

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

May 18 2020

SC Court of Appeals

APPELLATE CASE NO.: 2019-002082

JOHN BYERLY, individually and as Personal Representative of the ESTATE OF SUSAN
B. BYERLY.....Appellant,

vs.

THOMAS WESLEY,Respondent.

RECORD ON APPEAL

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Attorneys for Appellant

Other Counsel of Record:

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Attorney for Respondent
Thomas Wesley

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
)
SUSAN B. BYERLY and)
JOHN BYERLY)
)
Plaintiffs,)
)
vs.)
)
THOMAS WESLEY,)
)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2017-CP-26-2880

VERDICT FORM

1. Do you find that the defendant was negligent?

_____ YES: GO TO QUESTION 2
 ✓ NO: STOP AND DELIBERATE NO FURTHER

2. Do you find that the defendant's negligence proximately caused the plaintiff's injury?

_____ YES: GO TO QUESTION 3
_____ NO: STOP AND DELIBERATE NO FURTHER

3. Do you find that the plaintiff was negligent?

_____ YES: GO TO QUESTION 4
_____ NO: GO TO QUESTION 6

4. Do you find that the plaintiff's negligence proximately caused his injury?

_____ YES: GO TO QUESTION 5
_____ NO: GO TO QUESTION 6

5. If your answers to questions 1, 2, 3, and 4 are all YES, then answer this question:

Taking the combined negligence that proximately caused the parties' injuries as one hundred percent (100%), what percentage of that negligence is attributable to the plaintiff and what percentage is attributable to the defendant?

Plaintiff: _____ %

Defendant: _____ %

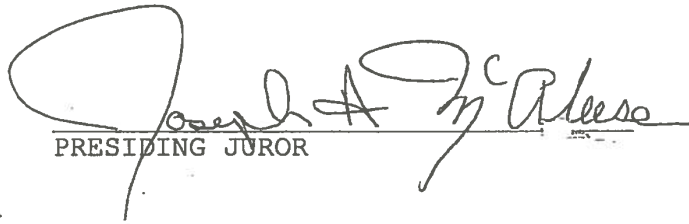
Total _____ 100%

If the plaintiff's percentage of negligence is greater than 50%, STOP AND DELIBERATE NO FURTHER.

If the plaintiff's percentage of negligence is 50% or less, GO TO QUESTION 6.

6. Please state the total amount of damages, if any, sustained by the plaintiff:

_____ DOLLARS
(\$ _____ .00), actual damages.


PRESIDING JUROR

CONWAY, SOUTH CAROLINA

November 21, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2017-CP-26-_____
 Susan B. Byerly,)	
)	
Plaintiff,	)	SUMMONS
v.	)	(JURY TRIAL DEMANDED)
)	
Thomas Wesley, Brown Rooftops, LLC, and)	
Bay Service and Contracting, LLC.)	
)	
Defendants.)	
_____)	

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service, at 12019 Ocean Highway, Pawleys Island, South Carolina 29585.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

HOPKINS LAW FIRM, LLC

s/ William E. Hopkins, Jr.
William E. Hopkins, Jr., SC Bar No.: 66474
12019 Ocean Highway
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Attorneys for the Plaintiff

Pawleys Island, South Carolina
May 8, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	THE FIFTEENTH JUDICIAL CIRCUIT
	)	Docket No.: 2017-CP-26-
Susan B. Byerly,)	
)	
Plaintiff,)	
v.	)	COMPLAINT
	)	(JURY TRIAL DEMANDED)
Thomas Wesley, Brown Rooftops, LLC, and)	
Bay Service and Contracting, LLC.)	
)	
Defendants.)	

Susan B. Byerly (hereinafter "Plaintiff"), complaining of Thomas Wesley, Brown Rooftops, LLC and Bay service and Contracting, LLC ("Defendants"), would respectfully show unto the Court the following:

PARTIES

1. Plaintiff is a citizen and resident of Horry County, South Carolina.
2. Upon information and belief, Defendant Thomas Wesley is a citizen and resident of Horry County, South Carolina and is the owner of real property located at 6211 Brynn Drive in Myrtle Beach, Horry County, South Carolina.
3. Upon information and belief, Defendant Brown Rooftops, LLC is a limited liability corporation organized and existing under the laws of the State of South Carolina, and at all times pertinent herein was doing business and maintained it principal place of business, or "nerve center" in Horry County, South Carolina.
4. Upon information and belief, Defendant Bay Service and Contracting, LLC is a limited liability corporation organized and existing under the laws of the State of South Carolina, and at all times pertinent herein was doing business and maintained it principal place of business, or "nerve center" in Horry County, South Carolina.

VENUE AND JURISDICTION

5. Venue and jurisdiction is proper because at least one Defendant owns property in Horry County, South Carolina, and all of the acts complained of herein occurred in Horry County, South Carolina.

FACTS

6. On or about October 12, 2016, Plaintiff, her husband, her daughter and her grandchildren were living at 6211-A Brynn Drive in Myrtle Beach pursuant to a Lease Agreement with Defendant Wesley, who owns the property.

7. Plaintiff was an invitee on the premises and at all times relevant to this action was on Defendant's property with the express and/or implied permission of Defendant and for the purpose of benefitting Defendant.

8. At the time, both Plaintiff and her husband were working at Coastal Carolina University and had to leave their house for work before daybreak.

9. The property contained large railroad ties, presumably placed on the property by Defendant Wesley.

10. In early October 2016, a severe storm in Myrtle Beach caused damage to the property, including damage to the roof and the yard/trees on the property. As a result, Defendant Wesley or his insurance carrier hired the two corporate defendants to perform certain repair and/or cleaning work on the property.

11. Completely unbeknownst to Plaintiff and her husband, the Defendants moved the large railroad ties from their previous position and placed them directly in the path between the door to the residence and Plaintiff's vehicle. On the date in question, while walking from the home to their car in the dark, before sunrise, Plaintiff tripped on one of the railroad ties placed between

her vehicle and the door to the residence and fell, incurring serious injuries.

12. The aforesaid conditions constituted a hazardous, dangerous and/or defective condition of the property.

13. Defendants created the hazardous, dangerous, and/or defective condition, and they had actual or constructive knowledge of the hazardous, dangerous, and/or defective condition, and failed to correct it or cordon it off or notify or warn Plaintiff, despite reasonable opportunity to do so.

14. As a result, Plaintiff has incurred medical expenses, pain and suffering, permanent disability and loss of income, anxiety, stress, embarrassment, and mental distress as a result of the acts and/or omissions of Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligence)

15. Plaintiff realleges and restates all the allegations of the preceding paragraphs as if fully rewritten and restated herein verbatim.

16. By operating a rental property for lease to the general public, Defendant Wesley owed its invitees, including Plaintiff, a duty of care to prevent and discover risks and dangerous conditions and to take safety precautions to either eliminate unreasonable risks or properly warn of such risks and dangers.

17. The two corporate Defendants also owed a duty of care to prevent and discover risks and dangerous conditions and to take safety precautions to either eliminate unreasonable risks or properly warn of such risks and dangers.

18. At the time and place described above, Defendants breached their respective duties of care they owed Plaintiff and were negligent and grossly negligent. Specifically, Defendants'

conduct was negligent, grossly negligent, willful, wanton and reckless in one or more of the following particulars:

- a. In failing to exercise ordinary care to maintain and keep the subject property in a reasonably safe condition for use by its invitees;
- b. In failing to warn Plaintiff of the dangerous condition of the property when they could have easily done so;
- c. In failing to implement preventive measures, procedures or policies designed to eliminate or reduce such dangerous conditions and the hazards posed therefrom;
- d. In failing to exercise the reasonable care, skill and prudence exercised by an ordinary, reasonable property owner, contractor, operator, lessor, owner, and construction expert under the circumstances;
- e. In failing to properly remedy the dangerous condition after they knew or should have known, through reasonable diligence, that the dangerous condition existed;
- f. In failing to properly supervise, instruct, train and discipline their contractors and employees in the manner in which to inspect and discover and report and reduce such hazards;
- g. In improperly and negligently designing the property area;
- h. In improperly and negligently maintaining the property area;
- i. In causing the dangerous condition to exist;
- j. In failing to obey the laws, statutes, regulations and ordinances then and there prevailing;
- k. In failing to protect the safety and interests of Plaintiff; and
- l. In such other particulars as the evidence produced in discovery and at trial may show.

19. As a direct and proximate result of Defendants' negligence in regards to this incident, Plaintiff has suffered severe physical and psychological injuries, including, but not limited to:

- a. Permanent physical impairment;
- b. Loss of enjoyment of life;
- c. Physical pain and suffering;
- d. Medical bills;
- e. Mental anguish; and
- f. Such other damages as may be proven at trial.

20. Upon information and belief, Plaintiff is entitled to judgment against Defendants, jointly and severally, for actual damages and punitive damages for their negligence, gross negligence, willful, wanton and reckless conduct.

WHEREFORE, Plaintiff would request an Order of the Court granting the relief sought in the Complaint, actual damages, punitive damages, consequential damages, pre-judgment interest, attorneys' fees and costs, and for any such other and further relief as the Court may deem just and proper.

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

HOPKINS LAW FIRM, LLC

s/ William E. Hopkins, Jr.
William E. Hopkins, Jr., SC Bar #66474
Post Office Box 1885
Pawleys Island, South Carolina 29585
(843) 314-4202 - Telephone
(843) 314-9365 – Facsimile
bill@hopkinsfirm.com

ATTORNEYS FOR PLAINTIFF

Pawleys Island, South Carolina
May 8, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2017-CP-26-02880
)	
SUSAN B. BYERLY,)	
)	
Plaintiff,)	
	)	ANSWER TO COMPLAINT
vs.)	
	)	(JURY TRIAL DEMANDED)
THOMAS WESLEY, BROWN)	
ROOFTOPS, LLC, and BAY SERVICE)	
AND CONTRACTING, LLC,)	
)	
Defendants.)	
)	

TO: WILLIAM E. HOPKINS, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendant, Thomas Wesley, responding to the Plaintiff's Complaint, states as follows:

FOR A FIRST DEFENSE

1. Defendant denies all allegations of the Plaintiff's Complaint which are not herein after specifically admitted, qualified, and/or explained.
2. Defendant admits, upon information and belief, the allegations set forth in Paragraph 1 of Plaintiff's Complaint.
3. Defendant admits the allegations set forth in Paragraph 2 of Plaintiff's Complaint.
4. Defendant is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 3 of Plaintiff's Complaint and therefore demands strict proof thereof.
5. Defendant is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 4 of Plaintiff's Complaint and therefore demands strict proof thereof.
6. Paragraph 5 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required.

7. Defendant admits the allegations set forth in Paragraph 6 of Plaintiff's Complaint.

8. Paragraph 7 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required.

9. Defendant is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 8 of Plaintiff's Complaint and therefore demands strict proof thereof.

10. With respect to the allegations set forth in Paragraph 9 of the Plaintiff's Complaint, Defendant only admits that, upon information and belief, there was a railroad tie on the property. Defendant is without sufficient knowledge to admit or deny the remaining allegations set forth in Paragraph 9 of the Complaint and therefore demands strict proof thereof.

11. Defendant admits, upon information and belief, the allegations set forth in Paragraph 10 of Plaintiff's Complaint.

12. With respect to the allegations set forth in Paragraph 11 of the Plaintiff's Complaint, Defendant only admits that, upon information and belief, a railroad tie had been moved on the property due to repairs that were taking place on the property. Defendant is without sufficient knowledge to admit or deny the remaining allegations set forth in Paragraph 11 of the Complaint and therefore demands strict proof thereof.

13. Defendant denies the allegations set forth in Paragraph 12 of Plaintiff's Complaint.

14. Defendant denies the allegations set forth in Paragraph 13 of Plaintiff's Complaint.

15. Defendant denies the allegations set forth in Paragraph 14 of Plaintiff's Complaint.

16. With respect to the allegations set forth in Paragraph 15, Defendant repeats his responses to Paragraphs 1 through 14 of Plaintiff's Complaint and incorporates them by reference herein as if more fully set forth.

17. Paragraph 16 of Plaintiff's Complaint constitutes a conclusion of law to which no responsive pleading is required.

18. The allegations set forth in Paragraph 17 are not directed to the answering Defendant and therefore no answer is made. To the extent any of said allegations may be interpreted to infer or imply any liability on the part of the answering Defendant, said allegations are denied.

19. Defendant denies the allegations set forth in Paragraph 18, including all sub-parts, of Plaintiff's Complaint.

20. Defendant denies the allegations set forth in Paragraph 19, including all sub-parts, of Plaintiff's Complaint.

21. Defendant denies the allegations set forth in Paragraph 20 of Plaintiff's Complaint, which is the remainder of the Complaint, and demands strict proof thereof.

FOR A SECOND DEFENSE

22. BY WAY OF FURTHER ANSWER TO PLAINTIFF'S COMPLAINT, AND AS A SECOND DEFENSE THERETO, Defendant pleads the doctrine of comparative negligence and alleges that the negligence and/or recklessness of the Plaintiff was greater than any negligence which may be established against the Defendant and therefore the Plaintiff is barred from recovery, or, in the alternative, that any verdict or judgment obtained by Plaintiff must be reduced in proportion to the negligence attributed to her by the fact-finder.

FOR A THIRD DEFENSE

23. BY WAY OF FURTHER ANSWER TO PLAINTIFF'S COMPLAINT, AND AS A THIRD DEFENSE THERETO, Defendant would allege and show that any conditions alleged by Plaintiff to have been negligent, hazardous or dangerous were open and obvious conditions to Plaintiff and for that reason Defendant is not liable to Plaintiff in any way.

FOR A FOURTH DEFENSE

24. BY WAY OF FURTHER ANSWER TO PLAINTIFF'S COMPLAINT, AND AS A FOURTH DEFENSE THERETO, Defendant would show that any award of punitive damages to the Plaintiff would violate the constitutional safeguards provided Defendant under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution, in that the determination of punitive damages does not bear any reasonable relationship to the amount of actual and/or compensatory damages suffered by or awarded to the Plaintiff.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant prays that the same be dismissed, together with the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

DEFENDANT ALSO DEMANDS A TRIAL BY JURY.

[signature page to follow]

Mt. Pleasant, South Carolina
June 21, 2017

WESTON LAW FIRM, P.A.

/s/ Stephanie P. Anthony

Stephanie P. Anthony
761 Johnnie Dodds Blvd., Suite 100
P.O. Box 1992
Mt. Pleasant, SC 29465-1992
P: (843) 881-4995
F: (843) 881-4009
ATTORNEY FOR DEFENDANT
THOMAS WESLEY

ELECTRONICALLY FILED - 2017 Jun 21 12:36 PM - Horry - COMMON PLEAS - CASE#2017CP2602880

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2017-CP-26-02880
)	
Susan B. Byerly and John)	
Byerly,)	
)	
Plaintiffs,)	
)	
vs.	)	AMENDED SUMMONS
)	
Thomas Wesley, Brown)	
Rooftops, LLC, and Bay Service)	
Contracting, LLC,)	
)	
Defendants.)	
_____)	

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in this action. A copy of the Amended Complaint is attached to this Amended Summons and is herewith served upon you. Your answer must be in writing and signed by you or your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the Plaintiff within fifteen (15) days after the service hereof, exclusive of the day of service, at 12019 Ocean Highway, Pawleys Island, South Carolina 29585.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Amended Complaint as required by this Amended Summons within fifteen (15) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

HOPKINS LAW FIRM, LLC

s/William E. Hopkins, Jr.
William E. Hopkins, Jr. (SC Bar #66474)
12019 Ocean Highway
Post Office Box 1885
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bill@hopkinsfirm.com

ATTORNEYS FOR PLAINTIFF

Pawleys Island, South Carolina
February 28, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2017-CP-26-02880
)	
Susan B. Byerly and John)	
Byerly,)	
)	
Plaintiffs,)	
)	
vs.	)	AMENDED COMPLAINT
)	
Thomas Wesley, Brown)	
Rooftops, LLC, and Bay Service)	
Contracting, LLC,)	
)	
Defendants.)	
_____)	

Susan B. Byerly and John Byerly (hereinafter collectively "Plaintiffs"), complaining of Thomas Wesley, Brown Rooftops, LLC and Bay service and Contracting, LLC ("Defendants"), would respectfully show unto the Court the following:

PARTIES

1. Plaintiffs are citizens and residents of Horry County, South Carolina.
2. Upon information and belief, Defendant Thomas Wesley is a citizen and resident of Horry County, South Carolina and is the owner of real property located at 6211 Brynn Drive in Myrtle Beach, Horry County, South Carolina (the "Property").
3. Upon information and belief, Defendant Brown Rooftops, LLC is a limited liability corporation organized and existing under the laws of the State of South Carolina, and at all times pertinent herein was doing business and maintained its principal place of business, or "nerve center" in Horry County, South Carolina.
4. Upon information and belief, Defendant Bay Service and Contracting, LLC is a limited liability corporation organized and existing under the laws of the State of South

Carolina, and at all times pertinent herein was doing business and maintained its principal place of business, or "nerve center" in Horry County, South Carolina.

VENUE AND JURISDICTION

5. Venue and jurisdiction is proper because at least one Defendant owns property in Horry County, South Carolina, and all of the acts complained of herein occurred in Horry County, South Carolina.

FACTS

6. On or about October 12, 2016, Plaintiffs, their daughter and their grandchildren were living at 6211-A Brynn Drive in Myrtle Beach pursuant to a Lease Agreement with Defendant Wesley, who owns the Property.

7. Plaintiffs were invitees on the Property and at all times relevant to this action, were on Defendant Wesley's property with the express and/or implied permission of Defendant Wesley and for the purpose of benefitting Defendant Wesley.

8. At the time, both Plaintiffs were working at Coastal Carolina University and had to leave their house for work before daybreak.

