

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2018-002270
Case No. 2014-CP-26-07790

RECEIVED
DEC 09 2019
SC Court of Appeals

Richard Ciampanella, ...Respondent,

v.

City of Myrtle Beach, ...Appellant.

**RECORD ON APPEAL
VOLUME 1**

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2018-002270
Case No. 2014-CP-26-07790

Richard Ciampanella, ...Respondent,

v.

City of Myrtle Beach, ...Appellant.

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¹ Respondent initially designated all trial exhibits in his designation of matter. However, in response to Appellant's motion to strike certain portions of his designation, Respondent agreed to strike Plaintiff's Exhibits 16, 20, 21, 22 and 23, and Defendant's Exhibits 1 and 2. (Resp't Return to Mot. to Strike, p. 7). Additionally, the Court granted Appellant's motion to strike the "Myrtle Beach Walkover Inspection Report." (Order Granting Mot. to Strike In Part, Aug. 30, 2019). Appellant continues to argue in its Reply Brief that this Court should not consider the following exhibits, which are irrelevant to this appeal: Court's Exhibits 1, 2, and 3, and Plaintiff's Exhibits 1, 15, 25, 27, 31, and 33. (Appellant's Reply Brief, p. 9-11).

² As indicated at the end of this Index, Plaintiff's Exhibit 2 (large photograph), Plaintiff's Exhibit 31 (CD of Steven Poletti, MD deposition), and Plaintiff's Exhibit 33 (screw) are being filed separately with the Court pursuant to Rule 210(f), SCACR.

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**Plaintiff's Exhibit 2 (large photograph);
Plaintiff's Exhibit 31 (CD of Steven Poletti, MD deposition);
Plaintiff's Exhibit 33 (screw); and
Court's Exhibit 2 (mock-up of railing).**

³ As indicated at the end of this Index, Court's Exhibit 2 (mock-up of railing) is being filed separately with the Court pursuant to Rule 210(f), SCACR.

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2607790

Richard Ciamparella

Myrtle Beach City Of

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 tried or 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
COURT GRANTED A DIRECTED VERDICT.

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge-THOMAS RUSSO

2141
Judge Code

1/25/2017

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:

Gene McCain Connell Jr. PO Drawer 14547 Surfside Beach,
SC 29587

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

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-26-7790

Richard Ciamparella,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

**ORDER GRANTING NEW TRIAL
PURSUANT TO SCRPC 59**

THIS MATTER is before the Court based on Plaintiff's Motion for a New Trial. This case was previously heard by the Court, and, at the close of the evidence, the Court granted Defendant's motion for a directed verdict. The Plaintiff then timely moved for a new trial pursuant to South Carolina Rule of Civil Procedure 59(a), which provides in pertinent part:

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State[.]

The grant or denial of a new trial motion rests within the sound discretion of the trial court.

See Brinkley v. S.C. Dept. of Corrections, 386 S.C. 182, 687 S.E.2d 54 (Ct. App. 2009).

After reviewing of the transcript and briefs of the parties and hearing arguments from counsel, this Court finds that a new trial is necessary as to any and all causes of action related to negligent design and/or construction. See Creech v. S.C. Wildlife & Marine Resources Dept., 328 S.C. 24, 491 S.E.2d 571 (1997) (allowing a claim against the S.C. Wildlife & Marine Resources Department for negligent design and construction of a public dock/fishing pier to survive directed verdict where enough evidence was presented for a jury to infer negligence). The Court denies Plaintiff's motion for a new trial as to any causes of action related to maintenance, security, or

supervision of the walkover, as such claims are precluded by the South Carolina Tort Claims Act. Nothing in this ruling conflicts with the Court's previous ruling during trial, whereby partial summary judgment as to simple negligence was granted pursuant to the South Carolina Recreational Use Statute.

Accordingly, it is ORDERED that a new trial be granted pursuant to SCRCP 59(a) and (b) as to the causes of action related to negligent design and construction only; issues related to the City's inspection schedule, inspection methodology, and claims related to the adequacy of the City's preventative and corrective maintenance subsequent to original construction shall not be addressed during the new trial. It is further ORDERED that this matter be returned to the Horry County Court of Common Pleas for a new trial. The Clerk of Court is directed to place this matter on the docket for trial.

AND IT IS SO ORDERED.

The Honorable Thomas A. Russo
Presiding Judge, Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Richard Ciampanella VS Myrtle Beach City Of

Case Number: 2014CP2607790

Type: Order/Other

So Ordered

s/Thomas A. Russo

Electronically signed on 2018-09-25 14:22:38 page 3 of 3

ELECTRONICALLY FILED - 2018 Sep 25 3:38 PM - HORRY - COMMON PLEAS - CASE#2014CP2607790

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Richard Ciamparella,	)	Civil Action No. 2014-CP-26-07790
	)	
Plaintiff,	)	ORDER DENYING
	)	DEFENDANT'S MOTION
v.	)	FOR RECONSIDERATION
	)	
City of Myrtle Beach,	)	
	)	
Defendant.	)	
	)	

THIS MATTER comes before the Court on motion of the Defendant, City of Myrtle Beach, seeking reconsideration of this Court's September 25, 2018 Order partially granting the Plaintiff's motion for a new trial.

After thoroughly considering the objections of the Defendant, this Court respectfully denies the motion for reconsideration. As to the limited issue of negligent construction and design of the beach walkover, this Court views any remaining issues to be questions of fact for the jury, specifically, the issues of the effective date of various building codes, as well as the testimony of the Plaintiff's expert witness, Alan Campbell, regarding the appropriateness of the type and number of screws used.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Reconsideration is hereby DENIED.

AND IT IS SO ORDERED.

[Signature page to follow.]

October 24, 2018
Florence, South Carolina



Horry Common Pleas

Case Caption: Richard Ciampanella VS Myrtle Beach City Of
Case Number: 2014CP2607790
Type: Order/Other

So Ordered

s/Thomas A. Russo

Electronically signed on 2018-11-21 11:03:43 page 2 of 2

ELECTRONICALLY FILED - 2018 Nov 21 2:30 PM - HORRY - COMMON PLEAS - CASE#2014CP2607790

The South Carolina Court of Appeals

Richard Ciampanella, Respondent,

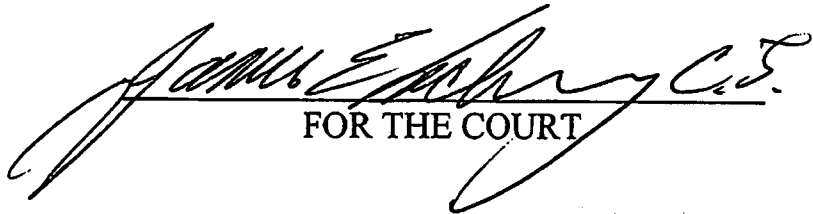
v.

City of Myrtle Beach, Appellant.

Appellate Case No. 2018-002270

ORDER

After careful consideration, the motion to dismiss is denied. Nothing prevents the parties from arguing the issue of appealability in their briefs.


FOR THE COURT

Columbia, South Carolina

cc:

William Alfred Bryan, Jr., Esquire
Amy Lynn Neuschafer, Esquire
Stephanie Lynn Mascella, Esquire
Gene McCain Connell, Jr., Esquire
Julian Zeno Hanna, Esquire

FILED

March 21, 2019

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-26-7790

Richard Ciampanella,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

COMPLAINT
(Premises Liability)
JURY TRIAL

FILED
HORRY COUNTY
2014 NOV 20 PM 3:18
HELANE HUGGINS-WARD
CLERK OF COURT

The Plaintiff, above-named, complaining of the Defendant herein, would allege:

1. The Plaintiff is a citizen and resident of Statesville, North Carolina.
2. The Defendant City of Myrtle Beach is a governmental entity organized and existing under the South Carolina Constitution and doing business as a municipality located in Horry County, South Carolina.

3. The Plaintiff, a visitor to the Grand Strand area, was in the City of Myrtle Beach on August 19, 2014 staying at a local hotel when Plaintiff leaned against a railing on a boardwalk that leads to the beach. The railing gave way causing Plaintiff to fall off the boardwalk onto the ground.

4. The Defendant City of Myrtle Beach, through its officers, agents and/or employees, was negligent, reckless, and willful in one or more of the following particulars:

- a. in failing to properly construct the boardwalk;
- b. in failing to properly maintain the boardwalk;
- c. in failing to make sure the boardwalk railing would not fall;
- d. in using improper nailing techniques on the boardwalk;
- e. in failing to properly affix the rail to the boardwalk;
- f. in nailing the railing to the outside of the post in violation of generally

accepted construction practices;

g. in failing to inspect the boardwalk and railing on a regular basis to make sure that it was properly affixed;

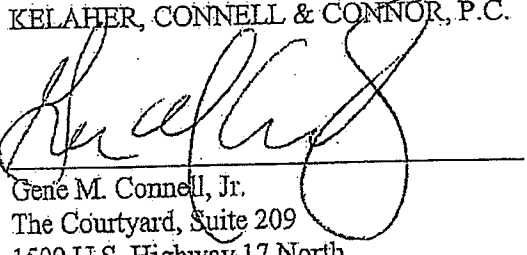
h. in failing to warn the Plaintiff of the dangers of the railing on the boardwalk;

i. in failing to take that degree of skill and care which a reasonable or prudent person would have done under the same or similar circumstances.

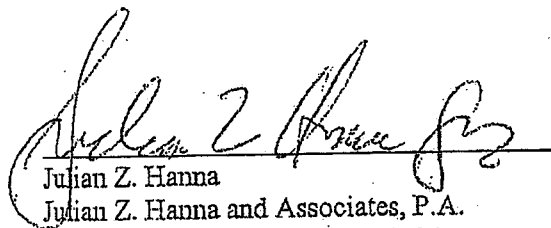
5. That as a direct and proximate result, the Plaintiff suffered severe and disabling injuries, has medical bills, will have future medical bills, has pain and suffering, will continue to have pain and suffering, has permanent impairment, will continue to have permanent impairment, has had to restrict his activities, will continue to restrict his activities, and will need additional medical care for the remainder of his life.

6. That Plaintiff asks for judgment against Defendant for actual damages, for punitive damages and for the cost of this action.

KELAHER, CONNELL & CONNOR, P.C.



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(843) 237-3431 (phone)

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Attorneys for Plaintiff

November 4, 2014

Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Richard Ciampanella,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2014-CP-26-7790

ANSWER

HORRY COUNTY
2015 FEB -2 PM 1:21
MELANIE HUGHES-WARD
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 and 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 and, therefore, denies the same.
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. The remaining inconsistent allegations of Paragraph 2 are denied; allegations that call for legal conclusions do not require a response.
3. Lacks sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 3 and, therefore, denies the same and demands strict proof thereof.
4. Denies the allegations of Paragraph 4, including all subparts, and demands strict proof thereof.

5. Denies the allegations of Paragraph 5 and demands strict proof thereof.
6. Denies that Plaintiff is entitled to the relief sought in the prayer of the Complaint.

FOR A SECOND DEFENSE

7. The foregoing allegations are incorporated herein as fully as if repeated verbatim.
8. 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), SCRPC.

FOR A THIRD DEFENSE

9. The foregoing allegations are incorporated herein as fully as if repeated verbatim.
10. 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 the Complaint.

FOR A FOURTH DEFENSE

11. The foregoing allegations are incorporated herein as fully as if repeated verbatim.
12. 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 the Act. Defendant makes specific reference herein to the provisions of §§ 15-78-60 (1), (4), (5), (8), (9), (13), (15), and (20) of said Act.

FOR A FIFTH DEFENSE

13. The foregoing allegations are incorporated herein as fully as if repeated verbatim.
14. Defendant asserts the public duty rule as a complete defense.

FOR A SIXTH DEFENSE

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

16. The City would show that it is protected from liability by operation of the South Carolina Recreational Use Statute codified at S.C. Code Ann. § 27-3-10, et al. which is pled as a complete defense.

FOR A SEVENTH DEFENSE

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

18. Any injuries or damages sustained by the 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

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

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

FOR A NINTH DEFENSE

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

22. Such injuries or losses as Plaintiffs sustained, if any, were caused by Plaintiff's assumption of a known risk; accordingly, Defendant pleads Plaintiff's assumption of a known risk as a complete defense.

FOR A TENTH DEFENSE

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

24. Any injuries sustained by Plaintiff were due to and caused by the sole negligence of third persons who caused or contributed to the railings becoming weak or loose and over whom the City had no control. Therefore, the City should not be liable to the Plaintiff in any sum whatsoever.

FOR AN ELEVENTH DEFENSE

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

26. 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 the Plaintiff in any sum whatsoever.

FOR A TWELFTH DEFENSE

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

28. Plaintiff either knew or should have known of any alleged deficiencies in the walkover and accepted the same with such knowledge. As a result, Plaintiff's recovery should be barred.

FOR A THIRTEENTH DEFENSE

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

30. Plaintiff's recovery may be reduced or barred if Plaintiff failed to mitigate damages as required by law.

FOR A FOURTEENTH DEFENSE

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

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

FOR A FIFTEENTH DEFENSE

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

34. Defendant would show that punitive damages are not recoverable under the South Carolina Tort Claims Act as set forth in § 15-78-120 and that Plaintiff's prayer for punitive damages should therefore be stricken.

FOR A SIXTEENTH DEFENSE

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

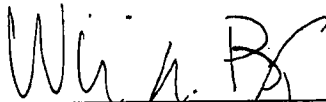
36. Defendant specifically reserves any additional and further defenses as may be available to it or revealed to it during the course of the investigation and/or discovery in this case.

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.

By: 
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ATTORNEYS FOR DEFENDANT
CITY OF MYRTLE BEACH

Murrells Inlet, South Carolina
January 30, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Richard Ciamparella,

☒ Plaintiff

v.

CASE NO. 2014-CP-26-7790

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

City of Myrtle Beach,

☐ Defendant.

Plaintiff's Attorney:

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Defendant's Attorney:

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P 843-353-2350 F 843-652-0301
Email: wbryan@collinsandlacy.com

- ☒ MOTION HEARING REQUESTED (attach written motion and 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: for New Trial/Alter or Amend Judgment

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

February 3, 2017

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ 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 the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

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

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

[Signature]

Date Filed:

2-7-2017

☒ MOTION FEE COLLECTED: 25.00

☐ CONTESTED - AMOUNT DUE:

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2014-CP- 26-7790**

Plaintiff,

vs.

Defendant.

PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR NEW TRIAL AND
TO ALTER OR AMEND A JUDGMENT
PURSUANT TO SCRCP 59

Plaintiff respectfully requests that the Court grant a new trial and that the Court amend and/or alter its oral order of January 25, 2017 wherein the court directed a verdict for the Defendant finding that Plaintiff had not proven actual notice of the defect in the beach walkover access. The basis of Plaintiff's motion requesting the Court grant a reversal of the directed verdict is as follows:

It is settled law in South Carolina that a motion for directed verdict requires the Court to view the evidence and all inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. If the evidence yields more than one inference or its inferences are in doubt, the court should deny such motion. *Worley v. Yarborough Ford, Inc.*, 317 S.C. 206, 452 S.E.2d 622 (Ct. App. 1994).

If there is any evidence that supports the party opposing the directed verdict request, this Court may not grant such a request. See *Graves v. Horry-Georgetown Technical College*, 391 S.C. 1, 704 S.E.2d 350 (Ct. App. 2010). Finally, when considering a directed verdict motion the trial court does not have the authority to decide credibility issues or to resolve conflicts in the testimony or evidence.

Plaintiff respectfully suggest that based on all the evidence presented which will be discuss, this Court erred in granting the motion to direct a verdict for the Defendant.

2. Notice is not required if the Defendant creates the hazard.

In support of Plaintiff's request that the Court deny Defendant's motion for a directed verdict on actual notice, Plaintiff pointed out to the Court that the beach walkover access was built, maintained, inspected and constructed by the Defendant City of Myrtle Beach. It is well settled law in South Carolina that notice is never required if the condition was created by a defendant's employees. See *Cook v. Food Lion*, 328 S.C. 324, 491 S.E.2d 690 (Ct. App. 1997), *cert. denied* (1998) (a customer is not required to show the store had notice of danger created by the mats because the store employees created the allegedly dangerous condition by placing the mats in the exit doors). See *Smith v. Walmart Stores*, 314 S.C. 248, 442 S.E.2d 606 (1998). See also *Wooten v. SCDOT*, 326, S.C. 516, 485 S.E.2d 119 (Ct.App. 1997); *affirmed* 333 S.C. 464, 511 S.E.2d (1999) (concluding that whether DOT complied with its design guidelines or any other appropriate professional standard is at best a jury issue).

Alan Campbell, Plaintiff's expert, offered significant testimony that the Defendant created the hazards by using #9 screws in the deck and beach walkover access.¹ He further testified to evidence of violations of building codes or industry standards which are admissible to

¹ See Exhibit 19, Work Order #1719 which was work performed by City employee Edsel on 8/20/2014. In his report he noted "screws had rusted into to cause them to break when leaned on."

prove notice. See *Elledge v. Richland/Lexington School District 5*, 341 S.C. 473, 534 S.E.2d 289 (Ct.App. 2000).

There is also evidence in the record of ownership and control of the beach walkover accesses by the City of Myrtle Beach. Exhibit No. 17, the Beach Management Act, specifically describes that the City owns the beach walkover access, built them, constructed them, inspected them, repaired them and maintained them. Because the City is a landowner in this situation, they are liable to third persons for defective conditions on their premises when such are due to defective construction. *Binnicker v. Adden*, 204 S.C. 487, 30 S.E.2d 142 (1942).

Thus, because the City of Myrtle Beach was the owner and created the condition, S.C. Code §15-78-60(16) is not applicable.

3. Plaintiff's expert's testimony showed defective construction and actual notice of the defects by the Defendant.

Plaintiff offered and qualified as an expert, Alan Campbell, a professional engineer from Charleston, South Carolina, who had significant experience in constructing and building beach walkover accesses in the coastal area of South Carolina. Campbell's testimony is significant on both notice and the creation of the defect. He testified as follows:

- Defendant's employees installed the wrong screws in construction of the deck. A #9 screw is not to be used because it corrodes easily and after seven years corrodes by a factor of 50 each year thereafter.²
- The Beach Management Act (Exhibit No. 32) recommends a bolt-through style construction and not the use of screws. See Exhibit 18 (Dune Walkover Guidelines) and Exhibit 17 (Beach Management Act).

² See Exhibit 19, *supra*.

- The Defendant's employees did not replace rusted screws which caused the beach walkover access to collapse injuring the Plaintiff.³ Rusted screws and the failure to replace them violate the 2012 International Property Maintenance Code, the 1994 Standard Building Code and the 2000 International Building Code which had all been adopted by the City of Myrtle Beach. Plaintiff refers the Court to Exhibits 34 (Standard Building Code), Exhibit 35 (International Building Code and Exhibit 26 (International Property Maintenance Code).⁴
- The Defendant's employees knew of the problems with the screws because many of the beach walkover accesses had rusted screws and there were failures throughout the system.
- According to the City's own internal documents including Exhibit 17 (Beach Management Act) the beach walkover accesses in questions had a 15 year lifespan and the one where the Plaintiff fell was built in 1990. The accident happened on August 19, 2014 long after the expected life span of the beach walkover access at 77th Avenue North.
- The method of construction by City employees was not in compliance with the Dune Walkover Guidelines (Exhibit 18) which required all beach walkover accesses to be built in accordance with the International Building Code. Further, Exhibit 24 had a drawing of the proper detail of the Beach Management Act and how beach walkovers were to be constructed. See also Exhibit 32 which described in detail how the railing was to be built with bolts. The pictures offered into evidence, Plaintiff's Exhibits 3-14) show severely rusted and corroded screws which were not of the correct diameter when

³ See Exhibit 19, *supra*

⁴ See also pictures (Ex. 7, 8, 9) showing the rusted screws in the beach walkover access railing where Plaintiff fell.

installed. The same photographs show not enough screws were used on the side railing.

The City employees' method of testing the railings for strength did not meet the Standard Building Code and City employees simply pushed on the railing as they walked through during their inspections which were done in seconds.

- Rusted screws are a sign that they should be replaced and were easily available on inspection.
- The City employees would have seen these rusty screws during their inspection.
- The #9 screws were not appropriate for use and as a result fastener failure occurred.
- The City's Walkover Inspection Reports showed numerous defects in the beach walkover accesses including the one where the Plaintiff fell at 77th Avenue North.
- Defendant's employees had actual knowledge of failures on other beach walkover accesses due to the rusty screws.
- The City employees did not build the beach walkover access in compliance with the 200 lb. concentrated force requirement as is required for any railings.
- The City employees failed to use proper corrective methods for railings and beach walkover accesses.
- The City employees did not construct guardrails consistent with industry standards.
- The City of Myrtle Beach did not follow its own replacement policy of beach walkover accesses.
- City inspections were totally inadequate because they were performed in seconds.
- City employees failed to correct a known problem (corroding screws that were much smaller than which should have been used).

- City employees failed to adopt representative testing of the railings to make sure they would withstand a 200 lb. concentrated force.
- Plaintiff's injury was a result of corrosion failure along with withdrawal failure -- all of which City employees had knowledge of prior to Plaintiff's injury.
- On cross-examination by Defendant's counsel, Alan Campbell reiterated that the City was aware of and had knowledge of the condition after creating it by constructing the beach walkover access in violation of Standard Building Code, International Building Code and the International Property Maintenance Code.

4. If notice was required pursuant to § 15-78-60(16) evidence offered was sufficient.

In granting the City's motion this Court stated actual notice was required pursuant to § 15-78-60(16). The decisions of the Court of Appeals and the Supreme Court have reiterated that the Plaintiff has the option of proving actual notice by the factual circumstances of the case. (Circumstantial evidence is allowed.) See *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998) and *Bryant v. City of North Charleston*, 304 S.C. 123, 403 S.E.2d 159 (Ct. App. 1991).

While Plaintiff submits that actual notice was not required because the City built the walkover access, Plaintiff's expert and his testimony more than met the standard. As stated above, Campbell testified that the rusty screws were obvious, they were the wrong size and they were seen by City employees. Further evidence of actual knowledge notice is found in the Beach Management Act (Exhibit 17)⁵, the Dune Walkover Guidelines (Exhibit 18), South Carolina Guide to Beachfront Property (Exhibit 30), the Coastal Construction Manual (Exhibit

⁵ The City adopted by resolution the South Carolina Beachfront Management Act on October 23, 2012. In that document the City acknowledged it was responsible for the beach walkover access (Exhibit 17, p. 13); the life of a beach walkover access is 15 years, and 40 beach walkovers including the one that failed in this case needed to be replaced as of 2010 study. (Exhibit 17, p. 62).

28) and in the violation of the Building Code committed by the City in the construction of the beach walkover access (see Exhibit 26, International Property Maintenance Code; Exhibit 34, Standard Building Code; and Exhibit 35 International Building Code.

In sum, Campbell's testimony during the trial was "...you would be able to see that the heads are corroded, which in turn would be an indication of the remaining concealed section of the fastener also having some degree of corrosion." (Deposition of Campbell, p. 47, Court's Exhibit 1); and "...everybody knows that, which goes back to maintenance issues of properly inspecting, properly maintaining, properly repairing." (Deposition of Campbell, p. 49).

5. S.C. Code Ann. § 15-78-60(16) does not apply.

The Court in granting Defendant's motion for a directed verdict also stated that S.C. Code Ann. § 15-78-60(16) applied. It provides in pertinent part: "maintenance, security or supervision of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security or supervision within a reasonable time after actual notice of the defect or condition."

Plaintiff refers the Court to Exhibit 17 offered into evidence entitled A RESOLUTION TO ADOPT THE 2012 BEACH MANAGEMENT PLAN FOR THE CITY OF MYRTLE BEACH. This plan approved by City Council discusses each of the beach walkover accesses in the City of Myrtle Beach. Exhibit 17 shows "...the City enforces the International Property Maintenance Code..." (Exhibit 17, p. 62) and that the beach walkover at 77th Avenue North is built on private property. (Exhibit 17, p. 107; Tax Map No. 1651607157-1651607296). Finally, Exhibit 17 indicates that the City does not own all the beach accesses. See Exhibit 17, p. 33,

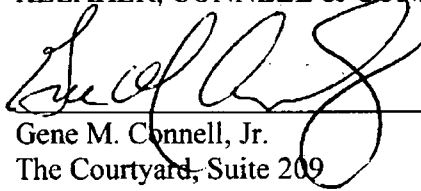
"There are 395 beach access points in the City with 145 being publicly maintained and accessible to the general public."

Plaintiff asserts that in this case, S.C. Code Ann. § 15-78-60(16) does not apply because Plaintiff's Exhibit 17 clearly shows that the beach walkover access at 77th Avenue North is not owned by the public. Accordingly, actual notice of a defect would not be required. Further, as has been stated above, the City had actual notice of the defect by using improper screws and corroded screws not being replaced.

Accordingly, Plaintiff moves the court for an Order reversing this Court's decision to direct a verdict to the Defendant and granting the Plaintiff a new trial pursuant to South Carolina Rule of Civil Procedure 59.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



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February 3, 2017

Attorneys for Plaintiff

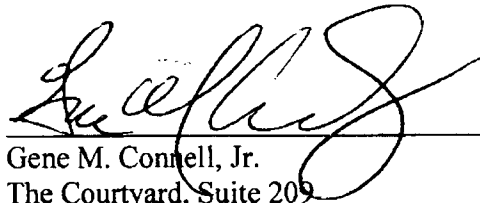
RULE 11 CERTIFICATION

The attorney(s) below hereby certifies that either:

- ___ A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- ___ B. Such consultation would serve no useful purpose, or could not be timely held; or
- ___ C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
- ___ a. To Dismiss
- ___ b. For Summary Judgment
- X c. For New Trial
- ___ d. For Judgment NOV

2017 FEB -7 PM 2:51
CLERK OF COURT
HONOLULU COUNTY, SC

KELAHER, CONNELL & CONNOR, P.C.



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February 3, 2017

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Richard Ciampanella,	)	Civil Action No.: 2014-CP-26-07790
	)	
Plaintiff,	)	
vs.	)	
	)	DEFENDANT'S MOTION FOR
City of Myrtle Beach,	)	RECONSIDERATION
	)	
Defendant.	)	
	)	

Defendant City of Myrtle Beach hereby moves in accordance with Rule 59(e), SCRCP, for reconsideration of the Court's Order of September 25, 2018, partially granting Plaintiff's motion for new trial.

Plaintiff brought a negligence action against the City of Myrtle Beach (hereinafter "City" or "Defendant") after falling from a public beach walkover at 77th Avenue North. The case was tried during the week of January 23, 2017. At the close of Plaintiff's case in chief, the Court granted Defendant's motion for directed verdict. Plaintiff filed a motion for a new trial and to alter or amend judgment. After hearing arguments from counsel, the Court entered an Order on September 25, 2018, partially granting Plaintiff's motion and allowing a new trial on the issue of negligent design and construction only. Defendant respectfully requests the Court reconsider its ruling for the following reasons.

1. Plaintiff failed to present any evidence of the design and/or building code in effect at the time of original construction. Plaintiff's expert Alan Campbell did not know when the walkover was originally built, relying instead upon a City employee's best guess that it was rebuilt after Hurricane Hugo. Even if the walkover was rebuilt in 1990 after Hurricane Hugo, Plaintiff never presented any evidence of a building or design code in effect in 1990. Plaintiff

made reference to the 1994 Edition of the Standard Building Code (Exhibit 34) and the International Building Code of 2000 (Exhibit 35). There was no exhibit containing codes in effect in 1990. Without evidence of the applicable building and/or design code(s), there is no evidence from which a jury could find negligent construction and/or design.

2. Plaintiff failed to present evidence of a building or design code violation at the time of original construction. Initially, Plaintiff's expert took exception to the City's use of screws. However, Mr. Campbell ultimately acknowledged the screws used were appropriate for the application. The following exchange reveals Mr. Campbell's actual position concerning the City's use of screws:

Q. ...But the use of 10 or 12 wood screws, that's an appropriate application; do you agree or not?

A. In some circumstances, it could be.

Q. I'm talking about 77th Avenue North. If the City used size #10 – number 9, 10 or 12 screws, is that an appropriate size screw for that application?

A. As long as – yes, as long as they inspect and maintain it properly, which they absolutely did not.

Exhibit A; Tr. Page 322, Lines 9 – 16.

In other words, Mr. Campbell conceded the screws used to construct the walkover railing were appropriate.

Plaintiff also challenged the construction on the grounds that the walkover railing would not satisfy a 200 pound concentrated force requirement taken from a subsequent building code. This opinion was based on Mr. Campbell's mistaken belief as to the number of screws in the railing. Once Mr. Campbell considered the additional screws, he testified repeatedly that the City's original construction would satisfy the 200 pound concentrated force requirement.

Q. Now, this screw is resting up against this board –

A. Yes, sir.

Q. - which is embedded in this post with two more screws.

A. Right.

Q. You agree that's – this board provides support for this board (indicating)? You're leaning up against it?

A. That way, absolutely, yes, sir.

Q. Yeah, if you're leaning up against it. So that this nail this board is also going to be – this board is also going to be supported by these two screws. So tell me what's going to be the strength of these two screws (indicating).

A. Probably around a hundred and – if I'm not mistaken, around 150 or so.

Q. **So with those three screws together, the original construction meets your 200 pounds of concentrated force requirement; yes?**

A. **On day one?**

Q. **Yeah.**

A. **Yes, sir.**

* * * * *

Q. ...But also something that I picked up on earlier, these boards at the walkover actually have nails – I'm not sure if they're coming from this direction or that direction (indicating), but these are nailed in all the way down the line.

A. Yeah. And I was looking at that probably two to three feet down.

Q. Okay.

A. But not right at the post.

Q. But that gives it –

A. Two to three feet down.

Q. And that gives it additional strength?

A. Probably every two to three feet on center.

Q. All right. How much more additional strength is that going to give the entire structure?

A. Well, that just allows all those screws to work together as opposed to individually. So you could add the two, based on that direction of load, you may get up to two or three hundred pounds or maybe even 400 pounds.

Q. **So we far exceed the building code's 200 concentrated pound requirement?**

A. **Yeah. It's not going to fail on day one.**

Exhibit A; Tr. Page 328, Lines 3 – 25 (emphasis added); Tr. Page 329, Line 9 – Page 330, Line 7 (emphasis added).

When Mr. Campbell considered all of the screws included in the original design and construction, he admitted the railing's original construction would withstand far more than 200 pounds of concentrated force. The testimony presented at trial fails to demonstrate negligent construction or design. Moreover, the evidence does not show gross negligence as required under the South Carolina Recreational Use Statute.¹

In the absence of evidence of the standard of care owed at the time of original construction and the absence of evidence from which a jury could find gross negligence (or even simple negligence) in the City's design or construction, Defendant requests the Court reconsider its Order granting new trial.

(SIGNATURE ON FOLLOWING PAGE.)

¹ In the September 25, 2018, Order, the Court recognized the ruling from the bench granting partial summary judgment as to the application of the South Carolina Recreational Use Statute. Thus, Plaintiff must offer evidence of gross negligence to withstand directed verdict.

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/William A. Bryan, Jr.

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ATTORNEYS FOR DEFENDANT CITY
OF MYRTLE BEACH

DEFENDANT'S MOTION FOR
RECONSIDERATION

Murrells Inlet, South Carolina
October 5, 2018

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State of South Carolina) Court of Common Pleas
County of Horry) 2014-CP-26-07790

Richard Ciamparella)
vs.)
City of Myrtle Beach) Transcript of Record

January 23, 2017
Conway, South Carolina

BEFORE:

Honorable Thomas A. Russo, Judge.

APPEARANCES:

Gene M. Connell, Jr., Esq.
Julian Z. Hanna, Esq.
Attorney for the Plaintiff

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

Teresa J. F. Bautz, RPR
Official Court Reporter

EXHIBIT

A

ALAN O. CAMPBELL-CROSS BY MR. BRYAN

322

1 make it last.

2 Q Mr. Campbell, but you said number 10 or even
3 number 12 screws is also acceptable; yes?

4 A It can be.

5 Q You don't --

6 A It can be, absolutely. But as we said, you've got
7 to install it properly, construct it properly and
8 maintain it properly.

9 Q All right. But the use of 10 or 12 wood screws,
10 that's an appropriate application; do you agree or not?

11 A In some circumstances, it could be.

12 Q I'm talking about 77th Avenue North. If the City
13 used size #10 -- number 9, 10 or 12 screws, is that an
14 appropriate size screw for that application?

15 A As long as -- yes, as long as they inspect and
16 maintain it properly, which they absolutely did not.

17 Q You said yes; right?

18 A Let's not take that out of context. I said yes,
19 as long as.

20 Q Okay.

21 A That's a full sentence, not one word.

22 Q All right. So we're talking about, I think, like
23 three-inch galvanized screws; correct?

24 A They're probably going to need to be three inches
25 for some of it.

ALAN O. CAMPBELL-CROSS BY MR. BRYAN

328

1 with some safety factor.

2 A Yes, sir.

3 Q Now, this screw is resting up against this
4 board --

5 A Yes, sir.

6 Q -- which is embedded in this post with two more
7 screws.

8 A Right.

9 Q You agree that's -- this board provides support
10 for this board (indicating)? You're leaning up against
11 it?

12 A That way, absolutely, yes, sir.

13 Q Yeah, if you're leaning up against it. So that
14 this nail this board is also going to be -- this board
15 is also going to be supported by these two screws. So
16 tell me what's going to be the strength of these two
17 screws (indicating).

18 A Probably around a hundred and -- if I'm not
19 mistaken, around 150 or so.

20 Q So with those three screws together, the original
21 construction meets your 200 pounds of concentrated
22 force requirement; yes?

23 A On day one?

24 Q Yeah.

25 A Yes, sir.

ALAN O. CAMPBELL-CROSS BY MR. BRYAN

329

1 Q And then it's also going to --

2 A Well, based on that configuration with that
3 sideways loading. Now, if you go back to,
4 hypothetically, somebody were to put a concentrated
5 load right there (indicating), that's probably going to
6 fail.

7 Q If somebody sat on it?

8 A Yeah, on that edge, it could fail.

9 Q Could cause, I agree with you. But also something
10 that I picked up on earlier, these boards at the
11 walkover actually have nails -- I'm not sure if they're
12 coming from this direction or that direction
13 (indicating), but these are nailed in all the way down
14 the line.

15 A Yeah. And I was looking at that probably two to
16 three feet down.

17 Q Okay.

18 A But not right at the post.

19 Q But that gives it --

20 A Two to three feet down.

21 Q And that gives it additional strength?

22 A Probably every two to three feet on center.

23 Q All right. How much more additional strength is
24 that going to give the entire structure?

25 A Well, that just allows all those screws to work

ALAN O. CAMPBELL-CROSS BY MR. BRYAN

330

1 together as opposed to individually. So you could add
2 the two, based on that direction of load, you may get
3 up to two or three hundred pounds or maybe even 400
4 pounds.

5 Q So we far exceed the building code's 200
6 concentrated pound requirement?

7 A Yeah. It's not going to fail on day one.

8 Q Okay. So you don't take exception to the design
9 and construction of the 77th Avenue North walkover;
10 correct?

11 A Well, actually, I do. But as we said, you've got
12 to have maintenance that is appropriate to the method
13 of construction.

14 Q Okay.

15 A And I don't think they're appropriate.

16 Q Okay. Construction is one thing. And we just
17 established that, with all these nails, it's got way
18 more than 200 pounds of -- it can withstand way more
19 than 200 pounds of concentrated pressure; agreed?

20 A Sure, on day one.

21 Q Okay.

22 A But then we get, you know, downstream, and that's
23 when we get into trouble.

24 Q Sure. Now, we're talking about inspection and --

25 A Inspection and maintenance.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry County
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2014-CP-26-07790

CCPY

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DEC 21 2018

SC Court of Appeals

Richard Ciampanella, ... Respondent,

v.

City of Myrtle Beach, ... Appellant.

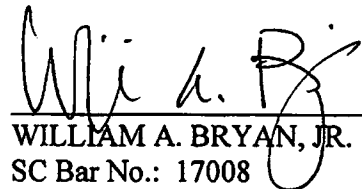
NOTICE OF APPEAL

Pursuant to Rule 58 of the South Carolina Rules of Civil Procedure, the City of Myrtle Beach appeals the Order of the Honorable Thomas A. Russo Granting New Trial entered on September 25, 2018, and the subsequent Order Denying Defendant's Motion for Reconsideration filed on November 21, 2018. Appellant received written notice of the entry of the Order Denying Defendant's Motion for Reconsideration on November 21, 2018.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,
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CITY OF MYRTLE BEACH

NOTICE OF APPEAL

Murrells Inlet, South Carolina
December 20, 2018

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2014-CP-26-7790

Richard Ciampanella,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

**ORDER GRANTING NEW TRIAL
PURSUANT TO SCRCP 59**

THIS MATTER is before the Court based on Plaintiff's Motion for a New Trial. This case was previously heard by the Court, and, at the close of the evidence, the Court granted Defendant's motion for a directed verdict. The Plaintiff then timely moved for a new trial pursuant to South Carolina Rule of Civil Procedure 59(a), which provides in pertinent part:

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State[.]

The grant or denial of a new trial motion rests within the sound discretion of the trial court.

See Brinkley v. S.C. Dept. of Corrections, 386 S.C. 182, 687 S.E.2d 54 (Ct. App. 2009).

After reviewing of the transcript and briefs of the parties and hearing arguments from counsel, this Court finds that a new trial is necessary as to any and all causes of action related to negligent design and/or construction. See Creech v. S.C. Wildlife & Marine Resources Dept., 328 S.C. 24, 491 S.E.2d 571 (1997) (allowing a claim against the S.C. Wildlife & Marine Resources Department for negligent design and construction of a public dock/fishing pier to survive directed verdict where enough evidence was presented for a jury to infer negligence). The Court denies Plaintiff's motion for a new trial as to any causes of action related to maintenance, security, or

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DEC 21 2018

SC Court of Appeals

supervision of the walkover, as such claims are precluded by the South Carolina Tort Claims Act. Nothing in this ruling conflicts with the Court's previous ruling during trial, whereby partial summary judgment as to simple negligence was granted pursuant to the South Carolina Recreational Use Statute.

Accordingly, it is ORDERED that a new trial be granted pursuant to SCRCP 59(a) and (b) as to the causes of action related to negligent design and construction only; issues related to the City's inspection schedule, inspection methodology, and claims related to the adequacy of the City's preventative and corrective maintenance subsequent to original construction shall not be addressed during the new trial. It is further ORDERED that this matter be returned to the Horry County Court of Common Pleas for a new trial. The Clerk of Court is directed to place this matter on the docket for trial.

AND IT IS SO ORDERED.

The Honorable Thomas A. Russo
Presiding Judge, Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Richard Ciampanella VS Myrtle Beach City Of

Case Number: 2014CP2607790

Type: Order/Other

So Ordered

s/Thomas A. Russo

Electronically signed on 2018-09-25 14:22:38 page 3 of 3

ELECTRONICALLY FILED - 2018 Sep 25 3:38 PM - HORRY - COMMON PLEAS - CASE#2014CP2607790

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Richard Ciamparella,	)	Civil Action No. 2014-CP-26-07790
	)	
Plaintiff,	)	ORDER DENYING
	)	DEFENDANT'S MOTION
v.	)	FOR RECONSIDERATION
	)	
City of Myrtle Beach,	)	
	)	
Defendant.	)	

THIS MATTER comes before the Court on motion of the Defendant, City of Myrtle Beach, seeking reconsideration of this Court's September 25, 2018 Order partially granting the Plaintiff's motion for a new trial.

After thoroughly considering the objections of the Defendant, this Court respectfully denies the motion for reconsideration. As to the limited issue of negligent construction and design of the beach walkover, this Court views any remaining issues to be questions of fact for the jury, specifically, the issues of the effective date of various building codes, as well as the testimony of the Plaintiff's expert witness, Alan Campbell, regarding the appropriateness of the type and number of screws used.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Reconsideration is hereby DENIED.

AND IT IS SO ORDERED.

[Signature page to follow.]

October 24, 2018
Florence, South Carolina

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DEC 21 2018
SC Court of Appeals



Horry Common Pleas

Case Caption: Richard Ciampanella VS Myrtle Beach City Of

Case Number: 2014CP2607790

Type: Order/Other

So Ordered

s/Thomas A. Russo

Electronically signed on 2018-11-21 11:03:43 page 2 of 2

ELECTRONICALLY FILED - 2018 Nov 21 2:30 PM - HORRY - COMMON PLEAS - CASE#2014CP2607790

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

CASE NO. 2014-CP-26-7790

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SC Court of Appeals

Richard Ciampanella Respondent

vs.

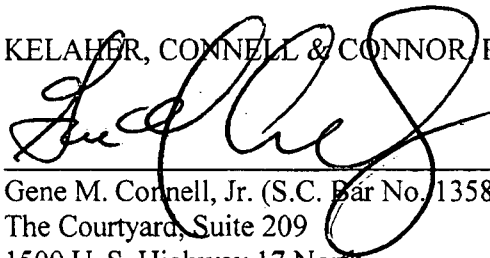
City of Myrtle Beach Appellant

MOTION TO DISMISS APPEAL

The Respondent, Richard Ciampanella, hereby moves for a dismissal of the appeal filed herein by the Appellant City of Myrtle Beach. The grounds for this motion are that the order of the lower court is not immediately appealable. The Respondent further moves for attorney's fees and costs to defend the appeal and for the filing of this motion.

Respectfully submitted,

KELAHY, CONNELL & CONNOR, P.C.



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January 9, 2019

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

CASE NO. 2014-CP-26-7790

Richard Ciampanella Respondent

vs.

City of Myrtle Beach Appellant

MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO DISMISS APPEAL

This matter is before the Court based on Respondent's Motion to Dismiss the Notice of Appeal dated December 21, 2018. The City of Myrtle Beach appeals an Order of the Trial Court granting a new trial pursuant to SCRCP 59. Briefly stated, Ciampanella was a visitor to the City of Myrtle Beach and was using a beach walkover access when he leaned against the railing which collapsed and severely injured Ciampanella. A trial was held and at the close of the Plaintiff's case, the trial court granted a directed verdict. Thereafter, Ciampanella filed a timely motion for a new trial which was granted by the trial judge in an Order dated September 25, 2018. The City of Myrtle Beach then moved for reconsideration which was denied. A written Order Denying Defendant's Motion for Reconsideration was issued on November 21, 2018.

APPLICABLE LAW

The law in South Carolina on the appealability of the granting of a new trial is summarized by Wallace K. Lightsey in South Carolina Jurisprudence, Appeal and Error, §26(e), as follows:

Section 14-3-330 of the South Carolina Code explicitly allows direct appeal of “[a]n order affecting a substantial right made in an action when such order...grants or refuses a new trial.” Nevertheless, because of the constitutional and statutory restriction of the appellate jurisdiction in law cases to “correction of errors of law,” a party may appeal an order granting or refusing a new trial only when the trial court’s decision is based upon a principle of law. Thus, an appeal does not lie from a decision predicated on the trial court’s determination as to whether the verdict is contrary to the fair preponderance of the evidence, whether the verdict is excessive or inadequate, whether the parties received a fair trial, or whether the jury understood the issues in the case. Moreover, if the trial court’s decision involves questions of law and fact, it is unappealable. [citations omitted.]

Thus, because the trial judge’s decision in this case is not a final order, it is not immediately appealable. See *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 573, 698 S.E.2d 856, 859 (Ct. App. 2010).

The trial judge’s decision to grant a new trial was predicated on the testimony of the experts regarding the negligent construction and design of the beach walkover. The Court in its Order Denying Defendant’s Motion for Reconsideration found the issue of the effective date of the various building codes as well as the testimony of the expert witness concerning the appropriateness of the type and number of screws used to be factual issues for the jury. The trial judge’s order clearly falls within S.C. Code § 14-3-30 since his opinion involves questions of law and fact. Further, our courts have held that in the event that a new trial is granted based upon factual issues, then the grant of the new trial is not immediately appealable. See *Epting v. Bell*, 260 S.C. 305, 195 S.E.2d 608 (1973); *Able v. Yang*, 259 S.C. 362, 191 S.E.2d 781 (1972); *Sellers v. Sears Robuck & Co.*, 252 S.C. 271, 166 S.E.2d 1 (1969). See also *Knight v. Johnson*, 244 S.C. 70, 135 S.E.2d 372 (1964).

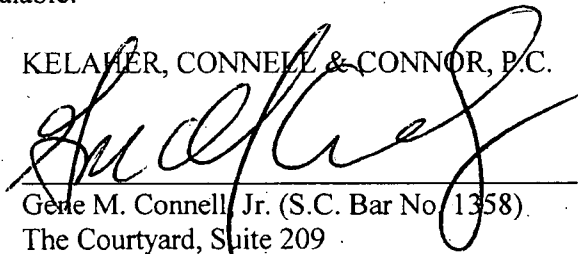
Each of these cases make clear that a new trial granted by the judge which involves questions of law and fact cannot be appealed and is interlocutory. This is clearly in keeping with overwhelming South Carolina case law that requires a final judgment in order to file an appeal. See *Link v. School District of Pickens County*, 302 S.C. 1, 393 S.E. 2d 176, 179 (1990). A "final judgment" requires that the ruling dispose of all issues in the action. *Link*, 302 S.C. at 5 n. 3, 393 S.E.2d at 178 n. 3 (1990).

In this case, the trial judge makes no final judgment, but simply holds that the issues presented are for the jury alone and are factual issues.

CONCLUSION

For the reasons stated above, the Respondent Ciampanella requests this Court dismiss the Appellant's appeal on the basis that the order for new trial in this case is based on legal and factual issues and therefore is not immediately appealable.

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January 9, 2019

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2018-002270
Case No. 2014-CP-26-07790

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JAN 24 2019

SC Court of Appeals

Richard Ciampanella, ... Respondent,

v.

City of Myrtle Beach, ... Appellant.

**APPELLANT'S RETURN TO RESPONDENT'S
MOTION TO DISMISS**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR), the Appellant files this Return in opposition to Respondent Richard Ciampanella's Motion to Dismiss:

FACTS/PROCEDURAL HISTORY

This personal injury action arises out of Respondent's alleged fall on a beach walkover in Myrtle Beach, South Carolina on August 19, 2014. The case was tried before the Honorable Thomas Russo the week of January 23, 2017. Following the close of Respondent's case, Judge Russo directed a verdict in favor of Appellant City of Myrtle Beach. On February 3, 2017, Respondent filed a Motion for New Trial and to Alter or Amend Judgment Pursuant to SCRCR 59. Judge Russo entered an Order partially granting and partially denying a new trial on September

25, 2018. Appellant's Motion for Reconsideration was denied and this appeal followed on December 21, 2018.

Respondent's Motion to Dismiss and supporting memorandum were filed January 9, 2019. Respondent alleges the trial court's grant of a new trial is not immediately appealable.

ARGUMENT

A party's right to appeal is governed by South Carolina Code Ann. § 14-3-330, which provides in relevant part: The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases and shall review upon appeal An order affecting a substantial right made in an action when such order . . . grants or refuses a new trial South Carolina Code Ann. § 14-3-330(2)(b). In South Carolina, it is well-established that an order that grants or refuses a new trial affects a substantial right and is immediately appealable. Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 335 n.4, 426 S.E.2d 777, 780 n.4 (1993); see also South Carolina State Highway Dep't v. Clarkson, 267 S.C. 121, 226 S.E.2d 696 (1976).

In Clarkson, the trial court granted the landowner's motion for new trial following a verdict in a condemnation action awarding no damages. The State appealed the Order granting a new trial. The Supreme Court rejected the argument advanced by the landowner, like the Respondent's argument here, that an order granting a new trial is not appealable. In reaching this decision, the Supreme Court recognized an earlier line of cases suggesting the appealability of an order granting or denying a new trial depended upon the type of error committed by the trial court. The Clarkson Court clarified that the previous cases were not addressing the appealability of the new trial order but were instead speaking of the Court's scope of review. 267 S.C. at 126-27, 226 S.E.2d at 676 ("While the statement in our decisions, that an order granting a new trial upon the facts is not appealable, is not correct in the sense that the appeal will not lie, it is correct in the sense that such an order based upon conflicting testimony will not be disturbed on appeal.").

The Court of Appeals has since acknowledged the holding in Clarkson and explained that “the case law does not preclude an appeal from an order granting or denying a new trial, but simply severely limits the scope of appellate review in such cases.” Pinckney v. Winn-Dixie Stores, Inc., 311 S.C. 1, 6, 426 S.E.2d 327, 330 (Ct. App. 1992).

Respondent relies on cases that predate Clarkson. However, in light of the Supreme Court’s clarifying decision in Clarkson, which was re-affirmed in Pinckney, the Order of Judge Russo granting a new trial is immediately appealable. Respondent’s Motion to Dismiss should be denied.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests this Court deny Respondent’s Motion to Dismiss.

Respectfully submitted,
COLLINS & LACY, P.C.

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Murrells Inlet, South Carolina
January 22, 2019

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State of South Carolina) Court of Common Pleas
County of Horry) 2014-CP-26-07790

Richard Ciampanella)
vs.)
City of Myrtle Beach) Transcript of Record

January 23, 2017
Conway, South Carolina

BEFORE:

Honorable Thomas A. Russo, Judge.

APPEARANCES:

Gene M. Connell, Jr., Esq.
Julian Z. Hanna, Esq.
Attorney for the Plaintiff

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

Teresa J. F. Bautz, RPR
Official Court Reporter

I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

Monday, January 23rd, 2017

Andrew Brown

Mr. Connell 29 -- -- --

Mr. Bryan -- 34 -- --

Richard Ciampanella

Mr. Connell 35 -- 90 --

Mr. Bryan -- 67 -- 112

Tuesday, January 24th, 2017

April Ciampanella

Mr. Connell 137 -- 162 --

Mr. Bryan -- 155 -- --

Alan O. Campbell

Mr. Connell 194 -- 257 --

Mr. Bryan -- 232 -- 294

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22 Exhibits retained by Clerk of Court.

23

24

25

1 (The hearing commenced at approximately 2:14
2 p.m.)

3 THE COURT: Okay. All right. We're ready for the
4 jury.

5 (WHEREUPON, the jury came into open court at
6 approximately 2:16 p.m.)

7 THE COURT: Ladies and gentlemen, welcome back. I
8 hope everyone had a good lunch and you're ready to get
9 to work.

10 Before I make some opening remarks to you, I'm
11 going to ask you if you would to give madam clerk your
12 attention, and she's going to place you under your oath
13 for your role as jurors in this case.

14 THE CLERK: Please stand and raise your right
15 hand.

16 (WHEREUPON, all jurors were duly sworn.)

17 THE COURT: Folks, we're ready to begin the trial
18 of the case of Richard Ciampanella versus the City of
19 Myrtle Beach. I don't know how many of you have ever
20 sat on an actual jury trial before or not. I would
21 tell you this, if you've done it, you're in the
22 minority of folks.

23 Most people have never had an opportunity to sit
24 in on an actual jury trial. Most folks' experience or
25 exposure to jury trials is what they have read in books

1 or seen in the movies or on television. Those trials,
2 as we all know, are full of high drama and intense
3 action and riveting circumstances. Those trials are --
4 they're meant to entertain you.

5 Now, during the course of this trial, while any
6 number of those things could occur, what's important to
7 understand and to keep in mind is that this trial is
8 not for your entertainment. This trial is a
9 fundamental part of our democracy. It may, at times,
10 be slow. It may be very deliberate. Sometimes it can
11 be repetitive. In other words, it's just very
12 different from what you've seen on television or read
13 in books or seen in the movies.

14 This courtroom is a place of honor that is
15 dedicated to the protection and to the preservation of
16 citizens' rights through what many have called the
17 greatest justice system ever created. The attorneys
18 that appear before you are advocates for the parties
19 that they represent.

20 But they are, first and foremost, they are
21 officers of the Court, sworn to uphold the integrity
22 and the fairness of our judicial system. You should
23 expect them to be professional and competent in the
24 representation of their client's interest.

25 Now, you've just taken an oath to try this case

1 and to reach a fair and a just verdict, and so you are
2 also expected to be professional and reasonable in the
3 performance of your duties, which I have absolutely no
4 doubt you will do. And I want to thank you for your
5 contribution to our court system here in Horry County.

6 Now, I'm going to go over a few things with you.
7 This is not a charge on the law. I will charge you on
8 the law that is applicable to this case at the
9 conclusion of the evidence. But I'm just going to go
10 over some things that will kind of maybe help you
11 follow along with the way that the trial is flowing.

12 It is going to be -- you've been selected as fair
13 and impartial jurors whose purpose is to find and to
14 determine the facts of this case. You are the sole
15 judges of the facts in this case. If at any time I
16 make any comment about the facts or the evidence in any
17 way, you must disregard those comments, because no one
18 other than the jury can determine the facts of a case.

19 You determine those facts from the testimony that
20 you hear and any other evidence that may be presented
21 during the course of this trial. Excuse me. It is
22 especially important that you perform your services as
23 the fact-finders, and in determining the facts,
24 diligently and conscientiously, because there is really
25 no way for me to correct an erroneous determination of

1 facts by a jury.

2 Now, on the other hand, but with equal emphasis,
3 the same law that makes you the judges of the facts
4 makes me the judge of the law. The law, as given to
5 you by the Court, is the only law that you are allowed
6 to follow. You must follow it and you must accept it,
7 even though you may disagree with it.

8 I'm not allowed to tell you what I think about the
9 facts or the evidence in this case, and you're not
10 allowed to disagree with me about what the law is or
11 what you think the law should be. Your job is to take
12 the facts as you find them to be from the evidence
13 that's presented and apply the law as I give it to you
14 to those facts in arriving at your verdict.

15 Now, as I told you when you went on your lunch
16 break -- it applies throughout the course of this
17 trial -- you're to have no conversation with anybody
18 about this case, nor are you allowed to allow anyone to
19 talk with you about this case.

20 It is very important that you make no decision
21 about any fact in this case until all of the evidence
22 is in, the attorneys have had an opportunity to address
23 you with their closing remarks, and I've given you the
24 law. Only then would it be appropriate for you to have
25 any conversation or make any determination about any

1 fact in this case or any issue in this case.

