ---

23 A. Yes.

24 Q. --- got flooded so bad and it ran up over the banks, ---

25 A. Yes, ---

- 1 Q. --- right?
- 2 A. --- that's correct.
- 3 Q. Was that 2007, 2006? When was that?
- 4 A. I don't know the date of that but it was yes, when we had
- 5 that very severe flooding.
- 6 Q. Okay, and it caused damage to your home?
- 7 A. No, not to the home itself.
- 8 Q. What what ---
- 9 A. My ---
- 10 Q. --- part of the ---
- 11 A. The water usually would come, on that occasion came up to
- 12 the walkway area there but it did not get into the house or
- 13 flood the house or the the deck area.
- 14 Q. It would flood parta the deck area, would it not,
- 15 ma'am?
- 16 A. That I can recall, no, and that seems it was maybe prior
- 17 to havin' the pool area filled in.
- 18 Q. That area where the decking is though receives a lotta
- 19 moisture, does it not?
- 20 A. The whole yard receives a lot of moisture.
- 21 Q. Like you said it's in the floodplain and you'll have
- 22 mildew actually growing on those boards and from time to time
- 23 you pressure washed it to get the mildew off?
- 24 A. That's correct.
- 25 Q. That that -- there's some -- you ever see some green

1 growth like plant growth on the boards too?

2 A. Yes, I saw that, it was evident there.

3 Q. Bobby still does your yard ---

4 A. Bobby does our yard, he's put in ---

5 Q. --- and you consider him to be truthful as you said ---

6 A. Yes.

7 Q. --- and you don't doubt for one second his summary of how
8 the accident happened.

9 A. No, I don't.

10 Q. Your housekeeper was there when the accident happened,
11 right?

12 A. Yes.

13 Q. Lady named Linda Jones?

14 A. That's correct.

15 Q. And you don't dispute the injuries that Bobby says he
16 suffered in the accident?

17 A. I do not, no.

18 Q. You don't dispute those would be painful injuries, do
19 you?

20 A. Of course.

21 Q. Tho -- those are big boards, aren't they, that came up
22 and the board that hit him in the face?

23 A. They're 2 by 4.

24 Q. Two by four?

25 A. Um-hum.

1 Q. Alright, it's -- I I said ---

2 A. I gue ---

3 Q. --- 2 by 6 but they're -- okay.

4 A. Standard board.

5 Q. Okay. Bear with me one second. I'm assumin' you never
6 told Mr. Edwards not to walk on any section of that deck.

7 A. No, I did not.

8 Q. Okay. You don't know who originally built the deck?

9 A. No, I do not.

10 Q. Alright, ma'am, I appreciate it. That's all.

11 THE COURT: Mr. Tate.

12 CROSS-EXAMINATION BY MR. TATE:

13 Q. Think Bobby has pled he was working for you 6 to 8 months
14 before this happened, is that right?

15 A. Um, I guess that's right. I don't have a record of when
16 he started but he was working there prior to having that
17 accident, ---

18 Q. Nichia, ---

19 A. --- yes.

20 Q. --- he'd been ---

21 A. He'd been ---

22 Q. --- working for -- your your your ---

23 A. Well ---

24 Q. --- boyfriend ---

25 A. --- right.

- 1 Q. --- hired him actually.
- 2 A. Right, yes.
- 3 Q. He'd been working there a while.
- 4 A. Correct.
- 5 Q. And that was in August 15th 2008?
- 6 A. When he was injured.
- 7 Q. Okay, now it's October the 3rd 2011?
- 8 A. That's correct.
- 9 Q. He's still working for ya?
- 10 A. Yes.
- 11 Q. Has he refused to walk on any parta the deck there now or
- 12 anything like that, say, I don't wanna, I don't wanna step on
- 13 that that's dangerous?
- 14 A. Uh, he's never made a verbal statement to me regarding
- 15 that, no.
- 16 Q. Okay. And was there anything in these photographs or
- 17 blowups or whatever that was hidden from him?
- 18 MR. DARWIN: Your Honor, I'm I'm gonna object to leading.
- 19 THE COURT: Overruled.
- 20 BY MR. TATE:
- 21 Q. You can answer the question. I mean, was there ---
- 22 A. No, the decking that is -- was like that at that time and
- 23 it's still there today.
- 24 Q. And he's still walking on it.
- 25 A. Yes, we walk on it every, you know, every day, not so

1 much on to that that door but the rest of the deck.

2 Q. Okay. You walk down the middle and and back and it's
3 weathered?

4 A. It is weathered on the sides and like I said, I walk down
5 the middle of the walkway.

6 Q. And but he still does your yard and does a good job ---

7 A. Yes.

8 Q. --- and still carries that big tank on his back and he
9 sprays and ---

10 A. I don't know if Bobby does that to date.

11 Q. Okay, but again, nothin' was hidden from him.

12 A. No, it's -- no.

13 Q. And before this happened did you have -- did you step on
14 the side of a board and have it come up or anything?

15 A. Oh, I never did, no.

16 Q. Okay, and ev -- and ya had any visitors in your backyard
17 before, you entertained and ---

18 A. Yes, we entertained in this outdoor building.

19 Q. Okay. People walk on the decking or whatever before
20 August 15th 2008?

21 A. Yes.

22 Q. Anybody ever have a board come up hit 'em in the mouth or
23 nose or whatever?

24 A. No.

25 Q. So it was a spri -- a sur -- a surprise to you.

1. A. Yes, very much so.

2. Q. Thank you.

3. REDIRECT EXAMINATION BY MR. DARWIN:

4. Q. You're not claimin' Bobby Edwards did anything improper
5. that day, are you?

6. A. No. Like I stated we walk in the center of the walkway
7. and it was my information that Bobby stepped on the side of
8. the board.

9. Q. But that wasn't improper for him to do that, that's
10. somethin' you would expect him to do to get on and off the
11. deck, right?

12. A. That is not the path I would have taken to get up on the
13. deck.

14. Q. Was the deck not constructed to tolerate that type
15. movement?

16. A. It should be but ---

17. Q. Yes, ma'am.

18. A. Yes.

19. Q. Okay, that's all.

20. THE COURT: You may step down.

21. MR. TATE: Thank you, Nichia.

22. THE DEFENDANT: Thank you.

23. (Whereupon, the defendant left the stand.)

24. MR. DARWIN: Your Honor, Mr. Pearson's not here today but
25. we're gonna publish parts of his testimony. He was deposed in

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1 March of this year and with Your Honor's permission we would
2 like for your law clerk to read the portions that we
3 designate.

4 THE COURT: Okay.

5 (Whereupon, a discussion was held off the record.)

6 (Deposition of Mr. Pearson marked Plaintiff's Exhibit
7 No. 21 for identification.)

8 MR. DARWIN: May I explain what...

9 (Whereupon, a discussion was held off the record.)

10 THE COURT: Ladies and gentlemen, as you were previously
11 told is their -- Bobby Pearson was a potential witness and in
12 any case when ya have potential witnesses oftentimes their
13 deposition is taken as just sworn testimony taken outside of
14 court. Sometimes it's used to find out what somebody knows
15 about a case and other times it's used for the purpose of of
16 bringin' it to court and using it in lieu of a witness coming
17 to court and testifying live, sometimes a witness isn't
18 available and so the deposition's taken so that that testimony
19 be preserved and it can be read in court if the witness is not
20 available so in this case Mr. Darwin's going to be introducing
21 some portions of Bobby Pearson's deposition that was taken
22 previously. When the, when the deposition is taken, it's
23 sworn testimony, as I say the person's placed under oath, a
24 court reporter is present and takes down everything that
25 they -- that is asked and it is responded to and lawyers are

MOTIONS AND MATTERS

1 present to conduct direct and cross-examination just like they
2 would in court so in this case Mr. Darwin's gonna be
3 introducing some portions of Mr. Pearson's deposition
4 testimony. He'll ask the question that he asked on the day
5 that the deposition was taken and seated in the witness chair
6 is Joseph Holland, he's my law clerk, he's not Mr. Pearson,
7 but he's gonna be reading the responses that Mr. Pearson gave
8 in response to the question of Mr. Darwin and, Mr. Tate, are
9 you gonna have any additional excerpt?

10 MR. TATE: Just a few.

11 THE COURT: Okay.

12 MR. DARWIN: We're we're blending 'em in, Judge. I'll
13 I'll read 'em 'cuz ---

14 THE COURT: You gonna read all of 'em ---

15 MR. DARWIN: No, I'll read 'em all.

16 THE COURT: --- yours and his?

17 MR. DARWIN: Well he didn't actually have any questions
18 that he asked this witness ---

19 THE COURT: Okay, alright, but I mean, you're gonna read
20 the ones that he would want read.

21 MR. DARWIN: Yes, sir. Yes, sir.

22 THE COURT: Alright, so all the, all the excerpts from
23 the deposition are gonna be presented by Mr. Darwin and he'll
24 ask the question he asked and Mr. Holland will give
25 Mr. Pearson's answer verbatim as he gave it on that day.

PARTIAL DEPOSITION OF ROBERT LEROY PEARSON

1 MR. DARWIN: This is the deposition of Robert Leroy
2 Pearson the fourth taken Tuesday March 15th 2011. I'm gonna
3 start at page 5 line 4.

4 (Whereupon, portions of Mr. Pearson's deposition are read
5 into the record.)

6 "Q. Mr. Pearson, you and I met a little while ago. My
7 name is Kip Darwin, I'm Mr. Edwards' attorney in this lawsuit
8 he's brought against Mr. Jordan because of this accident that
9 happened on August the 15th of 2008 at her home. I'm going to
10 be asking you some questions about the deck and some other
11 issues surrounding the case. Before I get into these
12 questions I'll have some background questions I need to ask
13 you mainly for jury selection purposes. If I ask you
14 something you don't understand, will you ask me to repeat my
15 question ---

16 A. (The witness nodded in the affirmative.)

17 Q. --- and I'll be happy to do that.

18 A. Okay.

19 Q. I want to make sure -- what I wanna make sure of is
20 that when I ask you a question you give me a response you
21 understood my question.

22 A. Okay.

23 Q. So it's your right as a witness in the case to ask
24 me to clarify it, to rephrase it, whatever I need to do to
25 make sure you understood it, is that fair?

PARTIAL DEPOSITION OF ROBERT LEROY PEARSON

1 A. That's fair.

2 Q. You just let me know. Be sure to speak up. Have
3 you ever been deposed before, had this done before?

4 A. No.

5 Q. Have you ever been a party to any type of lawsuit
6 or a witness to any type of lawsuit?

7 A. No.

8 Q. Who is your employer?

9 A. Mesa.

10 Q. Mason Air Group?

11 A. M-E-S-A Air Group.

12 Q. Okay, Mesa Air Group. Where do you fly out of?

13 A. I'm based in Charlotte.

14 Q. What type of planes do you fly?

15 A. CRJ-900.

16 Q. Did you serve in the military?

17 A. No.

18 Q. How did you become a pilot?

19 A. Just came out private.

20 Q. What's your educational background?

21 A. Two year degree liberal arts.

22 Q. Where did you attend school?

23 A. Spartanburg Methodist College.

24 Q. Are you from Spartanburg?

25 A. Yes, I am.

PARTIAL DEPOSITION OF ROBERT LEROY PEARSON

1 Q. Did you go to Spartan High or Dorman or where did
2 you go?

3 A. I went to Spartan High.

4 Q. When did you graduate from Spartanburg High
5 School?

6 A. 1978.

7 Q. Did you go grad -- did you go straight to SMC after
8 that?

9 A. Uh-huh.

10 Q. After you got a 2-year -- and you got a 2-year
11 degree from Spartanburg Methodist College?

12 A. Correct.

13 Q. What's your employment history since then? When
14 did you become a pilot that might be a better way for me to
15 ask it.

16 A. I started flight instructing 1986 ---

17 Q. Okay.

18 A. --- and flew freight until 1990, flew passengers
19 for a company in Charlotte called CC Air from 1990 to, there
20 were some furloughs in there but they were brought out by Mesa
21 Airlines in 1998, 1998 to present.

22 Q. So you've been a pilot since 1986, is that right?

23 A. Well as a profession, yes.

24 Q. That's been your job since 1986 ---

25 A. Correct.

1 Q. --- flying planes. I'm assuming you became a pilot
2 then before that?

3 A. It was prior to that, yeah."

4 MR. DARWIN: Alright, skippin' down to line 25.

5 "Q. How long have you and Ms. Jordan been together?

6 A. Since I don't know.

7 Q. I should have asked her, left it alone with you,
8 I've been doin' this long enough not to do this with guys but
9 give me your best estimate.

10 A. We've been seeing each other since 1996.

11 Q. How long have ya'll been living together?

12 A. Since I would say me and the dog got there at the
13 same time 2000.

14 Q. And ya'll have lived together continually since
15 2000 I'm assuming.

16 A. Right.

17 Q. Do you know about any repairs that were done to
18 this deck or walkway, I'm talkin' about all the woodwork ya'll
19 had behind the house before Mr. Edwards' accident?

20 A. No.

21 Q. Did ya'll ever have any work done to it or ever have
22 anything, any boards or planks removed, replaced, anything
23 like that before his accident from the time you started living
24 there in 2000?

25 A. Not on the walkway.

1 Q. Not on the stretch where he got hurt.

2 A. No, not on that stretch where he got hurt, no.

3 Q. Well if I had asked you the day before his accident
4 August 14th of 2008 to describe the condition of that walkway
5 where he got hurt, what would have told me good? fair? poor?
6 how would you have described it?

7 A. Well I thought it was good.

8 Q. And why would you say that?

9 A. Aged because I had not had any problems with any
10 boards being loose. I hadn't fallen offa the deck. It
11 was ---

12 Q. Did you have any plans to replace that walkway?

13 A. Yeah, we were going to replace that particular
14 walkway.

15 Q. Why were you going to replace it?

16 A. Just to fit in with the regular landscaping that we
17 had and we were going to put a deck on the pool house.

18 Q. How soon after Mr. Edwards' accident did you replace
19 that walkway where he got injured?

20 A. I can't recall, not long.

21 Q. Within a week week or two?

22 A. It was wi -- it was within a month I think."

23 MR. DARWIN: Alright, skip over to 11 starting at line 2.

24 "Q. Who removed the old walkway?

25 A. I had a friend of mine do it.

PARTIAL DEPOSITION OF ROBERT LEROY PEARSON

1 Q. Who was that?

2 A. Tony Brown.

3 Q. Tony Brown?

4 A. Yeah, basically.

5 Q. Does Tony have any type of company?

6 A. No.

7 Q. He's a handyman?

8 A. Yeah.

9 Q. Did you ask him to take up the entire walkway, you
10 know what I mean, the area where Mr. Edwards got hurt, that
11 walkway there?

12 A. That span, we removed that span.

13 Q. Do you have any idea how many boards or planks we're
14 talkin' about?

15 A. Twenty-five feet worth ---

16 Q. Okay.

17 A. --- would be my guess.

18 Q. Did you have that span removed because of
19 Mr. Edwards' accident?

20 A. No.

21 Q. Why did you have it removed?

22 A. Because we were going to put a deck on there and
23 finish the landscaping around there and put a deck in front
24 the pool house.

25 Q. So Mr. Edwards' accident had nothing whatsoever to

PARTIAL DEPOSITION OF ROBERT LEROY PEARSON

1 do with the removal of those boards or planks.

2 A. Well after his accident it certainly was a good idea
3 at that point, yeah, I mean, after he got hurt on it.

4 Q. Did you learn after he'd got injured that those
5 boards were not in good shape?

6 A. They were not in the condition that I thought.

7 Q. What did you learn about them?

8 A. Well, the screws were I think rusting, they were ---

9 Q. I'm sorry, finish your answer, I interrupted you.

10 A. Yeah, that was it.

11 Q. Tell me what you said again, I didn't hear that.

12 A. The screws that were holding some of the boards down
13 they had begun to rust, corrode.

14 Q. Had you ever inspected those boards before his
15 accident?

16 A. It never come up.

17 Q. Okay.

18 A. I mean, that was the first time that they had come
19 up.

20 Q. The screws had come up outta the wood is that what
21 you're talkin' about?

22 A. Yeah, that I could see the screws because they were
23 in the wood prior to that."

24 MR. DARWIN: Go to page 15 starting at line 17.

25 "Q. Now you learned on August 15th the date of

PARTIAL DEPOSITION OF ROBERT LEROY PEARSON

1 Mr. Edwards accident that he had been hurt on that walkway,
2 right?

3 A. Correct, yes.

4 Q. The same day you learned about it?

5 A. Yes, I was off that day I think.

6 Q. Did you -- were -- you were off. You weren't at
7 home though when this happened, were you?

8 A. No.

9 Q. How soon did you get back to the house after the
10 accident happened?

11 A. I don't know. I don't know who informed me.

12 Q. Was it still daylight?

13 A. Yes.

14 Q. Did you look at this area where the accident
15 happened?

16 A. Yeah, after the fact, yes.

17 Q. How did it appear? Obviously there was one loose
18 plank we know that.

19 A. There was two loose boards.

20 Q. Alright, two loose boards. Did you look at the
21 screws that had been connected to those boards?

22 A. Yes.

23 Q. How did they appear?

24 A. They were in poor condition."

25 MR. DARWIN: Alright, go to 17 starting at line 9.

1 "Q. Well after you saw the condition of the walkway did
2 you consider that walkway to be in poor condition?

3 A. Yes.

4 Q. The entire walkway?

5 A. That span. I've kind of tested the walkway that he
6 has pi -- the pictures of this and it's holding up pretty nice
7 and I've jumped on the corners.

8 Q. But the 25-foot span you had removed you did not
9 consider that safe after Mr. Edwards' accident.

10 A. No, I wouldn't want anybody to walk on it after his
11 accident.

12 Q. And why is that?

13 A. Because I had knowledge that, I have knowledge then
14 that the screws were in poor shape."

15 MR. DARWIN: Alright, go to page 18 starting at line 13.

16 "Q. What about the condition of the board around them,
17 was it rotted or warn, I mean, tell me about that.

18 A. They were aged but they were in good shape..

19 Q. Well how would rusted screws come loose? I'm just
20 tryin' to understand how this happened.

21 A. I mean, they were losing the amount of metal that
22 they once had.

23 Q. To connect them to another piece of wood that was
24 holding them down?

25 A. The joist that was going down through there."

1 MR. DARWIN: Go to page 20 starting at at line 15.

2 "Q. Is any part of the decking or walkway in need of
3 repair today?

4 A. No.

5 Q. So you would consider what's out there today to be
6 safe, not a hazard to anybody walkin' on it.

7 A. Yes.

8 Q. Did this accident with Mr. Edwards surprise you?

9 A. Yes."

10 MR. DARWIN: Page 22 starting at line 5.

11 "Q. Did you speak with Mr. Edwards after his accident?

12 A. Oh, yeah, Bobby is still in my employment.

13 Q. That's what I thought. You were the one who hired
14 him to come out there I guess starting in 2008, right?

15 A. Correct.

16 Q. And certainly the area where he was injured it
17 wouldn't have surprised you for him to be in that area, would
18 it have, on the property?

19 A. No, he had full reign of the property, whatever
20 maintenance he needed to do.

21 Q. He was there at ya'lls request and it was reasonable
22 for him to be there given how the yard was landscaped, is that
23 fair?

24 A. That's correct.

25 Q. I guess there were bushes around that area where he

1 was working, is that right?

2 A. Correct."

3 MR. DARWIN: Page 23.

4 "Q. Are you pleased with the work he does?

5 A. Yes.

6 Q. I guess you've dealt with him enough to form an
7 opinion about whether he's a truthful fella or not, haven't
8 you?

9 A. Oh, yes.

10 Q. Do you think he's a truthful fella?

11 A. Yes, I do.

12 Q. And ya'll have no plans to pull up any other
13 sections of the decking.

14 A. No.

15 Q. Have you pulled up any sections other than the
16 section where Mr. Edwards was injured?

17 A. No."

18 MR. DARWIN: Page 26 starting at 18.

19 "Q. You don't fault him in any way for this accident, do
20 you?

21 A. No."

22 MR. DARWIN: Page 27.

23 "Q. Okay, I've asked Ms. Jordan to track down any
24 documents she has relating to repairs that were done to the
25 deck, any inspections that may have been done of the property

1 before she bought it. Are you aware of any inspections that
2 would've been done since you started living there?

3 A. No."

4 MR. DARWIN: That's it. Thank you.

5 (Whereupon, the reading of the deposition concluded.)

6 MR. DARWIN: Alright, Your Honor, we've got a short video
7 of Dr. Rucker to play at this point.

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

9 (Whereupon, a discussion was held off the record.)

10 THE COURT: Alright, ladies and gentlemen, as you were
11 previously told, the next testimony to be presented is that of
12 Christopher D. Rucker who's a medical doctor, he was also
13 examined outside the Court under oath and his deposition was
14 videotaped so you'll see him as he testifies in response to
15 questions.

16 (Whereupon, the videotaped deposition of Dr. Rucker was
17 played.)

18 MR. DARWIN: Your Honor, may we approach?

19 THE COURT: Yes.'

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

21 THE COURT: Alright, ladies and gentlemen, I've got one
22 issue I need to address before we go further so I'll ask you
23 to please go to your jury room. Do not yet talk about the
24 case, I'll bring you back shortly to continue.

25 (The following takes place outside the presence of the

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1 jury.)

2 THE COURT: Alright; we have an issue I need to address?

3 MR. TATE: Your Honor, I would object to this being
4 introduced into evidence, it's uh, ---

5 THE COURT: Well let me find it. Let me know what it is
6 before we start ---

7 MR. TATE: Oh, okay.

8 THE COURT: --- objectin' to it.

9 MR. DARWIN: You want me to give you the background,
10 Judge?

11 THE COURT: Sure.

12 MR. DARWIN: We went out there to Ms. Jordan's property
13 March of this year with a videographer who's also a
14 photographer, that's where we got these pictures. We also
15 made a video, a short video of the decking that's out there,
16 it's about five minutes long. I can play it for you so you
17 can see it. I think what Mr. Tate has objected to mainly is
18 the section where Mr. Edwards just applies just a little bitta
19 pressure to the end of several boards that are out there now
20 they lift up. If you'll recall from Mr. Pearson's testimony,
21 he's testified that he's jumped up and down on the ends of the
22 board and they're stable. Our whole issue is Ms. Jordan's
23 testimony was this decking that remains is in the same
24 condition as the old decking, we're saying it was hazardous of
25 course 'cuz that's why this accident happened. We think it

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1 relevant.

2 THE COURT: Okay.

3 MR. TATE: First of all, the the new decking that, I
4 mean, that this decking is not where he stepped, I mean, it's
5 not relevant to that; second, it's three years later it's
6 post-spoilation. We did not take the deck down that he
7 stepped on because to hide it or anything, it's part of the
8 landscaping plan. I don't see where it's relevant or excuse
9 me, I spilled water; uh, it's cumulative also. I mean, he's
10 got the photographs, I don't know why we're spending time
11 doing this. I object to it. It's cumulative and it it une --
12 unnecessarily enhances some part that, uh, of him hoppin' up
13 and down the -- on the a deck with no foundation how it, ya
14 know, I don't know if he might removed scr -- screws or
15 anything or that was just the way it was and I object to it.

16 MR. DARWIN: Your Honor, Your Honor, Mr. Edwards, of
17 course can be cross-examined about whether he removed any
18 screws. He didn't remove any screws. We're doin' the best we
19 can with what we have left. This walkway was taken up within
20 a month of this accident. There's been testimony that the
21 decking that remains is in the exact same condition that this
22 other walkway was in and Mr. Pearson on page 17 of his
23 deposition testified, "I've kind of tested the walkway that he
24 has the pictures of this and it's holding up pretty nice and
25 I've jumped on the corners," that this is the best evidence we

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1 got left and we do think there's a spoilation issue. I
2 understand what they're sayin' that they did it for
3 landscapin' reasons but within a month of this happenin' it's
4 up.

5 THE COURT: Well where where is this portion of the deck
6 in relation to the old portion?

7 MR. TATE: Um, ---

8 MR. DARWIN: Mr. Edwards can speak to that, uh, it's,
9 uh, ---

10 THE COURT: Well I mean, he can't speak to it 'cuz he's
11 not representin' himself.

12 MR. DARWIN: Well, I can, I can just the best thing to do
13 is just to show the video but the decking, the testimony has
14 been that this walkway that was taken up is in the same
15 condition as the current walkway or was in the same condition,
16 that's the point we're tryin' to prove.

17 THE COURT: Is Mr. Edwards gonna testify that the portion
18 that you're showing in this video is is identical in condition
19 to the portion he stepped on the date of the accident?