9. The Property contained large railroad ties, presumably placed on the Property by Defendant Wesley.

10. In early October 2016, a severe storm in Myrtle Beach caused damage to the Property, including damage to the roof and the yard/trees on the Property. As a result, Defendant Wesley or his insurance carrier hired the two (2) corporate Defendants to perform certain repair and/or cleaning work on the Property.

11. Completely unbeknownst to Plaintiffs, the Defendants moved the large railroad ties from their previous position and placed them directly in the path between the

door to the residence and Plaintiffs' vehicle. On the date in question, while walking from the home to their car in the dark, before sunrise, Plaintiff Susan Byerly tripped on one of the railroad ties placed between their vehicle and the door to the residence and fell, incurring serious injuries.

12. The aforesaid conditions constituted a hazardous, dangerous and/or defective condition of the Property.

13. Defendants created the hazardous, dangerous, and/or defective condition, and they had actual or constructive knowledge of the hazardous, dangerous, and/or defective condition, and failed to correct it or cordon it off or notify or warn Plaintiffs, despite reasonable opportunity to do so.

14. As a result, Plaintiff Susan Byerly has incurred medical expenses, pain and suffering, permanent disability and loss of income, anxiety, stress, embarrassment, and mental distress as a result of the acts and/or omissions of Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligence)

15. Plaintiffs reallege and restate all the allegations of the preceding paragraphs as if fully rewritten and restated herein verbatim.

16. By operating a rental property for lease to the general public, Defendant Wesley owed its invitees, including Plaintiffs, a duty of care to prevent and discover risks and dangerous conditions and to take safety precautions to either eliminate unreasonable risks or properly warn of such risks and dangers.

17. The two corporate Defendants also owed a duty of care to prevent and discover risks and dangerous conditions and to take safety precautions to either eliminate unreasonable risks or properly warn of such risks and dangers.

18. At the time and place described above, Defendants breached their respective duties of care they owed Plaintiffs and were negligent and grossly negligent. Specifically, Defendants' conduct was negligent, grossly negligent, willful, wanton and reckless in one or more of the following particulars:

- a. In failing to exercise ordinary care to maintain and keep the Property in a reasonably safe condition for use by its invitees;
- b. In failing to warn Plaintiffs of the dangerous condition of the Property when they could have easily done so;
- c. In failing to implement preventive measures, procedures or policies designed to eliminate or reduce such dangerous conditions and the hazards posed therefrom;
- d. In failing to exercise the reasonable care, skill and prudence exercised by an ordinary, reasonable property owner, contractor, operator, lessor, owner, and construction expert under the circumstances;
- e. In failing to properly remedy the dangerous condition after they knew or should have known, through reasonable diligence, that the dangerous condition existed;
- f. In failing to properly supervise, instruct, train and discipline their contractors and employees in the manner in which to inspect and discover and report and reduce such hazards;
- g. In improperly and negligently designing the Property area;
- h. In improperly and negligently maintaining the Property area;
- i. In causing the dangerous condition to exist;
- j. In failing to obey the laws, statutes, regulations and ordinances then and there prevailing;
- k. In failing to protect the safety and interests of Plaintiff; and
- l. In such other particulars as the evidence produced in discovery and at trial may show.

19. As a direct and proximate result of Defendants' negligence in regards to this incident, Plaintiff Susan Byerly has suffered severe physical and psychological injuries, including, but not limited to:

- a. Permanent physical impairment;
- b. Loss of enjoyment of life;
- c. Physical pain and suffering;
- d. Medical bills;
- e. Mental anguish; and
- f. Such other damages as may be proven at trial.

20. Upon information and belief, Plaintiff is entitled to judgment against Defendants, jointly and severally, for actual damages and punitive damages for their negligence, gross negligence, willful, wanton and reckless conduct.

FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)

21. Plaintiffs reallege and restate all the allegations of the preceding paragraphs as if fully rewritten and restated herein verbatim.

22. As a direct and proximate result of the negligence of Defendants as mentioned above, Plaintiff John Byerly, as the husband of Susan Byerly, has suffered the loss of aid, comfort, consortium, society and damage to the marital relationship with this wife for which he is entitled to actual damages in an amount to be determined by the jury at the trial of this action.

WHEREFORE, Plaintiffs would request an Order of the Court granting the relief sought in the Complaint, actual damages, punitive damages, consequential damages,

pre-judgment interest, attorneys' fees and costs, and for any such other and further relief as the Court may deem just and proper.

Plaintiffs hereby demand a trial by jury.

HOPKINS LAW FIRM, LLC

s/William E. Hopkins, Jr.

William E. Hopkins, Jr. (SC Bar #66474)

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Pawleys Island, South Carolina 29585

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ATTORNEYS FOR PLAINTIFF

Pawleys Island, South Carolina
February 28, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
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SUSAN B. BYERLY and)
JOHN BYERLY,)
)
Plaintiffs,)
)
vs.)
)
THOMAS WESLEY, BROWN)
ROOFTOPS, LLC, and BAY SERVICE)
AND CONTRACTING, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-26-02880

**ANSWER TO
AMENDED COMPLAINT
(JURY TRIAL DEMANDED)**

TO: WILLIAM E. HOPKINS, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Defendant Thomas Wesley, responding to the Plaintiffs' Amended Complaint, states as follows:

FOR A FIRST DEFENSE

1. Defendant denies all allegations of the Plaintiffs' Complaint which are not herein after specifically admitted, qualified, and/or explained.
2. Defendant admits, upon information and belief, the allegations set forth in Paragraph 1 of Plaintiffs' Complaint.
3. Defendant admits the allegations set forth in Paragraph 2 of Plaintiffs' Complaint.
4. Defendant is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 3 of Plaintiffs' Complaint and therefore demands strict proof thereof.
5. Defendant is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 4 of Plaintiffs' Complaint and therefore demands strict proof thereof.

6. Paragraph 5 of Plaintiffs' Complaint constitutes a conclusion of law to which no responsive pleading is required.
7. Defendant admits the allegations set forth in Paragraph 6 of Plaintiffs' Complaint.
8. Paragraph 7 of Plaintiffs' Complaint constitutes a conclusion of law to which no responsive pleading is required.
9. Defendant is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 8 of Plaintiffs' Complaint and therefore demands strict proof thereof.
10. With respect to the allegations set forth in Paragraph 9 of the Plaintiffs' Complaint, Defendant only admits that, upon information and belief, there was a railroad tie on the property. Defendant is without sufficient knowledge to admit or deny the remaining allegations set forth in Paragraph 9 of the Complaint and therefore demands strict proof thereof.
11. Defendant admits, upon information and belief, the allegations set forth in Paragraph 10 of Plaintiffs' Complaint.
12. With respect to the allegations set forth in Paragraph 11 of the Plaintiffs' Complaint, Defendant only admits that, upon information and belief, a railroad tie had been moved on the property due to repairs that were taking place on the property. Defendant is without sufficient knowledge to admit or deny the remaining allegations set forth in Paragraph 11 of the Complaint and therefore demands strict proof thereof.
13. Defendant denies the allegations set forth in Paragraph 12 of Plaintiffs' Complaint.
14. Defendant denies the allegations set forth in Paragraph 13 of Plaintiffs' Complaint.

15. Defendant denies the allegations set forth in Paragraph 14 of Plaintiffs' Complaint.
16. With respect to the allegations set forth in Paragraph 15, Defendant repeats his responses to Paragraphs 1 through 14 of Plaintiffs' Complaint and incorporates them by reference herein as if more fully set forth.
17. Paragraph 16 of Plaintiffs' Complaint constitutes a conclusion of law to which no responsive pleading is required.
18. The allegations set forth in Paragraph 17 are not directed to the answering Defendant and therefore no answer is made. To the extent any of said allegations may be interpreted to infer or imply any liability on the part of the answering Defendant, said allegations are denied.
19. Defendant denies the allegations set forth in Paragraph 18, including all sub-parts, of Plaintiffs' Complaint.
20. Defendant denies the allegations set forth in Paragraph 19, including all sub-parts, of Plaintiffs' Complaint.
21. Defendant denies the allegations set forth in Paragraph 20 of Plaintiffs' Complaint.
22. With respect to the allegations set forth in Paragraph 21, Defendant repeats his responses to Paragraphs 1 through 20 of Plaintiffs' Complaint and incorporates them by reference herein as if more fully set forth.
23. Defendant denies the allegations set forth in Paragraph 22 of Plaintiffs' Complaint, which is the remainder of the Complaint, and demands strict proof thereof.

FOR A SECOND DEFENSE

24. BY WAY OF FURTHER ANSWER TO PLAINTIFFS' COMPLAINT, AND AS A SECOND DEFENSE THERETO, Defendant pleads the doctrine of comparative negligence and alleges that the negligence and/or recklessness of the Plaintiff was greater than any negligence which may be established against the Defendant and therefore the Plaintiff is barred from recovery, or, in the alternative, that any verdict or judgment obtained by Plaintiff must be reduced in proportion to the negligence attributed to her by the fact-finder.

FOR A THIRD DEFENSE

25. BY WAY OF FURTHER ANSWER TO PLAINTIFFS' COMPLAINT, AND AS A THIRD DEFENSE THERETO, Defendant would allege and show that any conditions alleged by Plaintiff to have been negligent, hazardous or dangerous were open and obvious conditions to Plaintiff and for that reason Defendant is not liable to Plaintiff in any way.

FOR A FOURTH DEFENSE

26. BY WAY OF FURTHER ANSWER TO PLAINTIFFS' COMPLAINT, AND AS A FOURTH DEFENSE THERETO, Defendant would show that any award of punitive damages to the Plaintiff would violate the constitutional safeguards provided Defendant under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution, in that the determination of punitive damages does not bear any reasonable relationship to the amount of actual and/or compensatory damages suffered by or awarded to the Plaintiff.

WHEREFORE, having fully answered the Plaintiffs' Amended Complaint, Defendant prays that the same be dismissed, together with the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

DEFENDANT ALSO DEMANDS A TRIAL BY JURY.

Mt. Pleasant, South Carolina
February 28, 2018

WESTON CRAIG ANTHONY, LLC

/s/ Stephanie P. Anthony

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THOMAS WESLEY**

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2017-CP-26-02880

Susan B. Byerly and John Byerly,)
)
Plaintiff,)

vs.)

**PLAINTIFFS' JURY
CHARGE #___**

Thomas Wesley, Brown)
Rooftops, LLC, and Bay Service)
and Contracting, LLC,)
)
Defendants.)
_____)

South Carolina Courts have found that a landlord who undertakes repair of his property by use of a contractor has a non-delegable duty to see that the repair is done properly and remains vicariously liable for injuries caused by improper repairs. *Gary v. Askew*, 417 S.C. 232, 789 S.E.2d 94 (S.C. App. 2016); *Simmons v. Tuomey Reg'l Med. Ctr. (Simmons 2)*, 341 S.C. 32, 42, 533 S.E.2d 312, 317 (2000); *Nebrow v. Pruitt*, 336 S.C. 668, 521 S.E.2d 755 (S.C. App. 1999).

A person may delegate a *duty* to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains *liable* for that breach. It actually is the liability, not the duty, that is not delegable. The party which owes the non-delegable duty is vicariously liable for the negligent acts of the independent contractor. *Id.* (Emphasis in original).

1 P-R-O-C-E-E-D-I-N-G-S.

2 (Plaintiffs' Exhibits 1A-1C, 1E-1J, 1L-1S, and
3 2 through 6, and 8 through 11 were marked.)

4 MR. HOPKINS: Good morning, Your Honor.

5 THE COURT: Good morning, Mr. Hopkins.

6 MR. HOPKINS: Yes, sir, thank you.

7 Your Honor, the defendant, Bay Services and
8 Contracting, LLC, although they were served, they've
9 never filed an answer in this action and, therefore,
10 pursuant to Rule 41(a)(1), we would like to
11 voluntarily dismiss that party from the case.

12 According to the deposition testimony, they had
13 nothing to do with the crossties, removing them,
14 anyway, so there is no basis for liability.

15 THE COURT: Any objection?

16 MS. ANTHONY: Your Honor, I understand that he's
17 referring to dismiss them pursuant to that rule,
18 however, there is conflicting testimony. I just want
19 to be clear that I'm asking for their actions to be
20 considered and intend to bring that up in front of the
21 jury. And, further, I would ask that there be a
22 percentage of negligence that the jury would be
23 awarding or allocating to that. So although I
24 understand under the rule they haven't answered and
25 that Mr. Hopkins is moving to dismiss them, I would

1 still ask that their negligence be considered.

2 THE COURT: Do you wish to respond?

3 MR. HOPKINS: Yes. My understanding of the law
4 is that a non-party is not to be put on the verdict
5 form, and I've never seen a case where a non-party is
6 put on the verdict form.

7 THE COURT: I appreciate that it is not on the
8 verdict form. It is the parties, when they have to do
9 an apportionment, as to who the possible players are,
10 and I don't think at this point, frankly, because of
11 the joint tort-feasor situation, and because it has
12 been up to this moment, I think it would be undue
13 prejudice for you to be able to remove the party from
14 the complaint right now, because it is an issue. I
15 agree, you can testify they didn't do anything wrong,
16 but somebody is going to say they did, and that is the
17 nightmare, and it really is a nightmare. I think I've
18 had two since the law took effect, and it is really
19 sad because I was a plaintiff's lawyer primarily when
20 I practiced law for 21 years, and I understand the
21 theory behind this of apportionment and to try to see
22 who the main culpable party is. I use "culpable"
23 loosely here, not in a criminal sense. But this
24 really isn't -- while you get to pick and choose who
25 you want to sue, that part I agree with. If you never

1 sued them, they can't bring it up because you didn't
2 sue them. But you did, and so when you choose that,
3 it really is kind of a situation where it almost plays
4 in the hands -- plays against the plaintiff. If the
5 party you end up suing, as I understand it, if it is
6 less than 50 percent, then they only pay that portion
7 that they are attributed to, and of course then we get
8 to the allocation of settlements. The jury doesn't
9 know anything about that; that is for my benefit. It
10 really creates a nightmare problem for a plaintiff,
11 but it is what it is. I have said that on the record
12 before. I don't think I've ever had any appeal yet.
13 But, anyway, maybe it will come up and maybe they'll
14 change it; I don't know. But, anyway, I appreciate
15 your position, but I think she's right.

16 MR. HOPKINS: We would like to just state our
17 objection for the record.

18 THE COURT: Oh, no question. It's preserved. No
19 problem. I think she has every right to do that. And
20 to be candid with you, I was on a panel where we
21 discussed this at a presentation several years ago.
22 In fact, I had my notebook in my office in Charleston.
23 I was going to go get it last night, but I decided
24 not, I'll just wing it, but the bottom line is that
25 really and truly what they should have done, I think

1 -- it's just like when you bifurcate punitive damages,
2 and I've done that. You don't hear any testimony
3 about recklessness. You don't hear any of that. You
4 wait until the second portion. If the jury finds --
5 well, you do hear testimony about that, but you don't
6 hear about wealth and punishment and that sort of
7 thing, and the egregious conduct, until the second
8 phase. Really and truly, and as I understand the
9 joint tort-feasor, first they've got to find a
10 judgment against the defendant, number one, and then
11 we go into the allocation. But rather than have a
12 second trial where evidence comes in about who is
13 involved, who is doing what, it really creates a
14 confusing nightmare. Because I know what she's going
15 to do, she's going to ask questions of what all these
16 other people did and it doesn't have a thing to do
17 with this defendant, but that is the only time she
18 gets to put it in. I think that is problematical for
19 the jury because they lose sight on what is going on.
20 That is one of the reasons I think these cases are
21 prone to be resolved, because of the complications of
22 this and a jury sorting it out. It's very similar to
23 what we were talking about yesterday with construction
24 litigation.

25 But, anyway, you'll certainly be able to do it.

1 Now, we all know when I send another form where I put
2 the allocations of the various parties, and you all do
3 get, by statute, as I understand they haven't changed
4 that, to make another argument as to who is more
5 culpable, but there will be no further testimony.

6 MR. HOPKINS: Could you say that again?

7 THE COURT: Once the jury returns a verdict, then
8 I tell them to go back to the room, we're going to
9 take a few minutes, but now you'll have another part.
10 When they come back out, I'll tell them this is it,
11 and you get to argue, do your argument, and I'll do a
12 charge that tells them you have to allocate an
13 apportionment between the parties.

14 MR. HOPKINS: And "between the parties" would be
15 between Ms. Byerly and?

16 THE COURT: Between the people on that sheet, and
17 it will have every defendant involved.

18 MR. HOPKINS: Again, we would just like to state
19 our objection.

20 THE COURT: I appreciate it, and I don't blame
21 you. I would object, too. But it is the law as I
22 read it, so thank you. That is why -- that's why it
23 is something that you have to think about. It is
24 another component of this settlement process.

25 Okay. Anything else?

1 MR. HOPKINS: Not from the plaintiff, no, sir.

2 THE COURT: Anything from the defendant?

3 MS. ANTHONY: Yes, Your honor. Along those same
4 lines as to the settling codefendant, the defendant
5 would make a motion for reallocation of those
6 settlement funds and for a set-off, and I know that is
7 premature.

8 THE COURT: I can't -- obviously the law is
9 clear, and I think Judge Hayes did one and I know
10 Justice James did it obviously in one of the cases
11 that I've read, but there is no question I have to
12 consider that. Again, we have the cart before the
13 horse because there may not be anything to allocate.

14 MS. ANTHONY: Absolutely. I just wanted to make
15 sure that I preserved.

16 THE COURT: No, I think you're preserved, because
17 I think it's inherent in the law, as I read it. I've
18 had one where that was the case where the parties
19 agreed to that allocation, and if that happens, then I
20 don't question it. That is binding. But when they've
21 done it and he had every right to settle it without
22 any agreement from anyone -- he doesn't have to have
23 the agreement, it just means that the proceeds then --
24 and he can allocate it however he chooses, but then
25 it's up to me to make the ultimate determination based

1 on the evidence and what's here. So the Court is not
2 bound by anything of the allocation at all, based on
3 the law. The Court may say, well, loss of consortium,
4 that is worth about \$5,000, and \$35,000 would go
5 towards this.