2 Now, it's important that you keep an open mind, as
3 I said, throughout this trial. In just a moment, I'm
4 going to recognize Mr. Connell on behalf of the
5 Plaintiff, and he's going to make what we would
6 typically refer to as an opening statement. Usually
7 what you hear in opening statements would be what he
8 believes the evidence in this case will show or the
9 facts will show.

10 Once he has concluded his opening remarks, then
11 Mr. Bryan will have an opportunity to address you with
12 his opening remarks as well.

13 The important thing to understand is this about
14 the opening statements, folks. What the attorneys
15 share with you in their opening remarks is not
16 evidence. They are not under oath. They're not
17 testifying. It is merely their contention as to what
18 they believe the evidence in this case will show.

19 Now, the evidence in this case is going to be
20 presented to you through witnesses who take the witness
21 stand, who are placed under oath and testify from the
22 stand, as well as any exhibits that may come in during
23 the course of the trial.

24 Now, from time to time during the trial, ladies
25 and gentlemen, you may see a situation where one of the

1 attorneys may say, judge, we've got a matter of law we
2 need to take up with the Court, or judge, may we
3 approach the bench. If I can resolve a matter of law
4 up here at the bench and let you remain where you're
5 at, I'll do that.

6 But there may be some times that the matter that I
7 have to deal with is a little bit more complex or that
8 it involves some piece of evidence that has either been
9 presented or going to be presented. As I told you
10 earlier, I'm not to have any influence over you about
11 the facts of this case. That is solely your
12 responsibility. But sometimes when I'm having to rule
13 on an issue of law, it requires me to make some comment
14 about the evidence or the facts. And so to protect you
15 from that, I may ask you to step back into the jury
16 room, let me resolve the matter of law, and then bring
17 you back out and pick up where we left off. If I do
18 that, the only reason I do that would be to protect you
19 and not in any way influence you in your role as the
20 fact-finders.

21 Now, the facts in this case, in determining those
22 facts you're going to have to decide whether the
23 testimony of a witness is believable. It's going to be
24 my job to rule as a matter of law whether certain
25 testimony is allowed into this record. But once

1 testimony is allowed, whether or not you believe it is
2 solely up for you to decide.

3 In deciding whether to believe a witness, you have
4 the right to consider whether the witness has any
5 interest in the result of the trial, whether the
6 witness is biased or prejudiced toward one side or the
7 other, the opportunity for that witness to have seen
8 the matters and the things about which that witness
9 testifies, the way the witnesses act on the witness
10 stand. It is your right, ladies and gentlemen, to
11 consider anything that is in this record that will help
12 you to evaluate the believability and the credibility
13 of the witnesses.

14 That means that it is very important that you pay
15 close attention to all of the witnesses, to the
16 attorneys and to the Court. Listen carefully to all of
17 the evidence in this case so that, at the conclusion of
18 all of the testimony and the evidence, when the lawyers
19 have finished with making to you their closing remarks
20 and I've given you the law, then you will be in a
21 position to retire back into your jury room and, as a
22 collective body, discuss and decide this case and
23 arrive at a verdict.

24 Now, before I turn it over to the attorneys, let
25 me first inquire from the Plaintiff, are there any

1 objections or exceptions to the Court's opening
2 remarks?

3 MR. CONNELL: No, sir.

4 THE COURT: Anything from the Defense?

5 MR. BRYAN: No, judge.

6 THE COURT: Thank you, gentlemen.

7 Folks, now, if you would, please give the
8 attorneys your undivided attention as they address you
9 with their opening remarks.

10 MR. CONNELL: Ladies and gentlemen, I appreciate
11 you coming today. I know that when you got your jury
12 summons you didn't think, oh, boy, this is a great
13 thing, I get to come over here for 20 bucks a day and
14 listen to these people talk on and on about something I
15 don't care anything about it.

16 I would say to you that you should care a lot
17 about this case and every case in this courthouse. And
18 one of the reasons is because you could be sitting out
19 here asking a jury to decide something just like we're
20 going to ask you to decide. And it's not only
21 important to the system, but it's important to these
22 people, it's important to y'all, it's important to the
23 community, because the community has certain standards
24 by which it's judged, and juries decide those
25 standards.

1 Now, let me talk to you a few minutes about why
2 we're here and what we're doing. First question you
3 might ask, well, is this a criminal case or civil case?
4 I've been doing this for some 30 years, and afterwards,
5 people say, well, who went to jail? And this is not a
6 criminal case, this is a civil case about money
7 damages. And criminal cases and civil cases have a
8 distinct difference in how to handle it, and we'll try
9 to explain to you what the differences are and what you
10 should consider in this case.

11 Now, in a civil case, the burden of proof is
12 different. If you remember from your high school
13 civics class, the little scales of justice that the
14 teacher talked about and talked about burden of proof,
15 we have the burden of proof. We have to prove our
16 case. Well, you might ask, well, how do you prove a
17 case?

18 Well, when looking at the scales, in a criminal
19 case, you have to prove beyond a reasonable doubt.
20 That's not this case. The scale has to go all the way
21 down to the bottom to prove somebody guilty and send
22 them to prison. In a civil case, you just have to bend
23 the scales slightly in your favor.

24 So, in other words, a feather on the scales would
25 tip it in your favor. That's called the preponderance

1 of the evidence, different standard than beyond a
2 reasonable doubt. That's the standard that we have in
3 this kind of case, a preponderance of the evidence, a
4 slight tipping of the scales in favor of the Plaintiff
5 or defendant.

6 So you might think, well, gee, you know, I didn't
7 go to law school, I didn't pay attention in my civics
8 class, you know, I don't have a clue about what that
9 means. So I'm going to give you a couple of examples
10 that, I think, will help you understand what our burden
11 is in this case.

12 Everybody watches football. Everybody saw the
13 championships yesterday, I'm sure, or saw parts of
14 them. I like to think of it as a football game, in one
15 respect. All I have to do for my burden of proof is
16 just move that ball a little bit beyond the 50-yard
17 line. Now, in this case, we're going to move it all
18 the way down the field, but the burden of proof is just
19 like that. I don't have to score a touchdown, I don't
20 have to run back an interception 99 yards. I just have
21 to move the ball down the field a little bit. That's a
22 preponderance of the evidence. That's the burden of
23 proof. That's a tipping of the scales. That's all I
24 have to do in this case.

25 Now, you might also ask, well, what are we going

1 to do when we get back there? All 12 of you must
2 agree. We're not going to have any TV cameras back
3 there. We're not going to be listening to what you
4 say. You have to follow the rules; okay?

5 I'll give you some examples of following the
6 rules. Number one, I've had this happen probably eight
7 or ten times in my 30-year career. You cannot go to
8 the scene. You cannot go to -- this happened at the
9 beach walkover access on 77th Avenue North. If you
10 live on 65th Avenue North, you can't go there and
11 investigate. You are not a detective, you're not an
12 investigator. What you hear and what you decide is
13 based on what is presented to you in this courtroom.
14 That's number one.

15 Number two, everybody's got Facebook. Everybody's
16 got all sorts of electronic media, Google or whatever.
17 You cannot go and do your own investigation. You can't
18 phone a friend. You can't e-mail somebody. You can't
19 call an engineer, you know, and say, hey, what do you
20 think about this case. That's for the 12 of you guys
21 to decide when you're in this room. That's how we get
22 a fair decision. So you can't use any of those things,
23 all right.

24 Well, what can you do? You can listen to what
25 we're going to present to you in this case, and we

1 believe we'll present a clear, cogent and reasonable
2 argument about what happened to poor Mr. Ciampanella
3 when he came down here on vacation. And we think that
4 when we're finished, that you'll have more than enough
5 evidence to decide the case.

6 Now, a couple of other things. Everybody knows
7 about safety rules. Safety rules are in our society
8 for a reason. We have safety rules to protect all of
9 us, protect Mr. Ciampanella, protect me, protect you
10 from getting injured. And the reason why we have those
11 rules is for situations like this. When the rules are
12 violated and someone is injured, then the community
13 standards are applied and a verdict is rendered for the
14 Plaintiff. And that's what you kind to have to
15 decide -- that's what you do have to decide in this
16 case.

17 So let me tell you a little bit about this case
18 and how it works out. Mr. and Mrs. Ciampanella and
19 their children were down here on vacation back on
20 August the 19th, 2014. And they were staying up at
21 77th Avenue North. And Mr. and Mrs. Ciampanella walked
22 out on a beach walk access built, maintained, repaired
23 and used by the City of Myrtle Beach.

24 Mr. and Mrs. Ciampanella are not drinking.
25 They're not using any illegal substances. They were

1 simply walking. Mr. Ciampanella leaned back on the
2 railing. See the railing? This is a picture of the
3 day that their thing happened. Leaned back on the
4 railing, fell about five and a half feet. He fell
5 about five and a half feet. And he's about six-three.

6 And this is what's called a transverse area of
7 your spine. He had a transverse fracture and
8 protrusion or herniation in this disc right here
9 (indicating). L4 is what you'll see. And for those
10 who don't know anything about spinal injuries, that's a
11 really serious injury. Mr. Ciampanella had to have
12 significant treatment. He was -- the EMS came about
13 two hours later and took him to the hospital.

14 From there, he went back to where he lives in
15 North Carolina, the Statesville area, had a lot of
16 treatment, about 16,000 some odd dollars in medical
17 treatment. He was a manager of a grocery store. He
18 lost about 45 days from work. He has a 16 percent
19 impairment to the spine, meaning he's got some
20 restriction in what he can do. He's got some pain and
21 discomfort. And it affected his life and a great deal
22 of how he -- what he can do today.

23 Now, Mr. Ciampanella is not one of these guys
24 who's going to tell you, I can't work, I can't take
25 care of my kids, I'm totally disabled. He's going to

1 tell you, yeah, I went back to work after about 30, 40
2 days, I've been able to work since then. I still have
3 some pain, I still have some discomfort. I still have
4 some problems with what I can and can't do.

5 Mr. Ciampanella is going to tell you all about
6 that, but he's not going to -- he's really not a
7 complainer, he's not a whiner. He has never been to
8 court before, and neither has his wife, and never been
9 before a jury before. And as you-all might wonder,
10 when you get on the stand up here, you can ask any
11 question you want of any of the witnesses. And of
12 course he's concerned about doing that, like anybody,
13 when you get cross-examined.

14 But I think he's going to make a great witness,
15 because he did absolutely nothing wrong. The deck, the
16 beach walkover was built by the City of Myrtle Beach.
17 You're going to find that they had rusted screws on
18 that particular deck. You're going to find it had been
19 built in 1990, that it had been some 27 years. You're
20 going to find that they had done some work on it here
21 and there but not enough work to protect the public, to
22 protect Mr. Ciampanella, to protect us all from what
23 would happen if you don't have the railing secured so
24 that you don't get injured.

25 We think, in the end, that you're going to be

1 given a form, a verdict form, and the verdict form is a
2 sheet of paper. And whoever becomes the foreperson,
3 I'm sure, will sign that form. And we think that
4 you're going to sign on that form, and you're going to
5 find the verdict for the Plaintiff in this case for
6 actual damages. And you might ask, well, what's that?
7 That's another legal term. Well, I don't understand
8 these legal terms.

9 We're going to try -- I'm going to try to explain
10 it to you. The judge is going to talk to you about it
11 at the end. But, basically, I'm going to tell you that
12 actual damages mean this, they mean the medical bills,
13 about \$16,000 and some odd cents. They mean the lost
14 wages, if any --

15 MR. BRYAN: Your Honor?

16 MR. CONNELL: They mean the --

17 THE COURT: Hold on for a minute.

18 (WHEREUPON, a bench conference was held off the
19 record in the presence of the jury but out of the
20 hearing of the jury.)

21 MR. CONNELL: Medical bills, permanent injury,
22 pain and suffering, loss of enjoyment of life. All of
23 those things are part of actual damages.

24 And so beyond the medical bills and the dollars
25 and cents, it will be you all's decision, all 12 of

1 you, to come to a value for each of those things. And
2 I will try at the end of the case to explain that to
3 you and as to how you reach a value when someone has a
4 permanent injury and they're 30-something years old.

5 Anyway, I've talked enough. I hope that by the
6 end of the day we'll have a part of the case done.
7 We're going to try our best to finish it tomorrow.
8 We've got to have a couple of experts come in. We've
9 got to have a doctor. I didn't explain to you about
10 doctors. Doctors are -- the law allows doctors to
11 appear by videotape, because they're supposed to be in
12 their offices when people need to see them for
13 treatment.

14 So you don't really see -- in most modern cases
15 now, you don't see the doctor come to trial and testify
16 very often. The law allows them to appear, so we'll
17 show a videotape. I hope -- there are a few pages
18 missing, they're trying to fix that. We'll show a
19 videotape of the doctor, and he'll be discussing the
20 injury of Mr. Ciampanella. He will discuss that on
21 tape.

22 But please don't hold that against him if he's not
23 here today. The rules clearly allow for a doctor not
24 to have to appear because he's supposed to be in his
25 office trying to help treat his patients.

1 So, anyway, I think I've said enough. I did tell
2 you -- I will tell you one other thing and sit down.
3 There is no punitive damages against a governmental
4 entity. We're not asking for punitive damages. You
5 couldn't get punitive damages anyway. We're only
6 asking for actual damages to make up for what's
7 happened to Mr. Ciampanella and to pay him for his
8 injuries. Thank you so much.

9 THE COURT: Thank you, Mr. Connell.

10 MR. CONNELL: Thank you, Your Honor.

11 THE COURT: Mr. Bryan?

12 MR. BRYAN: Thank you, judge. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 MR. BRYAN: My name is Will Bryan. This is Amy
16 Neuschafer, and we represent the City of Myrtle Beach.

17 What Mr. Connell told you about the Plaintiff
18 having the burden of proof is, in fact, the case. It
19 is their burden of proof, and his demonstration about
20 the scales of justice and proving his case by a
21 preponderance of the evidence is also true.

22 He uses the analogy of a football field and moving
23 the ball just past the 50-yard line. That's also true
24 except, unlike a college or NFL team that begins
25 typically at the 25-yard line, the Plaintiff has to

1 move from the goal line all the way to the 50. In
2 fact, just beyond the 50. So they've got to move the
3 ball a full 50 yards plus some.

4 Two things I want to be clear about right out of
5 the gate, and that is, first, the City does not take
6 exception or does not challenge the fact that
7 Mr. Ciampanella suffered a minimally displaced
8 transverse process fracture. I will do my best not to
9 argue about things that are not worth arguing about.
10 So that happened. The City does not dispute that.
11 There is a question, however, about how it happened,
12 why it happened and who is responsible for it.

13 The second thing we need to be clear on is that
14 just because there's an accident at the public beach
15 walkover or the convention center, it does not mean
16 that the City is automatically responsible for that
17 injury. That's the same if there was an injury, like a
18 private landowner residence is also not responsible
19 automatically for injury on his or her property.

20 The same is true for a company -- big companies,
21 Wal-Mart or CVS. If an injury or an accident occurs on
22 their property, the landowner is not automatically
23 responsible. And the same is true for the City of
24 Myrtle Beach.

25 You will hear in this case -- there's a law in

1 South Carolina that actually benefits landowners who
2 hold their property open for the benefit of the public,
3 who offer their property at no charge to the public to
4 use. And in exchange for a landowner -- and this can
5 be a private landowner, it could also be a public
6 landowner, like the City of Myrtle Beach.

7 But in exchange for offering your property at no
8 charge for recreational use, the State insulates that
9 entity from liability. There is, in fact, no duty to
10 keep that property safe. There is an obligation on --
11 typically on landowners, stores, shopkeepers, you have
12 to be reasonable, you have to keep your property
13 reasonably safe, but in the scenario of where you are
14 offering your property to the public at no charge, that
15 is not the case. And you'll hear testimony about that
16 particular statute and whether or not -- this was
17 public property -- whether or not there was a charge
18 for it in that instance.

19 Let's see. There's one other thing that I'll also
20 tell that you that is -- that the City does not
21 dispute, and that is that there was a rusty screw
22 inside the connection at the railing where
23 Mr. Ciampanella fell. It was rusty inside the wood.
24 The City's position is that they did not -- they were
25 not aware of the rust within the wood, could not see

1 it.

2 The Plaintiff wants you to believe, however, that
3 we could see within or inside the wood. You'll hear
4 from City witnesses who will testify that that's simply
5 not the case, that anything on the beach is going to
6 show elements of rust and corrosion if it's been out
7 there for any period of time.

8 So there may be evidence of rust, but that does
9 not mean that the screw is bad, it doesn't mean that
10 the wood is bad. And to account for that, you'll hear
11 testimony from the Building Maintenance Department
12 employees; from Mr. Richard Kirby, the park
13 superintendent; and also from Mr. Tom Anderson, the
14 City's safety coordinator. They'll all explain to you
15 exactly what they do to inspect and maintain the
16 walkovers.

17 Because you can't see the hidden corrosion,
18 Mr. Cadieux, Mr. Anderson, they walk every walkover.
19 Mr. Cadieux in the Building Maintenance Department will
20 testify that he does it annually. He starts on one end
21 and -- which is like 29th Avenue South, and he goes to
22 like 81st North. He walks every walkover, and he
23 pushes and pulls and shakes and kicks, and he tries to
24 feel for a loose connection. He can't see it, but if
25 he feels it give, if he feels the screws are loose, if

1 he feels the boards are bad, either the screws get
2 replaced or the boards get replaced or both. And
3 that's the way the City inspects and maintains the
4 boardwalks and the walkovers.

5 Mr. Cadieux does that every year. Every three
6 years, Mr. Tom Anderson in the Risk Department, he
7 comes along and he does his own inspection. He does
8 the same thing. He pushes and pulls and shakes, and he
9 feels for loose connections. And in this case, in the
10 year 2014, before Mr. Ciampanella's accident, two
11 inspections were done.

12 And then, additionally, just sort of a third
13 overarching inspection, you'll hear Mr. Richard Kirby,
14 the park superintendent, explain that every City
15 employee is trained and instructed that wherever they
16 are, on duty or off duty, wherever they are, when they
17 encounter a public property, any dangerous condition,
18 they are trained to call it in and to get it fixed and
19 repaired.

20 And so, in this case, the City has litter crews,
21 they've got beach sweepers, they've got employees that
22 are at the beach everyday, certainly in August and July
23 and the summer months. They are down there inspecting
24 during the regular course of their activities. They
25 may not be in the Building Maintenance Department, but

1 if they see something out of line or something that's
2 dangerous, they report it. In this case, there were no
3 reports or any problems with the 77th Avenue North
4 walkover in June, July, August of 2014.

5 And, in fact, that's actually another good point.
6 Mr. Kirby and Mr. Anderson can both testify that, in
7 fact, this has never been a problem for the City. They
8 will both testify that there have not been any calls or
9 complaints about the condition of the walkover at 77th
10 Avenue North. There have been no calls or complaints
11 about the condition of any of the walkovers. Other
12 than Mr. Ciamparella, they're not aware of anyone else
13 falling through a railing.

14 So there is not a history or a rash of problems of
15 people falling through the walkovers that would put the
16 City of Myrtle Beach on notice that this is a problem.
17 There's no evidence that it happened before, and there
18 is no evidence that it has happened since. We believe
19 the evidence shows that the City acted not really with
20 slight care but with reasonable and prudent care. They
21 acted appropriately.

22 I'll switch gears and talk to you briefly about
23 the injuries in this case. And, as I told you before,
24 there is no question that Mr. Ciamparella suffered a
25 minimally displaced transverse process fracture.

1 That's it, and he did.

2 He went to Grand Strand Regional Medical Center on
3 the evening, I believe, of August 19. He was
4 discharged. He went home the next day, August 20th,
5 he's back home in North Carolina. He goes and sees his
6 old doctor six days later on August 26th. That
7 doctor's name is Dr. Seldomridge, and you'll hear his
8 name later.

9 Mr. Ciampanella saw Dr. Seldomridge on the 26th.
10 That's one week after the accident. He saw him again
11 one month later in September, and he saw him a third
12 time on October 21st. Mr. Ciampanella will tell you
13 that's the last time he ever saw Dr. Ciampanella --
14 excuse me -- Dr. Seldomridge.

15 Two weeks later, however, Mr. Ciampanella will
16 tell you that he was sent to Charleston, three and a
17 half, four-hour drive from his hometown, to see a
18 doctor in Charleston, South Carolina, Dr. Poletti.
19 Mr. Ciampanella will acknowledge that his attorney
20 arranged for that -- for that visit.

21 Mr. Ciampanella saw Dr. Poletti one time. And the
22 only medical testimony, the only doctor's testimony
23 you're going to hear is from Dr. Poletti. You're not
24 going to hear from the treating physician in North
25 Carolina. You're going to hear from Dr. Poletti, who

1 saw Mr. Ciampanella on one occasion.

2 And I encourage you to listen closely to his
3 testimony, and then compare it to the symptoms that
4 were reported to Dr. Poletti in Charleston. Compare
5 those to the symptoms that were reported to Dr.
6 Seldomridge two weeks prior.

7 So we have three visits to Dr. Seldomridge, and we
8 have one visit with Dr. Poletti in the beginning of
9 November. And then there's no further medical
10 treatment. That's more than two years ago.

11 But we do know -- Mr. Ciampanella will tell us
12 that within 30 days of his last doctor's visit, he went
13 out and bought a new motorcycle. He bought a Harley
14 Road King. And Mr. Ciampanella continues to ride his
15 Road King, and he'll tell us about his drive along --
16 I'm not a motorcycle person, but there's apparently a
17 nice road in North Carolina at the North Carolina and
18 Tennessee border that's called the Tail of the Dragon.
19 And he'll tell us about his ride on the Tail of the
20 Dragon on this motorcycle.

21 But the good news is Mr. Ciampanella is riding his
22 motorcycle, he is back at work. He's back at work with
23 no special accommodations. He's working regular duty.

24 So that's the case. You've got sort of this
25 liability question, how did this happen, whose

1 responsibility is it? And then, second, what are the
2 injuries? Anyway, I appreciate your patience. Thank
3 you very much.

4 Thank you, judge.

5 THE COURT: Thank you, sir. All right. You may
6 call your first witness.

7 MR. CONNELL: Mr. Brown.

8 ANDREW BROWN, after being duly sworn, testified as
9 follows:

10 THE CLERK: Have a seat, please, sir. State your
11 name for the Court, please, sir, and spell your last
12 name.

13 THE WITNESS: Andrew Brown, B-R-O-W-N.

14 DIRECT EXAMINATION

15 BY MR. CONNELL:

16 Q All right, Mr. Brown. If you would tell us,
17 please, where you work and what you do for a living.

18 A I work for the City of Myrtle Beach Fire
19 Department, and I work -- I'm a firefighter/paramedic.

20 Q On August the 19th, 2014, were you on duty?

21 A Yes, sir.

22 Q And what station were you on duty on that night?

23 A Station 2.

24 Q And where is that located in the City of Myrtle
25 Beach?

1 A 5338 North Kings Highway.

2 Q And what type of shift did you have? Was it a
3 12-hour shift, an eight-hour, or what?

4 A We work 24-hour shifts.

5 Q And you said you're a paramedic. Would you tell
6 the jurors what it takes to become a paramedic.

7 A It's approximately a year of schooling, minimum.
8 Plus you have to have other certifications prior to
9 even starting.

10 Q And on the day on August 19, 2014 when you were on
11 duty, was a call received to go to a certain hotel?

12 A Yes.

13 Q All right. And where was call -- where were you
14 called to go?

15 A It would be Grand Shores Ocean Resort.

16 Q And what location is that?

17 A 201 77th Avenue North.

18 Q And besides yourself, who went to the scene?

19 A My EMT was Kevin Borros.

20 Q And is Mr. Borros currently an employee of the
21 City of Myrtle Beach?

22 A No, sir.

23 Q And is he retired or what...

24 A He left to pursue other opportunities in another
25 state.

1 Q I see. All right. Now, who was in charge that
2 day on the truck to go to...

3 A I was.

4 Q And why is that?

5 A I was the ranking medical provider on that
6 ambulance.

7 Q All right. And do you have a report in front of
8 you of what happened on that day?

9 A Yes, sir.

10 Q All right. Tell us if you would, please, who
11 called you, what you went to do and what happened from
12 there.

13 A We get dispatched through the Horry County 911
14 system, so I can't tell you exactly who called 911.

15 Q Yes, sir.

16 A But we did receive the call at approximately
17 11:05 p.m. to go to the Grand Shores motel -- or Ocean
18 Resort, excuse me. And we were dispatched to a fall
19 victim.

20 Q And who was the fall victim you were dispatched
21 to?

22 A Richard Ciampanella.

23 Q And what did you do when you got there?

24 A We found the patient laying on the bed, and we
25 placed a long -- placed him on a long spine board with

1 a cervical immobilization device.

2 Q What is that?

3 A It's a C-collar. We use them anytime there's a
4 potential for a cervical injury.

5 Q All right. And you said long bed. What is that?

6 A A long spine board is the long plastic board you
7 see us use for, again, back injuries, neck injuries.

8 Q All right. And what did you do after you placed
9 Mr. Ciampanella on the board?

10 A He would have been moved to the stretcher and the
11 ambulance for further evaluation and transport.

12 Q All right. And did you evaluate him before
13 transportation?

14 A My partner did at the time, Kevin. I did not deem
15 that he needed an IV or cardiac monitor, so Kevin would
16 have been in charge of the patient assessment. I
17 simply drove to the hospital.

18 Q All right. And what hospital was he taken to?

19 A Grand Strand Regional Medical Center.

20 Q And where did you leave him at the hospital?

21 A Forgive me. We don't use this system anymore, so
22 I'm kind of judging my -- I don't have an actual bed
23 that we -- or a room that we left him in.

24 Q Normally take him to emergency room; do you not?

25 A Correct.

1 Q And I would assume then he gets --

2 A He gets assigned to either a room or a hallway bed
3 until they're able to clear one up, based on his
4 triage.

5 Q And about what time was that when you took him to
6 the hospital and he arrived?

7 A We arrived at Grand Strand approximately
8 11:31 p.m.

9 Q All right. And what complaints did you give,
10 according to your report?

11 A He stated that he fell approximately two hours
12 prior to calling us.

13 Q All right. And was he having back pain, neck
14 pain; what do the records indicate?

15 A According to this, he had back pain that had
16 increased to the point he had difficulty walking.

17 Q And was that the reason why you were called?

18 A Yes.

19 Q All right.

20 MR. CONNELL: Your Honor, we'd like to offer the
21 report as Plaintiff's Exhibit No. 1.

22 THE COURT: Any objection?

23 MR. BRYAN: Is it just the report?

24 MR. CONNELL: Yes.

25 MR. BRYAN: There's no objection to the report,

1 Your Honor.

2 THE COURT: All right. Plaintiff's-1 is in
3 evidence without objection.

4 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
5 for identification only.)

6 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted
7 in evidence.)

8 MR. CONNELL: No further questions, Your Honor.

9 THE COURT: Cross?

10 MR. BRYAN: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. BRYAN:

13 Q Mr. Brown, do you have -- tell us, please, sir, is
14 there any indication in Exhibit No. 1 Mr. Ciamparella's
15 complaining of leg pain?

16 A No, sir.

17 Q Thank you.

18 MR. BRYAN: I have no further questions.

19 MR. CONNELL: Your Honor, can he be excused? He
20 needs to get back to his job.

21 THE COURT: Any objection?

22 MR. BRYAN: No, none.

23 THE COURT: Thank you, Mr. Brown. You're free to
24 go, sir. Appreciate you being here.

25 THE WITNESS: Yes, sir.

1 (Witness excused.)

2 THE COURT: Call your next witness.

3 MR. CONNELL: All right. Mr. Ciampanella, if
4 you'll come up, please, sir.

5 RICHARD J. CIAMPANELLA, after being duly sworn,
6 testified as follows:

7 THE CLERK: Have a seat, please, sir.

8 State your full name for the Court, please, sir.

9 THE WITNESS: Richard James Ciampanella.

10 DIRECT EXAMINATION

11 BY MR. CONNELL:

12 Q All right, Mr. Ciampanella. Tell us where you
13 live, please, sir.

14 A I live at 139 High Bluff Circle.

15 Q And where is that at?

16 A Mooresville, North Carolina.

17 COURT REPORTER: I'm sorry. What Circle?

18 THE WITNESS: High Bluff.

19 Q Give you a little something.

20 A I'll take that.

21 Q All right. Now, are you married?

22 A I am.

23 Q Is this your wife here?

24 A It is.

25 Q How many children do y'all have?

1 A She has two with an ex-husband, and I have one.

2 Q All right. And what kind of work do you do up in
3 North Carolina?

4 A I work for Lowe's Home Centers, LLC.

5 Q And doing what; what do you do?

6 A I work at their corporate office and process -- in
7 the vendor compliance.

8 Q And how old are you?

9 A 39.

10 Q Tell the jury about some of the other places
11 you've worked at. For instance, where did you work at
12 when this injury occurred?

13 A I worked for Lowes Foods in Mooresville, also. I
14 was a store manager.

15 Q And how long did you work for Lowes Foods as store
16 manager?

17 A For store manager, year and a half, two years.
18 But I worked 13 years in the grocery retail.

19 Q And where are you from originally?

20 A Statesville.

21 Q And where did you go to high school?

22 A North Iredell High School.

23 Q And have you had any type of education beyond high
24 school?

25 A No, sir.

- 1 Q Come to Myrtle Beach on a regular basis?
- 2 A I'd say yearly.
- 3 Q And on August the 19th, 2014, why were you here?
- 4 A We were here on vacation with the family.
- 5 Q And how many people were here?
- 6 A At that time, my fiancée, the three kids, and my
- 7 mother.
- 8 Q So that would have been six of you? That's six
- 9 people?
- 10 A Yes.
- 11 Q And why did you choose 77th Avenue North to stay?
- 12 A I've stayed at that hotel before.
- 13 Q How many times?
- 14 A I believe twice before then.
- 15 Q Okay. And you said you stayed at it before on
- 16 vacation?
- 17 A Yes.
- 18 Q And would you normally take your vacation at a
- 19 certain time of the year?
- 20 A I usually go late August because the rates change.
- 21 Q And I guess you got to get your children back to
- 22 school; right?
- 23 A Yeah, right before school starts back.
- 24 Q So, in this particular week in August, was this
- 25 the last of your vacation or was this the first day?

1 A It was the last -- the night before we left.

2 Q All right. And what room were you staying in; do
3 you remember?

4 A Don't remember the room number.

5 Q Was it a big high-rise hotel?

6 A Yeah. It's maybe fourth floor or fifth floor,
7 somewhere in there.

8 Q Would you go to the beach?

9 A Yes.

10 Q Is there a dunes crossover at the beach?

11 A Yes.

12 Q A dunes crossover like this (indicating)?

13 A Yes.

14 Q All right. And is that the dunes crossover that
15 you were at?

16 A Yes.

17 Q Let me ask you this before we talk about that.

18 Had you had any prior back problems?

19 A No.

20 Q Had you ever had a fracture of your back?

21 A No, sir.

22 Q Had you ever been hospitalized for any back or
23 neck problems?

24 A No, sir.

25 Q What was your health like?

1 A I was just -- I would say the average 37-year-old
2 male.

3 Q Which --

4 A Active.

5 Q It's been talked about that you like to ride
6 motorcycles. How long had you had a motorcycle?

7 A Since I was 18.

8 Q All right. What kind of motorcycles did you like
9 to ride?

10 A I rode street bikes, crotch rockets, you know,
11 metric bikes.

12 Q I believe Mr. Bryan said something about you -- in
13 his opening statement -- you made some ride after this
14 accident?

15 A Yes.

16 Q What is he talking about?

17 A I believe, May 2015, after the accident -- I had
18 purchased a Harley Road King after the accident, but I
19 couldn't ride my street bikes comfortably, so I got a
20 more comfortable bike.

21 Q All right. And did you take some sort of ride on
22 -- he mentioned some --

23 A Yes. Me and -- me and the fiancée at the time, or
24 wife now.

25 Q All right. Was that after you had the

1 treatment --

2 A Yes.

3 Q -- for your back injury?

4 A Yes.

5 Q Let's talk a little bit about your job. What was
6 your job at Lowes, was it a physical job?

7 A It was.

8 Q And what did you have to do as a grocery store
9 manager?

10 A It was -- you know, the main responsibility was to
11 ensure that the stores ran properly, whether that's
12 stocking trucks, picking up displays, servicing
13 customers. Physical labor, you know what I mean?
14 There was times where you had to break down a
15 thousand-piece grocery truck and then turn around and
16 get them stocked on the shelves.

17 Q How many hours a day were you working?

18 A Usually 10 to 11 at the minimum.

19 Q Okay. And how many days a week?

20 A Five.

21 Q And were you just in one store in your area, or
22 did you have to go to various stores?

23 A Typically, we were placed at a store, but you were
24 moved around from time to time, you know, due to, you
25 know, being in that store for a year, a need somewhere

1 else.

2 Q All right. Are you telling this jury that you
3 can't work?

4 A No.

5 Q Are you telling this jury that you're completely
6 incapacitated and unable to do anything?

7 A No.

8 Q Are you telling this jury that you have some
9 restriction from what happened?

10 A Yes.

11 Q All right. Are you telling this jury that you
12 have restrictions that are so severe that you're
13 limited to how many hours a day you can work?

14 A No.

15 Q Tell me, if you would, the -- is this the beach
16 crossover where you fell right here (indicating)?

17 A It is.

18 Q And what time did it happen on August 19th?

19 A 8:15, 8:30. It was about sunset that day.

20 Q Okay. And who was out there on the beach
21 crosswalk over besides yourself?

22 A April, my wife.

23 Q All right. And how long had y'all been out on the
24 walkover?

25 A We had been out on the beach enjoying the sunset

1 and was on our way back to the room, and we stopped for
2 a second to have a conversation.

3 Q Okay.

4 A So just a few seconds being on the boardwalk.

5 Q Now, while you were on the beach walkover --
6 crosswalk over, had you drunk anything alcoholic?

7 A No.

8 Q Had you -- do you smoke cigarettes?

9 A Nope.

10 Q All right. Tell the jury, if you would, what
11 happened when you leaned against that rail on the beach
12 crosswalk over on August 19, 2014.

13 A So I was --

14 Q Come down here, if you would.

15 MR. CONNELL: Your Honor, can he come down here
16 and explain?

17 THE COURT: Yeah, that's fine.

18 MR. CONNELL: Thank you, sir.

19 Q I'll have to be your holder here.

20 A So the beach is out here (indicating).

21 Q Okay.

22 A Hotel, as you can see, is right here.

23 Q Is this the hotel right up here (indicating)?

24 A Yes, that's our hotel.

25 Q All right. And that's where your children and

1 your mother were staying?

2 A Yes.

3 Q Okay.

4 A So this is the outside rail, this portion here
5 (indicating), which would have been that portion too.

6 Q Okay.

7 A So when we were walking up, I stopped for a second
8 and leaned the chairs against the upright and just
9 turned to lean against that to, you know, just to kind
10 of like to lean here.

11 Q Yes, sir.

12 A And it just gave way, straight to the ground.

13 Q All right. About how many feet did you fall?

14 A It was four to five feet. I mean, I'm six-four.
15 You know, that was a couple of feet off the ground.

16 Q Okay. Now, these pictures were taken by who?

17 A Those were taken by my son the next morning.

18 Q All right.

19 MR. CONNELL: Your Honor, we'd like to offer this
20 picture as Exhibit No. 2.

21 THE COURT: Any objection?

22 MR. BRYAN: Does the witness verify that that's
23 the condition of the walkover immediately after his
24 fall?

25 THE WITNESS: Yes.

1 MR. BRYAN: No objection.

2 THE COURT: All right. Without objection, it's

3 Exhibit No. 2.

4 (WHEREUPON, Plaintiff Exhibit No. 2 was marked for
5 identification only.)

6 (WHEREUPON, Plaintiff's Exhibit No. 2 was admitted
7 in evidence.)

8 Q Okay. So we're looking at Exhibit No. 2, Mr.
9 Ciampanella. And tell me about this board right here
10 that's laying on the sand.

11 A I didn't even know that was there until
12 daylight --

13 Q Okay.

14 A -- and I seen the picture.

15 Q All right. Was that board laying there when you
16 fell?

17 A Yes. I just didn't know because it was dark.

18 Q Okay. And this board that looks like it's falling
19 down, is that the board that you leaned against?

20 A That's the board I leaned against.

21 Q And is that the board that gave way, causing you
22 to fall?

23 A Yes.

24 Q All right. And this small board, about how high
25 was that on your --

1 A It's probably like my knee height.

2 Q All right. And what was the lighting like that
3 night?

4 A It was dark. Sun had already set.

5 COURT REPORTER: I'm sorry, sir. Could you speak
6 up, please.

7 THE WITNESS: It was dark. The sun had already
8 set.

9 Q How long had the sun set when --

10 A Maybe 15 minutes.

11 Q Okay.

12 MR. CONNELL: All right. Sit back up there. Your
13 Honor, can I give the jurors the picture?

14 THE COURT: Yes, sir.

15 MR. CONNELL: Thank you.

16 Q Okay. Now, what happened to your body when you
17 fell?

18 A When I fell, I lost control. I couldn't --
19 because, when I fell back, it just felt like I was free
20 falling backwards.

21 Q Okay. And how were you able to get to the room?

22 A After I was able to recoup my breath -- because
23 when I fell, I fell on the bottom part of my back and
24 it knocked the breath out of me -- so once I recouped,
25 April helped me to the room.

1 Q Okay. And who called the Horry County EMS?

2 A I believe it was her.

3 Q And about how long were you in the room before you
4 called the Horry County EMS?

5 A Two hours or so. Because I had went back to the
6 room to...

7 Q And where were you having pain on your body? Can
8 you describe it.

9 A The lower portion of my back.

10 Q All right. Now, did a huge bruise appear in that
11 part of your back?

12 A The bruise actually appeared on my right side of
13 my hip.

14 Q Okay. Let me show you some other photographs.

15 (WHEREUPON, Plaintiff Exhibit Nos. 3 through 15
16 were marked for identification only.)

17 Q Okay. I've got a series of pictures I want to let
18 you look at. Okay. Now, the next one is Plaintiff's
19 Exhibit No. 3. Was that taken by y'all?

20 A That was my son.

21 Q That's your son in the shadow right there?

22 A (Nodding.)

23 Q Is that the board that's laying on the ground that
24 you were talking about earlier?

25 A That was in the other picture, yes.

1 Q All right. And that was the next morning.

2 MR. CONNELL: Thank you, ma'am.

3 Q All right. What does Plaintiff's Exhibit No. 4
4 show?

5 A The same boardwalk.

6 Q Okay. And is that your hotel?

7 A That is my hotel.

8 Q And does it show the board that gave way?

9 A Yep.

10 Q Was that taken the next day, too?

11 A Yes.

12 Q All right. Plaintiff's Exhibit No. 5 with the
13 rusty screw, was that taken the next day?

14 A That was taken the next day.

15 Q All right. Plaintiff's Exhibit No. 6, what is
16 that?

17 A That's the end of the board.

18 Q All right. Is that the same rusty screw that's in
19 the other one?

20 A That's the -- yes.

21 Q Plaintiff's Exhibit No. 7, what does that show?

22 A That shows the upright where the board was.

23 Q Was that where the board gave way?

24 A Yes.

25 Q All right. Now, the board that was laying on the

1 ground, do you think that was laying on the ground
2 before you actually leaned back against it?

3 A I didn't --

4 MR. BRYAN: Your Honor, objection. It calls for
5 speculation, I guess.

6 THE COURT: Sustained. He can testify to what he
7 knows. He can't speculate.

8 MR. CONNELL: All right. Thank you, Your Honor.

9 Q Okay. Exhibit No. 9, would that be when you
10 started to have -- what is that?

11 A That is my right hip.

12 Q Okay.

13 A Right above my belt line.

14 Q Is that where the fracture was?

15 A It's not where the fracture is. The fracture is
16 in the -- on my vertebrae.

17 Q All right. On the back side?

18 A On the back side.

19 Q Was that what -- did that immediately happen
20 after?

21 A That started to happen within a few days.

22 Q Okay. Let's see. No. 8, is that a photograph
23 that was taken?

24 A Yes.

25 Q Okay. And what does it show?

1 A Looks like the inside of the board that was on the
2 railing.

3 Q The board that was hanging on the railing?

4 A That was hanging on the railing.

5 Q Are there any rusty screws on there?

6 A Yes, there is.

7 Q How many screws are there on that board?

8 A One.

9 Q Okay. All right. Now, Exhibit No. 10, was that
10 taken with your cell camera the night of the accident?

11 A Yes.

12 Q All right. And does that show the board that
13 fell?

14 A Yes. That's the one that we just referred to.

15 Q Okay. Exhibit No. 11, is that also a picture
16 taken with your cell phone?

17 A Yes.

18 Q Your son took that?

19 A Yeah, my son -- once I got back to the room, I
20 sent him back down to take pictures.

21 Q And how about Exhibit No. 12?

22 A Yes, that's the board. My son's feet.

23 Q Rusty screw on that, too?

24 A Rusty screw on that, too.

25 Q How about Exhibit No. 13?

1 A The same walkway --

2 Q Okay.

3 A -- going to the hotel.

4 Q The next day?

5 A Yes, that morning, along with the other pictures.

6 Q All right. And how about No. 14?

7 A Same time, same section.

8 Q All right. Now, did you report this to the City
9 of Myrtle Beach?

10 A I did.

11 Q I'll let you look at Exhibit 15 and ask if you can
12 recognize what that is.

13 A That's a loss report.

14 Q Okay. And is that your handwriting on the bottom?

15 A That is my handwriting.

16 Q All right. Can you read to the jurors what you
17 told the City of Myrtle Beach about what happened.

18 A It says, Please give a complete description of
19 what happened. Please be specific.

20 Was walking off beach around 8:20 p.m. Was
21 carrying a beach chair from enjoying sunset. I was
22 walking along the public access boardwalk when I
23 stopped to talk and leaned against railing. When I
24 leaned against railing, I fell to ground as a result of
25 the railing giving way. I went to room after

1 recovering my breath. Had EMS come due to pain around
2 11:30.

3 Q All right. When did you give that to the City of
4 Myrtle Beach?

5 A On our way home via the -- I called as soon as
6 they opened.

7 Q After you were released from the hospital?

8 A Yes, after I was released from the hospital.

9 Q All right. So let me ask this question. The
10 railing, were you pushing on the railing?

11 A I was not.

12 Q Were you abusing the railing?

13 A No, sir.

14 Q Were you standing up on the railing or anything?

15 A No, sir.

16 Q Were you horsing around on the railing?

17 A No, sir.

18 Q Were you trying to push the railing down to make
19 it fall so you could fall?

20 A No, sir.

21 Q All right. Were you doing anything to cause the
22 railing to fall?

23 A No.

24 Q Now, I want to talk about your medical care a
25 little bit.

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

3 Q All right, Richard. Look at Exhibit No. 16 and
4 tell me if you recognize what that is.

5 MR. BRYAN: Gene, please can I see?

6 MR. CONNELL: That's the list of all the medicals
7 that's been provided to you, \$16,508 and whatever it
8 is. I'm going to ask him to identify it.

9 MR. BRYAN: Okay.

10 Q All right, Mr. Ciampanella. Let me let you look
11 at Exhibit 16 and tell me if you recognize that
12 exhibit.

13 A I do.

14 Q Okay. And what is it?

15 A Those are a listing of the bills for the medical
16 services provided.

17 Q All right. How much is the totals?

18 A \$16,508.90.

19 Q Okay. Tell me about the treatment. You went by
20 ambulance to the hospital?

21 A I did.

22 Q How much did that cost?

23 A \$464.40.

24 Q You went to Grand Strand Regional Hospital. What
25 did that cost?

- 1 A \$8,838.95.
- 2 Q And you had -- what did you have; a CAT scan?
- 3 A There I had a --
- 4 Q An MRI?
- 5 A -- CT --
- 6 Q CT scan?
- 7 A CT scan.
- 8 Q And how much did Carolina Radiology charge you for
- 9 that?
- 10 A \$803.
- 11 Q And you were seen by ER physicians. How much was
- 12 that?
- 13 A That was \$1,454.
- 14 Q And then you were seen back where you live by an
- 15 orthopedic group; is that right?
- 16 A Yes, sir.
- 17 Q How much was that?
- 18 A \$2,665.
- 19 Q And what period of time did you see them from?
- 20 A From 8/26 to 10/21.
- 21 Q All right.
- 22 A 2014.
- 23 Q And something that's called Carolina Amputee and
- 24 Orthotic; what's that?
- 25 A That was from a back brace. That was \$1,533.55.

1 MR. BRYAN: Your Honor, does Mr. Ciampanella have
2 personal knowledge of the bills, or is he simply
3 reading a list?

4 MR. CONNELL: I think he's already said he did,
5 Your Honor.

6 THE WITNESS: I submitted them all.

7 THE COURT: All right. He submitted them.

8 MR. CONNELL: We'd like to offer them as the next
9 exhibit, Your Honor, Exhibit 16.

10 THE COURT: Any objection to the exhibit?

11 MR. BRYAN: No, sir.

12 THE COURT: All right.

13 (WHEREUPON, Plaintiff's Exhibit No. 16 was
14 admitted in evidence.)

15 Q Okay. So we were talking about Carolina Orthotic
16 and Amputee. What is that exactly?

17 A That is a business in -- that was close, in
18 Hickory, North Carolina. They supply, I guess, your
19 orthotic or --

20 Q What did they supply?

21 A I got a back brace from them.

22 Q All right. That cost \$1,553?

23 A Yes, sir.

24 Q And who prescribed the back brace to you?

25 A That was Dr. Seldomridge.

1 Q All right. And do you have the back brace here
2 with you?

3 A It is in the vehicle.

4 Q All right. And do you use it at times?

5 A I do.

6 Q All right. Do you use it all the time?

7 A No, sir.

8 Q Do you use it every week?

9 A No.

10 Q Tell the jury when you have to use a back brace to
11 help you with your back.

12 A Whenever I've irritated or agitated my back, you
13 know, in that -- from playing with the kids or, you
14 know, any activities that's overdone it for me.

15 Q Okay. Had you ever had to use a back brace before
16 you had the transverse fracture?

17 A No, sir.

18 Q All right. And then the final bill was from
19 Southeastern Spine. How much was that?

20 A \$750.

21 Q And what is the grand total again?

22 A \$16,508.90.

23 Q All right. The night you went to the hospital,
24 Grand Strand Regional Medical Center, tell me about
25 what happened there and whether you were going to stay

1 or not. Tell us about that, if you would. Don't say
2 what other people said, just tell me what you know.

3 A Right. We were there -- we got there, like I
4 said, about 11:30, 12 o'clock, via the ambulance. They
5 did the CT scan, as it's called.

6 Q Yes, sir.

7 A I got, I believe, two shots for the pain.

8 Q Okay.

9 A The option at 5 in the morning was to either be
10 admitted to the hospital or be released.

11 Q Okay.

12 A And due to the fact that we were due to leave at
13 10 o'clock in the morning, we chose to go home.

14 Q Okay. So the option was either go home or be
15 released -- or either be released or stay on?

16 A Be admitted to the --

17 Q All right.

18 A Get a room, I guess you could put it.

19 Q All right. And was that the last day of your
20 vacation?

21 A That was.

22 Q And when you got home, where did you go to? What
23 doctors did you go see when you got home?

24 A Dr. Seldomridge.

25 Q Had you been told by Grand Strand Regional Medical

1 Center to see an orthopedist at your home?

2 A No. I had chose to do that when I got home.

3 Q Okay. Had -- Grand Strand Hospital had referred
4 you to a doctor in the area, but you don't live here,
5 so you weren't going to see a doctor here; right?

6 A Right.

7 Q All right. And Dr. Seldomridge is an orthopedist?

8 A Yes.

9 Q And tell the jury what type of treatment you had
10 for the transverse fraction you had.

11 A From Dr. Seldomridge?

12 Q Yes, sir.

13 A We had the office test or office exam.

14 Q Okay.

15 A And then he put me on a light duty for several
16 weeks, with no pulling, pushing, lifting. And then --

17 Q Were you out of work for a period of time?

18 A I was out of work for a period of time, yes.

19 Q Okay. And I understand your employment covered
20 that.

21 A Yes, sir.

22 Q So they paid for that.

23 How many days were you out of work?

24 A Six to eight weeks. An exact number, I know it's
25 around 40, but I'm not for sure.

1 Q About 40 days?

2 A Yes.

3 Q And why were you out of work for 40 days?

4 A I could not walk naturally.

5 Q Okay.

6 A Couldn't lift, bend, those sort of things.

7 Q All right. And you weren't able to work because
8 it was -- you had to bend and lift?

9 A Yes.

10 Q So the orthopedist gave you an out-of-work slip or
11 told you, you couldn't go back to work?

12 A Yes, sir.

13 Q And during those 40 days, were you -- what were
14 you told to do? Don't say what he said, but what did
15 you do, I should say?

16 A I laid in the bed.

17 Q All right. And can you describe for the ladies
18 and gentlemen of the jury what kind of pain you had
19 during that period of time?

20 A I had pain in my back, in the lower back. If I
21 walked, it irritated, and I shuffled around the house.
22 But mainly I laid in the bed and recouped.

23 Q And during that period of time, could you tell us,
24 zero being no pain, ten being the most pain you've ever
25 had, what pain level are you talking about?

1 A I was on a seven to eight scale.

2 Q Okay. And when did it start to ease off where it
3 wasn't seven or eight?

4 A About two weeks later. It was getting more
5 manageable or tolerable.

6 Q Now, do you still have pain at times today?

7 A I do have pain at times.

8 Q All right. The pain keep you from working?

9 A It doesn't. I have to -- there is times if --
10 like I said, if I irritated it, I do have to take the
11 day off the next day because my back's hurting, and
12 it's limited me back to laying in the bed.

13 Q All right. How about, tell me about anything you
14 can -- you're unable to do or restrictions you have.

15 A I'm --

16 Q You do most everything you can -- you want to do?

17 A Yeah, I can do most things I want to do, but I
18 have to do it with caution.

19 Q All right. Give me an example of what you mean by
20 caution.

21 A I can't go out and just get into a -- I have an
22 eight-year-old stepson, so I can't just get on the
23 floor and wallow around with him. You know, because
24 I've done and learned that, A, that irritates the back.

25 Q Okay.

1 A You know, so playing basketball with my son, you
2 know, or riding the roller coasters when we go to the
3 amusement parks, I can't do those things.

4 Q Okay.

5 A Everything that requires bending or pushing,
6 pulling, or lifting is all done, like I say, with
7 caution. So I evaluate my situation before I just go.

8 Q All right. Now, you talked a little about your
9 motorcycle riding.

10 A Um-hum.

11 Q Did you get a motorcycle with some sort of brace
12 on it for your back?

13 A I got a touring motorcycle instead of a sport
14 bike, as I referred to. I had the street bikes before,
15 those are considered sport bikes. They're not designed
16 for comfort. They're more designed for the bike
17 itself, you know, and the -- I don't know the right
18 word to use for that. But the bike I have now is more
19 designed for comfort and touring --

20 Q Okay.

21 A -- which means long distances and whatnot.

22 Q All right. And that's easier to use for your
23 back?

24 A Yeah. I actually bought me a back rest to where I
25 have a back rest on my portion of the seat.

1 Q All right. Is there anything else medically that
2 you know that can be done for your back?

3 A Surgery or some sort of --

4 MR. BRYAN: Your Honor, this is outside his
5 knowledge.

6 THE COURT: Sustained.

7 Q Let me ask this question. The limitations that
8 you have now, are those limitations you've had as a
9 result of the August the 19th, 2014 fall?

10 A Yes, sir.

11 Q And prior to the August 19th, 2014 fall, were you
12 able to do anything that you needed to do?

13 A Anything I wanted to.

14 Q All right. Now, you're working -- currently
15 working full time; right?

16 A I am.

17 Q And your job at Lowe's Home Centers, is that a
18 physical job?

19 A No. It is a desk job.

20 Q Okay. Is that the same type of job you had at
21 Lowes Food Center?

22 A No, sir.

23 Q And I take it Lowes Food Center and Lowe's Home
24 Centers are not the same company; right?

25 A No. Two separate.

1 Q Even though they have the same name.

2 A There's a long history there, but yes.

3 Q Okay. And Lowe's -- you didn't get the job at
4 Lowe's Home Center by working at Lowes Food Center?

5 A No, sir.

6 Q All right. And does your current job, is it
7 easier on your back, your current job?

8 A It is.

9 Q And are you having to do any lifting in your
10 current job like you had to do when you were working as
11 a grocery store manager?

12 A No, sir.

13 Q And are you having to do any physical activity
14 like you did when you were a grocery store manager?

15 A No, sir.

16 Q Would that be one of the reasons why you changed
17 jobs?

18 A It wasn't the deciding factor, but it was
19 something that I took into consideration, that I went
20 with -- I went with a different career.

21 Q All right. Now, what if anything -- what if any
22 warning was there on the beach walkover that would have
23 told you that the railing might collapse?

24 A Was there any warning?

25 Q Yeah.

- 1 A No, sir.
- 2 Q All right. Was there a sign out there that said,
3 danger?
- 4 A No.
- 5 Q Was there any yellow tape around anything?
- 6 A No, sir.
- 7 Q Was there anything to advise you that the beach
8 walkover access might be dangerous?
- 9 A No, sir.
- 10 Q Was there anything -- were there any signs that
11 said under construction, under repair, anything of that
12 nature?
- 13 A No, sir.
- 14 Q Were there any City employees out there?
- 15 A No, sir.
- 16 Q All right. Now, is there a -- is there actually a
17 road beside the beach walkover access?
- 18 A There is, like where the -- I seen the -- like I
19 said, there's a beach -- the comber thing.
- 20 Q The beach patrol or whatever?
- 21 A The beach patrol, they use that.
- 22 Q All right. Is that beach walkover access within
23 viewing of anybody who was working for the City that
24 rode down that road?
- 25 A Yes.

1 Q All right. And was there any indication that the
2 beach walkover access was unsafe?

3 A No, sir.

4 Q Was there any indication that anybody had recently
5 worked on the beach walkover access?

6 A No, sir.

7 Q Can you describe -- we've seen the pictures -- can
8 you describe for the ladies and gentlemen of the jury
9 the condition of the wood on the beach walkover access.

