

23858

The State of South Carolina
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2017-001258
Case No. 2015-CP-26-00034

RECEIVED
FEB 22 2018
SC Court of Appeals

Christine LeFont, ... Appellant,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation, ... Respondents.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2600034

Christine LeFont		Myrtle Beach City of	Myrtle Beach Convention Center Hotel Corporation

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION
VERDICT FOR THE DEFENDANT.

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

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

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

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

Circuit Court Judge-R. MARKLEY DENNIS, JR.

Judge Code

9/7/2016

Date

For Clerk of Court Office Use Only

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

Thomas William Winslow 11019 Tournament Blvd. PO Box
829 Murrells Inlet, SC 29576
Stephen Lewis Goldfinch Jr. PO Box 829 Murrells Inlet,
SC 29576

Alan Grant Jones PO Box 2980 Greenville, SC 29602
William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D
Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Melanie Huggins-Ward - Clerk of Court

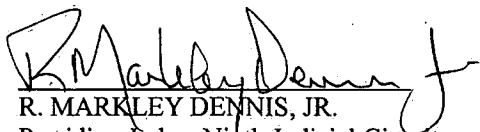
ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry	)	
	)	CASE NO. 2015-CP-26-0034
Christine LeFont,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
City of Myrtle Beach; Myrtle Beach	)	
Convention Center Hotel Corporation	)	
	)	
Defendants.	)	
	)	
	)	
	)	

This matter comes before me upon Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial filed by Stephen L. Goldfinch, Jr., attorney for the Plaintiff, Christine LeFont, on September 20, 2016. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial is respectfully **DENIED**;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

Dated: April 26, 2017

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Christine LeFont,

Plaintiff,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

C/A No.: 2015-CP-26-

0034

HORRY COUNTY
2015 JAN -5 PM 1:54
CLERK OF COURT

Submitted By: Thomas Winslow Address: Goldfinch Winslow, LLC Post Office Box 829 Murrells Inlet, SC 29576		SC Bar No: 73584 Telephone: 843.357.9301 Fax: 843.357.9303 Email: tom@goldfinchwinslow.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) <i>If Action is Judgment/Settlement do not complete</i>			
☒ 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)			
Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20__-NI-_____ ☐ Notice / File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☒ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order(850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers' Comp. Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Workers' Comp. (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Empl. Security Comm. (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)		☐ Pharmaceuticals (630) ☐ Unfair Trade Practice (640) ☐ Out of State Depositions (650) ☐ Motion to Quash Subpoena in an Out of County Action (660) ☐ Sexual Predator (510)	
Submitting Party Signature: _____		Date: January 1, 2015	
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.			

RECEIVED
JAN-9-15

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, 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 210th 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.

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 HORRY

Christine LeFont,

Plaintiff,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-26-_____

SUMMONS

(Jury Trial Demanded)

HORRY COUNTY
2015 JAN -5 PM 1:54
CLERK OF COURT

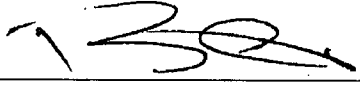
TO: THE DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to said Complaint on the undersigned attorneys' office at Goldfinch Winslow, LLC, 11019 Tournament Boulevard, Suite 202, Post Office Box 829, Murrells Inlet, South Carolina 29576, within thirty days after service thereof, exclusive of the date of such service. If you fail to answer, appear, or otherwise plead within the time aforesaid, the Plaintiff in this action will move the Court for judgment by default for the relief demanded in this Complaint and any other relief the Court may deem just or proper.

(Signature Page Follows)

Respectfully submitted,

GOLDFINCH WINSLOW, LLC

By: 

Thomas Winslow
Ryan Compton
Post Office Box 829
Murrells Inlet, SC 29576
t. 843.357.9301 / f. 843.357.9303
tom@goldfinchwinslow.com
ryan@goldfinchwinslow.com

**ATTORNEYS FOR PLAINTIFF
CHRISTINE LEFONT**

January 1, 2015
Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Christine LeFont,

Plaintiff ,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation,

Defendants .

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-26-_____

COMPLAINT

(Jury Trial Demanded)

FILED
CLERK OF COURT
2015 JUN -5 PM 1:54
HORRY COUNTY

Plaintiff Christine LeFont ("Plaintiff"), by and through her undersigned attorneys, brings this Complaint against Defendant City of Myrtle Beach and Defendant Myrtle Beach Convention Center Hotel Corporation, collectively referred to as "Defendants," based upon the allegations set forth herein.

PARTIES

1. Plaintiff Christine LeFont is a citizen and resident of Horry County, South Carolina.
2. Defendant City of Myrtle Beach ("Defendant City") is a governmental entity and municipal corporation incorporated, organized, and existing under the laws of the State of South Carolina with its city limits located in Horry County, South Carolina.
3. Defendant Myrtle Beach Convention Center Hotel Corporation ("Defendant MBCCHC"), upon information and belief, is a domestic non-profit public benefit corporation incorporated, organized, and existing under the laws of the State of South Carolina with its principal place of business located in Horry County, South Carolina.

4. Upon information and belief, Defendant City of Myrtle Beach owns a land parcel located at the intersection of 21st Avenue North and Oak Street, having a street address of 2101 North Oak Street, Myrtle Beach, South Carolina 29577 and tax map number 1810001084 ("parcel").

5. Upon information and belief, Defendant City constructed, or caused to be constructed, and at all times relevant hereto was and is the owner of the facilities existing on the parcel, including: (1) Myrtle Beach Convention Center; (2) Sheraton Myrtle Beach Convention Center Hotel ("hotel"); and (3) on-site parking lots. For simplicity, the parcel and facilities, when referenced collectively, are hereinafter referred to as the "premises."

6. Upon information and belief, Defendant MBCCHC controls, possesses, or manages the premises.

7. The Defendants, at all times relevant hereto and upon information and belief, did independently, jointly, and/or severally:

- a. exercise ownership or act as an owner;
- b. control and/or have the right to control; and/or
- c. were required to, did assume, and/or did undertake to provide or otherwise ensure provision of general maintenance

on the premises, either in whole or in part.

8. Upon information and belief, Defendant City exerts control and/or has the right and power to exert such control over Defendant MBCCHC in at least one or more particular aspects which included, but are not limited to:

- a. Business operations;

- b. Operating procedures;
- c. Procedures for handling events occurring on the convention center premises;
- d. Procedures for documenting incidents or injuries that occur, such as those persons that become injured while permissibly on the convention center premises;
- e. Employment, supervision, and/or training of employees and/or personnel and management personnel;
- f. Inspection, discovery, and/or reporting of dangerous conditions on the convention center premises; and
- g. Such other and/or further such particulars as may be learned through discovery, trial, or otherwise.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over all parties to this civil action.

10. This Court has subject matter jurisdiction over all of Plaintiff's claims alleged herein.

11. Venue in this Court is proper as the acts and/or omissions giving rise to and resulting in Plaintiff's injuries, as alleged herein, occurred and/or induced such injuries in Horry County, South Carolina.

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS **Gross Negligence**

12. Plaintiff incorporates by reference all of the foregoing paragraphs as if set forth verbatim fully herein.

13. On or about, the morning of Sunday, April 13, 2014, the Plaintiff entered upon Defendants' premises at the convention center for the purpose of attending the second and final day of the H.T. Hackney Food Show event being held at the convention center that weekend.

14. At all times relevant hereto, the Plaintiff entered onto the Defendants' premises as an invitee and remained an invitee while on the Defendants' premises.

15. As Plaintiff was proceeding directly from her parking spot toward the convention center's entry door, Plaintiff encountered a dangerous condition, depicted in **Exhibit A** attached hereto and incorporated herein, created by Defendants, and about which the Defendants know and/or should have known in the exercise of reasonable inspection, and about which the Defendants were on notice but failed to correct, which constituted a latent defect on the premises, which was neither open nor obvious, and about which the Plaintiff assumed no risk, namely an unsafe void in the asphalt surfacing which was precisely within the direct walking route to the convention center's doors.

16. The Plaintiff as a direct and proximate result of the defect on the premises and the negligent, grossly negligent, willful, wanton, and/or reckless acts and/or omissions of the Defendants, independently and/or joint and severally, fell and suffered severe and permanent injuries including but not limited to broken wrists, lacerations, and bruising, all of which required immediate medical attention and, subsequently, hospitalization and surgery.

17. The Plaintiff entered Defendants' premises upon a matter of advantage and benefit to each Defendant.

18. The Plaintiff entered Defendants' premises upon an express and/or implied invitation in connection with each Defendant.

19. Accordingly, as owners and/or occupiers of the premises, the Defendants, independently and collectively, owed to, and were required to exercise, the highest duties of care toward the Plaintiff and all of those duties were well-established under South Carolina premises liability law.

20. Each Defendant further owed to the Plaintiff the duty to warn of hidden or latent dangerous conditions of which either of the Defendants knew or, in the exercise of reasonable inspection of the premises, could have or should have known.

21. Each Defendant further owed to the Plaintiff the duty to have and maintain the premises in a reasonably safe condition.

22. Each Defendant further owed to the Plaintiff the duty of due care to inspect, discover, and give warning of any latent or concealed dangerous conditions on the premises.

23. Each Defendant further owed to the Plaintiff the duty of due care to discover any latent or concealed dangerous conditions on the premises and to further take all safety precautions necessary to warn of all such conditions and/or remedy or eliminate those conditions.

24. The Plaintiff was entitled to expect and reasonably did expect that each Defendant would take and exercise reasonable and due care to discover and know the actual conditions prevailing at the time the Plaintiff was on the premises and, further, to take all safety measures necessary to make all such conditions safe.

25. Each Defendant had actual and/or constructive notice of the hazard and dangerous condition, that the Plaintiff encountered through no fault of her own.

26. To the extent that either or both Defendants allege that it or they did not create the dangerous condition, such dangerous condition existed for such a length of time prior to the injury that, under the circumstances, each Defendant should have discovered and remedied the condition in the exercise of due care as set forth above.

27. Each Defendant was aware of or should have been aware of the dangerous condition, did not take any action to minimize or avoid the danger and did not attempt to warn the Plaintiff of the danger, and thus Defendants breached said duties and were thereby negligent, grossly negligent, reckless, willful, and/or wanton in at least one or more of the following particulars:

- a. Failing to maintain the premises;
- b. Failing to exercise due care;
- c. Failing to do what a reasonable person or entity would have done under the circumstances;
- d. Failing to post signs;
- e. Failing to properly inspect the premises;
- f. Failing to warn the Plaintiff;
- g. Failing to hire adequate personnel;
- h. Failing to hire adequately trained personnel;
- i. Failing to adequately and/or properly train personnel;
- j. Failing to adequately and/or properly manage personnel;
- k. Failing to develop adequate policies and/or procedures;

- l. Failing to enforce adequate policies and/or procedures;
- m. Failing to take actions to correct or cause to be corrected dangerous condition(s) known to exist;
- n. Failing to take actions to correct or cause to be corrected dangerous condition(s) which, in the exercise of due care, should have been known to exist; and/or
- o. In other and/or further such particulars as may be learned through discovery, trial, or otherwise.

28. Each Defendant's negligence, gross negligence, recklessness, willfulness, and/or wantonness created the latent dangerous conditions and/or allowed such latent dangerous conditions to persist on the premises which proximately caused the Plaintiff's injuries which include, but are not limited to:

- a. Physical pain;
- b. Suffering;
- c. Mental anguish;
- d. Emotional distress;
- e. Lost wages;
- f. Permanent impairment of health and/or bodily efficiency;
- g. Loss of enjoyment of Plaintiff's life;
- h. Loss of sleep;
- i. Loss of ability to adequately concentrate;
- j. Increased susceptibility to future injury;
- k. Substantial expenses incurred in provision of reasonable and necessary medical services;
- l. Expenses incurred in transportation to and from providers of reasonable and necessary medical services; and

m. Such other and/or further such particulars as may be learned through discovery, trial, or otherwise.

29. The Plaintiff had no knowledge or reason to suspect danger with regard to the latent dangerous condition contained on Defendants' premises.

30. The Plaintiff exercised ordinary and reasonable due care for herself at all times herein.

31. As a direct and proximate result of the aforementioned acts and/or omissions constituting negligence, gross negligence, recklessness, willfulness, wantonness, and/or carelessness on the part of the Defendants, the Plaintiff has sustained and suffered physical harm and injury, pain and suffering, and distress all of which resulted in the Plaintiff incurring medical expenses for medical treatment and services.

WHEREFORE, Plaintiff Christine LeFont prays that judgment be entered in favor of Plaintiff against Defendant City of Myrtle Beach and Defendant Myrtle Beach Convention Center Hotel Corporation, jointly and severally, as follows:

1. Actual and compensatory damages, in an amount sufficient to compensate for the injuries and damages sustained as may be determined by a jury;

2. Nominal, incidental, and consequential damages, in an amount to be determined by a jury;

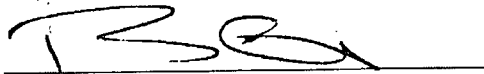
3. Punitive damages, adequate to punish the Defendants named for wrongful behavior, sufficient to deter the Defendants named and others from continuing and/or repeating such similar conduct warranting punishment, in an amount to be determined by a jury;

4. All costs, interest as authorized by law, disbursements, and all reasonable attorneys fees associated with this action; and

5. Any and all such other and further relief as this Court or the trier of fact may deem just and proper.

Respectfully submitted,

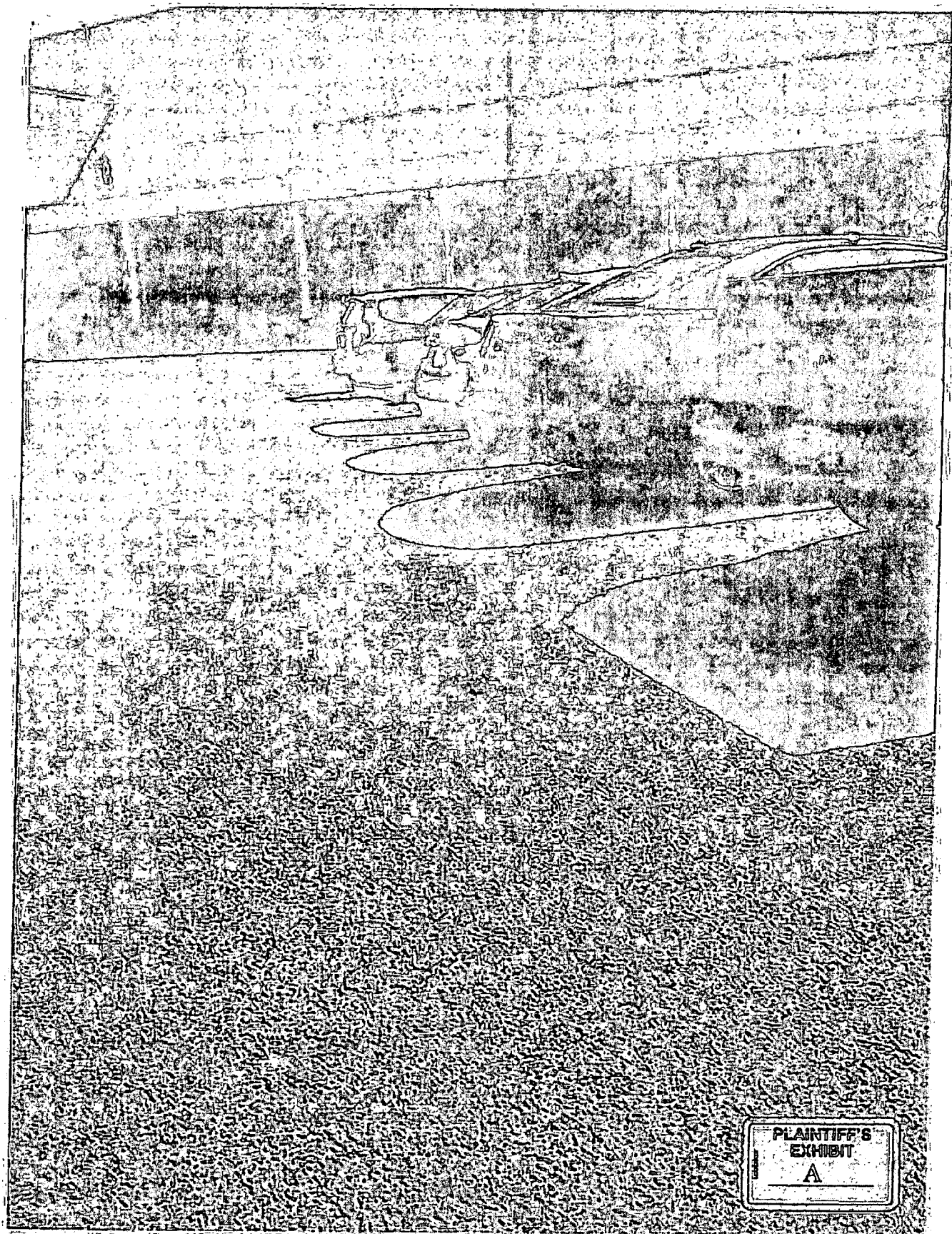
GOLDFINCH WINSLOW, LLC

By: 

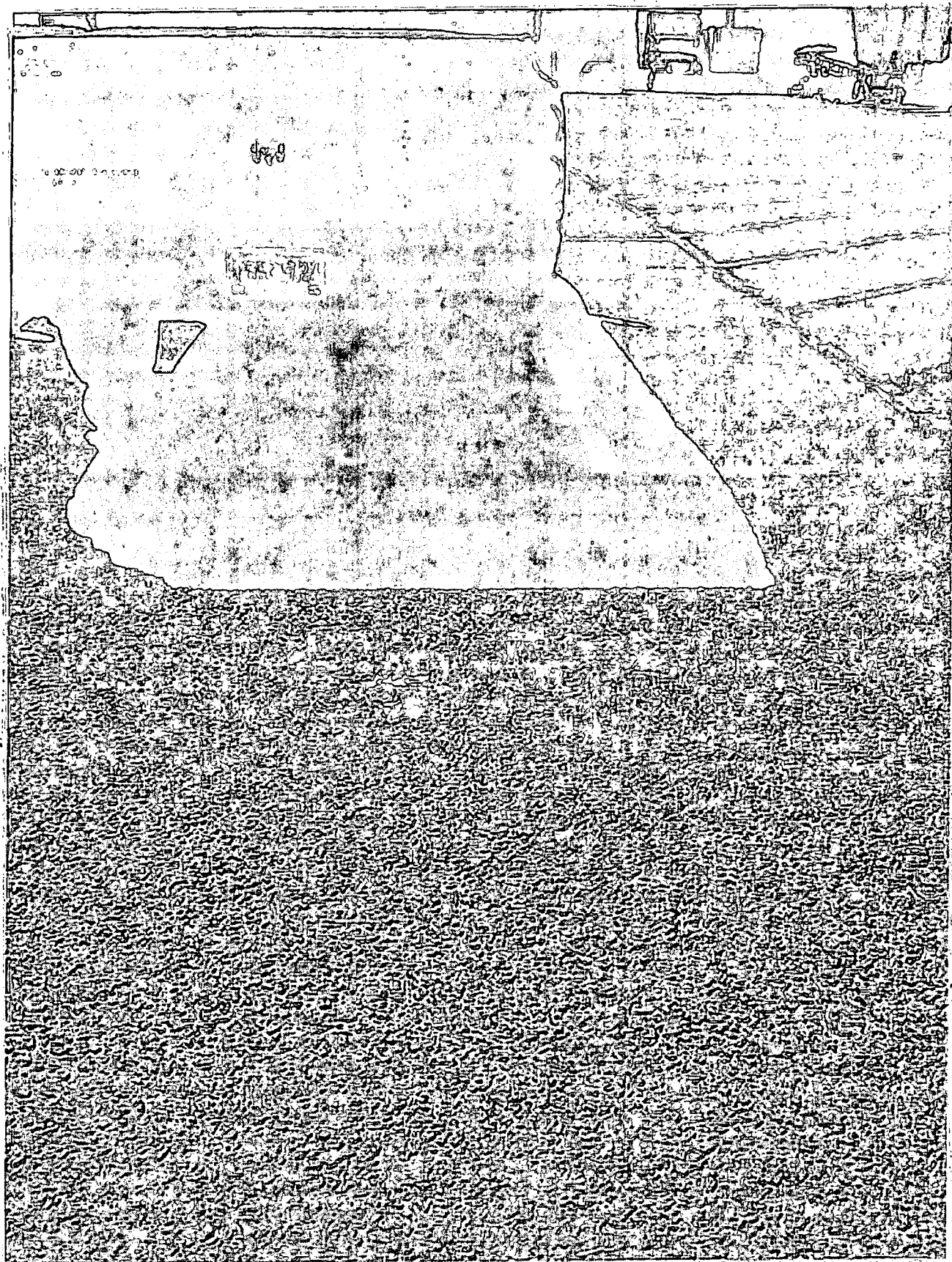
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ryan@goldfinchwinslow.com

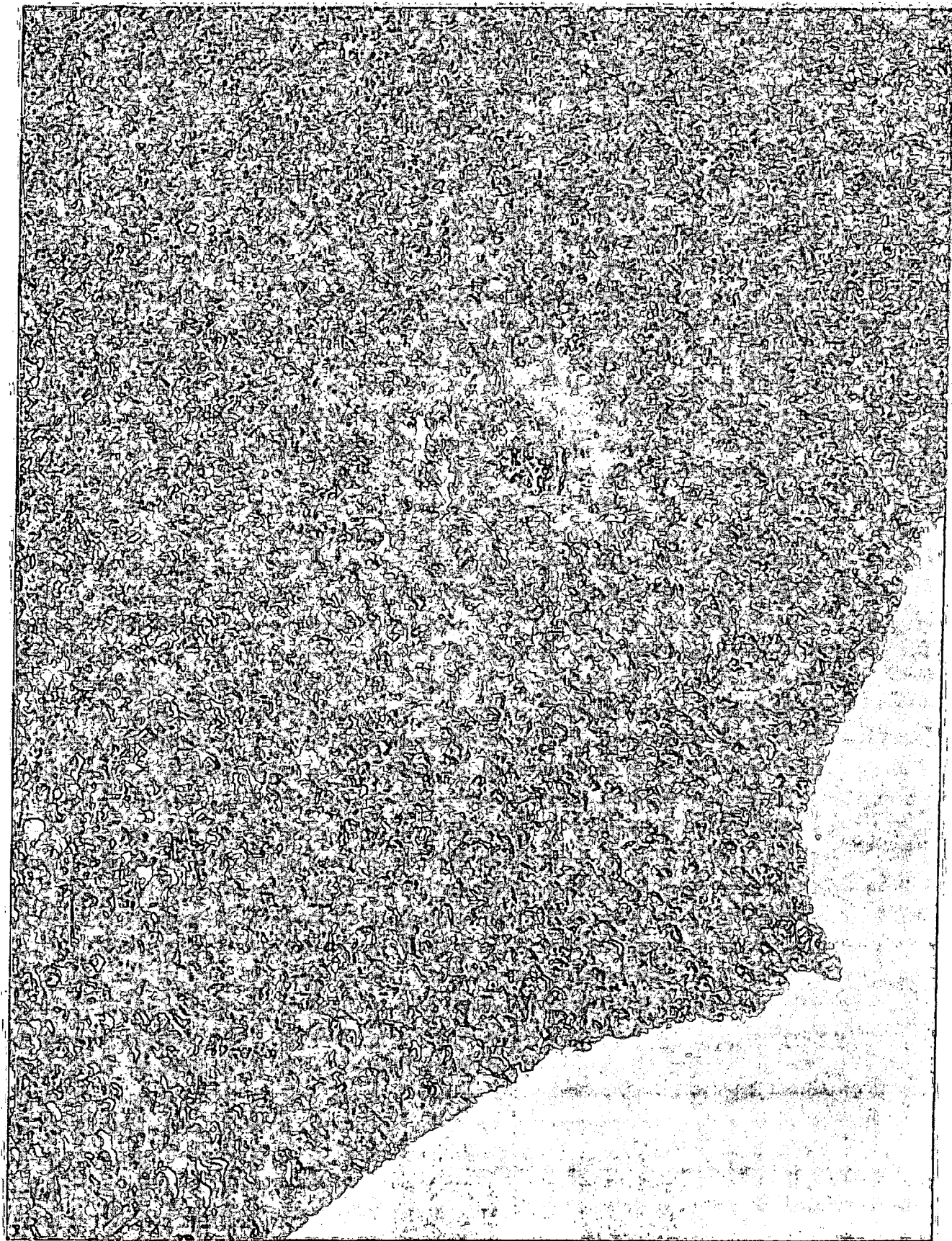
**ATTORNEYS FOR PLAINTIFF
CHRISTINE LEFONT**

January 1, 2015
Murrells Inlet, South Carolina



PLAINTIFF'S
EXHIBIT
A





STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Christine LeFont,)

Plaintiff,)

vs.)

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-26-00034

ANSWER

(Jury Trial Demanded)

FILED
MAR 20 AM 8:33
CLERK OF COURT

Defendant City of Myrtle Beach, reserving the right to file a motion under Rule 12 of the South Carolina Rules of Civil Procedure or any other dispositive motion, responds to the Complaint by denying each and every allegation not hereinafter specifically admitted, by demanding strict proof thereof, and by further answering as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 1.
2. Admits so much of Paragraph 2 as alleges or could be construed to allege that the City of Myrtle Beach is a political subdivision of the State of South Carolina, is situated in Horry County, and that the claims asserted against Defendant are subject to the limitations, protections, and defenses under § 15-78-200, et al., South Carolina Code of Laws of 1976 as amended also known as the South Carolina Tort Claims Act.
3. Admits so much of Paragraph 3 as alleges or could be construed to allege that Defendant Myrtle Beach Convention Center Hotel Corporation is a domestic, not for profit

corporation organized and existing under the laws of the State of South Carolina with its principal place of business located in Horry County, South Carolina. The remaining inconsistent allegations of Paragraph 3 are denied for insufficient information.

4. Admits, upon information and belief, the allegations of Paragraph 4.

5. Admits, upon information and belief, the allegations of Paragraph 5.

6. Admits only so much of Paragraph 6 as alleges that the Myrtle Beach Convention Center Hotel Corporation has some control over the operation and management of the hotel but denies that Myrtle Beach Convention Center Hotel Corporation controls, possess or manages the Convention Center or the parking at the rear of the building where the alleged incident occurred. All remaining inconsistent allegations of Paragraph 6 are denied.

7. Paragraph 7 sets forth legal conclusions that do not require a response. If a response is required, this Defendant admits it owns and controls the Convention Center and surface parking where the alleged incident occurred and provided general maintenance. By way of further response, this Defendant denies that the Myrtle Beach Convention Center Hotel Corporation exercised ownership or control over the Convention Center or the surface level parking behind the Convention Center. All remaining inconsistent allegations of Paragraph 7 are denied.

8. Admits only so much of Paragraph 8 as alleges that the City has the right to exert control over some business operations of the Myrtle Beach Convention Center Hotel Corporation but denies exerting control over the Myrtle Beach Convention Center Hotel Corporation with respect to items 8 (b), (c), (d), (e), (f), and (g). This Defendant would further show that the Myrtle Beach Convention Center Hotel Corporation is not involved in the

handling of events at the Convention Center or the documenting of incidents or injuries on behalf of the City. All remaining inconsistent allegations of Paragraph 8 are denied.

9. Paragraphs 9, 10 and 11 call for legal conclusions to which Defendant is not required to respond. If a response is required, Defendant admits, upon information and belief, the allegations of Paragraphs 9, 10 and 11.

10. Paragraph 12 is a procedural paragraph that does not require a response. If a response is required, Defendant incorporates its responses to Paragraphs 1 – 11 as fully as if repeated verbatim.

11. Admits only so much of Paragraph 13 as alleges or could be construed to allege that Plaintiff's incident occurred on April 13, 2014. The remaining allegations of Paragraph 13 are denied for insufficient information.

12. Paragraph 14 calls for a legal conclusion to which Defendant is not required to respond. If a response is required, Defendant denies the allegations of Paragraph 14.

13. Denies the allegations of Paragraphs 15 and 16 and demands strict proof thereof.

14. Denies the allegations of Paragraphs 17 and 18 and demands strict proof thereof.

15. Paragraphs 19 – 24 call for legal conclusions and, therefore, do not require a response. If a response is required, the allegations of Paragraphs 19 – 24 are denied and strict proof is demanded. To the extent Paragraphs 19 – 24 allege or could be construed to allege breach of duty or other wrongdoing against this Defendant, those allegations are denied and strict proof is demanded.

16. Paragraph 25 calls for a legal conclusion to which Defendant is not required to respond. If a response is required, Defendant denies the allegations of Paragraph 25 and demands strict proof thereof.

17. Denies the allegations of Paragraph 26.
18. Denies the allegations of Paragraph 27, including all subparts, and demands strict proof thereof.
19. Denies the allegations of Paragraph 28, including all subparts, and demands strict proof thereof.
20. Denies the allegations of Paragraphs 29 and 30 and demands strict proof thereof.
21. Denies the allegations of Paragraph 31 and demands strict proof thereof.
22. Denies that Plaintiff is entitled to the relief sought in the prayer of the Complaint.

FOR A SECOND DEFENSE

23. The foregoing allegations are incorporated herein as fully as if repeated verbatim.
24. At all times relevant to the allegations of the Complaint, Defendant was acting according to, and in compliance with, the laws of the State of South Carolina and/or regulations duly promulgated thereunder, and is, therefore, immune from suit. Defendant pleads such statutory, regulatory, and/or common law authorization as a complete defense and bar to any and all of Plaintiff's causes of action as set forth in her Complaint.

FOR A THIRD DEFENSE

25. The foregoing allegations are incorporated herein as fully as if repeated verbatim.
26. Defendant pleads the provisions of the South Carolina Tort Claims Act, South Carolina Code § 15-78-10, *et seq.*, including all of the immunities, limitations, and defenses granted or preserved by said Act. Defendant makes specific reference herein to the provisions of §§ 15-78-60 (1), (4), (5), (8), (9), (13), (15), (16) and (20) of said Act.

FOR A FOURTH DEFENSE

27. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

28. Defendant asserts the public duty rule as a complete defense.

FOR A FIFTH DEFENSE

29. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

30. The Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SIXTH DEFENSE

31. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

32. Defendant asserts the defense of comparative negligence with respect to any claims asserted by the Plaintiff and is entitled to a determination of the percentage which Plaintiff's negligence contributed to any resulting injuries/damages and to a reduction of any amount awarded by an amount equal to the percentage of her own negligence unless her comparative negligence contributed more than 50% to the cause of the accident and, in that event, her claims should be barred.

FOR A SEVENTH DEFENSE

33. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

34. Any injuries or damages sustained by Plaintiff were due to and caused and occasioned by Plaintiff's own negligence, gross negligence, recklessness, willfulness, and

wantonness which was the direct and proximate cause of Plaintiff's alleged injuries or damages, if any, and without which the same would not have occurred, and therefore, due to Plaintiff's sole negligence, gross negligence, recklessness, willfulness, and wantonness, Plaintiff's claims are barred.

FOR AN EIGHTH DEFENSE

35. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

36. Any injuries sustained by Plaintiff were due to and caused by the sole negligence of third persons over whom Defendant had no control, and therefore, Defendant should not be liable to Plaintiff in any sum whatsoever.

FOR A NINTH DEFENSE

37. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

38. Any injuries sustained by Plaintiff were due to and caused by the intervening and superseding acts of negligence, carelessness, recklessness, and gross negligence on the part of third persons as a proximate cause of injuries as alleged, if any, and therefore, Defendant should not be liable to Plaintiff in any sum whatsoever.

FOR A TENTH DEFENSE

39. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

40. Plaintiff's recovery may be reduced or barred based on Plaintiff's failure to mitigate damages as required by law.

FOR AN ELEVENTH DEFENSE

41. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

42. If any deficiency existed on the subject property, which is denied, Plaintiff either knew or should have known of the same and accepted the same with such knowledge and her recovery should, therefore, be barred.

FOR A TWELFTH DEFENSE

43. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

44. To the extent the parking lot was a hazardous condition, which is denied, Defendant asserts that Plaintiff either knew or should have known of any alleged danger or hazard inasmuch as it was an open and obvious condition.

FOR A THIRTEENTH DEFENSE

45. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

46. Plaintiff freely and voluntarily entered the parking lot and was fully aware of the conditions that were then and there existing. Any injury or damage suffered by Plaintiff was the result of the obvious risk and danger present, and because Plaintiff proceeded with full knowledge of the present danger and risk, she assumed the risk of her activities and any injuries and damages resulting to Plaintiff therefrom. Accordingly, Defendant pleads Plaintiff's assumption of a known risk as a complete defense.

FOR A FOURTEENTH DEFENSE

47. The foregoing allegations are incorporated herein as fully as if repeated verbatim.

48. To the extent that Plaintiff seeks punitive damages in this action, Defendant asserts that the same are not recoverable under the South Carolina Tort Claims Act as set forth in § 15-78-120 of said Act.

FOR A FIFTEENTH DEFENSE

49. Defendant specifically reserves any additional and further defenses as may be available to them or revealed to them during the course of the investigation and/or discovery in this case.

WHEREFORE, having fully answered Plaintiff's Complaint, subject to any and all motions, qualifications, or other pleadings, Defendant City of Myrtle Beach prays that this action be dismissed with prejudice and that Defendant be awarded costs and attorneys' fees as well as such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR DEFENDANT

CITY OF MYRTLE BEACH

Murrells Inlet, South Carolina
March 19, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Christine LeFont,

Plaintiff,

vs.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-26-00034

CERTIFICATE OF SERVICE

The undersigned employee of Collins & Lacy, P.C., Attorneys at Law, 11945 Grandhaven Drive, Suite D, Murrells Inlet, South Carolina 29576, does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by sending via facsimile and by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked, on the date indicated below:

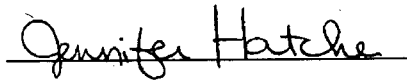
COUNSEL SERVED:

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Ryan Compton, Esquire
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Myrtle Beach, SC 29578
*Attorney for Co-Defendant Myrtle Beach
Convention Center Hotel Corporation*

PLEADINGS:

- ANSWER



Murrells Inlet, South Carolina
March 20, 2015

2015 MAR 20 AM 8:33
CLERK OF COURT
JENNIFER HATCHER
CLERK OF COURT

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2015-CP-26-00034

3

4

Christine LeFont)

5

vs.)

6

Transcript of Record

7

City of Myrtle Beach, et
al.)

8

ORIGINAL

9

September 6, 2016
Conway, South Carolina

10

11

BEFORE:

12

Honorable Markley R. Dennis, Judge.

13

14 APPEARANCES:

15

Stephen L. Goldfinch, Jr.
Attorney for the Plaintiff

16

17

William Bryan, Jr., Esq.
Amy L. Neuschafer, Esq.
Attorney for the Defendant

18

19

20

21

Teresa J. F. Bautz, RPR
Official Court Reporter

22

23

24

25

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Christine LeFont				
Mr. Goldfinch	61	--	109	--
Mr. Bryan	--	87	--	--
John Gambelli				
Mr. Goldfinch	115	--	147	--
Mr. Bryan	--	134	--	150
Bryan Durig, M.D.				
Mr. Goldfinch	157	--	186	--
Mr. Bryan	--	176	--	--
Brendan Foley				
Mr. Bryan	200	--	237	--
Mr. Goldfinch	--	210	--	243
Therese A. Perez				
Mr. Bryan	248	--	283	--
Mr. Goldfinch	--	259	--	--
Susan Skellett				
Mr. Bryan	284	--	308	--
Mr. Goldfinch	--	291	--	309
Christine LeFont				
Mr. Goldfinch	320	--	--	--
Opening Statement by Mr. Goldfinch			47	
Opening Statement by Mr. Bryan			53	
Certificate of Reporter			343	

E X H I B I T S

NO.	DESCRIPTION	ID	EV
Plaintiff's-1	Photograph	4	86
Plaintiff's-2	Photograph	4	86
Plaintiff's-3	Photograph	4	86
Plaintiff's-4	Photograph	4	69
Plaintiff's-5	Photograph	4	70
Plaintiff's-6	Photograph	4	70
Plaintiff's-7	Photograph	4	71
Plaintiff's-8	Photograph	4	--
Plaintiff's-9	Dr. Bryan Durig's report	4	--
Plaintiff's-10	Deposition of Paul Edwards	4	--
Plaintiff's-11	Deposition of Brendon Foley	4	--
Plaintiff's-12	Deposition of Vincent Caughey	4	--
Plaintiff's-13	Deposition of Christine LeFont	4	--
Plaintiff's-14	EMS Report dated 4/13/14	4	--
Defendant's-1	Incident Report	152	--
Defendant's-2	Photograph	202	--
Defendant's-3	Photograph	202	--
Defendant's-4	Photograph	286	--
Court's-1	Christine LeFont Deposition	105	--
Court's-2	Brendan Foley Deposition	215	--
Exhibits returned to counsel.			

1 (The hearing commenced at approximately
2 12:11 p.m.)

3 (WHEREUPON, Plaintiff's Exhibit Nos. 1 to 14 were
4 marked for identification only.)

5 THE COURT: Thank you very much, ladies and
6 gentlemen. Is Ms. LeFont present?

7 MR. GOLDFINCH: Your Honor, she is just across the
8 street.

9 THE COURT: Okay. That's fine.

10 MR. GOLDFINCH: My partner is downstairs. Just
11 getting everything together.

12 THE COURT: Not a problem, that is not a problem.
13 By the way, good afternoon now. My name is Markley
14 Dennis, I'm a circuit court judge from the Ninth
15 Circuit, Charleston and Berkeley County. And I've been
16 assigned this week to conduct a term of civil court,
17 and you've been qualified to help us resolve some of
18 the cases we have.

19 The first case I'm going to identify the parties
20 that are involved and ask you some questions. As I'm
21 sure Judge Hyman indicated, there are really no correct
22 answers to these questions. They are just really to
23 help you make a determination whether or not you can be
24 a judge with me in resolving this dispute, of course
25 your job being to decide the true facts from the

1 After the Defendant has finished, if the Defendant
2 does present any evidence, and then we conclude and
3 you've heard the closing arguments, I will instruct you
4 on the law. And then and only then will you be given
5 permission to make this decision that you are called
6 upon to make.

7 I thank you for your attention to my remarks, ask
8 to you please give that same attention to the
9 attorneys. It's truly an honor to serve with each one
10 of you as a judge in this case, and I know it's
11 something that you probably didn't make your top ten
12 list of things you wanted to do this week. But it's
13 part of being a part of this wonderful country, and
14 thank you for making me proud to be a part of being
15 with you. And thank you very much.

16 You may proceed, Mr. Goldfinch.

17 MR. GOLDFINCH: Thank you, Your Honor. Hi, folks.
18 My name is Stephen Goldfinch. I represent the
19 Plaintiff, Mrs. LeFont, in this matter. First and
20 foremost, I want you to know that I know the time
21 commitment that it requires to serve, that's required
22 to serve on a jury. I value your time. I know you
23 have things that you could be doing other than this.

24 So I want to start by telling you I'm going to do
25 my very best to present this case in as little time as

1 I possibly can with as little number of witnesses as I
2 can and little number of exhibits that I can, while
3 still proving to you the case.

4 And with that said, I would like to begin by
5 asking you a very simple question. And I want you to
6 think about this question throughout the entire trial.
7 And the question is this, should the government be
8 allowed to neglect its infrastructure to the point of
9 causing harm and injury to its citizens.

10 I'm going to ask it one more time. Should the
11 government be allowed to neglect its infrastructure to
12 the point of causing harm and injury to its citizens.

13 We've all seen lately political grandstanding.
14 We've all seen politicians that are willing or not
15 willing to do what we need to do to fix our
16 infrastructure, our roads, our bridges, our potholes,
17 our parking lots and things that we, you and I, walk
18 on, use, drive on every single day. And we've seen the
19 consequences of not having a spot and doing the things
20 that politicians are supposed to do, they are charged
21 with constitutionally to do.

22 I'm going to ask you to keep that in mind
23 throughout this entire trial. Why did the government
24 in this case not fix that piece of infrastructure that
25 is theirs, and what harm did it cause.

1 Let me tell you a little bit about our case. This
2 is a case about safety; the public safety, and how a
3 refusal to follow the rules imposed by the City on the
4 City -- and that's important, let me reiterate that.
5 The rules that the City follows are imposed on the City
6 by the City, okay. So a failure to follow those
7 rules -- how a failure to follow those rules injured my
8 client, Mrs. LeFont.

9 The evidence will show that the City adopted the
10 International Property Maintenance Code. Now, you
11 probably don't know what that is, maybe you do. But I
12 don't. I didn't whenever I had heard about this, many
13 people don't know what that is. But the City knows
14 what that is because they adopted it as their own rule.
15 And they failed to follow their own rule, which is why
16 we've had to hire an expert in this case. The expert
17 is going to come in and testify, and he's going to tell
18 you, he's going to tell you about the International
19 Property Maintenance Code. He's going to tell you what
20 wasn't done. He's going to tell you the cause.

21 Now, the expert doesn't tell you everything you
22 need to know about this case. You're going to need to
23 hear some of that from Mrs. LeFont, and you're going to
24 need to hear some of that from her husband as well.

25 But the expert's going to tell us a lot about the

1 International Property Maintenance Code and what the
2 City didn't do, and that's follow their own rules.
3 Now, I told you about an expert. His name is Dr.
4 Durig. He's an expert in mechanical engineering,
5 hazardous conditions. He's going to be here probably
6 tomorrow. He's going to be, in all likelihood, the
7 third witness that we present.

8 The first witness that you're going to hear right
9 after defense counsel comes up here is going to be
10 Mrs. LeFont. So you're going to hear from her
11 yourself. A lot of people want to hear directly from
12 the Plaintiff, you're going to hear from her.

13 You're going to hear how Mrs. LeFont was helping
14 her husband that day, who has a business, how they were
15 at the convention center, how she had dropped her
16 husband off after they unloaded everything and was on
17 her way back into the convention center on April 13th,
18 2014, how her toe caught the pothole that was in the
19 parking lot of the City of Myrtle Beach, owned by the
20 City at the convention center parking lot, and how she
21 violently stumbled many, many feet, falling like this
22 to protect her face (indicating), onto the pavement
23 breaking both arms.

24 That is worth saying again, breaking both arms.
25 You'll hear how she had to have both arms casted for

1 nearly three months, one in a hard cast and one in a
2 sling. You'll hear how she couldn't do things for
3 herself, how she had to have help from her husband and
4 others to do those things, some things that are very
5 embarrassing, as you can imagine.

6 You'll hear from her husband, he's going to
7 testify about his experience. He's going to tell you
8 about the things he saw the day of the injury, the day
9 of the injury, the excruciating pain he saw his wife
10 in, the trip to the hospital, the care in there. He's
11 going to tell you about having to clean his wife and
12 wash her and wipe her and feed her for three months
13 because of those two broken arms being immobile. He's
14 going to tell you about how he had to have help to do
15 that when he wasn't able to be there every single
16 waking moment of those three months.

17 Now, after we present our case, the Defense is
18 going to have an opportunity to present their case.
19 The judge told you about that a little bit earlier.
20 When it's their turn, they are going to try to point
21 out what we call the hair on the dog. I'm sure some of
22 you all have probably heard of that. If you haven't
23 heard of that, I mean, every dog has hair. That means
24 that every case has its problems. And that's true,
25 every case does have its problems. And we're not going

1 to run from those problems. In fact, I'm going to tell
2 you a little bit about them now.

3 Mrs. LeFont is a very young 61-year-old lady. But
4 every 61-year-old person has a medical history. Every
5 61-year-old person, for the most part, has arthritis or
6 some minor medical condition. It's true that
7 Mrs. LeFont has arthritis. It's true that Mrs. LeFont
8 had a history of anemia in the past. And those things
9 are true.

10 But at the end of the day, what you're going to
11 come to the conclusion, and I know you're going to get
12 it right, y'all are a good looking bunch, at the end of
13 the day you're going to see, but for the government
14 neglecting its infrastructure, this injury that put
15 these folks down for nearly three months, ruined their
16 lives for nearly three months, would not have happened
17 but for the government neglecting its infrastructure.

18 Goes right back to that question I asked you
19 earlier. That's a question you have to keep in your
20 mind, should the government be allowed to neglect its
21 infrastructure to the point of causing harm and injury
22 to others.

23 And that, ladies and gentlemen, would be pretty
24 much the extent of our case. It's going to be very
25 simple. It's not going to be long or time consuming.

1 I told you I'm going to do my best to consider your
2 time commitment here. I'm not going to try to
3 complicate matters by taking testimony from doctors
4 about treatment or what kind of cast she was in or any
5 kind of physical therapy. All that stuff is sort of
6 standard, but we're not going to do it. We're going to
7 cut right to the chase, right to the chase.

8 And I'm going to ask you, at the end of the day
9 I'm going to ask you -- maybe not today, probably
10 tomorrow -- to compensate her for the City's choice
11 here, because this was a choice. The government here
12 chose neglect, the neglect of your infrastructure and
13 my infrastructure and Ms. LeFont's infrastructure. And
14 it caused damage and it ruined their lives for nearly
15 three months.

16 Why did the City neglect that parking lot? I need
17 you to demand that, not externally but internally,
18 demand that they answer that question. Demand that
19 they answer that question, why did they neglect that
20 parking lot. We would all like to know. Thank you.

21 THE COURT: Thank you. Mr. Bryan.

22 MR. BRYAN: Thank you, judge. May it please the
23 Court.

24 THE COURT: Certainly.

25 MR. BRYAN: Ladies and gentlemen of the jury, the

1 issue that you have to decide is really was the City
2 reasonable, was Ms. LeFont reasonable. That's what
3 you're going to have to decide and wrestle with after
4 you hear the evidence, the testimony, the photographs
5 and so forth. But my name is Will Bryan, I represent
6 the City of Myrtle Beach. We are defending the City of
7 Myrtle Beach, along with Amy Neuschafer. Amy works
8 with me, we work in Murrells Inlet.

9 This is not a complicated case. In fact, there
10 are several things that the City will acknowledge. The
11 City acknowledges that Mrs. LeFont fell, the City
12 acknowledges that she fractured, I think it's her left
13 wrist and left elbow and right elbow probably trying
14 to, you know, protect herself. There's no question
15 about that. There's also no question that Ms. LeFont,
16 where she fell, she was in the employee parking lot
17 behind the convention center.

18 It is disputed where she fell. That is, it is
19 acknowledged that she was parking in the employee lot,
20 but exactly where in the employee lot, that is
21 disputed.

22 Mrs. LeFont will testify that she fell in one
23 area, and you will hear a number of witnesses who will
24 tell you that's not where they found her. You'll hear
25 from convention center employee Terry Perez.

1 Ms. Perez, it's one of her job responsibilities to
2 report the incident, actually to document the incident.
3 Ms. Perez will tell you she got word there was an
4 incident in the employee lot, she grabbed the incident
5 report, she raced out to the parking lot. And she went
6 up to Mrs. LeFont and had a discussion with her,
7 received information about what had happened, about
8 where it happened and how she was.

9 And then Mrs. LeFont was taken to the hospital.
10 Her testimony, in my view, will lead you to a different
11 conclusion than the conclusion that Ms. LeFont will
12 lead you to. But perhaps the most important witness
13 that you'll hear from is a gentleman by the name of
14 Brendan Foley.

15 Brendan Foley is not a City employee, he does not
16 work at the convention center, he has no association
17 with the City, in fact he lives in Charlotte. And I
18 hope that he will be here tomorrow, he said that he
19 will be. But Mr. Foley was attending the HT Hackney
20 Food Show the same way Ms. LeFont and her -- husband or
21 boyfriend?

22 MR. GOLDFINCH: Husband.

23 MR. BRYAN: -- husband were too. He sells a
24 drink, body armor drink, and Mr. Gambelli sells a drink
25 as well. But they are sort of there in the same

1 capacity. And Mr. Brendan Foley will tell you that
2 he's leaving the convention center, and he's headed to
3 his car to get some product or something. But he says
4 he hears noises like somebody is falling, and he turns
5 around and he sees the woman on the ground.

6 He goes up to her and he gives her assistance, he
7 offers her assistance. At that time the convention
8 center employee brings a golf cart around. But you'll
9 hear from Mr. Foley who I said, he has no interest in
10 this litigation other than just to provide testimony
11 about what he saw. And the most important thing he
12 saw -- the most important testimony you will hear from
13 him is that when he turned around and saw Ms. LeFont,
14 he didn't see her way over there where she says she
15 fell, he saw her in a way different area. So anyway,
16 those two witnesses sort of provide our picture of
17 where this actually happened.