20 MR. DARWIN: Si -- yes, sir. Yes, sir. Would you like
21 to see the video, Judge?

22 THE COURT: Well I guess I'll have to.

23 MR. DARWIN: Okay.

24 (Whereupon, a discussion was held off the record.)

25 THE DEFENDANT: Push it a little closer.

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1 THE COURT: It's alright.

2 MR. DARWIN: We got it, Judge.

3 (Whereupon, a discussion was held off the record.)

4 MR. DARWIN: Okay, it's on now? Okay.

5 (Whereupon, the video was played.)

6 MR. DARWIN: That's it, Judge. One additional ground of
7 course for introducing it would be credibility because
8 Ms. Jordan did say the rest of the decking system is safe and
9 solid and secure.

10 THE COURT: Alright, anything further?

11 MR. TATE: No, Your Honor.

12 THE COURT: Alright, I'll allow it assuming that the
13 proper foundation is laid from his testimony.

14 MR. DARWIN: Sure. Thank you, Judge.

15 THE COURT: Okay. How long is his testimony gonna take?
16 What else you got?

17 MR. DARWIN: After him just Ms. Pavlovich and we're done.

18 THE COURT: How long is his testimony gonna take?

19 MR. DARWIN: Probly thirty minutes, Judge.

20 THE COURT: On direct or both?

21 MR. DARWIN: Well on direct, yes.

22 MR. TATE: Fifteen minutes at the most I would think.

23 THE COURT: Alright, let's take, let's take ten
24 minutes.

25 MR. DARWIN: Okay.

1 (Whereupon, a recess was taken.)

2 (Plaintiff's medical records marked Plaintiff's Exhibit
3 No. 22 for identification.)

4 THE BAILIFF: Court come to order.

5 THE COURT: Thank you, be seated. Alright, are we ready
6 for the jury?

7 MR. DARWIN: I believe so, Judge. We have marked as the
8 next exhibit Mr. Edwards' medical records.

9 THE COURT: Alright, bring 'em in, please.

10 (The following takes place in the presence of the jury.)

11 THE COURT: Alright, we'll continue with the plaintiff's
12 presentation.

13 MR. DARWIN: Call Bobby Edwards, Judge.

14 ROBERT W. EDWARDS, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. DARWIN:

17 Q. You're Robert W. Edwards?

18 A. Yes, sir.

19 Q. You go by Bobby?

20 A. Yes, sir.

21 Q. Bobby, make sure that microphone's pulled close enough up
22 to you so everybody can hear.

23 A. Okay.

24 Q. Tell the jury a little bit about yourself: where you're
25 from, what you do for a living, that type thing?

1 A. I'm Bobby Edwards, I've lived Spartanburg my whole life,
2 I just recently turned 40 years of age. I am a landscaper in
3 Spartanburg County, have been doin' that for twenty plus years
4 in South Carolina and recently engaged, about to be married.

5 Q. How fardya go in school?

6 A. Tenth grade.

7 Q. Why did you stop goin' to school in tenth grade?

8 A. I come from a single family and at the time I had to help
9 support my family.

10 Q. What did you do when you left school?

11 A. I went to work as a grocery store clerk.

12 Q. And then what did you do after that?

13 A. I went to work as a chef for a restaurant and then I went
14 to a little culinary school and after a while I did some
15 landscaping.

16 Q. How long have you been in the landscaping business?

17 A. Professionally I've been in the landscapin' fifteen plus
18 years.

19 Q. What type of work do you do?

20 A. I do all phases of landscaping: irrigation,
21 installations, hardscapes, water features, fish ponds,
22 chemical applications, ---

23 Q. Do you do ---

24 A. --- maintenance.

25 Q. --- you do commercial and residential?

1 A. Yes, sir.

2 Q. During the course of your fifteen years as a landscaper,
3 have you had occasion to walk on decks before?

4 A. Yes.

5 Q. How often?

6 A. Pretty much on a daily basis.

7 Q. Ya ever been injured other than August 15th 2008 on a
8 deck?

9 A. No, I have not.

10 Q. Alright. Tell the jury about this this date of August
11 15th of 2008. Before you get right into that, tell us about
12 the background of of when you started working for Ms. Jordan,
13 how you got contracted with them to to do landscaping work and
14 then talk -- take us up to the date of the accident..

15 A. I came to work for Ms.. Jordan and her boyfriend Bobby.
16 Pearson. I never really s -- came in contact with Ms. Jordan
17 on a regular basis, it was more of her boyfriend who is the
18 one that hired me. I think I come early in the mornin', I
19 think, I think she was at work at that time so I really didn't
20 get to know her. I had worked for them for six, between six
21 and eight months prior to the accident.

22 Q. What type of work had you done for 'em?

23 A. Basically, I started out I did a little clean up, I had
24 did some initial mulching of their yard and main -- weekly
25 maintenance.

1 Q. So you would go out there every week weather
2 permitting?

3 A. Yes.

4 Q. And tell me the the type of work you were doing. Did you
5 cut the grass?

6 A. We would cut the grass, stream trim, spraying of weeds,
7 trimmin' the shrubbery, planting of grass, pulling of weeds,
8 taking care of flowers, stuff like that.

9 Q. Describe the walkway and decking system she has in her
10 backyard that she had back in 2008.

11 A. The deck to me I've I've always seen it, I've seen her,
12 Mr. Pearson walk on the deck, it's weathered. It's always
13 looked weathered to me, it had like a grayish color to it but
14 as far as inspecting I never really inspected it.

15 Q. How much time would you spend on that deck when you would
16 go out there on a weekly basis?

17 A. Long enough to get from one end of the deck to the other
18 blowing it off or crossing over the individual beds that she
19 has so a minimum of five to ten minutes a week at the most.

20 Q. Tell us about this date of August 15th of 2008; how long
21 had you been out there before this accident happened?

22 A. On that particular day?

23 Q. That day. Yeah, that day.

24 A. I had been there, I had already done the initial
25 maintenance part as far as cutting the grass and stream

1 trimming and stuff and I was walking around with a 4-gallon
2 backpack sprayer that was probly half full spraying weeds.

3 Q. I've heard somethin' about this big pack on your back is
4 that what you're talking about?

5 A. Yes.

6 Q. A 4-gallon spray ---

7 A. Yes.

8 Q. --- on your back?

9 A. Yes.

10 Q. That's all you had on you.

11 A. Yes.

12 Q. Tell the jury what happened as you were doin' that.

13 A. As I was walking around I thought I had been attacked by
14 300 pound gorilla. Something came outta nowhere and just laid
15 one on me and that's all I remember.

16 Q. How long were you out, do ya know?

17 A. I don't know.

18 Q. Did it knock you out?

19 A. It knocked me out.

20 Q. What did you do when you came to?

21 A. I looked around to see if somethin' was there or someone
22 was there. It took me a few minutes to get my bearings
23 together, I seen stars and then I went to to the house and
24 that's when I realized that the housekeeper was there.

25 Q. Did you come to find out you'd been hit in the face by a

1 board?

2 A. Yes.

3 Q. What type of board?

4 A. Its' a 2 by 6, one of the decking boards. It was
5 standing, it was standing -- well it was more like leaning
6 over a couple other boards.

7 THE COURT: Please be careful of that microphone.

8 THE PLAINTIFF: I'm sorry, sir. It was like leaning over
9 a couple of the other boards, that's when I realized what it
10 was.

11 BY MR. DARWIN:

12 Q. I -- we've heard some testimony about boards over hanging
13 a side or somethin' like that; tell us about the area you were
14 walking in when this happened and how the walkway was
15 configured.

16 A. The walkway is configured is the layout of the house, you
17 have a large deck then you have a wooden walkway that goes to
18 another larger deck and then you have a it's like a
19 Chinese-style garden where you have numerous little walkways
20 goin' in between the gardens and near where the what they call
21 I guess the pool room there's a deck that it's probly a good
22 20, 25 foot span that went to a bench at one end and expanded
23 back towards the pool room which is where I was at when I was
24 hit.

25 Q. How how long was that walkway there after your

1 accident?

2 A. It was not there much longer than a week.

3 Q. Next time you went out there it was gone?

4 A. It was gone.

5 Q. Alright, what what happened when you gathered your senses
6 and figured out you had an injury, what -- did you have any
7 swelling, what was going on?

8 A. Oh, I pretty much couldn't see and I knew something
9 wasn't right, it -- I ju -- my vision was kinda blurry. I
10 went to the house, I knocked on the door, the housekeeper came
11 out, I asked her how I looked, she told me I didn't look too
12 good and I told her that I wa -- was leaving, if she could
13 contact Mr. Pearson.

14 Q. What did you do after that?

15 A. I think I made a phone call or somethin' and got somebody
16 to come drive my truck 'cuz I couldn't drive and we left,
17 Mr. Pearson and Ms. Jordan weren't at home and I made
18 arrangements for my fiancée to take me to the emergency
19 room.

20 Q. So did you go that night?

21 A. Yes, couple hours later.

22 Q. What did they do for you at the emergency room?

23 A. Initially they just took my blood pressure and I think
24 that's where they did my CT scan, X-ray maybe and did an
25 examination.

1 Q. Did they give you any medications?

2 A. I think they prescribed me for Lortabs or somethin'.

3 Q. Were you in pain?

4 A. Oh, yes.

5 Q. Do your best job describing it to these people on the
6 jury.

7 A. Um, I don't know if I can. It was a pretty, it was a
8 pretty good smack in the face. I mean, I I'm sure the
9 gentlemen could be more familiar than the ladies but if you
10 ever been hit with a baseball bat playin' a sport or a
11 baseball or somethin', that's about what it felt like.

12 Q. Alright, fast forward to August I guess it was 18th when
13 you went to see Dr. Rucker and ---

14 A. Yes.

15 Q. --- what happened there?

16 A. When I went -- I made an appointment with Dr. Rucker's
17 office based on the referral of Spartanburg Regional, they
18 couldn't set my nose there, that I would have to go see a
19 specialist. They did the initial examination and determined
20 that I had a broken nose and a deviated septum and I think
21 think gave me a couple options of what to do: live with it
22 crooked or try to fix it. I chose to try to get it as
23 straight back as possible and that's procedure that
24 Dr. Rucker's performed.

25 Q. Alright, describe that to the jury how that went.

1 A. It was very painful. As he said he gave me local
2 anesthetic. The local did not work too well. He gives you an
3 injection all around the nose area: your eyes, in the nose or
4 whatever.

5 Q. Does he take a needle and stick it up your ---

6 A. Yes.

7 Q. --- nose? How far up does it go?

8 A. It's pretty far then he inserts this long metal rod about
9 this (indicating) long on one side, he takes the palm of his
10 hand, he stuck a foot between -- on the chair and he began to
11 stick a rod in one side to try work it and he took the palm of
12 his hand and pushed on my nose to try to get it straight about
13 three or four times. It was very painful.

14 Q. Did he, did he -- he's already testified that he didn't
15 do anything to the septum, ---

16 A. Yes.

17 Q. --- tell me what problems you're having still with your
18 nose.

19 A. Uh, my nose -- my nasal cavity which is my septum stays
20 clogged all the time and I snore very loudly.

21 Q. Now you're not tellin' this jury you're disabled, are
22 you?

23 A. Nope.

24 Q. You go to work every day?

25 A. Every single day.

1 Q. How long do you work when you go to work?

2 A. Twelve, fourteen hours a day.

3 Q. Six days, sometimes seven days a week?

4 A. Six, seven, sometimes seven days a week.

5 Q. So right now you have this problem with congestion. Do
6 you -- how 'bout snorin'? Do you have any problem snorin'?

7 A. Yes.

8 Q. And is that because of the deviated septum?

9 A. Yes.

10 Q. Did you do that before?

11 A. No.

12 Q. Had you ever had any prior injuries to your nose?

13 A. No.

14 Q. No football injuries, nothing' ---

15 A. Nope.

16 Q. --- like that. Alright, sir. In March of this year, you
17 and I went out to Ms. Jordan's property ---

18 A. Yes.

19 Q. --- with a fellow who shot some video of ---

20 A. Yes.

21 Q. --- this decking area. I'd like for you to step down and
22 describe some of the area and tell the jury about what they're
23 seeing here.

24 (Whereupon, the plaintiff left the stand.)

25 THE COURT: Now let me remind the witness now the

1 court reporter's behind you ---

2 THE PLAINTIFF: I'll I'll stand right here (indicating).

3 THE COURT: --- and so she's gotta be able to hear ya as
4 well as the jury.

5 THE PLAINTIFF: Okay.

6 MR. DARWIN: There are some microphones here to the ---

7 THE COURT: There are microphones around. As long as you
8 direct your voice ---

9 THE PLAINTIFF: Okay.

10 THE COURT: --- towards a microphone, you'll be fine.

11 THE PLAINTIFF: Alright. Yes, sir.

12 (Whereupon, a video is played.)

13 BY MR. DARWIN:

14 Q. Is that Ms. Jordan's house there (indicating)?

15 A. That's Ms. Jordan's house, yes.

16 Q. What are the different sections we're looking at? Is
17 that (indicating) the fronta the house?

18 A. This (indicating) is her back patio that she has flowers
19 and her little seats and that's (indicating) goin' up. This
20 (indicating) is going to I guess what they would call the
21 front yard.

22 Q. What is that right there (indicating)?

23 A. That is the creek which is the property line, that's
24 Lawson's Fork Creek.

25 Q. Alright, where are we now? backyard area?

- 1 A. I consider it as the fronta the house, they may consider
2 it the backyard.
- 3 Q. What's -- is that an embankment there (indicating)
4 that's -- that ---
- 5 A. You'll have to slow ---
- 6 Q. No idea ---
- 7 A. --- it down.
- 8 Q. --- uh, it's just still on the walk, we'll come back to
9 it in a minute. What part is that (indicating)?
- 10 A. That is the parts -- can you pause it?
- 11 Q. Yeah.
- 12 A. This (indicating) is the section, this section right here
13 (indicating) that is mulch into that (indicating) bench or
14 this (indicating) bench and that section right there
15 (indicating) is the section where wood used to be where I got
16 injured.
- 17 Q. And what are we seein' there (indicating)?
- 18 A. This is part of another pathway that is all connected
19 together.
- 20 Q. Alright, what's that showin' there (indicating)?
- 21 A. That is showing some weathered boards.
- 22 Q. Alright, what else is it showin'? You see anything?
23 missing nails ---
- 24 A. Yeah, there's there's some missing nails.
- 25 Q. Okay. Alright, what do we see there (indicating)?

- 1 A. A missing nail ---
- 2 Q. Okay.
- 3 A. --- or two.
- 4 Q. And then some screws there (indicating)?
- 5 A. And some screws.
- 6 Q. Okay. What do we have there (indicating)?
- 7 A. Missing screws.
- 8 Q. Okay. And how does that compare with the elevation that
- 9 you stepped on?
- 10 A. That is about the same height as the elevation that I
- 11 stepped on.
- 12 Q. How 'bout how the boards are placed? about the same
- 13 way?
- 14 A. Same same -- there was no overhang on the boards. They
- 15 were all placed right up on the board that was up underneath
- 16 'em.
- 17 Q. Okay. Now is that you walking on the deck now?
- 18 A. Yes, it is.
- 19 Q. Okay. What section of the house is this (indicating)?
- 20 A. This is the section that goes from the hot tub which
- 21 earlier Ms. Jordan said was her back door, this (indicating)
- 22 is the pathway that goes out to the deck.
- 23 Q. What does that show there (indicating)?
- 24 A. A rotten piece a wood.
- 25 Q. Speaks for itself, okay. What are you showing here

1 (indicating)?

2 A. This is the picture that I think that you've seen
3 earlier, Ms. Jordan, ---

4 Q. This ---

5 A. --- with the nails ---

6 Q. --- this ---

7 A. --- coming up outta the board, that is the boards.

8 Q. How much pressure were you applying there on that ---

9 A. Barely touching them.

10 Q. Alright, what does that (indicating) show?

11 A. Missin' screws.

12 Q. Do you remember us bein' out there for that video?

13 A. Yes.

14 Q. How were you walking on that then?

15 A. Very gingerly.

16 Q. Okay. In August 15th or on August 15th of 2008, did did
17 you consider this deck to be dangerous?

18 A. No, I had no idea.

19 Q. Did you have any idea the wood had rotted to this extent
20 or that that many nails or screws were missin'?

21 A. No, I did not.

22 Q. What does that (indicating) show?

23 A. Loose nails.

24 Q. That's (indicating) showing again what?

25 A. This (indicating) is the areas that I would be working in

1 and where you would cross from one deck to another bed because
2 there's a bed on each side of the deck so I would just step
3 off in the de -- from the deck into the back bed to do what I
4 needed to do and to step back up on the deck and cross over to
5 the other side or go around.

6 Q. What's this showin' here (indicating)?

7 A. These are the boards that were taken up from the section
8 that I was injured on.

9 Q. They still piled up out there ---

10 A. Yes.

11 Q. --- these -- You and I were out there in March of
12 2011 ---

13 A. Yes.

14 Q. --- this year. Okay, you can have a seat.

15 (Whereupon, the plaintiff returned to the stand.)

16 After your accident happened, did you have an opportunity
17 to speak with Mr. Pearson a day or so after your accident?

18 A. Yes, that afternoon.

19 Q. What did you learn from that conversation with him?

20 A. Mr. Pearson ---

21 MR. TATE: This is ---

22 THE PLAINTIFF: --- had told ---

23 MR. TATE: --- hearsay, Your Honor.

24 THE COURT: Sustained.

25 MR. DARWIN: Your Honor, may we approach?

1 THE COURT: Okay.

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

3 BY MR. DARWIN:

4 Q. As a result of your post-accident inspection of this deck
5 and video and photographs that we've seen now, what's your
6 opinion about the condition of that deck on August 15th of
7 2008?

8 A. I don't walk on it.

9 Q. You still do work out there but do you walk on it?

10 A. No, sir.

11 Q. How do ya get around and do ---

12 A. We ---

13 Q. --- your job?

14 A. --- we have it -- we walk on the big parts of the deck
15 which are I think the lumber is newer. The small parts that
16 are the walkways in between the beds we do the front section
17 behind the pool house, there is a trail and some woods and we
18 go around to that section and we blow from those areas, the
19 deck and the patio we blow it off while we're in those
20 sections instead of actually being on the deck.

21 Q. You feel like you did anything improper on August 15th of
22 2008?

23 A. No.

24 Q. Do you feel like you used that deck in a manner in which
25 it wasn't intended to be used?

1 A. No way.

2 Q. When we were out there March of 2011, did you take up any
3 screws or nails or do any type of work on the deck to make it
4 appear in bad shape?

5 A. No.

6 Q. That's how we found it out there?

7 A. Yep.

8 Q. Have you had medical bills as a result of this injury?

9 A. Yes.

10 Q. Let me show you what's been marked as Plaintiff's
11 Exhibit 22. Would you go over with the jury what your medical
12 expenses today are.

13 A. I have a medical bill with Spartanburg Regional
14 Healthcare for \$1,721.60, I have a medical bill for
15 Spartanburg Regional Emergency for \$340, I have a initial bill
16 for Spartanburg Ear, Nose and Throat for Dr. Rucker for \$660,
17 I have a Upstate Carolina Radiology bill for \$231 with a
18 combined total of \$2,952.60.

19 Q. And you haven't had a septoplasty done yet.

20 A. No, I have not.

21 Q. What's your understanding about where that'll have to be
22 done?

23 A. Um, it could be done at Dr. Rucker's office but to
24 completely ---

25 MR. TATE: I I object to this, this is speculative.

1 MR. DARWIN: Your Honor, I thought Dr. Rucker also
2 testified to what -- where it have to be done, what would need
3 to be done.

4 THE COURT: Did he?

5 MR. TATE: Well if he has, it it it's ---

6 THE COURT: Alright, ---

7 MR. TATE: --- speculation.

8 THE COURT: --- overruled.

9 BY MR. DARWIN:

10 Q. Go ahead.

11 A. Dr. Rucker said that he could fix my nasal, how I'm n ---

12 Q. Septum.

13 A. --- septum in his office but that still my nose still
14 won't be 100 percent corrected without another procedure.

15 Q. And what about the appearance of your nose?

16 A. It it's better now than it was on that day.

17 Q. Okay. I think that's all I have. Answer any questions

18 Mr. Tate may have for you.

19 A. Alright, sir.

20 MR. TATE: Please the Court.

21 CROSS-EXAMINATION BY MR. TATE:

22 Q. Mr. Edwards, you just told Mr. Darwin that you never walk
23 on parts a that deck anymore.

24 A. Yes, sir.

25 Q. I thought you told me on March 15th of this year that you

1 still walked across the deck.

2 A. After March 15th or so I do not walk on that deck
3 anymore.

4 Q. After we had the deposition ---

5 A. Yes, sir.

6 Q. --- you don't walk on it anymore?

7 A. No, sir.

8 Q. But before that ---

9 A. Ha -- I have walked ---

10 Q. --- for three years you walked on the deck.

11 A. I have walked on that deck, yes, sir.

12 Q. Any access fr -- between August 15th and March 15th of
13 this year?

14 A. No, sir. Other than this initial accident no, sir.

15 Q. Okay. And you told me on March 15th, I had a chance to
16 talk to you at Mr. Darwin's office, that you were very
17 familiar with this deck, is that correct?

18 A. I'm familiar as far as the layout, yes.

19 Q. Well in talkin' about the deck when the, when the
20 accident happened, you were familiar with it, right?

21 A. As far as the layout, yes.

22 Q. Well you said you'd walked on it a thousand times, didn't
23 ya?

24 A. Yes, sir.

25 Q. Okay. You ever had any problems before that?

1 A. No, sir.

2 Q. You said that Mr. Pearson and Nicha walked on it too.

3 A. Yes, sir.

4 Q. All three walked on it.

5 A. Yes, sir.

6 Q. Matter a fact, I think you told me you put or somebody
7 put wheelbarrows on it when you were mulching and that sorta
8 thing, is that right?

9 A. Yes, sir, we have walked off tha -- worked off that
10 deck.

11 Q. So I mean it wasn't, ya know, don't walk on this deck,
12 everybody walked on it, right?

13 A. Yes, sir.

14 Q. This happened, uh, they knew that the accident happened
15 there.

16 A. True.

17 Q. I asked you if there was any particular reason, any
18 reason that Micha would know that that board was not secure or
19 whatever any more than you would ---

20 MR. DARWIN: Objection, speculation.

21 THE COURT: Overruled.

22 BY MR. TATE:

23 Q. --- and you said I don't think so.

24 A. No, because I don't -- I'm not -- I don't live there.

25 I'm there for a short period a time. I don't inspect other

1 people's property, especially a deck or something like that.

2 I -- it's not part of my job to inspect it. I mean, I have
3 walked on that deck with the homeowner so I considered it I
4 guess as useful as they did but I did not physically get down
5 on my hands and knees and inspect it, no.

6 Q. . And but it it was weathered but you walked on it a
7 thousand times and never had an accident.

8 A. Never had an accident until that day.

9 Q. Okay, and you walked on it since that day.

10 A. Yes, I have.

11 Q. And you said a little while ago that you went out there a
12 week after when you were lookin' and talkin' about the boards
13 stu -- piled up or somethin', you walked -- it it was you went
14 out there a a week later, right, ---

15 A. Well ---

16 Q. --- after the accident?

17 A. --- no, that didn't go out until -- I don't understand
18 your question.

19 Q. Okay, when you were looking at the video or DVD or
20 whatever ---

21 A. Yes.

22 Q. --- and the boards from where your accident happened ---

23 A. Yes.

24 Q. --- where they were piled ---

25 A. Yes.

1 Q: --- you said they were pulled up within a week or
2 something.

3 A. Yes.

4 Q. So you went out there within a week after your accident,
5 right?

6 A. Yes, I was there the following week for work, yes.

7 Q. Okay, so you were all right to go back out?

8 A. I ow -- I'm the only worker at the time of my company. I
9 would have sh -- had to shut my company down if I didn't go
10 back to work.

11 Q. And you've worked once a week any week?

12 A. Every day.

13 Q. Been employed by Mr. Pearson I guess every [sic] since
14 then.

15 A. Yes.

16 Q. Never had any o -- more problems.

17 A. Not not one.

18 Q. And the date of the accident, August 15th of 2008, were
19 you wearing any kind of a, anything besides your Tommy
20 sunglasses?

21 A. Yes, sir.

22 Q. That was all?

23 A. At, yes at that time.

24 Q. Wear anything else now?

25 A. No, sir.

1 Q. You feel safe enough not to wear any mask or anything
2 like that, right?

3 A. There's no need to wear a mask.

4 Q. Alright. Thank you very much.

5 A. Yes, sir.

6 MR. DARWIN: Nothin' further, Your Honor. I believe I
7 have the video introduced into evidence.

8 THE COURT: You may step down.

9 (Whereupon, the plaintiff left the stand.)