10 A Aged.

11 Q All right. How about the screws themselves that
12 you've seen pictures of?

13 A They were rusted, and some of them looked to have
14 the ends of them rusted enough to be off of it.

15 Q All right. What do you do at Lowe's Home Centers?

16 A I work in the vendor compliance department.

17 Q All right. Do you ever have any ability to look
18 at screws like this when you're selling them?

19 A No.

20 Q Okay. Do you work in the hardware part of the --

21 A I used to.

22 Q All right. So have you seen screws without rust
23 on it like that?

24 A When they're brand new.

25 Q All right. Now, during the time that you were

1 unable to work the 40 or so days, did you need any help
2 from your wife during that period of time?

3 A I did.

4 Q All right. What kind of help did you need?

5 A Getting up out of the bed, getting to the
6 bathroom, putting socks on, in and out of the car.
7 During that time frame, I needed help.

8 Q All right. And you also have a disc protrusion in
9 your back, too?

10 A I do.

11 Q Does that give you pain?

12 A It does.

13 Q All right. And is that a different type of pain
14 than the pain you had from the transverse fracture you
15 had on the spine itself?

16 A Yeah. It's more -- the disc is more of a
17 sensitive area --

18 Q Okay.

19 A -- like to the touch.

20 Q Can you show the jury, looking at this spine,
21 where you have the pain.

22 A Can we flip.

23 Q Okay.

24 A Okay, that's the right side. Pain for the back is
25 here (indicating).

1 Q Okay.

2 A Or this area (indicating). My bulging or my
3 sensitive area is right in here (indicating).

4 Q Okay. Was that where the big bruise was?

5 A That's where the big bruise was.

6 Q All right. Now, do you have different levels of
7 pain based on the change of seasons?

8 A I do, depending on the activity.

9 Q Okay. How about when it rains or when it's cold,
10 do you have any --

11 A That doesn't bother me so much.

12 Q Okay. And when you said activity, what type of
13 activity are you talking about?

14 A You know, if it's the summertime or doing the yard
15 work or, you know, the things where I'm more active,
16 because I'm an outside person, I like to be outside.

17 Q Okay. All right.

18 MR. CONNELL: Let me talk to my co-counsel.

19 (Discussion off the record.)

20 MR. CONNELL: Okay, thank you. Answer any
21 questions they might have. Thank you, sir.

22 THE COURT: Cross-examine.

23 MR. BRYAN: Your Honor, do you mind if

24 Ms. Neuschafer sets up our projector while I go ahead
25 and start the cross-examination?

1 THE COURT: Yes, that's fine.

2 MR. BRYAN: Okay.

3 CROSS-EXAMINATION

4 BY MR. BRYAN:

5 Q Mr. Ciampanella, we met before, I'm Will Bryan. I
6 represent the City. I have some questions for
7 clarification, really.

8 Is it your testimony that -- this is the first
9 photograph we looked at, I believe, Exhibit No. 2 -- is
10 it your testimony that this board on the bottom, it was
11 already down there before you fell; correct?

12 A Yes.

13 Q Okay. So this walkover at 77th Avenue North has
14 got about six or seven sections; correct?

15 A Correct.

16 Q On both sides. So if this -- what we're looking
17 at before that's hanging down, that's what, I think,
18 the building and maintenance people call the like
19 sideboard. This one would be -- they also have a top
20 board, a cap board; right?

21 A Right.

22 Q You believe the one on the bottom is the cap
23 board?

24 A That's what I would assume.

25 Q Okay. So this section where you fell -- this

1 section where you decided to lean looked different from
2 all of the other sections in the walkover; is that
3 true?

4 A It was dark.

5 Q Okay. But it was different?

6 A I didn't know it was different.

7 Q Okay.

8 A I just leaned against that section.

9 Q And this happened at 8:20, 8:30 at night?

10 A Yeah.

11 Q In August?

12 A Somewhere around there, yes.

13 Q It's your testimony that at 8:30 at night in
14 August it is dark -- so dark, you can't see?

15 A It was dark, yes.

16 Q Okay. Do you know when this cap board was knocked
17 off?

18 A I do not.

19 Q Do you know who knocked it off?

20 A I do not.

21 Q Do you have any indication that the City was aware
22 that this cap board had been knocked off?

23 A Do not.

24 Q Okay. And Exhibit No. 15, the loss report, is
25 this your handwriting?

1 A It is.

2 Q It is, okay. And this was created a couple of
3 days later?

4 A Yes.

5 Q It was dated August 23rd. Anyway, at that time,
6 you said this happened between 8:15 and 8:20. Is that
7 still accurate?

8 A Yes, that's pretty accurate.

9 Q Okay. And it's your testimony that it's going to
10 be dark at 8:15 and 8:20 on August 19?

11 A It was dark.

12 Q Okay. When you reported the incident to the
13 City -- here, you look at Exhibit 15 -- did you tell
14 anybody at the City that the walkover, before you got
15 there, had already shown signs of disrepair where it
16 was already broken?

17 A I didn't know that. You said --

18 Q You knew it --

19 A Repeat the question, please.

20 Q When you notified the City several days later, did
21 you tell the City that the walkover had already been
22 broken before you got there?

23 A No, I didn't.

24 Q Okay. Did you say anything in your report to the
25 City that some part of the walkover had already fallen

1 down before your fall?

2 A No, sir.

3 Q No? Okay. There were a number of photographs
4 taken the next morning, I presume?

5 A Um-hum. Yes, sir.

6 Q Okay, thank you. I think there were two
7 photographs that were taken at night.

8 A Correct.

9 Q That would be the night of your injury?

10 A Um-hum.

11 Q Both Exhibits 10 and 11, they accurately depict
12 that section of the walkover where you fell immediately
13 after your fall?

14 A Correct.

15 Q Okay. That's -- 10 and 11, that's how it looked
16 at night?

17 A Um-hum.

18 Q Yes?

19 A Yes.

20 Q Just so I'm clear, okay. So this, the side
21 railing, when you fell through it, it actually dropped
22 straight down and came to rest on the board immediately
23 beneath it; is that true?

24 A According to the pictures, that's the way it
25 looks.

1 Q That's where that board that you were leaning
2 against and you fell through came to rest. It came to
3 rest right below where it was fixed; didn't it?

4 A According to the picture, it did.

5 Q But yet your testimony is that you fell through
6 the board; correct?

7 A I leaned against it.

8 Q Correct.

9 A And fell backwards.

10 Q Fell backwards. Okay, Mr. Ciampanella, you had
11 been in Myrtle Beach, I think, for like a long weekend.
12 This was the day before you were going home; correct?

13 A Correct.

14 Q I assume you had used that beach walkover several
15 times during the several days prior to this incident;
16 is that true?

17 A Yes, sir. Yes.

18 Q You said yes?

19 A Yes.

20 Q If you saw something that made you think the
21 walkover at 77th Avenue North was dangerous, you
22 wouldn't have used it; correct?

23 A Correct.

24 Q If you saw anything that led you to believe that
25 the walkover at 77th Avenue North was dangerous, you

1 wouldn't let your children or your fiancée use it;
2 would you?

3 A Yes, that's correct.

4 Q Okay. So there's nothing about the walkover that
5 appeared to be dangerous or defective?

6 A Correct.

7 Q All right. Well, you mentioned earlier that there
8 were screws that were rusted and stuff. Like did you
9 come back later and sort of examine the boardwalk, or
10 those are things you saw earlier?

11 A No. That's just what I got from pictures that
12 were taken.

13 Q Okay. Mr. Ciampanella, do you have any knowledge
14 that the City of Myrtle Beach knew that the railing at
15 77th Avenue North was close to failing?

16 A I did not.

17 Bailiff: The jurors need a break.

18 THE COURT: All right. Just make a note where you
19 are there, Mr. Bryan, and we'll start right back.

20 All right. Ladies and gentlemen, we're going to
21 short break. Please have no conversation about the
22 case, and I'll bring you back out shortly; okay?
23 Everyone else, please remain seated while the jury is
24 excused.

25 (WHEREUPON, the jury exited the courtroom at

1 3:40 p.m.)

2 THE COURT: All right. Mr. Ciampanella, you can
3 step down during the break. You're just not allowed to
4 have any conversation about your testimony, sir.

5 (WHEREUPON, a brief recess was taken at 3:41 p.m.)

6 THE COURT: All right. We ready to bring the jury
7 in?

8 MR. BRYAN: Yes, sir.

9 THE COURT: All right. Please bring them in.

10 (WHEREUPON, the jury came into open court at
11 approximately 4:01 p.m.)

12 THE COURT: All right. Ladies and gentlemen --
13 and let me apologize to y'all. I typically always do
14 this, and I realize, when you asked for that break,
15 that I didn't do it in this case. I should have told
16 you before we got started, anytime you need a break,
17 don't hesitate to get the bailiff's attention and let
18 me know; okay? We can take as many breaks as you need.

19 Also, if you can't hear somebody, don't hesitate
20 to let us know. We'll ask them to speak up and have
21 them repeat what they said. Okay? But thank you for
22 doing that.

23 What we're going to do is we're going to get madam
24 court reporter to read back the last question Mr. Bryan
25 asked and then we'll pick up there.

1 (The court reporter back the last question and
2 answer.)

3 THE COURT: All right.

4 MR. BRYAN: Thank you, Madam Court Reporter.

5 Q Mr. Ciampanella, do you have any knowledge that
6 the City of Myrtle Beach knew the railing screws were
7 corroded inside the wood?

8 A Did not.

9 Q Okay. Do you have any evidence that the City had
10 actual knowledge, like they actually knew the extent of
11 corrosion inside the wood where you went through the
12 railing?

13 A I did not.

14 Q Okay. Do you have any evidence that the City
15 received any calls or complaints about the condition of
16 the walkover at 77th Avenue North?

17 A Do not.

18 Q Do you have any evidence that the City received
19 complaints about the railings at any public beach
20 walkover?

21 A I do not.

22 Q Are you aware of anyone besides yourself that has
23 fallen through a City of Myrtle Beach public beach
24 walkover?

25 A Not that I'm aware of.

1 Q Okay. And I think I know the answer to this
2 question, but I need to ask it for the record. Was
3 there anybody at the walkover entrance, either side,
4 collecting a ticket or charging you to enter the 77th
5 Avenue walkover?

6 A No, sir.

7 Q All right. So the walkover was there for public
8 use at no charge?

9 A Correct.

10 Q Okay. And the night of your accident, you told us
11 you went to the beach with your wife to watch the
12 sunset; is that right?

13 A Correct.

14 Q Okay. Did you watch like right in front of your
15 hotel, or did you walk up or down the beach?

16 A If I'm not mistaken, I believe we walked off the
17 boardwalk or off the access, through the sand, and
18 20 feet to the left.

19 Q Okay. Was there anybody around when you fell
20 other than your -- was she your fiancée at the time?

21 A She was my fiancée at the time.

22 Q Other than April?

23 A No. There was a gentleman, as I was kind of
24 getting myself together, that was walking by, but
25 nobody there besides her.

1 Q Okay. Did you happen to talk to the gentleman
2 that walked by?

3 A He just -- he seen that I was getting up off the
4 ground, and that was it.

5 Q And then I think you demonstrated earlier that you
6 were -- the way you were leaning against the railing.
7 It wasn't like this (indicating)?

8 A Right.

9 Q It was --

10 A More like that.

11 Q Okay. You got any idea how far your feet were
12 away from the railing?

13 A I don't.

14 Q And how long had you been at the walkover before
15 you fell at that spot?

16 A A few seconds. Like I said, I walked up on the
17 boardwalk, set my chairs down against the upright,
18 turned around, and went to go lean against the railing.

19 Q Why did you stop right in the middle of the
20 walkway?

21 A We were just having a conversation. I just
22 stopped to continue our conversation.

23 Q Did you sit on the walkover?

24 A Did not.

25 Q Have you ever sat on a -- excuse me. Did you sit

1 on the railing at the 77th Avenue walkover?

2 A No, sir.

3 Q Have you ever sat on a railing?

4 A On a railing, yes.

5 Q Okay. But just not on August 19th?

6 A Correct. Or that one.

7 Q Okay. But your testimony is you fell straight
8 backwards?

9 A Correct.

10 Q And you hit, like fell straight back, hit your
11 lower back; is that correct?

12 A Correct.

13 Q Flat?

14 A Yes.

15 Q Yes?

16 A When I fell backwards, I fell flat.

17 Q And you fell -- some of these pictures show the
18 area beneath the walkover, it's sandy; correct?

19 A Correct.

20 Q All right. And that walkover is only two, two and
21 a half maybe, off of grade or above ground, and it's
22 not a large dune walkover?

23 A Correct, it's not.

24 Q It just hovers over the ground a foot?

25 A Two feet maybe.

1 Q Okay. All right. Looking at Exhibit 9, but
2 really -- this is your torso, stomach area; correct?

3 Yes?

4 A Yeah, my waistline, yes.

5 Q The exhibit sticker is like this but actually, to
6 look at it upright is that way; would you agree?

7 A Yes.

8 Q So what --

9 MR. BRYAN: Your Honor, can I put this up on the
10 big board?

11 MR. CONNELL: Fine with me.

12 THE COURT: You need the --

13 MR. BRYAN: Yeah, can we get the screen down.

14 Q All right. Mr. Ciampanella, what we're looking at
15 here is basically our -- standing this way, this is a
16 picture of your right side; correct?

17 A Correct.

18 Q But your testimony is that you fell straight back
19 and you hit the ground flat on your back; correct?

20 A Correct.

21 Q But, yet, there's no bruising on your back. The
22 only bruise you have is on your right side of your
23 belly?

24 A Correct.

25 Q Okay. And that's the shot in the daytime of what

1 that section looked like the night before, just after
2 you fell?

3 A Correct.

4 Q Okay. It was two hours later when the call was
5 made, I presume, to 911?

6 A Correct.

7 Q Okay. Then you get home the next day. That's
8 August 20th; correct?

9 A Correct.

10 Q Did you see any other doctor between August 20th
11 and when you later saw Dr. Seldomridge for the first
12 time on the 26th?

13 A No, sir.

14 Q Okay. Did you have a wheelchair at home?

15 A I did not.

16 Q Did you ever have any type of assistive walking
17 device like a cane, a walker or anything?

18 A No. I had my wife and my son.

19 Q Okay. But nobody prescribed you any -- like a
20 wheelchair or a walker?

21 A No, sir.

22 Q Okay. And you saw Dr. Seldomridge on three
23 occasions; correct?

24 A Correct.

25 Q You saw him six days after you got back home, and

1 then basically once a month?

2 A Correct.

3 Q You saw him September -- excuse me -- August 26th
4 and then sometime in September, and then your last
5 visit, would you agree, was October 21st?

6 A My last visit, yes.

7 Q To Dr. Seldomridge.

8 A Yes.

9 Q October 21st. Okay. And then you went to see a
10 doctor in Charleston, South Carolina; correct?

11 A Correct.

12 Q Dr. Poletti?

13 A Correct.

14 Q And how far is Charleston from -- where you from?
15 Statesville, Mooresville?

16 A Mooresville.

17 Q Mooresville.

18 How far is Charleston from Mooresville?

19 A Three and a half hours, four maybe.

20 Q Had you ever -- ever seen Dr. Poletti before?

21 A No, sir.

22 Q Ever heard of him?

23 A No, sir.

24 Q Okay. Who made the appointment at Dr. Poletti's
25 office for you?

1 A My lawyer.

2 Q So was Dr. Seldomridge, your treating physician,
3 was he involved in you going to see Dr. Poletti at all?

4 A No.

5 Q Your pain was in your low back area, your low
6 back, maybe call it your hip; correct?

7 A Correct.

8 Q And that might have been a couple inches above
9 your belt line; fair to say?

10 A Fair to say.

11 Q Okay. You didn't have any neck pain?

12 A No, sir.

13 Q You didn't have any leg pain, did you?

14 A No, sir.

15 Q During all of your visits with Dr. Seldomridge,
16 you never complained of leg pain?

17 A No leg pain.

18 Q When you went to Southeastern Spine, a lot of
19 doctors' offices do this, but they have patient
20 questionnaires, and oftentimes, it has an anatomical
21 diagram.

22 MR. BRYAN: Gene, I'm going to mark this as an
23 exhibit, the questionnaire from Southeastern Spine.

24 (WHEREUPON, Defense Exhibit No. 1 was marked for
25 identification only.)

1 Q Mr. Ciampanella, is that your signature on the
2 last page?

3 A Yes, sir.

4 Q Okay. Is it dated?

5 A 11/4.

6 Q 11/4, okay. Is that -- that's your handwriting?

7 A It is.

8 Q Is it your handwriting on the other pages of the
9 questionnaire?

10 A Yes. Yes, sir.

11 Q All right. Let's see. Let me put it up on the
12 board so we can talk about it. There's an anatomical
13 diagram of patients, and it shows where they're having
14 -- show where they're having pain. Can you see that?

15 A I can.

16 Q And that appears to show pain in your low back/hip
17 region on the right side?

18 A Correct.

19 Q Okay. And up at the top, it tells you, you use
20 circles or X's or slashes for different pain, stabbing
21 pains, burning pains. But there's no indication of any
22 pain anywhere else on your body except here; is that
23 correct?

24 A Pain wise?

25 Q Pardon?

1 A For pain?

2 Q Yeah.

3 A Correct.

4 Q Okay. And Southeastern Spine asked the question
5 about the pain scale. We've all heard of the rate your
6 pain on a zero-to-ten scale. Where did you indicate
7 your pain was in early November?

8 A I can't see that.

9 Q Where was your pain on the zero-to-ten scale on
10 November 4, 2014?

11 A On November the 4th, 2014, it says zero pain.

12 Q Thank you.

13 A Can I read the question, what it says?

14 Q Can you read the question?

15 A Yes. It says, please circle the number of pain
16 that best applies to your usual level of pain.

17 Q And that's a zero; correct?

18 A Correct.

19 Q Thank you. And it also asks about the medication
20 you were taking, question 15. I think it says,
21 ranitidine?

22 A Ranitidine.

23 Q Ranitidine, is that your handwriting?

24 A Yes, it is.

25 Q What is ranitidine?

1 A It's heartburn medication.

2 Q Heartburn?

3 A Um-hum.

4 Q Yes?

5 A Yes.

6 Q Okay. You were not taking any narcotics, no
7 OxyContin, no Oxycodone, no --

8 A I didn't have to take those.

9 Q Thank you. This is --

10 MR. BRYAN: You probably can turn the lights back
11 on.

12 Q After you saw Dr. Poletti in Charleston, did you
13 ever go back to him again?

14 A I have not.

15 Q The last time you saw Dr. Seldomridge, the
16 orthopedist that you were treating with in North
17 Carolina, when he discharged you, he told you to come
18 back if you had continued problems; correct?

19 A Correct.

20 Q And have you been back to see Dr. Seldomridge
21 since October 21st, 2014?

22 A I have not.

23 Q Have you sought treatment from any medical
24 provider for injuries that you contend were suffered or
25 sustained in Myrtle Beach in August of 2014 since you

1 last saw Dr. Seldomridge?

2 A Besides Dr. Poletti, no.

3 Q And Dr. Poletti didn't -- he didn't prescribe any
4 medication; correct?

5 A No.

6 Q Did you -- okay.

7 And Dr. Seldomridge, he never prescribed any
8 physical therapy, did he?

9 A He did not.

10 Q Okay. You testified earlier when Mr. Connell was
11 asking questions about your continued pain level and
12 you still have pain. And I guess my question is,
13 whatever pain you continue to have, it is not so
14 burdensome, it is not so bad that you've gone to see
15 any doctor for relief; is that true?

16 A Correct.

17 Q You've not gone to a Doctors Care?

18 A I have not gone to Doctors Care.

19 Q Have not gone to an ER?

20 A Have not.

21 Q Okay. And after your visit in -- with Dr. Poletti
22 in early November, it was in that same month when I
23 think you bought your new motorcycle; is that right?

24 A Correct.

25 Q And you've continued riding motorcycles since

1 then?

2 A Correct.

3 Q Including trips to the Tail of the Dragon?

4 A To -- I've went there once on the motorcycle, yes.

5 I did not go down the Tail of the Dragon. I visited

6 there. I didn't go down it.

7 Q You didn't take photographs?

8 A No, not at Tail of the Dragon.

9 Q Okay. You would ride your motorcycle to a scenic
10 highway that is popular for sport cars and motorcycles,
11 and your testimony to the jury is you did not ride your
12 motorcycle on the Tail of the Dragon?

13 A That is correct.

14 Q Okay. What the Tail of the Dragon is, it's 11
15 miles, winding through the mountains with 318 turns?

16 A Correct.

17 Q Some off -- is it off-camber?

18 A I believe so.

19 Q Do you know what that means?

20 A Yeah. They're like this (indicating).

21 Q A racetrack might be like that (indicating).

22 A Uh-hum.

23 Q Off-camber means the road is like this
24 (indicating).

25 A Um-hum.

- 1 Q It's, I guess --
- 2 A Opposite.
- 3 Q -- contoured the wrong way; correct?
- 4 A Correct.
- 5 Q And you're still riding today?
- 6 A Correct.
- 7 Q Okay. As far as your continued activities and
- 8 hobbies and stuff, you still, like you told me, that
- 9 you like to detail cars; correct?
- 10 A Correct.
- 11 Q You like to wax and polish cars?
- 12 A Um-hum.
- 13 Q Yes?
- 14 A Yes.
- 15 Q Not just yours. It's you like to detail other
- 16 people's cars?
- 17 A There's money involved, correct.
- 18 Q You're still cutting your grass; correct?
- 19 A Correct.
- 20 Q You're still using the push mower?
- 21 A Self-propelled.
- 22 Q Okay. You still using a Weed Eater?
- 23 A Yes.
- 24 Q Now, you use the Weed Eater -- in fact, not just
- 25 to weed eat, but also you use it to edge as well;

1 correct?

2 A It has an edger attachment.

3 Q Okay. You are able to edge and weed eat?

4 A I can, yes.

5 Q Okay. You've got no problem picking up bags of
6 sugar, ten-pound bags of ice, what have you?

7 A Carefully.

8 Q Carefully?

9 A Um-hum.

10 Q Okay.

11 MR. BRYAN: Off the record.

12 (Discussion off the record.)

13 MR. BRYAN: Judge, it's my understanding that all
14 the photographs are in evidence, even though
15 Mr. Connell may have skipped a step, but they are in
16 evidence; correct?

17 THE COURT: There's no objection?

18 MR. BRYAN: That's fine. I just want to make sure
19 they are in evidence.

20 THE COURT: Well, they are now.

21 (WHEREUPON, Plaintiff's Exhibit Nos. 3 to 14 were
22 admitted in evidence.)

23 MR. BRYAN: Thank you, sir. And then I would like
24 to move into evidence Defendant's Exhibit No. 1. I
25 think that's it.

1 MR. CONNELL: No, object -- is that the --

2 THE COURT: That was the first one you showed.

3 MR. CONNELL: Yes, sir.

4 MR. BRYAN: The bruise on the back.

5 MS. NEUSCHAFER: That was already in.

6 MR. BRYAN: Yeah, that's one of your photographs.

7 MR. CONNELL: No, the drawing.

8 MR. BRYAN: Yeah, the anatomical diagram?

9 MR. CONNELL: Is that what you want to talk about?

10 MR. BRYAN: Yes.

11 MR. CONNELL: Yeah, I won't object to that.

12 THE COURT: All right. Without objection, that's

13 Defendant's-1 now? Is that --

14 MR. BRYAN: Defendant's-1.

15 THE COURT: Defendant's-1, okay. Without

16 objection.

17 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
18 in evidence.)

19 MR. BRYAN: I was going to put in the photographs,
20 but Gene stole all my thunder, so I'm just left with
21 one exhibit.

22 Gene, I'd like to move into evidence his last
23 visit with Dr. Seldomridge, if I can show it to him.
24 Do you got any objection?

25 (Discussion off the record.)

1 (WHEREUPON, Defendant's Exhibit No. 2 was marked
2 for identification only.)

3 MR. BRYAN: Your Honor, I'm just going to move
4 Defendant's Exhibit No. 2 into evidence, and I'm going
5 to rest.

6 MR. CONNELL: No objection.

7 THE COURT: Without objection. All right. It's
8 in evidence without objection.

9 (WHEREUPON, Defendant's Exhibit No. 2 was admitted
10 in evidence.)

11 MR. BRYAN: Thank you, Mr. Ciampanella.

12 THE COURT: All right. Redirect?

13 MR. CONNELL: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. CONNELL:

16 Q The photograph that's been shown a couple times
17 here, Exhibit No. 1, this board that's down on the
18 left-hand side of the photograph right here --

19 A Um-hum.

20 Q -- does that board line up with being directly
21 over top of the board that fell down?

22 A No.

23 Q All right. What does that tell you, what does
24 that tell you about the board?

25 MR. BRYAN: Judge, I object. This calls for

1 speculation.

2 MR. CONNELL: Your Honor, it's a complete --

3 MR. BRYAN: He doesn't know when it fell, he
4 doesn't know how it fell. He doesn't who knocked it
5 down. It was dark that night.

6 THE COURT: Well, I think it speaks for itself, I
7 mean --

8 MR. CONNELL: That's what I -- I want him to speak
9 for what it says, though, Your Honor. I mean, this
10 board could not have fallen directly from right here if
11 he fell.

12 THE COURT: I don't think he can testify as to how
13 a board got anywhere without knowing how it got there.

14 MR. CONNELL: I understand that, Your Honor.

15 THE COURT: Okay.

16 MR. CONNELL: However, that was taken --

17 THE COURT: It speaks for itself. He can't
18 testify to how it got there.

19 MR. CONNELL: All right.

20 Q Let me ask you a couple of questions here. Where
21 the beach cross -- where the beach walk cross access
22 is, isn't there a parking lot right in front of it?

23 A There is.

24 Q Is that a parking lot with meters?

25 A It is.

1 Q And that's meters you have to pay to actually go?

2 A Correct.

3 Q If you want to park there and you want to use the
4 beach cross acces, you've got to pay to park?

5 A Correct.

6 Q All right. Now, you were staying here. Did you
7 ever go out to any restaurants?

8 A We actually went out to eat that night before.

9 Q All right. And did you pay an accommodations tax
10 at the hotel when you paid the bill?

11 A Yeah.

12 Q All right. And did you -- what did you understand
13 the --

14 MR. BRYAN: Judge, I object to this line of
15 questioning.

16 MR. CONNELL: You opened it up.

17 MR. BRYAN: I don't think he has any knowledge
18 about how accommodation taxes come from or who pays or
19 what -- you know, who pays for walkovers. That's where
20 Gene's going.

21 MR. CONNELL: Your Honor, he --

22 THE COURT: Hold on, hold on. Ladies and
23 gentlemen, let me get to you step back in the jury
24 room. Please have no conversation about the case.

25 (WHEREUPON, the jury exited the courtroom at.

1 4:29 p.m.)

2 MR. BRYAN: Your Honor, should I state my
3 objection?

4 THE COURT: Well, a couple of things. Let me make
5 a comment first. Because I've been kind of laid back
6 because you're two experienced attorneys and so I
7 haven't say anything, but -- and I try not to get
8 involved and let lawyers try their case.

9 But like, you know, Mr. Connell, you showed the
10 witness about seven or eight photographs, and as he
11 would identify them and talk about them, you'd pass
12 them over to the jury and stuff. Well, you're
13 publishing all those to the jury, they're not in
14 evidence.

15 If there was an objection to those -- of course
16 there wasn't, but if there was, yeah, it's
17 inappropriate to pass those things to the jury until
18 they're moved into evidence.

19 MR. CONNELL: I understand, Your Honor.

20 THE COURT: And arguing your objections in open
21 court with the jury sitting right there, that isn't
22 appropriate either; okay? You can either approach the
23 bench and we can do it quietly, maybe, but -- or maybe
24 we have to send them out.

25 MR. CONNELL: All right, sir.

1 THE COURT: So anyway.

2 MR. BRYAN: Sorry, judge.

3 THE COURT: We're going in -- what is the
4 relevance to this whole line of questioning?

5 MR. CONNELL: Your Honor, may I be heard on that?

6 THE COURT: Yeah.

7 MR. CONNELL: The question was asked on
8 cross-examination, you didn't pay anything to go on
9 this beach access.

10 THE COURT: Okay.

11 MR. CONNELL: And what you're going to hear, this
12 is not your typical premises liability case. What he's
13 going to argue to you later is that, if you don't pay
14 anything, then something called the Limitation on
15 Landlords Liability Act applies.

16 And one of the issues in that statute is whether
17 or not you had to pay to actually use -- it's -- if you
18 want to go on a public hunting land, and you go on
19 public hunting with your rifle and you fall into a
20 hole, then there's protections for the landowner in
21 that situation.

22 The City wants to argue that in this case. And, I
23 mean, that's going to be something you're going to face
24 tomorrow as to whether or not that applies or not. But
25 his question was, you didn't pay anything, setting that

1 up for tomorrow.

2 THE COURT: Okay.

3 MR. CONNELL: And my question is, oh, yes, you did
4 pay something, you paid these accommodation taxes.

5 THE COURT: Well, let me ask this question.

6 MR. CONNELL: Yes, sir.

7 THE COURT: Because I'm not familiar with this
8 walkover. Is it a private walkover?

9 MR. CONNELL: That's good -- that's what this
10 trial is going to be about.

11 THE COURT: Well, it is or it's not. I mean,
12 like, for right now, we end this trial, if I go down
13 there, can I use that walkover to go onto the beach?

14 MR. CONNELL: You can.

15 MR. BRYAN: Yes, sir.

16 MR. CONNELL: But the question is who owns the
17 property underneath of it.

18 THE COURT: I don't care who owns it. Here's the
19 issue, is it restrict -- is the use of it open to the
20 general public, or is it restricted to the folks who
21 stay in this high-rise?

22 MR. CONNELL: It isn't restricted.

23 THE COURT: Then why is this relevant?

24 MR. CONNELL: Because what it goes to is whether
25 or not we have to prove gross negligence. If it's

1 subject to the landlord or to the Landowners Limitation
2 Act --

3 MR. BRYAN: It's called the Recreational Use
4 Statute, I think.

5 MR. CONNELL: Yeah, Recreational Use Statute,
6 whatever you want -- there's two or three different
7 ones.

8 THE COURT: Okay. All right.

9 MR. CONNELL: I've seen it used two or --

10 THE COURT: Go ahead.

11 MR. CONNELL: The question is whether or not that
12 -- whether or not we have to prove gross negligence,
13 simple negligence, or something in between, whether or
14 not the person is a licensee or invitee. Those are the
15 questions that come out during the course of it.

16 And, see, their argument is this is public use, we
17 built it for the public, and that Recreational Use Act
18 applies. I'm not so sure about, based on what I know
19 so far, what's been presented, so...

20 THE COURT: Well, here's the thing, and this is
21 where I'm concerned about the relevance to all this.
22 If Mr. Ciampanella or myself or Ms. Nellerman or
23 anybody can use this walkway to access the beach and
24 all like this, and I'm not staying at that high-rise,
25 I'm not staying there, what difference does it make

1 that he pays a tax or some tax because he is staying at
2 that high-rise?

3 MR. CONNELL: Because you're not subject to the
4 limitations in the Act if they're charging a fee for
5 the use of it. And the argument could be made that if
6 you're paying an accommodations tax that is building
7 these walkways -- there are 105 of them in the City of
8 Myrtle Beach -- then you actually pay to use that.

9 Just like if you had to park in the parking lot,
10 there's a parking lot right before it, you've got to
11 pay a meter 50 cents or a dollar an hour or whatever it
12 is.

13 THE COURT: So if I stop at a parking meter in
14 Myrtle Beach and put a quarter in there, I'm not under
15 the Act anymore?

16 MR. CONNELL: Your Honor, our position is that
17 that's a question of fact for the jury. And our
18 position is also that you don't have to prove gross
19 negligence, because this particular walkover is at the
20 end of a street, and there are 30 or 40 parking meters..
21 And on top of that, Mr. Ciampanella --

22 THE COURT: I would understand your argument if
23 this was one of those restricted beach access things to
24 where it's only available to people staying in this
25 high-rise or people who paid to be in this parking

1 facility.

2 But if it's open to the public, and I don't stay
3 down there at all, I'm down here holding court, we
4 finish early, I head over to the beach, and I'm using
5 that, I don't see...

6 MR. CONNELL: Well, that's different than what
7 Mr. Ciampanella did, though.

8 THE COURT: Well, I understand that.

9 MR. CONNELL: He paid an accommodations tax, which
10 went directly to the construction of those
11 particular --

12 THE COURT: Well, you don't know that. I mean, is
13 there any evidence to that?

14 MR. CONNELL: We're going to prove that. Yes,
15 sir, we're going to prove that. I think we're going to
16 prove it.

17 MR. BRYAN: Your Honor, if his argument applies,
18 is successful, I mean, taxes go to build everything. I
19 mean, there would be no Recreational Use Statute at all
20 if you simply cite to the payment of taxes which were
21 used to build, you know, the recreational property.

22 In this case, Mr. Ciampanella, he's not one of the
23 gentlemen parking in the 50-cent meter. He walked out
24 of his hotel. He wasn't charged a thing to walk down
25 the walkway to get to the beach.

1 MR. CONNELL: Your Honor, but it doesn't -- I
2 mean, for purposes -- for your purposes, I don't think
3 it makes a difference, because the case law says that
4 issues regarding that Act and what happened all go to
5 the jury anyway.

6 MR. BRYAN: No, sir.

7 MR. CONNELL: We have a case right on point, and
8 I'll present it to you -- Harris vs. University of
9 South Carolina, somebody goes onto an island. The
10 Court of Appeals says -- and I'll give it to you and
11 you can look at it overnight -- says that, you know, if
12 you're over there for recreation or whatever, it's for
13 the jury to decide. It's not an issue for the Court to
14 decide.

15 MR. BRYAN: Court's -- judge, Recreational Use
16 Statute is decided at the summary judgment stage
17 frequently and at the directed verdict stage.

18 MR. CONNELL: It's a 2011 Supreme Court case.

19 MR. BRYAN: That doesn't mean that you --

20 MR. CONNELL: Well, we're going to present -- we
21 want to present that evidence so Your Honor has
22 everything at the end.

23 MR. BRYAN: I think through Mr. Ciampanella, it's
24 speculation.

25 MR. CONNELL: Well, he hasn't answered the

1 question yet, so we don't know whether it's speculation
2 or not.

3 MR. BRYAN: Well, I needed to stop that before he
4 answered it in front of the jury.

5 THE COURT: Right. I'm going to look at what
6 you're talking about. Because right now, without
7 anything else presented to me, I would disagree with
8 you that that's a jury issue, whether or not that
9 Recreational Use Statute applies. I think that's a
10 legal issue. I don't believe that's a jury issue. But
11 if you've got something that would -- to the contrary,
12 I'll be happy to look at it, but...

13 MR. CONNELL: Yes, sir.

14 MR. BRYAN: Judge, I'm sorry I got excited with my
15 objections.

16 THE COURT: That's okay. Here's the thing, too,
17 Mr. Connell, is Mr. Bryan mentioned it, and I would
18 agree. Then if your theory is that anything built by
19 the City has to have been paid for by taxes, so the
20 Recreational Use Act wouldn't ever apply to anything
21 built by the City. It just wouldn't apply.

22 MR. CONNELL: Your Honor --

23 THE COURT: Because somebody -- the people of
24 Horry County, the people of the City of Myrtle Beach,
25 they all pay taxes. So it doesn't apply.

1 MR. CONNELL: What I think you're missing is that
2 the Recreational Use Statute is not an issue of law for
3 the Court. It's an issue to be charged to the jury if
4 you think it applies in that case. But it's not
5 something for you to decide in a proper case.

6 And, I mean, in here, we're going to offer
7 evidence from an expert about what the problem is with
8 these beach walkovers, and we're going to offer this
9 Harris case, which is right on point, Your Honor,
10 exactly the same situation. A jury decides those
11 issues, the judge charged it. And, in fact, the
12 Supreme Court said they have the burden of proof on
13 that issue at the end of the trial as an affirmative
14 defense. Let me give that to you and you can take a
15 look at it.

16 THE COURT: Okay. All right. In the meantime,
17 I'm going to allow you to continue with this line of
18 questioning. However -- and I don't know if I
19 understood the objection exactly -- but I think that,
20 if he knows, Mr. Ciampanella can testify that, you
21 know, when I paid my bill, for example, and it's --
22 usually it's itemized, there was a whatever, what's it
23 called?

24 MR. CONNELL: Accommodations tax.

25 THE COURT: Accommodations tax is on there, and I

1 paid that. But as far as him going any further to
2 testify that those monies are used to build that
3 walkway --

4 MR. CONNELL: I wasn't going to do that.

5 MR. BRYAN: But, Your Honor, I'm afraid that if
6 you allow him to testify -- if you allow him to get
7 that far, the jury is going to connect the other dots.
8 Like if he cannot --

9 THE COURT: If I allow it. I mean, I'm not
10 sure -- at this point, I'm not sure it's a jury
11 question.

12 MR. BRYAN: I agree. But I'm not sure
13 Mr. Ciampanella should be allowed to answer, oh, I paid
14 an accommodation tax. That's just going to create
15 confusion over there in the jury, like, oh, maybe that
16 accommodation tax is used to pay -- to build the
17 boardwalks. There's no evidence of that. He doesn't
18 know that.

19 MR. CONNELL: The only question, Your Honor, is,
20 did you pay an accommodations tax with you left.

21 MR. BRYAN: Why is that relevant? Unless he can
22 say the accommodation tax was used to build walkovers.

23 THE COURT: It's relevant -- well, he can't ever
24 say that because he -- he'll never be able to testify
25 to that. But if Mr. Connell is correct, whether or not

1 that it's a jury issue, then it does become relevant.

2 MR. BRYAN: Just simply the payment of an
3 accommodation tax?

4 THE COURT: Again, I don't know the evidence he's
5 going to --

6 MR. CONNELL: Your Honor, I think it becomes
7 relevant in this situation. You know, their argument
8 is we've got to prove gross negligence. Our argument
9 is you don't. And that's under the Limitations Act.

10 So if there's conflicting evidence about that,
11 Your Honor will just charge both. I mean, you would
12 charge you may consider this. It's a factual issue,
13 that's my point about it.

14 THE COURT: Well, I understand that's your point
15 about it, which is why, if you're correct, it's
16 relevant testimony. I'm not sure you're correct.

17 Then, you know, if you don't want that question to
18 come in, then I think we need to stop at this point and
19 let me hear your argument on the issue of whether or
20 not it's a jury question or a legal question.

21 MR. CONNELL: Well, here's my point about that,
22 Your Honor. We're not -- the evidence hasn't all been
23 presented to you yet. So you can't, respectfully -- do
24 whatever you want to, of course, but --

25 THE COURT: Yeah, I know.

1 MR. CONNELL: But you can't make that --

2 THE COURT: Right. I know what you're saying.

3 MR. CONNELL: -- that decision until we get to
4 that point in the case.

5 THE COURT: That's why I didn't understand,
6 because here's the thing. The fact that he paid an
7 accommodation tax, and if he just testifies to that,
8 that doesn't confuse or cause any issue with the jury,
9 in my opinion. If I agree with you that it's a jury
10 question, and I -- I mean, it's a legal question and I
11 resolve it in favor of that the Act applies, at that
12 point, it's never mentioned again.

13 However, if I agree with Mr. Connell, then it is
14 relevant, and it will probably be raised upon -- I
15 mean, it will probably be raised in his closing
16 argument.

17 So that's -- my point being is, I don't think
18 there's any harm at this point in allowing him to ask
19 that question and let him answer it. I thought it was
20 going -- I thought he was going to go further and talk
21 about what that money is used for. Because it's
22 relevant if I agree with Mr. Connell. It's not
23 relevant, and therefore won't be confusing, if I agree
24 with you, Mr. Bryan, because that's not going to be a
25 question for the jury to even consider.

1 MR. BRYAN: Could I ask a question just for
2 clarification?

3 THE COURT: Yeah.

4 MR. BRYAN: Thank you. Your view of this is, if
5 it goes to the jury, it's a relevant question; right?

6 THE COURT: It's relevant -- for example, if I
7 agree with Mr. Connell that whether or not the
8 Recreational Use Act applies, if that's a jury
9 question, then I think it's relevant because that's one
10 of the --

11 MR. CONNELL: It goes to one of the standards of
12 care.

13 THE COURT: -- one of the standards of care as far
14 as -- but he's got more to connect to it. It's not
15 just that.

16 MR. BRYAN: That's what I'm saying.

17 THE COURT: He would have to bring in somebody who
18 can talk and testify about that walkway and how it's
19 built and what that the money is -- but my point is, it
20 becomes relevant if that's a jury issue. That, in and
21 of itself, is not dispositive.

22 MR. BRYAN: I agree with you. I'm just afraid the
23 impression is going to be for the jury.

24 THE COURT: But if I agree with you, if I decide
25 that whether or not that Act applies is a legal issue,

1 and I agree with you, then that came in and the jury
2 will never hear another word about it, and he can't
3 argue about it.

4 MR. BRYAN: I see what you mean.

5 THE COURT: Am I right? I mean, as far as going
6 forward and allowing you to ask your question.

7 MR. CONNELL: I think what happens is, if you
8 think it applies, then the standard is gross
9 negligence.

10 THE COURT: Right.

11 MR. CONNELL: I mean -- and so I have to prove
12 gross negligence to the jury.

13 THE COURT: Which, whether or not he paid the
14 accommodation tax, isn't an issue.

15 MR. CONNELL: Well, yeah, if you don't think that
16 the -- I can connect it up, that's correct. If you
17 don't think I can connect up the accommodations tax to
18 the --

19 THE COURT: There would be no reason to even talk
20 about accommodation taxes if I rule that the Act
21 applies.

22 MR. CONNELL: No, sir. There still would be a
23 reason, because all you'd have in that situation -- you
24 need to read the Act -- but all you'd have in that
25 situation was me being required to prove gross

1 negligence.

2 THE COURT: Right.

3 MR. CONNELL: If there's an exception for payment,
4 then gross negligence is not a factor, and it's like
5 any other premises liability case. Do you see the
6 difference between what --

7 THE COURT: So, under the Act -- so here -- and
8 you're right, I haven't read the Act. I, obviously,
9 need to. But under the Act, it's a gross negligence
10 standard unless you paid --

11 MR. CONNELL: You prove an exception. That's one
12 of the exceptions.

13 THE COURT: Like, in other words, if it was one of
14 those restricted beach accesses, only to the members
15 who stay in this complex.

16 MR. BRYAN: It doesn't apply at all.

17 MR. CONNELL: Well, think of it more this way,
18 Your Honor.

19 THE COURT: That's my -- go ahead.

20 MR. CONNELL: If that's a park and you have to pay
21 to come into the park --

22 THE COURT: Right.

23 MR. CONNELL: -- then that's probably an
24 exception. But if it's public hunting grounds where
25 you can go on it without having to make any payment,

1 that may be the gross negligence standard.

2 THE COURT: Right. But in this case, I'm pretty
3 confident that there's nothing you're going to ever
4 present that's going to show that his paying an
5 accommodation tax allowed him or didn't allow him to
6 use that access.

7 MR. CONNELL: But the Act doesn't say that, it
8 just says payment. It doesn't require it to be
9 earmarked like an admission to the circus or something.

10 THE COURT: Well, I'm going to read the Act, too,
11 then.

12 MR. CONNELL: I made a copy for you, if you want.

13 MR. BRYAN: Here are a couple sections, judge.

14 MR. CONNELL: Here's the whole thing, if you
15 wanted it.

16 THE COURT: She's got it, but I'll take it like
17 this.

18 MR. CONNELL: I know you really want to hear this
19 case with all this legal stuff.

20 THE COURT: No, listen, these are issues that have
21 to get resolved. I guess what I'm saying is, I'm not
22 sure that there's any harm to the Defense by allowing
23 you to ask that question and have it answered.

24 MR. CONNELL: Yes, sir.

25 THE COURT: Now, if we're going to go deeply into

1 it, that might be an issue. But it sounds to me like
2 you just want to know whether or not he paid the
3 accommodation tax.

4 MR. CONNELL: Yeah, that's the only question I
5 have of him.

6 THE COURT: Well, I'm going to allow that at this
7 point.

8 MR. CONNELL: But he doesn't know what it went to.

9 THE COURT: Right, right. And whether we get into
10 that other stuff will be a decision based on this
11 ruling, I guess.

12 All right. So we're just going to bring the jury
13 back in, I'm going to let you ask the question about
14 whether or not he paid an accommodation tax for his
15 stay at the hotel, and then we'll move on.

16 MR. CONNELL: Your Honor, it's ten minutes to
17 five. Do you want to stop then or are we going to go
18 on to the next witness?

19 THE COURT: No. This will be our final witness
20 because I don't want to leave this witness hanging if
21 there's anymore testimony.

22 MR. BRYAN: Does he know that he paid an
23 accommodation tax?

24 THE WITNESS: Um-hum.

25 MS. NEUSCHAFER: He does now.

1 THE WITNESS: No, no, I knew that before.

2 THE COURT: Guys, let -- I mean, come on. You
3 guys have stayed at hotels. How many times have you
4 paid a hotel bill and didn't see an accommodation tax
5 on it?

6 MS. NEUSCHAFER: Probably don't look at it too
7 closely.

8 THE COURT: Well, they're on there. I see it all
9 the time because I travel a lot. So I don't know what
10 it means. I'm always thinking it's just a way that the
11 City or the municipality or the county gets a little
12 extra money, you know, but anyway...

13 MR. BRYAN: Will I be allowed a one-or-two
14 question follow-up?

15 THE COURT: Yeah. We're going to finish this
16 witness before we rest for the afternoon; okay?

17 MR. BRYAN: Okay.

18 THE COURT: All right, let's bring the jury in.

19 (WHEREUPON, the jury came into open court at
20 approximately 4:50 p.m.)

21 THE COURT: All right. Mr. Connell, I'll allow
22 you to continue with your examination, sir.

23 MR. CONNELL: Thank you.

24 Q Now, when you checked out, did you pay an
25 accommodations tax?

1 A Yes.

2 Q Were you aware that this particular walkover had
3 been built in 1990?

4 A I was not.

5 Q Were you aware that there's a 15-year life span on
6 walkovers?

7 A No.

8 Q Have you ever hidden the fact from anybody that
9 you tried to get back to normal after this incident?

10 A No.

11 Q And today you're still trying to get back to
12 normal?

13 A Correct.

14 Q Now, a lot's been made about this bruise that you
15 have right here (indicating).

16 A Um-hum.

17 Q Is that where the disc is that's causing your
18 problem in your back?

19 A Yeah, that's the area that this tenderness is or
20 the soreness that I had on the side.

21 Q Okay.

22 A Front, right. Yeah, the back side.

23 Q Is that where the bruise is right there?

24 A Yeah, the bruise is on my hip right there.

25 Q All right. And the transverse fracture is where

1 on that spine?

2 A One of these little -- they're called a pedicle.

3 Q Right there?

4 A Yeah.

5 MR. CONNELL: All right. Thank you, sir. That's
6 all the questions I have.

7 THE COURT: All right.

8 RE CROSS-EXAMINATION

9 BY MR. BRYAN:

10 Q Mr. Ciampanella, do you have personal knowledge of
11 where the accommodation tax money goes?

12 A I do not.

13 MR. BRYAN: Thank you. All right, judge. That's
14 all.

15 THE COURT: All right. Thank you very much, sir.
16 You may step down.

17 (Witness excused.)

18 THE COURT: All right. Ladies and gentlemen, it's
19 about ten minutes to five, and we try to, you know, to
20 the extent we can keep regular business hours, we try
21 to do that. And so we don't really have enough time to
22 go into our next witness, so we'll just adjourn for the
23 afternoon and we'll pick up in the morning.

24 Now, it's a little bit different than when you
25 went to lunch because you're now about to leave and go

1 home, and you're going to -- I'm confident your family,
2 friends, or loved ones will be interested as to whether
3 or not you were selected to be on a panel. And I know
4 I'm blessed to be married to the most wonderful woman
5 in the world, but, man, she's curious about what goes
6 on in court. And I will replay this trial this evening
7 when I talk to her.

8 But you're not allowed to do that. If your
9 family, friends, or loved ones are curious about what
10 you did today, you can tell them that you were selected
11 to be on a panel, and that's what you're doing, and
12 that you have to be back tomorrow. But that's all you
13 can tell them.

14 If you say something as innocent as, yeah, it's a
15 case that involves the City of Myrtle Beach, a case
16 that involves the walkover to the -- or the beach
17 access, whatever it's called. Saying something as
18 innocent as that could possibly elicit a response that
19 might compromise your ability to be fair and impartial.

20 So I tell you this because it really is the best
21 way to handle it, and that is, you just need to tell
22 them that you are on a case, you're not allowed to tell
23 them anything about the case, not even the names of the
24 litigants or any -- nothing. But that when the case is
25 over, you'll be able to tell them everything they want

1 to know, and for them to just respect the fact that
2 you're under instruction by the Court to not have any
3 conversation about the case.

4 If they are curious as to how long the case is
5 going to last, you can tell them that I've talked with
6 the attorneys, I imagine we probably won't go past
7 Wednesday, I wouldn't think. We might even not go to
8 Wednesday. I just don't know. It's not a lengthy case
9 as far as time wise. We're not going to be here all
10 week or into next week.

11 So it's a very important case to the litigants
12 that are involved here, and the length of the case has
13 no correlation to its importance. It's extremely
14 important. But just let them know that you're not
15 allowed to discuss it. When it's over, you'll tell
16 them whatever they want to know, but until that point
17 they just need to respect that, that you're not allowed
18 to have conversation about it; okay?

19 If you haven't already experienced it today, jury
20 service is not physically taxing from a muscular
21 standpoint but it can be from a mental standpoint. And
22 so there are just countless studies that show that our
23 minds and our brains work much better and more
24 efficiently if they are well-rested.

25 So to the extent you can get a good night's rest

1 tonight, please try to do that so that when you come
2 back tomorrow, you're well-rested and ready to go to
3 work; okay?

4 I'm going to ask you, if you would, to be back
5 here at 9:30 in the morning. I don't know if you had
6 any difficulty with parking today, but if you did, the
7 main -- you know, all of y'all had to be here this
8 morning. The main panel isn't coming back in the
9 morning, so all of those cars will be eliminated, so
10 hopefully, parking won't be as difficult as it may have
11 been this morning.

12 But allow yourself enough time to get here,
13 parked, and get in, and please, if you would be ready
14 to go at 9:30 in the jury room, ready to go at 9:30,
15 I'd appreciate that; okay?

16 So if everyone else would please remain seated.
17 Ladies and gentlemen, we'll see you back here at 9:30
18 tomorrow morning.

19 Oh, folks, I was just taken by surprise, because I
20 live in Florence and we don't have this luxury in
21 Florence. But your Clerk of Court is very kind and is
22 offering to provide breakfast if you want some
23 breakfast in the morning. What, it's just biscuits or
24 something?

25 THE CLERK: Biscuits.

1 THE COURT: You know, a sausage biscuit. Anyway,
2 we'll something here. You're welcome to it, or if you
3 eat before you come, that's fine, too. Or if you don't
4 eat breakfast, that's fine. But we'll have that; okay?
5 Thank you, folks.

6 (WHEREUPON, the jury exited the courtroom at
7 4:57 p.m.)

8 MR. CONNELL: Your Honor, a couple of things. We
9 gave you the Limitation of Liability Landlord's Act.

10 THE COURT: Yeah.

11 MR. CONNELL: That's about ten pages.

12 THE COURT: Yes, sir.

13 MR. CONNELL: And the last page, the issue of
14 whether the Recreational Use Statute applied to
15 negligence actions was for the jury, a negligence
16 action against University. And that's the Harris
17 versus USC case that was decided, an issue being what
18 went to the jury, what charge went to the jury, not an
19 issue of whether or not you can stop the case because
20 of the statute.

21 So, Your Honor, we will argue that, if you look at
22 this case and you look at the statute, that that's a
23 defense they can argue, but it's not the catch-all for
24 every case.

25 MR. BRYAN: It can go to the jury on occasion, if

1 there's a question of fact about it.

2 THE COURT: Okay. But, and I'll look at it, and
3 I'll -- what we'll do -- and that's what I was going to
4 tell y'all -- if y'all would be here ready to go at 9,
5 we'll take up anything y'all want to address about this
6 issue; okay?

7 MR. BRYAN: May I approach with the some cases?

8 THE COURT: Yeah. And we'll start back, then, at
9 nine.

10 (WHEREUPON, the hearing adjourned at approximately
11 5 o'clock p.m.)

12 (The hearing resumed on Tuesday, January 24th,
13 2017, at approximately 9:27 a.m.)

14 THE COURT: Best way to do it is take it just
15 directly and which causes me to pose the question,
16 Mr. Connell, to you. Can you distinguish Kinsey versus
17 City of Myrtle Beach from this case?

18 MR. CONNELL: Yes, sir.

19 THE COURT: Other than the fact that they didn't
20 live in the same city in North Carolina and it was the
21 steps --

22 MR. CONNELL: Yes, sir.

23 THE COURT: -- instead of the rail.

24 MR. CONNELL: Yes, sir. I don't know if you've
25 looked at Harris versus USC?

1 THE COURT: I did look at it.

2 MR. CONNELL: All right.

3 THE COURT: And, to me, that stands for the
4 proposition that under that fact scenario, there was a
5 question as to whether or not the island, the way it
6 was being used by the University, and then the lady who
7 came, whether or not she was an invitee or a licensee,
8 and her status, all of that were questions that were
9 appropriate for the jury to decide.

10 MR. CONNELL: Yes, sir.

11 THE COURT: Here, I'm not aware of any question
12 about the status of the property being used, nor the
13 status of the Plaintiff.

14 MR. CONNELL: Well, here, Your Honor, are a couple
15 of things. Recreational Use Statute, the burden of
16 proof is on the Defendant to prove that. We hadn't
17 finished the case.

18 THE COURT: Oh, I know that. I'm just --

19 MR. CONNELL: I'd just point that out to Your
20 Honor. The second thing is, is that the Kinsey case is
21 a situation where somebody's stepping down from a step
22 onto an area where sand is gathered up underneath the
23 beach. A perfect example, just like the hunting land
24 situation where you go and step in a hole. This case
25 involves the City acting as a contractor and building

1 and repairing and maintaining a structure. And the
2 difference being that our expert is going to opine at
3 great length that they didn't follow -- that it wasn't
4 built correctly, they didn't follow the correct
5 building codes --

6 THE COURT: Oh, I'm sure that -- in other words --
7 but our question -- I think the question that we had
8 here was the question as to whether or not the
9 Recreational Use Statute even applies.

