

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

---

Case No. 2012-CP-40-5356

---

Jeremy Cantrell,

Appellant,

v.

Plex Indoor Sports, LLC,

Respondent.

---

**RECORD ON APPEAL**

---

Lee Dixon  
Hedrick, Gardner, Kincheloe & Garofalo, LLP  
1301 Gervais Street,  
Suite 1900  
Columbia SC, 29201

**Attorney for Respondent**

Mario A. Pacella  
Jessica H. Lerer  
STROM LAW FIRM, LLC  
2110 N. Beltline Boulevard  
Columbia SC, 29204

**Attorney for Appellant**

**RECEIVED**

OCT 17 2014

**SC Court of Appeals**

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Jeremy Cantrell,

Plaintiff,

vs.

Plex Indoor Sports, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-05356

ORDER

RECEIVED  
FEB 14 2013  
SC Court of Appeals

RICHLAND COUNTY  
FILED  
2014 JAN -3 PM 4:30  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. In Plaintiff's Motion to Alter or Amend Pursuant to Rule 59(e) submitted on or about December 23, 2013, Plaintiff argues that this Court failed to properly consider that Plaintiff was a minor, and therefore required greater warnings or parental consent for the "advanced bowl." However, Plaintiff failed to cite any South Carolina precedent or rule of law to support these arguments and relied only upon the law of other jurisdictions, which is not the law in this state. Accordingly, this Court hereby **DENIES** Plaintiff's Motion to Alter or Amend Pursuant to Rule 59(e). Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

December 31, 2013  
Columbia, South Carolina

SCANNED



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-5356

JEREMY CANTRELL,

Plaintiff,

vs.

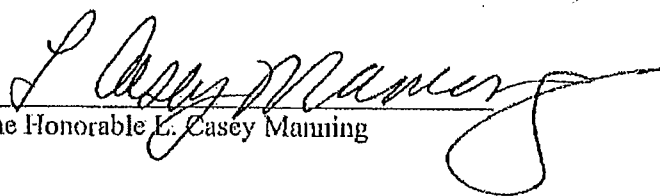
PLEX INDOOR SPORTS, LLC,

Defendant.

CONSENT ORDER

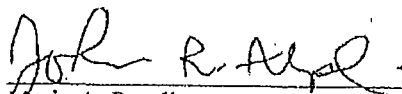
Before the Court is Plaintiff's Motion to Amend Complaint. Upon consent of the parties, Plaintiff's motion is **GRANTED**. Plaintiff shall have twenty (20) days from the date of this Order to file his Amended Complaint and serve same on Defendant's Counsel.

SO ORDERED, this 28 day of June, 2013.

  
The Honorable L. Casey Manning

Strom Law Firm, LLC.

Hedrick Gardner Kincheloe & Garofalo, LLP

  
Mario A. Pacella  
John R. Alphin  
2110 N. Beltline Boulevard, Suite A  
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(803) 252-4800  
Attorneys for Plaintiff

  
Lee E. Dixon  
P.O. Box 11267  
Columbia, SC 29211  
(803) 727-1200  
Attorneys for Defendant

RICHLAND COUNTY  
FILED  
2013 JUL 12 AM 10:25  
JEANETTE W. HIGDON  
C.C.P. & G.S.

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

CASE NUMBER: 2012CP4005356

Jeremy Cantrell

Plex Indoor Sports LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

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

## DISPOSITION TYPE (CHECK ONE)

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

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

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

## ORDER INFORMATION

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

## INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge Lee Edward Dixon Judge Code \_\_\_\_\_ Date 12/10/2013

## For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Dec 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Mario Anthony Pacella

Lee Edward Dixon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeannette W. McBride

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Jeremy Cantrell,

Plaintiff,

vs.

Plex Indoor Sports, LLC.,

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-05356

ORDER

RICHLAND COUNTY  
FILED  
2013 DEC 11 AM 11:52  
JEANETTE W. HIGDON  
CLERK C.P. & C.S.

This matter came before the Court on September 4, 2013 at a hearing on Defendant's Motion for Summary Judgment. Present at the hearing were Mario Pacella, Esquire, counsel for Plaintiff, and Lee Dixon, Esquire, counsel for Defendant. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendant's Motion for Summary Judgment is **GRANTED**.

#### FACTS

This matter arises from an ankle injury Plaintiff suffered on July 30, 2009. On July 28, 2009, Plaintiff visited Plex Indoor Sports, LLC ("Plex"). Plaintiff was fifteen years old at the time. At this visit, Plaintiff was provided a copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" ("release"). Plaintiff signed the release, but he did not read it. On July 30, 2009, Plaintiff again visited Plex for the purpose of skateboarding at the indoor skate park. While at the skate park, Plaintiff fell from his skateboard and injured his ankle.

On August 7, 2012, Plaintiff filed a complaint against Defendant. Defendant answered on October 11, 2012. On July 18, 2013, Plaintiff filed a First Amended Complaint alleging negligence and premises liability against Defendant. On August 28, 2013, Defendant filed a motion for summary judgment.

#### STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRCP. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the

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non-moving party is only required to submit a mere scintilla of evidence.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). “A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine.” *Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). If a legal duty is established, whether the defendant breached that duty is a question of fact. *Singletary v. S.C. Dept. of Educ.*, 316 S.C. 153, 157, 447 S.E.2d 231, 233 (Ct. App. 1994).

### DISCUSSION

Defendant makes several arguments as to why summary judgment should be granted. First, Defendant argues that it was under no duty to protect Plaintiff from the inherent dangers of skateboarding. Second, Defendant argues there is no evidence of any breach proximately causing Plaintiff’s injury. Third, Defendant argues Plaintiff executed a waiver of liability. Plaintiff argues that summary judgment is not appropriate because Defendant owed Plaintiff a duty to warn, Defendant undertook a heightened duty by failing to secure parental permission for Plaintiff to use its facility, and Defendant’s breach proximately caused Plaintiff’s injury.

In order to prevail in a cause of action for negligence, Plaintiff must prove: (1) a duty of care owed by the defendant; (2) a breach of that duty by a negligent act or omission; (3) the breach was the actual and proximate cause of the injury; and (4) plaintiff suffered damages or an injury. See *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). The same elements are required to plead and prove negligence in a premises liability action. See *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). In premises liability actions where the Plaintiff is a business invitee, the business generally owes the visitor the duty of exercising reasonable or ordinary care for his safety and must warn only of latent or hidden dangers. See *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000).

In the present case, the elements of negligence are not met because Defendant did not owe a duty of care to Plaintiff. In the context of sporting activities, a defendant has no duty to protect an invitee from the inherent dangers of the sport because of the doctrine of primary implied assumption of risk. See, e.g., *Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 38, 637 S.E.2d 560, 562-63 (2006) (doctrine applied to spectator hit by hockey puck). “Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity.” *Davenport v. Cotton Hope Plantation Horizontal Prop.*

ad #2

*Regime*, 333 S.C. 71, 81, 508 S.E.2d 565, 570 (1998). The doctrine of primary implied assumption of risk is not a defense, but rather "goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff." *Id.* Absent a legally recognized duty, the defendant in a negligence action is entitled to a judgment as matter of law. *Hurst*, 371 S.C. at 37, 637 S.E.2d at 562. The doctrine was applied in the sports context in *Hurst v. East Coast Hockey League, Inc.* when the South Carolina Supreme Court held that "a flying puck is inherent to the game of hockey and is also a *common, expected, and frequent risk* of hockey" and that the plaintiff assumed the risks inherent in the sport of hockey when he attended a hockey game. *Id.* at 38, 637 S.E.2d at 562-63 (emphasis added). Since *Hurst*, the doctrine has been extended to casual games and games played by minors. In *Cole v. Boy Scouts of America*, the South Carolina Supreme Court applied the doctrine to a pick-up game of softball played on a camping trip. See *Cole v. Boy Scouts of Am.*, 397 S.C. 247, 252-53, 725 S.E.2d 476, 479 (2011). Additionally, the federal district court, applying South Carolina law, held that the doctrine applied to minors, ages nine and eleven, playing golf. See *Rudzinski v. BB*, 2010 WL 2723105, at \*1, \*4 (D.S.C. 2010).

The undisputed facts of this case are that Plaintiff came to Plex for the sole purpose of skateboarding and, while doing so, he fell and sustained an injury. Falling is an inherent, common, expected, and frequent risk of skateboarding. The fact that Plaintiff's injuries were more severe than he expected is irrelevant. The doctrine of primary implied assumption of risk leads to the determination that any duties Defendant had did not encompass the inherent risk Plaintiff encountered in skateboarding. Plaintiff has admitted that his fall was not caused by any defect in the skate park, and the only allegations in the Complaint related to any danger or hazard refer solely to the dangers of skateboarding. Although Plaintiff also argues that Defendant should have assessed his skill before allowing him to skate, the inherent risks associated with skateboarding exist regardless of skill level. Defendant has no duty to assess skill because of the inherent risks which are impliedly assumed when a person participates in that activity. Under South Carolina law, Defendant was under no duty to protect Plaintiff from the inherent risks associated with skateboarding. ad  
#3

Plaintiff also argues that the release he signed imposed a duty upon Defendant to warn. The release Plaintiff signed purports to require a parent or legal guardian's signature if the participant is under the age of eighteen. It is undisputed that Plaintiff's parents did not sign the

release. Defendant argues that it is error for Plaintiff to imply that this waiver imposed a duty upon Defendant to warn, and this Court agrees. The duty to warn under premises liability law only exists for latent or hidden dangers created by the premises itself. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000). It does not extend to the duty to warn about the activity. There is no law in this state establishing such a requirement.

Therefore, Defendant owed no duty to Plaintiff in a cause of action for negligence or premises liability. Because Defendant owed no duty to the Plaintiff and therefore cannot be held liable for Plaintiff's actions, Defendant's other arguments for granting its motion for summary judgment need not be considered. Additionally, Plaintiff has provided no evidence of a latent or hidden danger at the skate park. Therefore, the premises liability cause of action cannot be maintained.

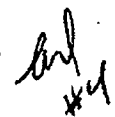
**ORDER**

For the reasons stated above, it is therefore **ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED**.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
December 10, 2013



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Jeremy Cantrell,

Plaintiff,

vs.

Plex Indoor Sports, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

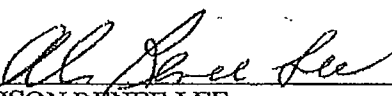
CASE NO. 2012-CP-40-05356

ORDER

RICHLAND COUNTY  
FILED  
2014 JAN -3 PM 4:30  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. In Plaintiff's Motion to Alter or Amend Pursuant to Rule 59(e) submitted on or about December 23, 2013, Plaintiff argues that this Court failed to properly consider that Plaintiff was a minor, and therefore required greater warnings or parental consent for the "advanced bowl." However, Plaintiff failed to cite any South Carolina precedent or rule of law to support these arguments and relied only upon the law of other jurisdictions, which is not the law in this state. Accordingly, this Court hereby **DENIES** Plaintiff's Motion to Alter or Amend Pursuant to Rule 59(e). Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

December 31, 2013  
Columbia, South Carolina

**SCANNED**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JEREMY CANTRELL,

Plaintiff(s)

vs.

PLEX INDOOR SPORTS, LLC,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 CP 400 5356  
2011-CP-40

Submitted By: Mario A. Pacella  
Address: 2110 Beltline Boulevard  
Columbia, South Carolina 29204

SC Bar #: 68488  
Telephone #: 803-252-4800  
Fax #: 803-252-4801  
Other:  
E-mail: mpacella@stromlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

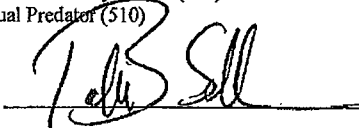
DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Contracts<br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <input type="checkbox"/> Torts - Professional Malpractice<br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 -CP-<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                 | <input type="checkbox"/> Torts - Personal Injury<br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input checked="" type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399)                                                                                                                                                                              | <input type="checkbox"/> Real Property<br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                                  |
| <input type="checkbox"/> Inmate Petitions<br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                       | <input type="checkbox"/> Administrative Law/Relief<br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) | <input type="checkbox"/> Judgments/Settlements<br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Other (799) | <input type="checkbox"/> Appeals<br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Special/Complex /Other<br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)                                                                                      | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (510)                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

Submitting Party Signature: 

Date: 8/2/12/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note:** You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA, )  
 )  
COUNTY OF RICHLAND )  
 )  
JEREMY CANTRELL, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PLEX INDOOR SPORTS, LLC, )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2011-CP-40

RICHLAND COUNTY  
FILED  
2012 AUG -7 AM 8:40  
JEANETTE W. MURPHY  
C.C.P. & G.S.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

  
\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff

Dated: August 2, 2012

Address: Strom Law Firm, LLC  
2110 Beltline Boulevard  
Columbia, South Carolina 29204

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS        |
|                          | ) | FOR THE FIFTEENTH JUDICIAL DISTRICT |
| COUNTY OF RICHLAND       | ) |                                     |
|                          | ) | CIVIL ACTION NO.: 2011-CP-40-_____  |
| JEREMY CANTRELL          | ) |                                     |
|                          | ) |                                     |
| Plaintiff,               | ) |                                     |
|                          | ) |                                     |
| vs.                      | ) | COMPLAINT                           |
|                          | ) | (Jury Trial Demanded)               |
|                          | ) |                                     |
| PLEX INDOOR SPORTS, LLC, | ) |                                     |
|                          | ) |                                     |
| Defendant.               | ) |                                     |
| _____                    | ) |                                     |

RICHLAND COUNTY  
 FILED  
 2012 AUG - 7 AM 11:48  
 JEANETTE M. McBRIDE  
 C.C.P. & G.S.

Comes now Plaintiff, by and through his undersigned Counsel of Record and alleges as follows:

**NATURE OF THE CASE**

1. Plaintiff, Jeremy Cantrell, brings this action for personal injuries suffered as a result of catastrophic injuries received when Plaintiff severely fractured his ankle while engaged in skateboarding activities in a building owned and maintained by Defendant, which occurred on or about July 30, 2009.
2. Plaintiff brings this action for monetary damages against Defendant for negligent careless, and unlawful act(s) including, but not limited to, failing to properly maintain Defendant's indoor skate park; failing to guard or warn against a dangerous condition; failing to monitor premises; failing to inspect premises; creating unsafe conditions on premises.

**JURISDICTION AND PARTIES**

3. Plaintiff is a resident of Kershaw County, South Carolina.

4. On information and belief, Defendant Plex Indoor Sports, LLC is a South Carolina for-profit company with its principal place of business in Columbia, South Carolina (Richland County). Accordingly, Defendant is subject to the jurisdiction of this Court for the resolution of all issues raised in Plaintiff's Complaint and may be served with a copy of this Complaint by and through its registered agent for service.

5. Venue and jurisdiction (both as to the parties and the subject matter) are properly laid in this Court under S.C. Code Ann. § 15-7-30 as the incident giving rise to Plaintiff's negligence claims occurred in Columbia, South Carolina (Richland County) where Defendants were and are residents.

6. This action accrued on July 30, 2009, while Plaintiff was a minor child. His date of birth is June 20, 1994 and he turned eighteen on June 20, 2012. Pursuant to S.C. Code Ann. § 15-3-40, Plaintiff remained under a disability, tolling his limitations period until one year after his eighteenth birthday. Accordingly, this action has been commenced within the limitations period.

#### **FACTUAL ALLEGATIONS**

7. Plaintiff realleges the allegations of the above paragraphs as if recounted at length herein.

8. On the afternoon of July 30, 2009, Jeremy Cantrell, a 15 year old minor at the time of the incident, (hereinafter "Cantrell") was skateboarding at the Plex Indoor Sports skate park facility located at 741 Fashion Road, Columbia, South Carolina (Richland County).

9. Before skating, Defendants failed to investigate Cantrell's minority status before his signing Defendant's "Release and Waiver Form."

10. On that same day, Cantrell attempted to drop into a bowl at Defendant's skate park, fell, and broke his ankle.

11. Defendant's failure to maintain the skate park properly, paired with Defendant's failure to monitor the premises, created a dangerous situation to Cantrell.

12. Defendant also failed to warn Plaintiff of the dangerous nature of the premises and failed to warn his parents of same. In failing to warn Plaintiff's parents, Defendant assumed the role of *in loco parentis* and owed Plaintiff a heightened duty of care and a heightened duty to warn.

13. Mr. Cantrell has seen multiple doctors to treat his injuries that arose from this accident, and has experienced emotional pain resulting from missed school.

**FIRST CAUSE OF ACTION**  
(NEGLIGENCE)

14. Cantrell re-alleges paragraphs 7-13 as if set forth verbatim herein.

15. Defendant owned the skate park that caused the accident.

16. Defendant licenses the skaters who utilize the skate park.

17. By licensing Cantrell to use the skate park, Defendant was obligated to use reasonable and due care to avoid injury to Cantrell carrying on activities upon the premises.

18. Defendant breached that duty of care in one or more of the following particulars:

- a. In failing to ensure safe skating surfaces;
- b. In failing to maintain the skate park;
- c. In failing to inspect the skate park;

- d. In failing to warn Plaintiff of the dangers of the skate park and skating surface;
- e. In failing to provide proper parental supervision when Defendant was *in loco parentis*; and
- f. Such other particulars as may be learned during discovery or at the trial of this matter.

19. As a direct and proximate result of Defendant's negligent, careless, and unlawful acts as described more fully above, Cantrell suffered extensive pain, suffering, mental anguish, and discomfort.

20. As a direct and proximate result of the Defendant's negligent, careless, and unlawful acts as described more fully above, Cantrell suffered extensive damages including but not limited to:

- a. Pecuniary loss;
- b. Pain and suffering;
- c. Extensive medical expenses; and
- d. Such additional damages as may be learned through discovery and permitted by law.

**SECOND CAUSE OF ACTION**  
(GROSS NEGLIGENCE)

- 21. Cantrell re-alleges paragraphs 7-13 as if set forth verbatim herein.
- 22. Defendant owned the skate park that caused the accident.
- 23. Defendant licenses the skaters who utilize the skate park.

24. By licensing Cantrell to use the skate park, Defendant was obligated to use reasonable and due care to avoid injury to Cantrell while he was carrying on activities upon the premises.

25. Defendant breached that duty of care by acting in a manner that displayed a conscious disregard for his duty of care in one or more of the following particulars:

- a. In failing to ensure safe skating surfaces;
- b. In failing to maintain the skate park;
- c. In failing to inspect the skate park;
- d. In failing to warn Plaintiff of the dangers of the skate park and skating surface;
- e. In failing to provide proper parental supervision when Defendant was *in loco parentis*; and
- f. Such other particulars as may be learned during discovery or at the trial of this matter.

26. As a direct and proximate result of Defendant's negligent, careless, and unlawful acts as described more fully above, Cantrell suffered extensive pain, suffering, mental anguish, and discomfort.

27. As a direct and proximate result of the Defendant's negligent, careless, and unlawful acts as described more fully above, Cantrell suffered extensive damages including but not limited to:

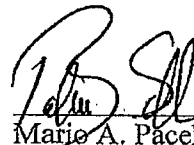
- a. Punitive and exemplary damages, and;
- b. Such additional damages as may be learned through discovery and permitted by law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court issue an order in favor of Plaintiff and against Defendant, awarding Plaintiff:

- a. Pecuniary loss;
- b. Pain and suffering;
- c. Extensive medical expenses;
- d. Punitive and exemplary damages; and
- f. Such additional damages as may be learned through discovery and permitted by law.

Strom Law Firm, LLC

 *for MAP*  
Mario A. Pacella  
John R. Alphin  
2110 Beltline Blvd., Suite A  
Columbia, South Carolina 29204  
Tel: (803) 252-4800  
Fax: (803) 252-4801

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

August \_\_\_\_, 2012



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE JUDICIAL CIRCUIT  
Civil Action No. 2012-CP-400-5356

JEREMY CANTRELL,

Plaintiff,

v.

PLEX INDOOR SPORTS, LLC.,

Defendant.

**DEFENDANT'S ANSWER**

JURY TRIAL DEMANDED

FILED  
RICHLAND COUNTY  
2012 OCT 11 AM 11:13  
JEANETTE M. HCBRIDE  
CLERK, P. G.S.

Plex Indoor Sports, LLC. ("Defendant") hereby answers the Complaint of Plaintiff  
Jeremy Cantrell as follows:

**FOR A FIRST DEFENSE**  
**(Response to Allegations)**

Defendant denies each and every allegation of Plaintiff's Complaint not expressly  
admitted, qualified or explained.

1. Defendant admits, upon information and belief, that Plaintiff suffered a personal  
injury on or about July 30, 2009 while engaging in skateboarding activities at a Plex Indoor  
Sports facility owned and operated by Defendant. Defendant expressly denies liability for such  
injuries. Defendant lacks knowledge or information sufficient to form a belief as to the truth of  
any remaining allegations in Paragraph 1 and therefore denies the same..

2. Defendant admits that Plaintiff purports to bring an action against Defendant  
through the Complaint in this action. Defendant expressly denies liability for Plaintiff's alleged  
injuries.

3. Defendant lacks knowledge or information sufficient to form a belief as to the  
truth of the allegations in Paragraph 3.

4. Defendant admits as much of Paragraph 4 as alleges that Defendant is a South Carolina corporation conducting business in Richland County, South Carolina. Defendant admits that this Court has jurisdiction over Defendant and the subject matter of this case.

5. Defendant admits that venue is proper in Richland County pursuant to S.C. Code Ann. § 15-7-30.

6. Defendant admits, upon information and belief, that the incident occurred on or about July 30, 2009. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7. There are no additional allegations in Paragraph 7. To the extent Paragraph 7 can be construed as alleging facts requiring a response, Defendant realleges its responses to Paragraphs 1 through 6 above as if set forth fully herein.

8. Defendant admits, upon information and belief, that Plaintiff was skateboarding at Defendant's 741 Fashion Road, Columbia, South Carolina facility (hereinafter "Skate Park") on or around July 30, 2009. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8.

9. Defendant denies the allegations in Paragraph 9.

10. Defendant admits, upon information and belief, that Plaintiff did fall and suffer an injury while skateboarding at the Skate Park. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10.

11. Defendant denies the allegations in Paragraph 11.

12. Defendant denies the allegations in Paragraph 12.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13.

**FOR A FIRST DEFENSE**  
**AS TO FIRST CAUSE OF ACTION**  
**(Negligence)**

14. Defendant realleges its responses to Paragraphs 1 through 13 above as if set forth fully herein.

15. Defendant admits the allegations in Paragraph 15.

16. Defendant admits that it operates a business that is open to the public and the Skate Park was available for use upon registration and the payment of a fee.

17. The allegations in Paragraph 17 state legal conclusions to which no response is required.

18. Defendant denies the allegations in Paragraph 18, including all subparts.

19. Defendant denies the allegations in Paragraph 19.

20. Defendant denies the allegations in Paragraph 20, including all subparts.

**FOR A FIRST DEFENSE**  
**AS TO SECOND CAUSE OF ACTION**  
**(Gross Negligence)**

21. Defendant realleges its responses to Paragraphs 1 through 20 above as if set forth fully herein

22. Defendant admits that it owned the Skate Park. Defendant denies the remaining allegations in Paragraph 22.

23. Defendant admits that it operates a business that is open to the public and the Skate Park was available for use upon registration and the payment of a fee.

24. The allegations in Paragraph 24 state legal conclusions to which no response is required.

25. Defendant denies the allegations in Paragraph 25, including all subparts.

26. Defendant denies the allegations in Paragraph 26.
27. Defendant denies the allegations in Paragraph 27, including all subparts.
28. Defendant denies that Plaintiff is entitled to the relief sought in the Paragraph beginning with "WHEREFORE."

**FOR A SECOND DEFENSE**

**(Failure to State a Claim)**

29. Plaintiff's Complaint fails to state a claim for which relief can be granted against this Defendant, and thus should be dismissed pursuant to SCRCF 12(b)(6).

**FOR A THIRD DEFENSE**

**(Plaintiff's Fault in Alleged Injuries)**

30. Any injuries and damages sustained by Plaintiff as alleged in the Complaint were due to and caused solely by Plaintiff's own negligence, carelessness, recklessness, willfulness and/or wantonness in one or more of the following particulars:

- a) In failing to exercise reasonable care for his own safety;
- b) In failing to properly maintain his equipment;
- c) In engaging in inherently dangerous activities without adequate skill or experience;
- d) In attempting skateboarding maneuvers beyond his skill and experience level;
- e) In failing to cease skateboarding activities upon observing any substance, defect, or obstruction on the premises, if any there was; and
- f) In such other particulars as may be shown by the evidence at trial.

**FOR A FOURTH DEFENSE**  
**(Comparative Negligence)**

31. Defendant pleads the negligence, carelessness, recklessness, willfulness and/or wantonness of Plaintiff as a complete bar to, or in mitigation of, the recovery sought. Therefore, in accordance with the principles of comparative negligence, Plaintiff's claims should be reduced in proportion to Plaintiff's own negligence and carelessness, and must be denied if Plaintiff's negligence exceeds fifty (50%) percent.

**FOR A FOURTH DEFENSE**  
**(Open & Obvious)**

32. All risks and dangers, if any, connected with the alleged fall referred to in the Complaint were open, obvious and readily apparent and were known or should have been known to the Plaintiff. Therefore, Plaintiff's claims should be denied.

**FOR A FIFTH DEFENSE**  
**(Assumption of the Risk)**

33. All risks and dangers, if any, connected with the accident referred to in the Complaint and the use of the area where Plaintiff allegedly fell were open, obvious, and apparent and were known to or should have been known to Plaintiff; and, therefore, Defendant pleads assumption of the risk on part of Plaintiff as a complete bar to Plaintiff's causes of action.

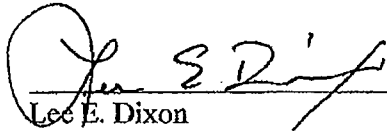
**FOR A SIXTH DEFENSE**  
**(Negligence of Third Parties)**

34. Defendant alleges upon information and belief that any injuries or damages alleged were due to, occasioned by, or caused by intervening acts or omissions on the part of someone other than this Defendant, without which act and/or omissions the Plaintiff would not have sustained any injuries or damages set forth in the Complaint, all of which Defendant pleads as a bar, in whole or in part, to Plaintiff's claims against Defendant. Alternatively, Defendant

seeks an apportionment of fault among any persons or entities, whether parties to this action or not, who are or may have been responsible to causing or contributing to Plaintiff's alleged injuries.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant, Plex Indoor Sports, prays that the Complaint be dismissed, with costs assessed to Plaintiff, and for such further relief as the Court may deem proper.

**Hedrick, Gardner, Kincheloe & Garofalo, L.L.P.**



Lee E. Dixon

SC Bar No.: 72582

P.O. Box 11267

Columbia, SC 29211

803.727.1215

**Attorneys for Defendant**

**Plex Indoor Sports, LLC**

October 9, 2012  
Columbia, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jeremy Cantrell

Plaintiff,

vs.

Plex Indoor Sports, LLC.

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-400-5356

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                                                                                                                                                            |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Plaintiff's Attorney:</b><br>Mario A. Pacella<br>Address:<br>2110 Beltline Blvd.<br>Columbia, SC 29204<br>Phone: (803) 252-4800 Fax: (803) 252-4801<br>E-mail: mpacella@stromlaw.com Other:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | <b>Defendant's Attorney:</b><br>Lee E. Dixon<br>Address:<br>P.O. Box 11267<br>Columbia, SC 29211<br>Phone: (803) 727-1200 Fax:<br>E-mail: ldixon@hedrickgardner.com Other: |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete <b>SECTIONS I and III</b> )<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete <b>SECTIONS II and III</b> )<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete <b>SECTIONS II and III</b> )                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                            |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                                                                                            |  |
| Nature of Motion:<br>Estimated Time Needed: <u>20 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |                                                                                                                                                                            |  |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                            |  |
| <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                                            |  |
| Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant Date submitted: 7/11/2013                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                            |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                            |  |
| <input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$25.00</b><br><input type="checkbox"/> <b>EXEMPT:</b> ow Cause in Child or Spousal Support<br>(check reason)      Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCF)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: |  |                                                                                                                                                                            |  |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | <b>JUDGE CODE</b>                                                                                                                                                          |  |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | Date:                                                                                                                                                                      |  |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                            |  |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> <b>MOTION FEE COLLECTED: \$</b><br><input type="checkbox"/> <b>CONTESTED - AMOUNT DUE: \$</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                                                                                                                                                            |  |

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Civil Action No. 2012-CP-40-05356

JEREMY CANTRELL,

Plaintiff,

v.

PLEX INDOOR SPORTS, LLC. ,

Defendant.

**MOTION FOR**  
**SUMMARY JUDGMENT**

FILED  
2013 JUL 12 AM 10:21  
JEREMY CANTRELL  
PLEX INDOOR SPORTS, LLC.

TO: PLAINTIFF, JEREMY CANTRELL, AND PLAINTIFF'S ATTORNEY, MARIO A. PACELLA:

PLEASE TAKE NOTICE that Defendant Plex Indoor Sports, LLC ("Defendant"), by and through the undersigned counsel, will move on the tenth (10<sup>th</sup>) day after service hereof or as soon thereafter as counsel may be heard, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order from the Court granting summary judgment in favor of Defendant as to all claims asserted in this action. Defendant bases its Motion on the grounds that there is no genuine issue of material fact relating to any claims against Defendant, that Plaintiff has failed to state a cause of action against Defendant, that Plaintiff has failed to allege or prove a breach of any duty recognized at law, and that Defendant is entitled to judgment as a matter of law on all causes of action in this matter.

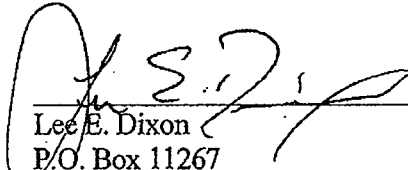
Defendant's Motion is based upon the pleadings, discovery and evidence produced in this case, is supported by the applicable statutory and case law, and may be supplemented by memorandum, affidavits and/or other evidence that may be received by the Court.

[Signature on Next Page]



Respectfully submitted, this the 11<sup>th</sup> day of July, 2013.

**Hedrick Gardner Kincheloe & Garofalo, LLP**



Lee E. Dixon

P.O. Box 11267

Columbia, SC 29211

(803) 727-1200

ldixon@hedrickgardner.com

**Attorneys for Defendant**

**IN THE COURT OF COMMON PLEAS  
FOR THE JUDICIAL CIRCUIT**

**Civil Action No. 2012-CP-40-5356**

**vs.**

**Defendant.**

Comes now, Plaintiff, by and through his undersigned counsel of record, and provides the following responses to Defendant's First Requests for Admissions. Discovery is ongoing, and Plaintiff reserves the right to amend and/or supplement his responses, in the event of new evidence or information, in accordance with the South Carolina Rules of Civil Procedure.

1. Admit that Plaintiff was provided a copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" attached hereto as Exhibit A prior to engaging in skateboarding activities at Plex Indoor Sport.

2. Admit that Plaintiff read the "Plex Indoor Sports Individual Player Release and Waiver Form" attached hereto as Exhibit A prior to engaging in skateboarding activities at Plex Indoor Sport.

3. Admit that Plaintiff signed the "Plex Indoor Sports Individual Player Release and Waiver Form" attached hereto as Exhibit A.

27

4. Admit that Exhibit A, attached hereto, is a true and genuine copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" signed by Plaintiff Jeremy Cantrell.

RESPONSE: Admitted.

5. Admit that Plaintiffs injury on July 30, 2009 occurred while Plaintiff was engaged in the activity of skateboarding.

RESPONSE: Admitted.

6. Admit that, as of July 30, 2009, Plaintiff was aware that there was a risk of falling associated with the activity of skateboarding.

RESPONSE: Admitted.

7. Admit that, as of July 30, 2009, Plaintiff was aware that there was a risk of injury associated with the activity of skateboarding.

RESPONSE: Denied.

8. Admit that Plaintiffs injury occurred when Plaintiff fell off his skateboard while engaged in the activity of skateboarding.

RESPONSE: Admitted.

9. Admit that that the fall referred to in Request No. 8 was not caused by any act of Defendant, either directly or through any of its agents or employees.

RESPONSE: Denied.

10. Admit that the fall referred to in Request No. 8 was not caused by any omission on the part of Defendant, either directly or through any of its agents or employees.

RESPONSE: Denied.

11. Admit that the fall referred to in Request No. 8 was not caused by any defect in the skatepark.

RESPONSE: Admitted.

12. Admit that Plaintiff was wearing a helmet at the time of the accident.

RESPONSE: Admitted.

Strom Law Firm



Mario A. Pacella

SC Bar No.: 68488

John R. Alphin

SC Bar No.: 72583

2110 Beltline Blvd.

Columbia, South Carolina 29204

T: (803) 252-4800

Attorney For Plaintiff, Jeremy Cantrell

July 12, 2013  
Columbia, SC

|                          |   |                                   |
|--------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF RICHLAND       | ) | FOR THE FIFTH JUDICIAL DISTRICT   |
| JEREMY CANTRELL,         | ) |                                   |
| Plaintiff,               | ) | CIVIL ACTION NO.: 2012-CP-40-5356 |
| vs.                      | ) |                                   |
| PLEX INDOOR SPORTS, LLC, | ) | FIRST AMENDED COMPLAINT           |
| Defendant.               | ) | (Jury Trial Demanded)             |

2013 JUL 18 PM 3:25  
 JEANETTE W. HARRIS  
 C.C.P. & G.S.  
 FILED  
 RICHLAND COUNTY

Comes now Plaintiff, by and through her undersigned Counsel of Record and  
 alleges as follows:

**NATURE OF THE CASE**

1. Plaintiff, Jeremy Cantrell, brings this action for personal injuries suffered as a result of catastrophic injuries received when Plaintiff severely fractured his ankle while engaged in skateboarding activities in a building owned and maintained by Defendant, which occurred on or about July 30, 2009.
2. Plaintiff brings this action for monetary damages against Defendant for negligent careless, and unlawful act(s) including, but not limited to, failing to properly maintain Defendant's indoor skate park; failing to guard or warn against a dangerous condition; failing to monitor premises; failing to inspect premises; creating unsafe conditions on premises.

**JURISDICTION AND PARTIES**

3. Plaintiff is a resident of Kershaw County, South Carolina.

4. On information and belief, Defendant Plex Indoor Sports, LLC is a South Carolina for-profit corporation with its principal place of business in Columbia, South Carolina (Richland County). Accordingly, Defendant is subject to the jurisdiction of this Court for the resolution of all issues raised in Plaintiff's Complaint and may be served with a copy of this Complaint by and through its registered agent for service.

5. Venue and jurisdiction (both as to the parties and the subject matter) are properly laid in this Court under S.C. Code Ann. § 15-7-30 as the incident giving rise to Plaintiff's negligence claims occurred in Columbia, South Carolina (Richland County) where Defendants were and are residents.

6. This action accrued on July 30, 2009, while Plaintiff was a minor child. He was born on June 20, 1994 and did not turn eighteen (18) until 2012. Pursuant to S.C. Code Ann. § 15-3-40, Plaintiff remained under a disability, tolling his limitations period until one year after his eighteenth birthday. Accordingly, this action has been commenced within the limitations period.

#### **FACTUAL ALLEGATIONS**

7. Plaintiff realleges the allegations of the above paragraphs as if recounted at length herein.

8. On the afternoon of July 30, 2009, Jeremy Cantrell (hereinafter "Cantrell") was skateboarding at the Plex Indoor Sports skate park facility located at 741 Fashion Road, Columbia, South Carolina (Richland County).

9. Defendant failed to investigate Cantrell's minority status before he signed Defendant's "Release and Waiver Form."

10. Neither of Plaintiff's parents signed a "Release and Waiver Form" for Plaintiff to use the skate park.

11. Before permitting Plaintiff to skate, Defendant failed to investigate Plaintiff's skill level but still permitted him to engage in this dangerous activity.

12. Before permitting Plaintiff to skate, Defendant failed to train Plaintiff regarding how to properly use Defendant's facilities.

13. Before permitting Plaintiff to skate, Defendant failed to warn Plaintiff regarding the dangerous nature of skating without proper training.

14. On that same day, Cantrell attempted to drop into a bowl at Defendant's skate park, fell, and broke his ankle.

15. Defendant also failed to warn Plaintiff of the dangerous nature of the premises and failed to warn his parents of same. In failing to warn Plaintiff's parents, Defendant assumed the role of *in loco parentis* and owed Plaintiff a heightened duty of care and a heightened duty to warn.

16. Defendant's failure to ascertain Plaintiff's skill level, to properly train Plaintiff, and to warn Plaintiff of the dangerous nature of the skate park, created a dangerous situation to Cantrell.

17. Mr. Cantrell has seen multiple doctors to treat his injuries that arose from this accident and has missed considerable time in school and has experienced emotional pain resulting in from missed school.

**FIRST CAUSE OF ACTION**  
**(NEGLIGENCE)**

18. Plaintiff re-alleges paragraphs 7-17 as if set forth verbatim herein.

19. Defendant owned the skate park that caused the accident.

20. Defendant permits skaters to utilize the skate park for a fee.

21. By permitting Plaintiff to use the skate park, Defendant was obligated to use reasonable and due care to avoid injury to Plaintiff carrying on activities upon the premises.

22. Defendant breached that duty of care in one or more of the following particulars:

- a. In failing to ensure Plaintiff had the appropriate skill level to use the facilities;
- b. In failing to train Plaintiff to use the skating facilities, including advanced facilities;
- c. In failing to warn Plaintiff of the risk of injury with respect to use of the facilities;
- d. In failing to warn Plaintiff's parents of the risks involved in using Defendant's facilities;
- e. In failing to provide proper parental supervision when Defendant was *in loco parentis*; and
- f. Such other particulars as may be learned during discovery or at the trial of this matter.

23. As a direct and proximate result of Defendant's negligent, careless, and unlawful acts as described more fully above, Cantrell suffered extensive pain, suffering, mental anguish, and discomfort.

24. As a direct and proximate result of the Defendant's negligent, careless, and unlawful acts as described more fully above, Cantrell suffered extensive damages including but not limited to:



- a. Pecuniary loss;
- b. Pain and suffering;
- c. Extensive medical expenses; and
- d. Such additional damages as may be learned through discovery and permitted by law.

**SECOND CAUSE OF ACTION**  
**(PREMISES LIABILITY)**

- 25. Plaintiff re-alleges paragraphs 7-17 as if set forth verbatim herein.
- 26. Defendant owned the skate park that caused the accident.
- 27. Plaintiff, a minor child at the time, was a business invitee of Defendant.
- 28. Because of Plaintiff's status as a business invitee, Defendant was obligated to use reasonable and due care to avoid injury to Plaintiff, including refraining from any activity that may harm Plaintiff.
- 29. Because of Plaintiff's status as a business invitee, Defendant was obligated to warn Plaintiff of hidden or latent dangers in using the skate park as an inexperienced skateboarder.
- 30. Defendant breached that duty of care by acting in a manner that displayed a conscious disregard for his duty of care in one or more of the following particulars:
  - a. In failing to ensure Plaintiff had the appropriate skill level to use the facilities;
  - b. In failing to train Plaintiff to use the skating facilities, including advanced facilities;

- c. In failing to warn Plaintiff of the risk of injury with respect to use of the facilities;
- d. In failing to warn Plaintiff's parents of the risks involved in using Defendant's facilities;
- e. In failing to provide proper parental supervision when Defendant was *in loco parentis*; and
- f. Such other particulars as may be learned during discovery or at the trial of this matter.

31. As a direct and proximate result of Defendant's negligent, careless, and unlawful acts as described more fully above, Cantrell suffered extensive pain, suffering, mental anguish, and discomfort.

32. As a direct and proximate result of the Defendant's negligent, careless, and unlawful acts as described more fully above, Cantrell suffered extensive damages including but not limited to:

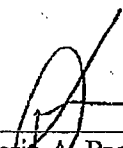
- a. Pecuniary loss;
- b. Pain and suffering;
- c. Extensive medical expenses;
- d. Punitive and exemplary damages; and
- f. Such additional damages as may be learned through discovery and permitted by law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays the Court issue an order in favor of Plaintiff and against Defendant, awarding Plaintiff:

- a. Pecuniary loss;
- b. Pain and suffering;
- c. Extensive medical expenses;
- d. Punitive and exemplary damages; and
- f. Such additional damages as may be learned through discovery and permitted by law.

Strom Law Firm, LLC



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

July 18<sup>th</sup>, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-5356

JEREMY CANTRELL,

Plaintiff,

vs.

PLEX INDOOR SPORTS, LLC,

Defendant.

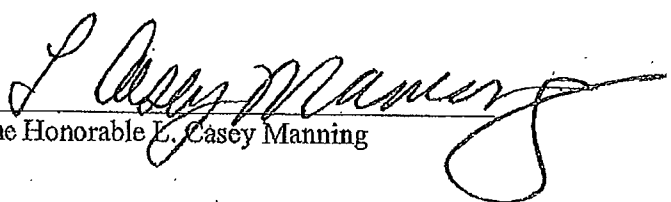
CONSENT ORDER

Before the Court is Plaintiff's Motion to Amend Complaint. Upon consent of the parties,

Plaintiff's motion is **GRANTED**. Plaintiff shall have twenty (20) days from the date of this

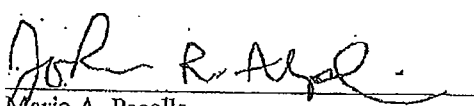
Order to file his Amended Complaint and serve same on Defendant's Counsel.

SO ORDERED, this 28 day of June, 2013.

  
The Honorable E. Casey Manning

Strom Law Firm, LLC.

Hedrick Gardner Kincheloe & Garofalo, LLP

  
Mario A. Pacella

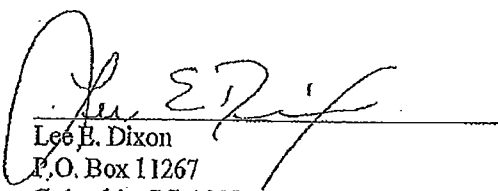
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Attorneys for Defendant

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Civil Action No. 2012-CP-400-5356

JEREMY CANTRELL,

Plaintiff,

v.

PLEX INDOOR SPORTS, LLC.,

Defendant.

**DEFENDANT'S ANSWER  
TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

JURY TRIAL DEMANDED

Plex Indoor Sports, LLC. ("Defendant") hereby answers Plaintiff Jeremy Cantrell's First Amended Complaint as follows:

**FOR A FIRST DEFENSE**  
**(Response to Allegations)**

Defendant denies each and every allegation of Plaintiff's Complaint not expressly admitted, qualified or explained.

1. Defendant admits, upon information and belief, that Plaintiff suffered a personal injury on or about July 30, 2009 while engaging in skateboarding activities at a Plex Indoor Sports facility owned and operated by Defendant. Defendant expressly denies liability for such injuries. Defendant lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 1 and therefore denies the same.

2. Paragraph 2 does not state any factual allegations requiring a response from Defendant. To the extent a response is deemed required, Defendant admits that Plaintiff purports to bring an action against Defendant as alleged in the Amended Complaint. Defendant expressly denies liability for Plaintiff's alleged injuries.

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.

4. Defendant admits as much of Paragraph 4 as alleges that Defendant is a South Carolina limited liability company conducting business in Richland County, South Carolina. Defendant admits that this Court has jurisdiction over Defendant and the subject matter of this case.

5. Defendant admits that venue is proper in Richland County pursuant to S.C. Code Ann. § 15-7-30.

6. Defendant admits, upon information and belief, that the incident at issue in this matter occurred on or about July 30, 2009. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7. There are no additional allegations in Paragraph 7. To the extent Paragraph 7 can be construed as alleging facts requiring a response, Defendant realleges its responses to Paragraphs 1 through 6 above as if set forth fully herein.

8. Defendant admits, upon information and belief, that Plaintiff was engaged in the activity of skateboarding at the indoor skate park located at Defendant's 741 Fashion Road, Columbia, South Carolina facility (hereinafter "Skate Park") on or around July 30, 2009.

9. Defendant denies the allegations in Paragraph 9.

10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10.

11. Defendant admits that it does not investigate the individual skill level of participants prior to allowing them access to the Skate Park.

12. Defendant admits that it does not provide individualized training to participants prior to allowing them access to the Skate Park.

13. Defendant denies the allegations in Paragraph 13.

14. Defendant admits, upon information and belief, that Plaintiff did fall and suffer an injury while skateboarding at the Skate Park. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14.

15. Defendant admits that it provided Plaintiff with a Plex Indoor Sports Individual Player Release and Waiver Form that expressly included a warning that participating in activities at Plex Indoor Sports involves risk and dangers of serious bodily injury. Defendant admits, upon information and belief, that Plaintiff's parents were not present when Plaintiff was provided this express warning. The remaining allegations in Paragraph 15 state legal conclusions to which no response from Defendant is required. To the extent a response is deemed to be required, Defendant denies those allegations.

16. The allegations in Paragraph 16 state legal conclusions to which no response from Defendant is required. To the extent a response is deemed to be required, Defendant denies those allegations.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.

**FOR A FIRST DEFENSE**  
**AS TO FIRST CAUSE OF ACTION**  
**(Negligence)**

18. Defendant realleges its responses to Paragraphs 1 through 17 above as if set forth fully herein.

19. Defendant admits that it owned the Skate Park where Plaintiff was injured. Defendant denies that the skate park caused the accident.

20. Defendant admits that it operates a business that is open to the public and that its facilities, including the Skate Park, were available for use upon registration and the payment of a fee.

21. The allegations in Paragraph 21 state legal conclusions to which no response is required. To the extent a response from Defendant is deemed to be required, Defendant denies that it breached any duty allegedly owed to Plaintiff.

22. Defendant denies the allegations in Paragraph 22, including all subparts.

23. Defendant denies the allegations in Paragraph 23.

24. Defendant denies the allegations in Paragraph 24, including all subparts.

**FOR A FIRST DEFENSE**  
**AS TO SECOND CAUSE OF ACTION**  
**(Premises Liability)**

25. Defendant realleges its responses to Paragraphs 1 through 24 above as if set forth fully herein

26. Defendant admits that it owned the Skate Park where Plaintiff was injured. Defendant denies that the Skate Park caused the accident.

27. Defendant admits that it operates a business that is open to the public and the Skate Park was available for use upon registration and the payment of a fee. Defendant admits, upon information and belief, that Plaintiff paid the required fee and was allowed to use the Skate Park.



28. The allegations in Paragraph 28 state legal conclusions to which no response is required. To the extent a response from Defendant is deemed to be required, Defendant denies that it breached any duty allegedly owed to Plaintiff.

29. The allegations in Paragraph 29 state legal conclusions to which no response is required. To the extent a response from Defendant is deemed to be required, Defendant denies that it breached any duty allegedly owed to Plaintiff.

30. Defendant denies the allegations in Paragraph 30, including all subparts.

31. Defendant denies the allegations in Paragraph 31.

32. Defendant denies the allegations in Paragraph 32, including all subparts.

33. Defendant denies that Plaintiff is entitled to the relief sought in the unnumbered paragraph in the Amended Complaint beginning with "WHEREFORE."

**FOR A SECOND DEFENSE**  
**(Failure to State a Claim)**

34. Plaintiff's Complaint fails to state a claim for which relief can be granted against this Defendant, and thus should be dismissed pursuant to SCRCP 12(b)(6).

**FOR A THIRD DEFENSE**  
**(Plaintiff's Fault in Alleged Injuries)**

35. Any injuries and damages sustained by Plaintiff as alleged in the Complaint were due to and caused solely by Plaintiff's own negligence, carelessness, recklessness, willfulness and/or wantonness in one or more of the following particulars:

- a) In failing to exercise reasonable care for his own safety;
- b) In failing to properly maintain his equipment;
- c) In engaging in inherently dangerous activities without adequate skill or experience;

- d) In attempting skateboarding maneuvers beyond his skill and experience level;
- e) In failing to cease skateboarding activities upon observing any substance, defect, or obstruction on the premises, if any there was; and
- f) In such other particulars as may be shown by the evidence at trial.

**FOR A FOURTH DEFENSE**  
**(Comparative Negligence)**

36. Defendant pleads the negligence, carelessness, recklessness, willfulness and/or wantonness of Plaintiff as a complete bar to, or in mitigation of, the recovery sought. Therefore, in accordance with the principles of comparative negligence, Plaintiff's claims should be reduced in proportion to Plaintiff's own negligence and carelessness, and must be denied if Plaintiff's negligence exceeds fifty (50%) percent.

**FOR A FOURTH DEFENSE**  
**(Open & Obvious)**

37. All risks and dangers, if any, connected with the alleged fall referred to in the Complaint were open, obvious and readily apparent and were known or should have been known to the Plaintiff. Therefore, Plaintiff's claims should be denied.

**FOR A FIFTH DEFENSE**  
**(Assumption of the Risk)**

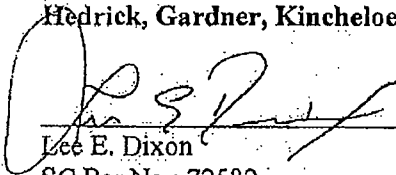
38. All risks and dangers, if any, connected with the accident referred to in the Complaint and the use of the area where Plaintiff allegedly fell were open, obvious, and apparent and were known to or should have been known to Plaintiff, and, therefore, Defendant pleads assumption of the risk on part of Plaintiff as a complete bar to Plaintiff's causes of action.