18 You'll hear from a third witness, Ms. Susan
19 Skellett. Ms. Susan Skellett is -- she was at the time
20 the event manager. Event managers are the liaison
21 between the HT Hackney show and the convention center,
22 it's sort of she's in charge of the show to make sure
23 it runs smoothly, but she's sort of more or less the
24 manager.

25 But the incident occurred. The employees had

1 notified Ms. Skellett. She comes downstairs, she wants
2 to find out where it happened. And so within minutes
3 of the incident Ms. Skellett takes the two convention
4 center employees outside, she stays, take me to where
5 this happened. They then show her where it happened,
6 and Ms. Skellett took a photograph of that area. And
7 we'll put that photograph into evidence later.

8 But that's the evidence, you know, it's sort of a
9 he said, she said situation. You've got Ms. LeFont on
10 the one hand that will say, she fell here. You got
11 Ms. Perez who will say, no, this is where I found her,
12 and Mr. Brendan Foley who will say the same thing.
13 You'll have to sort of weigh the credibility of the
14 witnesses. The judge will sort of instruct you on your
15 role in that regard. But you have to decide who is
16 credible, who is believable.

17 Let's see. You'll have to decide also, we'll have
18 to get back to the issue of where the incident took
19 place, we got to figure that out. If you believe that
20 the incident occurred where Ms. LeFont said it did,,
21 you'll have to decide whether that area of the parking
22 lot was unreasonably dangerous. There are a number of
23 categories and persons that go on the property.

24 You could have like a trespasser, for instance. A
25 trespasser is owed a certain standard of care. You

1 could have invitees, you could have licensees, but
2 there are different categories and each category has a
3 different standard of care that's owed to that person.
4 And the judge will charge you on what the proper
5 standard is.

6 But the highest standard, if this person is an
7 invitee, a property owner to an invitee is not required
8 to keep the property absolutely safe, that's not the
9 City of Myrtle Beach's duty. Premises owners,
10 landowners, are not insurers of safety. That is an
11 impossible duty. Excuse me. The landowner's duty is
12 to exercise reasonable care. Landowners should keep
13 the property, in this case the parking lot, reasonably
14 safe. And that's the issue that I believe that you
15 have to decide, was the parking lot reasonably safe.

16 If you find that the parking lot was not
17 reasonably safe, it was unreasonably dangerous, then
18 the question becomes, was it a condition that Ms.
19 LeFont should have observed while she was leaving her
20 car, is this something that she should have seen,
21 walked around, stepped over and avoided. There's a
22 defense called open and obvious defense that the City
23 has pled.

24 And if a condition -- if there is a dangerous
25 condition, first of all, if that's what you decide,

1 that the area is a dangerous condition, the question
2 then becomes was it an open and obvious condition such
3 that Ms. LeFont would have -- should have seen it and
4 could have walked around it and exercised precautions
5 to protect herself.

6 We'll put up evidence that will indicate that it
7 was, in fact, an open and obvious condition, that she
8 should have walked around or could have, in fact,
9 walked around it or stepped over it. Now, those are
10 sort of the questions regarding liability, like whose
11 responsibility is it.

12 But there's also questions about damages. If you
13 find that this area was unreasonably dangerous, if you
14 found that said she fell where she said she fell and
15 not where Ms. Perez found her and where Mr. Brendan
16 Foley found her, and you found that that area was
17 unreasonably dangerous, then the question becomes, you
18 know, what are Ms. LeFont's damages.

19 Like I said, the City doesn't dispute the fact
20 that she fell, she fractured her wrist and elbow and
21 her other elbow. But the evidence will show you that
22 Mrs. LeFont followed up with a hand doctor and was
23 released by the hand doctor within three months.
24 You'll hear testimony that Ms. LeFont quit taking any
25 prescription medications within about six weeks. After

1 being released by the hand doctor three months after
2 the incident, Ms. LeFont didn't have any other
3 treatment after that time.

4 The accident's April 13, 2014, and sometime in
5 July Ms. LeFont is discharged by the orthopedist. And
6 there really is no follow-up treatment from that point.
7 Ms. LeFont will tell you that she still runs -- excuse
8 me, she walks on a daily basis several miles, she rides
9 horses, she swims, she does aerobics and she travels
10 extensively.

11 So I don't know what her testimony will be
12 regarding the extent of her damages, but as
13 Mr. Goldfinch pointed out, she was not in picture
14 perfect health when she set foot on the convention
15 center property. She had other conditions that you'll
16 hear about.

17 But, you know, within several months of our
18 accident she is back riding horses, back swimming, back
19 walking. And that's the case. And after all of the
20 evidence is presented, all the City asks, all I ask is
21 that you render a verdict that is fair based on the
22 evidence. Thank you, judge.

23 THE COURT: Thank you very much. You may call
24 your first witness, Mr. Goldfinch.

25 MR. GOLDFINCH: Your Honor, I would like to call

1 Ms. LeFont.

2 CHRISTINE LeFONT, after being duly sworn,
3 testified as follows:

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

6 THE WITNESS: Christine LeFont.

7 DIRECT EXAMINATION

8 BY MR. GOLDFINCH:

9 Q Hey, Ms. LeFont.

10 A Hello.

11 Q Ms. LeFont, for the record, could you tell us your
12 full name, address, date of birth.

13 A Christine LeFont, I was born May 12th, 1955. I
14 live at 116 Staten Lane, Longs, South Carolina.

15 Q Okay, thank you. Can you tell me what you were
16 doing on April 13th, 2014 before the accident?

17 A We have a business that we import and distribute
18 an Aloe Vera King Drink. My better half and I go
19 around the country doing shows, getting new clients,
20 putting it into large stores and of that sort.

21 Q Okay. So why were you going to the convention
22 center?

23 A There's a company called HT Hackney, they are a
24 large distributor, they are in 48 states. And we were
25 at their particular show. They have it every year

1 at -- in Myrtle Beach.

2 Q Okay. Do you travel around to various other
3 convention centers?

4 A Yes. There are several large distributors that we
5 go to and do similar shows.

6 Q Okay. And this is a regular occurrence?

7 A Every year.

8 Q Every year. How many times a year would you say
9 that you travel around to different convention centers?

10 A The shows are about between 10 to 18 shows. It
11 just varies on what distributors we're working with at
12 the time.

13 Q Okay. And these are -- these various convention
14 centers are around the nation; is that correct?

15 A They are. Usually, you know, we stay pretty much
16 like to Raleigh, North Carolina, South Carolina,
17 Alabama. We go as far as Indiana, we've been up to
18 Toronto.

19 Q Okay. Have you been to this convention before,
20 the one in Myrtle Beach?

21 A Many times, yes.

22 Q Okay. So had you parked in that parking lot where
23 you parked there before?

24 A Well, when you work and do the shows, you usually
25 have a week of set-up or several days prior to the

1 shows doing set-up. I don't get involved with that
2 that much. We have help that does that. But what I
3 did learn is that when you go in, obviously you have to
4 move out. There's a lot of activities, there's
5 18-wheelers coming in and out, different vans.

6 So you always ask permission to go in and out of a
7 place if you know it's, you know, behind the scenes
8 source the things. Where we actually do all the work
9 is behind the scenes.

10 Q Do you remember what the weather was like that
11 day?

12 A It was actually a very nice day, a little bit cool
13 but very nice.

14 Q Okay. Do you remember what you were wearing that
15 day?

16 A I had -- very similar to what I'm wearing now,
17 trousers, casual top.

18 Q Okay. What kind of shoes --

19 A Cowboy boots. I wear a lot of cowboy boots
20 because --

21 Q Okay.

22 A -- as you said, I like to ride.

23 Q Do they have any high heels on them or anything?

24 A No. I don't wear heels.

25 Q No heels, okay. All right. I'd like to begin, if

1 I can, without tripping here, I'd like to begin by
2 showing you this picture here, if I can. This is
3 marked as Plaintiff's Exhibit 1. And I'm going to be
4 introducing it. Mrs. LeFont, I'm just going to take
5 this off here. Do you recognize this?

6 A Yes. That is the -- I call it the Sheridan
7 Convention Center.

8 Q Okay. Great. And could you point out to the
9 jury, please, on this picture where you came into this
10 convention center.

11 A We actually come in on 21st Avenue here
12 (indicating), drive up.

13 Q Okay.

14 A There's like an armed gate that lifts in and out.
15 There's actually two, there's one here and one at the
16 back end on 21st (indicating). I came in here because
17 this is where we were unloading all of our supplies and
18 where the ice maker is --

19 Q Okay.

20 A -- which we need.

21 Q Okay, great. Thank you. All right. I'm going to
22 jump to Plaintiff's Exhibit 2, a little closer up. Is
23 this also the same place?

24 A That is correct.

25 Q Okay. Could you show me again where you came in.

1 A I came in through this gate here and left John off
2 right around here (indicating).

3 Q Okay. And at the end here, Ms. LeFont,
4 Plaintiff's Exhibit 3, what's marked as Plaintiff's
5 Exhibit 3. All right. Show me one more time where you
6 came in:

7 A I came in through this side here (indicating).

8 Q Okay.

9 A And there is a gate that goes up and down during
10 the conventions.

11 Q All right. Now, when you came in, where did
12 you -- what did you do? Tell me about your activities
13 when you came in.

14 A I came in this way (indicating). We had some
15 supplies because -- it's a two-day show actually, it's
16 Saturday and Sunday. Saturday was very successful, we
17 had pretty much given all our product out. This
18 particular show, unlike the other ones that are in
19 different states, we actually have our warehouses here
20 in Conway.

21 So since we gave everything out, we went back to
22 the warehouse that night, on Saturday night. So the
23 vehicle was full of more product that we were dropping
24 off for the Sunday show. So I brought John in here, I
25 was driving, and I dropped him off pretty much right

1 around where this 18-wheeler is.

2 Q Okay, all right. And then what did you do?

3 A Again, I've learned that you always ask permission
4 because there's always guards here. They actually had
5 this whole center taped off, you couldn't get past over
6 here (indicating).

7 Q Could you show us where it was taped off, please.

8 A It was taped off down here and right along this
9 way (indicating), so you couldn't park or do anything
10 in this side here (indicating).

11 MR. GOLDFINCH: For the record, the Defendant is
12 drawing a line along the back side of the cars that are
13 parked in a sequence here, and then in a straight down
14 L from here.

15 THE WITNESS: Correct, you can't get past that.
16 So I asked the guard, I said -- John had gone in and I
17 didn't know if we had enough of product for the day.
18 So I said, can I just park here for a few minutes and
19 to see if I have all the product in here or if I had to
20 run and get more. So then I came in and parked pretty
21 much to where the other gate is, very close to it that
22 goes on 21st Avenue.

23 Q So Ms. LeFont, you're pointing at the very back
24 side --

25 A That's correct.

- 1 Q -- of the last car that's parked here?
- 2 A I was about three or four in.
- 3 Q Okay, about three or four in from the very last
- 4 car?
- 5 A It's a gate, you can't see where the gate is.
- 6 It's a little bit in front of that, correct.
- 7 Q All right, very good. So when you parked, what
- 8 did you do?
- 9 A I got out. There --
- 10 Q I'm sorry to interrupt you. Were you carrying
- 11 anything?
- 12 A Just my handbag, all right.
- 13 Q Okay.
- 14 A John had taken everything else in.
- 15 Q Okay.
- 16 A When I came out, I just came across because they
- 17 had this taped off. And this arm went up and down,
- 18 there were still vehicles coming in from the other side
- 19 as well.
- 20 Q Okay.
- 21 A So I came here, and I just literally started
- 22 walking up, trying to get to this location where John
- 23 was and where the event was.
- 24 Q Did you take the shortest route?
- 25 A Most direct route.

1 Q Most direct route?

2 A A strait line.

3 Q Okay. So can you draw a line with your finger
4 where you parked, and then two, where you were walking.

5 A I parked very close to where this silver car is
6 now.

7 Q Okay.

8 A Came straight across to get out of the way of
9 traffic and just started working my way straight up
10 here (indicating). And, again, this was taped off so
11 you couldn't cut through, so I had to walk straight up
12 that direction (indicating).

13 Q Okay. I'm going to leave that right there for now
14 so I can reference that. All right. Ms. LeFont, I'm
15 going to show you what's now marked as Plaintiff's
16 Exhibit 4. Does that look familiar to you?

17 A It does.

18 Q Okay. Tell me what that is.

19 A That's a slight hole that -- or divot as you might
20 want to call it that's in the pavement.

21 Q Okay. We got off track there for just a second.
22 Tell me again what this is.

23 A It's a hole or small divot.

24 Q Okay. Where in relation to this parking lot that
25 I just pointed out to you, where is this hole?

1 A It's roughly somewhere right around here
2 (indicating).

3 Q Okay, great.

4 MR. GOLDFINCH: I would like to introduce that as
5 Plaintiff's Exhibit 4.

6 THE COURT: Any objection?

7 MR. BRYAN: No objection.

8 THE COURT: Without objection, Plaintiff's-4 is
9 admitted.

10 (WHEREUPON, Plaintiff's Exhibit No. 4 was admitted
11 in evidence.)

12 Q I'm going to show you what's now marked as
13 Plaintiff's Exhibit 5. It's taken from a different
14 angle, but it's --

15 A Correct.

16 Q Is that --

17 A That is the hole.

18 Q That is the hole?

19 A Yes.

20 Q Okay. Is that the same hole that you identified
21 as being right there (indicating)?

22 A Correct, it is the same hole.

23 Q Okay.

24 MR. GOLDFINCH: I would like to introduce that as
25 Plaintiff's Exhibit 5..

1 THE COURT: Any objection?

2 MR. BRYAN: Your Honor, if the Plaintiff can lay a
3 foundation, I don't have an objection.

4 THE COURT: She just identified it as a hole. So
5 without objection, it's admitted.

6 (WHEREUPON, Plaintiff's Exhibit No. 5 was admitted
7 in evidence.)

8 Q I'm going to show you what's marked as Plaintiff's
9 Exhibit 6. Is that the same hole?

10 A It is.

11 Q Okay.

12 A Correct.

13 MR. GOLDFINCH: I would like to introduce that as
14 Plaintiff's Exhibit 6.

15 THE COURT: Without objection, Plaintiff's Exhibit
16 6 is admitted.

17 (WHEREUPON, Plaintiff's Exhibit No. 6 was admitted
18 in evidence.)

19 Q And finally, Plaintiff's Exhibit 7. Is that the
20 same hole?

21 A It is.

22 Q I know these are all from different angles, I'm
23 sorry for asking the same question --

24 A Yes, that is the same hole.

25 Q -- over and over again.

1 MR. GOLDFINCH: Plaintiff's Exhibit 7.

2 THE COURT: Without objection, Plaintiff's-7 is
3 admitted.

4 (WHEREUPON, Plaintiff's Exhibit No. 7 was admitted
5 in evidence.)

6 Q And one more time, Ms. LeFont, could you tell us
7 where that hole is in relation to where you were
8 parked.

9 A It's roughly right in here (indicating).

10 Q Okay.

11 A Like the second line in here (indicating).

12 Q And where were you parked?

13 A I was pretty much where that silver car was.

14 Q Okay. This is very fuzzy right here, but are
15 those, but are --

16 A It's all woods.

17 Q Those are all woods?

18 A Correct.

19 Q Okay. What time of the day was this?

20 A It was about ten to ten, quarter to ten.

21 Q And was this on, you've said that --

22 A The Sunday.

23 Q Okay, this was on Sunday?

24 A Correct.

25 Q Okay. What time did the what's it called,

1 Hackney?

2 A The Hackney show on Sundays start around
3 10 o'clock, right after church:

4 Q What time did they start at 9 -- or what time did
5 they start on Saturday?

6 A 9 o'clock.

7 Q Okay, all right. So on Saturday they start at
8 nine, Sunday they started at ten?

9 A After church, yes.

10 Q After church, okay. All right. So you identified
11 these as trees or woods earlier?

12 A Correct.

13 Q At that time of the day when you were walking by,
14 was there any kind of obstruction, was there anything
15 that may have hindered your vision here?

16 What I'm getting at, Ms. LeFont, is, is there
17 anything -- were you wearing your glasses, I mean, is
18 there anything that could have caused you to not be
19 able to walk properly, is there anything that could
20 have caused you to stumble other than the hole, is
21 there anything?

22 A Absolutely not, no.

23 Q Okay, all right. In other words, there wasn't a
24 tree laying in the parking lot?

25 A Correct.

1 Q You had on your glasses?

2 A I did. Always do.

3 Q You were wearing your boots, you told us?

4 A I did --

5 Q Okay.

6 A -- have them on.

7 Q Okay. All right. Let's talk about the actual /
8 fall. Tell me about it.

9 A Well, as I said, I was look -- I was coming across
10 knowing that I was going up to the convention area, and
11 I literally felt the stumble where you fall forward.
12 My foot went down into something, and it put me into
13 this almost like a running motion because I was walking
14 kind of brisk trying to get up there. And I could feel
15 myself like just like a cartoon almost, it felt like,
16 it didn't seem real. I just kept running and running
17 knowing I'm going down.

18 And with that, I just didn't want to hit my face.
19 I guess it's a normal reaction. So I just -- oh,
20 sorry -- pulled my hands up over my face. But I did go
21 down and I went straight down forward.

22 Q Back up just a second. You said you tripped and
23 stumbled. Tell me about that; did you feel something
24 catch your toe?

25 A Absolutely. Something, my foot down went, my

1 right foot went down, that caused me to go into this
2 stumbling motion.

3 Q Okay. And is the hole that I've identified or
4 that you have identified in Plaintiff's Exhibits 4, 5,
5 6 and 7, is that the hole in which your toe caught?

6 A That's where I was.

7 Q And you stumbled, that's where you were. Okay,
8 all right. So you ended where, I think you ended here
9 (indicating)?

10 A Face down. I stumbled quite a ways, so I didn't
11 just fall flat straight down. I stumbled forward.

12 Q Okay. How far forward do you think you may have
13 stumbled?

14 A A couple car lengths, I would have thought. I was
15 in that running mode.

16 Q Couple car lengths. So that's about how far; 20
17 feet maybe?

18 A 20, 30 feet, maybe.

19 Q Okay, all right. So about that far (indicating)?

20 A Um-hum, yeah. I was trying so hard to stay up but
21 eventually went down.

22 Q Okay, got you. And when you went down, what
23 happened, what do you remember?

24 A Instantly this ungodly pain mostly with my left --
25 my left wrist. I knew the second I looked at it, it

1 had immediately started blowing up, so I knew that was
2 fractured. And at that time I had screamed. There was
3 a gentleman that was about four cars up from me that I
4 actually said, good morning to. And he got in his car,
5 heard my scream, and he came running to me.

6 Q Okay. What did that gentleman look like?

7 A He was very tall, I'd say he was about six-two,
8 six-three, kind of full beard but silver grayish,
9 short, blondish gray hair.

10 Q Okay. Have you ever met Mr. Foley who the Defense
11 says they are going to call?

12 A I have no idea who that gentleman is.

13 Q Okay. You don't know what he looks like?

14 A No, I do not.

15 Q Okay, all right. So what happened then? After
16 you felt the pain, you saw the man come over?

17 A He did. And he tried to get me up and secure with
18 my position. My bag had gone flying. You know, I'm
19 kind of, I'm literally hysterical at that point. I
20 knew the pain was just unbelievable.

21 Q Okay.

22 A And I remember saying to somebody, please find
23 John Gambelli, you know, he's in Hackney. I remember
24 the row that he was in, so I wanted him to come.

25 Q Right.

1 A Come out.

2 Q At that time you knew that -- did you know that
3 both arms were injured or only one?

4 A I did not. I mean, the agonizing pain -- I didn't
5 move, I mean, I didn't move very far. The gentleman
6 tried to get me up, we -- you know, we were in that
7 location for a bit.

8 Q Right, okay. And then what?

9 A A gentleman -- I guess the convention center sent
10 out a golf cart, and I got into the golf cart. They
11 brought -- I remember wanting ice because I knew the
12 swelling was there. And I dropped John off right at
13 the convention center where there's an ice machine
14 because we all use it for the drinks. So I knew there
15 was ice right up at the walkway going up.

16 Q Right.

17 A And I can remember asking John, please get me some
18 ice so I can get it on it. The tall gentleman at that
19 time too, I didn't get his name -- I really wasn't
20 coherent at that time -- but I do remember him dialing
21 immediately 911. And he said, ma'am, you definitely
22 have a broken wrist, you know, don't move too much, let
23 me get the ambulance here. And he called 911.

24 Q Okay. And then what happened; did the ambulance
25 come?

1 A It felt like an hour, but I'm told, you know, it's
2 really very quickly they were there. Again, it was a
3 Sunday morning.

4 Q Okay.

5 A And it's -- Grand Strand isn't very far from the
6 convention center.

7 Q Let me reference Plaintiff's Exhibit 3 again.
8 Could you tell me where the golf cart took you.

9 A They took -- I asked them to bring me up here for
10 the ice (indicating). So they did bring me up here.

11 Q Okay. So --

12 A Right around this section (indicating).

13 Q -- for the record, the witness is pointing in this
14 area to the left of the 18-wheelers, to the right of
15 the woods --

16 A Right.

17 Q -- in this blank spot here (indicating). Okay.
18 So tell me then, where were you, what happened?

19 A Fell here, probably stumbled to about here
20 (indicating).

21 Q Okay.

22 A Got on a golf cart. And then we -- the ambulance
23 came in the same direction I came in here (indicating).
24 And then I got into the --

25 Q Okay. So when the --

- 1 A -- into the ambulance.
- 2 Q When the ambulance came you were waiting where?
- 3 A I was still -- I was in the golf cart. I was
- 4 sitting on the back of the golf cart like a kid would.
- 5 Q Okay.
- 6 A Yeah.
- 7 Q All right, great. Who was with you when you were
- 8 waiting?
- 9 A John.
- 10 Q Okay.
- 11 A John stayed with me.
- 12 Q Anybody else?
- 13 A Not to my knowledge. And, again, at that point I
- 14 was pretty hysterical.
- 15 Q So did the convention center employees leave you?
- 16 A I don't have any recollection of what transpired
- 17 once I got up into the golf cart. I mean, I was
- 18 crying, I know I was in pain.
- 19 Q Okay.
- 20 A I know John went and got me -- was getting me ice.
- 21 Q Okay.
- 22 A But I don't think the ice came before the
- 23 ambulance did.
- 24 Q Okay. So when the ambulance got there, take me
- 25 from there.

1 A They got me in the -- got me on the stretcher.
2 And they called in immediately to see if they could
3 give me pain meds, which they did. They gave me some
4 morphine. And the young lady inside said, could you
5 please put your arms down because they want to strap
6 you in for transport. And that's when I realized I
7 could not move. I know I couldn't move my left arm,
8 but I couldn't move my right arm. It would not
9 straighten out.

10 So at that point I was just sitting there with
11 both arms crossed over my chest. And that's when I
12 realized I was in really bad trouble, that it just
13 wasn't my left, that I had both arms in -- yeah, in
14 severe pain --

15 Q Okay.

16 A And couldn't move them.

17 Q All right. And they took you to the hospital?

18 A Took me immediately into the emergency room at
19 Grand Strand.

20 Q Okay.

21 A Took me straight in. The doctors, again, gave me
22 some more morphine and just started doing X-rays.

23 Q Okay. And what did the X-rays reveal?

24 A They said, you've got bad news.

25 Q Don't tell me what they said, just tell me what

1 happened.

2 A Well, it turns out that I did break my left wrist.

3 I broke my forearm of the same arm here and that elbow.

4 And then on the right hand I had broken the elbow. So

5 I had both elbows, forearm and the wrist. And in fact,

6 it was the bone that connects your thumb into your

7 wrist, this here had shattered (indicating).

8 Q Okay. And what was the recommended disposition or
9 treatment?

10 A At the time they actually wanted me to stay that
11 night. But I have animals and I wasn't in a good place
12 in my head, I wanted to get home. But they actually --
13 my hands were too swollen. I don't know if anyone's
14 ever broke anything, but they don't cast you right away
15 which I didn't know at the time.

16 So they sent me -- they kind of put splints on
17 you, they strap you down, they put you in splints and
18 then both my arms were in splints and I don't know what
19 you call those.

20 Q Sling?

21 A Slings. And both arms were in slings.

22 Q Okay. And did you go back later for a permanent
23 cast?

24 A Well, actually the very -- that whole night I
25 didn't sleep at all. I was just beside myself, the

1 pain was unbelievable in the wrist. So John actually
2 about 7 in the morning put me back in the car, took me
3 back to Grand Stand, and they recasted the left arm
4 again because it wasn't done correctly.

5 And they left me there and said, we have to wait
6 for the swelling, nobody can put a cast on you for
7 anywhere from seven to ten days before they could
8 actually cast it.

9 Q Did they have to reset it?

10 A Well, fortunately, I mean, they just actually just
11 put it into a hard cast.

12 Q Which arm?

13 A The left.

14 Q Okay.

15 A And it was a full cast. It was from the fingers
16 all the way up to about here (indicating), you know,
17 because of the elbow.

18 Q Okay.

19 A The other arm they wanted to cast, but I started
20 begging them that I couldn't survive with two casts on.
21 So they did strap the other arm down, and I was in a
22 sling the whole time, so I couldn't move it or use it.
23 But it wasn't that heavy cast.

24 Q Okay. So you had a hard cast up to your shoulder
25 on your left arm?

1 A Correct.

2 Q If I'm understanding your testimony correctly.

3 And an immobilizing sling on your right arm?

4 A That is correct.

5 Q Okay, all right. So that next day, tell me about

6 that next day. Were you finished with your treatment

7 for the week, or did you have to go back again?

8 A Well, the next day, I mean, when they put the

9 hard -- they put me in the slings, I had to wait to get

10 to the orthopedist. The one doctor I wanted to go to

11 was on vacation, so I actually went to a hand special,

12 Dr. Everman, who's over at Grand Coastal Orthopedics.

13 Q Okay, all right. And did Dr. Everman recommend

14 something different, or did he agree with the treatment

15 plan?

16 A No, he agreed with the -- well, he x-rayed me and

17 he showed me. At that time I wasn't even aware that I

18 had broken the forearm. I definitely knew my wrist was

19 broken, I knew my elbows were in trouble, but I didn't

20 realize I had broken the forearm. So he showed me

21 those and put that in a cast.

22 He goes, that needs to be in a cast for a good six

23 weeks. He wanted to cast my other arm, and I begged

24 him, please don't. And he agreed. He made me promise

25 that I wouldn't be using it and kind of told me what

- 1 kind of trouble I'd get into if I had, so...
- 2 Q Right.
- 3 A But I left that in a sling.
- 4 Q Okay, all right. How long were you in a cast and
- 5 a sling?
- 6 A Well, the slings were almost three months.
- 7 Q Okay.
- 8 A The cast, I had on for six weeks straight. They
- 9 took it off, re-X-rayed it, put it back on.
- 10 Q Okay.
- 11 A And that they did three times.
- 12 Q Is that because it wasn't healed?
- 13 A It wasn't healing properly.
- 14 Q Okay. So ultimately at the end of the day, you
- 15 had your cast on, your hard cast on, for how long?
- 16 A Just shy of three months.
- 17 Q Okay, all right. And then you were in a soft cast
- 18 or a sling from there?
- 19 A That's correct.
- 20 Q Okay, all right. Both arms were immobile?
- 21 A Immobile, completely.
- 22 Q All right. So let's talk about that. Tell me
- 23 about the problems of having both arms immobile for
- 24 three plus months.
- 25 A You can't do anything. You literally just have to

1 sit there, and if you have to go to the bathroom you
2 got to ask for help.

3 Q Take your time, it's okay.

4 A I had to get friends in and family in, my
5 daughter-in-law, John. And, again, the pain was just
6 very hard. The whole thing was a very hard experience
7 to go through because you can't leave the house, you
8 can't leave your bedroom, you can't use the bathroom
9 without somebody being there. And it was embarrassing
10 and hard. It was very hard.

11 Q I'm sorry to have to ask you these questions, but
12 I think it's important to ask. Did you have to have
13 somebody help you bathe?

14 A Yes.

15 Q And wash?

16 A Everything. I mean, everything. Like I couldn't
17 put undergarments on, I couldn't get dressed, I
18 couldn't eat, I couldn't get -- you know, if you sit
19 there and you can't bring food to your mouth. I
20 couldn't do anything.

21 Q So if you had to go to the bathroom at 3 a.m.?

22 A I had to wake John up.

23 Q You had to wake your husband up?

24 A I did.

25 Q Every single meal you had to be fed?

- 1 A Fed.
- 2 Q For three months?
- 3 A Close to it.
- 4 Q Were you able to dress yourself?
- 5 A No, I could not. You're basically a child, you
- 6 know, like an infant, you're treated that way.
- 7 Somebody has to drive you anywhere. If I had the
- 8 doctor's appointments, you know, John's sister helped a
- 9 few times, we had some people from work come to help a
- 10 few times because John had to work.
- 11 Q All right. Ms. LeFont, did you see the pothole
- 12 that you stepped in?
- 13 A I did not.
- 14 Q Would you have wished this on anybody?
- 15 A Not your worst enemy.
- 16 Q Were you doing everything you should have done
- 17 that day to avoid stepping in a hole and breaking your
- 18 arms?
- 19 A Again, I don't think there's anybody of sound mind
- 20 that would step in a hole and go through what I went
- 21 through, or tried to.
- 22 Q You had on your glasses?
- 23 A I did. I always wear my glasses. I drive with
- 24 them and I do everything in them.
- 25 Q You weren't carrying an excessive amount of

1 weight?

2 A Just my handbag.

3 Q Okay. Ms. LeFont, what are you asking the jury to
4 do today, what do you want them to do?

5 A The right thing. It could have been any of us, it
6 could have been any of you, your child, it could have
7 been. It shouldn't have happened. I mean, had they
8 filled that hole, I wouldn't have fallen.

9 Q Okay.

10 MR. GOLDFINCH: No more questions, Your Honor.

11 THE COURT: Cross examine.

12 MR. BRYAN: Yes, sir.

13 MR. GOLDFINCH: Your Honor, I'm not actually sure
14 if I put one through three in.

15 THE COURT: You didn't.

16 MR. GOLDFINCH: I did?

17 THE COURT: You did not. Four through seven are
18 admitted. One through three, any objection to one
19 through three?

20 MR. BRYAN: No, sir.

21 THE COURT: One through three are admitted without
22 objection.

23 (WHEREUPON, Plaintiff's Exhibit Nos. 1 through 3
24 were admitted in evidence.)

25 CROSS-EXAMINATION

1 BY MR. BRYAN:

2 Q Ms. LeFont, my name is Will Bryan, we've met
3 before.

4 A We've met before.

5 Q I just have some questions for you for
6 clarification really. Let me see. Some photos,
7 Ms. LeFont, let's see, you were looking at this one.
8 And did you answer a question about where you fell?

9 A Um-hum.

10 Q Was it a close-up?

11 A Oh, yeah, I mean, that's obviously the more
12 visible of it.

13 Q And did you mark on the exhibit?

14 A No, I did not.

15 Q Can you show me.

16 A Yes. I parked here (indicating), came across the
17 walkway --

18 Q Where is here?

19 A Very much where that silver vehicle is.

20 Q Over here (indicating), okay.

21 A Yes. And then I came across because this was --
22 there was cars going up and down. And I came up this
23 way, and it was roughly around here where my foot
24 caught the hole (indicating).

25 Q Okay. And you mentioned you stumbled?

1 A Well, my toe went down. I definitely went down
2 which is what caused that forward stumbling.

3 Q And did you say you stumbled --

4 A Couple ways. I was trying very hard to stay up.

5 Q Did you tell us earlier there was a couple car
6 lengths?

7 A Roughly, I would say, yes.

8 Q Are you talking about the length of a parking
9 space?

10 A Pretty much so, because I really fell beyond where
11 that white car is.

12 Q Let's see.

13 A When I finally landed.

14 Q Okay. And you do recall being assisted by a
15 gentleman from the convention center?

16 A No. I didn't say he was from the convention
17 center.

18 Q The gentleman with the golf cart?

19 A Well, he came out afterwards, but the first
20 gentlemen came over was parked not far from where I
21 was.

22 Q You just parked from where the first gentleman --

23 A If I was in the silver, he was pretty much in this
24 black vehicle. Yeah, there (indicating), that's
25 correct. Because there was nobody there. They all had

1 to come to me.

2 Q Okay. And when you fell, you couldn't get up;
3 correct, you didn't --

4 A Not immediately, no.

5 Q I mean, later did you walk?

6 A Just into the -- onto the golf cart, I did, yes.
7 They didn't carry me.

8 Q Okay. When the ambulance arrived, did the
9 ambulance park near the handicap space?

10 A Probably roughly in that area. But to be honest,
11 I -- at that point I was pretty out of it, but
12 somewhere in there, yes. It was closer to -- I know I
13 was brought closer to the convention center at that
14 point.

15 Q And is it your testimony that you got in the golf
16 cart and the golf cart --

17 A Brought me closer to the ramps.

18 Q And where did they take you?

19 A Straight up to where the convention center --
20 where that large 18-wheeler is here (indicating). This
21 is where I was heading to (indicating), this is where
22 the golf cart brought me around here (indicating).

23 Q So the golf cart brought you up here to where
24 this --

25 A That is correct?

- 1 Q -- yellow truck is?
- 2 A That is correct. Well, I was still on the
3 pavement, obviously.
- 4 Q And at that time you were in the golf cart?
- 5 A I was sitting on the back of the golf cart.
- 6 Q Okay. Ms. LeFont?
- 7 A Yes, sir.
- 8 Q If you're paying attention to where you're
9 walking, you can see the depression in the asphalt?
- 10 A You see it now, yes. But at the time I did not
11 see it.
- 12 Q Okay. But you don't disagree if you're paying
13 attention to where you're walking, you can see the
14 depression in the asphalt; yes?
- 15 A If you're looking down, yes.
- 16 Q Okay. And you would agree that if you see the
17 depression in the asphalt, you can easily step over it
18 or you can take a step on either side, right or left;
19 correct?
- 20 A That is correct.
- 21 Q Okay. And all you were carrying that day was a
22 purse?
- 23 A One handbag, yes.
- 24 Q Okay. Nothing in your hands?
- 25 A No. John had taken everything in.

- 1 Q Did you tell Mr. Goldfinch that there was nothing
2 obstructing your view that day?
- 3 A That is correct.
- 4 Q So when you get out of your car there's nobody,
5 nothing --
- 6 A There's no one.
- 7 Q -- in front of you?
- 8 A That is correct.
- 9 Q That would prevent you from seeing the depression
10 in the asphalt?
- 11 A Well, obviously I did not see it.
- 12 Q Okay. But there was nothing to prevent you from
13 seeing it --
- 14 A That's correct.
- 15 Q -- if you were looking where you were walking?
- 16 A If I was looking down.
- 17 Q Okay. And Ms. LeFont, these photographs were
18 taken a couple days after your incident?
- 19 A My husband, John, he went there and got them.
- 20 Q Okay. After the incident, Mr. Gambelli comes out.
21 You ask, you know, somebody go get John, he comes to
22 see you; correct?
- 23 A Correct.
- 24 Q And then about that time paramedics arrive?
- 25 A Correct.

1 Q And then they whisk you off to, I think, Grand
2 Strand?

3 A They did.

4 Q Okay. And you didn't leave where you were, you
5 didn't leave the paramedics to take Mr. Gambelli around
6 the corner to show him where you fell; did you?

7 A No, sir.

8 Q You never showed him where you fell?

9 A I did not.

10 Q Okay. But it's your understanding Mr. Gambelli
11 came back to the convention center parking lot several
12 days later by himself; correct?

13 A With his sister actually.

14 Q Okay. But not with you?

15 A No, I was at home.

16 Q And took photographs of the parking lot?

17 A He did.

18 Q Okay. Ms. LeFont, you've been going to the
19 convention center with Mr. Gambelli for years?

20 A For years.

21 Q I think you said you go twice a year maybe?

22 A Yes. There's a regular convention for all
23 distributors once a year, and then Hackney itself has
24 it yearly, same weekend every year.

25 Q Okay. You know the parking area immediately

1 behind the convention center shown in Plaintiff's
2 Exhibit 3, this is the employee parking lot; correct?

3 A Yes. Yes, it is.

4 Q And you also know that just north of the
5 convention center is a giant parking lot dedicated for
6 public parking; correct?

7 A Well, we normally afterwards would have parked in
8 the disabled area.

9 Q That morning -- okay, let's go back.

10 A Okay.

11 Q That morning you arrive, you said, like 9:50?

12 A Roughly, well, quarter to, yeah. Try to get there
13 for ten.

14 Q You typically arrive at your shows earlier than
15 quarter of; correct?

16 A Usually try to.

17 Q That day you were running late?

18 A I was.

19 Q Okay. You drop -- if I understand correctly, you
20 drop Mr. Gambelli off near the ramp so he can get ice,
21 I think is what you said?

22 A We had to take boxes out of the car.

23 Q All right. Then you park. And then were you
24 approached by a gentleman?

25 A No. The guards are always right near the ramps up

1 there. And I knew it was busy and I know the routine.
2 We go to conventions everywhere. If you just park,
3 they will come look for you. So I know that to always
4 go up to the gentleman who's controlling that area,
5 tell him what you're doing, how long you're going to
6 leave your vehicle.

7 Q Your plan that day --

8 A It's pretty standard.

9 Q Your plan that day, once you dropped off Mr.
10 Gambelli, you parked, you were going to go inside,
11 and then --

12 A I was going to go inside to make sure he'd have
13 enough of what we were going to be giving out on the
14 Sunday show.

15 THE COURT: Excuse me a second, Ms. LeFont.

16 THE WITNESS: Yes, sir.

17 THE COURT: Do us, the jury and the record a
18 favor, wait for him to finish asking the question
19 before you answer it. Because the court reporter has
20 to take down what everybody is saying, so it will help
21 us tremendously.

22 Excuse me for interrupting you.

23 MR. BRYAN: That's okay.

24 Q Okay. Your plan that day was to drop Mr. Gambelli
25 off, park, you were going to walk inside and then maybe

- 1 send somebody out to get additional product?
- 2 A No. The vehicle was empty. I wanted to go inside
- 3 to see if I had to go to the convention center -- I
- 4 mean, to our warehouse to get any more product.
- 5 Q Okay. But was your plan then to move the vehicle?
- 6 A Yes, it was.
- 7 Q Where were you going to move it?
- 8 A To the disabled, which is all the way the other
- 9 side by the front entrance.
- 10 Q Okay. Who's got a disabled placard?
- 11 A John Gambelli does.
- 12 Q Okay. You were parking on the employee lot?
- 13 A Just temporarily.
- 14 Q You were parking that morning in the employee lot
- 15 temporarily as a convenience for yourself; correct?
- 16 A Correct.
- 17 Q Okay. And the gentleman you said you spoke with,
- 18 do you know whether or not that person worked for the
- 19 convention center --
- 20 A Well, no --
- 21 Q -- or you thought he was security for HT Hackney;
- 22 do you know who he worked for?
- 23 A It's not Hackney, no.
- 24 Q Okay. Do you know who he works for?
- 25 A He was in there. He's controlling the traffic

1 area.

2 Q Correct. But do you know ~~the~~

3 A I do not.

4 Q Do you know how much security HT Hackney is
5 required to have at the back of the convention center?

6 A They don't have any. They do not have any
7 security.

8 Q What is your role in HT Hackney?

9 A They are one of our distributors of our product.

10 Q Okay. But you're not aware that HT Hackney has
11 somebody at the back entrance to not only keep people
12 out of their show that's not supposed to be there, but
13 also to keep the employee lot clear?

14 A They have nothing to do with that.

15 Q Okay. And Ms. LeFont, you never personally dealt
16 with the convention center?

17 A I have nothing to do with them, correct.

18 Q And when your husband is setting up his booth, he
19 doesn't lease his booth from the convention center, he
20 doesn't have any association with the convention center
21 either; does he?

22 A No. It's done through a brokerage.

23 Q Okay. And you have a broker that deals with HT
24 Hackney?

25 A With many distributors.

1 Q Correct. But in this case, the HT Hackney show,
2 you have a broker that brokered some deal with HT
3 Hackney for your booth space or for Mr. Gambelli's
4 booth space; is that correct?

5 A Yes.

6 Q The convention center is not part of that
7 transaction; correct?

8 A Well, they have to rent it from the convention
9 center..

10 Q All right. But the renting it to you and your
11 husband, you didn't rent your booth from the convention
12 center; correct?

13 A Our brokerage did.

14 Q I thought you entered in from HT Hackney?

15 A We have a company called Matrix Brokers.

16 Q Right..

17 A They set up about 20 different vendors. We pay
18 Matrix Brokers who then is doing it with the convention
19 center. They get the tables. We have to pay, though.
20 We pay Matrix Brokers.

21 Q Who sets up your booth?

22 A Matrix Brokers do.

23 Q Okay. And do you have like personal knowledge of
24 what Matrix does to secure your booth or the booth for
25 Aloha King?

1 A Well, in the original days when we first started,
2 we did it ourselves directly. But now we're part of
3 this brokerage, so it's just the same thing, you just
4 every year secure the amount of space that you need for
5 the amount of vendors you're going to be having.

6 Q Who has the space, thought; isn't it HT Hackney --
7 doesn't HT Hackney secure the space?

8 A That I don't know how that works, to be honest.

9 Q Okay. Ms. LeFont, do you have any knowledge or
10 evidence to indicate or show what caused the depression
11 in the asphalt parking lot -- in the employee lot
12 behind the convention center shown in Exhibits 5, 6 and
13 7?

14 A I have no idea.

15 Q Okay. Do you have any evidence that would
16 indicate that the convention center or any of its
17 employees had actual knowledge that that depression was
18 there?

19 A I didn't speak to them regarding it, I have no
20 knowledge.

21 Q Okay. Do you have any knowledge of any prior
22 incidents occurring in the -- trip and fall, slip and
23 fall incidents occurring in the employee parking lot of
24 the convention center?

25 A No knowledge whatsoever.

1 Q Okay. If Ms. Terry Perez, the woman that
2 generated this incident report and came to your
3 assistance, if it's her testimony that she found you in
4 this shaded area here sort of on the end cap of this
5 center parking area (indicating), do you deny that
6 testimony?

7 A Yes, I do.

8 Q You do, okay. Just so I'm clear, you think you
9 tripped here (indicating), and you actually fell to the
10 ground where, behind the white car?

11 A Near where that white car is, correct. Not as far
12 as that maybe but close to it.

13 Q I'm sorry. And then you're saying a golf cart
14 came by, picked you up and drove you all the way
15 over --

16 A Well, no. I said up towards in front of that, on
17 the pavement right there a little in the middle of that
18 roadway because it was all blocked off. All that space
19 was blocked off, you couldn't come this side of it
20 (indicating).

21 Q Okay. You went to Grand Strand Regional that
22 morning; correct?

23 A They took me right there, the ambulance.

24 Q You were received and released that day; correct?

25 A About 6 o'clock that night.

- 1 Q You went back the next day, you rewrapped, I
2 think, your arms?
- 3 A They x-rayed me again and checked, made sure it
4 was -- nothing had moved.
- 5 Q All right. And you were discharged again the same
6 day; right?
- 7 A That is correct.
- 8 Q And then, did you ever have an overnight stay in
9 the hospital?
- 10 A I did not want to stay, no.
- 11 Q Okay. And then you followed up with Dr. Everman
12 who's a hand specialist; is that correct?
- 13 A Arms, arms and hands, yes.
- 14 Q Is it true that about six weeks from the day of
15 the accident you were no longer taking pain
16 prescription medications?
- 17 A That is correct.
- 18 Q Okay.
- 19 A Other than Advil or over the counter.
- 20 Q Okay. And then Dr. Everman released you from his
21 care in July of 2014; correct?
- 22 A Yes.
- 23 Q And Dr. Everman's -- his discharge instructions to
24 you were, you know, come back and see me if need
25 arises?

1 A That is correct.

2 Q Or words to that effect; yes?

3 A Yes.

4 Q Is that a yes?

5 A That's a yes, I'm sorry.

6 Q Thank you. And then you were kind of rocking
7 along the second part of 2014, the rest of July,
8 August, September, October, November, the rest of the
9 year, that's more than five months, you don't seek any

10 additional follow-up care for your left wrist or --

11 A Well, I did go through therapy once the cast came
12 off, so I had exercise. I knew what to do once they
13 had instructed me.

14 Q Correct. Their therapy actually concluded before
15 Dr. Everman discharged you; correct?

16 A Yes, that is correct.

17 Q Okay. So when Dr. Everman discharged you, you
18 didn't have any additional care after July of 2014?

19 A I believe that's correct.

20 Q Okay. And Ms. LeFont, have your wrists and elbows
21 continued to improve?

22 A I have excruciating pain in the wrist all the
23 time.

24 Q Okay. But for the remainder of 2014 and for a
25 number of months in 2015, you didn't see a reason to go

1 back to Dr. Everman?

2 A Everman, yes. No, but it's not -- I mean, a break
3 is a break, a heal is a heal. There's nothing that can
4 be done, it's...

5 Q But your excruciating pain, it wasn't so
6 excruciating that you went either to see Dr. Everman or
7 to an ER or to a doc in the box or anything?

8 A No.

9 Q Okay. Is there anything you can't do today
10 because of the injuries to your wrist and elbows that
11 you could do the day before you were at the convention
12 center?

13 A I can't open a jar. Lots of things I can't do. I
14 can't get off a floor, John has to help me.

15 Q Okay.

16 A There's many, many things I can't do with the left
17 hand.

18 Q Okay. But you're right hand dominant; correct?

19 A That is correct.

20 Q All right. So you would open things with your
21 right hand?

22 A But you still have to hold something, I can't hold
23 it.

24 Q Okay. Did you go horseback riding?

25 A I have not rode since the accident.

- 1 Q You're walking every day?
- 2 A I do.
- 3 Q Swim?
- 4 A We have a pool, yes.
- 5 Q You go to aerobics?
- 6 A As much as I can.
- 7 Q You're still helping your husband with his work?
- 8 A Yeah. I do the office work.
- 9 Q And you also travel with him; correct?
- 10 A I always traveled, yes.
- 11 Q Whatever pain you have in your wrist or elbows,
12 it's not so severe that it prevents you from going on
13 trips; correct?
- 14 A That is correct.
- 15 Q All right. Can you identify a trip or a cruise
16 that you have scheduled to take that you did not take
17 in the last -- let's say, since April of 2014.
- 18 A Well, that whole year after it I couldn't do any
19 of the shows. So we had to -- I had to cancel a lot of
20 the trips I was going to do that year.
- 21 Q Okay. Didn't you take a cruise to the Bahamas
22 that Thanksgiving or that Christmas?
- 23 A In November.
- 24 Q Okay. And did you go to a Formula One race in
25 Houston with your friend?

1 A That was in February, that's the following
2 February.

3 Q February of 2015?

4 A Correct.

5 Q Okay. And I think it's in February 2015 you went
6 back to the Bahamas?

7 A Yes.

8 Q Okay. Ms. LeFont, you told us that you have
9 excruciating pain in your --

10 A Left wrist.

11 Q -- left wrist?

12 A Yes.

13 Q You have a history, though, of injury to your left
14 wrist; correct?

15 A In '81, yes, I hurt it.

16 Q Okay. Left wrist. And did you also break your
17 right elbow previously?

18 A That was probably in the early '90s, yes.

19 Q Okay.

20 A My dog pulled me.

21 Q Ms. LeFont, I'm going to ask you again, how often
22 are you riding horses now?

23 A I haven't since I've had the accident.

24 Q Okay.

25 A Normally I would go up to my family's in the City

1 who have horses and ride, but I haven't.

2 MR. BRYAN: Your Honor?

3 THE COURT: Ladies and gentlemen, I'm opening an
4 envelope which contains the original transcript of a
5 deposition of Ms. LeFont that was taken on August 11th,
6 2015. Deposition is simply a term used to describe
7 testimony taken at a place other than this courtroom.
8 It's not uncommon to have deposition testimony with
9 live testimony, you can consider both of them.

10 This is going to be offered pursuant to the rules.
11 And again, when you're instructed to begin your
12 deliberations, you'll evaluate this testimony in the
13 same fashion as any other testimony. It's very proper
14 to use it and very proper to present it. It's now
15 Court's Exhibit No. 1.