10 MR. CONNELL: We do have that question.

11 THE COURT: Well, what --

12 MR. CONNELL: But even if it does apply, the
13 expert's testimony would offer opinions of gross
14 negligence, which would send in to the jury, and just
15 like the Harris versus USC case, a situation where they
16 were on the beach walkover access.

17 THE COURT: Okay. Then I just completely
18 misunderstood what you were trying to say. I thought
19 that you were trying to -- I mean, obviously, if the
20 statute applies, then obviously your burden then is to
21 show gross negligence.

22 MR. CONNELL: That's correct.

23 THE COURT: Whereas, if it didn't apply, that
24 would not be your standard. I thought your issue -- I
25 thought you were arguing that the jury gets to decide

1 whether or not it applies at all.

2 MR. CONNELL: I think Harris does say that.

3 THE COURT: I don't think Harris does say that at
4 all.

5 MR. CONNELL: Well, Your Honor, if you look at --

6 THE COURT: Not under this fact scenario we have
7 here. It does in Harris.

8 MR. CONNELL: It's the same thing.

9 THE COURT: It's not the same thing.

10 MR. CONNELL: Your Honor, respectfully, it is,
11 because she's using a beach walkover access, and she's
12 arguing that she misstepped and that caused an injury.
13 In our case, we have experts -- in fact, the
14 Defendant's own expert says that they had a duty to
15 make sure that it was safe, they had a duty to inspect.
16 He even says that Mr. Ciampanella did nothing wrong.

17 THE COURT: The whole issue in Harris, though,
18 there was a question as to the use of that property by
19 the University and whether or not it met the criteria
20 for RUS to apply.

21 MR. CONNELL: They weren't arguing about rust in
22 Harris.

23 MR. BRYAN: This is argue as to RUS.

24 MR. CONNELL: Oh, I see.

25 MR. BRYAN: The Recreational Use Statute.

1 MR. CONNELL: Oh, okay.

2 THE COURT: Yeah, the Recreational Use Statute.

3 And so the issue there was whether or not the
4 Recreational Use Statute even applied at all in that
5 case.

6 MR. CONNELL: But they let the jury decide that.

7 THE COURT: Okay. Because under that fact
8 scenario, it was appropriate. There were questions of
9 fact. And I'm going to read it straight out of Kinsey
10 because it is identical to what we have here. In
11 Kinsey it says, In the incident case, the South
12 Carolina Recreational Use Statute limits the City's
13 liability. The City undisputedly owns the beach and
14 the walkover behind the hotel and, thus, an owner of
15 the land.

16 Here, there's no question, it's undisputable, the
17 City owns the beach and the walkover that was next to
18 this hotel.

19 MR. CONNELL: We do dispute that.

20 THE COURT: You do dispute that?

21 MR. CONNELL: Yes, sir. We dispute -- we say the
22 City maintains the walkover. We dispute they own the
23 land underneath it. It's not been proven that they do
24 at this point in the trial.

25 We also -- Your Honor, we also dispute, if Your

1 Honor looks, there's a law review article on this
2 particular statute. And there's actually another case
3 that says contractors are not covered under the RUS.
4 And if the City is, in fact, a contractor, a factual
5 issue in this case, then the issue of whether or not
6 that's decided is for the jury to decide.

7 THE COURT: Whether the City is a contractor?

8 MR. CONNELL: Yes, sir. Because they're doing
9 repairs, and they're maintaining, they're building it,
10 they're inspecting it, they're repairing it, they're
11 looking at it.

12 And, Your Honor, our position is that that is a
13 jury issue as to whether or not the City was grossly
14 negligence in the way in which they did that and in the
15 manner in which they did that. And the Kinsey case had
16 no expert in the case. She was stepping down off the
17 last step onto the beach where some sand had gathered
18 because of a high tide, a wholly different situation
19 than what we have here.

20 Here, we have a significant maintenance issue, the
21 way it was constructed, how it was constructed, whether
22 or not it --

23 THE COURT: That all goes to your burden as to
24 whether or not you can prove gross negligence.

25 MR. CONNELL: Yes, sir. And that's a jury issue.

1 THE COURT: I agree with you.

2 MR. CONNELL: That's certainly a jury issue in
3 this case.

4 THE COURT: I absolutely agree with that. I
5 disagree with you that in this case whether or not the
6 Recreational Use Statute even applies is in question.
7 And the argument about accommodation tax, which we took
8 up time yesterday, that's completely irrelevant.

9 MR. CONNELL: Well, Your Honor, in the Harris
10 case, as you know from reading it, they granted -- the
11 judge granted the summary judgment on simple
12 negligence. He said you couldn't prove that. But he
13 sent the gross negligence issue to the jury.

14 THE COURT: And I agree that, if there's evidence
15 that would tend to show gross negligence, that that is
16 a jury question. I agree with that.

17 Where I'm coming down with regards to this case --
18 and maybe it will help you as you go forward in
19 presenting your case -- and that is, I'm not going to
20 allow the jury to make the decision as to whether the
21 Recreational Use Statute is applicable in this case.
22 It is.

23 MR. CONNELL: Well, Your Honor, did you look in
24 Harris where the Court of Appeals said the burden of
25 proof for the Recreational Use Statute was on the

1 Defendant? There's a section in the --

2 THE COURT: I agree with you.

3 MR. CONNELL: And so, Your Honor, that would be
4 their burden of proof. It would not be a question of
5 law. And, apparently, that was something that was
6 raised to the trial court at the end of the case, and
7 the judge said, you know what, you're right. I should
8 have charged that. And the lawyer said, well, you
9 know, no, that's okay.

10 And the Court seems to opine in that situation
11 that the burden of proof is on the Defendant, and
12 that's just like comparative negligence, assumption of
13 the risk, and every other type of defense. That's
14 something for the Defendant to present to the Court for
15 the jury to decide, not as a matter of law.

16 MR. BRYAN: I can present that evidence through
17 Plaintiff's case. I presented evidence yesterday that
18 there's no charge for the use of the walkover. So I
19 can prove all of the elements conceivably --

20 THE COURT: And here's what it's going to come
21 down to. It's going to come down to is -- well, we'll
22 just have to proceed.

23 MR. CONNELL: Your Honor, what do you think about
24 this, too, in the statute, since you been looking at
25 it. If you look at Section --

1 THE COURT: Let me grab it.

2 MR. CONNELL: -- 27-340.

3 THE COURT: All right.

4 MR. CONNELL: And you look at the first section,
5 except as specifically recognized by or provided in
6 27-360, an owner of land who permits, without charge,
7 any person having sought such permission.

8 Well, Mr. Ciampanella didn't seek any such
9 permission to use the ramp, it was just there. So it
10 seems like that would be something that he would have
11 had to have done under statute to apply, sought such
12 permission. I mean, that seems to be part of the
13 element of the case. And certainly he didn't.

14 And then if you look at Section 27-320; and the
15 case head notes in that section, it says that the
16 Recreational Use Statute is a derogation of the common
17 law and must be strictly construed.

18 So it's not a situation where Mr. Ciampanella came
19 up to a gate and they said, do you want to come in,
20 like at the State Park or the case where somebody
21 drowned at Lake Murray. It's not that situation. It
22 was an open area. He didn't seek any permission, and
23 the City is acting as a contractor in constructing the
24 buildings. So how would the statute even apply in that
25 situation?

1 MR. BRYAN: Judge?

2 THE COURT: Yes.

3 MR. BRYAN: Mr. Connell's question about
4 permission is addressed by a Court of Appeals in the
5 case of Brooks. That's the Little League case. And in
6 that case, Plaintiff made the same argument that she
7 hadn't sought permission, and the Court essentially
8 said permission is implied here. You don't have to
9 have a --

10 THE COURT: Well, it would have to be.

11 MR. BRYAN: Correct.

12 THE COURT: If it wasn't, then what you're doing
13 is you're rewarding trespassers.

14 MR. BRYAN: Correct. So that --

15 THE COURT: If the law was that you have to
16 actually -- you have to literally seek permission to
17 use a walkway, then the statute would never apply.

18 MR. CONNELL: No. It would apply when you go to a
19 State Park, when you go to --

20 THE COURT: I'm talking about in this scenario,
21 with these walkways, these public walkways --

22 MR. CONNELL: Yes.

23 THE COURT: -- to beach access, it would never
24 apply in those situations.

25 MR. CONNELL: Yes, sir. Your Honor, we would ask

1 you to look at -- there's a law review article written
2 on this whole statute, it's about three pages. It goes
3 into great deal about what happens if you're a
4 contractor. It says the statute does not apply.

5 And, I mean, surely in this case, they're a
6 contractor, they're building, repairing, replacing. I
7 mean, they're not acting as a landowner of a vacant
8 piece of land. They're acting in a situation that is
9 much removed from owning a piece --

10 THE COURT: No. The statute says that if a
11 landowner provides or allows its property to be used by
12 the general public without charge -- the whole purpose
13 of the statute is to encourage private landowners to
14 make available to the general public areas of South
15 Carolina that would be of recreational use to the
16 general public and not basically -- so, in other words,
17 you don't have all the wealthy in the state hoarding
18 all this public property or all this property and
19 basically shutting down our beaches.

20 So the purpose of the statute is where a private
21 landowner. And then if you meet that, you're the
22 private landowner, you make it available to the public,
23 you don't charge them, then you are protected, and
24 you're not required to maintain what's on there, to --
25 in other words -- and I don't know all the language --

1 but it basically relieves you from a lot of the burdens
2 that you would have as a private landowner who was
3 charging people to come on. Then you have a higher
4 standard.

5 And so if you put a walkway there or if you put
6 something there, then you have a higher standard to
7 maintain that and to maintain it in a good condition,
8 da-da-da, and all those other things.

9 The whole purpose for that Recreational Use
10 Statute is that you then -- you don't have that higher
11 standard anymore. Now, you still have a gross
12 negligence standard that you have to be concerned with,
13 but so...

14 MR. CONNELL: But, Your Honor, when you take a
15 piece of property and you then build something on it
16 and you maintain it, even if the statute applies, that
17 takes it out of the statute. You've assumed a duty
18 beyond that. It's not --

19 THE COURT: Show me a law -- show me where it says
20 that. Show me case law where it says that.

21 MR. CONNELL: Corbett versus City of Myrtle Beach.

22 THE COURT: Do you have it?

23 MR. CONNELL: It's in the head notes. We can show
24 it to you. Contractor for the City on a beach was not
25 an occupant or person. They're acting not only as an

1 owner, if Your Honor takes their argument, but they're
2 acting as a contractor. They're acting as a contractor
3 because they're building, they're maintaining, they're
4 repairing, they're upgrading. All of those things are
5 different than just being a landowner under the
6 Recreational Use Statute.

7 The law review article that we were talking about
8 says contractors are not covered under the RUS.

9 MR. BRYAN: Judge, Mr. Connell -- Corbett
10 involves, I think, the contracts of this Jack's Beach
11 Service.

12 THE COURT: Right.

13 MR. BRYAN: The lifeguard service.

14 THE COURT: Right. They were the lifeguard
15 service.

16 MR. BRYAN: Mr. Connell seems to think that if we
17 go out there and hammer nails in our walkover, that
18 automatically makes us a contractor, like a
19 construction contractor. We're the owner, we own the
20 walkover. We are not a contractor in the sense that
21 Corbett talks about contractor.

22 And, further, I point out, judge, that the
23 Recreational Use Statute defines owner, an owner,
24 according to this, can be somebody who doesn't have to
25 actually be the owner. It can be somebody that's

1 simply a person in control of the premises.

2 So even if we don't own it, we are clearly in
3 control, that's his whole case. He's alleging we have
4 control and we failed to control it. So whether we own
5 it or not, the evidence already in evidence is that we
6 controlled it and maintained it. That part of the
7 statute's already been established. I don't need to
8 touch it in my case in chief. It's free, we're in
9 control. I mean, this has already been proven through
10 Plaintiff's case, if you ask me.

11 THE COURT: All right.

12 MR. BRYAN: I agree with you, judge. I think the
13 Recreational Use Statute does, in fact, apply.

14 MR. CONNELL: Well, only if -- Your Honor, even it
15 does, assuming it does, it's just a question of does
16 the jury think it was grossly negligent.

17 THE COURT: Yeah. I agree with that.

18 MR. BRYAN: You think it -- judge, it has been
19 decided summarily, the issue of gross negligence. I
20 have to show the absence of even slight care. If I can
21 show slight care, I assume that Your Honor can make
22 that call.

23 THE COURT: Well, of course all of this is
24 argument to be made once we reach a directed verdict
25 stage.

1 MR. BRYAN: Correct.

2 THE COURT: Not at this point.

3 MR. BRYAN: I'm just laying a foundation.

4 THE COURT: Sure. I mean, I understand. I guess,
5 you know, I thought we should address it this morning,
6 because I don't know what further testimony you have.
7 But I guess my -- and this is my opinion, but based on
8 what I thought we were dealing with -- and I certainly
9 would note any exception that the Plaintiff may have to
10 this opinion.

11 And that is, there's no relevancy to the fact that
12 they made a payment of accommodation tax by staying at
13 that hotel. That's not an issue in this case. That's
14 not going to be considered any further as far as the
15 issue as to whether or not the Recreational Use Statute
16 applies.

17 I mean, it was an interesting argument to make. I
18 just don't think it's -- it's not the intent of the
19 statute, and that wouldn't fit. But in any case, we'll
20 proceed and allow the Plaintiff to proceed with his
21 case, and we'll continue on. Is there anything that we
22 need to take up before we get started?

23 MR. CONNELL: No, Your Honor.

24 MR. BRYAN: No, sir.

25 THE COURT: Okay. All right. Then if we can get

1 the jury out.

2 (WHEREUPON, the jury came into open court at
3 approximately 9:45 a.m.)

4 THE BAILIFF: Hold on, judge, just a second.

5 THE COURT: All right, that's fine. All right.

6 Ladies and gentlemen, I hope everyone had a good
7 evening, had a good night's rest, and are ready to get
8 started back this morning.

9 If you recall, when we adjourned court yesterday,
10 we were on the Plaintiff's case, and so we'll pick up
11 where we left off. And I would recognize Mr. Connell
12 for the Plaintiff's next witness.

13 MR. CONNELL: Your Honor, let me talk to him just
14 a second about the document, if I could.

15 THE COURT: Yeah, that's fine.

16 MR. CONNELL: Thank you, Your Honor.

17 (WHEREUPON, Plaintiff Exhibit Nos. 17, 18 and 19
18 were marked for identification only.)

19 MR. CONNELL: Your Honor, we had subpoenaed the
20 City of Myrtle Beach clerk -- City Council --

21 THE COURT: Yes, sir.

22 MR. CONNELL: -- to provide us with some documents
23 regarding the beach walkover access, and we got three
24 documents that the Plaintiff and Defendant have agreed,
25 rather than have the City clerk come.

1 THE COURT: Okay.

2 MR. CONNELL: And, Your Honor, those documents are
3 a resolution of City Council regarding the Beach
4 Management Act, Plaintiff's Exhibit No. 17; the Dune
5 Walkover Guideline Construction Services,
6 Plaintiff's-18; and Plaintiff's-19, a work order for
7 the 77th Avenue North beach walkover access.

8 THE COURT: Okay.

9 MR. CONNELL: Your Honor, we would offer those
10 three exhibits into the record.

11 THE COURT: And no objection.

12 MR. BRYAN: Well, judge, Mr. Connell has a
13 highlighted copy, and actually I have a copy of the
14 full -- he's got like eight pages of the beach
15 management plan. I've got the entire document. So if
16 he's going to put it in, put it in with the entire
17 document that's not highlighted; fair?

18 MR. CONNELL: Where is --

19 MR. BRYAN: You can take your resolution. Just
20 put it with the entire beach management plan.

21 MR. CONNELL: All right. So you want me to add
22 that as a part of the document; is that what you're
23 saying?

24 MR. BRYAN: Take your resolution and staple it to
25 the entire -- with the entire beach management plan,

1 not just seven pages.

2 MR. CONNELL: That's fine. Is that what you want?

3 THE COURT: I think he's concerned that there's
4 something highlighted there.

5 MR. BRYAN: Yeah. You want the resolution
6 adopting this plan. All of this is in here. This is
7 the entire document, so you can refer to this.

8 MR. CONNELL: Yes, sir.

9 THE COURT: Okay. All right. So that's
10 Plaintiffs 17, 18 and 19, without objection.

11 (WHEREUPON, Plaintiff's Exhibit Nos. 17, 18, and
12 19 were admitted in evidence.)

13 MR. CONNELL: And, Your Honor, would you -- since
14 the City clerk is not here, would you explain the
15 efficacy of having them been admitted into evidence
16 even without her being here.

17 THE COURT: Oh, yeah. Ladies and gentlemen, what
18 this basically is, is -- and we're very fortunate that
19 we have a very amicable bar association here in this
20 area. And this is the lawyers just agreeing to rather
21 than bring the clerk in, have him or her get on the
22 stand, testify as to those documents, what they are,
23 the authenticity of those documents and all of that,
24 the attorneys, Mr. Connell and Mr. Bryan, have agreed
25 that rather than put you through all of that, that the

1 documents are what they are, and they don't need her or
2 him to come in and authenticate those.

3 And so they've just stipulated or agreed that
4 those are admissible in this case. And you would treat
5 those just as any other evidence that comes in. They
6 are authentic documents, they are the documents of the
7 council that they purport to be.

8 MR. CONNELL: Thank you, Your Honor. And I would
9 like to publish just a few sentences of the document,
10 of some of the documents.

11 THE COURT: All right, sir.

12 MR. CONNELL: And give them to the jury
13 afterwards.

14 THE COURT: Okay.

15 MR. CONNELL: Exhibit No. 18, City of Myrtle Beach
16 Construction Services, Dune Walkover Guidelines. The
17 following is a guideline for permitting and
18 constructing dune walkovers in the City limits of
19 Myrtle Beach. Additional requirements for design and
20 construction as follows, walkover shall be designed in
21 accordance with the 2015 International Building Code.

22 And that's Exhibit 18, Your Honor, and I want to
23 hand that to the jury.

24 MR. BRYAN: What year, Gene, if you can publish --
25 tell them what year that is.

1 MR. CONNELL: It says, revised 7/1/16.

2 MR. BRYAN: So it's a 2016?

3 MR. CONNELL: Right.

4 MR. BRYAN: Got you.

5 MR. CONNELL: And then the second document, Your
6 Honor, Exhibit No. 17, Resolution to Adopt the 2012
7 Beach Management Plan for the City of Myrtle Beach, 107
8 pages. Page 60 of the document, the City's goal is to
9 replace six to seven walkovers per year for the next
10 ten years. The walkovers built in the last five years
11 or so should have a life span of approximately 15
12 years. There are approximately 40 dunes walkovers will
13 need to be replaced during the next six to seven years.

14 In 2011, two of the walkovers will be converted to
15 handicapped access, north of 77th Avenue North, to
16 achieve the requirements of a handicapped walkover
17 every one and a half miles. Page 61, 77th Avenue is
18 the 33rd walkover to be replaced.

19 So, Your Honor, we would offer Exhibit 17 into
20 evidence, as Your Honor has already admitted.

21 THE COURT: All right.

22 MR. CONNELL: And that's pages 60 and 61. Thank
23 you. Now, Your Honor, the document final is
24 Plaintiff's Exhibit No. 19, which is a work repair
25 order for August 20th, 2014 after Mr. Ciampanella's

1 injury. We'd offer that into evidence as Exhibit
2 No. 19:

3 THE COURT: All right. Exhibit 19, without
4 objection.

5 MR. CONNELL: Your Honor, we would now like to
6 call Ms. Ciampanella to come forward.

7 APRIL CIAMPANELLA, after being duly sworn,
8 testified as follows:

9 THE CLERK: State your name for the Court, please,
10 ma'am.

11 THE WITNESS: April Ciampanella.

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. CONNELL:

15 Q All right, April. Tell us with you live, please,
16 ma'am.

17 A Mooresville, North Carolina.

18 Q All right. And how long have you lived in
19 Mooresville, North Carolina?

20 A Since the year 2000.

21 Q And how long have you and Mr. Ciampanella known
22 each other?

23 A Since we were 17. But we started -- we started
24 dating when we were -- in 2013.

25 Q All right. How many children do y'all have?

1 A We have three.

2 Q And what ages are they?

3 A 15, 13 and 8.

4 Q All right. And what kind of educational
5 background do you have?

6 A High school graduate. And I went to a -- Kings
7 College in Charlotte for a ten-month program.

8 Q All right. Now, let me ask you this, when you --
9 would you come to Myrtle Beach on a regular basis?

10 A Yes.

11 Q And tell us why.

12 A For vacation. We enjoy the beach.

13 Q All right. Now, how many times have you been to
14 Myrtle Beach prior to the incident on August 19, 2014?

15 A More than I can count. I mean, growing up we've
16 always came to Myrtle Beach.

17 Q And how many times have you stayed in Myrtle Beach
18 at the 77th Avenue North area?

19 A Me? I've only stayed there once, just that time.

20 Q And that was the time when this incident occurred?

21 A Yes.

22 Q And would you normally come down to Myrtle Beach
23 at a certain time in August because of the children's
24 school and that kind of thing?

25 A Yes. We would come when the children were out of

1 school. In that time, we came in August because the
2 rates were a little cheaper.

3 Q The rates were cheaper. They changed at a certain
4 time in August?

5 A Yes, yes.

6 Q So on this particular day that you were down here
7 in August, had the rates changed somewhat?

8 A Yes. I think they usually change like a week
9 before the kids go back to school, two weeks.

10 Q How many people were with you in your party when
11 you came down here?

12 A There was six of us. There was me, Richard, our
13 three children, and his mother.

14 Q And how long did y'all stay?

15 A I believe we were here two or three nights. It
16 was three to four days.

17 Q Did this happen the first night or did it happen
18 at the end of your vacation?

19 A The end. The night before we left.

20 Q All right. And can you explain to the jurors what
21 happened on the night of August 19, 2014.

22 A Yes. We had left the children with his mother at
23 the hotel. We had went out to dinner, we'd come back.
24 The sun was getting ready to set, so we grabbed our
25 beach chairs. We sat on the beach for 20, 30 minutes.

1 I don't remember the exact time.

2 Q About what time was it?

3 A When we got to the beach or when we left?

4 Q When you got there.

5 A It was probably a little before eight.

6 Q Okay. And when you got to the beach a little
7 before eight, where did you set your beach chairs out?

8 A Not far from the hotel. We probably walked 20,
9 30 feet out on the beach, set our chairs down.

10 Q Okay. And about what time did you decide to
11 leave?

12 A Well, it was right before the accident, so around
13 8:20, I guess.

14 Q And how did you get from your hotel to the beach?

15 A The walkway.

16 Q And how did you get back to your hotel?

17 A We took the walkway.

18 Q And can you tell the ladies and gentlemen of the
19 jury what happened when you were walking on the walkway
20 going back to the hotel.

21 A He was in front of me.

22 Q When you say he, you're talking about Richard?

23 A Yes, Richard.

24 He was in front of me a little ways, and I believe
25 I said something to make him stop, either, like, wait

1 up or slow down, you know, just something what wives
2 do. And he stopped.

3 Q He was out in front of you; is that what you're
4 saying?

5 A Yes, he was out in front of me. You know, I just
6 didn't want to walk by myself. And, you know, I don't
7 know, I don't recall exactly what I said, but I'm sure
8 it was something like that.

9 Q You weren't walking side by side with him at the
10 time?

11 A No, no. So he was up ahead, not very far, I mean,
12 probably less than where he is from me now. And he set
13 the chair down. At that point, I was still walking.
14 Can I stand up and show you?

15 Q Sure, you can. Sure.

16 A At that point, I was still walking. I remember he
17 set the chair down. He kind of stood this way
18 (indicating). You know, the rail was like this
19 (indicating). At this point, I was about -- not far
20 from him at all.

21 And as I got right here, I just remember he went
22 to, you know, just lean on the rail, and it was like --
23 just like that. Remember his arms started going and he
24 goes backwards. And there was nothing to stop it from
25 happening. There was nothing to grab onto. It just

1 happened just like that.

2 Q Was there -- was he sitting on the rail? There's
3 been questions --

4 A No.

5 Q Did you see him sit on the rail?

6 A No.

7 Q Was anybody else out there beside the two of you?

8 A Not that I remember. Not at that time. I
9 remember somebody walking by after he fell, but I don't
10 recall anybody being on the walkway with us.

11 Q About how far did he fall after he leaned on the
12 rail?

13 A Four to five feet, I would guess.

14 Q Okay.

15 A Closer to five. He's taller than me, so he has a
16 little bit further to fall.

17 Q What part of his body hit the ground?

18 A His back. His feet went straight up in the air,
19 and he landed flat on his back.

20 Q All right. Come down here, if you would, and talk
21 about this photograph a minute. Is this a photograph
22 that was taken the next day?

23 A Yes.

24 Q All right. And that was taken by who?

25 A This one? It's not taken by me. Maybe Tyler.

1 Q That's your son, your stepson?

2 A Yes.

3 Q All right. Now, is that the way the railing
4 looked on the night that your husband fell, with this
5 board down like this?

6 A Yes.

7 Q All right. And what about this board that was on
8 the ground; do you know?

9 A I don't know. I mean, when this happened, to be
10 honest, you notice through pictures, but my main
11 concern was not to analyze the whole rail situation.
12 My main concern was, you know, what's wrong, is he
13 hurt, how bad is he hurt, you know. I'm more concerned
14 about getting him up to the room and hoping that he can
15 take some ibuprofen and sleep it off, and we can go
16 home tomorrow.

17 Q All right.

18 A You know? This was not touched. I mean, we have
19 pictures from the night that it happened that we sent
20 Tyler down and they match this. So, yes, based on
21 that, I would assume this is the way it looked when it
22 happened.

23 Q Okay. Let's look at some of those photographs. I
24 believe this is Exhibit 3; is that right?

25 A Yes, it is.

- 1 Q And there's a shadow?
- 2 A That's Tyler.
- 3 Q That's your stepson?
- 4 A That's --
- 5 Q He took that picture?
- 6 A He was 13 at the time, yes.
- 7 Q All right. And is that the way it looked on the
- 8 night of your incident?
- 9 A Yes.
- 10 Q How about No. 5 with this rusty screw?
- 11 A Yes.
- 12 Q Okay. How about No. 6?
- 13 A Yes.
- 14 Q All right. And how about No. 7?
- 15 A Yes.
- 16 Q Okay. How about No. 8?
- 17 A Yes.
- 18 Q Now, were these the photos that were taken by your
- 19 stepson?
- 20 A Yes. That was about --
- 21 Q This one in the dark?
- 22 A That was about 20 minutes after the accident.
- 23 Q Okay. And how about No. 11?
- 24 A Yes.
- 25 Q Okay. And how about this board that's down here

1 on the bottom right there?

2 A I mean, it was dark, so we couldn't see the board.

3 Q Okay. Do you see it in the photograph?

4 A I see it in the photograph, yes.

5 Q That's an accurate photograph of the area?

6 A That's an accurate photograph of the area, yeah.

7 Q Okay. How about No. 13?

8 A Yes.

9 Q No. 14?

10 A Yes.

11 Q Okay. Now, there is a picture, No. 9?

12 A That's an accurate photograph.

13 Q All right. And who took that photograph?

14 A Probably me.

15 Q Okay, all right. You can go back and sit down.

16 Okay. Now, when you got back to the -- how did you get
17 back to the room?

18 A I know that I carried the chairs, and I believe he
19 was leaning on me. He was in a lot of pain. I
20 remember that part.

21 Q All right. Now, I didn't ask you this, but I'll
22 ask you. Did you see Richard touch the rail before he
23 leaned on it?

24 A No.

25 Q When you got back to the room, what made you call

1 the ambulance? Tell me what happened.

2 A Well, he was in a lot of pain, and it was about
3 two hours later that we called the ambulance. He had
4 to use the bathroom. He tried to get up, and he
5 couldn't, and it scared him, and he started to cry
6 because he couldn't get up.

7 Q What do you mean, he couldn't get up?

8 A He was -- he couldn't stand up. Any kind of
9 movement would -- you know, it was just very painful
10 for him. He could not get up to go to the bathroom.
11 He couldn't really be comfortable unless he was laying
12 perfectly still in the bed, and even then...

13 So when that happened, when he got upset, I told
14 him, it's time to call an ambulance, you have to go to
15 the hospital and I can't get you there by myself. We
16 have to call an ambulance.

17 Q Okay. Tell me what happened then.

18 A Well, we went to the hospital.

19 Q By ambulance?

20 A He did, yes. I followed them there. The kids
21 stayed at the hotel with my mother-in-law. I sit in
22 the waiting room of the ER, and they have a screen.
23 And I was told to just watch the screen, and then when
24 he got done doing his test that they would come and get
25 me and take me back to see him.

1 Q How long was he there?

2 A We did not get back to the hotel until 5 o'clock
3 in the morning. So we were there all night.

4 Q Was he offered to stay in the hotel -- I mean, in
5 the hospital as an inpatient?

6 A Yes.

7 Q And why didn't he do that?

8 A Our children -- we wanted to get everybody home.
9 We wanted to get back home. We just wanted to get
10 home.

11 Q And was he on pain medication when he left the
12 hospital?

13 A Yes.

14 Q What type of pain medication, if you know?

15 A I believe he had shots of morphine. I can't be a
16 hundred percent positive, but he was on shots of pain
17 medication.

18 Q How did you get him back to your house in North
19 Carolina?

20 A We had to -- the hotel didn't have a wheelchair,
21 whenever we would ask. So the way the Grand Shores is
22 set up, our hotel room was right here (indicating).
23 You know, the door led to the outside, and there was a
24 small walkway, and luckily, our car was right there.
25 It was attached to the parking garage.

1 And so I had to have him kneel on a luggage cart,
2 and that's how I got him into the bed while my
3 mother-in-law packed up the house or the hotel room.
4 She packed the car up. We got the kids situated. We
5 had two vehicles. My daughter and my son, my daughter
6 sat in the middle. We laid his seat all the way
7 backwards for the whole ride home. We had him kneel on
8 a luggage cart, again, to get him back to the car. And
9 he stayed in the car the whole way home.

10 We went through one drive-thru to feed the kids,
11 and if he had to use the bathroom, he had to use a
12 bottle because we could not get him out of the car.

13 Q All right. And when you got back to your home,
14 about how many days did it take you to get a doctor's
15 appointment?

16 A I believe it was five or six.

17 Q And was that with an orthopedist or a specialist?

18 A Yes, to the doctor he went to see.

19 Q And what kind of work was he doing at the time or
20 prior to him getting injured like that?

21 A What kind of work was he doing prior?

22 Q Yes, ma'am.

23 A Whatever he wanted to do. He's very active, wakes
24 up at 4:30, 5:30 on his own every morning, and if he
25 lays in bed, he's wasting daylight. So that's just how

1 he is.

2 Q What was his job, what was his employment at that
3 time?

4 A He was a store manager at Lowes Foods.

5 Q And what were his hours?

6 A He would go in anywhere between five and six, and
7 he would get home usually around between six and seven.

8 Q All right. Was he traveling around to various
9 stores, or was he at one store?

10 A At that time, I believe he was at the Mooresville
11 store.

12 Q And was he out of work as a result of the
13 transverse fracture he had to his back?

14 A I'm thinking about that. I'm not sure that he was
15 at the Mooresville store at the time. He could
16 have still been in Hickory.

17 Q Is that one of the stores in your area?

18 A Yes, he was -- I mean, he traveled to so many
19 different stores, it's hard to pinpoint what store he
20 was at.

21 Q Okay. And was he not able to work when he got
22 home after the fall?

23 A Oh, no. No.

24 Q How long was he not able to work?

25 A I know he was written out of work for six to eight

1 weeks after the accident.

2 Q Okay.

3 A He stayed in bed. I don't think he got out of bed
4 for the first couple of days after we got home. We
5 would give him a shower. We would put the plastic
6 patio chair in the shower, and he would have to sit in
7 the shower, and we would spray him with the sprayer in
8 the shower and put him back in the bed.

9 Q Okay. And the week after the fall, who was with
10 him at home?

11 A My stepson, Tyler, he spends the summer with us.
12 He lives with his mother. He had one more week with
13 us, so he stayed with his dad and I went to work.

14 Q Okay. And the other weeks that he was out, was he
15 bedridden during those weeks?

16 A He was getting to where he could get out of bed,
17 but not for long periods of time. And he didn't walk
18 upright. He kind of reminded you of the -- you know,
19 he would kind of walk hunched over or shuffle around.

20 Q All right.

21 A And I don't think he would be upright for more
22 than 30 minutes max before he was back in the bed.

23 Q How about his pain, what kind of pain was he
24 having that you could see from looking at him?

25 A Uncomfortable. In pain if he -- if he stayed up

1 too long. I mean, he just had to lay down.

2 Q All right. And about when did he go back to work
3 after being out for that six to eight-week period?

4 A I believe he was released to go back to work
5 September 29th, I believe, for light duty. He couldn't
6 lift more than ten pounds --

7 Q Okay.

8 A -- for two weeks after that. So when he went back
9 to work, he wasn't to lift anything over ten pounds for
10 the next two weeks.

11 Q All right. So August 19th was the incident?

12 A Um-hum.

13 Q And then September, what day did you say it was?

14 A I believe it was the 29th of September.

15 Q And was he able to go back to work for that period
16 of time and not lift anything over ten pounds?

17 A The first week that he went back to work, he
18 didn't work full days. He would work a few hours and
19 come back home because he couldn't do it. Sitting too
20 long hurt, you know, standing too long hurt.

21 Luckily, they have the motorized shopping carts,
22 and he could use those when he needed to. But it took
23 him a couple of weeks to be able to do a full day of
24 work.

25 Q Okay.

1 A And he wore a back brace at that time, too.

2 Q When did he fully get back to work, about?

3 A Probably -- knowing him, it was probably, I would
4 say, two weeks max before he started.

5 Q What type of limitations has he had, have you
6 noticed, since this incident?

7 A Limitations? Now, two and a half years later,
8 right?

9 Q Right.

10 A I would say, you know, he's doing pretty well.
11 He's just cautious, very cautious when he lifts
12 anything or, you know, watches what he does. He still
13 rides motorcycles. That's his relaxation. He --
14 that's what he does to relax. I play phone games on my
15 phone, I read TMZ, and he rides motorcycles and cleans
16 cars to relax. So he does that.

17 He does, you know, whatever he can. I mean,
18 there's hobbies that he enjoys. The most thing is just
19 lifting or, like he said, you don't want to ride roller
20 coasters or you -- you just be smart about it. Don't
21 do anything that's going to -- don't go sledding or,
22 you know, anything that's going to hurt your back.

23 Q Okay. What kind of things did you and the family
24 have to do during the period of time that he was
25 convalescing?

1 A We had to do everything immediately after the
2 accident.

3 Q For about how long?

4 A Probably the first at least three weeks.

5 Q Okay. How about -- I'm sure you guys own a house;
6 right?

7 A Yes.

8 Q Who did the house repairs, landscaping, cutting of
9 the grass, that kind of stuff?

10 A Our neighbor, next-door neighbor, he had a little
11 side business where he cut yards. So we paid him to
12 cut our yard probably for a month or so. I mean, I
13 think he only -- he mowed it every like two weeks. And
14 it was like not priority -- top priority at the time.

15 Q I understand.

16 A And we had him do that. I cleaned the house, you
17 know, I did all of that stuff.

18 Q Has he mentioned to you whether or not he
19 continues to have some pain on occasion as a result?

20 MR. BRYAN: Your Honor, calls for hearsay.

21 MR. CONNELL: Doesn't call for hearsay in this
22 situation. If he's telling her that, if she knows
23 about it --

24 THE COURT: Overruled.

25 THE WITNESS: Yes. If he overdoes it, his back is

1 sore. It's not like it was when it happened, but...

2 Q It's a lot better than when it first happened?

3 A Yes, because...

4 Q But it still has some problems?

5 A Yes.

6 Q Okay. Prior to the incident, what was his
7 physical condition during that -- prior to the
8 incident, when he had a fracture?

9 A What was his condition?

10 Q What could he do prior to the --

11 A Anything, anything he wanted. He -- I mean, he's
12 very -- I don't know how to describe it, a manly man.
13 I mean, he just -- he does whatever. He digs holes,
14 he -- you know, whatever needs to be done, that's what
15 he does.

16 Q Okay. And you're not saying that he's almost back
17 to where he was; are you, today?

18 A No. I don't think he will ever be, you know, back
19 to where he was. But he's -- you know, we have a nice
20 life, we have -- we enjoy life. I'm not saying that,
21 you know, his life is terrible either, it's not.

22 Q He's gotten a lot better since it happened?

23 A Yes.

24 Q And currently he's working at the Lowe's Home
25 Centers?

1 A Correct.

2 Q And that's a different type of job than the

3 Lowes --

4 A Yes. It's a desk job.

5 Q And the grocery store manager was a more physical
6 job?

7 A Yes, it was.

8 Q Okay. Would the grocery store manager job require
9 more lifting?

10 A Yes.

11 Q Bending, stooping?

12 A Yes.

13 Q And his current job is more a nine to five?

14 A Yes. And he still has to -- I mean, sitting all
15 day is not good for his back either. He still has to
16 get up and go walk. And, luckily, they have -- it's
17 the headquarters there, and they have a nice pond that
18 you can go walk around. So it's very common for him to
19 get up and go do a lap around the pond to stretch his
20 back out.

21 MR. CONNELL: Okay. All right. Answer any
22 questions they might have. Thank you.

23 THE WITNESS: Thank you.

24 CROSS-EXAMINATION

25 BY MR. BRYAN:

1 Q Good morning, Ms. Ciampanella.

2 A Good morning.

3 Q You told Mr. Connell that -- when he asked how
4 your husband is doing -- I was taking notes -- I think
5 you said, he's doing pretty well. Is that still a
6 correct statement?

7 A Yes.

8 Q Okay. And you answered he's still riding
9 motorcycles?

10 A Yes.

11 Q Yesterday -- several months after the accident,
12 your husband bought a Harley Road King; is that
13 correct?

14 A Correct.

15 Q Okay. And since then, since that time, has your
16 husband bought another motorcycle?

17 A Yes.

18 Q Tell us what that is.

19 A It was Electra Glide. It was his uncle's
20 motorcycle.

21 Q So he bought a -- is that another Harley Davidson?

22 A Yes, it is. It's a -- much more comfortable. It
23 feels like sitting on your living room sofa.

24 Q Okay. He still rides motorcycles. What is it
25 that your husband can't do now? He's doing

1 landscaping. He says he cuts the grass, does weed
2 eating, edging.

3 A Um-hum.

4 Q What is it that he cannot do?

5 A I don't know, I mean.

6 Q Okay.

7 A I'd need to...

8 Q That's fair enough.

9 Earlier, you were looking at a number of
10 photographs.

11 MR. BRYAN: Gene, where are the photographs?

12 MR. CONNELL: They're all up there. The photos
13 are right up --

14 MR. BRYAN: I see.

15 Q Mrs. Ciamparella, earlier, Mr. Connell showed you
16 a number of photographs. And these are close-up shots
17 of the post, it looks like.

18 A Uh-hum.

19 Q Did you inspect the post that night or that next
20 day?

21 A No.

22 Q Okay. So when Mr. Connell asked you, this is the
23 way it looked the day before, you don't really know how
24 it looked the day before, you didn't really inspect the
25 post or the screws?

1 A Just off photographs.

2 Q Okay. And when your husband worked at Lowes
3 Foods, is it true that they had him moving from one
4 store to another?

5 A Prior to the accident, yes.

6 Q Okay. And he had to relocate based on wherever
7 Lowes Foods wanted to send him to be the next manager;
8 is that correct?

9 A Correct.

10 Q Lowe's Home Improvement, however, puts him in one
11 place?

12 A Correct.

13 Q And that's near you; correct?

14 A Five minutes from home.

15 Q Yeah, I think I understand now. When your husband
16 fell, why was there a rush to take pictures of the
17 scene?

18 A Well, I wanted to -- I thought at that time -- I
19 went, actually, down to the hotel lobby to notify them
20 that the walkway -- that my husband had just fell, and
21 you know, that the walkway was broken. And they, you
22 know, told me it was the City's property. And I
23 believe we just had Tyler go down and take pictures of
24 it.

25 Q That's when you sent your stepson to take

1 pictures?

2 A Yeah. I mean, I saw how much pain he was in. I
3 knew that we were getting ready to go -- have to go to
4 the hospital.

5 Q Okay. All right. You had been using that
6 walkover to get to and from the beach several times a
7 day for the several days that you had been in Myrtle
8 Beach; correct?

9 A Yes.

10 Q Did you have to pay to use the walkover?

11 A No.

12 Q Were there any signs indicating that the walkover
13 was private property?

14 A Not that I recall.

15 Q Okay. Would you agree with me that the walkover
16 was open for public use?

17 A Yes.

18 Q Okay. At no charge?

19 A No, no charge.

20 Q Okay. And you could use the walkover to get to
21 the beach to do whatever people do at the beach, fish,
22 swim, fly a kite, or watch the sunset; yes?

23 A Yes.

24 Q Okay. Before your husband fell, did you notice
25 that the top railing of the handrail had been knocked

1 off?

2 A No, sir.

3 Q So you don't know -- do you know how the top board
4 got knocked off?

5 A No.

6 Q When you used that walkover earlier that day, the
7 day of August 19th, and let's say the previous day
8 during daylight hours, did you notice that the top
9 board of the handrail had been knocked off?

10 A No.

11 Q No.

12 A I never really look at the walkover, I mean,
13 inspect rails or anything like that. Prior to this,
14 you just don't notice.

15 Q Okay. But clearly, I mean, they are there to be
16 seen. There's handrails on either side of you when you
17 walk down the walkover; correct?

18 A Sure.

19 Q Okay. So if you're paying attention, I mean, you
20 could see that there's --

21 A When you got three kids and you've got all kinds
22 of beach equipment and stuff, the last thing you're
23 doing is inspecting handrails.

24 Q Okay. On your way to the beach that night when
25 you're with your husband to go to the beach to watch

1 the sunset, you would have gotten out there before the
2 actual sunset; correct?

3 A Around the same time, I would think.

4 Q There's still some daylight; correct?

5 A Sure.

6 Q All right. At that time, on your way out to the
7 boardwalk -- excuse me -- on your way across the
8 walkover to the beach, did you happen to notice that
9 the railing was knocked off at that point?

10 A No.

11 Q Never did. You love your husband,
12 Mrs. Ciampanella?

13 A I do.

14 Q You want what's best for him?

15 A I do.

16 Q On the night of August 19th when he's up in the
17 bed, he said he's laying on his back and his back
18 hurts, you said, baby, you can't be here, you're going
19 to the hospital; right?

20 A Yes, finally. It took him a few minutes to agree
21 to it, but yes.

22 Q All right. Let's just fast forward a year, or
23 today. If you thought your husband needed to see a
24 doctor, he was in a -- if he was in a bad way, if he's
25 hurting or if his situation was causing you problems,

1 you would say, baby, you got to go see a doctor;
2 wouldn't you?

3 A Yes, I would, if I thought that there was
4 something the doctor could do.

5 Q Okay. But you haven't insisted that your husband
6 go back to see a doctor; have you?

7 A No. Because laying around is what makes his back
8 feel better.

9 Q Okay. Your husband, back in 2014, he may be
10 thinner now than he was then; is it correct that he
11 weighed about 245 pounds?

12 A Yeah.

13 Q Back in August of 2014?

14 A I believe so.

15 Q Okay. And Mrs. Ciampanella, you're here today to
16 help your husband; correct?

17 A Correct. To tell the truth.

18 MR. BRYAN: Thank you, Mrs. Ciampanella. I have
19 no further questions.

20 THE COURT: Anything on redirect?

21 MR. CONNELL: Just a couple, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. CONNELL:

24 Q What's the purpose of a railing?

25 A To keep you from falling out.

1 MR. BRYAN: Objection. Calls for speculation,
2 judge.

3 MR. CONNELL: Your Honor, it's our--

4 THE COURT: What was the question?

5 MR. CONNELL: I said, what's the purpose of the
6 railing? It would be common knowledge, Your Honor,
7 what the purpose of a railing is.

8 THE COURT: I'll allow it.

9 MR. CONNELL: Thank you.

10 Q What's the purpose of a railing?

11 A To keep you from falling off the walkway.

12 Q What do you expect a railing to do for you?

13 A Not let you fall off the walkway.

14 Q Okay. Now, I think the question was asked, did
15 you see the top rail that was lying on the sand. In
16 this photograph, did you see the top rail that was
17 lying on the sand?

18 A I see it in the photograph.

19 Q Okay.

20 A Yeah.

21 Q You're walking on this railing [sic], it's at
22 night. Can you see this top railing lying on the sand?

23 A I don't know that you'd be able to see it during
24 the day while you're on the walkway.

25 Q Well, let's look at the photographs that were

1 taken the night of the accident or the incident.

2 Number 11, is that a side view of the railing?

3 A Yes.

4 Q Or, I mean, of the walkway. Would you have been
5 able to see that railing laying down there?

6 A Not on the walkway, no.

7 Q How about No. 10, a picture that was taken at
8 night, the night of the incident; would you have been
9 able to see the railing?

10 A No.

11 Q Were you aware that the top railing was not on, on
12 the night of it?

13 A We were not aware that anything was wrong with the
14 walkway railing.

15 Q Okay. Now, there's been some question about your
16 husband's weight. How tall is he?

17 A Six-four.

18 Q Is he fat?

19 A Not to me.

20 Q All right. Has he been less than 240 and more
21 than 240?

22 A Yes.

23 Q All right. Does he fluctuate a few pounds?

24 A Yes. He's recently lost about 20 pounds.

25 Q But that's pretty much the same he was on the

1 night of the --

2 A Yeah, pretty close.

3 Q Within a few pounds?

4 A Yes.

5 Q Now, was there any indication that he was pushing
6 on the railing with all his force?

7 A No.

8 Q Could you describe to the jury how he was leaning
9 on the rail?

10 A He barely touched it. It happened just like that
11 (indicating), it's...

12 Q All right.

13 MR. CONNELL: Thank you, ma'am.

14 THE COURT: Anything further?

15 MR. BRYAN: No, Your Honor.

16 THE COURT: Thank you very much, ma'am. You may
17 step down.

18 (Witness excused.)

19 MR. CONNELL: You Honor, we need a few minutes to
20 set Dr. Poletti's video deposition up.

21 THE COURT: All right. Folks, we need to set up
22 some equipment here. We're going to take a short
23 recess and ask you to please not have any discussion
24 about the case. If you need anything, just let the
25 bailiff know that, and we'll start back in just a

1 little bit.

2 (WHEREUPON, the jury exited the courtroom at
3 10:33 a.m.)

4 THE COURT: We'll be at ease.

5 (Discussion off the record.)

6 MR. CONNELL: I would like to add these back as
7 the next exhibits.

8 COURT REPORTER: Which will be 20 through 23.

9 THE COURT: The next one is 20.

10 MR. CONNELL: All right. So, Your Honor, 20 will
11 be the MRI lumbar spine.

12 THE COURT: All right.

13 MR. CONNELL: 21 will be the Piedmont Healthcare
14 records. 22 will be the Southeastern Spine intake
15 sheet. And the next one will be his original file,
16 Dr. Poletti's original file.

17 MR. BRYAN: All right. The folder is in the
18 original file, correct.

19 (WHEREUPON, Plaintiff Exhibit Nos. 20 through 23
20 were marked for identification only.)

21 (WHEREUPON, Plaintiff's Exhibit Nos. 20 through 23
22 were admitted in evidence.)

23 THE COURT: All right.

24 MR. BRYAN: Judge, I have an issue with the video
25 itself. I'm not trying to prevent Mr. Connell from

1 offering Dr. Poletti's testimony, but there's a large
2 part of it I've not seen on video. I do have the full
3 transcript.

4 And what I propose is he wants to play his part of
5 it, fine. But I've not had a chance to look at the
6 video part. I have identified excerpts to read. If he
7 wants to identify other excerpts to read, fine. But I
8 propose -- it's not ideal, I'd rather have a chance to
9 look at the video, but I didn't have that opportunity
10 last night.

11 So what I propose to do is he plays his part.
12 There may be -- there's two discs. On the tail end of
13 the first disc actually I'm on there, and I've got that
14 clip. And it cuts out a lot of dead time. There's
15 like two or three minutes where I've cut it out.
16 That's part of my concern also, there's a lot of dead
17 time that's going to aggravate the hell out of the
18 jury. Reading it will eliminate that dead time.

19 Because I was -- he's trying to find records, I'm
20 trying to find records, and so it -- that's how it
21 ended up being an hour and a half deposition. But
22 really the testimony is probably 45 minutes or so.

23 But I propose to do it that way. Since I didn't
24 have the benefit of the video, let Gene play his video,
25 and then I can read my parts.

1 MR. CONNELL: Your Honor, I don't know what
2 happened with the video. It was taken January 11th.
3 We -- I think he got the video and, I think, Friday
4 night he said he -- he said there's something missing.
5 We spent a lot of time yesterday. I got the whole
6 video actually brought to me and put on these tapes.
7 And they include one and two, and then they also
8 include the missing lines from his part of the
9 deposition.

10 So I don't care how he does it. I want to be able
11 to show my 30 minutes of examination of Dr. Poletti,
12 because he describes the fracture, he shows some
13 things.

14 THE COURT: Will, is yours on there, though, or
15 you don't know?

16 MR. BRYAN: It sounds like it's cut up. Sounds
17 like he's got two discs, and then he's got a third disc
18 that captures my missing --

19 MR. CONNELL: Well, he got -- we got two discs
20 from the videographer.

21 THE COURT: Yeah.

22 MR. CONNELL: And so we called him, when this
23 occurred, we heard it last night.

24 THE COURT: Right.

25 MR. CONNELL: And he sent us a Dropbox. And all

1 we did was make the same two videos, one and two, with
2 everything on it. And then, as a precaution, my
3 assistant made a video with what he said was missing.
4 So, I mean, we have --

5 THE COURT: So that tape or that disc purports to
6 have the missing 23 pages of your testimony?

7 MR. BRYAN: I don't know.

8 MR. CONNELL: But these two --

9 MR. BRYAN: I'm sure it does. I just haven't seen
10 it.

11 MR. CONNELL: These two discs have everything,
12 Your Honor, just like --

13 THE COURT: That?

14 MR. CONNELL: No, no. This is -- he said this
15 part was missing.

16 THE COURT: You said it has everything. If that's
17 missing, then it's not on there.

18 MR. CONNELL: No, no, it is. We have the -- the
19 videographer said, I taped everything, and here are my
20 two discs. And so we have those. And so I said, well,
21 since he said 23 pages are missing, how about just put
22 that on a separate disc just for purposes of giving it
23 to him if he wanted it.

24 So, I mean, we have the two original discs of what
25 he made with both examination and cross-examination of

1 the person.

2 MR. BRYAN: I've never seen my full video.

3 MR. CONNELL: He has, he does have the written
4 transcript. That's nothing on the transcript that's
5 going to be different than what's on this video.

6 MR. BRYAN: I would just prefer to publish my part
7 since I haven't seen the video.

8 MR. CONNELL: I don't care about that, I just want
9 to --

10 THE COURT: So you're going to videotape your
11 direct examination, I mean, you have the video?

12 MR. CONNELL: Yes, sir.

13 THE COURT: You're going to show that direct.

14 MR. CONNELL: Yes, sir.

15 THE COURT: Then when we get to cross, we're going
16 to -- you're going to put up someone to read the
17 doctor's part?

18 MR. BRYAN: Yeah, if you'll just provide the jury
19 a 30-second explanation that stuff got lost.

20 THE COURT: Yeah.

21 MR. BRYAN: I've got a clip that I could play in
22 that first video, but I'm afraid it's going to -- we're
23 going to lose time switching from computer to computer.

24 MR. CONNELL: You can use mine. I'll let you,
25 whatever you want to do.

1 MR. BRYAN: Well, I'll just read it. I'll read
2 it. I'll just -- he'll play the video, and then I'll
3 read the excerpts.

4 THE COURT: You get to the end of your direct.

5 MR. CONNELL: Yes, sir.

6 THE COURT: And we'll cut it off. I'll then
7 explain to the members of the jury that there was an
8 issue with the video, there was some portions initially
9 missing, but then we recovered but not in time for you
10 to be able to review it. So that the remaining portion
11 of the deposition, which the entire thing was done -- a
12 transcript of the entire thing is there.

13 MR. CONNELL: Yes, sir.

14 THE COURT: But just out of an abundance of
15 caution, we're going to read or present the balance of
16 that through reading of the transcript.

17 MR. BRYAN: Well, I've identified excerpts to
18 read.

19 THE COURT: Okay.

20 MR. BRYAN: There's a lot of dialogue between
21 myself and Mr. Connell about exhibits that should be
22 cut out.

23 THE COURT: That doesn't need to be. You're just
24 going to basically read the testimony regarding
25 question and answer, question and answers, not all the

1 peripheral stuff.

2 MR. BRYAN: Correct. And there are some questions
3 that -- I mean, I asked him about Tony Romo having a
4 transverse process fracture.

5 THE COURT: Yes.

6 MR. BRYAN: I took that out. So, to be candid,
7 there is some testimony that was -- that is full
8 question, full answers.

9 THE COURT: Well, I'll just let them know that
10 you're going to read --

11 MR. BRYAN: Select excerpts.

12 THE COURT: -- select excerpts from the balance of
13 the video.

14 MR. BRYAN: That's fine. It's not great, but it's
15 fine.

16 THE COURT: All right.

17 MR. CONNELL: Your Honor, one of the things that
18 we have, this is Exhibit No. 20. That's the CT scan
19 that at the end I'd like to put that up just for a
20 second so the jury can see that, because I won't be
21 able to have -- they won't have that in the --

22 THE COURT: All right. The video, he doesn't
23 refer to that in --

24 MR. CONNELL: He does, but --

25 THE COURT: I mean, as far as it being where they

1 can see it.