**FOR A SIXTH DEFENSE**  
**(Negligence of Third Parties)**

39. Defendant alleges upon information and belief that any injuries or damages alleged were due to, occasioned by, or caused by intervening acts or omissions on the part of someone other than this Defendant, without which act and/or omissions the Plaintiff would not have sustained any injuries or damages set forth in the Complaint, all of which Defendant pleads as a bar, in whole or in part, to Plaintiff's claims against Defendant. Alternatively, Defendant seeks an apportionment of fault among any persons or entities, whether parties to this action or not, who are or may have been responsible to causing or contributing to Plaintiff's alleged injuries.

WHEREFORE, having fully answered Plaintiff's First Amended Complaint, Defendant, Plex Indoor Sports, prays that the Complaint be dismissed, with costs assessed to Plaintiff, and for such further relief as the Court may deem proper.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P.

  
\_\_\_\_\_  
Lee E. Dixon

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P.O. Box 11267

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803.727.1215

Attorneys for Defendant Plex Indoor Sports, LLC

July 26, 2013  
Columbia, S.C.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Civil Action No. 2012-CP-40-05356

JEREMY CANTRELL,

Plaintiff,

v.

PLEX INDOOR SPORTS, LLC.,

Defendant.

**DEFENDANT'S MEMORANDUM IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

2013 SEP -5 PM 3:25  
CLERK OF COURT  
C.C.P. & G.S.  
RICHLAND

This is a personal injury case arising out of a skateboarding accident that occurred on July 30, 2009 at Defendant's indoor sports recreational facility located in Columbia, South Carolina ("Plex"). While skateboarding at Plex, Plaintiff fell and fractured his ankle. At the time, Plaintiff was 15 years old. Plaintiff has asserted claims for negligence and premises liability and has alleged that Plex was negligent in: (1) failing to ensure Plaintiff had the appropriate skill level, (2) failing to train Plaintiff, and (3) failing to warn of the risks involved in skateboarding. Plaintiff also claims that Plex stood *in loco parentis* and owed a heightened duty since Plaintiff was a minor and Plex did not warn his parents or obtain their permission. As set forth below, Plex is entitled to summary judgment as there has been no evidence produced that Plex breached any duty recognized at law or that any alleged negligence proximately caused Plaintiff's injuries. Finally, Plaintiff has expressly waived any and all claims against Plex.

**FACTUAL BACKGROUND**

On July 30, 2009, Plaintiff "severely fractured his ankle while engaged in skateboarding activities in a building owned and maintained by Defendant." Amended Complaint, ¶ 1. The undisputed facts show that Plaintiff came to Plex on July 28, 2009 to look over the Plex facility.

According to Plaintiff, he was provided a copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" ("Release") by the front desk attendant. See Exhibit 1. Plaintiff admits that he signed the Release, but maintains that he did not read it. See Exhibit 2 (Plaintiff's Responses to Defendant's Request to Admit), ¶ 1, 3. Plaintiff testified in his deposition that he filled out the form, returned it to the desk attendant and left the facility. Two days later, Plaintiff returned to Plex with a friend for the purpose of skateboarding at the indoor skate park ("Skate Park"). Sometime after entering the Skate Park, Plaintiff was attempting to "drop in" to the "bowl" and fell from his skateboard. Amended Complaint, ¶ 14. A photograph of the Skate Park "bowl" is attached as Exhibit 3. Plaintiff has admitted that his fall was not caused by any defect in the Skate Park. See Exhibit 2, ¶11. As a result of the fall, Plaintiff sustained a serious ankle injury.

#### **SUMMARY JUDGMENT STANDARD**

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See S.C. R. Civ. P. 56(c); Pittman v. Grand Strand Entertainment, Inc., 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005). Summary Judgment is appropriate if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); Helms Realty, Inc. v. Gibson-Wall, Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005).

#### **ARGUMENT**

In a negligence action, Plaintiff is required to plead and prove: (1) the defendant owed him a duty of care; (2) the defendant breached that duty of care; and (3) the defendant's breach proximately caused him damage. Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79,

502 S.E.2d 78 (1998). The same elements are required to plead and prove a premises liability action. See Hurst v. East Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006). Whether the law recognizes a particular duty is an issue of law to be determined by the court. Ellis v. Niles, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). In a negligence case, “no inference of negligence arises from the mere fact of injury and that the plaintiff has the burden of producing evidence tending to show some breach of duty.” Mack v. West, 275 S.C. 453, 455, 272 S.E.2d 631, 631 (1980). As demonstrated below, Defendant was under no duty to protect Plaintiff from the inherent dangers of skateboarding and there is no evidence that Defendant breached any duty owed to Plaintiff that was the proximate cause of his injury.

I. Plex was under to duty to protect Plaintiff from the inherent dangers of skateboarding.

a. Plex was not under any heightened duty based on Plaintiff's age.

In his Complaint, Plaintiff alleges a “heightened duty” because Plex assumed the role of *in loco parentis* by failing to warn Plaintiff's parents of the dangerous nature of the premises. Amended Complaint, ¶ 15. Plaintiff further alleges that Plex was negligent in failing to provide proper “parental supervision” while it was *in loco parentis*. Amended Complaint, ¶ 22(e), 30(e). Plaintiff's alleged duty to provide “parental supervision” is wholly without precedent in South Carolina and the doctrine of *in loco parentis* has no application in a negligence action.

The term *in loco parentis* is defined in various statutes in South Carolina, none of which apply in this circumstance. See e.g., S.C. Code §44-41-10(o) (“In loco parentis’ means any person over the age of eighteen who has placed himself or herself in the position of a lawful parent by assuming obligations which are incidental to the parental relationship and has so served for a period of sixty days.”); S.C. Code Ann. §20-1-300 (providing a person standing in loco parentis authority to provide written consent to underage marriage). No South Carolina

case has recognized the creation of this relationship in a commercial setting. Consequently, absent a statute, contract or special relationship, there is no recognized duty for a commercial establishment to provide "parental supervision" of a minor or to warn a minor's parents warning as to the inherent risks of a minor's activities.

Plaintiff's theory as to a heightened duty is also contrary to established negligence law in South Carolina. For the purposes of negligence or contributory negligence, South Carolina law requires that the conduct of a minor 14 years or older be judged in accordance with an adult standard of care. See McCormick v. Campbell by Campbell, 285 S.C. 272, 273-74329 S.E.2d 752, 753 (1985) ("since both parties were fourteen years old or above at the time of the accident, the adult standard of care should have been charged."). Imposing a heightened duty on Plex simply by virtue of Plaintiff being 15 would turn this established rule of law on its head.

For these reasons, there is no genuine issue as to any material fact and Plex is entitled to summary judgment on Plaintiff's alleged "heightened duty."

b. Plex was under no duty to protect Plaintiff from the inherent dangers of skateboarding.

In the context of sporting activities, a defendant has no duty to protect an invitee from the inherent dangers of the sport. Generally, the owner of property owes an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety and is liable for injuries resulting from the breach of such duty. Larimore v. Carolina Power & Light, 340 S.C. 438, 444, 531 S.E.2d 535, 538 (Ct. App. 2000). This general rule has been modified by the South Carolina Supreme Court under the doctrine of primary implied assumption of risk. As stated by our Supreme Court, "[p]rimary implied assumption of risk arises when the plaintiff *impliedly assumes those risks that are inherent in a particular activity.*" Davenport v. Cotton Hope

Plantation Horizontal Prop. Regime, 333 S.C. 71, 81, 508 S.E.2d 565, 570 (1998) (emphasis added). According to the Court:

[I]mplied assumption of risk focuses not on the plaintiffs conduct in assuming the risk, but on the defendant's general duty of care.... Clearly, primary implied assumption of risk is but another way of stating the conclusion that a *plaintiff has failed to establish a prima facie case [of negligence] by failing to establish that a duty exists.*

Id. (quoting Perez v. McConkey, 872 S.W.2d 897 (Tenn. 1994)) (emphasis added). As explained further in Hurst v. East Coast Hockey League, Inc., 371 S.C. 33, 637 S.E.2d 560 (2006), a defendant's duty of care does not encompass risks that are inherent in a particular activity. In that case, the Court found no duty to protect a spectator from being hit by a flying puck in a hockey game because that risk was a "common, expected, and frequent risk of hockey." Id., 371 S.C. at 38, 637 S.E.2d 562-63; see also, Cole v. Boy Scouts of America, 397 S.C. 247, 253, 725 S.E.2d 476, 479 (2011) ("Where a person chooses to participate in a contact sport, whatever the level of play, he assumes the risks inherent in that sport."). The application of this doctrine is not altered when the plaintiff is a minor. See Rudzinski v. BB, 2010 WL 2723105 (D.S.C. 2010) (Judge Anderson finding 11 year old defendant had no duty to protect 9 year old plaintiff from being struck by a golf club as such was an inherent risk in golf).

In this case, Plaintiff's injury occurred while he was skateboarding. While Plaintiff admits that he knew skateboarding could result in a fall and injury, he also states in his deposition that he was not aware that he could sustain this severe of injury. Nevertheless, it is the purview of the court to make a determination that the risk of falling and injury is a "common, expected, and frequent risk" of skateboarding. See Cole, 397 S.C. at 253, 725 S.E.2d at 479 ("the relative inquiry into the standard of care is whether the sport is a contact sport, which should be determined 'by examining the objective factors surrounding the game itself, not on the



subjective expectations of the parties'') (citing Landrum v. Gonzalez, 629 N.E.2d 710, 714 (1994)). Moreover, "[a]lmost all contact sports, especially ones that require protective gear as part of their equipment, involve conduct that a reasonably prudent person would recognize may result in injury." Cole, 725 S.E.2d at 254, 397 S.C. at 480. Plaintiff testified that he was required to and did wear a helmet while he was skateboarding at Plex. See also, Exhibit 2, ¶ 12.

The undisputed facts of this case are that Plaintiff came to Plex for the sole purpose of skateboarding and, while doing so, he fell and sustained a serious injury. Under the doctrine of primary implied assumption of the risk, Defendant owed no duty to protect Plaintiff from those risks that are inherent in skateboarding. Plaintiff has admitted that his fall was not caused by any defect in the Skate Park and the only allegations in the Complaint related to any danger or hazard refer solely to the dangers of skateboarding. See Amended Complaint, ¶¶ 11, 13, 15, 16, 22(c), 22(d), 29, 30(c), 30(d).

Plaintiff has failed to produce any evidence that Plex owed a duty to assess Plaintiff's skill level or to provide any level of training. Under South Carolina law, Defendant was under no duty to protect him from the inherent risks associated with skateboarding.<sup>1</sup> For these reasons, there is no genuine issue of material fact and Defendant is entitled to summary judgment on Plaintiff's claims for negligence and premises liability.

c. The waiver of liability does not create a duty.

Plaintiff attempts to turn Plex's policy of obtaining parent signatures on a liability release into an affirmative duty to advise a minor's parents of the child's activity and an affirmative duty

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<sup>1</sup> Plaintiff has also alleged a failure to warn Plaintiff of the risks of using Defendant's facilities. As evidenced by the admissions the record, Plaintiff was expressly warned of the risks when he was provided the Release.

to obtain the parent's permission before allowing a minor to use the facility. No South Carolina law or case has recognized such a duty and no such duty can be inferred on these facts.

On its face, the Release signed by Plaintiff purports to require a parent or legal guardian's signature if the participant is under the age of 18. See Exhibit 1. It is undisputed that Plaintiff's parents did not sign the Release. Plex's Rule 30(b)(6) witness testified that the purpose of the Release is to protect Plex from liability. In order to effectuate this goal, Plex requires all participants to execute a release and, in the case of minors, that a parent or legal guardian sign the Release. Notwithstanding that Plaintiff testified that he was not told what was in the Release or what it was for, there is simply no evidence that Plex's policy regarding waivers acts as the voluntary assumption of a duty to protect Plaintiff. See Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991) ("One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability..."). A waiver required for the express purpose of releasing a party of all claims for liability, can hardly be interpreted as voluntarily undertaking a duty to protect the other party from harm.

Plaintiff attempts to create an affirmative duty to warn Plaintiff's parents of the risks involved in the activities voluntarily engaged in by Plaintiff. In essence, Plaintiff wants to hold Plex strictly liable for Plaintiff's injuries, not because they were negligent and caused his injury, but because they were negligent in failing to tell his parents that he was about to engage in an activity that posed an inherent risk of injury. Such a theory is contrary to South Carolina law. For these reasons, there is no genuine issue as to any material fact and Plex is entitled to summary judgment on Plaintiff's alleged duty to warn Plaintiff's parents or obtain their permission.

II. There is no evidence of any breach proximately causing Plaintiff's injury.

Assuming without admitting that the duties alleged by Plaintiff actually exist at law, there is no evidence that the alleged breaches of those duties were the proximate cause of Plaintiff's injuries. A negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred. Shepard v. SCDOC, 299 S.C. 370, 374, 385 S.E.2d 35, 37 (Ct. App. 1989). An act or omission that does no more than furnish the condition or give rise to the occasion by which the injury is made possible is not the proximate cause of the injury. Id. As explained by the court Bodie v. Charleston & W.C. Ry. Co., 61 S.C. 468, 39 S.E. 715, (1901):

[W]hen the carelessness of the person inflicting the injury is antecedent to the negligence of the person injured, and the latter might, by ordinary care, have discovered the failure of the former to use such care in time to avoid the injury, there can be no recovery, because the intervening the negligence of the injured person is the direct and proximate cause of the injury.

Id., 61 S.C. at 486, 39 S.E. 721. Moreover,

A prior and remote cause cannot be made the basis of an action if such remote cause did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible, if there intervened between such prior or remote cause and the injury a distinct, successive, unrelated and efficient cause of the injury, even though such injury would not have happened but for such condition or occasion. If no danger existed in the condition except because of the independent cause, such condition was not the proximate cause.

Driggers v. City of Florence, 190 S.C. 309, 313, 2 S.E.2d 790, 791 (1939).

In this case, Defendant's alleged negligence did nothing more than result in Plaintiff being allowed entry to and access to the facilities of Plex. Such alleged negligence was not the direct and efficient cause of Plaintiff's fall. The only reasonable inference from the facts of this case is that Plaintiff fell while skateboarding through no fault of Plex. Plex's alleged negligence "did nothing more than furnish the condition or give rise to the occasion by which the injury was

made possible.” Consequently, there is no genuine issue as to any material fact and Plex is entitled to summary judgment as Plaintiff has failed to establish that Plex’s alleged negligence was the proximate cause of his injury.

III. Plaintiff has executed a waiver of liability.

Finally, Plaintiff has admitted to signing the Release which, by its terms, is a waiver of all claims for injuries sustained while engaged in activities at Plex. See Exhibit 1. While Plaintiff denies reading the Release, it is nonetheless an express waiver of liability. See First Baptist Church of Timmonsville v. George A. Creed & Son, Inc., 281 S.E.2d 121, 276 S.C. 597 (1981) (holding arbitration provision in contract enforceable despite party alleging it did not read the terms); Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981) (“One who is capable of reading and understanding but fails to read a contract before signing is bound by the terms thereof.”).

As a general rule, waivers of liability are valid and enforceable in South Carolina. See Huckaby v. Confederate Motor Speedway, Inc., 276 S.C. 629, 630, 281 S.E.2d 223, 224 (1981) (“Although exculpatory contracts are not favored by the courts, as they usually tend to induce a want of care, we have upheld them in some instances recognizing people should be free to contract as they choose.”); Johnson v. Paraplane Corp., 319 S.C. 247, 254, 460 S.E.2d 398, 402 (Ct. App. 1995) (“Summary judgment should be granted where parties engaging in voluntary recreational activities of a hazardous nature execute a release.”); McCune v. Myrtle Beach Indoor Shooting Range, Inc., 364 S.C. 242; 612 S.E.2d 462, 467 (Ct. App. 2005) (“we hold the trial court properly determined the release signed by McCune was sufficient to release the Range from all liability in this incident.”).

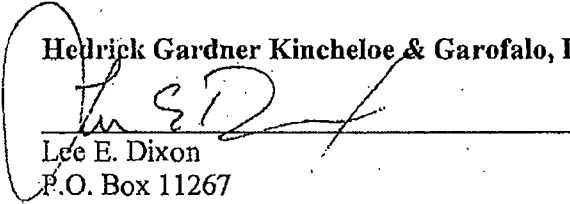
The Release specifically states that the participant releases, discharges and covenants not to sue Plex "FROM ALL LIABILITY, CLAIMS, DEMANDS, LOSSES, OR DAMAGES ON MY ACCOUNT CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF [PLEX] OR OTHERWISE." See Exhibit 1. The terms of the Release are express and precise and operate as a waiver of liability as consideration for using Plex's facilities. Based on this express waiver of liability, Plex is entitled to summary judgment as to Plaintiff's claims for negligence and premises liability.

IV. Conclusion

As set forth above, Plex is entitled to summary judgment on Plaintiff's causes of action for negligence and premises liability. Plaintiff has failed to demonstrate that Plex was under a duty to warn him or his parents about the inherent dangers of skateboarding. Additionally, Plaintiff has failed to show that Plex was under a duty to assess his skill level or to provide him training before allowing him to skate in the Skate Park. Moreover, Plaintiff has failed to demonstrate any breach of a duty owed to Plaintiff and none of the alleged breaches were the proximate cause of Plaintiff's injury. Finally, Plaintiff has waived any and all claims against Plex. For the foregoing reasons, Defendant respectfully requests this Court grant its Motion for Summary Judgment as to Plaintiff's causes of action.

Respectfully submitted,

**Hedrick Gardner Kincheloe & Garofalo, LLP**



Lee E. Dixon

P.O. Box 11267

Columbia, SC 29211

(803) 727-1200

**Attorneys for Defendant**

Columbia, SC  
August 28, 2013

# **EXHIBIT 1**

## Plex Indoor Sports Individual Player Release and Waiver Form

No participant will be allowed to participate at Plex  
until signature is obtained and this form is received by Plex

### Release & Waiver of Liability, Assumption of Risk, and Indemnity and Parental Consent Agreement

In Consideration of being permitted to participate in any way in the Plex Indoor Sports, LLC's ("PLEX") complex I, for myself and for personal representatives, assigns, heirs, and next of kin:

- Acknowledge, agree, and represent that I understand the nature of the activities at PLEX's complex, and that I am qualified, in good health, and in proper physical condition to participate in such activity. I further agree and warrant that if at any time I believe conditions to be unsafe, I will immediately discontinue further participation in the activity.
- Fully understand that: (a) activities at the PLEX complex involve risks and dangers of serious bodily injury, including permanent disability, paralysis and death (Risks); (b) these Risks and dangers may be caused by my own actions or inaction's the actions or inaction's of others participating in the activity, the condition in which the activity takes place, or the negligence of the "Releasees" named below; (c) there may be other risk and social and economic losses either not known to me or not readily foreseeable at this time; and I fully accept and assume all such risks and all the responsibility for losses and costs, and damages I incur as a result of my participation or that of the minor in the activity.
- Hereby release, discharge, and covenant not to sue PLEX, and/or PLEX's respective administrators, directors, agents, officers, members, volunteers, and employees; other participants, any sponsors, advertisers, and if applicable, owner and lessors of the premises on which the activities take place, each considered one of the "Releasees" herein) **FROM ALL LIABILITY, CLAIMS, DEMANDS, LOSSES, OR DAMAGES ON MY ACCOUNT CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE "RELEASEES" OR OTHERWISE, INCLUDING NEGLIGENT RESCUE OPERATIONS AND I FURTHER AGREE** that if, despite this release and waiver of liability assumption of risk, and indemnity agreement I, or anyone on my behalf, makes a claim against any of the Releasees, I will indemnify, save and hold harmless each of the Releasees from any litigation expenses, attorney fees, loss, liability, damage, or cost which may incur as the result of such claim.

I have read this agreement, fully understand its terms, understand that I have given up substantial rights by signing it and have signed it freely and without inducement or assurance of any nature and intend it to be a complete and unconditional release of all liability to the greatest extent allowed by law and agree that if any portion of this agreement is held to be invalid the balance, notwithstanding, shall continue in full force and effect.

### MINOR RELEASE--

I, the Minor's parent or legal guardian, understand the nature of the activities at PLEX's complex and the minor's experience and capabilities and believe the minor to be qualified, in good health and in proper physical condition to participate in such activity. I hereby release, discharge, covenant not to sue, and agree to indemnify and save and hold harmless each of the Releasee's from all liability claims, demands, losses, or damages on the minor's account caused or alleged to be caused in whole or in part by the negligence of the Releasees or otherwise, including negligent rescue operation and further agree that if, despite this release, I, the minor, or anyone on the minor's behalf makes a claim against any of the Releasees named above, I will indemnify, save, and hold harmless each of the Releasees from any litigation expenses, attorney fees, loss liability, damage, or cost any may incur as a result of any such claim.

Participant Printed Name Jeremy (an)ell Date: 07.28.09  
Participant Signature [Signature] (parent signature if under 18)

Participant Home Address: 275 Clearwater Lake Rd  
City: Lamden State: SC  
Participant E-mail: \_\_\_\_\_

Phone: 315-222-6110  
Zip Code: 29020  
DOB: 06.20.94

PLEX\_0017

## **EXHIBIT 2**



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

JEREMY CANTRELL,

Plaintiff,

vs.

PLEX INDOOR SPORTS, LLC.

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-5356

**PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST REQUEST TO ADMIT**

Comes now, Plaintiff, by and through his undersigned counsel of record, and provides the following responses to Defendant's First Requests for Admissions. Discovery is ongoing, and Plaintiff reserves the right to amend and/or supplement his responses, in the event of new evidence or information, in accordance with the South Carolina Rules of Civil Procedure.

**RESPONSES**

1. Admit that Plaintiff was provided a copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" attached hereto as Exhibit A prior to engaging in skateboarding activities at Plex Indoor Sport.

RESPONSE: Admitted.

2. Admit that Plaintiff read the "Plex Indoor Sports Individual Player Release and Waiver Form" attached hereto as Exhibit A prior to engaging in skateboarding activities at Plex Indoor Sport.

RESPONSE: Denied.

3. Admit that Plaintiff signed the "Plex Indoor Sports Individual Player Release and Waiver Form" attached hereto as Exhibit A.

RESPONSE: Admitted.

4. Admit that Exhibit A, attached hereto, is a true and genuine copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" signed by Plaintiff Jeremy Cantrell.

RESPONSE: Admitted.

5. Admit that Plaintiffs injury on July 30, 2009 occurred while Plaintiff was engaged in the activity of skateboarding.

RESPONSE: Admitted.

6. Admit that, as of July 30, 2009, Plaintiff was aware that there was a risk of falling associated with the activity of skateboarding.

RESPONSE: Admitted.

7. Admit that, as of July 30, 2009, Plaintiff was aware that there was a risk of injury associated with the activity of skateboarding.

RESPONSE: Denied.

8. Admit that Plaintiffs injury occurred when Plaintiff fell off his skateboard while engaged in the activity of skateboarding.

RESPONSE: Admitted.

9. Admit that that the fall referred to in Request No. 8 was not caused by any act of Defendant, either directly or through any of its agents or employees.

RESPONSE: Denied.

10. Admit that the fall referred to in Request No. 8 was not caused by any omission on the part of Defendant, either directly or through any of its agents or employees.

RESPONSE: Denied.

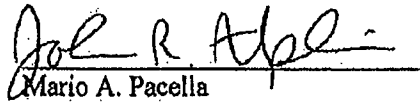
11. Admit that the fall referred to in Request No. 8 was not caused by any defect in the skatepark.

RESPONSE: Admitted.

12. Admit that Plaintiff was wearing a helmet at the time of the accident.

RESPONSE: Admitted.

**Strom Law Firm**

A handwritten signature in dark ink, appearing to read "John R. Alphin", is written over a horizontal line.

**Mario A. Pacella**

**SC Bar No.: 68488**

**John R. Alphin**

**SC Bar No.: 72583**

**2110 Beltline Blvd.**

**Columbia, South Carolina 29204**

**T: (803) 252-4800**

**Attorney For Plaintiff, Jeremy Cantrell**

**July 12, 2013  
Columbia, SC**

## **EXHIBIT 3**



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-5356

JEREMY CANTRELL,

Plaintiff,

vs.

PLEX INDOOR SPORTS, LLC,

Defendant.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This is a personal injury and premises liability action where Plaintiff, who was a minor child at the time, suffered severe injuries to his ankle while attempting to "drop-in" to a skate bowl on Defendant's premises. Plaintiff alleged in his complaint, as amended, that Defendant, in making available a dangerous facility, failed to warn Plaintiff and failed to warn Plaintiff's parents of the danger in using the skate bowl. Additionally, Plaintiff has alleged that Defendant, by failing to ascertain permission from Plaintiff's parents, assumed the role of a parent and was required to properly train and supervise Plaintiff while using Defendant's facilities. Defendant filed a summary judgment motions and supplemented same on August 28, 2013 with a Memorandum of Law and Exhibits in Support. Plaintiff files this response.

**Statement of the Facts**

This action stems from a catastrophic ankle injury suffered by Plaintiff on July 30, 2009, when he was fifteen years old. It is undisputed that although Defendant's employees were to secure written waivers from participants and their parents or legal guardians, Defendant did not do so in this case. In fact, Defendant's memorandum concedes that Plaintiff signed his own

waiver at the age of 15. Moreover, there is no evidence that Plaintiff or his parents ever read the waiver and no evidence Plaintiff's parents gave him permission to skate board at the Plex in their advanced skating section that included the skate bowl.

Chris Reed, the skate park attendant employed by Defendant and on duty at the time of the accident, testified that Plaintiff "was a shorter, bigger kid, probably 14, 15." (Exhibit A, Reed Depo at 22.) Reed explained that "I remember the kid was really nervous, and when the kid fell he didn't – basically when you drop in you have to lean forward and if you stutter or if you second guess or lean back, and I do remember his leg going back because he slipped off and I saw his legs flail back." (Exhibit A, Reed Depo at 23.) Reed, an experienced skate boarder himself, explained that Plaintiff was hurt as a result of "[u]ndercommitment. He just was not prepared. He tried something and it was beyond what he possibly – probably could do. . . . On the size of that wall it's fairly hard for him to do." (Exhibit A, Reed Depo at 37-38.) Reed confirmed that it was not the policy of Defendant to test the skill level of a participant or skater. (Exhibit A, Reed Depo at 55.) Chuck Davis, the Rule 30(b)(6) deponent identified to testify as to Defendant's policies and procedures, confirmed that Defendant does not determine the skill level of participants before permitting them to used advanced skating equipment like the large skate bowl where Plaintiff suffered his injuries or the fall. (Exhibit B, Davis Depo at 45-46.)

With respect to warnings given to minors and their parents, Davis testified that the only warning provided was the warning on the waiver form. (Exhibit B, Davis Depo at Exhibit 2.) Davis stated this was the only warning and that they did not require parents to sign in front of an employee or notary notwithstanding a document existed regarding "Plex Indoor Sports Skatepark Conduct and Safety Rules" required execution of the waiver by a parent or guardian in person or before a notary public. (Exhibit B, Davis Depo at Exhibit 3.) Davis also explained that no

employee of Defendant is required to point out the warning encompassed in the waiver. (Exhibit B, Davis Depo at 32-33.) Instead, the policy was to explain the safety equipment required to a participant's parent if the parent was present. (Exhibit B, Davis Depo at 37.)

Davis further testified that it was the policy of Defendant for the skate park attendant to help participants if they need it and to instruct them at times. (Exhibit B, Davis Depot at 46.) Moreover, Davis explained in his deposition that if a participant was attempting something beyond his skill level, the policy was to give the minor assistance and offer a training session, which would come at an additional cost. (Exhibit B, Davis Depo at 52.)

Here, it is uncontroverted that Plaintiff did not read the waiver and was not warned of the dangers of skateboarding in the skate bowl. Plaintiff explained that he was 15 years old at the time and that while he skated for several years, he only attempted drop-ins 4-6 times at community skate parks in Georgia years earlier. (Exhibit C, Cantrell Depo at 66.) Additionally, Plaintiff testified that he did not understand the risk of injury at the time of the accident and just wanted to skate. Plaintiff stated, "I knew I could get hurt. I didn't know I could get injured. There's a difference between knowing that you are going to get hurt and knowing you are going to mess the rest of your life up." (Exhibit C, Cantrell Depo at 38.)

In making his attempt to drop-in, Plaintiff shattered his ankle. He still has not recovered after numerous surgeries and could potential require additional surgeries or an ankle fusion. (Exhibit C, Cantrell Depo at 76-78.)

#### Standard of Determination

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Hamiter v. Retirement Division of South Carolina, 326 S.C. 93, 96, 484 S.E 2d 586, 587 (1997); Café Assocs., Ltd. V. Gerngross,



305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). The Court may grant summary judgment to a party when, after a reasonable time for discovery, the evidence demonstrates that the nonmovant has failed to establish an essential element of his case. The party moving for summary judgment bears the initial burden of meeting this exacting standard. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S. Ct. 1598, 1608, 26 L. Ed. 2d 142 (1970). In determining whether any triable issue of fact exists which will preclude summary judgment, the evidence, and all inferences that can be reasonably drawn, must be viewed in the light most favorable to the non-moving party. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000).

Once the moving party has met this initial burden, the burden shifts to the opposing party to show that a genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). The opposing party may not simply rest upon mere allegations or denials of the pleadings. Rather, the nonmoving party must make a sufficient showing of facts to establish the existence of an essential element to his case on which he will bear the burden of proof at trial. Id.; Barfield v. Brierton, 883 F.2d 923, 933 (11<sup>th</sup> Cir. 1989). To oppose the motion sufficiently after the movant has met his initial burden, the nonmoving party must point to evidence in the record or present additional evidence in the form of affidavits. Riley v. Newton, 94 F.3d 632, 639 (11<sup>th</sup> Cir. 1996). If the record presents factual issues, the Court must deny the motion and proceed to trial. Environmental Defense Fund v. Marsh, 651 F.2d 983, 991 (5<sup>th</sup> Cir. Unit A 1981). Summary judgment is also inappropriate where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. Lighting Fixture & Elec. Supply Co. v. Continental Ins. Co., 420 F.2d 1211, 1213 (5<sup>th</sup> Cir. 1969).

#### Discussion and Citation to Authority

**I. Defendant Owed Plaintiff a Duty to Warn of the Dangers of Skateboarding in the Advanced Skate Bowl Area.**

An invitee, on the other hand, "is a person who enters onto the property of another at the express or implied invitation of the property owner." Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 441, 494 S.E.2d 827, 831. "The visitor is considered an invitee especially when he is upon a matter of mutual interest or advantage to the property owner." Sims v. Giles, 343 S.C. 708, 716, 541 S.E.2d 857, 862 (Ct. App. 2001). "The owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty." Sims, 342 S.C. at 718, 541 S.E.2d at 863. "The property owner has a duty to warn an invitee only of latent or hidden dangers of which the property owner has or should have knowledge." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 256, 607 S.E.2d 362, 365 (Ct. App. 2004).

"A property owner generally does not have a duty to warn others of open and obvious conditions, but a landowner may be liable if the landowner should have anticipated the resulting harm." Id. In this regard, the degree of care must be commensurate with the particular circumstances involved, including the age and capacity of the invitee. Meadows v. Heritage Village Church and Missionary Fellowship, Inc., 305 S.C. 375, 377, 409 S.E.2d 349, 351 (1991). "This degree of care must be commensurate with the particular circumstances involved, including the age and capacity of the invitee. This duty is an active or affirmative duty. It includes refraining from any act which may make the invitee's use of the premises dangerous or result in injury to him." Hughes v. Children's Clinic, P. A., 269 S.C. 389, 397, 237 S.E.2d 753, 756 (1977).

Defendant knew of the danger that "activities at the PLEX complex involve risks and dangers of serious bodily injury, including permanent disability, paralysis and death." (Exhibit 2

to Davis Depo.) Defendant also knew that the premises should only be used by qualified individuals and sought that representation from a minor's parents. (Exhibit 2 to Davis Depo.) Here, Defendant made no warnings to Plaintiff other than to tell him he needed to sign the Plex Indoor Sports Individual Player Release and Waiver Form and did not ensure that Plaintiff, a minor child, actually read the form or had his parent or legal guarding form. This failure then required these small print warnings to be presented to Plaintiff, a 15 year old child, in a manner that he could understand before assuming any risk associated with skating in the advanced bowl. Moreover, Defendant, by not securing an affirmative representation from the parent or legal guardian of Plaintiff that Plaintiff was qualified, failed to ensure that Plaintiff had the requisite skill to safely use the advanced skating bowl.

In a case where a minor hockey player was injured in a hockey game, the Pennsylvania Superior Court upheld a lower court's ruling that the minor was incapable of contributory negligence. The decision also supports the concept that minors require greater warnings of the risk of injury when participating in a sport. Here the Court explained, "we find no evidence in the record that portrays Brad as a young boy who possessed of superior intelligence thereby giving him exceptional perceptions of the risks and dangers of hockey." Berman by Berman v. Philadelphia Bd. of Educ., 310 Pa. Super. 153, 161, 456 A.2d 245, 549-50 (1983). Likewise, here there is no evidence that demonstrates Plaintiff, a 15 year old minor, was aware of the risks of serious bodily injury; thereby requiring Defendant to warn Plaintiff and his parents of such risks.

## **II. Defendant's Breach Proximately Caused Plaintiff's Injury.**

Here, Defendant's failure to ascertain Plaintiff's warn of the dangers of skating in the advanced section of the skate park; the failure to ascertain Plaintiff's skill level; and the failure to intervene when its employee observed Plaintiff struggling, proximately caused his injury. If

Defendant had done any of these three things as required when operating dangerous premises for the benefit of paying minor customers, Plaintiff would not have been using the advanced portion of the skate park and would not have attempted an advanced maneuver beyond his skill set. These breaches proximately caused Plaintiff's injuries.

**III. Defendant Undertook a Heightened Duty to Protect Plaintiff By Failing to Secure Parental Permission for Plaintiff to Use Its Facilities.**

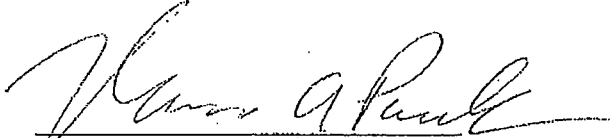
In Bradley v. Welch, 94 Ark. App. 171, 179, 228 S.W.3d 559, 565 (2006), the Arkansas Court of Appeals explained that a landowner or occupier "owes a duty of reasonable care to provide supervision to the child if the defendant has been entrusted with and accepted responsibility for supervising the child." Likewise, Michigan courts apply the same rule that "that defendant landowners have an affirmative duty to supervise minor guests only when a minor guest is *unaccompanied* by a parent and the defendant has voluntarily assumed a duty to supervise the child." Wheeler v. Central Michigan Inns, Inc., 292 Mich. App. 300, 306, 807 N.W.2d 909, 913 (Mich. App. 2011)(citations omitted). Here, absent a waiver and permission from Plaintiff's parent, Defendant become a *de facto* supervisor of Plaintiff and owed a duty to protect Plaintiff from his own bad judgment. Like, Defendant failed to properly train Plaintiff to use the facilities and intervene when it knew Plaintiff was attempting activities beyond his skill set.

**Conclusion**

For the above and foregoing reasons, Plaintiff has set forth a *prima facie* case that Defendant owed Plaintiff a duty; that Defendant breached that duty; and that the breach was the direct and proximate cause of Plaintiff's injuries. Accordingly, Defendant's Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED, this 3<sup>rd</sup> day of September, 2013.

Strom Law Firm, LLC

A handwritten signature in dark ink, appearing to read "Mario A. Pacella", written over a horizontal line.

Mario A. Pacella

SC Bar No.: 68488

John R. Alphin

SC Bar No.: 72583

2110 Beltline Blvd.

Columbia, South Carolina 29204

T: (803) 252-4800

F: (803) 252-4801

Attorneys for Plaintiff

# Exhibit A

1 you call them? Skaters?

2 A. Skaters.

3 Q. The incident that we're dealing with  
4 here in this lawsuit occurred on July 30, '09. Do  
5 you recall the incident?

6 A. Vaguely. I'll be honest with you.

7 Q. I'll represent to you the plaintiff's  
8 name is Jeremy Cantrell. He was roughly -- well,  
9 do you remember a boy around that time --

10 A. Yes.

11 Q. -- being injured and taken away from  
12 the facility by the fire department?

13 A. Yes.

14 Q. Tell me what you remember just  
15 physically about the boy from your recollection.

16 A. Am I supposed to be biased here?

17 Q. No.

18 A. You might want to clarify. Just what I  
19 saw or --

20 Q. What do you remember?

21 A. -- how I felt when he was on the bowl?

22 Q. No. No. What do you remember about --  
23 what did he look like? Do you remember seeing him?

24 A. He was a shorter, bigger kid, probably  
25 14, 15 is probably what I would say. Probably

1 medium hair, dark hair, fair skin.

2 Q. Did you see him skating before he was  
3 injured?

4 A. No. I don't recollect that, no. I  
5 remember he was with a friend, a younger boy who  
6 was skating.

7 Q. Did you ever talk with either one of  
8 them?

9 A. I don't recollect, no.

10 Q. Let me be clear. Did you ever talk to  
11 them before he was injured in any way in passing  
12 while you were working?

13 A. I couldn't say yes or no to that. I  
14 apologize.

15 Q. That's okay.

16 A. I do not believe I did.

17 Q. All right. Tell me what you do  
18 remember about the incident from that day.

19 A. I remember his friend was on top of the  
20 bowl urging him to do it, and I remember the kid  
21 was really nervous, and when the kid fell he  
22 didn't -- basically when you drop in you have to  
23 lean forward and if you stutter or if you second  
24 guess it you lean back, and I do remember his leg  
25 going back because he slipped off and I saw his



1 Chuck there.

2 Q. Is it possible it was another manager  
3 and you're just misremembering?

4 A. It's possible, but I remember a  
5 skinnier man doing it. I'm fairly confident it was  
6 Chuck, but I could be wrong.

7 Q. But there was a male manager that was  
8 working that day?

9 A. Yes.

10 Q. Did you ever see Jeremy before this  
11 day?

12 A. No.

13 Q. Did you ever see him afterwards?

14 A. No.

15 Q. How about anybody -- any members of his  
16 family or friends?

17 A. No, not that I recall.

18 Q. None of them has ever approached you or  
19 talked to you --

20 A. No.

21 Q. -- about this situation?

22 A. No.

23 Q. Based on your observations there, what  
24 do you think was the cause of Jeremy's fall?

25 A. Undercommitment. He just was not

1 prepared. He tried something and it was beyond  
2 what he possibly -- probably could do.

3 Q. Is a drop-in a fairly advanced  
4 maneuver?

5 A. On the size of that wall it's fairly  
6 hard for him to do. It's not impossible. I've  
7 seen a lot of kids do it, but I do not think it was  
8 likely.

9 Q. Is it a very popular maneuver,  
10 something kids like to try to do?

11 A. It's something you have to learn.

12 Q. Something you have to learn?

13 A. If you want to enjoy a skate park, most  
14 likely, yes. There are a lot of smaller ramps  
15 there. I should say that. He was on the higher  
16 side of the bowl.

17 Q. You say the higher side. Is that --  
18 for instance, using my swimming pool analysis, is  
19 that the deep end?

20 A. That would be the deep end.

21 Q. I want to just -- I've got a photograph  
22 here. Let me turn it the right way.

23 Okay. We've got this. This was  
24 produced in discovery. It's identified as Plex  
25 009.

1 is he?

2 A. Correct. He is not.

3 Q. Below that there's like a handwritten  
4 note. Can you read that into the record?

5 A. A large boy.

6 Q. And that goes along with your  
7 description of the skater at the time?

8 A. Correct.

9 MR. ALPHIN: Give me just one second.  
10 I think I'm done.

11 BY MR. ALPHIN:

12 Q. I have one more question. Prior to  
13 allowing anyone to skate in the park did you all  
14 ever test the skill level of the skater or anything  
15 like that?

16 A. No.

17 Q. So you all didn't do anything to  
18 confine where they could skate --

19 A. Correct.

20 Q. -- based on skill level or anything  
21 like that?

22 A. Correct.

23 MR. ALPHIN: I have no other questions.

24 MR. DIXON: I do have a couple quick  
25 follow-ups.

# Exhibit B

1 see? Posted somewhere for either -- was it posted  
2 anywhere for employees to see, in your  
3 recollection?

4 A. No, sir.

5 Q. Was it posted anywhere for customers to  
6 see, to your recollection?

7 A. No, sir.

8 Q. In this manual that we can't find, do  
9 you know if this document was in there?

10 A. I can't say.

11 Q. With respect to item number two, do you  
12 know if -- in item number two, where it goes --  
13 those under 16 must wear full safety gear, was that  
14 in effect in 2009?

15 A. I cannot say yes or no on that.

16 Q. To your recollection, at one time, it  
17 was a 12-year-old cutoff. Is that --

18 A. To my knowledge, yes, sir.

19 Q. And you wouldn't know if the  
20 12-year-old cutoff was the earlier version or the  
21 later version?

22 A. No, sir, I cannot.

23 Q. Okay. When a person wants to use the  
24 skate facilities, particularly a minor, what's done  
25 to determine their skill level and see what parts

1 of the facility they should be permitted to use?

2 A. It is not determined.

3 Q. Okay. Does -- if an employee at the  
4 Plex noticed, observed a minor trying to engage in  
5 activity that is beyond his or her skill level,  
6 what was the policy and procedure -- what is that  
7 employee supposed to do?

8 MR. DIXON: Object to the form.

9 THE WITNESS: The skate park attendant  
10 is over there to watch over the park, to help kids  
11 if they need it. They are also looking to see --  
12 make sure everyone is participating in a nice  
13 manner. They are also watching kids and  
14 instructing them at times.

15 BY MR. PACELLA:

16 Q. Instructing kids on how to use the  
17 park?

18 A. Yes.

19 Q. Okay. And if -- I'm going to ask the  
20 question again. If the employee notices someone  
21 trying to do something that is outside their skill  
22 level, what would be the policy or procedure for  
23 that employee to do anything? To do something, if  
24 anything?

25 MR. DIXON: Object to the form.

## Plex Indoor Sports Individual Player Release and Waiver Form

No participant will be allowed to participate at Plex  
until signature is obtained and this form is received by Plex

### Release & Waiver of Liability, Assumption of Risk, and Indemnity and Parental Consent Agreement

In Consideration of being permitted to participate in any way in the Plex Indoor Sports, LLC's ("PLEX") complex, I, for myself and for personal representatives, assigns, heirs, and next of kin:

- Acknowledge, agree, and represent that I understand the nature of the activities at PLEX's complex, and that I am qualified, in good health, and in proper physical condition to participate in such activity. I further agree and warrant that if at any time I believe conditions to be unsafe, I will immediately discontinue further participation in the activity.
- Fully understand that: (a) activities at the PLEX complex involve risks and dangers of serious bodily injury, including permanent disability, paralysis and death (Risks); (b) these Risks and dangers may be caused by my own actions or inaction or the actions or inaction of others participating in the activity, the condition in which the activity takes place, or the negligence of the "Releasees" named below; (c) there may be other risk and social and economic losses either not known to me or not readily foreseeable at this time; and I fully accept and assume all such risks and all the responsibility for losses and costs, and damages I incur as a result of my participation or that of the minor in the activity.
- Heroby release, discharge, and covenant not to sue PLEX, and/or PLEX's respective administrators, directors, agents, officers, members, volunteers, and employees, other participants, any sponsors, advertisers, and if applicable, owner and lessors of the premises on which the activities take place, each considered one of the "Releasees" herein) FROM ALL LIABILITY, CLAIMS, DEMANDS, LOSSES, OR DAMAGES ON MY ACCOUNT CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE "RELEASEES" OR OTHERWISE, INCLUDING NEGLIGENCE RESCUE OPERATIONS AND FURTHER AGREE that if, despite this release and waiver of liability assumption of risk, and indemnity agreement I, or anyone on my behalf, makes a claim against any of the Releasees, I will indemnify, save and hold harmless each of the Releasees from any litigation expenses, attorney fees, loss, liability, damage, or cost which may incur as the result of such claim.

I have read this agreement, fully understand its terms, understand that I have given up substantial rights by signing it and have signed it freely and without inducement or assurance of any nature and intend it to be a complete and unconditional release of all liability to the greatest extent allowed by law and agree that if any portion of this agreement is held to be invalid the balance, notwithstanding, shall continue in full force and effect.

### MINOR RELEASE--

I, the Minor's parent or legal guardian, understand the nature of the activities at PLEX's complex and the minor's experience and capabilities and believe the minor to be qualified, in good health and in proper physical condition to participate in such activity. I hereby release, discharge, covenant not to sue, and agree to indemnify and save and hold harmless each of the Releasees from all liability claims, demands, losses, or damages on the minor's account caused or alleged to be caused in whole or in part by the negligence of the Releasees or otherwise, including negligent rescue operations and further agree that if, despite this release, I, the minor, or anyone on the minor's behalf makes a claim against any of the Releasees named above, I will indemnify, save, and hold harmless each of the Releasees from any litigation expenses, attorney fees, loss liability, damage, or cost any may incur as a result of any such claim.

Participant Printed Name: Jeremy Canfield Date: 07.28.09  
Participant Signature: Jeremy Canfield (parent signature if under 18)

Participant Home Address: 275 Glenwater Lane Rd  
City: Camden State: SC  
Participant E-mail: \_\_\_\_\_

Phone: 315-222-6110  
Zip Code: 29020  
DOB: 06-20-94



PLEX\_0017



## Plex Indoor Sports Skatepark Conduct and Safety Rules

1. No one under the age of six (6) years shall be allowed into the skating area of the Park.
2. All participants under the age of 16 must wear full safety gear, including but not limited to, a helmet, elbow and knee pads. All participants 16 years old and older must wear a helmet, but wearing of elbow and knee pads are optional. Those participants have been fully advised that wearing of elbow and knee pads will enhance safety and that if they fail to wear pads they are substantially increasing their risk of injury.
3. Participants under the age of 18 must have their parent(s) or legal guardian(s) sign the waiver, in the presence of a Plex employee or a notary public. (There are no exceptions to this rule)
4. All participants must skate/ride safely at all times and avoid collisions with other participants. Fighting or other aggressive or disruptive behavior will result in immediate ejection from the park.
5. Absolutely no food, or drink (including gum) may be brought into the skate park and participants may only consume food and drink in the designated areas. Non skate/ride equipment or gear, and any other items, must be stored in locations outside the skate area.
6. Smoking is prohibited in this facility.
7. No contests of any sort are allowed in the Park unless organized and run by the Park itself.
8. The Park reserves the right to terminate any membership at any time, and to eject anyone at any time for any reason.
9. Shirts and shoes must be worn at all times while in the Skate Park.
10. Although the park is monitored by the attendant in the shop and/or a skate guard, it is impossible to monitor the flow, traffic and behavior of the participants in every area of the park at all times. Ultimate responsibility for the smooth flow of skateboards and rollerblades, and a safe environment, relies on strict adherence to the above rules by participants. Violation of these rules should immediately be reported to the attendant at the front desk and/or skate guard. Anyone caught violating these rules will be immediately ejected from the park.



PLEX\_0058



1 A. It does.

2 Q. And I pointed out the section  
3 previously where -- where it says, I have read the  
4 agreement; is that the first statement in the  
5 document, where it -- where it has any indication  
6 that the document should be read?

7 MR. DIXON: Object to the form.

8 THE WITNESS: It does not say read  
9 first. It does say in the form to read.

10 BY MR. PACELLA:

11 Q. When a customer comes in, does the --  
12 does the front desk person point out bullet point  
13 number two in this document, specifically go over  
14 this?

15 A. They do not.

16 Q. Okay. And no one -- so no -- from a  
17 policy or procedures standpoint, it doesn't mean it  
18 never happens, but from a procedure standpoint,  
19 there is not a requirement for an employee to  
20 explain about the risks involved?

21 A. No, sir.

22 Q. And specifically, those risks being  
23 dangers of serious bodily injury, including  
24 permanent disability, paralysis and death, correct?

25 A. Is that a question?

1 Q. Including those -- yes, no one at the  
2 Plex is instructed to specifically lay that --  
3 point that out on this form?

4 A. They are not instructed, correct.

5 Q. The front desk, is there a video  
6 camera?

7 A. Yes.

8 Q. So someone at the front desk -- someone  
9 at the front desk could be caught on video; is that  
10 correct?

11 A. The customer would be caught, correct,  
12 yes.

13 Q. And you don't have that video for  
14 Mr. Cantrell; is that correct?

15 A. That is correct, because of the time  
16 elapsed.

17 Q. Okay. And so you have a written  
18 procedure about the use of the video or maintenance  
19 of the video? Maintenance of all your video  
20 surveillance?

21 A. No, sir.

22 Q. So you do not have a procedure for  
23 that?

24 A. No, sir.

25 Q. So what's -- what's the typical

1 the skate park facilities, and it's a minor.

2 A. Uh-huh.

3 Q. I want to know about the policies and  
4 procedures specifically of explaining the dangers  
5 regarding skateboarding on the facility.

6 A. Okay, when a parent brings a child in  
7 to skateboard, or when they did bring them in, they  
8 would -- we would explain to them the policy on  
9 helmets, elbow and knee pads, because at the time  
10 -- and again, we changed some of our policies  
11 slightly, as far as requirements for full pads  
12 versus just a helmet.