6 MS. ANTHONY: Absolutely, Your Honor. And I do
7 think that that is the distinguishing point in some of
8 the case law where they said no allocation is that in
9 this case it is a derivative action. You know, you
10 don't have the loss of consortium but for the
11 negligence claim.

12 THE COURT: I understand. No question. I mean,
13 obviously -- again, obviously, if they get a defense
14 verdict -- because we have another thing in this case,
15 another component for settlement. In some ways, I
16 wish we were a pure comparative state, but we're not.
17 I had one where this was the case. Gary Ling, a
18 plaintiff's lawyer in Charleston, tried this case. We
19 didn't even -- we agreed on the damage sum. We were
20 questioning whether or not it was comparative
21 negligence. The jury came back with 50.1. The
22 plaintiff lost by one-tenth of a percent. So that
23 part is bad, but it is good, too. I was on a panel
24 with the supreme court where we said it is not a pure
25 comparative, and if I granted a directed verdict of no

1 negligence, and in this case -- I called it the pink
2 elephant, pink stuffed animal. A fellow walked out in
3 front of a car on East Bay in Charleston and was hit.
4 The driver said I never saw him until he was right in
5 front of my car. Well, the court of appeals said that
6 is sufficient, the jury has to weigh that. We said,
7 no, he was in a position of safety. He had the best
8 chance of changing it, and the verdict was directed.
9 The percent of the plaintiff was more than that of the
10 defendant.

11 So, you know, in this case that is another
12 problem, too. I understand the technicality of the
13 landlord being, by law, technically responsible, but
14 it will be interesting to see what the percentage of
15 allocation is on that, too.

16 MS. ANTHONY: And, certainly, to the extent it
17 comes up --

18 THE COURT: Do you still have your comparative
19 negligence defense?

20 MS. ANTHONY: Yes. Yes. Absolutely. But along
21 those same lines, as far as the antiquated vicarious
22 liability theory, that theory was not pled in the
23 complaint, and I know that was some of the case law
24 that plaintiffs' counsel pointed out that they would
25 want to allege. Now that the other parties are not

1 here, I'm not sure that that comes up. Certainly, it
2 doesn't relieve any duties that the landlord would
3 independently have, but I would, of course, object to
4 anything going to the jury as to an instruction on
5 vicarious liability for anything that the contractors
6 did being imputed on the defendant.

7 THE COURT: We'll cross that bridge when we come
8 to it.

9 MR. HOPKINS: I have a proposed jury charge if
10 you would like it, or if you prefer to wait. It is
11 not vicarious, it is direct liability.

12 MS. ANTHONY: That is fine. Just in case that
13 came up.

14 And I think one other thing that Bill and I
15 agreed upon was that we were going to see how we
16 needed to deal with exhibits as they came along. If
17 for some reason any of the medical records that
18 plaintiffs' counsel has put together are moved to be
19 admitted into evidence, we've agreed to make sure that
20 all of the references to insurance are redacted before
21 they go back to the jury.

22 THE COURT: At this point, whatever -- you may
23 not know. Is there going to be any objection to
24 anything other than that particular issue?

25 MS. ANTHONY: No. None is anticipated. And I

JURY SELECTION

1 think we're just dealing with the bills, but in case
2 anything comes up where they do need to come in.

3 THE COURT: No problem. Anything else?

4 We're ready for the jury.

5 (A brief pause in the proceedings.)

6 THE COURT: Will you go with as few as 11 jurors
7 if you have to?

8 MR. HOPKINS: Yes, sir, Your Honor.

9 MS. ANTHONY: Sure. Yes, sir.

10 THE COURT: We won't need an alternate then.

11 (A recess was taken.)

12 THE COURT: Good morning to you. My name is
13 Markley Dennis. I'm a circuit court judge from the
14 Ninth Circuit in Charleston and Berkeley. And I've
15 been assigned this week to conduct a term of civil
16 court, and you have been selected to help us resolve
17 one of the cases we've had this week, and thank you
18 for your patience with us. I know you've been calling
19 in. I hope it has not been too much of an imposition
20 and inconvenience, but we are ready to go forward with
21 this case.

22 First, I'm going to identify the parties to the
23 dispute and the people involved, and I'll ask you
24 certain questions about it. I'm sure when Judge
25 Culbertson qualified you, he talked about distinctions

OPENING STATEMENTS BY MS. ANTHONY

1 I'm not sure if anyone had any damage during the
2 hurricane, but certainly just to even get contractors
3 out and start working on these problems that has
4 happened as a result of the hurricane was a huge feat.
5 He got on the phone and actually had someone out
6 within two hours before the Byerlys ever returned
7 home. He hired professional contractors. They got
8 licensing to start doing repairs to the property, and
9 ultimately got right on it. As was indicated, most of
10 the damage was to the other side of the property, to
11 the other unit, as it is a duplex.

12 You also hear, as was indicated, that Mr. Wesley
13 did not move the railroad ties. He was not there when
14 they were moved, but you'll hear testimony about the
15 reason and necessity for them to be moved. These
16 railroad ties, as you'll hear, were at the border of
17 the property. The reason they were placed there 20
18 years prior is because people were backing up onto the
19 lawn. There was an apartment complex across the way,
20 and people were backing on the lawn. So these ties
21 were placed there to stop there.

22 In order to get in a very large tree -- and
23 you'll see pictures of this -- removed from the roof,
24 they had to bring in a backhoe. They could not get in
25 without moving those railroad ties, so there was a

OPENING STATEMENTS BY MS. ANTHONY

1 roofing company that came out. There was another
2 contractor that came out, and ultimately they had to
3 move those railroad ties.

4 I want you to pay close attention to the timeline
5 and how everything kind of flushes out over the course
6 of the days, and also look at the pictures and the
7 objective evidence that is not coming from any
8 testimony, but you are looking at pictures and able to
9 see when the railroad ties were removed.

10 As I indicated, and as the Judge touched on a
11 bit, negligence, you'll hear a bit more at the end,
12 but it is ultimately deciding if Mr. Wesley breached
13 some duty and didn't act reasonably under the
14 circumstances and failed to warn of something that is
15 not an obvious -- open and obvious condition. In
16 other words, I can't walk down the street, see a big
17 hole, fall in it and hold someone else responsible.
18 That is an open and obvious condition. I think when
19 you pay attention to the timeline of events here,
20 you'll come to see that there was notice, and that the
21 Byerlys did know that these railroad ties had moved.
22 In fact, by the time they get back to the property on
23 the 11th, these railroad ties were already moved.
24 You'll be able to see that through the photographic
25 evidence and also when the contract was signed between

OPENING STATEMENTS BY MS. ANTHONY

1 Mr. Wesley, as well as with the other contractors.

2 Ultimately, without liability, you don't get to
3 the damages portion of it; that being said, I still
4 want to keep in mind when you look at the damages and
5 when we talk about Ms. Byerly's injuries, I want you
6 to understand what the Judge said about proximate
7 cause. When a plaintiff comes in and wants
8 compensation for a particular injury, they have to
9 show causation, that what happened actually happened
10 to begin with, and that after that, what happened
11 caused those injuries.

12 Now, they may be claiming some exacerbation of a
13 preexisting injury, but that is not what is being
14 claimed here. I think when you hear the evidence and
15 see the medical billing records and whatnot, you'll
16 understand there is some issues with that causation
17 element.

18 As the Judge indicated, the plaintiff bears the
19 burden of proof as to everything except for that
20 comparative negligence element. Everybody, as I
21 indicated, if you are walking and see a big hole, you
22 can't just walk right into it and hold someone else
23 responsible. You have to take responsibility and use
24 due care for your safety.

25 At the end of the day, you will be asked to

JOHN BYERLY - DIRECT EXAMINATION

1 MR. HOPKINS: Can you hear me okay?

2 THE WITNESS: Yes.

3 DIRECT-EXAMINATION

4 BY MR. HOPKINS:

5 Q John, where are you from?

6 A Springfield, Ohio.

7 Q Is that where you met Susan?

8 A It is.

9 Q What town in Ohio?

10 A Springfield.

11 Q You and Susan went to school together?

12 A No. She was a senior in high school when we met.

13 Q What year did you get married?

14 A 1980.

15 Q What did you do after she got out of high school,
16 John?

17 A I worked in farm machinery and stuff.

18 Q You and Susan have two kids?

19 A We do.

20 Q What are their names?

21 A Shawn and Amber.

22 Q At some point, I understand you went to Oklahoma?

23 A Yes. I was out there for about six months.

24 Moved out there, tried to work out there for awhile,
25 and then we eventually moved to South Carolina.

JOHN BYERLY - DIRECT EXAMINATION

1 Q What did you do in Oklahoma?

2 A I worked in a Braham Oil warehouse.

3 Q What got you to -- what brought you to South
4 Carolina?

5 A We had friends that lived in Rock Hill. They
6 sort of convinced us to come on down.

7 Q Packed up and moved everybody?

8 A Yeah.

9 Q What did you do when you got to Rock Hill, John?

10 A I worked for the City of Rock Hill doing street
11 markers and painting sidewalks and whatnot, government
12 maintenance on the street.

13 Q How about Susan? I know Susan tried to go to
14 college for awhile, didn't she?

15 A Yes. She went to Winthrop for about six months
16 or seven, I believe.

17 Q Did she find being a mother a little overwhelming
18 in college?

19 A Yes. Yes, sir.

20 Q How long did you work for the City of Rock Hill,
21 John?

22 A Approximately, 15 years.

23 Q So after 15 years at the City, what did you and
24 Susan decide to do with the family?

25 A Kids were grown, so we decided to come down to

JOHN BYERLY - DIRECT EXAMINATION

1 the beach and try down here.

2 Q And do you know -- and it is not important --
3 about what year you may have moved here?

4 A 2008.

5 Q Now, at the time, was it just you and Susan, or
6 did any of the kids join you?

7 A It was just me and Susan when we moved down.

8 Q At some point later, did one or both of your kids
9 decide to join you at the beach?

10 A Our daughter, Amber, and three grandsons.

11 Q When did they come down?

12 A It was about 2010.

13 Q So, John, when you got down to Myrtle Beach, what
14 did you do for work?

15 A I worked in a temporary service for awhile, and
16 then I eventually wound up at Coastal Carolina, that is
17 how I wound up there, and been there ever since.

18 Q You started off through a temp agency?

19 A Yes, sir.

20 Q And they hired you on directly full time?

21 A Yes.

22 Q And I know Susan ultimately went to work there,
23 too; is that right?

24 A Yes, sir.

25 Q How did she get her job out there?

JOHN BYERLY - DIRECT EXAMINATION

1 A I just told her about it, and she applied and
2 they hired her, pretty much.

3 Q Did you all work the same shift or same schedule
4 at work?

5 A Yes, sir.

6 Q I know it can change from time to time, but
7 generally what shift did you all work?

8 A From 6:30 to 3:30.

9 Q Now, where do you live today?

10 A 707, on the outskirts of Myrtle Beach.

11 Q Who lives with you?

12 A Amber, my three grandsons.

13 Q And what are the ages of the grandsons?

14 A I have two twins that are 17, and the younger
15 brother is 12.

16 Q Any specialty issues with the grandkids?

17 A No.

18 Q How about the two twins, have they had some
19 disabilities that have had to be addressed?

20 A Yes, they do have disabilities, learning
21 disabilities.

22 Q John, I want to go back and let's get on into it
23 and talk about this incident that we're here about. Do
24 you remember when it happened?

25 A It was....

JOHN BYERLY - DIRECT EXAMINATION

1 Q I don't expect you to remember the specific date.

2 Was it back in 2016 when the hurricane came through?

3 A Yeah, uh-huh.

4 Q Where were you living at the time?

5 A Blynn Drive.

6 Q How long had you been at Blynn Drive?

7 A Approximately, three years.

8 Q Who lived with you at Blynn Drive?

9 A My grandsons and my daughter.

10 Q And Susan?

11 A Uh-huh, Susan.

12 Q And did you and Susan specifically find a house
13 that would accommodate letting your grandkids live with
14 you all?

15 A Yes, we did.

16 Q That was something you were looking for?

17 A Yes.

18 Q When you first heard about the hurricane, did you
19 understand or read somewhere there was an evacuation
20 order?

21 A Yes, sir.

22 Q Did you follow that evacuation order?

23 A Yes. The day of the evacuation I think was on
24 the 5th, and we left on the 6th.

25 Q Where did you go on October 6th, John?

JOHN BYERLY - DIRECT EXAMINATION

1 A We went to Rock Hill.

2 Q And where did you stay?

3 A We stayed with friends.

4 Q And when did you decide to come back, or when did
5 you get word you could come back?

6 A It was the 10th we were able to come back into
7 Myrtle Beach.

8 Q When you came back in on the 10th, did you go to
9 the house?

10 A Briefly, but we discovered that there wasn't any
11 electric, so we did go get a hotel.

12 Q On October 10th you stayed in a hotel?

13 A Yes, sir.

14 Q What about October 11th, did you go back to
15 work?

16 A Yes, we did.

17 Q And how about Susan, she went to work with you?

18 A Yes, sir.

19 Q And what did you all do when you got off work on
20 October 11th?

21 A Came home, and that was basically the day of
22 where we saw the workers there and Mr. Wesley. That
23 was basically the first day we saw him.

24 Q So you saw the people were already out there
25 working on the house and yard?

JOHN BYERLY - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Now, was the power on when you went back?

3 A No, sir.

4 Q Why didn't you stay in a hotel again?

5 A I just couldn't afford to go to a hotel again, so
6 we stayed there and rode it out.

7 Q When you got back on the 11th, was Amber
8 already back?

9 A She came in shortly after we got there.

10 Q When you and Susan -- talk about this first, the
11 house. Let's talk about the driveway. How many cars
12 did you have in the driveway?

13 A Three.

14 Q Throughout pretty much the whole time or day of
15 this hurricane there was three cars?

16 A Yes, sir.

17 Q And let's talk about them. The first car in
18 line, did that car run?

19 A No, sir.

20 Q It never moved?

21 A No.

22 Q What were the other two cars?

23 A Amber had a Cadillac, and I also had a Explorer,
24 Ford Explorer.

25 Q So all three of these cars would use the same

JOHN BYERLY - DIRECT EXAMINATION

1 driveway?

2 A Yes.

3 Q Let's talk about the property itself. We've
4 talked about the fact it is a duplex?

5 A Yes.

6 Q And which side -- if you are facing the building
7 from the street from Blynn Drive, which side did you
8 and Susan stay on?

9 A The right.

10 Q If you are facing the house?

11 A Facing the house, we lived on the left.

12 Q Facing the house, the left. Facing the street,
13 the right?

14 A Yes.

15 Q And so the folks on the "B" side, they had their
16 own driveway?

17 A Yes, sir.

18 Q And you all had your own driveway?

19 A Yes, sir.

20 Q When you got back on the 11th, did you see
21 Mr. Wesley in the yard?

22 A Yes, sir.

23 Q Did you have a chance to speak to him?

24 A Briefly.

25 Q What did you all talk about, John?

JOHN BYERLY - DIRECT EXAMINATION

1 A He basically told us that we had people doing
2 repairs on the house, and that was pretty much it.

3 Q You had a good relationship with Mr. Wesley,
4 didn't you?

5 A Yes.

6 Q You still have a relationship with him today?

7 A Yes, sir.

8 Q Now, when you and Susan got home on
9 October 11th, and you got out of your car to go into
10 the house, did you experience any difficulties getting
11 in the house?

12 A No, sir.

13 Q Did Susan?

14 A No.

15 Q Who always drove?

16 A I did.

17 Q So Susan would have been in the passenger's seat?

18 A Yes, sir.

19 Q When she got out of her car, did she tell you
20 there is anything in the way, crossties, did she
21 mention anything impeding her getting to the house?

22 A No, sir.

23 Q Let's talk about October 12th, the next day,
24 October 12th, did you go to work?

25 A Yes, I did.

JOHN BYERLY - DIRECT EXAMINATION

1 Q Did Susan go to work?

2 A No.

3 Q She stayed home with Amber and the boys?

4 A Yes, sir.

5 Q Was there electricity in your house on
6 October 12th?

7 A No.

8 Q Did you leave at your regular time, 6:00 in the
9 morning?

10 A Yes, sir.

11 Q Come home at the regular time, 3:30?

12 A Yes, sir.

13 Q John, did you see any crossties near your vehicle
14 or near the driveway when you got home on the 12th?

15 A I did not.

16 Q Well, let's talk about the 13th. On the 13th,
17 was there any power?

18 A No. No, sir.

19 Q Now, when you -- was your car parked in the
20 regular spot?

21 A Yes, sir.

22 Q Where did you generally park your car at the end
23 of the day?

24 A It was always on the end of the drive, parked on
25 the end of the drive, because we were always the first

JOHN BYERLY - DIRECT EXAMINATION

1 ones to leave in the morning.

2 Q So Amber wouldn't have to move her car, you kept
3 your car in the back?

4 A Exactly.

5 Q What time did you and Susan have to leave every
6 day to get down to Coastal Carolina to be ready for
7 your shift at 6:30?

8 A We would leave -- we would leave at 6:30 and be
9 there by 7:00. That was our normal time to leave,
10 about 6:30.

11 Q Now, when you walked out to the yard that day,
12 was there anything different, anything that you did
13 that day that you didn't ordinarily do?

14 A No, sir.

15 Q Were the streetlights working, John?

16 A No, sir.

17 Q You can't bring cell phones in the courthouse,
18 but do you have a cell phone with a flashlight on it,
19 John?

20 A I do not.

21 Q You still have a flip phone?

22 A Yeah.

23 Q If it works good for you. So on the 13th, what
24 was the first thing you heard or learned that anything
25 was wrong?

JOHN BYERLY - DIRECT EXAMINATION

1 A I heard my wife holler when she fell, and I went
2 around to see what had happened, and that's when I
3 found her laying on the railroad ties.