2 MR. CONNELL: Yes, sir.

3 MR. BRYAN: Are they going to be able to tell what
4 the hell it is?

5 THE COURT: Probably not, I don't know.

6 MR. BRYAN: I mean, it's --

7 THE COURT: I've seen one before. It's Greek to
8 me.

9 MR. BRYAN: Gene, do whatever, but I don't know
10 that it --

11 MR. CONNELL: It's for effect, Will.

12 MR. BRYAN: Listen, but Gene can't get up there
13 and say --

14 THE COURT: Well, yeah, you can show it, but there
15 can't be any testimony about it.

16 MR. CONNELL: Yeah. I'm not going to be the
17 doctor.

18 MR. BRYAN: He has been before. I do have one --
19 I did object during Gene's direct of Dr. Poletti. At
20 page 19, essentially, there was some a question about
21 whether he needs future surgery. And the answer was,
22 It's possible but not probable. It's my position is
23 that's not the standard.

24 THE COURT: Right.

25 MR. BRYAN: That question needs to be cut out.

1 That full answer about it, maybe -- that needs to come
2 out. So you've got to be vigilant to cut it and then
3 fast-forward through it.

4 THE COURT: Well, let me ask you this. It's a
5 disc; right?

6 MR. CONNELL: Yes, sir.

7 THE COURT: And I'm assuming it's got like time
8 stamps or at least something?

9 MR. BRYAN: It does.

10 THE COURT: We can right now before we bring the
11 jury back out, you can get on the computer, go to that
12 question, see where it -- make a notation, see where it
13 ends, make a notation, and then we can do it rather
14 quickly, I would think.

15 MR. CONNELL: Okay. All right, sir.

16 THE COURT: If y'all want to do that, go ahead and
17 do that.

18 (WHEREUPON, a brief recess was taken at
19 10:46 a.m.)

20 MR. CONNELL: Your Honor, we need to talk about
21 this. Let me show you the deposition starting right
22 there.

23 THE COURT: All right.

24 MR. CONNELL: So, Your Honor, my position is we're
25 not going to ask for surgery. I'm not going to argue

1 that in closing. I do think there is valuable
2 information about his back is weaker than a normal
3 person that hadn't had that type of fracture. So now I
4 concede that he doesn't recommend future surgery. It's
5 not part of the damage.

6 MR. BRYAN: I think it's two sentences. Page 19,
7 line 17 and 18. And then the first two words in 19.

8 Beyond that, he's talking about the disc rupturing
9 and needing surgery. But he says there, the ruptured
10 disc, the disc is herniated, and it's weakened as a
11 consequence of this. Fine, I can live with that.

12 MR. CONNELL: Why don't I let you, so you don't
13 jump on me, decide when you want to stop it, so that I
14 don't miss a sentence that you're going to be
15 aggravated with me about.

16 MR. BRYAN: Let's just decide what --

17 MR. CONNELL: I know, but I'm not sure I can stop
18 it at the right -- there's no times on it. I mean, I
19 have to watch it --

20 MR. BRYAN: There should be.

21 MR. CONNELL: There's no times on the video, so
22 I'm going to have to --

23 THE COURT: So you just give the question, where,
24 All right, doctor, you also indicated with notes that
25 this is -- that it is possible, but not probable, that

1 he will have surgery. Is that in there? I mean...

2 MR. BRYAN: That's -- I don't think -- I'm not
3 sure that question or that answer should be in there.

4 THE COURT: So if we've got to go back before page
5 19; is that right?

6 MR. BRYAN: Well, but he -- I think what he wants
7 to get in is on page 19. I just don't know how to --
8 what's the previous question?

9 MR. CONNELL: I think your argument about his back
10 is weaker is something that the jury could decide based
11 on what they heard from the doctor, than a person who
12 hasn't had a transverse fracture.

13 MS. NEUSCHAFER: Gene, is that same testimony
14 about the back being weaker anywhere else in the
15 transcript?

16 MR. CONNELL: No.

17 MR. NEUSCHAFER: You don't think?

18 MR. CONNELL: I don't think so.

19 MR. BRYAN: I'm jumping from on page 19, judge,
20 line 8, all the way down to line 17. That's kind of
21 the same fault. It leaves out your question about
22 surgery, and you get in two more lines, if it's
23 ruptured and it's herniated and it's weakened as a
24 consequence. It's sort of the same thought. It's
25 going to be disjoined, but --

1 A MAN: I think it --

2 THE COURT: What's that?

3 A MAN: I said I think it's -- if you're talking
4 about the same thing, I think it's -- you've got it on
5 video.

6 MR. CONNELL: Yeah, I just don't want to -- I
7 don't want to make an error and have some, if Your
8 Honor is going to rule that. I think I ought to be
9 able to put that part in anyway. We're not asking for
10 surgery. But if Your Honor is going to require me to
11 do otherwise, then I think what I ought to do is let
12 them -- you know, if we get to the point it goes over,
13 then it's going to be a problem.

14 THE COURT: So what are you proposing, Will,
15 that --

16 MR. BRYAN: Well, I propose that --

17 THE COURT: -- that it be turned off at what
18 point; page 19, line 8, or the end of line 8?

19 MR. BRYAN: That is my compromise. It would stop
20 at the end of line 8 and then pick up again with line
21 17.

22 THE COURT: Again, this man has a ruptured disc.
23 That disc is herniated and it's weakened as a
24 consequence of this.

25 MR. BRYAN: Stop. And then we would delete the

1 rest to page 20, line 16.

2 THE COURT: Picking up with 17, all right, doctor,
3 in other words, the next question.

4 MR. BRYAN: Yeah, the next question.

5 THE COURT: Picking up on 17 -- line 17.

6 MR. BRYAN: Yes, sir. And so we take out the
7 question about --

8 THE COURT: And you're more comfortable as when we
9 get to that to have Will hit the controls.

10 MR. CONNELL: Exactly. So there won't be any
11 complaints about my conduct.

12 THE COURT: Hit the stop button. But here's --

13 MR. BRYAN: I'm almost sitting in his lap.

14 MR. CONNELL: No, you can sit in the chair, I'll
15 sit behind you.

16 THE COURT: Here's what you'll need to do, though,
17 is here --

18 MR. BRYAN: I'll have the transcript to follow
19 along.

20 THE COURT: Yeah. But then what we'll need to do
21 is, because you're going to go cut it off on that
22 portion at line 19, so we need to go ahead and find out
23 where, time wise, where it picks up on the disk, line
24 17 on page 20, the next question, so we can fast
25 forward to that point.

1 (Discussion off the record.)

2 (WHEREUPON, a brief recess was taken at

3 11:02 a.m.)

4 THE COURT: When we get ready, we'll bring them
5 in, and I'll let them know -- I'll recognize him as
6 your next witness, and you'll say it's Dr. Poletti via
7 his videotape. I'll explain to them, you know, that
8 they are to treat the videotape just as if the doctor
9 were present and all this stuff.

10 And then I'll let them know that there were some
11 technical difficulties during the taking of that
12 deposition, and at some point, you'll notice that
13 counsel is going to stop the tape or the thing, because
14 there are some portions where the Court sustained some
15 objections to the testimony. Those portions are going
16 to be eliminated.

17 And then Mr. Bryan is going to read his portion of
18 it and just let them know that that's what's going on,
19 so they're not thinking it's supposed to run smoothly
20 or something. All right, let's bring them in.

21 (WHEREUPON, the jury came into open court at
22 approximately 11:13 a.m.)

23 THE COURT: All right. Ladies and gentlemen,
24 we'll pick up where we left off on the break and
25 recognize Mr. Connell for the Plaintiff's next witness.

1 MR. CONNELL: Your Honor, we're going to call
2 Dr. Poletti by video deposition.

3 THE COURT: All right. Folks, let me explain to
4 you just briefly, and I think it was mentioned earlier
5 in the case, but oftentimes, we can take -- the law
6 provides that we can take the deposition of folks
7 outside the courtroom for the convenience both of the
8 witness as well as for the courts and the litigants.

9 A videotaped deposition or any taped deposition,
10 whether it's an audiotape and it's transcribed or
11 whether it's a videotape, all of these are testimony
12 that's taken outside of the courtroom. It's taken in
13 the same manner as it would be as if the witness were
14 here in court.

15 In other words, there is a court reporter present
16 taking down all the testimony. The attorneys are
17 present representing their client's interest. The
18 witness is placed under oath just as they would be
19 here. And they testify and they answer questions just
20 as they would here.

21 I tell you all of that to say that videotape
22 deposition or the transcript of deposition that's read
23 into the record, you are to treat that testimony as if
24 the witness had appeared live here in court and
25 testified. In other words, you give it whatever weight

1 you think it deserves.

2 My point to you is this, just as in any witness
3 who testifies, you decide the credibility, the
4 believability, and the weight that you give testimony.
5 It's just that if it's testimony taken outside the
6 court, you're not to consider that at all in the way
7 you weigh that testimony. You're to consider it the
8 same way as if that witness were sitting right here
9 giving that testimony; all right?

10 Now, during the course of a -- now, the thing
11 about a videotape deposition, if you'll notice here, if
12 Mr. Connell is direct examining the witness, if
13 Mr. Bryan has an objection, he can make that objection
14 and the Court will rule on it. I'll either sustain the
15 objection or I'll overrule it. And, of course, if I
16 sustain an objection, then that question is stricken
17 and they move on.

18 On a videotaped deposition, they don't have that
19 luxury. So as we play this deposition, you'll notice
20 there will come a part in the deposition where there
21 was an objection and the Court ruled on that and that
22 portion was eliminated. Now, we couldn't eliminate it
23 from the video, so what's going to happen is the
24 attorneys are going to -- they've gone over the tape,
25 they know where it's at.

1 So when we get to that objection, they're going to
2 stop the tape, then they're going to move it forward
3 past the objectionable portion and then start it back.
4 So that's what's going on when you see that happen.

5 And then the other thing is, when Mr. Bryan did
6 his cross-examination of the witness, there were some
7 technical problems with the videotape. And so rather
8 than wrestle with those problems, Mr. Bryan is going to
9 -- they have the transcript, the written transcript of
10 the testimony, and he is going to present that via the
11 written transcript. So that's what's going on as we go
12 through this process; okay?

13 Okay. So okay, so we're at the beginning now?

14 MR. CONNELL: Yes, sir.

15 THE COURT: All right. Mr. Connell, then, if
16 you're ready, we'll just proceed with Dr. Poletti as
17 the next witness. Let's just move the podium out of
18 the jury's way.

19 (WHEREUPON, the video was played at 11:18 a.m.)

20 MR. BRYAN: Your Honor, should I just sit in the
21 witness chair?

22 THE COURT: Here, that's fine.

23 MR. BRYAN: It's kind of unorthodox. If it's okay
24 with the Court, I'm just going to read the question and
25 the answer.

1 THE COURT: Yeah, you just read the question and
2 answer, and question and answer.

3 MR. BRYAN: You got it. All right. So what
4 you're going to hear is the question from me and the
5 answer, Dr. Poletti's answer.

6 (Mr. Bryan is reading from the transcript.)

7 MR. BRYAN: The next question, Gene, at the bottom
8 of the next page, line 25.

9 (Mr. Bryan continues reading from the transcript.)

10 MR. BRYAN: And we'll skip down, Gene, to the next
11 page, line 4.

12 (Mr. Bryan continues reading from the transcript.)

13 MR. BRYAN: Fast forward a few minutes. We're
14 back on the record.

15 (Mr. Bryan continues reading from the transcript.)

16 MR. BRYAN: Gene, skip over to page 47, line 7.

17 (Mr. Bryan continues reading from the transcript.)

18 MR. BRYAN: Next question, Gene, at the top of
19 page 50, line 1.

20 (Mr. Bryan continues reading from the transcript.)

21 MR. BRYAN: Gene, we pick up page 52, line 8.

22 (Mr. Bryan continues reading from the transcript.)

23 MR. BRYAN: Gene, why don't we skip over to page
24 60. This will be our last entry. Page 60, line 22.

25 (Mr. Bryan continues reading from the transcript.)

1 MR. CONNELL: I got a couple things in response.

2 MR. BRYAN: What's that?

3 MR. CONNELL: I've got a couple of things in
4 response to this. On page 62, line 14...

5 (Mr. Connell is reading from the transcript.)

6 MR. BRYAN: Thank you, judge.

7 THE COURT: Thank you, gentlemen.

8 MR. CONNELL: Your Honor, we have the CT scan.

9 THE COURT: All right. Go ahead.

10 MR. CONNELL: There were four exhibits that we had
11 asked Your Honor to consider moving into evidence,
12 Dr. Poletti's records.

13 THE COURT: Yeah.

14 MR. CONNELL: Your Honor, they're Plaintiff's-20,
15 21, 22, and 23, that I understand we've agreed are in
16 evidence.

17 THE COURT: Correct.

18 MR. CONNELL: And, Your Honor, we would like to
19 just put up --

20 THE COURT: Publish the CT scan?

21 MR. CONNELL: Yes. Just show it on the video
22 first of November 2.

23 THE COURT: Yeah.

24 MR. CONNELL: Well, maybe I should do that after
25 lunch. It says it's not supported, but I had it

1 working earlier so I'll have it, if I can work on it a
2 few minutes.

3 THE COURT: I think you would get full support of
4 all of us with that last suggestion. We will break for
5 lunch at this time. Folks, again, as yesterday, please
6 continue to maintain your ability to remain fair and
7 impartial by not having any discussion with anyone, not
8 discussing the case, not doing anything about the case
9 as you're outside the jury box.

10 We're going to -- I'm going to ask you, if you
11 would, because there are going to need to fix that and
12 get that squared away, and I don't know how long that's
13 going to take.

14 MR. CONNELL: Your Honor, it's not but a minute or
15 two video -- I mean, it's just showing --

16 THE COURT: Right. I realize what you want to
17 show is short. I just don't know how long it will take
18 to get it to where it will do it.

19 MR. CONNELL: Yes.

20 THE COURT: So let me ask you to be back here at
21 2 o'clock. That gives you about an hour and 45 minutes
22 for lunch. I ask you to please be back here at
23 2 o'clock, and we'll resume at that point. Everyone
24 else please remain seated while the members of the jury
25 are excused.

1 (WHEREUPON, the jury exited the courtroom at
2 12:14 p.m.)

3 (WHEREUPON, a luncheon recess was taken at
4 12:17 p.m.)

5 THE COURT: Good afternoon.

6 MR. BRYAN: Your Honor, we had made a motion in
7 limine to either include or limit Mr. Campbell, and
8 Your Honor didn't really rule on it. You said you
9 would consider it. So I guess I am raising that again
10 so that I can get a ruling --

11 THE COURT: Okay.

12 MR. BRYAN: -- for the record. And then, I guess,
13 I'll probably renew my objection again once we get to
14 that point in Mr. Campbell's testimony.

15 THE COURT: All right. Tell me what we're
16 renewing now again.

17 MR. BRYAN: The earlier -- there was stuff on your
18 desk. It has the tabs one through 4.

19 THE COURT: Yeah.

20 MR. BRYAN: When I was up here earlier, I saw it.

21 THE COURT: Right here.

22 MR. BRYAN: That's it. There's two grounds
23 essentially, judge. One has to do with the --
24 Mr. Campbell's opinion. Are we on the record, judge?

25 COURT REPORTER: Yeah.

1 THE COURT: Yeah.

2 MR. BRYAN: The first has to do with
3 Mr. Campbell's opinion that the railing at the time or
4 immediately before the failure did not meet the code
5 requirement that it withstand 200 pounds of
6 concentrated force. That's the code requirement.
7 That's Mr. Campbell's opinion, that it did not.

8 Our position is Mr. Campbell has done no
9 engineering analysis, no testing, he has not done any
10 of the things that you could do to sort of -- to arrive
11 at that conclusion scientifically and reliably.
12 Earlier, Your Honor, we talked about the Council
13 factors. There's four factors under Rule 702 when
14 dealing with expert testimony. The courts require that
15 the expert testimony have certain hallmarks of
16 reliability.

17 And in the memo, judge, on page 3, towards the
18 bottom of page 3, there's reference to the case of
19 Graves and then beneath that there are the four -- what
20 I call the four Council reliability factors. But the
21 Court must consider the following four factors to
22 determine whether expert testimony that is scientific
23 in nature is reliable. First is the publications and
24 peer review of the technique. In this case, judge,
25 there was no methodology or technique, so there is no

1 peer review or anything.

2 Second, prior application of the method to the
3 type of evidence involved in this case. Again, there
4 was no method, and there were no prior application in
5 some other matter. Third, is the quality control
6 procedures used to ensure reliability. There were none
7 here. And, lastly, the consistency of the method with
8 recognized scientific laws and procedures. And, again,
9 that's lacking as well.

10 During Mr. Campbell's deposition I asked him, you
11 know, what he could do if he wanted to determine sort
12 of the strength of that railing. And he said, well, I
13 would have to reconstruct it and recreate it and hire a
14 metallurgical expert, like a corrosive expert, to tell
15 the rate screws corrode, and I could back into it that
16 way. And I asked him, have you done any of that here,
17 and his answer was no.

18 So how he arrived at his opinion that the railing
19 would not withstand 200 pounds of concentrated force is
20 simply because the accident happened. And that is the
21 only basis -- that's the only foundation for his
22 opinion. Because the accident happened, the railing,
23 therefore, must not have been able to withstand 200
24 pounds of pressure.

25 That sort of opinion, judge, is not reliable and

1 should not be presented to the jury. It is confusing,
2 it is not helpful to the trier of fact. And in this
3 case it discounts the possibility that the Plaintiff,
4 who weighs 245 pounds, could sit on it and exert more
5 than 200 pounds of concentrated force.

6 He simply assumed that the railing failed. He
7 assumes that the railing had less than 200 pounds of --
8 or could withstand less than 200 pounds of concentrated
9 force. There is just no science or engineering
10 analysis underlying or supporting that opinion. And on
11 that basis, judge, we submit it's unreliable, and
12 Mr. Campbell should not be permitted to offer that
13 opinion to the jury.

14 And then the second part of my motion, judge, had
15 to do with his reliance on the three, we'll call them
16 manuals that are tabbed in the memo. Those manuals are
17 from Texas, Florida, and I forget where the other one
18 is from.

19 THE COURT: There's two from Florida and one from
20 Texas.

21 MR. BRYAN: I know there's Texas and Florida, I'm
22 not sure about the other one. But the question there
23 is those are not, you know, commonly recognized
24 standards. I mean, there are widely recognized
25 standards. There are ANSI standards and ASTM

1 standards. Here, there's -- you know, there's no
2 evidence that these standards were vetted. There's no
3 indication of how they were arrived at. There's no
4 indication, judge, that these standards were in effect
5 at the time this walkover was constructed.

6 Further, there's no indication that these
7 standards in Texas or in Florida have any application
8 to the walkover in Myrtle Beach. So, for a number of
9 reasons, we submit that those documents are not the
10 types of documents that an expert should be permitted
11 on testify upon under Rule 703. And, further, those
12 documents are irrelevant and misleading as much as they
13 are Texas and Florida, and no evidence that they are
14 applicable to South Carolina, and no evidence that they
15 were in existence at the time of construction.

16 So, for that reason -- that's sort of the second
17 ground of the motion. For that reasons, we ask that
18 Mr. Campbell not be allowed to offer opinions based on
19 those manuals.

20 THE COURT: All right, sir.

21 MR. BRYAN: Thank you, judge.

22 MR. CONNELL: Your Honor, Mr. Campbell has
23 testified for 30 some years in engineering cases.
24 Will's used him, I've used him. Everybody -- he's from
25 South Carolina -- has used him. He's investigated

1 railings, he's investigated beach walkovers, he's
2 investigated failures all over the state.

3 He's been cited a number of opinions throughout
4 the state, appellate opinions. He is not a -- this is
5 not his first rodeo. He's going to explain in
6 excruciating detail how he arrived at his opinion. And
7 you're going to find and be given all the engineering,
8 all of the factual bases, all of his reliance upon the
9 building codes, several different building codes, and
10 how they arrived at his figures.

11 And he's going to do that just like he's done it
12 in every other case. I can't believe that Will's not
13 going to argue that he's not qualified to be a forensic
14 engineer --

15 THE COURT: Well, I don't think he --

16 MR. BRYAN: That's not my --

17 THE COURT: He's not arguing that.

18 MR. CONNELL: Well, Your Honor, as far as this 200
19 -- as far as his opinion about the 200 pounds, I think
20 you have to listen to his opinion before you make a
21 decision.

22 THE COURT: Well, that -- and that's what I
23 thought we talked about before we broke for lunch.

24 MR. CONNELL: That's what I thought we did, too.

25 THE COURT: -- is that I'm going to let him.

1 testify. I don't think there's an objection to him
2 being qualified as an expert in his field. And then
3 let him talk about what he did. But before we get to
4 the point that he actually is asked to render an
5 opinion, at that point, I'll entertain the objection.

6 MR. CONNELL: Yes, sir.

7 THE COURT: But make sure you make it.

8 MR. BRYAN: Correct, yeah. I was just making sure
9 that I was on the record as having made my motion since
10 earlier you more or less took it under advisement.

11 THE COURT: Yeah.

12 MR. CONNELL: On Monday, that is.

13 THE COURT: Yeah.

14 MR. BRYAN: That's fine, judge. As an
15 alternative, is it possible to put Mr. Campbell on the
16 stand and ask him a couple of questions about how he
17 arrived at certain opinions?

18 THE COURT: Well, I mean, I don't know how long
19 his testimony is going to last. I don't know if --

20 MR. BRYAN: I would like to ask him one question,
21 like, have you determined, you know, how much -- how
22 many pounds of pressure that railing would have
23 withstood immediately before Mr. Ciampanella's
24 accident. Has he done that? That's...

25 MR. CONNELL: And I think we ought to set the

1 stage, like Your Honor said. Let's go through all of
2 it, and then he can object at the appropriate time.

3 THE COURT: I think that's what I'm going to do,
4 is I'm going to let him testify. Now, during that
5 testimony in laying that foundation -- and you listen
6 carefully. If he's starting to ask him questions about
7 opinions and stuff prior to getting there, I'm going to
8 entertain those objections at that point.

9 MR. CONNELL: I hear you loud and clear.

10 THE COURT: Okay?

11 MR. BRYAN: Thank you, judge.

12 THE COURT: All right. Let's bring the jury in.

13 (WHEREUPON, the jury came into open court at
14 approximately 2:15 p.m.)

15 THE COURT: All right. Ladies and gentlemen,
16 welcome back. I hope everyone had a good lunch. And
17 we're going to pick up with the Plaintiff's case and
18 recognize Mr. Connell for his next witness.

19 MR. CONNELL: Your Honor, before we left I just
20 wanted to show the jury --

21 THE COURT: Oh, I'm sorry.

22 MR. CONNELL: -- the CT scan that we discussed.
23 So I now have it up.

24 THE COURT: Yeah. Let's do that. Ladies and
25 gentlemen, the CT scan which was referenced in Dr.

1 Poletti's testimony is in evidence, and we're going to
2 publish that to you right now.

3 MR. CONNELL: Your Honor, I believe that's No. 20.

4 THE COURT: All right.

5 MR. CONNELL: Thank you, Your Honor.

6 THE COURT: All right. You may call your next
7 witness.

8 MR. CONNELL: Your Honor, we call Alan Campbell.

9 THE COURT: All right. Mr. Campbell, if you would
10 please come around and be sworn, sir.

11 ALAN O. CAMPBELL, after being duly sworn,
12 testified as follows:

13 THE CLERK: State your name for the Court, please,
14 sir.

15 THE WITNESS: Alan Owens Campbell.

16 DIRECT EXAMINATION

17 BY MR. CONNELL:

18 Q First, Alan, tell us what you do for a living,
19 please, sir.

20 A I'm a consulting engineer in the field of civil
21 and structural engineering.

22 Q All right. And how long have you been a
23 consulting engineer?

24 A I was first registered as an engineer in 1986, so
25 I guess it's probably coming up on 30 years now.

1 Q Give you a copy of your CV or experiences.

2 A Yes, sir.

3 Q And tell me if you would, what does it require to
4 become a registered professional engineer?

5 A First, you must have a degree, a four-year degree,
6 in engineering from an accredited engineering school.
7 There are two tests that we have to take. We have to
8 take the eight-hour engineering training exam. I think
9 they changed the name -- changed the name of it now,
10 but back then we called it EIT exam.

11 And then you have to take -- after four years of
12 experience of working under a qualified licensed
13 engineer, then you take the eight-hour professional
14 engineer's exam and pass both of those. With the
15 proper experience, with the proper education, you are
16 then a licensed engineer.

17 Q What is an EIT?

18 A That's basically when you're going through that
19 four-year training program, it's almost like an
20 engineering apprenticeship. So before you become
21 registered as a licensed engineer and you can work
22 independently, you have to work under another licensed
23 engineer. So you're an engineer in training.

24 Q And do you have to go to college first?

25 A Absolutely, yes, sir.

1 Q And do you have to get a degree in civil engineer
2 or some type of engineering?

3 A From an accredited school, yes, sir.

4 Q And do you have a degree from a college in
5 engineering?

6 A I do. I went to The Citadel.

7 Q And when did you get that degree?

8 A 1980.

9 Q And do you have any graduate degrees beyond that
10 in engineering?

11 A I do. I have a graduate degree in applied
12 psychology with a concentration in human factors from
13 Clemson University.

14 Q And when did you get that?

15 A 2012.

16 Q And is that a master's or a PhD?

17 A That's a master's.

18 Q All right. And how long have you been -- tell me
19 what forensic engineering is.

20 A Forensic engineering is actually engineering
21 consulting, but it focuses on cases that are either in
22 litigation or likely to go to litigation, so it
23 basically has a legal side. And generally I think as a
24 rule, forensic engineers are probably held to a higher
25 standard because we're qualified experts in our field.

1 Q Have you testified in court before?

2 A I have, yes, sir.

3 Q How many times; do you know?

4 A Probably 30 or 40.

5 Q And have you testified in federal court before?

6 A I have, yes, sir.

7 Q And have you testified in courts other than South
8 Carolina courts?

9 A I have. I've testified in multiple states
10 throughout the Southeast and Northeast, yes, sir.

11 Q And what's the name of the company that you work
12 for?

13 A Applied Building Sciences.

14 Q And how many engineers are in Applied Building
15 Sciences?

16 A I don't know exactly. Probably, again, around 10
17 or 12. We have licensed engineers, architects and
18 technicians and roof consultants.

19 Q Have you done investigations in failure analysis?

20 A Quite often, yes, sir.

21 Q How many times?

22 A Probably hundreds.

23 Q Have you done investigations in railing failures
24 in the past?

25 A Quite a few as well, yes, sir.

1 Q How many times?

2 A Many dozen.

3 Q Give the jury a couple of examples of cases where
4 you have investigated railing and/or deck or dock
5 failures.

6 A Little bit of everything. One that we started
7 recently was another rail collapse. And just kind of
8 as a matter of reference, I guess, the injured party in
9 that case was a doctor who is a professor at the
10 medical university, but at the time, before he moved to
11 the medical university, he was President Reagan's and
12 President Bush's White House physician.

13 Unfortunately, now he's a paraplegic because he
14 fell off his rail -- fell off his deck, landed on the
15 rail, and broke his back. That happened about six
16 months ago.

17 Q All right.

18 A Then there was one up here in Myrtle Beach on a
19 dune walkover --

20 MR. BRYAN: Judge, I object to any further
21 discussion about other cases.

22 THE COURT: Sustained. It's not relevant to this
23 issue.

24 MR. CONNELL: All right. Your Honor, we're just
25 -- we just need to go through his experience so Your

1 Honor can...

2 THE COURT: I don't think there's any objection to
3 Mr. Campbell being qualified as an expert in the field
4 of forensic engineering.

5 MR. BRYAN: Engineering, sure.

6 MR. CONNELL: All right. Well, Your Honor, I'd
7 like to go through so the jury can hear what all he's
8 done.

9 THE COURT: You can --

10 MR. CONNELL: Thank you.

11 THE COURT: -- but no more comments about other
12 cases he's working on.

13 MR. CONNELL: Okay.

14 Q Failure analysis?

15 A Yes, sir.

16 Q Let's talk about that a little bit if we can.

17 This particular case --

18 A Okay.

19 Q -- have you had an opportunity to review certain
20 depositions, documentation in regard to this particular
21 case?

22 A Yes, sir.

23 Q All right. Have you put it in a notebook?

24 A I have.

25 Q All right. And is this the notebook that you have

1 used to look at as the foundation of your opinions?

2 A This is a good bit of it. We also have quite a
3 few digital files that were sent to us, e-mail
4 transcripts of other depositions, and Mr. Rogers'
5 report that was provided to us.

6 Q Okay.

7 A Documents of that nature. But certainly that's a
8 good bit of it and quite a few relevant references that
9 we have there.

10 Q All right. And tell me what documents -- what
11 documents would you normally review in determining the
12 failure analysis of a railing such as what as in this
13 case?

14 A Well, we want to get as many facts as we can. So
15 if there's any reports that have been produced or
16 sometimes the legal complaint provides a lot of
17 information regarding facts and time and occurrences.

18 And then from there, we review depositions to
19 get -- basically, it's an official summary of work
20 performed by others, such as work performed by the City
21 of Myrtle Beach, Mr. Ciampanella's deposition to get
22 the facts related to his fall --

23 Q Okay.

24 A -- depositions of other experts and engineers.

25 Q All right.

1 A Sometimes even the medical staff. So as much
2 information as we can gather to get relevant facts that
3 are accurate facts that we can consider for our
4 evaluation.

5 Q All right. Now, did you review the depositions of
6 three City of Myrtle Beach employees?

7 A I did, yes, sir.

8 Q And which depositions did you review?

9 A I don't remember the exact names. I mean,
10 Mr. Anderson was one of the main ones.

11 Q Okay.

12 A And there was another name that started with a C.

13 Q Cidero or something, I think?

14 A Was it Cadieux or Cadeck? I can't remember
15 exactly.

16 Q Let's see.

17 A I've got them on my flash drive.

18 Q Okay.

19 A I don't have them printed out.

20 Q Mr. Kirby, did you review Richard Kirby's
21 deposition?

22 A Yes, sir.

23 Q And Thomas Anderson's deposition?

24 A Yes, sir.

25 Q And did you review Paul Cadieux's deposition?

1 A That was it, whatever. Yes, sir.

2 Q And have you reviewed Mr. Ciampanella's
3 deposition?

4 A Yes, sir.

5 Q Have you been to the scene of where the incident
6 occurred?

7 A I have, yes, sir.

8 Q All right. Have you sent -- do you use people --
9 investigators or engineers in training to go to scenes
10 for you?

11 A Absolutely.

12 Q All right. And did you have someone else go to
13 the scene from your office to look at it?

14 A I did. In fact, it was not an EIT, it was another
15 PE from my office.

16 Q All right.

17 A They went to the site and took some measurements
18 and photographs.

19 Q And who was that?

20 A Joe Shahid.

21 Q And are the photographs on this particular disc
22 from your office?

23 A They should be.

24 MR. CONNELL: Your Honor, we'd like to offer this
25 as one of the exhibits because we're going to use this

1 to explain some of his conclusions.

2 MR. BRYAN: Your Honor, I don't think I've ever
3 seen these photographs. I think this is a recent visit
4 to the walkover.

5 MR. CONNELL: Your Honor, could we be heard? We
6 need to be...

7 THE COURT: All right. Ladies and gentlemen, let
8 me get you to step back into the jury room. Please
9 have no conversation about the case. I'll bring you
10 back out shortly.

11 (WHEREUPON, the jury exited the courtroom at
12 2:25 p.m.)

13 MR. CONNELL: Your Honor, these photographs were
14 given along with everything else on December 28, 2015.
15 I wrote him a letter, he took Mr. Campbell's deposition
16 for half a day. And there is no surprise, these are
17 not any new photographs. These are photographs that
18 his -- someone from his office took that he's going to
19 use to render his opinion. So I'm not sure how he says
20 that we didn't give them to him at an earlier time.

21 MR. BRYAN: If I can just -- if that's the case,
22 like, did you have those at the time of your
23 deposition?

24 THE WITNESS: Not at the time of my deposition,
25 no.

1 MR. CONNELL: We gave them to you afterwards. You
2 asked for a whole bunch of stuff.

3 MR. BRYAN: I asked for everything Alan had.

4 MR. CONNELL: Yeah, and we gave it --

5 MR. BRYAN: I no idea -- at the time there were no
6 photographs of them. That's why I heard that he went
7 to the scene recently. When did you go to the scene?

8 THE WITNESS: I went to the scene -- I went
9 personally this morning.

10 MR. BRYAN: When did your -- the EI -- when did
11 the other PE go?

12 THE WITNESS: I don't know. We'll have to check
13 the photographs. They should have the date stamp on
14 them, but I don't --

15 MR. CONNELL: Well, we gave you the photographs
16 back the last day of December, along with all these
17 other items.

18 MR. BRYAN: You don't have hard copies?

19 MR. CONNELL: I gave them to you back in December.
20 as part of my --

21 MR. BRYAN: What where you trying to put into
22 evidence; a disk?

23 MR. CONNELL: His -- I'm going to put his photos
24 in the machine and let him explain them. I mean,
25 there's no surprise. There's no surprise. Y'all got

1 these photographs --

2 MR. BRYAN: If you showed them to me, I don't
3 recall it.

4 MR. CONNELL: Okay.

5 MR. BRYAN: The other issue, judge, is, if these
6 are photographs taken recently, and I presume they are,
7 the walkover has been modified since his accident. We
8 submit that that's a subsequent remedial measure
9 because there were changes made to the walkover.

10 THE COURT: Sure.

11 MR. BRYAN: We'd ask that for that reason they not
12 be shown to the jury. Can we get to metadata or
13 whatever it's called?

14 THE WITNESS: Yeah. Just right click on the
15 photograph, and it should pop up the date it was taken.
16 And I don't remember the day he was out there.

17 MR. CONNELL: If it makes y'all feel any better,
18 I'm not going to offer the photographs that were taken
19 that show the remedial measure, if that's what you're
20 concerned about. I realize that you can't do that,
21 okay.

22 MS. NEUSCHAFER: Well, I think he just wants to
23 see them before --

24 MR. CONNELL: Well, he did see them. I sent y'all
25 this stuff.

1 THE COURT: Listen, let me just ask. He says he
2 sent you the photographs. Are they in your materials?

3 MR. BRYAN: Not to my knowledge. Those
4 photographs on this disk?

5 THE COURT: According to what Mr. Connell
6 indicated, he sent you hard copies.

7 MR. BRYAN: These photographs, judge, are the ones
8 we've had for years. They're in evidence.

9 MR. CONNELL: Yeah.

10 MR. BRYAN: These aren't new ones.

11 MR. CONNELL: December 28, 2016. Plaintiff's
12 supplemental interrogatories. As you all know, at Alan
13 Campbell's deposition, he told us he would produce to
14 us all documents he relied upon. I got a copy of my
15 documents on December 6th with a transmittal letter
16 dated December 2nd. I contacted his office and was
17 told you got the same documents. Accordingly, I want
18 you to be aware that I may use these documents during
19 the trial. I have enclosed Plaintiff's supplemental
20 answers to interrogatories, and in that, is a set of
21 these photographs right here.

22 There's no surprise to anybody. I'm not trying to
23 play by the ball with him in any way.

24 MR. BRYAN: Gene, I'm not suggesting that. If
25 that disc -- if these photographs you want to try to

1 get in, they're already in.

2 MR. CONNELL: I want to show them to him, that's
3 all I want to do.

4 MR. BRYAN: They're already in evidence.

5 THE COURT: All right. For example, if that
6 photograph is in evidence here --

7 MR. BRYAN: Yeah.

8 THE COURT: -- there's not an issue with blowing
9 it up.

10 MR. BRYAN: Yeah, I agree. I didn't know what was
11 on the disc, judge. Yeah, I have those, I've had those
12 for a year or, I don't know, sometime.

13 MR. CONNELL: Why don't you look at all of the
14 other documents that we've already been through, so
15 we'll make sure we don't have any problem. Come over
16 here and look at them.

17 (Discussion off the record.)

18 MR. BRYAN: Judge, you have some of this stuff in
19 front of you, at least three or four of these.

20 Yeah, I don't have any problem with this. The
21 ones that are part of my memorandum, judge, I don't
22 believe those are documents that are reasonably relied
23 upon when offering opinions about coastal construction
24 in South Carolina, particularly walkover construction.
25 But, you know, the standards or whatever, that's fine.

1 THE COURT: Does South -- and I'm asking now, does
2 South Carolina have standards --

3 MR. CONNELL: Yes, sir.

4 THE COURT: -- and regs regarding building these
5 walkovers?

6 MR. CONNELL: Yes, sir. He's getting ready --

7 THE COURT: Then why isn't that the focus of all
8 this attention? Why are we dealing with some document
9 out of Texas and some other document out of Florida?

10 MR. CONNELL: Your Honor, it's just to show that
11 it's a uniform way that it's done around the Southeast.

12 THE COURT: But we're not showing South Carolina.

13 MR. CONNELL: We're going to show South Carolina.

14 THE COURT: Okay. Well, it's not in this
15 material.

16 MR. BRYAN: Yeah, I haven't seen it. But in any
17 event, I do have issue with a number of these.

18 (Discussion off the record.)

19 THE COURT: I mean, the fact that you showed it to
20 him or you gave it to him ahead of time, that still
21 doesn't prevent him from objecting.

22 MR. CONNELL: No, I understand, Your Honor.

23 MR. BRYAN: I don't know where this came from,
24 what it applies to, what year it was --

25 MR. CONNELL: If you'll let him explain, he'll

1 give you an explanation.

2 MR. BRYAN: Okay. Well --

3 THE COURT: Go ahead and proffer it.

4 MR. BRYAN: Yeah. I'm not agreeing to it --

5 MR. CONNELL: You want to know about it now, Your
6 Honor?

7 THE COURT: Yeah. Go ahead and proffer it.

8 MR. CONNELL: All right, now.

9 THE COURT: Are we back on?

10 Q Let's look at your notebook first.

11 A Okay.

12 Q And I guess we better mark these.

13 (WHEREUPON, Plaintiff Exhibit No. 24 through 30
14 was marked for identification only.)

15 Q All right. Let's go through the documents that
16 are in your investigative file.

17 A Here?

18 Q Yes, sir. And let's start with -- let's see where
19 you are, I want to make sure we're on the same page.
20 Plaintiff's Exhibit No. 24, is that in your file?

21 A It is.

22 Q All right. And what is that?

23 A That is a document from the Office of Coastal and
24 Resource Management, which is basically the State
25 document that governs construction of dune walkovers

1 published by the State of South Carolina.

2 Q All right. And that --

3 THE COURT: Now, let me -- hold on for a minute.

4 I just want to make sure that they're on the same page.

5 Have you got that document, Mr. Bryan?

6 MR. BRYAN: I don't know what 24 is.

7 MR. CONNELL: Right here.

8 MR. BRYAN: I see the sticker.

9 MR. CONNELL: You can stand here, if you want to
10 look at all of them as we talk about them.

11 Q Okay. And what is Plaintiff's Exhibit No. 24?

12 A It's a document. It's Section O, Sand Dune
13 Management, and it gives guidelines and details for the
14 construction of dune walkovers.

15 Q And is that a document that is normally relied
16 upon by professional engineers as yourself in
17 constructing dune walkovers in the coastal area of
18 South Carolina, including Myrtle Beach?

19 A Yes, sir.

20 Q All right. And attached to that document, are
21 there schematic drawings?

22 A There are.

23 Q Are those --

24 MR. CONNELL: Let me give this to Your Honor if he
25 wants to see it.

1 Q Is that a document that professional engineers
2 rely upon in providing plans to construct dune
3 walkovers in the coastal area of South Carolina?

4 A Yes, sir.

5 Q Is that a document that is used by Coastal
6 Resource Management in the City of Myrtle Beach in
7 constructing dune walkovers in the City of Myrtle
8 Beach, Pawleys Island, Kiawah, and all the other
9 islands?

10 A Yes, sir. It comes from OCRM. It's statewide.

11 Q Okay. And is that one of the guidelines that OCRM
12 uses in building dune walkovers on the beach in South
13 Carolina?

14 A I mean, you know, sometimes we look at terms of
15 should and shall. I mean, this document says shall,
16 shall be constructed with the following requirements.

17 Q Okay.

18 A I think that's pretty much a mandate.

19 Q And if you would look back on the next page, are
20 there pictures of a schematic of how a dock should be
21 built or a dunes walkover deck should be built in the
22 City of Myrtle Beach on the beach?

23 A Yes, sir.

24 Q And is that the same requirements that were
25 required when this accident happened on August 19,

1 2014?

2 A Yes, sir.

3 Q All right. And do you know how long that -- those
4 requirements have been in effect in the State of South
5 Carolina?

6 A I know we've been using them for many, many years.
7 One of the documents has a 1983 date stamp on it.

8 Q All right. In particular, does the document and
9 the schematic show the use of bolts rather than screws?

10 A It does.

11 Q All right. Does the document show the use of
12 bolts in the handrails rather than screws?

13 A It does, yes, sir.

14 Q All right. Do you then have an opinion as to
15 whether or not a dune walkover built in the City of
16 Myrtle Beach is required to have bolts rather than
17 screws on or about August 19, 2014 when Mr. Ciampanella
18 was injured?

19 A That is the detail shown in their document, yes,
20 sir.

21 Q All right. Now, let's look at the next document.

22 MR. CONNELL: Your Honor, we'd like to offer that
23 as an exhibit in evidence at some point.

24 Q All right. Let's look at the next document. All
25 right, what document is that?

1 A This is a City of Myrtle Beach resolution.

2 Q All right. And is that -- was that resolution
3 something that was discovered by your office in the
4 records for the City of Myrtle Beach?

5 A Yes, sir.

6 MR. CONNELL: And, Your Honor, just so you know,
7 that is already in the record. That's Exhibit 17 in
8 the record.

9 THE COURT: Okay, yeah.

10 MR. CONNELL: And he's going to talk about a
11 couple of pages..

12 THE COURT: All right.

13 Q All right. So you were able to determine that
14 that resolution was approved by the City of Myrtle
15 Beach?

16 A Yes, sir.

17 Q All right. And in particular, cite to the Court
18 the pages that you believe are applicable to this case
19 based on your research.

20 A Well, we found a document.

21 Q What page number?

22 A I'm on page 60 of one of the attachments to that
23 document --

24 Q Yes, sir.

25 A -- from the City of Myrtle Beach. It basically

1 establishes the City goal to replace six to seven
2 walkovers per year for the next ten years starting in
3 late 2010..

4 Q All right. And this particular walkover on 77th
5 Avenue North in Myrtle Beach, when was it slated to be
6 repaired or replaced?

7 A If we go with that schedule of six to seven per
8 year, number 33, somewhere in that five to six-year
9 time frame.

10 Q All right. Before or after Mr. Ciampanella fell?

11 A It could have been before, but probably right at
12 or just after.

13 Q All right. Does the document also reference the
14 life span of a particular dunes walkway in the Myrtle
15 Beach area?

16 A Yes, sir. It addresses a life span of
17 approximately 15 years which, if I could add, also
18 comes out of one of the other references, the Coastal
19 Construction Manual, which has that same reference.
20 That's probably where that came from.

21 Q All right. And what page is that for the judge?
22 He's flipping his papers.

23 A That's page 60.

24 Q All right. Now, based on deposition testimony of
25 employees of the City of Myrtle Beach, what is your

1 understanding as to when this particular dune walkover
2 was built?

3 A Probably, I understand, maybe 1990.

4 Q All right.

5 A Probably right after Hurricane Hugo because
6 Hurricane Hugo -- the storm surge from Hurricane Hugo
7 along coastal South Carolina, especially in Myrtle
8 Beach, was pretty devastating. It pretty much wiped
9 out anything right on the beach, including dune
10 walkovers and dunes.

11 Q Let me ask you this, were you a professional
12 engineer after Hurricane Hugo in 1990?

13 A I was, yes, sir. And I spent a lot of time up
14 here.

15 Q All right. And you spent a lot of time up here on
16 construction projects afterwards?

17 A I have.

18 Q Would that be right?

19 A Yes, sir.

20 Q So the document that you're referencing, do you
21 have an opinion to a reasonable degree of engineering
22 certainty as to whether or not this particular dock --
23 dunes crossover was beyond its useful life when
24 Mr. Ciampanella fell on August the 19th, 2014?

25 A You know, you could say that's marginal, if you

1 break it down by component. Certainly the construction
2 of it was not -- or the construction maintenance, when
3 you collectively take those together, were not
4 acceptable because of the extent of corrosion of the
5 fasteners.

6 The reason that rail failed is because the
7 fasteners, the screws, were so badly corroded, they
8 could not carry any, I guess, sizable load. Certainly
9 wasn't going to comply with the requirements of the
10 applicable building code.

11 Q Okay.

12 A And they were unacceptable.

13 Q All right.

14 A So either they should have been substantially
15 renovated, or they should have been replaced.

16 Q All right.

17 A Take your pick. They could have been salvaged,
18 but that work was not performed.

19 Q All right. Do you have an opinion based upon the
20 deposition testimony of the City of Myrtle Beach
21 employees as to whether there was an appropriate
22 maintenance schedule to repair the corroded screws?

23 A There was not. There was none.

24 Q All right.

25 A None whatsoever, that I've been aware of.

1 Q All right. Now, do you have an opinion to a
2 reasonable degree of engineering certainty as to what
3 building codes were in force and effect on August
4 the 19th, 2014 when Mr. Ciampanella was injured?

5 A Well, the most applicable one would be the
6 International Property Maintenance Code, which
7 basically addresses construction, maintenance and
8 upkeep of key elements of buildings.

9 Q All right. Do you have an opinion to a reasonable
10 degree of engineering certainty as to whether or not
11 the maintenance or upkeep or construction, in this
12 case, of the dunes walkover was based on the applicable
13 standards in question in 2014?

14 A I do. They did not satisfy the requirements of
15 that code.

16 Q Okay. And in what respects did they not satisfy
17 the requirements of the code?

18 A Beginning at the new exhibit, if you want to look
19 at that.

20 Q Then let's go to the next exhibit. Which one
21 would that be?

22 A That would be here.

23 Q Okay. Exhibit No. 26?

24 A Yes, sir.

25 Q All right. Do you have that in your notebook?

1 A I do.

2 MR. CONNELL: I'll give that to the Court. Thank
3 you, Your Honor.

4 Q Now, if you would, tell us what Exhibit No. 26 is
5 and how it relates to the injury Mr. Ciampanella had on
6 August the 19, 2014.

7 A That is the International Property Maintenance
8 Code, which has been adopted by the City of Myrtle
9 Beach. It has a section for Exterior Structures.

10 Just a quick read. The exterior of a structure
11 shall be maintained in good repair, structurally sound
12 and sanitary so as not to pose a threat to the public
13 health, safety or welfare.

14 And then it goes to define unsafe conditions, in
15 particular, unsafe conditions related to exterior
16 stairs, decks, porches, balconies, and all similar
17 appurtenances...

18 Q All right. Do you have an opinion to a reasonable
19 degree of engineering certainty as to whether or not
20 the applicable -- or the beach walkover that
21 Mr. Ciampanella violated the 2012 International
22 Property Management Code?

23 A They did violate it. They did not satisfy those
24 requirements. It was dangerous, it collapsed, and he
25 was injured. So, therefore, they did not protect

1 public welfare.

2 Q And let me ask you this. You've looked at Mr.
3 Rogers' deposition, too; have you not?

4 A I have, yes, sir.

5 Q And --

6 A Well, no, not his deposition. You've given me
7 kind of an executive summary. I've looked at his
8 calculations in his report.

9 Q Okay, all right. And do you have an opinion to a
10 reasonable degree of engineering certainty as to
11 whether or not the 2012 International Property
12 Management Code was in force and effect on August 19,
13 2014 in the City of Myrtle Beach?

14 A It was adopted, yes, sir.

15 Q Okay, all right. Let's go to the next exhibit you
16 have.

17 A This is from the Coastal Construction Manual.

18 Q Okay. What exhibit number? Let's see. Let me
19 find that for the Court.

20 MR. CONNELL: This will be No. 28, Your Honor.

21 THE COURT: Yes, sir.

22 Q All right. Now, what is Exhibit No. 28?

23 A This is the Coastal Construction Manual. This is
24 actually published by FEMA. And, once again, it's one
25 of those documents that's used on a regular basis by

1 engineers along the coast.

2 Q Okay. And what relevance does Exhibit 28 have to
3 your opinions in this case?

4 A This document actually has a section similar to
5 International Property Maintenance Code that addresses
6 corrosion. It gives us kind of the rule of thumb for
7 corrosion, requirements for galvanized
8 corrosion-resistant fasteners and also includes that
9 same reference that you can expect that these walkovers
10 are only going to last about 15 years and that
11 corrosion is going to be rather extensive after a short
12 period of time.

13 Q All right. And what other information does
14 Exhibit 28 give you to help you formulate your opinions
15 in this case?

16 A In particular, it specifically addresses rate of
17 corrosion that the fasteners -- the zinc, which is the
18 galvanization -- galvanized coating on the fastener is
19 going to dissolve within probably seven years. And
20 then, after the loss of that coating, that protective
21 coating, the rate of corrosion accelerates by a factor
22 of 50.

23 Q All right.

24 A Which is not surprising, based on what we've seen
25 here.

1 Q All right. And do you have an opinion to a
2 reasonable degree of engineering certainty as to
3 whether or not City of Myrtle Beach employees would
4 have been able to see the corrosion during their either
5 inspections, corrections or attempted repairs?

6 A They should have been, yes, sir, absolutely,
7 through either the course of inspections, through the
8 course of preventive maintenance or through the course
9 of corrective maintenance. Once these rails began to
10 fail, they should have easily been able to determine
11 that these fasteners were corroding and needed to be
12 replaced.

13 Q All right. Now, the photos that we haven't put in
14 yet, but the photos that -- do the photos support that
15 proposition?

16 A They do, yes, sir.

17 Q All right. Let's look at your next exhibit.

18 A Those are the ones that I've tabbed. You may have
19 a couple more.

20 Q Okay. Let me ask you to look at this. This would
21 be Exhibit No. 25.

22 A Okay.

23 Q Does DHEC have rules and regulations regarding the
24 construction of beach walkover accesses?

25 A They do. I didn't get that heavy into this

1 document. This kind of just addresses some similar
2 issues. You know, basically it's just kind of
3 redundant compared to some of the other documents.

4 Q Redundant to what you've already had?

5 A Some of the other issues we've addressed.

6 Q All right.

7 A But it is a State document, and it addresses dune
8 walkovers.

9 Q All right. And what other documents do you have
10 in your files?

11 Okay. I've got that one. This is Exhibit No. 30,
12 South Carolina Guide to Beach Front Property.

13 A Yeah. This one -- and we could probably leave
14 this one out because it really addresses more like
15 dunes and kind of beach front construction as opposed
16 to walkovers and specifics, unless there was something
17 that you wanted to address in there.

18 Q Okay. We'll pull that one out. What other ones
19 do you have? How about Exhibit No. 29, Dune Walkover
20 Guidance? Well, that's actually from what the Court
21 was asking about, that's from Florida.

22 A Yeah, just showing us an industry standard.

23 Q Okay.

24 A Very similar construction.

25 Q All right. The Court was asking questions about

1 why Florida and Texas. What do you mean, it shows an
2 industry standard?

3 A Well, they have the same issues we do. They have
4 a coastline, you know, along the ocean.

5 Q Right.

6 A And it's salt water. So they have the same issues
7 regarding corrosion and maintenance and safety and wear
8 and tear and construction.

9 Q So the industry standard for corrosion and the
10 corrosiveness and the maintenance and repair are
11 similar in South Carolina as they are in these other
12 states?

13 A Yes, sir.

14 Q Is that why you had this in your file?

15 A Right.

16 MR. CONNELL: All right. Your Honor, that's
17 numbers 24 and 25.

18 THE COURT: All right, sir.

19 Q Now, since there seems to be some issue about
20 calculations and how you arrived at them, if you would
21 tell the Court how you arrived at your calculation.
22 That's a document right there, you're getting ready to
23 point to me, that is already in evidence. Let me get
24 that. Exhibit No. 18, is that a document in your file?

25 A It is.

1 Q And what is that?

2 A It's probably a little bit after the fact, but it
3 does address that construction methods, methodologies,
4 any repairs after the adoption of the 2015
5 International Building Code shall be constructed in
6 accordance with that code.

7 Q All right. And have you looked at the building
8 code before 2015 to see if there's any appreciable
9 difference in the way you build a dune walkover
10 construction in 2014 and 2015?

11 A Yeah. It doesn't give specific information about
12 dune walkovers, but it's going to give you the
13 information that you and I addressed earlier regarding
14 the analysis in construction and design of those
15 walkovers.

16 Q All right.

17 A So, basically, it gives a roadmap for the engineer
18 to follow as to how to design those walkovers.

19 Q All right. Has there been any change in the
20 building code since the 1980s regarding how railings
21 are to be built in the dune walkover area?

22 A I would say no.

23 Q All right.

24 A Based on the codes, the references, the standards
25 and the applicable loads, that 200-pound concentrated

1 load requirement has been around as long as I've been
2 practicing engineering.

3 Q All right. Now, tell us if you would, what
4 documents you looked at and how you determined -- I
5 think the issue was how you arrived at an opinion
6 regarding the amount of force required to cause the
7 rail to collapse. There's been some discussion about
8 that.

9 A Yeah, I would say there's actually two ways of
10 looking at it. One, Mr. Bryan was asking, could I
11 determine the load capacity of that fastener
12 immediately prior to the failure of that rail when
13 Mr. Ciampanella was leaning on it.

14 I would say nobody can do that. We know that, you
15 know, unless there's some debate -- Mr. Bryan made a
16 reference to Mr. Ciampanella sitting on the rail, I
17 mean, I've not seen any testimony whatsoever -- it's my
18 understanding he was simply leaning against the rail.

19 So him leaning against that rail is only going to
20 exert a force of probably 30 or 40 pounds and nowhere
21 near 200 pounds because he's simply leaning against it,
22 just like leaning against a wall. He's not sitting.
23 He's feet are still on the ground, and it's a sideways
24 force as opposed to a vertical force.

25 Q All right. Is that a standard engineering

1 equation that you can come up to figure that out? How
2 did you figure that out?

3 A Yeah, sometimes, in engineering, we use the term
4 by inspection. So if I look at something and I know
5 the load that was applied and I know it failed, then I
6 know, by inspection, that that's the load that caused
7 it to fail. It could have failed at some load a little
8 below that, but somewhere between zero and 30 pounds,
9 we know that that sideways force is what caused that
10 rail to fall. So that would be by inspection.