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

18 (Discussion off the record.)

19 Q Ms. LeFont, do you have the deposition transcript?

20 A I have it in front of me.

21 Q Okay. If you would, please, ma'am, please turn to
22 page 14. And do you recall that I took your deposition
23 some time ago at another lawyer's office; correct?

24 A That is correct.

25 Q I asked you a number of questions; yes?

1 A Yes, you did.

2 Q You were placed under oath; yes?

3 A That is correct..

4 Q And on page 14, ma'am, let's see, starting at --
5 start at line seven.

6 A Um-hum.

7 Q Do you have any hobbies? And what was your
8 answer? /

9 A I ride horses.

10 Q And dance?

11 A Right.

12 Q And you -- and then your answer was, you ride
13 horses equestrian?

14 A That is correct.

15 Q I asked you how often do you do that.. And your
16 answer was, as often as I can. My father ran the Bronx
17 Riding Academy, so I grew up on horses.. So all my
18 family and cousins and all have horses that I'm
19 constantly going to visit and we ride. Did I read that
20 correctly?

21 A You did.

22 Q Okay. The next question was, do you own horses
23 yourself? And your answer was, I don't, no. But I
24 just bought 20 acres, so I'm hoping to change that.
25 Next question was, around here? And you said, um-hum,

1 Longs. How often do you ride horses? And your answer
2 was, I'd say, well, right now, about four times a year.
3 Ms. LeFont, did I read that correctly?

4 A Well, right now meant previous to the accident;
5 though. I wasn't currently able to ride.

6 Q So right now didn't mean --

7 A Then and there.

8 Q Right now when I was taking your deposition in
9 August of 2015?

10 A I normally would have gone at least four times a
11 year. That's what I was meaning to say or saying.

12 Q Ms. LeFont, you also have a history of
13 diagnosis -- you have diagnosed arthritis in your left
14 hand and wrist; correct?

15 A That's what the doctors have told me, yes.

16 Q Okay. And that's a diagnosis that predates your
17 incident at the convention center; correct?

18 A Correct.

19 Q Okay. And you know that arthritis is a
20 degenerative condition that gets worse over time?

21 A No, I did not know that.

22 Q Okay. You suffered another wrist injury a couple
23 years before this incident at the Marriott. Which
24 wrist was that?

25 A It wasn't my wrist. It was my knee.

1 MR. BRYAN: Off the record.

2 (Discussion off the record.)

3 Q Ms. LeFont, I just want to make sure your
4 testimony is clear. Your husband -- this is after you
5 fell, you're on the ground, you're being treated by the
6 paramedics. You ask for Mr. Gambelli to come out. He
7 doesn't know in that time where you've fallen; is that
8 correct?

9 A We were talking. I mean, he saw what was going
10 on.

11 Q Right. But you're nowhere near at that point
12 where you fell?

13 A No. He came over -- I was still on the ground
14 when he came out.

15 Q Okay.

16 A Which is where I fell.

17 Q Well, did you fall -- you fell like 20 feet, you
18 said, or so away?

19 A Yes. But it was right -- right there, yeah. He
20 saw where I fell.

21 Q When you left to go to the hospital, your husband
22 didn't know what caused you to fall?

23 A I have no knowledge of what he was -- I was in the
24 hospital.

25 Q Okay. Ms. LeFont, have you been back to see Dr.

1 Everman or any other physician for your wrist pain

2 or --

3 A Dr. Everman.

4 Q -- elbow pain?

5 A Dr. Everman.

6 Q When is that?

7 A I guess about six, seven months ago.

8 Q Okay. Since then, have you seen anybody since
9 then?

10 A No.

11 Q Okay.

12 MR. BRYAN: Your Honor, that's all I have.

13 THE COURT: Redirect?

14 MR. GOLDFINCH: Just quick.

15 THE COURT: Sure. Absolutely.

16 REDIRECT EXAMINATION

17 BY MR. GOLDFINCH:

18 Q Ms. LeFont, just a couple questions. First one,
19 whether you rode horses or not prior to the injury,
20 does that have anything to do with the fact that you
21 had two broken arms as a result of the City's
22 negligence?

23 A I can't see where it would.

24 Q Okay. Second question --

25 MR. BRYAN: Objection.

1 THE COURT: You objected?

2 MR. BRYAN: Objection to characterization of the
3 City's actions as negligence.

4 THE COURT: Leading question, sustained. Rephrase
5 your question, please.

6 MR. GOLDFINCH: Just withdraw it, Your Honor.

7 THE COURT: All right.

8 Q Ms. LeFont?

9 A Yes, sir.

10 Q Mr. Bryant asked you earlier and he mentioned a
11 shaded or shadowy area. And I want to draw your
12 attention to that area that he pointed out as being
13 shadowy. Is the shadowy area where you tripped and
14 fell --

15 A Yes.

16 Q -- on this picture?

17 A It is.

18 Q Okay. Tell me again what time of the day it was.

19 A About quarter -- about ten to ten in the morning.

20 Q Okay. So ten to ten is not high noon; is it?

21 A It is not.

22 Q Okay. So is it possible the sun is behind these
23 trees casting a shadow where Mr. Bryant pointed out the
24 shadow?

25 MR. BRYAN: Objection.

1 THE COURT: I'll allow it.

2 MR. BRYAN: Okay.

3 THE WITNESS: It's possible, yes.

4 Q Okay. So I'm going to ask you a very direct
5 question. Was it shadowed where you tripped and fell?

6 A I'm not sure, I didn't see anything.

7 Q Okay. Fair enough. Fair enough. And my last and
8 final set of questions are going to be regarding the
9 Plaintiff's Exhibit 4, five, six and seven. You saw
10 these, you're familiar with them.

11 A I'm very familiar with them.

12 Q Tell me who took these pictures.

13 A My husband.

14 Q Okay. All right. How far were you when you saw
15 your husband for the first time after you fell, how far
16 were you from this hole?

17 A About a car, maybe two car lengths away.

18 Q Okay. So two car lengths away from this hole?

19 A Correct.

20 Q It's a relatively small hole; isn't it?

21 A It's very small.

22 Q Circular?

23 A Yes.

24 Q About how deep would you say?

25 A Two about two and a half, three inches.

- 1 Q Okay. Now, you said that you didn't see this
2 hole; correct?
- 3 A I did not.
- 4 Q Why didn't you see it?
- 5 A I was looking up where I was going.
- 6 Q Okay.
- 7 A Up to the convention area.
- 8 Q Okay. Now, as I flip through these pictures, I
9 noticed that looking directly over it --
- 10 A Right.
- 11 Q -- I can see the dirt in it.
- 12 A Um-hum.
- 13 Q Do you see what -- can you see any dirt in that
14 picture?
- 15 A Only that I know it's there now, but no, I would
16 not see it.
- 17 Q Was that picture taken from a --
- 18 A That's the angle I was walking.
- 19 Q That would be the angle you were walking?
- 20 A That is correct, because I was heading to that
21 ramp.
- 22 Q Is it significantly different than the other
23 picture I showed you?
- 24 A Very different.
- 25 Q Why?

1 A Because it all blends in here. When you're on top
2 of it, you see it.

3 Q Okay. And yet your testimony now is that it is at
4 least an inch and a half or two inches deep; is that
5 your testimony?

6 A That is correct.

7 Q Okay. When you fell and your husband came out,
8 did you tell him where you fell?

9 A Yeah. He asked me what happened.

10 Q Okay. So while he was therestanding at your
11 side, you said what?

12 A I tripped and I just -- you know, I definitely
13 stumbled forward.

14 Q Okay. So he was at the scene when you --

15 A He helped me up. He helped me up to get up onto
16 the cart.

17 Q Okay. So would he have known where to go to take
18 pictures of the problem?

19 A Absolutely. And he also -- the car was just
20 opposite, so later on that day he had to go get the
21 car. So it was there.

22 MR. GOLDFINCH: That's all I have, Your Honor.
23 Thank you.

24 THE COURT: Recross?

25 MR. BRYAN: None, Your Honor.

1 THE COURT: Very well. You may come down. Thank
2 you, sir.

3 (Witness excused..)

4 THE COURT: All right, ladies and gentlemen, at
5 this point we'll take about a ten-minute break, let you
6 go to your jury room. Do not begin your deliberations,
7 do not discuss the case, and we'll be with you very
8 quickly. Thank you..

9 (WHEREUPON, the jury exited the courtroom at
10 3:59 p.m.)

11 THE COURT: Anything from the Plaintiff before we
12 recess?

13 MR. GOLDFINCH: No, Your Honor.

14 THE COURT: Anything from the Defendant?

15 MR. BRYAN: No, Your Honor.

16 THE COURT: We'll be at ease for about ten
17 minutes. Thank you.

18 (WHEREUPON, a brief recess was taken at 3:59 p.m.)

19 (WHEREUPON, the jury came into open court at
20 approximately 4:12 p.m.)

21 THE COURT: Thank you very much, ladies and
22 gentlemen. We are ready to continue. Give your
23 attention to the next witness. You may call your next
24 witness, Mr. Goldfinch.

25 MR. GOLDFINCH: Your Honor, we call John Gambelli.

1 THE COURT: Okay.

2 JOHN GAMBELLI, after being duly sworn, testified
3 as follows:

4 THE CLERK: State your name for the Court, please,
5 sir.

6 THE WITNESS: John Gambelli.

7 DIRECT EXAMINATION

8 BY MR. GOLDFINCH:

9 Q Mr. Gambelli, what's your address?

10 A 116 Staten Lane, Longs, South Carolina, 29568..

11 Q How about your date of birth?

12 A 6/15/56.

13 Q And what is your occupation, sir?

14 A I am the owner of the Superaloelicious Aloe Vera
15 King drink company.

16 Q Before we get into anything else, let me ask you a
17 little bit about that. What is that company? Tell me
18 a little bit about that.

19 A Well, actually, it's manufactured in South Korea.
20 It's imported here to the United States. It's a health
21 drink. Actually, it's the -- blazing a trail of
22 probably what all drinks will probably turn into.
23 Health drinks is what it's all about. I started my
24 company six years ago, seven years ago. And it's doing
25 really well, and it's really having great effects on

1 everybody who drinks it..

2 Q Okay. So tell me how, more so -- less so about
3 the product but more so about how it works. How do you
4 sell it, what's the deal with the convention center?

5 A Well, what we have is a brokerage firm which is
6 Matrix Brokerage. And they basically handle all of the
7 facilitation through us for distribution partners.
8 That means we sell by the pallet. We also have a DSD,
9 which is direct store distribution that we sell to mom
10 and pop convenience stores and so on and so forth, to
11 really the independent business person which really
12 made this country great.

13 Q Okay. So you present this product to potential --

14 A Right.

15 Q -- vendors?

16 A The conventions that we do, actually it's Matrix
17 Brokerage, procures all of the venues.

18 Q Okay.

19 A And we go to venues that are like the Petro Show,
20 which is where we would be in front of a lot of people
21 that would be looking for our product. And then we
22 have the regular convention shows that they are already
23 selling our product. And we give allowances, and we
24 give items to display and so on, but they are actually
25 in their warehouses.

- 1 Q Okay, got you. And so what you are doing when
2 you're traveling around is?
- 3 A Promoting our business.
- 4 Q Promoting your business?
- 5 A Um-hum.
- 6 Q And does your wife help with that?
- 7 A Oh, absolutely.
- 8 Q Okay. What does she do for you?
- 9 A Well, she helps me with the booth. She works as
10 the CFO.
- 11 Q Okay.
- 12 A I mean, she is a part of the business, there's no
13 question about it.
- 14 Q All right, great. Was she helping you that day,
15 April 13th, 2014?
- 16 A Yes.
- 17 Q Okay. Had you been to that convention center
18 before?
- 19 A Yes, I have.
- 20 Q And we're talking about the Myrtle Beach
21 Convention Center?
- 22 A Yes.
- 23 Q Okay. Do you remember what the weather was like
24 that day?
- 25 A It was a nice day. I mean, the sun was, you know,

1 shining.

2 Q Okay, all right. Mr. Gambelli, I'm going to -- I
3 lost my exhibits. Here they are, okay. I'm going to
4 show you some of the same exhibits that I showed
5 Christine earlier. I'm going to ask you some similar
6 questions, I'm sorry to tell you.

7 A Okay.

8 Q Let's just do that. Do you recognize this parking
9 lot?

10 A Yes, I do.

11 Q Can you tell me where that is.

12 A It's the convention center, it's the employee
13 parking area and it's the loading zones.

14 Q Okay. Can you tell me where your wife dropped you
15 off that day.

16 A I was up in this area right here (indicating),
17 which is basically a loading dock where vendors bring
18 their products in. And then we will procure like a
19 rolling cart to bring our stuff in.

20 Q Okay.

21 A And then also there's ice machines there so that
22 we can also grab ice to ice our products. Of course
23 they are better cold than they are warm.

24 Q Okay. So tell me what happened from the time you
25 got there until the time that you came out to see your

1 wife after the injury. Start from the beginning.

2 A Well, I came -- I went in and I started, you know,
3 putting the ice in the coolers, you know, cooling
4 everything down and such. And, you know, the next day,
5 I mean, you put everything away, so I started, you
6 know, putting the items up and so on and so forth.

7 Q Okay.

8 A And then someone came in and said that Christine
9 had fallen in the parking lot.

10 So I came out, and I went to an area where she
11 was.

12 Q Where is that?

13 A It was actually down in this area over here
14 (indicating).

15 Q Okay. You're pointing behind the white car that's
16 parked in the middle of the parking lot here.

17 A Um-hum.

18 Q Okay. Is that -- that's where what, where you
19 found her?

20 A Well, actually it was probably just a bit, you
21 know --

22 Q Up this way (indicating)?

23 A -- forward. But, I mean, I can't -- I wouldn't
24 say exactly because of, you know, the picture itself.

25 But that's -- that's where she was. And then they had

1 come over with a golf cart and picked her up and then
2 brought her in this area over here (indicating).

3 Q Okay. So what you're telling me is, we have to
4 describe the picture here, what you're telling me is
5 that you found your wife laying around this white car
6 here, behind this white car here?

7 A Yes, sir.

8 Q Is that a yes, sir?

9 A Yes, sir.

10 Q Okay.

11 A Sorry.

12 Q That the golf cart came, picked her up and took
13 her into this area you described here (indicating),
14 which, I guess, this would be the area again to the --
15 to the left of the 18-wheelers --

16 A Yes.

17 Q -- I guess, is the best way to describe that on
18 the picture?

19 A Yes, sir.

20 Q Okay. All right, great. Then what happened?

21 A Well --

22 Q After they picked her up in the golf cart and took
23 her to that area you just described to me.

24 A Right. Well, the ambulance came, I guess.

25 Q Well, back up just a second.

- 1 A All right.
- 2 Q So you described where you saw her laying here?
- 3 A Okay.
- 4 Q And then you describe her being moved. Tell me
- 5 what happened in between there. Did she say anything
- 6 to you, did she make any --
- 7 A Well, yeah.
- 8 Q Don't tell me exactly what she said. But what I
- 9 want to know is --
- 10 A She had fallen.
- 11 Q -- your impression of what had happened.
- 12 A Well, she was very upset. I mean, she was, you
- 13 know, obviously in pain.
- 14 Q Sure.
- 15 A And she said she had fallen, she tripped in a --
- 16 it was like a little divot, dish, dip. And she had
- 17 pointed in the area where it was. And, you know, I
- 18 went back and took a look at it.
- 19 Q Okay.
- 20 A And then the -- she wanted to get some ice, I know
- 21 she was asking for ice for her arms. And then the
- 22 ambulance came, and --
- 23 Q All right. So when she -- let me stop you right
- 24 there.
- 25 A Okay, I'm sorry.

1 Q When she was laying on the ground the first time
2 you approached her, before the golf cart picked her
3 up --

4 A Um-hum.

5 Q -- did she tell you where the hole was that she
6 had fallen in?

7 A Yes, she did.

8 MR. BRYAN: Objection. Calls for hearsay
9 testimony, Your Honor.

10 THE COURT: Sustained.

11 Q Is that the hole that you took a picture of?

12 A Oh, absolutely, yes.

13 Q How did you know to go take that picture?

14 A Because Christine had showed me where that was.
15 And then I had come back because my vehicle was left
16 there, or the vehicle that we drove, and I had taken a
17 picture of it.

18 Q Okay, all right. So I interrupted you right in
19 the middle of you telling me about Christine being
20 moved from the spot where you found her to the spot
21 where the golf cart took her. Tell me about that.

22 A Well, she was --

23 Q Was she in pain?

24 A Yeah. Oh, absolutely.

25 Q Okay. Did she have physical signs and symptoms of

1 having broken arms?

2 A Yeah, I mean, her -- she was just like this
3 (indicating), they were just like limp --

4 Q Okay.

5 A -- her wrists.

6 Q Okay.

7 A She was, I mean, crying. She was definitely in
8 pain. I mean, I don't -- it was pretty difficult to
9 deal with to see her in that type of condition and the
10 pain that she was in.

11 Q Sure.

12 A You know, so --

13 Q Was she able to talk with you, was she able to
14 convey anything to you, or was she just?

15 A No. She was a mess.

16 Q She was crying?

17 A Yeah..

18 Q Okay.

19 A I mean, an absolute mess.

20 Q Okay, all right. And then what happened when the
21 ambulance came, did you ride with her?

22 A No, I did not. I went back into the building.

23 Q Okay.

24 A Actually had to finish doing what I was doing.
25 Then what I did was I tried to find some people from

1 Matrix Brokerage, because we would always handle our
2 own booths ourselves.

3 Q Um-hum.

4 A And once I got them squared away I, you know, went
5 to the hospital.

6 Q Okay. So when you wrapped up what you had to do
7 there?

8 A Right.

9 Q Was this the last day y'all were there?

10 A Yeah. It was Sunday.

11 Q Okay.

12 A Was the last day.

13 Q So they were going to lock you out?

14 A Yeah, absolutely.

15 Q Okay, all right. So once you wrapped up
16 everything, did you go straight to the hospital?

17 A Yes.

18 Q Okay. How long were y'all there?

19 A Into the night. I mean, I'm not exactly sure. It
20 had to be after seven, 8 o'clock, something like that.

21 Q When you found out that she was going to have both
22 arms casted, tell me about that.

23 A Well, I knew she was in for a bumpy ride. I mean,
24 Christine is --

25 MR. BRYAN: Is Mr. Gambelli's testimony about his

1 state of mind, about --

2 THE COURT: I don't know.

3 MR. BRYAN: Is it relevant at all?

4 THE COURT: I would sustain the objection. Also
5 if you lay a foundation before he can testify about
6 what she was experiencing to counter.

7 MR. GOLDFINCH: Certainly. Certainly, Your Honor.

8 Q Mr. Gambelli, what I'd like to know is really more
9 about Ms. LeFont.

10 A Okay.

11 Q So the questions I'm going to ask you from here on
12 out, please take that into consideration.

13 A Okay.

14 Q And they start by saying or by asking, did you see
15 your wife in a state of panic that night?

16 A Absolutely.

17 Q Why?

18 A Because she was in pain.

19 MR. BRYAN: Judge, I object, calls for
20 speculation.

21 THE COURT: I sustain the objection. He can't
22 testify to why. He can testify to what his
23 observations were under the rule.

24 MR. GOLDFINCH: Sure.

25 THE COURT: Otherwise it would be hearsay.

1 MR. GOLDFINCH: Yes, Your Honor.

2 THE COURT: Thank you. You may proceed.

3 THE WITNESS: Well, yeah, I mean, she was -- let
4 me just put it this way, I've never seen her in that
5 state..

6 Q Let me stop you right there. When you went home
7 after all of the medical treatment that was provided,
8 what did you have to do for Mrs. LeFont, for your wife?

9 A I had to take care of all of her needs.

10 Q Like what?

11 A You know, well, she couldn't go to the bathroom on
12 her own, she couldn't, you know, take a shower on her
13 own, she couldn't -- she couldn't do anything. And
14 besides being incapacitated with her injuries, you
15 know, her spirit was, I mean, she was down in the
16 dumps. I mean, it was --

17 Q And obviously, I'm not diminishing what happened
18 in your relationship, but I'm not asking about that
19 right now. What I'd like to know is how that affected
20 her. Other than emotionally, you've told us about
21 that. Tell me about the physical needs that did not --
22 she wasn't able to take care of herself and you had to
23 help her with.

24 A Well, and I guess I would say, you know, I guess
25 her dignity in that respect is -- I mean, she's a

1 strong woman, but when I saw her like that and having
2 to, you know, literally take her to the bathroom and,
3 you know, clean and so on and so forth, I mean, I love
4 her, I mean, I would do anything for her.

5 Q Sure.

6 A But I think what she was going through was
7 probably more than I was going through. Because I knew
8 that if the -- you know, that if I was in that
9 position, she would be doing the same thing. And to
10 her mind and so on and so forth, from what I know of
11 her, I know that she felt that that was pretty
12 degrading to her in a sense. To me, again, it -- I
13 love her, you know, what am I going to do.

14 Q Yes. Did you have to bathe her?

15 A Yes, absolutely.

16 Q Did you have to feed her?

17 A Absolutely.

18 Q Did you have to wipe her?

19 A Yes, I did.

20 Q Did you have to clean the house?

21 A Yes, I did.

22 Q Did you have to cook dinner?

23 A Yes.

24 Q Did you have to drive her?

25 A Yeah. She couldn't drive.

- 1 Q Was this a 24/7 job, or did you have a nurse or
2 somebody in the house to help you?
- 3 A No. I mean, when I had to go somewhere or
4 whatever, my sister would come in and she would help
5 out and, you know, our neighbors. But pretty much
6 95 percent of the time, you know, I was there with her.
- 7 Q Okay. All right. Let me go back to the pictures
8 you took real fast and make sure I understand your
9 testimony. And then I'm going to leave you alone, I
10 promise.
- 11 A Okay.
- 12 Q How did you know to take these pictures that we've
13 referenced in these pictures, how did you know to take
14 them? How did you know that was the problem?
- 15 A Well, it's -- it was not far from where Christine
16 actually landed. And she's the one who pointed it out
17 and --
- 18 Q How far was it from where she landed?
- 19 A I guess maybe two car lengths.
- 20 Q So about that far (indicating)?
- 21 A I would say.
- 22 Q All right.
- 23 A I mean, I didn't see her, but that's what she was
24 talking about.
- 25 Q Sure.

1 A That's where it looked like the distance was.

2 Q So the pothole was here where this little divot in
3 the floor was here, the pothole was here (indicating),
4 your testimony is she was laying about right here?

5 A Um-hum.

6 Q Okay.

7 THE COURT: Is that a yes?

8 THE WITNESS: Yes. I'm sorry.

9 THE COURT: That's all right. The court reporter,
10 it helps us and it helps her.

11 THE WITNESS: No, no, I understand Your Honor.
12 Sorry, I'm not really used to it.

13 THE COURT: No, that's -- we all do it, that's not
14 a problem.

15 THE WITNESS: Yeah, okay.

16 Q Now, I see that you have glasses, and I don't mean
17 this question to be -- I don't mean to diminish your
18 eyesight in any way or your age, but is it hard for you
19 to see from here to there, sir?

20 A No. My problem isn't with nearsighted. I can
21 probably knock a bullseye out of the exit sign there.

22 Q Okay. Well, let's not do that in the courtroom,
23 if you don't mind.

24 A No, sir. But I can't see as close is what my
25 challenge is. These are just, actually these are

1 just -- I guess they call them cheaters.
2 Q Sure.
3 A So, you know, you can just pick and read.
4 Q Right.
5 A But that's it. Otherwise I can see it.
6 Q So seeing a hole from here to there would not be a
7 problem for you; is that what you're saying?
8 A No, not whatsoever.
9 Q Okay. And was it your testimony that Christine
10 told you, that's where I fell --
11 A Yes.
12 Q Is that your testimony?
13 A Yes.
14 Q Okay. Is that why you knew to take a picture of
15 that hole?
16 A That is correct.
17 Q Okay. I see that you took a bunch of different
18 angles of this picture. Let me use these instead. Do
19 you see dirt in that picture?
20 A Yes.
21 MR. BRYAN: Which number?
22 MR. GOLDFINCH: I am referencing Plaintiff's
23 Exhibit 4.
24 Q Do you see dirt in that picture?
25 A Yes, I do.

1 Q Okay. What kind of an angle was that? And that
2 question is very vague, I know, but is it more of a
3 over-the-top angle, or is it from the side?

4 A Well, if I put it this way, and I'm not -- profess
5 to be some photographer or whatever, but I would think
6 that I would be having to stand right over the top of
7 it to get that picture.

8 Q Okay. So that would be a closer photo than say
9 this picture which I'm referencing Plaintiff's
10 Exhibit 6. Is that a further away picture?

11 A It's -- I don't know whether it's a further away
12 or whether it's just the way it was taken, you know,
13 with the camera itself. It doesn't -- it's necessarily
14 not standing over it, that's for sure.

15 Q Okay. Can you see dirt in that picture? Can you
16 even see -- I mean, if you look closely --

17 A Yeah.

18 Q -- obviously you can, but can you really even see
19 the hole in that picture?

20 A It's not anything -- yeah, I mean, I could see it,
21 it looks like there is a depth to it.

22 Q Does it stand out to you as opposed to this
23 picture (indicating)?

24 A No.

25 Q Okay. So is your testimony that standing over it

1 you can see it well, and here can you see it well

2 (indicating)?

3 A No.

4 Q Okay. And here would be from a distance

5 (indicating); is that correct?

6 A Yeah.

7 Q And here would be (indicating)?

8 A Right on top of it. I mean, you'd have to --

9 yeah, on top of it.

10 Q Okay.

11 MR. GOLDFINCH: Your Honor, I'm going to pass

12 these to the jury, if that's okay with you.

13 THE COURT: All right. Ladies and gentlemen,

14 exhibits that are introduced, as I mentioned to you,

15 they will accompany you to your jury room. It's not

16 uncommon for them to pass them, you can look at them.

17 But know that you'll have an opportunity to study them

18 more intently and in greater detail when you get to

19 your jury room.

20 Q Mr. Gambelli, when you came back to get your car,

21 you came back to this parking lot; right?

22 A Um-hum. Yes. I'm sorry.

23 Q Please remember to verbalize.

24 A Yes.

25 Q Tell me where you picked your car up from, please.

- 1 Where did y'all park?
- 2 A Right over there (indicating).
- 3 Q Are you pointing to the very back of the parking
4 lot, the very back left-hand corner of the parking lot,
5 in this area (indicating)?
- 6 A No.
- 7 Q You're pointing over here further (indicating)?
- 8 A Yeah, no. Right around this area (indicating).
- 9 Q Oh, right in here (indicating)?
- 10 A Yeah.
- 11 Q Okay. So a couple spots in but in the back
12 left-hand corner?
- 13 A Um-hum.
- 14 Q Okay. And tell me one more time where the hole
15 was that you took a picture of.
- 16 A It was in this section over here (indicating).
- 17 Q Okay. Are you pointing, sir?
- 18 A I mean, I can't really see it with that, but I
19 would assume that that would be the case.
- 20 MR. GOLDFINCH: Can I borrow your pen, please:
- 21 Q You testified earlier that this is the area where
22 the golf cart, that you met the golf cart; is that
23 correct?
- 24 A That's correct.
- 25 Q You testified that this is where you saw Christine

1 on the ground for the first time?

2 A That's correct.

3 Q Okay. Tell me where you saw the hole that you
4 took a picture of, just point to it with the pen.

5 A I would say somewhere in this vicinity
6 (indicating).

7 Q Okay. Perfect. That's what I need to know.

8 MR. GOLDFINCH: That's all the questions I have,
9 Your Honor.

10 THE COURT: Cross examine?

11 MR. BRYAN: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BRYAN:

14 Q Mr. Gambelli, how long have you been seeing your
15 wife?

16 A How long have I been seeing her? Everyday.

17 Q Yeah, how long have y'all been together?

18 A Oh. Probably a little over seven years now.

19 Q And you were married when?

20 A When I was married?

21 Q Yeah. When were you married?

22 A Well, we're not exactly married, we're living in a
23 regular, you know, domestic --

24 Q Okay, I'm sorry. I thought y'all were married.

25 Pardon me, how long have you been living with

- 1 Ms. LeFont, for seven years?
- 2 A A little over seven years, yeah.
- 3 Q Okay. You love Ms. LeFont?
- 4 A Do I love her?
- 5 Q Yeah.
- 6 A Yes, I do.
- 7 Q And you would like to do whatever you can to help
- 8 her; correct?
- 9 A Well, I wouldn't lie for her.
- 10 Q But you want to help her in any way that you can,
- 11 you would; right?
- 12 A I would want to assist her in any way, I wouldn't
- 13 want to enable her, I wouldn't want to lie for her,
- 14 just as she would do the same for me.
- 15 Q Fair enough. You were looking at a number of
- 16 photographs earlier, one of them. Were these the only
- 17 three that you looked at with Mr. Goldfinch?
- 18 A Yeah, I guess. You know, sometimes they just all
- 19 look the same.
- 20 Q Okay. Anyway, here's Plaintiff's Exhibit 7; have
- 21 you seen that?
- 22 A Yes.
- 23 Q Did you take that photograph?
- 24 A Let me see. Yes, I did.
- 25 Q And it's taken from a distance of eight, ten,

1 twelve feet from the depression?

2 A I can't recollect. All I know is I took that
3 picture.

4 Q Okay. Do you agree that the depression in
5 Plaintiff's Exhibit 7, the photograph, is on the far
6 side of the parking space with the red truck?

7 A Yeah.

8 Q Okay. And you're standing obviously in the --
9 somewhere in the parking space next to it; correct,
10 adjacent to the next parking space.

11 A I really -- I honestly can't say that that would
12 be the case or not.

13 Q Okay.

14 A But I took that picture.

15 Q Yeah.

16 A I can well tell you that.

17 Q And you took it because you can see the depression
18 in this picture; correct?

19 A Well, I took it because that's where Christine
20 fell.

21 Q And you took it because you can see the depression
22 in the photograph; yes?

23 A Yeah. When I'm standing over it, I can.

24 Q But from this distance you can clearly see the
25 depression; yes?

1 MR. GOLDFINCH: Objection, leading.

2 THE WITNESS: I guess, yeah.

3 THE COURT: It's cross-examination, he may.

4 THE WITNESS: I mean, I can see it, sure.

5 Q Yeah, right.

6 A I got my glasses on, I can see it. I'm looking
7 for it, right.

8 Q You took the picture; right?

9 A Yeah.

10 Q Okay. And you could see it then, and you could
11 see it today; right?

12 A That is correct;

13 Q All right. So the suggestion that you can't see
14 the depression until you're right up on it, that's not
15 really accurate; is it? You can see it from eight, ten
16 feet?

17 A Like I told you, I don't know where I was standing
18 when I took that picture, except for that it's probably
19 over the top of it. All I know is I could tell you is
20 I took that picture, and that's where she fell. I
21 can't testify to anything else I don't know.

22 Q Okay. You can see the picture from the distance
23 you were standing when you took the photograph; yes,
24 whatever that is?

25 A I can see that picture, sir, yes.

1 Q You told us that -- first of all, how did you get
2 word that Ms. LeFont had fallen?

3 A Someone came to the booth and told me that she had
4 fallen in the parking lot.

5 Q Do you recall who it was?

6 A Not to my recollection, no. But I did go outside,
7 and that's when I saw Christine on the ground right
8 near that area. And then a gentleman came around with
9 a -- there was a gentleman there, and then some -- and
10 then they came around with a golf cart later on. But
11 there was actually three of us, there was one gentleman
12 that was there, myself, and then of course Christine.

13 Q All right. How many cars were in the center
14 parking area when you got there?

15 A I couldn't tell you that. I mean, I wasn't
16 counting cars.

17 Q But some cars?

18 A I would assume if they were in that picture, I
19 mean, and that's after the fact. I couldn't tell you.
20 I mean, I wasn't looking at cars, I was taking care of
21 my wife.

22 Q Okay. Did you have to weave through cars to get
23 to her?

24 A No, that --

25 Q How did you get to her?

1 A There was -- that whole thing was all roped off or
2 whatever.

3 Q Were you there when the golf cart approached her?

4 A Yes -- no -- yes. Because I helped her on the
5 golf cart with the other gentleman.

6 Q Okay. Tell me from which direction the golf cart
7 came.

8 A It came -- let me see. It wound up over here
9 (indicating). So I would say the golf cart came from
10 -- it either came from this side here, or it came from
11 that side (indicating). I'm not exactly sure. But all
12 I know is that she was on the golf cart with the other
13 gentleman that was there, and I was there also.

14 Q Okay. But you're there, then the golf cart
15 arrives; is that your testimony?

16 A Am I where, where she is?

17 Q Isn't that your testimony that you come out, you
18 go to the area where you found her?

19 A Yes.

20 Q And then a golf cart arrives?

21 A Yeah. The golf cart came down, put her on the
22 golf cart, and that's where they brought her up to the
23 area.

24 Q Okay. My question is from which direction did the
25 golf cart approach? Like when the golf cart stops --

1 A I can't certainly tell you that, sir. I mean, in
2 all due respect is that I wasn't looking at logistics,
3 I was trying to take care of what was going on.

4 Q Is it your -- go ahead?

5 A I mean, I'm just telling you what I know and what
6 I saw and what I can, you know, tell you.

7 Q Okay.

8 A It was something that was -- it wasn't like, you
9 know, we were making an entrance into a ballroom or
10 something. It was -- she was on the ground, she was in
11 pain. I wasn't there to interview her, I was there to
12 help her.

13 Q Thank you. My question is did you tell us earlier
14 that you helped put Ms. LeFont onto the back of the
15 golf cart?

16 A Yes, that's -- there was the gentleman that was
17 there and myself. And that's how they got -- she got
18 on the golf cart, and then the golf cart moved up to
19 the area up there. But where it was exactly or how
20 many cars or whatever, that's...

21 Q Well, when you helped to put Ms. LeFont on the
22 back of the golf cart, was the golf cart -- did you
23 have to put her on the back facing this
24 way (indicating) --

25 A I don't know, sir.

1 Q -- or the back this way (indicating)?

2 A Honestly, really?

3 Q Yeah, really. Yeah, really.

4 A I understand that. But how could you ask me a
5 question like that that I cannot answer.

6 THE COURT: Sir, you don't need to ask a question,
7 you just need to respond if you can. If you can't, you
8 can't.

9 THE WITNESS: I can't tell you. I mean, honestly
10 I can't give you those specs. All I know is that she
11 fell there, we got her on the golf cart, she went up,
12 she got ice, the ambulance came and took her to the
13 hospital.

14 Q Okay.

15 A That's all I can tell you.

16 Q Where was Ms. LeFont when the ambulance arrived?

17 A I don't know, sir.

18 Q You don't?

19 A I mean, I couldn't tell you in great conscience
20 where she was on that piece of thing there. I can't --

21 Q I'm not asking for an exact place, but --

22 A Well, all I can tell you, sir, is what I told you
23 before. And if that's not good enough, I don't know
24 what else to say.

25 Q I don't recall what you told me. I don't know

1 that I asked you a question about where the ambulance
2 was. When the ambulance arrived, where was Ms. LeFont?
3 That's the question, if you know.

4 A She was there at the golf cart. And then they put
5 her into the ambulance.

6 Q Right, okay. Then where was the golf cart when
7 the ambulance arrived?

8 A I don't know sir, I can't pinpoint on that
9 particular picture and tell you where she was.

10 Q Can you give me an approximate area.

11 A She was in the convention center parking lot.

12 Q Can you give me any greater specificity about
13 where?

14 A I couldn't do that without any -- what's the word
15 I want to ask -- I mean, what's the word I want to say.
16 I can't say definitively where it was, sir.

17 Q Do you know definitively where it was that Ms.
18 LeFont fell?

19 A Well, yes, I did.

20 Q Okay. Mr. Goldfinch asked you a question about
21 did she convey, did Ms. LeFont convey anything to you,
22 and I think your answer was something like, she was a
23 mess; is that correct?

24 A Yeah.

25 Q She's having a hard time communicating with you;

1 is that what she was a mess means?

2 A No, she was in pain. I mean, we didn't talk about
3 the weather, we didn't talk about baseball. I mean, we
4 talked about she was in pain. And what I was -- you
5 know, I can't even tell you the state of my own mind
6 except for that it was very tumultuous.

7 Q Mr. Gambelli, if you thought that Ms. LeFont
8 needed some type of counselling or therapy because she
9 was getting depressed for any reason, you would
10 certainly request or even insist that she go seek out
11 that help; yes?

12 A I'm not -- I'm not qualified to answer that
13 question.

14 Q So do you --

15 A I'm not a psychiatrist. I'm not --

16 Q I know, you're not.

17 A I know I definitely saw a change in her, but I
18 can't -- I can't answer that question.

19 Q The question was if you thought she needed to see
20 somebody, if she would benefit from therapy or
21 counselling, you would certainly make that
22 recommendation to her; wouldn't you?

23 A Well, yeah. But I -- I would assume if that was
24 the case. But I didn't make that particular call or
25 whatever the situation was.

1 Q Correct. If you thought she needed to see
2 somebody, you would have certainly made the
3 recommendation. But in this case you didn't; did you?

4 A Well, I mean -- and again, that's -- that wasn't
5 necessarily my thoughts. My thoughts were is that
6 she's totally incapacitated, she can't do anything for
7 herself. I have to do all of the things for her. I
8 mean, I was just hoping that she would get well and
9 heal, and so on and so forth, and maybe this whole
10 traumatic situation would be able to, you know,
11 disappear in a period of time.

12 But I can't comment to her -- you know, how she --
13 I mean, I could see how she was feeling, but I don't
14 think she needed any psychiatric counselling or
15 whatever.

16 Q You do not?

17 A I mean, and again, it never crossed my mind. It
18 wasn't something that, you know, I was busy with -- I
19 mean, she couldn't sleep, she couldn't take care of
20 herself, she couldn't eat herself. I mean, this is in
21 between things. I don't know what else to tell you.

22 Q After July of 2014, when Ms. LeFont is at that
23 point dismissed or released from Dr. Everman, the hand
24 doctor, did you ever recommend that she go back to Dr.
25 Everman in the next, let's say, six months or to see

1 any other doctor to go to an ER to receive any type of
2 treatment?

3 A Well, and again, I mean, that was up to...

4 Q I'm asking did you make a recommendation to her,
5 please, honey, go see a doctor, did you ever do that?

6 A Well, yeah. I mean, I took her to the doctor's.

7 Q Did you take her after July of 2014 is my
8 question.

9 A I can't recall that, if I took her after 2014. I
10 mean, all I know is that she fell in that parking lot,
11 and it really damaged her and her spirit and
12 physically, and so on and so forth, and...

13 Q Okay. And after she was released by the doctor,
14 did you ever suggest to her, please follow up with your
15 doctor, honey; did you ever suggest that?

16 A Well, no. Evidently over the period of time --
17 and I don't necessarily know that particular
18 timeline -- I mean, as she started to progress to do --
19 you know, to feel better and so on and so forth, it --
20 it wasn't -- it wasn't necessarily a topic of
21 conversation. It was more like, wow, I mean, she went
22 through all of this stuff. I don't know what you're
23 trying to get at, so...

24 Q I'm just asking a question.

25 A And I'm answering to the best that I can, but --

1 Q All right.

2 A I don't know what you want me to say.

3 Q I'm just going to ask you a yes or no question.

4 After Ms. LeFont was released from Dr. Everman in July
5 of 2014, did you ever suggest to her, please, honey, go
6 back and follow up with Dr. Everman or go to the ER or
7 any other medical specialist for excruciating pain in
8 any parts of her body?

9 A No. I never had that conversation with her.

10 Q Okay. Mr. Gambelli, do you have any evidence that
11 the City of Myrtle Beach was aware that there was a
12 depression in the employee parking lot?

13 A I wouldn't know that.

14 Q Okay. Do you know how the depression that's
15 exhibited in photographs or Exhibits --

16 A No, sir.

17 Q -- 4, 5, 6 and 7, how it came to be?

18 A No. How would I know that.

19 Q Do you have any information or evidence that would
20 suggest that the City had notice of the depression in
21 the employee parking lot?

22 A No, I wouldn't know that either.

23 Q Okay. Do you have any evidence that there have
24 been any previous incidents in the employee parking lot
25 involving a trip and fall or slip and fall or what have

1 you in this area depicted in photographs, I believe, 4,
2 5, 6 and 7?

3 A No, sir.

4 Q Okay.

5 MR. BRYAN: I have nothing further, Your Honor.

6 THE COURT: Okay. Redirect?

7 MR. GOLDFINCH: Yes, sir, real fast.

8 REDIRECT EXAMINATION

9 BY MR. GOLDFINCH:

10 Q I've heard you, Mr. Gambelli, call Ms. LeFont your
11 wife multiple times, and I've heard her call you her
12 husband. Y'all consider each other husband and wife?

13 A Absolutely, yes.

14 Q You've lived together for a long time?

15 A Yes, we have.

16 Q Why didn't you ever get married? Not that it
17 matters, but why didn't you ever get married?

18 A There was really no need to, I mean, we share
19 everything and...

20 Q You both been through a divorce before, or she had
21 been through a divorce before?

22 A No. I lost my wife in 2007.

23 Q So you're a widower?

24 A Yes, sir.

25 Q Okay. All right. I heard a lot of back and forth

1 about where you and the golf cart and Ms. LeFont were
2 when the ambulance came.

3 A Um-hum.

4 Q Okay. You told me earlier where you parked, you
5 told me earlier where she fell, you told me earlier
6 where you found her. And you told me approximately
7 where she was when the golf cart took her?

8 A That's correct.

9 Q Okay. I don't need a GPS coordinate from you,
10 sir. But all I need from you is that a general area of
11 where the golf cart was when she was picked up by the
12 ambulance.

13 A Okay. Where she was picked up by the ambulance.

14 Q Just draw a big circle in the general area.

15 A It was in this area right over here (indicating).

16 Q Okay. That's all I need to know, very simple. Do
17 you remember if there were any other witnesses around
18 when you were there, was there anybody else that saw?

19 A I mean, the only recollection it was me, there was
20 the gentleman that was by where she was. And then that
21 was it. I mean, I didn't see anybody else.

22 Q You didn't see any other employees of the
23 convention center, anybody from Hackney, anybody like
24 that?

25 A No. It was -- it was, you know, the beginning of

1 the -- or it was the last day of the convention, but it
2 was the -- it was on a Sunday so they had church.

3 Q All right.

4 A And of course after that, it started at
5 11 o'clock.

6 Q Okay. So the people that actually came and got
7 her in the golf cart, to your knowledge, were not
8 witnesses to the accident; is that correct?

9 A Not to my -- not to my knowledge, no.

10 Q And the only person you know that is a witness to
11 this accident was the person, the man you described
12 earlier?

13 A Yeah.

14 Q Okay, all right. Was that that person that parked
15 next to y'all?

16 A I don't know exactly where he parked, I mean.

17 Q Do you remember what he looked like?

18 A Yeah. He was probably in his forties.

19 Q Okay.

20 A Thin.

21 Q Okay. Do you remember what color hair he had?

22 A Yeah. It was blondish but a little gray in it.

23 Q Okay.

24 A You know, he was...

25 Q Have you ever met Mr. Foley who intends to give

1 testimony about this case as a witness?

2 A I wouldn't know Mr. Foley unless I saw him, but
3 no.

4 Q Okay.

5 A I mean, if I did see him and then I would say, oh,
6 yeah, I've seen that guy before.

7 Q Okay. But the person you saw as a witness, you
8 just told me in your testimony had blond hair?

9 A Um-hum.

10 Q Was tall and thin?

11 A Oh, sorry. Yes. Yes and yes.

12 MR. GOLDFINCH: That's what I need to know. Thank
13 you, sir.

14 THE COURT: Recross.

15 RECROSS-EXAMINATION

16 BY MR. BRYAN:

17 Q Mr. Gambelli, you're a witness, you talked to him
18 for two or three minutes. And you remember his hair
19 color; yes?

20 A Well, I remember -- I remember him distinctively
21 because he was the first person, I guess, there to get
22 to Christine. And I observed everything at that
23 particular point in time. I mean, if it wasn't
24 something of that caliber, like if I walked past
25 somebody or something, would I remember them in detail.

1 I remembered him in detail because he was there.

2 Q But this happened two years ago, give or take;
3 yes?

4 A Yeah, I would assume so.

5 Q And you were around this gentleman just for
6 several minutes; yes?

7 A I would say it was more than several minutes. I
8 was there until the ambulance put Christine in it and
9 so on and so forth. So I would definitely say it was
10 more than a few minutes.

11 Q Mr. Gambelli, you don't know if there may have
12 been other witnesses who were there who left before you
13 arrived; correct?

14 A I couldn't answer that. You're asking me if I
15 knew there was other -- any other witnesses?

16 Q You say there were not any other witnesses who
17 were present but then left before you arrived, you
18 don't know that; do you?

19 A All I know is that what I exactly told you what
20 was going on at that particular point in time. No. I
21 guess that would be a no.

22 Q Okay. And do you remember talking to one of the
23 convention center employees who was preparing the
24 incident report?

25 A I don't -- I don't think -- no, I wasn't -- I

1 wasn't there for when they were writing an incident
2 report, not that I can recall. I'm not exactly sure.
3 I can't definitively say that that was the case.

4 Q Okay.

5 MR. BRYAN: Your Honor, I'm going to put this in
6 and probably tomorrow when my witnesses are here.

7 THE COURT: Mark it as Defendant's-1 for
8 identification.

9 (WHEREUPON, Defense Exhibit No. 1 was marked for
10 identification only.)

11 Q Mr. Gambelli, I'm showing you what's been marked
12 as Defendant's-1 for identification, it's a Myrtle
13 Beach incident report. Contains a number of -- first
14 of all, do you recognize that document?

15 A I can't say if I do or I don't. I mean, it's got
16 all of my name on there, and so on and so forth.

17 Q It does have your name; correct?

18 A Well, somebody wrote all of that in.

19 Q Correct. It also has your telephone number; yes?

20 A Yes, it does.

21 Q Is that in fact your telephone number, or was it
22 your telephone number in April of 2014?

23 A Yes, and it still is.

24 Q Okay. Then on the second page, is that your
25 signature in the middle of the page?

1 A Yes, it is.

2 Q Okay. So would you agree with me, Mr. Gambelli,
3 that you at some point did have some interaction with
4 someone from the convention center putting together the
5 incident report?

6 A Yes. Now I do.

7 Q Okay. So there may have been other people around
8 Ms. LeFont while she was being tended to other than
9 people that you expressly remember; yes?

10 A I couldn't say. Like I don't know when I actually
11 signed that, whether it was after the fact or whatever.
12 But obviously if I remember that I actually did that,
13 then I would say I did. But I have no reason to lie
14 about it.

15 Q You just don't remember?

16 A No. Exactly.

17 Q Okay.

18 A But obviously I did because that's my signature,
19 and I can't deny it.

20 Q Correct, okay.

21 MR. BRYAN: Thank you, Mr. Gambelli.

22 THE COURT: All right. Thank you, sir. You may
23 step down.

24 THE WITNESS: Okay.

25 (Witness excused.)

1 MR. GOLDFINCH: I think we're finished for the
2 day, Your Honor.

3 THE COURT: Very well. All right, ladies and
4 gentlemen, at this point let's go home, we'll take our
5 recess. First of all, no need to call the answering
6 machine, that message doesn't apply to you. And
7 somebody -- I'm sure people say, well, why does he say
8 that. Honestly, over my career as a judge I've had
9 people do that and not come in. So I do that.

10 Y'all aren't where I am. I have to be reminded of
11 things from time to time, and I appreciate your
12 patience with that. But just plan to be in your jury
13 room, please, by 9:30 in the morning.

14 Please remember that you are not at liberty to
15 discuss this case among yourselves or with anyone else,
16 and that includes anyone that might be at home tonight
17 when you go home. I would imagine the first question
18 is, what are you doing, what's going on. And if you
19 start talking about it, you will have violated the oath
20 that you took because you would have commenced your
21 individual deliberations at that point.

22 You'll finish this case probably tomorrow, I would
23 think. And then if you want to talk about it, you're
24 free to talk about it. But don't discuss it with
25 anyone, even anyone at home, and don't allow anybody to

1 talk with you about the case or talk about it in your
2 presence.