4 Q John, was it dark outside?

5 A Very.

6 Q Do you know what time sunrise was on
7 October 13th?

8 A 7:15, 7:20, somewhere in there.

9 Q And so when you went around to check on Susan,
10 what did you see or feel or find out there?

11 A I just seen her laying there, and she was
12 basically laying between the railroad ties. I had to
13 get her up from there. Her leg was, like, wedged.

14 Q John, just to give the jury some idea --
15 initially, I would like to keep talking about Susan,
16 and no one even has seen her. I want to show you a
17 couple of pictures and show the jury so they'll know
18 who we are talking about. Is that her?

19 A Yes, sir.

20 Q How long had you been married at the time she
21 passed away?

22 A Would have been 40 years.

23 Q Tell me about this picture.

24 A We was at the aquarium together. It was right
25 after my daughter moved down here with the boys.

JOHN BYERLY - DIRECT EXAMINATION

1 Q Did you and Susan spend a lot of time helping
2 Amber with the boys?

3 A Yes, sir, we did.

4 Q Is that Susan on the left?

5 A Yes, sir.

6 Q What is that a picture of, John?

7 A It is when Amber first had the boys, the twins,
8 at the hospital.

9 Q I want to talk about when you went back on
10 October 11th, when you and Susan went back to this
11 house. I want to show you a picture marked as Exhibit
12 1L. It is dated October 11, 2016, John.

13 MR. HOPKINS: May I approach, Your Honor?

14 THE COURT: Yes, you may.

15 Q (MR. HOPKINS) Does that appear to be a picture
16 of the yard as it appeared on October 11, 2016?

17 A Yes, sir.

18 Q Is there a good deal of space between the house
19 and the street, Blynn Drive?

20 A Yes, quite a bit.

21 Q Now, you knew before the hurricane, the crossties
22 were already out on the property, weren't they?

23 A Yes, sir.

24 Q Where were the crossties before the hurricane?

25 A They was near the street in a patch of grass

JOHN BYERLY - DIRECT EXAMINATION

1 about 4-foot wide and 30-foot long, and they had two
2 railroad ties on the right side of the sidewalk, and
3 two on the left.

4 Q And it was out on the street?

5 A Yes.

6 Q Did you understand that Mr. Wesley didn't want
7 people driving on the lawn?

8 A Yes.

9 Q But, at that time, it didn't affect you in any
10 way, did they?

11 A No, sir, not at that time.

12 MR. HOPKINS: Your Honor, we would move to
13 introduce Plaintiffs' 1L.

14 MS. ANTHONY: No objection.

15 THE COURT: Without objection, Plaintiffs' 1L
16 admitted.

17 (Plaintiffs' Exhibit 1L admitted.)

18 Q (MR. HOPKINS) I'll show you what is marked as
19 Plaintiffs' 1M; is that a picture of some of the
20 shrubbery that was out in the yard? I think that is
21 also dated October 11th?

22 A Yes, sir.

23 Q Now, is all of this open land, is that on
24 Mr. Wesley's property?

25 A Yes, sir.

JOHN BYERLY - DIRECT EXAMINATION

1 MR. HOPKINS: Your Honor, we move to introduce
2 1M, as in Mary.

3 MS. ANTHONY: Without objection.

4 THE COURT: Without objection, 1M is admitted.

5 (Plaintiffs' Exhibit 1M admitted.)

6 Q (MR. HOPKINS) This is Plaintiffs' 1N, do you
7 recognize that as a picture that was taken on October
8 11, 2018?

9 A Yes, sir.

10 Q Do you know who took these photographs?

11 A No, sir, I don't.

12 MR. HOPKINS: We move to introduce Plaintiffs'
13 1N, as in Nancy.

14 THE COURT: Without objection, 1N is admitted?

15 MS. ANTHONY: No objection.

16 (Plaintiffs' Exhibit 1N admitted.)

17 Q (MR. HOPKINS) I'll show you 1Q; is that a
18 photograph of another area of the yard, but still on
19 Mr. Wesley's property?

20 A Yes, sir.

21 MR. HOPKINS: We move to introduce Plaintiffs'
22 1Q.

23 MS. ANTHONY: No objection.

24 THE COURT: Admitted without objection.

25 Ladies and gentlemen, for your information,

JOHN BYERLY - DIRECT EXAMINATION

1 anything that is admitted into evidence will accompany
2 you to your jury room so you'll have an opportunity to
3 review it and study it more closely when you begin
4 your deliberations.

5 (Plaintiffs' Exhibit 1Q admitted.)

6 Q (MR. HOPKINS) I'll show you Plaintiffs' 1R.
7 This was taken on October 12, 2016. Is that a fair
8 representation of what was happening in the yard on
9 October 12th?

10 A Yes, sir.

11 Q Is that one of the crossties right there,
12 Mr. Byerly, down beneath the backhoe?

13 A Yes, it is.

14 Q So on October 12, we know at least one of them
15 was in another part of the yard; is that correct?

16 A Yes.

17 Q Did you see anything at all in this yard, Mr.
18 Byerly, which would have prevented Mr. Wesley or anyone
19 else from putting those crossties over here in the
20 middle of the yard nowhere near a driveway?

21 A I don't see any reason why they couldn't.

22 MR. HOPKINS: We move to introduce Plaintiffs'
23 1R, Your Honor.

24 THE COURT: Without objection, 1R is admitted.

25 (Plaintiffs' Exhibit 1R admitted.)

JOHN BYERLY - DIRECT EXAMINATION

1 Q (MR. HOPKINS) This is Plaintiffs' 1S. This
2 really shows you a better photograph of the crosstie,
3 Mr. Byerly. Can you see the crossties on this side of
4 the walkway underneath?

5 A Yes.

6 MR. HOPKINS: Your Honor, we move to introduce
7 Plaintiffs' 1S.

8 THE COURT: Without objection, 1S is admitted.

9 (Plaintiffs' Exhibit 1S admitted.)

10 Q (MR. HOPKINS) So, now, Mr. Byerly, I would like
11 to show you where the crossties were placed. I'll
12 show you what was marked as Plaintiffs' Exhibit 1B.
13 Does that appear to be -- that picture is dated
14 October 13th of 2016; does that appear to be where
15 the crossties were on the day your wife was injured?

16 A Yes, sir.

17 Q Explain to me what is this car on the left,
18 Mr. Byerly?

19 A That is my daughter's car.

20 Q On the morning when you were going to work, would
21 her car have been there, or would your Ford Explorer
22 have been there?

23 A It would have been there, and I would have been
24 behind her car.

25 Q And so is this the house back here? This

JOHN BYERLY - DIRECT EXAMINATION

1 direction is the house?

2 A Yes.

3 Q And so we see this truck here, is that a truck?

4 A Yes, sir. Dump truck.

5 Q That wasn't your dump truck, was it?

6 A No, sir.

7 Q So your car would have been behind Amber's?

8 A Yes, sir.

9 Q So Susan would have had to walk from the front
10 door of the house right in this alleyway to get to her
11 vehicle; is that correct?

12 A Yes, sir.

13 Q Is that where she tripped and fell?

14 A Yes, sir.

15 MR. HOPKINS: We move to introduce Plaintiffs'

16 1B.

17 THE COURT: Without objection, 1B is admitted.

18 (Plaintiffs' Exhibit 1B admitted.)

19 Q (MR. HOPKINS) I'll show you Plaintiffs' 1C.

20 I'll let you tell me, it's hard to see, are those the
21 crossties on the right?

22 A Yes, sir.

23 Q Even in the daytime, it is difficult to see. Are
24 these the crossties we're talking about?

25 A Yes, sir.

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1 Q Did you know those crossties were sitting there
2 on the morning of October 13th?

3 A I did not.

4 MR. HOPKINS: We move to introduce Plaintiffs'
5 1C.

6 THE COURT: Without objection, it is admitted.
7 (Plaintiffs' Exhibit 1C admitted.)

8 MR. HOPKINS: I'll show you 1E. This was dated
9 October 13th, 2016, is that a picture of the
10 crossties from the house out towards the street?

11 A Yes, sir, it is.

12 Q Do I understand that your Explorer would have
13 been behind Amber's car that morning?

14 A Yes, sir.

15 Q And Ms. Susan would have been walking between
16 Amber's car and this dump truck?

17 A Yes.

18 MR. HOPKINS: We move to introduce Plaintiffs'
19 1E, Your Honor.

20 THE COURT: Without objection, it is admitted.
21 (Plaintiffs' Exhibit 1E admitted.)

22 Q (MR. HOPKINS) I'll show you Plaintiffs' 1F taken
23 on October 13, 2016; does that appear to be
24 Ms. Susan's crutch on the left?

25 A Yes, it is.

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1 MR. HOPKINS: We move to introduce Plaintiffs'
2 1F.

3 THE COURT: Without objection, 1F is admitted.
4 (Plaintiffs' Exhibit 1F admitted.)

5 Q (MR. HOPKINS) We have another one here of 1H.
6 Does 1H appear to be the way the crossties appeared on
7 October 13th, the day the photograph was taken and
8 the day your wife was injured?

9 A Yes, sir.

10 Q How close is the dump truck to the crosstie on
11 the left?

12 A I would say 3, 4 feet from one another.

13 Q How far is the crosstie on the right from Amber's
14 vehicle?

15 A About two to three.

16 MR. HOPKINS: Your Honor, we move to introduce
17 1H.

18 THE COURT: Without objection, 1H is admitted.
19 (Plaintiffs' Exhibit 1H admitted.)

20 Q (MR. HOPKINS) And I'll show you 1A, does that
21 appear to be a picture of Ms. Susan's crutch beside
22 the two crossties?

23 A Yes, sir.

24 Q That was taken on the 13th as well?

25 A Yes.

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1 Q So after you discovered she was hurt, what did
2 you do?

3 A I got her into the truck and took her directly to
4 the hospital.

5 Q And what about work?

6 A We called our bosses on the way to the hospital.

7 Q And what did you tell them?

8 A Told them that we would not be in, that Susie
9 hurt herself and I was going to the hospital with her.

10 Q Do you know how long you spent at the hospital?

11 A A long time.

12 Q Would this have been three days after the
13 hurricane?

14 A Yes, sir.

15 Q So what did they do with Ms. Susie at the
16 hospital?

17 A Basically, after I got her there, we had a
18 wheelchair, put her inside. She waited to go back to
19 the back to get examined. We was there, like I said, a
20 very long time after that.

21 Q Did she have something on her left leg when you
22 brought her home?

23 A She had like a temporary cast, and they put a
24 boot -- made her wear a boot along with it.

25 Q And after she came home with the initial cast,

JOHN BYERLY - DIRECT EXAMINATION

1 was she sent to the orthopedic doctors?

2 A Yes, sir.

3 Q And I'll show you a photograph taken
4 October 14th, the day after. This is marked as
5 Plaintiffs' Exhibit 1G; does that appear to be the
6 condition of Susan's leg?

7 A Yes, sir.

8 MR. HOPKINS: Your Honor, we move to introduce
9 1G.

10 THE COURT: Without objection, 1G is admitted.

11 Q (MR. HOPKINS) I'll show you what is marked as
12 Plaintiffs' Exhibit 1I; does that appear to be a
13 picture of Ms. Susan's leg when she removed the
14 temporary cast?

15 A Yes, sir.

16 Q You can't see it on there. We'll let the jury
17 look at it.

18 MR. HOPKINS: We move to introduce 1G -- I'm
19 sorry, 1I.

20 MS. ANTHONY: No objection.

21 THE COURT: Without objection, it is admitted.

22 (Plaintiffs' Exhibit 1I admitted.)

23 Q (MR. HOPKINS) Here is another photograph, 1J,
24 which appears to have both the cast and something
25 around her knee. Was that put on Ms. Susan's leg by

JOHN BYERLY - DIRECT EXAMINATION

1 the hospital?

2 A Yes, sir.

3 MR. HOPKINS: We move to introduce Plaintiffs'
4 1J.

5 THE COURT: 1J is admitted without objection.

6 (Plaintiffs' Exhibit 1J admitted.)

7 Q (MR. HOPKINS) I'll show you Plaintiffs' 10 that
8 shows some scratches and some abrasions, some skin
9 missing there on her leg; does that appear to be a
10 representation of Ms. Susan's leg after she was
11 injured?

12 A Yes, sir.

13 MR. HOPKINS: Your honor, we would move to
14 introduce 10.

15 MS. ANTHONY: No objection.

16 THE COURT: Without objection, 10 is admitted.

17 (Plaintiffs' Exhibit 10 admitted.)

18 Q (MR. HOPKINS) Finally, this is Exhibit 1P, which
19 shows also her knee scraped up; is that an accurate
20 representation of Ms. Susan's knee when they removed
21 the temporary cast?

22 A Yes, sir.

23 Q Mr. Byerly, I want to show you -- does Coastal
24 Carolina keep employment records, time and date records
25 for your employment?

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1 A Yes, sir.

2 Q And did they do the same for Susan?

3 A Yes, sir.

4 Q I'll show you what is marked as Plaintiffs'
5 Exhibit 11 and ask you -- this is for Susan Byerly. It
6 shows on October 11th she worked a full day,
7 seven-and-a-half hours; is that correct?

8 A Yes.

9 Q And on October 12th of 2016, it says she took
10 annual leave?

11 A Yes, sir.

12 Q Is that correct?

13 A Yes.

14 Q And then on October 13th, it says "employee
15 sick leave"; is that correct?

16 A Uh-huh.

17 MR. HOPKINS: Your Honor, we would move to
18 introduce Plaintiffs' Exhibit 11.

19 THE COURT: Without objection, it is admitted,
20 Plaintiffs' 11.

21 (Plaintiffs' Exhibit 11 admitted.)

22 Q (MR. HOPKINS) John, did you ever see -- I know
23 -- did you ever see the crossties being moved from
24 their original position out on the street?

25 A No, sir.

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1 Q Now, when the work was going on out there, did
2 you see Mr. Wesley out in the yard from time to time?

3 A From time to time, I did.

4 Q I was going to talk briefly, John, about the
5 injuries. We need to put in some medical bills here.
6 Initially, you took Susan to Grand Strand Regional
7 Emergency Room; is that correct?

8 A Yes, sir.

9 Q And did you receive a bill from Grand Strand
10 Regional in the amount of \$3,040?

11 A Yes, sir.

12 Q Is this a copy of the bill you received?

13 A Yes, sir.

14 MR. HOPKINS: We move to introduce Plaintiffs' 2.

15 THE COURT: Without objection, Plaintiffs' 2 is
16 admitted.

17 (Plaintiffs' Exhibit 2 admitted.)

18 Q (MR. HOPKINS) Did Susan return to Grand Strand
19 Emergency Room the following week -- actually, on
20 October 22, complaining of headaches and pain?

21 A I believe so, yes.

22 Q And did you also receive a bill for her services
23 rendered to her that day?

24 A Yes.

25 Q In the amount of \$8,362.76?

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1 A Yes, sir.

2 Q Is that a copy of that bill?

3 A Yes, sir.

4 Q Now, John, also, I know between October the
5 17th and November 22nd, Ms. Susan was going to see
6 the orthopedic doctors; is that correct?

7 A Yes, sir.

8 Q To deal with the ankle?

9 A Uh-huh.

10 THE COURT: Is that a yes?

11 A Yes.

12 Q When she was released by the orthopedic doctors,
13 did you receive a bill from the orthopedic doctors in
14 the amount of \$1,366.40?

15 A Yes, sir.

16 Q I'll show you, John, is this a copy of the bill
17 that you received from Strand Orthopedic Consultants,
18 LLC, in Myrtle Beach for the orthopedic doctors?

19 A Yes, sir.

20 Q So let's fast forward a little bit, John, if we
21 can, to 2017. After the first of the year, we heard
22 Susan's testimony that she was released by the doctor,
23 but couldn't work. Did she continue to complain going
24 into 2017?

25 A Yes, sir.

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1 Q And it sounded like it was late March or early
2 April when she had this situation at work; do you
3 recall that?

4 A Yes, sir.

5 Q And do you know why Susan resigned in April?

6 A She just couldn't do the work anymore that was
7 required. She did a lot of walking up and down the
8 steps on her job. She just couldn't do it anymore.

9 Q About that same time, late March/early April, did
10 she go to Conway Medical Center complaining about her
11 left hip?

12 A Yes.

13 Q Were you aware that they diagnosed her with
14 sciatica?

15 A Yes.

16 Q And she didn't think much of that opinion, did
17 she?

18 A No, she did not.

19 Q But you still got a bill from Conway for that
20 opinion, didn't you?

21 A Yes, sir.

22 Q In the amount of \$942.06?

23 A Yes, sir.

24 Q Is this a copy of that bill?

25 A Yes, sir.

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1 MR. HOPKINS: We move to introduce Plaintiffs'
2 Exhibit 9.

3 MS. ANTHONY: No objection.

4 THE COURT: Without objection, 9 is admitted.
5 (Plaintiffs' Exhibit 9 admitted.)

6 Q (MR. HOPKINS) So five days later, John, on April
7 10th, she went to Tideland's for a second opinion; do
8 you recall that?

9 A Yes, sir.

10 Q And did you know that -- did she tell you they
11 gave her an injection at that time into her hip?

12 A Yes, sir.

13 Q And did you receive a bill from Tideland's for the
14 injection in her hip?

15 A Yes, sir.

16 Q In the amount of \$2,048.21? Is this a copy of
17 that bill, John?

18 A Yes, sir.

19 Q Now, did Susan tell you that she got relief from
20 that injection?

21 A Yes. She said that she got relief from it.

22 Q But it looks like 60 days later -- 64 days later,
23 she went back to Dr. Lindaberry complaining about the
24 hip again?

25 A Yes, sir.

JOHN BYERLY - DIRECT EXAMINATION

1 Q The relief from the injection had run out?

2 A Yes.

3 Q And did you receive a bill from Dr. Lindaberry
4 for \$331 for examining her left hip?

5 A Yes, sir.

6 Q Is this a copy of that bill?

7 A Yes, sir.

8 Q And the very next day, June 15th, the day after
9 she saw Dr. Lindaberry, she went and got another
10 injection from Tideland's; were you aware of that?