10 MR. DARWIN: Now I call Courtney Pavlovich.

11 COURTNEY JOANNE PAVLOVICH, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. DARWIN:

14 Q. State your name for the record, ma'am.

15 A. Courtney Joanne Pavlovich.

16 Q. Ms. Pavlovich, tell the jury a little bit about yourself.

17 A. I am a home health physical therapist with Spartanburg
18 County.

19 Q. What does that mean?

20 A. I go to people's homes and rehabilitate.

21 Q. Where are you from?

22 A. West Virginia.

23 Q. When did you come to South Carolina?

24 A. 'Bout six years ago.

25 Q. Why did you come here?

1 A. I was a travelin' therapist so I came to Spartanburg and
2 end up likin' it so I stayed.

3 Q. Where did you go to physical therapy school?

4 A. Mountain State University.

5 Q. Is that in West Virginia?

6 A. Yes.

7 Q. How long is that program?

8 A. It's a two-year program. I'm just -- I'm I'm a physical
9 therapist assistant, sorry.

10 Q. And you've been doin' that how long, did ya tell me
11 already, how long you been a physical ther ---

12 A. Eight years.

13 Q. Eight, okay. And and what are the different types of
14 patients you take care of?

15 A. It can be a a stroke, a knee replacement, car accident,
16 general weakness, just about anything.

17 Q. You help them get back to the as as much a movement as
18 they did before as possible?

19 A. Yes, walking, balance, thought prevention.

20 Q. Okay. How long have you known Mr. Edwards here?

21 A. 'Bout six years.

22 Q. Ya'll are engaged to be married?

23 A. Yes.

24 Q. And what's your opinion regarding his work ethic? Does
25 does -- is he a hard worker?

1 A. Very hard worker and he works long hours so we have late
2 dinners unfortunately.

3 Q. When did you find out about this accident that we're here
4 on today?

5 A. He had called me that day, unfortunately I was in
6 Woodruff, Enoree, Cross Anchor area so I couldn't take him
7 right then 'cuz that's, ya know, rather far away so...

8 Q. So when did you see him? How soon was it after he had
9 his accident at Ms. Jordan's property?

10 A. I seen him at about 5:00, 5:30 that evenin'.

11 Q. Did you take him to the emergency room?

12 A. I did.

13 Q. What -- how did he appear when you saw him?

14 A. His face was very swollen, both of his eyes were black,
15 he could barely speak, barely s -- barely see, um, he was
16 hurtin'.

17 Q. Is Bobby a complainer?

18 A. No.

19 Q. Does he have a ---

20 A. He complains if his hand's hurtin'.

21 Q. Alright, so you took him to the ER and how long were
22 ya'll there in the ER?

23 A. Several hours, well up until the evenin'.

24 Q. And then he came home that night and then went three days
25 later to see Dr. Rucker to have the procedure performed ---

1 A. Yes.

2 Q. --- we've already talked about.

3 A. Um-hum.

4 Q. Did you go with him for that procedure or did you have to
5 work?

6 A. - No, I had to work.

7 Q. Okay. Tell the jury how he came along with his injury in
8 terms of how long his face was swollen, that typa thing.

9 A. Oh, several days. I mean, he was swollen after the
10 initial procedure that Dr. Rucker had done but of course the
11 bruising had lasted for quite some time after the impact.

12 Q. What problems does he have now with his nose?

13 A. Constant congestion, he's always blowin', he doesn't
14 sleep good at night, he snores loud so a course I have to deal
15 with that as well.

16 Q. You still gonna get married to him?

17 A. Yes.

18 Q. Okay. What attracts you to Mr. Edwards?

19 A. He's a good man and he's humble, he's caring, he's
20 honest, he works hard and that's really hard to come by.

21 Q. Thank you, that's all I have.

22 MR. TATE: I don't think I have anything. Thanks very
23 much.

24 THE COURT: You may step down.

25 (Whereupon, the witness left the stand.)

MOTIONS AND MATTERS

1 MR. DARWIN: Plaintiffs rest, Your Honor.

2 --THE COURT: Alright. Any additional evidence from the
3 defense?

4 MR. TATE: No, Your Honor.

5 THE COURT: Alright, ladies and gentlemen, that's all of
6 the testimony or evidence to be presented in the trial of the
7 case. What remains to be done are the lawyers' final
8 summations after which I'll instruct you on the law that's
9 applicable and then you'll begin deliberations. We're not
10 gonna complete that this afternoon because of the hour but we
11 will resume with the balance of the trial at 9:30 in the
12 mornin', so keep in mind the caution I've already provided:
13 no discussions about the case during the over night recess
14 with any family member, any friend or even any fellow juror,
15 also do not conduct any research or do your own investigation
16 into any issue that has arisen. Do have a good evening and
17 please report to your jury room at 9:30 in the mornin', 9:30
18 in the mornin'.

19 (Whereupon, a discussion was held off the record.)

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Let me see ya'll for a minute.

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

24 MR. DARWIN: Your Honor, I've got a motion to make.

25 THE COURT: Okay.

MOTIONS AND MATTERS

1 MR. DARWIN: Your Honor, plaintiff moves for a directed
2 verdict as to the defense or moves to strike the defense of
3 comparative negligence, if you look at the answer that's been
4 filed on behalf of Ms. Jordan, you'll see a number of
5 affirmative defenses, and actually movin' to strike all of the
6 affirmative defenses because they allege or at least number,
7 the second defense and the third defense allege fault on the
8 part of Mr. Edwards and the testimony of Ms. Jordan and her
9 boyfriend, Mr. Pearson, is they don't blame him for the
10 accident, they don't think he did anything wrong, there's no
11 evidence he did anything wrong, they're -- they don't pretend
12 it was an open and obvious condition, as a matter of fact they
13 say there was absolutely nothing wrong at all with the deck,
14 nothin' to support a a negligence charge against him.

15 THE COURT: Okay. Mr. Tate.

16 MR. TATE: According to comparative negligence, we would
17 agree with that.

18 THE COURT: You would agree?

19 MR. TATE: Yes.

20 THE COURT: Are you withdrawin' your comparative
21 negligence ---

22 MR. TATE: Yeah, ---

23 THE COURT: --- defense ---

24 MR. TATE: --- uh, ---

25 THE COURT: --- or consentin' to his motion?

MOTIONS AND MATTERS

1 MR. TATE: No, sir, I'm not consenting. Uh, the third
2 defense ---

3 THE COURT: You just said you agree with it.

4 MR. TATE: Sir?

5 THE COURT: Didn't you just say you agree with it?

6 MR. TATE: I'm sorry, I I miss -- I'm I'm I was thinkin'
7 about the the -- I apologize, Your Honor. No, we're not,
8 we're not, we're not withdrawing any defenses.

9 THE COURT: Okay, ---

10 MR. TATE: Uh, ---

11 THE COURT: --- tell me why it shouldn't be granted.

12 MR. TATE: Because he was walking, there's testimony that
13 he was walking in a path that was not usual, it's not the way
14 you'd walk on the, on the walkway is in the -- he was
15 negligent and -- in stepping on the side of the board and
16 popping it up. As far -- and also a a third defense he
17 assumed the risk and it was, uh, he knew it was weathered and
18 worn down and is well aware of that so he assumed the danger
19 if there was one. There was one.

20 MR. DARWIN: I I'm confused by the theory because I
21 thought the theory ---

22 THE COURT: Well I'm confused too but I think I'm gonna
23 clear it up in a minute.

24 MR. DARWIN: Okay, well that's probly a good sign for me
25 to stop talkin' but Mr. Pearson said in his deposition that we

MOTIONS AND MATTERS

1 read to you that Mr. Edwards had free reign of the property,
2 anywhere he needed to go to do his job.

3 THE COURT: Well I -- the the issue in the case is not
4 what Mr. Pearson thinks or what Ms. Jordan thinks about any
5 fault on the part of the plaintiff, the issue is what the the
6 evidence in the case shows or what might be reasonably
7 inferred from the evidence in the case. Now I'm only goin' to
8 assume that that video of that deck was introduced for the
9 purpose of establishing that Ms. Jordan knew or reasonably
10 should have known that that deck was in a dangerous condition;
11 you can look at it and tell it's in such a condition that it's
12 not safe to walk upon. Well if that's good for Ms. Jordan
13 then it's good for the plaintiff and so if the video showed
14 it's unsafe and you shouldn't be walkin' on it, she should've
15 known and fixed then he could've looked at it and determined
16 it was unsafe so the jury could reasonably infer some
17 negligence on his part by his not heeding his own advice about
18 not walkin' on that deck because it appears to be unsafe so
19 anyway, there's some evidence from which a jury could
20 reasonably find he was negligent in not looking out for
21 himself and protecting himself from what appears or what
22 someone might believe appears to be a dangerous condition so
23 in that sense it would be open and obvious.

24 MR. TATE:-- I'm sorry, Your Honor, that that's ---

25 THE COURT: Is that what you wanted to say?

MOTIONS AND MATTERS

1 MR. TATE: Thank you. It was weathered and he knew it
2 and he walked ---

3 THE COURT: I know.

4 MR. DARWIN: I just thought their theory was it wasn't
5 open and obvious so that's was the basis of my motion, that's
6 what I thought they were arguin' in their defense.

7 THE COURT: Well, open and obvious I guess is in the eye
8 of the beholder, it just depends, but in this case I think you
9 could -- a jury could reasonably find that it was an open and
10 obvious condition that you would look out for so or they could
11 find differently so anyway, there's some evidence there so I'm
12 gonna deny your motion for a directed verdict as to the
13 defense of comparative negligence, alright? What -- any
14 others?

15 MR. TATE: That's where I misspoke. As far as the other
16 defenses, certainly the fourth and fifth's a 12 (b)(6), we
17 will consent to that. Uh, ---

18 THE COURT: Okay, that one's dismissed.

19 MR. TATE: As far as it may still be the law, uh, he did
20 assume the risk of no -- known danger by stepping on a board
21 on the end of it with a 4-gallon pack on his back but...

22 THE COURT: Well I'm not buyin' that one.

23 MR. TATE: Okay.

24 THE COURT: That that's part of, that's part of
25 negligence ---

CLOSING ARGUMENTS

1 MR. TATE: I understand.

2 THE COURT: --- if it exists at all. Alright, anything
3 else?

4 MR. DARWIN: No, sir. We have some jury charges that ---

5 THE COURT: Okay.

6 MR. DARWIN: --- we can ---

7 THE COURT: You wanna discuss those in chambers?

8 MR. DARWIN: We can do that yes, sir.

9 THE COURT: Alright, the Court is in recess until 9:30
10 tomorrow.

11 (Proceedings October 4, 2011)

12 THE COURT: Alright, ya'll ready for the jury?

13 MR. DARWIN: Yes.

14 THE COURT: Okay, bring 'em in.

15 (The following takes place in the presence of the jury.)

16 THE COURT: Good morning, ladies and gentlemen.

17 THE JURY: Good morning.

18 THE COURT: As you know yesterday when we recessed all of
19 the evidence had been received and what remained to be done
20 are the lawyers' final summations after which I will provide
21 you the legal instruction and then you would begin with your
22 deliberations so please give the lawyers your attention now as
23 they give you their final summations.

24 MR. DARWIN: Mornin' ladies and gentlemen, ---

25 THE JURY: Good mornin'.

CLOSING ARGUMENTS

1 MR. DARWIN: --- Mr. Foreman. We've reached the point in
2 the trial where ya'll are probly thinkin' I wish that egghead
3 would just sit down and let us look at this evidence, we've
4 heard the testimony, we're ready to make a decision. I
5 promise ya'll I won't talk real long but I do wanna focus on
6 just a few of the points I think are significant in this case.
7 Ya'll had an opportunity yesterday to meet Bobby Edwards and
8 you learned that he's a hardworkin' fella, you learned that
9 he's an honest fella by Ms. Jordan's own testimony and by her
10 boyfriend, Mr. Pearson's, own testimony, you also learned I
11 believe that he's competent at what he does and he's
12 experienced at what he does, that he's a knowledgeable fella,
13 that he's not one to knowingly taking any type of risk, he
14 certainly is not going to deliberately try to get himself
15 injured or encounter an an open and obvious condition that
16 will hurt him. He's self-employed, he doesn't get sick days.
17 If he misses time from work, he doesn't get paid so ya learned
18 that about Mr. Edwards. What we, what we saw yesterday when
19 we -- oh, and one other point I wanna make, he's also not a
20 deck inspector. The reason he's at this property of.
21 Ms. Jordan's is to take care of the grass, to take care of the
22 weeds, to take care of the bushes, he's not there to inspect
23 the the deck. Now if the deck had a big hole in it and he
24 fell in the hole, that be a different story. This problem
25 that we're talkin' about in this case resulted from neglect.

CLOSING ARGUMENTS

1 It didn't happen over a six-month period a time, it didn't
2 happen over a two-year period a time, it happened over years
3 and years of gradual neglect the rotting ya'll saw and I'm
4 gonna show you some pictures, enlargements like I did
5 yesterday. The video's in evidence if ya'll wanna see that as
6 you're deliberatin', I'm not gonna play that again, that's
7 about five minutes long but but that's why this accident
8 happened.

9 I'm gonna tell ya a little bit 'bout the law. The judge
10 is gonna charge you on the law after we finish our closin'
11 arguments. Listen carefully to that charge, ya'll paid close
12 attention to this case, we've been payin' attention to ya'll
13 and watched how ya'll have listened to testimony even the the
14 deposition that was read 'cuz I know sometimes that can be
15 kinda difficult to follow but you've watched it all and
16 listened to it all carefully. Some of the law that the judge
17 will charge you, if I got it right, if the judge says it
18 differently believe the judge 'cuz he's the man as far as the
19 law's concerned, but that a property owner has to exercise
20 reasonable care for the safety of an invitee which Mr. Edwards
21 was, that's his legal status, you're gonna hear invitee probly
22 used a lot in the charge, that was his legal status because
23 he's there with Ms. Jordan's permission, had free reign of the
24 property according to her boyfriend and according to her. An
25 owner of property owes an invitee a duty to have those

CLOSING ARGUMENTS

1 premises, the property in a reasonably safe condition and also
2 owes the invitee, you're gonna hear the charge -- judge charge
3 this I believe, a duty of care to discover risks, to discover
4 them and take safety precautions to warn of or eliminate those
5 risks, that's the duty that Ms. Jordan has.

6 Now I've already talked to ya'll about what an open and
7 obvious condition is, it's somethin' that that anybody can see
8 and it's it's just so obvious that you know you better avoid
9 it. There's also an issue under the law that the judge is
10 gonna charge ya on two different types of notice: actual
11 notice with if a property owner actually knows about a problem
12 and constructive notice which means the property owner shoulda
13 known about it because it existed long enough that over time
14 the property owner shoulda become aware of it. Where you see
15 business owners and property owners use that constructive
16 notice defense say, 'We didn't have, we didn't know anything
17 about it are in situations like grocery store, like a Publix
18 or BiLo where somebody knocks over a can a Coke, two minutes
19 later somebody walkin' down the aisle slips on it and and the
20 business owner legitimately argues, I didn't know about it, I
21 didn't know that happened, if it been on the ground for thirty
22 minutes, we got people who walk around and find it but that
23 was just there for two or three minutes. How long do ya'll
24 think that it took this deck to get into the condition that
25 we've been showing ya'll in these (indicating) pictures that

CLOSING ARGUMENTS

1 Ms. Jordan and her boyfriend say is still safe to this day?
2 How many years do you think that it took for these boards to
3 rot, these nails to rust? Ladies and gentlemen, constructive
4 notice should not be an issue in this case, they had plenty of
5 time. The judge is gonna talk about when it -- listen
6 carefully to the charge on constructive notice, he's gonna
7 talk about the amount of time the condition exists, this has
8 gone on for a long time and this deck has been neglected.

9 Now there's also actual notice and I want ya'll when ya
10 get back there in the deliberation room to look real carefully
11 at some of these pictures. Now if I understand their defense
12 correctly, their argument is this deck was safe that day on
13 August 15th of 2008 and it's still safe to this day, despite
14 these pictures and the video you've seen, it's still safe.
15 Yesterday I said this this deck was an accident waiting to
16 happen, it's still an accident waiting to happen and I got a
17 good idea now why Ms. Jordan and her boyfriend walk down the
18 the center of the deck but what you're gonna see that to me
19 shows evidence of actual notice of a problem before
20 Mr. Edwards' accident is if you look carefully at some of
21 these photographs, you will see some nails missing and some
22 screws that have been put in but you will not see these screws
23 uniformly throughout this deck, you'll see 'em in certain
24 places. Here's (indicating) a good example. Ya got holes
25 where they're missin' nails and then you got some screws kinda

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1 haphazardly placed in there, some of 'em look even stripped.
2 Now when this lawsuit got filed I asked him, I said, Give me
3 all the photographs you got that will show the the condition
4 of this deck at the time Mr. Edwards had his accident and this
5 is what I was given (indicating), this is what I was given,
6 these three pictures right here (indicating), not any color
7 copies, this is what I got, so we had to go out and get a
8 professional videographer to take the pictures that we've put
9 in front of ya'll to show you the actual condition of the deck
10 and of course that section where he was hurt got ripped up but
11 the other section's still there. We believe these photographs
12 and some other ones show that over the twenty years this deck
13 was there before, twenty, more than twenty years, before
14 Mr. Edwards' accident happened and during the time Ms. Jordan
15 has owned the property somebody has known that these boards
16 are givin' way and they've got gone in and done not
17 professional repairs but some type of attempts at repairs,
18 that would be actual notice of a dangerous condition so they
19 got actual and constructive notice. We believe the evidence
20 shows that Ms. Jordan and Mr. Pearson exercised no care for
21 their problem. Not only did they not meet the reasonable care
22 standard, they didn't care for it at all. Another thing I
23 asked for in terms of documents was any repair bills, any
24 inspection reports, anything like that to to show me, show us
25 that they had fulfilled their legal duty to get somebody

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1 professionally to come in and check particularly after
2 Lawson's Fork Creek flooded and this decking which is only
3 inches above the ground got exposed to the water and we got
4 nothin'. The only evidence they've produced regarding the
5 condition of the deck is this (indicating), that's all we got.
6 There's no -- been no, by their own admission there's been
7 absolutely no work done to it although it suggests from these
8 photographs that there was some work done. Now they did
9 admit, Mr. Pearson did admit that when they pulled up this
10 section where Mr. Edwards had his accident that he found that
11 was in poor condition but there'd been no changes to that
12 walkway since it happened and no warnings given to anybody.
13 Now Mr. Edwards knows now about the condition of that deck
14 when he goes out there to work on the property, what about
15 other people who come out there: heating and air people,
16 whoever, service people who might come out there? They're not
17 gettin' any warnings and that goes to show what they think is
18 reasonable, is keepin' your property in reasonable condition.

19 Perhaps the most amazing testimony to me was the
20 testimony from Ms. Jordan and Mr. Pearson about the current
21 condition of the deck which to me shows what their opinion is
22 about what's reasonable care. This was read to to ya'll
23 yesterday but when I asked Mr. Pearson back in March of this
24 year, "Is any part of the decking or walkway in need of repair
25 today?"

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1 Answer: "No."

2 "So you would consider what's out there today to be safe,
3 not a hazard to anybody walkin' on it?"

4 "Yes," was his testimony.

5 Page 17 of his deposition he told me, "I've kinda tested
6 the walkway that he has the pictures of this and it's holding
7 up pretty nice and I've jumped on the corners." Now I don't
8 know which corners of that decking he jumped on, which boards
9 he jumped on but I know a couple at least that he didn't jump
10 on or he would've probly had to go to the ER himself.

11 Page 23, "And ya'll have no plans to pull up any other
12 sections of the decking?"

13 "No."

14 "Have ya pulled up any sections other than the sections
15 where or the section where Mr. Edwards was injured?"

16 "No."

17 Still out there in the same condition and that goes to
18 credibility too when they come in and say that walkway was
19 safe, we had no notice of any problem at all, it was safe for
20 him to be on, well now they have notice and it's still in the
21 same condition, they have notice of an accident, still in the
22 same condition, there's another accident waitin' to happen.

23 I I don't know exactly what Mr. Tate's gonna say when he
24 stands in front ya'll but one defense that's been pled is
25 comparative negligence. I don't understand that defense in

CLOSING ARGUMENTS

1 this case. I thought their theory was, has been, is that this
2 decking is safe. If the decking is safe, it w -- if it was
3 safe on August 15th of 2008, how could this man possibly have
4 been negligent? How can they say he's at fault for causin'
5 this accident? There was some mention early on in the the
6 testimony about him wearing a big pack on his back, we we
7 found out it's a 4-gallon pack that he was wearin' to spray
8 weeds, that's all he had and you seen how big a fella he is,
9 about an average sized guy. You've seen how law -- how low
10 the deck was to the ground that he stepped on, just a few
11 inches above the ground. Would it surprise anybody for
12 someone to step on the edge of that decking? Just he didn't
13 probly have to lift his foot hardly to get on it, almost like
14 walkin' on the ground. It's not like he had to climb up and
15 hold onto some rails to get on the side of it, he's just
16 walkin' and sprayin' for weeds. How was he at fault in any
17 way, particularly when they say there's nothin' wrong with
18 him? I don't know how you argue that, you're talkin' outta
19 both sides of your mouth when you make that argument. It
20 certainly was reasonable for him to use that walkway, they've
21 said that, he had free reign of the property.

22 We talked about his medical bills and his pain and
23 suffering. We're not claiming any lost wages because he went
24 back to work as soon as he could and ya'll have heard him,
25 he's a pretty tough fella. When when I tried to get him to

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1 describe how badly it hurt, I don't know which woulda been
2 worse for him the accident itself or three days later when
3 Dr. Rucker was doin' that procedure and and taking that needle
4 and putting up -- it up both his nostrils and then leanin'
5 down on his nose like that, that looked pretty painful to me.
6 I'm not an ear, nose and throat doctor but in his video he
7 showed ya'll the bones that got broken and there's the septum,
8 he talked about what happened there. Mr. Edwards still has
9 congestion in his nose, he can get that fixed but to do that
10 he's got to have a septoplasty at the Ambulatory Surgery
11 Center so Dr. Rucker will have to perform an open procedure to
12 do that, he talked in his video deposition about the
13 procedure. You've seen his medical bills or they're in
14 evidence. Right now they total \$2,952.60 and that doesn't
15 include the septoplasty procedure. What I'd like for ya'll to
16 do when ya go back to your room there is just look at these
17 (indicating) photographs because the testimony has been that
18 the color photographs that we provided you, color photographs
19 that we provided you, show the decking in the same condition,
20 that section that was ripped out it's the same, in the same
21 condition and that's safe, just pay close attention to those
22 and you decide if Ms. Jordan met the duty she owed to
23 Mr. Edwards the invitee.

24 Mr. Tate's gonna talk to ya'll now a about their
25 defenses, I'll have one more opportunity to address you

CLOSING ARGUMENTS

1 briefly and reply, I promise you it will be brief. What we're
2 asking for of course in this case is to compensate Mr. Edwards
3 for his medical bills, his pain and suffering, the chronic
4 congestion he still experiences, those problems he talked
5 about. He knows this isn't re -- a retirement case, he
6 doesn't wanna retire, but he wants what's fair. I know ya'll
7 will do that, thanks.

8 MR. TATE: Please the Court.

9 THE COURT: Mr. Tate.

10 MR. TATE: Good mornin', ladies and gentlemen of the
11 jury.

12 THE JURY: Good morning.

13 MR. TATE: As I told you yesterday morning, you will hear
14 about the weathered deck, about condition of the deck and a a
15 a a broken nose and that sorta thing, I told you everything
16 and that's what you heard. Now they're telling, ya know,
17 they're coming in with these pictures, wherever they are,
18 showing certain problems with the weathered deck, it doesn't
19 look good. Ladies and gentlemen, ya'll are here as I said
20 yesterday because this is the best system in the world. I
21 believe it was Thomas Jefferson said that jury trials are the
22 closest thing to pure democracy that we have and please be
23 fair to both sides and look at both sides because we don't
24 tell ya to leave your common sense and good judgment at the
25 door and come in here and try to learn justice or or learn how

CLOSING ARGUMENTS

1 to apply justice, we ask you to bring your common sense, good
2 judgment and life experiences in the courtroom and apply that
3 and hear the facts, apply those, apply the law to those facts
4 when reaching your verdict and you'll hear that Nicha and it's
5 only Nicha, it's Linda N. Jordan, she's a property owner,
6 earlier I heard her joined, incorporated or whatever compared
7 to grocery stores and such as that, no it's a a nice lady who
8 owns a home and tries to take care of it and they say well
9 that she did not do a good job, she did not bring out a let --
10 a lot of inspectors, she did not have the right people looking
11 at the deck; no, they walked on doin' nothin', they saw it
12 every day and she and her Mr. Pearson knew about it but let's
13 look in the facts. She bought the house from her late husband
14 back in 1988, the -- this accident happened August 15th --
15 excuse me, 2008, that's twenty years without an accident,
16 twenty years with nobody getting hurt, twenty years of daily
17 activity, living like normal people do and the fam -- the
18 family came over there, friends came over there, a lotta
19 people walked on that deck, anybody get hurt? no, but on a
20 fateful day August 15th 2008 the plaintiff who had walked on
21 the deck by his testimony a thousand times, I'm not sure that
22 was exactly accurate but that was what he said under oath on
23 March 15th 2011 this year, he walked on that deck two -- a
24 thousand times, he was very familiar with the deck, nothing
25 hidden, nothing about it that he didn't know or should know.