3 Also, and we live in a society that's, it's nice
4 and sometimes it has some negative sides and this
5 happens to be one of them, we've had it happen. Don't
6 conduct any independent research on your own. We've
7 had jurors that do that. And I commend, I mean, that's
8 fine. I would love to start a practice in law 40 years
9 ago with Google, that would have been wonderful, but
10 didn't have that luxury.

11 You can do whatever you want after you finish, but
12 before that if you do any independent research you can
13 damage the whole -- we'll have to retry the case. So
14 please remember that and not have any independent
15 research or consider anything. I'll give you the law
16 at the conclusion, and then you can apply that law and
17 do what you wish to do after that. Thank you for your
18 attention, have a great evening and I'll see you
19 tomorrow at 9:30. Thank you.

20 (WHEREUPON, the jury exited the courtroom at
21 5:03 p.m.)

22 THE COURT: Anything from the Plaintiff before we
23 recess?

24 MR. GOLDFINCH: No, Your Honor.

25 THE COURT: Anything from the Defendant?

1 MR. BRYAN: No, Your Honor..

2 THE COURT: Thank you all. See you at 9:30 in the
3 morning.

4 (The hearing concluded at approximately 5:03 p.m.)

5 (The hearing resumed on Wednesday, September 7,
6 2016, at approximately 9:46 a.m.)

7 THE COURT: Anything from the Plaintiff before we
8 bring in the jury?

9 MR. GOLDFINCH: No, Your Honor.

10 THE COURT: Okay.

11 MR. BRYAN: Nothing, judge.

12 THE COURT: Let's bring in our jury. Thank you,
13 sir.

14 (Discussion off the record.)

15 (WHEREUPON, the jury came into open court at
16 approximately 9:47 a.m.)

17 THE COURT: Good morning, ladies and gentlemen.
18 I'm glad to see you, we came in, they said, well, there
19 was a wreck this morning. And I thought, well, I
20 didn't -- I thought I left Charleston, but that's what
21 happens in Charleston. I live 37 miles from the
22 courthouse, and sometimes it takes me an hour and 30 or
23 40 minutes to go that 37 miles.

24 Good to see you all. I hope that your frustration
25 level is down and we're ready to continue, and I hope

1 you had a restful evening. Thank you very much, I
2 appreciate it. We will continue now, and Mr.
3 Goldfinch, you may call your next witness..

4 MR. GOLDFINCH: Thank you, Your Honor. Your
5 Honor, we would like to call Dr. Bryan Durig.

6 BRYAN ROBERT DURIG, after being duly sworn,
7 testified as follows:

8 THE CLERK: Have a seat, please sir. State your
9 name for the Court, please, sir, and spell your last
10 name.

11 THE WITNESS: Brian Robert Durig, D-U-R-I-G.

12 DIRECT EXAMINATION

13 BY MR. GOLDFINCH:

14 Q Good morning, Dr. Durig.

15 A Good morning.

16 Q Thank you for being here today. Dr. Durig, tell
17 me your occupation, sir.

18 A I'm a mechanical engineer in Columbia with Summit
19 Engineering, and we do basically forensic engineering
20 work.

21 Q How long have you been doing that?

22 A Since June of 1991, so it's 25 years.

23 Q Okay. And what are your duties and
24 responsibilities?

25 A We investigate different types of accidents,

1 basically to figure out what happened. We look at it
2 from an engineering aspect of, depending on what type
3 you're looking at, to basically look at it, look at
4 safety issues, look at code issues. And basically give
5 our opinions of what we think occurred.

6 Q What would you say your areas of expertise or
7 specialty would be?

8 A I work in three principal areas, one fire
9 investigations, which deals with a lot of machinery and
10 equipment, premises liability such as this is a fall
11 case, and then some just basic machinery or failure
12 analysis, a pipe fails or a shaft fails, to determine
13 what caused the failure.

14 Q Okay. Tell me a little bit about your education,
15 if you could.

16 A I grew up in Columbia. Went to Roach Northeast
17 High School, went to South Carolina in the department
18 of engineering, graduated in December '84 with a
19 Bachelor of Science, December '85 with a Master's of
20 Science in mechanical engineering, May 1988 with a PhD
21 in mechanical engineering, and August of '93 with an
22 MBA, all from South Carolina.

23 Q Okay. Do you present courses anywhere or
24 seminars?

25 A No. My dad's a professor, my brother's a

1 professor and I won't be one.

2 Q I understand, sir. All right. Any kind of
3 publications?

4 A Graduate school. Research we've done, a few cases
5 we've done. But that was -- most of that was in the
6 '80s and '90s.

7 Q Okay. Registration, licensure?

8 A Licensed engineer in South Carolina and then as
9 well as in North Carolina, Georgia, Tennessee, Florida,
10 Mississippi, Alabama, I believe.

11 Q Okay. Any kind of continuing education we need to
12 know about?

13 A Routinely we have to have 15 hours a year, or 16
14 in some states. So annually, I take numerous courses,
15 some dealing with fire investigation, some dealing with
16 straight safety, some dealing with ADA compliance. You
17 know, just basic mechanical engineering or safety
18 related classes.

19 Q All right. So you've said that term a couple
20 times, mechanical engineering. Tell me, explain what
21 mechanical engineering is, if you would.

22 A It's one of the four principal engineerings. You
23 got mechanical, electrical, chemical and civil.
24 Mechanical is obviously the best of those four, little
25 biassed. But basically look at there's two areas,

1 thermal science which would be heat transfer, fluid
2 flow, and then the mechanic side which would be
3 machinery, materials.

4 My Master's was in the thermoscience and my PhD
5 was in the mechanical side. And then I've taken those
6 issues, went to work at Savannah River site in Aiken
7 looking at the nuclear -- the safety aspects of the
8 reactors there and then transitioned into consulting
9 and investigating accidents and, you know, basically
10 looking at safety issues, basically since I got out of
11 the graduate school.

12 Q Okay. You testified in court in South Carolina or
13 elsewhere as an expert in mechanical engineering?

14 A Yes, sir.

15 Q Okay. You have experience or expertise in
16 hazardous conditions?

17 A Yes, sir.

18 Q Okay.

19 MR. GOLDFINCH: Unless you have any other --
20 judge, I would like to offer him, Dr. Durig, as an
21 expert in this case.

22 THE COURT: Do you care to examine him as to
23 expertise in what field?

24 MR. GOLDFINCH: In mechanical engineering,
25 hazardous conditions, premises liability is what I'm

1 going to be...

2 MR. BRYAN: I don't know that his....

3 THE COURT: I don't think under -- I don't know
4 what the name of the case is, John Freeman testified in
5 the case about his legal expertise for the Court's
6 benefit.

7 JUDGE'S CLERK: Dawkins.

8 THE COURT: He can testify in mechanical
9 engineering and any code dealing with hazardous
10 situations. I will not qualify him or allow him to
11 testify or render opinions on premises liability.

12 MR. GOLDFINCH: Understood.

13 THE COURT: Okay.

14 MR. GOLDFINCH: Thank you, judge.

15 THE COURT: Do you have any objection to those two
16 areas?

17 MR. BRYAN: Well, if this is a mechanical
18 engineering case, that's fine.

19 THE COURT: Well --

20 MR. BRYAN: To me didn't seem like.

21 THE COURT: -- he can testify to opinions. The
22 relevance issue, that will be something else.

23 MR. BRYAN: Fair enough.

24 THE COURT: Thank you, sir.

25 MR. GOLDFINCH: Thank you, Your Honor.

1 THE COURT: You may proceed, sir.

2 MR. GOLDFINCH: Thank you, sir.

3 Q Dr. Durig, at some point you were asked to
4 investigate this case and render an opinion relative to
5 the safety of the parking lot of the Myrtle Beach
6 Convention Center where Ms. LeFont fell, can you tell
7 me when that was and why and by whom?

8 A I originally talked with Mr. Compton probably
9 sometime in 2015, that he had had a couple cases he
10 wanted me to look at, and this was one of them, and he
11 showed me some pictures of a depression. I'll probably
12 use the word depression as opposed to a pothole or
13 anything else. It's basically not a level surface.

14 And he showed me the photographs. And I said,
15 yeah, that can cause a fall. And I said, let me know
16 what I can do for you. And then earlier this year he
17 sent me a number of documents to review, which included
18 depositions and discovery material and some additional
19 photographs.

20 Q Okay. And what were you asked to do specifically?

21 A Basically review the material and determine if
22 there's a hazardous condition in the parking lot.

23 Q Okay. Did we have terms of engagement that you
24 need to tell us about, contingencies?

25 A I'm pretty easy to work with, I don't require

1 retainers or, you know, formal letters of engagement.

2 Q Is your fee contingent upon the outcome of this
3 case in any way?

4 A No, sir.

5 Q So regardless of what happens here, you get paid?

6 A I hope so.

7 Q Okay.

8 A Not always, but I hope so.

9 Q You told us that you've done testimony in
10 mechanical engineering in other cases here. Have you
11 done cases for both Plaintiffs and defendants?

12 A Yes. About two thirds of my work is Plaintiffs,
13 and about a third of it's defense related.

14 Q Okay. After you're engaged by us, what did your
15 inquiry or your investigation consist of?

16 A Basically review the depositions of Ms. LeFont
17 and, I think, Mr. Edwards, who was the convention
18 center manager that discussed the parking lot in
19 question. Reviewed the photographs, and then I have a
20 pretty substantial research library physically in
21 papers as well as a number of them electronically and
22 basically go to the electronic ones and printed out
23 certain codes that would apply to this area that
24 discuss hazards and how things need to be kept hazard
25 free.

1 Q Did you go out and look at the site and do a field
2 investigation?

3 A I've looked at photographs. I did actually drive
4 by this morning just to orient myself with the
5 photographs. I've seen photographs. Google Earth is a
6 wonderful thing these days, and you can do a lot with
7 Google Earth or street views to familiarize yourself
8 with the general area. I've been to that facility
9 prior to this case on other issues. But for this one
10 the photographs were sufficient to let me see basically
11 the size and the depth of the depression.

12 Q Okay. And this morning when you went by, did you
13 spend some time looking at the depression?

14 A Yes.

15 Q Where the depression was?

16 A Correct.

17 Q Okay.

18 A Well, it originally was. It's patched now, but it
19 was originally in the same location. You can base that
20 on the parking lines.

21 Q Okay. Has the whole lot been paved now, or has it
22 just been patched?

23 A No. It's just one small patch.

24 Q One small patch. Is that one small patch where
25 the hole was?

1 A Yes.

2 Q Okay. Did you become familiar with Ms. LeFont's
3 description of what happened?

4 A Yes.

5 Q Okay. How did you become familiar with that?

6 A Reviewed her deposition where she discussed where
7 she had parked and gave a discussion of how she was
8 walking towards the loading dock and her foot caught
9 something and she stumbled and put her hands out and
10 broke both wrists.

11 Q Okay. Reading through Mrs. LeFont's description
12 of what happened, is that consistent with the way a
13 mechanical engineer would look at the way that that
14 played out?

15 A Yes. It's interfering with the walking of how
16 someone would walk. You catch a --

17 MR. BRYAN: Judge, Your Honor, I don't think Dr.
18 Durig is a biomechanical expert. He's here to testify
19 as to mechanical engineering.

20 THE COURT: I'll sustain the objection, Mr. Bryan.

21 Q Dr. Durig, based on your investigation, were you
22 able to come to any conclusions about whether or not
23 the parking lot in question was in a defective or
24 hazardous condition?

25 MR. BRYAN: Judge, it's -- excuse me.

1 THE COURT: Rephrase your question and consistent
2 with his expertise.

3 MR. GOLDFINCH: Sure.

4 THE COURT: Hazardous condition would be something
5 more of a legal determination.

6 MR. BRYAN: Thank you, judge.

7 MR. GOLDFINCH: Sure.

8 Q Dr. Durig, as an engineer looking at that parking
9 lot, do you see any problems as an engineer that need
10 remedy?

11 A Yes.

12 Q Okay. Could you tell me what they are.

13 A The principal safety issues as we have is a level
14 walking surface with a depression in it, which if you
15 look, asphalt's about an inch and a half per layer.
16 And you can see in the photographs there's basically
17 one layer of asphalt missing, so we know it's about an
18 inch and a half deep.

19 If you look at the white lines, they are a
20 standard of four inches wide, and this one is four to
21 six inches, if you look at the size of the hole versus
22 one of the painted lines which is just up to the right
23 of it in the photograph. So you've got a hole that's
24 about an inch and a half deep and four to six inches in
25 diameter. And that can cause instability, and when you

1 have an --

2 MR. BRYAN: Again, he's talking about
3 biomechanical issues.

4 THE COURT: I think he's -- no, I disagree with
5 you. He's talking about from an engineering
6 standpoint. I overrule your objection.

7 MR. BRYAN: Okay.

8 THE COURT: Thank you.

9 THE WITNESS: From a static standpoint, you got to
10 have stable ground. And when you have one foot that's
11 not stable, you lose your stability. And when you lose
12 your stability you fall. And so in this case, as
13 Ms. LeFont described, her right foot made contact with
14 something and she stumbled. Well, once you start
15 stumbling you lose your stability, and you fall to the
16 ground.

17 The type of hole that is here can cause
18 instability, and in my opinion, based on her
19 description we have a depression that caused that.

20 Q Let's just make sure we're talking about the same
21 spot before we go any further. I would like to draw
22 your attention to what's been labeled Plaintiff's
23 Exhibit 1. Is this an area and a photo that you're
24 familiar with?

25 A Yes.

1 Q Okay. Could you tell me what we're looking at
2 here.

3 A Top view, we got Oak Avenue, or where is Oak.
4 Oak's over here and this is 21st that comes off 17
5 (indicating). There's a back entrance here to the
6 loading docks that go to the Myrtle Beach Convention
7 Center. The accident we have is basically right in the
8 area where this hash marks are, the first parking spot.

9 Q Let me show you a little more of a close-up view
10 of that parking lot. I draw your attention to
11 Plaintiff's Exhibit 3. Is this a picture you're
12 familiar with?

13 A Yes.

14 Q Okay. Is this a parking lot you're familiar with?

15 A Yes.

16 Q Okay. Could you tell me a little bit about it.

17 A Again, the entrance on 21st Street is over here
18 (indicating). This is our convention center here on
19 the right (indicating). The loading dock's right along
20 this wall, you can see the tractor trailers. Ms.
21 LeFont described parking over here near the trees and
22 was heading towards these loading docks (indicating).

23 And as you'll see in the close-up, we have a cross
24 hash here on this end of the parking spaces and
25 there's, I think, seven on each side, so would be 14

1 spaces here (indicating). And when you go back and
2 look at the next close-up one, you'll see these hash
3 marks and you'll see a groove in the asphalt, and
4 you'll see where there's a depression. And that
5 depression is right behind this first parking spot
6 (indicating).

7 Q Okay. Dr. Durig, are there codes or standards
8 that apply to parking lots of this nature?

9 A Yes, sir, both codes and standards that would
10 apply.

11 Q Could you tell me about any of those codes or
12 standards.

13 A The codes would be, in this case, the
14 International Property and Maintenance Code, or IPMC.
15 It's published by the same people that do the building
16 codes, residential codes, mechanical codes. It's a
17 permissive code by the State of South Carolina, and
18 it's up to the individual entity whether or not they
19 adopt it. The City of Myrtle Beach has adopted it, and
20 it's part of their ordinances that you should follow if
21 you're within the City of Myrtle Beach.

22 Chapter 3 deals with exterior or general
23 requirements and 302.3 states that the -- well, says,
24 all sidewalks, walkways, stairs, driveways, parking
25 spaces and similar areas shall be kept in a proper

1 state of repair, comma, and maintained free from
2 hazardous conditions.

3 So the fact that we've got a depression that can
4 cause a fall would be a violation of that section of
5 the code.

6 Q What is the ASTM?

7 A That's an industry standard, ASTM F 1637, that
8 basically states...

9 Q What industry, Dr. Durig?

10 A ASTM is the American Society of Testing and
11 Materials. They produce hundreds and hundreds of
12 standards dealing with construction of buildings,
13 dealing with mortar, cinderblocks, glass, many, many
14 different portions or materials related to the
15 construction of a building. And this one's titled,
16 Standard Practice For Safe Walking Surfaces, and it
17 addresses new construction as well as maintaining
18 existing structures.

19 Q Okay. What does the ASTM F 1637, how does that
20 apply in this case?

21 A It will help you define what is a hazardous
22 condition. When the IPMC says you need to maintain it
23 free of hazards, this helps define some of what those
24 hazards will be or can be.

25 Q Okay, all right. And the IPMC, again, is a

1 standard?

2 A No, it's a code.

3 Q It's a code?

4 A It's adopted by the City of Myrtle Beach as one of
5 their ordinances.

6 Q Okay, all right. And is the depression that we're
7 talking about, the pothole in the ground, is that
8 depression a violation not of the code in and of
9 itself, but if you as an engineer were looking to be in
10 compliance with this industry standard, would that
11 depression in the asphalt be in compliance with the
12 industry standard?

13 A No. There's several sections of the standard that
14 it would violate.

15 Q Okay, all right. Dr. Durig, to a -- I'm going to
16 ask you some questions, and I want you to answer those
17 with the understanding that I'm asking you to a
18 reasonable degree of engineering certainty; okay?

19 The parking lot where Ms. LeFont fell, was it
20 being maintained in accordance with industry standards?

21 A No, sir.

22 Q Okay. The pothole or depression, would it present
23 a fall hazard to anyone walking in that area?

24 A A potential fall hazard to anyone walking in that
25 area, yes, sir.

1 Q Okay. Is that unsafe condition, is that unsafe
2 condition that you mentioned there that's in violation
3 of the industry standards, is that a condition that
4 could cause a fall to anyone in that particular area?
5 I wanted to rephrase my question because I want to go
6 back to this picture.

7 A Okay.

8 Q And I want you to take a take a close look at
9 where you said the pothole was. Is that in an area
10 where someone would be walking normally?

11 A Yes. You'd walk behind the cars to get access to
12 the building.

13 Q Okay.

14 A If you park anywhere along these -- this tree
15 line, it would be an area that would be a foreseeable
16 pedestrian path, somewhere that it is foreseeable that
17 someone will be walking.

18 Q So that pothole is not in a parking space?

19 A No. It's in the driveway area.

20 Q Okay. So that is a foreseeable place for someone
21 to walk; is that what you're saying?

22 A Yes, sir.

23 Q And therefore -- and therefore, in your opinion
24 within a reasonable degree of engineering certainty, it
25 is a what?

1 A It's a fall hazard.

2 Q Okay. Are all of these opinions and conclusions
3 expressed by you today expressed within a reasonable
4 degree of engineering certainty?

5 A Yes, sir.

6 Q Does this parking lot, is there a normal parking
7 lot, or does that parking lot receive additional
8 traffic? In your opinion as an engineer, is there
9 anything about this parking lot that could potentially
10 cause it to, you know, to wear and tear faster than
11 anything else?

12 A I mean, it's obviously in the loading zone, so
13 you're going to have tractor trailers coming in and out
14 of the convention center. I don't know how many
15 conventions they have weekly or monthly, but every time
16 you have one you'll have larger trucks coming in and
17 out of this area to access it, as opposed to some other
18 corner lot which may not get the tractor trailer
19 traffic.

20 Q And do large trucks cause more wear and tear on
21 infrastructure than say a normal parking lot?

22 A They will. And they should be designed to handle
23 the heavier loads of a tractor trailer as opposed to a
24 standard passenger vehicle.

25 Q Dr. Durig, I would like to call your attention to

1 Plaintiff's Exhibit 4. Is that the hole or where you
2 witnessed the patch that you mentioned?
3 A Yes.
4 Q Okay. Plaintiff's Exhibit 5. Same question, sir?
5 A Yes. Same spot.
6 Q Plaintiff's Exhibit 6.
7 A Yes, sir.
8 Q And Plaintiff's Exhibit 7, same question.
9 A Yes, sir. Same hole.
10 Q Dr. Durig, yesterday, we spent a little time
11 talking about this hole. And it looks as though this
12 picture has something in it, that the hole has
13 something in it. Do you see something in the hole, a
14 different color?
15 A Yeah. There's some dirt, looks like or --
16 Q Okay.
17 A -- debris.
18 Q And what are you referencing there, what --
19 A Just the brownish color versus the --
20 Q Okay.
21 A -- gray and black and white.
22 Q Okay. And is that a fairly close up or a fairly
23 far shot?
24 A That's fairly close.
25 Q Okay.

1 MR. BRYAN: What exhibit number?

2 THE WITNESS: Four.

3 MR. GOLDFINCH: Plaintiff's Exhibit 4 is what I'm
4 referencing, what he's referencing.

5 Q Now, I would like to draw your attention to
6 Plaintiff's Exhibit 6; is that a little farther away?

7 A Yes.

8 Q Okay: Do you -- can you still see the dirt that
9 you mentioned in Plaintiff's Exhibit 4 from farther
10 away?

11 A No, I do not.

12 Q Okay. In your opinion as an engineer, does that
13 create additional hazard that you would need to take
14 into consideration if you were repairing that parking
15 lot or engineering this parking lot?

16 A No. I mean, the depression itself needs to be
17 repaired.

18 Q If you were repairing the parking lot?

19 A I'm not sure of the question.

20 Q The question is, sir, that there is a obviously a
21 hole that you identified here. I think you've
22 identified that it's easy to see that close up. And
23 you've identified that it's not easy to see from far
24 away. Is that a hazard that needs to be repaired
25 because of the condition?

1 A Well, it needs to be repaired because it's deep
2 enough to cause instability if somebody's walking. The
3 fact that people are going to be walking through here
4 looking for cars, you don't look at your feet when you
5 walk. And so, you know --

6 MR. BRYAN: Judge.

7 THE COURT: I sustain that.

8 MR. BRYAN: -- I object to his testimony and move
9 to strike.

10 THE COURT: The jury will disregard the last
11 statement, it exceeds his expertise. He's answered the
12 question, Mr. Goldfinch.

13 MR. GOLDFINCH: Yes, sir.

14 THE COURT: Thoroughly, I think.

15 MR. GOLDFINCH: Yes, sir. Those are all the
16 question I have for now.

17 THE COURT: Great.

18 MR. GOLDFINCH: Thank you, Dr. Durig.

19 THE COURT: You may cross examine.

20 MR. BRYAN: Thank you, judge.

21 CROSS-EXAMINATION

22 BY MR. BRYAN:

23 Q Dr. Durig, we meet again.

24 A Good morning.

25 Q Thanks for being here. Just a couple questions

1 just for clarification really. So you did not go to
2 the convention center to take measurements or anything
3 before developing your opinions for the Goldfinch
4 Winslow law firm; is that correct?

5 A Correct. The photographs were sufficient for me
6 to get the depth and the width of the depression.

7 Q Okay, so they provided you photographs. When you
8 got the photographs, did you have any difficulty
9 observing the depression in the photographs?

10 A No. I have a -- I was looking for what stands out
11 in that photograph that shouldn't be here.

12 Q They are easy to see?

13 A Easy for me to see.

14 Q The question is, it was easy to see in the
15 photographs?

16 A It's easy for me to see, yes, sir.

17 Q Okay. Before developing your opinions, did you
18 speak to Mrs. LeFont about her incident?

19 A No. I mean, I read her deposition, so I
20 understood her description of how the accident
21 occurred.

22 Q But you did not talk to Ms. LeFont actually?

23 A No, sir, not directly.

24 Q And the photographs you were provided, you told us
25 you were provided photographs at first?

1 A Correct.

2 Q You got -- it sounds like from earlier you got two
3 sets of information. The first back in 2015, I think,
4 Mr. Compton provided you photographs, you said;
5 correct?

6 A He showed me photographs that had a depression in
7 it, and I said, yes, that's a fall hazard.

8 Q Okay.

9 A And I said, let me know if I need to do anything
10 else. And then he provided me the additional
11 documentation.

12 Q All right. But the first set of photographs
13 concerned that depression area; correct?

14 A Correct.

15 Q And then sometime later they call you back and
16 say, we'll send you more information, you got the
17 deposition transcript?

18 A Correct.

19 Q And then you said additional photographs?

20 A Well, he provided me copies of them. The first
21 time I saw them he showed them to me, he had them in
22 his possession.

23 Q You met in person?

24 A Yes.

25 Q You met in person?

1 A Yes.

2 Q Okay. All right, the second set of documents,
3 were they copies of the first documents -- first photos
4 you had seen, where they copies?

5 A Yes. And there may have been one or two more.

6 Q Okay.

7 A But they were of the depression showing the basic
8 size of it.

9 Q And that's my real question here. All of the
10 photographs you've seen are of that one area where
11 there's the depression, behind -- you know, looking at
12 what is Exhibit 3, you know, behind the first parking
13 space in this center parking area; is that correct?

14 A Of the depression, yes.

15 Q And those are the only photographs you were
16 provided?

17 A I mean, I've got other photographs of the same
18 general area of showing some signs and stuff. But of
19 the depression, those are -- that's the only depression
20 that I've been shown. If there's additional
21 depressions, I haven't seen those photographs.

22 Q What other areas of the parking lot have you been
23 shown? Do you have your file with you?

24 A Yes, sir.

25 Q Okay. What signs -- let's see, let's start with

1 what pictures of signs have you been provided?

2 A There's four sets of photographs, I think some of
3 them had two to a page.

4 Q All right. And tell the jury what those signs
5 indicate.

6 A These are -- basically this one is a close-up,
7 says, convention center staff parking only. Those
8 are -- another one on a pole says the same thing,
9 convention center staff parking only. But they are in
10 the opposite direction. This one shows the sign up
11 front Myrtle Beach Convention Center, public parking,
12 loading dock! This one says, no convention center
13 parking. Excuse me.

14 This sign has two up on a pole that says,
15 convention center parking use, follow street entrance
16 ahead. And then a blue one underneath that, convention
17 center loading dock. And then there's a yellow one
18 underneath that, all vendors enter from Farlow Street.
19 And then there's one more that's between 21st and where
20 the parking spot -- or the parking area that Ms. LeFont
21 parked, and there's a crossbar on it. It says, do not
22 lift gate. And then there's one that says, no through
23 traffic.

24 Q Okay. The only opinions you have today are those
25 relating to the indention that was shown to you that

1 the jury has seen in Plaintiff's Exhibit No. 4?

2 A Yes.

3 Q Is that correct?

4 A The depression. Indention, I use depression.

5 Q What did I call it?

6 A Indention.

7 Q Indention. Depression. Okay, I'm sorry. But
8 your opinions and your analysis relate to that area;
9 correct?

10 A Correct.

11 Q And only that area; correct?

12 A Correct.

13 Q All right. If Ms. LeFont actually fell at a
14 different area, you have no opinions regarding that
15 other area; correct?

16 A Correct. I'm not aware of that, but okay.

17 Q Okay.

18 A But if she fell somewhere else, then I've not
19 inspected photographs of that other area.

20 Q Okay. When you talk about this foreseeable
21 walking area, it was not maintained in accordance with
22 the standards, you're really talking about that one,
23 what did you say, four by six or four by five area?

24 A Yes, that whole area is four to six inches in
25 diameter. Or the general area of those photographs is

1 probably a little bit bigger, but yes, that specific
2 depression, I would say it was four to six inches in
3 diameter, inch and a half deep.

4 Q Okay. So when you say that the walking area or
5 the walking surface doesn't apply with the code or the
6 standards, you're talking about just that small spot;
7 correct?

8 A Correct, where the fall hazard is, yes.

9 Q Okay. And if Ms. LeFont had walked, let's say,
10 eight inches to the left or eight inches to the right,
11 you wouldn't be offering the same opinions?

12 A No. I'd offer the opinion that it's a hazard, but
13 it wouldn't be related to her fall if --

14 Q Right.

15 A -- she didn't trip over it, right.

16 Q If she walked eight inches to the right or eight
17 inches to the left, there is no trip hazard there;
18 correct?

19 A No. There's a trip hazard there. She didn't
20 interact with the trip hazard.

21 Q If she walked around it?

22 A Correct. That trip hazard wouldn't have caused
23 her to fall.

24 Q Fair enough. And, Dr. Durig, you don't know what
25 caused the indentation or depression; correct?

1 A No. You can see some grooves in the asphalt right
2 beside it where something is drug on it. But, you
3 know, it's basically crumbled and been removed, the
4 pieces have been taken out.

5 Q Thank you. Do you see -- typically if you have a
6 hole in asphalt, aren't you going to see cracks?

7 A You can. It depends on if it was -- something was
8 there or somebody put a stabilizer for a lift or
9 something, you could damage a small area and not
10 necessarily damage the whole area, but...

11 Q What is a stabilizer for?

12 A Just the outriggers on a JLG lift or a Genie lift.

13 Q Okay. In the photographs you've seen of this
14 indentation, are there any cracks?

15 A There's some grooves just a couple feet away from
16 it, which are, you know, not your standard -- there's
17 two sets of grooves that run parallel to where the hole
18 is that something's been drug along there.

19 Q Are there any cracks like migrating out from
20 this -- from the indentation or depression, as you call
21 it?

22 A No.

23 Q Okay. And if you've got ahold of asphalt, aren't
24 you typically going to see like spider webbing of
25 cracks in asphalt over time, rain, weather?

1 A If it's related to improper sub-ground underneath
2 it where it hasn't been properly compacted, yes, you're
3 going to get things settle over time. But if you have,
4 as I say, something impinging on it from the top, it's
5 just going to be in that one small area.

6 Q Okay. So in this case without the crack
7 spreading, that suggests to you that there is the
8 sub -- the subsurface is stable?

9 A Yes, yeah.

10 Q Okay.

11 A You would have tire marks and grooves.

12 Q Okay.

13 A But I don't see those.

14 Q Okay. And Dr. Durig, you get paid for your
15 testimony; correct?

16 A I get paid for my time. If I sit here for eight
17 hours, I get paid eight hours.

18 Q Sure. How much time have you invested into
19 Mr. Goldfinch in the case?

20 A Probably seven to ten hours.

21 Q How much of that is simply driving?

22 A Probably none of that.

23 Q None of that?

24 A Yeah. But that's just looking at the material,
25 reviewing everything and getting all the research

1 material. And I drove down today, and it's about three
2 hours from Columbia.

3 Q Okay. And you told us that, if I heard you
4 correctly, you have like three areas of expertise?

5 A Three areas I principally work in, yes, sir.

6 Q Fire investigation, premises liability and --

7 A Machinery.

8 Q -- fall cases, and then machinery failure
9 analysis; right?

10 A Yes.

11 Q Premises, the fall cases, is that the largest part
12 of your forensic work?

13 A Case wise, yes. It's probably 50 percent. So
14 I'll probably do a hundred of those a year.

15 Q Okay. Let's just talk about that kind of work,
16 trip and fall, slip and fall cases. In those type
17 cases would you agree with me that you are hired the
18 vast majority of time by plaintiff's counsel like
19 Mr. Goldfinch?

20 A Yes. More Plaintiffs than defense in those, and
21 as well as any of the cases, but yes.

22 Q But in trip and fall, slip and fall cases, the
23 vast majority of your work is for Plaintiffs; isn't it?

24 A Yes.

25 MR. BRYAN: Thank you, Dr. Durig. Judge, I have

1 nothing further.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. GOLDFINCH:

5 Q Dr. Durig, you did in fact spend a little time
6 with Ms. LeFont talking about the case; didn't you?

7 A This morning, yes.

8 Q Did she describe in detail in her own words how
9 the fall happened?

10 MR. BRYAN: Judge.

11 THE COURT: Yes.

12 MR. BRYAN: I'm going to object on hearsay
13 grounds.

14 MR. GOLDFINCH: I'm not asking what she said, I'm
15 asking --

16 THE COURT: That's fine. He's an expert, he can
17 render opinions under the rule. As long as he confines
18 it to the rule, that will be fine.

19 THE WITNESS: Yes, her description was the same as
20 what I read in her deposition.

21 Q Thank you. A question was asked of you if she
22 walked eight inches to the left or eight inches to the
23 right she wouldn't have tripped in that hole, I think
24 was the way that question was asked. If she walks
25 eight inches to the right, does she have a problem

1 walking there, assuming that this parking lot's full?

2 A She may be interfering with cars or running into
3 cars that are parked there.

4 Q If she walks eight inches to the left, is that a
5 prudent thing to do either, sir?

6 A Well, then she's walking down more towards the
7 middle of the driveway, so you'd have to be looking out
8 more to see if there's any vehicles coming.

9 Q So is this the most likely place for someone to
10 walk?

11 A Typically --

12 MR. BRYAN: Objection.

13 THE COURT: Sustain the objection.

14 MR. BRYAN: Thank you, judge.

15 THE COURT: That's beyond his expertise.

16 Q When you walked there this morning, did you walk
17 down that path?

18 A Yes.

19 Q Okay.

20 MR. GOLDFINCH: I think that's all I have, judge.

21 THE COURT: Recross?

22 MR. BRYAN: No, sir;

23 THE COURT: Sir, you may step down. Do you wish
24 the witness to be excused, Mr. Goldfinch?

25 MR. GOLDFINCH: Yes, sir, thank you.

1 THE COURT: Any objection?

2 MR. BRYAN: No, sir.

3 THE COURT: You're also free to leave, sir, thank
4 you.

5 (Witness excused.)

6 THE COURT: All right. Call your next witness,
7 please.

8 MR. GOLDFINCH: Court's indulgence, Your Honor.

9 (Discussion off the record.)

10 MR. GOLDFINCH: Plaintiffs rest.

11 THE COURT: Very well. Ladies and gentlemen,
12 thank you very much. At this point there are some
13 matters of law that I need to take up out of your
14 presence. I'm going to ask you to go to your jury
15 room. But do not begin your deliberations and don't
16 discuss the case among yourselves. We'll be with you
17 as quickly as we can. Thank you.

18 (WHEREUPON, the jury exited the courtroom at
19 10:24 a.m.)

20 THE COURT: All right. Any motions from the
21 Plaintiff, Mr. Goldfinch, at this point, sir?

22 MR. GOLDFINCH: I got nothing at this time, Your
23 Honor.

24 THE COURT: Thank you, sir. All right. Mr.
25 Bryan?

1 MR. BRYAN: Yes, sir, judge. We've got a couple
2 motions, directed verdict motions, judge. Judge,
3 first, we submit that the City is entitled to a
4 directed verdict on Plaintiff's claim for medical
5 expenses. There has been no evidence, no testimony, no
6 nothing of any medical bills. And if the Court were to
7 put the issue of medical expenses to the jury, then
8 they are --

9 THE COURT: Well, I'm not going to -- there's no
10 need to direct a verdict at this point, there's
11 nothing that -- I won't charge reasonable and necessary
12 medical expenses. I'll just talk about pain and
13 suffering and loss of enjoyment of life, because that's
14 what the damages are at this point as I see it.

15 MR. BRYAN: What if the jury does, in fact, you
16 know, put in --

17 THE COURT: I don't know what the jury is going to
18 do, Mr. Bryan, that's the problem we got. And to be
19 honest with you, I was thinking about it yesterday,
20 there's plenty of strategies, and some people choose
21 not to for the simple reason it tends to lock their
22 mind into a figure. And so I -- one thing we know, we
23 don't -- because if I direct your verdict, then I've
24 really contradicted a part.

25 The Plaintiff does not have to prove his damages

1 to a mathematical certainty, and that's putting a
2 certain figure on something. Because even if he gives
3 a figure, there's still reasonable and necessary. I
4 mean, you've had it too, I'm sure, where they didn't
5 bring back medicals because they didn't find them to be
6 reasonable and necessary.

7 So I trust the jury and I trust the process. And
8 I'm not going to tell them -- obviously if he argues
9 about medical expenses, you object, I'll probably
10 sustain the objection. And I'll probably state that
11 that's not an issue for the jury, there's no evidence
12 of that. But I understand your motion, but I decline
13 and for the reasons I've stated. And I'm not arguing
14 with you, I just want to put on the record why.

15 MR. BRYAN: That's fine, judge.

16 THE COURT: Thank you.

17 MR. BRYAN: Judge, Defendants also move for a
18 directed verdict on the negligence cause of action.
19 Plaintiff has to show either negligence by the City
20 where Plaintiff alleges she was injured by a hazardous
21 condition. Under the Winterstein analysis, judge, the
22 Plaintiff has to show the Defendant -- excuse me,
23 either a specific act of the Defendant that created a
24 hazardous condition or that the Defendant had actual or
25 constructive knowledge of it.

1 In this case, judge, the alleged dangerous
2 condition is a hole in the parking lot, not the parking
3 lot itself. We talked earlier, the City poured the
4 parking lot, but that's not the issue here. The issue
5 is the hole. And there is no evidence here that the
6 City created the hole. There's no evidence here that
7 the City had actual or constructive knowledge of the
8 hole. Under that -- under the Winterstein analysis,
9 judge, there is no evidence to get the Plaintiff by
10 that.

11 THE COURT: And I've read Winterstein. Was
12 Winterstein the ice maker?

13 MR. NEUSCHAFER: Yes, sir.

14 MR. BRYAN: Yes, sir.

15 THE COURT: See, that's the problem with
16 Winterstein, it doesn't -- to me, I agree with you,
17 just -- I think that the typical thing you hear from
18 the highway department, and this isn't law, this is
19 just the way it works in reality, if you have a pothole
20 and you're damaged, you call them and they say, well,
21 we'll fix it now.

22 Now, the next person that hits it gets it
23 repaired. The first person doesn't get it repaired.
24 And the obvious reason is just what you're just saying,
25 I'm going to charge the jury on hazardous condition

1 they knew or shouldn't know. I hear you, I just don't
2 think I can take Winterstein to apply to something
3 where they created it. I don't disagree with you. But
4 I think it's a jury issue, and that's similar to what
5 Cook said, it's a jury issue, did they create a
6 hazardous condition.

7 MR. BRYAN: Yeah, judge, I went back after we
8 talked earlier about the Cook case, and I looked at
9 Cook. And Cook, I believe, can be distinguished
10 because Food Lion in that case, they put the mats down.

11 THE COURT: Well --

12 MR. BRYAN: Here, there's no evidence that we put
13 the hole in the ground.

14 THE COURT: Well, I didn't say you did. But you
15 put the highway down. And the hole formed in the
16 highway. And the problem we have, Lord knows, the only
17 thing that I'm going to argue that this is that the
18 jury can conclude, I don't know how many potholes --
19 I'm not being critical of highways in Horry County -- I
20 don't know how many potholes I've crossed in Horry
21 County. I don't know how many potholes I'd cross in
22 Charleston.

23 And I'll tell you this. If you walk down the
24 street in Charleston right now, you could fall anytime,
25 anyplace, I guarantee you that. Does that make the

1 State liable? No, it doesn't make the State liable,
2 because it's simply a condition that can exist.

3 Again, hazardous conditions that they know or
4 should be aware that a person wouldn't, that's what the
5 charge says. And that's where we get into
6 distinguishing a pothole that's open to everybody to
7 see. And that's up to the jury. So I appreciate it.

8 I tried a case, we were talking about it the other
9 day, about two years ago concerning the parking lot in
10 the College of Charleston, and the fellow tripped going
11 to a basketball game. And it was over a -- basically a
12 raised portion that had been there forever. Nobody had
13 fallen, I guess, but the jury felt like, yeah, they
14 were responsible. So it's a jury question is all I'm
15 saying.

16 I don't -- I hear you, I don't think I can do
17 that. I think they'd spin it back here as quickly as
18 it got up there. So thank you, sir.

19 MR. BRYAN: Judge, would I be testing your
20 patience if I --

21 THE COURT: No.

22 MR. BRYAN: -- pointed your attention to one other
23 case?

24 THE COURT: Sure.

25 MR. BRYAN: The case of Pringle versus SLR of

1 Summerton. I believe that's a restaurant case where
2 they used --

3 THE COURT: Okay.

4 MR. BRYAN: -- an office where they used chairs
5 and the chair, I think. The question was, was the
6 chair defective, a dangerous condition. And there they
7 didn't use the two-part test, but they also required
8 that there be evidence that use of the chair was
9 negligent. And here I would say, there's no evidence
10 that the City's, you know, maintenance of the parking
11 lot, construction of the parking lot was negligent.

12 THE COURT: Well, other than the fact that we have
13 an expert that said it violated the code. And the
14 question is this, to me. It gets back to something
15 else, it goes back to the law. The law doesn't make
16 them and insure them. And that's what I'm going to
17 charge them. The fact that it violates a code, if
18 we're driving down the road and we have an automobile
19 accident and our taillight's out but we run in the back
20 of somebody, we violated the code, we violated the law
21 because a taillight was out. That's negligence, we
22 were operating a vehicle negligently. Did it have
23 anything to do with anything? No. Did this have? I
24 don't know, that's up for a jury to say.

25 I appreciate that case. Again, it is a

1 well-defined area. And I've granted my share of
2 summary judgments in this, as we talk about Cook. But
3 the problem I have here is I've got an expert who said
4 it's a violation. Whether or not that was the cause or
5 a cause, that's up for the jury. And I think it's a
6 jury call. I think it's close, I'll be candid with
7 you. The other issue I have is it's a city, and we
8 have a gross negligence issue. So that's the other
9 thing, it's not simple negligence for a municipality.
10 I think that's what the law says too in a governmental
11 body.

12 MR. BRYAN: Correct. Judge, we would also move
13 for directed verdict on the grounds that there's been
14 no evidence of a violation of a duty owed to
15 Mrs. LeFont based on evidence that she was a
16 trespasser.

17 THE COURT: A trespasser, that's an interesting
18 proposition. You have a -- you invite the public to
19 come to a program, and anybody that comes to the
20 program is a trespasser?

21 MR. BRYAN: No, sir. First of all, she was
22 invited by HT Hackney, not the convention center.

23 THE COURT: Well, but the convention center --
24 look, are you telling me that -- well, then Hackney was
25 a trespasser. They had the right to invite somebody;

1 correct?

2 MR. BRYAN: Sure, yes.

3 THE COURT: Okay. Thank you, sir.

4 MR. BRYAN: But the parking lot, judge, is really
5 the issue where she was trespassing. She --

6 THE COURT: Listen, that's not going to convince
7 me. Maybe it will convince the ladies and gentlemen on
8 Sumter Street, that will be good. But they'll have to
9 do it, not me. Thank you. I don't buy that for a
10 second. But they may say, judge, you should have.
11 Okay.

12 MR. BRYAN: Judge, we would similarly move for
13 directed verdict on the theory that if Mrs. LeFont was
14 not a trespasser in the employee parking lot, she was
15 at best a licensee. And a licensee is not entitled to
16 the full protections and benefits that an invitee is
17 entitled to.

18 THE COURT: That would be an issue whether I'm
19 going to charge invitee or licensee, I'll hear your
20 argument in that stage. That's one that I was thinking
21 about last night as to what position did she -- I don't
22 believe she's a trespasser. Whether she's an invitee
23 and whether these are licensees, I've got myself
24 reversed on that one too where a person came to correct
25 the line, I think it was a line replacement. And they

1 went and made a repair in Berkeley County. And I
2 thought they were licensees. But the Court said, no,
3 they are invitees, because they are invited to come
4 repair the line.

5 Therein lies the issue that I'll have to address.
6 I understand that, but I'm not going to grant a
7 directed verdict on the differential between the two.
8 So that's not going to win the day.

9 MR. BRYAN: All right, judge. Thank you.

10 THE COURT: But I understand your point there.

11 MR. GOLDFINCH: Thank you, Your Honor.

12 THE COURT: You bet. The other issue in that case
13 in Charleston, one of the things we did, we bifurcated
14 it. And that was because the damages were so
15 incredible. The guy was basically put on dialysis as a
16 result of the blood problem because he had -- he was on
17 blood thinner.

18 And so we tried the negligence issue first. And
19 the jury did come back with negligence on his part. It
20 just was -- but it wasn't over 50 percent, it wasn't
21 even -- it was about 25, I think.

22 So I think that if anything, that's where this
23 case may be. If it's any negligence, I think it's
24 going to be an apportionment issue. I just -- I hear
25 what you're saying, and this may be the case to take up

1 and they come back and say, look, you've got to have
2 what we all function under, what I've said --

3 MR. BRYAN: Yeah.

4 THE COURT: -- it's just my experience that you've
5 got to have some incident, something to put you on
6 notice. Because if we don't, if this is the law, not
7 being critical of any branch of government, but boy,
8 we've got some problems if we've created the nightmare
9 where the State is going to have to respond to every
10 single thing that happens because the roads aren't
11 maintained.

12 Because I'm not a mechanical engineer, but I
13 believe the roads -- I was in Greenville of all places
14 last week, and I think Greenville has, at least to me
15 when I've crossed that county line -- We're off the
16 record now.

17 (WHEREUPON, a brief recess was taken at
18 10:47 a.m.)

19 THE COURT: Okay. Let's bring in our jury.

20 (WHEREUPON, the jury came into open court at
21 approximately 10:52 a.m.)

22 THE COURT: Thank you very much, ladies and
23 gentlemen. And I've noticed that you've occupied that
24 seat now, sat down first. Have you been selected as a
25 presiding juror, or you just like that seat?

1 A JUROR: I just like the seat.

2 THE COURT: You just like the seat. Okay, that's
3 fine. At some point if you'll take up that item,
4 ladies and gentlemen, it would be helpful. But it
5 doesn't have to be done, again, right away. Thank you
6 very much. Okay. We're finished the first part.

7 And you recall when I told you the Defendant, of
8 course, has nothing to prove or disprove regarding the
9 Plaintiff's claim, but they have every right, it has
10 every right to present any additional testimony for
11 your consideration.

12 Mr. Bryan, does the Defendant wish to call any
13 additional witnesses, sir?

14 MR. BRYAN: I would, judge.

15 THE COURT: You may proceed, sir.

16 MR. BRYAN: The City of Myrtle Beach would like to
17 call Brendan Foley.

18 THE COURT: Okay.

19 BRENDAN FOLEY, after being duly sworn, testified
20 as follows:

21 THE CLERK: Have a seat, please sir. State your
22 name for the Court, please, sir, and spell your last
23 name.

24 THE WITNESS: Brendan Foley. Last name is
25 F-O-L-E-Y, first name, B-R-E-N-D-A-N, Brendan.

DIRECT EXAMINATION

1
2 BY MR. BRYAN:

3 Q Thank you, Mr. Foley. Where are you from,
4 Mr. Foley?

5 A I live in Charlotte, North Carolina.

6 Q And what do you do for a living?

7 A I'm a regional sales manager for a company called
8 Body Armor. It's an all natural sport drink. I run
9 North Carolina, South Carolina, Georgia and Alabama.

10 Q All right. Is part of your work responsibilities,
11 do you have occasion to attend food shows at the Myrtle
12 Beach Convention Center?

13 A Trade shows, yeah.

14 Q Trade shows, okay.

15 A Yeah.

16 Q Do you attend a food show or trade show in Myrtle
17 Beach that's put on by a company called HT Hackney?

18 A I did.

19 Q Okay. Is that a show that you regularly attend or
20 that you regularly attended?

21 A That was the first HT Hackney show. But I've been
22 to at least a dozen at the Myrtle Beach Convention
23 Center. My prior, previous employer was Fiji Water.

24 I'm still in the beverage industry. I've at least two
25 to three shows at that convention center per year for

1 the past five, six years.

2 Q Let me ask you this. Did you attend an HT Hackney
3 show in Myrtle Beach two years ago, that would be
4 April 2014?

5 A I did.

6 Q Okay. And at that show do you recall encountering
7 a woman in the employee parking lot who had reportedly
8 fallen?

9 A Yes.

10 Q Okay. Please tell the jury, Mr. Foley, the
11 circumstances under which you encountered Ms. LeFont in
12 the parking lot.

13 A So I been going to the same trade show for six
14 years. I'm a creature of habit, so I park in the exact
15 same spot every single time so I have the same entrance
16 and exit path every time I go or enter.

17 And on one of the occasions I heard a scuffle
18 behind me. I turned around and there was a lady on the
19 ground. I attended to her. It wasn't a long
20 encounter. I can't give you an exact time because I
21 don't remember, it was almost two and a half years ago.
22 But it was fairly brief.

23 Q Mr. Foley, stop there. Let me ask you, get you to
24 back up a second.

25 A All right.

1 Q Do you know the route that you took to leave the
2 convention center? This is the day that you had the
3 encounter with the woman that fell.

4 A Yes.

5 Q Okay. If I provide you a photograph of the
6 convention center, would that benefit you in showing
7 your route?

8 A Sure. Yes.

9 (WHEREUPON, Defense Exhibit Nos. 2 and 3 were
10 marked for identification only.)