11 A Yes, sir.

12 Q To buy some more relief?

13 A Yes.

14 Q And did you get a bill from Tideland's for the
15 second injection given to Susan in the amount of
16 \$1,393.98?

17 A Yes, sir.

18 Q Finally, John, about two weeks later, did you
19 understand that she finally got -- she finally went and
20 had an MRI performed at Tideland's -- sorry. Were you
21 aware that two weeks later, on June 28th, about 13
22 days after the second injection, that Tideland's finally
23 agreed to perform an MRI?

24 A Yes, sir.

25 Q Did you know -- did Susan tell you the results of

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1 the MRI?

2 A She did.

3 Q What were the results of the MRI?

4 A It turned up that she had a torn ligament in her
5 hip, I believe that is how they stated it.

6 Q Is this a copy of the bill you received for the
7 MRI for \$6,404.88?

8 A Yes, sir.

9 MR. HOPKINS: We move to introduce that as
10 Plaintiffs' 5.

11 MS. ANTHONY: Without objection.

12 THE COURT: Without objection, it is admitted,
13 Plaintiffs' 5.

14 (Plaintiffs' Exhibit 5 admitted.)

15 Q (MR. HOPKINS) Are you seeking to be reimbursed
16 for Ms. Susan's medical bills in the amount of
17 \$23,889.29?

18 A Yes, sir.

19 Q Did you understand -- was there anything that can
20 be done for this torn labrum, torn ligament of the hip?
21 Could they do anything surgically for Ms. Susan?

22 A I don't believe so, but I'm not positive.

23 Q Did she get any more medical treatment, or did
24 she just stay home?

25 A No, she didn't get any more medical treatment.

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1 Q Did you understand, John, that actually all that
2 work she had been doing, trying to work for the past
3 seven months, really was just aggravating that torn
4 labrum?

5 A Yes, sir.

6 Q But Susan continued to work and apply for jobs,
7 didn't she?

8 A Yes, sir.

9 Q Would it be fair to say you were under financial
10 stress when she resigned from her job at CCU, John?

11 A Yes, sir.

12 Q Did you all rely on both incomes to support your
13 family?

14 A Yes, sir, we did.

15 Q You have been appointed as personal
16 representative of Susan's estate?

17 A Yes, sir.

18 Q Therefore, you are trying to collect this money
19 for her estate; do you understand that?

20 A Yes, sir.

21 Q Do you know who the beneficiaries are of her
22 estate?

23 A Yes.

24 Q Is that you and your two children?

25 A Yes. Yes, sir.

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1 Q And you understand you have a duty to disburse
2 the money in accordance with the law?

3 A Yes, sir.

4 Q I'll ask you about your claim of loss of
5 consortium. I know you are not a lawyer, so I'll ask
6 you questions about it. Basically, did you and Susan
7 have a good marriage?

8 A Very much so.

9 Q I know you weren't at her deposition. Is today
10 the first time you have heard those things she said
11 about you in her deposition?

12 A Yes, first time.

13 Q I want to talk about the things that Susan -- how
14 this injury affected your marriage, John. How did it
15 affect your marriage?

16 A Several different ways. She wasn't able to do
17 the things with the grandkids, and our relationship
18 was -- as far as a marital relationship, we could not
19 do a lot because she was always in pain.

20 Q Did you ever get mad at her for that?

21 A No.

22 Q Did you wind up doing a lot of the caretaking for
23 her and the grandkids, John?

24 A Yes, sir.

25 Q John, had Susan ever -- well, I know she couldn't

JOHN BYERLY - DIRECT EXAMINATION

1 do things with the grandkids. Were there things that
2 just the two of you couldn't do anymore, in other ways?

3 A Yeah. I mean, she couldn't walk on the beach for
4 any length of time anymore. Our sexual relationship
5 changed.

6 Q Did Susan ever have any hip injury or hip pain or
7 complaint about hip problems before this incident,
8 John?

9 A No, sir.

10 Q Until she died in May, you understand that she
11 died of other causes, don't you, cardiomyopathy?

12 A Yes, sir.

13 Q Up until the day she died, May 26th, did she
14 ever stop complaining about her hip pain?

15 A No, sir.

16 Q And these crossties, do you recall when you
17 brought Susan home from the hospital in that cast we
18 just put up there, was Mr. Wesley on the property at
19 that time?

20 A Yes, sir.

21 Q And what did Mr. Wesley say?

22 A Basically said that he was sorry that it
23 happened, but we knew about the ties, which we didn't.

24 Q He said you knew about the railroad ties?

25 A Yes.

JOHN BYERLY - DIRECT EXAMINATION

1 Q It was Susan's fault?

2 A Yes.

3 Q You are making a claim for lost wages; is that
4 correct?

5 A Yes, sir.

6 Q Although we heard it in her testimony, did you
7 understand that Susan earned \$11.06 per hour?

8 A Yes, sir.

9 Q Fortunately for you all, in the first several
10 months when she couldn't work, she had a lot of
11 accumulated leave, didn't she?

12 A Yes, sir.

13 Q You had not used a lot of your leave, had you?

14 A Yes.

15 Q So was she able to get paid for leave even when
16 she was too sick to go to work?

17 A She did for a short period of time until her
18 leave ran out.

19 Q She ran out of leave before she resigned?

20 A Yes.

21 Q Okay. And so, John, did you know that Susan
22 resigned on April 17, 2017, but actually got paid
23 through the next month?

24 A No, I did not.

25 Q She has a paycheck May 15, 2017. Up until that

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1 point -- up until that point she had missed 232.62
2 hours of unpaid leave, of \$11.06 per hour, for
3 \$2,572.78; are you asking the jury to consider awarding
4 you those damages?

5 A Yes, sir.

6 Q When she passed away almost a year later, 54
7 weeks -- 53 weeks later she passed away, other than the
8 less than a week work at Unity, did she have any income
9 at all?

10 A No, sir.

11 Q Would that be 23,447.20 in lost wages?

12 A Yes, sir.

13 Q Do you believe Susan would have continued to work
14 had she not suffered this injury, that she would have
15 still been at CCU today?

16 A Yes, sir.

17 Q And even if she left CCU, do you believe she
18 tried as hard as she could to work other places?

19 A Yes, sir.

20 Q Do you believe that these medical bills and lost
21 wages are directly related to the injury she sustained?

22 A Yes, sir.

23 MR. HOPKINS: Beg the Court's indulgence.

24 (A brief pause in the proceedings.)

25 MR. HOPKINS: Your Honor, I'm reminded,

JOHN BYERLY - CROSS-EXAMINATION

1 apparently I failed to introduce -- and the court
2 reporter is shaking her head -- so I failed to move to
3 introduce 1A and 1P.

4 THE COURT: Yeah. Those are admitted without
5 objection.

6 (Plaintiffs' Exhibits 1A and 1P admitted.)

7 MR. HOPKINS: Thank you. And Exhibit 6, Your
8 Honor.

9 THE COURT: Without objection, it's admitted.
10 (Plaintiffs' Exhibit 6 admitted.)

11 MR. HOPKINS: Thank you, Mr. Byerly.

12 THE COURT: Are you going to need this?

13 MS. ANTHONY: I don't believe so.

14 THE COURT: We can turn the lights back on.
15 You may cross-examine.

16 CROSS-EXAMINATION

17 BY MS. ANTHONY:

18 Q Mr. Byerly, you testified that you drove
19 Ms. Byerly straight to the hospital after her fall on
20 October 13th in the morning around 6:00, 6:30 in the
21 morning?

22 A Yes, sir -- yes, ma'am. Sorry.

23 Q That's okay, I'm wearing a pant suit here
24 (laughing).

25 And you drove directly to Grand Strand Regional

JOHN BYERLY - CROSS-EXAMINATION

1 Medical Center, the emergency room, correct?

2 A Yes, ma'am.

3 Q But isn't it true that you didn't check
4 Ms. Byerly into the emergency room until 12:50 p.m.?

5 A That is not true.

6 Q You did not show up to the emergency room at --

7 A I went there directly from the house at 6:30.

8 Q Isn't it true that the medical bill that your
9 attorney moved in and is asking the jury to have Tom
10 pay reflects treatment which took place on October 13
11 between the hours of a 12:50 check-in time, and a
12 2:30 p.m. discharge time?

13 A I can't explain the time. All I can tell you is
14 I took her directly out there. I don't know if the
15 time didn't start under after she was in the back room
16 or whatever, but I took her out there directly after
17 the accident.

18 Q Right. But what I'm representing to you is that
19 the medical records that you are asking for that
20 treatment to be paid for by Tom --

21 MR. HOPKINS: Your Honor, I need to object. I
22 don't believe she can impeach him on a document he
23 didn't author.

24 THE COURT: You put it into evidence, it's
25 subject to cross-examination. I overrule your

JOHN BYERLY - CROSS-EXAMINATION

1 objection.

2 Q (MS. ANTHONY) I can't remember exactly where I
3 was, but from your residence at the time, the Blynn
4 Drive address, that is at 6211-A, Blynn Drive,
5 correct?

6 A Correct.

7 Q And you took Ms. Byerly directly, you say, at
8 6:00, 6:30 to 809 82nd Parkway, which is the
9 emergency room, right?

10 A Right.

11 Q And it is my understanding that is about
12 1.8 miles away from your house?

13 A About that.

14 Q And with traffic, maybe four or five minutes at
15 the most?

16 A Maybe, yes.

17 Q And those medical bills that you would like Tom
18 to pay, that reflects treatment at a different time
19 when you say you were there, do you dispute anything
20 else in those medical records or in the bill you are
21 submitting to the jury?

22 A Please repeat that.

23 Q Sure. The medical bill that you have submitted
24 to the jury, and that you are here on behalf of your
25 wife and asking Tom to pay, it reflects treatment

JOHN BYERLY - CROSS-EXAMINATION

1 during a different time than when you say you were
2 there; are you disputing anything else in that medical
3 record or that medical bill?

4 A No, ma'am. But I can't explain why they had the
5 12:00 to 2:00, but I know when I took her out there.
6 That is all I can say.

7 Q All right. And when Ms. Byerly fell and tripped
8 over the railroad tie, if you took her directly to the
9 emergency room and checked in at 12:50, it would have
10 been light outside at the time of her trip and fall,
11 correct?

12 A No, ma'am, it wouldn't be. The sun rose at 7:15,
13 7:20, and I was already on my way to the hospital by
14 then. It was dark when she tripped.

15 Q All right. And you testified, too, that you
16 arrived home on the 11th. Now, that day, are you --
17 you testified today that you got back into town on the
18 10th and stayed in a hotel, correct?

19 A Yes, ma'am.

20 Q Do you remember when I took your deposition
21 August of last year; do you recall us talking about the
22 same kind of things?

23 A Yes.

24 Q You never said anything about coming back on the
25 10th and staying in a hotel, did you?

JOHN BYERLY - CROSS-EXAMINATION

1 A I don't recall.

2 Q And, in fact, you told me that you arrived back
3 from the evacuation on the 11th, and when you arrived
4 back directly from the evacuation, that Tom was already
5 there and he had a couple contractors there working on
6 the property, correct?

7 A Yes, ma'am. That was on the 11th.

8 Q This is actually different from the testimony we
9 heard from your wife earlier through deposition
10 testimony where she indicated when she first arrived
11 back from the evacuation, that no one was there, she
12 had to call Tom to tell him to come and do some work on
13 the home, correct?

14 A I don't recall that.

15 Q At the time you arrived back at the house on the
16 11th, was it your understanding that the contractors
17 that were there were Brown Rooftops and Bay Services,
18 who were there to take care of the tree on the house
19 and start initiating repairs?

20 A Yes, ma'am.

21 Q And the railroad ties were actually already moved
22 on the 11th on both sides of the property, correct?

23 A I don't know when they were moved.

24 Q All right. But what I'm asking you is on the
25 11th, when you arrived at the property for the first

JOHN BYERLY - CROSS-EXAMINATION

1 time after the hurricane evacuation, the railroad
2 ties -- where we see them in the photographs that your
3 attorney put up were actually already there when you
4 and Ms. Byerly arrived on the 11th, you said around
5 3:30, 4 o'clock?

6 A Yes, ma'am.

7 Q So they were already there and visible at that
8 point?

9 A If you seen them, they was visible, but I never
10 seen them.

11 Q But they were moved because they had to get the
12 backhoe onto the property?

13 A Yes, ma'am.

14 Q I know earlier you said today was the first time
15 that you heard the deposition testimony of your wife.
16 I know you weren't there that day, but you said today
17 was first time you heard her deposition testimony and
18 had any knowledge of anything that she said about you
19 or otherwise, correct?

20 A That's correct.

21 Q But do you remember in August of last year, when
22 I took your deposition, you actually indicated to me
23 that you reviewed her deposition transcript in
24 preparation for your deposition?

25 A Very briefly. I didn't go through the whole

JOHN BYERLY - CROSS-EXAMINATION

1 thing.

2 Q We talked a little bit about the point in time
3 when you actually ended up moving out of the property,
4 and we heard the testimony of your wife as well through
5 her deposition and you indicated that you actually
6 moved out of the property because of the storm and
7 because the home was in disrepair; is that correct?

8 A Yes, ma'am.

9 Q Isn't it true that actually before this incident
10 of October 13th, 2016, before this incident, in
11 September you received a notice from Mr. Wesley that he
12 was going to have to terminate your tenancy-at-will,
13 your agreement, because he needed to do some
14 renovations to the house?

15 A Yes, ma'am, that's true.

16 Q And with that notice, you were actually put on
17 notice that you needed to be out of the house by
18 October 30th, correct?

19 A Yes, ma'am.

20 Q And then, in the meantime, from getting that
21 notice until you were supposed to move out
22 October 30th, Ms. Byerly falls on the railroad ties,
23 correct?

24 A Yes.

25 Q And so you didn't actually move out of the house

JOHN BYERLY - CROSS-EXAMINATION

1 because of the disrepair of the house, you moved out of
2 the house because Mr. Wesley had told you, hey, I'm
3 giving you notice and I need you to move out.

4 A We was already aware of the notice, yes, ma'am.
5 But we had to move out one way or the other, storm-wise
6 or otherwise.

7 Q But you didn't actually move out by that
8 October 30th deadline, did you?

9 A It was November 1st.

10 Q November 1st?

11 A That is when we moved into the house we are in
12 now.

13 Q Did you pay your rent in October to Mr. Wesley?

14 A I don't recall that. That is too long ago.

15 Q Were you upset with Mr. Wesley for terminating
16 the lease agreement?

17 A Not at all.

18 Q When you moved out of the home, how did you leave
19 the home?

20 A We cleaned out everything and did what we could.
21 He told us not to really worry about cleaning up
22 because he was going to be in there, but we didn't not
23 clean up.

24 Q So you are saying that Mr. Wesley told you not to
25 worry about cleaning up?

JOHN BYERLY - CROSS-EXAMINATION

1 A Yeah.

2 Q Did he tell you not to worry about the rent
3 payment as well?

4 A Like I claim, I don't remember that at all.

5 Q Earlier, we heard the deposition testimony of
6 your wife, and she indicated in that deposition
7 testimony, that your attorney read, and it was actually
8 me asking the questions, but she indicated that she
9 never had been sued -- never been sued, never sued
10 anybody, never had anything like this, correct?

11 A Correct.

12 Q But, actually, on the day of her deposition, she
13 had been sued on four different occasions in Horry
14 County within the past three or four years; isn't that
15 correct?

16 A Not that I'm aware of.

17 Q Are you aware that she was being sued for medical
18 bills that she's claiming in this lawsuit?

19 A No, ma'am.

20 Q From Conway Medical Center and Grand Strand
21 Regional?

22 A Not aware of that.

23 Q You said earlier, too, that you and Ms. Byerly
24 were really close husband and wife, married a long time
25 and you were aware that she had no prior hip pain

JOHN BYERLY - CROSS-EXAMINATION

1 before this incident of October 13th?

2 A Correct.

3 Q And you heard her deposition testimony as well,
4 and in her deposition testimony, she says that she had
5 no pain medications prescribed to her prior to this
6 incident, correct?

7 A Correct.

8 Q And was that your understanding as well?

9 A Yes, ma'am.

10 Q But isn't it true that the month before this
11 incident, almost the month to the day, on
12 September 12th and 13th of 2016, just a month prior
13 to this incident, she actually visited two different
14 orthopedic doctors and requested pain medications?

15 A I don't know.

16 Q So you weren't -- you don't have any personal
17 knowledge whether she was taking pain medications?

18 A No. Like I stated, sometimes I went to the
19 doctor with her, and sometimes I didn't, so I wasn't
20 aware of anything.

21 Q Yet, you actually did take her to the emergency
22 room a couple years before this incident, October of
23 2014, because she needed treatment for complaints of
24 left hip pain, left shoulder pain, neck pain and back
25 pain; isn't that correct?

JOHN BYERLY - CROSS-EXAMINATION

1 A I don't know. I didn't always go to the hospital
2 with her.

3 Q But it's still your testimony that she did not
4 have any prior pain in her hip before this incident?

5 A That's true.

6 Q Do you know why she would have had an x-ray of
7 her hip at the emergency room at Conway Medical Center
8 in 2014 if she had no prior pain in her hip before this
9 incident?

10 A I don't have any recollection of that.

11 Q What about shoulder pain, any recollection of
12 that?

13 A She hurt all over all the time, from her head to
14 her toes.

15 Q So before this incident, she actually did hurt
16 all over; it wasn't just after this incident?

17 A It was more so after this incident.

18 Q More so. But you testified earlier that she
19 didn't have any problems with those areas of her body
20 before this incident?

21 A Not to my knowledge.

22 Q But it is your knowledge, and you testified, that
23 you did know that she hurt all over before this
24 incident, correct?