CLOSING ARGUMENTS

1 As a matter of fact, I asked him, Is there anything
2 specifically that Nicha or Mr. Bobby Pearson would know that
3 you didn't know, he said, Well they walked on it, I walked on
4 it, no I don't think so, and I can appreciate them comin' in
5 here with, oh, I gave them these (indicating), these are all
6 we had, we're not hidin' a thing, I promise you that, they
7 went out there and took the DVD and whatever but they can do
8 what they want but we did not hide anything. It's not that
9 we, ya know, potentially loved the deck so much that we took
10 snapshots of it, I mean, now it just didn't happen like that
11 so we're not hiding anything, I can promise you that but
12 again, and you see these (indicating) pictures, well they show
13 just a part of it. It's like looking at, uh, if ya like
14 somebody's toes or somethin' and judging them by, ya know,
15 what you see there. The deck was in good shape but they they
16 talk about the deck is bad shape, the deck was in bad shape,
17 the deck was in bad shape but how did this accident happen?
18 Did he fall through the deck? Did he trip over the deck? no,
19 sir, no, ma'am. What he did was and we're not blamin' him,
20 there's no blame to go around but he stepped on the edge of
21 the board and the board came up and hit him in the nose.
22 Well, ya know, well they didn't have the na -- the nails were
23 corroded, the nails were not in there. Well I don't know,
24 nobody knows. I wasn't there, nobody in here -- Nicha and
25 Mr. Pearson were not there about the nails being not in there.

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1 I mean, it came up but I don't know whether it just the weight
2 of it put it up or what but it wasn't, it was one board or two
3 boards at the most and it just happened. Accidents do happen
4 and he stepped on the board, he got hit in the nose and they
5 can come in here with the the septum picture and all that but
6 he got a broken nose. We're sorry about that but don't hold
7 Ni -- Nicha responsible for not takin' care of her property
8 and that hurts her feeling and it feels bad and she did as
9 good as she could and you'll hear the judge say that she had a
10 duty to keep -- take reasonable and ordinary care to make it
11 safe and she is, I promise you she is, and I -- we hate that
12 it happened, we really do but she's not responsible. It's
13 it's her deck, yeah, but it was him and he had, you've heard
14 this before, he had full reign of the property and it was --
15 it's evident. Mr. Pearson was not there when this happened,
16 Nicha was not there when this happened, he had full reign of
17 the property. They trusted him and they knew that he knew
18 what he was doin', they knew that he was aware of what the
19 deck as well as they were and he just stepped on the edge,
20 came up and hit him in the nose and that's that's what really
21 happened. Again, they're sayin', Well, you know, this and
22 that but outside the courtroom, ya know, somebody who's
23 standin' on the corner of Pine and Main and somebody came up
24 and said, You know so and so? Yeah. Well he got a broken
25 nose. There wasn't any, Oh, oh my God, oh no, oh, well that's

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1 horrible a broken nose, well it's bad but a the broken nose is
2 a broken nose and we're sorry for it but to come in this
3 courtroom, in fact never designed to be a lottery or anything
4 like that, it was designed for the truth and justice, the
5 truth and justice, that this is unfor -- unfortunate accident,
6 nothing more, nothing less and we ask you when you go back to
7 deliberate, again give both sides a fair shake, that's what
8 justice is and, uh, and they at the end of the, excuse me, lib
9 -- deliberations thinkin' about both sides if you can wake up
10 tomorrow mornin' and then the next morning and then I think
11 it's Friday morning and you still know that you've done the
12 right thing then you've reached a just verdict and that's all
13 we ask. Thank you very much.

14 MR. DARWIN: May it please the Court.

15 THE COURT: Mr. Darwin.

16 MR. DARWIN: Ladies and gentlemen, I don't think this is
17 a lottery. I've I've done my best to be low key throughout
18 this trial, I haven't tried to exaggerate anything, I've just
19 told you about the injuries he he has. I'm very puzzled by
20 this defense, I have been throughout the case. How can you
21 argue this property was properly maintained and have this
22 accident happen? How can you make that argument? These
23 boards were supposed to be nailed down and one flew up and hit
24 Mr. Edwards in the face and even Ms. Jordan admitted as I was
25 cross-examining her that it had to be in bad condition for

JURY CHARGE

1 that to happen. I've asked them, as I've told ya'll a second
2 ago, over and over for any evidence they have of any
3 maintenance to this deck even after the fling, I haven't
4 gotten anything at all from them to show that and again, most
5 disturbing is in the aftermath of this accident with
6 conditions like this (indicating), with conditions like this
7 (indicating), with conditions like this (indicating), with
8 nails sticking up as shown in that (indicating) picture and no
9 nails present in some of these (indicating) boards, conditions
10 like this (indicating), they're saying to this day the deck is
11 safe, that's plenty of notice, ladies and gentlemen, that's
12 neglect, that's exercising no care and that's why we're asking
13 you to return a verdict for Mr. Edwards for an amount that you
14 think is fair for what he's been through. Thank you. Your
15 Honor, may we approach?

16 THE COURT: Yes, sir.

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

18 THE COURT: Ladies and gentlemen, you of course have
19 heard and seen all the evidence and now the final summations
20 and therefore now I'm going to instruct you on the law that's
21 applicable in the case and then you'll go back and begin with
22 your deliberations. It is your exclusive duty to determine
23 what the facts are and you do that through your own common
24 sense, examination and evaluation of all of the testimony and
25 the other evidence received during the trial of this case and

JURY CHARGE

1 you twelve jurors alone will decide what weight, value and
2 effect to give to any particular testimony or other evidence
3 in the case. Your sole objective is to simply reach the truth
4 in the matter, by doing that you will have fulfilled your
5 obligations as jurors and that is to simply give both the
6 plaintiff and the defendant a fair and impartial trial. The
7 same law that provides that you are the judges of the facts
8 also provides that I am the judge of the law and that simply
9 means that nobody's going to tell you how to arrive at your
10 determination of fact in this case, you do that as I've
11 already stated through the exercise of good judgment and
12 common sense, conscientiously apply it to the testimony and
13 the evidence received during the course of the trial. You
14 must, however, under your oath as a juror accept the law as I
15 provide it to ya as being the law that you are to apply in the
16 case. In other words, you're never to concern yourself with
17 what you thought the law was before you came to serve as a
18 juror this week or what you think the law ought to be. Under
19 your oath as a juror you must simply accept the law as I
20 provide it to you as being the law that you are to apply in
21 the case and then you simply take that law and you apply it to
22 the facts as you twelve jurors determine those facts to be
23 based upon your common sense, examination and evaluation of
24 the testimony in the case.

25 Now as you know this is a case brought by the plaintiff

JURY CHARGE

1 setting forth a cause of action in negligence. A cause of
2 action is simply a legal theory of liability and a right of
3 recovery by a plaintiff against another for some injury they
4 have sustained based upon some fault or or wrong on having
5 being committed on the part of the defendant. The burden is
6 always upon the plaintiff in bringing a lawsuit against
7 another to establish his entitlement to a recovery and he must
8 establish that entitlement to a recovery by what's called the
9 "greater weight of the evidence" or by the "preponderance of
10 the evidence" and the greater weight or preponderance of the
11 evidence may be illustrated by your imagining a traditional
12 set of weighing scales with the scales of justice and when the
13 the trial begins the scales are absolutely even and as the
14 trial progresses and evidence is being received, you may be
15 placing that evidence on one side of those scales or the
16 other, that is, for or against some proposition asserted by
17 one side or the other but in the end after you've carefully
18 considered all of the evidence and weighed it in your minds,
19 if those scales remain absolutely even or if they tip in favor
20 of the defendant then the plaintiff will have failed in his
21 burden of proof, that is, the burden of proving his
22 entitlement to a recovery by the greater weight and on the
23 other hand if those scales tip even slightly in favor of the
24 plaintiff then the plaintiff will have met his burden of
25 proof, the burden of proving his entitlement by the greater

JURY CHARGE

1 weight. There is no method for you to actually weigh
2 evidence, you do that through a mental exercise using your own
3 good judgment and common sense in order to accomplish that
4 task that you have been called upon to perform.

5 Now while there are various forms of evidence such as
6 testimony, photographs, documents, charts, videos and other
7 types of physical exhibits, there are really only two types of
8 evidence and either or both of those types of evidence may be
9 used to prove any fact in issue but the two types of evidence
10 are direct evidence and circumstantial evidence. Now direct
11 evidence is the testimony of a person who testifies from
12 actual knowledge of a fact, it is testimony by a person who
13 has perceived the existence of a fact by means of his or her
14 senses and then they come into court and they testify as to
15 what they have previously perceived. Circumstantial evidence,
16 on the other hand, is the proof of some other fact or set of
17 facts which taken taken either singly or collectively may
18 prove the existence of a fact in question as a necessary
19 consequence that is through an inference and an inference is
20 simply a deduction of fact that may logically and reasonably
21 be drawn from the proof of some other fact or set of fact. In
22 other words, it's a fact not proven by the direct testimony of
23 a witness based upon personal perception but it is a
24 conclusion which might reasonably be drawn from the proof of
25 other facts. In other words, you may infer that a particular

JURY CHARGE

1 event occurred or that a particular fact exists based upon the
2 proof of sufficient factual circumstances which would
3 reasonably warrant your arriving at such a conclusion. Now
4 the conclusion you reach must be the most reasonable and
5 probable conclusion. Every reasonable conclusion need not be
6 excluded but if there are several reasonable inferences that
7 might be drawn from the evidence then it is for you twelve
8 jurors to determine which is the most probable and reasonable
9 as established by the greater weight of the evidence in the
10 case.

11 Now because you are the sole judges of the facts in this
12 case you are therefore necessarily the sole judges of the
13 credibility and the believability of each witness that has
14 testified during the course of the trial and as you evaluate a
15 witness's testimony you should consider several factors and
16 I'm going to list those factors for ya. You should consider
17 the demeanor of the witness as the witness testified; in other
18 words, what was that witness's manner and appearance. Was the
19 witness straightforward in responding to questions or was the
20 witness hesitant or evasive in responding to questions that
21 were asked of the witness. Simply put, did the witness appear
22 to you to be telling the truth and to have knowledge of the
23 fact to which that witness has testified. You should also
24 consider whether or not the testimony of a witness is
25 consistent or is it inconsistent with other testimony or other

JURY CHARGE

1 evidence or even the testimony of that same witness. You
2 should also consider how the witness came to know the facts to
3 which a witness has testified. In other words, what was a
4 witness's opportunity to perceive the existence of those facts
5 to which they have testified by having previously used their
6 senses and then what is that witness's ability to be able to
7 come into court and to accurately recollect to you as to what
8 they have previously perceived. You should also consider any
9 bias or prejudice or interest that a witness might have in the
10 outcome of a case. In other words, do you find some reason
11 that a particular witness would testify one way or another to
12 help or to hurt one side or the other and you may consider any
13 interest that a witness might have in the outcome of the case
14 if you determine that a witness does have such an interest and
15 you find that that interest would bear upon that particular
16 witness's credibility and you may also consider whether or not
17 the testimony of a witness is strengthened or is it weakened
18 by other testimony or other evidence received during the
19 trial.

20 Now you as the finders of the fact and you as the judges
21 of the credibility of each witness are permitted to believe as
22 much or as little of what a witness has testified to as you
23 deem is appropriate and therefore you may believe everything
24 that a witness testified to, you may choose to believe none of
25 it. You may believe one portion of a witness's testimony and

JURY CHARGE

1 reject some other portion of that same witness's testimony.
2 You may believe one witness as opposed to several or several
3 as opposed to one but whatever your good judgment and common
4 sense tells you is the most credible and believable testimony
5 is the testimony you should accept and you should reject any
6 testimony or other evidence that you find not to be credible
7 or believable. Again, your sole objective is to simply reach
8 the truth in the matter and by doing that you will have
9 fulfilled your obligations as jurors and that is to simply
10 give both parties a fair and impartial trial.

11 Now in this case as you know the plaintiff has alleged a
12 cause of action in negligence, this is a premises liability
13 civil action which is based in negligence, and in bringing
14 this lawsuit the plaintiff is alleging that the defendant has
15 breached a legal duty in the maintaining of a property under
16 her control and that the failure to fulfill that obligation
17 has resulted in some injury or loss having been sustained by
18 the plaintiff. The breach of a legal duty is more commonly
19 referred to as being negligent which simply means that a
20 person has done something that he was legally obligated not to
21 do or she has failed to do something that she was legally
22 obligated to do under the circumstances. In order to be
23 entitled to a recovery in a negligence case in a premises
24 liability context, it would be necessary that the plaintiff
25 has proven three essential elements; first, the plaintiff has

JURY CHARGE

1 to prove that the defendant owed a legal duty of care to the
2 plaintiff and I'll define for you later on in this instruction
3 what that legal duty is but a legal duty generally refers to
4 that standard of conduct that the law requires of a person in
5 order to protect others against a foreseeable and avoidable
6 risk of harm from one's actions. A basic principle of law is
7 that a person should not be required to suffer harm to his
8 person or property which is reasonably foreseeable and which
9 can be avoided by the exercise of reasonable care. The second
10 element that the plaintiff must establish is that the
11 defendant breached any duty of care that was owed to the
12 plaintiff by the commission of a negligent act or an omission.
13 Again, negligence is defined as the failure to do something
14 that a reasonable and prudent person would have done or it is
15 the commission of an act that a reasonable and prudent person
16 would not have done if acting under the same or similar
17 circumstances as established by the evidence in this case.
18 The terms thoughtlessness and carelessness mean the same thing
19 as negligence. And thirdly, the plaintiff would have to prove
20 that he has sustained some personal injury or incurred some
21 other loss which was proximately caused by the defendant's
22 negligent act or omission.

23 Now with respect to the first element in a premises
24 liability lawsuit, any duty of care that is owed by a property
25 owner or a person in possession of that property to a person

JURY CHARGE

1 visiting upon that premises is determined by the relationship
2 of the visitor to the owner or to the possessor. Whether or
3 not there exists any legal duty of care at all and if so the
4 extent of that scope of duty depends upon the legal status of
5 the visitor in relation to the owner or person in possession
6 of the property.

7 In this particular case the parties are in agreement that
8 the plaintiff held the status of an invitee in regards to any
9 legal duty owed to the plaintiff by the defendant. So what is
10 the legal duty owed to an invitee? An owner or occupier of a
11 property owes to an invitee the duty to exercise reasonable or
12 ordinary care for his safety and this duty requires that the
13 owner or the occupier of the property maintain the premises in
14 a reasonably safe condition and to use reasonable care in
15 order to discover any unreasonable risk on the premises and
16 upon such discovery to eliminate any unreasonable risk within
17 the area of the invitation or to warn the invitee of that
18 danger. You are further instructed that an owner or an
19 occupier of property has a duty to warn an invitee of any
20 latent or hidden dangers of which the owner or occupier has
21 knowledge or reasonably should have knowledge and of which the
22 invitee would be reasonably unaware. A latent or a hidden
23 danger is one in which an owner or occupier has actual
24 knowledge of or reasonably should have knowledge of and of
25 which an invitee is reasonably unaware and which a reasonably

JURY CHARGE

1 careful inspection would not reveal. An invitee is entitled
2 to expect that the owner or occupier of a premises will take
3 reasonable care to know the actual condition of the premises
4 at the time that the invitee is on the premises and to make
5 safe any unreasonably dangerous condition on the premises or
6 warn the invitee of the existence of that condition. The
7 degree of care which is required is commensurate with the
8 particular circumstances involved in the case including the
9 age, abilities and the capacity of the invitee. Ordinarily,
10 an owner or an occupier of a property has no duty to warn an
11 invitee of any dangerous condition which is open and obvious
12 and would therefore not ordinarily be liable for any injury
13 sustained by an invitee which is caused by an activity or a
14 condition known to the invitee or which is open and obvious to
15 the invitee; however, the owner or occupier of a property may
16 be held liable for an invitee's injury which is caused by an
17 open and obvious condition if the circumstances are such that
18 the owner or occupier should reasonably anticipate the harm
19 despite the invitee's knowledge of the fact that the danger is
20 open and obvious. In other words, an owner or occupier of a
21 property may be deemed to owe a duty to warn an invitee or to
22 make or take reasonable measures to protect -- to protect an
23 invitee of an obvious danger if the owner or the occupier has
24 reason to expect that the invitee's attention may be
25 distracted such that he will not discover that which may be

JURY CHARGE

1 open and obvious or fail to perceive -- protect himself against
2 it.

3 While there is a duty of care owed to invitees as I have
4 stated, an owner or occupier of a property is not required to
5 make or keep the premises absolutely safe or in such a
6 condition that no accident can possibly be expected to occur.
7 An owner or occupier is not an insurer of the safety of
8 invitees upon the premises. The duty as I have described it
9 is only to exercise reasonable care in maintaining the
10 premises in a reasonably safe condition. If negligence on the
11 part of the owner or occupier has not been affirmative --
12 affirmatively proven, there is no liability, notwithstanding
13 the fact that an invitee may have actually suffered some
14 injury or incurred some loss. If a reasonable person in the
15 position of the owner or the occupier of the property would
16 not have been reasonably aware of the risk or if the risk was
17 not an unreasonable risk considering all of the facts and
18 circumstances relating to the case then there is no liability --
19 there is no liability upon the owner or occupier; therefore,
20 in the context of this case before the plaintiff would be
21 entitled to recover it would be necessary that the plaintiff
22 has established by the greater weight or preponderance of the
23 evidence that; number one, the defendant owed a legal duty of
24 care to the plaintiff; number two, that the defendant breached
25 that legal duty of care and in order to prove a breach of the

JURY CHARGE

1 legal duty of care it is necessary that the plaintiff
2 establish that there existed on the premises an unreasonably
3 dangerous condition and that the defendant either created the
4 unreasonably dangerous condition or had actual notice or
5 constructive notice of that condition and that the defendant
6 failed to eliminate the condition within a reasonable time
7 after knowledge of it or failed to take appropriate measures
8 to reasonably warn the plaintiff of the existence of that
9 danger.

10 Now with regard to having actual or constructive notice,
11 actual notice refers to notice expressly and actually given to
12 the defendant or the defendant's awareness of specific
13 information from whatever source providing knowledge to the
14 defendant of the existence of the unreasonably dangerous
15 condition prior to the accident having occurred. Actual
16 notice may be proven by direct evidence or by circumstantial
17 evidence from which notice might be reasonably inferred or by
18 a combination of direct and circumstantial evidence.

19 Constructive notice refers to notice of sufficient
20 factual circumstances that that would put a reasonable person
21 on notice of the fact in controversy. In other words, the
22 defendant was aware of sufficient factual circumstances which
23 in the exercise of reasonable diligence should have put her on
24 notice that the condition existed. A person has reason to
25 know a fact when he or she has such information as would

JURY CHARGE

1 prompt a person to infer its existence or in the exercise of
2 due diligence make such a reasonable inquiry as would
3 necessarily lead to the discovery of other undisclosed facts
4 which would put a person on notice of the existence of the
5 condition. And then lastly, the plaintiff would have to prove
6 that he has suffered some personal injury or incurred some
7 other loss which were proximately caused by any breach of a
8 legal duty owed by the plaintiff -- owed to the plaintiff by
9 the defendant.

10 Now the mere fact that an accident has occurred or that
11 an injury has been suffered by someone or even that a person
12 has breached a legal duty owed to another or otherwise shown
13 to have been negligent in some respect that does not in and of
14 itself establish liability or responsibility on the part of
15 the defendant unless proximate causation has also been
16 established by the greater weight or a preponderance of the
17 evidence and therefore even if you find that the plaintiff has
18 proven the defendant breached a legal duty and you further
19 find that he has suffered some injury or incurred some other
20 loss, he would still not be entitled to a verdict against the
21 defendant unless you further find that it was the defendant's
22 negligence or breach of a legal duty that was the proximate of
23 cause of some injury or loss proven to have been sustained by
24 the plaintiff.

25 The law defines the proximate cause of an injury or loss

JURY CHARGE

1 to be something that produces a natural chain of events which
2 in the end brings about the result. In other words, the
3 proximate cause is the direct cause without which the event
4 and the resulting injury would not have occurred. Where the
5 cause of the plaintiff's injuries may be as reasonably
6 attributed to an act or a cause for which the defendant is not
7 liable as to one for which the defendant is liable then the
8 plaintiff will have failed to establish that his injuries or
9 losses were proximately caused by the defendant's negligence
10 or breach of duty. It is only when the injury is proven to
11 have been proximately caused by the conduct of the defendant
12 and not some other cause that the defendant would be held
13 responsible and the plaintiff would be entitled to a verdict
14 against the defendant. This does not mean however that there
15 must be only one cause to an event or to an injury for the law
16 recognizes or there may be more than one proximate cause to an
17 injury and therefore provides that all whose wrongful conduct
18 contributes as a proximate cause to a particular result may be
19 held responsible for that result and that would include any
20 fault on the part of the plaintiff himself. A plaintiff does
21 not have to prove that the d -- the defendant's conduct was
22 the sole cause of any injury or loss complained of but the
23 plaintiff must prove that the defendant was negligent and that
24 such negligence was at least a proximate cause of any injury
25 proven to have been sustained by the plaintiff as a result of

JURY CHARGE

1 the event in question.

2 In this case the defendant not only denies her own
3 negligence but she goes further and alleges that the plaintiff
4 himself was negligent and that the plaintiff's negligence was
5 the cause of any injury claimed to have been sustained by the
6 plaintiff as a result of the event in question. In that
7 regard and in the context of a premises liability lawsuit, you
8 are instructed that it is the law that all persons are
9 required to exercise reasonable and ordinary care for his or
10 her own protection and safety and to use that degree of care
11 that an ordinary, reasonable and prudent person would have
12 exercised if acting under the same or similar circumstances as
13 established by the evidence in this case and it is therefore
14 the duty of all persons with due consideration being given to
15 his or her age and capacity to exercise reasonable care to
16 observe and to discover any obstructions, risks, dangers and
17 conditions upon a property which one might reasonably expect
18 to encounter and to use reasonable reasonable care for one's
19 own safety to avoid an injury that might otherwise result even
20 from the negligence of another. Where a person fails to
21 exercise reasonable and due care for his own safety in order
22 to avoid an injury and such a failure contributes as a
23 proximate cause to an injury alleged to have been sustained by
24 the plaintiff then the plaintiff may be held responsible for
25 his own injuries in comparison to any negligence on the part

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1 of the defendant if such negligence has been proven on the
2 part of the defendant. The plaintiff has the burden of
3 proving any negligence on the part of the defendant as I've
4 told ya by the greater weight or a preponderance of the
5 evidence and the defendant has the same burden. When the
6 defendant alleges negligence on the part of the plaintiff, the
7 defendant bears the same burden of proof, that is, the
8 defendant bears the burden of proving by the greater weight or
9 a preponderance of the evidence that the plaintiff was
10 negligent and that that negligence was a proximate cause of
11 any injury proven to have been sustained by the plaintiff.