13 When we tell the parents, you are --  
14 children aged 10 -- I think it's -- we started out  
15 at 12. If they were 12 or below, they needed to  
16 have a helmet, elbow pads and knee pads, due to the  
17 fact that they were going to be falling. If they  
18 were older than 12, they were only required to wear  
19 a helmet.

20 Q. Okay. And when would this conversation  
21 take place?

22 A. At the front desk.

23 Q. And when the minor child took the form  
24 home and got it signed and brought it in, how did  
25 they convey that to the parent?

1 correct. And then also, we would inform them that  
2 we do have -- we do have training that we can offer  
3 them to our -- a two-hour session, and we let them  
4 know how much that is. And it's either on a  
5 private or small group training, to where they can  
6 come in, if they elect to get trained, to do it on  
7 a Saturday morning.

8 Q. Okay. And you would inform them if  
9 they were -- if they were having struggles using  
10 the facilities. Is that what you are telling me?

11 A. No, not just because of that. We also  
12 let them know, hey, if you want to learn advanced  
13 skills or get better training, we do ask them --  
14 you know, we have parents ask, well, he wants to  
15 learn how to skate, or do you have training classes  
16 or -- we tell them yes.

17 And we will -- the way we explain it,  
18 if they are first-time skateboarders, we can take  
19 them from balancing on the boards to starting down  
20 the ramps.

21 Q. Okay.

22 A. And we offer that to them to let them  
23 know that we have that, to help them grow as a  
24 skateboarder.

25 Q. And you tell that to the parents?

# Exhibit C

1 Q. What do you do with your back foot?

2 A. You slide it to the -- right behind the  
3 back truck, like right in the middle of it, to  
4 where you can have enough weight on the back to  
5 keep the board underneath you. Whenever you put  
6 your foot there, you just make sure that you have  
7 control over it.

8 Q. How did you learn to do a drop-in?

9 A. Tried it one time, didn't fall and  
10 break anything.

11 Q. How many times had you done -- before  
12 the time where you fell and broke your ankle, how  
13 many times had you successfully done a drop-in?

14 A. In my life?

15 Q. Yes.

16 A. Probably four or five.

17 Q. Would that -- sorry, I didn't mean to  
18 stop you.

19 A. Maybe six, but that's probably about  
20 it.

21 Q. Were those all at Plex Indoor Sports?

22 A. No, no.

23 Q. Where were they?

24 A. They were around Georgia and down where  
25 I -- when I first learned how to do it, it was when

1     skateboarding, there was a potential you could  
2     fall?

3             A.     Fall and get a bruise, not fall and  
4     bust my leg into 40 pieces.

5             Q.     Not trying to put words in your mouth,  
6     but I wanted to make sure you did know that you  
7     could fall while skateboarding.

8             A.     Okay.

9             Q.     Have you ever fallen while  
10    skateboarding?

11            A.     Not like that.

12            Q.     Have you ever fallen?

13            A.     Yes.

14            Q.     Have you ever gotten a cut?

15            A.     I've had scrapes.

16            Q.     Have you ever landed on your knee and  
17    scratched it up?

18            A.     Yes.

19            Q.     So you knew that you could be injured  
20    while skateboarding?

21            A.     Yes. I knew I could get hurt. I  
22    didn't know I could get injured. There's a  
23    difference between knowing that you are going to  
24    get hurt and knowing you are going to mess the rest  
25    of your life up, so --

1 the side and place the bone and the cartilage into  
2 my leg and attach my ankle back. And basically,  
3 just cleaning it out and repositioning it, the  
4 screws and the pins and stuff.

5 Q. That's the last surgery that you had,  
6 that you recall?

7 A. Yes.

8 Q. How have you recovered since then?  
9 Tell me about your current condition.

10 A. I'm day-to-day, pretty much. Don't  
11 know whether the -- it's day-to-day. I mean, I  
12 have my good days, and I have a lot of the bad  
13 days, but it's -- like when it's raining, it will  
14 kill me, and when it's sunny, it's -- I mean, it's  
15 in between, but --

16 Q. And not to make this more difficult  
17 than it has to be, but -- when you describe this,  
18 are you talking about just pain?

19 A. Yes.

20 Q. So on certain days, it's more painful  
21 than others?

22 A. It's a lot worse.

23 Q. What sort of physical limitations do  
24 you have, in terms of what you can do and can't do?

25 A. I can -- I can barely walk. I can't



1 run anymore. I can't take any hard steps. I have  
2 a hard time walking up hills or stairs or anything.

3 Q. When is the last time you saw  
4 Dr. McBride?

5 A. This month.

6 Q. Sir?

7 A. I think it was this month.

8 Q. What was your -- why did you go see  
9 him?

10 A. It was a follow-up. They just wanted  
11 to take x-rays, and make sure that everything was  
12 still fine with the surgery, because of the -- like  
13 I was having really bad pain in it again. I could  
14 barely walk.

15 Q. I'm not sure I've seen those records  
16 yet, if that's the case, if you had something that  
17 recent. So can you tell me, based on that visit,  
18 your understanding of what your options are going  
19 forward, what sort of treatment he's advising for  
20 you?

21 A. Nothing. Pretty much he -- he told me  
22 that they can go back in and clean it out and check  
23 it and make sure the -- because basically, he told  
24 me I cannot have an ankle replacement, that I will  
25 have to get redone in -- I can get it redone in

1 half a year, six months, or I can have a fusion  
2 done and get it replaced every year. It's just  
3 something I don't want to go through.

4 Q. Is he -- he's giving you those two  
5 options --

6 A. Yes.

7 Q. -- for you? Is he making a  
8 recommendation of one over the other?

9 A. Just going to be -- I mean, it can be a  
10 miss or it can help. He said it's 50/50.  
11 Basically, it's just -- if I do the fusion, I lose  
12 the ability to even turn my ankle or move it, the  
13 little bit of movement I have. If I get the ankle  
14 replacement done, I just have to keep going back  
15 and going back and going back. I just don't want  
16 to do it.

17 Q. Based on that, I'm assuming you don't  
18 have a decision about what you are going to do, in  
19 terms of your future treatment?

20 A. No.

21 Q. Is that correct?

22 A. I don't have no idea.

23 Q. Are you seeing any other doctors right  
24 now for this problem?

25 A. Not right now.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-5356

JEREMY CANTRELL,

Plaintiff,

vs.

PLEX INDOOR SPORTS, LLC,

Defendant.

RICHLAND COUNTY  
FILED  
2013 DEC 23 PM 2:54  
JEANETTE W. McBRIDE  
CLERK, P. & G.S.

**PLAINTIFF'S MOTION TO ALTER OR AMEND  
PURSUANT TO RULE 59(e)**

On December 11, 2013, this Court issued an Order granting Defendant's Motion for Summary Judgment, holding that the Defendant owed Plaintiff, a fifteen year old boy, no duty to warn of the dangers of skateboarding. By making its ruling, this Court failed to acknowledge that Plaintiff's argument was that skateboarding in the advanced bowl created for advanced skaters required Defendant to effectively warn the Plaintiff of the dangers of using the advanced bowl and not skateboarding only. In this regard, Plaintiff moves for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

Here, Defendant knew of the danger that "activities at the PLEX complex involve risks and dangers of serious bodily injury, including permanent disability, paralysis and death." (Exhibit 2 to Davis Depo.) Defendant also knew that the premises should only be used by qualified individuals and sought that representation from a minor's parents. (Exhibit 2 to Davis Depo.) Here, Defendant made no warnings to Plaintiff other than to tell him he needed to sign the Plex Indoor Sports Individual Player Release and Waiver Form and did not ensure that Plaintiff, a minor child, actually read the form or had his parent or legal guarding form. This

failure then required these small print warnings to be presented to Plaintiff, a 15 year old child, in a manner that he could understand before assuming any risk associated with skating in the advanced bowl. Moreover, Defendant, by not securing an affirmative representation from the parent or legal guardian of Plaintiff that Plaintiff was qualified, failed to ensure that Plaintiff had the requisite skill to safely use the advanced skating bowl.

In a case where a minor hockey player was injured in a hockey game, the Pennsylvania Superior Court upheld a lower court's ruling that the minor was incapable of contributory negligence. The decision also supports the concept that minors require greater warnings of the risk of injury when participating in a sport. Here the Court explained, "we find no evidence in the record that portrays Brad as a young boy who possessed of superior intelligence thereby giving him exceptional perceptions of the risks and dangers of hockey." Berman by Berman v. Philadelphia Bd. of Educ., 310 Pa. Super. 153, 161, 456 A.2d 245, 549-50 (1983). Likewise, here there is no evidence that demonstrates Plaintiff, a 15 year old minor, was aware of the risks of serious bodily injury, thereby requiring Defendant to warn Plaintiff and his parents of such risks.

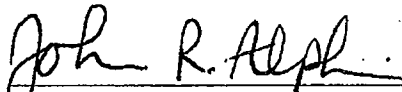
Additionally, this Court failed to address whether Defendant owed Plaintiff a duty to supervise him because it failed to secure consent from Plaintiff's parents for Plaintiff to skate in the skate park. In Bradley v. Welch, 94 Ark. App. 171, 179, 228 S.W.3d 559, 565 (2006), the Arkansas Court of Appeals explained that a landowner or occupier "owes a duty of reasonable care to provide supervision to the child if the defendant has been entrusted with and accepted responsibility for supervising the child." Likewise, Michigan courts apply the same rule that "that defendant landowners have an affirmative duty to supervise minor guests only when a minor guest is *unaccompanied* by a parent and the defendant has voluntarily assumed a duty to supervise the child." Wheeler v. Central Michigan Inns, Inc., 292 Mich. App. 300, 306, 807

N.W.2d 909, 913 (Mich. App. 2011)(citations omitted). Here, absent a waiver and permission from Plaintiff's parent, Defendant become a *de facto* supervisor of Plaintiff and owed a duty to protect Plaintiff from his own bad judgment. Like, Defendant failed to properly train Plaintiff to use the facilities and intervene when it knew Plaintiff was attempting activities beyond his skill set.

Accordingly, Plaintiff respectfully requests this Court alter or amend its judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and find that Defendant owed Plaintiff a duty to warn of the significant risks and dangers involved in using the advanced skate bowl, where Defendant failed to ascertain Plaintiff's experience.

RESPECTFULLY SUBMITTED, this 23rd day of December, 2013.

Strom Law Firm, LLC



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Attorneys for Plaintiff

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Civil Action No. 2012-CP-40-05356

JEREMY CANTRELL,

Plaintiff,

v.

PLEX INDOOR SPORTS, LLC. ,

Defendant.

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S RULE 59(e) MOTION**

This matter is before the Court on Plaintiff's Motion to Alter or Amend this Court's December 11, 2013, order ("Order") granting summary judgment to Defendant. Summary judgment was granted on the basis that Defendant owed no duty to Plaintiff who was injured while engaged in skateboarding activities at Defendant's indoor sports recreational facility located in Columbia, South Carolina ("Plex"). For the foregoing reasons, the Court properly considered the arguments of Plaintiff and there is no basis for reconsidering the Order or altering or amending the Order in any way.

"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). In his Rule 50(e) motion, Plaintiff contends that the Court "failed to acknowledge that Plaintiff's argument was that skateboarding in the advanced bowl created for advanced skaters required Defendant to effectively warn the Plaintiff of the dangers of using the advanced bowl and not skateboarding only." Plaintiff's Motion to Alter or Amend, p. 1. Plaintiff's requested relief, however, is without merit for several reasons.

First, Plaintiff has not produced or cited to any evidence in the record that the skatepark bowl was an "advanced bowl created for advanced skaters." Plaintiff's wholly unsupported characterization of the skatepark as "advanced" is not a basis for deviating from the established law in this state that a defendant has no duty to warn a participant in a sporting activity of the dangers inherent in that sport. Dyer v. Moss, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985) ("plaintiff cannot defeat the defendant's motion by relying upon the mere allegations of his complaint but must disclose the facts he intends to rely on by affidavit or other proof.")

Second, Plaintiff argues that Defendant "made no warning to Plaintiff other than to tell him he needed to sign the Plex Indoor Sports Individual Player Release and Waiver Form." Plaintiff's Motion, p. 1. Notwithstanding the fact that Defendant owed Plaintiff no duty to warn in the first place, Plaintiff fails to recognize or acknowledge that the waiver form was, in fact, just such a warning. South Carolina has never required a defendant to affirmatively ensure that a plaintiff has actually read a written instrument as a prerequisite of enforceability. See e.g., Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981) ("One who is capable of reading and understanding but fails to read a contract before signing is bound by the terms thereof."). In this case, the waiver explicitly warned Plaintiff of the risks associated with the use of Plex facilities and the fact that Plaintiff chose not to read or acknowledge that express written (and signed) warning, does not alter the general rule in South Carolina that Plex owed no duty to protect Plaintiff from the inherent risks associated with skateboarding.

Third, Plaintiff again attempts to circumvent the general rule on sporting activities by asserting Plaintiff's minority status at the time of his injury. In so doing, Plaintiff fails to cite to any South Carolina precedent for this argument and, instead, relies on several cases from other states that do not stand for the proposition for which they were cited or are based on state law

that is contrary to South Carolina law. Plaintiff cites Berman by Berman v. Philadelphia Bd. Of Educ., 456 A.2d 545 (P.A. 1983) for the proposition that minors require greater warnings of the risk of injury when participating in a sport. In that case, the question before the court was whether an 11 year-old could be barred from recovery on the basis of contributory negligence in assuming the risk of playing hockey. Under the applicable law, the question of a minor's contributory negligence was based on certain age guidelines and criteria.

A determination of the negligence of a minor defendant begins with the application of three presumption: (1) minors under the age of seven years are conclusively presumed incapable of negligence; (2) minors over the age of fourteen years are presumptively capable of negligence; (3) minors between the ages of seven and fourteen years are presumed incapable of negligence; however, such a presumption is rebuttable and grows weaker as the fourteenth year grows closer.

Berman, 456 A.2d at 459. The court found that the 11 year-old plaintiff was presumptively incapable of negligence and that this presumption was not rebutted by the records. This case is inapposite for several reasons. First, the ruling in that case regarding the rebuttable presumption that a minor of 11 was incapable of negligence applies a standard that has been rejected in South Carolina. While South Carolina had formerly applied a similar tiered standard for determining the negligence of a minor, that is no longer the law in this state. In McCormick v. Campbell by Campbell, 285 S.C. 272, 329 S.E.2d 752 (1985), the court recognized that South Carolina had "abrogated arbitrary age presumptions in determining a minor's negligence or contributory negligence holding the behavior of minors under the age of fourteen should be judged by the conduct expected of a minor of like age under like circumstances." Id., 285 S.C. at 273, 329 S.E.2d 752. Secondly, the outcome in this case would not be any different even under the law as applied in Berman. At the time of his injury, Plaintiff was 15. Thus, under Berman and McCormick, he was presumptively capable of negligence and there would be no greater



requirement for a warning as argued by Plaintiff. More importantly, under South Carolina law, Plaintiff's actions should be governed by an adult standard of care. See McCormick, 285 S.C. at 273-74, 329 S.E.2d at 753 ("since both parties were fourteen years old or above at the time of the accident, the adult standard of care should have been charged.").

Plaintiff also argues that the Court failed to address whether Defendant owed a duty to supervise because "it failed to secure consent from Plaintiff's parents for Plaintiff to skate in the skate part." Plaintiff's Motion, p. 2. Defendant respectfully contends that the Court did consider and properly rejected this argument. The Court, in the Order, held that Defendant owed no duty to protect Plaintiff from the inherent dangers of the sport; this certainly encompasses Plaintiff's argued duty to supervise.

As the Court properly held, no duty exists under the doctrine of implied assumption of risk. See Order, p. 2 (citing Hurst v. E. Coast Hockey League, Inc., 371 S.C. 33, 637 S.E.2d 560 (2006)). Plaintiff again seeks an order from the Court deviating from this established precedent. In support of his argument, Plaintiff cites to Bradley v. Welch, 228 S.W.3d 559 (Ark. Ct. App. 2006) and Wheeler v. Central Michigan Inns, Inc., 807 N.W.2d 909 (MI. Ct. App. 2011). Plaintiff argues that Bradley stands for the proposition that a defendant owes a duty to "provide supervision to a child if the defendant has been entrusted with and accepted responsibility for supervising the child." Plaintiff's Motion, p. 2. However, as stated by the court Bradley, "[t]his envisions an actual transference of supervisory responsibility from one parent to another." Bradley, 807 S.W.3d at 565. Assuming without conceding that this rule is even applicable in South Carolina, such a transference requires a "conscious and deliberate shifting of responsibility from the parent to the purported caretaker." Id. In this case, there is no evidence whatsoever of any conscious and deliberate shifting of responsibility from Plaintiff's parents to Defendant. On

the contrary, Defendant expressly disclaimed any responsibility for the supervision and care of Plaintiff under the terms of the waiver form. The case of Wheeler is similarly inapposite. In that case, the court actually held that the defendant was not responsible for the drowning death of a five year-old where the defendant "did nothing to indicate that it had voluntarily assumed a duty to protect [the minor]." Wheeler, 807 N.W.2d at 913.

Plaintiff contends that failure to obtain parental permission for him to use the facilities at Plex, made Defendant the "*de facto*" supervisor of Plaintiff and owed a duty to protect Plaintiff from his own bad judgment. As correctly held by this Court in the Order, there is no such duty under South Carolina law. As our courts have held, there is no general duty to control the conduct of another or to warn a third person of potential danger. See Madison v. Babcock, Inc., 371, S.C. 123, 136, 638 S.E.2d 650, 656 (2006). This general rule has a number of exceptions: (1) where the defendant has a special relationship with the victim or injurer; (2) where the defendant voluntarily undertakes a duty; (3) where the defendant negligently or intentionally creates the risk; and (4) where a statute imposes a duty. Id. Plaintiff has failed to cite to any controlling or even persuasive authority for his contention that the Court should deviate from this established law. In this case there is no evidence of any special relationship, no evidence of any voluntary undertaking, no evidence that Defendant created the risk, and no statute imposing a duty under these facts.

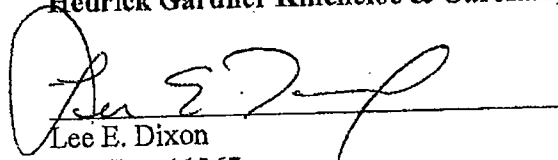
As set forth above, and in Defendant's submissions and arguments in support of summary judgment, Plaintiff was capable of and admitted to understanding that there was an inherent risk of falling associated with the activity of skateboarding. The established law in South Carolina, under the doctrine of implied assumption of risk, is that a defendant owes no duty to protect or warn a participant in such an activity of the inherent risks of the activity. At the time of his

injury, Plaintiff was 15 years old and as capable of negligence and comparative negligence as any adult. As such, there is no basis or support for altering the application of this doctrine to Plaintiff.

The Court, in its Order, fully considered Plaintiff's arguments and properly rejected them in favor of the established precedent and case law in South Carolina. The undisputed facts of this case are that Plaintiff came to Plex for the sole purpose of skateboarding and, while doing so, he fell and sustained an injury. Under the doctrine of primary implied assumption of the risk, Defendant owed no duty to protect Plaintiff from those risks that are inherent in skateboarding. For these reasons, Defendant respectfully requests this Court deny Plaintiff's Motion to Alter or Amend.

Respectfully submitted,

**Hedrick Gardner Kincheloe & Garofalo, LLP**



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Attorneys for Defendant

Columbia, SC  
December 30, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-5356

RICHLAND COUNTY  
FILED  
2014 FEB 11 AM 11:32  
JEANETTE W. McBRIDE  
C.C.P. & C.S.

Plex Indoor Sports, LLC,

Respondent,

v.

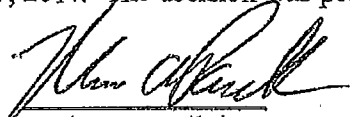
Jeremy Cantrell,

Appellant.

NOTICE OF APPEAL

Jeremy Cantrell appeals the order of the Honorable Allison Renee Lee dated December 10, 2013, granting Defendant's (Respondent's) Motion for Summary Judgment. Appellant received written notice of entry of this order on December 11, 2013, and timely filed his Motion for Reconsideration pursuant to Rule 59(e), SCRCP. Appellant received the Court's decision, denying his timely filed Rule 59(e) motion on January 17, 2014. The decision was postmarked on January 14, 2014. The respective orders are attached.

February 11, 2014



Mario A. Pacella  
STROM LAW FIRM, LLC  
2110 N. Beltline Blvd.  
Columbia, South Carolina 29204  
(803)252-4800  
*Attorney for Appellant*

Other Counsel of Record:  
Lee Dixon  
Hedrick Gardner Kincheloe & Garofalo, LLP  
Post Office Box 11267  
Columbia SC, 29211  
*Attorney for Respondent*  
(803) 727-1200

RECEIVED

FEB 11 2014

SC Court of Appeals

## FORM 4

## JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2012CP4005356

Jeremy Cantrell

Plex Indoor Sports LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

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

## DISPOSITION TYPE (CHECK ONE)

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

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

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

## ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

## INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date 12/10/2013

## For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Dec 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Mario Anthony Patella

Leo Edward Dixon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Jeremy Cantrell,

Plaintiff,

vs.

Plex Indoor Sports, LLC.,

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-05356

ORDER

RICHLAND COUNTY  
FILED  
2013 DEC 11 AM 11:52  
JERAMIE W. GOS.  
C.C.P. & G.S.

This matter came before the Court on September 4, 2013 at a hearing on Defendant's Motion for Summary Judgment. Present at the hearing were Mario Pacella, Esquire, counsel for Plaintiff, and Lee Dixon, Esquire, counsel for Defendant. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendant's Motion for Summary Judgment is **GRANTED**.

#### FACTS

This matter arises from an ankle injury Plaintiff suffered on July 30, 2009. On July 28, 2009, Plaintiff visited Plex Indoor Sports, LLC ("Plex"). Plaintiff was fifteen years old at the time. At this visit, Plaintiff was provided a copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" ("release"). Plaintiff signed the release, but he did not read it. On July 30, 2009, Plaintiff again visited Plex for the purpose of skateboarding at the indoor skate park. While at the skate park, Plaintiff fell from his skateboard and injured his ankle.

On August 7, 2012, Plaintiff filed a complaint against Defendant. Defendant answered on October 11, 2012. On July 18, 2013, Plaintiff filed a First Amended Complaint alleging negligence and premises liability against Defendant. On August 28, 2013, Defendant filed a motion for summary judgment.

#### STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRCP. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the

and  
#1

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non-moving party is only required to submit a mere scintilla of evidence." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). "A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine." *Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). If a legal duty is established, whether the defendant breached that duty is a question of fact. *Singletary v. S.C. Dept. of Educ.*, 316 S.C. 153, 157, 447 S.E.2d 231, 233 (Cl. App. 1994).

### DISCUSSION

Defendant makes several arguments as to why summary judgment should be granted. First, Defendant argues that it was under no duty to protect Plaintiff from the inherent dangers of skateboarding. Second, Defendant argues there is no evidence of any breach proximately causing Plaintiff's injury. Third, Defendant argues Plaintiff executed a waiver of liability. Plaintiff argues that summary judgment is not appropriate because Defendant owed Plaintiff a duty to warn, Defendant undertook a heightened duty by failing to secure parental permission for Plaintiff to use its facility, and Defendant's breach proximately caused Plaintiff's injury.

In order to prevail in a cause of action for negligence, Plaintiff must prove: (1) a duty of care owed by the defendant; (2) a breach of that duty by a negligent act or omission; (3) the breach was the actual and proximate cause of the injury; and (4) plaintiff suffered damages or an injury. See *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). The same elements are required to plead and prove negligence in a premises liability action. See *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Cl. App. 2008). In premises liability actions where the Plaintiff is a business invitee, the business generally owes the visitor the duty of exercising reasonable or ordinary care for his safety and must warn only of latent or hidden dangers. See *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Cl. App. 2000).

In the present case, the elements of negligence are not met because Defendant did not owe a duty of care to Plaintiff. In the context of sporting activities, a defendant has no duty to protect an invitee from the inherent dangers of the sport because of the doctrine of primary implied assumption of risk. See, e.g., *Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 38, 637 S.E.2d 560, 562-63 (2006) (doctrine applied to spectator hit by hockey puck). "Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity." *Davenport v. Cotton Hope Plantation Horizontal Prop.*

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*Regime*, 333 S.C. 71, 81, 508 S.E.2d 565, 570 (1998). The doctrine of primary implied assumption of risk is not a defense, but rather "goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff." *Id.* Absent a legally recognized duty, the defendant in a negligence action is entitled to a judgment as matter of law. *Hurst*, 371 S.C. at 37, 637 S.E.2d at 562. The doctrine was applied in the sports context in *Hurst v. East Coast Hockey League, Inc.* when the South Carolina Supreme Court held that "a flying puck is inherent to the game of hockey and is also a *common, expected, and frequent risk* of hockey" and that the plaintiff assumed the risks inherent in the sport of hockey when he attended a hockey game. *Id.* at 38, 637 S.E.2d at 562-63 (emphasis added). Since *Hurst*, the doctrine has been extended to casual games and games played by minors. In *Cole v. Boy Scouts of America*, the South Carolina Supreme Court applied the doctrine to a pick-up game of softball played on a camping trip. See *Cole v. Boy Scouts of Am.*, 397 S.C. 247, 252-53, 725 S.E.2d 476, 479 (2011). Additionally, the federal district court, applying South Carolina law, held that the doctrine applied to minors, ages nine and eleven, playing golf. See *Rudzinski v. BB*, 2010 WL 2723105, at \*1, \*4 (D.S.C. 2010).

The undisputed facts of this case are that Plaintiff came to Plex for the sole purpose of skateboarding and, while doing so, he fell and sustained an injury. Falling is an inherent, common, expected, and frequent risk of skateboarding. The fact that Plaintiff's injuries were more severe than he expected is irrelevant. The doctrine of primary implied assumption of risk leads to the determination that any duties Defendant had did not encompass the inherent risk Plaintiff encountered in skateboarding. Plaintiff has admitted that his fall was not caused by any defect in the skate park, and the only allegations in the Complaint related to any danger or hazard refer solely to the dangers of skateboarding. Although Plaintiff also argues that Defendant should have assessed his skill before allowing him to skate, the inherent risks associated with skateboarding exist regardless of skill level. Defendant has no duty to assess skill because of the inherent risks which are impliedly assumed when a person participates in that activity. Under South Carolina law, Defendant was under no duty to protect Plaintiff from the inherent risks associated with skateboarding.

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#3

Plaintiff also argues that the release he signed imposed a duty upon Defendant to warn. The release Plaintiff signed purports to require a parent or legal guardian's signature if the participant is under the age of eighteen. It is undisputed that Plaintiff's parents did not sign the



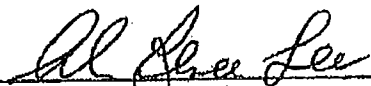
release. Defendant argues that it is error for Plaintiff to imply that this waiver imposed a duty upon Defendant to warn, and this Court agrees. The duty to warn under premises liability law only exists for latent or hidden dangers created by the premises itself. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000). It does not extend to the duty to warn about the activity. There is no law in this state establishing such a requirement.

Therefore, Defendant owed no duty to Plaintiff in a cause of action for negligence or premises liability. Because Defendant owed no duty to the Plaintiff and therefore cannot be held liable for Plaintiff's actions, Defendant's other arguments for granting its motion for summary judgment need not be considered. Additionally, Plaintiff has provided no evidence of a latent or hidden danger at the skate park. Therefore, the premises liability cause of action cannot be maintained.

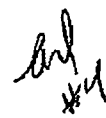
**ORDER**

For the reasons stated above, it is therefore **ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED**.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
December 10, 2013



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JEREMY CANTRELL

Plaintiff,

vs.

PLEX INDOOR SPORTS, LLC

Defendant.

IN THE COURT OF COMMON PLEAS  
Fifth JUDICIAL CIRCUIT

CASE NO.: 2012-CP-40-5356

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

**Plaintiff's Attorney:**

John R. Alphin, Bar No. 72583

**Address:**

Strom Law Firm, 2110 Beltline Blvd.

Columbia, SC 29204

Phone: 803-252-4800 Fax 803-252-4801

E-mail: jalphin@stromlaw.com Other:

**Defendant's Attorney:**

Lee E. Dixon, Bar No. \_\_\_\_\_

**Address:**

Hedrick, Gardner Kincheloe & Garofalo, P.C.

PO Box 11267, Columbia, SC 29114

Phone: 803-727-1200 Fax 803-727-1259

E-mail: ldixon@hedrickgardner.com Other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_

Estimated Time Needed: \_\_\_\_\_

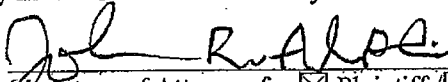
Court Reporter Needed: ☐ YES / ☐ NO

**SECTION II: Motion/Order Type**

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

12/23/13

Date submitted

**SECTION III: Motion Fee**

☒ PAID - AMOUNT: \$ \_\_\_\_\_

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

☐ Other: \_\_\_\_\_

**JUDGE'S SECTION**

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \$ \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

FEB 24 2014

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

10 Court of Appeals

Allison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-5356

RICHLAND COUNTY  
FILED  
2014 FEB 24 PM 3:43  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

Jeremy Cantrell,

Appellant,

v.

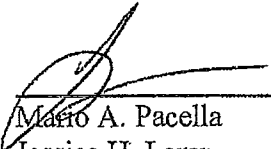
Plex Indoor Sports, LLC,

Respondent.

AMENDED NOTICE OF APPEAL

Appellant Jeremy Cantrell appeals the order of the Honorable Alison Renee Lee dated December 11, 2013, granting Defendant's (Respondent's) Motion for Summary Judgment. Appellant received written notice of entry of this order on or after December 11, 2013, and timely filed his Motion for Reconsideration pursuant to Rule 59(e), SCRCP. Appellant received the Court's decision date-stamped January 3, 2014, denying his timely filed Rule 59(e) motion on January 17, 2014. The decision was postmarked on January 14, 2014. The respective orders are attached.

February 24, 2014

  
Mario A. Pacella  
Jessica H. Lerer  
STROM LAW FIRM, LLC  
2110 N. Beltline Blvd.  
Columbia, South Carolina 29204  
(803)252-4800  
*Attorney for Appellant*

Other Counsel of Record:  
Lee Dixon  
Hedrick Gardner Kincheloe & Garofalo, LLP  
Post Office Box 11267  
Columbia SC, 29211  
(803) 727-1200  
*Attorney for Respondent*

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

## JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4005356

Jeremy Cantrell

Plex Indoor Sports LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

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

## DISPOSITION TYPE (CHECK ONE)

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

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

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

## ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

## INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge Alfred Lee Judge Code \_\_\_\_\_ Date 12/10/2013

## For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Dec, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Mario Anthony Pacella

Lee Edward Dixon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Jeremy Cantrell,

Plaintiff,

vs.

Plex Indoor Sports, LLC.,

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-05356

SC Court of Appeals

ORDER

RECEIVED  
FEB 11 2013  
RICHLAND COUNTY  
FILED  
2013 DEC 11 AM 11:52  
JEANETTE W. McBRIDE  
C.C.P. & C.S.

This matter came before the Court on September 4, 2013 at a hearing on Defendant's Motion for Summary Judgment. Present at the hearing were Mario Pacella, Esquire, counsel for Plaintiff, and Lee Dixon, Esquire, counsel for Defendant. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendant's Motion for Summary Judgment is **GRANTED**.

#### FACTS

This matter arises from an ankle injury Plaintiff suffered on July 30, 2009. On July 28, 2009, Plaintiff visited Plex Indoor Sports, LLC ("Plex"). Plaintiff was fifteen years old at the time. At this visit, Plaintiff was provided a copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" ("release"). Plaintiff signed the release, but he did not read it. On July 30, 2009, Plaintiff again visited Plex for the purpose of skateboarding at the indoor skate park. While at the skate park, Plaintiff fell from his skateboard and injured his ankle.

On August 7, 2012, Plaintiff filed a complaint against Defendant. Defendant answered on October 11, 2012. On July 18, 2013, Plaintiff filed a First Amended Complaint alleging negligence and premises liability against Defendant. On August 28, 2013, Defendant filed a motion for summary judgment.

#### STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRCP. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the

SCANNED

non-moving party is only required to submit a mere scintilla of evidence.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). “A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine.” *Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). If a legal duty is established, whether the defendant breached that duty is a question of fact. *Singletary v. S.C. Dept. of Educ.*, 316 S.C. 153, 157, 447 S.E.2d 231, 233 (Ct. App. 1994).

### DISCUSSION

Defendant makes several arguments as to why summary judgment should be granted. First, Defendant argues that it was under no duty to protect Plaintiff from the inherent dangers of skateboarding. Second, Defendant argues there is no evidence of any breach proximately causing Plaintiff’s injury. Third, Defendant argues Plaintiff executed a waiver of liability. Plaintiff argues that summary judgment is not appropriate because Defendant owed Plaintiff a duty to warn, Defendant undertook a heightened duty by failing to secure parental permission for Plaintiff to use its facility, and Defendant’s breach proximately caused Plaintiff’s injury.

In order to prevail in a cause of action for negligence, Plaintiff must prove: (1) a duty of care owed by the defendant; (2) a breach of that duty by a negligent act or omission; (3) the breach was the actual and proximate cause of the injury; and (4) plaintiff suffered damages or an injury. *See Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). The same elements are required to plead and prove negligence in a premises liability action. *See Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). In premises liability actions where the Plaintiff is a business invitee, the business generally owes the visitor the duty of exercising reasonable or ordinary care for his safety and must warn only of latent or hidden dangers. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000).

In the present case, the elements of negligence are not met because Defendant did not owe a duty of care to Plaintiff. In the context of sporting activities, a defendant has no duty to protect an invitee from the inherent dangers of the sport because of the doctrine of primary implied assumption of risk. *See, e.g., Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 38, 637 S.E.2d 560, 562-63 (2006) (doctrine applied to spectator hit by hockey puck). “Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity.” *Davenport v. Cotton Hope Plantation Horizontal Prop.*

*Regime*, 333 S.C. 71, 81, 508 S.E.2d 565, 570 (1998). The doctrine of primary implied assumption of risk is not a defense, but rather "goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff." *Id.* Absent a legally recognized duty, the defendant in a negligence action is entitled to a judgment as matter of law. *Hurst*, 371 S.C. at 37, 637 S.E.2d at 562. The doctrine was applied in the sports context in *Hurst v. East Coast Hockey League, Inc.* when the South Carolina Supreme Court held that "a flying puck is inherent to the game of hockey and is also a *common, expected, and frequent risk of hockey*" and that the plaintiff assumed the risks inherent in the sport of hockey when he attended a hockey game. *Id.* at 38, 637 S.E.2d at 562-63 (emphasis added). Since *Hurst*, the doctrine has been extended to casual games and games played by minors. In *Cole v. Boy Scouts of America*, the South Carolina Supreme Court applied the doctrine to a pick-up game of softball played on a camping trip. See *Cole v. Boy Scouts of Am.*, 397 S.C. 247, 252-53, 725 S.E.2d 476, 479 (2011). Additionally, the federal district court, applying South Carolina law, held that the doctrine applied to minors, ages nine and eleven, playing golf. See *Rudzinski v. BB*, 2010 WL 2723105, at \*1, \*4 (D.S.C. 2010).

The undisputed facts of this case are that Plaintiff came to Plex for the sole purpose of skateboarding and, while doing so, he fell and sustained an injury. Falling is an inherent, common, expected, and frequent risk of skateboarding. The fact that Plaintiff's injuries were more severe than he expected is irrelevant. The doctrine of primary implied assumption of risk leads to the determination that any duties Defendant had did not encompass the inherent risk Plaintiff encountered in skateboarding. Plaintiff has admitted that his fall was not caused by any defect in the skate park, and the only allegations in the Complaint related to any danger or hazard refer solely to the dangers of skateboarding. Although Plaintiff also argues that Defendant should have assessed his skill before allowing him to skate, the inherent risks associated with skateboarding exist regardless of skill level. Defendant has no duty to assess skill because of the inherent risks which are impliedly assumed when a person participates in that activity. Under South Carolina law, Defendant was under no duty to protect Plaintiff from the inherent risks associated with skateboarding.

Plaintiff also argues that the release he signed imposed a duty upon Defendant to warn. The release Plaintiff signed purports to require a parent or legal guardian's signature if the participant is under the age of eighteen. It is undisputed that Plaintiff's parents did not sign the

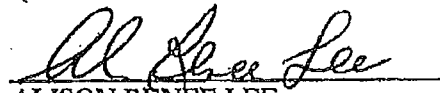
release. Defendant argues that it is error for Plaintiff to imply that this waiver imposed a duty upon Defendant to warn, and this Court agrees. The duty to warn under premises liability law only exists for latent or hidden dangers created by the premises itself. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000). It does not extend to the duty to warn about the activity. There is no law in this state establishing such a requirement.

Therefore, Defendant owed no duty to Plaintiff in a cause of action for negligence or premises liability. Because Defendant owed no duty to the Plaintiff and therefore cannot be held liable for Plaintiff's actions, Defendant's other arguments for granting its motion for summary judgment need not be considered. Additionally, Plaintiff has provided no evidence of a latent or hidden danger at the skate park. Therefore, the premises liability cause of action cannot be maintained.

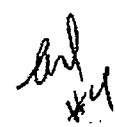
**ORDER**

For the reasons stated above, it is therefore **ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED**.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

Columbia, South Carolina  
December 10, 2013





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

CASE NUMBER: **2012CP4005356**

Jeremy Cantrell

Plex Indoor Sports LLC

FEB 9 2014

PLAINTIFF(S)

DEFENDANT(S)

Court of Appeals

Submitted by: \_\_\_\_\_

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

## DISPOSITION TYPE (CHECK ONE)

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

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

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

## ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

## INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

## For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 6 January 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Mario Anthony Pacella

Lee Edward Dixon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

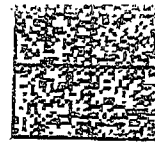
Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

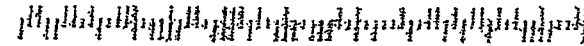
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IN THE COURT OF COMMON PLEAS  
FOR THE JUDICIAL CIRCUIT  
STATE OF SOUTH CAROLINA

JEREMY CANTRELL,

)

Plaintiff,

)

vs.

)

Case No. 2012-CP-400-5356

PLEX INDOOR SPORTS, LLC,

)

Defendant.

)

)

Deposition of:

KYLE BLANKENSHIP

Date:

April 10, 2013

Reported by:

Tania S. Koven

CSR No. 12377

1 Deposition of KYLE BLANKENSHIP, taken on behalf  
2 of the Defendant, before Tania S. Koven, a Certified  
3 Shorthand Reporter, commencing at the hour of  
4 11:10 a.m., Wednesday, April 10, 2013, at the Yucca  
5 Valley Community Center, 57090 Twentynine Palms Highway,  
6 Yucca Valley, California.

7

8 APPEARANCES:

9 FOR THE PLAINTIFF:

10 THE STROM LAW FIRM, LLC  
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15 FOR THE DEFENDANT:

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1 INDEX

2 Deposition of KYLE BLANKENSHIP

3 Taken on April 10, 2013

4

5 Examination by:

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6 Mr. Dixon

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7 Mr. Pacella

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10 Exhibits:

11 1 Plex Indoor Sports Individual Player

14

12 Release and Waiver Form

13

14

15 Information Requested:

16 (None)

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1 KYLE BLANKENSHIP,  
2 having been first duly sworn by the court reporter, was  
3 examined and testified as follows:  
4

5 EXAMINATION

6 BY MR. DIXON:

7 Q. Kyle, good afternoon.

8 A. Good afternoon, sir.

9 Q. My name is Lee Dixon. You and I have spoken  
10 once before on the telephone. I'm an attorney  
11 representing Plex Indoor Sports in a lawsuit that has  
12 been filed by Jeremy Cantrell. This is a lawsuit  
13 involving an injury to Jeremy that occurred on July 30,  
14 2009.

15 Are you familiar with this incident?

16 A. Yes.

17 Q. Could you do me a favor and spell your full  
18 name for the record, please.

19 A. K-y-l-e, B-l-a-n-k-e-n-s-h-i-p.

20 Q. Kyle, I understand you're currently in the  
21 military, correct?

22 A. Yes, I am.

23 Q. What is your rank and --

24 A. I'm a lance corporal. I'm a deployments clerk.

25 Q. And where are you currently stationed?

1 A. Twentynine Palms, California.

2 Q. And what is the mailing address for you there  
3 at Twentynine Palms?

4 A. It's Box 788200, Barracks 1608, Room 221,  
5 Twentynine Palms, California 92278.

6 Q. 2278. Okay. What is your date of birth?

7 A. December 1, 1989.

8 Q. Do you mind if I call you Kyle?

9 A. That's fine.

10 Q. Okay. And what is your current age?

11 A. 23.

12 Q. Is this your first deposition?

13 A. Yes, it is.

14 Q. Okay. I'm going to go through a couple quick  
15 ground rules for you, just to lay it out. This is a  
16 relatively informal process. There's a court reporter  
17 there who is responsible for taking a documentary  
18 transcript of everything that's said between the two of  
19 us. You and I are conducting this by a telephone so  
20 it's a little bit unusual from a typical deposition  
21 where we would be sitting face to face and could sort of  
22 understand each other a little better. For the purposes  
23 of the record, and especially because we are on the  
24 phone, I would appreciate it if, while you may  
25 understand the question I'm asking you and can

1 anticipate it, let me finish the question before you  
2 begin your answer.

3 Is that understood?

4 A. Yes.

5 Q. And I'll do the same for you, as well. It just  
6 makes a much clearer record. And particularly because  
7 we are on a telephone call it's particularly important.  
8 If you do not understand a question that I ask you,  
9 please ask me to rephrase it. If you -- I'm going to  
10 assume if you answer a question that you understood it  
11 the way I asked it.

12 Is that fair?

13 A. Yes, that's fair.

14 Q. Okay. At some point during the deposition --  
15 Jeremy's attorney is also on the line. He may have --  
16 he may desire to put an objection on the record. When  
17 he does you are still required to answer the question  
18 even though he is -- with that objection.

19 Do you understand?

20 A. Yes.

21 Q. I assume you don't have an attorney  
22 representing you in this matter; is that correct?

23 A. Yes.

24 Q. Jeremy is related to you by marriage, correct?

25 A. Yes.



1 Q. Tell me how that -- what's that relationship?

2 A. I personally don't really know him that much.  
3 I've met him a couple of times. More so just because  
4 his older sister which is married to my brother.

5 Q. That's Kimberly?

6 A. Yes.

7 Q. And your brother is Adam; is that correct?

8 A. Yes.

9 Q. And their last name is Chambers?

10 A. Yes.

11 Q. You and your brother have different last names.

12 Are you half-brothers? Steps?

13 A. We are half-brothers.

14 Q. And he and Kimberly still live in  
15 South Carolina, correct?

16 A. Yes, they do.

17 Q. When is the last time you saw either one of  
18 them?

19 A. The last time I saw them was December for  
20 Christmas.

21 Q. Of this -- of 2012?

22 A. Yes.

23 Q. Where did you see them?

24 A. In South Carolina.

25 Q. You flew -- was that at their house?

1 A. Yes.

2 Q. You have any other family in South Carolina?

3 A. No, I don't.

4 Q. I understand that you have some experience  
5 yourself with skateboarding; is that correct?

6 A. Yes, I do.

7 Q. Were you sponsored?

8 A. No, I wasn't.

9 Q. You were not. Okay. What is your -- what kind  
10 of experience did you have as a skateboarder?

11 A. At that point I had been skating for about  
12 seven years.

13 Q. Seven years straight? Off and on?

14 A. Seven years straight.

15 Q. Did you compete?

16 A. Not that much. A couple -- like little basic  
17 tournaments, if you will. That's about it though.

18 Q. Did you consider yourself an advanced  
19 skateboarder -- at the time of this accident, and  
20 advanced skateboarder or intermediate?

21 A. Advanced.

22 Q. When did you first meet Jeremy?

23 A. I first met him when I went -- I was with my  
24 brother and his wife and we pretty much drove there on  
25 vacation. That's the first time I actually initially

1 met them, along with his whole family.

2 Q. During this trip on vacation -- this was right  
3 around the same time period when this accident occurred;  
4 is that correct?

5 A. Yes.

6 Q. So at the point where you -- the accident  
7 occurred that was sort of your -- not that day, but that  
8 time span was the first time you ever met Jeremy?

9 A. Yes.

10 Q. Okay. Do you know how old Jeremy was at the  
11 time?

12 A. I believe he was around 15 or 16.

13 Q. When you first saw him could you describe for  
14 me what he looked like, appearance overall?

15 A. He was a little short, kind of chubby  
16 skateboarder. He had kind of shaggy hair a little bit.  
17 It was not that long, but it was probably about 4 inches  
18 long.

19 Q. Would you say he looked 15 or 16 or did he look  
20 older than his age?

21 A. He looked about 15 or 16. He looked his age.

22 Q. Okay. You said you were out here for vacation.  
23 How long was that vacation?

24 A. We were there for about two weeks.

25 Q. Did you stay with Jeremy and his family?

1           A.    For a couple days and then we were in the motel  
2   the rest of it.

3           Q.    And have -- after you left from that trip, did  
4   you ever see Jeremy again?

5           A.    Yes, I did.

6           Q.    When did you see him?

7           A.    That was for Christmas when we went back to --  
8   when I saw them for Christmas.

9           Q.    This last year?

10          A.    Uh-huh, yes.

11          Q.    In 2012?

12          A.    Yes.

13          Q.    Just so -- if I understand you correctly, this  
14   accident occurred in July of 2009. After you left the  
15   only other time you've seen Jeremy since then is in  
16   2012?

17          A.    Yes.

18          Q.    You keep in contact with him?

19          A.    No, I don't.

20          Q.    He doesn't call?

21          A.    No.

22          Q.    You friends on Facebook?

23          A.    No.

24          Q.    And I do want to let you know -- and we will  
25   talk about it in a little bit -- Mr. Pacella has just

1 provided me with a copy of a chat session between you  
2 and Jeremy's mom.

3 A. Yes.

4 Q. You're friends with her on Facebook, correct?

5 A. She sent me a friend request, but I did not  
6 accept it.

7 Q. Did you chat with someone that you're not  
8 friends with?

9 A. She messaged me, yes. You can chat a little  
10 bit. You can message back and forth.

11 Q. How many -- was that a single day chat session  
12 or did that occur over time?

13 A. She messages me periodically, I think, when she  
14 wants something or she's asking me questions about this  
15 incident. And this previous time was when she was  
16 getting my number. She was telling me it was for  
17 Jeremy, but then I believe it was for this.

18 Q. So she's contacted you more than one time about  
19 this lawsuit?

20 A. Yes.

21 Q. What does she usually contact you about?

22 A. She first starts out by trying to ask me how  
23 I'm doing and stuff and then she will continue to just  
24 ask me about the -- if I've been contacted by any  
25 lawyers or if I'm going to talk to anyone.

1 Q. Does she ever ask you -- I've got one -- it  
2 looks like one chat session. I don't necessarily have  
3 everything that you guys have talked about so my  
4 question is a little bit broad.

5 Has she ever asked you about how you should  
6 answer any specific questions or try to suggest to you  
7 any answers?

8 A. No, she hasn't.

9 Q. She's just asked you what you're -- what sort  
10 of things you're going to talk about or what questions  
11 you've been asked or what does she ask you about?

12 A. She only asked me if I have spoken to anyone or  
13 if Mario has contacted me or if I spoke with him.  
14 That's basically all she ever asks me about.

15 Q. Have you ever spoken to anybody -- when I say  
16 spoken I mean chatted or telephone call or e-mail or  
17 communicated with anyone else other than Jeremy's mom  
18 and the two attorneys here that I think have contacted  
19 you, have you talked to anyone else about this lawsuit?

20 A. No. Well, aside from Amanda.

21 Q. When did you talk to Amanda?

22 A. I spoke to her a couple of months ago.  
23 Probably around the first time we spoke. And then that  
24 was just about if I was contacted or whatever about this  
25 situation.

1 Q. And I understood you've spoken with Jeremy's  
2 attorney on the line; is that correct?

3 A. Yes.

4 Q. How many times have you spoken with him?

5 A. I don't recall.

6 Q. More than once?

7 A. I think it's been a couple of times.

8 Q. Tell me about those conversations. What was  
9 the purpose of those conversations?

10 A. The last conversation was to let me know what  
11 was going to happen today and pretty much if I have any  
12 questions to let him know so he could clear things up.

13 Q. Did you have any questions that you needed  
14 answered?

15 A. No. Other than -- I didn't know if the actual  
16 paper was -- like you guys had that paper or whatever so  
17 that was the only thing I had a question about.

18 MR. DIXON: If I'm not mistaken -- and Tania, this  
19 question is for you. Do you have a copy of that  
20 document that we sent to you?

21 THE WITNESS: Yes, I do.

22 THE REPORTER: Yes, I brought it.

23 MR. DIXON: We'll get into that a little bit later  
24 on. Thank you for doing that. I appreciate it.

25 Let me ask you then, I guess -- if you've got

1 that document let's pull that out right now. I'm  
2 looking at it here. This will be marked as Exhibit  
3 Number 1 to your deposition. This is a Release and  
4 Waiver Form from my client, Plex Indoor Sports.