25 A Her body ached all the time.

JOHN BYERLY - CROSS-EXAMINATION

1 Q Your attorney talked to you about Ms. Byerly's
2 lost wage claim and entered into evidence a document
3 showing the days she missed work after this occasion
4 and I guess the day of this occasion, correct?

5 A Yes.

6 Q You testified that prior to this incident, she
7 had a good track record at work, attendance-wise?

8 A Yes, ma'am.

9 Q In those same set of records, where we pulled out
10 that small piece of the record, isn't it true that in
11 March of the same year of this incident, March of 2016,
12 she was out and missed 18 days of work for sick leave?

13 A I guess.

14 Q And you indicated that you went to work with her
15 on a daily basis. You carpooled, went to the same
16 location, right?

17 A Yes.

18 Q Do you remember just a few months prior to this
19 incident her being out for half of the month of March?

20 A I don't remember that.

21 Q What about less than a year before this incident
22 in November of 2015, she actually didn't go to work
23 with you for the entire month until the 19th of
24 November, correct?

25 A I don't recall that.

JOHN BYERLY - CROSS-EXAMINATION

1 Q Do you recall her having any surgeries in
2 November of 2015 where she was out of work for most of
3 the month of November?

4 A No, ma'am, I don't.

5 Q You mentioned earlier her having visited both the
6 orthopedic doctors, for which she's submitting bills,
7 prior to this accident, and you said you didn't know
8 about her receiving pain medications or requesting pain
9 medications?

10 A Yes, ma'am.

11 Q Well, that month before this incident, did you
12 observe Ms. Byerly in excruciating pain and hardly able
13 to walk?

14 A Like I said, my wife hurt from the time we got
15 married. She was beat as a child. She had a lot of
16 stuff wrong with her before we ever got married.

17 Q And before this incident, she had all of those
18 same problems with her hip that she had after this
19 incident, correct?

20 A Excuse me?

21 Q She had all of the same issues with her hip that
22 she had before the accident, after this incident,
23 correct?

24 A Yeah.

25 Q And, actually, specific to the hip, did you

JOHN BYERLY - CROSS-EXAMINATION

1 accompany Ms. Byerly to see her family physician after
2 she had a slip and fall in 2014 where she claimed to
3 have injured her left shoulder and her hip?

4 A No, ma'am, I didn't.

5 Q And that's a little bit before this incident, two
6 years before. But, again, on September 12, 2016, a
7 month and a day before this incident, were you aware
8 that Ms. Byerly visited her physician -- one of the
9 physicians you asked to be compensated treatment
10 with -- and indicated that -- and, again, this is
11 before this fall -- that she had pain in her shoulder,
12 her arm on the right side, her left arm, her hip, her
13 hands, her knees, her chins and both ankles?

14 A I'm not aware of that. She never complained to
15 me about any of that.

16 Q Were you around Ms. Byerly enough to know or to
17 be able to observe her within the month prior to this
18 incident, whether she was having problems walking?

19 A Yes.

20 Q So if she indicated to her doctor that she could
21 hardly walk, would that be true? Is that something you
22 observed?

23 A Yes, ma'am.

24 Q That was just before this incident, correct?

25 A Uh-huh.

JOHN BYERLY - CROSS-EXAMINATION

- 1 Q And she had spent significant time out of work on
2 sick leave for these various injuries that she had
3 before this trip and fall ever happened?
- 4 A Like I said, she hurt all the time, but this was
5 more so.
- 6 Q And, actually, on that day, September 12, 2016,
7 she indicated that she was at a 10 out of 10 on a pain
8 level; do you recall that?
- 9 A (Witness nods head.)
- 10 Q That's about as bad as it can get, right, a 10
11 out of a 10?
- 12 A Pretty much.
- 13 Q What about observing prior to this incident, any
14 swelling in her ankles?
- 15 A Yes, they are swollen before and after, actually.
- 16 Q Was it any different after?
- 17 A Not that I'm aware of.
- 18 Q Nothing you can observe?
- 19 A Yeah.
- 20 Q No notice of anything different? No?
- 21 A No.
- 22 Q And in those pictures that were put up a bit
23 earlier that were taken on the 13th and 14th,
24 respectively of your wife's legs, where it shows the
25 cut on her left leg; do you remember that one?

JOHN BYERLY - CROSS-EXAMINATION

1 A Yes.

2 Q That area on her knee, that wasn't from this
3 incident, was it? That is actually her psoriasis?

4 A That is psoriasis on her knee, but the mark below
5 that was not.

6 Q Right. So the one on the chin, like a cut?

7 A Right.

8 Q And that's what you are claiming is from this
9 incident, right?

10 A The ankle being broken and the hip being injured,
11 yes.

12 Q Right. And a little before those visits, isn't
13 it true that you took Ms. Byerly to Conway Medical
14 Center again where she was complaining of left knee
15 pain and said that she had osteoarthritis?

16 A We knew she had arthritis.

17 Q And that was to the left knee?

18 A I guess. She had arthritis in her arms, also.

19 Q In Ms. Byerly's deposition, she said her knee was
20 bleeding; was that something that you observed as well?

21 A Yes.

22 Q And was that just related to the psoriasis she
23 had?

24 A From the fall and the psoriasis together.

25 Q I'll show you an additional picture from the

JOHN BYERLY - CROSS-EXAMINATION

1 11th of October. Are you aware that the photographs
2 that your attorney put into evidence and that you
3 testified as to, are you aware that those photographs
4 were taken by your daughter; did you know that?

5 A Yes.

6 Q Do you know why she was taking these photographs
7 before --

8 A We took them -- as soon as my wife got hurt, we
9 took them.

10 Q But this -- actually, a number of these
11 photographs were taken before your wife got hurt on the
12 11th and the 12th, before the incident on the 13th.

13 A They had all of the stuff around there, I mean.

14 Q Take me back through the date of the incident on
15 the 13th when you are leaving your home. When you
16 and your wife walk out of the house, you testified that
17 you walked straight into pitch black darkness, correct?

18 A Yes, ma'am.

19 Q You knew that you were walking through a yard
20 where a hurricane just hit a few days ago?

21 A Yes, ma'am.

22 Q And you knew there was construction going on on
23 the property at that time, right?

24 A Yes, ma'am.

25 Q In fact, there was a huge pile of debris at the

JOHN BYERLY - CROSS-EXAMINATION

1 roadway, right?

2 A Yes, ma'am.

3 Q And you, nor your wife, used any kind of
4 flashlight, shuffled your feet, anything of that
5 nature?

6 A Well, I don't have a flashlight on my phone, and
7 I felt confident I could get out there without a
8 flashlight. But the path was changed when -- there
9 wasn't no tape put up, no cones put up, no barricades
10 put up, so you had to judge where you was walking.

11 Q But there was another exit on the side of the
12 house directly onto the driveway, correct?

13 A That's true.

14 Q And no portion of the driveway or the sides of
15 the driveway was covered with any debris, correct?

16 A Correct.

17 Q And you knew that before you went out on the
18 13th, because you had been at work on the 11th and
19 maybe on the 12th?

20 A Even so, if I went out the other door, it still
21 would have been dark. You still would have tripped
22 over something, I'm sure.

23 Q Is it your testimony that you know that
24 Ms. Byerly did not leave the house at all on the
25 12th? So from 3:30, 4 o'clock when she got home, it

JOHN BYERLY - CROSS-EXAMINATION

- 1 is still daylight on the 11th, she didn't leave the
2 house until the 13th, morning of the 13th?
- 3 A She did not leave the house until the 13th.
- 4 Q Were you at work on the 12th?
- 5 A I was.
- 6 Q Did Ms. Byerly smoke?
- 7 A Yes.
- 8 Q How much did she smoke on a typical day?
- 9 A A pack.
- 10 Q Did she go outside to smoke?
- 11 A Sometimes she would go out on the side porch.
- 12 Q Did she sometimes smoke in the house?
- 13 A Yes, ma'am.
- 14 Q And I know earlier you said that Ms. Byerly broke
15 her ankle; is that correct?
- 16 A Yes, ma'am.
- 17 Q And you are not a medical doctor and you didn't
18 examine her, did you?
- 19 A No, ma'am.
- 20 Q And you did indicate, though, that you were aware
21 that she followed up with Strand Orthopedic a few days
22 after this incident?
- 23 A Yes, ma'am.
- 24 Q Were you aware that Strand Orthotics actually did
25 not diagnose her with a broken ankle?

JOHN BYERLY - CROSS-EXAMINATION

1 A I'm not aware of that.

2 Q What is it exactly that you think that Tom did
3 wrong?

4 A He -- Mr. Wesley should have, in my opinion, went
5 behind the contractors to make sure that they had some
6 kind of safety device, and it was up to him, and them,
7 to make sure that that was taken care of.

8 Q What type of safety devices do you think would
9 have been helpful to be out on that morning of the
10 incident?

11 A Could have been barricaded, coned, taped, any of
12 the above.

13 Q So if you are walking into pitch black darkness
14 and there is a barricade in front of you, is it your
15 testimony that you think that that is what Mr. Wesley
16 should have done?

17 A He should have had some kind of safety thing out
18 there to show where everything was.

19 Q And you did testify that you saw Mr. Wesley from
20 time to time coming and checking on the progress?

21 A That's true.

22 Q But it is your understanding that he hired the
23 professionals to do the work, right?

24 A He did, but he was also responsible for following
25 up with them.

JOHN BYERLY - REDIRECT EXAMINATION

1 Q All right. Had it been light outside, would you
2 agree with me that those railroad ties were open and
3 obvious, you could see them right in front of you?

4 A If it was daylight, but it wasn't daylight.

5 Q So if the emergency room records that you are
6 asking for compensation from Tom reflect that it was
7 daylight and that the incident happened at 11:00 a.m.,
8 you would dispute that?

9 A Yes. It didn't happen at 11:00 a.m.

10 MS. ANTHONY: I think that is all I have. One
11 second.

12 (A brief pause in the proceedings.)

13 MS. ANTHONY: That is all I have. Thank you.

14 THE COURT: Redirect?

15 MR. HOPKINS: Very briefly, Your Honor.

16 REDIRECT-EXAMINATION

17 BY MR. HOPKINS:

18 Q As an initial matter, John, could you identify
19 for the jury what this is, please, sir?

20 A It's a receipt for the Wind Surfer Hotel, which
21 we stayed at.

22 Q What night did you spend the night at the Wind
23 Surfer?

24 A The 10th.

25 Q October 10th?

JOHN BYERLY - REDIRECT EXAMINATION

1 A Yes.

2 MR. HOPKINS: Your honor, we would move to
3 introduce this?

4 THE COURT: Any objection?

5 MS. ANTHONY: I haven't seen it.

6 MR. HOPKINS: It's just strictly for rebuttal
7 your Honor, it was questioned whether he was telling
8 the truth about it.

9 MS. ANTHONY: Sure. No objection.

10 (A brief discussion was had off the record.)

11 (Plaintiffs' Exhibit 7 marked and admitted.)

12 Q (MR. HOPKINS) John, have you and your wife ever
13 walked out of the side door to go to work in the
14 morning?

15 A No, sir.

16 Q Did you think there would be any reason you would
17 have needed to change your routine you've had for three
18 years prior to -- just because of the hurricane?

19 A No, sir.

20 Q And I'll show you this photograph.

21 MR. HOPKINS: Clayton, put up 1B. That's all
22 right. I'll move on.

23 Q How close are those crossties to the sidewalk?

24 A Approximately, 2 to 3 feet.

25 Q And Amber's car is there in the driveway?

JOHN BYERLY - REDIRECT EXAMINATION

1 A Uh-huh.

2 Q Do you believe that even if you walked out the
3 side door, is there any way that Susan could have
4 avoided walking into those crossties as close as they
5 were to your car, regardless of which door you walked
6 out of?

7 A No.

8 Q If you would have used the side door, do you
9 think this still would have happened?

10 A A good possibility it would still have happened.

11 Q A lot was made about Ms. Susan's injuries, and I
12 won't belabor it, but I'll make some points. You are
13 not asking this jury for anything related to a knee,
14 are you?

15 A No, sir.

16 Q One thing -- first of all, it was suggested there
17 wasn't a break; do you recall that question, nothing
18 was broken?

19 A Yes.

20 Q Have you read the records from Strand Orthopedic
21 Consultants on November 26th? I would like you to
22 read to the jury what the --

23 THE COURT: Don't you have it in evidence?

24 MR. HOPKINS: No, sir.

25 THE COURT: Well, if you don't have it in

JOHN BYERLY - REDIRECT EXAMINATION

1 evidence, you can't publish it, sir.

2 MR. HOPKINS: I'll put it into evidence, Your
3 Honor.

4 Q (MR. HOPKINS) A lot of these issues that
5 Ms. Susan had, is there any medical record, any
6 medical evidence that Susan Byerly ever had a torn
7 labrum in her hip before this incident?

8 A No, sir.

9 Q Now, you testified Susan did have medical
10 problems, didn't she?

11 A Yes.

12 Q She had her gallbladder removed?

13 A Yes, sir.

14 Q She had an endoscopy?

15 A Yes, sir.

16 Q In 2014, did she go to the emergency room five
17 times complaining of abdominal problems before the
18 gallbladder surgery?

19 A Yes.

20 Q You don't deny any of those illnesses?

21 A No, sir.

22 Q But did she ever have a broken fibula and a torn
23 labrum before this incident?

24 MS. ANTHONY: Objection. I don't think he can
25 testify as to a medical diagnosis.

JOHN BYERLY - REDIRECT EXAMINATION

1 THE COURT: He just asked did she have it. It is
2 not a medical diagnosis, just asked a question.

3 Q (MR. HOPKINS) Do you have a medical record
4 showing a torn labrum or a broken fibula prior to this
5 incident?

6 A No, sir.

7 Q Now, they made a big deal about Susan's work
8 records at CCU, and I think what I asked -- I don't
9 think I said it the way she did -- did Susan ever have
10 any performance-related problems or issues at work?

11 A No, sir.

12 Q Before this?

13 A No, sir.

14 Q Now, opposing counsel brought up that she missed
15 18 days. Is it true she missed 18 days because her
16 mother died in the State of Ohio.

17 A Yes, sir.

18 Q And did she have to go to Ohio and deal with her
19 mother's death?

20 A We did. We were up there quite awhile.

21 Q I'll show you a record from Strand Orthopedic
22 Consultants. Were you aware that Susan went to Strand
23 Orthopedic Consultants?

24 A No.

25 Q Did you know she went to an orthopedic doctor?

JOHN BYERLY - REDIRECT EXAMINATION

1 A Yes, I was aware of that.

2 MR. HOPKINS: Your honor, we would offer this
3 into -- as Plaintiffs' 8.

4 MS. ANTHONY: I don't mind him asking about it.
5 I think it contains hearsay and wouldn't be
6 admissible.

7 THE COURT: Unless you agree, you can't introduce
8 it through this person. He didn't prepare it and not
9 the custodian, so I sustain the objection.

10 MR. HOPKINS: Okay.

11 Q (MR. HOPKINS) John, did you understand she had a
12 broken fibula?

13 A Yes.

14 Q And have you seen any medical record that
15 indicates otherwise?

16 A No, sir.

17 Q It's indicated or been indicated suggesting that
18 there were four lawsuits against Susan for medical
19 bills, the medical bills caused by this; have you gone
20 to court or had a deposition?

21 A No, sir.

22 Q Have you ever been served with anything?

23 A No, sir.

24 Q Now, you knew on the 11th, when your daughter
25 was taking the pictures, you knew that one of the

JOHN BYERLY - REDIRECT EXAMINATION

1 crossties had been moved, correct?

2 A Yes, sir.

3 Q Did you know they had been moved directly beside
4 the driveway where your car is parked?

5 A No, I did not.

6 MR. HOPKINS: One moment, Your Honor.

7 THE COURT: Yes, sir.

8 (A brief pause in the proceedings.)

9 Q (MR. HOPKINS) Did Susan have an endoscopy which
10 required her to miss a lot of time from work?

11 A Yes, sir.

12 Q And, of course, you know now that she had a heart
13 condition that was undiagnosed?

14 A Yes.

15 Q Did I mention the hysterectomy? Susan had a
16 hysterectomy a couple years before this?

17 A Yes, sir.

18 Q So Susan spent a lot of time in hospitals and
19 medical offices?

20 A Yes.

21 Q But have you seen any medical records indicating
22 that she ever had a broken fibula or torn labrum prior
23 to this incident?

24 A No, sir.

25 Q One final thing. It has been suggested that

JOHN BYERLY - RECROSS-EXAMINATION

1 maybe this didn't happen until about 11:00, 12 o'clock;
2 what time did you and Susan have to be at work?

3 A We had to be there by 7:00, so we left at 6:30 to
4 be out there.

5 Q And what would happen if you and Susan were still
6 at home sitting at your house at 11 o'clock?

7 A Probably wouldn't have a job.

8 Q Did you have any --

9 A We had to call them.

10 Q Did you have any disciplinary action because you
11 and Susan didn't show up for work at noon on
12 October 13th?

13 A No, sir, we did not.

14 MR. HOPKINS: No further questions.

15 THE COURT: Recross.

16 RECROSS-EXAMINATION

17 BY MS. ANTHONY:

18 Q The path was described a bit, the path that
19 Ms. Byerly took to walk to her car on the morning of
20 the 13th; it is not actually a path, is it, it is the
21 yard?

22 A Yard.

23 Q So she's walking through the yard. There was no
24 debris blocking the pathway of the house, correct?

25 A Correct.

JOHN BYERLY - RE-CROSS-EXAMINATION

1 Q And you were asked whether you thought that the
2 hurricane was the reason to change the path of walking
3 where you are going out in pitch black dark; would you
4 agree that the hurricane did, in fact, change the
5 landscape of the yard?

6 A Somewhat, not totally.

7 Q And you also said that you cannot have -- she
8 could have not avoided walking into the crossties if
9 she had taken a different path, correct?

10 A She could have taken a different path, but there
11 is still debris. She still could have tripped over
12 something else other than the ties.