11 Q All right. And did you use generally accepted
12 engineering practices in coming to that conclusion?

13 A Sure, absolutely. Based on my previous
14 experience, based on my education, based on my
15 training, and based on my knowledge of those
16 connections and those fasteners and certainly
17 Mr. Ciampanella's testimony.

18 Q All right.

19 A So you asked the question, that was one method.
20 There's also another method.

21 Q Yes, sir. Tell me about the other method so the
22 Court can hear about that.

23 A So, I guess, after my testimony, Mr. Bryan asked
24 Mr. Rogers to perform some calculations. So I was able
25 -- I was provided a copy of those calculations, and I

1 was able to review those calculations and then look at
2 those and perform some calculations of my own.

3 Q Okay. So the Defendant's engineer came up with a
4 set of calculations that were presented to you?

5 A He did, yes, sir. Presented to Mr. Bryan.

6 Q All right. And have you reviewed the Defendant's
7 engineer's calculations about the amount of force
8 required to cause the railing to fail?

9 A Yeah. He didn't -- I mean, obviously, he didn't
10 do that either because I don't think he could. But he
11 did analyze that connection based on the condition it
12 would have been on day one when they built it.

13 Q All right.

14 A And most engineers should be capable of doing
15 that.

16 Q So Mr. Rogers has his own theory of how much force
17 it would require to have the rail fail; is that right?

18 A Yes, sir.

19 Q And --

20 A Or how much it could have withstood, yeah. What
21 the load-carrying capability of that rail was at the
22 time it was constructed.

23 Q Now, Mr. Rogers' calculations were performed
24 sometime after your deposition was taken?

25 A I expect. I don't know for sure, but I expect

1 they probably were.

2 Q All right. And you have looked at Mr. Rogers'
3 calculations; have you not?

4 A I have, yes, sir.

5 Q Have you come to an opinion to a reasonable degree
6 of engineering certainty as to, after reviewing his
7 calculations, your experience in the industry, what --
8 how you arrived at some calculation that was different
9 than his?

10 A I did.

11 Q Okay. And what's that?

12 A Yeah. I don't know why he took that approach, but
13 he used the reference or used the wrong reference.

14 Q Okay.

15 A It didn't totally make his calculations incorrect,
16 but they -- his calculations were not performed in
17 accordance with the applicable requirements such as the
18 Standard Building Code and the International Building
19 Code, which is very explicit as to how those
20 calculations shall be performed.

21 Q All right. And have you performed the calculation
22 based on those two codes?

23 A I have.

24 Q All right. And are those the benchmark codes as
25 to how you perform a calculation as to the failure rate

1 of a railing?

2 A Yes, sir. I mean, that's what the code requires.

3 Q All right. And what did you come up with, what
4 did you arrive at?

5 A It depends on how you look at it. I understand
6 Mr. Rogers' calculations are based on the rails acting
7 together, all the three fasteners taken as one. I
8 would disagree with that based on the photographs
9 because the rails are independent. There's a
10 horizontal rail and there's a vertical rail, and there
11 does not appear to be any connection between the two.

12 So you need to evaluate the fasteners separately,
13 and also, you need to use the proper applicable code
14 for those calculations.

15 Q All right.

16 A So what I determined -- and even, you know, giving
17 Mr. Rogers the benefit of the doubt, if you take the
18 horizontal rail separately, I think he arrived at 170
19 pounds for the capacity of that fastener, which is a
20 little high. So even that does not meet the 200-pound
21 standard.

22 Q Okay. And so would that be how you arrived at the
23 zero to 30-pound?

24 A No. I mean, as I said, that was based on the
25 fasteners when it was constructed and substantial

1 deterioration and substantial weakness of the
2 as-constructed condition. So that goes back to the
3 quality of the construction, the quality of the
4 inspection, and the quality of the maintenance, and
5 lack thereof.

6 Q Okay.

7 MR. CONNELL: All right, Your Honor, you want us
8 to go through all the pictures? Would you like us to
9 go through all the pictures? We can go through all
10 those, too, since we're kind of having an in-camera
11 hearing about this issue.

12 THE COURT: I don't think that's necessary.

13 MR. BRYAN: Yeah, put them up. If those are the
14 pictures on the computer, I've seen them all.

15 MR. CONNELL: Okay. Your Honor, I don't want to
16 waste your time.

17 THE COURT: I mean, if there's not an objection,
18 if you've got those pictures and you've seen them...

19 MR. BRYAN: But Alan said the pictures were taken
20 by Tim.

21 THE WITNESS: I think those are Julian's.

22 MR. BRYAN: And these are not --

23 MS. NEUSCHAFER: Right.

24 MR. BRYAN: I haven't seen any Tim pictures.

25 MR. CONNELL: Yeah, we're not using any pictures.

1 that you haven't seen.

2 MR. BRYAN: Okay. When you say you got this one
3 from Alan and new pictures, I hadn't seen any -- I've
4 seen those. That's fine.

5 MR. CONNELL: Okay. That's what I'm using.

6 MR. BRYAN: That's fine.

7 THE COURT: Okay. All right. Well, I'm going to
8 give -- because we're in an in-camera hearing right
9 now, I'm going to give Mr. Bryan an opportunity --

10 MR. CONNELL: Yes, sir.

11 THE COURT: -- to do some cross-examination so
12 that I can make a ruling with regards to...

13 MR. CONNELL: Well, let me ask you about -- let me
14 do one other thing.

15 THE COURT: All right.

16 MR. CONNELL: Because I didn't know about this,
17 let me ask about this.

18 Q Alan, did you prepare a -- I'll call in an
19 exemplar that you had discussed you might do in your
20 deposition?

21 A Yes, sir.

22 Q And what is -- tell the Court what this is and
23 what this would show the Court and the jury and aid
24 them in coming to any conclusions in this case.

25 A Just in the event that the jury doesn't completely

1 understand how the rail was constructed, I built one.
2 This is the construction method of the rail that failed
3 at the time. There was a horizontal rail. And it's
4 nice to be able to put it in front of the jury when we
5 talk about a horizontal rail and a vertical rail and
6 the fasteners and the location of the fasteners. And
7 that's the only purpose. It doesn't serve any purpose
8 of showing any load or how much --

9 THE COURT: It's just a mock-up of what --

10 THE WITNESS: Yes, sir. Yes, Your Honor.

11 THE COURT: -- of what it was.

12 THE WITNESS: That's all it is.

13 MR. CONNELL: It's a model to show the jury.

14 THE WITNESS: It's just to point out, you know,
15 the rail pieces and the posts and where the screws are
16 located.

17 THE COURT: Where they were, yeah.

18 THE WITNESS: Very simple, yes, sir.

19 MR. CONNELL: Your Honor, we're going to use this,
20 if the Court permits, also.

21 THE COURT: Yeah, I don't think there's any issue
22 with that.

23 MR. CONNELL: All right.

24 CROSS-EXAMINATION

25 BY MR. BRYAN:

1 Q Just so I can be clear on which document you
2 really did rely upon, it was the Coastal --

3 A I think it said something about construction of
4 dunes.

5 Q Here we go.

6 MR. CONNELL: I think the Court has those up on
7 the...

8 Q Here we go. Coastal dunes?

9 A Yeah.

10 Q In Texas?

11 A Yeah. Well, let me see. Yeah, I don't think we
12 need that one.

13 Q All right. Then the first document you looked at,
14 the section R30-13, Sand Dune Management, there's a
15 directive, but shall meet the following requirements.

16 These following requirements, though, don't
17 provide any sort of construction requirements, do they?

18 A Well, except for the attached details.

19 Q Okay. I don't see -- do you see -- does it say in
20 here that you shall meet the attached construction
21 details?

22 A It's all collective. It's all part of the same
23 document.

24 Q Okay. Well, if I were to pull up Section R30-13,
25 I'm not going to find the schematics; am I?

1 A I don't know.

2 Q Okay. Do you know where these schematics came
3 from?

4 A It came from one of our -- one of our references.

5 Q Okay. So if I represent to you that when I pull
6 up section R30-13 the schematics don't follow, you
7 don't know where they came from?

8 A Yeah, I can't tell you for sure that they were,
9 you know, attached to this document at the time. I
10 know that we got them from the State as part of the
11 recommended dune walkover guidelines.

12 Q Okay. But the first page, it says these things
13 shall be done. It doesn't say anywhere on there that
14 you shall follow the attached schematics or the
15 attached drawings; does it?

16 A It does not say that, you're correct.

17 Q And page one and the following schematics are not
18 part of the same document; correct?

19 A Yeah, I'll have to take your word for it on that
20 one.

21 Q Well, do you know if they are?

22 A That's what I said, I don't know if they are or
23 are not. I know that we got them from the -- from OCRM
24 at the same time when they were provided to us.

25 Q Okay. Is there any language that is attached to

1 any of those documents, any of the drawings, that says
2 this is the required mandatory construction procedure
3 for Myrtle Beach or anywhere in coastal South Carolina?

4 A There are standard details for construction of a
5 dune walkover.

6 Q You can construct a dune walkover any number of
7 ways; can't you?

8 A Yeah. I mean, if you go back to the applicable
9 codes, if you go back to follow proper maintenance
10 requirements, structural engineering standards, there
11 are modifications and alternate procedures that you can
12 use. And, generally, if you talk to a building
13 official, if a document is stamped by a professional
14 engineer, usually they'll give you a lot of leeway as
15 long as that engineer does follow those accepted
16 industry standards.

17 Q So there's not just one way you construct a beach
18 walkover?

19 A No. There are good ways and bad ways.

20 Q Okay. But there's not just one good way to
21 construct a beach walkover; is there?

22 A No.

23 Q Okay.

24 A But there are a lot of bad ways.

25 Q Does the South Carolina Beach Management Plan,

1 which is an exhibit --

2 THE COURT: Is that 17 here?

3 Q -- which is Exhibit 17, does it state how the City
4 is supposed to construct beach walkovers?

5 A Not that I'm aware of, no, sir.

6 Q Okay. What about the other documents in here?
7 The one from DHEC, the one with the blue cover, that
8 doesn't provide any guidance about how to build a dune
9 walkover either?

10 A Well, the best reference is from the Coastal
11 Construction Manual that references the use of
12 stainless steel fasteners.

13 Q All right. But this one you looked at, it doesn't
14 -- does that address how to build a dune walkover?

15 A I don't...

16 Q Or does it address how to build a dune?

17 A Yeah. As I said, this is something that's more of
18 a recommendation as to how to do it. It doesn't have
19 standard details. And it really has a lot of the same
20 language as the OCRM document.

21 Q How to do what, though? How to --

22 A Constructed of wood, no wider than six feet. I
23 think if you can reference the two documents, I think
24 you'll find they are --

25 Q But they're identical.

1 A My point.

2 Q Right.

3 A Exactly.

4 Q But it says nothing about how to build it with
5 this many screws and this far apart. It's just, don't
6 disturb the dunes; isn't that what it is?

7 A Yeah. They're industry standards for proper
8 construction.

9 Q Okay. But this doesn't tell you how to build it?

10 A Let me see that real quick. No, that next page.

11 No. No, there's no specifications in there.

12 Q So does this document help provide you guidance?

13 A Not really.

14 Q Is it going to provide the jury any guidance?

15 A Probably not, no, Not in the interest of time.

16 MR. BRYAN: That's Exhibit 25, judge. Judge, the
17 sand dune --

18 Q In the document, Sand Dune Management, that is
19 part of your file -- do you have a document from OCRM
20 that says like, dune walkover management?

21 A Not sure that document exists.

22 Q Okay. So because this one just addresses sand
23 dune management; right?

24 A Well, as part of sand dune management is the
25 construction of dune walkovers, obviously, because OCRM

1 does not want you walking on dunes because you flatten
2 the dunes and you damage the sea oats. I think -- I'm
3 not -- it used to be, I'm not sure if it still is,
4 damaging sea oats was a federal offense.

5 MR. BRYAN: Judge, I'd point out that -- I'm not
6 sure what number the Sand Dune Management is, but
7 Mr. Campbell has acknowledged that --

8 THE COURT: 24.

9 MR. BRYAN: Yeah. Exhibit 24, the drawings or
10 schematics that follow Exhibit 24 are not necessarily
11 part of page one, Sand Dune Management. I don't know
12 where they came from. In any event, I do have an
13 objection to use of Exhibit 24.

14 Q And the document from Florida, let's see.
15 Mr. Campbell, is there any evidence that the authors of
16 the document from Florida, that they intended it to
17 apply to South Carolina?

18 A I think you would have to ask them. I'm not sure
19 what their intent was. I expect their intent was to
20 develop a document that addressed applicable industry
21 standards which, at the same time, would be very
22 similar whether we're in Florida, Texas or South
23 Carolina.

24 Q Are you able to represent to the Court that that
25 Florida manual was in existence at the time the 77th

1 Avenue beach walkover was constructed that, it had not
2 repealed or modified or amended?

3 A Can you restate that.

4 Q Yeah. Can you represent to the Court that the
5 Florida manual, as it exists in your file, was in
6 existence at the time the 77th Avenue North beach
7 walkover was constructed, and it had not been repealed
8 or amended in any way?

9 A If we're looking at the same document, some of
10 those same details that we've been referring to are in
11 that document, and they're dated 1983, as I already
12 addressed.

13 Q Okay. But can you represent to the Court that
14 that 1983 document has never been amended, revoked,
15 perhaps the policies in Florida, maybe they changed, do
16 you know if this document -- can you represent to the
17 Court that this document, 1983, that the provisions in
18 it were the same whenever the 77th Avenue North dune
19 beach walkover was constructed?

20 A I'm not sure -- I'm not sure how it's going to be
21 revoked. And I'm not sure if it's been superseded, but
22 certainly, if we take it as an industry standard at the
23 time of construction, then it would have provided those
24 same details that we've already addressed. They were
25 representative of proper construction for a dune

1 walkover.

2 Q All right. Can you tell us that this document has
3 not been amended? Can you tell the Court that this
4 document dated March 1983 was not amended between that
5 date and the date of construction of the 77th Avenue
6 North walkover?

7 A I am not aware of any amendments whatsoever.

8 Q And this document, the Coastal Construction
9 Manual, when was this document promulgated? What is
10 the exhibit number for the...

11 THE COURT: This is 28.

12 Q It was, Mr. Campbell, Exhibit 28, when was it
13 promulgated?

14 A Coastal Construction Manual has been around since
15 probably at least the late '70s into the '80s, and
16 then, you know, minor revisions and new editions over
17 the years.

18 Q When was this document published?

19 A I'm not sure of the date of this one.

20 THE COURT: All right. I'm going to interrupt
21 here for a second. And I'm going to let you get back,
22 Mr. Bryan, to your questioning if you need to, but I'm
23 just a simple man, folks. And sometimes I think just
24 simply asking a direct question is the way to resolve
25 stuff.

1 I'm going to ask, Mr. Campbell, is there a manual
2 or a schematic or some standard in South Carolina for
3 the construction and maintenance of walkovers?

4 THE WITNESS: The two main documents would be the
5 OCRM document.

6 THE COURT: Okay.

7 THE WITNESS: And the Coastal Construction Manual.

8 THE COURT: Okay. And do they -- in those
9 documents, is there details on how they are to be
10 built?

11 THE WITNESS: Those are the ones that we've
12 addressed that Mr. Bryan was asking if those -- if the
13 cover sheet of the OCRM --

14 THE COURT: Matched that?

15 THE WITNESS: Yeah, if it said --

16 THE COURT: That was one document.

17 THE WITNESS: Yes, sir. If it says, you shall
18 follow these diagrams -- and, truthfully, you can build
19 it differently, there are alternative methods of
20 construction. But if you're going to start with a
21 guideline, that would be a good start.

22 THE COURT: Okay. And then, in your examination
23 and in your work on this case, did you use those
24 standards in determining or in coming up with your
25 opinion as to the construction of this walkover?

1 THE WITNESS: Yeah. I would say the -- probably
2 the most relevant standard would be the excerpt from
3 Chapter 14 of the Coastal Construction Manual that
4 talks about corrosion resistant fasteners, stainless
5 steel, and things of that nature. Certainly that's a
6 good design in those details, but there are ways you
7 could do it without going as heavy. But it requires
8 more maintenance, it's going to be not as cost
9 effective down the road.

10 But, you know, a good engineer could design an
11 alternative design, but that's a very good start
12 showing bolted fasteners. And that's the point I was
13 making.

14 THE COURT: All right. Let me -- and you may have
15 more to ask, Mr. Bryan, but just so we can start
16 getting some clarification here -- and I think
17 Mr. Campbell would agree with me because he said it.
18 This Plaintiff's 25, this DHEC document, that's not
19 going to be helpful to this jury in arriving --

20 MR. CONNELL: Yes, sir. He said it already.

21 THE COURT: So...

22 MR. CONNELL: It's out.

23 THE COURT: We'll exclude that one. You know, I
24 understand the testimony that this document from Texas
25 and this document from Florida basically give an

1 overview of the standards for coastal construction and
2 stuff. But I don't know that they're helpful to this
3 issue and to his opinion as to condition of these
4 walkovers, because I think he's testified or he will
5 testify that he used the standards here in South
6 Carolina that are applicable to this type of work.

7 THE WITNESS: Yes, sir.

8 THE COURT: So, you know, again, I'm trying to
9 pare this thing down and not make it so blasted
10 confusing. So I think number -- Plaintiff's-27 and 29,
11 I'm not sure that those need to be a part of the record
12 here.

13 MR. CONNELL: All right.

14 THE COURT: And so we'll take those out. And I
15 think 28 is the one that he said is applicable in this
16 case.

17 MR. BRYAN: Which one; can you show me?

18 THE COURT: You know what, I don't even know the
19 names of them. They're all confusing to me.

20 MR. BRYAN: Judge, what about 24?

21 THE COURT: I think 24 I've already said -- well,
22 wait a minute, 24. All right, I got a little confused
23 in there, because I've got this one that has 24 and 27
24 on it.

25 MR. BRYAN: I think that's 27.

1 THE COURT: I think this is 27. And I think 24
2 might have been on there from earlier, maybe during the
3 deposition or something.

4 MR. CONNELL: I put those on there before the
5 trial. That's the Texas one, you've already said
6 you're not going to put the Florida one, so.

7 THE COURT: Right. But, anyway, which one are you
8 asking about?

9 MR. BRYAN: This one.

10 THE COURT: 24, okay. Now, 24, if my
11 understanding is correct from Mr. Campbell's testimony,
12 is that the schematics attached to this were not -- in
13 other words, that was done -- that's not part of the
14 document.

15 MR. CONNELL: No, sir, he said they came. He said
16 they came --

17 THE WITNESS: They came from OCRM.

18 MR. BRYAN: But they're not --

19 THE COURT: Right, right. But -- and they're
20 relevant.

21 THE WITNESS: Yes, sir, very relevant.

22 THE COURT: Clearly relevant. But the way the
23 exhibit is constructed, they were attached because
24 they're relevant. But it would appear that it makes it
25 read that you shall meet the following requirements and

1 that these are the following requirements.

2 MR. CONNELL: So you want me to separate those as
3 exhibits; is that's what you're saying?

4 THE COURT: Well, I think for it to be clear.
5 Now, I don't know how you copy this one, but it tends
6 to have it on the back anyway. Am I correct,
7 Mr. Bryan, that's what your point is; right?

8 MR. BRYAN: Correct.

9 THE COURT: That this language, you shall meet,
10 means these requirements A through H, not shall meet
11 these requirements.

12 MR. BRYAN: And a further question of where those
13 came from.

14 THE COURT: Well, he testified to that.

15 MR. BRYAN: And when they are effective. Were
16 they effective at the time of construction? Like
17 that's another question, were they effective when this
18 walkover was built?

19 MR. CONNELL: I think he said that already.

20 MR. BRYAN: How does he know?

21 THE COURT: Well, it would be in the manual or
22 wherever it came from.

23 THE WITNESS: Either for original construction or
24 maintenance beyond, they're going to apply. And
25 they're guidelines.

1 THE COURT: And so I want to get to the issue,
2 which the central issue in all of this is whether or
3 not Mr. Campbell -- that his opinions are based and
4 supported by industry standards of reliability and
5 consistency and the methods used in arriving at that,
6 in giving his opinion.

7 I think a lot of what we're going through here, if
8 I allow that opinion testimony in, I think a lot of
9 what we're going through here may go to the weight of
10 that testimony, but I don't know that it goes to the
11 admissibility of it.

12 MR. CONNELL: Yes.

13 THE COURT: And obviously would give Mr. Bryan,
14 you know, wide latitude and leeway to cross-examine and
15 do what he would like to. But as far as the
16 admissibility of the opinion, I would like you to focus
17 your efforts on that at this point and to determine
18 whether or not the methods used, you know, meet the
19 standard.

20 MR. BRYAN: Judge, my questioning of Mr. Campbell
21 so far has to do with the documents he's relying upon.

22 THE COURT: All right.

23 MR. BRYAN: There is one opinion that the
24 load-bearing capability of that railing, that I would
25 like to ask him just two or three questions --

1 THE COURT: Yeah. Sure.

2 MR. BRYAN: And then depending on that, you can
3 decide if that opinion, based on the work he did is, in
4 fact, reliable enough to go to the jury.

5 THE COURT: Okay.

6 MR. BRYAN: That's all. May I proceed?

7 THE COURT: Yeah. And do you need any of this?

8 MR. BRYAN: I don't think so, judge.

9 THE COURT: Okay.

10 Q Mr. Campbell, I asked you in your deposition, you
11 know, if you could determine, you know, when the
12 railing would have been able or would have not been
13 able to withstand 200 pounds of concentrated force.
14 And you told me that you would produce things like
15 create an exemplar, I think you said. You said you
16 would need to determine the size of the fasteners,
17 probably also reconstruct an exemplar and load-test it
18 to see at what point it would fail.

19 Then I would also probably get a metallurgic
20 corrosion engineer involved to help develop a timeline
21 of the rate of corrosion. And that would give us
22 information on the strength. And then plot that in
23 between regarding corrosion, fastener strength,
24 connection failure, all of those components. So it's
25 going to -- and then start from the max, we end up

1 probably near zero, and we've got to kind of calculate
2 all the points in between. And I said, okay, but that
3 can be done? And you said, I think it can be done,
4 sure.

5 But has any of that work been done?

6 A No, I didn't do any load testing. I took the
7 other route, since Mr. Rogers had performed
8 calculations, reviewed his calculations and performed
9 additional calculations --

10 Q Like when you --

11 A -- which is an accepted engineering practice.

12 Q When you formulated your opinion several months
13 ago, you hadn't done any of that analysis?

14 A No, I had not done that analysis. But if you
15 remember from my deposition, I testified that I fully
16 expected that that rail would not meet the 200-pound
17 load, and I was correct.

18 Q Okay. Have you determined -- have you done any
19 tests to determine how many pounds of pressure this
20 railing would have withstood the moment before
21 Mr. Ciampanella fell?

22 A You've already asked me that on multiple
23 occasions. And I had neither I or anybody else can
24 tell you that exact number. But we know probably from
25 -- as by inspection, from simple calculations, from

1 engineering experience that it's going to be somewhere
2 between probably zero and 30 to 40 pounds.

3 It failed simply by Mr. Ciampanella leaning
4 against the rail, not sitting on the rail, and it
5 failed from, you say, simple sideways force.
6 Therefore, it was somewhere between zero, and probably
7 not zero, and probably not at the point that he
8 actually put his full leaning force against it of 30 or
9 40 pounds, so I would speculate probably 20 to 30
10 pounds. And that was it.

11 Q Have you done the calculations to determine the
12 strength or the corrosion rate of the screws?

13 A That's -- I don't need to speculate on that. That
14 comes from one of these FEMA documents that we've
15 produced. It says that that galvanized coating will
16 last approximately seven years in a coastal environment
17 near the ocean. That analysis has already been
18 performed and published.

19 Q Your analysis assumes that the two boards that
20 made up the railing were connected; correct, at the
21 time Mr. Ciampanella leaned against it?

22 A My analysis?

23 Q Yeah.

24 A The other board was probably down. There was only
25 a single board there.

1 Q Excuse me. You're -- are you sure?

2 A Well, if you look at the photographs, the
3 photographs show the boards separately. There could
4 have been -- they could have been both up.

5 Q So you knew this whole time that that railing only
6 had one rail at the time Mr. Ciampanella leaned against
7 it?

8 A I knew the whole time?

9 Q Yeah. Because I don't think anybody else in this
10 room knew until yesterday. But you knew?

11 A Well, let's look at this photograph. I've
12 identified one, and I was not aware that testimony came
13 out. But if you look at this photograph, this
14 photograph's already in evidence, I don't see how that
15 rail would have displaced from him leaning against it
16 the way it did.

17 Q So you knew it was already down. Do you know the
18 force that -- do you know what caused that railing to
19 be damaged in such a manner that the top rail came
20 apart?

21 A Corrosion.

22 Q Just --

23 A Lack of maintenance.

24 Q It just fell off all by itself, without anybody
25 touching it?

1 A You need to restate that, I'm not following your
2 question.

3 Q Okay. What --

4 A Are you talking about the time that he fell, are
5 you talking about at the time the board fell off, or
6 are you talking about sometime in between?

7 Q When Mr. Ciampanella approached that walkover and
8 leaned against it, there's only one board on the top
9 railing.

10 A Apparently, yes, sir.

11 Q So you knew that all along?

12 A I mean, I can't say with hundred percent
13 certainty.

14 Q Okay. Well, my question to you is, what caused
15 that board to be knocked off?

16 A At the time Mr. Ciampanella was injured?

17 Q Well, it fell off before he got there, so --

18 A Oh, you're saying that board. Yeah. Well, let's
19 look. It could have been vandalism, it could have been
20 corrosion, it could have been gravity, it could have
21 been a dog or a child.

22 Q Okay.

23 A I mean, I don't know that me speculating as to
24 what caused that board to fall off is going to be
25 helpful. But at the same time, if the board fell off,

1 it likely was not capable of withstanding that
2 200-pound load because of the significant advanced
3 state of corrosion along the fasteners. That's the
4 bottom line.

5 Q So you can't eliminate the possibility that
6 whatever caused that top rail to fall off, that would
7 have also had some impact on the horizontal railing?

8 A I don't see that.

9 Q You don't?

10 A No, sir.

11 Q Okay. You think it just fell off by itself
12 without any forces being imparted on the third railing?

13 MR. CONNELL: Your Honor, I'm going to object.
14 That question has been asked and answered three or four
15 times.

16 THE COURT: Well, it's incredibly speculative. I
17 don't know that Mr. Campbell or anyone can -- unless
18 they were actually there and watched that rail fall,
19 it's going to be completely speculation as to what
20 caused it.

21 THE WITNESS: That's my point, Your Honor.

22 THE COURT: Vandalism?

23 MR. BRYAN: Could be.

24 THE COURT: You know, somebody other than
25 Mr. Ciampanella being knocked into it? So -- and I.

1 guess what I'm getting at is, again, all of this goes
2 to the weight of the testimony. But I don't know that
3 it goes to the admissibility.

4 I'm going -- based on what I've heard, I'm going
5 to allow Mr. Campbell to testify and to give his
6 opinions based upon his examinations and certainly give
7 Mr. Bryan whatever leeway he needs in his
8 cross-examination.

9 MR. BRYAN: All right. Thank you, judge.

10 THE COURT: All right? Now, just so the record's
11 clear -- and y'all stay with me and make sure I'm not
12 messing something up here -- Plaintiff's-17 is in
13 evidence, okay? That's that document that came in
14 earlier.

15 MR. CONNELL: Yes, sir.

16 MR. BRYAN: Sure.

17 THE COURT: And I think 18 was in and 26. Now,
18 24 -- may I suggest, I think, for 24 to be accurate and
19 not confusing, if we could make a photocopy of just
20 this front page, because this was a double-sided copy.
21 And then put a new sticker on matching 24 and let this
22 be the single page without this.

23 THE WITNESS: I do have a black Sharpie, if you
24 want to just strike through "shall," if it makes it any
25 easier on anybody.

1 THE COURT: Well, I don't think they want that.

2 THE WITNESS: Apparently not.

3 THE COURT: Can you make me a copy of this? Just
4 the front, just the front page. Now, so we're clear,
5 that doesn't preclude it at all, Mr. Campbell, of
6 discussing these schematics as far as -- because that's
7 part of the document that's in evidence. And then 28
8 is in evidence. 25 is not, 27 is not, and 29 is not.

9 THE WITNESS: Your Honor, while y'all are doing
10 that, just to save some time, could I make a quick
11 bathroom stop?

12 THE COURT: Absolutely. And before we start back,
13 before we bring the jury back out, we'll all do that,
14 if anybody needs it.

15 MR. CONNELL: Let me just -- so we cannot have any
16 more stops.

17 THE COURT: Yeah.

18 MR. CONNELL: These are the three other things,
19 International Building Code, the Standard Building Code
20 of 1994, and the ASTM for technical advisors.

21 THE COURT: Are these things that he relied upon?

22 MR. CONNELL: Yes, sir.

23 THE COURT: As long as they're things that he
24 replied upon in forming his opinion, and they're South
25 Carolina.

1 MR. BRYAN: I've just never seen them.

2 THE COURT: You haven't seen this?

3 MR. BRYAN: No, sir.

4 THE COURT: I thought this was all in his
5 deposition.

6 MR. BRYAN: No, this is brand new.

7 MR. CONNELL: This is stuff he did afterwards so
8 that he could --

9 MR. BRYAN: Stuff we discussed.

10 THE COURT: I'm not sure whether -- I mean...

11 MR. CONNELL: He's testified about the codes that
12 he's going to offer.

13 THE COURT: Right. But what are those?

14 MR. CONNELL: Those are the codes. And, Your
15 Honor, they're also -- in response to what we got, he
16 named an expert, and we got his expert like two weeks
17 ago. And they were in response to the documentation we
18 got from his expert.

19 THE COURT: We're going to take a short break and
20 let y'all look at them. And then maybe after you look
21 at them, it may not be an objection. Let's do that,
22 okay.

23 MS. NEUSCHAFER: And this one has not marked;
24 correct?

25 THE COURT: No, no, those are just the schematics

1 I just took off the last thing.

2 MS. NEUSCHAFER: Okay, okay. Just making sure --

3 MR. CONNELL: But we're going to make that what,
4 24-A, or what do you want me to do with that; just make
5 it a whole new number? I was going put that in
6 evidence.

7 THE COURT: You can do it just as a separate
8 number.

9 MR. BRYAN: Yeah.

10 MR. CONNELL: All right.

11 THE COURT: And not relate it to that --

12 MR. CONNELL: Okay, Your Honor.

13 THE COURT: -- that document. Okay? All right,
14 we'll just take a few minutes and give y'all a chance
15 to go over those things.

16 (WHEREUPON, a brief recess was taken at 3:31 p.m.)

17 (WHEREUPON, Plaintiff Exhibit No. 31 and 32 was
18 marked for identification only.)

19 (Discussion off the record.)

20 (WHEREUPON, the jury came into open court at
21 approximately 4:00 p.m.)

22 THE COURT: All right, folks. Let me -- now, I
23 promise you what I'm about to tell you is not some
24 standard government-issue comment about why I've wasted
25 all your time, because I haven't wasted your time. As

1 a matter of fact, we took the opportunity while you
2 were out to resolve several issues that likely would
3 have come up later on.

4 And so while we had you out, we thought this is a
5 good opportunity to go through a bunch of things, so
6 that we can flow a little more smoothly as far as not
7 sending you out and bringing you back in. So I
8 appreciate your patience while we did that. But I
9 promise you that, in the long run, this time that we
10 took, which was over an hour, is going to save us at
11 least that if not more throughout the remainder of the
12 case. So thank you for your understanding in that.

13 Are you ready to proceed?

14 MR. CONNELL: Yes, sir.

15 THE COURT: Okay.

16 CONTINUING DIRECT EXAMINATION

17 BY MR. CONNELL:

18 Q All right. Let's go back. You've got a notebook
19 there, if you would, and let's look at what documents
20 you looked at in reaching your opinions in this case.
21 And let's start at the beginning, and I'll try to put
22 my hands on the ones we've got an exhibit.

23 A I have numerous photographs produced. Taken not
24 by me but produced by, I think, by Mr. Hanna.

25 Q Okay. How many are there?

1 A Do you want me to count, or do you want me to
2 estimate?

3 Q Just estimate.

4 A I think there's like maybe 13, 12 to 13, 10 to 12,
5 something like that. Maybe a dozen.

6 Q You've got 13 photographs?

7 A Yeah, a dozen, yeah. Yes, sir.

8 Q All right. What else do you have?

9 A Just some reference documents from OCRM, Office of
10 Coastal Resource Management, basically giving some
11 guidelines for --

12 Q All right. Stop right there, because we've
13 already marked those while the jury was out. Let's
14 talk about those. Exhibits 24 and 32, are those the
15 exhibits that are in your notebook?

16 A Yes, sir.

17 Q Are those the exhibits you relied upon in forming
18 your opinion as to the cause of the injury to
19 Mr. Ciampanella on August 19, 2014?

20 A I would say indirectly, because it goes back to
21 the method of construction and probably how the injury
22 possibly could have been prevented.

23 Q Are those part of the documents that you relied
24 upon in forming your opinion about the City of Myrtle
25 Beach's construction, maintenance and repair of the

1 dunes walkover at 77th Avenue North on August 19th,
2 2014?

3 A Yes, sir.

4 Q All right. What other documents do you have that
5 you relied upon? Maybe I can speed this up and help
6 you a little bit. How about Plaintiff's Exhibit No.
7 17, a resolution to adopt the 2012 Beach Management
8 Plan for the City of Myrtle Beach; is that a document
9 that you relied upon? Pages 60 and 61, I think are in
10 your records.

11 A Yes, sir.

12 Q All right. And what did you rely upon in that
13 document in reaching your opinion about the City's
14 practices regarding the dunes crossover construction,
15 maintenance and repair?

16 A The City's position on the life expectancy of the
17 dune walkover and their replacement schedule.

18 Q Okay. How long did the City of Myrtle Beach
19 indicate their life expectancy would be of a dunes
20 walkover in that resolution that's Exhibit No. 17?

21 A 15 years.

22 Q All right. Now, what opinion or what evidence
23 have you seen as to how old the dunes walkover is at
24 77th Avenue North where Mr. Ciampanella was injured on
25 August 19th, 2014?

1 A Based on testimony and based on information that's
2 been provided to me, it would appear that that dune
3 walkover was probably replaced after Hurricane Hugo,
4 because most of those washed out after Hurricane Hugo
5 and had to be replaced at that time. Looking at the
6 deteriorated condition and the physical condition of
7 the wood and the fasteners as well, it does appear to
8 probably be in that timeframe.

9 Q All right. Now, Exhibit 17, what indication is it
10 in Exhibit 17 in regards to the City's intent to
11 replace the dunes walkover at 77th Avenue North?

12 A As part of this resolution, it was the City's
13 intent to replace six to seven per year of these
14 walkovers until they identified and removed and
15 replaced the ones that were damaged or worn or beyond
16 repair. Included within those was the one that was the
17 subject of this lawsuit.

18 Q All right. And what number was the 77th Avenue
19 North dunes walkover on the list of repairs to be fully
20 -- for the dunes walkover to be fully repaired? What
21 number was that?

22 A 33.

23 Q All right. And what year was that decided that
24 they were going to replace what -- you said six to
25 seven?

1 A Yes, sir.

2 Q What year was it decided they were going to
3 replace six to seven every ten years or every five or
4 whatever it was?

5 A Yeah. This was dated in December 2010. So if we
6 go 2011, '12, '13, '14, '15, so through the end of 2015
7 at six per year would be 30, seven per year would be
8 35. So this dune walkover should have been replaced no
9 later than the end of 2016, and it's still there.

10 Q All right.

11 A So it shows that it was in a state of deteriorated
12 condition, and they identified it for replacement.

13 Q All right. Now, you've been to the dune walkover?

14 A I have, yes, sir.

15 Q Is it in the same condition?

16 A They've -- it's still --

17 Q We'll talk about what's been done. Has it been
18 totally repaired? Let me say that.

19 A It's has not been removed and replaced, correct.

20 Q All right.

21 A It still has quite a bit of deterioration to it.

22 Q All right. Now, Exhibit No. 32, can you tell the
23 jury what that is and how that helped you in your
24 decision or your opinion-making process.

25 A These are some standard guidelines from OCRM, the

1 Office of Coastal Resource Management, and it gives
2 some details on recommended procedures for constructing
3 dune walkovers, including the type of fasteners. As
4 opposed to using small screws -- and if you want to
5 look at one, we can show what size screw was used to
6 construct these -- this detail recommends using a
7 half-inch diameter bolt as opposed to a number 9 screw.

8 Q Okay. Let me show you those and ask you what they
9 are.

10 A Now, this still has a label on it, it's a number 9
11 -- number 9 screw. The diameter is about three
12 sixteenths of an inch, as opposed to a half inch. So
13 less than -- way less than half of the diameter of one
14 of those bolts.

15 Q All right. And Exhibit 32, what does it recommend
16 as construction for the dunes walkover; what does the
17 State OCRM recommend?

18 A Half-inch diameter bolts.

19 Q All right. And are there any half-inch diameter
20 bolts on the pictures you've seen?

21 A I didn't see any anywhere from walking through,
22 ones I've seen, ones I've seen in the past.

23 Q Okay. Now, have you at my request constructed
24 what was there based on your review of the depositions,
25 the testimony and the pictures?

1 A Yes, sir.

2 Q And is that what this is?

3 A Yes, sir.

4 Q And when did you build that?

5 A Yesterday.

6 Q Okay. And if you would, I'd like you to come down
7 here and explain to the jury so we can get some
8 understanding about what this is and what it
9 represents.

10 A The only difference would be there's actually a
11 decorative kind of cap, almost like an acorn or
12 pineapple or something on top of the four by four.
13 This is a four by four, this is a two by four, this is
14 a two by four. I'm sure a lot you know what those are.
15 So this is how the rail was constructed. This would
16 have been the walkway side. So inside -- so from the
17 inside looking out, you would see the face of the four
18 by four. I call this the flat two by four, or the cap,
19 and this is a vertical two by four.

20 The way it was fastened, there's a joint in some
21 of these, so there's two screws here. They go in the
22 face. Two screws there, there's a butt joint right
23 there, and a single screw that went through the flap.

24 There's no evidence that these two rail sections
25 were fastened together. So he has a single screw. And

1 if any of you have ever been carpenters, you understand
2 the term toenail as opposed to, you know, a face nail
3 or a face screw. So this is a much weaker connection
4 with a toenail than it would be -- or a toe screw --
5 than it would be with a -- one that goes through the
6 face.

7 The fact that they're not connected together also
8 makes it weaker, and the fact that it was a number 9
9 screw, which is a very, very small diameter, means it
10 can corrode at a very fast rate once the galvanized
11 coating wears off. So, basically, we have these
12 screws, number 9, installed to fasten the rails to the
13 four-by-four post.

14 Q All right. Do you have an opinion to a reasonable
15 degree of engineering certainty as to whether or not
16 the railing as constructed by the City of Myrtle Beach
17 was consistent with the State of South Carolina's OCR
18 and rules and regulations as you discussed in
19 Plaintiff's 32?

20 A It certainly does not follow the guidelines in the
21 fact that they used a small diameter screw. It could
22 have worked, but it would create a very, very high
23 maintenance schedule because of the fast rate of
24 corrosion. So the fact that the screws would
25 deteriorate so quickly, then they either need to

1 maintain it on a regular basis or construct it in a
2 much stronger manner using bolts instead of screws.

3 Q All right. Can you speak to this railing down
4 here that's seen in the picture the day after and as to
5 where that railing -- or what that is and where that
6 would have been.

7 A It appears that it was what I'm calling the cap
8 rail, it would have been across the top. And it just
9 attached between the posts, because the rail that's
10 hanging down is the vertical rail.

11 Q All right.

12 A So it would appear because it's back here that it
13 was not in place at the time of the collapse. So there
14 had already been some deterioration and collapse of the
15 rail before Mr. Ciampanella's accident.

16 Q All right. Do you have an opinion to a reasonable
17 degree of engineering certainty based on the
18 photographs that were taken on August 19, 2014 as to
19 whether or not this particular board, right near where
20 my finger is, came off at the time of Mr. Ciampanella's
21 fall, based on the location?

22 A Yeah, based on the location, it would not have
23 fallen. It appears that it had fallen off previously
24 and had been placed on the side. It was not in place
25 at the time of Mr. Ciampanella's accident.

1 Q All right. Now, what else about the exemplar that
2 you built in regards to the lag bolts you were
3 discussing that was a preferred form of construction;
4 how would that have been -- can you explain that to the
5 jury.

6 A Well, those lag bolts would have been much larger
7 diameter, a half-inch diameter, and they would have
8 penetrated all the way through the post. So they would
9 have gone in one side, with the head of the bolt on one
10 side, and the nut with a washer on the other side.

11 Q All right. As opposed to what with this?

12 A Yeah, just simple screws that just go into the
13 face and go into the post, you know, a short distance.

14 Q Okay. What do we know or what do you as an
15 engineer know about the harsh coastal environment and
16 the use of these type of screws in dunes walkovers on
17 the beach and how they last and how they hold up?

18 A They don't last very long, it's not recommended.
19 And if they do, if you use those, you've got to replace
20 them very frequently. They're just not recommended.
21 You should use something much larger in diameter with a
22 heavier galvanized coating. And you can get screws
23 with a galvanized coating. That's what these are,
24 these are galvanized screws.

25 But they must be much larger in diameter. It's

1 like anything else, if something is going to wear out,
2 the bigger it is, the longer it takes. Anything that's
3 small -- a small diameter screw means it's going to
4 deteriorate at a much quicker rate as opposed to a
5 large half-inch diameter bolt.

6 Q All right. Does Plaintiff's Exhibit No. 32, which
7 you had in your -- which you got from OCRM, does that
8 have the bolts that you're referring to?

9 A It does. Galvanized half-inch diameter bolt, yes,
10 sir.

11 Q All right. Come back here.

12 MR. CONNELL: Your Honor, we'd like to offer this
13 as an exhibit. Where is...

14 MR. BRYAN: Right over here.

15 MR. CONNELL: Oh, okay. We'd like to offer this
16 as an exhibit.

17 THE COURT: Any objection?

18 MR. BRYAN: I don't think it accurately depicts
19 the configuration of the walkover, judge.

20 THE COURT: Where is your photograph?

21 MR. CONNELL: Right here.

22 THE COURT: Where is your blow-up?

23 MR. CONNELL: Right here.

24 MR. BRYAN: Does the horizontal board show it has
25 fasteners that would be going into the cap board?

1 THE WITNESS: That's a vertical.

2 MR. BRYAN: Does the vertical board show nail
3 holes or screw holes, whatever, that would be fastening
4 it to the horizontal cap board?

5 THE WITNESS: No, sir.

6 MR. BRYAN: It doesn't?

7 THE WITNESS: You're pointing at that?

8 MR. BRYAN: You don't see nail holes, one, two,
9 three, four? The two boards are fastened together; are
10 they?

11 THE WITNESS: I don't -- I don't see screws.

12 MR. BRYAN: Do you see holes there? The two
13 boards, they've fallen apart now. I'm not sure that
14 the screws are there because the two boards have now
15 been separated.

16 THE WITNESS: Right.

17 MR. BRYAN: But do see where they were fastened
18 together? Do you see either nail or screw holes on the
19 vertical board near the top of the vertical board that
20 would fasten the vertical board to the horizontal cap
21 board?

22 THE COURT: You're saying on this vertical board?

23 MR. BRYAN: Yeah.

24 THE WITNESS: And do I see holes?

25 MR. BRYAN: Yeah.

1 THE WITNESS: I don't. I mean, I'll certainly
2 defer to the jury, if the jury sees holes. I don't see
3 holes.

4 MR. BRYAN: Do you wear glasses?

5 THE WITNESS: Only to read fine print.

6 MR. BRYAN: Put your glasses on.

7 THE WITNESS: There may be a dot there. I do see
8 a dot there.

9 MR. BRYAN: Look two feet to the left and look two
10 feet to the right.

11 THE WITNESS: Okay. There may be a dot there.

12 MR. BRYAN: Okay. So those two boards were
13 fastened. And my question is to you, in your little
14 exemplar here, if you fastened --

15 MR. CONNELL: Your Honor, let me -- let me -- I
16 mean, I've offered it as an exhibit based on his
17 understanding of the theory of our case. If he wants
18 to cross-examine him --

19 MR. BRYAN: It's not the same, judge, so I object.

20 THE COURT: Your objection -- all right. I'm
21 going to sustain the objection. It doesn't...

22 MR. BRYAN: Thank you, judge.

23 THE COURT: It doesn't depict, apparently, the --
24 as seen. But the jury will have the pictures, they'll
25 have all that.

1 MR. CONNELL: All right. Let me go back then.

2 Q How did you construct the exemplar that we have
3 here, and what did you use to construct it?

4 A I just screwed it together.

5 THE COURT: Let me -- come on up here.

6 (WHEREUPON, a bench conference was held off the
7 record in the presence of the jury but out of the
8 hearing of the jury.)

9 Q All right. Now, if you would, go back and tell me
10 what else that you used in forming your opinions.

11 A We've already addressed the replacement schedule.

12 Q We did.

13 A I guess the next document would be the
14 International Property Maintenance Code.

15 Q All right. Tell me how the International Property
16 Maintenance Code relates to this particular case.

17 A It gives guidelines related to the construction
18 and maintenance. I'll just read that first couple
19 paragraphs. This is Section 304 from the International
20 Property Maintenance Code, which has been adopted by
21 the City of Myrtle Beach.

22 The exterior of a structure shall be maintained in
23 good repair, structurally sound and sanitary so as not
24 to pose a threat to the public health, safety or
25 welfare. The following conditions shall be determined

1 as unsafe and shall be repaired or replaced to comply
2 with the International Building Code or the
3 International Existing Building Code.

4 Specifically, number 12 falls under those
5 categories, addresses exterior stairs, decks, porches,
6 balconies, and all similar appurtenances attached
7 thereto, including guards and handrails that are not
8 structurally sound or properly anchored.

9 MR. CONNELL: All right. That would be Exhibit
10 No. 26, Your Honor, which I think is already in
11 evidence.

12 THE COURT: Yes.

13 Q All right. Now, tell me what the International
14 Property Maintenance Code is and why it's used.

15 A It's a document for, basically, maintenance and
16 repair because the International Building Code is a
17 design document, although it does have a section on
18 renovation of existing buildings. But this document is
19 more addressed towards repair, maintenance, and to a
20 certain extent, life safety, as specifically addressed
21 here.

22 Q All right. Do you have an opinion to a reasonable
23 degree of engineering certainty as to whether or not
24 the City of Myrtle Beach violated the 2012 and earlier
25 International Property Management Code, based on its

1 maintenance, construction and repair of the dunes
2 walkover in this case on August 19, 2014?

3 A They did not meet the requirements of this code.

4 Q All right. And tell the jury why they didn't meet
5 the requirements.

6 A Because this code is published in the interest of
7 the public welfare and life safety, and it addresses
8 unsafe conditions. And if unsafe conditions exist or
9 are identified, they shall be repaired. And that did
10 not occur in this situation because the fasteners for
11 the rail corroded through and collapsed and caused an
12 injury.

13 Q All right. And this being the fastener you're
14 talking about?

15 A Not one exactly like that. That diameter, one
16 that size.

17 Q When you say size, what do you mean by that?

18 A When we talk about size, we talk about the shape,
19 diameter, the thread diameter. So that diameter --
20 this is the size of the fastener. They probably would
21 have been longer, so I don't want to misrepresent the
22 length. They probably would have been longer, but they
23 would have been very small diameter.

24 Q All right. So diameter, you're talking about the
25 width of the screw; is that right? The width of the --

1 is that what you mean by that?

2 A Correct, right. And we want to see longer ones in
3 that box I gave you. There are actually some longer
4 screws. Oh, here they are right here.

5 Q Okay. Yeah, pull us out some.

6 A So just sort of -- I know they do come in much
7 longer sizes. This is not a number 9, this is actually
8 a number 8, it's a little bit smaller. But they -- by
9 the naked eye, you wouldn't know the difference -- but
10 they do come in much longer lengths, if necessary. So
11 the length is not the issue with that one. The
12 diameter is what we're addressing because of the rate
13 of corrosion.

14 MR. CONNELL: Okay. Your Honor, we'd like to
15 offer the number 9 screw as the next exhibit in line.

16 MR. BRYAN: Is it a new screw?

17 MR. CONNELL: Just as an example.

18 THE COURT: And he's refer- -- it's being offered
19 to show the diameter of the screws used.

20 MR. BRYAN: Without objection.

21 THE COURT: Without objection. And good luck in
22 tagging that.

23 COURT REPORTER: 33. Thank you, judge.

24 (WHEREUPON, Plaintiff Exhibit No. 33 was marked
25 for identification only.)

1 Q All right. Now, let's look at the next document
2 you have.

3 A There is actually a specific section in the
4 International Property Maintenance Code that addresses
5 handrails and guard rails.

6 Q All right. Talk to me about that specific section
7 and how it applies to this case.

8 A Section or paragraph 304-12, Every handrail and
9 guard -- guard being the term for guardrails -- shall
10 be firmly fastened and capable of supporting normally
11 imposed loads and shall be maintained in good
12 condition.

13 Q All right.

14 A Clearly, they did not satisfy that requirement
15 either.

16 Q All right. Let me ask it this way, because I have
17 to ask it a certain way, as you know. Do you have
18 opinion to a reasonable degree of engineering certainty
19 as to whether or not the City's maintenance,
20 construction and repair of the guardrail at the 77th
21 Avenue beach walkover on August 19, 2014 met that
22 particular provision of the code?

23 A They did not. I mean, simply being that the fact
24 that Mr. Ciampanella leaned against it and it failed.
25 And him leaning against it would have exerted a much,

1 much lower load than what would have been required by
2 the applicable building code.

3 Q All right. Now, let me -- let's go to the next
4 document that you've looked at in forming your opinion.

5 A I don't know if we used that one or not, but it's
6 just -- has details very similar to the, I think,
7 Exhibit 32, which is -- I think, this is our 32; isn't
8 it?

9 Q That's the -- all right, look at this one, Exhibit
10 No. 30, South Carolina Guide to Beach Front Property.

11 MR. CONNELL: I believe that's in evidence, is it
12 not, Madam Court Reporter?

13 COURT REPORTER: Yes.

14 THE WITNESS: Okay. I got it.

15 Q Tell the jury, if you would, how Exhibit 30
16 assisted you in reaching your opinions in this case.

17 MR. BRYAN: I thought this was one we may have
18 left out.

19 COURT REPORTER: Okay, hold on a minute.

20 MR. CONNELL: All right. Did you confirm and make
21 sure --

22 COURT REPORTER: No, it's not out. Yeah, only 25
23 to 29 is out.

24 MR. BRYAN: Is it the last one in the stack?

25 COURT REPORTER: The last one I have is --

1 THE WITNESS: It probably should be out, we don't
2 need it.

3 MR. CONNELL: All right. We'll withdraw it then,
4 Your Honor. Give us extra credit, we're withdrawing an
5 exhibit.

6 Q All right. Now...

7 A Did we use that one?

8 Q Dune Walkover Guidelines, let's see where that one
9 is. No, those are out, I guess.

10 A Yeah, I think that one's out, too.

11 Q Okay. All right.

12 A So we'll go to the Coastal Construction Manual.

13 Q All right. Tell me how the Coastal -- what is the
14 Coastal Construction Manual?

15 A This is a document published by FEMA. Now, I
16 don't know if we're all familiar with FEMA, it's the
17 Federal Emergency Management Agency. They address --
18 really, they cover flood zones, flood zones along
19 rivers, flood plains, oceans, any area mostly
20 susceptible to flood in this particular application.
21 And they published a Coastal Construction Manual that
22 has recommendations and guidelines related to coastal
23 construction.

24 Q Okay. And how did that document figure into your
25 opinion?

1 A Basically, it gives us more guidelines as well.
2 It gives us guidelines that the galvanized coating on a
3 particular fastener, galvanized zinc, making it
4 corrosion resistant, the analysis they have done and
5 published as a guideline is that that galvanized
6 coating to make those fasteners corrosion resistant is
7 only going to last about seven years, when exposed
8 along the ocean in the area close to spray, humidity,
9 moisture, direct exposure and very harsh abrasive
10 conditions.

11 So once you lose the corrosion-resistant coating
12 after probably seven years or so, the rate of
13 corrosion, in accordance -- as addressed by this
14 manual, the rate of corrosion basically accelerates by
15 a factor of 50.

16 Q All right.

17 A So what would corrode at a very, very minimal rate
18 with a galvanized coating is going to be 50 times
19 greater once that coating wears away.

20 Q All right. So the first seven years -- I'm trying
21 to do the math. The first seven years, it's going
22 to --

23 A You're pretty well protected.

24 Q Okay. And then how about year number eight?

25 A It's going to start taking off in a hurry. And

1 that's what we have. So if you're using these small
2 diameter fasteners, if you're thinking that you're
3 going to make it 15 years, you're not even going to
4 make that. They're going to corrode, they're going to
5 fail, and the rails are going to collapse.

6 Q All right. Do you have an opinion to a reasonable
7 degree of engineering certainty as to whether or not
8 the City employees would have been able to see that
9 type of corrosion in the inspections that they were
10 doing prior to Mr. Ciampanella's injury on August the
11 19th, 2014?

12 A Based on his injury, based on that collapse, based
13 on prior -- based on review of testimony of prior rail
14 collapses, they certainly should have been on notice.
15 Because previous or other rails have collapsed
16 previously, they had to do repairs, and at that time
17 they should have seen that those repairs were probably
18 dictated by corrosion of those fasteners, those screws
19 and nails that connected those rails to the post.

20 Q All right. And do the photographs that you
21 have -- let me let you look at the photographs, and
22 tell me which photographs that you show that would have
23 shown that.

24 A I think we're all familiar with what rust looks
25 like. Photo three, where this rail has dropped down,

1 there's corrosion at the post. Photo four is very
2 similar, a little bit more close up, shows evidence of
3 corrosion at the post.

4 Five is a very, very close up corrosion of the
5 fastener at the post. Photo six is even more close up,
6 shows accelerated corrosion or evidence of accelerated
7 corrosion, seven as well. Photo eight shows fasteners
8 that have corroded entirely through, which caused the
9 rail to fall off and fail.