11 Q Mr. Foley, I'm showing you what's been marked as
12 Defendant's Exhibit 2 and 3. Just a couple questions
13 first. Do you recognize photographs 2 and 3?

14 A I do.

15 Q Is that, in fact, one a picture of the rear
16 parking area of the convention center and the second an
17 aerial shot of the convention center?

18 A They are.

19 Q Okay. Do those photographs accurately depict the
20 layout of the convention center April 13, 2014, the day
21 we're talking about?

22 A They do.

23 MR. BRYAN: Judge, I would like to move
24 Defendant's-2 and 3 into evidence.

25 THE COURT: Any objection?

1 MR. GOLDFINCH: No objection.

2 THE COURT: Very well. They are admitted without
3 objection, Defendant's-2 and 3.

4 (WHEREUPON, Defendant's Exhibit Nos. 2 and 3 were
5 admitted in evidence.)

6 MR. BRYAN: And judge, if I might, I would like to
7 put the photographs on the board.

8 THE COURT: Sure.

9 MR. BRYAN: And then with the Court's permission,
10 I'd like Mr. Foley with a photograph and with a pen to
11 show his route.

12 THE COURT: That's fine.

13 MR. BRYAN: Okay.

14 Q Mr. Foley, if you'll step down.

15 THE COURT: Just keep your voice elevated,
16 Mr. Foley, when you're down.

17 THE WITNESS: Okay.

18 THE COURT: Thank you, sir.

19 MR. BRYAN: Can we get the lights dimmed without
20 turning them off totally?

21 THE CLERK: No. She'll show you.

22 MR. BRYAN: Let's try. If it's too dark, we'll do
23 the best we can.

24 THE COURT: That's fine.

25 Q Mr. Foley, here's the pen. And I guess using

1 Defendant's Exhibit 2, if you would draw an A where you
2 would be first leaving the convention center, and then
3 draw a line indicating the route you would take to your
4 parking space. Do you understand the question?

5 A I believe so. So I would enter one of these
6 loading docks right here (indicating). I'm parked
7 behind here (indicating), there's a parking lot in the
8 rear back. So I always go out here, this way
9 (indicating).

10 Q And you're headed actually to an area that's off
11 the photograph?

12 A Correct. It's up to the left. And there's a
13 parking lot to the far left.

14 Q Sure. We've seen, it's hard to see here, but
15 there's a -- this is a larger picture.

16 A Yep. So it's this parking lot right here
17 (indicating).

18 Q You can point to it if you want. Just with your
19 finger show where you left.

20 A (Indicating.)

21 Q All right. Now, is that a route that you're
22 familiar with?

23 A Yes.

24 Q Why so?

25 A It's the only route I've ever taken. I park there

1 every single time, less traffic. That's just the route
2 that I take every single time no matter what. You know
3 what, you can see it on here.

4 Q Go over your line with a thicker marker;

5 A (Indicating.)

6 Q Okay. And did you tell us that you attend
7 multiple shows a year at the convention center?

8 A At least two.

9 Q And then how many times you coming in and out of
10 your car each day, let's say?

11 A I can't give you a specific number.

12 Q Approximately.

13 A I mean, you forget stuff in your truck, I go out
14 and make a call. I mean, it's multiple times a day
15 that I'm in and out. I can't give you...

16 Q Three, four, five?

17 A Higher.

18 Q Five, six, seven times a day?

19 A Again, I can't give you an exact time but -- or
20 number, but it's probably ten or more.

21 Q Okay. A day?

22 A Correct.

23 Q And you've been attending two shows for how many
24 years, six, seven years?

25 A 2010, so six years.

1 Q So two shows a year for six years, six, seven,
2 eight times a day; correct?
3 A Approximately.
4 Q Okay. And that is the -- your testimony is what,
5 that's the only route you take?
6 A Correct.
7 Q Okay, all right. On the day we're talking about,
8 what caused you to turn around?
9 A I heard a scuffle or familiar with a tripping
10 sound, and I heard something and I turned around.
11 Q Okay. And what did you see?
12 A I saw a lady on the ground on her kind of side of
13 her hip with her arm on the ground. I attended her, I
14 asked her if she was okay. And then --
15 Q Were you the first person to reach her?
16 A I was the first person there, yes.
17 Q Okay.
18 A And then a golf cart came up, attended to her. I
19 felt like they had everything under control, and I
20 left.
21 Q Okay. Let's -- let me have you look at
22 Defendant's Exhibit 3. This is, again, the employee
23 parking lot just from a different angle. Can you use
24 Exhibit 3 to show the general area of where when you
25 turned around, you see --

1 A I came out here (indicating). And, again, I can't
2 be exact, but it was somewhere in there (indicating),
3 because that's the path that I take.

4 Q Okay. So you hear a noise, you turn around, and
5 your testimony is you saw a woman on the ground in that
6 shaded area?

7 A That is correct.

8 Q Okay. And are you sure she was on the ground and
9 not in a golf cart at that time?

10 A Yes.

11 Q A golf cart did arrive later, though?

12 A Correct.

13 Q Okay. And once the golf cart arrived, did the
14 golf cart move as far as you know?

15 A Not to my knowledge.

16 Q As long as you were there, did the golf cart move?

17 A I don't recall. I don't think so, I don't recall.

18 Q That's fine, that's fair enough. Have a seat. If
19 I need more questions about the exhibits, I'll get you
20 to come down. Thank you. One second. Mr. Foley, you
21 can stay seated. Have you ever been -- can you see
22 what area I've marked?

23 A Yeah. Never.

24 Q Let me ask my question first. Have you ever been
25 to that area of the parking lot?

1 A Never.

2 Q How can you say never?

3 A I have the exact same entrance and exit route.

4 I'm, again, a creature of habit. I find one spot that
5 I park in, and I've been parking there for the last six
6 years. So my car would have never been -- my vehicle
7 would have never been in that area for me to go that
8 direction or way.

9 Q Okay. And do you recall what -- this is two and a
10 half years ago, do you recall what Ms. LeFont looked
11 like?

12 A I cannot be exact, no.

13 Q Okay, all right. How much -- if you can estimate,
14 how much time were you there roughly? Maybe a range.

15 A Again, I can't be a hundred percent sure on
16 anything but the route that I took, and then I saw
17 someone on the ground. But I would, if I were -- had
18 to guess, I would say anywhere from a minute to three
19 minutes. But, again, I'm not a hundred percent sure on
20 that.

21 Q That's fair. And over the last six years that
22 you've been attending shows at the convention center
23 twice a year, coming in and out of your car multiple
24 times a day, have you ever encountered anyone falling
25 at any other time except on that particular day?

1 A I only encountered one person who has fallen.

2 Q And that was on April 13, 2014?

3 A Yes.

4 Q Is that the last day of the HT Hackney show?

5 A It was.

6 Q Okay. Mr. Foley, you and I have talked before
7 today; correct?

8 A Yes.

9 Q If you would, tell the jury, you know, the
10 purposes of our phone calls and when they occurred, to
11 the best of your recollection.

12 A So, again, I'm not exactly sure, but I guess I
13 gave my business card to someone on the grounds, and I
14 was called probably late last year about this. I told
15 my story, we spoke once, and then we were trying to
16 schedule a deposition in Charlotte. There was a lot of
17 phone tag. So a couple times, and then yesterday
18 directions and, you know, logistics to get here.

19 Q Yesterday I got in touch with you and said, our
20 case has been called to trial?

21 A Correct.

22 Q Can you be here in a hurry. Have you also been
23 contacted by the attorneys for Ms. LeFont, attorneys
24 from Goldfinch Winslow?

25 A Yes.

1 Q Okay. Have you told --

2 THE COURT: Excuse me, Mr. Bryan, are we finished?

3 MR. BRYAN: Yes, sir, we can turn the lights on.

4 THE COURT: So we can turn the lights on.

5 MR. BRYAN: Yes, sir. I'm sorry.

6 THE COURT: That's all right.

7 MR. BRYAN: I kind of got used to the dim
8 lighting.

9 THE COURT: I understand.

10 Q And did you tell Mr. Winslow or Mr. Goldfinch,
11 whoever it was, you told them the same things you told
12 me?

13 A Yeah. I actually pulled that photo and e-mailed
14 it to both parties and showed them a better route that
15 I was taking, the exact route.

16 Q Is your testimony today the same thing that you
17 have told Mr. Winslow or Goldfinch in the past and the
18 same thing you told me in the past, has it changed?

19 A I don't believe so.

20 Q Okay.

21 MR. BRYAN: Thank you, Mr. Foley.

22 CROSS-EXAMINATION

23 BY MR. GOLDFINCH:

24 Q Good morning, Mr. Foley. My name is Stephen
25 Goldfinch, I represent Ms. LeFont in this case. Could

- 1 you tell me a little bit about your company.
- 2 A My company now?
- 3 Q Yes.
- 4 A Okay. Because it's a different company?
- 5 Q That's fine.
- 6 A Okay.
- 7 Q Just tell me what.
- 8 A It's a all natural sports drink. It's a healthier
- 9 Gatorade, slash, Power Aid.
- 10 Q What's the name of it, the drink you sell? I'll
- 11 give you a plug here, the drink you sell.
- 12 A Body Armor.
- 13 Q Okay.
- 14 A It's got 10 percent cocoanut water, one seventh
- 15 the sodium, ten times the potassium.
- 16 Q It does sound delicious. What kind of a market
- 17 are you looking for, who do you sell to?
- 18 A I manage -- I don't sell. Well, I guess I -- I
- 19 manage distribution network. I manage our distributors
- 20 through North Carolina, South Carolina, Georgia and
- 21 Alabama. And then I call on retailers, Harris Teeter,
- 22 Food Lion.
- 23 Q Okay.
- 24 A And some smaller C stores, convenience stores.
- 25 Q Okay. How do you get paid?

- 1 A Salary.
- 2 Q So is the success of the company dependent upon
- 3 your salary, or your salary --
- 4 A No. But I do have equity in the company.
- 5 Q Okay, all right, got you. Are you aware that
- 6 Ms. LeFont and her husband are in the same similar
- 7 business?
- 8 A I was not, no.
- 9 Q You aren't?
- 10 A Excuse me?
- 11 Q You aren't aware that they are in a similar
- 12 business?
- 13 A No, I was not aware.
- 14 Q Okay. Are you aware that they sell to the same
- 15 market?
- 16 A I was not. Well, I assume so because that's a
- 17 North Carolina, South Carolina trade show. So I don't
- 18 think they would be in from the West Coast if they were
- 19 at the trade. So I assume it's the same market, yes.
- 20 Q Were you subpoenaed to be here today?
- 21 A Subpoenaed?
- 22 Q Yeah. I mean, did you receive a subpoena from the
- 23 Court?
- 24 A No.
- 25 Q Okay. So you just came freely to testify here

1 today against Mrs. LeFont?

2 MR. BRYAN: Judge?

3 THE COURT: Yes.

4 MR. BRYAN: I object to the characterization of
5 his testimony as against anybody.

6 THE COURT: Sustained. That's argumentative,
7 rephrase the question, please.

8 Q Did you know, Mr. Foley, that a South Carolina
9 subpoena isn't even enforceable in North Carolina where
10 you live?

11 MR. BRYAN: Judge, I object. I didn't issue a
12 subpoena, and whether he knows --

13 THE COURT: Sustain the objection. It's not
14 relevant.

15 Q You don't have to answer that question.

16 A I was just --

17 THE COURT: No, sir. Wait until the next
18 question.

19 THE WITNESS: Okay.

20 THE COURT: Thank you, sir.

21 Q Is it possible that you see them as a competitor,
22 is that a possibility, Mr. Foley?

23 A Absolutely not. I didn't even know their line of
24 work. When I -- when the HT Hackney show, I worked for
25 Fiji Water who sold Wonderful Pistachios.

1 Q Mr. Foley, why did you come here today?

2 A Because I thought I was -- I thought I had no
3 choice.

4 Q Okay. I'm sorry, I thought I understood that you
5 were not subpoenaed?

6 A I'm not an expert in the legal field.

7 Q Did somebody --

8 A During the deposition, someone on your side said,
9 are you willing to show up in court if it happens. I
10 said yes. And then I was told that it's going to trial
11 and that I needed to be here. Trust me, I have --

12 Q Did somebody --

13 A It's three and a half hours away for me.

14 Q Mr. Foley, did somebody tell you that you had to
15 be here?

16 A I assumed that I had to be here.

17 Q But nobody told you you had to be here; is that
18 correct?

19 A I wasn't given, yeah, I guess, a consequence of
20 not being here. I thought that I was supposed to be
21 here.

22 Q Okay.

23 A I guess no one else -- I guess no one actually
24 said, you have to be here, I just assumed because I was
25 at a deposition. I mean, this is the first time ever

1 in a courtroom for me. This is naivety on my part.

2 Q Mr. Foley, do you remember giving a deposition?

3 A I do.

4 Q Okay.

5 THE COURT: Court's Exhibit 2?

6 COURT REPORTER: Yes, judge.

7 THE COURT: Is the original transcript of the
8 deposition taken of Brendan Foley on June 22nd, 2016,
9 portions to be published now pursuant to our rules.

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

12 Q Mr. Foley, you've got a deposition in front of you
13 today that's been identified as Court's Exhibit 2. If
14 you don't mind, I would like for you to follow along
15 with me.

16 MR. BRYAN: Judge, that's not -- that's improper
17 impeachment.

18 THE COURT: Yeah, refer to the line and question
19 that you want to ask him, but we're not just going to
20 read from the deposition.

21 MR. GOLDFINCH: No, sir. That wasn't the intent.

22 THE COURT: Okay, set it up as to the impeachment.

23 MR. GOLDFINCH: Sure, sure.

24 Q Mr. Foley, I just want to make sure I'm clear on
25 your testimony. On page 6, line 21 --

1 MR. BRYAN: Judge, what is the question he's
2 trying to impeach him on?

3 THE COURT: I'll let him ask the question, then
4 you can make your objection. I don't know what it is
5 at this point.

6 MR. BRYAN: But he's reading out of the
7 transcript.

8 THE COURT: The transcript is a Court's exhibit,
9 he's publishing something. I don't know what the
10 question is, and I can instruct the jury if necessary.

11 Q Mr. Foley, do you remember the day in question
12 that the fall happened?

13 A Do I remember the day?

14 Q Yes. Yes, sir. Do you remember the day? I heard
15 you give some testimony earlier. And I'm curious if
16 you remember specific events about that day. I'm going
17 to ask you some questions now. So if you remember the
18 day, that's the first question.

19 THE COURT: Let me under 611(a), let me ask if you
20 could clarify, are you asking him just the day in
21 general or the specific date, is that what you're
22 asking? I need --

23 MR. GOLDFINCH: Yes, sir.

24 THE COURT: Because I'm not sure the answer, how
25 you answer the question. That's the only reason I'm

1 asking that.

2 MR. GOLDFINCH: Sure, yeah. The day in question.

3 THE COURT: Okay.

4 THE WITNESS: Do I remember specific events during
5 that day?

6 Q Yes, sir. Let's start with that. Do you remember
7 what you were wearing that day?

8 A No.

9 Q Okay. Do you remember what Mrs. LeFont was
10 wearing that day?

11 A I do not.

12 Q Okay. Do you remember what kind of shoes she had
13 on?

14 A I can't recall.

15 Q Do you remember what color hair she had, sir?

16 A The only thing that I can be a hundred percent
17 sure on is that someone fell that day and the exit and
18 entrance that I went. Other than that, I can't give
19 you specifics, it was two and a half years ago. I
20 don't have specifics. I don't remember specifics other
21 than someone fell, only one person ever since I been
22 going there has fallen, and I know my route. Other
23 than that, I cannot be a hundred percent sure on
24 anything else.

25 Q So you really don't know if Mrs. LeFont is the

1 person you saw fall?

2 A All I know is I only encountered one person on
3 that day. There was an incident.

4 Q Did you see that incident?

5 A I saw the aftermath of the incident, I didn't see
6 her fall. I attended her after she fell and thought
7 that she was okay. Golf cart came, I didn't see any
8 reason for me to be there any longer because she wasn't
9 in major distress, so I left.

10 Q I'm sorry to interrupt you, sir. Did you attend
11 to her, as you said, did you attend to her while she
12 was on the ground or while she was standing or while
13 she was sitting in the golf cart?

14 A She was on the ground.

15 Q On the ground?

16 A Yes.

17 Q Okay. Is that prior to the golf cart showing up?

18 A Prior to the golf cart.

19 Q Is that a yes, sir?

20 A Yes.

21 Q Okay. Do you remember what time this accident
22 occurred, sir?

23 A Not specifics, no.

24 Q Approximately.

25 A I mean, I know what time it was, during the

1 deposition it was pointed out to me. But if you ask
2 me, I couldn't pinpoint an exact time.

3 Q I'm not looking for an exact time. I'm looking
4 for an approximate time that you thought she fell.

5 A Again, I'm in and out of there. I can't give you
6 one.

7 Q You can't give me like midday, mid afternoon, late
8 afternoon?

9 A Well, I know the answer to the question.

10 Q Okay.

11 A Prior to that, I probably -- I couldn't give you
12 an honest answer.

13 Q How about, let's do it from a different way, then.
14 How about beginning of the show, middle of the show,
15 late show?

16 A Again, I know the answer to the question. So
17 prior to I wouldn't be a hundred percent.

18 Q Did you say you know the answer to the question,
19 but what does that mean, does that mean you don't
20 have --

21 A Well, I can't look at you a hundred percent and
22 say I know exactly what time when I already was
23 presented the time. They brought me -- on your side,
24 brought me an incident report and showed me what time
25 it was. So I now know what time it happened. I can't

1 tell you prior to that if I'm 100 percent sure when it
2 happened.

3 Q Okay.

4 A Because I'm in and out. And it was two and a half
5 years ago, I'm trying my best to remember, but again,
6 I'm not a hundred percent sure.

7 Q Mr. Foley, is it possible that you saw someone
8 else other than Ms. LeFont?

9 A The only thing I can be a hundred percent sure on
10 is my route out and that I've only seen one person on
11 the ground that has fallen in all my years of going
12 there and all my exits and entrances.

13 Q Is it possible that anyone could have fallen there
14 in front of you?

15 MR. BRYAN: Judge, I object to the question.

16 THE COURT: That's -- I'll sustain it under 602.

17 He says he can't tell you who it was, he said that. So
18 he would be speculating as to anybody, for identity.

19 Q I think your testimony was and I think the judge
20 just ruled that you are not sure who that is. If
21 that's a correct assessment of your testimony, I would
22 like to draw your attention to line 49 of your
23 deposition, page 49 of your deposition. And I will
24 ask --

25 A Did you ask me a question?

1 Q I will ask you the question again when you get to
2 page 49, sir.

3 MR. BRYAN: Judge, there's going to be additional
4 excerpts that I'm going to want him to read, in
5 addition.

6 THE COURT: You'll have a chance to -- for
7 completeness we'll do that now, but you'll have a
8 chance to redirect. If it's necessary for completeness
9 we'll certainly -- I'll let you read that. But if any
10 additional portions you want, you have the right to do
11 so.

12 MR. BRYAN: Okay.

13 Q Mr. Foley, did you get to page 49?

14 A Yes.

15 Q Mr. Foley, are you a hundred percent positive that
16 Ms. LeFont is the one that fell?

17 A The only thing that I'm positive is I've seen one
18 person on the ground. I'm looking at what you said and
19 what you're referring to.

20 Q And what am I referring to, sir?

21 A It says, I don't know her measurements, I don't
22 know her exact color of her hair. I will say with a
23 hundred percent certainty since we're sitting here,
24 that was one person -- that there was one person that
25 was Ms. LeFont on the ground that I saw.

1 I guess I misspoke. I assumed we're there talking
2 about Ms. LeFont. I've only seen one person on the
3 ground. I guess I shouldn't have guessed and said
4 that. I guess I misspoke.

5 Q Okay. So the day that you saw Ms. LeFont fall,
6 what day was that?

7 A April --

8 Q No, I don't need a date, just what day; was it
9 Friday, Saturday, Sunday?

10 A Again, I mean, all the days -- I think, well, I
11 know that it was a Sunday.

12 Q Okay. You know that it was a Sunday. Why do you
13 know that?

14 A Because we've --

15 Q Is that what somebody tells you or is that --

16 A No, I mean we've gone over -- at the deposition,
17 I've seen the incident report, and I was told that it
18 was Sunday.

19 Q You were told that it was Sunday?

20 A I believe so.

21 Q Mr. Foley, I would like to draw your attention to
22 Defendant's Exhibit 1. Are you familiar with that?

23 A Am I familiar with this?

24 Q Yes, sir. Can you tell me what it is.

25 A It's an incident report.

1 Q Have you ever seen it before prior to the
2 deposition?

3 A No.. I don't believe so.

4 Q Did you sign this incident report?

5 A I don't recall, to be honest with you. It was two
6 and a half years ago. I don't recall.

7 Q Is there a place on this incident report for
8 witnesses, witnesses to the incident?

9 A There is.

10 Q Okay. Did you sign this report under witnesses to
11 the incident?

12 A My name is spelled wrong, so I mean, I didn't
13 write that.

14 Q Did you sign it anywhere on here?

15 A No.

16 Q How did they know, if you didn't sign this, how
17 did they know you even existed?

18 A They had my information, I'm assuming they got it
19 from a business card.

20 Q Okay. Do you remember giving them a business
21 card?

22 A I have business cards on me with my home address
23 and that cell phone number.

24 Q That's not the question, sir. The question is do
25 you remember giving them a business card?

1 A Again, the only thing I'm a hundred percent sure
2 on is the route and that someone was on the ground one
3 time in all my visits there.

4 Q When was the first time you were contacted by
5 defense counsel about this case?

6 A I can't give you an exact date.

7 Q How long after the incident approximately?

8 A Again, I can't give you an exact date, but I mean
9 it was over a year.

10 Q Okay. Did you take notes of this incident after
11 it happened?

12 A Never.

13 Q Okay. Did you take pictures?

14 A I didn't take pictures. I was given a picture via
15 e-mail where I couldn't properly show them my route.

16 So I went on Google Maps and printed the aerial view to
17 give them a better idea of my route.

18 Q Was that after they called you and told you about
19 it?

20 A During.

21 Q I don't understand, what does that mean?

22 A They presented a picture, I didn't feel like that
23 picture --

24 Q When was this?

25 A -- could display --

1 Q I'm sorry to interrupt you. When was this? 'About
2 a year after the accident; is that what you said?

3 A Maybe longer.

4 Q Okay.

5 MR. GOLDFINCH: Judge, I got to move to strike
6 this. I can't get anything out of this guy.

7 THE COURT: Excuse me. Move to strike what?

8 MR. GOLDFINCH: I don't know if you want to do
9 this.

10 THE COURT: Ladies and gentlemen, let you go to
11 your jury room. Do not begin your deliberations.
12 There's a matter of law that I need to take up out of
13 your presence.

14 (WHEREUPON, the jury exited the courtroom at
15 11:29 a.m.)

16 THE COURT: Okay.

17 MR. GOLDFINCH: Judge, I got to move to strike his
18 testimony, he has lack of personal knowledge. Rule 602
19 says he has to have personal knowledge. The only
20 personal knowledge he has is that he thinks somebody
21 fell. He can't identify the woman, he can't identify
22 her hair color, he can't identify her clothes, he can't
23 identify the date of the fall, he can't identify where
24 the fall happened.

25 THE COURT: You don't need to go -- I think the

1 record speaks for itself, Mr. Goldfinch. That's what
2 jury trials are all about, sir. You don't strike him.
3 He's identified a fall, he's identified a place where
4 he saw something. He's identified and related some
5 things that connect. It's up to the jury to decide
6 whether or not it's the same.

7 Just like -- to be precise with you, it's just
8 like the pothole. I mean, I could take a position on
9 that too and say I'm going to strike your case because
10 I think that's ridiculous.

11 MR. GOLDFINCH: Sure, I understand.

12 THE COURT: But so -- and I'm not being critical
13 of you, I just understand -- I understand your
14 position. And that's why I said what I said, he's
15 really -- he can't answer any of those questions. You
16 were asking him to stress it, but he can't answer those
17 questions because he doesn't know. And under 602 I
18 wasn't going to allow him to do that.

19 But he can testify to what he does know. He's
20 testified emphatically that he went to the thing, that
21 -- what he said with knowledge is he was there, he was
22 there on a day, I don't even know it was the same day
23 that this lady was there. We don't know that. We knew
24 it was a day, and we knew that a golf cart came and
25 someone fell. That's all we know. And that's all he's

1 testified to.

2 And he's free to testify to that because he's --
3 the jury puts it together and they say, I don't think
4 it really adds anything, or it might add everything. I
5 don't know. So your motion is noted. And I
6 respectfully deny it for the reasons I've stated.

7 MR. GOLDFINCH: I understand, Your Honor.

8 THE COURT: Thank you, sir.

9 MR. GOLDFINCH: And I'm sorry to cause the --

10 THE COURT: Oh, no, it's not a problem.

11 MR. GOLDFINCH: -- the occurrence. I just
12 couldn't -- I can't get any questions out of him.

13 THE COURT: Well, the reason you can't is he's
14 being -- to be candid with you, and I'm not bolstering
15 anybody, frankly, I wish all witnesses would do that.
16 He doesn't know anything and he's not testifying to
17 anything. So he's doing exactly what -- I don't know
18 what you tell your witnesses, I know what I told mine.

19 There are three answers. I know it, or I don't
20 know it or I don't recall it. And I don't care how
21 many times they suggest could it be, that doesn't
22 change your three answers.

23 MR. GOLDFINCH: Right.

24 THE COURT: And he's hung to that, he's stuck with
25 it.

1 MR. GOLDFINCH: He's doing a very good job.

2 THE COURT: He's doing what he's -- well, he's
3 doing what he's supposed to do.

4 MR. GOLDFINCH: Yes, sir.

5 THE COURT: And so that's why I don't find his
6 testimony for the weight of it and the worth, that's up
7 to the jury.

8 MR. GOLDFINCH: Sure, I understand.

9 THE COURT: Okay. Thank you, sir.

10 MR. GOLDFINCH: Thank you, sir. I just have a
11 couple more.

12 THE COURT: All right. Let's bring in our jury.
13 Thank you.

14 MR. GOLDFINCH: Thank you, sir.

15 (WHEREUPON, the jury came into open court at
16 approximately 11:33 a.m.)

17 THE COURT: Thank you, ladies and gentlemen. I
18 appreciate it. Sometimes during the trial, and you've
19 already seen some where objections are made and I make
20 a ruling. That's a matter of law, and that's only --
21 that's for my purpose. And you shouldn't put any
22 weight or stock in anything that attorneys argue
23 concerning objections, the fact that an objection is
24 made. It's very proper for those to occur. Again,
25 that's how we work together and in trying this case.

1 When we -- sometimes, though, we have to excuse
2 you to place it on the record. And that's what we just
3 did. But the fact that we did that, again, it should
4 not even be considered by you because that's very
5 proper for that to have been done. And that's just the
6 way this trial works. And thank you for your patience,
7 we appreciate it.

8 Mr. Goldfinch, thank you. You may continue your
9 examination.

10 MR. GOLDFINCH: Thank you, Your Honor. Sorry
11 about the --

12 THE COURT: No problem.

13 Q -- time, Mr. Foley, sorry about that. Let's see
14 if we can get back on task here. Mr. Foley, I think
15 your testimony was that you're not sure about the time
16 that the incident occurred. If you don't mind, sir,
17 I'd like to bring your attention to page 20 of your
18 deposition. Are you there, Mr. Foley?

19 A I am.

20 Q Do you see anything on page 20, approximately line
21 22, with regard to your previous testimony?

22 A I do.

23 Q Could you tell me what it says?

24 A Asked what time it was. In my head I don't
25 recall. I mean, it's hazy, but I do not recall. I

1 don't recall seeing her on the -- oh, you said line 22.

2 Q Okay, you can keep going.

3 A Okay. I do not recall seeing her on the ground.

4 Okay. What time of day was this? Mid to late

5 afternoon. Okay. Just give me a time frame. 2:30.

6 Q Okay. Is it true that you now don't remember the
7 time of day?

8 A Again, I felt like I was pressured to guess.

9 Again, I'm going to stick to what I said. The only
10 thing I'm a hundred percent sure of is someone fell, I
11 attended to them. And, I mean, it was two and a half
12 years ago, I'm trying my best here. And the only thing
13 that I can be a hundred percent sure is maybe I
14 misspoke, but I do believe I said a few times in the
15 deposition that what I just said. I'm a hundred
16 percent sure on only one person falling, where I
17 parked. Everything else I'm not a hundred percent sure
18 on.

19 Q Was it your testimony that just a minute ago that
20 you just read that you don't remember seeing her on the
21 ground?

22 A Yeah.

23 Q Could you read that to me again, please, sir?

24 MR. BRYAN: Judge, what page are we on, first of
25 all?

1 THE COURT: It's page --
2 MR. BRYAN: If this impeachment?
3 THE COURT: What page? Yes.
4 MR. BRYAN: What page?
5 MR. GOLDFINCH: Page 20.
6 THE COURT: What line?
7 Q What line was that, Mr. Foley; 23, I think?
8 A 19.
9 Q 19, thank you.
10 MR. BRYAN: Please read it, please read.
11 THE COURT: Just read the -- publish the --
12 THE WITNESS: Yeah. In my head, I don't recall.
13 I mean, it's hazy, but I do not recall her actually
14 falling. I do recall her sitting on the ground.
15 Q Okay.
16 A Do see -- do recall seeing her on the ground.
17 Q Okay. So now you recall seeing her on the ground?
18 A I thought I said that.
19 MR. BRYAN: Judge, he's never testified that --
20 THE COURT: You'll have a moment. You'll have him
21 on redirect. It's overruled.
22 THE WITNESS: I don't remember her actually
23 falling, but I do remember someone being on the ground.
24 Q Okay.
25 A I mean, it was behind me.

1 Q Do you remember what her state of mind was? Was
2 she hysterical, was she calm, was she -- her state of
3 mind.

4 A Again, I'm not a hundred percent sure, but she was
5 not hysterical.

6 Q Okay.

7 A Otherwise I wouldn't have left. I felt like she
8 was in a good enough state where she was in good hands
9 and I could leave.

10 Q Was it clear that she had injuries?

11 A Again, I don't know. They were attending to her,
12 I'm not a doctor.

13 Q Who was attending to her?

14 A The golf cart arrived, and then I left.

15 Q When the golf cart arrived, is your testimony that
16 you left; is that what you just said, sir?

17 A Shortly after, yeah.

18 Q Okay. Who was attending to her before the golf
19 cart got there?

20 A I approached her.

21 Q Your testimony was they were attending to her, the
22 golf cart arrived, and I left; isn't that what you just
23 said?

24 A Can you restate that. Sorry.

25 Q Your testimony --

1 A Yep.

2 Q -- was that they were attending to her, you
3 arrived, golf cart got there, you left?

4 A Incorrect.

5 Q Who was attending to her is the question?

6 A Incorrect. I turned around. It was her on the
7 ground, I approached her, and then shortly after the
8 golf cart arrived, and then I left.

9 Q So who was attending to her? You said somebody
10 was attending to her, who was attending to her?

11 A Whoever was in the golf cart.

12 Q Somebody was in the golf cart that was attending
13 to her?

14 A I mean, showing up. Again, the only thing I can
15 be a hundred percent positive is someone fell that day,
16 that's where I parked, someone was on the ground, and a
17 golf cart arrived. I left afterwards.

18 I would not have left if someone was in major
19 distress. I would like to think that I would attend to
20 it if someone was in major injury. It didn't appear
21 so, I left.

22 Q Mr. Foley, I think your testimony earlier when you
23 were being directed by Mr. Will Bryan there was that
24 you would not have been in that area that -- let me see
25 if I can.

1 Let me just ask it that way. Would you have been
2 in this area that was described to you in that exhibit,
3 and I'll pull out Exhibit 1 to make it easier for us.
4 I'm sorry, Plaintiff's Exhibit 3.

5 Show me one more time how you came in, where you
6 saw her. Go through it with me.

7 A Down the loading dock, up here (indicating), and
8 then I park over there, top left corner.

9 Q Okay.

10 MR. BRYAN: Stephen, you're blocking several
11 jurors.

12 Q One more time please, sir.

13 A I'm parked up in that left-hand corner.

14 Q Okay. So is it your testimony that you saw her
15 over in this area (indicating), is that where you saw
16 her?

17 A I can't give you the exact location, but it would
18 be somewhere in this route because that's where I go..
19 And I, again, parked in the same spot every time.

20 Q Okay. And is that where the golf cart was as
21 well?

22 A Would have been somewhere along that path.

23 Q Okay. So is it a possibility if you saw somebody
24 injured out here, is it in your nature to walk over
25 here and help them? Is that a possibility you may have

1 deviated off of this path?

2 A I mean, it happened behind me.

3 Q Let's just --

4 A I was in front and it happened behind me. And I
5 turned around.

6 Q So you turned around. You were on your way out of
7 here; is that correct, and you turned around and came
8 back?

9 A I mean, it wasn't but a couple feet --

10 Q Okay.

11 A -- behind me.

12 Q So you turned around to render aid?

13 A To see if the woman was okay, yes.

14 Q Okay. Was someone already rendering aid when you
15 got there?

16 A Not to my knowledge.

17 Q Did you render aid?

18 A I asked if she was okay. And then shortly
19 after -- stood there, shortly after golf cart arrived.

20 Q Did you try to help her up?

21 A I'm not a hundred percent sure on that.

22 Q Did you offer any kind of medical support?

23 A Again, I'm not a hundred percent sure, I could
24 have. I'm not a hundred percent sure.

25 Q Okay. Mr. Foley, is it possible that she tripped

1 somewhere else and ended up over here? I mean, did you
2 actually see the trip and fall occur?

3 A I heard it.

4 MR. BRYAN: Judge, I object, he's calling for the
5 witness to speculate.

6 THE COURT: Sustain the objection.

7 MR. GOLDFINCH: I withdraw it.

8 Q So, Mr. Foley, you're not sure of the time?

9 A No.

10 Q You're not sure of the day?

11 A I mean, I'm told that it was the day.

12 Q You're not sure that it was the Plaintiff?

13 A Not sure what?

14 Q That it was Mrs. LeFont.

15 A Again, going to keep going back to this, all I
16 know is I've seen one person on the ground from a fall.
17 They have my information, that's it. I go the same
18 route, that's the only thing I'm a hundred percent sure
19 of.

20 Q You're not sure you gave them your information.

21 You're not sure what Ms. LeFont looks like?

22 A The second part of that's correct.

23 Q The only thing you know is that you saw someone on
24 the ground; is that correct?

25 A And they must have got my business card because

1 that was the address on my business card. That is not
2 my address of my current residence.

3 MR. GOLDFINCH: Thank you, Mr. Foley.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. BRYAN:

7 Q Mr. Foley, let's be clear; did you see the woman
8 fall?

9 A I did not see her fall, I heard it.

10 Q Got you. How much time elapsed between the time
11 you hear the sound of falling and when you turn around?

12 A Not long at all, few seconds.

13 Q Took you two seconds to turn around?

14 A A few seconds, again.

15 Q Okay. When you turn around, is that -- do you see
16 somebody?

17 A On the ground.

18 Q You see a woman on the ground; correct?

19 A Um-hum.

20 Q Is that a yes?

21 A Yes.

22 Q You got to say yes.

23 A Sorry, yes.

24 Q And you see a woman on the ground in Defendant's
25 Exhibit 3 in the shaded area; correct?

1 A Correct.

2 Q And the woman you saw on the ground, was she
3 anywhere over here (indicating)?

4 A I've never been over there.

5 Q Anywhere over here (indicating)?

6 A No.

7 THE COURT: What are you referencing? I'm sorry,
8 what exhibit?

9 MR. BRYAN: This is Plaintiff's Exhibit 3.

10 THE COURT: Thank you. Excuse me, I'm sorry.

11 Q Was she anywhere over here behind this row of
12 cars?

13 A No.

14 Q Okay. Are you sure of that?

15 A Again, the only thing I can be a hundred percent
16 sure on is someone was on the ground on my route that I
17 always take, and I've never been to that area that you
18 just pointed out.

19 Q Okay.

20 MR. BRYAN: Judge, earlier Mr. Goldfinch used
21 Mr. Foley's deposition transcript. I would like to
22 publish a small excerpt from it.

23 THE COURT: Ask him a question, go ahead.

24 Q Do you have the transcript in front you, Mr.
25 Foley?

1 A I do.

2 Q Let's see, turn to page 48 with me, sir. And by
3 the way, when you were deposed, the issue of the time
4 of the incident, that came up before; is that correct?

5 A Yeah, it was addressed.

6 Q And during the deposition were you shared
7 information that showed you actually when the time
8 occurred, when the incident occurred?

9 A Yes.

10 Q Okay. And earlier when you were asked questions
11 about when did it -- do you know when it happened, you
12 said, well, I know the answer to the question now. Can
13 you explain to the jury what you meant by that answer.

14 A The incident report was presented to me during the
15 deposition. And so when he asked me the question, do I
16 know what time it happened, I know the answer now.

17 Q Did you know it at the time of the deposition or
18 before?

19 A Again, I said I wasn't a hundred percent sure of
20 the time.

21 Q Thank you, all right. Turn to page 48.

22 A Um-hum.

23 Q And this is a question at line seven, this is a
24 question that was asked to you by Mr. Winslow which is
25 Mr. Goldfinch's law partner. If you'll just read along

1 with me, do you know, do you know that was Ms. LeFont
2 you saw on the afternoon of the 13th at the convention
3 center? And what was your answer?

4 A You could tell me her name is Ms. Johnson and I
5 wouldn't know her name because I didn't ask her name.
6 I didn't take measurements, I didn't take a photo. I
7 saw one person on the ground in my lifetime. That's
8 all.

9 Q Okay. Thank you, Mr. Foley. And the incident
10 we're talking about happened during the HT Hackney
11 Trade Show?

12 A Yes.

13 Q Did it happen on the last day of the trade show?

14 A Yes.

15 Q Okay. And you're sure of that?

16 A Well, I've been presented the day, yes.

17 Q Were you present at the trade show the whole day
18 on that last day April 13th, 2014?

19 A Again, I mean, I don't know what time -- I can't
20 be a hundred percent on that because I don't know the
21 hours that it lasted to, and I don't know my exact exit
22 time.

23 Q Okay, fair enough. Let me ask you this, while --
24 all right. Do you know if you left early, do you have
25 reason to think you left early?

1 A Again, I'm not a hundred percent sure. No, I
2 don't think so. But, again, I'm not a hundred percent.

3 Q Here's my question --

4 A I could be going out to my truck. There's a lot
5 of reasons why I go in and out, you forget something.
6 I don't know if I was leaving, I don't know if I was
7 going to get something. I can't be a hundred percent
8 positive on it.

9 Q I understand. Here's my question. During the
10 time you were there on that day, the last day of the HT
11 Hackney Trade Show, do you recall hearing about or
12 seeing anybody else falling at the convention center?

13 A Not at that trade show or at any other trade shows
14 I've ever --

15 Q I'm talking about that particular trade show --

16 A No.

17 Q -- April 13, 2014, did you see any other incidents
18 that day?

19 A No.

20 Q No?

21 A No.

22 Q You got to say no.

23 A No. Sorry.

24 Q Did you hear about just scuttlebutt, did you hear
25 about any other incidents occurring that day?

- 1 A Not that I recall.
- 2 Q Okay. And Mr. Foley, do you have any connection
3 at all with the convention center?
- 4 A None.
- 5 Q Are you friends or family with any manager or
6 employee of the convention center?
- 7 A No.
- 8 Q Do you have any association or connection with the
9 City of Myrtle Beach, are you friends or have a family
10 member within the City of Myrtle Beach?
- 11 A Zero connection.
- 12 Q Have you and I, did we ever know each other before
13 the Christine LeFont case came about?
- 14 A No.
- 15 Q So you and I have no association. Do you have any
16 association with Ms. Neuschafer?
- 17 A No.
- 18 Q Anybody in my law firm, are you friends or family
19 with anybody on in my law firm?
- 20 A No.
- 21 Q Do you have any interest in giving testimony
22 that's anything other than honest today?
- 23 A No. And, I mean, this is an inconvenience to me.
24 I don't want to be here because I have a full-time job.
25 I was under the impression that I had to be here, and I

1 have no sides. I'm just telling you exactly what I
2 remember, and that's it.

3 MR. BRYAN: Mr. Foley, I appreciate your time.

4 THE COURT: Recross?

5 MR. GOLDFINCH: Yes, sir. Just one question.

6 THE COURT: Sure.

7 RECROSS-EXAMINATION

8 BY MR. GOLDFINCH:

9 Q Mr. Foley, I know we've beaten this horse to
10 death, so I'm going to finish with this. How do you
11 know it was Ms. LeFont?

12 A Again, I've only seen one person ever on the
13 ground, and that's the only thing I can say.

14 Q Will you go to page 36 of your deposition, please,
15 sir. Line 4, how do you know it was Ms. LeFont. Will
16 you please read on there.

17 A And do you know it was Ms. LeFont? I don't, I'm
18 assuming it is because someone fell. I only saw one
19 person on the ground that day.

20 Q That's good enough for me, sir. Thank you.

21 THE COURT: Is there more to the answer than that
22 or does that conclude the answer?

23 MR. GOLDFINCH: That was the conclusion of the
24 answer.

25 THE COURT: That's fine. Okay, very good. You

1 may come down, sir, and you are free to leave. Thank
2 you. You can just pass that over to the court
3 reporter, would be helpful. Thank you very much.

4 (Witness excused.)

5 THE COURT: Do you have another witness?

6 MR. BRYAN: Yes, sir.

7 THE COURT: What's the length of that witness, do
8 you think?

9 MR. BRYAN: Pardon me?

10 THE COURT: How long will that witness be?

11 MR. BRYAN: How long was Mr. Foley?

12 THE COURT: Mr. Foley has been about two and a
13 half hours, I think.

14 MR. BRYAN: The next witness will be 40 -- well,
15 not including cross.

16 THE COURT: Thank you very much, ladies and
17 gentlemen. At this point we'll take our break for
18 lunch. Do not begin your deliberations, I'll ask you
19 to be back at your jury room by 1:30, please, thank
20 you. Don't discuss the case with anyone outside
21 either. Thank you.

22 (WHEREUPON, the jury exited the courtroom at
23 11:54 a.m.)

24 THE COURT: Okay. Just for y'all's information,
25 and I'm not trying to be disruptive or restrictive of

1 your trials, I know what it was to be a trial lawyer,
2 I tried -- not as good as you all are -- but I tried to
3 do it for 21 years. Justice Pleicones, Chief Justice
4 Pleicones, pointed out something to me in 1996, and I
5 have used it consistently since then.

6 I've never seen it Court of Appeals do it, but I'm
7 just calling it to your attention. Rule 611(a) is a
8 very important rule. Because it says it's the one time
9 that I get to play, says a control by the Court.

10 The Court shall exercise reasonable control --
11 now, reasonable is the key word here, folks, I
12 understand that -- over the mode and order of
13 interrogating witnesses and presenting evidence so as
14 to make the interrogation and presentation effective
15 for the ascertainment of truth.

16 Two, avoid needless consumption of time. And,
17 three, protect the witness from harassment and undo
18 embarrassment.

19 I'm going to allow you to impeach, attack, do what
20 you need to do. But this repeated over the same area,
21 I'm going to call 611(a) on y'all, and when I do, if
22 you want to -- I'm sharing this with you because I want
23 you to preserve your record -- please feel free at the
24 conclusion when we excuse the witness, if you want to
25 proffer some testimony that I would not allow, I'd be

1 happy to do so. But I do want to keep this case
2 flowing for the benefit of those 12 people.

3 MR. GOLDFINCH: I know that's directed to me, Your
4 Honor.

5 THE COURT: No, sir.

6 MR. GOLDFINCH: And I certainly will take
7 that into --

8 THE COURT: To be honest with you, it is not
9 directed to you Stephen, because I almost did it, but
10 he left it. I was about to say, Mr. Bryan, 611(a),
11 move on, sir. So thank you very much.

12 MR. GOLDFINCH: Thank you.

13 THE COURT: And seriously, off the record.

14 (Discussion off the record.)

15 (The hearing commenced at approximately 1:37 p.m.)

16 THE COURT: Just for planning purposes, I'm going
17 to try to get all of the witnesses. I have a hearing
18 set in a criminal case at 4 o'clock. So I'm going to
19 have to stop at four.

20 MR. BRYAN: I'm going to get moving, judge.

21 THE COURT: No, no, that's fine. I don't think
22 we -- I mean, we can see where we are, but I'm not
23 sure.

24 MR. BRYAN: I heard about this Rule 611, and I
25 take it very serious.

1 THE COURT: Yes, sir. But no, I use it sparingly.

2 MR. BRYAN: I'll move it along.

3 THE COURT: I'm just thinking about them. Of
4 course we can take a break. If we're maybe at the
5 point where we get finished our testimony, and I don't
6 know what y'all's preference, I let the jury usually
7 pick when it's after 4 o'clock.

8 Judge Harwell used to say when he was a circuit
9 court judge and he was a chief, he said, if you can't
10 get a jury the case before 4 o'clock, you don't give it
11 to them. But I found that some jurors prefer to go on
12 and get it done, especially if you're not coming back.

13 MR. BRYAN: Yeah.

14 THE COURT: And I won't make these people come
15 back. All right, okay. We ready. Well, no, still
16 waiting.

17 (Discussion off the record.)

18 THE COURT: Is the Plaintiff ready?

19 MR. GOLDFINCH: Yes, sir, Your Honor.

20 THE COURT: Thank you. Defense ready?

21 MR. BRYAN: Defense is ready, judge.

22 THE COURT: Let's bring them in, please. Thank
23 you.

24 (WHEREUPON, the jury came into open court at
25 approximately 1:40 p.m.)

1 MR. GOLDFINCH: Judge, I'm sorry to bring this up
2 when the jury came in, but I thought we were going to
3 take something up before they came in.

4 THE COURT: We can take that up when we get to a
5 point, that's fine. Thank you very much.

6 Ms. Sanchez, the power of suggestion. Thank you
7 very much, ladies and gentlemen. And Ms. Sanchez, you
8 are the presiding juror, and you may continue to occupy
9 that seat for the balance of the trial. And thank you,
10 ladies and gentlemen, for taking care of that as well.
11 Hope you had a good lunch. We are ready to continue,
12 you may call your next witness.

13 MR. BRYAN: Thank you, Your Honor. City of Myrtle
14 Beach would like to call Terry Perez to the stand.

15 THE COURT: Okay.

16 THERESE A. PEREZ, after being duly sworn,
17 testified as follows:

18 THE CLERK: Have a seat, please. State your name
19 for the Court, please, ma'am, and spell your last name.
20 My name is Therese Perez, P-E-R-E-Z. I go by Terry.

21 DIRECT EXAMINATION

22 BY MR. BRYAN:

23 Q Ms. Perez, tell the jury how long you've been with
24 the convention center, please, ma'am.

25 A I was hired part-time in February of 2012 and was

1 promoted to full-time in April -- I'm sorry, in
2 February of -- I'm nervous, I'm sorry -- in April
3 of 2012, I was hired as part-time. In February of 2014
4 I went full-time.

5 Q Okay.

6 A This is the first time I'm ever I been on a court.

7 Q It's okay. And you work in the convention
8 services department; is that correct?

9 A I do, yes.

10 Q Okay. Ms. Perez, do you recall the incident
11 involving Ms. LeFont?

12 A I do.

13 Q All right. If you would, tell the jury what you
14 remember.

15 A What I remember about that day, I was in the
16 security office, and there was another employee that
17 came to the door and told me that somebody had fallen
18 in the employee parking lot. So what we normally do is
19 we'll get the closest incident report, take it out to
20 the incident, question everybody and get as much
21 information as we can.

22 So I grabbed the incident report. The security
23 office is located, if you are facing the loading dock
24 area, in the far right-hand corner. So I had came out
25 the door, went down to -- went down the ramp --

1 Q Just so the jury knows, in Plaintiff's Exhibit 3,
2 can you just point to the general area where the
3 security office would be.

4 A Would be in this far right corner (indicating).

5 Q Back here?

6 A Um-hum.

7 Q Okay. Go ahead, I'm sorry.

8 A So when I came out of the door, I stayed close to
9 the building, went down the small ramp and started
10 crossing over the parking lot area. We -- as I was
11 coming out I could see the golf cart, and Mrs. LeFont
12 was on the back of the golf cart. As I was walking
13 over to her, Bernie, which is the employee that brought
14 the golf cart over to where Ms. LeFont was and helped
15 her on the back of it, he kind of met me. He told me
16 who Mr. Foley was, Brendan Foley, and said that he was
17 there. Well, he did not actually see the fall, but he
18 came over to assist her. He heard the commotion and
19 came over to assist her. So when I had gotten there
20 Brendan was there, which was the witness, and Bernie
21 who is the employee.