13 Q In retrospect, do you think it would have been
14 wise for you or Ms. Byerly to use a flashlight when you
15 are going out to a changed landscape a couple days
16 after a hurricane?

17 A Possibly so, but I didn't have a flashlight
18 handy, so we didn't use one.

19 Q You kind of took on that risk?

20 A Not really.

21 MS. ANTHONY: Nothing further.

22 THE COURT: All right. You may come down, thank
23 you.

24 Let's take a recess for about ten minutes. Do
25 not begin your deliberations, don't discuss the case.

JURY EXITS - RECESS

1 You may retire to your jury room.

2 (The jury exits at 3:30 p.m., and the
3 following is heard out of the presence of the jury.)

4 THE COURT: Anything from the plaintiff before we
5 recess?

6 MR. HOPKINS: No, sir.

7 THE COURT: How many more witnesses do you have?

8 MR. HOPKINS: One, Mr. Wesley.

9 THE COURT: Do you have witnesses after that?

10 MS. ANTHONY: No, Your Honor.

11 THE COURT: All right. We'll be at ease for
12 about 10 minutes then. Thank you.

13 (A recess was taken.)

14 THE COURT: Plaintiff ready?

15 MR. HOPKINS: Yes, sir.

16 THE COURT: Defendant ready?

17 MS. ANTHONY: Yes, Your Honor.

18 THE COURT: Bring in our jury, please.

19 (The jury enters at 3:43 p.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: Thank you, ladies and gentlemen. We
22 are ready to continue.

23 Call your next witness, Mr. Hopkins.

24 MR. HOPKINS: Thank you, Your Honor. We call
25 Mr. Tom Wesley.

THOMAS WESLEY - DIRECT EXAMINATION

1 (THOMAS WESLEY, having been duly sworn, testified
2 as follows:)

3 THE WITNESS: Tom Wesley, W-E-S-L-E-Y.

4 DIRECT-EXAMINATION

5 BY MR. HOPKINS:

6 Q Mr. Wesley, good afternoon.

7 A How are you doing, sir?

8 Q Yes, sir. We met before at your deposition. Can
9 you hear me okay?

10 A Yeah.

11 Q I know you were ill earlier this week, and we
12 thank you for coming up here sick to try this case.

13 Mr. Wesley, can we agree that you knew that the
14 three crossties were laid right beside the driveway
15 near their car?

16 A I did. They were there for a purpose.

17 Q Yes, sir. And despite that fact, you didn't tell
18 anyone or warn anyone that they were that close to the
19 cars?

20 A There wasn't anyone to tell at the time. This
21 was an emergency.

22 Q You did speak to Mr. Byerly on the 11th, didn't
23 you?

24 A I don't know what dates.

25 Q So can we -- is it correct that -- I think there

THOMAS WESLEY - DIRECT EXAMINATION

1 were six crossties?

2 A Uh-huh, three on each side of the sidewalk.

3 Q I know you had them out there so people wouldn't
4 drive in your yard?

5 A Moved them so the crane could get in to get the
6 tree off the top of the house.

7 Q Only three of the crossties were next to the
8 Byerly driveway and the Byerly vehicles, correct?

9 A Right.

10 Q And the other three crossties were in another
11 part of the yard?

12 A Same area, just straight across from the front.

13 Q And there is no reason, is there, that you
14 couldn't have put these three crossties in the same
15 area where the three other crossties were and avoided
16 this whole situation?

17 A I suppose so.

18 Q Do you recall telling me in your deposition the
19 sole reason you didn't move these three crossties with
20 the other three was just convenience?

21 A Yeah. It is 6 feet versus 50.

22 Q Yes, sir. You said why move them 30 feet if you
23 can move them six feet?

24 A Uh-huh.

25 THE COURT: Is that a yes?

THOMAS WESLEY - DIRECT EXAMINATION

1 A Yes, excuse me.

2 THE COURT: That's all right.

3 Q (MR. HOPKINS) Wouldn't the safety of your
4 tenants be one reason you might move them 30 feet
5 instead of 6 feet?

6 A In hindsight, possibly. But they were stacked so
7 that they could be seen and out of the way of the
8 vehicles and should not have made it a problem for
9 Susan to get to her door.

10 Q You said they were stacked. We have a lot of
11 pictures, and I don't --

12 A Those are not stacked. They were stacked
13 originally. They only took up the width of one.

14 Q If they had been stacked, maybe they would have
15 come up to here and she might not have fallen, correct?

16 A Right.

17 Q But we know the morning she fell, they were not
18 stacked?

19 A When we moved them, we stacked them. How they
20 got in that order, I don't know.

21 Q Now, would it be accurate to say from the time
22 you bought this property until you sold it recently,
23 you were solely responsible for maintaining the yard;
24 you did all of the yard?

25 A Right.

THOMAS WESLEY - DIRECT EXAMINATION

1 Q You had a landscaping business?

2 A Yes.

3 Q And I think you also had a contractor's license
4 in Columbia for a few years?

5 A I did.

6 Q So you have more familiarity than most people
7 with construction sites and things like that; is that
8 correct?

9 A Right.

10 Q And can you and I agree that, really, safety is
11 job one on these areas?

12 A I would, yeah. I would agree with that.

13 Q And can we agree that the Byerlys were good
14 tenants?

15 A Yeah. I actually liked them. They were good
16 tenants. We had very few disagreements. Three more
17 people moved in than what was on the lease, and I just
18 let it slide. They had a dog that I didn't know about,
19 but I didn't have any trouble.

20 Q And the kids, I know they have disabilities, but
21 the kids never gave you any problems, did they?

22 A No. No. None of them did. They were good
23 tenants.

24 Q They were the longest-serving tenants you had in
25 that property, right?

THOMAS WESLEY - DIRECT EXAMINATION

- 1 A Right.
- 2 Q I believe it's been brought out that right before
3 this hurricane, you already told the Byerlys you were
4 not going to renew their lease, correct?
- 5 A Correct.
- 6 Q You were going to renovate the property?
- 7 A Yes.
- 8 Q Now, let's talk about the day of this hurricane.
9 How did you find out that the tree had fallen on your
10 house?
- 11 A I drove up there after the storm.
- 12 Q I think you called a contractor the same day?
- 13 A I believe it was the same day; if not, it was the
14 next day, and they were on-site by then.
- 15 Q Did you call different folks and get quotes, or
16 you just called one and he went up there?
- 17 A No, I have a property management friend that had
18 contacts, and she had them out there in two hours.
- 19 Q And so what were your instructions to the
20 gentlemen you hired?
- 21 A Fix it.
- 22 Q Did they fix it?
- 23 A Excuse me?
- 24 Q Did they fix it?
- 25 A They did. They did a great job.

THOMAS WESLEY - DIRECT EXAMINATION

1 Q Now, when all of this was going on, you were
2 spending time on the property?

3 A As much as I could.

4 Q I think you said that you were out there enough
5 so that you got to know all the guys working out there
6 pretty well?

7 A Most of them.

8 Q When you first put those railroad ties in the
9 front of your yard, that wasn't required by the city or
10 anything, was it?

11 A No.

12 THE COURT: Hold on a second. You need to sit-up
13 close to that mic so they can hear you, sir. Thank
14 you.

15 A There were two or three apartment complexes
16 across the street that run back, and it seemed like the
17 tenants that moved in there can drive fine head first,
18 but when they back out, they like to go all the way up
19 to my porch, and I wasn't real fond of that.

20 Q (MR. HOPKINS) And you knew that the Byerlys had
21 three vehicles in the driveway?

22 A Well, they came with two.

23 Q Sorry, I couldn't hear.

24 A They came with two.

25 Q And I think when the daughter moved in, they had

THOMAS WESLEY - DIRECT EXAMINATION

1 a third one.

2 A Yes, sir.

3 Q So you knew when the crossties were placed there,
4 you knew, didn't you, that it was in the approximate
5 area of where this third car would be, back by the
6 driveway?

7 A Yes.

8 Q Can we agree, Mr. Wesley, that as owner of the
9 property, it is your duty to make sure that the
10 property is safe for your tenants?

11 A Yes, and that is what I was trying to do.

12 Q If there is an unsafe condition on your property,
13 you have a legal duty to warn your tenants?

14 A I think everyone was well warned with two trees
15 through the roof.

16 Q You believe that Ms. Byerly was warned that there
17 were crossties by her car on the driveway?

18 A Well, when we put them up out there, they were
19 standing up. In the pictures I see, they are laying
20 down, so I don't know how they got laid down.

21 Q These things are really heavy, aren't they?

22 A They are. I can't --

23 Q Mr. Byerly didn't --

24 A No, it would take two grown men.

25 Q Making sure that you didn't think the Byerlys had

THOMAS WESLEY - DIRECT EXAMINATION

1 unstacked them?

2 A Oh, no. Huh-huh. Probably got knocked over by
3 the equipment.

4 Q Do you believe or contend that anyone other than
5 you had the duty to keep the yard in a safe condition?

6 A No. I owned it. I mean, I did ask them to pick
7 up after their dog, which we had a little disagreement
8 on that, but.

9 Q Can we agree that you were not present on the
10 morning that Ms. Byerly fell?

11 A No.

12 Q So you don't know what the conditions were?

13 A No.

14 Q Do you have any basis to dispute what they've
15 testified to, that it was pitch black dark, 6:00 in the
16 morning?

17 A I wasn't there. I believe what they say as far
18 as her injuries. I have no reason to doubt them. I
19 always found them to be honest and straightforward
20 people.

21 Q And is it correct that the power was out at the
22 property?

23 A Oh, yeah.

24 Q So in addition to sunrise being an
25 hour-and-a-half, no streetlights or anything like that?

THOMAS WESLEY - DIRECT EXAMINATION

1 A Right.

2 Q So we can agree the conditions in which she
3 walked out was darkness?

4 A If it was dark when she came out, yes. I don't
5 know when she came out. I can't answer that.

6 Q So I'm curious, Mr. Wesley, if you agree it was
7 your duty to keep the property safe, what is it that
8 you think Ms. Byerly did wrong at 6 o'clock in the
9 morning in the dark?

10 A Well, last time I left, the day before, those
11 were piled straight up, and when I come back and she
12 had her issue, they were laying flat. I don't know how
13 they got from A to B.

14 Q But you don't have any evidence that Ms. Byerly
15 did that?

16 A No. I mean -- no. She had no reason to knock
17 them over.

18 Q I appreciate that. I'm not sure I got an answer
19 to the question, though. What do you contend -- why do
20 you contend it was Ms. Byerly's fault to trip over
21 something by her car at 6:00 in the morning that she
22 didn't know about?

23 A I don't know how to answer it. It was pretty
24 plain. If it is pitch black, I don't know what she
25 could or couldn't see, but it was pretty close in the

THOMAS WESLEY - CROSS-EXAMINATION

1 driveway and she would have had to dodge them to get in
2 on that side of the car, and I don't know if she did
3 that or not.

4 Q So you admit that she would have had to
5 negotiated those crossties just to get in the vehicle?

6 A Right.

7 Q And do you have any evidence that she knew they
8 were there that morning?

9 A No.

10 MR. HOPKINS: Thank you for your time.

11 THE COURT: You may cross-examine the witness.

12 CROSS-EXAMINATION

13 BY MS. ANTHONY:

14 Q Hi, Mr. Wesley. If you could, just briefly tell
15 the jury about yourself. Are you from Myrtle Beach?

16 A Moved to Myrtle Beach from Tennessee, 1956.
17 Lived with my parents, went to Carolina, got kicked
18 out, went back, got kicked out, went back and finally
19 finished. I lived in Columbia for a good while, and as
20 my parents were getting older, I moved back to the
21 beach and bought the duplex.

22 Q And were you retired at that time, or just moving
23 back to the beach?

24 A I was in the mortgage business then.

25 Q Okay. And when you say you moved back to the

THOMAS WESLEY - CROSS-EXAMINATION

1 beach, you actually moved into the Blynn Drive
2 residence?

3 A Right.

4 Q And did you live in the same unit that the
5 Byerlys occupied, thereafter?

6 A I did.

7 Q And how long did you live there?

8 A Ten or 11 years.

9 Q We heard a lot about where the railroad ties were
10 initially. When were those put there to block the
11 neighbors?

12 A Years ago.

13 Q When you say "years ago," when you were living
14 there?

15 A Probably two or three years after I moved in. I
16 was tired of filling up tire tracks.

17 Q And why did you end up moving out of that
18 property?

19 A My parents passed. I redid that house and moved.

20 Q So you moved into your parents' old house?

21 A Right.

22 Q Now, before Hurricane Matthew came through Myrtle
23 Beach, which I understand you didn't evacuate?

24 A No. I haven't left one yet.

25 Q And before that, you had actually given notice to

THOMAS WESLEY - CROSS-EXAMINATION

1 the Byerlys that you were going to go ahead and not
2 renew their lease for the next month?

3 A Right. What I found in rental property is after
4 about three years you have to completely redo it. The
5 carpets were torn up. The kitchen counter was broken.
6 I mean, it is just stuff you do after every one. I
7 didn't know we would get a hurricane on top of that.

8 Q So after -- you talked about your relationship
9 that you had over the couple of years when the Byerlys
10 were your tenants, and that was a good relationship?

11 A Uh-huh.

12 Q Never any major problems or anything?

13 A Huh-huh.

14 THE COURT: Is that a no?

15 THE WITNESS: No. I'm sorry, I have that
16 problem.

17 THE COURT: No, it's not a problem, but the lady
18 seated next to you is taking down everything we're
19 saying, and it helps her when you verbalize it,
20 please.

21 Q (MS. ANTHONY) I understand you sent notice to
22 the Byerlys in -- at the end of September; is that
23 correct?

24 A Yes.

25 Q And, tell me, did your relationship with the

THOMAS WESLEY - CROSS-EXAMINATION

1 Byerlys change?

2 A It got a little cold then.

3 Q Did you have any friendly conversations with them
4 after that?

5 A I don't think we had any ugly ones, but they
6 weren't as warm as they used to be.

7 Q Did the Byerlys end up moving out by the end of
8 October as they were supposed to do?

9 A Huh-huh. I think they ran into November, but
10 their unit was less damaged than the other unit. We
11 were trying to get that one ready first while they were
12 moving out.

13 Q Were you working with them?

14 A Best we could, yeah. They were moving out, but
15 the damage to their unit was in the closet in the
16 master bedroom, so the rest of the house was usable,
17 except for power.

18 Q And did you eventually have to file an eviction
19 action?

20 A They eventually left, and that was fine.

21 Q That was after you did a ten-day notice, correct?

22 A I gave them 30- or a 45-day notice.

23 Q So you gave them additional time after that.

24 And we heard some testimony earlier about some
25 conversations that, perhaps, were alleged that you had

THOMAS WESLEY - CROSS-EXAMINATION

1 with the Byerlys after Ms. Byerly's fall; do you
2 recall any of those conversations?

3 A Only thing I remember was her cast looked like a
4 sandal, which seemed odd.

5 Q So you did see Ms. Byerly, and you saw her with
6 that splint, or as she described it, a cast?

7 A Where the railroad ties were moved is where they
8 drove through the yard to get to the steps so she could
9 go in.

10 Q And after the hurricane, when did you first find
11 out about the damage to the Blynn Drive property?

12 A I was up there the next day.

13 Q And when you say "the next day" --

14 A The day after the storm.

15 Q So as soon as things were clear, you went
16 straight over?

17 A To see what kind of damage I was going to be
18 facing. It was way more than I thought.

19 Q You indicated earlier that you got someone out
20 there either that day, within two hours, or the next
21 day within two hours?

22 A The next day I had a whole crew in there.

23 Q Who was it that you hired?

24 A Richey -- I don't remember the company's name. I
25 had a contact in the property management business, and

THOMAS WESLEY - CROSS-EXAMINATION

1 she knew this guy and had used him, so I went to him,
2 signed a contract and he started right then, which I
3 normally would not do, but this was an emergency. I
4 had two tenants that needed work.

5 Q Is it your understanding that Richey of Brown
6 Rooftops went out and hired a subcontractor, Bay
7 Services?

8 A Yeah, he's the one that came in with heavy
9 equipment. The tree was laying over the peak from the
10 back. There was no way to get to it, to the back. If
11 you cut it, it would just smash the rest of the roof,
12 so he had to bring it from the front to hold it while
13 they cut it, and then take it out of the yard. That
14 was done that morning that they finally came to work.

15 Q And I'm going to show you what I'll mark as
16 Defendant's 1. I know some of these will be in
17 evidence, but I'm not sure number-wise.

18 THE COURT: Defendant's 1, you say?

19 MS. ANTHONY: Yes, Your Honor.

20 (Defendant's Exhibit 1 marked.)

21 Q (MS. ANTHONY) Is this an accurate depiction of
22 the damage as you found it right after the storm when
23 you visited the Blynn Drive address?

24 A It shows the first tree went through the ceiling
25 of a bedroom in the other unit, and they were in the

THOMAS WESLEY - CROSS-EXAMINATION

1 bed. The limbs went right over their face. The
2 Byerlys, in the master bedroom, which was add-on, I
3 guess, originally, so the only thing it really damaged
4 was their closet in the back.

5 Q But you are saying that your other tenant, on the
6 other side of the duplex, actually didn't evacuate
7 either?

8 A No. They stayed until we had to get in there,
9 even though they didn't have power. They didn't have
10 anywhere else to go, so I didn't charge them any rent.

11 Q And from your recollection, does this picture
12 accurately reflect the way that you found the property
13 and the tree on top of the house when you arrived after
14 the storm?

15 A Right. You can see where it is lying on the
16 power lines. It crushed through -- it actually
17 crunched the back bedroom and went through the walls
18 into the ceiling on the front bedroom. It was a big
19 tree.

20 MS. ANTHONY: At this time, I move to admit --
21 I'm not sure what your number is, but it is
22 Defendant's 1.

23 MR. HOPKINS: No objection.

24 THE COURT: Without objection, Defendant's 1 is
25 admitted.

THOMAS WESLEY - CROSS-EXAMINATION

1 (Defendant's Exhibit 1 admitted.)