12 I'm now gonna instruct you on the law as it relates to
13 the issue of damages. There are two generally two two types
14 of damages, there are compensatory damages or actual damages
15 and there are exemplary damages or punitive damages. Actual
16 damages or compensatory damages are designed to compensate an
17 injured person for the losses and the injuries that that they
18 have sustained as a result of negligence on the part of
19 another person. Exemplary or punitive damages are designed or
20 intended to punish a defendant and to make an example of the
21 defendant and to deter others. Now in this particular case
22 it's not an appropriate case for an award of punitive damages
23 and they are not being sought by the plaintiff in this case.
24 The only type of damages that are being sought by the
25 plaintiff are actual damages or compensatory damages. Actual

JURY CHARGE

1 damages are monies paid to the plaintiff which are intended to
2 compensate him as near as possible as that can be done by an
3 award of money and to put him in the same position that he was
4 in before the incident occurred which resulted in injury. In
5 other words, actual damages would be damages and compensation
6 for actual expenses and other losses suffered by the plaintiff
7 because of the negligent conduct of the defendant. A
8 plaintiff who has been personally injured or sustained some
9 loss due to the negligent conduct of another is entitled to be
10 compensated for all losses both tangible and intangible which
11 are proximately caused by the defendant's conduct, such an
12 award would properly include compensation not only for those
13 losses and expenses already shown to have been sustained by
14 the plaintiff but also compensation for any damages which are
15 proven to be reasonably certain to occur in the future so long
16 as they are also proven to have been proximately caused by the
17 defendant's conduct. Elements of damages for which an injured
18 plaintiff may be compensated would include compensation for
19 all reasonable and necessary expenses incurred for medical
20 treatment and that would include physician's fees, hospital
21 charges, physical therapy costs, medications as well as any
22 medical equipment necessary for treatment. A person injured
23 due to the fault of another may also be entitled to
24 compensation for physical pain and suffering. Pain and
25 suffering is a material element upon which a recovery may be

JURY CHARGE

1 based, such damages have no market price, they are not capable
2 of exact measurement and there is no fixed rule or standard by
3 which such damages can be made and therefore any damages to be
4 awarded for pain and suffering if proven by the plaintiff must
5 be left to the judgment of the jury and considered in light of
6 your own life experiences and in the exercise of discretion
7 and common sense. A plaintiff who has been injured by the
8 fault of another may also be entitled to compensation for any
9 loss of enjoyment in life. Loss of the capacity to enjoy life
10 resulting from personal injury may also be compensated for in
11 the event you determine that the plaintiff has proven to have
12 suffered such damages. Like pain and suffering, those types
13 of damages have no market price, they're not capable of exact
14 measurement, there is no fixed rule or standard by which they
15 can be measured but damages for loss of enjoyment of life are
16 designed to compensate for the limitations on an injured
17 person's ability to participate in and to derive pleasure from
18 the normal activities of daily life as well as for any
19 inability of the injured person to pursue his normal talents,
20 recreational interests, hobbies and avocations.

21 As I've stated, the plaintiff has the burden of proving
22 his damages by the greater weight of the evidence just as he
23 must prove any other element of the cause of action. This
24 does not mean however that the plaintiff has to prove damages
25 to a mathematical certainty nor does it mean that he has to

JURY CHARGE

1 produce evidence of any precise amount of damages that he has
2 suffered, rather what it means is is that the evidence put
3 forth by the plaintiff should be such as to enable you twelve
4 jurors to determine what amount of damages is fair and just
5 and reasonable without your having to resort to speculation or
6 to conjecture in order to determine the appropriate measure of
7 damages.

8 Now, Mr. Foreman, as you know when you and your fellow
9 jurors go back you're gonna be called upon to preside over the
10 jury deliberations to ensure that they are carried out in some
11 orderly fashion but all are expected to participate because as
12 I've already told you the verdict or the decision is the
13 unanimous consensus opinion of all twelve and so all of you
14 are going to have an equal vote in the ultimate decision but,
15 Mr. Foreman, when you go back to begin your deliberations, in
16 addition to the exhibits which have been introduced, I'm gonna
17 send back a verdict form and you'll be responsible for
18 completing that verdict form which will indicate the unanimous
19 decision of your fellow jurors. The verdict form has certain
20 questions on it and I think the verdict form will also help
21 you to to have a clear understanding of the the legal theory
22 of comparative negligence and how you are to make that
23 determination under the facts in the law but you'll have
24 certain questions that you'll be asked to respond to. The
25 first question on the form is simply, Do you find, do you the

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1 jury find that the plaintiff, Robert W. Edwards, Jr., has
2 proven by the greater weight of the evidence that the
3 defendant, Linda Jordan, was negligent and that such
4 negligence was a proximate cause of some injury or loss
5 sustained by the plaintiff. You have two potential responses:
6 yes or no. If your answer is no then that means the plaintiff
7 has failed to prove his en -- his entitlement to recovery and
8 so if you circle no then you stop, you don't deliberate any
9 further, the verdict in that instance would be for the
10 defendant. If you answer yes to that question the plaintiff
11 has proven an entitlement to a recovery then you'll go to the
12 next question which is question 2 and that question relates to
13 any negligence on the part of the plaintiff and it simply
14 asks, Do you find that the defendant, Linda Jordan, has proven
15 by the greater e -- greater weight of the evidence that the
16 plaintiff, Robert Edwards, was negligent and that such
17 negligence was a proximate cause of some injury or loss
18 sustained by the plaintiff. Again, you have two possible
19 responses, those are yes or no. If your answer is yes to that
20 question, that means the defendant has proven the plaintiff to
21 also have been at fault in any resulting loss. If you find
22 that and answer yes then you would go to question 3 and that's
23 where you make the comparison of negligence. If you answer no
24 to question 2 which means the the the defendant has not proven
25 fault on the part of the plaintiff then you would go to

JURY CHARGE

1 provision 4 which is where you state the the damage award but
2 if you do find that both parties have been proven to have been
3 at fault and proximately causing the resulting injury then in
4 question 3 or in the paragraph 3 of the verdict form you would
5 set out the percentage of fault which you attribute to each of
6 the parties, it can be any number of a percentage but the
7 percentages have to total 100 percent so whatever if you find
8 both to be at fault, you've got to assess a percentage of
9 fault to each of the parties, both the plaintiff and the
10 defendant, and you'll write that out in the space provided but
11 as I say the percentages have to total 100 percent. If you do
12 find the plaintiff to have been at fault and if you find that
13 his percentage of fault was more than 50 percent then you
14 stop. The plaintiff is not entitled to a recovery if you find
15 him to be at fault and you find that fault to be more than 50
16 percent. If you find the plaintiff to have been at fault but
17 you find his fault to have been 50 percent or less then the
18 plaintiff would be entitled to a verdict and you would again
19 go to question 4 and in question 4, in provision 4 that's
20 where you state the actual damages that you find have been
21 proven to have been sustained by the plaintiff by the evidence
22 in the case.

23 Now when you get or if you get or as you get to question
24 4 which is where you set out any damages you find to have been
25 sustained, do not reduce any damage award by any percentage of

JURY CHARGE

1 fault if you find such to be on the part of the plaintiff. If
2 there's to be any, if there is to be any reduction, the Court
3 will accomplish that but the jury is never to reduce a an
4 actual damage award by any percentage of fault of the
5 plaintiff should you find the plaintiff to have been at fault
6 in some percentage. You'll simply state the entire amount of
7 actual damages you find the de -- the plaintiff has suffered
8 as a result of the event in question and there's a -- you'll
9 need to -- but there's a line for you to write that out in
10 words, there's also a space beneath that for the numerical
11 equivalent so if you find actual damages on the part of the --
12 to be awarded to the plaintiff, write that damage award out in
13 words and also insert the numerical equivalent.

14 Now I'm not in any way concerned with what your decision
15 is but as I've told ya the verdict has to be unanimous, all
16 twelve of you must be in agreement, so when you have come to
17 that unanimous agreement, Mr. Foreman, if you'll indicate that
18 decision by completion of the verdict form, sign your name as
19 the foreperson, you're the only person that needs to sign the
20 verdict form. Once you've completed the verdict form, that is
21 you've reached your decision, if you'll knock on the door, let
22 the bailiff know you've reached a decision, we'll bring you
23 back to receive that verdict. You keep the verdict form,
24 don't give it to the bailiff. You'll bring it back to the
25 courtroom and I'll receive it once you come back.

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1 If during your deliberations there comes a time where you
2 have a question about the evidence in the case, I'm never
3 allowed to answer questions about evidence or the facts of the
4 matter, you have to determine that from your remembrance of
5 and your review of the testimony and evidence in the case. If
6 you have a question about testimony and you think that
7 testimony -- that question can be answered by having testimony
8 replayed or -- in whole or in part, we can bring you back into
9 the courtroom to have testimony replayed. I don't have
10 transcripts of a witness's testimony to send back to the jury
11 room but if you need to have a testimony -- have a witness's
12 testimony replayed, I can bring you back into the courtroom to
13 accomplish that purpose. If you ever have a question about
14 the law -- oh, and and so far as the evidence is concerned, no
15 additional evidence can be received so if you go back and you
16 say, Well wonder if they've got this or that or that's
17 available, you can't ha -- even if it exists you can't have
18 it, the evidence is closed and you have to consider what's
19 been introduced during the trial, you can't consider any
20 outside or extraneous information and no additional evidence
21 can be received now that you're going back to begin your
22 deliberations. If you ever have a question about the law that
23 is applicable, I am permitted to answer those questions so
24 should you have a question about the law, if you need me to
25 give you a a a - reinstruct you on the law or if you need to

JURY CHARGE

1 gi -- for me to give you an additional explanation or a
2 clarification any point of law then I am permitted to do that
3 so, Mr. Foreman, if at any time you need to address any matter
4 to me, if you'll write it on a piece of paper, give it to the
5 bailiff, he'll provide it to me and I'll respond accordingly.
6 I don't know if we have any smokers on the jury, if we do you
7 can smoke during deliberations but you cannot smoke in the
8 jury room, you have to go outside to accomplish that so
9 anybody wants to smoke tell the bailiff, he'll take ya outside
10 to accomplish that purpose. You are instructed however that
11 deliberations must stop if any juror is absent from the jury
12 room for any authorized purpose and deliberations may only
13 resume when all twelve jurors are present so that all may
14 participate. It's not lunchtime, it's not close to lunchtime
15 and I don't know how long your deliberations are gonna take,
16 you don't know either till ya get back there and start talkin'
17 about it but if for some reason the deliberations take you
18 into the lunch period and you think it's appropriate to order
19 lunch if you'll let us know we'll send somebody back there to
20 take your lunch order. It ordinarily takes about an hour or
21 so for lunch to be ordered, prepared and brought to the jury
22 room so just keep that time frame in mind if you get to a
23 point where ya think it's appropriate to order lunch. I think
24 that covers everything, if it doesn't I'll bring you back but
25 right now I'm gonna ask the twelve primary jurors,

JURY CHARGE

1 Mr. Freseman, you stay here with me, I'll ask the twelve
2 primary jurors to please retire to your jury room but do not
3 begin your deliberations until I send you word to do so. When
4 it's time for you to begin, I'll send word by way of the
5 bailiff that you can and in that event he'll bring to the jury
6 room all of the exhibits which which have been introduced and
7 to you, Mr. Foreman, he'll also bring the verdict form upon
8 which you will indicate a decision so please retire but do not
9 begin deliberations until I send you word.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Mr. Freseman, as you know you are not
13 provision -- permitted to engage in jury deliberations because
14 the original twelve are able to do that so that's gonna
15 conclude your service for the trial of this case but I do
16 wanna thank you for the time, the attention that you've
17 devoted to it. The balance of the panel, those who have not
18 been selected, are returning to the courthouse at 2:30 this
19 afternoon and we anticipate at that time selecting a jury in
20 another case so while you are excused now I would ask that you
21 please report back to the jury assembly room at 2:30 this
22 afternoon at which time you might be called upon to serve
23 again so thank you for your service in this case.

24 JUROR NUMBER 53: Thank you.

25 THE COURT: Please report back at 2:30.

MOTIONS AND MATTERS

1 (Whereupon, the alternate juror left the courtroom.)

2 THE COURT: Are there any exceptions taken to the
3 instruction or requests for additions to the instruction by
4 the plaintiff?

5 MR. DARWIN: Yes, Your Honor. We take exception to the
6 comparative negligence charge, all all -- every part of the
7 charge that related to the law of comparative negligence as
8 well as the except -- we take exception to the open and
9 obvious condition charge. The reason that we're taking these
10 exceptions and objecting to those charges is because in his
11 closing argument Mr. Tate said that the the defendant was not
12 blaming Mr. Edwards for the accident and did not make any
13 comparative negligence argument to the jury and by doing that
14 we believe either withdrew and/or waived that defense. Just
15 as I have an obligation in my closing argument to address all
16 the elements that I have to prove to prevail including
17 damages, that defense was not argued at all by Mr. Tate and
18 therefore I think it's been withdrawn or waived and so I
19 object to all portions of the charge that relate to
20 comparative negligence we -- as well as open and obvious.
21 There was no argument by Mr. Tate this was an open and obvious
22 condition and also obviously object to the verdict form that
23 addresses comparative negligence.

24 THE COURT: Alright, Mr. Tate, you wanna respond to him?

25 MR. TATE: Yes, Your Honor. As far as the comparative

MOTIONS AND MATTERS

1 negligence, I did say that he stepped on the end of the board
2 and it came up and hit him. Now I did not couch into and and
3 well he was negligent in doin' that but, I mean, stepping on
4 the enda the board it wasn't I said, like I said, I prefaced
5 it by sayin' he didn't fall through or anything, he stepped on
6 the enda the board, I think that's inherently you can infer
7 that that's comparative negligence or negligence on his part
8 by doin' that but as far as not blaming anybody, not blaming
9 him for breaking his nose, I mean, it's a, kind of a nice, ya
10 know, nice thing to say but I didn't get in a comparative
11 negligence part. As far as open and obvious, I think I said
12 many times that the deck was -- he had walked on it a thousand
13 times and he knew it as well as they did, any kind of a defect
14 would have had had to been open and obvious to him if there
15 was one. I mean, I...

16 THE COURT: Alright, note your exception. How 'bout
17 ya'll verify the exhibits, please.

18 MR. DARWIN: Sure.

19 (Whereupon, the attorneys complied.)

20 (Whereupon, a discussion was held off the record.)

21 THE COURT: Let me have ya'll look at the verdict ---.

22 MR. DARWIN: Okay.

23 THE COURT: --- form, please.

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

25 THE COURT: Are all the exhibits accounted for?

MOTIONS AND MATTERS

1 MR. DARWIN: Yes, sir.

2 MR. TATE: Yes.

3 THE COURT: Okay, send 'em back, please. Tell the jury
4 to begin deliberations, notify us when they've concluded.

5 (Whereupon, a discussion was held off the record.)

6 THE COURT: We'll be at ease while the jury's
7 deliberating.

8 (Whereupon, the jury began deliberating at 10:45 a.m.)

9 (Notes from the jury marked Court's Exhibit Nos. 1 and 2
10 for identification.)

11 (Whereupon, a verdict was reached at 1:20 p.m.)

12 THE COURT: Oh, we have a verdict. We ready to receive
13 it?

14 MR. DARWIN: Yes, sir.

15 THE COURT: Okay, bring 'em in.

16 (The following takes place in the presence of the jury.)

17 THE COURT: Mr. Foreman, has the jury reached a decision?

18 JURY FOREMAN: We have, Your Honor.

19 THE COURT: Have you indicated that on the verdict
20 form?

21 JURY FOREMAN: We have, sir.

22 THE COURT: Did you sign it?

23 JURY FOREMAN: Yes.

24 THE COURT: If you'll hand that form up by way of the
25 bailiff, please.

VERDICT

1 (Whereupon, the jury foreman complied.)

2 THE COURT: Alright, in case number 2010-CP-42-462 Robert
3 W. Edwards, Jr. vs. Linda N. Jordan, defendant, in response to
4 the special interrogatory verdict form question 1, Do you find
5 the plaintiff has proven the defendant to have been negligent
6 and that her negligence was a proximate cause of some injury?
7 Yes. Question 2, Do you find the defendant has proven the
8 plaintiff was negligent and that that negligence was the
9 proximate cause of some injury, the response is yes.
10 Provision 3 in the allocation of fault: defendant 65 percent,
11 plaintiff 35 percent. Provision 4 stating the total amount of
12 actual damages sustained by the plaintiff \$2,952.60, the
13 verdict form signed by Robert E. Fellner as the foreperson.
14 Is this the verdict of each juror and if it is your verdict
15 and still your verdict I would ask that you indicate so by
16 raising your right hands. All have responded affirmatively.
17 Any other matters to be addressed with the jury present?

18 MR. DARWIN: No, sir.

19 MR. TATE: No, Your Honor.

20 THE COURT: Okay, thank you, ladies and gentlemen, you
21 can be excused now for lunch. I'm told that we will likely be
22 selecting another jury this afternoon at 2:45, at 2:45 so if
23 you'll please report to the jury assembly room at 2:45 this
24 afternoon, it might be that you'll be called upon to serve
25 again in another case, okay, so thank you for your

MOTIONS AND MATTERS

1 participation in this one. Have a good lunch, we'll see ya at
2 2:45 this afternoon.

3 (Whereupon, the jury left the courtroom.)

4 THE COURT: Alright, any matters to address before we
5 conclude?

6 MR. DARWIN: Your Honor, may I have ten days for post-
7 trial motions?

8 THE COURT: You need ten days?

9 MR. DARWIN: I'd like to have it.

10 THE COURT: Sir?

11 MR. DARWIN: I mean, if if the Court would give
12 me, ---

13 THE COURT: I'll let him ---

14 MR. DARWIN: --- allow me to.

15 THE COURT: You got any objection, Mr. Tate?

16 MR. TATE: No, Your Honor, I ---

17 THE COURT: Okay, ten days.

18 MR. TATE: --- I prefer, I prefer not to but if ---

19 THE COURT: Sir?

20 MR. TATE: --- he needs 'em yes, sir, I will -- I don't
21 have any objection so...

22 THE COURT: Okay, ten days.

23 MR. DARWIN: Alright.

24 THE COURT: Alright, court's in recess until 2:45.

25 MR. TATE: Thank you, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Thank you.

2 (Deposition of Dr. Rucker marked Plaintiff's Exhibit
3 No. 20 and video of deck marked Plaintiff's Exhibit No. 23 for
4 identification.)

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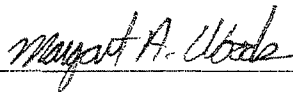
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1 CERTIFICATE OF REPORTER

2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on October 3 and 4, 2011 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 6 through 152, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 June 19, 2012

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.

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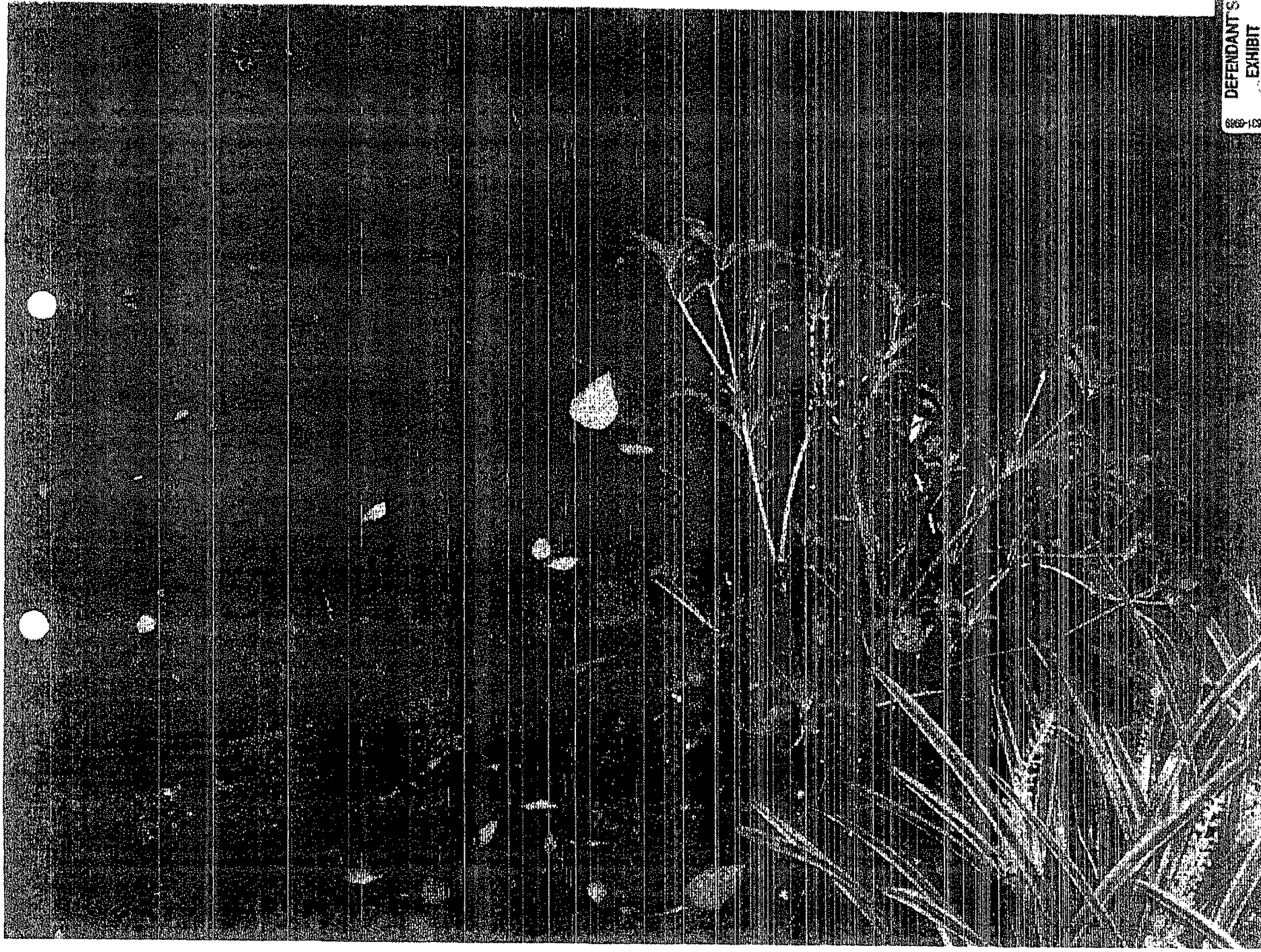
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DEFENDANT'S
EXHIBIT

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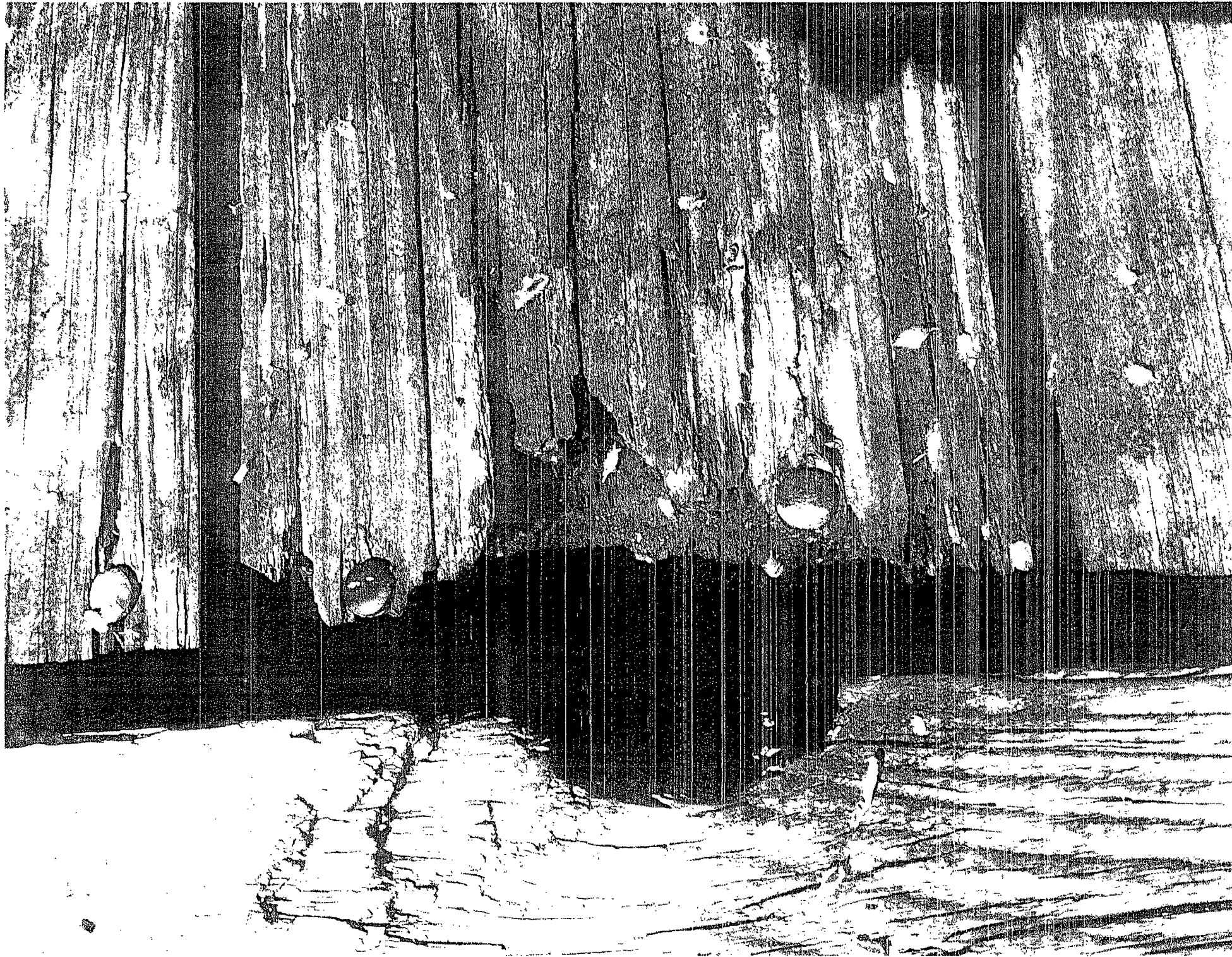
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EXHIBIT