10 I think photo ten is Mr. Ciampanella's injury.
11 That was nine, I'm sorry, nine is his injury. Ten is
12 in the dark, you really can't see anything. Eleven is
13 in the dark. 12 shows a fastener that has corroded
14 entirely through. 13's fairly wide angle, doesn't show
15 much. 14 shows evidence of corrosion.

16 Q All right. Now, let me get all those from you so
17 we don't lose them all.

18 A Right.

19 Q Now, have you had an opportunity to review through
20 the depositions of the City employees the inspection
21 technique that they were using on the beach walkovers
22 in the City of Myrtle Beach?

23 A Yes, sir.

24 Q And do you have an opinion to a reasonable degree
25 of engineering certainty as to whether or not their

1 inspection technique for looking at the beach walkovers
2 was appropriate based on reasonable engineering
3 standards?

4 A I have, yes, sir.

5 Q All right. And what is that opinion?

6 A Based on my review of their testimony, my
7 experience and evidence presented as a result of
8 Mr. Ciampanella's fall and previous related conditions,
9 their work was inadequate.

10 Q All right. How about the way they inspected the
11 actual beach walkovers, did you look at any evidence as
12 to how they did that?

13 A Yes, sir. It looks like it was only done every
14 three years. It looks like there are over 100
15 walkovers. It only took four days -- three to four
16 days, so sometimes less than four days, to do that
17 investigation, to do that testing. And based on their
18 testimony, the procedures they used was to simply walk
19 along, bump it, push on it, maybe step on it, kick it.
20 And that is not either a scientific or accepted
21 procedure.

22 That should have been documented. It should have
23 been standardized. If there was any type of testing
24 that was done, it should have been done in a manner
25 where you could measure how much load was applied. And

1 the amount of time allotted for that is totally
2 inadequate.

3 Just doing some quick math -- and everyone can do
4 their own math -- but if you take 32 hours, which is
5 four days, divide that out by the number of connections
6 and the number of walkovers and the work that was
7 performed, because there's -- if you see from this
8 photo, which is Plaintiff's Exhibit 2, there's one,
9 two, three, four, five, sometimes six rails that go
10 into one post. So if you take each post, the amount of
11 time, it works out to about five to ten seconds per
12 post.

13 Now, you've got to drive to the site, you've got
14 to park your vehicle, you've got to walk, you've got to
15 photograph, you've got to record, you've got to
16 document. I mean, there's just not much time. When
17 you're talking about over a hundred walkovers, that
18 type of investigation and inspection, that's not a lot
19 of time. To me, that's inadequate, along with the fact
20 that there's nothing standardized, nothing scientific
21 about that type of investigation.

22 I think that's what brings us to the fact that,
23 from review of that testimony, there was no, I guess,
24 evidence or indication of any type of standard
25 methodology. And there are various industry standards.

1 out there that we rely upon for that testing. There
2 are also other procedures such as the scientific
3 method, task analysis, failure mode, and effects of
4 analysis, of evaluating those conditions. So none of
5 that was performed, based on their testimony.

6 Q All right.

7 A It's just totally inadequate.

8 Q Is a railing system a safety system?

9 A Absolutely.

10 Q And can you explain to the jury what the code says
11 about life and safety and how that's to be considered
12 when you're doing construction of life and safety.

13 A Those rails, per the building code, industry
14 standards, and life safety requirements, even OSHA,
15 which doesn't apply here, but it's a simple standard
16 that those rails must be able to withstand a 200-pound
17 load placed on that rail at any point in any direction,
18 up, down, sideways, end, middle, top, bottom, wherever
19 it may be. It's got to be able to withstand a
20 200-pound load.

21 Q All right. Do you have an opinion to a reasonable
22 degree of engineering certainty, based upon everything
23 you've seen in this case, as to whether or not the
24 rails had the 200-pound limit on August 19th, 2014 when
25 Mr. Ciampanella leaned on the rail?

1 A They absolutely did not.

2 Q All right. And do you have an opinion as to what
3 level of force was at work, based upon everything
4 you've seen -- the codes, the depositions, the
5 pictures, the screws, the method of construction -- as
6 to what type of force it would have taken to cause that
7 rail to fall?

8 A Just based on everything we've seen, the
9 photographs, Mr. Ciamparella's testimony, the rail, the
10 type of fasteners, the screws, I think we're looking at
11 probably 30 to 40 pounds at the most. The reason being
12 is that I understand Mr. Ciamparella weighs over 200
13 pounds, but he was not sitting on the rail. He was
14 simply leaning on the rail.

15 So a 200-pound, 250-pound man leaning on a rail is
16 probably going to exert 30 to 40 pounds but nowhere
17 near 200 pounds. So, obviously, some -- the rail was
18 in place, so it's going to be some number greater than
19 zero but probably less than 30 to 40 pounds and nowhere
20 near what the code requires of 200 pounds.

21 Q All right. Have you had an opportunity to look at
22 Mr. Rogers', who was the engineer for the City,
23 calculations regarding the load calculations he made on
24 the rail?

25 A I have, yes, sir.

1 Q All right. Do you have an opinion about his
2 calculations based upon his review of the calculations
3 to a reasonable degree of engineering certainty?

4 A I have, yes, sir.

5 Q And what opinion do you reach about Mr. Rogers'
6 calculations that he makes regarding leaning on the
7 rail?

8 A Basically, he didn't perform any calculations of
9 leaning on the rail. I think his calculation or
10 analysis was based on the original construction with a
11 number 9 screw.

12 Q All right. And did Mr. Rogers use the appropriate
13 codes in coming to his calculation?

14 A He did not.

15 Q And what code did he use?

16 A He used the Wood Handbook, which is a manual but
17 is not the methodology prescribed by the applicable
18 building code.

19 Q All right. And what code did you use?

20 A Well, we used either the 1994 Standard Building
21 Code or the International Building Code.

22 Q All right. And is the Wood Handbook a code which
23 has been approved by the City of Myrtle Beach?

24 A It has not. So the way the codes operate is that
25 some of it basically gives you information as to what

1 methodology to use, what references can be used, and
2 how to perform your calculations. If I could just read
3 one section from this.

4 Q Which one are you in?

5 A This is from the International Building Code.

6 Q Okay. Would that have been a code that would have
7 been in force and effect in Myrtle Beach?

8 A Yes, sir.

9 Q All right. And what year was that code?

10 A This was adopted in 2001, if I'm not mistaken.

11 Q All right.

12 A All right. So this is addressing analysis of
13 wood, which would be wood rails, wood connections: The
14 structural analysis and construction of wood elements
15 in structures using allowable design methods shall be
16 in accordance with the following standards, and that
17 would be the national design standard for wood.

18 And there's a reference section in the back that
19 shows approved references, which does include the
20 national design standard for wood but does not include
21 the Wood Handbook.

22 Q All right. And what's the difference between --
23 so because you're the engineer, I'm trying to figure
24 out what you -- what's the difference between a Wood
25 Handbook and this particular code that the City of

1 Myrtle Beach adopted?

2 A One is a reference book, and it does give a
3 procedure for doing analysis, but it doesn't give you
4 the procedure established by the building code.

5 Q All right.

6 A So it's basically -- this is a very, very specific
7 road map that tells you which way to go. Maybe you can
8 say the Wood Handbook is a map and you can take some
9 meandering turns along the way.

10 Q All right.

11 A But you're not going to end up at the same
12 location.

13 Q If there's a conflict between the Wood Handbook
14 and the code the City adopted, which one do you use?

15 A In my opinion, there's no doubt you're going to
16 use the applicable building code and the adopted
17 references.

18 Q All right. And then you were also talking about
19 the 1994 Standard Building Code. Can you point to what
20 you're talking about in that particular code section.

21 A It has similar language, I think, the language in
22 here. This is from Chapter 23, wood, from the 1994
23 Standard Building Code: The following standards shall
24 be accepted as conforming to good engineering
25 practice -- and this is as applied to wood -- the

1 National Design Specification for Wood Construction.

2 And, once again, there's a reference section that
3 includes the National Design Specification for Wood.

4 Q All right.

5 MR. CONNELL: Your Honor, we'd like to offer those
6 as the next exhibits in line.

7 THE COURT: Any objection to those two items?

8 MR. BRYAN: No objection.

9 THE COURT: All right. Without objection.

10 (WHEREUPON, Plaintiff Exhibit Nos. 34 and 35 was
11 marked for identification only.)

12 (WHEREUPON, Plaintiff's Exhibit Nos. 34 and 35
13 were admitted in evidence.)

14 Q Okay. Now, do you have an opinion to a reasonable
15 degree of engineering certainty as to whether or not
16 the City of Myrtle Beach should have pulled some of the
17 boards off some of the boardwalks to check on the rate
18 of corrosion?

19 A Absolutely, yes, sir.

20 Q All right. And if that had been done, what would
21 they have seen on the inside of those boards?

22 A They would absolutely have seen evidence of
23 corrosion. They're using a small diameter fastener
24 that's galvanized coated, but that coating is going to
25 wear away and then the fastener is going to corrode

1 away. And there's clear evidence in these photographs
2 that that condition has been ongoing.

3 There's other evidence that we're aware of. We
4 know the date of construction. They should have known
5 that there was a certain limited life expectancy. It
6 would appear they were aware of that, it was in their own
7 document, the 15-year life expectancy. They had a
8 replacement schedule to replace those walkovers because
9 they knew that they were deteriorated, to some extent
10 beyond repair, and needed to be replaced.

11 I think you can kind of go down a checklist based
12 on the method of construction, based on the type of
13 fasteners, based on experience. Once one works in a
14 given area, they develop a large quantity of experience
15 knowing performance of material, corrosion of
16 materials, and the procedures to correct damage to
17 those materials.

18 Q All right. Now, what's the difference, if any,
19 between corrective maintenance and preventative
20 maintenance?

21 A Well, I describe that as preventative maintenance,
22 you're preventing an event from occurring such as
23 changing the oil in your car. You know you have to
24 change the oil to protect the engine. So if you don't
25 change the oil, your engine is going to fail. So the

1 preventive maintenance is changing the oil. Kind of
2 the extreme corrective maintenance is run to fail, as
3 we call it. The engine fails and you have to replace
4 it.

5 So the difference here is corrective maintenance
6 is when a rail collapses, you put it back up. The
7 preventive maintenance is identifying the corrosion,
8 identifying the defect, identifying the damage and
9 correcting it before that failure occurs.

10 Q All right. Would corrective maintenance have
11 been, for instance, in using this, would it have been
12 putting the center lag bolts you were talking about
13 through?

14 A Well, that would have gone -- actually have gone
15 back to original design and probably would greatly have
16 extended that maintenance schedule to make everything
17 last a lot longer. It also would have exposed the end
18 of the fasteners that you could -- they're not
19 concealed and you could see them more readily.

20 Q So you would be able -- you're saying you would be
21 able to see the end of the bolt on the other side of
22 the wood?

23 A Correct.

24 Q And that would do what for you?

25 A You would, one, know it's going to last much

1 longer. You could monitor the rate of corrosion of the
2 fastener and probably determine when it needed to be
3 replaced or the entire assembly needed to be replaced.

4 Q Okay. Do you have an opinion to a reasonable
5 degree of engineering certainty as to whether or not
6 this particular beach walkover access was at the end of
7 its life before August of 19th, 2014 when
8 Mr. Ciampanella was injured?

9 A Certainly that part of it. The fasteners, we can
10 see from these photos there's a lot of splitting of the
11 wood, a lot of weathering of the wood, a lot of
12 corrosion of the fasteners. The deck boards are
13 getting very worn, split, broken. I mean, you can kind
14 of put a Band Aid on it and extend it, but the ideal
15 solution would have been to replace it. I think they
16 had it right, when they put it on the replacement
17 schedule -- and their schedule, not mine -- when they
18 put on it the replacement schedule, I think it was
19 time.

20 Q All right. Since this issue may come up, I'll ask
21 you what -- can you explain to me what withdraw failure
22 is in engineering, and explain it to the jurors if you
23 can in kind of layman's terms.

24 A Sure. Withdraw failure is when you pull it out,
25 you withdraw it. So maybe the easy answer is to look

1 at our exemplar.

2 Q Okay.

3 A So if you have a screw that's installed this way
4 (indicating), a withdraw failure would be pulling it
5 out. So imagine if somebody is pushing from the other
6 side, putting that lateral horizontal force on it, for
7 those screws to come out they'd have to withdraw from
8 the wood, so that would be a withdraw effect.

9 Q Okay.

10 A And I think the next question is probably what is
11 the shear failure.

12 Q That's right, because we're going to hear about
13 it.

14 COURT REPORTER: I'm sorry?

15 MR. CONNELL: Shear, S-H-E-A-R.

16 Q What is the shear failure?

17 A Right. So the next mode of failure would be
18 perpendicular to the screw. So if it's going to shear,
19 then you put a load directly on top of it, and the
20 fastener will shear off as opposed to pulling out.
21 Does that make sense?

22 Q It does.

23 A So one pulls out, one shears it and cuts it in
24 two.

25 Q And you're saying fastener. You just mean --

- 1 A The screws. The screws, yes, sir.
- 2 Q All right.
- 3 A So...
- 4 Q All right, thank you. All right. Were the
- 5 construction guidelines the same for railings on the
- 6 beach crosswalk access in 1990 as they are today?
- 7 A Yeah. We've got some probably more advanced
- 8 coatings and materials that we can use. But for the
- 9 most part, regarding bolts, large diameter bolts as
- 10 opposed to small diameter screws, treated wood, the
- 11 layout, the rail construction, very, very similar with
- 12 very, very minimal changes.
- 13 Q Okay. Would it be correct to say the codes have
- 14 been updated a little bit, but the basic safety
- 15 structures remain the same since the 1980s?
- 16 A I would say that's accurate, yes, sir.
- 17 Q Do you have an opinion to a reasonable degree of
- 18 engineering certainty as to whether or not this was
- 19 improper construction and improper maintenance in this
- 20 particular situation on August the 19th, 2014 when
- 21 Mr. Ciampanella was injured?
- 22 A Absolutely, yes, sir.
- 23 Q Do you have an opinion as to whether or not the
- 24 railing in question was built in compliance with the
- 25 200-pound concentrated force requirement in the code?

1 A You know, I think Mr. Bryan, giving him the
2 benefit of the doubt, brought up an issue with the
3 fasteners through the two boards. So if we address
4 that, that the fasteners went through the two boards,
5 it would have satisfied that. The problem I have, if I
6 could show you something.

7 Q Okay.

8 A It still -- I would say still bad construction.
9 Because if these two rails, the vertical rail and the
10 horizontal rail, are fastened together, then there
11 would be another screw going through here that would
12 hold the two together (indicating). But what we have
13 is an exposed opening between the two, and every time
14 it rains, every time there's humidity, every time
15 there's moisture, it drains down between the two boards
16 to that section of the screw that's exposed, which is
17 going to accelerate deterioration. And at some point
18 in time, they're going to separate and act at one as
19 opposed to acting as two.

20 And they have actually developed better ways of
21 doing it by putting another wider piece of wood on top
22 of this one, so that that joint is no longer exposed.
23 But at the time, that was poor construction technique.

24 Q Okay.

25 MR. CONNELL: Okay, Your Honor, I think that's all

1 I have.

2 THE COURT: All right. Cross-examination?

3 MR. BRYAN: You want to keep going? Okay.

4 CROSS-EXAMINATION

5 BY MR. BRYAN:

6 Q All right, Mr. Campbell. Let's see, do you have
7 the Beach Management Plan in front of you with the
8 schedule, the replacement schedule?

9 A I've got mine. Do you want to refer to it?

10 Q Well, it's got to be here. Here it is. This is
11 it. Page 63 maybe.

12 A Okay.

13 Q Anyway, you answered some questions about it. I
14 just want to make sure I'm clear. Tell me when you're
15 to the replacement schedule page.

16 A I got it.

17 Q And by your math, if I recall correctly, the
18 schedule sort of begins December of 2010; right?

19 A According to the document, yes, sir.

20 Q So really we're counting starting in year 2011;
21 right?

22 A Right.

23 Q And so if we were to do six a year in '11, '12,
24 and '13, and then the accident happened August of 2014,
25 so let's say we're to get four done in year 2014 by

1 August, that would give us maybe to item No. 22;
2 correct? Would be well short of No. 33, which is 77th
3 Avenue North; correct?

4 A Yeah, you're not going to get to 33 for probably
5 another year or so.

6 Q Or more?

7 A Sure.

8 Q You said -- I think you said maybe the end of 2016
9 or so?

10 A By the end of 2016, which would be six years, even
11 at six per year, you should be beyond 33.

12 Q Okay. But your testimony is that, according to
13 that schedule, the 77th Avenue North walkover was not
14 slated for replacement --

15 A No, sir.

16 Q -- prior to the accident?

17 A I think my testimony, it had been clearly
18 identified and put on the replacement schedule.

19 Q Do you know what factors go into the creation of
20 that replacement schedule?

21 A I mean, I haven't -- I have not seen a protocol.
22 Clearly, if it's, you know, using, I guess, maintenance
23 practices and economics and common knowledge. Excuse
24 me, if it's fully salvageable, I don't think they're
25 going to remove and replace it. If it's more

1 economical to replace it than to repair it, then that's
2 probably what they're going to do. It just comes down
3 to funding and availability and materials and taxes
4 and --

5 Q Storms?

6 A -- storms and politics. I mean, we can make a
7 long list.

8 Q Would you be surprised if that replacement
9 schedule is a fluid document, that walkovers move up
10 and down it based on wear and tear, based on storm
11 damage, based on weather damage, based on wind damage?

12 A Sure, based on fire. I mean, we can talk about
13 vandalism, there could be fires, there could be
14 erosion, corrosion, wear and tear, whatever it may be.

15 Q Okay.

16 A That was just the maintenance schedule. And
17 certainly, at the time, it was identified as one that
18 was in need.

19 Q Now, you talked to us earlier about -- I think you
20 made reference to drawings maybe. Did you have some
21 like schematic drawings?

22 A Did I?

23 Q Yeah.

24 A There are some references that we have.

25 Q The ones that -- you talked about lag bolts or

1 something like that?

2 A Yes, sir.

3 Q What are those? Okay. What agency or entity
4 drafted those drawings; do you know?

5 A Now, who the drafting party was, it's not signed.

6 Q Okay. So you don't know where they came from?

7 A Well, there's a difference in the drafter and the
8 publisher and adoptee and whoever it may be. So, no, I
9 don't know who published them.

10 Q Okay.

11 A Or who drafted them.

12 Q You don't know who adopted them?

13 A Well, actually, these documents came from one of
14 the other documents that we addressed earlier that was
15 not included as a reference. I mean, if you want to
16 pull that one out, we can.

17 Q Is there anything in your drawings that shows that
18 your drawings have been adopted by the State of South
19 Carolina, for instance?

20 A They're published as a guideline through OCRM.

21 Q It's a guideline. Guideline is not a mandate,
22 it's not a directive, it's simply a -- it's a guide;
23 correct?

24 A Sure. Yeah, I mean, it's a starting point. You
25 can call it conceptual design, you can call it

1 something to go by. You can make modifications as long
2 as they satisfy building code requirements, industry
3 standards and construction guidelines.

4 Q And you would agree that you could build a
5 walkover a many number of ways; correct?

6 A There are good ways and bad ways.

7 Q There's not just one way to build a walkover;
8 correct?

9 A Correct. There good ways and bad ways.

10 Q All right. And then, let's see, do you have your
11 drawings, yes. Is there any indication on the drawings
12 as to when they were promulgated?

13 A There was 1983 on one. I think it's the stair
14 profile.

15 Q Is there any indication that these drawings have
16 been adopted by the City of Myrtle Beach as the
17 prescribed method for walkover construction?

18 A I think they're going to be like any other
19 municipality. There are guidelines out there. They
20 can hire their own engineers, they can do their own
21 design; as I said, follow industry standards,
22 applicable building codes and construction guidelines.

23 Q Okay. In Exhibit 24, there's a gentleman's name
24 at the top, Bobby Funcik. Who is that?

25 A He's one of our engineers.

1 Q Okay. Did you talk to DHEC or OCRM, or is this
2 something that Bobby had?

3 A This was a document that came from another project
4 that we were working on. And it was in our file and it
5 was applicable, so I used it.

6 Q Okay. You didn't reach out to OCRM in connection
7 with this case?

8 A Well, no, not if we already had the document. I
9 didn't need to do it twice.

10 Q And you talked to us earlier about the life
11 expectancy of a dune walkover. Then you later ended up
12 it's like an engine or something, and I thought a motor
13 or an engine might be a good example, that a motor has
14 a life expectancy, but it can be extended significantly
15 with regular maintenance; correct?

16 A Sure.

17 Q Okay.

18 A Well, there's -- there are, I guess, parameters
19 that we go by, you know, exposure, type of
20 construction. And if we look at these guidelines from
21 OCRM, you know, I would expect this dune walkover is
22 going to last much longer than the walkover that we saw
23 that Mr. Ciamparella fell from.

24 So, like I said, industry standards, applicable
25 building codes, and construction guidelines. So, yeah,

1 there are good engines and bad engines; there are good
2 walkovers and bad walkovers, good designs and bad
3 designs.

4 Q Okay. There can be -- you could have, like,
5 levels of adequate designs, correct? You could have
6 one that's just built with the most durable of product
7 that just -- it will stay forever and ever?

8 A Sure.

9 Q So like a hardwood, you know. I'm not sure the
10 City of Myrtle Beach can afford that type of hardwood,
11 but you can have it; correct?

12 A There are good practices and best practices, yes,
13 sir.

14 Q So there are levels of acceptable construction
15 practices; would you agree?

16 A Sure. But what needs to be taken into
17 consideration, the quality of the materials, the
18 durability of the materials, the life expectancy of the
19 material. And then you brought up economics, the labor
20 that goes into that. So build it one time and make it
21 last, as opposed to having to break it down more
22 frequently to have twice as much labor, twice as much
23 expense, and twice as many failures.

24 Q All right. Mr. Campbell, you talked about, I
25 think you said, corrective maintenance, but there's

1 also another type of maintenance you mentioned?

2 A Preventative maintenance.

3 Q Preventative. Preventative, as you said, a rail
4 falls off, somebody goes over and screws it back in?

5 A That would be corrective.

6 Q Okay.

7 A Corrective would be run to fail. You let it run,
8 you let it fail --

9 Q Preventative is -- is --

10 A You prevented that condition from occurring, you
11 maintain it on a regular basis.

12 Q Okay. So preventative would be a sort of
13 proactive approach?

14 A Absolutely, proactive. Proactive to prevent this
15 type of condition from occurring.

16 Q I got you. So if the City was inspecting every
17 year and proactively looking for problem areas -- loose
18 boards, weak screws, rust, corrosion, rot -- that's the
19 type of preventative maintenance you're talking about?

20 A As long as they are --

21 Q Yes or no?

22 A Well, yes, as long as they are proactively and
23 adequately performing that task, yes, which they may
24 have been attempting to be proactive, but they were not
25 adequate.

1 Q Okay. But you give them credit for having a
2 preventative maintenance plan or process?

3 A They were proactive, yes, but totally inadequate
4 because they didn't follow any industry standards, did
5 not allow adequate time in the processes and procedures
6 they followed, did not identify deficiencies that
7 needed to be corrected.

8 Q Okay. So their inspections did not identify
9 deficiencies, that's your testimony?

10 A That need to be corrected.

11 Q Okay. Well, I have several exhibits of
12 spreadsheets showing things that need to be repaired
13 through these inspections, so --

14 A Well, let's say they didn't fully identify some of
15 the necessary --

16 Q You're saying they didn't catch this failure; is
17 that what you're saying?

18 A Well, also, there are -- I mean, from -- correct,
19 they didn't catch this failure. Then there's another
20 failure laying in the sand right there by it,
21 indicating that this walkover is not performing so
22 well.

23 Q Do you have any idea of when that failure
24 occurred, when the top rail came off? Do you have any
25 idea if it occurred that day, the day before? You

1 don't.

2 A I don't. There's no date stamp on it.

3 Q Okay. It very well could have occurred earlier
4 that day; right?

5 A Yeah. Hypothetically, it could have.

6 Q And you wouldn't expect the City to catch that;
7 would you?

8 A That would be pretty quick; wouldn't it.

9 Q That's not the type of inspection schedule that
10 you place -- the City does not have that type of duty;
11 does it?

12 A No. But my point is, is that --

13 Q Does it? Is that -- you're not saying the City
14 has a duty --

15 A No.

16 Q -- to catch that within 24 hours?

17 A No. They couldn't afford it because they'd have
18 to monitor it regularly. But my point is, is that
19 there's deposition testimony that rails in other
20 locations had fallen off. So those rails need to be
21 reattached. The life of these walkovers, the condition
22 of these walkovers, the fact they were getting
23 repetitive failures, should have been an indication
24 that we need to do more work, we need to do a better
25 job.

1 And then backing into it from Mr. Anderson's
2 testimony, five to ten seconds per rail post and rail
3 post connection is not what I would call adequate. And
4 he was not following any established industry standard.

5 Q Okay, then. Let's talk about the inspections.
6 You said it's inadequate, but your impression is that
7 the City performed -- Mr. Anderson performs an
8 inspection once every three years; correct?

9 A Yes, sir.

10 Q And your opinion is that's inadequate?

11 A That is inadequate.

12 Q In and of itself?

13 A Yes, sir.

14 Q Okay.

15 A And to follow up with that --

16 Q If the City had done additional inspections, that
17 would be better?

18 A Well, I mean, we need to stick with the term
19 adequate. But to follow up on that three years,
20 generally what you do is you're going to inspect it
21 twice a year. You've got storm seasons, you've got the
22 end of hurricane season when you're going to need to
23 perform an inspection. And then you've got peak
24 tourist season.

25 So probably about six months apart, maybe in that

1 October-November timeframe, and then probably in that
2 March-April timeframe. You should be performing
3 inspections twice a year to identify those conditions.
4 Certainly every three years is totally inadequate.
5 Doesn't meet any type of established maintenance
6 schedule.

7 Q Okay. Let's get back to extending the life of the
8 walkover. But with preventative maintenance, you can,
9 in fact, you agree, extend the life significantly of
10 anything you're working on?

11 A Absolutely. It's all a matter of cost.

12 Q All right. Let's talk about -- you brought up the
13 inspections. Your testimony is that there should be an
14 inspection, a walkover inspection twice a year;
15 correct?

16 A Yes, sir.

17 Q You've used the Means Facilities Maintenance
18 manual before?

19 A I have.

20 Q Yeah. Can you identify any section in the Means
21 Facilities Maintenance manual that states that there's
22 an inspection requirement twice a year.

23 A I don't have it in front of me, and I cannot
24 recite a particular section. But, actually, I think --
25 now that you brought that up, I think that's where I

1 got it from, is from the Means Maintenance manual.

2 MR. BRYAN: Thank you, sir.

3 THE COURT: Yes, sir.

4 Q Mr. Campbell, do you recall being deposed?

5 Actually, I came to your office maybe about a month
6 ago.

7 A I do.

8 Q And do you recall being placed under oath?

9 A I was.

10 Q And you were asked a number of questions?

11 A I was.

12 Q And I assume you've been through this process as
13 well?

14 A I have.

15 Q Okay. I was looking through your previous
16 testimony, and I noticed that -- let's see, turn to
17 page 76, if you would.

18 A All right.

19 Q At line -- starting at line 3, I asked, Can you
20 identify the section within the Means Facility
21 Maintenance manual that you relied upon. And your
22 answer to me then was no.

23 A Same answer.

24 Q Okay. And you've relied upon, besides the Means
25 Facilities Maintenance manual, you relied upon the

1 International Property Maintenance Code in the past?

2 A I have. And we cited that today.

3 Q And is there a provision within the International
4 Property Maintenance Code that prescribes a schedule
5 for walkover maintenance either once a year, twice a
6 year, four times a year, anything?

7 A It's a performance requirement. It says, as
8 required. It says, you shall maintain your property in
9 a safe manner in the interest of public safety.

10 Q Okay.

11 A So you can establish that schedule any way you
12 want to. You can do it every day, you can do it every
13 year, as long as you satisfy that requirement of
14 keeping the public safe. So it's a performance
15 requirement, not a prescriptive requirement. You can
16 have either. You can -- performance based or
17 prescriptive based.

18 Q So your testimony that the City should be doing it
19 twice a year is not based on, so far, it's not based on
20 Means and it's not based on the International Property
21 Maintenance Code; correct?

22 A No. It actually could be based on the
23 International Property Maintenance Code. What I said,
24 it doesn't prescriptively tell you, it shall be twice a
25 year, but it says, you shall do it in a manner that

1 keeps your property maintained in a safe manner in the
2 interest of public safety.

3 So you can infer from that however you desire from
4 a standpoint of a schedule. But you need to do it in a
5 safe manner.

6 Q All right. But neither one provides a schedule?

7 A They do not.

8 Q Okay.

9 A Not an explicit schedule that said, you shall.

10 Q All right. So the City's inspection schedule, it
11 doesn't violate either one of those, Means or the
12 International Property Maintenance Code; correct?

13 A It absolutely does.

14 Q You're saying that because that particular railing
15 failed?

16 A Yes.

17 Q Okay. And that's also the basis for your opinion
18 based on the other code section, that it's not safe,
19 your opinion that it's not safe is because
20 Mr. Ciampanella fell through the railing; is that
21 correct?

22 A That's part of it, yes, sir.

23 Q Okay.

24 A I mean, they said they did the inspections. They
25 identified the procedure they followed to do the

1 inspections. And keep in mind, that inspection was two
2 months, three months at the most, prior to
3 Mr. Ciampanella's accident. So let's put the timeline
4 together.

5 It didn't need the 200-pound requirement three
6 months prior to the accident, and suddenly over the
7 next three months, corroded to the extent that it
8 failed simply from him leaning upon it, somehow you
9 missed something.

10 Q Okay.

11 A He was inspecting it --

12 Q But somehow it was damaged, though. Before
13 Mr. Ciampanella apparently leaned against it, somehow
14 the railing was damaged; correct?

15 A It was absolutely damaged. It was damaged by
16 corrosion over a long and extended period of time. It
17 was not identified during those inspections.

18 Q Do you know that, do you know that it's corrosion
19 and not vandalism? Somebody couldn't sit on it, knock
20 it off; how do you know it's corrosion?

21 A Because we've got photographs, we've got
22 wide-angle photographs, we've got close-up photographs.
23 We've got evidence of extensive corrosion.

24 Q Well, if it's corrosion, then why is it --

25 A The rail -- the rail was not broken. There's no

1 evidence of a crack or broken condition.

2 Q If it's corrosion, then why didn't this board
3 that's over here, why didn't it fall simply right there
4 (indicating)? How in the heck did it get moved way
5 over here (indicating)?

6 A Oh, I don't think it would be unusual at all for
7 somebody to -- if the board fell in, onto the deck,
8 somebody is not going to leave it laying there. I
9 would expect someone would lift it up and drop it into
10 the sand.

11 Q So somebody had their hands on it, you're saying.
12 You're saying they didn't knock it off, so somebody
13 moved it?

14 A Yeah, I mean, we -- yeah. I mean, let's look at
15 it this way. You don't want me to speculate, but
16 you're asking me the question. I wasn't there, there's
17 no video monitoring. The board has moved. I don't
18 think anyone would tell you that it fell from where it
19 was and moved 10 feet the other way. It got displaced
20 in some manner, likely picked up and moved.

21 To follow, to expand on that, looking at it, the
22 rails are not broken, the rails are not split, the
23 rails do show evidence of extensive corrosion. That's
24 what I'm relying upon. I know what I can see. Beyond
25 that would be speculation. We have clear evidence that

1 there's corrosion, there's absence of proper
2 maintenance and absence of good construction.

3 Q You finished?

4 A I am finished. With that part, yes, sir.

5 Q You work with the ASTM standards; correct?

6 A Quite often, yes, sir.

7 Q Can you identify a provision with the ASTM
8 standards that says that the City has to inspect the
9 walkovers on a specific schedule?

10 A I'm not aware of an ASTM dune walkover standard.

11 Q Okay. And you use ANSI standards a lot?

12 A We do, yes, sir.

13 Q That you rely on heavily; correct?

14 A Under applicable circumstances, yes, sir.

15 Q Is there an ANSI standard that prescribes a
16 schedule whereby the City has to inspect the walkovers
17 once a year, twice a year, once a month, whatever; is
18 there?

19 A No. We've been through this, I haven't.

20 Q Okay. No, we haven't. I have not talked about
21 ANSI standards. There are all kinds of standards, and
22 I'm curious, is there anything that prescribes a
23 schedule that says, City of Myrtle Beach, you have to
24 inspect every month or twice a month, whatever? And
25 I'm looking for -- you've said do it twice a year. And

1 I'm trying to find in any of these documents where your
2 opinion comes from.

3 A Yeah, I mean --

4 Q Does it come from these documents?

5 A If you want to make it simple, we don't have to
6 stay with the twice-a-year, but we do have to stay with
7 an adequate inspection protocol and a performance
8 requirement. And that performance requirement is
9 clearly established in the International Property
10 Maintenance Code that says those rails must be safe and
11 they must be maintained in a safe manner in the
12 interest of public health. That requirement was not
13 satisfied.

14 So we can call it anything you want to, you can
15 call it ten years. But you've got to construct it in a
16 manner that's going to be able to withstand it,
17 withstand that weather, that environment for ten years
18 without failing. So I don't care what you call it, it
19 was inadequate.

20 Q Okay. Their inspection frequency was inadequate
21 is what you're saying?

22 A Well, they don't correlate. They don't match.
23 The method of construction does not match with the, I
24 guess, protocols and maintenance schedule that they
25 followed. They were on a three-year schedule, very,

1 very limited testing of any sort. They didn't follow
2 any industry standard using --

3 Q First of all, you're wrong about the three-year
4 schedule.

5 A -- using very, very small diameter fasteners.

6 Q Are you aware that you're wrong about a three-year
7 schedule?

8 A That came out of Mr. Anderson's deposition.

9 MR. CONNELL: Objection, Your Honor.

10 Q But your opinions about these --

11 THE COURT: Hold on. Come forward.

12 (WHEREUPON, a bench conference was held off the
13 record in the presence of the jury but out of the
14 hearing of the jury.)

15 Q Mr. Campbell, you're not aware of any inspection
16 schedule other than the three-year cycle performed by
17 Mr. Tom Anderson, and that's what your opinions are
18 based on; right?

19 A Based on information provided to me, review of
20 Mr. Anderson's deposition transcript. He testified he
21 inspected on a three-year schedule. Now, I understand
22 these guys are out there, they check it when they're
23 walking through, a very informal inspection. But that
24 still doesn't meet any industry standard, nor was that
25 the intent of them being there. They may be out there

1 to retrieve a lifeguard stand or repair a lifeguard
2 stand or patch a rail.

3 Q Okay.

4 A They can do an inspection at that time, that's
5 fine. But somehow they still missed it.

6 Q All right.

7 A So their protocols are inadequate and that's too
8 long to do it. And it doesn't follow any industry
9 standard whatsoever.

10 Q Okay. So that's your understanding of the
11 inspection schedule, three years and then sort of
12 random?

13 A Unless I hear otherwise, yes, sir.

14 Q Okay.

15 A I'm sure they'll have an opportunity tomorrow to
16 say otherwise.

17 Q Mr. Campbell, can you identify a South Carolina
18 code or a law that requires the City of Myrtle Beach to
19 do inspections on any particular schedule?

20 A No, sir.

21 Q Okay.

22 A Other than a performance schedule that it must be
23 maintained in a safe manner. So they can establish
24 their own schedule as long as they do it safely.

25 Q All right. I just asked you a number of questions

1 about what requirement the City would have as far as
2 the frequency of their inspections. Now I have
3 questions about, you know, what authority is there to
4 tell the City how exactly their inspection should be
5 performed.

6 Would you agree with me that the code does not
7 establish or prescribe a method for walkover
8 inspections?

9 A The code establishes a requirement for guardrails
10 if there is some question about the load carrying
11 capacity of that rail. Once again, it doesn't tell you
12 how to perform that test, but it tells you specifically
13 how much load to apply. So, I mean, as we described in
14 my deposition, you can have a truck with a pulley on
15 the back, you can have a cart with weights on it, you
16 can use whatever procedure you want, but the code is
17 very specific on how much load to apply to that rail.
18 And it's not 200 pounds, it's actually 500 pounds.

19 Q So you would apply 500 pounds of load. I think
20 you told me that it was -- you do a sampling, 10
21 percent, 15 percent; is that correct?

22 A Yeah. If I'm going to test, I'm going to test
23 something that gives me a representative number, yes,
24 sir.

25 Q Okay. Well, in this case, looking at 77th Avenue

1 North, you've got -- I think you've got seven railings
2 on one side and six on the other. So you've got 13.

3 If you do a sampling of 10 percent, you're going
4 to test one and a half -- you're going to test two
5 sections.

6 So odds are you're not going to get to the section
7 that Mr. Ciampanella fell through; correct?

8 A I'm not sure how you're getting your six and
9 seven. There's like 11 or 12 posts down one side.

10 Q Well, I guess sections.

11 A Okay. Yeah, I mean, it's not that big a deal.

12 Q Seven and six.

13 A Yeah.

14 Q But, in any event, you're going to catch 10
15 percent of it, which means 90 percent are not going to
16 be tested. So, under your scenario, your load testing
17 is not going to catch that failure; agreed?

18 A Maybe it will, Maybe it won't.

19 Q Maybe.

20 A Yeah, maybe. Exactly. What I would do if I were
21 testing, when you're -- you want to identify the weak
22 link. So I would say you do a quick visual, you
23 identify your worst case scenario, take two or three
24 rail sections, and you test those and see what you get.
25 And if they pass, then at least you've done some

1 testing in some standardized manner and you've
2 identified a sample.

3 Q Okay.

4 A But simply walking the deck and bumping it and
5 pushing it with your hand doesn't do any standardized
6 procedure.

7 Q Okay. Your suggested technique, can that be found
8 in the Means Facility Maintenance code?

9 A I doubt it. That's a test procedure, that's not a
10 maintenance procedure.

11 Q All right. Can your inspection suggestion, the
12 load testing, the sampling, can that be found in the
13 International Property Maintenance Code?

14 A As I said, I have no idea what you're trying to
15 get at here. What I've told you is that the
16 International Property Maintenance Code says, you shall
17 maintain those guardrails in a safe manner. So in
18 order to do that, either you can replace them on a
19 regular basis, you can test them on a regular basis,
20 and you can identify deficiencies that need to be
21 corrected.

22 Q Okay.

23 A It doesn't give you a protocol as to how to do it.
24 Means and methods are up to the owner, up to the
25 contractor. When we say means and methods, that gives

1 them an option. It doesn't tell them you shall do it
2 in one specific manner. There's a lot of ways to
3 obtain a 200-pound load, there's a lot of ways to
4 examine a corroded fastener.

5 Means and methods are up to the tester, as long as
6 you do it regularly and you do it adequately, and you
7 provide a safe rail to the public. And that was not
8 satisfied here.

9 Q So any time there's a railing that fails anywhere
10 on any of the beach walkovers -- and that doesn't
11 include the boardwalk -- you would say the City has
12 violated whatever code section, whatever standard it is
13 because it's not safe?

14 A That's just part of the big picture. When one of
15 those rails fail, you need to look at it, do a visual
16 examination. You know, it takes about 30 seconds.
17 What caused it to fail? Did some drunk tourist knock
18 it off, or did all the screws corrode through?

19 If I looked at it and saw that all the screws were
20 badly corroded, I'd think I've got a problem. I need
21 to look deeper. If a drunk tourist knocked it off and
22 everything's in good shape, leave it alone. Move on,
23 spend your time better somewhere else.

24 Q Are you aware of there being a history of people
25 falling through the railings at Myrtle Beach walkovers,

1 like is this a recurring problem that you have
2 knowledge of?

3 A Myrtle Beach walkovers, it has occurred. But
4 let's say, based on my experience, I get calls on a
5 regular basis of this exact condition. Whether it's
6 owned by the City of Myrtle Beach, whether it's owned
7 by a property owner, whether it's owned by some other
8 municipality, I get these calls on a regular basis.

9 Sometimes it results in no injury, sometimes it
10 results in major injuries, and sometimes it results in
11 death. Yes, I get these calls on a regular basis. Do
12 I get these calls on a regular basis from the City of
13 Myrtle Beach? No.

14 Q Okay.

15 A But it happens on a regular basis.

16 Q Okay.

17 A And it's very unfortunate.

18 Q Your suggestion for the testing protocol, how it
19 should be done, can you refer me to any of the codes or
20 the standards that you commonly rely upon that will say
21 this is how the City of Myrtle Beach should be doing
22 it?

23 A They don't tell you how. They tell you how much.

24 Q Okay.

25 A What force shall be applied to test those rails.

1 Q All right. So --

2 A Means and methods are the responsibility of the
3 testing agency, the owner, the contractor, whoever it
4 may be. As they say figuratively, there are a lot of
5 different ways to skin a cat.

6 Q All right. So your suggestion of inspecting twice
7 a year is per Alan Campbell, PE?

8 A No. We've used it in other recommendations, but
9 it's certainly one of mine.

10 Q But it's your recommendation; correct?

11 A It's one of mine, but I didn't make it up. We've
12 used that on many, many occurrences. You know, and
13 I've been working in the field of maintenance for many,
14 many years, worked for a company that specialized in
15 maintenance, and it's a recommendation that we've used
16 on many occurrences and reports and using our expert
17 guidance.

18 Q Let's talk about the original construction of the
19 walkover. First of all, do you know when it was built?

20 A I think we --

21 Q Do you have actual knowledge, independent
22 knowledge of when it was built?

23 A I can only rely on testimony from City of Myrtle
24 Beach, and they testified it was probably replaced
25 after Hurricane Hugo, which would have put it probably

1 around 1990.

2 Q Is it probably, or they said for sure?

3 A No. I mean, we talked about this already in my
4 deposition. Is there a --

5 Q You don't know; do you?

6 A Is there an asset schedule? No. So I don't have
7 any document, nor does Myrtle Beach. But we have the
8 information from City of Myrtle Beach that says
9 probably replaced sometime after Hurricane Hugo,
10 probably around 1990.

11 And from looking at this, looking at the
12 condition, looking at the weathering, looking at the
13 corrosion, even method of construction, it was
14 definitely not five years ago and very easily could
15 have been 25 years ago. So somewhere in between.

16 Q And earlier you testified about the lag bolts and
17 stuff. I want to get back to that. Do you think
18 that's the proper fasteners that should have been used?

19 A That would have been a good way to do it. In
20 fact, as I sit here looking at Exhibit 2, they actually
21 use lag bolts to secure the stringers along the bottom.
22 They had lag bolts, they used lag bolts. They just
23 didn't put them in the rail.

24 Yes, that's the way the rails should have been
25 attached, could have been attached, to make it safe and

1 make it last.

2 Q Mr. Campbell, but you said number 10 or even
3 number 12 screws is also acceptable; yes?

4 A It can be.

5 Q You don't --

6 A It can be, absolutely. But as we said, you've got
7 to install it properly, construct it properly and
8 maintain it properly.

9 Q All right. But the use of 10 or 12 wood screws,
10 that's an appropriate application; do you agree or not?

11 A In some circumstances, it could be.

12 Q I'm talking about 77th Avenue North. If the City
13 used size #10 -- number 9, 10 or 12 screws, is that an
14 appropriate size screw for that application?

15 A As long as -- yes, as long as they inspect and
16 maintain it properly, which they absolutely did not.

17 Q You said yes; right?

18 A Let's not take that out of context. I said yes,
19 as long as.

20 Q Okay.

21 A That's a full sentence, not one word.

22 Q All right. So we're talking about, I think, like
23 three-inch galvanized screws; correct?

24 A They're probably going to need to be three inches
25 for some of it.

1 Q Okay. Do you agree with me that the design
2 strength of a three and a half size 10 -- 9, 10, 12
3 galvanized screw is going to be somewhere in the range
4 of 200 pounds?

5 A No.

6 Q You don't?

7 A No.

8 Q What do you think it is?

9 A It's going to be less. And that's the difference
10 between the reference that Mr. Rogers used, because
11 there are other adjustment factors that need to be
12 taken into consideration.

13 Q All right.

14 A The national design standard for wood makes an
15 adjustment for the toe configuration, which is at an
16 angle as opposed to straight in. There's also a
17 moisture adjustment. The moisture adjustment alone is
18 a 30 percent reduction --

19 Q All right.

20 A -- for high moisture content wood that is direct
21 exposure outside.

22 Q What is the design strength of a three-and-a-half
23 inch, let's say, size 10 galvanized screw?

24 A I don't have that in my head. It's going to be --
25 and it could be close to 200 pounds. It could be 150

1 to 200. I don't have that in my head, I don't memorize
2 those numbers.

3 Q Okay.

4 A I don't have the NDS in front of me either.

5 Q I thought you said it was not 200. You're saying
6 it could be 150 to 200?

7 A I've got one of the charts here. Let me just see
8 if I have that one. Do you want to give me a minute,
9 do you want me to look?

10 Q Yeah. If you can find it. I'm curious.

11 A Me, too.

12 THE COURT: All right. Keep your place while he's
13 looking for that. We're going to take a short break.

14 Ladies and gentlemen, please have no conversation
15 about the case, and just let us know when you're ready
16 to come back in; okay?

17 (WHEREUPON, the jury exited the courtroom at
18 5:22 p.m.)

19 THE COURT: We'll be at ease, then, for a few
20 minutes while the jury is out.

21 (WHEREUPON, a brief recess was taken at 5:23 p.m.)

22 (WHEREUPON, the jury came into open court at
23 approximately 5:32 p.m.)

24 THE COURT: All right. Mr. Bryan, you may
25 continue with your examination.

1 Q Okay. Mr. Campbell, you were, I think, looking at
2 some reference information to determine, like, the
3 screw strength of a size 9, 10, or maybe a 12,
4 three-and-a-half inch galvanized wood screw?

5 A Yes, sir.

6 Q And I've inquired about the strength of that
7 screw, and I thought you said it might be between 150
8 to 200 pounds; is that correct?

9 A That's correct. I did find my chart.

10 Q You did the calculations?

11 A It starts with a chart, but then you have to make
12 certain adjustments along the way. But it depends.

13 Q All right. So what can you tell us? Can you
14 answer the question how much strength -- how many
15 pounds of pressure will a one -- excuse me, a
16 three-and-a-half-inch galvanized size 10 screw
17 withstand?

18 A Well, the calculation was based on number 9.

19 Q Okay. What was that?

20 A Mr. Rogers identifies a number 9, and we accept
21 that.

22 Q What would that be?

23 A So the -- well, based on the one-inch -- I think
24 Mr. Rogers' calculations reference a one-inch embedment
25 of that screw. In order for that screw to develop the

1 strength of his calculations, the screw has to be in
2 seven times the diameter. I mean, that sounds weird,
3 but that's just the way it's done by the calculations,
4 which means it has to be embedded at least an inch and
5 a quarter. So that's the difference between using the
6 wood handbook and using the national design standard as
7 specified.

8 Q Okay. I'm --

9 A So there's going to be some -- I just want to be
10 clear -- there's going to be some variations. His
11 formula is based on established criteria, but it's just
12 not based on the building code. So there's going to be
13 some variations.

14 Q That's fine. I'm just asking your number.

15 A So hundred pounds for the value of the angled
16 screw, the toe screw. Hundred pounds.

17 Q And the toe screw?

18 A Yeah, that one. The angled screw at an angle,
19 number 9, hundred pounds.

20 Q Okay.

21 A And there's adjustment factors for moisture and
22 for the angle and the grain.

23 Q All right. But the screws have a design -- a
24 safety factor; correct, like three, four, maybe even
25 five to one?

1 A Up to five, five and a half even.

2 Q Okay. So, in this case, this screw should -- it
3 should not fail before it reaches, let's say, 400
4 pounds?

5 A Well, I mean, we're getting complicated here.
6 Let's not get it out of context. As an engineer, you
7 absolutely cannot use those values. You've got to have
8 a factor of safety.

9 Q I'm just telling you.

10 A So, I mean, if you want to go out and test it in a
11 lab, what's the maximum pull out, it may be up to 400
12 pounds. But you cannot use that, you've got to have a
13 built in factor of safety in the interest of the
14 public.

15 Q I'm just asking you, it's got a safety factor in
16 that screw that it will actually withstand a lot more
17 than a hundred pounds. In fact, it will go three, four
18 or five to one; right?

19 A Based on the absolute maximum and perfect
20 conditions.

21 Q Okay.

22 A Dry conditions, unsplit, properly embedded,
23 perfect installation. So we've got to have some
24 allowances for error.

25 Q Okay. We've got this screw here, hundred pounds

1 with some safety factor.

2 A Yes, sir.

3 Q Now, this screw is resting up against this
4 board --

5 A Yes, sir.

6 Q -- which is embedded in this post with two more
7 screws.

8 A Right.

9 Q You agree that's -- this board provides support
10 for this board (indicating)? You're leaning up against
11 it?

12 A That way, absolutely, yes, sir.

13 Q Yeah, if you're leaning up against it. So that
14 this nail this board is also going to be -- this board
15 is also going to be supported by these two screws. So
16 tell me what's going to be the strength of these two
17 screws (indicating).

18 A Probably around a hundred and -- if I'm not
19 mistaken, around 150 or so.

20 Q So with those three screws together, the original
21 construction meets your 200 pounds of concentrated
22 force requirement; yes?

23 A On day one?

24 Q Yeah.

25 A Yes, sir.

1 Q And then it's also going to --

2 A Well, based on that configuration with that
3 sideways loading. Now, if you go back to,
4 hypothetically, somebody were to put a concentrated
5 load right there (indicating), that's probably going to
6 fail.

7 Q If somebody sat on it?

8 A Yeah, on that edge, it could fail.

9 Q Could cause, I agree with you. But also something
10 that I picked up on earlier, these boards at the
11 walkover actually have nails -- I'm not sure if they're
12 coming from this direction or that direction
13 (indicating), but these are nailed in all the way down
14 the line.

15 A Yeah. And I was looking at that probably two to
16 three feet down.

17 Q Okay.

18 A But not right at the post.

19 Q But that gives it --

20 A Two to three feet down.

21 Q And that gives it additional strength?

22 A Probably every two to three feet on center.

23 Q All right. How much more additional strength is
24 that going to give the entire structure?

25 A Well, that just allows all those screws to work

1 together as opposed to individually. So you could add
2 the two, based on that direction of load, you may get
3 up to two or three hundred pounds or maybe even 400
4 pounds.

5 Q So we far exceed the building code's 200
6 concentrated pound requirement?

7 A Yeah. It's not going to fail on day one.

8 Q Okay. So you don't take exception to the design
9 and construction of the 77th Avenue North walkover;
10 correct?

11 A Well, actually, I do. But as we said, you've got
12 to have maintenance that is appropriate to the method
13 of construction.

14 Q Okay.

15 A And I don't think they're appropriate.

16 Q Okay. Construction is one thing. And we just
17 established that, with all these nails, it's got way
18 more than 200 pounds of -- it can withstand way more
19 than 200 pounds of concentrated pressure; agreed?

20 A Sure, on day one.

21 Q Okay.

22 A But then we get, you know, downstream, and that's
23 when we get into trouble.

24 Q Sure. Now, we're talking about inspection and --

25 A Inspection and maintenance.

1 Q -- corrective --

2 A Inspection, maintenance, and repair.

3 Q Preventative maintenance?

4 A Yes, sir.

5 Q Okay. I sort of list those two things
6 differently. We've talked about preventative
7 maintenance, we've talked about inspection schedules
8 and inspection -- the type of inspection. I just
9 wanted to touch on the construction, the original
10 design. That's got enough strength there; right?

11 A Day one, it's good.

12 Q Yes, sir. You formulated your opinions several
13 months ago; correct?

14 A Got started.

15 Q And you hadn't been to the scene until this
16 morning; is that correct?

17 A Correct.

18 MR. BRYAN: That's all I have. Thank you.

19 MR. CONNELL: Nothing from me, Your Honor.

20 THE COURT: All right. Thank you very much, sir.
21 You may step down.

22 (Witness excused.)

23 THE COURT: Any objection to Mr. Campbell being
24 excused?

25 MR. BRYAN: No, sir.

1 THE COURT: All right. Thank you very much,
2 Mr. Campbell. You're free to go, sir. Just make sure,
3 when you take your stuff, you don't take any exhibits.

4 MR. CAMPBELL: I'm going to sit down and
5 double-check.

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

7 All right. Ladies and gentlemen, we're going to
8 adjourn for the evening. Please continue to maintain
9 your ability to remain fair and impartial. Do not
10 allow anyone to discuss the case with you. Let your
11 friends, family, and loved ones know that you're
12 getting there, but you're not there yet, so you're
13 still not allowed to talk about the case.

14 Try to get a good night's rest, and when you come
15 back in the morning, we'll get started. Actually, if
16 you would be here at 9:30, and we'll get started as
17 soon as everyone has reconvened; okay? Everyone else,
18 please remain seated, and folks, we'll see you back
19 here tomorrow morning at 9:30.

20 (WHEREUPON, the jury exited the courtroom at
21 5:40 p.m.)

22 THE COURT: All right. Just for scheduling
23 purposes, Gene, how much more do you got?

24 MR. CONNELL: I may have to publish some
25 depositions or call some of the City employees

1 tomorrow.

2 THE COURT: Okay.

3 MR. CONNELL: So if they'll just be here.

4 THE COURT: How many do you think?

5 MR. CONNELL: There are three that their

6 depositions have been taken.

7 THE COURT: Okay. You don't know anything about
8 it?

9 MR. BRYAN: I'm not sure they're going to be here.

10 MR. CONNELL: Well, if they're not here, I'll read
11 their depositions, if that's what you want to do. I
12 could send them a subpoena, but I figured they were
13 here earlier on in the trial. If they're going to
14 testify, they ought to come.

15 THE COURT: Well, if you want them here, subpoena
16 them. But if you don't, you got the depositions and
17 we'll do that. But, anyway, there's three employees.

18 MR. CONNELL: Yes, sir.

19 THE COURT: You've taken their dep; is it very
20 lengthy?

21 MR. CONNELL: No, no, Your Honor. Not like what
22 you've seen.

23 THE COURT: All right. And then anything -- and
24 then what else; anything further?

25 MR. CONNELL: No, sir.

1 THE COURT: Okay. All right. Well, we'll --
2 anything we need to take up before we start back in the
3 morning, gentlemen?