22 And she was on the back of the cart. I don't
23 recall if John was there at the time. But I spoke to
24 Bernie and they kind of agreed that it occurred
25 approximately ten minutes before the time I had gotten

1 there. So I looked at my phone and got 10:05, which is
2 the time I recorded on the incident report, and put
3 9:55 as the approximate time of the incident.

4 Q Did you have occasion to speak with Ms. LeFont?

5 A I did. After I spoke briefly with Bernie and I
6 believe that's the time I spoke to Brendan and got his
7 information and recorded that on the document as well,
8 I then turned my attention to Ms. LeFont.

9 When I walked up to her, she was holding -- her
10 right hand was holding her left arm. And I just asked
11 her, I said, where did it happen, what -- where did the
12 incident take place. And she motioned her right hand
13 and looked to the right of the golf cart approximately
14 just couple feet away from the golf cart, which was to
15 her right which would have been to my left.

16 Q Hang on. Let's -- to give the jury a frame of
17 reference, again, on Plaintiff's Exhibit 3, where was
18 the golf cart, if you would?

19 A Golf cart was approximately in this area right
20 here (indicating).

21 Q Okay. And which direction was it heading?

22 A It was facing this way (indicating). She was on
23 the back facing the direction that I was coming from.

24 Q Okay. So she's sitting like this (indicating)?

25 A Yeah, she's sitting on the back of the golf cart.

1 Q Okay.

2 A And was holding her wrist.

3 Q All right. Okay.

4 A And when she motioned, it was kind of where the
5 lines, the striping, were. So she motioned, it was
6 just kind of with her palm up and looked and was like
7 right there.

8 And I looked over and I didn't see anything
9 obvious that she could have fallen on. So then I asked
10 her, I said, well, how did you fall, you know, what --
11 she said, I just tripped. And that's what I documented
12 on the paperwork. She didn't recall tripping over
13 anything, she just tripped.

14 Q Okay. And as you are receiving information from
15 Ms. LeFont, from the other people around, are you
16 adding information to the incident report?

17 A I am.

18 Q Let me -- Ms. Perez, let me show you what's been
19 marked previously as Defendant's Exhibit No. 1. And if
20 you would, tell me if you recognize that document.

21 A I do.

22 Q Is that the incident report that you prepared
23 following Ms. LeFont's incident?

24 A Definitely, yes.

25 Q The information that it contains, is it

1 information that you gathered -- was it prepared, you
2 know, as you were gathering information at the scene?

3 A It was -- it was -- I was recording it as I was
4 getting the information. And I was completing it at
5 the time the ambulance, because literally I looked at
6 the clock again, I have 10:05 is when I was writing it
7 and 10:06 was when the ambulance was pulling in.

8 Once that had happened I wanted to kind of get out
9 of the way and let them take care of Mrs. LeFont. So I
10 finished up any kind of notations that I needed. At
11 that point John was there, and they -- all I knew was
12 John was a coworker and a friend. And I didn't want to
13 try and get Ms. LeFont to sign the report because of
14 the state she was in and just her being helped with --
15 by the ambulance and the people. So I asked John if he
16 would sign it for her, which I got his signature.

17 Q Let me ask you this question --

18 A Yes.

19 Q -- Ms. Perez. Defendant's Exhibit No. 1, is that
20 a true and accurate copy of the incident report that
21 you generated; has it been altered or changed in any
22 way?

23 A No. I mean, hasn't been altered as far as what I
24 recorded, no.

25 Q Okay.

1 MR. BRYAN: Judge, Defendants would move
2 Defendant's Exhibit No. 1 into evidence.

3 THE COURT: Is there any objection?

4 MR. GOLDFINCH: No objection, Your Honor.

5 THE COURT: Without objection Defendant's-1 is
6 admitted.

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

9 MR. BRYAN: All right. I'm going to put a copy of
10 that on the...

11 THE COURT: You need the screen down?

12 MR. BRYAN: Yeah, I need the screen.

13 (Discussion off the record.)

14 THE COURT: Can all the jurors see the screen okay
15 now?

16 (All jurors respond affirmatively.)

17 Q Okay. Ms. Perez, this indicates a time of -- time
18 of the report, 10:05?

19 A Yes.

20 Q Is that when you got there?

21 A Yes, that's when I started the report.

22 Q Okay.

23 A Starting to fill in the information.

24 Q Okay. And you told us that they told you the
25 incident happened about ten minutes before?

- 1 A Correct.
- 2 Q And that's -- is that why you --
- 3 A That's how I got 9:55, yes.
- 4 Q Okay. And then you have a date -- or excuse me, a
5 time of 10:06 paramedics; how do you know that?
- 6 A The ambulance -- because I was there, and the
7 ambulance pulled in. I looked, it said 10:06 on my
8 phone is what just -- we have the old flip phones.
- 9 Q Okay. So you check your phone?
- 10 A Yes. The phone said that time.
- 11 Q All right. And then I interrupted you to get the
12 report introduced into evidence and put it on the
13 screen. But you mentioned that you spoke to
14 Mr. Gambelli and that you had him sign the report?
- 15 A Yes.
- 16 Q That's on the second page; correct? Mr. Foley's
17 information is reflected on the bottom of the first
18 page; correct?
- 19 A Yes. And I put, friend and coworker, above it.
- 20 Q Well, Mr. Foley's information is at the bottom?
- 21 A Oh, I'm sorry. Brendan Foley, yes, is at the
22 bottom of the first page.
- 23 Q And you see here Mr. Gambelli's name and telephone
24 number is at the top. That is Mr. Gambelli's signature
25 on the second page?

1 A Yes, sir.

2 Q Okay. All right. Ms. Perez, how do you recall
3 getting Mr. Foley's information?

4 A I recall him being -- standing with Bernie at the
5 time I approached the golf cart.

6 Q Who's Bernie, first of all?

7 A Bernie is the other employee, the one who pulled
8 up on the golf cart that helped her -- that assisted
9 Mrs. LeFont onto the golf cart. And I remember just
10 having a quick conversation and getting the information
11 from him. I don't recall if he gave me a card, a
12 business card, he may have. But I believe it was
13 just I asked questions and he answered.

14 Q Okay. What happened next?

15 A Well, the ambulance came. They attended to her.
16 Basically, after that, after everything subsided, one
17 of the normal things we do is we contact the event
18 coordinator who takes care of all the details of a
19 show. So if anything occurs or changes or -- we need
20 to contact them. I don't recall if it was me or if it
21 was Bernie that contacted Susan, but Susan was the
22 event coordinator for the show.

23 After the ambulance was pretty much -- I'm not
24 sure if they had pulled away at the time or if we had
25 just walked in and they were still out there. But as

1 we were walking in the employee entrance, we met Susan
2 in the hallway. Bernie and I were telling her what had
3 happened, and she asked if we had gotten any pictures,
4 which we hadn't.

5 So she immediately said, well, let's go out to
6 where the incident happened, I want you and Bernie to
7 basically stand where the incident happened, where you
8 believe it happened. And I'm going to take the
9 picture.

10 I walked to the point that she pointed out to me
11 and told me that that's where she fell, so I stood in
12 that spot. Bernie went over to where he saw her on the
13 ground and helped her up and he walked to the same
14 spot. And Susan took the picture.

15 Q Okay. And I'll talk to Mrs. Skellett about the
16 picture when she takes the stand. I guess you signed
17 the report, and Ms. Skellett signs the report?

18 A Yes.

19 Q Anything else I'm missing about the incident? Let
20 me ask you this, I can't think of anything. But you
21 heard Ms. LeFont's testimony yesterday that the parking
22 area in the employee parking lot, the center area which
23 consists, I believe, of 14 spaces, you heard her
24 testimony that that area was taped off.

25 My question to you, Mrs. Perez, is have you ever

1 known the convention center to tape off parking areas
2 in the employee parking lot?
3 A We never use tape, never.
4 Q Have you ever --
5 A I have never.
6 Q -- taped off a parking area?
7 A No. We use cones, we have never used tape.
8 Q Have you ever seen it done in the employee parking
9 lot?
10 A No.
11 Q Have you ever heard it being done, taping up
12 parking spaces?
13 A No.
14 Q Okay. You were working that day, the last day of
15 the HT Hackney Trade Show. My question is besides
16 Ms. LeFont's incident, are you aware of any other
17 incidents occurring that day?
18 A No, sir.
19 Q All right. Are you aware of any other incidents
20 occurring anywhere in the employee lot, either -- let's
21 say before Ms. LeFont's fall?
22 A I do not recall any incidents in the employee lot.
23 Q Okay.
24 A And that was the only incident report that we had
25 written up that day.

1 Q Okay. This is a good question. The gentleman,
2 Bernie Seaford?

3 A Yes.

4 Q The gentleman on the golf cart.

5 A Yes.

6 Q Does he still work for the convention center?

7 A No, he does not.

8 Q Why is that?

9 A He's deceased.

10 Q Okay.

11 MR. BRYAN: Thank you, Ms. Perez.

12 THE WITNESS: You're welcome.

13 THE COURT: Cross-examine? Mr. Goldfinch, you
14 going to need the screen?

15 MR. GOLDFINCH: No, sir.

16 THE COURT: Okay, turn on our light, please,
17 Ms. Danna, and you can put the screen up. Thank you.

18 CROSS-EXAMINATION

19 BY MR. GOLDFINCH:

20 Q Good afternoon, Ms. Perez.

21 A Hello.

22 Q Perez?

23 A Perez.

24 Q Perez, okay. Ms. Perez, are you an employee of
25 the City?

- 1 A Yes.
- 2 Q Okay. Are you here representing the City today?
- 3 A Yes.
- 4 Q Okay. As of the date of the accident in April
- 5 of 2014, how long had you been working there?
- 6 A I started working there in April of 2012.
- 7 Q Okay. So approximately two years?
- 8 A Yes.
- 9 Q Okay. So you have no knowledge of what happened
- 10 prior to that as far as the lot goes; right, as far as
- 11 injuries, as far as accidents, as far as repairs? So
- 12 your knowledge can only go back to April 2012 is what
- 13 I'm asking.
- 14 A Correct.
- 15 Q Okay. Did you call Mrs. LeFont after the accident
- 16 and ask her about the truth and veracity of this
- 17 incident report that you just testified about?
- 18 A I didn't speak to her after -- after the incident.
- 19 Q Okay. Did you tell her what was in the incident
- 20 report?
- 21 A No.
- 22 Q Okay. So she had no opportunity at any time to
- 23 review what was in the incident report to make sure
- 24 that it was true; is that correct?
- 25 A No. I showed it to John Gambelli. She was busy

1 with the ambulance, and I did not get to talk to her
2 after that, no.

3 Q Okay. But do you know if John Gambelli actually
4 saw the fall?

5 A I believe John did not see the fall.

6 Q Okay. So is --

7 A No one saw the fall.

8 Q No one saw the fall?

9 A As far as I know, no one saw the fall.

10 Q Okay. Is it disputed that she actually fell in
11 your parking lot, though?

12 A No.

13 Q Okay. It's not disputed?

14 A Nu-uh.

15 Q Okay. Where do you park, Ms. Perez?

16 A I park in the employee parking lot.

17 Q Is that where Ms. LeFont fell?

18 A Yes.

19 Q As a representative of the City here today, are
20 you aware of the pleadings and discovery requests that
21 were made by the Plaintiffs to the Defendants, have you
22 had a chance to review any of those?

23 A I'm sorry, can you repeat that.

24 Q Have you had a chance to review any of the
25 pleadings or the discovery requests or anything to do

1 with the lawsuit?

2 A I have been able to read some depositions; is that
3 what you're talking about?

4 Q Well, that would be part of the discovery, right.
5 There's also interrogatories, requests to produce.
6 Have you seen any of those things?

7 A I'm not sure what they are.

8 Q Okay. Those are questions that we ask of the
9 Defendant or things to produce. You haven't seen any
10 of those; is that correct?

11 A Not that I'm aware of. I'm not sure what it is.

12 Q Okay. Were you aware that the Plaintiff sent a
13 what we call spoliation letter asking for evidence?

14 A No.

15 Q Okay. Do you know if the Defendants preserved all
16 of the written video and photographic evidence that you
17 have?

18 A Do I know if they preserve it?

19 Q Right. Did you preserve it and --

20 A Right. The only thing that I know of, I knew that
21 when I wrote this, I forwarded it to Susan and she
22 forwarded it to the City of Myrtle Beach. And she can
23 tell you a little bit more about that. But I'm not
24 sure where you're getting that. I don't handle, I
25 guess, that part of it.

1 Q Okay, all right.

2 A I wrote the report.

3 Q So the only piece of evidence you're familiar with
4 in this case is that one written document; is that
5 correct?

6 A I've seen some pictures that people have taken
7 like the one that Brendan was looking at earlier and
8 the one they presented yesterday --

9 Q Okay.

10 A -- just of the parking lot area.

11 Q Right. Do you have video cameras on the outside
12 of the buildings looking at this lot?

13 A We have some -- we had some cameras. We've gotten
14 an updated system since then. There were some camera
15 systems, but I don't believe they were pointing in that
16 direction.

17 Q Did you know that we asked for all video footage
18 of that lot?

19 A No, I did not.

20 Q Was it your testimony earlier that Mr. Foley had
21 already left by the time you got there and that
22 Bernie -- I think you said Bernie was his name, is --

23 A No. Bernie works for the convention center.

24 Q Sure.

25 A And Mr. Foley was the gentleman that was here

1 earlier today that said that he assisted her after the
2 fall.

3 Q I understand what he said.

4 A He was there when I -- when I came up to the golf
5 cart, he was there with Bernie.

6 Q Mr. Foley was there when you got there?

7 A Yes.

8 Q Okay. Did you come on the golf cart, or did you
9 drive separately or walk?

10 A Like I said earlier, I was in the office and I
11 walked from the building to the golf cart.

12 Q Okay. How did you get Mr. Foley's contact?

13 A I asked him for it.

14 Q Okay. What did he give you?

15 A His name, his address, his phone number. The only
16 thing that I was aware of was that he didn't actually
17 see the fall.

18 Q Okay.

19 A He was there, he heard the commotion, just as he
20 said earlier. That's what I was told that day, that he
21 went over to assist her. It was 10:05, the show
22 started at ten. I'm assuming he probably needed to get
23 inside to the show. And like he said, he didn't stick
24 around too long.

25 I don't know when he disappeared. Once I turned

1 my attention to Ms. LeFont, I don't recall how much
2 longer he was there.

3 Q So I think you just told me Mr. Foley didn't see
4 her fall, I think you've told me you didn't see her
5 fall and I think you've told me Mr. Bernie didn't see
6 her fall. Did anybody with the Defense see her fall?

7 A I don't know that anybody saw her fall. They only
8 saw her on the ground after she had fallen.

9 Q In your investigation after the fall, did you
10 review any of the video evidence, any of the
11 videography that was pointing at the parking lot?

12 A Did I look at any pictures?

13 Q Video or pictures.

14 A I did not see any videos. I saw some of the
15 pictures of the parking lot, yes.

16 Q Okay. So you don't know what any of these
17 recordings may or may not show; right?

18 A I'm not sure what you're getting to.

19 Q My question is, do you know what any of these
20 recordings of the video camera you told us about, do
21 you know what any of them may show? Could they show
22 that she fell ==

23 A As far as I know, there are no videos.

24 Q You told us you had video cameras; are you telling
25 me now they weren't working?

1 A I'm telling you -- they only store probably for a
2 few weeks. I don't know that they checked them right
3 away. But at the point -- at that point they were
4 either not facing -- I don't know, I wouldn't be
5 involved with that.

6 Q Is Susan a better person to ask that question to?

7 A Probably, yes.

8 Q Okay, thank you. Quick question here. Could you
9 tell me where the restroom is in this building.

10 A Can I tell you where the restroom is?

11 Q Yeah, seriously. Just point to it, if you don't
12 mind.

13 A Well, there's one down the hall (indicating).

14 Q Okay. So where did you just point?

15 A If you go out and you go down the hall.

16 Q The first time. You pointed somewhere right
17 around here (indicating).

18 THE COURT: Let's move on, Mr. Goldfinch, under
19 611(a), please.

20 MR. GOLDFINCH: Yes, sir.

21 THE WITNESS: I've been in this building twice.

22 THE COURT: Okay, move on. That's all right.

23 Q Do you think it's possible that in Ms. -- do you
24 think that Mrs. LeFont was in pain after she broke her
25 arms?

1 A I'm sure she was.

2 MR. BRYAN: Object to the form of the -- judge, I
3 object to the question.

4 THE COURT: I'll allow that. She went out and she
5 saw her, that would be fine. That would be a
6 perception.

7 MR. BRYAN: Okay.

8 THE WITNESS: When I was asking her questions, she
9 seemed a little annoyed by me asking questions. So, I
10 mean, I'm sure she was feeling some pain.

11 Q Sure. And when you asked her where she fell --

12 A Yes.

13 Q -- what did she do? Tell me.

14 A She was holding her arm, and she took her right
15 arm with her palm up, and kind of pointed in the
16 direction with her eyes and her hand.

17 Q Okay.

18 A And she pointed to the right side of the golf
19 cart.

20 Q Like this (indicating)?

21 A Yeah.

22 Q Okay.

23 A I mean, it was a small gesture, she didn't wave
24 her arm.

25 Q Okay.

- 1 A She kind of motioned it to the right, and she
2 motioned her eyes to the right.
- 3 Q Okay, fair enough. If I could show you
4 Plaintiff's Exhibit 3. Where did you say you guys were
5 parked?
- 6 A The golf cart.
- 7 Q In the golf cart in this area?
- 8 A Yes.
- 9 Q Where the striped lines were?
- 10 A About right there (indicating).
- 11 Q Okay.
- 12 A And she motioned to right here (indicating).
- 13 Q She motioned this way from where you were
14 (indicating)?
- 15 A Um-hum, to her right.
- 16 Q How far would you say it is from there to there
17 (indicating)?
- 18 A From there to there (indicating)?
- 19 Q From there to there (indicating). That's one,
20 two, three, four car lengths.
- 21 A I don't know what the actual footage is. I know
22 that I was told after the fact that they had brought
23 the picture in, and there was some kind of hole over
24 here where the first lot is. And I actually one day
25 walked in, and I walked from there to there

1 (indicating).

2 Q Okay.

3 A And it took me at least 30 steps..

4 Q 30 steps, okay.

5 A At least.

6 Q All right, great. So about how far is the steps
7 where you could -- maybe foot and a half, two feet?

8 A Maybe.

9 Q Okay. So 40 to 45 feet approximately. When she
10 does this (indicating), do you think she could be
11 pointing 40 to 45 feet away?

12 A No.

13 Q No, okay.

14 A No, absolutely not.

15 Q Fair enough, thank you. Tell me about your
16 security of that lot.

17 A Well, there's two gates. There's an entrance from
18 21st Avenue, there's a gate on the -- where the larger
19 main parking lot area is. Standardly what we do is
20 when there's a show going on, we close the gates so
21 that everyone is not coming back there.

22 But the day that this happened would have been the
23 day we had a move-out. The end of the show would have
24 been about 3 o'clock, and at 3 o'clock we would then
25 open the gates and they would come in and they would

1 basically start moving out. A lot of groups will tend
2 to move out earlier, so we try to keep the gates down
3 until 3 o'clock when the show would be over to avoid
4 that.

5 Q Okay. Do you have security other than the gates?

6 A We have the guard that -- the main guard, which I
7 would have been the main guard for that day.

8 Q What do you mean by we? I'm sorry.

9 A We, the convention center.

10 Q Okay. Which is also the City; right?

11 A We are employed by the City, yes.

12 Q Okay. My point is it wasn't Hackney, it was the
13 City that was doing the security; correct?

14 A No. Well, what happens is Hackney will hire some
15 of our guards.

16 Q Okay.

17 A We did not have a guard in the -- working for
18 Hackney at that time.

19 Q I'm sorry.

20 A They were scheduled to work at 2 o'clock that day
21 for the move-out.

22 Q I thought you just told me you were doing the
23 security that day.

24 A For the building, yes, not for Hackney.

25 Q For the building?

- 1 A I work for the building, yes.
- 2 Q Okay. But you have to access to the building
- 3 through that -- I mean, you can access the building
- 4 through that employee lot. That's where the vendors
- 5 come and go from when they are dropping off stuff?
- 6 A When they are dropping --
- 7 Q Is that correct?
- 8 A Yes.
- 9 Q Okay. So is it true that there was no security?
- 10 A There was no guard doing the move-out at that
- 11 time, no.
- 12 Q Okay. Were the gates open?
- 13 MR. BRYAN: At what time?
- 14 Q Were the gates open at the time of the incident?
- 15 A Not that I'm aware of. I don't know for sure.
- 16 Q Okay. Would it be normal for them to be open at
- 17 10 a.m. on a Sunday morning during --
- 18 A Well, the show started at 10.
- 19 Q Sure.
- 20 A So normally when the show is going on, they are
- 21 closed.
- 22 Q Okay, got you. So in all likelihood, or is it
- 23 likely that somebody let her in those gates?
- 24 A I couldn't tell you.
- 25 Q I mean, she didn't break through them; right? I

1 mean, there's no broken gate at your convention center;
2 right?

3 A No. I don't know how she got through the gates.

4 Q Do you have any idea who would have let her in?

5 A I mean, if somebody knew the code and came in
6 before her, she could have come in behind another car.
7 I don't know.

8 Q Okay. Were employees getting there at 10 a.m.?

9 A Employees are there pretty much any time. I mean,
10 in our position we're there 24/7. It depends on what's
11 going on, what shows are there, what time they start,
12 what time they finish. They will have different
13 employees there staying. They have a night crew that
14 comes in at night that cleans, so there's employees
15 pretty much there all the time.

16 Q Okay. Is it your testimony that the City or the
17 convention center, same thing in our case, is it your
18 testimony that they are responsible for patrolling and
19 manning that lot?

20 A I couldn't tell you that.

21 Q Well, I think you can. I mean, you told me
22 earlier that security is provided by the convention
23 center. So --

24 A Well, I mean, we secure the whole building. We
25 open it up, unlock it in the morning, and we lock it

1 down at night. I guess you could say that the parking
2 lot would be part of that, so I'm...

3 Q Okay.

4 A I mean, it's the whole grounds, the whole
5 building.

6 Q Did you take a statement from Bernie? He was the
7 first person there; right?

8 A He was.

9 Q Okay. Did you take a statement from him?

10 A Like a written statement? I mean, he's spoke to
11 me verbally. But I don't have anything in writing, no.

12 Q You don't have anything in writing. Did he sign
13 anything?

14 A I don't believe so.

15 Q Did he get included in the incident report?

16 A I have him as the first person responding to the
17 incident.

18 Q Is there a statement from him in there?

19 A No. I wrote the report, but he did not --

20 Q Okay.

21 A He did not write anything in the report.

22 Q So he didn't write anything on it, there's no
23 statement taken from him and he didn't sign it; is that
24 correct?

25 A Correct.

1 Q Okay. And he was the first person there; correct?

2 A He was.

3 Q Okay.

4 A He is in the operations -- he was in the
5 operations department. The security department, the
6 convention services team or the event coordinator is
7 usually the one responsible for filling this out.

8 Q Would Bernie have maybe opened the gate for
9 vendors to come in and out?

10 MR. BRYAN: Judge?

11 THE COURT: Yes.

12 MR. BRYAN: Is he calling for speculation?

13 THE COURT: Under 602 I'd sustain the objection.
14 She doesn't know.

15 Q Have you ever seen Bernie open a gate before for
16 vendors?

17 A They -- I mean, they come in and out of the gate.
18 But would they open it, I don't know, no. I can't
19 answer that. Well, that wouldn't be anybody, Bernie or
20 any other employee for that matter.

21 Q Okay. So is it uncommon for an employee of yours
22 to open a gate for vendors?

23 A I wouldn't say that it's common, but I wouldn't
24 say that it couldn't happen.

25 Q Okay, thank you. Were vendors invited to that

1 show that day?

2 A The show --

3 Q The Hackney show.

4 A I mean, they are the exhibitors. The exhibitors
5 set up, they have the booths, and the buyers are --
6 would be the guests that would be coming.

7 Q And do they pay for booths?

8 A I don't know that part of the -- I couldn't tell
9 you. I mean, I'm sure they do, but I don't -- I don't
10 do that part.

11 Q Does Hackney pay the convention center?

12 A You have to ask Susan.

13 Q Okay, thank you.

14 MR. GOLDFINCH: Your Honor, I think this witness
15 has testified that she's here representing the City. I
16 would like to introduce -- I would like to give that to
17 you as a Court's exhibit. That's a deposition of the
18 City, a 30(b)(5), 30(b)(6).

19 THE COURT: Well, for what purpose, Mr. Goldfinch?

20 MR. GOLDFINCH: Impeachment of the testimony of
21 the City.

22 THE COURT: It's not her deposition, so you can --
23 you can offer it and at the appropriate time you can
24 proffer that portion that you wish to proffer. She is
25 not the person that gave the deposition, so it can't be

1 used to impeach her, in my opinion so...

2 MR. GOLDFINCH: Fair enough.

3 Q Is it true that vendors may walk through the
4 employee parking lot?

5 A Yes.

6 Q Is it true that vendors may use the employee
7 parking lot?

8 A For unloading and loading purposes.

9 Q Okay. Is it true that while they are loading and
10 unloading, they may be walking back and forth from the
11 convention center?

12 A Yes.

13 Q Okay. Who allows them to do that?

14 A I mean, they have to get in and move their stuff
15 in. That's the area they do that in. The loading dock
16 is in the back of the building where the employee lot
17 is, so that's --

18 Q No, ma'am. My question is who allows them to use
19 that lot?

20 A I couldn't tell you.

21 Q Who controls that lot?

22 A I mean, we will maintain -- when we have a move-in
23 or a move-out, we usually set cones in the parking lot.
24 We create aisles for the cars to come in, pull into the
25 aisles.

1 To try and maximize the space for the vendors to
2 get in with ease, unload their stuff, come back out, we
3 ask them to move to the bigger parking lot, or actually
4 to the other side of the trees where Mr. Foley was
5 talking. We call that the vendor parking lot. That is
6 where they are supposed to park when they're done.

7 Q Ms. Perez, I'm sorry, I'm really not trying to be
8 hard-headed here.

9 A I just don't know how to answer your question.

10 Q The question is just a simple one. Who controls
11 that parking lot?

12 A I mean, when we have the move-in and move-outs, if
13 that's what you're asking. If you're asking a higher
14 up, I don't know who it is.

15 Q Is Susan a better person to answer that question?

16 A You can ask Susan.

17 Q Okay. Are you supposed to patrol that lot?

18 A We -- like I said, when the move-in and move-outs,
19 we have guards that will patrol that lot. But we are
20 not out in that lot 24/7.

21 Q Okay. Is a defect in the asphalt something that
22 you as an employee are supposed to be looking out for
23 as a matter of policies and procedures?

24 A If there is something that we think would be a
25 safety issue, a hazard, we report that to the

1 appropriate higher up and for them to take care of
2 that.

3 Q So what is the, if you know, the policy for
4 reporting a defect? If you see something, I think is
5 what you said. But I need a little bit more than that.
6 Is that just you see something and you report it, or do
7 you have to fill out an incident report? How -- tell
8 me, walk me through that, please.

9 A I mean, normally if I were to see something that
10 needed to be moved or to be fixed or, I mean, just
11 certain little safety issues, I guess, I would probably
12 go to my manager which would be Susan.

13 Q Okay.

14 A Or the appropriate department if it could be
15 easily handled.

16 Q Okay. Are you aware of the tractor trailer use,
17 heavy tractor trailer use in that parking lot?

18 A I --

19 Q Do forklifts use that parking lot?

20 A The forklifts, high lifts. I mean, we have trucks
21 that sometime move into shows.

22 Q Big trucks?

23 A It's -- it's a parking lot.

24 Q Sure.

25 A So you have all kind of weather.

1 Q Does that parking lot in particular fare worse
2 than, let's say, the customer parking lot?

3 A I wouldn't think so.

4 Q Do you patrol those lots, or do you walk through
5 them looking for problems?

6 A No.

7 Q Is anybody supposed to be walking through the
8 property looking for problems?

9 A I don't know.

10 Q Okay. Was it your testimony a minute ago you're
11 supposed to report a problem if you see it?

12 A Yes.

13 Q Okay. Is that different from looking for
14 problems?

15 A I mean, if we notice something, then we would
16 report it, yes.

17 Q Okay. But you don't think you're supposed to be
18 looking for problems?

19 A I mean, we're looking -- I'm not walking the whole
20 parking lot looking for every little thing. But, yes,
21 if I'm out in the parking lot, I keep my eyes open, I'm
22 looking around. If I see something that I think is an
23 issue, then I will report it.

24 Q Okay. And, once again, referencing Plaintiff's
25 Exhibit 3, you told me earlier that you park in this

- 1 parking lot?
- 2 A I do.
- 3 Q Okay. Where do you park?
- 4 A A lot of times I park in the center.
- 5 Q Right here (indicating)?
- 6 A But I've parked along the trees, and I've parked
- 7 on the other side along the building.
- 8 Q So you've parked here (indicating), you've parked
- 9 here (indicating)?
- 10 A Um-hum.
- 11 Q You've parked everywhere in the lot essentially?
- 12 A Pretty much.
- 13 Q Is what you're saying. Okay. Have you ever seen
- 14 that pothole that was there?
- 15 A I have not. Not until after the fact, not until
- 16 they took the picture and said, this is where she fell.
- 17 Q So from 2012 to 2014, you parked here almost
- 18 everyday?
- 19 A Yes.
- 20 Q Everywhere in this little lot right here
- 21 (indicating)?
- 22 A Correct.
- 23 Q And you're saying that you've never seen that
- 24 pothole?
- 25 A No.

1 Q Are you denying that it exists?
2 A No.
3 Q Okay. It does exist?
4 A No. I just -- I guess it was not something that I
5 would have thought of as a hazard.
6 Q Okay, that's fair enough. But have you seen it?
7 I mean, if you didn't think of it as a hazard, I guess
8 you're saying -- are you saying you saw it but you
9 didn't think of it as a hazard?
10 A After the fact I saw it, yes.
11 Q Okay.
12 A I mean, it was pointed out, and I kind of saw it.
13 Q Is that it -- I'm referencing Plaintiff's
14 Exhibit 4.
15 A I believe so, yes.
16 Q Okay. And that references Plaintiff's Exhibit 5?
17 THE COURT: Mr. Goldfinch, we've gone through
18 those. You don't have to have her identify each one of
19 them.
20 MR. GOLDFINCH: Sure.
21 THE COURT: Thank you, sir.
22 Q That was the pothole?
23 A Yes.
24 Q Okay. How many times did you say you walked past
25 it?

1 A Probably a lot.

2 Q Okay.

3 A Pretty much any parking lot I've ever been in has
4 little divots and little cracks, and there's some out
5 in this parking lot here.

6 Q So if you didn't see it for two plus years, you
7 think it's possible Ms. LeFont didn't see it?

8 MR. BRYAN: Judge, objection, calls for
9 speculation again.

10 THE COURT: Calls for speculation. Sustained,
11 602. She can't answer the question.

12 THE WITNESS: But that was no --

13 THE COURT: No, ma'am, Ma'am.

14 THE WITNESS: Okay.

15 THE COURT: I sustained the objection.

16 THE WITNESS: Sorry.

17 THE COURT: Wait for the next question.

18 THE WITNESS: Sorry.

19 Q I think that I have covered this, but let me just
20 make sure. Do other employees, not just you, do other
21 employees that you know of actively go and look for
22 things like that; do you have anybody on staff that you
23 know of that does that?

24 A I mean, I'm not certain. We have the electricians
25 who would go around checking. I would -- I believe

1 that anybody in the City of Myrtle Beach would actually
2 look anywhere in the City of Myrtle Beach and report
3 things to upper management if something needed to be
4 repaired.

5 Q Do you have a responsibility to report it if you
6 see it, something that's a hazardous condition for
7 instance?

8 A It is, I mean, it would, I guess be a part of our
9 job to bring it to the attention of somebody that can
10 take care of it.

11 Q Okay.

12 MR. GOLDFINCH: No more questions, Your Honor.

13 Thank you.

14 THE COURT: Okay. Redirect?

15 MR. BRYAN: Sure.

16 REDIRECT EXAMINATION

17 BY MR. BRYAN:

18 Q Ms. Perez, do you when the depression that you
19 talked about, when it came into existence?

20 A For me?

21 Q Did you know when it happened?

22 A I don't know when it actually was created, no.

23 Q Okay.

24 MR. BRYAN: Thank you. Recross, Mr. Goldfinch?

25 MR. GOLDFINCH: No, Your Honor.

1 THE COURT: All right. Ms. Perez, I'll ask you to
2 step down. Please remain in the courtroom, though,
3 thank you.

4 (Witness excused.)

5 THE COURT: All right. You may call your next
6 witness.

7 MR. BRYAN: Thank you, judge. The City calls
8 Ms. Susan Skellett.

9 SUSAN SKELLETT, after being duly sworn, testified
10 as follows:

11 THE CLERK: Have a seat, please. State your name
12 for the Court, please, ma'am, and spell your last name.

13 THE WITNESS: Susan Skellett, S-K-E-L-L-E-T-T.

14 DIRECT EXAMINATION

15 BY MR. BRYAN:

16 Q Ms. Skellett, how long have you been with or
17 working with the Myrtle Beach Convention Center?

18 A 16 and a half years.

19 Q Okay. Have you been for 16 and a half years in
20 the same job?

21 A No. I started in 2000 as an event coordinator. I
22 was then promoted in 2006 as the event manager, and
23 just this past February I was promoted to convention
24 services manager.

25 Q All right. At the time of Ms. LeFont's incident,

1 that would be April 13, 2014, what were you?

2 A Event manager.

3 Q Event manager, Okay. Tell the jury what an event
4 manager is or does.

5 A I play the liaison between our clients and the
6 convention center. And we plan the process of building
7 their show. I'm there from the beginning to the end to
8 make sure that it flows the way that they would like it
9 and that everything is set up according to the floor
10 plan which they've submitted to me prior to that, that
11 I've submitted to our fire marshall.

12 Anything that happens during the event they
13 normally will always report to me. Any help they need,
14 any -- pretty much like I said, I'm just the liaison
15 for just about everybody.

16 Q Okay. Ms. Skellett, are you familiar with
17 Ms. LeFont's incident?

18 A I became familiar with it.

19 Q Okay. Which means you didn't see it, but you --

20 A Right.

21 Q -- you were informed, all right. Next question,
22 how did you become aware that there was an incident?

23 A I received a phone call during my shift, which was
24 the second day of the show, from Terry saying that
25 there was an incident. And I came downstairs to find

1 out exactly what happened.

2 Q Is that protocol?

3 A Yes.

4 Q Okay. What happened next?

5 A I met Terry, and Bernie was with her. And I
6 asked, I said, you know, what happened. And they
7 started explaining it to me. So I said, did you guys
8 happen to get any pictures. And they said, no. And I
9 said, well, let's take a walk outside and just show me
10 where you found her, and then we can, you know,
11 document accordingly with the incident report.

12 Q Okay. And did you, in fact, take a picture?

13 A I did.

14 Q Okay.

15 MR. BRYAN: Madam court reporter, I'd like to mark
16 this as Defendant's-4.

17 (WHEREUPON, Defense Exhibit No. 4 was marked for
18 identification only.)

19 Q Ms. Skellett, do you have Defendant's Exhibit 4 in
20 front of you?

21 A I do.

22 Q Do you recognize Exhibit 4?

23 A I do.

24 Q Is that in fact a photograph you took of Ms. Perez
25 and Mr. Seifert?

1 A Yes, it is.

2 Q Mr. Seifert is Bernie; correct?

3 A Yes.

4 Q Bernie Seifert. Is this the photograph taken
5 immediately after the incident?

6 A Correct.

7 Q Okay. Does this photograph accurately depict the
8 area where Mr. Seifert told you that where he found
9 Ms. LeFont?

10 A They both, yes.

11 Q Okay. Has the photograph been altered or
12 documented or changed in any way since it was taken?

13 A No.

14 Q Okay.

15 MR. BRYAN: Your Honor, Defendants would move
16 Defendant's Exhibit 4 into evidence.

17 THE COURT: Any objection?

18 MR. GOLDFINCH: No objection, Your Honor.

19 THE COURT: Without objection, Defendant's-4 is
20 admitted. Thank you.

21 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
22 in evidence.)

23 MR. BRYAN: Thank you, judge.

24 Q Now, tell me what you asked Ms. Perez and
25 Mr. Seifert to do, like how this picture, I'll put it

1 on the...

2 MR. BRYAN: Can we get the screen again? Thank
3 you.

4 Q Okay. If you would, Ms. Skellett, tell me exactly
5 how this picture came to be taken. What did you tell
6 Mr. Seifert, what did you tell Ms. Perez?

7 A I simply just asked them if they would go stand in
8 the area in which they found Ms. LeFont, and I took the
9 picture. And at that point I said to Terry, I said,
10 well, what did she fall over. And Terry said, she told
11 me she just fell. Because I wanted to include anything
12 in the picture that I thought might have, you know,
13 created the accident.

14 Q Correct. As the event manager, do you keep a file
15 or a folder for each of your events?

16 A Yes.

17 Q And they are like your clients, as I understand?

18 A Right.

19 Q Hackney is like your client?

20 A Right.

21 Q It's your baby?

22 A Yes.

23 Q Do you have a folder for every event?

24 A Every year --

25 Q It keeps --

1 A -- that they've been there I have a separate event
2 file, is what we call it.

3 Q And you keep contracts; what else?

4 A Security schedules, banquet event owners which we
5 call BEOs. They're what we give out as an information
6 tool to our staff to tell them --

7 Q Sure.

8 A -- how the show's working that week, when the
9 move-in is, when the show hours are, all that.

10 Q Does your event file contain incident reports that
11 occurred during that incident -- excuse me, during that
12 event?

13 A Yes.

14 Q Okay. The event folder for the HT Hackney show,
15 year 2014, did it contain an incident report?

16 A It had one incident report, yes.

17 Q And it's the one we've looked at previously;
18 correct?

19 A Yes..

20 Q Is there a second incident report in your event
21 file for the HT Hackney show in year 2014?

22 A No.

23 Q If there was an incident, is that where the report
24 would be maintained?

25 A Yes.

- 1 Q Have you, in fact, checked your event file?
- 2 A Yes.
- 3 Q Okay. And how many incident reports did you find?
- 4 A One.
- 5 Q Okay. One involving who?
- 6 A Ms. LeFont.
- 7 Q Okay. The Hackney show is a two-day show?
- 8 A Correct, Saturday and Sunday.
- 9 Q 13th when this occurred, is that a Sunday?
- 10 A Yes.
- 11 Q Okay. On Sunday, what time does the HT Hackney
- 12 show start?
- 13 A 10 a.m.
- 14 Q 10 a.m.?
- 15 A Um-hum.
- 16 Q And what time did the vendors typically arrive
- 17 before?
- 18 A That's the second day of the show, so
- 19 traditionally speaking, you know, they are usually not
- 20 there as early as the first day. So an hour, 30
- 21 minutes. Some get a little earlier because they may
- 22 need to restock on products. But traditionally
- 23 speaking, not before 9 o'clock.
- 24 Q Not before nine?
- 25 A About an hour before the show, at most.

1 Q Okay. On Sunday you would expect the vendors to
2 be arriving around an hour beforehand?

3 A Right.

4 Q Okay. And you have experienced that with your own
5 eyes?

6 A Oh, yes.

7 Q Okay.

8 MR. BRYAN: Thank you, Ms. Skellett. I have no
9 further questions.

10 THE WITNESS: Okay.

11 THE COURT: Do you need the video, I mean, the
12 picture for any reason, Mr. Goldfinch?

13 MR. GOLDFINCH: No, sir. I don't need it.

14 THE COURT: You may put it up, please. Thank you.
15 You may cross-examine, sir.

16 MR. GOLDFINCH: Thank you, sir.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. GOLDFINCH:

20 Q Good afternoon, Ms. Skellett.

21 A Good afternoon.

22 Q Is it Skellett?

23 A Skellett.

24 Q Okay. Not skillet, Skellett?

25 A No, not...

1 Q Are you here as a representative of the City?

2 A Yes.

3 Q Okay... Are you here as an employee of the
4 convention center?

5 A I'm an employee of the City of Myrtle Beach.

6 Q Okay.

7 A Yeah.

8 Q All right. Is that pretty much the same thing for
9 our purposes?

10 A Yeah.

11 Q Was that a yes?

12 A I guess so, yes..

13 Q Okay. Are you aware of the pleadings, the
14 discovery, all of stuff that we send in this case; have
15 you had an opportunity to review any of that stuff?

16 A I as well, same as Terry, the only thing I have
17 seen is some depositions.

18 Q Okay.

19 A But other than that, no, I'm not familiar with
20 anything else that would have been requested.

21 Q Okay. You're not familiar with our request for
22 video evidence?

23 A No, sir.

24 Q Okay.

25 THE COURT: Is that a no?

1 THE WITNESS: No. Sorry.

2 Q Did y'all have video cameras at the time of the
3 incident?

4 A We did have video cameras. I'm not sure -- I did
5 not check the video cameras. But there were -- they
6 were -- there are some, I'm not sure where they would
7 have been directing, though.

8 Q Okay. Did anybody check the video cameras after
9 this incident?

10 A I believe Paul Edwards did, which is my general
11 manager.

12 Q Paul -- I'm sorry, I didn't hear you.

13 A Paul Edwards.

14 Q Paul Edwards, okay. All right. Is he in the
15 courtroom today?

16 A He was. I guess not now.

17 Q He was?

18 A Yeah.

19 Q Okay. Would it be interesting for you to know
20 what was on those videos?

21 MR. BRYAN: Judge, it's irrelevant.

22 THE COURT: Sustain the objection.

23 Q Ms. Skellett, wouldn't that help us resolve some
24 of these things?

25 MR. BRYAN: Objection. Again, it's irrelevant.

1 THE COURT: Sustain the objection, it's
2 argumentative.

3 MR. GOLDFINCH: Fair enough.

4 THE COURT: And you can argue that to the jury.

5 MR. GOLDFINCH: Thank you, sir.

6 THE COURT: Thank you.

7 Q Did you see where Ms. LeFont fell, Ms. Skellett?

8 A No.

9 Q Okay. Do you know of anybody in the Defense's
10 camp that saw where Ms. LeFont fell?

11 A No.

12 Q Is there anybody that worked for the convention
13 center for the City that you know of that saw
14 Mrs. LeFont fall?

15 A No.

16 Q Okay, thank you. Can you tell me a little bit
17 about your security of the lot.

18 A As far as?

19 Q I'm sorry, ma'am. I can't hear you very well, I
20 don't hear very well. I'm a little bit deaf in this
21 ear.

22 A What exactly would, I mean...

23 Q Security wise, yeah. Do you have -- I heard
24 testimony earlier about gates, and I got some answers
25 that you would have -- you would have better

1 information. So I'm curious specifically about who
2 would have let the LeFonts in or out of the gate, who
3 would that have been?

4 A I don't know that anybody would know that.
5 Traditionally speaking on the last day of a show, we
6 keep those gates down just for that purpose. Most of
7 our vendors get anxious, and they want to secure a spot
8 to be the first ones out of the exhibit hall.

9 Q Okay.

10 A So traditionally speaking, those gates would be
11 down in the morning very early to prevent vendors from
12 coming back in that area.

13 Q Okay. So you know the vendors --

14 A When somebody -- I'm sorry.

15 Q So I think it's your testimony that you know that
16 vendors want to come in and out of there as quickly as
17 possible on Sunday; is that what you said?

18 A Yes.

19 Q Okay. And those gates would have normally been
20 down; is that correct?

21 A Correct.

22 Q Okay. So is it true that somebody would have had
23 to let her in?

24 A I don't know. I mean, she could have.

25 Q Okay.

1 A I mean, I've seen people go through and then
2 another car scoot behind.

3 Q Okay.

4 A I've seen people go up and physically pick up the
5 gate and let people get in. I've seen them get out.
6 There is a button that is inside of the mechanism.
7 I've seen people get out and push the button that will
8 make the arm come up. I've seen people drive through
9 the arm.

10 Q Okay.

11 A Can I say that happened that day, I don't really
12 know. But, yes, I've seen people that come back in
13 that area that we are trying to deter that.

14 Q Okay. But vendors are allowed to come in and out
15 of that area to load and unload; is that correct?

16 A Yes.

17 Q Okay. So if the gate's down and vendors are
18 allowed to come in, how do they get in and out?

19 A There is normally a phone number there or there
20 could be somebody back in that area.

21 Q Okay.

22 A Now, I'm not sure, again -- now, this particular
23 morning because it was the second day of the show and
24 the move-in was over --

25 Q So let's go through both of those scenarios. You

1 said phone number and somebody may be there?

2 A Right. There is --

3 Q If it was a phone number, who would they have
4 called?

5 A Convention service -- the main convention services
6 personnel --

7 Q Okay.

8 A -- who is the building guard is what we call.

9 Q Okay. And does that person work for the City?

10 A Yes.

11 Q The convention center in this case?

12 A Um-hum.

13 Q Okay. So under that scenario where they would
14 have made a phone call, they would have called an
15 employee of the City to let them in the gate; is that
16 correct?

17 A Correct.

18 Q Okay. Under the second scenario, if someone was
19 in that area, I assume you meant a security guard; is
20 that who you're talking about?

21 A Anybody.

22 Q Okay. Like who? That's what I need to know.

23 A And that's what I'm saying, it could have been an
24 operations person, it could have been a concessions
25 person. There's several personnel that come through

1 that area --

2 Q Okay.

3 A -- during that show or any show, for that matter.

4 Q Employees that park in that parking lot?

5 A Sure.

6 Q Okay. Also employees of the City?

7 A Sure.

8 Q Okay.

9 A And it would -- yeah.

10 Q All right. So other than the gate, I'm not

11 talking about ingress, egress.

12 A Okay.

13 Q Other than the gate, who mans that parking lot,

14 who's in charge of security for that parking lot, other

15 than the gate? I mean, do you have somebody walking

16 the lot at night or anything like that?

17 A Not -- you mean specific to that parking lot?

18 Q The parking lots in whole, the area.

19 A We have 24/7 security that is for the entire

20 building.

21 Q Are those like uniformed security guards?

22 A Correct. Well, we call them convention services.

23 Q Okay. Those aren't City police officers or

24 anything like that?

25 A No.

1 Q Those are uniformed security guards?

2 A Right.

3 Q Okay. Do they work for the City?

4 A Yes.

5 Q Okay. Is it a policy of the City to look for
6 things like this, this trip hazard, this pothole that
7 we're talking about?

8 A I feel it's a policy of -- yes, any city employee,
9 the same way I report a spilled cup of coffee or, you
10 know, anything that when I'm on any grounds. I as an
11 employee even when I take my son to the baseball
12 fields --

13 Q Sure.

14 A -- I report anything that I might feel that would
15 be a hazard.

16 Q And I think that's a great policy. But my
17 question is, is that a policy that if you see it you're
18 supposed to report it?

19 A I think it's something that I've been asked to do
20 as an employee, yes. Now, is it a policy, I don't
21 know.

22 Q Have you ever seen a written policy about things
23 like this?

24 A No.

25 Q Okay. Have you ever seen a written policy about

1 any kind of defect; not specific to potholes but any
2 kind of problem that could be a public safety concern?

3 A An actual written policy?

4 Q Sure, yes, ma'am.

5 A No. No.

6 Q Okay. How about a verbal policy?

7 A I think that's definitely a standard within our
8 facility, anytime you see anything obviously, like I
9 said, from spills to -- we have hundreds of thousands
10 of people that go in and out of our facility and our
11 parking lot areas.

12 Q Yes, you do.

13 A So I'm going to say anything from spills to, you
14 know, people not feeling well --

15 Q Right.

16 A -- medical conditions, anything of that nature --

17 Q Okay.

18 A -- is, yes, communicated that -- you report it to
19 your immediate manager.

20 Q Okay. And when you're hired, would you have been
21 told that by your immediate manager or by some boss
22 somewhere?