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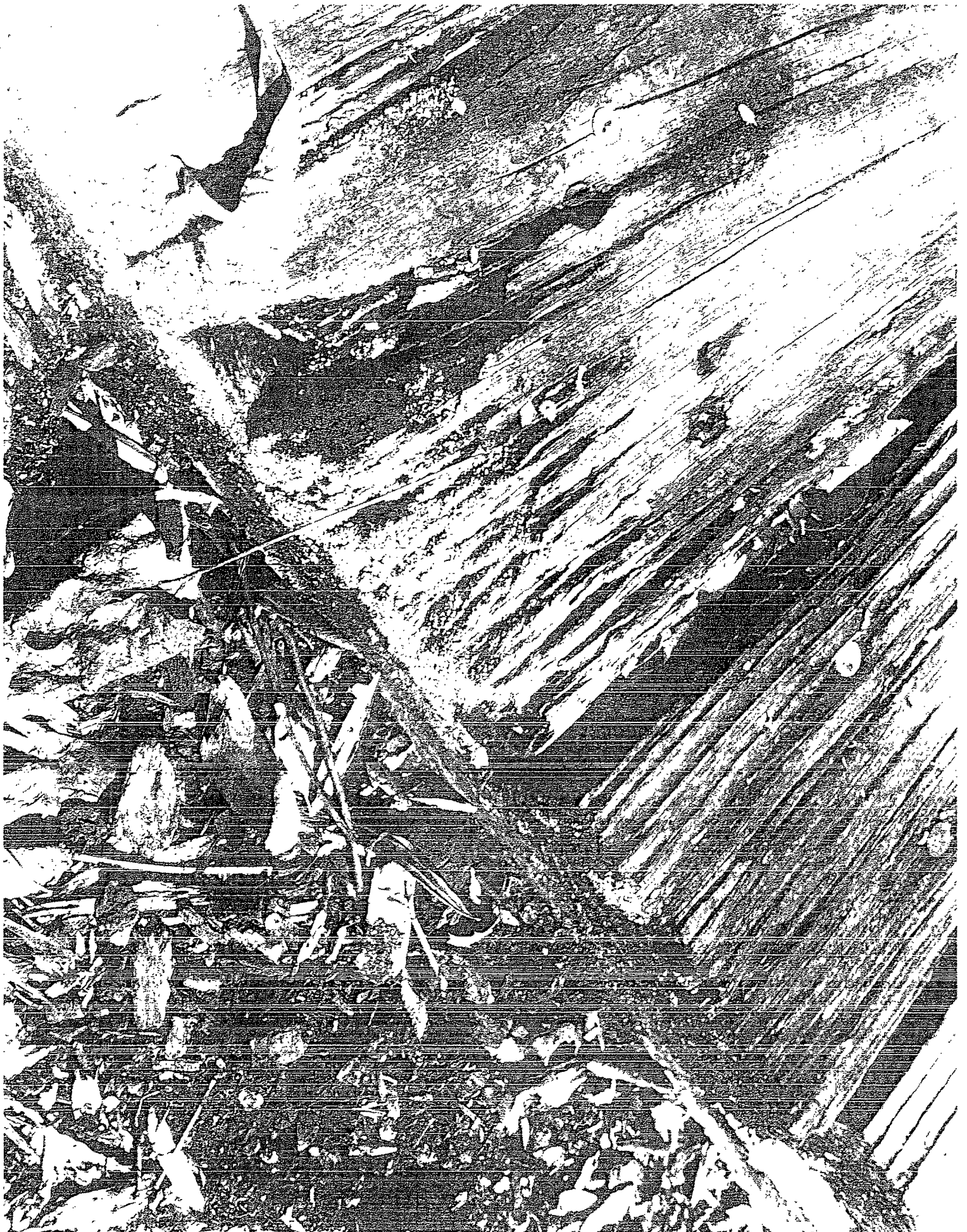
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DEFENDANT'S
EXHIBIT
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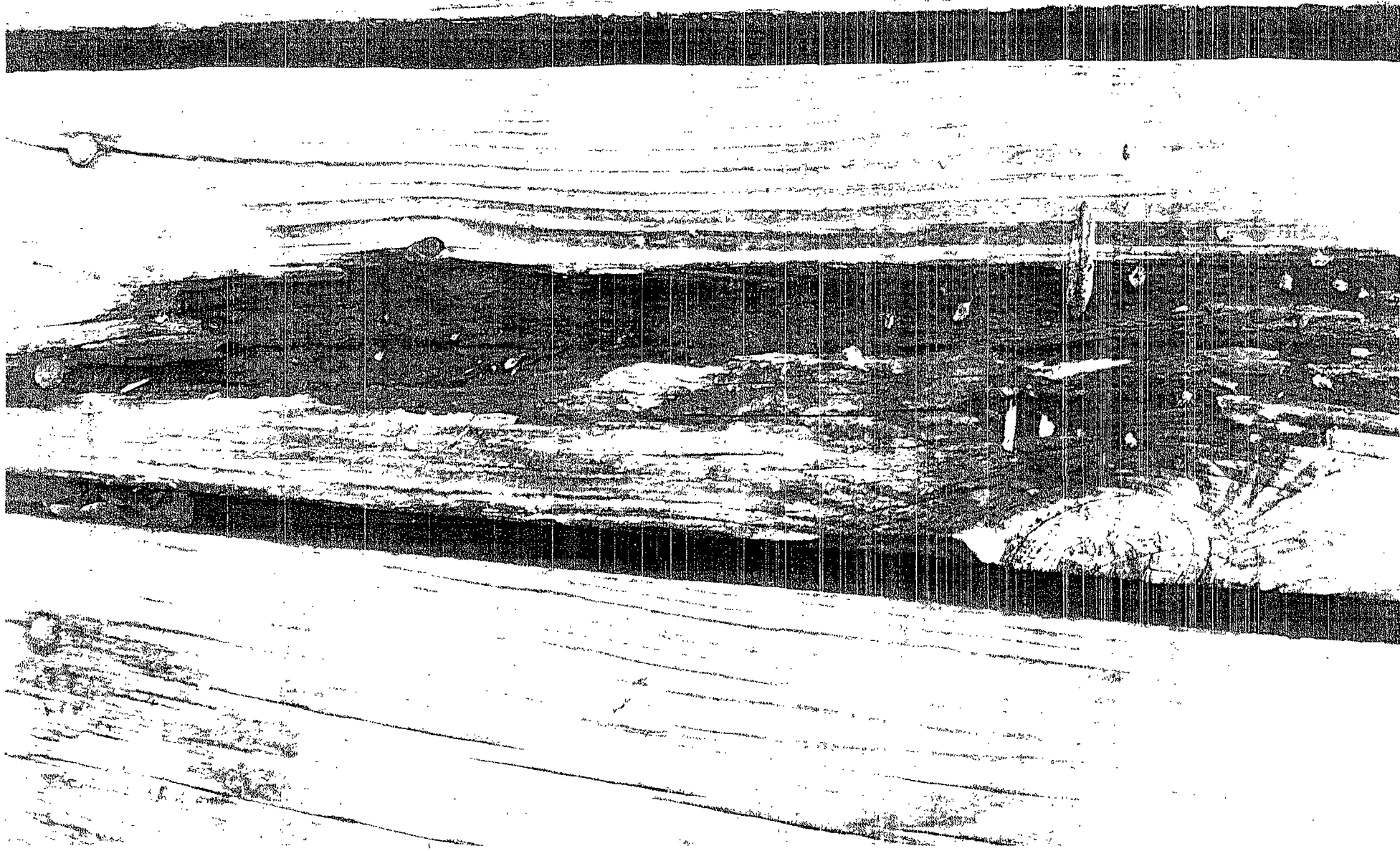


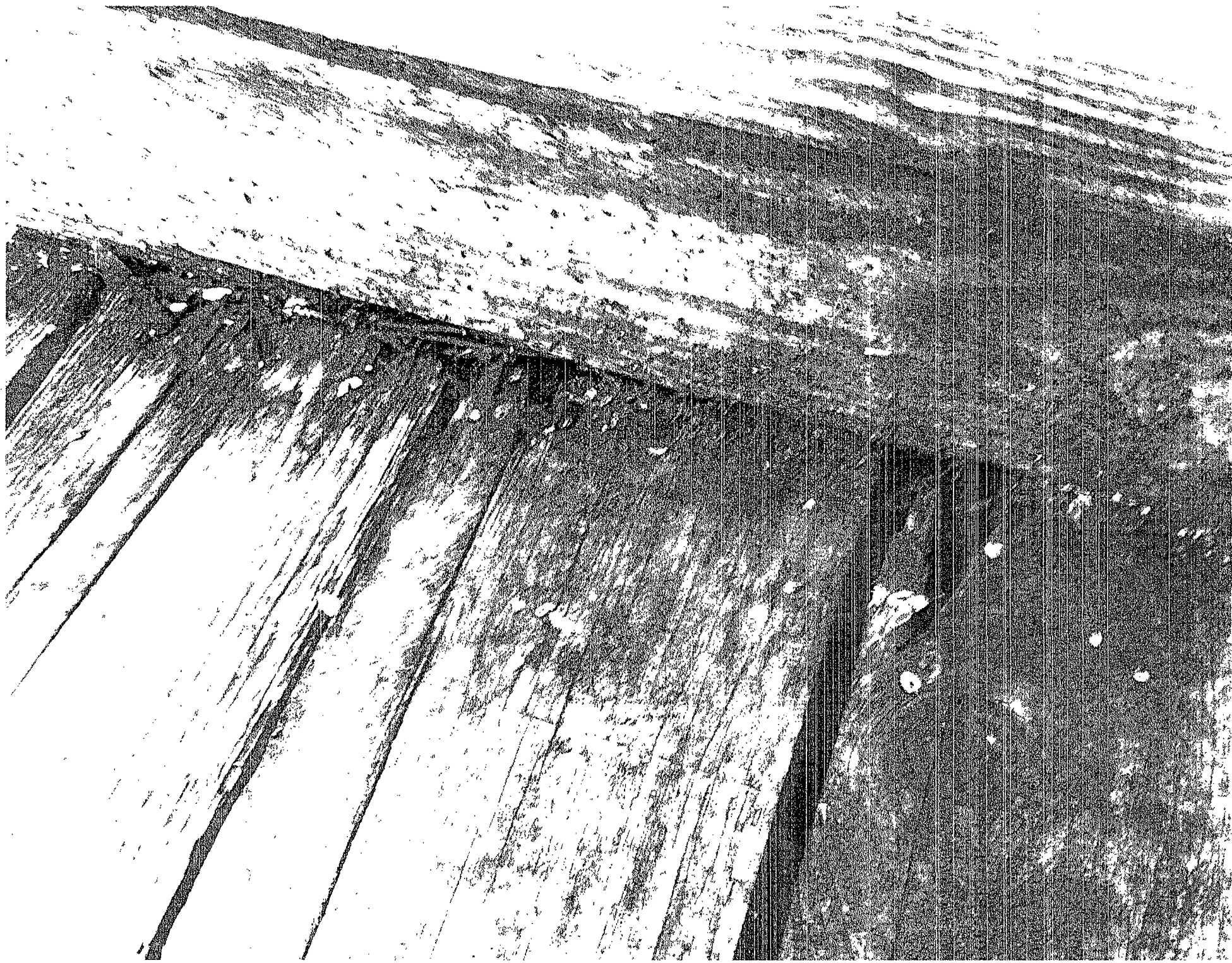


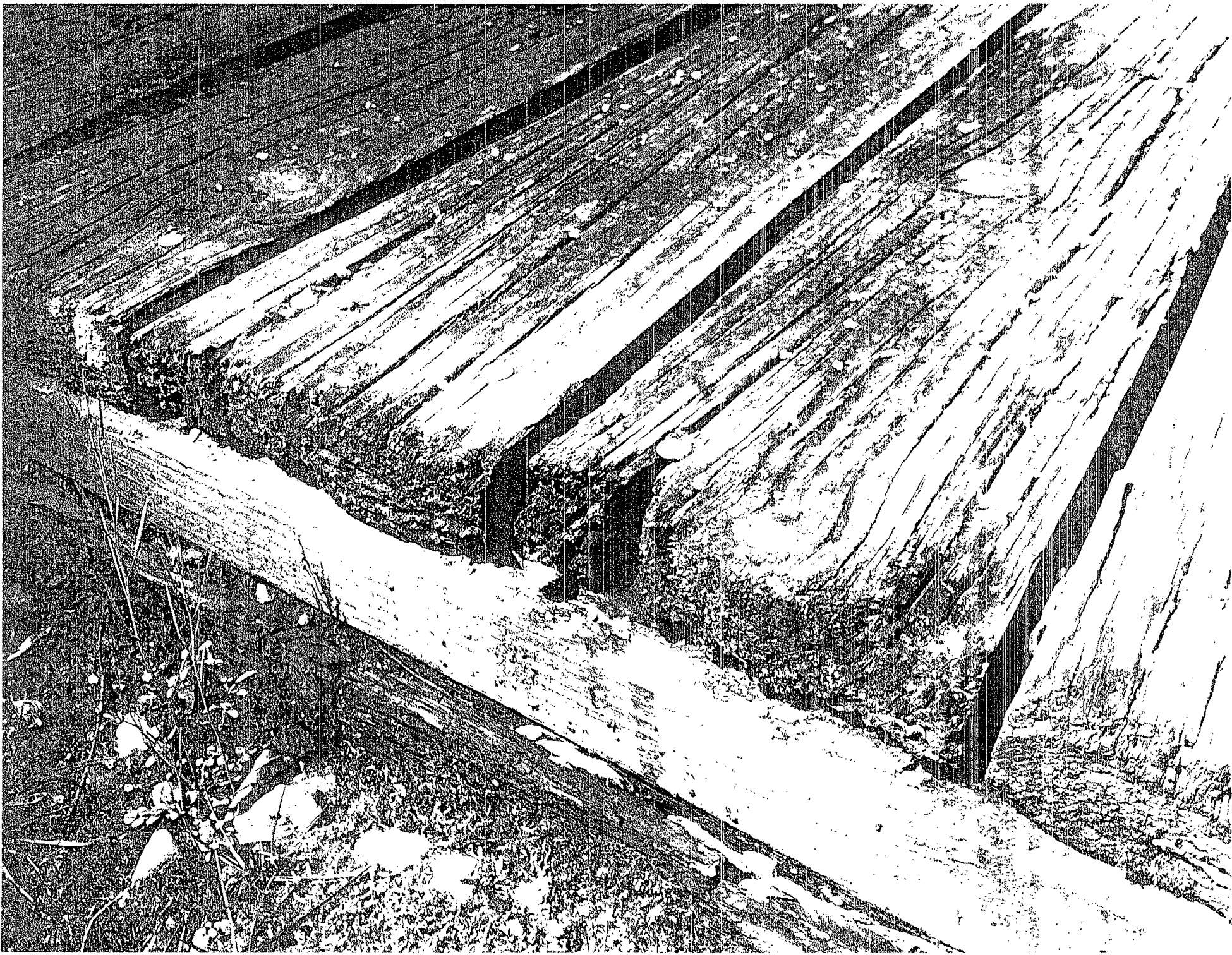








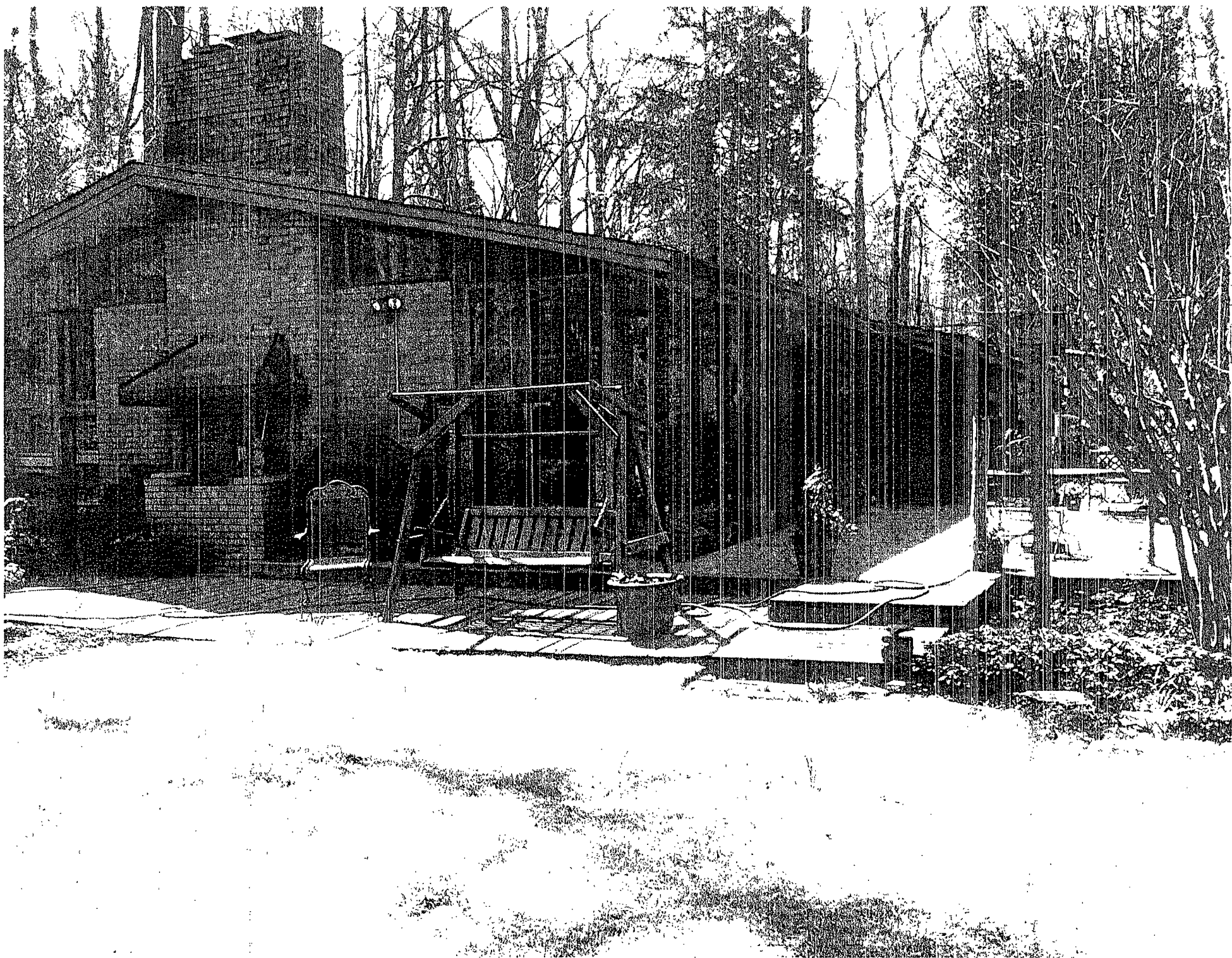












STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Robert W. Edwards, Jr.,	)	
	)	C/A NO. 2010-CP-42-00462
Plaintiff,	)	
	)	
vs.	)	
	)	
Linda N. Jordan,	)	
	)	
Defendant.	)	

COPY

**VIDEO-TAPED DEPOSITION OF
CHRISTOPHER D. RUCKER, M.D.**

**Thursday, September 29, 2011
7:58 a.m.-8:08 a.m.**

The video-taped deposition of CHRISTOPHER D. RUCKER, M.D., taken on behalf of the Plaintiff at the offices of Spartanburg & Greer Ear, Nose and Throat, 1330 Boiling Springs Road, Suite 1400, Spartanburg, South Carolina, on the 29th day of September, 2011, before Lyn Allen, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES:

Representing the Plaintiff:

William B. Darwin, Jr., Esquire
Holcombe Bomar, P.A.
Post Office Box 1897
Spartanburg, South Carolina 29304

Representing the Defendant:

Raymond A. Tate, Jr., Esquire
Doyle, Tate & McDade, P.A.
812 West Whitner Street
Post Office Box 2125
Anderson, South Carolina 29622

ALSO PRESENT:

Michael M. Arrison, videographer

CONTENTS:

(Deposition of Christopher D. Rucker, M.D.)

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Certification of Reporter	15

EXHIBIT INDEX

EXHIBITS:

IDENTIFIED AT PAGE:

(No Exhibits Were Marked)

S T I P U L A T I O N

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition is taken in accordance with the South Carolina Rules of Civil Procedure;

That the formality of READING AND SIGNING is specifically WAIVED;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

- - -

1 VIDEOGRAPHER: This is the video-taped deposition of
2 Dr. Christopher Rucker taken by the plaintiff in the
3 matter of Robert W. Edwards Jr., Plaintiff, versus
4 Linda N. Jordan, Defendant, filed in the Court of
5 Common Pleas, State of South Carolina, Spartanburg
6 County, Case Number 2010-CP-42-00462. This deposition
7 is being held at the Spartanburg Ear, Nose and Throat
8 at 1330 Boiling Springs Road in Suite 1400 in
9 Spartanburg, South Carolina, on Thursday, September
10 29th, 2011. My name is Michael Arrison from the firm
11 of Carolina Legal Video Services. The court reporter
12 is Lyn Allen from Allen Court Reporting. We're going
13 on the record at 7:58 a.m. Counsel will now state
14 their appearance for the record.

15 MR. DARWIN: I'm Kip Darwin representing Bobby
16 Edwards.

17 MR. TATE: My name is Ray Tate representing Linda
18 N. Jordan.

19 VIDEOGRAPHER: The court reporter will now swear
20 in the witness.

21 CHRISTOPHER D. RUCKER, M.D., being duly sworn, deposes and
22 testifies as follows:

23 DR. RUCKER - EXAMINATION BY MR. DARWIN:

24 Q: You are Dr. Christopher Rucker?

25 A: That's correct.

1 Q: Dr. Rucker, you are a medical doctor; is that correct?

2 A: I am.

3 Q: All right. Give us the benefit of your educational
4 background and your professional experience.

5 A: I graduated from the University of Virginia with an
6 undergraduate degree in environmental sciences. And
7 graduated from the University of Virginia with a
8 medical degree in 1978, pardon me, in 1984. And then I
9 graduated from my residency in ear nose and throat in
10 1989 from the East Virginia Graduate School of Medicine
11 in Norfolk, Virginia. And I've been in practice here
12 approximately 13 years.

13 MR. TATE: We'll stipulate that the doctor is an
14 expert in the field of ear, nose and throat and
15 otolaryngology.

16 Q: Okay. And let me just get a little more background
17 from you and then I'll go into your treatment of Mr.
18 Edwards why we're here today of course. You've been in
19 Spartanburg for 13 years?

20 A: Yes.

21 Q: With this same practice?

22 A: That is correct.

23 Q: And what are the different types of patients you treat?
24 What types of problems do you treat?

25 A: I treat everything above the level of the shoulders

1 except for the brain and the eyeballs. Ours is a
2 regional specialty. We are specialists in head and
3 neck surgery.

4 Q: Do you have privileges at hospitals here in town?

5 A: I do.

6 Q: Which ones?

7 A: Both the Regional Hospital and Mary Black Hospital.

8 Q: Do you perform surgeries at those two hospitals?

9 A: Yes, I do.

10 Q: Do you also perform outpatient surgeries?

11 A: That's correct.

12 Q: Where do you perform those surgeries?

13 A: At both the Ambulatory Surgery Center in Spartanburg
14 and the Ambulatory Surgery Center in Greer.

15 Q: Now, Mr. Edwards, Bobby Edwards has been a patient of
16 yours, has he not?

17 A: Yes, he has.

18 Q: I believe you saw him on August 18th of 2008?

19 A: I did.

20 Q: Correct? He had been to the emergency room at
21 Spartanburg Regional three days before that, had he
22 not?

23 A: That's what I understand from the record.

24 Q: Okay. Have you seen an interpretation of a CT-scan
25 that was done of his nose?

1 A: I have not.

2 Q: You have not? Let me show that to you.

3 A: Yes. That was not part of my record. I saw that it
4 had been done.

5 Q: Okay. I'll show that to you. Okay. What was your
6 understanding of the injury that Mr. Edwards had
7 sustained on August 15th of 2008?