5 (Exhibit 1 marked for identification.)

6 BY MR. DIXON:

7 Q. Are you familiar with that form?

8 A. Yes.

9 Q. Is that your name and signature on the bottom?

10 A. Yes, it is.

11 Q. Is that your writing?

12 A. Yes, it is.

13 Q. Everything that's handwritten on that page was  
14 written by you?

15 A. Not the actual -- my printed name, that isn't  
16 written by me.

17 Q. Who wrote that?

18 A. I'm not sure who wrote that. I believe it was  
19 the actual person at the front window.

20 Q. The date on that is July 28, 2009.

21 A. Yes.

22 Q. Now, Jeremy's accident -- our information is  
23 that it occurred on July 30, 2009. Were you at Plex  
24 Indoor Sports twice?

25 A. No, I wasn't.



1 Q. Did you date this form?

2 A. No, I did not.

3 Q. How did you receive this form?

4 A. They filled it out and handed it to me for a  
5 signature.

6 Q. Who is "they"? Is that an employee of Plex?

7 A. Yes.

8 Q. So just to be clear, your testimony is that  
9 you've only been to Plex one time; is that correct?

10 A. Yes.

11 Q. Never been there to visit or check it out or do  
12 anything else, other than the one time you were there to  
13 skate with Jeremy?

14 A. Yes.

15 Q. And somebody there who was an employee filled  
16 out the bottom of this form and you signed it?

17 A. Yes.

18 Q. So as far as the handwritten stuff on the  
19 bottom of this page, the only thing that you actually  
20 wrote was your signature?

21 A. Yes.

22 Q. Where it says "participant signature" is that  
23 correct?

24 A. Yes.

25 Q. Were you over the age of 18 at the time?

1 A. I was.

2 Q. Did they ask you to provide any ID or ask for  
3 any proof of age?

4 A. Yes.

5 Q. Who did that?

6 A. The actual -- the employee there.

7 Q. Do you have any -- as we are sitting here  
8 today, do you have any reason or have any explanation as  
9 to why the date on this would be different from the date  
10 that the accident occurred?

11 A. I don't know about that.

12 Q. Is it possible that the form was filled out two  
13 days before and then they just handed it to you that day  
14 for you to sign?

15 A. I'm not sure.

16 Q. Let me ask you this: The person who filled out  
17 the bottom of that form, did you witness them doing it  
18 or are you assuming that someone from Plex filled it  
19 out?

20 A. I personally did not fill it out because I know  
21 how to spell my name and it's misspelled on this paper.  
22 I didn't fill out the top part of this paper.

23 Q. I understand that. I'm trying to figure out  
24 the timing of it exactly. Is it possible that someone  
25 filled out this form on the 28th, but you didn't get it

1 to sign until the 30th?

2 A. Could be possible.

3 Q. So you didn't actually see an employee of Plex  
4 fill out the bottom of this form; is that correct?

5 A. No.

6 Q. And as far as your visits to Plex it was the  
7 one day and it was the same day that Jeremy was injured,  
8 correct?

9 A. Yes.

10 Q. And what was -- who else was there with you on  
11 that day?

12 A. It was Amanda and my brother.

13 Q. Who is your brother again? Adam, right?

14 A. Adam, yes.

15 Q. Did they go into Plex with you?

16 A. They did.

17 Q. Jeremy was with you as well, correct?

18 A. Yes.

19 Q. How about Jeremy, I understand he has --  
20 there's a form that's filled out much the same as yours  
21 with his name and it's dated the same date as yours.  
22 Did you ever witness him receive a form like that?

23 A. I was behind them. Him and Amanda were at the  
24 counter together. I was behind them when they were  
25 doing their consent form.

1 Q. Did you see Jeremy sign that form?

2 A. I didn't physically see him or watch him sign  
3 it.

4 Q. Did you see Amanda sign his form?

5 A. I couldn't see her sign or -- I couldn't see  
6 the paper physically.

7 Q. The reason I ask -- let me refresh your memory  
8 a little bit. Back in -- back in February of this year  
9 an investigator or an insurance adjuster, claims  
10 adjuster, for -- on our behalf contacted you about this  
11 case to talk to you about your knowledge of the events.

12 A. Yes.

13 Q. Do you remember that conversation?

14 A. Yes. Vaguely.

15 Q. I realize you don't have the benefit of looking  
16 at the transcript of that call, and I have it here in  
17 front of me, but I'd like to read out a section of it  
18 here and see if it refreshes your memory or if you can  
19 explain it to me because what you said then is different  
20 than what you said today.

21 A. Yes.

22 Q. It says -- the question is: "Okay. And did  
23 they have Jeremy execute that waiver himself or was  
24 there any -- besides you and Jeremy, was there anyone  
25 else in your group that went?" Your answer is, "Yeah, I

1 mean, we were the only skaters, but Amanda was the one  
2 that signed for him." "Did sign for him?" Is the  
3 question. And your answer is, "Yeah." The question is:  
4 "Do you recall seeing that?" "Yeah, I was standing  
5 right there."

6 A. Yes.

7 Q. Could you clarify that for me in terms of what  
8 you actually saw?

9 A. To that it was more of like -- I was there and  
10 assuming you have to be 18 to sign this paper and they  
11 were both there, so I assumed, more so than know, that  
12 she is the one that signed. I couldn't -- I wasn't like  
13 watching her physically sign it, but as the paper  
14 states, "parent signature if under 18," that was to my  
15 understanding, you have to be 18, so I just assumed that  
16 she would be the one to sign it.

17 Q. But in terms of when the document -- to the  
18 best of your knowledge when that document was filled out  
19 it was Jeremy and his sister at the front counter  
20 talking with the employee; is that correct?

21 A. Yes.

22 Q. And you assumed his sister signed it, but  
23 didn't see anyone sign it at all?

24 A. Yes.

25 Q. Where was Adam during all of this?

1           A.    He was walking around a little bit.  I'm not  
2   sure where exactly he was.

3           Q.    So who drove you all over there that day?

4           A.    Adam and Amanda.

5           Q.    Who was driving?

6           A.    I don't recall that.

7           Q.    But then you all got to Plex, came inside,  
8   filled out the forms at the front desk, correct?

9           A.    Yes.

10          Q.    Do anything in between -- before filling out  
11   the forms?

12          A.    Not that I recall.

13          Q.    You guys came in and went straight to the front  
14   desk?

15          A.    Yes.

16          Q.    What did you do after -- let me back up.

17                So when you came in you walked to the front  
18   desk.  Can you describe, to the best of your  
19   recollection, if you remember at all, who was working  
20   behind the counter, you may not know their name  
21   necessarily, but could you describe what you remember  
22   they look like?

23          A.    No, I have no idea.

24          Q.    Was it a boy or girl?

25          A.    Not sure.

1 Q. Not sure. Okay. Now, you said they asked you  
2 for proof of ID?

3 A. Yes.

4 Q. You showed them your driver's license or --

5 A. Yes, my driver's license.

6 Q. Filled out your form and signed it. You do  
7 yours before Jeremy or after?

8 A. Before.

9 Q. Did they explain to you the rules of the skate  
10 park?

11 A. Yes, they did.

12 Q. Tell me what you remember being told.

13 A. Pretty much that we needed a helmet and to  
14 skate at your own risk, in a sense. I mean, you're  
15 signing a waiver. So just had to provide the proper  
16 pads and helmet and you could skate in the indoor skate  
17 park.

18 Q. Did you have that equipment?

19 A. I had a helmet on, yes.

20 Q. How about Jeremy?

21 A. He did, yes.

22 Q. You said you skated for seven years or so?

23 A. Yes.

24 Q. You understood that falling was one of the  
25 things that could happen to you when skating, correct?

1 A. Yes.

2 Q. Have you ever fallen and been injured while  
3 skating?

4 A. I have not broken anything, but I've been  
5 injured, yes.

6 Q. Tell me what kind of injuries you have gotten  
7 while skateboarding.

8 A. Rolled ankles, bruises, scrapes -- thing of  
9 that nature.

10 Q. Have you ever skated in a skate park similar to  
11 the one you saw at Plex?

12 A. Yes, I have.

13 Q. How many different skate parks like that have  
14 you been to?

15 A. I don't know an exact number, but a lot. I  
16 usually skate at skate parks just -- just as often as I  
17 can.

18 Q. Okay. And when I say similar we are talking  
19 about a skateboarding bowl with a deck on the topside of  
20 it?

21 A. Yes.

22 Q. Do you typically skate in indoor parks or  
23 outdoor parks or is it a mix?

24 A. A mixture of both.

25 Q. Had you ever skated with Jeremy before that



1 day?

2 A. Not really. I watched him skate a little bit,  
3 like in the dirt, but other than that he was just -- to  
4 my knowledge he said he skated before and everything,  
5 but I never skated with him or anything, like,  
6 excessively.

7 Q. Were you able to -- how long did you all skate  
8 before he was injured?

9 A. Not that long. I'd say probably an hour or  
10 less.

11 Q. Do you -- were you watching him while he was  
12 doing stuff? While you were skating were you paying any  
13 attention to what he was doing?

14 A. Yes. We were skating in the same areas. I was  
15 watching -- I'll do a trick and he would do a trick or  
16 he would attempt.

17 Q. Was he able to do most of the tricks that you  
18 were able to?

19 A. No.

20 Q. Give me an example of a trick that you would  
21 try to do that you remember he wasn't able to do.

22 A. There was a box -- I'd be grinding the box,  
23 like doing a basic 50/50 grind and he couldn't do that.  
24 He couldn't really ollie up high enough to get onto the  
25 box.

1 Q. For the purposes of this transcript -- this may  
2 get read to a jury at some point so we need you to back  
3 up and explain what you just said in terms of doing the  
4 50/50 move on the box so that someone who is not  
5 familiar with skateboarding can understand that. Can  
6 you describe that in more detail?

7 A. As far as actually describe the maneuver? What  
8 I would do?

9 Q. What is the maneuver you're talking about?

10 A. A 50/50 grind is when you ollie onto the box  
11 where the coping is and you're on both trucks and you  
12 grind across the top, which means you slide on your  
13 trucks across the top of the box, and then you ollie off  
14 the other side.

15 Q. And "ollie" is more like a jump, right?

16 A. Yes.

17 Q. The board jumps with your feet?

18 A. Yes.

19 Q. And you said Jeremy tried to do that and he  
20 couldn't?

21 A. Yes.

22 Q. Do you recall what happened to him when he  
23 tried it and couldn't successfully complete it?

24 A. He just couldn't ollie high enough to get up  
25 there so his front truck would get onto the coping, but

1 the bottom -- his back truck would stay lower so it  
2 would just hit and he would kind of jump off the board.

3 Q. And the coping is the trim around the top edge  
4 of the bowl; is that correct?

5 A. This is on the box that we were skating, not  
6 the bowl itself, that he got injured in.

7 Q. So the coping is an edge trim?

8 A. Yes, it's similar.

9 Q. Is it typically metal?

10 A. Yes.

11 Q. And this one -- the one you're referring to  
12 would be a metal coping that you were sliding along  
13 doing this grind and, for example, Jeremy couldn't do  
14 that, correct?

15 A. Yes.

16 Q. Did you understand my question?

17 A. Yes.

18 Q. I couldn't be sure. So your answer is yes,  
19 that was something he could not do, correct?

20 A. Yes, that's correct.

21 Q. Anything else you can remember, a maneuver that  
22 you tried that he couldn't do?

23 A. There's a lot of things. I would be playing  
24 skate, which is similar to horse in basketball. I would  
25 do a trick and someone else would do a trick. I was

1 playing skate with random people inside of the actual  
2 skate park. He would try the tricks that I was trying,  
3 but he couldn't do anything other than an ollie.

4 Q. How many other people would you say were in the  
5 skate bowl while you were in there?

6 A. In the actual bowl itself or the whole skate  
7 park?

8 Q. The whole skate park.

9 A. When I was there it wasn't that busy. I'd say  
10 there was probably 30 people there, maybe.

11 Q. Okay. Do you remember seeing any employees of  
12 Plex that were there acting as a monitor/supervisor or  
13 anything like that while you were there?

14 A. There would be a couple people walking around,  
15 but I'm not sure if they would go inside of the bowl or  
16 anything. They were on the outskirts of the skate park.

17 Q. But you do remember seeing someone walking  
18 around who was an employee, correct?

19 A. Yes, and verifying that they had helmets on.

20 Q. Did you speak with any of them?

21 A. No, I didn't.

22 Q. Since you're pretty familiar with skate parks  
23 and you skated in a number of them, can you tell me what  
24 your opinion of the Plex skate park was?

25 A. It was pretty decent. It wasn't the best skate

1 park that I've skated. It was fun. It had a lot of  
2 things that more experienced skateboarders could use and  
3 it also had the little things that not so experienced  
4 skateboarders could use.

5 Q. A little bit of something for everybody?

6 A. Yes.

7 Q. How about the condition of the skate park? Did  
8 you notice anything -- any loose boards or any areas  
9 that didn't look like it was properly maintained?

10 A. No.

11 Q. Did you ever get your skateboard stuck on a  
12 board or anything that should have been nailed down that  
13 wasn't?

14 A. No, I didn't.

15 Q. Tell me what a "drop-in" is.

16 A. That's when you're on the top of the bowl --  
17 when your back is on the coping. You have the tail.

18 Q. Uh-huh.

19 A. Your front foot, you place it on the front of  
20 the board on the bolts and push down and lean a little  
21 forward and you roll into the bowl.

22 Q. Just to be clear, when we are talking about  
23 setting up for a drop-in, the board itself is extended  
24 in the air over the bowl and the back tail of the board  
25 is the only thing that's touching the surface, it's sort

1 of pinned down by your back foot, correct?

2 A. Yes.

3 Q. So you have a back foot on the tail, which is  
4 holding it down on the coping and the edge of the deck,  
5 correct?

6 A. Yes.

7 Q. And the front foot is basically around the  
8 point of the front truck?

9 A. Yes.

10 Q. And that's again suspended in the air over the  
11 bowl?

12 A. Yes.

13 Q. And then the -- the skateboarder does what  
14 then?

15 A. At that point you just push your front foot  
16 down towards the bottom of the bowl and it takes your  
17 back foot up and when you lean forward the bottom truck,  
18 your wheels will then hit on the -- in the -- like the  
19 slope and you pretty much roll down the rest of the way.

20 Q. Are you familiar -- can you do a drop-in?

21 A. Yes, I can.

22 Q. Were you doing it that day?

23 A. I was not that day.

24 Q. That was not one of the things you were doing  
25 when you were playing skate?

1 A. No.

2 Q. What about Jeremy, was that a move that he  
3 tried to do?

4 A. That was the first time I watched him try to do  
5 it, yes.

6 Q. That was the first time, what are you referring  
7 to?

8 A. He told me that he had been doing it and that  
9 he could drop in there, but I had not watched him before  
10 the time when he got hurt.

11 Q. So let me ask you this since we've gotten to  
12 that point. Did you actually witness what Jeremy was  
13 doing when he fell on his board and got hurt?

14 A. Yes.

15 Q. You were looking right at him when the whole  
16 thing occurred?

17 A. Yes, I was standing on the top of the deck, on  
18 the top on the far -- to the left of him.

19 Q. Uh-huh. And you say he was trying to do a  
20 drop-in?

21 A. Yes.

22 Q. So you watched him -- did he position the board  
23 correctly?

24 A. Yes.

25 Q. So he had the board extended out over the bowl,

1 back foot was on it and the front foot was on the front  
2 of the board?

3 A. Yes.

4 Q. Tell me what happened then.

5 A. At that point when you try to drop in and push  
6 the front truck down he got scared -- it happens a lot  
7 when people aren't confident with dropping in. He took  
8 his foot off and tried to run down the rest of the way  
9 and when that happened his foot just slipped -- or  
10 whatever happened to his foot at that point and twisted  
11 and that's when it was broken.

12 Q. So he wasn't -- let me ask you this: Did you  
13 see his board, truck or any part of his board get stuck  
14 on any board?

15 A. No.

16 Q. So he didn't get thrown from his board because  
17 something caught the wheel or in another way impeded his  
18 movement?

19 A. No.

20 Q. In terms of -- before the accident occurred you  
21 said you were watching Jeremy do some other stuff and  
22 there were maneuvers that he couldn't do. Would you  
23 consider him, in your experience, to be a beginner or  
24 intermediate skateboarder?

25 A. Beginner.



1 Q. If I understand your -- what you're saying here  
2 is that he was attempting to do a drop-in and basically  
3 didn't do it properly?

4 A. Yes.

5 Q. Jumped off the board because it wasn't going  
6 the way it should go; is that correct?

7 A. Yes.

8 Q. And did you watch him when he fell and the  
9 ankle got broken?

10 A. Yes.

11 Q. What happened next?

12 A. At that point we -- I got help and then I  
13 called my brother and Amanda to come back. Basically I  
14 was letting them know that Jeremy just got hurt.

15 Q. You say -- let me back you up and slow down a  
16 little bit.

17 So you're standing up there and you watch  
18 Jeremy fall, did he scream or what happened to him?

19 A. He didn't exactly scream. He wasn't happy  
20 obviously, but he wasn't -- he wasn't saying anything  
21 really. He just was in pain. He was kind of like  
22 moaning a little bit and making some grimacing sounds.

23 Q. Was there anyone else around in the bowl at  
24 that point when it occurred?

25 A. There were people outside of it, yes.

1 Q. I think you said you went and got help or you  
2 called for help?

3 A. I got -- well, the employee wasn't that far  
4 away from where we were so I kind of walked a little to  
5 him and told him what happened and that's when I was  
6 calling my brother, as well.

7 Q. You went and got an employee who was standing  
8 nearby?

9 A. Yes.

10 Q. Did that employee come and check on Jeremy  
11 first? What happened?

12 A. Yes. They came and checked on him and then  
13 they went and -- I believe they called the fire  
14 department because that's who came.

15 Q. Do you know who called?

16 A. I'm not sure to that, who called.

17 Q. It wasn't you?

18 A. I didn't call the fire department, no.

19 Q. Did you call 911?

20 A. No. They did. The employee -- or someone that  
21 was an employee.

22 Q. Is that an assumption or do you remember  
23 talking with someone who informed you in some way that  
24 they called?

25 A. Well, the employee that I was with was -- they

1 left to go either call or have someone call. That was  
2 the only part of my knowledge that I had about the fire  
3 department.

4 Q. Did you stay with Jeremy the entire time?

5 A. Yes, I did.

6 Q. Until the firemen showed up?

7 A. Yes.

8 Q. And you said about the same time you were  
9 notifying the employee that this happened you pulled out  
10 your cell phone and called Amanda and your brother?

11 A. Yes.

12 Q. Where were they? Do you know?

13 A. I'm not sure where they were. They were  
14 shopping at the local mall.

15 Q. The same mall where Plex is located, correct?

16 A. Yes.

17 Q. So they weren't far away?

18 A. No.

19 Q. They-- how long did it take for them to get  
20 there?

21 A. Not that long. I would say probably about 5 to  
22 10 minutes.

23 Q. Let's see. Who got Jeremy out of the bowl?

24 A. The fire department.

25 Q. They have to put him on a stretcher? How did

1 they get him out?

2 A. They put him on a stretcher and since the bowl  
3 isn't -- has steep walls they had to put a ladder down  
4 and then push him up the ladder to get him out of there.

5 Q. Did you go with Jeremy to the hospital?

6 A. No, I didn't.

7 Q. Where did you go?

8 A. I just went back to the house.

9 Q. Who took you to the house?

10 A. I believe it was Adam.

11 Q. Do you know if anybody went with Jeremy to the  
12 hospital?

13 A. I'm not sure.

14 Q. What about Amanda, did she come with you?

15 A. I believe she did.

16 Q. Back to the house?

17 A. Yes.

18 Q. Jeremy went to the hospital and the three of  
19 you went back to the house?

20 A. Yes.

21 Q. At what point were Jeremy's parents notified,  
22 do you know?

23 A. I believe Amanda called them -- as soon as she  
24 found out. I'm not sure when she actually made that  
25 call.

1 Q. You weren't there when she made the call?

2 A. No.

3 Q. Did you see Jeremy's parents that day?

4 A. I did, but I don't remember exactly when that  
5 was.

6 Q. As far as you know, from what you saw being  
7 basically the only eye witness we've talked to at this  
8 point, did you -- do you -- is it your opinion -- do you  
9 have an opinion as to whether or not Plex Indoor Sports  
10 did anything wrong to cause this injury?

11 A. As far as the park itself?

12 Q. Yes.

13 A. The park itself was fine. I wouldn't see that  
14 causing an injury. It was more the act itself that  
15 caused the injury.

16 Q. So Jeremy doing a move that he couldn't do  
17 properly caused the injury?

18 A. Yes.

19 Q. Just a moment here.

20 Let me ask you about this chat that you had  
21 with -- and what I'm looking at here is a printout of a  
22 Facebook chat session. And the two people involved --  
23 the one identity is Karen and Randy Cantrell.

24 Do you understand that to be Jeremy's parents?

25 A. Yes.

1 Q. Is that typically both of them or do they both  
2 use that account or is that just the mom?

3 A. I believe it's just the mom.

4 Q. Whenever you've gotten a message from that  
5 account has it always just been the mom?

6 A. Yes.

7 Q. Have you ever spoken with Jeremy's dad?

8 A. Not on Facebook or anything, other than when I  
9 was actually visiting there.

10 Q. I understand that -- there's some references in  
11 here about some problems that Amanda may be having with  
12 the parents.

13 A. Yes.

14 Q. What do you know about that?

15 A. I don't know that much about that. I just  
16 heard that from talking to Amanda and my brother Adam.  
17 They're not seeing eye to eye, I guess. They were  
18 fighting a little bit and Jeremy and Amanda were having  
19 troubles. As far as I knew Jeremy slapped her or  
20 something like that and then that's when my brother and  
21 Amanda proceeded to move out.

22 Q. Jeremy -- Jeremy hit Amanda?

23 A. Yes, that's what I was told. I wasn't there  
24 for any of this. That's what was said to have happened  
25 and that's the reason they moved out and then that was

1 the reason for all the fighting between the whole  
2 family.

3 Q. Who told you about the fighting?

4 A. Amanda.

5 Q. How about your brother, did Adam -- did you  
6 talk to Adam about any of this?

7 A. Yes, I did.

8 Q. In terms of whoever it was that told you that  
9 Jeremy hit Amanda, was that Amanda? Was that Adam? How  
10 did you hear about that?

11 A. Amanda told me first initially and then Adam  
12 also -- he told me.

13 Q. Do you know if Adam saw it?

14 A. I'm not sure if he saw it or was told about it.  
15 I think he was at work and then she called. I'm not  
16 sure.

17 Q. So do you know what the current state of that  
18 is? Have they resolved their problems or are they still  
19 fighting?

20 A. I have no idea. I haven't spoken about that  
21 since they told me about the incident. I'm not sure if  
22 they resolved their issues or not.

23 Q. About how long ago was it that you learned all  
24 of this?

25 A. Probably -- I would say like four months ago,

1 five months ago. I'm not sure of an exact date.

2 Q. How often do you talk to Amanda?

3 A. Amanda, I don't speak to often.

4 Q. Every couple of months? Do you talk to her  
5 once a week? What's not --

6 A. If she answers Adam's phone or something like  
7 that or sometimes she will be on his Facebook account  
8 and I'll speak to my brother, but then she will be the  
9 one that answers the phone or messages back on Facebook  
10 and let me know she's uploading pictures or something or  
11 she will answer the phone and say he's gone or taking a  
12 shower or he's at work. That's the only time I really  
13 talk to her. I don't call her or anything like that.

14 Q. And in terms of what you know -- signing the  
15 waiver -- excuse me.

16 The waiver that's -- that has Jeremy's name on  
17 it, we talked about it earlier and you said here today  
18 that you were not sure exactly who signed that form,  
19 correct?

20 A. Yes.

21 Q. Have you had any discussions about that after  
22 the fact with either Amanda or Karen?

23 A. No.

24 Q. Karen is Jeremy's mother. Have you discussed  
25 who, in fact, signed Jeremy's waiver form with her?



1 A. No.

2 Q. And looking back here I'm trying to go  
3 through -- okay.

4 There was a reference to it in this chat  
5 session. It does look like Karen asked you about  
6 whether you would give a written statement.

7 A. Yes.

8 Q. Obviously I have one reference here to it. It  
9 looks like you would rather stay out of it.

10 Do you remember ever giving a written  
11 statement?

12 A. I've never given her a written statement.

13 Q. Did you ever type her an e-mail telling her  
14 what you remember happening?

15 A. No. I believe she asked me to do that, but I  
16 never did.

17 Q. Has anyone else asked you to provide any kind  
18 of written statement?

19 A. No.

20 Q. How often do you get back to South Carolina?

21 A. I haven't been back since then.

22 Q. The last time was Christmas 2012?

23 A. Yes.

24 Q. Do you expect to be back in South Carolina any  
25 time soon?

1 A. No.

2 Q. If this case had to go to trial would you be  
3 able to appear and testify in the case?

4 A. I would obviously have to route it through my  
5 chain of command and go through the proper steps, but if  
6 I was needed and I could get there, yes, I could.

7 Q. So there would be -- you would have to get  
8 special permission from the military to take a leave for  
9 that, correct?

10 A. Yes.

11 Q. What is your current work schedule like? What  
12 days a week?

13 A. I work six days a week.

14 Q. What type of work do you do?

15 A. Right now I'm just -- I work on computers.

16 Q. What do you do on compute?

17 A. As far as deployments, they -- a unit will  
18 deploy and I just work with a lot of their money and  
19 make sure they're getting paid. Anywhere from 400- to  
20 \$600,000 for each unit. Just make sure they're all  
21 getting their pay. That's pretty much what I do.

22 Q. Did you -- the release that you signed, did you  
23 read it before you signed it?

24 A. Did I read it?

25 Q. Yes.

1 A. Yes, I did.

2 Q. What do you remember -- did anyone -- other  
3 than asking you to read it, did anyone explain to you  
4 the terms of what that waiver was?

5 A. Not really.

6 Q. You understand that -- there was a statement in  
7 there that what you were -- the activities you were  
8 about to engage in involved a risk of harm and injury?

9 A. Yes.

10 Q. You understood that because you were a  
11 skateboarder?

12 A. Yes.

13 Q. You didn't need this form to explain to you  
14 that skateboarding could result in injury, correct?

15 A. No, I didn't.

16 MR. DIXON: I don't think I have any other questions  
17 for you. Mr. Pacella may have some, but I think we are  
18 okay right now.

19 Mario, do you have any questions?

20 MR. PACELLA: I do.

21

22 EXAMINATION

23 BY MR. PACELLA:

24 Q. Can you hear me?

25 A. Yes, I can.

1 Q. I'm going to call you Kyle, if that's okay.

2 A. Yes.

3 Q. My name is Mario Pacella. I represent Jeremy  
4 Cantrell.

5 I only have a couple of questions. My name is  
6 Mario Pacella. I represent Jeremy Cantrell.

7 On the day you went into the Plex was either  
8 Karen Cantrell or Randy Cantrell with you?

9 A. No.

10 Q. Did any employee of the Plex provide any  
11 training to Jeremy Cantrell regarding the use of the  
12 facility?

13 A. No.

14 Q. Did anyone employed by the Plex do any testing  
15 to Jeremy to determine his skill level?

16 A. No.

17 MR. PACELLA: That's all the questions I have.

18 MR. DIXON: Tania, just for one thing -- Mario and I  
19 have an agreement in place to hold this deposition open  
20 pending additional discovery on these Facebook chats  
21 that we just learned about today. So we just want to  
22 make sure that agreement is on the record to potentially  
23 reopen the deposition to further delve into those issues  
24 as they're further discovered.

25 Is that the agreement, Mario?

1 MR. PACELLA: Agreed.

2 MR. DIXON: I do want to explain to you, Kyle, that  
3 you have an opportunity, should you choose to exercise  
4 it, to read and sign your deposition. What that  
5 provides to you under South Carolina rules is that if  
6 there are any inaccuracies in the transcript you can  
7 correct them. You are not required to and it does not  
8 allow you to change the substance of any answers. You  
9 can waive this right, and a lot of witnesses do, but I  
10 do need to advise you that that is a right that you have  
11 that you could exercise or waive.

12 THE WITNESS: I'll waive that.

13 MR. DIXON: I think that does it for us.

14 (The deposition adjourned at 11:58 a.m.)  
15  
16  
17  
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25

Certificate  
of  
Certified Shorthand Reporter

6. I, Tania S. Koven, Certified Shorthand Reporter  
7 of the State of California, do hereby certify:

8           That the foregoing deposition was taken before me at  
9   the time and place therein set forth, at which time the  
10   witness was duly sworn by me;

11 That the testimony of the witness and all objections  
12 made at the time of examination were recorded  
13 stenographically by me and thereafter transcribed, said  
14 transcript being a true copy of my shorthand notes  
15 thereof, and a true record of the testimony given by the  
16 witness to the best of my ability.

17       IN WITNESS WHEREOF, I have subscribed my name in  
18   blue ink this 20th day of April, 2013.

22 Tania S. Koven, CSR  
23 Certificate No. 12377

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

JEREMY CANTRELL,

Plaintiff,

vs.

CASE NO. 2012-CP-40-5356

PLEX INDOOR SPORTS, LLC,

Defendant.

DEPOSITION OF: CHRISTOPHER REED

DATE: June 3, 2013

TIME: 10:57 a.m.

LOCATION: Law Offices of Hedrick, Gardner,  
Kincheloe & Garofalo, LLP  
1301 Gervais Street, Suite 1900  
Columbia, South Carolina

TAKEN BY: Counsel for the Defendant

REPORTED BY: ANGELA D. ZUVER,  
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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25 (INDEX AT REAR OF TRANSCRIPT)



## STIPULATIONS

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

\* \* \* \* \*

CHRISTOPHER REED

being first duly sworn, testified as follows:

## EXAMINATION

BY MR. DIXON:

Q. Mr. Reed, - good afternoon, or good morning, I guess it probably still is. We just met a moment ago before the court reporter started this deposition.

My name is Lee Dixon. I'm an attorney here and I represent a former employer of yours, Plex Indoor Sports. We are involved in a lawsuit that has been brought by a customer or a participant who was injured on the Plex Sports facility back in July of 2009.

You're here for your deposition as a

1 witness to some of the events involved in that  
2 incident. Is that your understanding of the  
3 situation?

4 A. That's correct.

5 Q. Have you ever had your deposition taken  
6 before?

7 A. Never.

8 Q. I'll just give you a few ground rules  
9 here. You're not here represented by an attorney,  
10 correct?

11 A. Correct.

12 Q. If at any point you need to stop or  
13 take a break or anything at all, you just say the  
14 word and we'll go off the record. If you need a  
15 bathroom break or whatever, just let me know. This  
16 is not an endurance contest of any kind. So let me  
17 know what's going on.

18 The purpose of this is just to allow me  
19 to ask you questions to find out what you know or  
20 what you remember about the accident that occurred  
21 in 2009.

22 As I said, the court reporter is here  
23 and she is taking down a transcript of everything  
24 that is said in the room so that if we ever have to  
25 present this to a judge or a jury we will have a

1 record of what you have said.

2 Do you understand the oath that she  
3 read to you?

4 A. Yeah. Absolutely.

5 Q. Like I said, it's just a matter of  
6 giving me truthful answers to the best of your  
7 recollection about what you remember from that  
8 incident.

9 For the purpose of the record, I would  
10 appreciate it if any response that you give me is a  
11 verbal response, a yes or a no versus uh-huh or  
12 shaking your head. Again, that's for the purpose  
13 of the court reporter and the record. Sometimes  
14 the nonverbal cues that you and I would understand  
15 sitting here looking across the table from each  
16 other do not show up so well in the transcript. Is  
17 that understood?

18 A. I understand.

19 Q. If I ask a question and you have any --  
20 if you don't understand the way I've phrased the  
21 question or if you'd like me to rephrase it in any  
22 way, just let me know.

23 A. Uh-huh.

24 Q. Is that fair?

25 A. Fair enough.

1 Q. I'll assume if you can answer the  
2 question that you will understand it the way I  
3 intended to ask it; is that correct?

4 A. Yes.

5 Q. Is that fair?

6 A. Yes.

7 Q. State your full name for the record for  
8 me, please.

9 A. Christopher Glenn Reed.

10 Q. Glenn?

11 A. Yep.

12 Q. Spell that for me.

13 A. G-L-E-N-N.

14 Q. How old are you, Chris?

15 A. Twenty-six.

16 Q. You don't mind if I call you Chris, do  
17 you?

18 A. That's fine.

19 Q. What's your date of birth, Chris?

20 A. 5/14/87. May 14, 1987.

21 Q. Where do you currently reside?

22 A. 1329 Glenhaven Drive.

23 Q. Is that in Columbia?

24 A. Yeah. Columbia, South Carolina 29203.

25 Q. How long have you been at that address?

1 A. About a year, give or take.

2 Q. And prior to there, where did you live?

3 A. 1909 Mercury Street, Columbia, South  
4 Carolina.

5 Q. Is that with your mother?

6 A. Yes. 29209.

7 Q. Is she still at that address?

8 A. Yes.

9 Q. Other than your mother do you have any  
10 family here in Richland County?

11 A. No. That is it.

12 Q. How long have you lived in Richland  
13 County?

14 A. Oh, boy. Ten years.

15 Q. Where did you come from?

16 A. Tampa Bay, Florida.

17 Q. What brought you to South Carolina?

18 A. My dad was in the military.

19 Q. Fort Jackson?

20 A. No. He was actually in Shaw.

21 Q. Okay. I got you.

22 A. It was too small so we had to move.

23 Q. Where do you currently work?

24 A. I work for a software company called  
25 Unitrends Software.

1 Q. Unitrends?

2 A. Yes.

3 Q. What do you do at Unitrends?

4 A. I am a customer engineer.

5 Q. What do you do as a customer engineer?

6 A. Basically it's like a call center, I

7 guess is what you would consider it.

8 Q. What sort of work does Unitrends do?

9 A. Software backup solutions. Unit  
10 software.

11 Q. How long have you worked there?

12 A. Two years.

13 Q. Where did you work prior to Unitrends?

14 A. I worked for a guy named Paul Butler.

15 It was a contract position.

16 Q. Construction contractor?

17 A. No. It was with Unitrends.

18 Q. What sort of business does Paul Butler  
19 have?

20 A. He's basically a consultant in software  
21 basically. Same thing.

22 Q. Before you worked with Mr. Butler where  
23 did you work?

24 A. Plex.

25 Q. And that's Plex Indoor Sports, correct?

1 A. Yes.

2 Q. Did you only work at the Sandhills  
3 location?

4 A. No. I worked in Irmo mostly.

5 Q. Mostly?

6 A. Sandhills was in the beginning and then  
7 I went to Irmo.

8 Q. How long did you work at the Sandhills  
9 location?

10 A. That's a good question. I cannot give  
11 you an honest answer on that. A few months. Is  
12 that an appropriate answer?

13 Q. Yes.

14 A. At most, a few months.

15 Q. And then you transferred over to Irmo  
16 or what --

17 A. Yeah. They built the new park over  
18 there so I was transferred.

19 Q. Was that by request or did they just  
20 tell you?

21 A. By request.

22 Q. How long did you work over at the Irmo  
23 location?

24 A. You're asking good ones. Probably  
25 about a year.

1 Q. About a year. Okay.

2 Do you remember approximately the date  
3 that you left working for Plex Indoor Sports?

4 A. It would have to be approximate. I do  
5 not remember.

6 Q. Do you remember the year?

7 A. That I left Plex?

8 Q. Yes.

9 A. If I wrote it down I probably could  
10 tell you. 2010. 2010 most likely.

11 Q. So all told, how long did you work at  
12 Plex Indoor Sports?

13 A. A year and a few months.

14 Q. Tell me about your education real  
15 quick. Do you have any post-high school degrees of  
16 any kind?

17 A. No. Just high school.

18 Q. Where did you go to high school?

19 A. Crestwood in Sumter.

20 Q. Crestwood?

21 A. Yes.

22 Q. What year did you graduate?

23 A. '05. Sorry. I went to Crestwood, then  
24 I went to SCAIHS here. It's a home school group.

25 Q. How do you spell SCAIHS?



1 A. S-C-A-I-H-S, all capitals.

2 Q. But your graduation date was '05?

3 A. Yeah.

4 Q. Did you attend any college or technical  
5 college?

6 A. I went to Midlands for a bit.

7 Q. Did you finish any program there?

8 A. No.

9 Q. AA or anything like that?

10 A. Huh-uh.

11 Q. How did you get started in software?

12 A. I've kind of been doing it a long time.

13 I've been doing it a while. It's kind of my dad's

14 background too. So I've kind of had the ability,

15 or I should say the environment to...

16 Q. Had the connections?

17 A. Yeah. There you go.

18 Q. Okay. That makes sense.

19 All right. Let me talk to you about  
20 your time at Plex. When you first started there at  
21 the Sandhills location what was your job  
22 responsibility?

23 A. Skate park attendant.

24 Q. Was that your only position?

25 A. Only position when I worked there.

1 Technically I've been a camp counselor too,  
2 actually.

3 Q. For summer camps?

4 A. Yeah.

5 Q. Was that just for skate park --

6 A. Skate park.

7 Q. -- summer activities or --

8 A. Yeah, only skate park.

9 Q. Only skate park. Okay.

10 Do you have a background in  
11 skateboarding?

12 A. Yeah.

13 Q. How long have you been skateboarding?

14 A. Today, 11 years.

15 Q. Eleven years. How do you know today 11  
16 years?

17 A. Well, I was just saying as of today  
18 it's been around 11 years.

19 Q. Okay. I got you. I didn't know if it  
20 was an anniversary of the first time or something.

21 A. No.

22 Q. I was just curious.

23 A. No anniversary.

24 Q. So when you started working there in --  
25 was it '09 that you started at Plex?

1 A. Yes.

2 Q. And you would have had about seven  
3 years, I guess --

4 A. Yeah, give or take.

5 Q. If my math is correct.

6 A. Correct.

7 Q. Assuming my math skills are up to par.  
8 So we're talking about seven years of  
9 skateboarding experience. . Recreationally?

10 A. Yes.

11 Q. Did you do any competitions?

12 A. Yes.

13 Q. Where did you compete?

14 A. Oh, boy.

15 Q. Anywhere and everywhere?

16 A. A lot of places. I don't want to be  
17 general, but I -- I can tell you a few places.  
18 Mooresville, Florence, Charleston, Charlotte.  
19 There's a few. Atlanta.

20 Q. Were you in any kind of a group or  
21 association where you would compete within that  
22 group or did you just sign up as an independent --

23 A. Individual.

24 Q. Individual. Were you ever sponsored by  
25 anybody to skate?

1 A. Somewhat, yes.

2 Q. Tell me what you mean by somewhat.

3 A. I rode for a shop or two, yes. Nothing  
4 big.

5 Q. Put the logo on your shirt or --

6 A. Yeah. More discounts is what they do.

7 Q. I got you. If you had to guess, about  
8 how many competitions have you been in?

9 A. 50, 60.

10 Q. Were you doing that long before you  
11 started at Plex --

12 A. Yes.

13 Q. -- that sort of competitions?

14 A. Uh-huh.

15 Q. Very frequently?

16 A. I only did it for four years, give or  
17 take. Probably not more than that. I stopped  
18 doing competitions when I graduated from high  
19 school.

20 Q. I got you. Okay.

21 Still skated recreationally after that,  
22 though?

23 A. Yeah.

24 Q. Where did you state?

25 A. Skate parks, street. When I say street

1 I mean just up and down.

2 Q. What about places like Owens Field

3 or --

4 A. Correct.

5 Q. Did you go down there?

6 A. Correct.

7 Q. What other skate parks are in this area

8 besides what was at the Sandhills location and

9 Owens Field?

10 A. Correct. There is Fort Jackson.

11 Q. Fort Jackson has one?

12 A. There is one out in Lexington that is  
13 owned by a church called Calvary Chapel Lexington.

14 There is Owens Field, and there was the two Plexes  
15 that were around, and they are no longer...

16 Q. So they are no longer -- you mean the  
17 skate park is no longer --

18 A. Yeah, they don't have one anymore.

19 Q. At either location, correct?

20 A. Correct. From what I know.

21 Q. Do you still skate?

22 A. Uh-huh.

23 Q. But no competitions anymore?

24 A. No.

25 Q. A little long in the tooth at 26, I

1 guess?

2 A. Yeah. You've got to retire at some  
3 point, I think.

4 Q. I understand. Well, tell me about --  
5 as a skate park monitor at Plex what were your  
6 duties and responsibilities?

7 A. Watch the kids, make sure the areas  
8 were clean, make sure moms and dads didn't come in  
9 there running, yelling and screaming. Control the  
10 chaos, give or take.

11 Q. On an average day how many people would  
12 you have skating within the park?

13 A. A busy day or a slow day? Do you want  
14 an average?

15 Q. Average.

16 A. Eight or ten. Twelve maybe.

17 Q. On a slow day about how many?

18 A. Probably about eight.

19 Q. And on a very busy day how many kids  
20 did you have in there?

21 A. 60, 70. Are you saying altogether or  
22 throughout the day?

23 Q. Any given time. At any given moment  
24 about how many people would you have skating?

25 A. There wouldn't be more than 20 or so

1 skating. Maybe 30 on a very busy day, a busy  
2 Friday night or something.

3 Q. And that's in addition to the bowl?  
4 There were other things outside the bowl, correct?

5 A. That's correct.

6 Q. I guess things were -- they would do  
7 grinds, blocks; is that correct?

8 A. Correct. Correct.

9 Q. And just so I'm clear, the bowl that  
10 was inside the skate park was not the only place  
11 where skaters would skate, correct?

12 A. That's correct.

13 Q. Again, this is just so if someone down  
14 the road has to look at this it makes sense for  
15 them, what we're talking about.

16 A. I understand.

17 Q. So you would watch the kids. What kind  
18 of -- what sort of kids are we talking about, age  
19 ranges?

20 A. You wouldn't even talk about kids. You  
21 would see adults in there. You'd see ranges from  
22 six, seven to 40s, 50s. You'd see anybody and  
23 everybody trying. It's an activity that's  
24 really...

25 Q. Tell me about what sort of safety

1 equipment would be required for anybody that was  
2 participating in the skate park.

3 A. Okay. If you're under the age of ten  
4 you're required pads, head and kneepads -- Plex  
5 rules of course -- and a helmet. If you're over  
6 the age of ten you can get away with just a helmet  
7 or all you need to wear is a helmet.

8 Q. Would that be to participate anywhere  
9 in the skate park?

10 A. Correct. Same equipment is used  
11 wherever. And of course you need a skateboard.

12 Q. Yeah. Was it your job to make sure  
13 that the participants had the proper equipment?

14 A. Yes. It was to make sure that they  
15 were out there, correct, with helmets, pads, elbow  
16 pads. Whatever was needed.

17 Q. What did you do as a skate park  
18 attendant in performing your duties? Were you  
19 walking around? Were you stuck in a spot? Sort of  
20 tell me how you would monitor.

21 A. We were allowed to skate with the kids,  
22 if need be, or kind of just have fun with them.  
23 Also we were able to sit down on a bench and just  
24 watch.

25 Q. Did you walk around?



1           A.    Yeah, we were allowed to walk around,  
2   but only within the skate park.

3           Q.    About how many skate park attendants  
4   would be working on a given shift?

5           A.    One.

6           Q.    So if --

7           A.    On a very busy night, two.

8           Q.    Was there always a skate park monitor  
9   on duty?

10          A.    Always.

11          Q.    How about inspecting the bowl and -- I  
12   guess what would you -- how would you call the deck  
13   at the top of the bowl?

14          A.    The deck.

15          Q.    Was it called the deck? I just want to  
16   make sure I get the proper terms.

17          A.    (Nodding head.)

18          Q.    Was it your job to check or inspect the  
19   bowl and the deck?

20          A.    We don't really inspect it per se,  
21   but -- I mean, we do skate on it as well with all  
22   the other kids. So we do -- I wouldn't say  
23   inspect, but we ride on everything before everyone  
24   else does normally.

25          Q.    Before the place opens?

1 A. We were allowed to, yes.

2 Q. How about -- I'm sorry. Go ahead.

3 A. We do sometimes. Or we did.

4 Q. How about cleaning? Did you clean when  
5 you started your shift?

6 A. Yeah. We had to -- we'd have to sweep.  
7 We'd do it normally at the end of the night.

8 Q. Did you sweep before the shift started?

9 A. Not normally, no. We'd normally sweep  
10 at the end of the night.

11 Q. Tell me what you'd do.

12 A. We have a big broom, some sort of broom  
13 and we'd push -- mop everything into a big pile and  
14 put it in the trash can.

15 Q. You'd mop the -- you'd sweep the deck?

16 A. Uh-huh.

17 Q. What about inside the bowl?

18 A. If there's a lot of junk and trash in  
19 there, yeah, of course. Because you can't skate on  
20 something if there's -- if you have little rocks or  
21 something they're going to catch in the wheels.

22 So, yeah, if a deck surface is coming up you're  
23 going to hit it. So of course anything like that  
24 would be addressed.

25 Q. Were you guys given any kind of

1 training on what to look for when you were out on  
2 the skate park?

3 A. No.

4 Q. But you'd go as an experienced -- were  
5 all of the skate park monitors experienced skaters?

6 A. Yes. Absolutely.

7 Q. Was there any requirement that they  
8 be --

9 A. I think they appreciated it because we  
10 knew what we were doing and we've all done this  
11 before.

12 Q. Did you know most of the skate park  
13 monitors that were there at the time?

14 A. Yeah, I knew them.

15 Q. And you knew all of them had multiple  
16 years of experience?

17 A. Uh-huh.

18 Q. And they all skated on the park --

19 A. Absolutely.

20 Q. -- just like you did, correct?

21 A. Absolutely.

22 Q. Just like all the customers did?

23 A. Absolutely.

24 Q. The people coming in, did you refer to  
25 them as customers, guests, participants? What did

1 you call them? Skaters?

2 A. Skaters.

3 Q. The incident that we're dealing with  
4 here in this lawsuit occurred on July 30, '09. Do  
5 you recall the incident?

6 A. Vaguely. I'll be honest with you.

7 Q. I'll represent to you the plaintiff's  
8 name is Jeremy Cantrell. He was roughly -- well,  
9 do you remember a boy around that time --

10 A. Yes.

11 Q. -- being injured and taken away from  
12 the facility by the fire department?

13 A. Yes.

14 Q. Tell me what you remember just  
15 physically about the boy from your recollection.

16 A. Am I supposed to be biased here?

17 Q. No.

18 A. You might want to clarify. Just what I  
19 saw or --

20 Q. What do you remember?

21 A. -- how I felt when he was on the bowl?

22 Q. No. No. What do you remember about --  
23 what did he look like? Do you remember seeing him?

24 A. He was a shorter, bigger kid, probably  
25 14, 15 is probably what I would say. Probably

1 medium hair, dark hair, fair skin.

2 Q. Did you see him skating before he was  
3 injured?

4 A. No. I don't recollect that, no. I  
5 remember he was with a friend, a younger boy who  
6 was skating.

7 Q. Did you ever talk with either one of  
8 them?

9 A. I don't recollect, no.

10 Q. Let me be clear. Did you ever talk to  
11 them before he was injured in any way in passing  
12 while you were working?

13 A. I couldn't say yes or no to that. I  
14 apologize.

15 Q. That's okay.

16 A. I do not believe I did.

17 Q. All right. Tell me what you do  
18 remember about the incident from that day.

19 A. I remember his friend was on top of the  
20 bowl urging him to do it, and I remember the kid  
21 was really nervous, and when the kid fell he  
22 didn't -- basically when you drop in you have to  
23 lean forward and if you stutter or if you second  
24 guess it you lean back, and I do remember his leg  
25 going back because he slipped off and I saw his

1. legs flail back.

2 Q. Let me back you up just a little bit.

3 Okay. When you said the friend was urging him to  
4 do it, what was he urging him to do?

5 A. He was encouraging him to try it.

6 Q. Try what?

7 A. To drop in.

8 Q. To drop in. Okay.

9 A. What a drop-in is, is when you put your  
10 board up at the top, you lean forward and you roll  
11 down smoothly.

12 Q. When you say -- tell me real precise as  
13 if we've got a jury of people who have never skated  
14 before. Describe for me what a drop-in is.

15 A. Okay. So there is a long vertical part  
16 and then it smooths out at the bottom. So it  
17 rounds out. So if you put a board down it, it will  
18 go down, almost straight down, and then curve out.  
19 So all your speed is pushed forward.

20 So what a drop-in is, is you put your  
21 board at the top of the coping, which is like the  
22 top of the vertical part, and then you would push  
23 down on the front of the board until it met the  
24 vertical part and you would roll down with it. And  
25 normally you would roll out okay, or in a good

1 scenario you would roll out okay.

2 Q. The intended result is to roll at the  
3 bottom of the thing?

4 A. Yes.

5 Q. I'm going to describe it as I  
6 understand it, so correct me if I get any of this  
7 wrong.

8 A. Okay.

9 Q. What you're talking about as the drop  
10 in is -- and I'm going to use sort of the -- the  
11 skate park itself, the bowl, is similar to like an  
12 empty swimming pool, correct?