23 A I mean, I couldn't say specifically, but I think
24 somewhere along the line.

25 Q Okay.

1 A Yeah, definitely.

2 Q Do you tell people under you that that's the

3 policy to see --

4 A Absolutely.

5 Q -- when you see something, you report it?

6 A Absolutely.

7 Q Okay. You tell them that they need to be on the

8 lookout for problems that somebody may trip over or

9 anything like that?

10 A Yes.

11 Q Okay.

12 A Any type of individual that comes into the

13 building that may be suspicious --

14 Q Okay.

15 A -- any suspicious packages.

16 Q Right. So any kind of hazard that may exist, you

17 tell them to be on the lookout for it and to report it

18 if they see it?

19 A Correct.

20 Q Okay, thank you. Are you familiar with the way

21 Hackney sort of runs the show? I mean, when they book

22 with you, are you familiar with the whole process?

23 A Sure.

24 Q Okay. Do vendors pay to open a booth there?

25 A I would assume that Hackney -- well, that's -- we

1 lease the space and we do what we call a lease
2 agreement --

3 Q Okay.

4 A -- to HT Hackney. And they in that lease
5 agreement, it's outlined what space they are entitled
6 to use. At that point it's up to the client to
7 determine in what fashion they want to use it.

8 Q Okay.

9 A And then they submit a floor plan to me, and that
10 is given to my fire marshal for approval 30 days prior
11 to the event.

12 Q Okay. And do you have knowledge if Hackney
13 charges the vendors to come in?

14 A I don't. I can't say a hundred percent. Most
15 times conversation that I've with had with clients,
16 they do.

17 Q Okay. So your testimony was you've had
18 conversations with people like Hackney, and they do
19 charge?

20 A Yes.

21 Q Is that correct?

22 A Um-hum.

23 Q Okay. Would you say that vendors are invited to
24 the convention center to display their wares, their
25 goods?

- 1 A I guess that's one terminology you could use, I
2 guess.
- 3 Q That's a yes?
- 4 A Yes.
- 5 Q Okay. Are you familiar with -- well, let me ask
6 you, how long have you been with the convention center?
7 I'm sorry I didn't ask you that in the beginning.
- 8 A 16 and a half years.
- 9 Q 16 and a half?
- 10 A Um-hum.
- 11 Q Okay. So that would have been?
- 12 A March of 2000.
- 13 Q March of 2000, okay. Your math's better than
14 mine. I'm a lawyer, I'm sorry, I'm not a
15 mathematician. So since what did you say, August
16 of 2000, what was it?
- 17 A March of 2000.
- 18 Q March of 2000. Since March of 2000, have you seen
19 any major repairs of that lot in the last 16 and a half
20 years?
- 21 A I mean, it's been resurfaced.
- 22 Q Okay.
- 23 A I can't -- I don't know when. I don't get
24 involved in a lot of that process.
- 25 Q Is that more of a Paul question?

- 1 A Paul, yeah.
- 2 Q Okay.
- 3 A He heads up, it's what we call capital projects.
- 4 Q Okay. But to your knowledge, how many times has
- 5 it been resurfaced in the last 16 years?
- 6 A I really honestly couldn't tell you for sure.
- 7 Q Okay. Do you walk in that parking lot?
- 8 A I have before, yes.
- 9 Q Okay. Have you seen the City or some third-party
- 10 vendor undertake fixing potholes in that parking lot?
- 11 A I can't honestly say if I've actually ever
- 12 witnessed it. I think I've --
- 13 Q Well, I'm not saying witnessed the actual patching
- 14 of a pothole. Have you seen remnants of a pothole
- 15 being patched in that parking lot?
- 16 A Yes.
- 17 Q Okay, thank you. Did you ever see this pothole in
- 18 question?
- 19 A Not until after the incident, no.
- 20 Q I'm sorry again? I really don't hear very well.
- 21 A Not until after the incident.
- 22 THE COURT: You could sit up and speak into that
- 23 mike, thank you very much.
- 24 MR. GOLDFINCH: Thank you.
- 25 Q Not until after the incident; is that what you

1 said?

2 A Correct. No, I did not see it before the
3 incident.

4 Q If you would have seen it, would you have reported
5 it?

6 A Probably not.

7 Q Fair enough. If your employees that work
8 underneath you would have seen it, would you have
9 expected them to report it?

10 A It's hard to -- I don't know. I really don't
11 know.

12 Q Okay. I'm not going to go through all of these,
13 I'm just going to ask you about this one.

14 A Okay.

15 Q I'm referencing Plaintiff's Exhibit 4.

16 A Um-hum.

17 Q The same question now that you can see this
18 pothole. If you or any of your employees would have
19 seen that pothole, would you have asked them to report
20 it?

21 A I don't know that I would have.

22 Q Okay. After you found out that that was the
23 pothole in question that was being alleged as being the
24 tripping hazard, did y'all go and measure it or do any
25 inspection of it?

1 A I did not. I believe my general manager did,
2 though, Paul Edwards.
3 Q Paul Edwards.
4 A Um-hum.
5 Q Okay, all right. Do you know of the results of
6 that inspection?
7 A I do not.
8 Q Okay. You don't know how deep it was, how wide it
9 was?
10 A I do not. Specifically, no.
11 Q All right, fair enough. Didn't you -- I think it
12 was your testimony that you -- that vendors commonly
13 restock at the time of the incident, 10 o'clock on
14 Sunday morning. I think that was your testimony;
15 wasn't it?
16 A I don't know if commonly, but there are some, yes.
17 Q Okay. So if you keep gates down to prevent
18 vendors from coming in and out at that time, how are
19 hey supposed to restock?
20 A Well, and again, you know, we do the best we can
21 to accommodate those folks. Traditionally, there
22 aren't that many. But there's no way that we cannot
23 keep those gates down because if we don't do that, what
24 happens is we have vendors back there that are not
25 really doing that. And it creates a problem for our

1 fire marshal.

2 Q Okay. So you know that vendors -- if I'm not
3 mistaken on your testimony, you know that vendors use
4 it, you keep the gate down?

5 A Um-hum. A lot of vendors don't need to drive back
6 there, though. A lot of vendors will hand walk because
7 they're --

8 Q Well, if you're restocking, would you need to
9 drive back there?

10 A Some do, some don't.

11 Q Okay. I assume...

12 A It just depends on, you know, the business flow
13 for that day. But a lot of vendors go back and forth
14 on foot as well.

15 Q Sure.

16 A So we don't have a whole lot of traffic routinely
17 at that time.

18 Q But you know that --

19 A It can happen, yes.

20 Q -- vendors can be back there?

21 A Yes.

22 Q Okay. And there's, again, two options for getting
23 in and out of that gate; is that correct?

24 A Correct.

25 Q Okay. Both of them are options which include your

1 employees; is that correct?

2 A Correct.

3 Q Okay. Thank you.

4 MR. GOLDFINCH: Nothing further.

5 THE WITNESS: Or an employee, not just...

6 THE COURT: Redirect?

7 MR. BRYAN: Just a couple, judge.

8 THE COURT: Sure.

9 REDIRECT EXAMINATION

10 BY MR. BRYAN:

11 Q Mrs. Skellett, vendors, are they allowed to park
12 in the employee parking lot whenever they want to, or
13 are they allowed just at certain specified times?

14 A Just at certain specified times.

15 Q Okay. And did you ever see the indention shown in
16 Plaintiff's Exhibits like 4, 5 and 6 before
17 Ms. LeFont's incident?

18 A No.

19 Q Okay. Do you know when that indention happened?

20 A I do not.

21 Q Do you have any knowledge of any complaints prior
22 to Ms. LeFont's accident, complaints about the
23 condition of the parking lot in the employee parking
24 lot of the convention center?

25 A No.

1 Q You answered the question to Mr. Goldfinch that
2 vendors are invited to trade shows. My question is, do
3 you know who invites them?

4 A The -- what we call the show promoter.

5 Q Okay. Does the convention center invite them?

6 A No.

7 MR. BRYAN: Okay. Thank you.

8 THE COURT: Recross?

9 MR. GOLDFINCH: Just one more.

10 (Discussion off the record.)

11 MR. GOLDFINCH: Defendant's Exhibit 3. Okay, got
12 it.

13 RECROSS-EXAMINATION

14 BY MR. GOLDFINCH:

15 Q Mrs. Skellett, just a quick confirmation here:

16 MR. BRYAN: Judge, it's outside the scope of my
17 redirect.

18 THE COURT: I don't know what -- it may be, I
19 don't know what the question is.

20 MR. BRYAN: That's my objection.

21 MR. GOLDFINCH: He just --

22 THE COURT: Well, I understand that. But I don't
23 know what the question is. It may or may not be.

24 MR. BRYAN: Okay.

25 THE COURT: Don't answer question until he

1 finishes asking it.

2 THE WITNESS: Okay.

3 Q The question is the same question that was asked.

4 These 14 spaces right here that we were just

5 referencing, is that the employee parking lot?

6 A Anything beyond the arms are what we consider the

7 employee parking lot, which is here and here

8 (indicating).

9 Q So are these --

10 A We don't recommend anyone beyond those arms, other

11 than when they are invited during the move-in or the

12 move-out process.

13 Q Okay. But my question is, are these considered

14 employee parking?

15 A Yes.

16 Q Are these considered employee parking

17 (indicating)?

18 A Yes.

19 Q Okay. Everything in this lot --

20 A Correct.

21 Q -- including those 14 spaces is considered

22 employee parking?

23 A Correct.

24 MR. GOLDFINCH: Okay. Thank you.

25 THE COURT: All right. Thank you, ma'am. You may

1 come down.

2 (Witness excused.)

3 THE COURT: Ladies and gentlemen, I'm going to let
4 you go to your jury room for about ten minutes. Do not
5 begin your deliberations, there's a matter of law that
6 I need to take up as well. We'll be with you in about
7 10, 15 minutes.

8 (WHEREUPON, the jury exited the courtroom at
9 2:55 p.m.)

10 THE COURT: All right. First of all, do you want
11 the Court's -- the 12(b)(6) deposition marked, or do
12 you want to ask her questions concerning that?

13 MR. GOLDFINCH: The 30(b) deposition, Your Honor?

14 THE COURT: Yeah.

15 MR. GOLDFINCH: I don't -- after that, I don't
16 think we need it, no, sir.

17 THE COURT: Okay, all right. We will just -- it
18 won't be marked, okay. All right. How many more
19 witnesses do you have?

20 MR. BRYAN: I just have a matter of publishing.

21 THE COURT: That's what I thought was going to be
22 the case. So I need to address that, and I'll be happy
23 to hear from you. And I've read your e-mails and
24 exchanged e-mails, so I'll be happy to hear from you.

25 MR. GOLDFINCH: Okay. Do you want to hear from

1 Mr. Bryan first or --

2 THE COURT: No, I understand that. I did it too
3 as a lawyer, so I understand what he wants to do. So,
4 I mean, I'm curious as to why I shouldn't allow it.

5 MR. GOLDFINCH: Well, a couple things, Your Honor.
6 The first one is he referenced 30(b)(2)?

7 MR. BRYAN: 32.

8 THE COURT: 32 is a rule.

9 MR. GOLDFINCH: 32(a)(2). And (a)(2) is
10 referencing a 30(b)(6) deposition.

11 THE COURT: Well, no, it also has a party. It's
12 both of them. I looked at that too. It says a -- it
13 says -- I'd read that to be both of them. It's not
14 just confined, because I've used it, it has to be. I
15 have it right here. The deposition of party or anyone
16 who at the time is a 30(b)(6). So it's a party.

17 MR. GOLDFINCH: Okay. Fair enough, Your Honor.
18 I'll jump from that one to my second argument.

19 THE COURT: All right.

20 MR. GOLDFINCH: Which would simply be the
21 individual specific items that he's mentioned. I think
22 it's important that we mention the substance of those
23 items to talk about the relevancy of them more so than
24 whether or not we should admit them under the rule.
25 And the first one that he brought up would be page 130,

1 line 22.

2 THE COURT: Wait just one second.

3 MR. GOLDFINCH: Yes, sir.

4 THE COURT: I don't have the deposition.

5 (Discussion off the record.)

6 THE COURT: Referring to page and line, please.

7 MR. BRYAN: He was referring you to page 130,
8 judge.

9 THE COURT: Okay.

10 MR. GOLDFINCH: 130, line 22.

11 THE COURT: All right, let me just read it. And
12 your objection is?

13 MR. GOLDFINCH: Yes, sir, that goes for three
14 pages, it looks like, 130 to page 133.

15 THE COURT: Um-hum.

16 MR. GOLDFINCH: The objection is that this is
17 prior medicals. We're not arguing any kind of
18 permanent injury here, we've never done that. We're
19 not arguing future, we're not arguing any kind of a
20 permanent injury. So I'm not really sure why the prior
21 medicals in this case is relevant.

22 THE COURT: What's your position on that?

23 MR. BRYAN: Well, judge, I have to admit, I'm a
24 little bit unsure of what their damage model really is.

25 THE COURT: Well, as long as -- understanding that

1 I would not charge on any permanent injury or future
2 injury, then I would agree that it really doesn't --
3 because there's not -- there's no statement of an
4 aggravation of a preexisting condition which could
5 bring into play some prior injury.

6 But that being the case, or nothing that said she
7 was -- that somebody else wouldn't have been as harmed.
8 So I would agree, I'm not going to charge so that any
9 statement about her continuing to have pain and
10 suffering is really moot.

11 MR. BRYAN: So there's no ongoing pain and
12 suffering after --

13 THE COURT: No charge for permanent --

14 MR. BRYAN: -- three weeks.

15 THE COURT: We're talking about from now till --
16 talking about from now back to the day it happened,
17 that's the damage that we're talking about.

18 MR. GOLDFINCH: Correct, Your Honor, that's what
19 we're claiming. The next one, two, three --

20 THE COURT: The filing of the lawsuit back really
21 would be the trigger date.

22 MR. BRYAN: The filing of the lawsuit back to
23 the --

24 THE COURT: To the day of occurrence.

25 MR. GOLDFINCH: The next one, two, three are

1 exactly the same, Your Honor, they are also prior
2 medicals. The third one is depression therapy. We're
3 not claiming depression.

4 THE COURT: As long as I'm not going to charge
5 mental suffering.

6 MR. BRYAN: Judge, there was testimony yesterday
7 that -- she's crying on the stand.

8 THE COURT: Well, I understand that.

9 MR. BRYAN: She's upset and she's...

10 THE COURT: You really aren't going to try to
11 argue that that's depression related, I don't think,
12 for somebody breaking their arm. I hope you're not
13 going to argue that. I will -- you can argue what you
14 want. From a standpoint of reading that, you don't
15 need to do that, in my opinion. I think that's pretty
16 much human nature. But you don't have to be depressed
17 to have that reaction, I don't believe.

18 MR. GOLDFINCH: And this is past depression, past
19 mental health issue.

20 THE COURT: Past when?

21 MR. GOLDFINCH: Prior to the injury.

22 THE COURT: I understand that. But that would
23 be -- make her more susceptible to arguing and react
24 emotionally, to me. And I understand that particular
25 argument. I just -- I don't think it's -- I don't

1 think it's that relevant.

2 So you can proffer that, you can proffer that for
3 purposes of review, just that portion that you want.

4 But I would sustain the objection as to that.

5 MR. BRYAN: Yeah, I would like to proffer it.

6 THE COURT: That's fine. So just --

7 MR. BRYAN: It's like six lines.

8 THE COURT: That's fine. We'll just have you
9 state at the conclusion what you want to have it heard.

10 That's not a problem, I don't mind that.

11 MR. GOLDFINCH: The last one we have, Your Honor,
12 the rest we're fine, but the last we have is page 167,
13 line 9 to 169, line 14.

14 THE COURT: 167, line 9.

15 MR. GOLDFINCH: Yes, sir.

16 THE COURT: I think that's very relevant. That
17 goes to the time period we're talking about.

18 MR. GOLDFINCH: This is regards to her travel
19 habits.

20 THE COURT: Oh, I understand that. It talks -- he
21 asked her questions about that, but it goes and
22 elaborates more into that. So, yeah, I would allow
23 that. Overrule your objection.

24 MR. GOLDFINCH: Thank you, Your Honor.

25 THE COURT: All right. So the part that I'm not

1 allowing, which one was that?

2 MR. GOLDFINCH: That's page 130, line 22 through
3 page 133, line 14.

4 THE COURT: All right. That's dealing with the
5 depression?

6 MR. GOLDFINCH: No, sir. That's dealing with the
7 prior medical history.

8 THE COURT: Oh, no. Well, that part, I don't
9 think he's arguing with that. The specific one with
10 respect to the depression that you wanted to have?

11 MR. GOLDFINCH: Oh, that's page 162, line 20.

12 THE COURT: All right. To where?

13 MR. GOLDFINCH: To page 163, line 12.

14 THE COURT: All right. That Court's Exhibit 1 is
15 proffered by the Defendant. And I sustain the
16 objection, and you preserve that for purposes of
17 review, so should that become necessary. If you need
18 to elaborate, Mr. Bryan, feel free to do so.

19 MR. BRYAN: Okay, what else have we decided?

20 THE COURT: The other one I'm going to allow, the
21 one on the cruises, you can publish that.

22 MR. BRYAN: All right. The ones I've got that I
23 can't speak to you is page 130 to 133.

24 THE COURT: That's dealing with -- because they
25 are not creating any permanent injury, I don't think

1 it's relevant.

2 MR. BRYAN: The 135, 137?

3 MR. GOLDFINCH: Right.

4 MR. BRYAN: And 139?

5 MR. GOLDFINCH: Right.

6 MR. BRYAN: And 139?

7 MR. GOLDFINCH: Yes, correct.

8 Your Honor, this has nothing to do with the case,

9 but is it warm if here or is it just me.

10 (Discussion off the record.)

11 THE COURT: Let's take about a five-minute break,

12 folks, and then we'll go. Okay, thanks.

13 (WHEREUPON, a brief recess was taken at 3:04 p.m.)

14 (WHEREUPON, the jury came into open court at

15 approximately 3:15 p.m.)

16 THE COURT: All right. Thank you very much,

17 ladies and gentlemen. The next witness that will

18 appear -- as I mentioned to you we've already discussed

19 about depositions. Our rules provide for persons

20 bringing civil cases, it provides that the deposition

21 of a party may be published by any person at any time

22 for any reason, provided we go through the rules that

23 you've observed, the rules of evidence that would apply

24 to those parts that have been published.

25 So at this point Defense counsel, I think, Mr.

1 Bryan, you're going to publish it; is that correct?

2 MR. BRYAN: Yes, sir.

3 THE COURT: He is going to read portions of the
4 deposition of Christine LeFont, which is Court's
5 Exhibit 1, and you heard some of that yesterday. You
6 again will consider this testimony the same as any
7 other testimony given in this when you analyze the
8 evidence and decide what you find to be credible and
9 believable. Thank you. You may proceed, sir.

10 MR. BRYAN: Thank you judge.

11 (Whereupon, the Mr. Bryan reads a deposition
12 excerpt.)

13 MR. BRYAN: So ends the publication, Your Honor.

14 THE COURT: All right. Any additional witnesses
15 for the Defendant?

16 MR. BRYAN: No, none.

17 THE COURT: All right. At this point does the
18 Plaintiff wish to call any reply testimony?

19 MR. GOLDFINCH: Yes, Your Honor.

20 THE COURT: You may do so.

21 MR. GOLDFINCH: I would like to call Christine
22 LeFont.

23 THE COURT: Ms. LeFont, I would remind you as
24 you're coming to take your seat that you're still under
25 oath in this matter.

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you, ma'am.

3 DIRECT EXAMINATION

4 BY MR. GOLDFINCH:

5 Q We're back again, Mrs. LeFont;

6 A Yes.

7 Q All right. Just a couple of quick questions for
8 you. When you were answering in that deposition about
9 the travel --

10 A Yes.

11 Q -- go back to that for a second, if you would.

12 A Yes.

13 Q Have you worked hard building that company you
14 worked for?

15 A Absolutely.

16 Q Yes. Do you think you should be penalized for
17 enjoying the success of your work?

18 A I would hope not, not at 60.

19 Q I hope not, either. Ms. LeFont, do you pay to get
20 into these vendor shows?

21 A We do.

22 Q Okay. How much did you pay for the Hackney show?

23 A It's usually between 1800 and 2500, that --

24 Q Will they let you in the show to do your thing if
25 you don't pay?

1 A Absolutely not.

2 Q Okay. The day of the accident, who let you in the
3 gate?

4 A There was a guard there.

5 Q Okay. Was that a guard -- do you know if the
6 guard was an employee of the convention center?

7 A I assumed he was. But I didn't -- you know, he
8 didn't say Sheridan or anything.

9 Q Did he open the gate to let you in?

10 A He did.

11 Q Okay.

12 MR. BRYAN: Your Honor, point of clarification.

13 THE COURT: Yes.

14 MR. BRYAN: When he's doing this (indicating),
15 should it be limited to the publication testimony?

16 THE COURT: No, sir.

17 MR. BRYAN: Okay.

18 THE COURT: It's reply testimony --

19 MR. BRYAN: No problem.

20 THE COURT: -- to your whole case.

21 MR. BRYAN: No problem.

22 THE COURT: Yes, sir.

23 MR. GOLDFINCH: I'm sorry, I think I was
24 interrupted.

25 Q So the gate was down?

1 A Yes.

2 Q Okay. And the guard that was at the gate let you
3 in?

4 A Yes. Because we had more product to bring in.

5 Q Okay.

6 MR. GOLDFINCH: That's all I have. Thank you,

7 Mrs. LeFont.

8 THE COURT: Cross-examine?

9 MR. BRYAN: No, sir.

10 THE COURT: Thank you, Ms. LeFont, you may step
11 down.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 THE COURT: Any additional reply testimony,

15 Mr. Goldfinch?

16 MR. GOLDFINCH: No, sir.

17 THE COURT: Ladies and gentlemen, that concludes
18 the evidentiary portion of this proceeding. There are
19 some matters of law now that I have to take up out of
20 your presence. It's still -- while you will not hear
21 any more evidence, it still would be inappropriate for
22 you to begin your deliberations and discussions about
23 this case. If you'll retire to your jury room, we'll
24 be with you as quickly as we can. Thank you.

25 (WHEREUPON, the jury exited the courtroom at

1 3:27 p.m.)

2 THE COURT: All right, thank you very much. Any
3 motions from the Plaintiff at this point,
4 Mr. Goldfinch?

5 MR. GOLDFINCH: None, Your Honor.

6 THE COURT: Okay. The Defendant again?

7 MS. NEUSCHAFER: Yes, Your Honor. I'm going to
8 give Mr. Bryan a break.

9 THE COURT: I see. Since you were coaching him
10 the last time, I think that's good.

11 MR. BRYAN: Judge, she just needs a break from me.

12 THE COURT: Let me tell you this, Gedney and I
13 were classmates, and Gedney has Alvin Hammer, and Alvin
14 was also our classmate. And I've tried a couple of
15 cases with Gedney, and Gedney always says, if you want
16 to ask a question about the law, ask Alvin, if you want
17 to know about the facts, ask me.

18 MR. BRYAN: That's right, that's how this is.

19 THE COURT: And that's the perfect teamwork. I
20 have no problem, glad to hear from you.

21 MS. NEUSCHAFER: All right. Well, we've got a
22 directed verdict motion once again. A lot of this
23 you've heard before.

24 THE COURT: Yes.

25 MS. NEUSCHAFER: Maybe one additional ground, and

1 I just hope you'll indulge me, I'll run through this.

2 THE COURT: No, please feel free. And of course
3 all of the other grounds are stated and certainly
4 articulated very clearly on the first.

5 MS. NEUSCHAFER: Yes, sir.

6 THE COURT: I understand they are still there, but
7 I'll be happy to hear you.

8 MS. NEUSCHAFER: Okay.. Again, I'm going to come
9 back to the two-part test that has to be established in
10 a premises liability case. Kind of a case that was the
11 most recent one I could find, South Carolina Supreme
12 Court case was the Pringle versus SLR Summerton case
13 with the broken chair.

14 In that case and in a progeny before it is that
15 you have to establish that the Defendant either created
16 the dangerous condition or knew or should have known of
17 the condition and failed to remedy it. And these
18 elements have to be proven regardless of whether you're
19 dealing with a government entity like the City of
20 Myrtle Beach or if you're dealing with a Plaintiff who
21 fell in the parking lot at Belk.

22 The only reasonable inference here from the
23 evidence we've heard is that there's a failure of proof
24 on these material elements. We've had no witness
25 testify as to how the hole was created, no less whether

1 it was created by an act of the City specifically.
2 There is no evidence that the City had actual knowledge
3 of the hole or that it had constructive notice of the
4 hole. We have no idea how long it was there.

5 There's some cases that discuss that the matter of
6 constructive notice and that how long the hole was
7 there cannot be left to speculation.

8 THE COURT: Correct.

9 MS. NEUSCHAFER: Kind of tied into that argument
10 is one of the exceptions to the waiver of immunity in
11 the South Carolina Tort Claims Act. 15-78-60,
12 subsection 15 --

13 THE COURT: Yep.

14 MS. NEUSCHAFER: -- that section says that a
15 government entity is not responsible for a loss arising
16 out of a defect on a road, street or other public way
17 caused by a third party unless the defect is not
18 corrected within a reasonable time after actual or
19 constructive knowledge to the government entity.

20 Again, same arguments, no evidence that the City
21 created the hole or had actual constructive notice of
22 it. So those two arguments tie in together.

23 THE COURT: Okay.

24 MS. NEUSCHAFER: The next argument we have is
25 back, again, to Ms. LeFont's classification while she's

1 on -- in specifically, in this employee parking lot and
2 the commensurate duty that is owed depending on that
3 classification.

4 THE COURT: Let me ask you a question there. I
5 mean, I'll be happy to obviously whether it's a
6 licensee or invitee.

7 MS. NEUSCHAFER: Sure.

8 THE COURT: But as a practical matter, I don't
9 think this case rises or falls on either one of them.

10 MS. NEUSCHAFER: I think that our argument would
11 be that there is a lesser duty.

12 THE COURT: I agree with you, there's a lesser
13 degree of it. But the bottom line is, to me this case,
14 and that's what I started thinking during lunch time,
15 this case is really -- because we all know, and I --
16 y'all didn't but I did, I practiced when there was
17 no -- you couldn't sue the State. And we know that
18 when that date came it became wonderful, because we
19 could have an opportunity to sue the people.

20 MR. BRYAN: It created jobs.

21 THE COURT: We created jobs. And I made those
22 arguments and why did they carry liability insurance if
23 they couldn't be sued. And some courts, not our state
24 but other courts, said you could. I represented the
25 school districts, so I had to make that argument a lot.

1 But the bottom line is when the Tort Claims Act
2 was passed, it said yes, you can. But here's -- these
3 are the avenues. And I've been under the impression
4 and still believe it has to be strictly construed. It
5 doesn't open the flood gate, so to speak. But no, I
6 don't disagree with you that it's important for this.
7 I just --

8 MS. NEUSCHAFER: Okay.

9 THE COURT: Because I agree with you. And I
10 understand -- I think I understand your argument, I
11 looked at that too. I assume your argument is we
12 leased it, it's almost like a landlord tenant
13 situation.

14 MS. NEUSCHAFER: Yeah, I think that's probably a
15 fair characterization. And I think the testimony
16 supports that the convention center has the
17 relationship with Hackney and that Hackney invites
18 these vendors to come in, not the City. Okay.

19 THE COURT: Yeah, I understand. And I understand
20 that Plaintiff disagrees with that. But I understand
21 that premise.

22 MS. NEUSCHAFER: And then specifically with regard
23 to the employee parking lot if you look at it as within
24 the scope of that area, because I think you can be
25 different classifications at different portions of the

1 premises depending on the scope of the invitation, so
2 to speak.

3 THE COURT: Okay.

4 MS. NEUSCHAFER: I think at best the evidence
5 supports a reasonable inference only that Plaintiff was
6 at best a licensee.

7 THE COURT: I know you think that she was a
8 trespasser.

9 MS. NEUSCHAFER: I'll comment on that real
10 briefly, and then I'll move on. But Ms. LeFont, you
11 know, admitted she was there primarily for her own
12 benefit to market this product that her business sold.
13 And she testified that she was parking in the lot
14 briefly for her own convenience to get where she needed
15 to be quickly and the most direct route.

16 And I think we've heard the City does have a gate
17 to restrict access and signs, ample signs, that Dr.
18 Durig referenced for us indicating that the lot is for
19 employees only. And we heard testimony that there are
20 times that vendors are allowed in there and that this
21 was not one of them.

22 And with respect to that, being a licensee, the
23 duty would be limited to a duty to warn of hidden
24 dangers of which the City has actual knowledge and of
25 which the licensee would not be reasonably aware. The

1 City has no duty to search out, find things wrong or
2 dangers or otherwise take affirmative steps to make the
3 premises safe.

4 So here the hole is not a hidden danger, it's
5 right there, you know, smack in the middle of the
6 pavement. I believe Ms. LeFont testified, you know, if
7 she had been looking down there, she would have seen
8 it. It's nothing hidden about it. And despite the
9 fact there's nothing hidden about it, the duty is we
10 have to have actual knowledge of the hidden danger.
11 And back again, there's no evidence of actual knowledge
12 of the hidden danger.

13 So that's where we would fall as far as the
14 licensee classification and Plaintiff's failure to
15 establish a breach of the duty with regard to a
16 licensee. We do think the other -- the only other
17 inference would be that she's a trespasser, she's not
18 allowed to be there, she's not permitted to be there.
19 The duty with regard to a trespasser is only to avoid
20 acting recklessly, and there's no evidence of
21 recklessness.

22 THE COURT: Okay.

23 MS. NEUSCHAFER: Just I'll hit on the last point
24 again to renew briefly the medical expense issue.
25 We've still not heard any evidence or testimony.

1 THE COURT: I'm not going to charge that, so
2 that's not --

3 MS. NEUSCHAFER: As to the amount of the medical
4 expenses, it's the Defendant's position that the only
5 inference to be granted from that is that -- to be
6 gleaned from that is that there are no medical
7 expenses, and that to allow -- to allow the jury to
8 consider that would be speculative and allow them to
9 base their decision on speculation.

10 THE COURT: Okay. All right.

11 MR. BRYAN: No, I thought she did very well, much
12 better than I could do.

13 THE COURT: Be happy to hear from you.

14 MR. GOLDFINCH: Well, there's a lot there. So
15 I'll try to take what I --

16 THE COURT: Take as long as you need in any order
17 you wish.

18 MR. GOLDFINCH: Let me start with gross negligence
19 which was pled in the case. There was testimony of the
20 ordinance, and there was testimony of violation of the
21 ordinance. A violation of the ordinance is, in fact,
22 gross negligence. So as far as that issue, I think we
23 can -- let me just set that aside for a minute and go
24 to the case.

25 A chair, the case that they referenced, a chair in

1 that case is a foreign substance. This is not, this is
2 a defect within. I've got a couple cases here that I
3 would like to reference. City of Greenville v.
4 Washington Lee Baseball Club, Norris v. Greenwolf,
5 Black v. Childs, they all have the same -- in fact,
6 City of Greenville v. Washington is the latest -- if a
7 party has knowledge of circumstances or facts
8 sufficient to give the party a reason to inquire
9 further and yet the party chooses not to investigate,
10 as we heard in testimony today, he shall be considered
11 to have notice of all of the facts that inquiries would
12 have uncovered.

(13 In other words, there's inquiry notice. We
14 have -- I have asked multiple questions of the two
15 representatives of the City, did you walk by that spot.
16 And the testimony was almost verbatim, yes, everyday,
17 from the first lady. Yes, everyday. Do you have
18 cameras there. Yes, we have cameras there. Didn't
19 provide us with the videography.

20 THE COURT: Any of those cases deal with highway
21 maintenance? I assume they all are municipality
22 lawsuits that they were --

23 MR. GOLDFINCH: One is a baseball stadium, a hole
24 in a baseball stadium.

25 THE COURT: All right.

1 MR. GOLDFINCH: Norris v. Greenville is not a
2 baseball stadium. I think that's a -- we'll pull that
3 one right now and double check on that one. But they
4 are similar, Your Honor. They are not distinguishable.

5 THE COURT: And the reason I ask you that is quite
6 specifically because we're dealing with a highway, and
7 it specifically sets forth. And I don't -- I was -- I
8 agree with your argument that a legal tenet -- that you
9 all noticed the things you should have found, you could
10 have reasoned with. But that's why the Tort Claims Act
11 did what it did. Because it protects -- it's got to
12 protect the entity because they can't do that.

13 I mean, what really started triggering this is my
14 statement earlier that the State can't be responsible
15 for all the holes. I mean, that's crazy. And the
16 holes, every single hole in a road today, based on
17 Durig's testimony, just taking your argument, is a
18 violation. And therefore, if somebody is injured, it's
19 negligence.

20 It can't be. And the reason it can't be is
21 because of the Tort Claims Act. It protects the State,
22 it protects a public body. And it has to. I mean,
23 there's no way they can be that -- held to that
24 accountability.

25 MR. GOLDFINCH: Your Honor, I agree. That is a

1 standard that is a little high.

2 THE COURT: It's extremely high.

3 MR. GOLDFINCH: I pulled the statute that you were
4 looking at, and if I could, I would like to --

5 THE COURT: Well, I have it right here. You don't
6 need to read it again.

7 MR. GOLDFINCH: I'd like to talk about it for just
8 a second if I could. Governmental entities responsible
9 for maintaining highways, roads, streets, causeways,
10 bridges or other public ways are not liable for loss
11 arising out of a defect or condition in under or --

12 THE COURT: Overhanging, that's trees.

13 MR. GOLDFINCH: -- Overhanging a highway, road,
14 street, causeway, bridge or other public way -- here's
15 the key part -- caused by a third party.

16 THE COURT: Well, I agree with you.

17 MR. GOLDFINCH: Unless the defect or condition is
18 not corrected by the --

19 THE COURT: Where is the evidence who caused it?

20 MR. GOLDFINCH: And we don't -- that's my point.
21 We don't have to go to the point of figuring out who
22 did it because you have an unless here, unless the
23 condition is not corrected by the particular.

24 THE COURT: Thank you.

25 MR. GOLDFINCH: Dr. Durig testified today

1 something obviously was drug through there. He knows
2 his mechanical engineering, something was drug through
3 there. He demonstrated the drag marks on the picture
4 and he said, this looks like an area --

5 THE COURT: Okay.

6 MR. GOLDFINCH: -- where something was drug
7 through that parking lot. I think it's clear, nobody
8 drags heavy equipment through a parking lot unless you
9 own that parking lot.

10 THE COURT: How long had it been there? Where is
11 the testimony --

12 MR. GOLDFINCH: How long?

13 THE COURT: Yeah. Where is the testimony of any
14 length of time or suggestion of length of time? And
15 the reason I'm asking you that question is there's a
16 decision, and I'm going to rely on this decision
17 because it really, really is about as close to anything
18 I found. And, frankly, it sets up for you what I'm
19 about to do.

20 But I read the Court of Appeals, Justice, Judge
21 Few then, wrote the decision, it's Major versus City of
22 Hartsville. This is Paul Burch's case. He granted a
23 summary judgment on a defect in a pothole in the City
24 of Hartsville. And that -- the appellate decision is
25 at 398 South Carolina 257, 728 S.E. 2d 52. That's

1 Court of Appeals 2012. The Supreme Court granted cert
2 and they reversed Judge Few.

3 And the reason they reversed him was this.. There
4 was no evidence of actual knowledge, but if you read
5 that case, the lower case that the Court just said they
6 have to prove it twofold, actual knowledge or
7 constructive knowledge. And in this case they have
8 years, sounds like, of cars -- of trucks cutting
9 through occur and then making indentation.

10 Not only that, they had years, they had several
11 times where the person testified, yeah, we repaired
12 that, we filled it up. And it kept happening over and
13 over, so it became, we just stopped. You got
14 constructive notice there. And the Supreme Court
15 reversed it only on that basis.

16 I don't have anything like that here. And I
17 thought about it hard, I said, where is it. And I
18 thought, well, I'll wait and find it out now. I don't
19 have any of that.

20 MR. GOLDFINCH: It's Lexington County Recreation
21 Commission, it's Struther v. Lexington County
22 Recreation Commission.

23 THE COURT: All right, that's a ball field.

24 MR. GOLDFINCH: That's a South Carolina. But
25 also, Your Honor, I'd like to say we're talking about

1 roads here. This is a parking lot, it's not even a
2 public way under the definition. It's a parking lot
3 owned by a governmental entity.

4 THE COURT: Okay.

5 MR. GOLDFINCH: Lexington, this Struther case
6 says, the doctrine of inquiry notice punishes one who
7 chooses to remain ignorant by serving as the legal
8 equivalent of actual notice.

9 THE COURT: Okay.

10 MR. GOLDFINCH: That's the leading Supreme Court
11 case on this.

12 THE COURT: Okay.

13 MR. GOLDFINCH: I think we can get to actual
14 notice if you remain ignorant of something you
15 shouldn't have.

16 THE COURT: I understand that, and I agree with
17 you. Frankly, you could have argued that same thing
18 before Judge Burch because there was numbers of times
19 they went back and saw a problem. And they not only
20 recognize it a problem because they tried to repair it.

21 This one, I don't have that. I don't have any of
22 that, nothing, other than the fact that it existed.
23 And there's no question that it existed. I agree with
24 you, it existed. Whether or not in and of itself it's
25 a hazard, that will have to be subject to a review.

1 Because I'm not so sure that I disagree with the
2 people. I don't know that you would even report that.

3 I don't -- if it is, as I said, if it is, we are
4 opening Pandora's box. And that's all I'm saying. And
5 before I'm going to open Pandora's box, they are going
6 to have to open Pandora's box in Columbia.

7 MR. GOLDFINCH: Your Honor, I will say that
8 whether or not it is a defect that needs to be reported
9 seems to me like it should be for these guys.

10 THE COURT: I appreciate that. But the bottom
11 line is that's what triggered your involvement in it,
12 and that's what trigger they should have noticed. They
13 either had actual or constructive notice of it. And
14 frankly, if you take the logic -- Witherstein bothered
15 me because you're dealing with a private entity, and
16 that -- and therein lies the -- I think there's a
17 distinction there.

18 But the language they talked about really goes in
19 and is -- and, in fact, Witherstein is cited in the
20 major case and may be cited in some of the other cases,
21 they are using the rationale there to really explain
22 what is notice, what's required. It just simply -- it
23 has to be something that gives, I think, a jury a
24 chance to say, yeah, that something would be
25 constructive notice, they would be aware of it.

1 The fact that it existed is not. It existed,
2 just -- that argument is -- it's almost res ipsa. And
3 I know you're not arguing res ipsa, but you are -- but
4 it's almost there's a pothole, therefore there's a
5 problem. And we aren't a res ipsa state.

6 MR. GOLDFINCH: And if the testimony proffered was
7 that they are under a duty or responsibility to go out
8 and look for problems.

9 THE COURT: I don't -- I'll ask them to respond to
10 that. I don't think they have a duty to do that.

11 MR. GOLDFINCH: But, Your Honor, both of their
12 witnesses today answered my question in the
13 affirmative, yes, we have a responsibility.

14 THE COURT: To be on notice.

15 MR. GOLDFINCH: To go out and look for problems.

16 THE COURT: Yeah. But they've got to see a
17 problem. And therein lies the problem.

18 MR. GOLDFINCH: I agree. And that goes right back
19 to whether or not they ignored it if they parked in the
20 parking lot with it.

21 THE COURT: To me, again, I don't know what -- I
22 don't have the same factual situation that I had --
23 that you had in Major, and I'm sorry, I just don't
24 think it's there.

25 MR. GOLDFINCH: Okay. Thank you, sir. So is your

1 problem that there is no -- that you're having a hard
2 time getting the invitee, and therefore --

3 THE COURT: No, no. I'm not -- I can tell you
4 right now I was going -- I am also granting the
5 directed verdict. You're a licensee, I don't think
6 there's any question here. This is something where
7 you, the convention center leases to somebody for their
8 benefit, and the benefit is certainly indirectly. But
9 that doesn't make them an invitee because they don't
10 control who comes or goes or who's asked to come or go.

11 So they're maintaining the premises for the use of
12 licensees, and that's what they are, in my opinion.

13 MR. GOLDFINCH: For the purpose of preserving the
14 record, can I carry --

15 THE COURT: You don't need to because your record
16 supports your argument. You think they are invitees,
17 and I'm ruling as a matter of law that I understand the
18 rule of what an invitee is. And you don't have to
19 argue to me because the record's going to support it.

20 MR. GOLDFINCH: No, sir. I agree, I'm just --
21 just want to make sure I've got it clear. So opening a
22 gate and letting them in makes them a licensee
23 under your ruling?

24 THE COURT: Opening a gate just simply says, we're
25 giving you access to something that we're -- we're

1 accommodating you is basically what it amounts to.

2 MR. GOLDFINCH: Okay.

3 THE COURT: That's why they are licensees. If
4 they didn't accommodate them, they wouldn't be -- what
5 did they do to earn the rent. To me, they really are
6 likened to insofar as their responsibility to a
7 landlord tenant, I mean, seriously. They can't create
8 a problem and throw you in the pit.

9 But by the same token, who comes and goes and use
10 of the premises, they have the responsibility of a
11 licensee and that's to take care of things that are
12 known to be actual dangers or hazardous situations that
13 they knew or should have known somebody else would have
14 been. And I just don't think there's any testimony to
15 that, so --

16 MR. GOLDFINCH: Is there a non-delegable act here,
17 sir?

18 THE COURT: No. What's the delegable act?
19 There's nothing -- there's nothing delegable. Again,
20 you can't extract everything I've talked about, about
21 the responsibility concerning the ongoing maintenance
22 and the fact that the pothole from the licensee status.
23 They are entitled to function as a licensee
24 understanding that they have only the responsibilities
25 that the law requires of them.

1 And therefore, I found that they complied with
2 that. So I find that they are, so that creates a
3 twofold -- a two barrel appeal if you want to take it.
4 And that is, yes, I think they were invitees and
5 therefore a higher standard maybe. I don't know that
6 you ever get a higher standard -- really and truly I
7 almost think the State's always in a licensee status,
8 because of the limitations. But I'm not finding that
9 as a matter of law.

10 I'm finding in this particular factual situation
11 my conclusion is these people meet the definition of
12 being a -- your lady, the Plaintiff met the definition
13 of a licensee, not an invitee, and was on the premises
14 certainly not as a trespasser. She had every right to
15 be there. And she had every right to expect the
16 premises to be -- not contain any latent defects or any
17 problems that would have been hidden, and be on notice
18 of that. But other than that, open and obvious things,
19 that's -- they are open and obvious, and that's --
20 everybody has that responsibility.

21 But primarily I don't find that there's any
22 evidence that would establish constructive notice of
23 the pothole and therefore require that the City to take
24 any action independent of what was done.

25 MR. GOLDFINCH: Thank you, sir.

1 THE COURT: Thank you, sir. Appreciate it. Thank
2 y'all very much, and I appreciate your patience with
3 me. All right, I'm going to go dismiss this jury.

4 (The hearing concluded at approximately 3:50 p.m.)

5 (End of Transcript of Record.)
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1 CERTIFICATE OF REPORTER

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF HORRY)

5

6

I, TERESA J.F. BAUTZ, Official Court

7

Reporter for the Fifteenth Judicial Circuit of the

8

State of South Carolina, do hereby certify that the

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foregoing is a true, accurate and complete Transcript

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of Record of the proceedings had and evidence

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introduced in the trial of the captioned case, relative

12

to appeal, in the Court of Common Pleas for Horry

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County, South Carolina, on the 24th day of January,

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2017.

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I FURTHER CERTIFY that I am neither of

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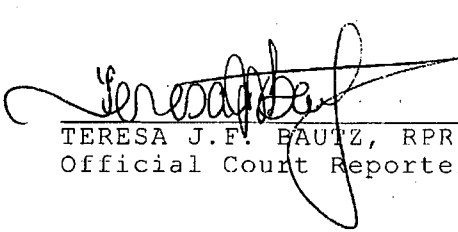
kin, counsel nor interest to any party hereto.