8 A: The patient told us that he had been smacked in the
9 face with a board while visiting somebody's home.

10 Q: On August 18th of 2008 you performed a physical
11 examination of Mr. Edwards, didn't you?

12 A: I did.

13 Q: All right. What did that involve?

14 A: I examined his ears, his nose, his throat, his neck and
15 his facial skeleton.

16 Q: And what were your findings?

17 A: The pertinent findings were that he had a depressed
18 nasal fracture with a C-shaped deformity of his nasal
19 dorsum with it convexly toward his left side. He also
20 had a deviation of his cartilaginous nasal septum
21 deviated toward his left side.

22 Q: Did your findings, were they consistent with the
23 history he gave you of the accident?

24 A: Yes, they were.

25 Q: Show us, you've got a diagram there, show us what nasal

1 bones were involved that were fractured or otherwise
2 injured.

3 A: In the upper diagram it shows the nasal skeleton. And
4 there are a pair of nasal bones, one on either side.
5 And you will be able to see here the left nasal bone is
6 this upper bone. And there is a paired one on the
7 other side of the nose. So if he had suffered a blow
8 from the right side of his face it would have depressed
9 the right nasal bone and elevated the left nasal bone
10 which would have resulted in a curve of his nasal
11 dorsum like that as opposed to it being straight down
12 the middle.

13 Q: And you also noted an injury to the septum; is that
14 correct?

15 A: Yes. The nasal septum in the middle portion of the
16 nose. It's cartilaginous up front, made of cartilage
17 and it is bony behind. And his nasal septum instead of
18 being vertically oriented was also bowed toward his
19 left side as if he had either had a congenital
20 deformity or been struck from the right side of his
21 face.

22 Q: What types of problems can a deviated septum cause for
23 a patient?

24 A: Generally nasal obstruction, difficulty breathing
25 through the nostrils.

1 Q: How did you arrive at those findings? What did your
2 exam entail?

3 A: First of all, I looked at the patient's face and he had
4 an obvious cosmetic deformity to his nose. It was
5 crooked. And he stated that that was not his
6 pre-morbid facial shape. So that was consistent with
7 the blow to the nose. And secondly I examined him
8 inside by using a nasal speculum which gently spreads
9 the nostrils so that you can evaluate whether or not
10 the nasal septum is in the midline or crooked.

11 Q: Okay. All right. After you performed your physical
12 examination, what did you decide to do after discussing
13 the different options with Mr. Edwards?

14 A: I offered Mr. Edwards the options of either leaving the
15 nose alone and leaving it crooked or a closed reduction
16 of nasal bones. And he elected that.

17 Q: And closed reduction means what?

18 A: It means that I didn't perform any incisions to
19 straighten out the nasal bones but did it manually
20 through a closed technique.

21 Q: Here in your office?

22 A: Yes.

23 Q: All right. Tell us how you went about doing that.

24 A: The first thing I did was use a nasal speculum to
25 gently spread his nostrils and spray some decongestant

1 in his nose to shrink the mucus membrane so I could see
2 more easily. And after that I used some local
3 anesthetic and a syringe and I numbed both the skin
4 over his nasal dorsum and went up his nostrils to numb
5 the skin inside his nasal cavities so that when I
6 repositioned the nasal bones it wouldn't be overly
7 painful.

8 Q: So you inserted the syringe or the needle inside his
9 nose?

10 A: That's correct.

11 Q: After you did that, tell me how you repaired the
12 fractures.

13 A: Because his fracture was deviated toward the left side,
14 the goal was to elevate the right nasal bone since it
15 had been pushed in and depress the left nasal bone so
16 that instead of having a crooked nose like that he
17 would have a straight nose. So in order to do he would
18 have to simultaneously push down on the convex bone
19 from the outside of the nose and lift up inside with a
20 lever inside the nostril. So this would be inserted in
21 the nose as far up as the nasal bone is broken. And
22 that would be used to lift up from the inside while I'm
23 molding down from the outside.

24 Q: You're doing all that at the same time applying force,
25 manual pressure?

1 A: That's correct.

2 Q: And he's sitting in the chair as you are doing this?

3 A: He's actually lying down.

4 Q: Lying down? All right. And what's your goal through
5 this procedure? What are you trying to do?

6 A: What you try to do is turn the nose to its premorbid
7 condition so the shape that he says it was before it
8 was injured.

9 Q: How about the septum? What did you do if anything
10 about that?

11 A: I did nothing to the septum because I knew that would
12 require a general anesthetic at a later time to perform
13 an open procedure called a septoplasty.

14 Q: And what does that involve, a septoplasty?

15 A: A septoplasty involves an incision inside the nostril
16 and repositioning the crooked nasal cartilage and bone.

17 Q: Where would that procedure be performed?

18 A: At the outpatient surgery center under a general
19 anesthetic.

20 Q: In other words, you put him to sleep?

21 A: Yes.

22 Q: What instruments would be used during that procedure?

23 A: Similar instruments to this but would also require a
24 scalpel to open up the nose to make the incision and
25 some forceps to remove any crooked bone and cartilage

1 that are not necessary for support of the nose.

2 Q: Mr. Edwards complains of nasal congestion on a chronic
3 basis. Is that consistent with a deviated septum?

4 A: It is.

5 Q: So after you did your repositioning of the nasal bones
6 we've talked about, was there still some deformity?

7 A: Well the best I can say is that the patient said it
8 looks good. And my not having seen him before I don't
9 know if I returned him to his pre-morbid nasal shape or
10 not. And that's why we always tell our patients that
11 this may or may not be as good as you think it should
12 be both because I haven't seen it before and because
13 there's some swelling in the nose, and the swelling you
14 can't tell through the thin nasal skin where the bone
15 is actually positioned.

16 Q: Based on the history Mr. Edwards gave you, to a
17 reasonable degree of medical certainty do you believe
18 these nasal fractures of the deviated septum were
19 caused by the force of the board hitting his face?

20 A: It's entirely consistent with his history.

21 Q: All right. So your answer would be yes to that?

22 A: Sure.

23 Q: I believe that's all I have. I appreciate it.

24 MR. TATE: Can we go off the record just for a
25 second?

1 MR. DARWIN: Sure. Uh-huh (affirmative response).

2 VIDEOGRAPHER: Off the record at 8:07 a.m.

3 (Off the Record)

4 VIDEOGRAPHER: On the record at 8:07 a.m.

5 **EXAMINATION BY MR. TATE:**

6 Q: Doctor, is this the only time you saw Mr. Edwards?

7 A: Yes, sir. That's correct.

8 Q: Okay. And what you did for him that day, is that
9 unusual?

10 A: No. It's quite common.

11 Q: Okay. And if someone gets a broken nose, that's what
12 you do?

13 A: Yes, sir.

14 Q: Okay. Thank you very much.

15 MR. DARWIN: All right. That's it.

16 VIDEOGRAPHER: This concludes today's deposition
17 of Dr. Christopher Rucker. Off the record at 8:08 a.m.
18 Further deponent sayeth not.

19 (There being no further questions, the deposition concluded
20 at 8:08 a.m.)

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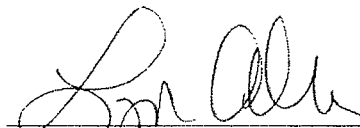
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CERTIFICATE OF REPORTER

I, Lyn Allen, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the deposition of Christopher D. Rucker, M.D. on the 29th day of September, 2011, that the witness was first duly sworn by me, and that the foregoing 14 pages constitute a true and correct transcription of the said deposition.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I FURTHER CERTIFY that the original for said transcript shall be hereafter sealed and delivered to William B. Darwin, Jr., Esquire, Holcombe Bomar, P.A., Post Office Box 1897, Spartanburg, South Carolina. This sealed original transcript shall be retained by the above party, who shall be responsible for filing same with Court prior to trial or any hearing which might result in a final order on any issue.



Lyn Allen, Court Reporter
Notary Public for South Carolina

My commission expires: February 8, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Robert W. Edwards, Jr.,	)	
	)	C/A NO. 2010-CP-42-00462
Plaintiff,	)	
	)	
vs.	)	
	)	
Linda N. Jordan,	)	
	)	
Defendant.	)	
	)	

COPY

**DEPOSITION OF
ROBERT LEROY PEARSON, IV**

**Tuesday, March 15, 2011
11:15 a.m.-11:51 a.m.**

The deposition of ROBERT LEROY PEARSON, IV, taken on behalf of the Plaintiff at the offices of Holcombe Bomar, P.A., 100 Dunbar Street, Spartanburg, South Carolina, on the 15th day of March, 2011, before Lyn Allen, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES:

Representing the Plaintiff:

William B. Darwin, Jr., Esquire
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Spartanburg, South Carolina 29304

Representing the Defendant:

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Also Present:

Robert W. Edwards, Jr.
Linda N. Nordan

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EXHIBITS:

IDENTIFIED AT PAGE:

(No Exhibits Were Marked)

S T I P U L A T I O N

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition is taken in accordance with the South Carolina Rules of Civil Procedure;

That the formality of READING AND SIGNING is specifically WAIVED;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

- - -

1 ROBERT LEROY PEARSON, IV, being duly sworn, deposes and
2 testifies as follows:

3 MR. PEARSON - EXAMINATION BY MR. DARWIN:

4 Q: Mr. Pearson, you and I met a little while ago. My name
5 is Kip Darwin. I'm Mr. Edwards' attorney in this
6 lawsuit he's brought against Ms. Jordan because of this
7 accident that happened on August 15th of 2008 at her
8 home. I'm going to be asking you some questions about
9 the deck and some other issues surrounding the case.
10 Before I get into those questions, I'll have some
11 background questions I need to ask you, mainly for jury
12 selection purposes.

13 A: Uh-huh (affirmative response).

14 Q: If I ask you something you don't understand, will you
15 ask me to repeat my question?

16 A: (Nods head affirmatively.)

17 Q: And I'll be happy to do that.

18 A: Okay.

19 Q: I want to make sure I, what I want to make sure of is
20 that when I ask you a question and you give me a
21 response you understood my question.

22 A: Okay.

23 Q: So it's your right as a witness in the case to ask me
24 to clarify it, to rephrase it, whatever I need to do to
25 make sure you understood it. Is that fair?

1 A: That's fair.

2 Q: Okay. You just let me know. Be sure to speak up.

3 Have you ever been deposed before. Had this done

4 before?

5 A: No.

6 Q: Have you ever been a party to any type of lawsuit or a

7 witness in any type of lawsuit?

8 A: No.

9 Q: Who is your employer?

10 A: Mesa.

11 Q: Mason Air Group?

12 A: M-E-S-A Air Group.

13 Q: Okay. Mesa Air Group. Where do you fly out of?

14 A: I'm based in Charlotte.

15 Q: What type of planes do you fly?

16 A: CRJ 900.

17 Q: Did you serve in the military?

18 A: No.

19 Q: How did you become a pilot?

20 A: Just came out private.

21 Q: Okay. What's your educational background?

22 A: Two-year degree liberal arts.

23 Q: Where did you attend school?

24 A: Spartanburg Methodist College.

25 Q: Are you from Spartanburg?

1 A: Yes, I am.

2 Q: Did you go to Spartan High or Dorman or where did you
3 go?

4 A: I went to Spartan High.

5 Q: When did you graduate from Spartanburg High School?

6 A: 1978.

7 Q: Did you go straight to SMC after that?

8 A: Uh-huh (affirmative response).

9 Q: And you got a two-year degree from Spartanburg
10 Methodist College?

11 A: Correct.

12 Q: What's your employment history since then? When did
13 you become a pilot? That might be a better way for me
14 to ask it.

15 A: I started flight instructing 1986.

16 Q: Okay.

17 A: And flew freight until 1990. Flew passengers for a
18 company in Charlotte called CC Air from 1990 to, there
19 were some furloughs in there but they were bought out
20 by Mesa Airlines in 1998. 1998 to present.

21 Q: So you've been a pilot since 1986; is that right?

22 A: Well, as a profession. Yes.

23 Q: That's been your job since 1986?

24 A: Correct.

25 Q: Flying planes. I'm assuming you became a pilot then

1 before that.

2 A: It was prior to that. Yeah.

3 Q: Okay. Have you had any other jobs other than being a
4 pilot since 1986?

5 A: I have worked for motorcycle shops here in town.

6 Q: Which ones?

7 A: I worked for Cycle World. It's no longer in existence.

8 Q: Any other employers?

9 A: Oh, and worked here at the airport here for Orr
10 Aviation from 1979 to '85.

11 Q: What did you do for them?

12 A: Just fueler mostly.

13 Q: Now, Mesa Air group, you said you fly out of Charlotte.
14 Are you connected with any bigger airline?

15 A: Well, we do business as U.S. Airways Express, United
16 Express.

17 Q: Okay.

18 A: And we have a stand alone airline in Hawaii called Go
19 Airlines.

20 Q: So I guess you're out of town a fair amount, aren't
21 you?

22 A: Correct.

23 Q: All right.

24 A: Yeah. Usually two nights, three nights a week.

25 Q: Okay. How long have you and Ms. Jordan been together?

1 A: Since, I don't know.

2 Q: I should have asked her and left it alone with you.

3 I've been doing this long enough not to do this to
4 guys. But give me your best estimate.

5 A: We've been seeing each other since 1996.

6 Q: Okay. How long have y'all been living together?

7 A: Since, I would say me and the dog got there at the same
8 time. 2000.

9 Q: Okay. And y'all have lived together continuously since
10 2000 I'm assuming?

11 A: Right.

12 Q: Do you know about any repairs that were done to this
13 deck or walkway, I'm talking about all the woodwork
14 y'all have behind the house, before Mr. Edwards'
15 accident?

16 A: No.

17 Q: Did y'all ever have any work done to it or ever have
18 any, any boards or planks removed, replaced, anything
19 like that before his accident from the time you started
20 living there in 2000?

21 A: Not on the walkway.

22 Q: Not on the stretch where he got hurt?

23 A: No. Not on that stretch where he got hurt. No.

24 Q: Well, if I had asked you the day before his accident
25 August 14th of 2008 to describe the condition of that

1 walkway where he got hurt, what would you have told me?

2 Good? Fair? Poor? How would you have described it?

3 A: Well, I thought it was good.

4 Q: And why would you say that?

5 A: Aged. Because I had not had any problems with any
6 boards being loose. I hadn't fallen off of the deck.

7 It was --

8 Q: Did you have any plans to replace that walkway?

9 A: Yeah. We were going to replace that particular
10 walkway.

11 Q: Why were you going to replace it?

12 A: Just to fit in with the regular landscaping that we
13 had. And we were going to put a deck on the pool
14 house.

15 Q: How soon after Mr. Edwards' accident did you replace
16 that walkway where he got injured?

17 A: I can't recall. Not long.

18 Q: Within a week or two?

19 A: It was within a month I think.

20 Q: Okay. Who did that work?

21 A: West Construction.

22 Q: West Construction?

23 A: Yeah.

24 Q: W-E-S-T?

25 A: Now, he put the deck on. He didn't remove the old

1 walkway.

2 Q: Who removed the old walkway?

3 A: I had a friend of mine do it.

4 Q: Who was that?

5 A: Tony Brown.

6 Q: Tony Brown?

7 A: Yeah. Basically.

8 Q: Does Tony have any type of company?

9 A: No.

10 Q: He's a handyman?

11 A: Yeah.

12 Q: Did you ask him to take up the entire walkway? Do you

13 know what I mean? The area where Mr. Edwards got hurt,

14 that walkway there.

15 A: That span. We removed that span.

16 Q: Do you have any idea how many boards or planks we're

17 talking about?

18 A: Twenty-five feet worth.

19 Q: Okay.

20 A: Would be my guess.

21 Q: Did you have that span we removed because of

22 Mr. Edwards' accident?

23 A: No.

24 Q: Why did you have it removed?

25 A: Because we were going to put a deck on there and finish

1 the landscaping around there and put a deck in front of
2 the pool house.

3 Q: So Mr. Edwards' accident had nothing whatsoever to do
4 with the removal of those boards or planks?

5 A: Well, after his accident it certainly was a good idea
6 at that point, yeah. I mean, after he had gotten hurt
7 on it.

8 Q: Did you learn after he got injured that those boards
9 were not in good shape?

10 A: They were not in the condition that I thought.

11 Q: What did you learn about them?

12 A: The, well, the screws were I think rusting. They
13 were --

14 Q: I'm sorry. Finish your answer. I interrupted you.

15 A: Yeah. That was it.

16 Q: Tell me what you said again. I didn't hear that.

17 A: The screws that were holding some of those boards down,
18 they had begun to rust, corrode.

19 Q: Had you ever inspected those boards before his
20 accident?

21 A: It had never come up.

22 Q: Okay.

23 A: I mean, that was the first time that they had come up.

24 Q: The screws had come up out of the wood; is that what
25 you're talking about?

1 A: Yeah. That I could see the screws because they were in
2 the wood prior to that.

3 Q: Did you ever have any concerns about the condition of
4 that walkway before his accident?

5 A: No.

6 Q: Were there any loose boards or did the deck appear real
7 old?

8 A: It was aged. And --

9 Q: Did Mr. Brown tell you anything that would help explain
10 how his accident happened?

11 A: No.

12 Q: He didn't tell you anything about the planks being
13 under a pool pump?

14 A: No, he wasn't involved. He had no knowledge of the
15 accident.

16 Q: Well, I know. But what he found after he removed the
17 boards. Did he tell you what he found under there, an
18 old pool pump or anything like that?

19 A: No.

20 Q: Mr. Edwards has told me that the plank may have been
21 put on a hinge that covered up a pool pump. You don't
22 know anything about that?

23 A: No.

24 Q: Did Mr. Brown tell you anything about the condition of
25 the boards that he removed?

1 A: No. I mean, I called him up, he needed work, I gave
2 him a job. He pulled it all up and put it in a pile.
3 Q: Did you call him up because of Mr. Edwards' accident?
4 A: No. I called him up to do a job.
5 Q: You called him up, is it your testimony you called him
6 up to remove those boards for landscaping reasons?
7 A: I don't, explain that expression.
8 Q: Well, what I'm getting at, did you call Mr. West up and
9 say you need to get these --
10 A: West?
11 Q: I'm sorry. I'm sorry.
12 A: Had no involvement in that.
13 Q: Mr. Brown. I'm sorry. I got the name wrong.
14 A: Right.
15 Q: Did you call Mr. Brown up and tell him you needed him
16 to get out there to remove those boards because a
17 fellow had been injured out there and that walkway was
18 unsafe?
19 A: No. Tony needed some work. And I mean I gave him the
20 job to do. That just, demolition is what we did there.
21 Q: Well, was Mr. Edwards' accident just a coincidence in
22 the timing of the work that Mr. Brown did for you?
23 A: Yes. I would say so.
24 Q: Had you called Mr. Brown before Mr. Edwards' accident
25 about coming out there and removing part of the deck?

1 A: I don't remember the timing of when I called him.
2 Q: You don't recall any calls to him before Mr. Edward's
3 accident?
4 A: No.
5 Q: Did Mr. Brown bill you for his services?
6 A: I, yes.
7 Q: Did you --
8 A: I mean I paid him.
9 Q: Did he give you paperwork?
10 A: No.
11 Q: He just told you how --
12 A: That's not the kind of job Tony does for me.
13 Q: Do you recall how much you paid him?
14 A: I don't recall. I think it was less than a hundred.
15 Q: What did he do with the boards?
16 A: They got hauled off. I don't remember.
17 Q: Now, you learned on August 15th the date of
18 Mr. Edwards' accident that he had been hurt on that
19 walkway; right?
20 A: Correct. Yes.
21 Q: The same day you learned about it?
22 A: Yes. I was off that day I think.
23 Q: Okay. Did, you were off. You weren't at home though
24 when this happened, were you?
25 A: No.

1 Q: How soon did you get back to the house after the
2 accident happened?
3 A: I don't know. I don't know who informed me.
4 Q: Was it still daylight?
5 A: Yes.
6 Q: Did you look at this area where the accident happened?
7 A: Yeah. After the fact. Yes.
8 Q: How did it appear? Obviously there was one loose
9 plank. We know that.
10 A: There was two loose boards.
11 Q: All right. Two loose boards. Did you look at the
12 screws that had been connected to those boards?
13 A: Yes.
14 Q: How did they appear?
15 A: They were in poor condition.
16 Q: Okay.
17 A: They were rusty.
18 Q: Did you make the call to Mr. Brown that day?
19 A: No.
20 Q: How about the next day?
21 A: I don't know.
22 Q: Within that week? Is that fair?
23 A: I don't know.
24 Q: Within two weeks? Is that fair?
25 A: I just don't have the dates of the time we had it

1 removed and the time, you know, the 15th that we're
2 talking about. I don't remember how long it was after
3 that.

4 Q: I hate to keep beating a dead horse but it had nothing
5 to do with Mr. Edwards' accident, the timing of your
6 call to Mr. Brown?

7 A: That is correct. It had nothing to do with
8 Mr. Edwards' accident.

9 Q: Well, after you saw the condition of that walkway, did
10 you consider that walkway to be in poor condition?

11 A: Yes.

12 Q: The entire walkway?

13 A: That span. I've kind of tested the walkway that he has
14 the pictures of. This. And it's holding up pretty
15 nice. And I've jumped on the corners.

16 Q: But the 25-foot span you had removed you did not
17 consider that safe after Mr. Edwards' accident?

18 A: No. I wouldn't want anybody to walk on it after his
19 accident.

20 Q: And why is that?

21 A: Because I had knowledge then that the screws were in
22 poor shape.

23 Q: If you had looked at that walkway before his accident,
24 a week or two, a month before the accident, could you
25 have seen that problem with the walkway?

1 A: I don't know. I don't know how much weight that could
2 really support.

3 Q: Well --

4 A: Just by looking at the screws.

5 Q: If you had looked at the screws what would you have
6 seen before his accident?

7 A: Well, those are the only screws that I saw. And I saw
8 that they were not in good condition.

9 Q: Well, tell me when you say not in good condition, be a
10 little more specific. How did they appear that led you
11 to that conclusion?

12 A: They were rusted.

13 Q: What about the condition of the board around them? Was
14 it rotted or worn? I mean, tell me about that.

15 A: They were aged but they were in good shape.

16 Q: Well, how would rusted screws come loose? I'm just
17 trying to understand how this happened.

18 A: I mean, they were losing the amount of metal that they
19 once had.

20 Q: To connect them to another piece of wood that was
21 holding them down?

22 A: The joist that was going down through there.

23 Q: Okay. Did you look at the screws after his accident
24 along that entire 25-foot span?

25 A: No. I just, I didn't pull any boards up.

1 Q: Did you come to the conclusion --

2 A: Other than --

3 Q: I'm sorry. Did you come to the conclusion though that
4 they were all rusted along that stretch?

5 A: Well, yes. You could make that assumption that they
6 were in the same condition. I didn't look at them.

7 Q: But it wouldn't make any sense to just have two rusted
8 screws or four rusted screws? I mean, they're all
9 going to be rusted in that area, wouldn't you agree?

10 A: I agree.

11 Q: Okay. But you don't recall Mr. Brown saying anything
12 to you about the condition of those boards?

13 A: No. I didn't ask him.

14 Q: Now, these photographs that were marked during Mr.
15 Edwards' deposition, these black and white Xeroxed
16 copies of photographs, what part of the walkway or deck
17 did they show? Obviously not the area where he got
18 hurt but what area of the deck did they show?

19 A: That's from really where the pool house is. And
20 there's a span of probably almost 30 feet there from
21 the pool house to where it starts to adjoin the decking
22 that's actually around the hump.

23 Q: Now, we want to send a fellow out there to take some
24 pictures of that area. Today we had it planned but
25 that's not a, today's not going to work because of the

1 weather.

2 A: Uh-huh (affirmative response).

3 Q: Y'all don't have any problem with us coming out there
4 and getting photographs, do you?

5 A: No.

6 Q: Okay. And when our fellow goes out there to take those
7 pictures, and we'll let you know when he's coming out
8 there, but describe it to me. How is it going to look?
9 Will part of the old deck that's been there since 1988
10 still be there?

11 A: Yeah.

12 Q: Okay.

13 A: I think, you know, I guess it was all built around the
14 same time when the pool was built.

15 Q: Is any part of the decking or walkway in need of repair
16 today?

17 A: No.

18 Q: So you would consider what's out there today to be
19 safe, not a hazard to anybody walking on it?

20 A: Yes.

21 Q: Did this accident with Mr. Edwards surprise you?

22 A: Yes.

23 Q: He gave a statement to an insurance fellow. And I
24 don't know if you've had a chance to look at this or
25 not. But he quotes you as saying that the deck was in

1 bad condition. And he says that you told him you
2 didn't realize it was in that bad of a condition until
3 you had some repair work done to it or somebody had
4 gone out there.