13 A. Correct. Correct. That's exactly what  
14 it looks like.

15 Q. And as the swimming pool walls go up  
16 and meet the deck there is a coping --

17 A. Correct.

18 Q. -- which is sort of just the railing  
19 around that point where the wall and the deck  
20 connect, correct?

21 A. Correct.

22 Q. Is that a wooden coping, metal?

23 A. Always metal, or if it's a pool,  
24 concrete.

25 Q. In this case the skate park at Plex had

1 a metal coping?

2 A. Correct.

3 Q. And a skater who was intending to drop  
4 in would put -- as I understand it, and correct me  
5 if I'm wrong, would put the rear tail of their  
6 skateboard on that coping, correct?

7 A. Uh-huh.

8 Q. With the skateboard extending out over?

9 A. Correct.

10 Q. Basically suspended in the air over the  
11 empty swimming pool?

12 A. Correct, but their tail would be  
13 holding them against the coping.

14 Q. And then that would be positioned there  
15 or pinned there by one of their feet; is that  
16 correct?

17 A. Correct.

18 Q. Once you've got that board in that  
19 position tell me what a skater is supposed to do  
20 from that position.

21 A. When you're in that position you would  
22 hold the board up by leaning your weight toward the  
23 tail, and then if you wanted to drop in you would  
24 lean forward and push the board down.

25 Q. And tell me, am I correct in assuming



1 that that's what you saw this boy -- the maneuver  
2 he was attempting to do prior to his injury?

3 A. Correct. No, I did not see him do it.  
4 That was the only time I've ever seen him try. So  
5 you're asking me if he successfully --

6 Q. I'm asking you if that's what he was  
7 doing prior to his injury.

8 A. That's what he was attempting to do.

9 Q. Attempting to drop into the bowl?

10 A. Correct.

11 Q. And you observed that?

12 A. That he was trying it?

13 Q. Yes.

14 A. Correct.

15 Q. Once he had began the attempt, describe  
16 for me what you saw.

17 A. When he began he dropped in but leaned  
18 back. So he halfway committed, just enough for the  
19 board to go down and slip away from him. So he  
20 continued to lean back.

21 Q. So he did not successfully --

22 A. Correct.

23 Q. -- I guess do the maneuver; is that  
24 correct?

25 A. That's correct.

1 Q. The drop-in itself is something that  
2 you start from a stationary point, correct?

3 A. Correct.

4 Q. You're not rolling or doing anything  
5 and then drop in?

6 A. Correct.

7 Q. So if a person's about to drop in there  
8 would be, for instance, the wheel -- the front  
9 wheels of the skateboard are in midair? They're  
10 not rolling over anything as this occurs, correct?

11 A. Correct.

12 Q. And so just so I'm clear, you saw him  
13 at the top of the deck with this other boy who was  
14 urging him to try and drop in?

15 A. Correct.

16 Q. And that's when he attempted it and  
17 fell?

18 A. Correct.

19 Q. Did you see him fall? Were you --

20 A. Correct.

21 Q. Where were you when this happened?

22 A. I was in the corner. So I was kind of  
23 in view. I was in view. And when I saw him slip  
24 down, he slipped out and his legs slipped out from  
25 under him.

1 Q. Did he scream or indicate that he had  
2 been injured?

3 A. Oh, yes. He did scream very loudly.

4 Q. What did you do at that point?

5 A. We ran down to see what was wrong. Of  
6 course we first assessed and looked at what's going  
7 on, but you could tell his back left leg was  
8 actually pretty well broken. So we did not move  
9 him. The first thing we did is got a manager, got  
10 a supervisor, and called 911.

11 Q. Do you remember who the supervisor or  
12 manager was?

13 A. Mine was Brynley Farr. I want to say  
14 Chuck, and I cannot remember Chuck's last -- Chuck  
15 Davis I think is his name. He was the person to  
16 assess the situation, would have been the manager  
17 on hand.

18 Q. What about Doug Zeis? Does that name  
19 ring a bell?

20 A. No. I do not...

21 Q. Was Brynley there that day?

22 A. I believe, yes.

23 Q. Did either of the managers that were  
24 there come out to the skate park to see what was --

25 A. Yes. They all ran into the bowl.

1 Q. They all ran in. Okay.

2 After this boy was injured did you  
3 speak to him while he was down in the bowl?

4 A. No.

5 Q. Do you recall anybody --

6 A. Well, let me see. I must have said  
7 something to him. I can't recollect what was said.  
8 I'm sorry.

9 Q. That's fine. Well, let me ask you.  
10 Did you -- do you have any recollection at all  
11 about him indicating what had happened to him,  
12 explaining --

13 A. Do I? Did I explain what had happened  
14 to him?

15 Q. Did he explain to you or did you  
16 overhear him telling anybody else what had  
17 happened?

18 A. No. No. I think he was in shock.

19 Q. You don't remember him explaining to  
20 anybody what the cause of his fall was, if any?

21 A. No.

22 Q. Did you look to see if there were any  
23 defects with the bowl or any obstacles that would  
24 have contributed to his fall?

25 A. Are you saying prior to the accident

1 or --

2 Q. After.

3 A. After?

4 Q. Yeah.

5 A. No.

6 Q. Did you look?

7 A. Yeah.

8 Q. Where did you look?

9 A. Right where he was. Are you asking me  
10 if I inspected it or did I see anything that stuck  
11 out to my eye?

12 Q. Either. Did you inspect it?

13 A. I did not inspect it.

14 Q. Do you recall seeing anything that  
15 stood out to you as something that might have  
16 contributed to the fall?

17 A. No.

18 Q. Did you look up on the deck to see if  
19 there were any loose boards?

20 A. Not at that time.

21 Q. How about later in that shift?

22 A. I would say that it was skated earlier  
23 that day so I doubt there were any loose boards or  
24 anything that would affect it or -- and after.

25 Q. Do you have any recollection of anybody

1 , around that time, later that day or the next day  
2 reporting to you or anyone else that there was a  
3 loose board?

4 A. No.

5 Q. If there had been a loose board would  
6 you recall that?

7 A. Very likely. Because it would have  
8 interrupted everybody else skating. Someone would  
9 have complained.

10 Q. What would you do if somebody had  
11 complained? Was there a --

12 A. Brought it to a manager or supervisor.

13 Q. What was the procedure for correcting  
14 that if you find a situation like that?

15 A. First of all, we would have marked it  
16 so a kid wouldn't skate over it. Because a kid  
17 falling through a bowl wouldn't be very fun. Then  
18 we would have probably went to Brynley or one of  
19 the managers to have it addressed as quickly as  
20 possible.

21 Q. How would you have marked it?

22 A. To be honest with you, they probably  
23 would have closed the bowl off if the top deck was  
24 coming up.

25 Q. You mentioned marking something. If

1 you've got a problem how do you mark it?

2 A. We had -- I know we had tape. Warning  
3 tape, cones, something. Little kids will try and  
4 go through that stuff. So you do your best to --  
5 that's exactly why we're there too, to make sure  
6 kids don't go through stuff that's already broken  
7 or something like that.

8 Q. Do you ever have any memory of loose  
9 boards causing anybody to fall from the deck of the  
10 bowl or within the bowl itself?

11 A. I do not, no.

12 Q. Do you have any recollection of ever  
13 finding during your cleanup or looking or skating  
14 any loose boards or anything in the bowl or up on  
15 the deck?

16 A. Say that one more time for me. Sorry.

17 Q. While you were working there --

18 A. Yes, sir.

19 Q. -- as a skateboard monitor or as just a  
20 skater do you have any specific memory of ever  
21 seeing a loose board that was up on the deck or  
22 within the bowl itself?

23 A. No. No. I'm trying to think. I'm  
24 sorry.

25 Q. That's okay. Take your time. If you

1. need a moment to --

2. A. See, I skated there before I worked  
3. there, so I also -- I was just trying to recollect  
4. that as well.

5. Q. But during your time as an employee --

6. A. No, not at all.

7. Q. Sort of describe for me the scene.  
8. Sort of walk me through it. Once this boy fell you  
9. said you went to the manager --

10. A. Uh-huh.

11. Q. -- reported the incident and then  
12. someone called 911?

13. A. Yeah. Chuck did.

14. Q. Chuck did?

15. A. Right away.

16. Q. What did you do after that? Did you go  
17. back to the park?

18. A. Yeah. I just needed to wait around to  
19. make sure kids weren't coming around him and  
20. surrounding him asking him what was going on.

21. Q. How long did it take for --

22. A. EMS?

23. Q. -- EMS or whoever to respond?

24. A. Thirty minutes, give or take. They  
25. weren't too far away.



1 Q. What happened when they got there?

2 A. Thirty minutes at max.

3 They first needed help getting into the  
4 bowl, but then they used the ladder to just slide  
5 Jeremy out. They wrapped this thing around his leg  
6 and they put him in a stretcher and carried him  
7 out.

8 Q. Was anybody else there with him, his  
9 family or friends?

10 A. His family did appear later on. I  
11 think maybe a little bit after EMS.

12 Q. Do you remember who it was?

13 A. I believe -- I couldn't tell you. His  
14 sister, I think.

15 Q. Did you ever speak to her?

16 A. Brynley. Brynley, I believe, did. And  
17 Chuck. I know they both did, for a fact. I know  
18 that they did.

19 Q. Other than possibly a sister, do you  
20 remember anybody else showing up?

21 A. I think she was with some guy. So it  
22 was her boyfriend at the time or something. I  
23 don't know. These are purely assumptions.

24 Q. I appreciate you letting me know. If  
25 you're assuming something let me know that versus

1 if you know with certainty something is true.

2 But a girl, possibly his sister, and  
3 another man?

4 A. Yeah.

5 Q. Do you remember his mother or father  
6 showing up at any time?

7 A. I do not.

8 Q. Again, during all of this did you have  
9 any conversations with any of these people?

10 A. No.

11 Q. Do you recall seeing anybody from Plex  
12 have a conversation with Jeremy?

13 A. Yes.

14 Q. Who talked with him?

15 A. Chuck.

16 Q. Do you recall Brynley having any  
17 conversations with him?

18 A. I think Brynley talked to the people.  
19 She did not talk to Jeremy.

20 Q. Talked to the people? You mean --

21 A. The sister or the lady that was there.

22 Q. Now I just want to ask you about how  
23 certain you are that it's Chuck Davis who was there  
24 that day.

25 A. I'm about 90 percent sure that was

1 Chuck there.

2 Q. Is it possible it was another manager  
3 and you're just misremembering?

4 A. It's possible, but I remember a  
5 skinnier man doing it. I'm fairly confident it was  
6 Chuck, but I could be wrong.

7 Q. But there was a male manager that was  
8 working that day?

9 A. Yes.

10 Q. Did you ever see Jeremy before this  
11 day?

12 A. No.

13 Q. Did you ever see him afterwards?

14 A. No.

15 Q. How about anybody -- any members of his  
16 family or friends?

17 A. No, not that I recall.

18 Q. None of them has ever approached you or  
19 talked to you --

20 A. No.

21 Q. -- about this situation?

22 A. No.

23 Q. Based on your observations there, what  
24 do you think was the cause of Jeremy's fall?

25 A. Undercommitment. He just was not

1 prepared. He tried something and it was beyond  
2 what he possibly -- probably could do.

3 Q. Is a drop-in a fairly advanced  
4 maneuver?

5 A. On the size of that wall it's fairly  
6 hard for him to do. It's not impossible. I've  
7 seen a lot of kids do it, but I do not think it was  
8 likely.

9 Q. Is it a very popular maneuver,  
10 something kids like to try to do?

11 A. It's something you have to learn.

12 Q. Something you have to learn?

13 A. If you want to enjoy a skate park, most  
14 likely, yes. There are a lot of smaller ramps  
15 there. I should say that. He was on the higher  
16 side of the bowl.

17 Q. You say the higher side. Is that --  
18 for instance, using my swimming pool analysis, is  
19 that the deep end?

20 A. That would be the deep end.

21 Q. I want to just -- I've got a photograph  
22 here. Let me turn it the right way.

23 Okay. We've got this. This was  
24 produced in discovery. It's identified as Plex  
25 009.

1 A. That's it.

2 Q. I want to show you this here and ask  
3 you to identify that for me. Is that the skate  
4 park we're talking about here?

5 A. Yeah, that's the bowl. This is an  
6 older photo, though. I can tell you that because  
7 there's a wall piece right here. But, yeah, that's  
8 it.

9 Q. What do you mean by the wall piece?

10 A. See how there's a board right here?

11 Q. Yes. Put a little mark there where  
12 you're referring to. Mark it with like a number  
13 one.

14 A. That is now up. So this would be an  
15 older photo most likely. Either that or it's --  
16 actually, they must have took it down. So I can't  
17 actually tell you when they did that. They either  
18 did that recently or they did that after. But  
19 correct, that's the right photo.

20 Q. But does this picture accurately  
21 reflect the way the bowl was in July of 2009 to the  
22 best of your recollection?

23 A. Yes.

24 Q. Would it have been any different in  
25 July of 2009 than it is from that photo?

1           A.    The wood would probably be a little bit  
2   better, but other than that, no.

3           Q.    Sort of mark as a number two where  
4   Jeremy was as he began his drop-in.

5           A.    There.  (Indicating.)

6           Q.    Where were you approximately?  Were you  
7   in that photograph?

8           A.    Probably a little standing out, to be  
9   honest with you, but yeah.

10          Q.    Off to the left side of the photograph?

11          A.    Yeah.  Probably over here.

12          Q.    Would you have been elevated --

13          A.    No.

14          Q.    -- from where you were or were you down  
15   on the --

16          A.    Probably right there, actually, give or  
17   take.  In that vicinity.  You'd actually probably  
18   do like a circle.  It was in that area.

19          Q.    But you were up -- were you up on the  
20   deck?

21          A.    Yeah.

22          Q.    So you were up on the deck walking  
23   around or were you skating at the time?

24          A.    I was walking around.

25          Q.    And then Jeremy was just over here to

1 your right where you've marked the number two?

2 A. Uh-huh. Correct.

3 Q. Okay. I got you. I assume from  
4 looking at this there was nothing that would have  
5 obstructed your view of the situation?

6 A. No.

7 Q. So from your vantage point there when  
8 you were seeing this you did not see his board  
9 catch on any loose boards?

10 A. No.

11 Q. You didn't see it catch on a rock?

12 A. No.

13 Q. Something that would have thrown him  
14 from his skateboard?

15 A. No.

16 Q. Basically, if I understood you  
17 correctly, as he was moving he did not have his  
18 weight properly shifted and he fell off the board?

19 A. That's correct.

20 MR. DIXON: I don't have any other  
21 questions.

22 (EXH. 1, Photograph, was marked for  
23 identification.)

24 (EXH. 2, Photograph, was marked for  
25 identification.)

1

EXAMINATION

2 BY MR. ALPHIN:

3 Q. How are you doing today, sir?

4 A. Pretty good. How about yourself?

5 Q. I'm doing well. Thank you.

6 I represent Jeremy Cantrell in this  
7 matter.

8 A. Okay.

9 Q. It's related to an accident that  
10 occurred on July 30, 2009. We've been talking a  
11 little bit about the accident, but I just want to  
12 kind of get your impressions of what -- how you get  
13 into the Plex Center, and walk me through the steps  
14 of going through the rules. So you come in the  
15 front door. What do you normally have to do to get  
16 into the facility?

17 A. You have to check in. So there's a  
18 cost. They give you a wristband to show that you  
19 paid. And you normally have to show them your  
20 helmet. But just in case, you would continue  
21 walking and you would -- if you rented a helmet you  
22 would come and pick it up from me or one of the  
23 skate counselors that were there or the skate  
24 guards.

25 There is a red tape line. So there's a



1 narrow walkway that you have to walk through. It's  
2 approximately -- it's like 100, maybe 150 feet from  
3 the front door or front check-in. Then you would  
4 walk to your right. As you walked in you would see  
5 a glass where the fields are. If you keep walking  
6 the skate park is on your right. There's a net  
7 there dropped down. That's how you know where it  
8 is. It's also labeled with a skate park sign. You  
9 walk through and go straight. Then you have a big  
10 open skate park here. So you have to walk through  
11 the skate park to get to the bowl.

12 If you were to get up this bowl there  
13 are only two different ways to actually enter it,  
14 both of which require you to run up a ramp. This  
15 one is a slanted ramp. It's approximately -- it's  
16 probably about 25 feet, and this one is, I think, a  
17 six and a half foot vert wall.

18 Q. Did you ever work at the front desk  
19 where they handed out the bracelets?

20 A. No.

21 Q. Who would have been working that day?  
22 Do you remember?

23 A. I could not tell you, no, sir.

24 Q. But the typical procedure was you'd  
25 come in the front door and you'd have to pay that

1 day to get your bracelet?

2 A. Yes. Of course.

3 Q. Would you also have to sign a release  
4 that day or would you be able to sign a release  
5 before then?

6 A. From what I know, if you -- if you ever  
7 skate in a skate park you're supposed to sign a  
8 waiver. So if it's your first day or -- if you've  
9 ever basically been there, the first time you would  
10 have to sign a waiver.

11 Q. So you have to come in and set up a  
12 file basically where you sign a waiver and fill out  
13 the paperwork and everything like that?

14 A. Correct.

15 Q. And then the day you come in you  
16 actually pay and get a bracelet that day?

17 A. Correct. And you can get a waiver if  
18 you need it, but someone has to sign it, of course.

19 Q. And that person has to be over 18?

20 A. Yes.

21 Q. I heard you talking earlier about the  
22 equipment necessary to skate.

23 A. Correct.

24 Q. I think you said that if you were over  
25 ten you didn't have to have --

1 A. Kneepads or elbow pads.

2 Q. Where did you come up with that  
3 understanding?

4 A. Basically all the kids over there. If  
5 the parents said it was okay then I didn't contest  
6 it.

7 Q. Is that something that you were trained  
8 at Plex, that anyone over ten --

9 A. Yeah. That's what they told us,  
10 correct.

11 Q. Is that a written policy or just  
12 something they just told you?

13 A. I think it's a basic guideline. I  
14 don't believe it's a written policy. I think the  
15 only policy is to actually have a helmet.

16 (EXH. 3, Plex Indoor Sports Skatepark  
17 Conduct and Safety Rules, Bates labeled Plex\_0058,  
18 was marked for identification.)

19 BY MR. ALPHIN:

20 Q. I'll show you what's marked as  
21 Exhibit 3 now, correct?

22 A. Yeah.

23 Q. This is marked as Plex\_0058 in  
24 discovery. Just take a minute and read this,  
25 please, and let me know when you're ready.

1 A. You're going to read number two?

2 Q. I'll let you read number two, but go  
3 ahead.

4 A. All participants under the age of 16  
5 must wear full safety gear, including but not  
6 limited to, a helmet, elbow and kneepads.

7 Q. Keep going, please.

8 A. All participants 16 years old and older  
9 must wear a helmet, but wearing of elbow and  
10 kneepad are optional. Those participants must have  
11 been fully advised that wearing of elbow and  
12 kneepads will enhance safety and that if they fail  
13 to wear pads they are substantially increasing  
14 their risk of injury.

15 Q. I think you testified that you thought  
16 this boy was between 14 and 15 years old; is that  
17 correct?

18 A. That's correct.

19 Q. Did he have on kneepads or elbow pads  
20 or anything that day?

21 A. No. All he had on was a helmet.

22 Q. Were you present when he signed the  
23 release?

24 A. No. I'm not there.

25 Q. Do you know if his parents were there

1     when he signed the release?

2             A.     I could not tell you.

3             Q.     So you have no idea about any releases?

4             A.     I cannot. I'm not at the front desk.

5             Q.     Perfect. You said that he looked like

6     he didn't know what he was doing? Is that -- did

7     he look like he knew what he was doing when he was

8     at the edge of the bowl?

9             A.     I would say not.

10            Q.     Did this looks like something he'd ever

11   done before?

12            A.     I would say no.

13            Q.     Was it typically your practice to go

14   help people that had never done this before or

15   you'd just kind of let them do it on their own?

16            A.     In that scenario, to help him would have

17   prohibited -- just increased pain, to be honest

18   with you.

19            Q.     No. I'm talking about the move, before

20   he did the move. Is that something you show them

21   how to do or do you all ever teach them how to do

22   those kinds of things?

23            A.     They have to pay normally if they want

24   training, I guess you would say, one-on-one.

25            Q.     One-on-one training?

1 A. (Nodding head.)

2 Q. Have you ever gone up and told somebody  
3 this is the big wall, you need to go over to the  
4 little wall to try it first, or anything like that?

5 A. No.

6 Q. So you never stopped anybody from  
7 trying to do anything?

8 A. We would advise them not to.

9 Q. Did you advise him not to?

10 A. No.

11 Q. Okay. Is it typically your practice to  
12 warn people of the risks when they come in or  
13 anything like that?

14 A. No.

15 Q. And did you ever meet with his parents  
16 or talk to his parents at all about what happened?

17 A. No.

18 Q. I think you said earlier that -- does  
19 Plex still have a skate park or did they close  
20 their skate park?

21 A. Both of them are closed.

22 Q. So they no longer have a skate park?

23 A. That's correct.

24 Q. Were you there when they closed it or  
25 did they close it after you left?

1 A. After I left.

2 Q. How long had you been working there at  
3 the time of this incident?

4 A. A few months tops.

5 Q. So you probably started right after  
6 school got out in June?

7 A. Yes.

8 Q. So probably about six weeks?

9 A. Yeah.

10 Q. What kind of training did you go  
11 through before you started working there?

12 A. Kind of a meet and greet. They kind of  
13 basically just told us how we need to interface  
14 with customers.

15 Q. What did they tell you?

16 A. Oh, boy. I don't recollect,  
17 unfortunately.

18 Q. Did they ever go through any safety  
19 steps or anything?

20 A. Quickly.

21 Q. Very quickly?

22 A. I would say, yeah, more quickly, yes,  
23 sir.

24 Q. You said you saw him attempting to do  
25 the maneuver; is that correct?

1 A. Correct.

2 Q. And he looked like he had no idea what  
3 he was doing?

4 A. That would be correct.

5 Q. Had you ever seen anyone else get  
6 injured in the same way he did? Doing the same  
7 maneuver, not the same kind of break.

8 A. Rolling or dropping, yes. Are you  
9 asking me if I've seen people --

10 Q. Get injured doing drop-ins on that same  
11 place.

12 A. That same bowl, no, but I have seen  
13 people get injured doing drop-ins, yes.

14 Q. Injured in the same way probably?

15 A. Normally, yeah.

16 Q. From the same thing he did, leaning  
17 back instead of leaning forward?

18 A. Most of the time, yeah. Most of the  
19 time you see them hit their head on the side of the  
20 wall or something.

21 Q. Knock themselves out?

22 A. Yeah.

23 Q. I think earlier you testified that his  
24 sister showed up later; is that correct?

25 A. That's correct.



1 Q. So she was not there at the time of the  
2 incident?

3 A. That's correct.

4 Q. Were you ever asked to fill out an  
5 incident report or anything like that after this  
6 accident?

7 A. Yes.

8 Q. Do you know if other people, other  
9 supervisors or anyone like that filled out incident  
10 reports?

11 A. I do not know.

12 MR. ALPHIN: There are several pages of  
13 incident reports. Is it okay if we just mark them  
14 all as one exhibit and go through them?

15 MR. DIXON: That's fine with me.

16 MR. ALPHIN: I'm going to mark as  
17 Exhibit 4 Plex 18, 19, 20 and 21 which were  
18 produced in discovery.

19 (EXH. 4, Facility Incident Report Form  
20 Bates labeled PLEX\_0018 - PLEX\_0021, was marked for  
21 identification.)

22 BY MR. ALPHIN:

23 Q. I'll let you look through these and  
24 then we can talk about them, okay?

25 A. Okay.

1 Q. Are any of these an incident report  
2 that you filled out?

3 A. No. These are all -- this is one  
4 incident report.

5 Q. Correct. Did you fill out an incident  
6 report or did you just provide information that  
7 went into an incident report?

8 A. I provided information that went into  
9 the report. Brynley filled this out.

10 Q. But did she actually see it or did you  
11 actually see it?

12 A. I saw it.

13 Q. So her statement is probably based on  
14 what you told her?

15 A. Correct.

16 Q. If you look at Plex 19, at six it says  
17 other comments. Can you read that into the record  
18 for us? ✓

19 A. Which one is it?

20 Q. If you look down at the bottom right  
21 corner they have the little --

22 A. Which one is it, 19?

23 Q. Yes, sir.

24 A. Six?

25 Q. Yes, sir.

1           A.    Sister, brother-in-law, friends were  
2 present of injured party.

3           Q.    Do you read that to say that she was  
4 there at the time of the incident?

5           MR. DIXON: Object to the form.

6           You can go ahead and answer.

7 BY MR. ALPHIN:

8           Q.    You didn't --

9           A.    I would say that's not conclusive, but  
10 okay.

11          Q.    You didn't draft the report so you  
12 wouldn't know?

13          A.    Correct.

14          Q.    Did you do anything to prepare for your  
15 deposition today?

16          A.    No.

17          Q.    Did you meet with anyone or talk to  
18 anyone?

19          A.    No.

20          Q.    After the accident did you ever meet  
21 with anyone or talk with anyone --

22          A.    No.

23          Q.    -- about the accident other than  
24 Brynley?

25          A.    No.

1 Q. So you've never been contacted by  
2 anyone else other than Mr. Dixon to schedule your  
3 deposition today?

4 A. Correct. And you or someone with your  
5 law firm.

6 Q. Someone with my law firm?

7 A. Yeah. I think they called me up, I  
8 think. Didn't they? Or was that just you?

9 MR. DIXON: It was probably just our  
10 law office.

11 BY MR. ALPHIN:

12 Q. If you'd look down at the response, who  
13 responded to the incident.

14 A. Which one?

15 Q. Number four. It's on Page 18.

16 A. Brynley Farr, Doug Zeis, skate park  
17 worker.

18 Q. I think earlier you testified -- do you  
19 know who Doug Zeis is?

20 A. I do not remember Doug Zeis. There was  
21 a short guy named Doug, so that could have been  
22 Doug. But I remember it being Chuck.

23 Q. You remember it being Chuck?

24 A. Yes..

25 Q. But Chuck is not listed on the report,

1 is he?

2 A. Correct. He is not.

3 Q. Below that there's like a handwritten

4 note. Can you read that into the record?

5 A. A large boy.

6 Q. And that goes along with your

7 description of the skater at the time?

8 A. Correct.

9 MR. ALPHIN: Give me just one second.

10 I think I'm done.

11 BY MR. ALPHIN:

12 Q. I have one more question. Prior to

13 allowing anyone to skate in the park did you all

14 ever test the skill level of the skater or anything

15 like that?

16 A. No.

17 Q. So you all didn't do anything to

18 confine where they could skate --

19 A. Correct.

20 Q. -- based on skill level or anything

21 like that?

22 A. Correct.

23 MR. ALPHIN: I have no other questions.

24 MR. DIXON: I do have a couple quick

25 follow-ups.

1 EXAMINATION

2 BY MR. DIXON:

3 Q. Chris, Mr. Cantrell's attorney asked  
4 you briefly if you ever warned skaters about the  
5 risk of injury with skating at the skate park. Do  
6 you recall that question? Do you recall him asking  
7 you that question?

8 A. Yes. Yes.

9 Q. Thank you. Have you ever read the  
10 waiver that this firm -- that the company uses?

11 A. I can recollect it a little bit.

12 Q. Do you --

13 A. I know what waivers are for and why we  
14 sign them, if that's really what you're asking me.

15 Q. Do you recall specifically in that  
16 waiver if there is a warning to all participants  
17 that skateboarding is an inherently risky activity?

18 A. Yeah. And you have to skate at your  
19 own risk.

20 Q. You have to skate at your own risk.

21 Okay.

22 So there would be no reason for you to  
23 come back behind that and explain to them that they  
24 are still participating in a risky activity,  
25 correct?

1 A. Correct.

2 Q. And I wanted to ask you about the  
3 safety rules that you were asked about here. It  
4 was Plex 58. Do you know for a fact whether these  
5 rules were actually in place on July 30, 2009?

6 A. I do not. I do not. To be honest,  
7 this is the first time I've seen this.

8 Q. So your testimony about the --

9 A. Well, like number five, that one  
10 definitely did not apply because there was a bench  
11 within there which kids were allowed to bring food  
12 and drink into.

13 Q. I got you.

14 Okay. So to the best of your  
15 recollection, your testimony about a participant  
16 over the age of ten only needing a helmet may in  
17 fact have been the policy in place in July of 2009?

18 A. That's possible.

19 Q. By reading this does this change your  
20 recollection of what was the policy at the time you  
21 were working -- this incident occurred?

22 A. No.

23 Q. Mr. Alphin also asked you about whether  
24 or not you had seen skaters get injured doing this  
25 same maneuver at that same part of the skate park.

1 Do you recall that questioning?

2 A. Uh-huh.

3 Q. Have you seen skaters get injured doing  
4 other things involved in skateboarding?

5 A. Oh, yes. Yes.

6 Q. Have you seen skaters get injured doing  
7 very simple things?

8 A. Yes.

9 Q. Have you yourself ever been injured  
10 skateboarding?

11 A. Yes.

12 Q. Is injury an inherent risk with  
13 skateboarding?

14 A. Yes. Same with any other sport,  
15 correct.

16 Q. And you were also asked about your  
17 opinion as to the experience level of Jeremy. I  
18 think the question was whether he looked like he  
19 knew what he was doing, and your answer, if I  
20 recall, was, no, it did not.

21 A. Correct.

22 Q. Correct me if I'm wrong, but you didn't  
23 see him skating prior to that particular incident,  
24 correct?

25 A. Correct.



1 Q. So you had no basis to determine  
2 whether or not he was capable or qualified to do  
3 that particular maneuver, correct?

4 A. Correct.

5 Q. Other than the fact that he looked  
6 hesitant at the top?

7 A. Correct.

8 Q. Have you seen people who have done this  
9 maneuver before look hesitant while they were at  
10 the top?

11 A. No.

12 Q. No. Okay. By the fact that someone is  
13 hesitant, would that be cause for you to go over  
14 and warn them that they shouldn't do that maneuver?

15 A. No.

16 Q. Under what circumstances would you stop  
17 a participant and say, whoa, whoa, whoa, you should  
18 not do that?

19 A. If they're doing it wrong so  
20 inherently -- you have to use the tail of your  
21 board. If he put the middle of his board down I  
22 know for a fact it wouldn't end well. But very  
23 unlikely would I ever...

24 Q. But just because someone is cautious  
25 and hesitant in starting this maneuver doesn't mean

1 they're necessarily going to fall; is that correct?

2 A. That's correct.

3 Q. And then lastly a question I had was  
4 again going back to this manager on duty. If Chuck  
5 Davis were to testify that he was not working that  
6 day would you have any reason to think that that  
7 was an inaccurate statement?

8 A. That what? Repeat that again. Clarify  
9 it.

10 Q. If Chuck were to say, I wasn't working  
11 that day, would you believe him or would you -- do  
12 you think that he would not be telling the truth if  
13 he were to testify to that?

14 A. I don't know. It's very likely. I  
15 guess it's hard for me to recollect a lot of stuff  
16 from that long ago, but I'm simply going on what I  
17 remember.

18 Q. But I'm just saying that the level of  
19 your certainty that it was Chuck Davis that was  
20 working that day -- if he were to say, I was  
21 definitely not there, and Mr. Zeis says, I was,  
22 would you defer to their recollection?

23 A. No. I would say they were probably  
24 correct.

25 Q. So you would defer to their

1 recollection as to who was working?

2 A. Okay. Yes.

3 MR. DIXON: That's all I wanted to make

4 sure of. I don't have any other questions.

5 MR. ALPHIN: That's it.

6 (The deposition was concluded at  
7 11:51 a.m.)

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CERTIFICATE OF REPORTER.

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I, Angela D. Zuver, Court Reporter  
and Notary Public for the State of South Carolina  
at Large, do hereby certify that the foregoing  
transcript is a true, accurate, and complete  
record.

I further certify that I am  
neither related to nor counsel for any party to the  
cause pending or interested in the events thereof.

Witness my hand, I have hereunto  
affixed my official seal this 13th day of June,  
2013 at Lexington, Lexington County, South  
Carolina.

---

Angela D. Zuver, Court Reporter  
My Commission expires  
July 2, 2014

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF RICHLAND

3 JEREMY CANTRELL,

4 Plaintiff,

5 vs. CASE NO. 12-CP-40-5356

6 PLEX INDOOR SPORTS, LLC,

7 Defendant.

8  
9 30(B)6

10 DEPOSITION OF: CHUCK DAVIS

11 DATE: August 21, 2013

12 TIME: 10:05 A.M.

13 LOCATION: Law Offices of  
14 Hedrick, Gardner, Kincheloe &  
Garofalo  
15 1301 Gervais Street, Suite 1900  
Columbia, SC

16 TAKEN BY: Counsel for the Plaintiff

17 REPORTED BY: Leslie T. Stanley,  
18 Certified Shorthand Reporter

19  
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10 ATTORNEYS FOR THE DEFENDANT  
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17 LDixon@hedrickgardner.com

18 (INDEX AT REAR OF TRANSCRIPT)  
19  
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1 STIPULATION

2 It is stipulated by and between Counsel  
3 that this deposition is being taken in accordance  
4 with the South Carolina Rules of Civil Procedure,  
5 Rule 30; that all objections as to Notice of this  
6 deposition are hereby waived; that all objections  
7 except as to form are reserved until the time of  
8 trial; and that the deponent does not waive reading  
9 and signing of this deposition.

10 \* \* \* \* \*

11 CHUCK DAVIS,

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. PACELLA:

15 Q. All right, Mr. Davis, my name is Mario  
16 Pacella. I'm a lawyer here in Columbia. I also  
17 work in the Georgia office, with the Strom Law  
18 Firm, and I represent Jeremy Cantrell, who filed  
19 this lawsuit against Plex Indoor Sports, LLC. As I  
20 understand it, you have been identified as a  
21 witness by Plex, pursuant to a notice that I have  
22 given, and we will go over that in a few minutes.  
23 But just preliminarily, have you ever had your  
24 deposition taken before?

25 A. Yes.

1 Q. How many times?

2 A. Once.

3 Q. And was it in the context of your  
4 employment at Plex, or was it something else?

5 A. Yes, Plex.

6 Q. Okay. What was that about?

7 A. Well --

8 Q. Just --

9 A. Excuse me, the deposition took place at  
10 Plex, because that's what -- but it had nothing to  
11 do with Plex.

12 Q. What kind of --

13 A. It was a former employee that something  
14 happened outside that they wanted me to testify  
15 about.

16 Q. Okay.

17 A. Give a record of.

18 Q. And the reason why I ask this, just to  
19 kind of go over the rules, so I can sort of  
20 streamline the rules --

21 A. Okay.

22 Q. -- I will be asking you questions, and  
23 if you don't understand a question that I ask you,  
24 please ask me to clarify it.

25 A. Okay.

1 Q. Because if you answer a question, I'm  
2 going to assume that you understood the question,  
3 and that your answer was accurate to the question  
4 that was posed. I am from Buffalo, New York, so I  
5 am prone to occasionally talk over somebody, so if  
6 you are not finished with the response, please tell  
7 me to shutup, and that you need to finish. You can  
8 be polite or -- or you can be mean about it, if you  
9 have to. It's sort of a tendency that I have.

10 In that regard, I would ask you to wait  
11 for me to finish asking a question before you start  
12 your answer. You may know exactly what I am going  
13 to ask, but the court reporter is going to have a  
14 tough time taking down answers -- taking down  
15 statements being made simultaneously.

16 A. I understand.

17 Q. I need you to answer questions verbally  
18 and audibly, meaning with words and out loud. It's  
19 okay to nod your head, shake your head yes or no,  
20 because I know what that means, as long as it's  
21 accompanied with a verbal response.

22 If you say something like uh-huh or  
23 huh-uh, and I say, is that a yes or is that a no,  
24 I'm not trying to be rude. I'm trying to make sure  
25 the record is clear.

1 A. Okay.

2 Q. Likewise, the attorney for Plex may  
3 also do the same thing, just to make sure that the  
4 record is clear. He's not trying to be rude  
5 either, okay?

6 A. I understand.

7 Q. If you need a break for any reason,  
8 feel free to ask me. I don't expect that we will  
9 be here long enough where we would need to take a  
10 break. Usually, I take breaks somewhere in the  
11 60-minute to 90-minute range, and I don't  
12 anticipate -- it's possible, but I don't anticipate  
13 that we are going to be here much beyond 90  
14 minutes, and probably a lot less than that. Any  
15 questions about those instructions?

16 A. No, sir.

17 Q. Okay. I would ask -- I know you are  
18 here as a representative of Plex, and a lot of your  
19 personal information is not really relevant, but  
20 just -- if you can give me some background. It's  
21 Chuck Davis, but is it Charles or --

22 A. Charles E. Davis, Junior.

23 Q. And when were you born?

24 A. '62.

25 Q. Date of birth?

1 A. 1962. 2/11/62.

2 Q. Okay, and where were you born, what  
3 city and state?

4 A. Columbia.

5 Q. Okay. And are you married?

6 A. Yes.

7 Q. What is your wife's first name?

8 A. Miriam, M-i-r-i-a-m.

9 Q. Same last name?

10 A. Yes.

11 Q. Do you have any adult children?

12 A. Yes.

13 Q. Do they live in Richland County?

14 A. One does, one does not.

15 Q. The one that lives in Richland County?

16 A. Michael Alexander Davis.

17 Q. And do you have any other relatives  
18 that live in Richland County?

19 A. Okay, correction. You asked if -- if  
20 he lived in Richland County. We actually live in  
21 Lexington County, I apologize.

22 Q. He lives in Lexington County?

23 A. Correct.

24 Q. Okay. Do you have any relatives in  
25 Richland County?

1 A. I honestly can't say if I do or don't.

2 Q. Okay. With respect to sort of  
3 immediate family in the Columbia area, what last  
4 names would we be looking at? Davis?

5 A. Yes, Davis.

6 Q. Does your wife have a maiden name?

7 A. Yes, Brower.

8 Q. Okay.

9 A. Estes, Marcy.

10 Q. M-a-r-c-i?

11 A. Y.

12 Q. Okay.

13 A. Um, that's all that I can -- that comes  
14 to mind right now.

15 Q. Okay. What's your educational  
16 background?

17 A. High school graduate, one semester of  
18 college.

19 Q. Where did you graduate high school?

20 A. Brookland Cayce High School.

21 Q. You said one semester of college?

22 A. Tampa Bay Bible College.

23 Q. Where do you work?

24 A. Plex Indoor Sports.

25 Q. Where specifically, what's the address?

1 A. 741 Fashion Drive, Columbia, 29229.

2 Q. Do you also work at the hockey -- or  
3 the ice center or --

4 A. No, sir.

5 Q. Have you ever worked out there?

6 A. Yes.

7 Q. What's your position there now?

8 A. I'm the site manager.

9 Q. How long have you been there as site  
10 manager? Let me clarify the question. How long  
11 have you been site manager?

12 A. February, 2013.

13 Q. Okay. Any previous positions with  
14 Plex?

15 A. Facility manager.

16 Q. What were the dates of that?

17 A. Not sure on the exact start date.

18 Q. Okay.

19 A. Around February, 2006.

20 Q. That's an approximate date?

21 A. Correct.

22 Q. Was that also at the Sandhills  
23 location?

24 A. Correct.

25 Q. What were your responsibilities as

1 facility manager at that time?

2 A. Sports operations.

3 Q. What does that mean?

4 A. Organizing different leagues that we  
5 have at Plex. Maintenance.

6 Q. Do you do the maintenance yourself, or  
7 was that -- was that something that you were  
8 responsible for making sure it was done?

9 A. Most of it, I did myself. If it was  
10 beyond the realm, I had someone else do it.

11 Q. Anything else as facility manager?

12 A. I was in charge of transportation for  
13 after-school programs, for the busses.

14 Q. Okay.

15 A. Opening, closing of the facility.

16 Q. Okay. Any training of employees at  
17 that time?

18 A. Yes.

19 Q. Which kinds of employees would you  
20 train?

21 A. Janitorial staff, cafe staff.

22 Q. Do any training of front desk people?

23 A. Yes, from time to time.

24 Q. When did you start working with Plex?

25 A. June, 2004.



1 Q. What other positions did you hold  
2 there?

3 A. When I originally was hired for Plex,  
4 my job was to introduce Columbia to indoor soccer.  
5 I went around meeting with different college  
6 coaches, club coaches for adults, for youth, the  
7 Hispanic community, to bring leagues into the  
8 facility.

9 Q. Okay. In many ways, a sales type  
10 position?

11 A. Correct.

12 Q. Any other positions that you had at  
13 Plex?

14 A. Just about every position.

15 Q. What did you do, just careerwise, just  
16 a very brief overview, before you started working  
17 with Plex?

18 A. I was with Fed Ex for 18 years. I was  
19 a soccer coach for Brookland Cayce High School for  
20 girls and boys. I owned a lawn care business.

21 Q. Okay. Anything else that significantly  
22 -- I'm not really concerned about a job you held  
23 for two or three months in high school, but any  
24 other significant jobs?

25 A. Um, I was with Allison Irwin Company

1 for five and a half years.

2 Q. Doing what?

3 A. I was in the parts department, and we  
4 had parts for TVs, VCRs, heating and air.

5 Q. Okay. All right.

6 MR. PACELLA: I'm going to mark this as  
7 exhibit 1.

8 (PLF. EXH. 1, Deposition Notice,  
9 was marked for identification.)

10 BY MR. PACELLA:

11 Q. You have been handed a document marked  
12 as exhibit 1 to this deposition. And I will -- for  
13 the record, it is five pages long. It is a lot of  
14 -- sort of boiler plate definitions and language  
15 and rules of construction. The part that I plan to  
16 ask you about is going to be pages four and five.

17 You have every opportunity -- take  
18 every opportunity you want to read the entire  
19 document, but just for the record, I'm telling you  
20 I only plan to ask you questions about pages four  
21 and five. And if you have familiarized yourself  
22 with it recently and don't need to look at it  
23 again, just let me know, and we will proceed to  
24 questions.

25 A. Okay.

1 MR. DIXON: Do you need to review it?

2 THE WITNESS: I'm okay going forward.

3 BY MR. PACELLA:

4 Q. You have been identified as a 30(B)6  
5 witness, which means you have been identified as a  
6 person with knowledge of the topics listed in this  
7 document, and there are nine topics. Without  
8 actually specifically asking you about each, one  
9 through nine, is it your understanding that you  
10 have knowledge as to each of these topics, to be  
11 able to provide information on behalf of Plex?

12 A. Yes.

13 Q. And if we get to a point that I'm  
14 asking you a question, and you are not the most  
15 appropriate person to answer that, and it's  
16 somebody else, if you just let me know who that  
17 person is, I would appreciate it.

18 A. Fair enough.

19 Q. Okay. As you know, this case is about  
20 a minor who was skateboarding and was injured. Are  
21 you aware of that?

22 A. Yes.

23 Q. Okay. The allegations are that no  
24 adult, no parent or legal guardian, had signed a  
25 waiver form. Do you understand that that's an

1 allegation as well?

2 A. Yes.

3 Q. But you agree with that, that --  
4 whether you agree that that happened or not, the  
5 point is, that's an allegation. What -- when  
6 someone comes into Plex, a minor child comes into  
7 the Plex, take me through the process -- the  
8 skateboarding. I understand there is not a skate  
9 park there anymore?

10 A. Correct.

11 Q. I understand that there was a skate  
12 park there, so take me through the process. If a  
13 minor walks in, a 15-year-old walked into the Plex,  
14 wanted to skateboard and had skateboard in hand and  
15 helmet in hand, tell me what the procedure is.

16 A. They come up to the front desk, the  
17 front desk staff will ask them, have you skated  
18 here before, have you done anything at Plex before?  
19 With their answer, we will check the computer to  
20 see if their name had been entered as previously  
21 signing a waiver. If their name does not come up  
22 in our database, we then instruct them that they  
23 need to have a parent or legal guardian sign a  
24 waiver before they can participate.

25 Q. Do you do anything -- does Plex do

1 anything to verify the age of the person coming in?

2 A. If they are questionable, we will ask  
3 for ID. If someone comes in and they are ten, of  
4 course, we are not going to ask for an ID. If they  
5 come in and they are a young teenager, yes, we will  
6 ask for an ID to verify, and if they don't have ID,  
7 we will turn them away and give them a waiver and  
8 say, we need a legal guardian or parent to sign  
9 this.

10 Q. Okay. And when you give -- you give  
11 them the waiver to take home?

12 A. We have done that in the past. We will  
13 also say that we give -- it is on our website, they  
14 can download it.

15 Q. Okay. Now, if a -- if a minor comes in  
16 and -- how do you verify or confirm it is actually  
17 a parent or legal guardian that signed for them, if  
18 they didn't -- if they took the form home with  
19 them?

20 A. We have no way of actually knowing  
21 whether a legal parent or guardian were -- we're  
22 taking it at faith, that they did what they were  
23 supposed to.

24 Q. Okay, so you actually don't ask for a  
25 parent's identification or any other documentation

1 to establish custody or guardianship?

2 A. That is correct.

3 Q. Okay. Do you have a written policy or  
4 procedure about these waivers?

5 A. There is, and it's on the waiver. We  
6 do have -- we have had training manuals -- or not  
7 manuals, but for the front desk, we take them  
8 through, step by step, on how accept, who to  
9 accept.

10 Q. When were those training manuals  
11 developed?

12 A. Right around 2005, 2006. I was trying  
13 to locate one of those, and I have been unable to,  
14 due to the turnover that we've had over the past  
15 nine years.

16 Q. Who developed those manuals?

17 A. I want to say it was Sharon Farnham.

18 And --

19 Q. Farnham? Can you spell that?

20 A. F-a-r-n-h-a-m.

21 Q. Where is she?

22 A. She is in Columbia. She lives in Irmo.

23 Q. Do you know where she works?

24 A. She is still CFO, to my knowledge.

25 She's still CFO.

1 Q. Of Plex?

2 A. Of Plex.

3 Q. Okay.

4 A. And I think she works for herself.

5 Q. Okay.

6 A. The other person that would have had a  
7 hand in training manuals would have been Pam Osman.

8 Q. Can you spell her last name?

9 A. O-s-m-a-n.

10 Q. Okay. And where is she?

11 A. She lives in Lexington.

12 Q. Where does she work?

13 A. Well --

14 Q. Are you familiar with where she works?

15 A. I'm not a hundred percent familiar with  
16 where she works, no.

17 Q. When did she stop working at the Plex?

18 A. I don't know the date.

19 Q. Approximate year?

20 A. Approximately 2006 or 2007.

21 Q. These manuals, are they like in a  
22 binder or --

23 A. No.

24 Q. How do they look? What is their  
25 appearance?

1 A. It was forms stapled together.

2 Q. Okay. It's basically materials so  
3 someone at the front desk -- so if they were  
4 familiar with the procedure, they know exactly what  
5 to do?

6 A. Correct.

7 Q. Have you contacted Ms. Farnham about  
8 whether she had those documents on her computer?

9 A. I have not, no.

10 Q. Do you know if anyone on behalf of the  
11 Plex has done that?

12 A. I do not, no.

13 Q. And in preparation for your deposition  
14 today, you did not contact her to see if she has  
15 those documents?

16 A. Did not.

17 Q. Okay. When is the last time that you  
18 have seen those documents?

19 A. I can't honestly say.

20 Q. How did you train employees about that  
21 policy and procedure?

22 A. We take them through different  
23 scenarios when the person comes in. First, they  
24 shadow someone at the front desk or a manager on  
25 duty, then after a day or so, they are being



1 shadowed by the front desk person, to help them  
2 through -- they go through checking someone in,  
3 receiving money, and then after that is finished,  
4 then they are turned loose on their own, so they  
5 will have anywhere from two to four days of  
6 training.

7 Q. And that's -- the manual that was  
8 sitting at the front desk that we can't locate, is  
9 that something that would be gone over by a trainer  
10 with a person?

11 A. I honestly can't answer that question,  
12 because in the early years, my role was more taking  
13 care of the facility, and when someone was hired,  
14 they handled that part.

15 Q. Now, you testified that you did some  
16 training?

17 A. Correct.

18 Q. You trained -- and I think I asked you  
19 if you trained front desk people, and you did from  
20 time to time?

21 A. Correct.

22 Q. So those times when you would train,  
23 did you use that document that you were referring  
24 to?

25 A. No, sir.

1 Q. Do you know if anyone used that  
2 document in the training?

3 A. I can't say yes or no on that.

4 Q. Okay. Do you know if anyone ever  
5 looked at that document?

6 A. I do know they have looked at it. I'm  
7 assuming they have looked at it, because they have  
8 gone through the training.

9 Q. But you -- you didn't use it when you  
10 trained people?

11 A. No.

12 Q. Do you know if anyone else --

13 A. I can't honestly say yes or no.

14 Q. So this written policy and procedure,  
15 you do not know whether anyone actually used that  
16 document?

17 A. Correct.

18 Q. And is this just a document kept at the  
19 front desk, or was this something that was provided  
20 to employees upon hiring?

21 A. It was made -- it was made available to  
22 them. I honestly can't answer any more than that.

23 Q. You just testified that it was made  
24 available to you. How was it made available to  
25 each employee that it existed and where it was

1       kept?