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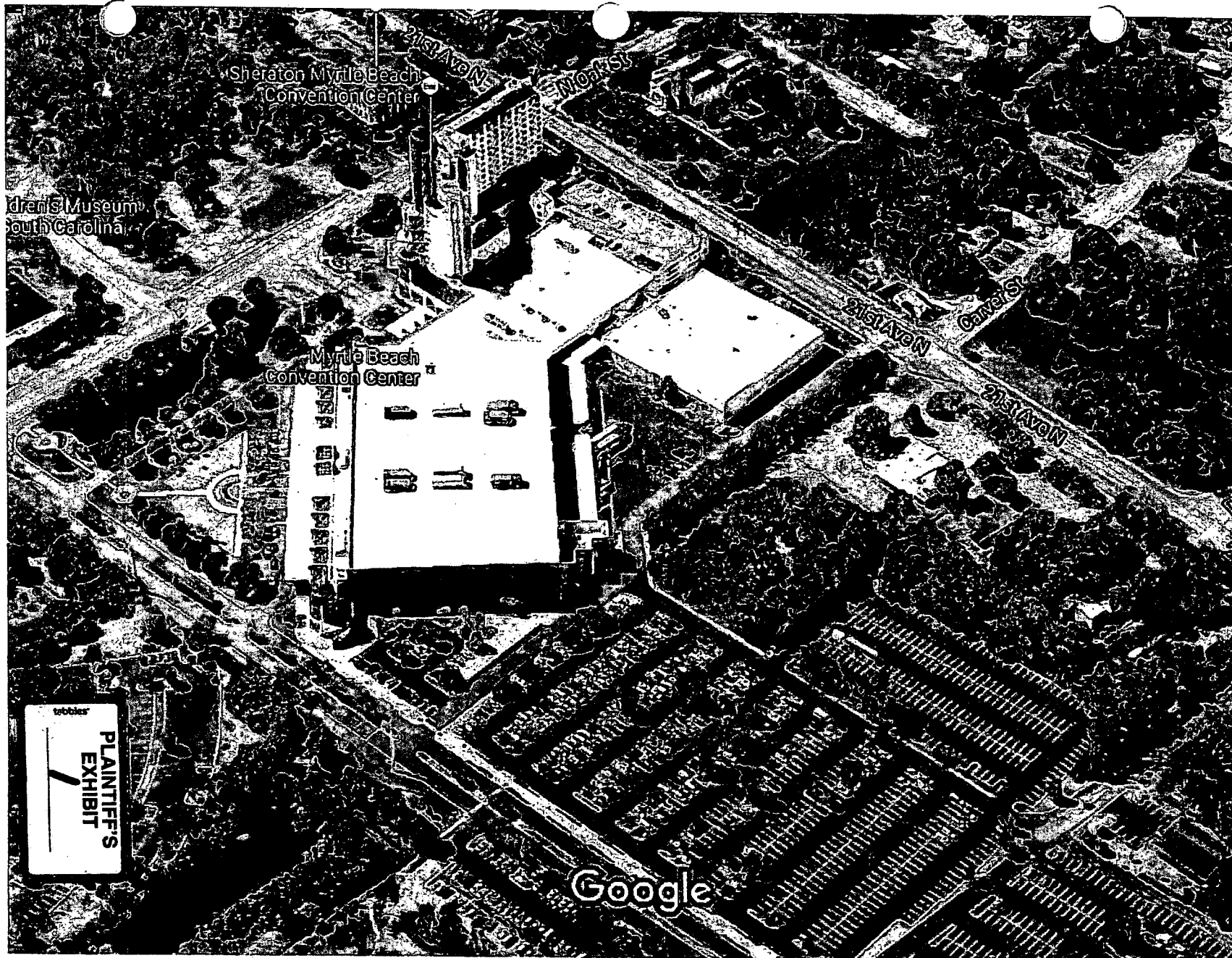

TERESA J.F. BAUTZ, RPR
Official Court Reporter

22

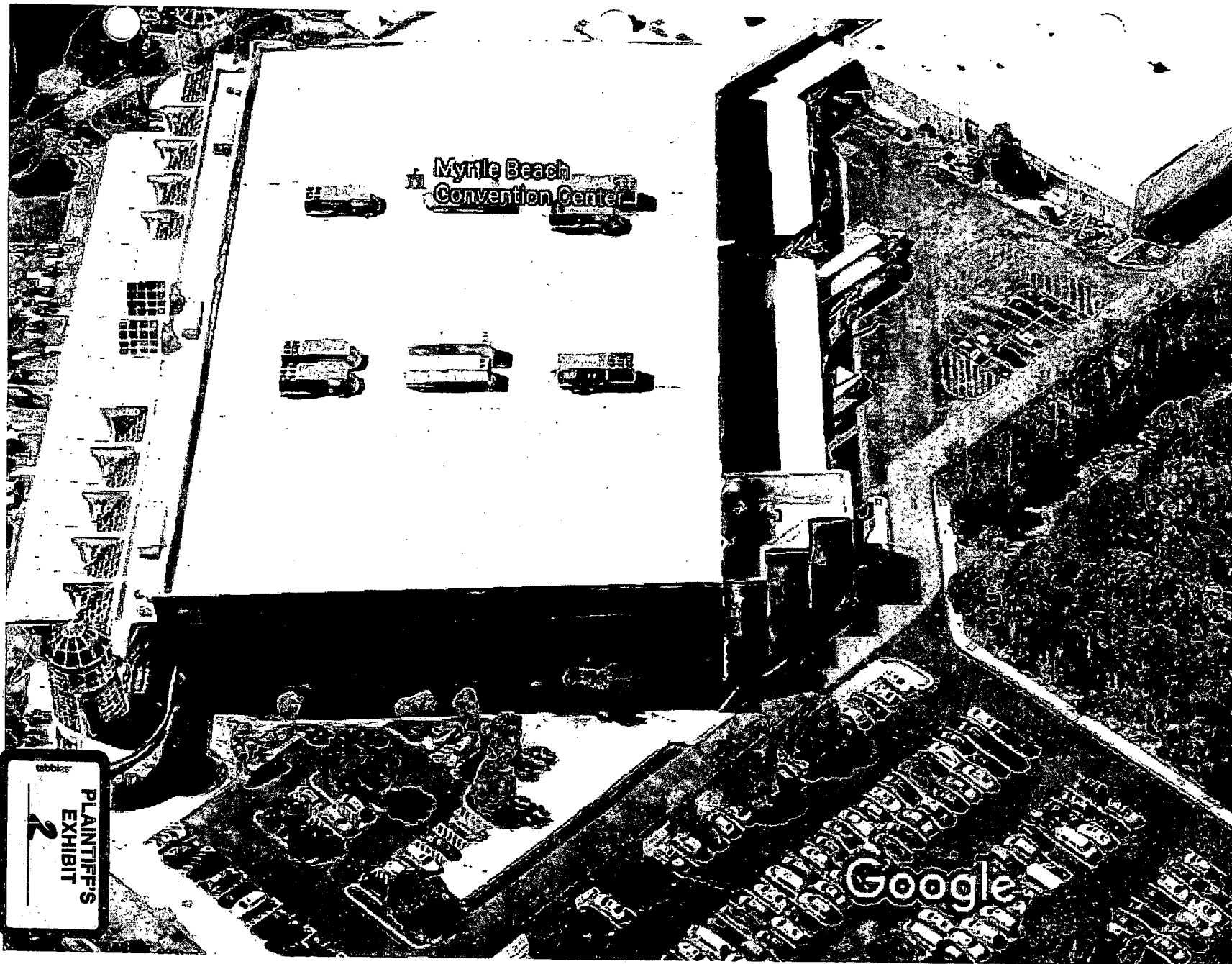
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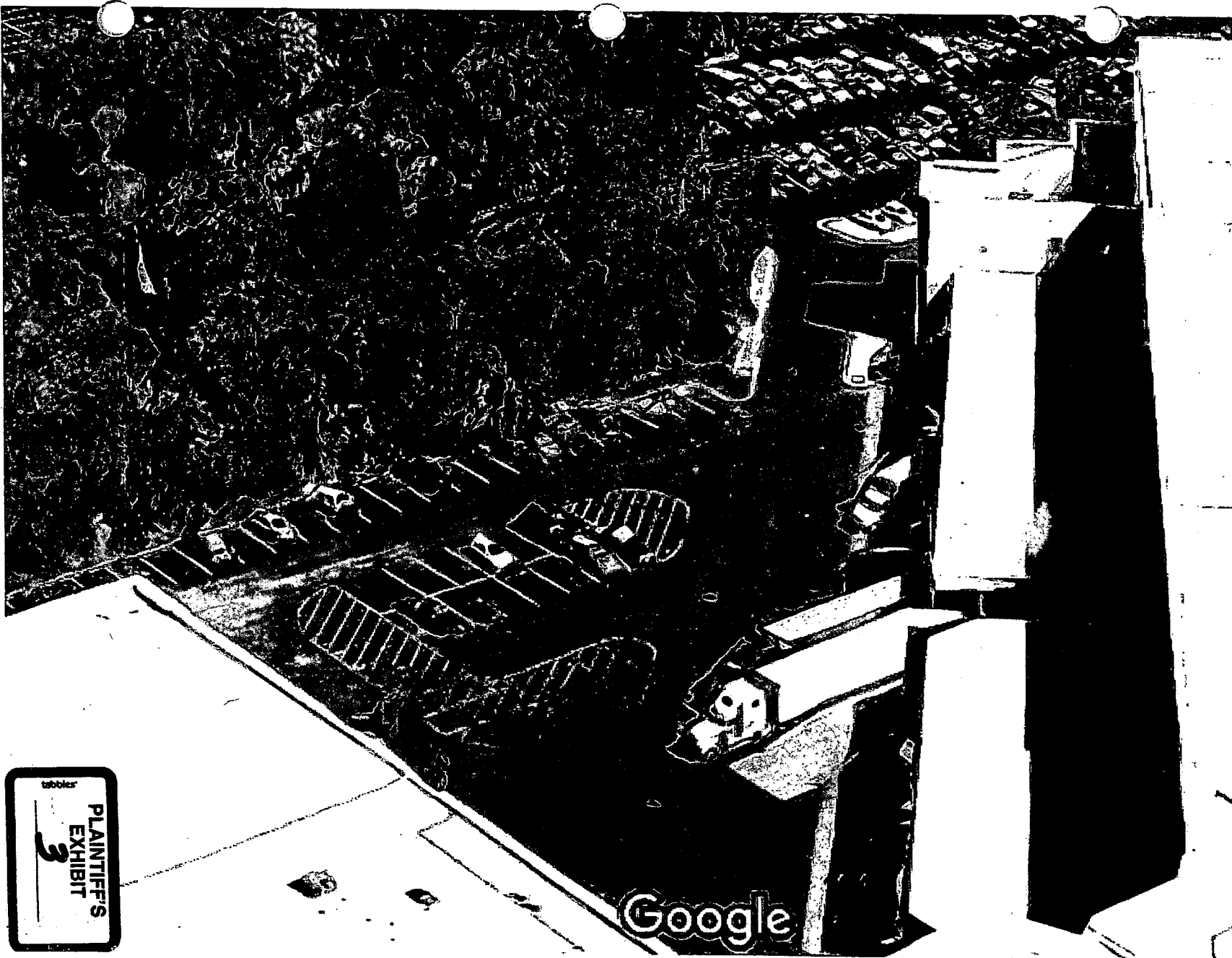
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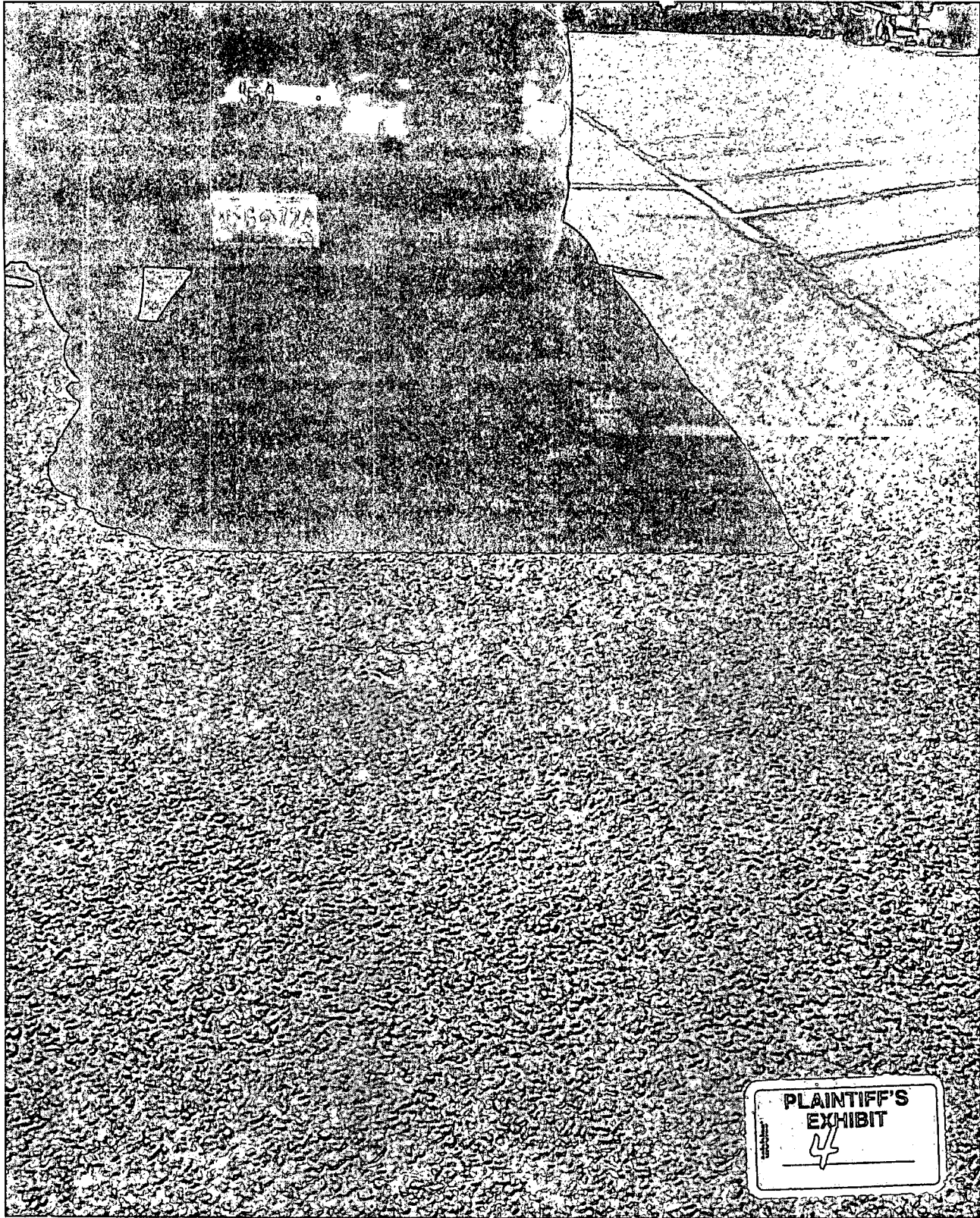


PLAINTIFF'S
EXHIBIT
1

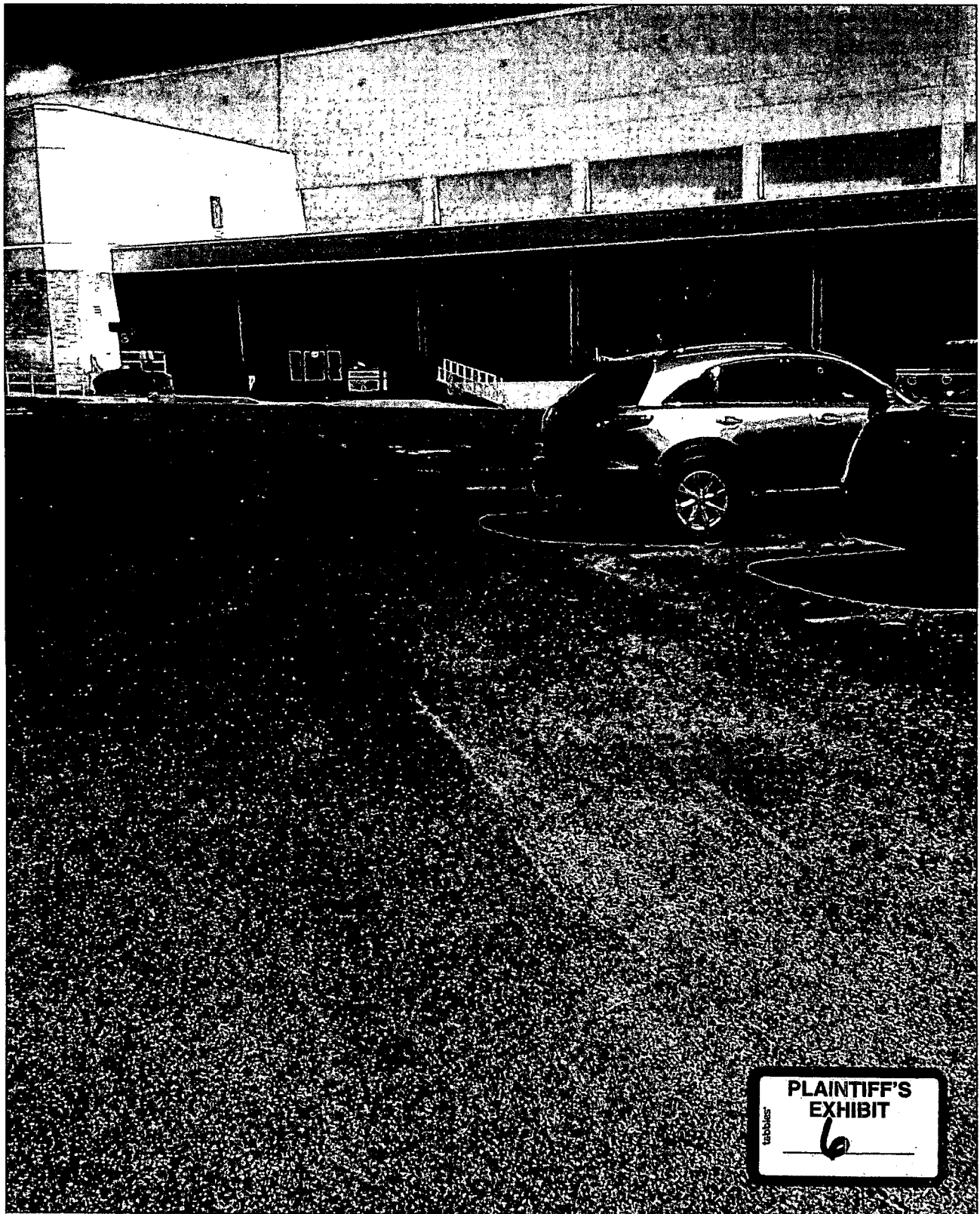


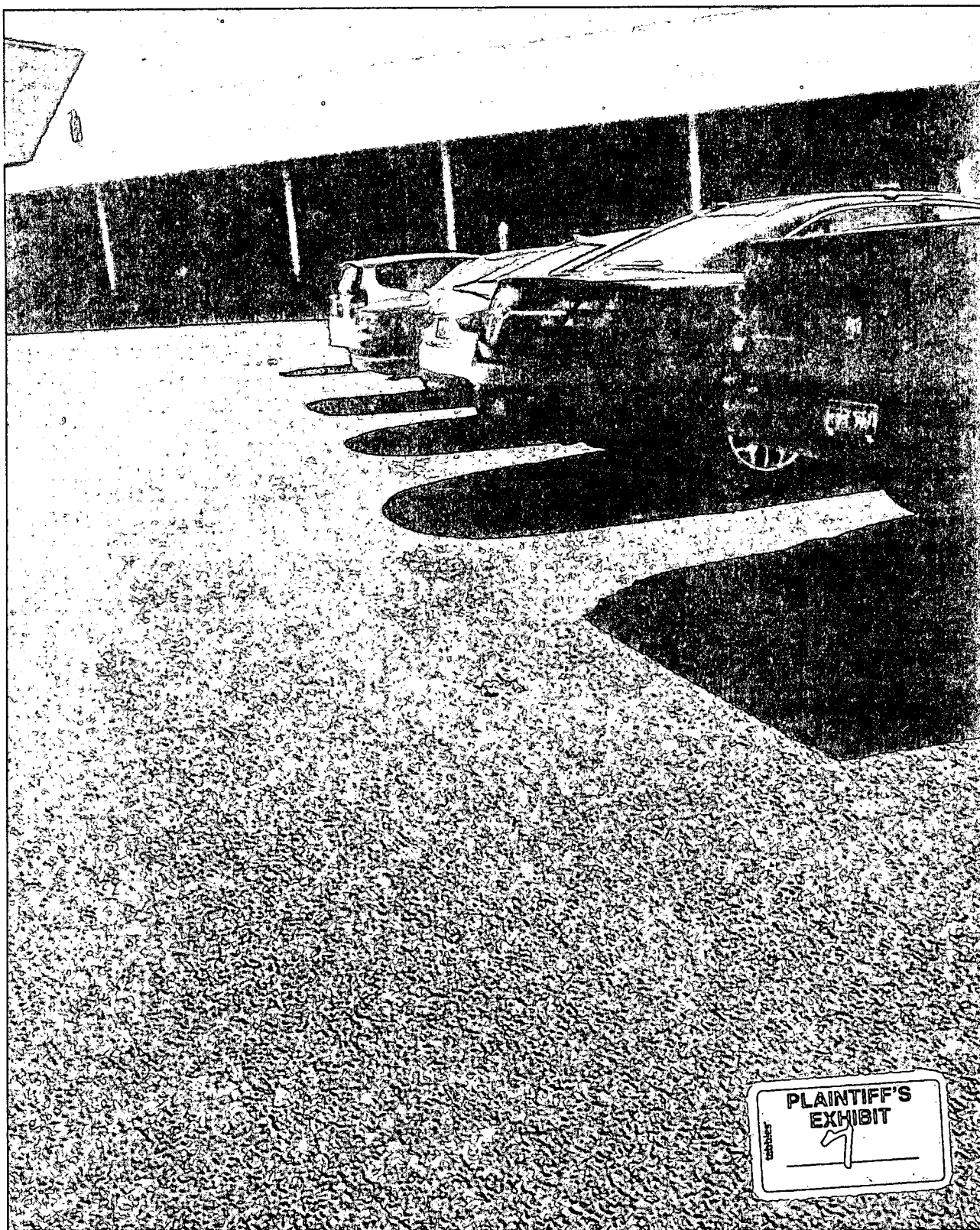
PLAINTIFF'S
EXHIBIT
2













Myrtle Beach
CONVENTION CENTER
A FACILITY OF THE CITY OF MYRTLE BEACH

INCIDENT REPORT

EVENT NAME AND COORDINATOR:

Hackney / Susan

DATE AND TIME OF INCIDENT:

9:55 AM

DATE AND TIME OF REPORT:

10:05 AM

1ST PERSON RESPONDING TO INCIDENT:

Bernie

GUARD OR MANAGER CONTACTED:

Terry

INCIDENT INVOLVED:

PARAMEDICS: ☒

POLICE: ☐

FIRE DEPT: ☐

OTHER:

arrived approx 10:06

WAS REPORT ISSUED: ☐

PERSON(S) INVOLVED IN INCIDENT:

NAME:

Christine Lefort

ADDRESS:

114 Station Lane

PHONE:

CELL:

HOME:

Longs SC 29568

NAME:

843-333 7849

ADDRESS:

John Gambelli

PHONE:

CELL:

HOME:

(Friend/coworker)

NAME:

ADDRESS:

PHONE:

CELL:

HOME:

WERE THERE ANY WITNESSES TO INCIDENT:

NAME:

Brendon Foley

ADDRESS:

626 N Graham St

PHONE:

CELL:

HOME:

Charlotte NC 28202

NAME:

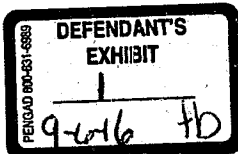
ADDRESS:

PHONE:

CELL:

HOME:

2101 North Oak Street, Myrtle Beach, South Carolina 29577



CONFIDENTIAL

DESCRIPTION OF INCIDENT:

walking thru parking lot & tripped
possibly broke her arm
(did not recall tripping over anything
just tripped)
taken to Grand Strand by ambulance

Witness (Brendon Foley) did not actually
see Christina fall but afterwards

The friend was not with her when she
fell. SS 4-21-14

THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE:

(SIGNATURE OF PERSON(S) INVOLVED IN INCIDENT)

x

(Armed - coworker)

x

x

(SIGNATURE OF WITNESS(ES) TO INCIDENT)

x

x

x

(SIGNATURE AND TITLE OF PERSON COMPLETING INCIDENT REPORT)

x

Theresa Perry Convention Svc Secretary

cc: Susan

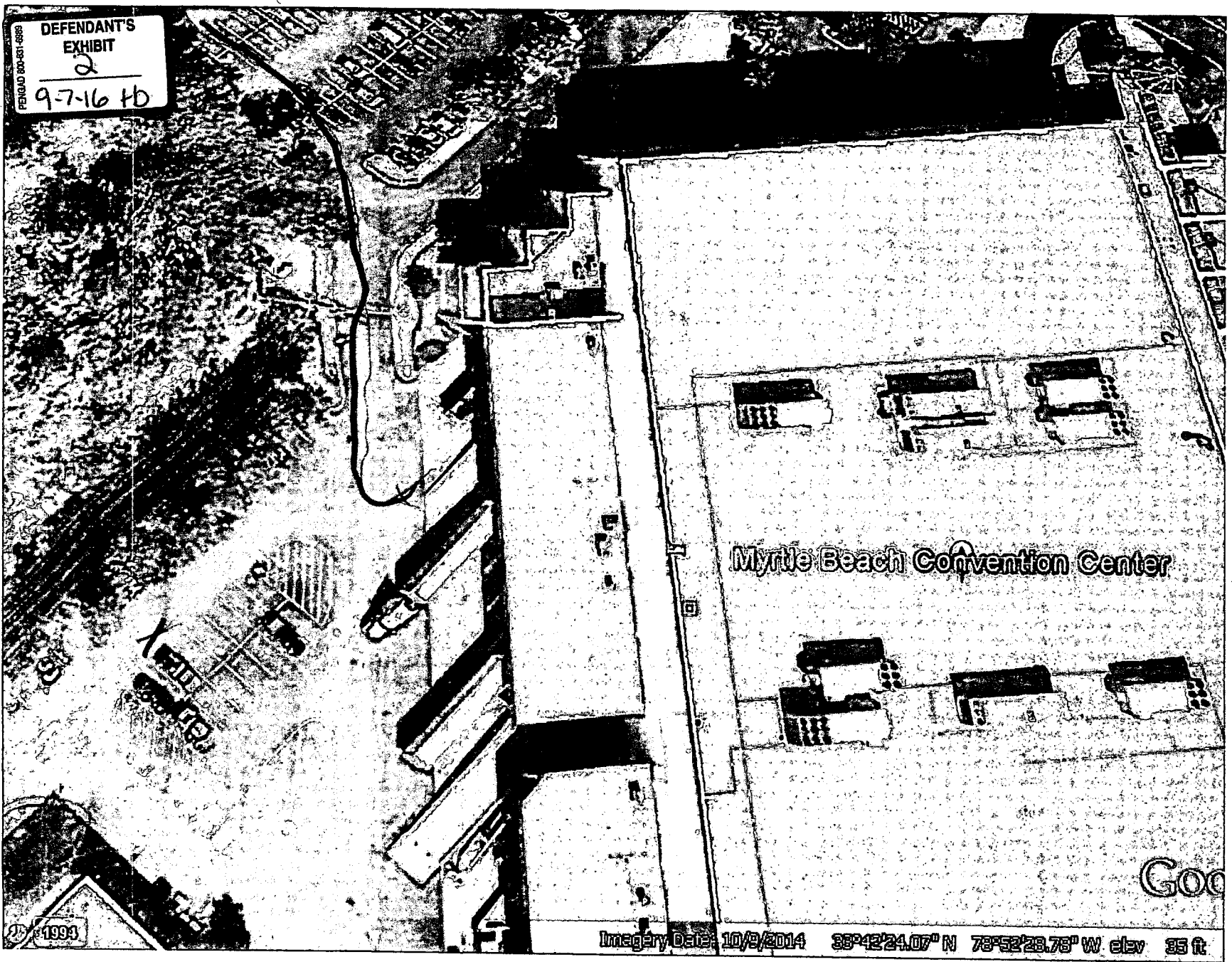
Date: 4/13/14

Susan Skellett

4-13-14

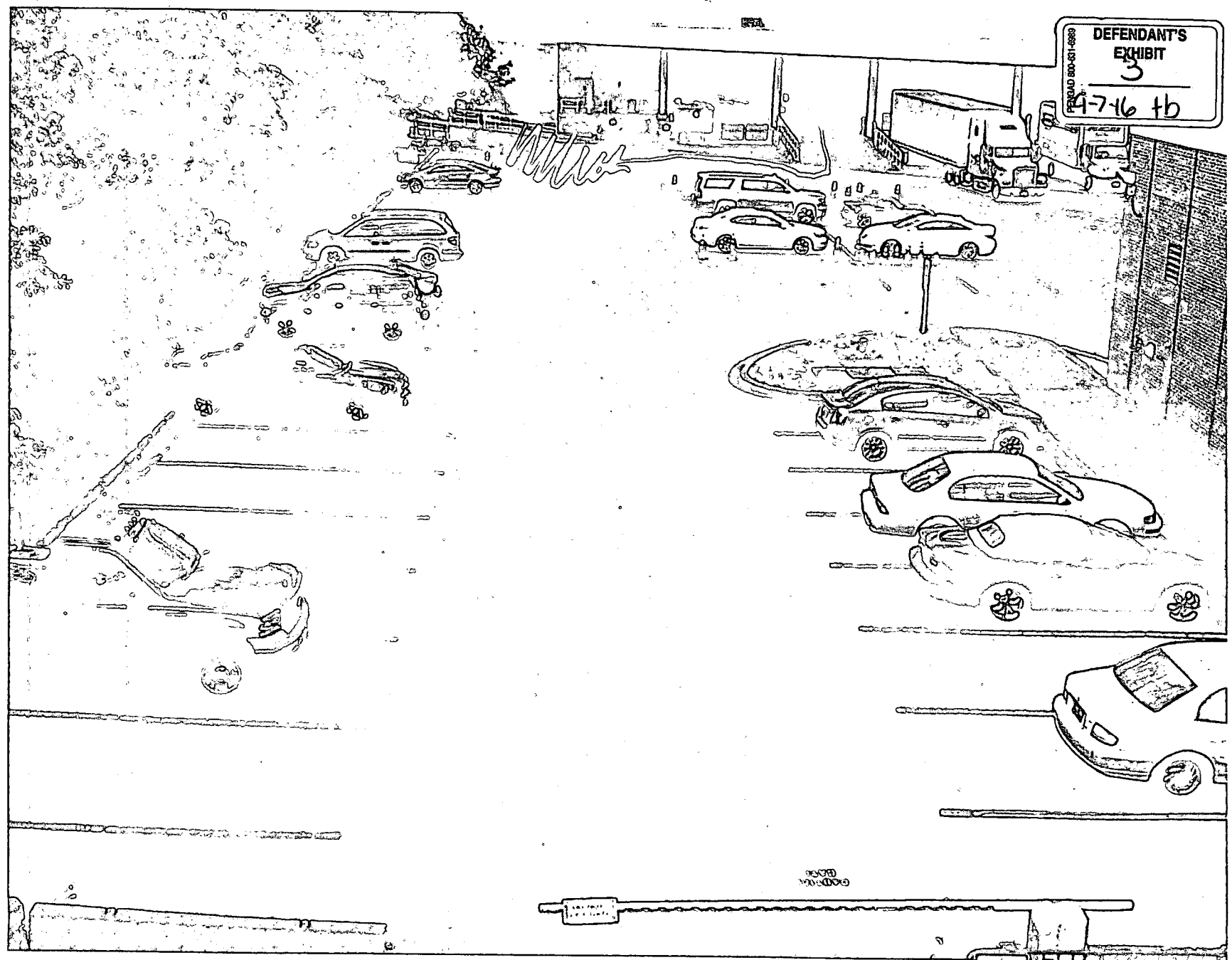
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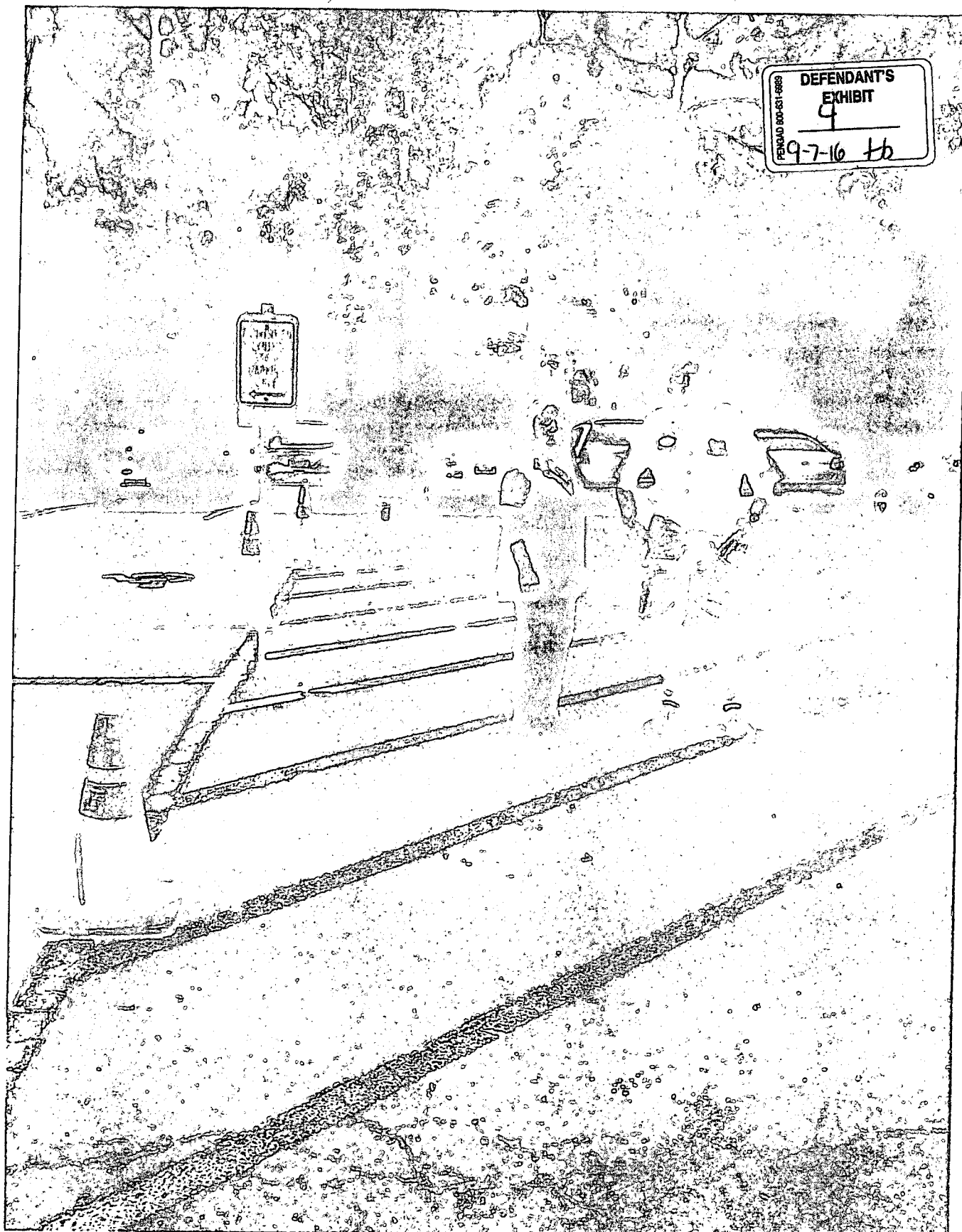
DEFENDANT'S
EXHIBIT
2
9-7-16 tb



Imagery Date: 10/8/2014 35°42'24.07" N 78°52'23.75" W elev 35 ft

DEFENDANT'S
EXHIBIT
3
4-7-16 tb





STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Christine LeFont,

Plaintiff,

v.

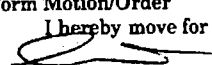
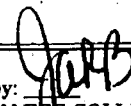
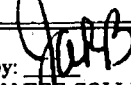
City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-26-00034

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: Stephen L. Goldfinch, Jr. (SC #77665) Goldfinch Winslow, LLC P.O. Box 829 Murrells Inlet, SC 29576 T: 843.357.9301 / F: 843.357.9303 E: stephen@goldfinchwinslow.com	Defendant's Attorney: William A. Bryan (SC #) Collins & Lacy, P.C. 11945 Grandhaven Drive, Suite D Murrells Inlet, SC 29576 T: / F: E: wbryan@collinsandlacy.com
☒ MOTION HEARING REQUESTED (attach written motion & complete SECTIONS I and III) ☐ 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: <u>Motion for Reconsideration, and/or Alter or Amend Order and New Trial</u> Estimated Time Needed: <u>30 minutes</u> 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 Date submitted <u>September 20, 2016</u>	
SECTION III: Motion Fee ☒ PAID - AMOUNT: <u>\$25.00</u> ☐ 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, SCRCP) ☐ Proposed order submitted at request of 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: <u>9-20-16</u>
CLERK'S VERIFICATION Collected by:  ☐ MOTION FEE COLLECTED: \$ <u>25.00</u> ☐ CONTESTED - AMOUNT DUE: \$ _____ Date Filed: <u>9-20-16</u>	

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Christine LeFont,

Plaintiff,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-26-00034

**PLAINTIFF'S MOTION FOR
RECONSIDERATION AND/OR ALTER OR
AMEND ORDER GRANTING DEFENDANT'S
MOTION FOR DIRECTED VERDICT AND
NEW TRIAL**

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure (SCRC^{CP}), the Plaintiff Christine LeFont ("Plaintiff"), by and through undersigned counsel, moves this Court for an Order Reconsidering and/or Altering or Amending its Form 4 Order granting verdict for the Defendant, and New Trial. This Motion is timely made under Rule 59, SCRC^{CP}, as the Court's Form 4 Order was entered on September 7, 2016, and signed by the Honorable R. Markley Dennis, Jr. that same day. As of the date of this Motion, written notice of entry of the Order has not been received. Plaintiff respectfully asks this Court to reconsider and/or to alter and amend its Order granting verdict for the Defendant, and grant a new trial for the reasons set forth below. While the court has ruled in the Defendant's favor, the Plaintiff submits this Motion to ensure that she has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000).

DIRECTED VERDICT STANDARD

In ruling on the Defendant's motion for directed verdict, the Court must view the evidence and all reasonable inferences in the light most favorable to the

Plaintiff as the non-moving party. See *Futch v. McAllister Towing*, 335 S.C. 598, 518 S.E.2d 591 (1999). When the evidence yields only one inference, a directed verdict in favor of the moving Defendant may be proper. If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury. In determining whether to grant or deny a directed verdict motion, the Court need only be concerned with the existence or non-existence of evidence. The Court does not have the authority to decide credibility issues or to resolve conflicts in the testimony or evidence. See *Hoover v. Broome*, 324 S.C. 531, 538, 479 S.E.2d 62, 66 (Ct. App. 1996). The Court must deny a motion for directed verdict and the case must be submitted to the jury if the evidence presents more than one reasonable inference or if its inferences are in doubt. See *Hoover*, 324 S.C. at 538, 479 S.E.2d at 66; see also *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003).

1. **PLAINTIFF'S STATUS ON THE PREMISES**

Respectfully, the Court improperly granted directed verdict for the Defendant ruling that, as a matter of law, the Plaintiff was a licensee and was not an invitee, while on the Defendant's Myrtle Beach Convention Center premises.

Of course, the classification of persons who come onto a premises is of great significance in South Carolina premises liability cases because "[t]he level of care owed is dependent upon the class of the person present." *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444, 531 S.E.2d 535, 538 (Ct. App. 2000). The nature and scope of the duty Defendant owed to the Plaintiff largely depends on whether she was a licensee or an invitee at the time of her injury.

Respectfully, the Court erred in granting a directed verdict on the ground that the Plaintiff was a licensee as a matter of law at the time of her injury. This was in error because: (1) there was evidence that the Plaintiff's presence on the premises of the landowning Defendant was to the benefit of both; (2) there was evidence that the Plaintiff entered onto the Defendant's premises, specifically into the rear parking lot at issue, through an express or implied invitation; and (3) there was evidence that the Plaintiff entered onto the Defendant's premises for her own business connected to the purpose for which the Convention Center was held open. Of course, "[i]nvitees include patrons of stores, patients in a physician's office, persons visiting a filling station to use the restroom or vending machine or to ask directions, and workmen invited to work on the premises." *Sims v. Giles*, 343 S.C. 708, 717, 541 S.E.2d 857, 862 (Ct. App. 2001). "However, the class of persons qualifying as business visitors **is not limited to** those coming upon the land for a purpose directly or indirectly connected with the business conducted thereon by the possessor, **but includes as well** those coming upon the land for a purpose connected with their own business, which itself is directly or indirectly connected with a purpose for which the possessor uses the land." *Id.* (emphases added).

"Ordinarily, when conflicting evidence is presented as to whether someone is a licensee or invitee, the question becomes one of fact and as such, is properly left to the jury." *Vogt v. Murraywood Swim and Racquet Club*, 357 S.C. 506, 511, 593 S.E.2d 617, 620 (Ct. App. 2004) (citing *Hoover v. Broome*, 324 S.C. 531, 537-38, 479 S.E.2d 62, 66 (Ct. App. 1996); see also *Harris v. Univ. of S.C.*, 391 S.C. 518, 523-24,

706 S.E.2d 45, 47-48 (Ct. App. 2011) (finding it is a jury issue as to whether plaintiff was invitee or licensee). Similarly, "[t]he loss of invitee status is usually a question for the jury." *Sims*, 343 S.C. at 733, 541 S.E.2d at 870 (Ct. App. 2001).

Assisting in set up and re-stocking as a paid vendor in the trade show, Plaintiff arguably provided an economic benefit to the Defendant. Because evidence existed that the Plaintiff served an economic interest of the Defendant, she raised a fact issue as to whether she was an invitee or licensee at the time of her injury. Thus, respectfully, the Court improperly granted directed verdict to the Defendant on the grounds that the Plaintiff was a licensee as a matter of law. The Court's ruling, as a corollary, essentially found there was no evidence that, when viewed in the light most favorably to the Plaintiff, could yield any reasonable inference that the Plaintiff entered the premises either directly or indirectly connected with the purpose for which the property owning Defendant uses or holds open the premises.

The Plaintiff's status on the premises is completely based on a factual determination of her status at the time she actually fell in the Defendant's rear parking lot. At trial, evidence existed from which the jury could reasonably infer that an employee of the Defendant expressly invited and/or impliedly invited the Plaintiff into the Defendant's rear parking lot area where she subsequently fell.

First, there was testimony from the Plaintiff that a gentleman employed by the Defendant was working at the gate arm located at the entrance area of the Defendant's rear parking lot. The Plaintiff further testified at trial that this same

gentleman specifically opened the gate arm for the Plaintiff to allow her entry into the rear parking lot area where she subsequently fell.

Second, this testimony elicited at trial was not directly contradicted by the Defendant or by any other evidence introduced. In fact, an employee of the Defendant, specifically testified at trial that one of the Defendant's employees could have opened the gate to allow Plaintiff's entry into the rear parking lot area, even though the practice is not necessarily common or normal.

Here, denial of the Defendant's directed verdict motion was required in light of the existence of conflicting evidence yielding more than one reasonable inference and, further, because inferences yieldable from said conflicting evidence are also in doubt. Respectfully, these issues should have been submitted to the jury for their determination. When the evidence is viewed in the light most favorable to the Plaintiff—as it must be for purposes of a directed verdict—there exists a question of fact as to whether Plaintiff had an express or implied invitation to the Defendant's premises and whether her presence on the premises, for the reason for which it was held open, benefited the Defendant. Respectfully, this question of fact concerning the Plaintiff's status while on Defendant's premises is one which is to be determined by the jury.

2. NOTICE

The decision of the Court to direct a verdict for the Defendant on the grounds that, as a matter of law, there was no evidence the Defendant had notice—actual, constructive, nor otherwise—of the condition complained of. Respectfully, this was reached and decided in error as a result of the Court's erroneous ruling that the

Plaintiff was a licensee as a matter of law. (See Section 1, *supra*). Then, as a result of that ruling, the Court applied a licensee analysis, further compounding the error, to then conclude, as a matter of law, that there was no evidence that the Defendant had either constructive notice or actual notice of the condition in its own rear parking lot.

Respectfully, this Court overlooked, or otherwise failed to view the evidence and all reasonable inferences from said evidence in the light most favorable to the Plaintiff. The existence of evidence in the record presents more than one reasonable inference and/or inferences which are in doubt.

There was testimony from Defendant's own employees establishing that this rear parking lot at issue is where they park their vehicles, as employees of the Defendant, to go to work in the Convention Center. Testimony from one of the Defendant's employees established that she has worked for the Defendant and parked here for 16 years. She further testified that, during those 16 years in which she has been an employee of the Defendant, this particular parking lot and the asphalt surfacing has been repaired and resurfaced several times. She and another employee testified that this is the area in which they park their vehicles during their time at work.

The Defendant, through its employees including those who testified at trial, has knowledge of facts (e.g. this parking lot receives more traffic regularly, wear and tear to the surface of the lot has occurred before, the lot surfacing has then had repairs and resurfacings to remediate the surface) that should lead them or some

employee or agent of the Defendant to conduct regular inspections. If these facts were pursued with any reasonable diligence, and regular inspections designed to respond to foreseeable hazards were conducted, previously undisclosed defects of the Defendant's employee parking lot would be discovered.

Constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other disclosed facts. See *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 64, 504 S.E.2d 117, 122 (1998). During trial, the testimony of the Defendant's own employees established some evidence as to said inquiry notice and constructive notice. Further, these employees of the Defendant testified that the Defendant had a policy and procedure requiring the Defendant's employees to actively report a defective or hazardous condition such that a defect or hazard could be repaired to ensure hazard-free conditions at the Convention Center. Therefore, because Defendant should have observed the at-issue condition during this procedure, and particularly so given the location of the at-issue condition in its own employee parking lot, it had inquiry or constructive notice of the condition.

Evidence showing that the condition existed *after* the Plaintiff's fall is particularly relevant to the condition's existence at the time of her injury and preceding that time, as well as to the Defendant's constructive notice of that condition. Pictures in evidence showed the condition still existed for some time after the Plaintiff's fall.

When the evidence as a whole is viewed in the light most favorable to the Plaintiff—as it must be for purposes of the Defendant's directed verdict motion—there firmly exists questions of fact concerning Defendant's notice of the condition because the evidence is reasonable capable of yielding more than one inference.

3. CONDITION NOT DANGEROUS AS A MATTER OF LAW

It is not clear or known to the Plaintiff whether the Court ruled on or granted a directed verdict to the Defendant on the grounds or reasoning that the condition complained of was not dangerous as a matter of law. To ensure adequate preservation of this issue, the Plaintiff respectfully requests that the Court clarify if, in fact, this was a ground upon which it granted a directed verdict. To the extent this may be a ground or reasoning upon which the Court granted directed verdict, the Plaintiff respectfully requests that this Court reconsider such ruling or reasoning because: (1) the Court reached out and ruled on this issue which nobody raised, and the Defendant did not raise or argue this issue as a ground in its motion for directed verdict; and (2) there was evidence and expert witness testimony establishing that the condition complained of on the Defendant's premises was in violation of and noncompliant with provisions of the International Property Maintenance Code (IPMC)—which was adopted by the City of Myrtle Beach and thereby has the force of mandatory law—as well as applicable industry standards, including ASTM F1637, Standard Practice for Safe Walking Surfaces.

When the evidence is viewed in the light most favorable to the Plaintiff—as it must be for purposes of a directed verdict—there exists evidence giving rise to a question of fact as to whether the complained of condition, being a hole existing in

the walking surface, constituted a dangerous condition. Respectfully, this question of fact must be determined by a jury.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court reconsider the above-mentioned, and address and rule on the matters previously raised but not ruled upon in the Court's Order.

This Motion will be further supported by the transcript of testimony at the trial of this case, argument, memoranda, stipulations of fact, the pleadings, and/or other materials as may be filed and served upon the parties in accordance with the South Carolina Rules of Civil Procedure.

[Signature Page Follows]

Respectfully submitted,

GOLDFINCH WINSLOW, LLC

By: 

Stephen L. Goldfinch, Jr.
Thomas W. Winslow
Ryan P. Compton
Post Office Box 829
Murrells Inlet, SC 29576
t. 843.357.9301 / f. 843.357.9303
stephen@goldfinchwinslow.com
tom@goldfinchwinslow.com
ryan@goldfinchwinslow.com

**ATTORNEYS FOR PLAINTIFF
CHRISTINE LEFONT**

September 20, 2016
Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Christine LeFont,

Plaintiff,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel
Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-26-00034

CERTIFICATE OF SERVICE

2016 SEP 20 PM 4:38

The undersigned certifies that a true copy of the foregoing **Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial** was served upon the following counsel of record on the below-indicated date via the following methods:

☐ United States Postal Service ☐ Facsimile ☒ Email ☒ Hand Delivery

William Bryan, Jr.
Amy Neuschafer
Collins & Lacy, PC
11945 Grandhaven Drive, Suite D
Murrells Inlet, SC 29576
wbryan@collinsandlacy.com
aneuschafer@collinsandlacy.com

Attorney for Defendant City of Myrtle Beach



September 20, 2016
Murrells Inlet, South Carolina

The State of South Carolina
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2015-CP-26-00034

Christine LeFont,.....Appellant,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation, ...Respondent.

NOTICE OF APPEAL

Christine LeFont appeals the Order of the Honorable R. Markley Dennis, Jr., Circuit Court Judge, dated September 7, 2016 and filed on September 7, 2016. On September 20, 2016 and prior to receiving written notice of entry of that Order, Appellant filed, pursuant to Rule 59, SCRCP, a Motion for Reconsideration and/or Alter or Amend and for New Trial. The lower court denied Appellant's said Motion by Order dated April 26, 2017 and filed on April 27, 2017. Appellant also appeals the Order denying her Motion for Reconsideration and/or Alter or Amend and for New Trial. Appellant received written notice of entry of the Order denying Appellant's Motion on April 27, 2017.

[Signature Page Follows]

Respectfully submitted,

s/Stephen L. Goldfinch, Jr.
Stephen L. Goldfinch, Jr. (Bar # 77665)
Thomas W. Winslow (Bar # 73584)
GOLDFINCH WINSLOW, LLC
Post Office Box 829
Murrells Inlet, SC 29576
t. 843.357.9301 f. 843.357.9303

Attorneys for Appellant

Murrells Inlet, South Carolina

May 26, 2017

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2600034

Christine LeFont		Myrtle Beach City of	Myrtle Beach Convention Center Hotel Corporation

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge R. MARKLEY DENNIS, JR.

Judge Code

9/7/2016

Date

For Clerk of Court Office Use Only

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

Thomas William Winslow 11019 Tournament Blvd. PO Box
829 Murrells Inlet, SC 29576
Stephen Lewis Goldfinch Jr. PO Box 829 Murrells Inlet,
SC 29576

Alan Grant Jones PO Box 2980 Greenville, SC 29602
William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D
Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Melanie Huggins-Ward - Clerk of Court

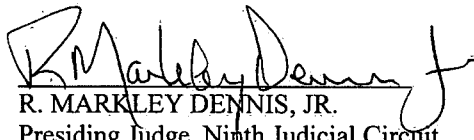
ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry	)	
	)	CASE NO. 2015-CP-26-0034
Christine LeFont,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
City of Myrtle Beach; Myrtle Beach	)	
Convention Center Hotel Corporation	)	
	)	
Defendants.	)	
	)	
	)	
	)	

This matter comes before me upon Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial filed by Stephen L. Goldfinch, Jr., attorney for the Plaintiff, Christine LeFont, on September 20, 2016. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial is respectfully **DENIED**;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

Dated: April 26, 2017

The State of South Carolina
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2015-CP-26-00034

Christine LeFont,.....Appellant,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation, ...Respondents.

PROOF OF SERVICE

I, the undersigned employee of Goldfinch Winslow, LLC, attorneys for Christine LeFont, certify that on the date indicated below, I served all counsel in this action with a copy of Appellant's Notice of Appeal by mailing a copy of same by United States Mail, first class postage prepaid, addressed to:

William A. Bryan, Jr.
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 19, 2018



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