5 A: That was after the fact.

6 Q: Yeah. Is that fair to say?

7 A: That's fair.

8 Q: Did you know before his accident that it was in bad
9 condition but just didn't realize how bad it was?

10 A: No.

11 Q: Because that's what he quotes you as saying. But you
12 don't remember saying that to him?

13 A: I did not know it was unsafe.

14 Q: Did you tell him though that you knew it was in bad
15 condition?

16 MR. TATE: Object to the form of the question.

17 Q: Before his accident?

18 A: I don't recall.

19 Q: Okay.

20 A: I mean, I looked at it as safe and unsafe. It was
21 aging.

22 Q: He's also quoting you as saying that you spoke with a
23 carpenter and that that fellow who was taking the deck
24 away informed you that the deck was in very bad shape
25 and needed to be replaced. Do you remember any

1 comments like that you made to Mr. Edwards?

2 A: I don't recall that. No.

3 Q: Do you deny it or you just don't remember it?

4 A: I don't recall.

5 Q: All right. Did you speak with Mr. Edwards after his
6 accident?

7 A: Oh, yeah. Bobby is still in my employment.

8 Q: That's what I thought. You were the one who hired him
9 to come out there I guess starting in 2008; right?

10 A: Correct.

11 Q: And certainly the area where he was injured it wouldn't
12 have surprised you for him to be in that area, would
13 it, on the property?

14 A: No. He had full reign of the property, whatever
15 maintenance he needed to do.

16 Q: He was there at y'all's request and it was reasonable
17 for him to be there given how the yard was landscaped;
18 is that fair?

19 A: That's correct.

20 Q: I guess there were bushes around that area where he was
21 working; is that right?

22 A: Correct.

23 Q: Okay. And you still use him today? He still comes out
24 there once a month or once a week I guess?

25 A: Yes.

1 Q: Are you pleased with the work he does?

2 A: Yes.

3 Q: I guess you've dealt with him enough to form an opinion
4 about whether he's a truthful fellow or not, haven't
5 you?

6 A: Oh, yes.

7 Q: Do you think he's a truthful fellow?

8 A: Yes, I do.

9 Q: And y'all have no plans to pull up any other sections
10 of the decking?

11 A: No.

12 Q: Have you pulled up any sections other than the section
13 where Mr. Edwards was injured?

14 A: No.

15 Q: Just that 25-foot long span? Is that, we're talking
16 about length or width?

17 A: Oh, it's the same width as that there.

18 Q: Okay.

19 A: It was, it might not be quite that long. It's twenty
20 and change.

21 Q: That's fine. 25 was an estimate. Your testimony would
22 be it was between 20 to 25 feet long?

23 A: Correct.

24 Q: That stretch was pulled up after his accident. But no
25 other sections of the deck had been pulled up since you

1 started living there?

2 A: Not along the walkways. There's a lot of decking at
3 this home.

4 Q: I understand. But not any of the walkways?

5 A: Not any of the walkways that I would say are of that
6 age.

7 Q: Okay. Do you have any ownership interest in that home?

8 A: No, I do not.

9 Q: Your name is not on any of the documents or anything
10 like that, the title documents, deeds or anything like
11 that?

12 A: Correct.

13 Q: Do you own a home?

14 A: Yes.

15 Q: Where is your home?

16 A: It's Fernbrook Condominiums.

17 Q: Do you rent that out?

18 A: No.

19 Q: So you've got that place too?

20 A: That's my home.

21 Q: How long have you owned that?

22 A: Since '03.

23 Q: Have you ever rented that condominium out?

24 A: No.

25 Q: You have not?

1 A: No.

2 Q: That's just a second residence or property you use?

3 A: My dad stays there.

4 Q: Okay. I take it, do you do any of the maintenance on

5 that property?

6 A: The --

7 Q: Maintenance.

8 A: What property are you talking about?

9 Q: The Fernbrook first of all.

10 A: Well, it's a condominium. Yeah. I take care of the

11 insides.

12 Q: Okay. That's right there near Jessie Boyd; right?

13 A: Correct.

14 Q: How about to Ms. Jordan's house? Do you do any of the

15 repairs to that house?

16 A: Yes. I mean, I've been known to fix something.

17 Q: Do you consider yourself pretty good with your hands in

18 doing jobs around the house? I'm not.

19 A: No.

20 Q: I'm not. That's why I'm asking you. I'm terrible at

21 that.

22 A: I mean, no.

23 Q: Okay.

24 A: A light fixture would be probably my extent of my

25 expertise.

1 Q: Had you ever done yourself any work to that stretch of
2 walkway where Mr. Edwards was injured before his
3 accident?

4 A: No.

5 Q: And to your knowledge nobody had?

6 A: No.

7 Q: Do you know anything else about the accident itself?

8 A: I don't know. Clarify that question.

9 Q: Yeah. Well, you've had conversations with Mr. Edwards
10 about how it happened. What was your understanding
11 about how it happened?

12 A: My understanding is he came up, there is a slight
13 incline. And he came up and stepped on the corner of
14 the deck. And I understand that he did have a tank, a
15 spray tank on him too.

16 Q: Do you know how much that weighed?

17 A: No.

18 Q: You don't fault him in any way for this accident, do
19 you?

20 A: No.

21 Q: Okay. Did he tell you about his injuries?

22 A: Yes.

23 Q: What did he tell you about that?

24 A: I know that he had, it broke his nose and he had had
25 some problems with his septum. And I knew he had to

1 have medical treatment for it. I know that, I've had a
2 broken nose a couple of times myself. I know it's not
3 fun.

4 Q: You don't dispute how painful the injury would be?

5 A: No.

6 Q: Did you ever have your -- I've had one too. Have you
7 ever had it set? Repaired?

8 A: No.

9 Q: Okay. I've asked Ms. Jordan to track down any
10 documents she has relating to repairs that were done to
11 the deck, any inspections that may have been done of
12 the property before she bought it. Are you aware of
13 any inspections that would have been done since you
14 started living there?

15 A: No.

16 Q: I didn't know if it, the home was ever refinanced or
17 anything like that where another inspection would be
18 needed?

19 A: I have no knowledge. No.

20 Q: Did y'all ever have termite inspectors come out to your
21 house to look at the house?

22 A: No.

23 Q: Okay. All right. Can you recall any work that was
24 done to Ms. Jordan's property before 2008, let's say
25 between 2000 and 2008, Bobby's accident?

1 A: Give me the dates again. Before 2008?

2 Q: Right. From the time you started living there until
3 Mr. Edwards broke his nose there on the walkway --

4 A: Uh-huh (affirmative response).

5 Q: -- do you know of any work that was done by any
6 contractor at the property?

7 A: Well, we had that deck put on. We had a, it was a
8 wall, wall unit air conditioner that was removed and
9 reboarded up.

10 Q: And the deck you're talking about you had put on that
11 was next to the pool house?

12 A: Correct.

13 Q: And that was after his accident?

14 A: Yes.

15 Q: And West did that work?

16 A: West Construction did that. Yeah.

17 Q: And they're here in town?

18 A: Uh-huh (affirmative response).

19 Q: That's yes; right? I'm not scolding you. It's just to
20 be clear on the record.

21 A: (Nods head affirmatively.)

22 Q: All right. Tony Brown, I take it if I were to serve
23 him a subpoena for any documents he's not going to have
24 any paperwork about this; right?

25 A: No.

1 Q: All right. You never got any from him?
2 A: No, it was just --
3 Q: Did you call him up on your cell phone or a land line?
4 Do you remember?
5 A: Cell phone.
6 Q: Do you have the same number?
7 A: I haven't talked to Tony in some time. I got a number.
8 Yes. I have his number.
9 Q: Is it your same cell phone number that you would have
10 used back then?
11 A: Yes.
12 Q: And you called him on your cell phone?
13 A: Yes.
14 Q: What's that number?
15 A: My cell phone number?
16 Q: Yes.
17 A: Is 921-0521.
18 Q: And who is your carrier?
19 A: AT&T.
20 Q: And what would Mr. Brown's number have been at the
21 time?
22 A: I don't know. I can look it up and see if I still have
23 a number for him if you need that number.
24 Q: Yeah. If you would do that and just provide it to Mr.
25 Tate. And tell me your full name again.

1 A: It's Robert Leroy Pearson.

2 Q: Pearson.

3 A: P-E-A-R. The Fourth.

4 Q: Was AT&T your carrier back in 2008?

5 A: Yes.

6 Q: I'm just trying to figure out when you called Mr.

7 Brown.

8 A: Okay.

9 Q: That's where I'm going with that. All right. Let me
10 talk to Mr. Edwards. That may be all I have.

11 A: Okay.

12 (Break - 11:43 a.m.-11:46 a.m.)

13 Q: All right. Just a few more and we'll be done. Who
14 took these photographs that we've got Xeroxed copies
15 of?

16 A: I don't know.

17 Q: Did you take any of the deck after Mr. Edwards'
18 accident?

19 A: I could have.

20 Q: Where would you have those?

21 A: I don't know. Can I ask her? Because I don't recall.

22 Q: Well, I already talked to her.

23 A: I don't know. I don't remember who took those
24 photographs.

25 Q: Here's what I need for y'all to do, you and Ms. Jordan.

1 I'll talk to Mr. Tate about this. I need any
2 photographs you have of the deck, especially
3 photographs you would have taken right after the
4 accident. Okay? So if you've got those please provide
5 them to Ms. Jordan's lawyer.

6 A: Okay.

7 Q: That could be very important to the case.

8 A: Fair enough.

9 Q: Did you know as of August 15th of 2008 that Mr. Edwards
10 might want to pursue a claim against the homeowner's
11 policy because of this accident?

12 A: No. I didn't, I think -- how did that happen? No.
13 Not until he had started with the proceeding.

14 Q: You mean the lawsuit?

15 A: Yeah. I'm trying to think.

16 Q: Because we didn't file the lawsuit until -- I can give
17 you the date of that to help you, orient you. We filed
18 suit in January of 2010.

19 A: I don't remember. I mean, I think me and Bobby might
20 have had some conversations that he was going to try to
21 -- well, there was more to it after that. You know,
22 you had tried to go through the insurance company.

23 Q: And he can't answer out loud. He's in the room but
24 he's --

25 A: Yeah. I'm trying to go through the facts right now.

1 Q: Yeah. I understand.

2 A: So I'm pulling out of memory.

3 Q: Yeah.

4 A: Yeah. And he had tried to go through the insurance
5 company just to try to get some remedies and some money
6 to help as far as his medicals and stuff like that.
7 And then it evolved after that when they didn't, I
8 guess, you know, satisfy what he wanted for his
9 injuries and stuff like that.

10 Q: Did you recommend to him that he pursue a claim?

11 A: No. I didn't recommend to him that he pursue a claim.

12 Q: You --

13 A: I understood his situation and hoped that he would be
14 able to get some financial help because it wasn't until
15 then that I knew that he didn't have health insurance
16 adequate enough to cover what he, what he had suffered.

17 Q: All right. If you will look for those documents and
18 photographs we've been talking about, you and
19 Ms. Jordan, I'd really appreciate it; okay? Thank you.

20 A: We'll see what we can find.

21 MR. TATE: I'll tell you now Tony Brown's phone
22 number at the time.

23 MR. DARWIN: That would be great. Yeah.

24 MR. TATE: 864, of course, 266-3491.

25 MR. DARWIN: 3491. 266-3491?

1 A: Yeah.

2 Q: Okay. That helps.

3 A: If that's, check to see if that's a working number.

4 That's the only number that I have. I haven't spoken
5 to Tony, I haven't spoke to him on the phone in, well,
6 it's been more than a year.

7 Q: How long have you known him?

8 A: Oh, since high school.

9 Q: Okay. Y'all went to high school together?

10 A: He's older than me. He was in kind of an older group
11 of boys and stuff. And we were all involved in
12 motorcycles and motorcycle racing and off road stuff.

13 Q: Had you ever called him to do any repairs to that
14 property before 2008?

15 A: No.

16 Q: Okay. Thank you.

17 Further deponent sayeth not.

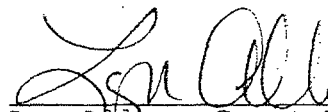
18 (There being no further questions, the deposition concluded
19 at 11:51 a.m.)
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2 I, Lyn Allen, Court Reporter and Notary Public in and
3 for the State of South Carolina, do hereby certify that I
4 reported the deposition of Robert Leroy Pearson, IV, on the
5 15th day of March, 2011, that the witness was first duly
6 sworn by me, and that the foregoing 33 pages constitute a
7 true and correct transcription of the said deposition.

8 I FURTHER CERTIFY that I am neither attorney nor
9 counsel for, nor related to or employed by, any of the
10 parties connected with this action, nor am I financially
11 interested in said cause.

12 I FURTHER CERTIFY that the original for said
13 transcript shall be hereafter sealed and delivered to
14 William B. Darwin, Jr., Esquire, Holcombe Bomar, P.A., 100
15 Dunbar Street, Post Office Box 1897, Spartanburg, South
16 Carolina. This sealed original transcript shall be retained
17 by the above party, who shall be responsible for filing same
18 with Court prior to trial or any hearing which might result
19 in a final order on any issue.

20 

21 Lyn Allen, Court Reporter
22 Notary Public for South Carolina

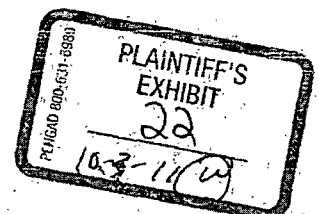
23 My commission expires: February 8, 2016
24
25

LIST OF SPECIAL DAMAGES

ROBERT W. EDWARDS, JR.

DATE OF INJURY: AUGUST 15, 2008

- | | | |
|----|--|---------------|
| 1. | Spartanburg Regional Healthcare System
8/15/08 - ER
(Bill and Reports) | \$1,721.60 |
| 2. | Spartanburg Regional Emergency Center Physicians
(Bill) | 340.00 |
| 3. | Spartanburg Ear, Nose & Throat
(Bill and Reports) | 660.00 |
| 4. | Upstate Carolina Radiology
(Bill) | <u>231.00</u> |
| 5. | TOTAL ----- | \$2,952.60 |





Spartanburg Regional Healthcare System
Business Services, Pinewood Resource Center
1001 North Pine Street
Spartanburg, SC 29303-3153

Welcome to Our New Statements!

As a result of suggestions made to us by patients just like you, we have re-designed our statement to provide you with complete, easy-to-read information about your bill. Thank you for your suggestions and your continued support. We are committed to continuing our efforts to improve the quality of service that we provide for you!

Page 1 of 2

Account Summary

Statement Date 12/01/2008
Patient Name ROBERT EDWARDS
Medical Record Number S000070286
Amount Now Due \$1,721.60

About Your Statement

Thank you for choosing Spartanburg Regional Healthcare System as your healthcare provider. This statement summarizes services provided to you and the amount due for these services. Please note this is a statement for Hospital Services Only. You may receive a separate bill for physician fees.

PLEASE CONFIRM THIS INFORMATION IS CORRECT

Name _____

If you are unable to contact our Customer Service Department by phone, please contact us by email at customer.service@spartanburgregional.com. Monday - Friday, 7:30 a.m. - 5:00 p.m.

PLEASE SEE THE BACK OF THIS STATEMENT FOR A SUMMARY OF EACH ACCOUNT

SPARTST1-1

DETACH HERE AND RETURN

Payment for Hospital Services

Statement Date: 12/01/2008

Patient	Account Number	Medical Record No.	State Due	Amount Now Due	Amount Enclosed
ROBERT EDWARDS	0822801233	S000070286	12/05/2008	\$1,721.60	

For your convenience, you may pay by Visa, MasterCard, Discover, American Express, personal check, or money order. (Please do not send cash.) Make checks payable to: Spartanburg Regional Healthcare System. If paying by credit card, indicate your card preference, provide the account information, and sign below.

Spartanburg Regional Healthcare System
P.O. Box 651602
Charlotte, NC 28265-1602



Account No. _____

Expiration Date _____

Signature X _____

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SPARTANBURG EAR, NOSE & THROAT

1110 BOILING SPRING RD-1100
Spartanburg, SC 29304-2003
(804) 581-2901

Tax ID: 5761441000000

ROBERT W EDWARDS

Spouse: (804) 581-2901

1110 BOILING SPRING RD

SPARTANBURG, SC 29304

Page Printed: 11/11/09

Statement of Charges for 01/01/2009 - 11/11/2009

Page 1

Pt Serv	Patient	Procedure	Description	Diagnosis	Provider	Charges	Adjusts	Days	Net	Balance
08/18/08	ROBERT	31801	CLOSED TX NASAL FN. W/O S	602.0	ROCKEF, MD	421.00	0.00	0.00	0.00	421.00
10/18/08	ROBERT	89004	COMPREHENSIVE EXAM/ NEW P	800.0	ROCKEF, MD	189.00	0.00	0.00	189.00	0.00
11/11/08	ROBERT	89014	POSTOPERATIVE FOLLOW-UP V	800.0	WEIR, MD	0.00	0.00	0.00	0.00	0.00
						421.00	0.00	0.00	421.00	421.00

ACCOUNTING AGING

Current	01-60 Days	61-90 Days	91-120 Days	120+ Days
0.00	0.00	0.00	0.00	421.00

* Total balance and aging is for the itemized charges only
and is based on date of patient responsibility



CARD NUMBER		AMOUNT
SIGNATURE		EXP DATE
Pay This Amount 340.00	Account Code SRH	Account Number 70286
Statement Date 10/21/08	Payment Due Date 11/07/08	SHOW AMOUNT PAID HERE \$

Bill To:**Please Make Checks Payable To**

ROBERT EDWARDS
107 DUTCH ELM COURT
SPARTANBURG SC 29302-4416

SPARTANBURG REG MED CNTR
PO BOX 277700
ATLANTA GA 30384-7700

☐ PLEASE CHECK BOX IF ABOVE ADDRESS IS INCORRECT OR INSURANCE INFORMATION HAS CHANGED: AND INDICATE CHANGE(S) ON REVERSE SIDE

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT.

Payment Due: 11/07/08

Service Date	Provider	Description	Charges	Payments/ Adjustments	Balance Due
08/15/08	RAUCH MD	EMER DEPT HIGH SEVERITY&T.	425.00	-85.00	340.00

PAYMENT IN FULL IS REQUIRED. IF YOU ARE UNABLE TO
PAY IN FULL, PLEASE CONTACT US IMMEDIATELY TO MAKE
FORMAL PAYMENT ARRANGEMENTS.

Account
Balance:
\$340.00

Amount Due
\$340.00

Patient Name: ROBERT EDWARDS

Physician Services Provided By:
SPARTANBURG REG MED CNTR
PO BOX 277700
ATLANTA, GA 30384-7700

To Pay Your Bill Online,
Please Visit:
www.shc1billpay.com/SPH

Billing Inquiries:
440-717-5555 or 800-579-7777
E-MAIL: questions@shoeservice.com
MON. - FRI. 8:00am to 5:00pm EST

238

Name: EDWARDS ROBERT Acct#: 50822801233 Pri Policy: 250631484
 Addr #1: 107 DUTCH ELM COURT DOB: 09/27/1971 Id: 02 Doc: 08 St: 10 Tp: E
 Acct Ba: 0.00 Pri: 1S/ 1 Sec: 1J/ 1 3rd: 1J/ 1 4th: 1J/ 1 5th: 1J/ 1 6th: 1J/ 1 7th: 1J/ 1 8th: 1J/ 1 9th: 1J/ 1 10th: 1J/ 1 11th: 1J/ 1 12th: 1J/ 1 13th: 1J/ 1 14th: 1J/ 1 15th: 1J/ 1 16th: 1J/ 1 17th: 1J/ 1 18th: 1J/ 1 19th: 1J/ 1 20th: 1J/ 1 21st: 1J/ 1 22nd: 1J/ 1 23rd: 1J/ 1 24th: 1J/ 1 25th: 1J/ 1 26th: 1J/ 1 27th: 1J/ 1 28th: 1J/ 1 29th: 1J/ 1 30th: 1J/ 1 31st: 1J/ 1 32nd: 1J/ 1 33rd: 1J/ 1 34th: 1J/ 1 35th: 1J/ 1 36th: 1J/ 1 37th: 1J/ 1 38th: 1J/ 1 39th: 1J/ 1 40th: 1J/ 1 41st: 1J/ 1 42nd: 1J/ 1 43rd: 1J/ 1 44th: 1J/ 1 45th: 1J/ 1 46th: 1J/ 1 47th: 1J/ 1 48th: 1J/ 1 49th: 1J/ 1 50th: 1J/ 1 51st: 1J/ 1 52nd: 1J/ 1 53rd: 1J/ 1 54th: 1J/ 1 55th: 1J/ 1 56th: 1J/ 1 57th: 1J/ 1 58th: 1J/ 1 59th: 1J/ 1 60th: 1J/ 1 61st: 1J/ 1 62nd: 1J/ 1 63rd: 1J/ 1 64th: 1J/ 1 65th: 1J/ 1 66th: 1J/ 1 67th: 1J/ 1 68th: 1J/ 1 69th: 1J/ 1 70th: 1J/ 1 71st: 1J/ 1 72nd: 1J/ 1 73rd: 1J/ 1 74th: 1J/ 1 75th: 1J/ 1 76th: 1J/ 1 77th: 1J/ 1 78th: 1J/ 1 79th: 1J/ 1 80th: 1J/ 1 81st: 1J/ 1 82nd: 1J/ 1 83rd: 1J/ 1 84th: 1J/ 1 85th: 1J/ 1 86th: 1J/ 1 87th: 1J/ 1 88th: 1J/ 1 89th: 1J/ 1 90th: 1J/ 1 91st: 1J/ 1 92nd: 1J/ 1 93rd: 1J/ 1 94th: 1J/ 1 95th: 1J/ 1 96th: 1J/ 1 97th: 1J/ 1 98th: 1J/ 1 99th: 1J/ 1 100th: 1J/ 1

Proc	Cd	Du	St	Doctor	P	T	Tc	M1	M2	Op	Diag1	Diag2	Billed	Filed	Invoice
Lc	Post	Cd	S	Date	P	Date	Ref	Ph	Units	Rf	Diag3	Diag4	Router	Amount	Balance
1	70486	02	10	08	S	E				LO	802.0		082208		
	70486	08	1508	082108	1272									231.00	231.00
				CT FACIAL BONES WO/CONT										10239800	14
2	131	02	10	08	Z	E				sp	**LP**				
	131	11	2408	112408	1272									231.00	0.00

[2 Transactions]
 Next Option: Message: LAST TRANSACTION

Upstate Carolina Road
 PO Box 2706
 Greenville, SC 29616

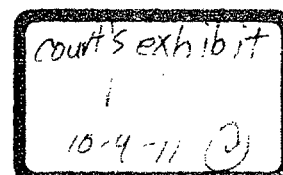
Video of Deck

Plaintiff's
Exhibit
23

The Jury Requests to see
the video that was played
as evidence and would like
to view the larger (blown up)
photos of the deck.

The larger blown up photos were not
introduced into evidence and therefore
may not be now received.

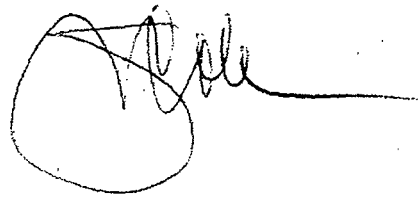
Dele

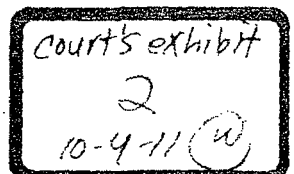


We are deliberating on an
award and have two questions

1) Should Attorney fees be
included in an award? NO

2) Should an estimate for a
future surgery be included
in an award? NO





CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 13, 2012



William B. Darwin, Jr.
Post Office Drawer 1897
Spartanburg, South Carolina 29304
(864) 594-5300
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2010-CP-42-00462

ROBERT W. EDWARDS, JR., ...Appellant,

v.

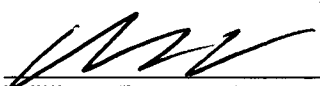
LINDA N. JORDAN, ...Respondent

PROOF OF SERVICE

I certify that I have served the Record on Appeal on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on November 15, 2012, addressed to the attorneys of record listed below:

Raymond A. Tate, Jr.
Doyle, Tate, McDade, P.A.
P.O. Box 2125
Anderson, South Carolina 29622
Attorney for Respondent

HOLCOMBE BOMAR, P.A.



William B. Darwin, Jr.
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Attorneys for Appellant

November 15, 2012

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NOV 20 2012
SC Court of Appeals