2               A.    We have, in this file cabinet -- we  
3       have all of our employee files; not employee files  
4       on people, but different documents, waivers, W-9s,  
5       I-9s, manuals for different equipment, that is  
6       where everything is usually kept, and that's where  
7       people, if they have a question about something,  
8       they refer to that drawer.

9               Q.    So this was in a file drawer? This was  
10       not at the front desk?

11              A.    Yes.

12              Q.    Okay. That file still exists?

13              A.    The file drawer is still there, yes.  
14       It's changed over time, as far as a -- as the  
15       cabinet, but we still have that there.

16              Q.    And the document is not in there?

17              A.    I did not see it, no.

18              Q.    And you last looked about five or six  
19       months ago, probably? Is that about right?

20              A.    It was actually when documentation was  
21       given to me from Lee, on trying to locate --

22              Q.    That's not the right time -- that's  
23       about the right timeframe? Might be off a month or  
24       two, but recently, within the past year?

25              A.    Yes.

1 Q. Did you look before this deposition?

2 A. I did.

3 Q. Okay. And so you present a waiver to  
4 the minor customer, if the person's a minor?

5 A. Uh-huh.

6 Q. You ask them to take it home if they  
7 don't have a parent with them?

8 A. That's correct.

9 Q. And if the person is -- if a person is  
10 a minor, but has an adult with them, you do nothing  
11 to verify that that might be a parent or legal  
12 guardian?

13 A. No, we do.

14 Q. Okay.

15 A. We ask the parent -- if a mom brings  
16 Johnny and Jimmy in, just for names' sake, and they  
17 are underage, we will ask them -- the mom, which  
18 one is your child? She can sign for Jimmy, but she  
19 can't sign for Johnny, and then that's when we let  
20 her know that we -- we can contact the other mom to  
21 let her know, hey, we need to get a signed copy  
22 before we can let him in with her.

23 Q. Okay.

24 A. In other words, she can't sign for him,  
25 because it's not her guardian -- her child.

1 Q. Okay, she brought a son and her son's  
2 friend?

3 A. That's correct.

4 Q. So how is that documented when someone  
5 does that? When they bring somebody in that's  
6 actually not their child, and you are going to turn  
7 them away until you get a waiver, how do you  
8 document that?

9 A. It's not documented.

10 Q. Okay. And what's the purpose of the  
11 waiver?

12 A. For protection for Plex.

13 Q. I don't know -- what -- explain what  
14 you mean by that.

15 A. If a person comes in, and they are  
16 participating in a sport, and they get injured, the  
17 document states that -- that, you know, Plex would  
18 not be liable for an injury that occurred during a  
19 sporting event or an activity at Plex, because  
20 they, you know, twisted an ankle while they were  
21 running or Johnny hit Susie with a ball and  
22 suffered a concussion. It was beyond anything that  
23 Plex says, so --

24 (PLF. EXH. 2, Plex Indoor Sports  
25 Waiver Form, was marked for

1 identification.)

2 BY MR. PACELLA:

3 Q. Mr. Davis, you have been handed exhibit  
4 2 to this 30(B)6 deposition, and we are talking  
5 about a waiver form. Is this -- this is a waiver  
6 form that has the signature of Jeremy Cantrell at  
7 the bottom of it. It's identified as Plex  
8 underscore 0017, Bates number. Is this the waiver  
9 form that we are talking about, that we've been  
10 discussing?

11 A. Yes.

12 Q. Okay. And do you know who drafted this  
13 waiver?

14 A. Plex's attorney.

15 Q. Okay. Okay, do you know when it was  
16 drafted?

17 A. I do not.

18 Q. Okay. Is this still the same form you  
19 are using today, or has it changed?

20 A. It is still the same.

21 Q. And has this form been in existence the  
22 entire time you've worked with Plex?

23 A. Yes.

24 Q. Okay, and there haven't been any  
25 changes to that form during that timeframe?

1 A. Not to my knowledge.

2 Q. In preparation for your deposition, did  
3 you locate any other versions of this form or any  
4 document pursuant to my document request? Did you  
5 locate any other versions of this form?

6 A. No.

7 Q. Okay. And have you seen this  
8 particular document before, with the -- with the  
9 signature of Jeremy Cantrell at the bottom?

10 A. I haven't.

11 Q. And do you know specifically about  
12 Mr. Cantrell and the process that -- where this  
13 signature took place? And that's possibly outside  
14 the scope of this deposition; I'm just asking if  
15 you have any personal knowledge?

16 A. Only what I've been told.

17 Q. Okay. And so as I understand it,  
18 Mr. Cantrell was 15 years old at the time he came  
19 into the Plex, if you understand that as well, or  
20 do I need to give you that as a given to assume for  
21 the sake of your testimony?

22 A. I'm assuming he was 15 at the time.

23 Q. Okay. So a person who's working at the  
24 front desk would give him this form and ask him to  
25 take it home and have it signed; is that correct?

1 A. That is correct.

2 Q. And that didn't happen, as far as your  
3 knowledge?

4 A. I cannot answer that.

5 Q. Okay. Okay, you don't know if he  
6 actually took this home to have it signed?

7 A. Do not, correct.

8 Q. But there would have been no one that  
9 would have verified whether this signature was the  
10 parent?

11 A. Rephrase that.

12 Q. There was no -- no one would have  
13 verified that the signature would have -- the  
14 signature Jeremy Cantrell in the signature block  
15 was his parent or legal guardian?

16 A. So I'm assuming you are saying did we  
17 call the mom to say, did you sign this form?

18 Q. I'm asking -- there is no policy or  
19 procedure that would require a verification that  
20 that was actually a parent or guardian?

21 A. That is correct.

22 Q. And if you are looking at this form, it  
23 is kind of confusing, because it says participant's  
24 signature, and then it says parent's signature if  
25 under 18.



1 A. Uh-huh.

2 Q. Is there a reason why there aren't two  
3 blanks?

4 A. I can't answer that question, because I  
5 don't know.

6 Q. From a -- from a notice standpoint,  
7 policy and procedure, what is the reason why you  
8 don't have separate blanks for the parent and --

9 A. I didn't write this document up, so I  
10 don't know the answer to that.

11 Q. Okay. And is there anyone at the Plex  
12 who would be able to explain why there aren't two  
13 separate blanks?

14 A. That would be a question for the  
15 attorney that drafted this.

16 Q. Okay. Additionally, is there any  
17 reason why there is no verification of a parent or  
18 guardian portion of this, verification that the  
19 person signing is actually the parent or guardian?  
20 Can you tell me, from a policy and procedure  
21 standpoint, why there is not?

22 A. We are taking it on faith that the  
23 customer is doing what we requested. When they do  
24 come in or a parent comes in, we will explain to  
25 them, and we will actually point out, you know, we

1 need your parent's signature here, and the person's  
2 name here participating, so that we can try to  
3 clarify that.

4 Q. Okay. So you are taking a 15-year-old  
5 -- you would take a 15-year-old child at face  
6 value. So if the child took this form and went  
7 home and forged their parent's signature and  
8 brought it in, you are taking a 15-year-old's  
9 statement at face value, that -- you know, this is  
10 my parent's signature?

11 A. Yes.

12 Q. Then why do you even ask for a parent's  
13 signature, from a policy and procedure standpoint?  
14 Why do you ask for a parent's signature?

15 A. Because it's stated on the form.

16 Q. I know it's stated on the form. Why  
17 does the Plex request the parent's signature?

18 A. We need parental permission from the  
19 parent or guardian to allow them to come in and  
20 participate.

21 Q. Why?

22 A. I'm not sure I understand your  
23 question.

24 Q. Why would you need a parent to sign?

25 A. Because they are underage.

1 Q. They are underage?

2 A. This is not a legal -- a legal --  
3 sorry. The underage is not considered -- cannot  
4 sign a legal document.

5 Q. And you understand that why? How do  
6 you understand that?

7 A. From explanations that have been given  
8 to me.

9 Q. From other employees at the Plex or  
10 supervisors?

11 A. Owners, lawyers, yes.

12 Q. Okay. And so if a parent needs -- I  
13 guess I have to go back to -- if a parent needs to  
14 sign or a legal guardian needs to sign it to have  
15 this -- for this to have legal effect, why don't  
16 you verify it?

17 A. I can't answer that. I don't know.

18 Q. When someone comes in to -- and you --  
19 someone at the Plex, at the front desk hands this  
20 document to someone, do you go over it with them?

21 A. We do not go over the entire form, no,  
22 sir.

23 Q. Well, if I'm coming in, explain the --

24 A. We need to have this form signed by  
25 your parents or legal guardian, or if they are an

1 adult, this is just a liability of release, release  
2 of liability. Some parents will stand there and  
3 read the whole thing. A lot of parents will sign  
4 it and they say, yes, we understand.

5 Q. Okay. So your employee is not  
6 instructed to tell them that they need to read the  
7 entire document?

8 A. That is correct.

9 Q. So you -- okay. Why not?

10 A. I can't answer that.

11 Q. Just from a straight policy and  
12 procedure standpoint, why don't you have your  
13 employees at least date and -- or say, you need to  
14 read this entire document?

15 A. I don't know.

16 Q. And at the top of this document, on  
17 exhibit 2, it says, no participant will be allowed  
18 to participate at Plex until signatures obtained  
19 and this form is received by Plex. Is that  
20 correct?

21 A. That is correct.

22 Q. And it's not until you get the -- like  
23 midway through the page, more than midway through  
24 the page, two-thirds of the way down, where it  
25 says, I have actually read this statement; is that

1 correct?

2 A. Well --

3 MR. DIXON: Could you be more specific  
4 about what you are referring to?

5 BY MR. PACELLA:

6 Q. Yes, if you take a look at the -- the  
7 agreement --

8 A. That's the first place.

9 Q. Is that correct?

10 A. I would have to say yes.

11 Q. Okay. So the first thing the document  
12 says is, sign it, and it's well into the page  
13 before it says to read it; is that correct?

14 MR. DIXON: Object to the form.

15 THE WITNESS: Restate the question.

16 BY MR. PACELLA:

17 Q. Yes, I think I added a compound  
18 question anyway, so that's probably the reason for  
19 the objection.

20 MR. DIXON: I also think you are  
21 mischaracterizing.

22 BY MR. PACELLA:

23 Q. At the top of the page, it does not say  
24 to read the entire page before signing; is that  
25 correct?

1 A. It does.

2 Q. And I pointed out the section  
3 previously where -- where it says, I have read the  
4 agreement; is that the first statement in the  
5 document, where it -- where it has any indication  
6 that the document should be read?

7 MR. DIXON: Object to the form.

8 THE WITNESS: It does not say read  
9 first. It does say in the form to read.

10 BY MR. PACELLA:

11 Q. When a customer comes in, does the --  
12 does the front desk person point out bullet point  
13 number two in this document, specifically go over  
14 this?

15 A. They do not.

16 Q. Okay. And no one -- so no -- from a  
17 policy or procedures standpoint, it doesn't mean it  
18 never happens, but from a procedure standpoint,  
19 there is not a requirement for an employee to  
20 explain about the risks involved?

21 A. No, sir.

22 Q. And specifically, those risks being  
23 dangers of serious bodily injury, including  
24 permanent disability, paralysis and death, correct?

25 A. Is that a question?

1 Q. Including those -- yes, no one at the  
2 Plex is instructed to specifically lay that --  
3 point that out on this form?

4 A. They are not instructed, correct.

5 Q. The front desk, is there a video  
6 camera?

7 A. Yes.

8 Q. So someone at the front desk -- someone  
9 at the front desk could be caught on video; is that  
10 correct?

11 A. The customer would be caught, correct,  
12 yes.

13 Q. And you don't have that video for  
14 Mr. Cantrell; is that correct?

15 A. That is correct, because of the time  
16 elapsed.

17 Q. Okay. And so you have a written  
18 procedure about the use of the video or maintenance  
19 of the video? Maintenance of all your video  
20 surveillance?

21 A. No, sir.

22 Q. So you do not have a procedure for  
23 that?

24 A. No, sir.

25 Q. So what's -- what's the typical

1     timeframe for maintaining that video?

2             A.    I don't understand the question, I'm  
3     sorry.

4             Q.    You said because of the time that has  
5     elapsed. How long do you keep the video for?

6             A.    It's a standard recorder by the alarm  
7     company. It recycled every 30 days.

8             Q.    Does the alarm company provide you a  
9     policy and procedure about how that happens?

10            A.    There were instructions given at the  
11    time of installation.

12            Q.    Were they oral or written?

13            A.    Honestly, I don't know, because it was  
14    installed before I had knowledge of it.

15            Q.    Okay. But if there is a written policy  
16    and procedure on that, at least when you went the  
17    look for documents on behalf of the Plex, did you  
18    look for that document that talked about the  
19    recycling of the video?

20            A.    No, sir.

21            Q.    Is that something you can look for?

22            A.    No, sir.

23            Q.    You don't have access to that  
24    information?

25            A.    No, because the recorder that was



1 originally installed is no longer there. Because  
2 it was fried in an electrical strike two years ago.

3 Q. I was asking about the policy provided  
4 by the alarm monitoring company that would have  
5 been provided at installation.

6 A. Okay. Again, I don't have the -- that  
7 documentation for that one that was installed at  
8 that time.

9 Q. Okay, and I guess I would ask why.

10 A. I can't answer that question.

11 Q. But you -- you just told me you didn't  
12 look for it, and I asked if you could look for it,  
13 and you said, I don't have it.

14 A. It wasn't something that was brought up  
15 that said I needed to look for it.

16 Q. I understand that. I'm not even  
17 fussing about that. I'm asking if you can look and  
18 see if you have it.

19 A. I could, if I -- if that is something  
20 that is going to be requested of me.

21 Q. Okay. All right. I believe that it  
22 technically has been requested, so we will talk  
23 about it later.

24 A. Okay..

25 Q. Okay, take me through the process of

1 explaining to -- your policy and procedure of  
2 explaining the dangers of skateboarding to minors,  
3 at least when you had the skateboarding facility,  
4 and particularly, back in 2009. What is the policy  
5 and procedure of explaining that to both the  
6 participant and the parents?

7 A. Didn't you already ask this question?  
8 Didn't we already talk about the explanation of the  
9 policy?

10 Q. We talked about the waiver of using the  
11 Plex, and I'm talking about the skate facilities in  
12 particular.

13 A. Um, I'm not sure I understand your  
14 question. Can you go ahead and ask it again,  
15 please?

16 Q. Can you take me through the policy and  
17 procedure to explain the dangers or warning of the  
18 dangers of skateboarding to minors and the their  
19 parents, the parents of the minors, the process of  
20 explaining that?

21 A. Okay, so you are talking about when a  
22 parent brings a -- they come to the front desk, and  
23 they are signing them in?

24 Q. Not necessarily. I'm talking about you  
25 have someone who wants to go skateboarding and use

1 the skate park facilities, and it's a minor.

2 A. Uh-huh.

3 Q. I want to know about the policies and  
4 procedures specifically of explaining the dangers  
5 regarding skateboarding on the facility.

6 A. Okay, when a parent brings a child in  
7 to skateboard, or when they did bring them in, they  
8 would -- we would explain to them the policy on  
9 helmets, elbow and knee pads, because at the time  
10 -- and again, we changed some of our policies  
11 slightly, as far as requirements for full pads  
12 versus just a helmet.

13 When we tell the parents, you are --  
14 children aged 10 -- I think it's -- we started out  
15 at 12. If they were 12 or below, they needed to  
16 have a helmet, elbow pads and knee pads, due to the  
17 fact that they were going to be falling. If they  
18 were older than 12, they were only required to wear  
19 a helmet.

20 Q. Okay. And when would this conversation  
21 take place?

22 A. At the front desk.

23 Q. And when the minor child took the form  
24 home and got it signed and brought it in, how did  
25 they convey that to the parent?

1 A. Convey the, --

2 Q. What you just told me.

3 A. The pads?

4 Q. Yes.

5 A. We would explain the same thing to  
6 them.

7 Q. You called them on the phone?

8 A. No, we did not call them on the phone.

9 Q. How did you explain it to the parents,  
10 then?

11 A. If they bought the child back up there,  
12 then we would explain it to them.

13 Q. When I asked specifically if they are  
14 not with their child, how do you then convey that  
15 information to the parents?

16 A. We don't convey that to the parents.

17 Q. Okay.

18 A. Or we would not call them and say, your  
19 child needs this, because they would not be allowed  
20 to go skateboarding or allowed to get on their  
21 skateboard until they had the proper pads.

22 (PLF. EXH. 3, Plex Indoor Sports  
23 Skatepark Conduct and Safety Rules,  
24 was marked for identification.)

25 BY MR. PACELLA:

1 Q. Mr. Davis, you have been handed exhibit  
2 3 to this 30(B)6 deposition. Can you identify this  
3 document?

4 A. It is a Plex document.

5 Q. What is it?

6 A. Conduct of safety and rules.

7 Q. If you need time to review it, let me  
8 know. We will ask you some questions about it.

9 A. Okay, I do need time.

10 Q. Okay, please go ahead.

11 (Pause).

12 THE WITNESS: Okay.

13 BY MR. PACELLA:

14 Q. You have had an opportunity to read the  
15 entire document?

16 A. Yes.

17 Q. You testified about wearing pads, and  
18 if the participant -- a participant is 16 years or  
19 older, they must wear a helmet. I'm sorry, you  
20 testified about 12 years old. 12 years or above,  
21 just had to wear a helmet, and individuals under 12  
22 had to wear full pads. Is that what your testimony  
23 was before?

24 A. Also, I testified that the policy has  
25 changed over the years.

1 Q. Okay. And this is the policy that was  
2 in place in 2009; is that correct?

3 A. I cannot confirm that.

4 Q. Okay. Did you produce this document?

5 A. I did not.

6 Q. You don't know who did?

7 A. I do not.

8 Q. Do you know if there are other  
9 documents that would identify different policies  
10 with respect to use of the skate park? Do you know  
11 if there are other written documents out there?

12 A. I do not.

13 Q. Okay. And you don't know what  
14 timeframe this document was in existence?

15 A. No, sir.

16 Q. I also direct your attention to number  
17 three. Can you read that for the record, please?

18 A. Participants under the age of 18 must  
19 have their parents or legal guardian sign the  
20 waiver in the presence of Plex employee or notary  
21 public. There are no exceptions to this rule.

22 Q. Now, that's different from the policy  
23 and procedure you testified to earlier, isn't that  
24 correct?

25 A. I would have to defer this to someone

1 else to testify about this. Because this is not  
2 something that I was fully aware of.

3 Q. Okay.

4 A. Because of who was in charge of the  
5 skate park at the time.

6 Q. Okay. All right. For the record, this  
7 is identified as Plex, underscore 0058, exhibit to  
8 the deposition, exhibit number 3. Mr. Davis, I  
9 will ask you to turn your attention to page four of  
10 exhibit 1, looking at number eight. Please read  
11 that for the record.

12 A. Any policies or procedures manual  
13 provided in response to the Plaintiff's first  
14 request for production of documents, including but  
15 not limited to, the document number Plex 0058, and  
16 the dates policies and procedure were in effect.

17 Q. Okay. And I'm not going to ask you  
18 about anything that you and Plex's attorney have  
19 discussed, but did you do any independent research  
20 to determine if there were any other documents like  
21 Plex, underscore 58 in preparation for your  
22 deposition?

23 A. I did look for other documentation. I  
24 haven't been able to locate some things.

25 Q. And you did not produce this for

1 counsel? That was produced by someone else?

2 A. That is correct.

3 Q. Do you know who that was?

4 A. I do not.

5 Q. Okay. Specifically, you said you need  
6 to defer number three to somebody else, because you  
7 weren't aware of that. Who would you defer that  
8 to?

9 A. Have we started talking about number  
10 three?

11 Q. Yes. You told me -- you read it into  
12 the record, and you told me you had to defer that  
13 to someone else, because you weren't -- oh, I'm  
14 sorry, number three in exhibit 3. I apologize.

15 MR. DIXON: Let's go off the record  
16 just a second. I just need to clarify something.

17 (Off-the-record conference.)

18 BY MR. PACELLA:

19 Q. Okay, back to -- I'm not sure what my  
20 question was, so I will just -- I will withdraw  
21 whatever question was pending and ask another  
22 question. With respect to paragraph three, you  
23 said you would have to defer to someone else, and I  
24 think, from an off-the-record conversation, that  
25 might be -- maybe Sharon Farnham might be the



1 person to direct that question to?

2 A. That is correct.

3 Q. Okay. But this -- you weren't aware of  
4 number three in exhibit 3 before today; is that  
5 correct?

6 A. That is correct.

7 Q. Okay. And what part weren't you aware  
8 of?

9 A. The -- in front of a parent or notary  
10 public.

11 Q. And there's no -- exhibit 2, there's no  
12 place for a notary to sign; is that correct?

13 A. There's no designated area for a  
14 notary.

15 Q. And there's no designated area for a  
16 Plex employee to sign and say, I've seen a parent  
17 or guardian sign it?

18 A. Correct.

19 Q. And you've been with Plex since June of  
20 2004?

21 A. Correct.

22 Q. And in that time, since June of 2004  
23 until the present, have you ever instructed someone  
24 you were training about number three in exhibit 3?

25 A. I have not, because I was not aware of

1 it.

2 Q. Okay. And how would employees be made  
3 aware of that?

4 A. I can't answer that question.

5 Q. Okay. Do you know if employees are  
6 following number three?

7 A. No, I cannot testify that they are.

8 Q. Okay. This document, is this document  
9 given to participants, customers who are using the  
10 skate park?

11 A. I can't say yes or no on that.

12 Q. Is there a policy and procedure to give  
13 this document to customers?

14 A. No.

15 Q. Okay. Is this --

16 A. Not that I'm aware of. Again, I can't  
17 testify, because again, I do not recall some of  
18 this document.

19 Q. Okay. Do you know if this document was  
20 ever posted -- when the skate park was in  
21 existence, do you know if this document was ever  
22 posted anywhere?

23 A. Not up on the walls, if that's what  
24 you're asking.

25 Q. Posted for employees or customers to

1 see? Posted somewhere for either -- was it posted  
2 anywhere for employees to see, in your  
3 recollection?

4 A. No, sir.

5 Q. Was it posted anywhere for customers to  
6 see, to your recollection?

7 A. No, sir.

8 Q. In this manual that we can't find, do  
9 you know if this document was in there?

10 A. I can't say.

11 Q. With respect to item number two, do you  
12 know if -- in item number two, where it goes --  
13 those under 16 must wear full safety gear, was that  
14 in effect in 2009?

15 A. I cannot say yes or no on that.

16 Q. To your recollection, at one time, it  
17 was a 12-year-old cutoff. Is that --

18 A. To my knowledge, yes, sir.

19 Q. And you wouldn't know if the  
20 12-year-old cutoff was the earlier version or the  
21 later version?

22 A. No, sir, I cannot.

23 Q. Okay. When a person wants to use the  
24 skate facilities, particularly a minor, what's done  
25 to determine their skill level and see what parts

1 of the facility they should be permitted to use?

2 A. It is not determined.

3 Q. Okay. Does -- if an employee at the  
4 Plex noticed, observed a minor trying to engage in  
5 activity that is beyond his or her skill level,  
6 what was the policy and procedure -- what is that  
7 employee supposed to do?

8 MR. DIXON: Object to the form.

9 THE WITNESS: The skate park attendant  
10 is over there to watch over the park, to help kids  
11 if they need it. They are also looking to see --  
12 make sure everyone is participating in a nice  
13 manner. They are also watching kids and  
14 instructing them at times.

15 BY MR. PACELLA:

16 Q. Instructing kids on how to use the  
17 park?

18 A. Yes.

19 Q. Okay. And if -- I'm going to ask the  
20 question again. If the employee notices someone  
21 trying to do something that is outside their skill  
22 level, what would be the policy or procedure for  
23 that employee to do anything? To do something, if  
24 anything?

25 MR. DIXON: Object to the form.

1           THE WITNESS: Again, the skate park is  
2 not going to know every kid that comes in there and  
3 what their skill level is. So he's not going to be  
4 able the determine whether that child or teenager  
5 or adult is skilled enough to do a skill.

6 BY MR. PACELLA:

7           Q. What if the skate park attendant, in  
8 fact, did determine that someone did not have the  
9 skill level to be using a particular part of the  
10 facilities? What would be the policy and procedure  
11 for that?

12          A. It's not so much a policy or procedure,  
13 but it would be him going over and saying, hey, if  
14 you do it this way, this will help you out.

15          Q. And if they -- if that customer or  
16 participant was at a risk of injury, because of --  
17 because they were trying something beyond their  
18 skill level, would the employee be responsible for  
19 doing anything to -- to intervene?

20          MR. DIXON: Object to the form.

21          THE WITNESS: Again, it's not up to the  
22 skate park attendants to know what the skill level  
23 is.

24 BY MR. PACELLA:

25          Q. If the skate park attendant identified

1 someone and said, this person is doing something  
2 beyond their skill level, should be using a  
3 different part of the skate park, would it be that  
4 attendant's responsibility to intervene and tell  
5 the participant to go to the other part of the  
6 park?

7 A. I'm not sure what you're -- what you're  
8 implying.

9 Q. Well, I'm asking you if -- if you were  
10 the attendant, and you saw someone trying  
11 activities that they clearly could not do, what  
12 would you do?

13 A. I would go over there and help them.

14 Q. Help them?

15 A. Instruct them.

16 Q. Or --

17 A. If they wanted the instruction.

18 Q. Okay. But --

19 A. Again, I'm not a skate park attendant.

20 Q. And when you were over facilities, did  
21 you supervise the skate park attendants?

22 A. No.

23 Q. Back in 2009, who would supervise the  
24 skate park attendants?

25 A. That would be Brynley Farr.

1 Q. Brynley? Can you spell that?

2 A. B-r-y-n-l-e-y, F-a-r-r-.

3 Q. And is that a male or female?

4 A. Female.

5 Q. Do you know where she is now?

6 A. She has her own company, By Farr.

7 Q. Do you know what that does?

8 A. Advertising, marketing. She's on the  
9 corner of Huger and Gervais.

10 Q. Okay.

11 A. And I would have to respectfully  
12 decline any other questions about the skate park  
13 attendants, because she was in charge of their  
14 training and their policies and procedures and how  
15 they conducted themselves.

16 Q. Okay, if we limit it to the policies  
17 and procedures for training minors before using the  
18 skateboard facility, you can't answer those  
19 questions?

20 A. No, sir.

21 Q. You have been identified as the person  
22 most appropriate to answer those questions,  
23 pursuant to this -- pursuant to exhibit 1, page  
24 four, number four; is that correct?

25 A. Well --

1 Q. If you need to look at exhibit 1, item  
2 number four --

3 (Pause).

4 THE WITNESS: Where again? I'm sorry.

5 BY MR. PACELLA:

6 Q. Page four, item number four.

7 A. Okay.

8 (Pause).

9 THE WITNESS: Okay.

10 BY MR. PACELLA:

11 Q. And if I'm limiting my questions to  
12 policies and procedures about training minors, you  
13 are the most appropriate person to testify; is that  
14 correct?

15 A. I would have to say no in this case.  
16 Because I was not directly involved in training the  
17 skateboard attendants.

18 Q. Okay. How about training of  
19 participants to use the facility?

20 A. No, sir.

21 Q. Okay. Do you know if there are any  
22 written policies and procedures about training  
23 skateboarders?

24 A. To my knowledge, we have never trained  
25 participants, people coming in. We have had the



1 skate park standards throughout everywhere. You  
2 can go to Owens Field, and there's no one even  
3 looking at people skateboarding, and they have much  
4 more advanced bowls and ramps than we ever had.  
5 And there's no one training them. It's -- they  
6 don't even have to sign a waiver to go participate  
7 in there.

8 Q. Well, there's a very good legal reason  
9 why, but we will move on from that. I'm asking  
10 about the Plex, okay?

11 A. Okay.

12 Q. I'm not worried about Owens Field, and  
13 I'm concerned about the Plex policies and  
14 procedures about training minors before they  
15 entered the skate facility.

16 A. Okay.

17 Q. As I understand it, you do not  
18 ascertain their skill level before they enter?

19 A. That is correct.

20 Q. And if they are trying something beyond  
21 their skill level, you are testifying that the  
22 policy would be to try to show them how to, you  
23 know -- show them or give them the help they might  
24 need?

25 A. To give them minor assistance, that is

1 correct. And then also, we would inform them that  
2 we do have -- we do have training that we can offer  
3 them to our -- a two-hour session, and we let them  
4 know how much that is. And it's either on a  
5 private or small group training, to where they can  
6 come in, if they elect to get trained, to do it on  
7 a Saturday morning.

8 Q. Okay. And you would inform them if  
9 they were -- if they were having struggles using  
10 the facilities. Is that what you are telling me?

11 A. No, not just because of that. We also  
12 let them know, hey, if you want to learn advanced  
13 skills or get better training, we do ask them --  
14 you know, we have parents ask, well, he wants to  
15 learn how to skate, or do you have training classes  
16 or -- we tell them yes.

17 And we will -- the way we explain it,  
18 if they are first-time skateboarders, we can take  
19 them from balancing on the boards to starting down  
20 the ramps.

21 Q. Okay.

22 A. And we offer that to them to let them  
23 know that we have that, to help them grow as a  
24 skateboarder.

25 Q. And you tell that to the parents?

1 A. Especially the younger kids, yes.

2 Q. And we mentioned -- we talked about the  
3 security cameras at the front desk. Were there any  
4 security cameras in the skate park area?

5 A. No, sir.

6 Q. If someone is injured, just take me  
7 through the policies and procedures of how to  
8 handle it, if you can.

9 A. Okay, if someone is injured, the skate  
10 park attendant or someone will go to that person,  
11 ask them what's hurting. Then someone, a manager,  
12 is notified that someone has been injured, the  
13 manager will come over, assess -- not necessarily  
14 do anything, as far as give medical attention to,  
15 because we are not trained that way.

16 Then we inform them, if it's a minor,  
17 we need to call your parents, if the parent is not  
18 there. We need to call your parents to let them  
19 know that you have been injured. If it is a -- an  
20 adult or legal age, then we recommend to them, you  
21 probably need to go get it examined.

22 Q. Okay. And any time someone is injured,  
23 you would document that?

24 A. Yes.

25 Q. Whether it's a minor injury or -- to

1 someone who might need emergency EMS assistance?

2 A. Correct.

3 Q. And how is that documented?

4 A. There is a -- an incident report that  
5 is filled out, so --

6 (PLF. EXH. 4, Accident & First Aid  
7 Report Form, was marked for  
8 identification.)

9 (PLF. EXH. 5, Facility Incident  
10 Report Form, was marked for  
11 identification.)

12 BY MR. PACELLA:

13 Q. Mr. Davis, I am handing you two  
14 exhibits, number 4 and number 5. That's number 5.  
15 That's number 5, and when you say a report is done,  
16 you have to explain to me which one of these is the  
17 one that's done when there's an injury, which  
18 document?

19 A. Both of these are documents at Plex.  
20 One is a facility document that we do at the time  
21 of the injury, and then the separate -- the second  
22 one is one that our insurance company indicated we  
23 also need to have filled out.

24 Q. Okay.

25 A. They are both filled out at the same

1 time.

2 Q. Okay, and it would be -- just for the  
3 record, the insurance company would be exhibit 5?

4 A. That is correct.

5 Q. Okay. All right. So these reports --  
6 after providing whatever assistance you can provide  
7 to the injured party, these documents are then  
8 completed?

9 A. Well --

10 Q. Is that --

11 A. It is. Again, we have -- when someone  
12 is injured, someone comes to assist, and while they  
13 are assisting, possibly getting ice, we have the  
14 form, and we are asking questions at that time.

15 Someone else is asking while someone is  
16 getting first aid or assisting or trying to find  
17 out what needs to be done or phone calls. So there  
18 are multiple people that could be involved in the  
19 assisting of an injured person.

20 Q. Okay. Now, do you have any independent  
21 recollection about these documents? Did you have  
22 any personal involvement with these documents?

23 A. The --

24 Q. I don't mean the form itself, I mean  
25 the actual content on it that was completed by

1 personnel at Plex.

2 A. I did not fill anything out, correct.

3 Q. And you weren't present at that time?

4 A. No, sir.

5 Q. Okay. Is there a document retention  
6 policy for the Plex?

7 A. Explain.

8 Q. Do you have a written policy that  
9 explains how long you are supposed to keep  
10 documents, these incident reports, e-mails, forms  
11 completed, waivers completed by participants,  
12 anything?

13 A. We keep them indefinitely.

14 Q. So there's no -- there's no policy or  
15 procedure of when to destroy documents?

16 A. No, sir.

17 Q. Have any documents been destroyed, to  
18 your knowledge?

19 A. No, sir, I just -- we just did a --  
20 took out one of our files, and I had to clean out  
21 behind where I had all my documents. I actually  
22 contacted Monument Sports, our insurance company,  
23 to ask them what is the legal parameters or when or  
24 if we could get rid of them, and they said they  
25 recommended making sure we kept all documents

1 indefinitely, and that's what we did.

2 Q. So with respect to this policy and  
3 procedure manual that would have been at the front  
4 desk, it's not that it was destroyed, it's just  
5 that you can't find it?

6 A. Possibly been misplaced.

7 Q. I just wanted to kind of put a bow on  
8 that and understand that it wasn't destroyed  
9 pursuant to any policy. If it's been misplaced,  
10 it's been misplaced, and it can't be located.

11 MR. PACELLA: I want to just take a  
12 five-minute break, to make sure I don't have  
13 anything else. I think I might be through. Let's  
14 take just a five-minute break.

15 (Brief recess.)

16 BY MR. PACELLA:

17 Q. Okay, back on. This will be brief.  
18 I'm just going to ask you about exhibit number 2,  
19 and I think you've answered these questions, but I  
20 just want to make sure I did ask it. Number two, I  
21 believe you testified that Plex's attorney drafted  
22 it, and that it clearly was in existence in 2009,  
23 and you were not aware of any prior drafts or  
24 changes that this document has gone through over  
25 time?

1 A. Correct.

2 Q. I did not ask those questions with  
3 respect to number three. Do you know who drafted  
4 number three?

5 A. I do not.

6 Q. And do you know if it was in existence  
7 in 2009?

8 A. I do not.

9 Q. And do you know if there were any other  
10 prior drafts of this document?

11 A. I do not.

12 Q. I know you testified that there was a  
13 procedure and policy, but with respect to this  
14 document, you don't know if it was a different  
15 document?

16 A. Correct.

17 Q. So and -- is this document -- this  
18 document is no longer in use, because it's no  
19 longer a skate park, but you testified that you  
20 were never aware of this document, document number  
21 three?

22 A. I -- that is correct. That is correct.

23 Q. You weren't aware of this document?

24 A. No, I was not aware of this document.

25 MR. PACELLA: Thank you. Lee, do you



1 have any questions?

2 MR. DIXON: I do have a few.

3 EXAMINATION

4 BY MR. DIXON:

5 Q. Mario asked you about this written  
6 manual a couple of times, and it may have been  
7 misplaced, and you are not sure whether it was. Do  
8 you recall that conversation?

9 A. Yes.

10 Q. With respect to signing of the waiver  
11 and the policies regarding minors and parents'  
12 signatures, do you know if there was anything in  
13 that document specific to those issues?

14 A. No, sir.

15 Q. Is it possible there was something in  
16 there specific to those issues that you don't  
17 remember?

18 A. Yes.

19 Q. Okay. So I was -- it's possible that  
20 there was something specific on there, and you just  
21 don't remember it, as we sit here today?

22 A. That is correct.

23 Q. Okay. As far as -- and again, you  
24 answered a question to Mr. Pacella about the  
25 purpose of this document; do you recall your

1 answer, when he asked you the purpose of your  
2 waiver?

3 A. I do recall.

4 Q. Correct me if I'm wrong, but I thought  
5 you said the purpose was to protect Plex?

6 A. Correct.

7 Q. It's a waiver of liability to -- you  
8 know, to prevent suits against Plex Indoor Sports  
9 if a participant is injured, correct?

10 A. Correct.

11 Q. Notwithstanding the document itself and  
12 any procedures that you may have had in place about  
13 parents' signatures, putting all of that aside, are  
14 you aware of any requirement in the law or any  
15 other regulation that would require you to get a  
16 parent's permission before allowing a minor to use  
17 your facility?

18 A. No, sir.

19 MR. PACELLA: Object to the form.

20 BY MR. DIXON:

21 Q. So the requirement -- to the best of  
22 your knowledge, the requirement to get a parent's  
23 signature is solely for the purpose of getting a  
24 binding waiver of liability?

25 A. Correct.

1 Q. Is there any other purpose that, in  
2 your knowledge -- is there any other purpose for  
3 which you need to get the parent's permission?

4 A. No, sir.

5 Q. Now, you also were having a  
6 conversation with Mr. Pacella about the terminology  
7 in this document, whether the person receiving it  
8 should actually read the document. Do you remember  
9 that discussion?

10 A. Yes, sir.

11 Q. There's a section in there where a  
12 person signing the bottom -- and I'm paraphrasing,  
13 but it's affirming that they have read the  
14 document; is that correct?

15 A. Correct.

16 Q. There's nothing in there directing that  
17 person to read the document?

18 A. Correct.

19 Q. Is it your assumption, or is it the  
20 assumption of Plex, in using this waiver of  
21 liability, that if you handed that to a customer or  
22 their parent, that -- and told them this was a  
23 waiver of liability, are you assuming that they  
24 will read the document?

25 A. Yes.

1 Q. So there is no reason for you, in your  
2 mind, to -- that there should be a requirement that  
3 the documents say on its face, you must read this  
4 document?

5 A. Correct.

6 Q. That's the purpose for which you are  
7 giving it, correct?

8 A. Correct.

9 Q. Now, with respect to document number  
10 three here, the safety rules that we've talked  
11 about, in terms of not being sure when this was in  
12 effect and whether or not you had seen this  
13 document, do you remember that discussion?

14 A. Yes, sir.

15 Q. I believe you testified at one point  
16 you thought the requirement for pads was a  
17 12-year-old requirement?

18 A. Correct.

19 Q. When the skate park was closed, what  
20 was the requirement at that time?

21 A. Ten.

22 Q. Is there a reason why you changed it in  
23 -- from 12 to ten?

24 A. It was the -- to my knowledge, it was  
25 the skill level of the participant coming in, it

1 was much greater.

2 Q. Tell me what you mean by that.

3 A. Better-skilled skateboarders.

4 Q. Meaning that ten-year-olds were just as  
5 -- well, I don't want to put words in your mouth.  
6 But can you elaborate for me what you mean -- why  
7 would the skill level of the participants cause you  
8 to change your policy on pads?

9 A. Honestly, I can't answer that, because  
10 I didn't have -- I wasn't part of the lowering of  
11 the age for that. So I followed procedure when it  
12 was told to us. So I don't have a knowledge of an  
13 actual reason why it was.

14 Q. But you just said it had something to  
15 do with the skill level of the participants?

16 A. Correct.

17 Q. What was your understanding? Not  
18 whoever changed it, what was their thinking, but  
19 what was your understanding of why it would be  
20 appropriate for a ten-year-old to not wear pads  
21 versus a 12-year-old to not wear pads?

22 A. We were having a lot of repeat  
23 customers coming in, and it wasn't getting to where  
24 there was a lot of new ones coming in, so they --  
25 their skill level was extremely high. These -- a

1 lot of the kids that were coming in were being  
2 sponsored by different skateboard companies, and  
3 they had been skating with Plex for three, four,  
4 five years, from my understanding.

5 Q. Would it be safe to say, then, having  
6 had that experience, that you determined that a  
7 ten-year-old was at no greater risk of injury than  
8 a 12-year-old, based on their relative skill  
9 levels?

10 A. Yes.

11 Q. And your answer was correct?

12 A. Correct.

13 MR. PACELLA: Object to the form.

14 BY MR. DIXON:

15 Q. And finally, the issue here we were  
16 talking about -- not sure this was the -- no, that  
17 was not it. Mr. Pacella asked you about training  
18 of the skate park attendants. Or -- no, excuse me,  
19 about the -- what policies and procedures you may  
20 or may not have had with respect to training the  
21 participants of the skate park. Do you recall that  
22 discussion?

23 A. Yes.

24 Q. And at some point, you said that  
25 Brynley Farr was the one who was somehow

1 responsible for overseeing that area?

2 A. Brynley was in charge of the skate park  
3 attendants.

4 Q. Okay.

5 A. Training them and letting them know  
6 what needed to take place.

7 Q. And Brynley is no longer with the  
8 company?

9 A. That is correct.

10 Q. Just to be clear, for the purposes of  
11 the notice, the deposition notice that Mr. Pacella  
12 pointed out, you were pointed out as the person to  
13 testify, the best person with knowledge in the  
14 company to testify about those facts.

15 Is there anybody else in the company  
16 currently who would be in a better position to  
17 discuss what training the attendants had with  
18 respect to assessing the skill level of the  
19 participants?

20 A. That would be Brynley Farr.

21 Q. But she's no longer with the company?

22 A. Correct.

23 Q. Is there anybody in this company who  
24 would be better suited than you to answer those  
25 questions?

1 A. No, sir.

2 MR. DIXON: That's all I have.

3 EXAMINATION

4 BY MR. PACELLA:

5 Q. Mr. Davis, these changes of the policy  
6 from 12 to 10, with regard to full pads, is that in  
7 writing? Was that in writing?

8 A. I honestly can't say it was.

9 Q. How was it conveyed to you?

10 A. Well --

11 Q. You talked about -- I'm not sure what  
12 your words were, but you talked about how it was  
13 told to you, told may not be the -- may not be the  
14 right word, but how was that information conveyed  
15 to you?

16 A. It was more verbal, about changing how  
17 we were going to have the kids come in or the  
18 participants come in.

19 Q. Okay, and who would have done that?

20 A. That would have been the GM or the  
21 skate park person in charge of the skate park at  
22 the time.

23 Q. Do you know who that would have been at  
24 the time?

25 A. Well, the person in charge, of course,



1 would have been Brynley Farr, and -- in 2009, if I  
2 remember correctly, Sharon Farnham was the GM at  
3 that time.

4 Q. And is there any e-mail communication  
5 between employees?

6 A. Somewhat, yes.

7 Q. Do you know if this policy would have  
8 been conveyed by e-mail in any way?

9 A. I honestly don't know. I can't answer  
10 that.

11 Q. Okay. No one's asked you to check your  
12 e-mails for any policies or procedures?

13 A. No, sir.

14 Q. Do you have a business e-mail?

15 A. Yes, I do.

16 Q. Just wanted to make sure of that.

17 A. Okay.

18 Q. Not every employee would have that?

19 A. That's correct.

20 Q. A high school kid who just works the  
21 front desk would not have that?

22 A. Correct.

23 Q. And someone at the concession stand?  
24 What level of employees would have Plex e-mail  
25 addresses?

1 A. Usually directors and GM.

2 Q. Would you ever get policies and  
3 procedures via e-mail?

4 A. Not that I recall, no, sir.

5 Q. No directives?

6 A. It would be -- I apologize --

7 Q. No directives about how you would  
8 change a policy or some operational procedure?

9 A. No, sir, usually those came in a staff  
10 meeting or brief meeting.

11 Q. Who would run those staff meetings?

12 A. The General Manager at the time.

13 Q. Okay, and the General Manager, would  
14 she have had a -- like a notebook or something that  
15 -- or an agenda that she would use?

16 A. Usually, she had an agenda.

17 MR. PACELLA: Okay, that's all the  
18 questions I have.

19 MR. DIXON: We're good.

20 (The deposition was concluded at 11:45  
21 a.m.)

22

23

24

25

## SIGNATURE OF DEPONENT

DEPONENT: CHUCK DAVIS  
DEPOSITION DATE: August 21, 2013  
REPORTER: LESLIE TOOLE STANLEY  
CASE CAPTION: JEREMY CANTRELL vs. PLEX INDOOR  
SPORTS

(Please return both Signature of Deponent pages)

I, the undersigned, CHUCK DAVIS, do hereby  
certify that I have read the foregoing deposition  
and find it to be a true and accurate transcription  
of my testimony, with the following corrections, if  
any:

| PAGE | LINE | CHANGE | REASON |
|------|------|--------|--------|
|------|------|--------|--------|



## 1 CERTIFICATE OF REPORTER

2  
3 I, Leslie Toole Stanley, Certified  
4 Shorthand Reporter and Notary Public for the State  
5 of South Carolina at Large, do hereby certify that  
6 the foregoing transcript is a true, accurate, and  
7 complete record.

8 I further certify that I am neither  
9 related to nor counsel for any party to the cause  
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto  
12 affixed my official seal this 22nd day of August,  
13 2013, at Columbia, Richland County, South Carolina.  
14  
15  
16  
17  
18  
19  
20  
21

22  
23 Leslie Toole Stanley,  
24 Certified Shorthand Reporter  
25 My Commission expires  
January 13, 2021

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(No Information Requested)

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1 STATE OF SOUTH CAROLINA  
2 COURT OF COMMON PLEAS  
3 COUNTY OF RICHLAND  
4 JEREMY CANTRELL,  
5 Plaintiff,  
6 vs. CASE NO. 12-CP-40-5356  
7 PLEX INDOOR SPORTS, LLC,  
8 Defendant.

9 DEPOSITION OF: JEREMY CANTRELL  
10 DATE: August 21, 2013  
11 TIME: 1:05 P.M.  
12 LOCATION: Law Offices of  
13 Hedrick, Gardner, Kincheloe &  
14 Garofalo  
15 1301 Gervais Street, Suite 1900  
16 Columbia, SC  
17  
18  
19  
20  
21  
22  
23  
24  
25

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18 (INDEX AT REAR OF TRANSCRIPT)  
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20  
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25

1 STIPULATION

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

10 \* \* \* \* \*

11 JEREMY CANTRELL,

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. DIXON:

15 Q. Good afternoon, Mr. Cantrell. We met  
16 just a moment ago. My name is Lee Dixon. I'm an  
17 attorney representing Plex Indoor Sports as the  
18 Defendant in the lawsuit that was filed by you  
19 relating to the ankle injuries back in July of  
20 2009.

21 A. Okay.

22 Q. Do you understand that to be true?

23 A. Yes.

24 Q. Have you ever had your deposition taken  
25 before?

1 A. One time.

2 Q. What was the purpose of that  
3 deposition?

4 A. It was an insurance adjuster for -- I  
5 think it was Plex.

6 Q. Okay.

7 A. Or it was --

8 Q. Over the phone?

9 A. It was in person.

10 Q. A recorded statement. Okay.

11 MR. PACELLA: They did it at our  
12 office.

13 BY MR. DIXON:

14 Q. Prior to that, have you ever sat down  
15 with a court reporter and had an attorney ask you  
16 questions, whether it be a personal injury or a  
17 worker's comp claim or anything like that?

18 A. No.

19 Q. The court reporter has just sworn you  
20 in. Do you have any questions about the oath that  
21 she just read to you?

22 A. No.

23 Q. She's here to take down everything  
24 that's said in the room. It's a discovery  
25 deposition. It's an opportunity for you and I to

1 have a conversation, for you and I to -- for me to  
2 ask you questions about the lawsuit, and to get as  
3 much information as I can from you. She's going to  
4 be taking down everything that's said, so if you  
5 can do me a favor, and I'll be working on this as  
6 well, when I'm asking you a question, you may know  
7 exactly what I'm going to ask, but please wait  
8 until I finish my question before you begin your  
9 answer. Do you understand that?

10 A. Uh-huh.

11 Q. And if you would do me a favor, respond  
12 with a yes or no, you know -- the verbal cues, you  
13 and I understand, but they don't show up so well in  
14 a transcript, and at some point, this may have to  
15 be read to a judge and jury, so head nods and stuff  
16 like that don't show up very well. So if I ask you  
17 to repeat yourself, it's not me being difficult, I  
18 just need the record to be clear, okay?

19 A. I got you.

20 Q. Okay. If you need -- well, if you do  
21 not understand a question for whatever reason, that  
22 I ask you, and you need me to rephrase it, I will  
23 be happy to do that, just let me know. I will  
24 assume that if you answer a question, that you  
25 understood the question as I asked it; is that

1 fair?

2 A. Yes.

3 Q. And now that the deposition has begun,  
4 if you do have any questions, about the deposition  
5 or anything going on, if you would, direct those to  
6 me and not your counsel while we are on the record.  
7 Is that fair?

8 A. Okay.

9 MR. PACELLA: I want to just put on the  
10 record, since your dad is out there, I will remind  
11 you, if we take a break, you cannot talk about your  
12 deposition with him or anyone else.

13 BY MR. DIXON:

14 Q. Any conversations you have about your  
15 testimony while we're on a break, I'm allowed to  
16 ask you about any conversations you have. You are  
17 not supposed to be discussing those things. If you  
18 need a break for any reason, if you want a drink or  
19 go to the bathroom, just let me know. It's not an  
20 endurance contest. I will let you take a walk,  
21 stretch your legs, whatever you need to do, okay?

22 A. Okay.

23 Q. Are you under any medication right now?

24 A. Medication I'm on is Tramadol.

25 Q. Tramadol?

1 A. Yes.

2 Q. And how much -- what is your -- what is  
3 the dosage on that?

4 A. 50 milligrams, I believe.

5 Q. How often are you taking it?

6 A. It's just as-needed.

7 Q. Have you taken any today?

8 A. No.

9 Q. When is the last time you took some?

10 A. Three days ago.

11 Q. As far as sitting here today, are you  
12 under any treatment or anything for any -- or  
13 suffering from any condition that would prevent you  
14 from giving truthful testimony today?