4 MR. BRYAN: Can't think of anything, judge.

5 MR. CONNELL: Your Honor, if we do those, and you
6 probably just have your engineer, and who else do you
7 have? One of your guys is sitting out in the lobby,
8 but I think we've got four listed.

9 THE COURT: Let's use a worst case scenario, okay,
10 for the purpose of this question. Worst case scenario,
11 do we get the case to the jury tomorrow?

12 MR. BRYAN: Yes, sir.

13 THE COURT: It's okay if we don't. We've got
14 time. I was just curious.

15 MR. BRYAN: Well, if Gene is going to be going at
16 an hour's time, hour an hour and a half maybe, a
17 directed verdict takes 30 minutes, I think we get it to
18 the jury, I really do.

19 THE COURT: Okay. Well, that's fine. And like I
20 said, if we don't, we don't. That's not a problem.

21 MR. BRYAN: We're getting there. I can't keep
22 them here another day, judge. They're already mad at
23 me.

24 THE COURT: Well, you know, here's the thing.

25 MR. CONNELL: I'm not mad at you.

1 MR. BRYAN: I know you're not.

2 THE COURT: I don't know that they're mad.

3 MR. BRYAN: They're losing interest.

4 THE COURT: I know that they -- sometimes I would
5 like to just lecture them and say, hey, listen, you
6 don't get called for jury duty very often. Calm down.
7 You might be here all week. But it's the only time
8 you're going to be here for the next three years, so
9 relax, you know. But you can't talk to them like that.

10 MR. CONNELL: The only time they hear that is when
11 they come see you and they said I was on jury, and my
12 case was different than yours. I've had that probably
13 five times in my career.

14 THE COURT: Oh, really?

15 MR. CONNELL: Yeah. And then they're upset and
16 will say, well, what did you think when you were back
17 there for 30 minutes? Oh, we had to go. So that is a
18 concern.

19 THE COURT: Yeah. All right. Well, we'll start
20 back, then, at 9:30. And we'll, I guess, be at ease
21 until that time; okay?

22 MR. CONNELL: I couldn't imagine, Your Honor, at
23 9:30, I couldn't imagine taking more than 45 minutes to
24 do what I have to do.

25 THE COURT: Okay.

1 MR. CONNELL: So by 10:15, we'll be in a
2 situation --

3 THE COURT: Then we'll take up whatever motions.

4 (The hearing adjourned at approximately 5:44 p.m.)

5 (The hearing resumed on Wednesday, January 25th,
6 2017, at approximately 9:50 a.m.)

7 THE COURT: We need to get those from you,
8 because, you know, I send my charge back to the jury,
9 so I've got to have time to put it together and put it
10 in a formal form.

11 So if you've got that and it's on a computer, you
12 could e-mail it to Emily, but please send it in a Word
13 format, not a pdf. I don't know the technical stuff.

14 MR. BRYAN: It's TRussolC?

15 THE COURT: Yes, sir. Yes, sir. @sccourts.

16 MR. CONNELL: Your Honor, I think we've -- for
17 purposes of you knowing what we're going to do now, I
18 think we've kind of agreed to publish a portion of very
19 brief, probably five, ten minutes --

20 THE COURT: Okay.

21 MR. CONNELL: -- of deposition of one of the
22 Defendant's employees.

23 THE COURT: Okay.

24 MR. CONNELL: Then I'm going to rest.

25 THE COURT: All right.

1 MR. CONNELL: So just you're -- for your purposes...

2 THE COURT: Okay. All right. Are we ready to go,
3 then?

4 MR. CONNELL: Yes, sir.

5 THE COURT: Defendant ready?

6 MR. BRYAN: Yes, sir.

7 THE COURT: Okay. Bring the jury in.

8 THE DEPUTY: Yes, sir.

9 (WHEREUPON, the jury came into open court at
10 approximately 9:53 a.m.)

11 THE COURT: All right. Folks, welcome back. I
12 hope everyone had a good evening. And we can get
13 started. We ended yesterday and we were still on the
14 Plaintiff's case, and we will pick up where we left off
15 and recognize Mr. Connell for the Plaintiff's next
16 witness.

17 MR. CONNELL: Your Honor, we're going to publish
18 about three minutes of a deposition. We would like
19 Your Honor to explain to the Court what a deposition
20 is.

21 THE COURT: Okay.

22 MR. CONNELL: Or to the jury, I'm sorry.

23 THE COURT: I think I did this yesterday with the
24 videotape deposition. This is not going to be a
25 videotape, this is going to be a transcript of a

1 deposition very similar to what Mr. Bryan read
2 yesterday. This witness that the transcript is with
3 regards to was in a room, court reporter present, they
4 were placed under oath, both attorneys were present,
5 and the witness was questioned just as they would have
6 been if they were in here in the courtroom.

7 And so as all the testimony and as with all the
8 witnesses, you judge the credibility and the
9 believability of the witnesses. And you give the
10 testimony whatever weight you think it is -- that you
11 think is appropriate. But it is important that you
12 give this testimony outside the court, you give it the
13 same weight you would give it as if this person were in
14 court testifying. It's to be treated no differently;
15 okay?

16 How are you going to do it, Mr. Connell?

17 MR. CONNELL: Your Honor, it's only less than five
18 minutes.

19 THE COURT: Okay.

20 MR. CONNELL: I'm just going to read the question
21 and answer.

22 THE COURT: Read the question and answer?

23 MR. CONNELL: Yes, sir.

24 THE COURT: All right, sir. If you would,
25 though --

1 MR. CONNELL: I'll cite the lines.

2 THE COURT: Yeah. And you're going to start with
3 the witness identifies themselves, and so they know who
4 it is?

5 MR. CONNELL: I'm just going to say who it is.

6 THE COURT: Okay.

7 MR. CONNELL: And we've kind of agreed on the
8 lines, I think.

9 THE COURT: That's fine, okay.

10 MR. CONNELL: Your Honor, this is the deposition
11 of Richard Kirby. He was the park -- or is a park
12 superintendent.

13 THE COURT: All right, sir.

14 MR. CONNELL: And you go to page 26, line 10, and
15 the question was asked: Is the City responsible for
16 maintaining the beach walkover access in the City of
17 Myrtle Beach? And the answer was, Yes.

18 And then line 13: And how long has the City been
19 responsible for doing that? And the answer was: As
20 long as I have worked here.

21 Let me go to the next. And then page 29, Your
22 Honor, line 15: Has the one at 77th Avenue been
23 replaced, to your knowledge? Answer: No.

24 And then page 38, line 25, just a portion of that:
25 Are you aware of whether there were any inspections of

1 rusted screws on any of the beach walkover accesses?

2 Answer: No.

3 And then the next question --

4 MR. BRYAN: Gene?

5 MR. CONNELL: Yes.

6 MR. BRYAN: I'd ask you to read through line 10.

7 MR. CONNELL: I was getting ready to.

8 MR. BRYAN: Okay.

9 MR. CONNELL: And the next question was: No,
10 there were never any inspections for rusted screws?

11 Answer: We inspected for loose screws and loose boards
12 on a regular basis. We can only see the head of the
13 screw, so I'm not sure how you would inspect for a
14 rusted screw other than just looking at the head of it.

15 And, Your Honor, that's what we would offer.

16 THE COURT: All right.

17 MR. BRYAN: Your Honor, I have one excerpt I would
18 like to publish.

19 THE COURT: Yes, sir.

20 MR. BRYAN: Starting at page 6, line 20.

21 Question: What kind of inspection protocol was in
22 force and effect in 2012 on the beach walkovers?

23 Answer: Our risk management person, Tom, did -- does a
24 risk management inspection of all of the walkovers
25 every three years. He did one in 2011. He did another

1 in 2014.

2 Question: All right. Let me ask you what Tom's
3 last name would be. Anderson.

4 Question: Is he still with the City? Answer:
5 Yes.

6 Next question: Okay. And who developed the
7 protocol of every three years for a beach walkover
8 inspection? Answer: Tom.

9 Next question: Is he still doing that? Answer:
10 Yes. The next one is scheduled for next year.

11 Question: All right. And in 2011, how do you
12 know that he inspected each beach walkover in Myrtle
13 Beach? His answer: He has the written report.

14 Question: And this is what's been produced to me,
15 a walkover inspection report? Answer is affirmative,
16 Uh-huh.

17 Next question: Is that what you're referring to
18 that Tom Anderson would have done? His answer: No,
19 that's not Tom's. In addition to what Tom Anderson
20 did, okay, the Building Maintenance Division does a
21 yearly inspection of all walkovers.

22 Next question: Okay. When did you start that?
23 I'm sorry? Question: When did they start that, sir?

24 The answer: They started long before I was involved in
25 it. I don't know exactly, okay, but I do know what it

1 was, and it was done in 2011. Tom did his in 2011.

2 Our people, building maintenance, did it in 2011, 2012,
3 2013 and 2014.

4 MR.. BRYAN: Thank you.

5 THE COURT: All right.

6 MR. CONNELL: That's the Plaintiff's case, Your
7 Honor.

8 THE COURT: All right.

9 MR. CONNELL: Plaintiff rests.

10 THE COURT: Thank you, sir.

11 Ladies and gentlemen, the Plaintiff has rested
12 their case. Now, I know I just brought you in here,
13 and I'm about to turn you around and send you back out,
14 but, this time not terribly long.

15 In all civil cases, at the close of the
16 plaintiff's case, I have to take up matters of law with
17 the attorneys before we proceed. And so I'm going to
18 ask you, if you would, to step back into your jury
19 room. Do not have any conversation. Don't get
20 terribly comfortable because I'm going to bring you
21 back out in just a little bit.

22 But let me resolve these matters of law and then
23 we'll proceed; okay. Please, if you would, step back
24 into the jury room.

25 (WHEREUPON, the jury exited the courtroom at

1 10:02 a.m.)

2 THE COURT: All right. At this time, I'll take up
3 any motions at the close of the Plaintiff's case.

4 MS. NEUSCHAFER: Your Honor, I'm going to give
5 Mr. Bryan a break from talking today.

6 THE COURT: Okay, all right.

7 MS. NEUSCHAFER: At this point, the Defense would
8 move for a directed verdict in its favor. We've got a
9 few different grounds, and I'll try to go through them
10 as fast as I can.

11 The first one you are familiar with already is the
12 operation of the Recreational Use Statute. We believe
13 that the case presented thus far has established the
14 applicability of the statute, and I believe you have a
15 copy of that already. There's not been any testimony
16 that anybody but the City of Myrtle Beach owns,
17 controls the subject walkover. It's undisputed that
18 it's open to the public. There was no charge for
19 Plaintiff to enter. And he was -- Mr. Ciampanella was
20 there for recreation. I believe he and his wife both
21 testified they were out on the beach enjoying the
22 sunset.

23 So under the Recreational Use Statute at this
24 point, it would be the Plaintiff's burden to prove
25 gross negligence under the exception. And, again, we

1 believe that testimony presented thus far only shows
2 one reasonable inference, and that is that the City has
3 exercised at least slight care which, of course, is the
4 definition of gross negligence.

5 We would rely on the Kinsey case which Your Honor
6 has already read and seen. That's very similar to this
7 case. And the evidence we would point to here of
8 exercising at least slight care, number one, the City
9 did have a walkover replacement plan which would show
10 that they did exercise care to identify and keep up
11 with these walkovers.

12 There was testimony about the inspections being
13 done, some of which we just heard by deposition, some
14 of which Mr. Alan Campbell discussed in his deposition.
15 The Building Maintenance Department did their annual
16 inspections. There was one done in each of the four
17 years preceding the subject accident. Mr. Tom Anderson
18 did one every three years.

19 And then, on top of that, the third level of
20 inspections done would be those done by the employees
21 just in the course of their employment, and they're
22 instructed to be on the lookout, report, repair,
23 whatever needs to be fixed.

24 Mr. Campbell also testified yesterday that he was
25 aware and saw evidence that this boardwalk had, in

1 fact, in spots been repaired and replaced, which shows
2 there was exercise of at least slight care in the
3 maintenance of the boardwalk. And that was what was at
4 issue in the Kinsey case. Again, the Court found that
5 the evidence of inspections in that case demonstrated
6 at least slight care.

7 The next ground we have would be the exception to
8 the waiver of immunity under the Tort Claims Act that's
9 at subsection 16. And I have a copy of that if you
10 would like to see it.

11 THE COURT: Thank you.

12 MS. NEUSCHAFER: So the exception to the waiver of
13 immunity in this section states that a governmental
14 entity is not liable for a loss resulting from
15 maintenance, security, or supervision of any public
16 property intended, permitted -- or permitted to be used
17 as a park, playground, or open area for recreational
18 purposes, unless the defect or condition causing the
19 loss is not corrected by the particular governmental
20 entity responsible for the maintenance, security or
21 supervision within a reasonable time after actual
22 notice of the defect or condition.

23 And the case law, of course, is Legion that says
24 these exemptions to liability must be liberally
25 construed in favor of limiting the liability of the

1 government. So, here again, you're dealing --
2 Plaintiff's case was -- yesterday, we heard
3 Mr. Campbell talk about maintenance. That seems to be
4 the issue.

5 This is a recreational area. Again, I think that
6 ties in with the Recreational Use Statute. So the
7 question then becomes whether the City had actual
8 notice of this broken railing prior to the Plaintiff's
9 accident. And we have not heard any evidence of actual
10 notice that the board was weakened or that the cap rail
11 had previously broken off.

12 There are a couple cases that discuss this
13 statute. One of them is Struthers versus the Lexington
14 County Recreation Commission. I've got copies of that
15 if Your Honor would like to see them. Again,
16 Struthers, I think, is important because it does
17 address the actual notice issue, and it defines actual
18 notice as all the facts being known. And that's
19 certainly not what we have here. So, again, that would
20 be our second ground, would be the exemption to the
21 waiver of immunity.

22 And the third ground, it's kind of a two-parter,
23 assuming neither of the statutory immunities would
24 apply, I think we're left with kind of the common law
25 premises liability analysis here. And it's our

1 position that Plaintiff would be categorized as a
2 licensee as a matter of law. That's important because
3 the duty to a licensee, obviously, is different than to
4 an invitee.

5 A licensee enters the property with consent but
6 not an invitation. A licensee is on property for the
7 primary benefit of the licensee and not the landowner.
8 The licensee enters for his own purpose. The duty to a
9 licensee is only to warn of hidden dangers of which the
10 owner has actual knowledge. -- so you get back, again,
11 to the actual knowledge requirement -- and of which the
12 licensee would not reasonably be expected to discover.

13 There is no duty to search out and discover
14 dangers or otherwise make the premises safe for a
15 licensee. We believe, again, there is no evidence of
16 actual knowledge. So if the City did not have actual
17 knowledge of the defect that is alleged here, there is
18 no duty to warn, no duty to make the premises safe for
19 the Plaintiff.

20 The second part of the premises liability analysis
21 would be the requirement in a premises case -- there
22 are many cases I could cite to you, but one is Anderson
23 versus Racetrac Petroleum, which is found at 296 S.C.
24 204, and that discusses the two-part test that a
25 Plaintiff has to prove in addition to the elements of

1 negligence. That would be that the Plaintiff has to
2 prove that the injury was either caused by a specific
3 act of the City that created the dangerous condition at
4 issue, or that the City had actual or constructive
5 knowledge of the dangerous condition and failed to
6 remedy it.

7 And, again, here we have not yet heard any
8 evidence that a specific act of the City created the
9 dangerous condition. No one knows how the cap rail
10 fell off or when. So there would be, again, actual
11 notice, I've said it twice already, but same thing, no
12 evidence of actual notice that the board was weakened
13 or that the cap rail was broken.

14 On the constructive notice side, you look at
15 things like how long the rail had been broken. And the
16 testimony, again, was no one knows when that happened,
17 how long before it happened. For all we know, it
18 happened an hour before Plaintiff's accident.

19 Will, do you have anything to add?

20 MR. BRYAN: You covered it.

21 MS. NEUSCHAFER: I think that is it, in a
22 nutshell.

23 THE COURT: All right. Mr. Connell?

24 MR. CONNELL: Your Honor, our position is that, as
25 to the actual notice, there were actual notice of the

1 defects. Mr. Campbell testified that they -- the
2 depositions he had reviewed of the City employees knew
3 that screws were rusted, they knew that boards were
4 falling, and they knew that other boards had failed on
5 the beach walkover area.

6 He also said that they failed to inspect the
7 railing when they knew there were rusty screws. He
8 said they ran a mode of run to fail, that this
9 particular beach walkover was built in 1990. By their
10 own documents and by the resolutions that's been put
11 into evidence, the beach walkover had a 15-year life,
12 and this was the 27-year -- or 24 -- 20 some years
13 afterwards.

14 They also said that those screws were going to
15 fail after seven years and that that was a known fact,
16 and that you would have a 50 percent factor of failure
17 every year after the seventh year. This thing was
18 built in 1990. By 1997, it was certainly going to
19 start -- it was known that it was going to fail from
20 there on.

21 He said the City also had -- and it's in evidence
22 -- that there was a schedule to be replaced, and that's
23 -- I think that's No. 18 -- Plaintiff's Exhibit No. 18.
24 He further indicated that the calculations indicate
25 that a slight lean of less than 40 pounds would cause

1 the railing to fall.

2 He also indicated that the maintenance plan and
3 the decision to maintain and construct was not in
4 accordance with the Beach Management Act, and that if
5 bolts had been used instead of rusty screws, that it
6 would have made a world of difference as to the railing
7 system. He also says there's a difference between
8 preventative maintenance and how it was maintained and
9 that preventative maintenance was not used and that
10 they had actual notice of the problems throughout the
11 system and throughout the 105 beach walkover areas.

12 He further indicated that he did not do any
13 adequate testing, that one person came out and over the
14 course of three years would walk through and had to do
15 105 within four days. And he figured that was about
16 five to six seconds testing, not including drive time
17 and report time.

18 He also indicated that they failed to have a plan
19 to replace rusty screws when they knew screws were
20 going to rust, and they knew from other incidents that
21 it happened, that boards were falling off. He further
22 indicated that failure to maintain and build properly
23 was a violation of the OCRM regs and that failure to
24 maintain, per the Coastal Construction Manual, was a
25 violation.

1 Importantly, he recognized that they were not
2 built according to the Standard Building Code. He
3 further indicated that the City council failed to abide
4 by its own resolution. Again, that's Plaintiff's-18.
5 And that was an idea that they were going to replace
6 all these railings within so many years -- all these
7 walkovers within so many years.

8 He said they failed to address corrosive failure
9 and corrosion failure when they knew about it; that all
10 these violated the Standard Building Code of 1994, the
11 International Property Management Code of 2012, and the
12 International Building Code of 2001.

13 As Your Honor, talking about the Limitation of
14 Liability of Landowners Act, the only case that's
15 applicable that we think is the Harris versus US -- or
16 Harris versus USC. It says that the Defendants have to
17 prove the Recreational Use Act, and that's an
18 affirmative defense for them.

19 And they have not proved that in this case yet.
20 There's been no evidence that they own this property.
21 There's been no evidence that they leased this
22 property. There's -- the only evidence that's in the
23 record right now is that they have maintained the
24 property and that they've been maintaining for a number
25 -- or maintaining it -- they've done the construction

1 and the repairs for a number of years.

2 There is -- they cited this Kinsey case. I know
3 Your Honor has read that. I'll just briefly talk about
4 that. The Plaintiff in that case fell when they were
5 stepping down from the last step onto the beach, and
6 there was some sand erosion. And the Court in that
7 case, the Fourth Circuit, said the Plaintiff failed to
8 adduce any evidence that the City was grossly
9 negligent. In fact, the Court noted in the one-page
10 opinion that the City had no knowledge of any erosion
11 hazards.

12 There was testimony that City engineers were not
13 aware, and there was also testimony from the City
14 maintenance person that they would go around and fill
15 the erosion in every couple of days. And the Fourth
16 Circuit said this evidence was not refuted by the
17 Plaintiff. And since we have no evidence that there
18 might be a jury question of gross negligence, that we
19 find that we -- we affirm the grant summary judgment.

20 A couple of cases that have not been cited, in
21 Creech versus Wildlife Department, I don't know if
22 you've looked at that one. I think it's attached to
23 some of the documents. That case is interesting and
24 that involves a railing system somewhere down in
25 Berkeley County where there was one rail on one side

1 and not a rail on the other side, and the Plaintiff
2 goes down and the railing falls -- or goes down the
3 walkway and falls off on the area where there's not a
4 railing. In that case, there's a jury verdict for the
5 Plaintiff. It was appealed, as the Court said that was
6 an issue of fact for the jury.

7 There are a number of cases that talk about -- I
8 assume Your Honor is going to want to hear about gross
9 negligence, even though we think that's an issue that's
10 not yet been proven. There's a number of cases in
11 South Carolina -- we're going to give you some of these
12 in the jury charge -- that say gross negligence is for
13 the jury to decide when there's evidence that could go
14 either way.

15 And, Your Honor, we argue in this case that
16 there's more than evidence that can go either way.
17 There's specific evidence about the City's knowledge,
18 actual knowledge, of what was happening when they --

19 THE COURT: Let me stop you there, because you
20 keep referring to the actual knowledge. As far as I
21 can tell, there was no testimony that the City had
22 actual knowledge that this walkover was defective.

23 There was testimony that they knew that they had
24 problems with walkovers throughout the area, and they
25 were making efforts to repair those. But there's no

1 actual -- there's no evidence of actual knowledge of
2 this walkover being --

3 MR. CONNELL: Your Honor, there -- you're correct.
4 But there is evidence that the City was aware of these
5 problems with the walkovers. And that is actual
6 knowledge such that a jury could decide that that --
7 that the Plaintiff could prevail in that situation.
8 And that's -- Mr. Campbell testified to that
9 extensively based on the depositions he had read and
10 what had happened during the proposed maintenance
11 program.

12 So, Your Honor, I think we've got to all the
13 issues that they have argued. Except I would point out
14 one thing, Your Honor, that is interesting in this
15 case. The problem was created by them. I mean, the
16 beach walkover access was maintained, and there's been
17 some evidence that those were built by them.

18 THE COURT: You're completely missing the whole
19 purpose of the Recreation Use Statute when you make
20 those comments. Because, if you read the statute, if
21 it applies, it says that under 27-340, that except as
22 specifically recognized or provided in 60, an owner of
23 land who permits, without charge, any person having
24 sought such permission to use such property for
25 recreational purposes does not thereby extend any

1 assurance that the premises are safe for any purpose,
2 confer upon any person the legal status of an invitee
3 or a licensee to whom the duty of care is owed, or
4 assume responsibility or incur liability for injury to
5 any person or property caused by any act or omission of
6 such persons.

7 And it says that, in 27-330, that the owner owes
8 no duty of care to keep the premises safe for injury or
9 use by persons who have sought and obtained permission
10 to use for recreational purposes or to give any warning
11 of any dangerous condition, use, structure or activity
12 on such premises to such persons entering or using the
13 property.

14 MR. CONNELL: Well, Your Honor, here's my response
15 to that, if I may.

16 THE COURT: Yeah.

17 MR. CONNELL: 27-320, owner means the possessor of
18 fee interest. There's no evidence that they had a fee
19 interest in this property. Number two, there's a
20 tenant. There's no evidence they had a tenant
21 agreement. Number three, there's no evidence they had
22 a lessee agreement. And number four, there's no
23 evidence that they were a person in control.

24 The only argument is they maintained or built it.
25 There was no evidence that's been put in the record yet

1 that they had any of these things. In fact, there's not
2 evidence otherwise -- under the Harris case, the burden
3 of proof of proving that Recreational Use Statute would
4 be on them. And so they haven't presented that yet.
5 So I don't know that Your Honor could make that ruling
6 at this point, respectfully.

7 THE COURT: Okay.

8 MS. NEUSCHAFER: With regard to the owner
9 definition, if the Plaintiff does not believe that the
10 City is a, quote, "person in control of the premises,"
11 then I'm not sure how we got to this point. And we
12 could move to dismiss if that's what Your Honor would
13 like on those grounds.

14 But the hallmark -- the first hurdle to get over
15 in any premises liability case is that the Defendant
16 has sufficient control of the property to be held
17 responsible for what happened to it.

18 THE COURT: If they don't have that, Mr. Connell,
19 why are you suing the City?

20 MR. CONNELL: Because they maintained it, they
21 built it, they constructed it, and they inspected it,
22 and all the things that Mr. Campbell has said.

23 MS. NEUSCHAFER: Sounds a lot like control to me.

24 MR. CONNELL: And, Your Honor, that issue has not
25 yet been -- has not been presented by the Defendants.

1 And Harris says that the burden of proof under the RUS.
2 is on them. So they have to establish that.

3 THE COURT: All right. Anything further?

4 MS. NEUSCHAFER: The only other thing, Your Honor,
5 I think you've kind of addressed the actual notice
6 issue already. Our position would be that there was no
7 -- there wasn't any testimony of other failures,
8 Mr. Campbell said he was not aware of any other
9 failures with regards to the railings. Actual notice
10 is -- the way that the definition is, is actual notice
11 of this defect, not some other defect. I think that
12 would be it, Will. Anything else?

13 (Discussion off the record.)

14 MS. NEUSCHAFER: And the last thing would be, just
15 to piggyback on what we said already, the hallmark of
16 premises liability is that the Defendant has control.
17 And if the Plaintiff's position is that the City does
18 not control, then we would move for a directed verdict
19 on the grounds that we are not, as a matter of law,
20 responsible for the defects, the alleged defects.

21 MR. CONNELL: Your Honor, not true. I mean, how
22 many cases have you had where you go to a store and
23 somebody slips on the mat, and the mat was placed there
24 by someone who did contracting work, and the store is
25 the owner of the property?

1 I mean, there are cases in Legion about that where
2 someone else has been doing the work, the maintenance,
3 the repair, the construction, and the owner is just the
4 owner of the property. So, I mean, that's the same
5 type -- that's all --

6 THE COURT: Yeah, but in that case, you just -- in
7 that example you just gave me, you'd sue the store.

8 MR. CONNELL: No. I'd probably sue both.

9 THE COURT: You wouldn't sue the mat guy.

10 MR. CONNELL: I'd sue both. I have actually had
11 that before.

12 THE COURT: How can you sue the store?

13 MR. CONNELL: You can sue the store under agency
14 theory. You know, they had an agreement together.
15 What usually happens is the store argues that the
16 person who placed the mat -- I see this all the time in
17 convenience stores where they have these heavy-weighted
18 mats they put out in front. They're usually bleached
19 and they change them out every so many months, and then
20 someone falls on them because it ripples up. So I
21 don't think that that's, you know, that's a big issue
22 at this point.

23 And, also, I point out to Your Honor, under the
24 rules of evidence, actual notice can be proven by a
25 scheme or a common habit or any of those particular

1 things. And, I mean, the actual notice in this case is
2 across the board, it's a systematic problem, the rusted
3 screws, and then having to produce things like that.
4 So I think that's a jury issue.

5 THE COURT: Okay.

6 MS. NEUSCHAFER: If you need to hear any more on
7 the control issue or the ownership issue, we would
8 point out that the Beach Management Plan -- and was it
9 the resolution?

10 MR. BRYAN: The City Council resolution --

11 MS. NEUSCHAFER: Right.

12 MR. BRYAN: -- adopting the Beach Management Plan,
13 which is in evidence.

14 THE COURT: One person argues at a time.

15 MS. NEUSCHAFER: That's right. The resolution and
16 the Beach Management Plan that Plaintiff has put in
17 evidence that identifies the properties, the City
18 properties, the list to be replaced or worked on in the
19 future, it clearly includes this walkover, and clearly
20 that is a City document identifying City property.

21 THE COURT: What exhibit is that?

22 MR. CONNELL: It's No. 18, I think, Your Honor.
23 If you want to see it, I'll be happy to --

24 THE COURT: Yeah, please.

25 MR. CONNELL: 17.

1 THE COURT: Mr. Connell, Exhibit 17, which was
2 introduced by you --

3 MR. CONNELL: Yes, sir.

4 THE COURT: -- states that, whereas, the beach is
5 the dominant physical feature of the City and is the
6 major factor in the City's economy -- and then it goes
7 further and further and further. And then it says,
8 there's now here -- therefore, be it resolved that the
9 City Council hereby reaffirm its commitment to preserve
10 the beach as the City's most precious natural asset.

11 How does that not -- how is that not evidence that
12 the City is the owner of this property?

13 MR. CONNELL: Your Honor, could I see the document
14 a second? Thank you. I was looking for that section
15 that he cited about the maintenance. I wanted to see
16 if I can --

17 THE COURT: Well, I mean, does that section refute
18 what --

19 MR. CONNELL: Your Honor, this -- again, this did
20 not happen on the beach. I mean, this happened on the
21 walkover back behind the dunes.

22 THE COURT: Okay.

23 MR. CONNELL: So, I mean, at high water.

24 THE COURT: All right.

25 MR. CONNELL: So...

1 MS. NEUSCHAFER: And the...

2 MR. CONNELL: But, Your Honor, I will say this to
3 you. I'm not trying to be argumentative, but if the
4 Court were to find that that is the case, then the
5 standard would be gross negligence. I think that's
6 kind of where I see you going. But I don't think -- my
7 point is, I think you've got to have more than what
8 we've got on the record at this point, on a motion for
9 involuntary nonsuit with prejudice because the standard
10 is all the inferences --

11 THE COURT: Here's what's going to happen, I'm
12 just going to tell y'all. You made a good point about
13 the ownership, and so that was a concern that I had.
14 But I'm not -- with all due respect, I'm not going to
15 grant your motion for a directed verdict because I
16 think that there's at issue in this case, which I think
17 is a jury question, would be whether or not the City
18 acted in gross negligence and whether or not the
19 remedial things that you mentioned would rise to the
20 level of slight care, which would take you out of that
21 liability.

22 So I'm not directing a verdict, but I'm telling
23 you now, there's no question, it's not even remote in
24 my mind, that the Recreation Use Statute applies. It's
25 not even -- I mean, I wish I had another term, because

1 there's no question in my mind it applies.

2 MR. CONNELL: All right, sir.

3 THE COURT: You had some interesting theories.

4 This theory that that refers to the beach, this isn't

5 the beach. This is the area that goes over the dunes

6 to the beach, you know, I --

7 MR. CONNELL: I understand.

8 THE COURT: -- I don't buy that.

9 MR. CONNELL: All right.

10 THE COURT: So I'm going to respectfully deny the

11 motion for a directed verdict. But as we go forward, I

12 feel that the Recreational Use Statute and that its

13 applicability in this case has been established.

14 MS. NEUSCHAFER: Your Honor, if I could, what has

15 happened in some of the cases I've seen is that either

16 summary judgment or a directed verdict has been granted

17 where the Court finds that the Recreational Use Statute

18 applies as a matter of law. Directed verdict or

19 summary judgment has been granted on the simple

20 negligence claims, so that all that's left is gross

21 negligence.

22 THE COURT: That -- I haven't seen the complaint,

23 so I don't even know what's alleged in the complaint.

24 But if they're alleging simple negligence, then I would

25 grant a directed verdict as to those causes of action.

1 MS. NEUSCHAFER: The second question I would have
2 would be as to our motion on the actual knowledge
3 element and the Tort Claims Act exception to the waiver
4 of immunity.

5 MR. CONNELL: I'm sorry. I didn't catch that, I'm
6 sorry.

7 MS. NEUSCHAFER: Sorry. I was just asking Your
8 Honor's ruling or decision on the -- our argument
9 pertaining to the Tort Claims Act exception to the
10 waiver of immunity, which requires actual notice of the
11 defect.

12 THE COURT: You want to address that?

13 MR. CONNELL: Your Honor, I think --

14 THE COURT: You already did.

15 MR. CONNELL: Yes. I don't want to belabor the
16 point.

17 THE COURT: Okay. I'm going to take a few minutes
18 to look at that.

19 MS. NEUSCHAFER: Sure. And, again, I think that
20 actual notice is kind of woven into our third ground to
21 the traditional premises liability that was --

22 THE COURT: I think that's out with the Recreation
23 Use Statute being in effect, as far as --

24 MS. NEUSCHAFER: Okay. Well, I think -- wouldn't
25 it just be a gross negligence standard, but he would

1 still have to prove all those elements of -- under a
2 traditional premises liability analysis.

3 THE COURT: Right.

4 MS. NEUSCHAFER: Just gross negligence instead of
5 negligence.

6 THE COURT: Right. Okay.

7 MR. BRYAN: She's smarter than I am, judge.

8 THE COURT: All right. I'm going to take just a
9 few minutes. Did you have anything else, Mr. Connell?

10 MR. CONNELL: I want to show you, this is what I
11 was looking for. This is their list. And the last
12 page is 77th Avenue North, and it lists the owner of
13 the property as private. The very last page.

14 MS. NEUSCHAFER: Of?

15 MR. CONNELL: 77th Avenue North.

16 THE COURT: Well, go through this. Does it list
17 anything other than private throughout these 20 pages?

18 MR. CONNELL: Your Honor, the way I read that is
19 that the ones that are not listed as private are
20 public, by looking at that document.

21 THE COURT: Everything in there is private,
22 everything.

23 MR. CONNELL: No. These are the ones I list, I
24 think, that are private. There are others that are
25 public beach accesses that they have title to.

1 THE COURT: There's no question in this case that
2 that was a public beach access; right? That's been
3 testified to.

4 MR. CONNELL: Well, look, it says, property owner,
5 private.

6 THE COURT: I don't care what that says. It's
7 been testified to that this was a public beach access;
8 is that not correct?

9 MR. CONNELL: Your Honor, we didn't testify to
10 that. We just said that we went across the --

11 MR. BRYAN: Yes.

12 THE COURT: Well, your clients did.

13 MR. CONNELL: I mean, he went across the deck. He
14 didn't know whether it was public or private. That's a
15 legal determination.

16 THE COURT: All right.

17 MS. NEUSCHAFER: I think the testimony was that
18 there was -- it was publicly accessible next to a
19 public parking lot.

20 THE COURT: All right.

21 MR. CONNELL: And, Your Honor, you have our
22 argument on the actual notice.

23 THE COURT: Yeah.

24 MR. CONNELL: We think that there's -- we showed
25 that.

1 THE COURT: All right. Just give me a few
2 minutes.

3 MR. BRYAN: Yes, sir.

4 (WHEREUPON, a brief recess was taken at
5 10:57 a.m.)

6 THE COURT: All right. I wrestle -- you know, I
7 always -- any time you're considering motions that
8 become dispositive of cases that obviously takes a lot
9 of time and effort.

10 The issue with regards to the application of the
11 Recreational Use Statute and all of that, you know,
12 even with the evidence that's here, you know, I think
13 it has been shown that the property in question was
14 owned by the City and maintained by the City. But even
15 if that's in question, even if that's an issue that
16 hasn't been made clear, which I believe it has been, we
17 have to look at the South Carolina Tort Claims Act.

18 And in that Act, under 15-78-60 where the
19 exception is to the waiver of immunity, in Subsection
20 16, there is no question at all that this structure was
21 placed there by the City, built by the City, maintained
22 by the City. And so, therefore, there's no argument
23 that that's a City-owned structure maintained by the
24 City.

25 And it would appear that, under 15-78-60,

1 Subsection 16, that the City would be -- would not be
2 liable for any losses resulting from the maintenance,
3 security or supervision of that structure. If they had
4 actual notice of the defect or the condition and
5 failed -- and failed to do it, at that point, then,
6 they don't have immunity. If there's actual knowledge
7 of the defect and the condition and they do not correct
8 it within a reasonable time after having actual
9 knowledge, then there is liability.

10 Here and in this case, I don't think there is any
11 evidence in the record that would show that the City
12 had actual knowledge that the walkover at 77th Avenue
13 was damaged or in any way compromised. I know there's
14 testimony and I realize that there is -- some testimony
15 is that the City was aware that, of these 105 or 108,
16 however many walkovers there were, that they were in
17 charge of, that there were issues and there were
18 problems and they were having to fix those. And they
19 had a plan in place to every three years and the yearly
20 inspection.

21 But having knowledge that you're having problems
22 -- let me give an analogy. It's no different than if
23 the government owns ten buildings in this area, and
24 some of these buildings have some issues and some
25 problems, others don't. And so they are having to

1 maintain ten buildings.

2 And then they have this one building where they're
3 not aware of any issue with this building, but there
4 becomes an issue and someone injures themselves. The
5 fact that they had knowledge that they have issues in
6 several of these buildings doesn't place actual
7 knowledge on -- in other words, I believe, in that
8 case, they'd have to have actual knowledge that that
9 particular building had a defect and they didn't do
10 anything with it.

11 I think that's the same here. They have a 105
12 walkovers. They may have actual knowledge of certain
13 defects, and they have to get to those defects and they
14 have to repair them. But there's no testimony --
15 there's nothing in this record that would indicate that
16 the City had any actual knowledge of a problem or a
17 defect with the walkover at 77th Avenue where this
18 occurred.

19 And so I think the Tort Claims Act applies, and
20 under that, I think the City is entitled to a directed
21 verdict as to the liability for any injuries as a
22 result of that 77th Avenue walkover.

23 MR. CONNELL: Your Honor, in light of your ruling,
24 we would like you to put all the cases that were
25 presented, including this Struthers versus Lexington

1 County case --

2 THE COURT: Yes, sir.

3 MR. CONNELL: -- and the last page. And we're
4 going to need all that in the record for further
5 review, Your Honor.

6 THE COURT: Was that submitted to the Court?

7 MR. CONNELL: That was submitted by the Defendants
8 a little while ago, and it specifically talks about
9 actual notice and about circumstantial evidence of that
10 on the last page.

11 THE COURT: Okay.

12 MR. CONNELL: So we'd like to have that in Your
13 Honor, also.

14 THE COURT: That absolutely will be in.

15 MR. CONNELL: And, Your Honor, we're going to need
16 a ruling on the exemplar that Your Honor -- yesterday,
17 this exemplar that we had an issue with yesterday.

18 THE COURT: Oh, right.

19 MR. CONNELL: I would like a ruling on that. You
20 know, Your Honor had -- my intent was to try to prove
21 -- try to show that as evidence yesterday as an
22 exhibit. And Your Honor said I couldn't go back and
23 try it another way because you had already ruled.

24 THE COURT: Well, I mean, I'll -- I think you
25 tried to admit it in evidence, and I think there was an

1 objection to it. And I sustained the objection, so I
2 didn't allow it into evidence. So I note your
3 exception to that. And we can make that a Court's
4 exhibit to make it a part of the record, although it
5 was used extensively --

6 MR. CONNELL: Yes, sir.

7 THE COURT: -- throughout your arguments. But --
8 however, we'll certainly mark that as a Court's
9 exhibit, so it will be a part of the record.

10 MR. CONNELL: Your Honor, I think we need to -- I
11 asked if we could put on the record our bench
12 conference afterwards about that issue. Because, Your
13 Honor, my intention was to try to get it in another way
14 and you said, I've already ruled, on sustaining the
15 objection. I thought there was another way to get it
16 in with those photographs, and you indicated to me that
17 you'd already made a ruling, so I wasn't going to
18 obviously argue with you about that.

19 THE COURT: All right, sir. We'll certainly note
20 that, that I do recall that there's a bench conference.
21 I sustained the objection to it coming in as evidence,
22 and you indicated at that point that you would like to
23 try another way to have that to come in and with, I
24 think, other photographs or something of that nature
25 that you mentioned. And I had indicated to you that I

1 had already ruled on that admissibility and --

2 MR. CONNELL: Yes, sir.

3 THE COURT: -- and then you moved on. And
4 obviously that precluded you from going into those
5 other ways.

6 MR. CONNELL: Yes, sir.

7 THE COURT: So we'll certainly note that for the
8 record, and then we'll make that a Court's exhibit so
9 it will be a part of --

10 MR. CONNELL: And, Your Honor, could we get you
11 to -- just for purposes of your ruling, could we get to
12 you distinguish the Struthers versus Lexington County
13 case that's been presented, and the last page that
14 talks about what actual notice is and how you --

15 THE COURT: I don't find there's actual notice
16 here. I don't find that you have shown constructive
17 actual notice. Where is it? Let me hold the case.

18 MR. CONNELL: Your Honor, that would be on the
19 last page where they talk about what actual notice
20 means, Section 8 -- 17 and 18. If Your Honor please,
21 we'd request that you --

22 THE COURT: On the last page?

23 MR. CONNELL: Yes, sir. The last page, 17 and 18,
24 that the Supreme Court talks about what actual notice
25 means.

1 MR. BRYAN: Gene, hang on.

2 MS. NEUSCHAFER: There's two -- are you looking at
3 the Supreme Court or the Court of Appeals' decision?

4 MR. CONNELL: I'm looking at the Supreme Court
5 opinion.

6 MS. NEUSCHAFER: Okay. Just making sure I got the
7 right one.

8 THE COURT: All right. And, in that case, the
9 Court indicated that, In our opinion, the Court's
10 decision erroneously eliminates the option of proving
11 actual notice by the factual circumstances of the case.
12 We find, in the context of the Act, actual notice means
13 all the facts are disclosed, and there's nothing left
14 to investigate. Actual notice may be shown by direct
15 evidence or inferred from factual circumstances.

16 And the Plaintiff in this case has rested. So
17 that was all of the evidence that the Plaintiff was
18 going to present. Everything that was presented, there
19 was no evidence -- there was evidence that out of 105
20 walkovers, over time there have been issues from time
21 to time that the City had to repair, had to go to, had
22 to take care of.

23 There was no evidence at all in this record of any
24 previous issues with regards to 77th Avenue walkover.
25 There was no evidence in the record at all -- no

1 circumstantial, no nothing -- of how -- there was
2 evidence that the top rail had been either damaged or
3 somehow removed prior to Mr. Ciampanella leaning on it.
4 But there was no evidence of when that happened, how
5 that happened, whether or not the City had been
6 notified in any way, shape or form.

7 And so I don't think that because there's been
8 evidence that throughout their existence of the 105
9 walkovers that they've had some issues and had to
10 repair certain walkovers at certain times, I don't
11 think that is at all dispositive or supportive of
12 actual notice or the totality of those facts that rises
13 to the level of actual notice.

14 They had in place a maintenance plan, but I don't
15 find that there's any evidence at all of actual notice
16 with regards to this issue.

17 MR. CONNELL: And I'm not trying to argue --

18 THE COURT: I know that.

19 MR. CONNELL: -- but just make a record so that
20 I --

21 THE COURT: Make a record. I have no problem with
22 you doing that.

23 MR. CONNELL: Your Honor, I hate to do that, but I
24 feel like I have to, you know, as Your Honor knows.
25 We've been here for two and a half days.

1 THE COURT: I'm with you all the way. I'm not
2 upset, I'm not offended. I want you to make your
3 record, and I think you should.

4 MR. CONNELL: Yes, sir.

5 THE COURT: I encourage you to.

6 MR. CONNELL: Thank you, Your Honor.

7 THE COURT: Yeah.

8 MR. CONNELL: Our position is that the deposition
9 testimony or the witness testimony of Mr. Campbell is
10 that the -- that this particular walkover had been
11 built in 1990, the life of it was 15 years, and the
12 City employees knew that there were rusted screws
13 throughout all of them throughout the system, and that
14 that was something any engineer would know needed to be
15 replaced; that the number 9 screw was not an
16 appropriate screw to use on it, and that, after seven
17 years, it was a 50 percent failure rate per year. And
18 that's how all of them were built, and that's how all
19 of them were constructed.

20 And so, Your Honor, our position is, under the
21 Struthers case, that circumstantial evidence can be
22 evidence across a systemwide construction. Because as
23 Your Honor said in the beginning --

24 THE COURT: So then, under that theory of those
25 105 walkovers, none of them fall under the Tort Claims

1 Act, none of them?

2 MR. CONNELL: Under our theory, it's a question
3 for the jury as to whether or not actual notice has
4 been met. Your Honor, we charge that. The jury might
5 -- the Defendants might argue, hey, we did what you
6 said, we repaired, we maintained them, we tried to do
7 what we could to fix it.

8 But to cut it off at this juncture, with the
9 evidence that we have in the record, Your Honor, when
10 it's supposed to be in the light most favorable to the
11 nonmoving party, which is the Plaintiff, Your Honor, we
12 would submit to Your Honor it is not -- is an error,
13 respectfully, Your Honor.

14 THE COURT: Sure. I understand. All right.
15 Anything further?

16 MS. NEUSCHAFER: I think we're fine. Thank you.

17 THE COURT: All right. Thank you, ladies and
18 gentlemen. Is the jury back?

19 I'm just looking again here at this Struthers
20 versus Lexington County. And in that case, the lower
21 court held that -- or held that the deposition
22 submitted by the respondent failed to present any
23 evidence creating a genuine issue of material fact;
24 that it had proved no actual notice of the defect, and
25 the Petitioners failed to present any evidence creating

1 a genuine issue of fact on the issue.

2 The Petitioners did not prove that the respondent
3 knew that this R-70 system was defective or prove this
4 system is so similar to the other troublesome systems
5 that actual notice could have been inferred in the
6 circumstantial evidence. And that's the case here.

7 MR. CONNELL: Your Honor, I disagree. I think we
8 proved all the decks are built the same way.

9 THE COURT: You haven't.

10 MR. CONNELL: Yes, sir, we have. Mr. Campbell's
11 testimony is that all the decks are built with the same
12 screws, they're all built the same way. The fact that
13 the screws are --

14 THE COURT: I don't believe that what is his
15 testimony at all.

16 MR. CONNELL: Your Honor, he --

17 THE COURT: I believe he examined this walkover.

18 MR. CONNELL: No, sir. He examined the
19 depositions of the Defendant's employees and all the
20 maintenance records, too, and all the records that
21 would show what they were doing in all the others and
22 opined that, you know, this is a systemwide problem.

23 I mean, he said there were boards falling -- and
24 that's the key difference between this case, the
25 Struthers case, and what we have here. We've got

1 systemwide circumstantial evidence of rusted screws,
2 number 9 screws being used throughout the --

3 THE COURT: Now, the testimony you read into
4 evidence this morning, with regards to the actual City
5 employee who did the inspections, indicated that they
6 could not determine whether or not screws were rusted
7 other than by looking at the screw heads because,
8 obviously, the screws are embedded in the wood.

9 MR. CONNELL: True. But that's contrary to
10 Mr. Campbell's testimony that you could tell,
11 yesterday.

12 THE COURT: Okay.

13 MR. CONNELL: I mean, our point is that, if you
14 look at the sprinkler system here, there's testimony
15 that they weren't aware. Mr. Campbell's expert
16 testimony, after reviewing the four depositions, is not
17 only were they aware, but they knew about it and the
18 boards had fallen before. And so our point is that's a
19 circumstantial evidence case for the jury.

20 THE COURT: All right.

21 MS. NEUSCHAFER: I would just say that, having to
22 do maintenance on one of the hundred walk -- you know,
23 some of the hundred walkovers over the years does not
24 equate to actual knowledge that there was a problem or
25 even this kind of problem with the load-bearing

1 capacity of the railing.

2 THE COURT: Well, again, and I go back to what I
3 said earlier, is that under this theory that you
4 mentioned, Mr. Connell, then -- and who knows, maybe a
5 higher court will agree with you -- but under your
6 theory, there is no -- none of these fall under the
7 Tort Claims Act, waiver of immunity, all 105. So
8 that --

9 MR. CONNELL: Well, no, sir. My issue is, if you
10 create the problem, you build it, you build it in such
11 a way that the problem is created by you, that's a
12 whole different situation than a premises liability
13 situation.

14 THE COURT: There is no evidence here that you
15 have a systemwide failure. There is evidence here that
16 out of the 105, they have on occasion had to go back
17 and make repairs, which, again, in his testimony is
18 that in the coastal regions, dealing with wood and
19 fasteners, you're going to have corrosion, you're going
20 to have this, which is why you have to have
21 maintenance.

22 And so he didn't testify that there's some
23 systemwide failure here. He testified that throughout
24 the years, they've had occasions where they've had to
25 go back and found rusted screws and had to replace .

1 those and repair those.

2 MR. CONNELL: Your Honor, I think he did testify
3 that these screws are -- I mean, that's the whole issue
4 in the case is the screws that were used were rusted,
5 and they did not last the appropriate period of time.
6 And that's what he's argued about or what he testified
7 to during his deposition after reviewing what they had
8 done and how they had done the maintenance. That's a
9 different -- that's a whole different thing than --

10 THE COURT: All right. And I understand what
11 you're saying. I don't find that to be enough to rise
12 to the level of actual notice in this case. And under
13 the Tort Claims Act, the City would not be liable even
14 if those screws were used and were rusted.

15 And I don't want, in any way, don't want to cut
16 you off. I understand, I appreciate needing to make a
17 record. So you don't offend me at all.

18 MR. CONNELL: All right. Well, some people don't
19 like that.

20 THE COURT: No. You know, I've got no problem.
21 Listen, in the long run, I may -- a higher court may
22 find that I'm wrong. And if I am, I'll learn from it,
23 but --

24 MR. CONNELL: But, you know, it's kind of like --

25 THE COURT: -- obviously I take it very seriously.

1 I can't tell you that, there have been a handful of
2 times in my 11 years on the bench that I've granted a
3 directed verdict. I take it very seriously. So if I
4 am mistaken, I do want to learn from it. I don't
5 believe I am. But if I am, I certainly have no problem
6 with it being pointed out and have no problem with you
7 supporting your case. So --

8 MR. CONNELL: Thank you, Your Honor.

9 THE COURT: -- I don't ever have an issue with
10 that.

11 MR. CONNELL: I appreciate you saying that.

12 THE COURT: Thank you for doing that. That's what
13 a good lawyer does.

14 MR. CONNELL: Thank you, Your Honor.

15 THE COURT: Okay? All right. Now, does it matter
16 how y'all -- if y'all want to remain here while I bring
17 the jury in and excuse them, or if you want to pack up,
18 it's up to you.

19 MR. BRYAN: Just bring them in and let them go.

20 THE COURT: All right. Bring the jury in, please,
21 sir.

22 (WHEREUPON, the jury came into open court at
23 approximately 11:19 a.m.)

24 THE COURT: All right. Ladies and gentlemen, let
25 me first begin by saying I realize that I have no

1 credibility with you because I told you that I was
2 going to send you out for just a moment and don't get
3 comfortable, and here we are, some long period of time
4 later. I apologize.

5 And I told you that at the time when I sent you
6 out that there were matters of law that the Court
7 needed to take up. And I did that. Those matters
8 ended up being extensive, requiring me to do a little
9 bit of research and looking into, and so that's why it
10 took longer.

11 But -- and I'm not going to be able to go into any
12 lengthy details to have you understand what I'm about
13 to tell you. But the Court, based on those legal
14 issues, has directed a verdict in favor of the
15 Defendant. So that will conclude your participation in
16 this case.

17 Now, I don't know -- have any of you had jury duty
18 before? Has anybody least served on a jury before? A
19 couple of you have. Okay. I'm 61 years of age, and
20 I've never even been summoned for jury duty but once in
21 my life, and it was about seven years ago during a term
22 of court that I was presiding over.

23 So, you know, not many people had have the
24 opportunity to sit on an actual jury case. I tell you
25 that those of you who this is your first time, I hope

1 you have not considered it to be a waste of your time.
2 But for a couple of legal issues, we would have needed
3 you to have decided this case. And it was very
4 important for the Plaintiffs and it was very important
5 for the Defendants that you were here and that you were
6 available to do your work.

7 So I want to thank you for your service. It's a
8 very -- it's a very high service that you give to your
9 community when you do sit for jury duty. Some folks
10 have said that it's second only to serving your country
11 in the military, as far as a high honor. And I believe
12 that to be the case.

13 We have a system of justice in this country that
14 is like no other, and it's the best system in the
15 world. It's not perfect because it was created and
16 developed by man, but it was -- it is the best on the
17 planet. And it only works because of good folks like
18 you who make yourselves available.

19 So I want to thank you for your service this week.
20 You've concluded your service. You'll be getting a
21 check in the mail. Please don't be offended when you
22 get that; okay? What do they do in Horry County?

23 THE CLERK: \$15 a day.

24 THE COURT: Is it a straight fee or they do
25 mileage?

1 THE CLERK: Plus mileage.

2 THE COURT: How much then?

3 THE CLERK: It's \$15 a day plus 25 cents a mile.

4 THE COURT: \$15 a day plus mileage. Before you
5 get terribly upset, it's only \$10 a day in Florence, so
6 you beat that crowd. But, you know, the thing is,
7 folks, jury service is not -- it's not a paid job, it's
8 not -- that's not the purpose of it. It's just what
9 it's called, it's a service that you give to your
10 community. And so I appreciate it, everyone here
11 appreciates it.

12 Now, if you need a work excuse -- can they get
13 that?

14 THE CLERK: Yes, sir. Just go by the clerk's
15 offers downstairs.

16 THE COURT: If you need a work excuse, you can go
17 by the clerk's office, and they'll give you one for
18 your time here. And, like I said, they'll at some
19 point over the next day or so, they'll send you your
20 check for your service here this week.

21 Thank you again. And if there's nothing further,
22 then, folks, I'm going to excuse you. You're done for
23 the week, and you've earned that exemption. Remember I
24 told you that -- or I guess it was judge Culbertson
25 told you that you're only required to serve on jury

1 duty once every three calendar years. So you've earned
2 that exemption.

3 So if you get another summons for jury service
4 here in circuit court for the balance of this year, all
5 of 2018 and all of 2019, and you wish to be excused
6 from that service, you can claim that exemption. Now,
7 it is just an exemption. It doesn't mean you're not
8 qualified to serve. So if you do get another jury
9 summons in that timeframe and you would like to serve,
10 I would encourage you to do so; okay?

11 So, everyone else please remain seated. Folks,
12 you're excused for the balance of the week. Thank you.

13 (WHEREUPON, the jury exited the courtroom at
14 11:24 a.m.)

15 (WHEREUPON, Court's Exhibit Nos. 1 to 3 were
16 marked for identification only.)

17 (WHEREUPON, the hearing concluded at approximately
18 11:24 a.m.)

19 (End of Transcript of Record.)
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25

CERTIFICATE OF REPORTER.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

I, TERESA J.F. BAUTZ, Official Court
Reporter for the Fifteenth Judicial Circuit of the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript
of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative
to appeal, in the Court of Common Pleas for Horry
County, South Carolina, on the 31st day of May, 2017.

I FURTHER CERTIFY that I am neither of
kin, counsel nor interest to any party hereto.

TERESA J.F. BAUTZ, RPR
Official Court Reporter