15 A. No.

16 Q. Do me a favor. Just for the record,  
17 state your full name.

18 A. Jeremy Phillip Cantrell.

19 Q. What is your date of birth?

20 A. 6/20/94.

21 Q. How old are you today?

22 A. I'm 19.

23 Q. Where were you born?

24 A. I was born in Ringgold, Georgia.

25 Q. Ringgold?

1 A. Ringgold.

2 Q. When did you move to South Carolina?

3 A. Seven years ago.

4 Q. Okay.

5 A. I believe.

6 Q. What brought you to South Carolina?

7 A. My dad got a job with Richland County.

8 Q. Doing what?

9 A. It was Parks and Recreation.

10 Q. Okay.

11 A. It was county maintenance.

12 Q. All right. Are you currently working  
13 anywhere?

14 A. No.

15 Q. I'm going to try to get sort of a work  
16 history from you, so we can start -- were you  
17 working while you were in high school?

18 A. Yes.

19 Q. Tell me about your first job that you  
20 ever had.

21 A. I worked at Food Lion as a cashier.

22 Q. How long did you work at the Food Lion?

23 A. I worked there for six or eight months.

24 Q. All right. And where did you go after  
25 that?



1           A.    I didn't. After I left there, the  
2 reason I left was because I had to have another  
3 major surgery, and there was no way I would be able  
4 to work after that.

5           Q.    Did you start at the Food Lion after  
6 your skateboarding accident, or were you working  
7 there when the injury occurred?

8           A.    It was after.

9           Q.    Okay.

10          A.    Because I was -- I was too young  
11 whenever the injury happened.

12          Q.    And so at some point, you needed one of  
13 your follow-up surgeries, and you just gave your  
14 notice at Food Lion?

15          A.    Yes.

16          Q.    What was your next place of employment?

17          A.    I didn't have any.

18          Q.    That's the only job you've had?

19          A.    Yes.

20          Q.    Have you done any part-time work or any  
21 volunteer work?

22          A.    No, just little stuff around the house,  
23 but nothing major.

24          Q.    So in terms of receiving a paycheck,  
25 the only place you've ever been employed where they

1       paid you for your time was the Food Lion?

2             A.    Yes.

3             Q.    Is that correct?

4             A.    Yes.

5             Q.    Where do you currently live?

6             A.    275 Clearwater Lake Road.

7             Q.    How long have you lived at that  
8       location?

9             A.    Going to be five years.

10            Q.    Where did you live prior to that?

11            A.    I lived in Georgia.

12            Q.    Now, I'm just trying to get the  
13       timeline straight in my head. I think earlier, you  
14       said seven years --

15            A.    Yes, we moved here, and we lived in a  
16       little house in Lugoff. I can't remember the  
17       address, then we lived there for a couple months,  
18       then we lived in the house -- we moved to the house  
19       we live in now.

20            Q.    So you've -- in terms of -- of  
21       residences in South Carolina, you have lived in  
22       Lugoff and the present location?

23            A.    Yes.

24            Q.    Okay. Who do you live with now?

25            A.    My mom and dad.

1 Q. I met your dad outside. His name is  
2 Randy?

3 A. Yes.

4 Q. And your mom's name is Karen?

5 A. Yes, sir.

6 Q. Okay.

7 MR. PACELLA: It's Randall.

8 MR. DIXON: Okay, sorry.

9 BY MR. DIXON:

10 Q. You also have a sister, correct?

11 A. Yes, I do.

12 Q. How many other brothers and sisters do  
13 you have?

14 A. I have three brothers and a sister.

15 Q. Let me get their names. Tell me your  
16 three brothers first.

17 A. Joshua, Randall and Sean.

18 Q. S-h-a-w-n or --

19 A. S-e-a-n.

20 Q. S-e-a-n, okay. And do either of your  
21 brothers live in Richland County?

22 A. No.

23 Q. Where do they live?

24 A. One's stationed in Fort Hood, the other  
25 is stationed in Fort Bragg. And the other lives in

1 Ringgold.

2 Q. Where is your sister currently?

3 A. She's stationed on Shaw.

4 Q. Kimberly?

5 A. Yes.

6 Q. Was she living with you at the time of  
7 your accident?

8 A. No, she wasn't living with us. She was  
9 in the process of coming from New York, where she  
10 was stationed, and moving to Texas.

11 Q. So she was here visiting at the time?

12 A. Yes.

13 Q. Have you graduated high school?

14 A. Yes.

15 Q. Where did you graduate from?

16 A. Carolina Connections.

17 Q. I'm not really familiar with Carolina  
18 Connections. Can you tell me a little bit about  
19 that?

20 A. It's a home school program that you do  
21 over the computer. It's basically like school.  
22 You just do the work at your own pace, and you get  
23 your high school diploma, actual diploma. It's the  
24 only one I could do. I was missing too many days  
25 from school from my injuries and all, that I had to

1 go and do something.

2 Q. Where were you, in terms of a school  
3 that you enrolled in before Connections? Where  
4 were you going to school?

5 A. North Central High School.

6 Q. Is that the only other high school you  
7 attended?

8 A. Yes.

9 Q. Do you have any other family members --  
10 let me just tell you the reason I'm asking this, is  
11 if we have to get a jury, I want to find out  
12 whether anybody in the jury pool is related to you  
13 in any way. Do you have any family related by  
14 blood or marriage in Richland County?

15 A. No.

16 Q. Aunts, uncles, and cousins?

17 A. No. My family is from Florida and  
18 Georgia and all over the place. Not South  
19 Carolina.

20 Q. Got you. Thank you. You are not  
21 married, right?

22 A. No.

23 Q. Do you attend a church?

24 A. No.

25 Q. Okay.

Jeremy Cantrell - August 21, 2013

14

1 A. Not regularly.

2 Q. Semi-regularly? Are you a member  
3 anywhere?

4 A. I was for awhile, at a -- at Refuge  
5 Baptist.

6 Q. When is the last time you were there?

7 A. It's been a few years.

8 Q. Did you attend regularly when you went?

9 A. When I went, I attended regularly.

10 Q. This is one of those background  
11 questions I ask everybody. Do you have any  
12 criminal record or arrests or convictions I need to  
13 know about?

14 A. No.

15 Q. Nothing?

16 A. No.

17 Q. Okay. And I assume since you only had  
18 that one job, that -- did you have any kind of  
19 worker's comp claim or anything?

20 A. I did not.

21 Q. Okay. The reason we are here is  
22 obviously to discuss the skateboarding accident  
23 that you had at Plex Indoor Sports in 2009. Let me  
24 just get some background on that, in terms of  
25 understanding how we got to this point. How did

1 you first learn about Plex Indoor Sports?

2 A. The first time I learned about it  
3 was -- I passed it when I went to Sandhills one  
4 day, and I went inside to check it out and see how  
5 it was. I just saw it and walked in.

6 Q. Okay. How soon was -- when you just  
7 walked in to check, how soon before your injury was  
8 that?

9 A. Repeat.

10 Q. I worded it badly. How long after you  
11 visited the Plex the first time did you come back  
12 to skateboard on the day you were injured?

13 A. I believe it was two days after.

14 Q. So you got -- you showed up one day  
15 after driving by, checked out the place and came  
16 back two days later, and that was the day you were  
17 injured?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. How many times total have you been  
22 inside the Plex facility before your injury?

23 A. Twice. Well, before my injury?

24 Q. Yes.

25 A. Once.

1 Q. So once before, once the day of?

2 A. Yes.

3 Q. Have you been back since?

4 A. No.

5 Q. On that first time, when you drove by,  
6 who were you with?

7 A. I was with my sister and my  
8 brother-in-law. And I believe it was my  
9 brother-in-law's brother.

10 Q. So your sister, being Kimberly?

11 A. Uh-huh.

12 Q. And her husband?

13 A. Uh-huh.

14 Q. What's his name?

15 A. Adam.

16 Q. And you think Adam's brother?

17 A. Yes.

18 Q. Is that correct?

19 A. Yes.

20 Q. So that was when you went in, the first  
21 time you ever saw Plex?

22 A. Yes, I believe so.

23 Q. Did everybody go inside?

24 A. I believe so. They checked it out and  
25 looked around.



1 Q. Why did you go inside? What made you  
2 think about going inside there?

3 A. To see what they had. We had never  
4 been in there before, and we just wanted to check  
5 it out and see the different stuff they had.

6 Q. So you never heard of them, didn't know  
7 what sort of activities they had?

8 A. No.

9 Q. Tell me about that visit that first  
10 time. What did you all do?

11 A. The first visit, we went in, we ended  
12 up -- we just looked around for a minute, and the  
13 woman -- she asked us if we wanted to participate  
14 in anything, and we decided that we would come back  
15 in a couple of days, and we would go skating or  
16 whatever, and then -- like she had told us just to  
17 fill out the paper work and everything, and she  
18 handed me a -- she handed me a slip and told me to  
19 sign it and date it and fill it out, and the only  
20 thing I read was just, you know, that -- where I  
21 had to put my name, where I had to put the date and  
22 everything, and I didn't -- I didn't think anything  
23 of it.

24 And I signed it, and she put it -- she  
25 put us in the computer and after that, we left.

1 And we came back in a couple of days, and that's  
2 when my injury took place.

3 Q. There's a lot there. I'm going to kind  
4 of string it out a little bit.

5 A. Okay.

6 Q. Did you walk around the whole building?

7 A. No, we didn't. We walked in the hall,  
8 and we went and looked around the skate park, and  
9 we looked at the -- I believe it was the hockey  
10 ring they had there, then we went back to the front  
11 desk.

12 Q. Why did you go back to the front desk?

13 A. Just to ask the woman the different  
14 stuff about it, because we just wanted to know. We  
15 didn't have any idea about it.

16 Q. Okay. And did she explain to you the  
17 pricing?

18 A. Yes, basically. She explained to us  
19 basically just the different stuff they do and how  
20 much it was to do it, and that's pretty much it.

21 Q. And you decided you wanted to come back  
22 and try the skate park?

23 A. Yes.

24 Q. What made you decide that?

25 A. I just thought it would be fun and

1 something different.

2 Q. Something different from what?

3 A. Skating around the house and -- you  
4 know, just -- just stuff like that.

5 Q. Okay. Do you play soccer, or did you  
6 play soccer at the time?

7 A. No.

8 Q. How about ice skating?

9 A. No.

10 Q. Roller skating?

11 A. When I was younger, I used to roller  
12 skate, but there would be no way I could now.

13 Q. But at that time --

14 A. I didn't really roller skate.

15 Q. But you did skateboard?

16 A. Yes.

17 Q. How long had you been skateboarding?

18 A. It was awhile. It was -- I know of at  
19 least five years.

20 Q. At the point that you were there that  
21 first time at Plex, you had been skateboarding for  
22 five years?

23 A. Yes.

24 Q. Where had you skateboarded before?

25 A. I started when I lived in Georgia, and

1 then I -- in Georgia, and then I just gradually  
2 started doing more over here. I did it -- I did a  
3 little bit, but it wasn't like I did it every day.

4 Q. What's a little bit, once a month or --

5 A. Once a week or so.

6 Q. Okay. Where would you skateboard?

7 A. At my house, normally out in the road  
8 or around the neighborhood or -- pretty much  
9 anywhere.

10 Q. Who would you skate with?

11 A. When I lived in Georgia, I used to  
12 skate with my friend. Since I was here, I would  
13 skate with -- normally, it would just be me or me  
14 and one of my friends.

15 Q. Give me the names of some of the guys.

16 A. My little brother, he'd come down.  
17 Well, he's family, but he's not blood related.

18 Q. Cole?

19 A. Yes.

20 Q. What's his last name?

21 A. Boswell or something. Something like  
22 that.

23 Q. Where does he live now?

24 A. Down in Georgia.

25 Q. And he would skate with you here in

1 South Carolina?

2 A. Yes, he would come for a trip, just for  
3 a couple days, and me and him hang around.

4 Q. What about guys from the neighborhood  
5 or school?

6 A. Not really. There wasn't nobody that  
7 really lived around there.

8 Q. Did you ride your skateboard to school?

9 A. No.

10 Q. No?

11 A. No.

12 Q. How far away was the school from your  
13 house?

14 A. Probably ten miles.

15 Q. That's a long skateboard trip.

16 A. Yes, it would be a good while.

17 Q. Had you ever been in a skate park  
18 before?

19 A. I have been in one, one or two.

20 Q. Where were those?

21 A. In Georgia.

22 Q. Georgia?

23 A. Yes.

24 Q. Whereabouts?

25 A. In the fort -- I can't remember the

1 name of the town.

2 Q. What was the --

3 A. Fort Oglethorpe.

4 Q. Oglethorpe?

5 MR. PACELLA: Oglethorpe.

6 BY MR. DIXON:

7 Q. Was it indoor or outdoor or --

8 A. Outdoor.

9 Q. Did it have a bowl?

10 A. Yes.

11 Q. Had you skateboarded in that bowl while  
12 you were there?

13 A. I did.

14 Q. All right. So Fort Oglethorpe had an  
15 outdoor skate park. What other -- what about other  
16 outdoor skate parks?

17 A. I can't remember the other one, but it  
18 was in -- it was in -- all I can remember is it was  
19 down toward Dalton, Georgia. It was out there.

20 Q. Dalton?

21 A. Yes.

22 Q. Okay. Was that an indoor or outdoor?

23 A. That one was an indoor. Part of it was  
24 outside, but it was indoor.

25 Q. Did they have a bowl as well?

1 A. Yes.

2 Q. And you had skateboarded in the bowl  
3 there?

4 A. I didn't.

5 Q. Why not?

6 A. I just -- I was only there for a little  
7 bit, I didn't have time.

8 Q. A little bit, what do you mean?

9 A. Like an hour.

10 Q. So you only skated there one time?

11 A. Yes.

12 Q. What about at Fort Oglethorpe? How  
13 many times did you skate there?

14 A. Once.

15 Q. For how long?

16 A. Probably about an hour or so. Wasn't  
17 very long.

18 Q. Who was with you when you skated at  
19 those two places?

20 A. Just my friends from down there.

21 Q. Okay.

22 A. Boys I grew up with.

23 Q. Whose idea was it to go to the skate  
24 park?

25 A. It was just all of us.

1 Q. Did your tell your parents you were  
2 going?

3 A. Then?

4 Q. Yes.

5 A. Well, they figured we'd go, but -- they  
6 didn't like me skateboarding.

7 Q. What do you mean?

8 A. They -- I don't know, they -- it was --  
9 they wouldn't let me do that.

10 Q. They wouldn't let you do --

11 A. When I was that young, I was younger at  
12 the time.

13 Q. How old were you when you were there?

14 A. Probably 10, 11.

15 Q. Were they okay with you skateboarding  
16 in the neighborhood?

17 A. Yes.

18 Q. Around the house, you said?

19 A. Yes.

20 Q. On the road?

21 A. Yes.

22 Q. When you say you were skateboarding on  
23 the road, what do you mean?

24 A. It was just a street. When I lived in  
25 Georgia, we had a cul-de-sac. Around where we live



1 now, it was just paved roads.

2 Q. All right, so going back to your first  
3 visit to Plex, you walked in, checked the place  
4 around, you go back to the front desk to discuss  
5 whatever information they were going to give you.  
6 You said someone gave you a form. Can you describe  
7 for me who it was that you were talking with?

8 A. It was a younger -- she was a  
9 blonde-headed girl.

10 Q. Okay. About how old?

11 A. Probably 17, 18.

12 Q. You thought she was older than you at  
13 the time?

14 A. She was.

15 Q. She wasn't like a manager or anything  
16 like that?

17 A. No, huh-uh.

18 Q. And she gave you the form?

19 A. Yes.

20 Q. Sort of -- the best you can remember,  
21 what exactly did she say to you about the form?

22 A. She just told me to sign it and date it  
23 and fill it out. She didn't tell me anything about  
24 reading it. She just asked me to sign it and fill  
25 it out.

1 Q. And you did?

2 A. Yes.

3 Q. Did you fill it out right there?

4 A. Yes.

5 Q. Did she watch you fill it out?

6 A. Yes.

7 Q. And did you hand it in the same day?

8 A. Yes.

9 Q. Did you have to pay anything?

10 A. Not on that visit. That day, she just  
11 put our names in the system.

12 Q. Did you -- you said you looked at the  
13 -- if I remember what you said earlier, you read  
14 the part where it tells you where to sign, correct?

15 A. I just read the part that said like --  
16 like basically, where it said first name or  
17 signature or date. I didn't think nothing of it to  
18 actually sit and take the time to read the whole  
19 form.

20 Q. Did you know what kind of form it was?

21 A. I really -- I figured it was a release,  
22 but I didn't -- I didn't read the whole thing. I  
23 just read where I had to sign.

24 Q. So you knew -- at the time, you knew  
25 you were signing a release of some kind?

1 A. Repeat.

2 Q. Is it fair to say that when you were  
3 signing this document, you knew it was a release of  
4 some kind?

5 A. At that time? I knew it -- I knew it  
6 was probably -- it was just something for them to  
7 put on record. I didn't think it was that big a  
8 deal.

9 Q. So you had no idea what type of  
10 document it was?

11 A. Not really.

12 Q. Okay. Nobody said to you, here is this  
13 document, and here is what it does?

14 A. Huh-uh.

15 MR. PACELLA: That's a no or yes? You  
16 need to --

17 THE WITNESS: No, sorry.

18 BY MR. DIXON:

19 Q. You didn't read the top title of the  
20 document?

21 A. Okay --

22 Q. Well, let's go ahead and pull that out  
23 here, since we are talking about it.

24 MR. PACELLA: I have a copy.

25 (DFT. EXH. 1, Plex Indoor Sports

1 Individual Player Release and Waiver  
2 Form, was marked for identification.)

3 BY MR. DIXON:

4 Q. Jeremy, in front of you is a document  
5 that's been marked exhibit 1 to your deposition.  
6 Through discovery, you have already admitted this  
7 is the document you received on the day you showed  
8 up at Plex, and that you signed this document. Is  
9 that your understanding?

10 A. Yes.

11 Q. I do want to ask you quickly, because  
12 there is more writing on this page, other than just  
13 your apparent signature. What writing is yours,  
14 and what, if any, that is not yours?

15 A. The printed name, the signature, the  
16 address, the Camden -- the only thing that I didn't  
17 put on here was the telephone number and the zip  
18 code, and I believe -- and I believe the date of  
19 birth.

20 Q. Okay, so how about the date of the  
21 document? Is that your writing?

22 A. That's my sister's.

23 Q. That's your sister's writing?

24 A. She wrote her number down and the zip  
25 code and the date of birth.

1 Q. So you recognize that writing as your  
2 sister's, or did you watch her fill it out?

3 A. I saw her put that down, because I  
4 didn't know it at the time.

5 Q. So she filled out the date on the  
6 document, and correct me if any of this is wrong.  
7 She filled in the date, she filled in the phone  
8 number, she filled in the zip code and the date of  
9 birth?

10 A. Uh-huh.

11 Q. And you wrote it, and that's basically  
12 everything on the righthand side of the document?

13 A. Yes.

14 Q. That's your sister's writing?

15 A. Looks like it.

16 Q. Then on the lefthand side of the  
17 document, which is your printed name, the signature  
18 and the address, that's all your writing, correct?

19 A. Yes, that's mine.

20 Q. Okay. And just again, to clarify, the  
21 date on this is 7/28, July the 28th. That's two  
22 days before your accident; is that correct?

23 A. Yes.

24 Q. Okay. And it's your testimony that  
25 your were given this form on the 28th, and you

1 filled it out while you were standing there at the  
2 front desk?

3 A. Yes.

4 Q. You didn't leave there with it, did  
5 you?

6 A. No.

7 Q. Okay. The -- the top of the document  
8 -- in bold letters, Plex Indoor Sports Individual  
9 Player Release and Waiver Form. Do you recall  
10 noticing that title on this document when you  
11 handled it?

12 A. I didn't look at it, really. She told  
13 me where to sign it and everything, and I filled it  
14 out, and then I was just trying to get it over with  
15 and get in the system, so we could go and do the  
16 rest of -- of our plans for the day, so I was in a  
17 hurry.

18 Q. So you didn't care what document you  
19 were signing?

20 A. I didn't -- I didn't -- at the time,  
21 wisdom comes with age, because being a dumb  
22 15-year-old, you don't think about it.

23 Q. Okay.

24 A. It wasn't like I was -- you know, I  
25 wasn't honestly thinking about this could happen or

1 anything like that.

2 Q. Okay. Did the person behind the  
3 counter say anything more to you about this form?

4 A. No.

5 Q. Did she say anything to you about the  
6 skate park specifically?

7 A. No.

8 Q. She gave you no information about the  
9 skate park?

10 A. Huh-uh, just the price, the rules.

11 Q. Well, that's what I'm trying to get at.

12 A. She just told us we had to have the  
13 helmet. That's about as far as it went into detail  
14 with her.

15 Q. Did she ask you how old you were?

16 A. No.

17 Q. But she told you you had to have a  
18 helmet?

19 A. You had to wear a helmet to get  
20 entrance into the skate park.

21 Q. Did you own a skateboard?

22 A. Yes.

23 Q. I will go into that a little bit more.  
24 Did you also own a helmet?

25 A. No.

1 Q. You did not own a helmet?

2 A. No.

3 Q. Did you own any pads?

4 A. Huh-uh.

5 MR. PACELLA: Is that a no?

6 THE WITNESS: No, sorry.

7 BY MR. DIXON:

8 Q. Did you have to go buy a helmet?

9 A. They rent them out there.

10 Q. Did you go rent one that day?

11 A. No.

12 Q. When you went back on the 30th?

13 A. Yes.

14 Q. Had you ever owned a skateboarding  
15 helmet?

16 A. A long time ago. I lost it when we  
17 were moving.

18 Q. How about pads? Did you ever own any  
19 pads?

20 A. No.

21 Q. How about skateboards? Was that your  
22 first skateboard?

23 A. No.

24 Q. How many skateboards have you owned  
25 over the years?



1 A. I would say at least four.

2 Q. Now, where did you get the skateboard  
3 that you used on the day of the accident?

4 A. I got it for a birthday present from my  
5 sister and her husband.

6 Q. Okay.

7 A. I didn't see them whenever my birthday  
8 was around, and they brought it to me.

9 Q. So you had only had that board for a  
10 short time?

11 A. It was probably over a week. It was a  
12 good while to be able to break it in or --

13 Q. Had you broken it in since getting it?

14 A. Yes.

15 Q. Did your parents know you got the  
16 skateboard?

17 A. Yes.

18 Q. Did they tell you anything about where  
19 you should use it, what you shouldn't do with it,  
20 anything like that?

21 A. They just told me to be careful, just  
22 don't do anything stupid with it.

23 Q. What did you think they meant by that?

24 A. Just not to get hurt.

25 Q. How about the other skateboards that

1 you had? Where did you get those?

2 A. I had one for a long time, and I bought  
3 it at Flamingo Skate Shop down in Tennessee. I  
4 got another one as a present, and they got me that  
5 one as a present. I got the other one through --  
6 probably a friend. I couldn't remember.

7 Q. My count, that was four skateboards we  
8 went through. The first one was the one you bought  
9 at the Flamingo Skate Shop, and -- was that your  
10 first skateboard?

11 A. No, the first one was the one I  
12 couldn't remember where -- it was from my friend, I  
13 believe.

14 Q. All right. Did your parents know that  
15 you had that skateboard?

16 A. Yes.

17 Q. How old were you when you got that?

18 A. Probably about nine or ten.

19 Q. All right. And then the second  
20 skateboard, was that the one you bought at  
21 Flamingo?

22 A. Yes.

23 Q. How much did that cost you, do you  
24 remember?

25 A. At the time, it was probably about 80

1 dollars.

2 Q. Where did you get that kind of money?

3 A. Back then, my dad had a real good job,  
4 and they just -- I would do chores, and they would  
5 give me an allowance and stuff.

6 Q. So you used your allowance to purchase  
7 your first skateboard?

8 A. Uh-huh.

9 Q. Okay.

10 MR. PACELLA: Meaning the first  
11 purchased --

12 BY MR. DIXON:

13 Q. The first one you ever purchased using  
14 your own money?

15 A. Yes.

16 Q. And there was another one there you  
17 said came as a present from whom?

18 A. The one -- I believe it come from my  
19 parents for Christmas a couple years ago.

20 Q. How old were you at that time, roughly?

21 A. 12 or so.

22 Q. That was from your both of your  
23 parents?

24 A. Yes, it was -- yes.

25 Q. What ever happened to that skateboard?

1 A. Lost it through time.

2 Q. Did you have that one at the time you  
3 got the gift from your sister?

4 A. No.

5 Q. Did you have a skateboard at that time?

6 A. Yes.

7 Q. So where did that next skateboard come  
8 from?

9 A. What do you mean, the next one?

10 Q. Again, I'm trying to get a timeline of  
11 how many skateboards you got and when you got them.  
12 The one that you got from your parents at Christmas  
13 --

14 A. The other one, I got from Cole. He  
15 gave me his. I traded him a game for it.

16 Q. Is that the one you had at the time  
17 your sister gave you this one?

18 A. Yes.

19 Q. So you got a third one that was a  
20 present from Cole?

21 A. Yes.

22 Q. Got you, okay. Thanks. So going back  
23 to the form here. Had you ever seen a form like  
24 this before?

25 A. No.

1 Q. Any of the other skate parks that you  
2 ever went to, did you ever -- were you ever asked  
3 to sign anything, or were your parents?

4 A. No.

5 Q. Okay. And you didn't read any language  
6 that was in there; have you read it since then?

7 A. I've read it since then.

8 Q. I want to ask you about some of this  
9 stuff. One of the things that the document says  
10 here -- there's little bullet points there. It's  
11 the second one down. Indicating that by signing  
12 this, you are indicating that you fully understand  
13 that the activities at the Plex complex involve  
14 risks and dangers. Do you see that portion of the  
15 document?

16 A. Uh-huh.

17 Q. Okay. Trying to look back at when you  
18 came to the Plex in 2009; did you understand that  
19 skateboarding involved risks of an injury?

20 A. I knew you could get hurt in the sense  
21 of a scrape or a bruise, something like that; I  
22 didn't believe -- I didn't believe you could have  
23 such a life-altering injury in that short amount of  
24 time from something like that.

25 Q. Okay. But you did understand that by

1       skateboarding, there was a potential you could  
2       fall?

3             A.    Fall and get a bruise, not fall and  
4       bust my leg into 40 pieces.

5             Q.    Not trying to put words in your mouth,  
6       but I wanted to make sure you did know that you  
7       could fall while skateboarding.

8             A.    Okay.

9             Q.    Have you ever fallen while  
10       skateboarding?

11            A.    Not like that.

12            Q.    Have you ever fallen?

13            A.    Yes.

14            Q.    Have you ever gotten a cut?

15            A.    I've had scrapes.

16            Q.    Have you ever landed on your knee and  
17       scratched it up?

18            A.    Yes.

19            Q.    So you knew that you could be injured  
20       while skateboarding?

21            A.    Yes. I knew I could get hurt. I  
22       didn't know I could get injured. There's a  
23       difference between knowing that you are going to  
24       get hurt and knowing you are going to mess the rest  
25       of your life up, so --

1 Q. So you never envisioned the fact that  
2 you could potentially shatter your ankle while  
3 skateboarding?

4 A. No.

5 Q. But you knew you could fall and get a  
6 cut or abrasion?

7 A. I didn't believe I'd break my bones.

8 Q. Have you ever known anybody who's  
9 gotten injured while skateboarding?

10 A. Not that severe.

11 Q. Do you know anybody who ever broke a  
12 bone while skateboarding?

13 A. No.

14 Q. Dislocated an elbow or --

15 A. Dislocated a pinky. It was their fault  
16 that they did it.

17 Q. Who was that?

18 A. My friend, Brandon, in Georgia.

19 Q. In Georgia, okay. So you were given  
20 the form, you filled out a portion of it, your  
21 sister filled out another portion of it, and you  
22 handed the paper work in, correct?

23 A. Correct.

24 Q. Did Kyle also fill out a form that day?

25 A. Yes, I believe so.

1 Q. Did he have to pay anything?

2 A. We paid when we came back in.

3 Q. Did you speak with anybody else there  
4 who was an employee of Plex Indoor Sports?

5 A. No.

6 Q. Did she say anything to you about your  
7 parents had to give you permission to be there?

8 A. No.

9 Q. Did she ask you how good a skater you  
10 were?

11 A. No.

12 Q. How good a skater do you think you  
13 were?

14 A. I was all right. I'd been doing it for  
15 awhile, and I had been -- you know, I was all right  
16 at it.

17 Q. Okay.

18 A. At the time, I mean -- it's clear that  
19 -- now looking back at it, I just shouldn't have  
20 been doing something like that, that clearly was a  
21 little bit too much.

22 Q. But going back to my original question,  
23 how good of a skater do you think you were? Do you  
24 characterize yourself as being a beginner?

25 A. Intermediate.



1 Q. Would you characterize yourself as  
2 being an advanced skater?

3 A. No.

4 Q. Participate in any competitions?

5 A. No.

6 Q. Any sort of informal competitions with  
7 the guys, to see who could do the most tricks?

8 A. Huh-uh.

9 MR. PACELLA: Again, yes or no?

10 THE WITNESS: No. I would not.

11 BY MR. DIXON:

12 Q. So you never had an informal  
13 competition with your friends to see who could  
14 skate the fastest?

15 A. No.

16 Q. Or see who could do a trick of any  
17 kind?

18 A. We would sit around and see who could  
19 do different tricks, but we wouldn't make it a  
20 competition.

21 Q. Okay. So in terms of learning how to  
22 skate and learning how to do things, you and your  
23 friends would do them together?

24 A. Yes.

25 Q. What sort of tricks would you do?

1           A.    I would do -- like a flip and grind and  
2   a --

3           Q.    I'm familiar with it, but for the  
4   record, would you tell me what an ollie is?

5           A.    It's where you kick the back of the  
6   board up, like jumping the board.

7           Q.    By kicking the back of the board, you  
8   make all of the wheels come off the ground?

9           A.    Yes.

10          Q.    So it's an aerial trick?

11          A.    Yes.

12          Q.    Is that correct?

13          A.    Yes.

14          Q.    What's a kick flip?

15          A.    It's where you -- where you do an  
16   ollie, and you slide your foot, and the board spins  
17   around and back up underneath your feet.

18          Q.    And you were able to do that?

19          A.    Yes.

20          Q.    What other sorts of maneuvers did you  
21   do?

22          A.    Just little stuff, like a grind and --  
23   I used to be able to do just little tricks.

24          Q.    Tell me what you mean by grind.

25          A.    Use a grinder -- where you put the

1 trucks on the bar or whatever and ride it on that.

2 Q. Okay. And again, I'm trying to make  
3 this clear for the record, so somebody who is not  
4 familiar with skateboarding can understand what  
5 you're describing. You are on an edge, like say a  
6 box or rail, and there's usually a metal coping on  
7 the side of it?

8 A. Like a piece of flashing.

9 Q. And you would ride that piece of  
10 flashing on the center of the trucks, correct?

11 A. Yes.

12 Q. The wheels wouldn't be touching the  
13 surface?

14 A. No.

15 Q. And how far of a distance would you be  
16 able to do that grind?

17 A. A couple feet or so.

18 Q. Okay.

19 A. I never really wanted to go any  
20 further, because I just don't -- never get up  
21 enough speed, just -- you know --

22 Q. Would you end up having to jump off the  
23 board?

24 A. Sometimes.

25 Q. What happens when you are grinding on a

1 rail and you decide you don't have enough speed to  
2 make it to the end?

3 A. You just step off. Wasn't like they  
4 were that high in the air. Maybe two or three foot  
5 off the ground.

6 Q. What about kick flips? Were you able  
7 to do that the first time you tried it?

8 A. No.

9 Q. What happened to you when you -- when  
10 you tried it and were not successful?

11 A. The board just hit the ground. Nothing  
12 happened to me.

13 Q. Did you fall down?

14 A. No.

15 Q. Have you ever fallen down on a kick  
16 flip that you couldn't quite land?

17 A. I've fell, and it wasn't like a fall, a  
18 thud, just kind of like a slip, just barely hit the  
19 ground.

20 Q. Like your knee would hit the ground?

21 A. Normally, I would just land on my butt  
22 or something.

23 Q. Okay. Got you. What other kinds of  
24 tricks can you do?

25 A. Just -- that's pretty much it. I never

1 really went out and did the competitions or got  
2 anybody to teach me.

3 Q. So you had never taken any  
4 instructional lessons?

5 A. No.

6 Q. Did anybody at Plex tell you that they  
7 could provide you with skateboarding instructions?

8 A. No.

9 Q. Okay. Would you have been interested  
10 in taking any if you had known about it?

11 A. Maybe.

12 Q. Okay. All right. So after that  
13 happened -- so we got to the point where you filled  
14 out the forms, and you turned it in; did you leave  
15 right then?

16 A. Yes.

17 Q. Where did you go?

18 A. We went to the Sandhills, shopping, and  
19 -- we went to -- we went a couple different places.

20 Q. Did you -- at some point, you went back  
21 home, right? Did you tell your parents about  
22 visiting Plex Sports?

23 A. I told them we stopped by, but I didn't  
24 tell them anything about doing all that.

25 Q. You told them you stopped by. Did you

1 tell them what kind of place it was?

2 A. They had heard about it before, but  
3 but they didn't know I was planning on going up  
4 there.

5 Q. You didn't tell them at all that you  
6 were going to be going skating back there in two  
7 days?

8 A. No.

9 Q. We will go next to the 30th, which is  
10 the date of your injury. Who was with you going  
11 there?

12 A. Going there, it was my sister, her  
13 husband, my brother Josh, Kyle and me. I believe  
14 that's everybody.

15 Q. Five of you?

16 A. Yes.

17 Q. Whose car were you in?

18 A. We were in an Explorer. It was  
19 Amanda's car and --

20 Q. Okay --

21 MR. PACELLA: Let's make sure -- Amanda  
22 and --

23 BY MR. DIXON:

24 Q. You say Amanda, that's your sister  
25 Kimberly?

1 A. Yes.

2 (Pause.)

3 THE WITNESS: I've called her that  
4 since -- that's -- since I was itty-bitty, and --  
5 BY MR. DIXON:

6 Q. Is that her middle name?

7 A. Kimberly Amanda Cantrell. It's  
8 Chambers now.

9 Q. You, your brother, Josh, and Adam's  
10 brother, Kyle?

11 A. Yes.

12 Q. Got in the Explorer?

13 A. Yes.

14 Q. Headed out to Plex Indoor Sports?

15 A. Yes.

16 Q. Whose idea was it to go?

17 A. Mine and Kyle's.

18 Q. Did you decide on the 28th that you  
19 were going to be coming back on the 30th?

20 A. No.

21 Q. Backwards going to the 28th; leaving  
22 the facility, did you have any idea when you were  
23 going to be coming back?

24 A. No, we just said it was going to be in  
25 a few days. We knew we couldn't do it the next

1 day. And we knew the day after that, we were on a  
2 timeline, because Amanda and all them were leaving,  
3 and they were going back to Texas and everything.

4 Q. Got you. And Kyle was with them  
5 travelling?

6 A. Yes.

7 Q. So he would be leaving when they left?

8 A. Yes.

9 Q. Did you and Kyle skateboard together  
10 while he was in town outside of Plex?

11 A. A couple times, but nothing -- you  
12 know, maybe two or three minutes' worth. It wasn't  
13 -- we hadn't been side by side skating or anything  
14 like that. We just -- we skated for maybe two or  
15 three minutes, something like that.

16 Q. So you guys -- let's say you woke up on  
17 July 30th. Who said, hey, let's go to Plex?

18 A. We just talked about it, and we were  
19 like, you want to go up there, and he was like, we  
20 ain't got nothing else to do, so we just decided to  
21 go.

22 Q. Did you ask your sister to go?

23 A. They were going to go out there that  
24 day to go shopping, because my brother Josh wanted  
25 to go up there and get a couple things.



1 Q. Where were your parents at the time?

2 A. They were probably at the house.

3 Q. Were you all at the house when this  
4 discussion was taking place?

5 A. Yes.

6 Q. So did they know you were leaving the  
7 house?

8 A. They didn't know we were going to go  
9 skateboarding.

10 Q. Was there any reason you didn't tell  
11 them?

12 A. I just didn't think about it at the  
13 time. We just rushed off.

14 Q. Were you afraid that if you told them,  
15 they would tell you not to go?

16 A. Maybe.

17 Q. Had they ever told you not to go  
18 someplace and skate before?

19 A. No.

20 Q. So why do you think they would have  
21 told you not to go that day?

22 A. They probably didn't -- well, they  
23 probably would have been like, well, we need to go  
24 check it out first and make sure everything's all  
25 right. They ain't the type to just let me go out

1 and do something that could be dangerous, and not  
2 wanting to check it out.

3 Q. You say that's dangerous -- is that  
4 something they had said to you before?

5 A. That's me looking back at it now.

6 Q. Well, I'm trying to get your  
7 perspective on what was happening at the time, not  
8 the benefit of what we know now. On the day that  
9 you guys were leaving, did you think about telling  
10 your parents where you were going?

11 A. We didn't -- that day, when we left, we  
12 didn't know about -- if we were going at the time.  
13 It was -- we took our stuff with us just in case,  
14 and then after we got up there, we just decided,  
15 well, we are going to go in.

16 Q. So when you left your house, you  
17 weren't sure?

18 A. We weren't sure if we were going in  
19 there, but we knew we were going to Sandhills.

20 Q. But you took your skateboards anyway?

21 A. Yes.

22 Q. Did you take anything else?

23 A. No.

24 Q. Who all took skateboards?

25 A. Just me and Kyle.

1 Q. Josh didn't skateboard?

2 A. No.

3 Q. All right. So when you got to Plex,  
4 who all went inside?

5 A. When we got there that day, it was me,  
6 Kyle, and -- I'm not sure if my sister went in that  
7 day or not.

8 Q. Do you recall if Adam or Josh went in?

9 A. They didn't. They were in the car. I  
10 remember that.

11 Q. So you and Kyle and probably your  
12 sister went inside the facility?

13 A. Uh-huh.

14 Q. What did you do then?

15 A. We just went in and we -- we told them  
16 to look up our names, we paid the fee, and we went  
17 to the shop and rented a helmet, and then we went  
18 and started skating. Amanda and Josh and Adam  
19 left.

20 Q. Did Kyle rent a helmet?

21 A. I believe so.

22 Q. Do you recall if he had a helmet when  
23 you left the house?

24 A. I couldn't tell you.

25 Q. But you definitely rented a helmet?

1 A. Yes.

2 Q. Why did you rent the helmet?

3 A. I don't -- I didn't own one at the  
4 time.

5 Q. And you were told one was required,  
6 right?

7 A. Yes.

8 Q. Okay. What do you think the purpose of  
9 a helmet is?

10 A. To make sure you don't hit your head  
11 and kill yourself, I guess.

12 Q. So by requiring a helmet, you would  
13 agree with me that that would indicate to you that  
14 you were about to do something where you might get  
15 your head hurt?

16 A. Yes, maybe bump your head or something.  
17 But that's why -- that's why they make kids wear a  
18 helmet, when they ride bicycles, because anything  
19 you do, you could fall and hit your head. I could  
20 stand up and walk out the door and fall and hit my  
21 head.

22 Q. But we don't require people to wear  
23 helmets when doing that, right?

24 A. Uh-huh.

25 Q. We do generally require people to wear

1 helmets when they are bicycling?

2 A. Uh-huh.

3 Q. Skateboarding?

4 A. Uh-huh.

5 Q. You've been to skateboarding shops  
6 before?

7 A. Yes.

8 Q. Have you looked around at the helmets  
9 that they sell?

10 A. Yes, I used to have one, but at the  
11 time, I just -- I don't remember what happened. It  
12 disappeared when I was moving.

13 Q. You would agree with me that safety  
14 equipment is sold at skateboarding shops, and  
15 there's usually a good bit of it?

16 A. Depends on what shop it is. The one I  
17 used to go to didn't sell any equipment; they just  
18 sold the boards.

19 Q. Just the boards? And that was the  
20 Flamingo Shop?

21 A. Yes.

22 Q. Have you been in the skateboarding  
23 shops where they did sell helmets and pads?

24 A. Maybe one.

25 Q. Where would that have been?

1 A. Probably at the Plex.

2 Q. What other skateboarding shops have you  
3 ever been in?

4 A. I couldn't name them. I've maybe been  
5 in one other, but that was probably it. Probably  
6 about five or six years ago.

7 Q. Well, you have your helmets, then.  
8 What did you do next?

9 A. We left, and we went into the skate  
10 park, and we just started skating around, and he  
11 went one way, and I went the other way, and we just  
12 were skating.

13 Q. Which way did he go?

14 A. I went off to the right, I think he  
15 went off toward the left, and when I went back that  
16 way, he went over toward the right.

17 Q. Just so I understand what you are  
18 referring to, the skateboarding park was a pretty  
19 large area within the building?

20 A. Yes.

21 Q. One section of it was the skate bowl?

22 A. Yes.

23 Q. And the other section, there were boxes  
24 for grinding?

25 A. Uh-huh.

1 Q. Is that a yes?

2 A. Yes.

3 Q. So when you got there -- you just gave  
4 me left and right; could you be more descriptive?

5 A. I went toward the boxes, and he went to  
6 the -- on the left side, there was ramps and  
7 another little platform on the left side, and he  
8 went over there, and I just went off to the right.

9 Q. How long did you skate in that area?

10 A. 20 or 30 minutes, and then we stopped  
11 and went and got something to drink.

12 Q. Okay.

13 A. Then come back and just skated for a  
14 few more minutes, and -- a little bit before it  
15 happened.

16 Q. When did you -- whose idea was it to  
17 get in the bowl?

18 A. It was mine. I was skateboarding up  
19 top, and I went to go in, and I just decided it  
20 couldn't be that bad, and I wanted to go in, and --  
21 I wanted to drop into it, and the board just  
22 stopped, and I got slung off of it and went  
23 straight to the bottom.

24 Q. You said you were skating around the  
25 top?

1 A. Yes.

2 Q. The top --

3 A. The top of the bowl.

4 Q. The top of the bowl. And for the  
5 purposes of the -- like we are looking essentially  
6 at a swimming pool, and you have the decks; that's  
7 what you mean by on top?

8 A. Yes.

9 Q. You were going down into the swimming  
10 pool?

11 A. Yes.

12 Q. When you fell and injured yourself, was  
13 that the first time that you tried to go into the  
14 bowl?

15 A. No, I had went in on the smaller side,  
16 because that wasn't -- there was a high side and a  
17 low side and a medium side, and when I went to go  
18 in on that one, it didn't give me a problem. I  
19 went to go on the other side, and it messed me up.

20 Q. Did I hear you say you were dropping  
21 in?

22 A. I was dropping into it, but it was off  
23 of the edge. It wasn't off of the -- like where I  
24 was dropping in, like where I broke my leg, like  
25 where I was dropping in before.



1 Q. Clarify that for me a little bit. Not  
2 sure I understand what you are getting at. The  
3 spot --

4 A. The spot where I broke my leg was a  
5 little higher. And there was the edge over here  
6 (Indicating). I was skating on the bottom and off  
7 the edge here, and I was inside and rolled down.

8 Q. So you were inside the swimming pool?

9 A. At one time. But that was like when --  
10 whenever I just went over to it and was looking at  
11 it and all. Then I went to go drop in on the other  
12 side. At the time I broke my leg, I had been up  
13 there maybe ten minutes.

14 Q. Okay.

15 A. So it was -- it wasn't like a -- like I  
16 had been up there looking around and skating around  
17 and -- it was just that I went up there, and it  
18 didn't look no different than anything else, so  
19 when I did it, I just hit the ground, and that's --  
20 that's the last thing I remember for a few days, at  
21 least.

22 Q. Okay. Help me understand, sort of step  
23 by step, leading up to your injury; where you were,  
24 when you started to move, and -- what was the move  
25 that you were doing? Kind of walk me through that.

1           A.    I was up top, and I was going to drop  
2           into the bowl from the top.

3           Q.    Okay.

4           A.    And when I did, I went and -- right  
5           when I got to the edge, to where you have to lift  
6           up a little bit to get the right angle on it, I had  
7           the -- I had the board on it, and I went to drop  
8           in, and it got hung or something underneath, and  
9           the board just stuck for a second, and the momentum  
10          I had, I slipped and when I slipped off of it, I  
11          went straight to the bottom. And the way I landed  
12          was so awkward, it -- I hit my leg and messed it  
13          up.

14          Q.    When I use the term drop in, do you  
15          understand that to have a specific meaning as a  
16          skateboarding maneuver?

17          A.    Yes.

18          Q.    What does it mean, to drop in?

19          A.    It can mean two things, either  
20          stationary, from having the board sitting in place,  
21          or from moving. It can --

22          Q.    And which one were you doing?

23          A.    I had it where I was doing it from  
24          stationary, but it had the edge on it, the back  
25          edge on it, and when I kicked up, the truck hit

1 something right there.

2 Q. Hold on. I want to make sure I  
3 understand. As I understand it, and based on the  
4 testimony of Kyle, who was there with you at the  
5 time, he described the drop-in. When you  
6 positioned the rear tail of your board to be over  
7 the edge -- on top of the coping, where the edge is  
8 to the bowl, with the wheels and the rest of the  
9 board forward of that tail, suspended in mid-air --

10 A. Uh-huh.

11 Q. And then you -- with the skateboarder  
12 standing on the top, one foot pinning the tail down  
13 and the other foot above the front trucks --

14 A. Uh-huh.

15 Q. Is that what you were doing?

16 A. Uh-huh.

17 Q. So from a stationary position, you had  
18 the rear tail of your board on the top of the deck?

19 A. Yes.

20 Q. With the rear trucks and the front  
21 trucks all suspended over the --

22 A. The rear trucks -- the rear trucks  
23 don't get suspended in the air, the rear trucks sit  
24 on the edge, because you couldn't put the tail on  
25 the board without the trucks touching something.

1 Q. They touch on the back side?

2 A. Yes.

3 Q. So underneath of the rear wheels,  
4 there's nothing, essentially.

5 A. Yeah.

6 Q. But the back part of the wheel is  
7 touching the edge of the pool?

8 A. Uh-huh.

9 Q. And the tail is sitting on the top edge  
10 of the pool?

11 A. Yes.

12 Q. So you were standing in that position,  
13 ready to drop into the bowl, correct?

14 A. Yes.

15 Q. Describe for me then how -- you said  
16 something caught?

17 A. It felt like -- whenever I dropped  
18 down, and I pushed the board down, it felt like the  
19 rear just stuck, and I tried to kick the board to  
20 get it to move, because it felt like it was locked  
21 in place, and it wasn't going to move. Then by the  
22 time I did that, I just got slung off of it and  
23 fell.

24 Q. Wasn't your foot on the back tail?

25 A. Yes.

1 Q. Was it your foot that was holding you  
2 down?

3 A. My foot was on the back, and my other  
4 foot was on the front, and whenever I pushed down  
5 on the front, you are supposed to put your foot  
6 right at the base of the back of it.

7 Q. Uh-huh.

8 A. And when I went to go drop in, I moved  
9 my foot, and I went to go move, and once it got  
10 three-quarters of the way through the motion to the  
11 bottom, it just stopped, and I fell. And then the  
12 board comes sliding down, and I lay there.

13 Q. Do you have -- what do you think it was  
14 that made your skateboard stick or stop?

15 A. It could have been anything. Could  
16 have been the coping around it or anything.

17 Q. Do you know what it was?

18 A. I'm not sure. I believe it was the --  
19 a little piece of wood or -- could have been that  
20 or a piece of plastic or just something on that  
21 edge. It hung me up.

22 Q. What wood or what plastic would have  
23 done that?

24 A. Something that wasn't in place all the  
25 way. There was a couple of boards on the top that

1 weren't in place all the way, it was more of a  
2 wobble to it.

3 Q. Okay. Help me understand, because when  
4 I'm thinking of the tail of a board, which is a  
5 flat piece of board, sitting on top of another  
6 piece of board, and something catching it to  
7 prevent it from coming off -- I'm thinking  
8 something else would have to be sitting on top of  
9 it. Is that what you are describing? You think  
10 something was sitting on top of the rear of your  
11 board?

12 A. No.

13 Q. So if something was not on the top --

14 A. I believe it got caught underneath, on  
15 the rear wheel. Not the rear wheel, but on the  
16 truck. There was something like a piece of plastic  
17 or anything -- because when the board come up, it  
18 just stopped. That's when I fell.

19 Q. Did you see anything in -- so when you  
20 -- let me back up. Scratch all of that. Based on  
21 what you just said, you believe something caught  
22 the truck, which is the metal portion, the axle, of  
23 the back wheels?

24 A. Yes.

25 Q. Right?

1 A. Yes.

2 Q. And so then having understood that the  
3 truck was below the top surface of the deck,  
4 hanging over the side, effectively, we are talking  
5 about something that would have been on the surface  
6 of the bowl?

7 A. Uh-huh.

8 Q. Is that a yes?

9 A. Yes.

10 Q. So you think something on the surface  
11 of the bowl down below the edge --

12 A. Or right at the edge.

13 Q. Or right at the edge? Or catching on  
14 your trucks?

15 A. Yes.

16 Q. Did you see anything?

17 A. When it happened, it happened so fast,  
18 that when I took my step into it, I looked down,  
19 and as soon as I looked down, the board wasn't  
20 moving, and I was.

21 Q. Okay.

22 A. Then when I crashed to the bottom, it  
23 went on by me.

24 Q. How was your back foot positioned when  
25 that happened?

1           A.   My back foot was -- on the edge at  
2           first, and when I put my front -- the board is like  
3           that (Indicating), my foot was here (Indicating),  
4           and I was on the back, and I was right there,  
5           whenever you go to move in, so you can position the  
6           weight.

7           Q.   Now, you are showing me things by  
8           positioning your hands in the air. That doesn't  
9           show up on the record very well.

10          A.   I don't know any other way to explain  
11          it.

12          Q.   If we could be -- so when your board is  
13          positioned in the stationary position, ready for a  
14          drop-in, your back foot, is that on the back tail  
15          of the board?

16          A.   Yes.

17          Q.   And your front foot is above the front  
18          truck?

19          A.   It's right at the front truck. If you  
20          put it -- if you go too far to the front, as soon  
21          as you step down, the board is going to come out  
22          from under you, and you are going to fall even  
23          worse.

24          Q.   How do you know that?

25          A.   Because I've seen it happen, and you --



1     you put your foot too far to the front, and when  
2     you go down, the board will push down on the front.

3             Q.     Is that something you have seen before  
4     this incident?

5             A.     It was something I've seen on TV. But  
6     it wasn't nothing I -- standing there witnessing.

7             Q.     So at the time you were doing this, on  
8     July 30th of 2009, you had seen somebody do a  
9     drop-in and put their foot in the wrong position  
10    and crash?

11            A.     You can see it on the internet or  
12    anything. It wasn't -- but it wasn't the  
13    positioning of the foot that did that.

14            Q.     That did what?

15            A.     That broke my leg. It was -- whether  
16    it was something holding it or whatever, but it --  
17    but the actual position of my foot --

18            Q.     So going back to the position of your  
19    foot, you've got one foot pinned down on the tail  
20    of the board, the other foot is just before the  
21    front trucks, correct?

22            A.     Yes.

23            Q.     As you start to move in, you push your  
24    weight down on your front foot?

25            A.     Yes.

1 Q. What do you do with your back foot?

2 A. You slide it to the -- right behind the  
3 back truck, like right in the middle of it, to  
4 where you can have enough weight on the back to  
5 keep the board underneath you. Whenever you put  
6 your foot there, you just make sure that you have  
7 control over it.

8 Q. How did you learn to do a drop-in?

9 A. Tried it one time, didn't fall and  
10 break anything.

11 Q. How many times had you done -- before  
12 the time where you fell and broke your ankle, how  
13 many times had you successfully done a drop-in?

14 A. In my life?

15 Q. Yes.

16 A. Probably four or five.

17 Q. Would that -- sorry, I didn't mean to  
18 stop you.

19 A. Maybe six, but that's probably about  
20 it.

21 Q. Were those all at Plex Indoor Sports?

22 A. No, no.

23 Q. Where were they?

24 A. They were around Georgia and down where  
25 I -- when I first learned how to do it, it was when

1 -- it was one of the first things I wanted to learn  
2 to do, and after I knew I could control the board  
3 and do everything else, I wanted to learn it.

4 Q. How did you learn it?

5 A. Trying it.

6 Q. Did you go on the internet to see how  
7 it was done?

8 A. Huh-uh.

9 MR. PACELLA: Is that a no?

10 THE WITNESS: No.

11 BY MR. DIXON:

12 Q. So as you were pushing your weight  
13 forward and dropping the front of your skateboard  
14 in, it's your testimony that something -- you don't  
15 know what it was, but you believe something stopped  
16 your skateboard?

17 A. Yes.

18 Q. Is that correct?

19 A. Yes.

20 Q. Did you just -- what happened after  
21 that? Describe the rest of that process.

22 A. Whenever I -- I dropped in the board, I  
23 pushed down on it, it went to move, and it got --  
24 not even -- it was probably almost three-quarters  
25 of the way, and it just dropped for a second. It

1 was just a split second when it stopped. I just  
2 went forward, because the momentum I already had, I  
3 was standing on the edge, I was already in motion  
4 to do it, and the momentum just took me into it.

5 Q. Did you fall off the board?

6 A. Yes.

7 Q. Okay. Had you done any successful  
8 drop-ins at Plex?

9 A. I hadn't dropped in from the top, no.

10 Q. Where had you dropped in from?

11 A. I just went and skated around the bowl,  
12 on the bottom, the inside of it, along the edges.

13 Q. If you are not doing a drop-in, as we  
14 have been talking about, how else do you get into  
15 the bowl?

16 A. You just climb in, slide in, whatever.

17 Q. Is that what you did before?

18 A. Yes.

19 Q. Tell me what happened when you fell.

20 A. I fell. As soon as I hit that ground,  
21 I -- well -- I hit that ground, and I looked down  
22 -- sorry --

23 Q. Take your time. Take your time.

24 (Pause).

25 MR. DIXON: You need some water or

1 something?

2 (Pause).

3 THE WITNESS: I fell, and whenever I  
4 looked up, my leg was turned all the way around and  
5 off to the side. I just remember laying there, not  
6 even being able to get up or even move.

7 BY MR. DIXON:

8 Q. Was Kyle in the skate bowl area when  
9 this happened?

10 A. Huh-uh.

11 Q. Where was he?

12 A. He didn't get there until everybody  
13 around was -- like I was laying there, and I was in  
14 so much pain, there was a boy up top, and I yelled  
15 at him, he went and got somebody, and they came  
16 down, and they called 911, and they asked me who  
17 was with me, and I told them it was Kyle, and they  
18 went and found him and brought him over there. He  
19 called my sister and all them, and they come over.

20 Q. Take a minute.

21 A. I'm sorry, it's just really --

22 Q. I understand. Do you remember who was  
23 the first person to get to you when you were at the  
24 bottom?

25 A. I couldn't tell you. It was after --

1 it was just a big mess.

2 Q. Okay.

3 A. At first, it was a guy that come  
4 running up, and soon after that, it was Kyle.  
5 After they asked me who was with me, and I told  
6 them, they went and got him, and he come running  
7 up, and everything else was just a mess after that.

8 Q. Do you know if the guy that first got  
9 there was an employee of Plex?

10 A. I believe so. I couldn't -- I couldn't  
11 tell you, because I didn't know him, but I believe  
12 he was an employee. He come up and he -- as soon  
13 as he saw it, he just -- he started calling -- they  
14 called 911, and the next ten minutes went by, and  
15 they got there, and my sister and all them got  
16 there, and then I had to wait probably another 20  
17 or 30 minutes, and then the fire trucks got there,  
18 and they pull me out of there.

19 Q. Do you remember -- I guess you were  
20 transported in an ambulance, right?

21 A. Yes.

22 Q. And do you remember where they took  
23 you?

24 A. I remember the hospital, but I don't  
25 everything that happened when I was there.

1 Q. You want to take five?

2 MR. PACELLA: Let's do that.

3 (Brief recess.)

4 BY MR. DIXON:

5 Q. All right, Kyle, we are back after a  
6 short break here.

7 MR. PACELLA: Jeremy.

8 (DFT. EXH. 2, Copy of Photograph of  
9 Skate Facility, was marked for  
10 identification.)

11 BY MR. DIXON:

12 Q. Jeremy, I'm sorry. I just had the  
13 court reporter put a document in front of you, it's  
14 marked as exhibit number 2. It's a photograph of  
15 the skate park at Plex Indoor Sports. Do you  
16 recognize that to be the skate park where you were  
17 injured?

18 A. Yes.

19 Q. If you would do me a favor, if you can  
20 -- do you remember where you were when you were  
21 dropping in?

22 A. Yes.

23 Q. Could you mark that with a number one  
24 and circle it where you were when you dropped in?

25 A. Okay.

1 (Pause.)

2 BY MR. DIXON:

3 Q. And if you can't do it, let me know.  
4 Not trying to force you into something you don't  
5 remember.

6 A. Right here by the wall, around the  
7 corner.

8 Q. Okay. Let's see how you've got that  
9 marked. If you don't mind, just indicate that  
10 point --

11 A. This one and the circle is my writing.

12 Q. This is your writing. Is that  
13 understood?

14 A. Yes.

15 Q. Were you down inside this dip? Looks  
16 to me like there is a dip on the picture, where the  
17 deck up here is raised higher, and it drops down --  
18 so you were dropping in, the edge of your board is  
19 just to the right of that number one?

20 A. Yes.

21 Q. That's all I needed to know, just to  
22 make sure we have the position on that straight.  
23 Do you recall seeing any signs or anything around  
24 the skate park?

25 A. No.



1           Q.    We've obviously got a lot of medical  
2 records regarding your treatment, and I don't want  
3 to spend a lot of time going into every detail of  
4 it, but I'd like to know if you could just walk me  
5 through the number of procedures that you've had  
6 and who has performed those procedures.

7           A.    All right. The first one -- the first  
8 two procedures -- the first initial one and the  
9 follow-up to it was performed by Moore Orthopaedic.  
10 It was Dr. -- I can't remember his name. He's --  
11 McFadden or something like that.

12          Q.    Okay. That's right, McFadden. So he  
13 performed the initial procedure when you were  
14 admitted to the hospital?

15          A.    He reset it, and then -- they put me  
16 under, in emergency surgery, and then the next one  
17 that he did on it, that -- he went in and cleaned  
18 it out and tried that on it, and it just kept  
19 getting worse and worse and worse.

20          Q.    Let me stop you there and kind of back  
21 up a little bit. So you had your initial procedure  
22 following the injury?

23          A.    Yes.

24          Q.    You say he reset it. You have some  
25 pins and plates?

1 A. Pins and plates.

2 Q. How long after that do you remember  
3 that -- before you had the second procedure?

4 A. It was probably four months, three or  
5 four months.

6 Q. Tell me, in your words, why that second  
7 procedure was necessary.

8 A. Because after the initial surgery,  
9 whenever I'd take a step, my leg would feel like  
10 something would catch inside of my joint, and I  
11 would hit the floor, and I just wouldn't be able to  
12 walk, and they did that and cleaned it out, took  
13 tons of bone fragments and stuff out of my leg, and  
14 he did that, and it still continued to be an issue.

15 After countless hours and stuff at the  
16 doctor and back and forth and back and forth,  
17 everything -- they just decided that there was  
18 nothing they could do anymore for me.

19 Q. Okay.

20 A. So that put me in the position of --  
21 well, no, I left from there and went to USC Sports  
22 Medicine. And the first doctor I saw was Dr. Guy,  
23 and he looked at it, x-rayed it, checked it, and he  
24 told me that night that he was going to try some  
25 stuff, but that he -- he probably knew what it was,

1 and then he did some x-rays, and he was like, we  
2 are going to have to pull these screws out, so they  
3 put me in for my next surgery, which they pulled  
4 out the -- two screws, a plate, and that was -- it  
5 was like four screws and a plate out, so -- and  
6 they let me heal up from that one, and they went  
7 back in again and did another cleanout of it, and  
8 then it was roughly -- it was probably six months  
9 later, they told me that it would have to be  
10 rebuilt again, and they would have to start in the  
11 bottom of it.

12 And then I got scheduled for surgery,  
13 and that was number five. I -- that's it for now.  
14 The surgeries, I think -- they may have done one  
15 more cleanup, but I couldn't recall. It would be  
16 in my records.

17 Q. So that last major surgery, if I can  
18 use that phrase, was that Dr. McBride that did  
19 that?

20 A. Yes, it was.

21 Q. And what was your understanding of what  
22 he was doing?

23 A. He was rebuilding my leg. He was  
24 taking bone and cartilage out of my knee, and he  
25 was going to cut my ankle off to let it hang from

1 the side and place the bone and the cartilage into  
2 my leg and attach my ankle back. And basically,  
3 just cleaning it out and repositioning it, the  
4 screws and the pins and stuff.

5 Q. That's the last surgery that you had,  
6 that you recall?

7 A. Yes.

8 Q. How have you recovered since then?  
9 Tell me about your current condition.

10 A. I'm day-to-day, pretty much. Don't  
11 know whether the -- it's day-to-day. I mean, I  
12 have my good days, and I have a lot of the bad  
13 days, but it's -- like when it's raining, it will  
14 kill me, and when it's sunny, it's -- I mean, it's  
15 in between, but --

16 Q. And not to make this more difficult  
17 than it has to be, but -- when you describe this,  
18 are you talking about just pain?

19 A. Yes.

20 Q. So on certain days, it's more painful  
21 than others?

22 A. It's a lot worse.

23 Q. What sort of physical limitations do  
24 you have, in terms of what you can do and can't do?

25 A. I can -- I can barely walk. I can't

1 run anymore. I can't take any hard steps. I have  
2 a hard time walking up hills or stairs or anything.

3 Q. When is the last time you saw  
4 Dr. McBride?

5 A. This month.

6 Q. Sir?

7 A. I think it was this month.

8 Q. What was your -- why did you go see  
9 him?

10 A. It was a follow-up. They just wanted  
11 to take x-rays, and make sure that everything was  
12 still fine with the surgery, because of the -- like  
13 I was having really bad pain in it again. I could  
14 barely walk.

15 Q. I'm not sure I've seen those records  
16 yet, if that's the case, if you had something that  
17 recent. So can you tell me, based on that visit,  
18 your understanding of what your options are going  
19 forward, what sort of treatment he's advising for  
20 you?

21 A. Nothing. Pretty much he -- he told me  
22 that they can go back in and clean it out and check  
23 it and make sure the -- because basically, he told  
24 me I cannot have an ankle replacement, that I will  
25 have to get redone in -- I can get it redone in

1 half a year, six months, or I can have a fusion  
2 done and get it replaced every year. It's just  
3 something I don't want to go through.

4 Q. Is he -- he's giving you those two  
5 options --

6 A. Yes.

7 Q. -- for you? Is he making a  
8 recommendation of one over the other?

9 A. Just going to be -- I mean, it can be a  
10 miss or it can help. He said it's 50/50.  
11 Basically, it's just -- if I do the fusion, I lose  
12 the ability to even turn my ankle or move it, the  
13 little bit of movement I have. If I get the ankle  
14 replacement done, I just have to keep going back  
15 and going back and going back. I just don't want  
16 to do it.

17 Q. Based on that, I'm assuming you don't  
18 have a decision about what you are going to do, in  
19 terms of your future treatment?

20 A. No.

21 Q. Is that correct?

22 A. I don't have no idea.

23 Q. Are you seeing any other doctors right  
24 now for this problem?

25 A. Not right now.

1 Q. Is Dr. McBride prescribing all of your  
2 pain medications?

3 A. He's just given me Tramadol, but it's  
4 as-needed, really. It's kind of like Tylenol, but  
5 I don't know. When it's raining like this, I just  
6 don't bother to take it, because it doesn't really  
7 do nothing for me and doesn't help. It's just --  
8 it's bad.

9 Q. Are you seeing -- I think I asked this;  
10 I just want to make sure. Other than Dr. McBride,  
11 are you seeing any other doctors that are treating  
12 you as a result of this accident?

13 A. No. Not currently. I have seen  
14 psychiatrists and stuff, but I just -- I don't  
15 know, I haven't went back in awhile.

16 Q. The only records I recall seeing was  
17 the Kershaw Medical Center.

18 A. The what?

19 Q. The Kershaw Psychiatric --

20 A. I went to Morthala; it was toward  
21 Elgin. That might be what it's called.

22 Q. When is the last time you were at  
23 Morthala?

24 A. Probably a year ago or so.

25 Q. And why did you go there?

1           A.    I just went for a visit.  He scheduled  
2   me for a follow-up for another visit, and he tried  
3   to put me on this medicine for my sleep issues and  
4   for everything else, and he just wanted to check on  
5   how it was working and everything.  It just  
6   basically -- I went to do that and I had the  
7   surgery, and I just haven't went back since.

8           Q.    I do know you went to see -- see  
9   somebody over at Kershaw -- Kershaw Psychiatric?

10          A.    I think it's the same thing.

11          Q.    Same place?

12          A.    Yes, I think so.

13          Q.    Okay.

14          A.    Because he's the only -- the only  
15   doctor I've been to.

16          Q.    All right.

17               (Pause).

18   BY MR. DIXON:

19          Q.    Kershaw County Psychiatry in Elgin?

20          A.    Yes, that's where I went.

21          Q.    Okay.  I think the last record we have  
22   from them is -- it looks like June of -- June of  
23   2011; does that sound about right?

24          A.    It's probably right.  It's been -- it's  
25   been a little while.



1 Q. Do you know anything about -- did he  
2 discuss with you the closure of your file there?

3 A. Huh-uh.

4 Q. Did he discuss with you any poor  
5 compliance with his recommendation?

6 A. Huh-uh.

7 Q. Do you know what that means?

8 A. No.

9 Q. Did he indicate to you or to anybody  
10 that he has decided you need to find another  
11 provider, that they will not see you anymore?

12 A. I figure -- I don't know.

13 Q. Tell me what you mean by you figure.

14 A. I just haven't been back, so they -- I  
15 didn't figure that I would go back to him.

16 Q. Do you recall what sort of  
17 recommendations he had for you, in terms of your  
18 treatment?

19 A. Huh-uh. He just basically gave me --  
20 it was Seroquel and -- like a sleep agent or  
21 something. It messed with me really bad. It put  
22 me out for hours and hours and hours. I wouldn't  
23 be able to get up and -- and I told him I just  
24 couldn't take it. And he was -- it was about the  
25 last time, because I seen him and -- I was never

1 scheduled another appointment.

2 Q. Okay. So to just make sure, in terms  
3 of recommendations he had for you, was just the  
4 prescription, and you had some problems with the  
5 prescription, you couldn't take it?

6 A. Yes.

7 Q. The side effects, I guess?

8 A. It was giving me -- giving me pretty  
9 bad side effects.

10 Q. Did you discuss with him alternative  
11 medications?

12 A. Huh-uh.

13 Q. And, did you cancel the last  
14 appointment, or do you know if he did, or did your  
15 parents? Do you know?

16 A. I believe that -- the appointment I had  
17 scheduled, I believe -- it was one of the days I  
18 woke up, and I couldn't walk, and I couldn't move,  
19 and I just told my parents that I couldn't go to  
20 it.

21 I mean, if I couldn't walk out the  
22 front door and go to it, there wasn't nothing I  
23 could do, so I just told them to cancel it. I just  
24 decided not to that day. I figured I'd reschedule  
25 it, but I just never did.

1           A.    I just went for a visit. He scheduled  
2 me for a follow-up for another visit, and he tried  
3 to put me on this medicine for my sleep issues and  
4 for everything else, and he just wanted to check on  
5 how it was working and everything. It just  
6 basically -- I went to do that and I had the  
7 surgery, and I just haven't went back since.

8           Q.    I do know you went to see -- see  
9 somebody over at Kershaw -- Kershaw Psychiatric?

10          A.    I think it's the same thing.

11          Q.    Same place?

12          A.    Yes, I think so.

13          Q.    Okay.

14          A.    Because he's the only -- the only  
15 doctor I've been to.

16          Q.    All right.

17               (Pause).

18 BY MR. DIXON:

19          Q.    Kershaw County Psychiatry in Elgin?

20          A.    Yes, that's where I went.

21          Q.    Okay. I think the last record we have  
22 from them is -- it looks like June of -- June of  
23 2011; does that sound about right?

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25 been a little while.

1 Q. Do you know anything about -- did he  
2 discuss with you the closure of your file there?

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4 Q. Did he discuss with you any poor  
5 compliance with his recommendation?

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7 Q. Do you know what that means?

8 A. No.

9 Q. Did he indicate to you or to anybody  
10 that he has decided you need to find another  
11 provider, that they will not see you anymore?

12 A. I figure -- I don't know.

13 Q. Tell me what you mean by you figure.

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15 didn't figure that I would go back to him.

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17 recommendations he had for you, in terms of your  
18 treatment?

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20 it was Seroquel and -- like a sleep agent or  
21 something. It messed with me really bad. It put  
22 me out for hours and hours and hours. I wouldn't  
23 be able to get up and -- and I told him I just  
24 couldn't take it. And he was -- it was about the  
25 last time, because I seen him and -- I was never

1 scheduled another appointment.

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3 of recommendations he had for you, was just the  
4 prescription, and you had some problems with the  
5 prescription, you couldn't take it?

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9 bad side effects.

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11 medications?

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14 appointment, or do you know if he did, or did your  
15 parents? Do you know?

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17 scheduled, I believe -- it was one of the days I  
18 woke up, and I couldn't walk, and I couldn't move,  
19 and I just told my parents that I couldn't go to  
20 it.

21 I mean, if I couldn't walk out the  
22 front door and go to it, there wasn't nothing I  
23 could do, so I just told them to cancel it. I just  
24 decided not to that day. I figured I'd reschedule  
25 it, but I just never did.

1 Q. Do you intend to see somebody else for  
2 that?

3 A. Yes, eventually.

4 Q. What do you plan on seeing them for?

5 A. Just depression.

6 Q. So there was a possibility that you  
7 will find a psychiatric caregiver at some point in  
8 the future?

9 A. Right.

10 Q. And you think that that's related to  
11 this incident?

12 A. Yes.

13 Q. Tell me how that's related.

14 A. Because after it happened -- I never  
15 had issues before, and after it happened, I just  
16 fell into a really deep state of depression,  
17 couldn't sleep, couldn't -- I couldn't do nothing.  
18 I would have nightmares. Just different stuff that  
19 didn't happen until this happened.

20 I just needed to talk to someone.  
21 After I quit going there, I just decided that  
22 eventually, I needed to go back to someone, but I  
23 just haven't done it yet.

24 Q. Okay. Those psychiatric records that  
25 we've got, from Dr. Morthala, Kershaw County

1 Psychiatry, they do reference some other things  
2 going on in your life that they indicated were  
3 causing you some problems. Are you familiar with  
4 those issues?

5 A. Probably.

6 Q. For instance, problems at home with  
7 your parents?

8 A. Yes, that's been resolved for years.  
9 The issues I was having then don't have any effect  
10 on me now, but the one thing that stays the same is  
11 because of my accident.

12 Q. Tell me a little bit about what the  
13 issues were. I'm not trying to get too personal  
14 but --

15 A. I had just gotten through a depression.  
16 Are you talking about my family or --

17 Q. Yes, the issues with your parents that  
18 were referenced in your records. I'm not sure what  
19 all of that is about. I just want to get a sense  
20 of --

21 A. It was just arguments or -- it wasn't  
22 specifically like my mom and my dad fighting or  
23 anything like that. It was just, you know, just  
24 different things that -- my dad got into an  
25 accident the same year I broke my ankle, he got hit

1 by a semi, and he -- I mean, it was just -- it was  
2 tough on him. I mean, it wasn't specifically one  
3 thing, just different stuff piled on top of one  
4 thing.

5 Q. What about the issues involving your  
6 sister and your parents?

7 A. They fixed that a long time ago.

8 Q. What do you mean by fixed it?

9 A. They didn't really have issues. It was  
10 more of a -- it was more of a little argument that  
11 just was stupid, and wasn't no reason -- wasn't no  
12 reason -- basically, just -- my parents wanted to  
13 see their grandbabies, and they all started talking  
14 again, and it was resolved awhile back.

15 Q. So your sister is now regularly talking  
16 with your parents?

17 A. Yes, here and there. About the babies.

18 Q. Do you still talk to your sister?

19 A. Yes, a little bit, whenever they are  
20 around.

21 Q. Did you have a fight with her at one  
22 point?

23 A. I had an argument with her, but it  
24 wasn't -- it wasn't nothing huge.

25 Q. Okay.



1           A.    It wasn't nothing -- it was blown out  
2 of proportion.  Shouldn't have been.

3           Q.    Have you resolved that issue with her?

4           A.    Yes.

5           Q.    So the -- just to be clear, the only  
6 issue right now is -- that you feel that your  
7 depression is related to is the stuff relating to  
8 your ankle injury?

9           A.    Yes.

10          Q.    Have you had -- before this accident  
11 and even since then, you have seen a number of  
12 doctors for a number of other issues as well?

13          A.    Okay.

14          Q.    I mean -- and I'm just going through a  
15 couple of them, and I'm seeing references to them,  
16 so I'm going to ask you to just fill me in, and  
17 they may or may not be relevant to anything here.  
18 I just want to get some more information that's  
19 available in the medical records, okay?

20          A.    Okay.

21          Q.    February of 2007, you had an injury, a  
22 dodge ball injury, something to your knee?

23          A.    It wasn't dodge ball, it was wrestling.  
24 It was when I was wrestling at -- it was LE, the  
25 Lugoff-Elgin or something, but it was my fault that

1 it happened.

2 Q. I want to be clear, because -- there's  
3 also an August, 2010 injury, where you had a knee  
4 problem. The medical records indicate you were  
5 horsing around. Are we talking about two different  
6 things or --

7 A. Probably.

8 Q. Do you remember from 2007, some kind of  
9 knee injury from dodge ball?

10 A. It wasn't a -- it wasn't -- wasn't a  
11 knee injury, I fell and landed on my knee the wrong  
12 way. It was my left knee that it happened to.

13 Q. And you were playing dodge ball?

14 A. Yes, we were, but -- we were -- we had  
15 the mats out for wrestling practice, and me and one  
16 of my friends were playing around, and I stepped  
17 off the mat, and when I did, my knee hit the  
18 ground. I stepped wrong, and my knee just slipped  
19 and hit the ground. It bruised it up, and that was  
20 about it.

21 Q. Did you recover from that or --

22 A. Yes, that was back to a hundred  
23 percent.

24 Q. One of those things where you fall down  
25 just walking down the street?

1 A. Yes.

2 Q. I notice also in 2008, you had a finger  
3 injury from football, got it caught on a jersey or  
4 something?

5 A. I didn't think it was that long ago.

6 Q. 2008?

7 A. Might be right. I dislocated my pinky.

8 Q. And that was playing football?

9 A. Yes, it was practice.

10 Q. Was that the high school team you were  
11 on?

12 A. Yeah.

13 Q. What position did you play?

14 A. I played -- I was offensive tackle,  
15 defensive end, and I played part runningback,  
16 whenever I was playing, like third string or  
17 something like that, like special teams.

18 Q. Okay. Got you.

19 A. Yeah, I played special teams.

20 Q. How many seasons did you play for the  
21 high school?

22 A. I just played one with them. I played  
23 a full season, and when the accident happened to  
24 me, I missed one game the first year, one or two  
25 games. And then after that, the next year, I was

1 going to go like the week following the accident,  
2 was when I started training camp, and -- so I was  
3 supposed to play that year, but the injury  
4 happened, and I just -- I lost all ability to do  
5 anything.

6 Q. Okay. And help me, because I'm not  
7 doing the math straight in my head. When the  
8 injury happened, it was the summer before your  
9 sophomore year or junior year?

10 A. It was before my sophomore year.

11 Q. Okay. Got you.

12 A. So I was playing as a freshman.

13 Q. Do you remember a foot injury in 2009  
14 from a -- from kicking a punching bag?

15 A. Maybe just one of the -- a little freak  
16 accident.

17 Q. Was that at school, at home? Where was  
18 the punching bag?

19 A. It was probably at the house. It was  
20 probably my brother's. I remember I sprained my  
21 foot. It was just a little sprain. Just one of  
22 the things I wanted to get checked out, because it  
23 was just like a little tingling feeling, just  
24 wanted to make sure it was all right.

25 Q. What were you doing when that happened?

1           A.    I couldn't remember to tell you. It  
2 says I was kicking a punching bag.

3           Q.    I'm just curious.

4           A.    Not sure if it was one of those big  
5 punching bags. Not like a speed bag, but a regular  
6 sized punching bag.

7           Q.    Okay. Got you. Did you ever take  
8 karate or anything? Were you practicing kicking  
9 for that or --

10          A.    No, probably just messed around and hit  
11 it and -- if I -- it was just one of them things.

12          Q.    Okay. Tell me about --

13          A.    That was a long time ago.

14          Q.    Tell me about -- just prior to this  
15 injury, you had an ankle injury on a mountain  
16 board. Do you remember --

17          A.    Oh, no, I was riding a mountain board,  
18 and I was going down a hill, and a deer ran out in  
19 front of me.

20          Q.    What is a mountain board?

21          A.    It's one of -- it's like a skateboard  
22 that has the big tires. Big all-terrain tires, you  
23 can ride down hills and in the snow and all that.

24          Q.    Where did that happen? Where were you  
25 doing that?

1 A. Around my house.

2 Q. Okay.

3 A. It was down -- it was down over a hill,  
4 and right when I got down toward the bottom, a deer  
5 ran out, and I went to go toward there and I just  
6 got scraped.

7 Q. So just abrasions and cuts?

8 A. Yes. It wasn't nothing -- it was just  
9 -- I got a cut on my knee, a little bit of road  
10 rash. Wasn't nothing serious. It was just one --  
11 something I had to get cleaned up.

12 Q. Looks like -- looks like that was  
13 within two weeks of you going to Plex. It was July  
14 18; does that sound and right?

15 A. Probably, it's close. Probably.

16 Q. So obviously, you -- I guess you were  
17 fine enough to be skateboarding two weeks later?

18 A. It was about a week -- they weren't  
19 deep cuts. They didn't take long to heal. They  
20 were fine within a couple days.

21 Q. So the mountain boarding, is that --  
22 did you have a mountain board?

23 A. My little cousin did. They moved. But  
24 they --

25 Q. Who was the little cousin? What's his

1 name?

2 A. Tyler. He is young. He's like nine.

3 Q. You borrowed his board?

4 A. Yes. Well, I had been using it. It  
5 was over at my house. He left it over there, and  
6 it just stayed around.

7 Q. Did your parents know you were doing  
8 that?

9 A. Yes, but they didn't know I was riding  
10 down that hill. They knew I was riding, but they  
11 probably didn't figure I was going to ride it down  
12 the hill.

13 Q. Did you ride it down different hills or  
14 something?

15 A. Normally, around the little hills  
16 around my yard. There is one big hill, and that  
17 was the one it happened on, but it wasn't -- it was  
18 just -- it was a freak accident altogether, because  
19 the deer normally wouldn't run out on somebody  
20 riding down the road like that in the middle of the  
21 day.

22 Q. And then after your accident, you had a  
23 shoulder injury, rolling an ATV. Tell me about  
24 that.

25 A. I was just messing around with my

1 sister, and she had ended up -- she was doing  
2 doughnuts on the four-wheeler, and there was a  
3 little pothole, and I didn't see it, and I got on  
4 there, and I went to -- I went to turn on it and do  
5 a doughnut, and it went into the pothole and  
6 bounced up, and I just basically pushed myself off  
7 of it to where I wouldn't get hurt, and I popped my  
8 shoulder, and -- whenever I landed on the ground.

9 Q. So you were driving the ATV?

10 A. Yes.

11 Q. Was your sister on it with you?

12 A. No, she had just handed it over. She  
13 was already doing it, and we were -- we were  
14 outside messing around. She was driving for a  
15 minute, and then she gave it to me, and I was  
16 driving for a minute.

17 Q. Where did this happen?

18 A. At my house. Not at my house, but  
19 right in the yard or basically -- you know --

20 Q. Was anybody else there besides you and  
21 your sister?

22 A. Maybe my brother-in-law.

23 Q. Did they take you to the hospital for  
24 that?

25 A. I went a couple of days after, because



1 I -- like when I woke up the next morning, my arm  
2 was just hurting real bad, and I just figured --  
3 make sure it wasn't broken or a rotator cuff injury  
4 or something.

5 Q. You just had separated your shoulder?

6 A. It was slightly separated. It was  
7 right here on the top part of the neck.

8 Q. Did your parents know you were driving  
9 an ATV?

10 A. Yes.

11 Q. Before you were driving it? Well,  
12 whose ATV was it?

13 A. That was -- that one was my -- it was  
14 my brother, Randall, it was his wife, his now wife.  
15 It was hers. But that was way before they got  
16 married.

17 Q. Do you guys own an ATV?

18 A. We do, but it's broke down. It's just  
19 sitting around, never --

20 Q. Have you ever driven that?

21 A. Once, but I -- whenever I can actually  
22 manage to do something like that, without having to  
23 worry about getting hurt or anything. One time I  
24 did drive it, it was after we got it. I just rode  
25 it down trails and -- didn't do very much.

1           Q.    I guess sometime in September of 2011,  
2    you fell off a ladder? Do you remember anything  
3    about that incident?

4           A.    Fell off a ladder? I couldn't tell  
5    you. I don't remember falling off a ladder.

6           Q.    Tell me about your hobbies before this  
7    injury. Obviously, you skateboarded some. We have  
8    gone over that. Before that --

9           A.    Played football and wrestled and just  
10   -- I'd rather be outside than anywhere. Hunted,  
11   fished. I love doing anything that involves just  
12   being outside. Didn't matter what it was.

13          Q.    Wrestling; was that school sports?

14          A.    School, yes.

15          Q.    Were you on the team, I guess?

16          A.    Yes.

17          Q.    And you were on the football team?

18          A.    Yes.

19          Q.    How long have you been hunting?

20          A.    Since I was little. Longer than I can  
21   remember. Probably since I was about two or so.  
22   My dad used to carry me into the woods when I was a  
23   little boy.

24          Q.    Are you still hunting at all?

25          A.    I can't really get out there. It's too

1 hard to walk up and down hills and even from --  
2 from here, there, still a little bit too far for me  
3 to be able to take one trip and have to stop and  
4 just reposition and do that.

5 Q. Did you do -- did you do indoor stuff,  
6 video games? Anything like that?

7 A. A little bit.

8 Q. What kind of -- did you play like  
9 Tommyhawk (sic), skateboarder stuff, those games?

10 A. A little bit. I played them when I was  
11 young, when they first come out, but I never really  
12 got into the games. I would have rather been  
13 outside.

14 Q. Did you have a game system in the  
15 house?

16 A. Yes.

17 Q. What kind of system did -- did you  
18 have?

19 A. Whenever the --

20 Q. Around the time this accident occurred,  
21 before then?

22 A. Probably a Playstation 3 or Playstation  
23 2, something like that.

24 Q. What other sort of activities or  
25 hobbies did you have that we haven't talked about?

1           A.    I used to ride bikes and stuff, and  
2           that was -- that was a long time ago.

3           Q.    What do you do now to pass the time? I  
4           know you talked about -- you are not working. Are  
5           you in school?

6           A.    I just -- when I graduated, I was going  
7           to start college, but I -- I am waiting to find out  
8           about my leg and the rest of everything. I don't  
9           want to start school somewhere and have to take a  
10          month or so and not be able to go and do all that.  
11          So I was just waiting to find out -- I do plan on  
12          going to school.

13          Q.    Okay. Where do you want to go?

14          A.    I'm not sure yet. Not too sure.

15          Q.    Do you know what you want to do?

16          A.    Something like biology or something  
17          like that.

18          Q.    Do you do any kind of exercise now?

19          A.    Huh-uh.

20          Q.    How about before? Did you work out?

21          A.    I used to work out every other day,  
22          especially during football season and stuff. I  
23          always stayed in shape. I don't do anything now.

24          Q.    In terms of what you're looking for in  
25          this lawsuit, if you were to -- I was going to --

1 I'm talking largely about money, because there is  
2 nothing else we can do at this point, but I'm  
3 trying to get an understanding of what you are  
4 looking for. We have medical bills that have been  
5 provided to us. Are you familiar with your medical  
6 bills?

7 A. A lot of them, but there's a lot.  
8 There's a lot of them.

9 Q. I mean, I don't want to go through them  
10 if you don't know anything about them, but if you  
11 are aware of medical bills, I want to kind of  
12 understand what you know of, in terms of the  
13 medical bills that you expect Plex to pay you for.

14 A. I just don't -- my leg. I mean, every  
15 -- everything that's happened -- I feel it could  
16 have been prevented.

17 Q. Tell me how you think it could have  
18 been prevented.

19 A. Just the fact, you know, somebody could  
20 have told me, hey, that's not -- a lot more  
21 dangerous than you think it is. Or just anything.  
22 I mean, just the littlest things could have stopped  
23 it.

24 Q. Let me ask you this. You said that you  
25 have now read the waiver form. Right? You didn't

1 read it the day you got it?

2 A. Yes, I didn't read it then.

3 Q. But since then, you told me you have  
4 definitely read it, right?

5 A. Yes.

6 Q. Is that correct?

7 A. Yeah, I've read it since then.

8 Q. Let me ask you a question. Just a  
9 hypothetical. Looking backwards, not knowing what  
10 we know now. You are a 15-year-old kid who wants  
11 to skateboard. Somebody hands you this form that  
12 says this skateboarding activity contains the risk  
13 of serious bodily injury; would you have turned  
14 around and gone home?

15 A. Maybe. It just depends on -- because I  
16 mean, at the time, I was just a dumb kid, so I  
17 can't say I would have turned around and went home,  
18 but I can't say I would have went and -- and tried  
19 to drop into the pool and do all that.

20 I mean -- there's a possibility I would  
21 have not went and skateboarded though. Especially  
22 if I would have known that I wasn't supposed to  
23 sign it, that I was supposed to have my parents  
24 sign it, and they weren't there, so -- I mean,  
25 there was a difference in it, I mean -- if I would

1 have looked at it and saw it, I mean, it was like  
2 we have to have your parents present, that's  
3 different.

4 Q. Tell me how it's different.

5 A. Because, I mean -- when you are that  
6 young, you don't think about this, could happen to  
7 you, you just do it. Everybody, they can't say  
8 when I was young, I just followed straight down the  
9 line. It was -- it was just one of them things.

10 It was something I look back now, and I  
11 think, why was I that dumb to do it? But it's  
12 still the fact that -- that they should have known  
13 by me putting my date of birth on there, my real  
14 date of birth, that I was not of age to do it. In  
15 the sense -- you know, somebody should have caught  
16 it.

17 Q. Caught what? Because what I'm trying  
18 to figure out, Jeremy, forgive me, but you have  
19 been skating for five years, and you described  
20 yourself as an intermediate skateboarder. You have  
21 dropped in plenty of times, and based on your  
22 testimony here today, you have done skateboarding,  
23 and you were aware that you could get hurt while  
24 skateboarding. Tell me how it would have been  
25 different if somebody at the front desk had said,

1       Jeremy, you could get hurt doing this?

2                   MR. PACELLA: Object to the form of the  
3 question.

4 BY MR. DIXON:

5               Q. Go ahead.

6               A. I would say -- because the way you put  
7 it was -- well, you can get hurt; there is a  
8 difference between scraping a knuckle, busting a  
9 kneecap, slitting a tiny paper cut on your hand or  
10 even getting a bruise or busting your elbow open,  
11 but nobody told me, hey, if you drop in off that,  
12 you are going to fall, you're going to break your  
13 leg, and it's going to ruin you the rest of your  
14 life, and you are just going to be completely  
15 screwed.

16                   Sorry to choose that language, but if  
17 somebody would have told me that, hey, there's a  
18 possibility you can completely shatter your leg,  
19 turn it 180 degrees around and not be able to walk  
20 for months and months and months --

21               Q. Do you know, in order to participate in  
22 the football program at your high school, did your  
23 parents have to sign a waiver?

24               A. They did. That's when I took my  
25 physical, so at that time, it was -- it was



1       probably -- whenever I was playing football, it was  
2       almost a year before the accident, so I didn't see  
3       the waiver or nothing, it was just -- I told them I  
4       wanted to play, and they took me to go to the  
5       doctor, and the doctor had the form already, all  
6       they had to do was check the form off, sign it and  
7       give it to my coach.

8               Q.     And they did?

9               A.     They signed the waiver for me to play  
10       football. Not for me to go skateboarding.

11              Q.     Right, but I'm asking you about  
12       football. They signed a waiver saying, Jeremy is  
13       participating in an activity where he could be  
14       injured, and they signed it, because you asked them  
15       to?

16              A.     Uh-huh.

17              Q.     If someone had said to you, Jeremy, you  
18       need to go get your parents' signature, would you  
19       have gone to them and said, Mom, Dad, I want you to  
20       sign this?

21              A.     Yes.

22              Q.     Okay.

23              A.     I would have. I would have, because if  
24       I would have known that they were supposed to have  
25       their signature on the paper, not mine, then yes, I

1 would have took it to them and have them sign it  
2 and come up there with me and check the place out  
3 like they would have wanted to.

4 Q. All right. That's fair.

5 MR. DIXON: Give me just a moment and  
6 let me make sure I covered everything I need to.

7 (Pause.)

8 BY MR. DIXON:

9 Q. The physical that you said you had  
10 before you started football, do you remember where  
11 that was?

12 A. It was either Sentinel or Camden Family  
13 Care. I couldn't tell you which one. I couldn't  
14 remember now when I switched to my family doctor,  
15 now that I -- I used to go to Sentinel, and they  
16 were just -- they always was a long way and -- I  
17 just got tired of it, and I switched family  
18 doctors. I haven't been back to my family doctor  
19 in awhile though.

20 Q. That was Camden?

21 A. Yes.

22 Q. And then -- when you had the physical,  
23 was that the summer before your freshman year, or  
24 was it during your freshman year?

25 A. It was right at the beginning of my

1       freshman year, I do believe. They were already a  
2       game or two games into the season whenever I  
3       started playing with them. So I had joined late,  
4       and I didn't go through training camp with them  
5       that year, but I did play that season.

6               Q.     Got you, okay. So what more  
7       information would you like to have been given from  
8       Plex?

9               A.     Just wanted somebody to tell me that,  
10      you know, you -- or at least ask me, well, what do  
11      you know -- at least anything that could have even  
12      started to prevent that, because if somebody would  
13      have told me that, you know, that that could be  
14      a -- potentially, you know, your leg or your arm or  
15      your neck or -- it could be anything, that if you  
16      fall the wrong way or whatever, you can get that  
17      serious of an injury off of it -- I understood that  
18      -- there's a difference in falling -- falling and  
19      getting hurt, but I did not, at 15, expect that I  
20      would even come close to getting such a severe --  
21      just an absolutely life-changing injury that quick,  
22      in that short of time.

23                    I mean, it was instantaneously. It  
24      wasn't a long time coming or nothing, it was just  
25      one of them things. I just believe that -- maybe

1     there might be a possibility somebody could have at  
2     least put into my mind, hey, you could have got  
3     hurt, and that could have changed my course of  
4     thinking. I know who I was at 15. It may look  
5     different toward y'all, but I know who I was at 15,  
6     so if somebody would have told me there was a  
7     possibility that you are not going to be able to  
8     walk, and you are going to have to sit around your  
9     house and just deal with the pain, then yes, I  
10    probably would have been just like, I don't want  
11    nothing to do with that. I would have walked  
12    around and done something else. But it's not like  
13    I had that privilege.

14           Q.    Were you -- and I want to go back to  
15    the football thing a little bit, because the same  
16    thing can happen when you play football.

17           A.    Yeah, but there's actually people  
18    trying to hit you when you play football.  
19    Skateboarding is like a recreational -- it's like  
20    bicycling. Nobody's trying to come and tackle you.  
21    Everybody knows that when you go onto a football  
22    field, if you catch the pass, there's going to be  
23    somebody there that's going to put you down.

24                   But there's nobody coming after you and  
25    chasing after you when you are skateboarding. It's

1 just one of those things that you -- you look at it  
2 like it couldn't hurt you. How could this board  
3 hurt me? How could doing this hurt me? When you  
4 are playing football, you are looking at it like --  
5 all right, he outweighs me by 40 pounds. He looks  
6 like if he hits me, it's going to hurt me. You  
7 don't expect that. I didn't expect that, when I  
8 was riding my skateboard.

9 Q. But you are aware that people get  
10 injuries, life-altering injuries, while playing  
11 football; would you agree with me?

12 A. Are you asking me what I know now or  
13 what I knew then? Because what I know now is a lot  
14 different than what I knew then. A lot different.  
15 I knew people that -- somebody could hit you or you  
16 can get a concussion, and you are not going to go  
17 up there and break your ankle like this and -- like  
18 is happening to people nowadays, when they are  
19 playing football.

20 At that time, I didn't think you could  
21 ride a skateboard and break your arm or break your  
22 leg. I just figured that you'd fall, and if you  
23 fell, you would get back up. It wasn't like I  
24 figured I -- I'm going out here and do anything of  
25 that nature.

1 Q. On the day you fell, I think we talked  
2 about it. You remember somebody -- I asked you if  
3 it was a skate park employee that came up and  
4 talked to you, and you weren't sure whether he was  
5 or not, correct?

6 A. No.

7 Q. Do you have any specific memory of  
8 talking with somebody that day that you know was a  
9 skate park employee?

10 A. That day, the only person that I spoke  
11 to was the younger guy who was running the shop and  
12 -- and the woman, the little girl at the front  
13 desk. I'm not sure -- she was young, but she was  
14 at the desk.

15 They checked to see if we had already  
16 filled the forms out and everything, and then paid  
17 the fees and then we went into the skate shop and  
18 got the --

19 Q. Do you remember if it was the same girl  
20 the second day?

21 A. I don't believe so. I just think that  
22 she asked for our names. It could have been, but  
23 before my injury, it's kind of -- kind of -- I -- I  
24 know that it was a young girl at the desk, and I  
25 knew that it -- I don't think it was the same one

1 from a few days before, because -- I mean, I felt  
2 they had different hair colors. I know that the  
3 first day, it was just a girl and then the second  
4 day, it was the girl working and there was also a  
5 manager off behind her somewhere back in the back,  
6 not watching what she was doing and checking  
7 anybody's IDs or anything like that. They were off  
8 doing their own thing, and she was up at the front,  
9 at the desk.

10 Q. Did you have any kind of an ID?

11 A. No, I didn't.

12 Q. Okay.

13 A. I didn't even have a photo ID.

14 Q. Do you remember about how tall you were  
15 or heavy at the time?

16 A. I was probably 5'6" or 5'7", maybe like  
17 175 or 180 pounds.

18 Q. Okay.

19 A. I just don't recall specifically.

20 MR. DIXON: I don't think I have  
21 anything else.

22 MR. PACELLA: I do not have any  
23 questions.

24 MR. DIXON: Then I think you are free  
25 to go, sir.

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(Pause.)

THE WITNESS: Thank you.

(The deposition was concluded at 3:25  
p.m.)



1 CERTIFICATE OF REPORTER.

2  
3 I, Leslie Toole Stanley, Certified  
4 Shorthand Reporter and Notary Public for the State  
5 of South Carolina at Large, do hereby certify that  
6 the foregoing transcript is a true, accurate, and  
7 complete record.

8 I further certify that I am neither  
9 related to nor counsel for any party to the cause  
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto  
12 affixed my official seal this 27th day of August,  
13 2013, at Columbia, Richland County, South Carolina.

14  
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23 Leslie Toole Stanley,  
24 Certified Shorthand Reporter  
25 My Commission expires  
January 13, 2021

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(No Information Requested)

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-5356

**RECEIVED**  
OCT 17 2014  
**SC Court of Appeals**

Jeremy Cantrell,

Appellant,

v.

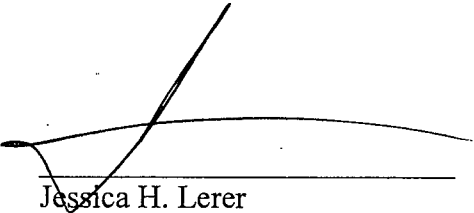
Plex Indoor Sports, LLC,

Respondent.

PROOF OF SERVICE

I, Jessica H. Lerer, the undersigned employee of Strom Law Firm, attorney for Appellant Jeremy Cantrell, do hereby certify that I have served a copy of the foregoing Record on Appeal, in connection with the above referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Lee Dixon  
Hedrick, Gardner, Kincheloe & Garofalo, LLP  
1301 Gervais Street  
Suite 1900  
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Jessica H. Lerer

This 15 day of October, 2014



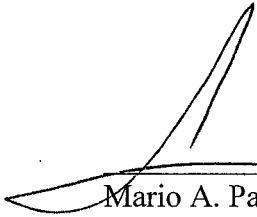
CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the South Carolina Appellate Court Rules, as well as all other applicable rules, orders, etc.

October 15, 2014

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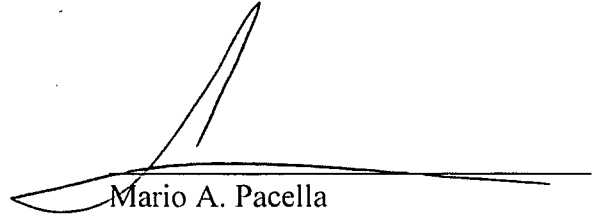
**SC Court of Appeals**

*Attorneys for Appellant*

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the South Carolina Appellate Court Rules, as well as all other applicable rules, orders, etc.

October 15, 2014

A handwritten signature in black ink, appearing to read "Mario A. Pacella", written over a horizontal line.

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OCT 15 2014

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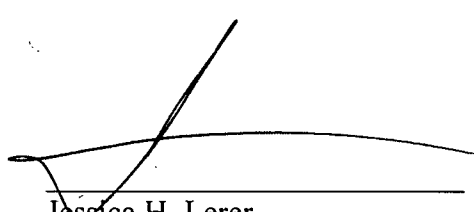
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I, Jessica H. Lerer, the undersigned employee of Strom Law Firm, attorney for Appellant Jeremy Cantrell, do hereby certify that I have served a copy of the foregoing Record on Appeal, in connection with the above referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

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Jessica H. Lerer

This 15 day of October, 2014