2 MS. ANTHONY: And, Your Honor, at this time I
3 would like to publish to the jury.

4 THE COURT: You may.

5 I'll remind you, ladies and gentlemen, it is not
6 uncommon to pass an exhibit, but they'll accompany you
7 into the jury room so you can study it in more detail
8 if needed.

9 Q Needless to say, when you arrived at the property
10 after the hurricane, it was -- the yard was in a
11 different condition than it typically was?

12 A Oh, yeah, branches everywhere, power lines down
13 and power off, of course.

14 Q And we heard that the Byerlys got back to the
15 house on the 11th. On the 11th of October, is it
16 safe to say that it was still in disrepair?

17 A Oh, yes. It was almost \$40,000 worth of damage.

18 Q Is it your understanding that the crossties
19 necessarily had to be moved to get the Bay Services'
20 vehicle or backhoe onto the property?

21 A Correct. And any other property or vehicles that
22 needed to get in there, that was the best angle. The
23 other side had tenants in it still, so we tried to
24 leave them alone.

25 Q Was that the first order of business, to get the

THOMAS WESLEY - CROSS-EXAMINATION

1 tree off of the house?

2 A Yes.

3 Q And why was that?

4 A So it could be waterproofed.

5 Q So you had to get the tree off the house and put
6 the tarp down, correct?

7 A Two trees. Two trees.

8 Q Two trees, okay.

9 About how many guys did Bay Services and Brown
10 Rooftops have out there working on the 11th; do you
11 remember?

12 A Bay Services probably just had two or three,
13 because theirs was primarily the equipment. Richey's
14 guys were doing the cutting and cleaning and all of
15 that. So there was probably a dozen guys there.

16 Q Again, they were there by the 11th, correct?

17 A Uh-huh.

18 THE COURT: Is that a yes?

19 A Yes. I think that is the right date. They were
20 there the next day.

21 Q I know the dates are hard to recall; however,
22 they were there that first day, they were the first
23 ones on the scene, correct?

24 A Right. Correct.

25 Q Those crossties, for the equipment to get onto

THOMAS WESLEY - CROSS-EXAMINATION

1 the property, they weren't hidden, were they?

2 A No. When they set them there, they were stacked
3 up. When we see the picture there, they are scattered.
4 So I don't know how that happened or why it happened.

5 Q You said you would come to the property a couple
6 times a day, but didn't participate in any of the work;
7 you left that to the professionals?

8 A No. If they had questions, I had answers.

9 Q And the crossties, at no time that you saw them,
10 were they under any debris or anything?

11 A Not at that point. They became under debris as
12 they brought it back. The whole front was about
13 10 feet high and 15 feet deep.

14 Q And was it at the front there --

15 A The whole front.

16 Q -- so the city would pick up the debris?

17 THE COURT: Hold on a second. What is happening
18 now is a court reporter's nightmare, when two people
19 are talking simultaneously. She has to take down what
20 everyone is saying. Let her finish asking the
21 question before you answer, please.

22 THE WITNESS: Okay.

23 Q (MS. ANTHONY) But at that point, on the 11th,
24 the railroad ties would have been in clear view to
25 anyone that stepped on the property?

THOMAS WESLEY - CROSS-EXAMINATION

- 1 A Yes.
- 2 Q And you didn't think that the property was unsafe
3 because of where the railroad ties were anyway, did
4 you?
- 5 A No, ma'am.
- 6 Q They weren't blocking the concrete path?
- 7 A No.
- 8 Q And they were not blocking the driveway?
- 9 A No, ma'am.
- 10 Q And if it were dark, if someone were to step out
11 onto the property and those railroad ties were situated
12 where they are in the photographs that we've seen
13 today, would they have been visible with a flashlight?
- 14 A Yes.
- 15 Q At that point, they weren't under debris or
16 hidden?
- 17 A No. They were open and standing up.
- 18 Q When the Byerlys finally moved out, what was the
19 status of their rent payments to you?
- 20 A Well, they didn't make the last couple, but I
21 don't blame them. They couldn't live there. They are
22 already moving, and so, you know, I just let them move
23 out, because I had to get the other unit.
- 24 Q This was really actually a disaster, right?
- 25 A Yes.

THOMAS WESLEY - REDIRECT EXAMINATION

1 Q And so you attempted to be very accommodating,
2 correct?

3 A As much as I could.

4 Q And you are not here asking for any compensation
5 for anything that was left behind or past due rent or
6 anything?

7 A No, ma'am.

8 MS. ANTHONY: That is all I have.

9 THE COURT: Redirect.

10 MR. HOPKINS: Just one.

11 REDIRECT-EXAMINATION

12 BY MR. HOPKINS:

13 Q Mr. Wesley, did you ever tell the Byerlys they
14 needed to use a flashlight to negotiate the property?

15 A No, sir. There wasn't any reason to.

16 MR. HOPKINS: Nothing further.

17 THE COURT: Recross.

18 MS. ANTHONY: Nothing further.

19 THE COURT: Thank you. You may step down.

20 You may call your next witness.

21 MR. HOPKINS: Plaintiff rests.

22 THE COURT: Do you anticipate any additional
23 witnesses?

24 MS. ANTHONY: No, Your Honor. There may be a
25 matter I would like to --

THOMAS WESLEY - REDIRECT EXAMINATION

1 THE COURT: Oh, I know there is a matter of law.

2 Ladies and gentlemen, it is now ten after 4:00.
3 it probably will take us a little while to finish
4 this, and there still remains two very important parts
5 of this process. It will probably take, I would think
6 for both, probably close to an hour-and-a-half to two
7 hours. So that puts us near 6 o'clock. I am not
8 going to start a jury deliberating at 6:00 in the
9 afternoon. I ask you to come back in the morning. Be
10 in the jury room at 9:30, and we'll bring you out at
11 that time and we'll move forward with the trial at
12 that point.

13 Do not, please, begin your deliberations
14 collectively or individually. You may think what does
15 he mean by "individually." When you go home tonight,
16 if someone asks you what you are doing, I imagine that
17 would be a typical question, but if you start telling
18 them about this case, you will have started your
19 deliberations. You will finish this tomorrow. Say I
20 can talk about it tomorrow, can't talk tonight. We'll
21 discuss it tomorrow when I'm finished. Talk about
22 something else.

23 Have a good evening, and I'll see you at 9:30.
24 Thank you.

25 (The jury exits at 4:11 p.m., and the

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1 time when we do that then, I'll certainly entertain
2 your objection, if we get to that point. We may not
3 get to that point; I don't know. We'll see.

4 You all don't want to talk settlement now that
5 you see your jury party? The one thing I remember --
6 we're off the record now.

7 (A discussion was had off the record.)

8 THE COURT: Do you have a request of charge? It
9 is premise of liability charge on invitee, is what it
10 amounts to. So it is a basic thing -- frankly, it is
11 the same charge we use for stores when a patron comes
12 in, what the duties are. The duties are he's not an
13 insurer. He has a duty to warn of things that are
14 open and obvious. He's not liable for latent -- of
15 course there is not any evidence that it is latent.
16 It is either open and obvious, or not.

17 MR. HOPKINS: Judge, all of our charges are from
18 the standard book except the one I handed up this
19 morning.

20 THE COURT: Yeah. I don't mind -- I think it is
21 pretty much covered in mine, but I'll look and see if
22 it is not. I certainly don't have any problem with
23 it.

24 MS. ANTHONY: Your Honor, a potential issue in
25 that Mr. Wesley has his urology appointment.

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1 THE COURT: He doesn't have to come.

2 MS. ANTHONY: I want to be sure -- you know, I
3 don't want the jury to think he's not here because he
4 doesn't want to be here.

5 THE COURT: By stipulation, we'll say he had a
6 doctor's appointment.

7 MS. ANTHONY: I know we said he was sick, but I
8 don't want him to miss that.

9 THE COURT: He already testified.

10 (A discussion was had off the record and the
11 proceedings for November 20th, 2019 ended. The
12 following was had on November 21st, 2019, out of the
13 presence of the jury.)

14 THE COURT: I think we discussed yesterday we had
15 two Exhibit 7s, and for clarity of the record, the
16 first 7 was Georgetown Memorial Bill, and we'll make
17 that 7A for purposes of the record. And then the Wind
18 Surfer will be 7B, that was also referenced in the
19 record as 7.

20 (Plaintiffs' Exhibits 7A and 7B remarked and
21 admitted.)

22 MR. HOPKINS: Yes, sir. And, in addition, we had
23 two other exhibits that were stipulated to, I think
24 Ms. Anthony agreed, but they were mentioned and
25 discussed with Mr. Byerly and shown to the jury, but I

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1 don't think I formally moved to introduce them.

2 THE COURT: What are the exhibits?

3 MR. HOPKINS: Nos. 3 and 8.

4 THE COURT: Plaintiffs' Exhibits 3 and 8 are
5 admitted without objection.

6 (Plaintiffs' Exhibits 3 and 8 admitted.)

7 THE COURT: Before we bring the jury out, I
8 looked at the charge, and it goes back to the
9 statement you made, and there is no testimony of
10 anything that would warrant a vicarious liability
11 charge, and that is what -- the charge you handed me
12 referenced vicariously liable, and it doesn't have
13 anything to do with that.

14 MR. HOPKINS: Well, I don't see it as being
15 vicariously liability. I think it is direct
16 liability.

17 THE COURT: I understand he's directly liable for
18 failing to use due care. It doesn't have anything to
19 do with the contract. There is no evidence of what
20 the contractor did or didn't do that is negative, so
21 there is no need to charge that, is my point.

22 MR. HOPKINS: We would just like to state our
23 position on the record.

24 THE COURT: You think I should charge it is a
25 non-delegable duty?

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1 MR. HOPKINS: Yes, sir.

2 THE COURT: But he hadn't claimed that it is
3 delegated to anything; there is no evidence of that.

4 MR. HOPKINS: I understand.

5 THE COURT: Okay. So that's why I don't charge
6 things for which there is no evidence, but we'll make
7 that Court's Exhibit 1 (sic), and I've written the
8 cite for the case that I read.

9 (Court's Exhibit 2 marked.)

10 MR. HOPKINS: I would just ask this, Judge, since
11 Your Honor is saying there is no evidence of what the
12 contractors did, then we should expect there won't be
13 anything in closing argument by Mr. Anthony saying --

14 THE COURT: Oh, no, she can argue empty chair all
15 day long.

16 MR. HOPKINS: Well, then, I would think it is
17 unfair to have her say that the contractor did
18 something.

19 THE COURT: She could say he didn't do anything,
20 the contractor caused it. But, again, you can argue
21 he's responsible.

22 MR. HOPKINS: I understand, but then Your Honor
23 will not back me up and say that's the law. The law
24 says he's responsible, not --

25 THE COURT: I'm going to back you up by saying

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1 he's responsible to do the things that he's required
2 to do. He's not required to undo the contractor's
3 work. He's required to put them on notice of anything
4 the contractor has done that would be hazardous. He's
5 not required to come in and say, oh, no, that's not
6 the way to do that job.

7 MR. HOPKINS: I understand.

8 THE COURT: I don't believe.

9 Now, that brings about the point about whether we
10 have another party, a joint tortfeasor. I know you
11 settled as to one, but, as I recall, you said you had
12 a default -- one of them was placed in default?

13 MR. HOPKINS: No, sir. They never filed an
14 answer, so we moved to dismiss them.

15 THE COURT: Both of them, then? So there is only
16 one party?

17 MR. HOPKINS: Yes.

18 MS. ANTHONY: Well, I want to make sure that Your
19 Honor understands that one of them settled, and the
20 other is in default. He never moved for default
21 judgment, but they are in default, as they have never
22 answered.

23 THE COURT: Well, but, he's moved to dismiss that
24 party.

25 MS. ANTHONY: Right. Right. I just wanted to

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1 make sure.

2 THE COURT: So that party is no longer here.

3 MS. ANTHONY: Right. He's moved to dismiss them.

4 THE COURT: That's correct. So there is no joint
5 tortfeasor to appoint, apportion, in this case?

6 MS. ANTHONY: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. ANTHONY: I think the apportionment was just
9 as to after the fact.

10 THE COURT: As to the amount of the settlement.

11 MS. ANTHONY: Allocation, apportionment.

12 THE COURT: It is really not apportionment, it's
13 allocation, that is correct.

14 MS. ANTHONY: Yes, Your Honor.

15 THE COURT: In reading this again, it clearly --
16 we're not talking about improper repairs, we're
17 talking about dangerous, hazardous conditions; that is
18 what we're saying existed, that he didn't forewarn
19 them of it.

20 MR. CLAY HOPKINS: Yes, sir, Judge. And I think
21 our issue is with the Nedrow case is that the supreme
22 court has now said this is basically like an emergency
23 room, the liability is not delegable at all. So even
24 if -- I mean, I understand what Ms. Anthony's position
25 is and the Court's position is regarding this issue,

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1 but even if we had four tortfeasors in here, I think
2 the Nedrow case says the landlord has the liability.
3 You can point the fingers, but, ultimately, I bear the
4 responsibility for any of these.

5 THE COURT: The landlord has -- the landlord does
6 not have the liability to make it fool-proof or no
7 accident can happen; that's clearly the law. This it
8 is an invitee situation. What you are measuring here
9 is a contractor -- someone suing -- frankly, I need to
10 look at those cases. I wonder if it is not dealing
11 with improper workmanship that was done. Because,
12 here, it is not improper workmanship, it is changing
13 the condition of the premises, that he should have put
14 them on notice. However, it is -- I don't think there
15 is any evidence there was a latent defect; we agree
16 with that?

17 MR. CLAY HOPKINS: I agree with that, Judge.

18 THE COURT: All right. Because the only thing
19 he's responsible for warning them about are things
20 that are latent defects. Obvious, he's not
21 responsible for the obvious.

22 MR. CLAY HOPKINS: I think even we would agree.

23 THE COURT: And that is what I'm saying. He's
24 not responsible for the work because it is an obvious
25 condition. It has nothing to do with the work. It

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1 has to do with what the premises looked like.

2 MR. CLAY HOPKINS: I understand the Court's
3 position, Judge. I'm just -- the Nedrow case -- they
4 say a landlord who employs an independent contractor to
5 perform a duty, which the landlord owes to his tenant
6 to maintain the leased property in a reasonably safe
7 condition, is subject to liability to the tenant for
8 physical harm caused by the contractor's failure to
9 exercise reasonable care to make the leased property
10 safe. I'm reading from the Nedrow case.

11 THE COURT: I know you are. I'm telling you that
12 the Nedrow case deals with a water heater, improper
13 repair of a water heater and that caused damages. I
14 have no problem with that. I have no problem saying
15 if that was the case -- if we were talking about in
16 this case they had done repairs to the steps that were
17 broken, and someone stepped on the steps and, bam, the
18 steps collapsed, he's responsible under the Nedrow
19 case, because the work was done improperly. He can't
20 say that is someone else's responsibility. I'm
21 responsible for making the steps safe. That is what
22 Nedrow says to me. So we can agree to disagree on
23 that.

24 MR. CLAY HOPKINS: I understand the Court's
25 position.

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1 THE COURT: Thank you, Mr. Hopkins.

2 And Court's Exhibit 2 is noted for the record,
3 and that will be an exception to my charge.

4 What else?

5 MR. HOPKINS: Nothing from the plaintiff, Your
6 Honor.

7 THE COURT: Anything from the defendant?

8 MS. ANTHONY: Nothing from the defense, other
9 than I would renew our prior motion. I can't remember
10 if I did that at the close of the case. I wanted to
11 make sure that was on the record. Further, I
12 anticipate that we need to wait until after the
13 verdict to talk about motions for reallocation of
14 settlement funds?

15 THE COURT: Oh, yeah. We can't even get to that
16 until we get a verdict.

17 MS. ANTHONY: All right. I just wanted to make
18 sure I'm preserving anything that I need to.

19 THE COURT: For instance, I'm sending back two
20 verdict forms. One for her, and I just kept the
21 name -- I'm going to explain that this is her case
22 through him as a representative. We need to take off
23 -- yeah, and one for him. His is loss of consortium.
24 I'm going to tell them that, obviously, they can't
25 find anything for him unless they find something for

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1 her. We are all in agreement with that? It is
2 derivative damages, is what it amounts to, as I'm
3 understanding.

4 Because you pled comparative negligence, I'm
5 using the comparative negligence form the six
6 questions.

7 MR. HOPKINS: I haven't looked at it.

8 THE COURT: Sure. I think you have seen it. It
9 is negligence, proximate cause, combined total and
10 then damages. You are welcome to look at it. It is
11 not perfect, but it is worth it for 26 years.

12 (A pause in the proceedings as Mr. Hopkins
13 examines a document given by the Judge.)

14 MR. CLAY HOPKINS: Only other thing, Judge, it is
15 my fault, I didn't know how the Court was going to
16 handle the defendant addressing, but out of an
17 abundance of caution, we need to make a directed
18 verdict motion on both of the claims, not only the
19 negligence claim and the loss of consortium, but also
20 the directed verdict on the comparative negligence
21 issue.

22 THE COURT: Correct. And I note that. I would
23 rule for the same reason I'm ruling against her, that
24 this is a case that deals with whether or not -- it is
25 clearly -- when you look at the charge, he has the

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1 duty to use ordinary care, if he fails to do that, he
2 is negligent, but that doesn't mean he's not an
3 insurer; that is in my charge. And he's not
4 responsible for open and obvious and dangerous
5 conditions, and that is where we get to why we have to
6 deny both of them, I believe. But your motions are
7 noted and protected and preserved for purposes of
8 review. I deny both of them. It is a jury issue, for
9 sure.

10 All right. Let's bring in our jury. I'll tell
11 them in this particular case the Byerlys were
12 invitees, because I don't think there is any question
13 of that. We don't get into a definition of what an
14 invitee is, because there is no issue with that. So
15 I'll charge that they were. Any objection?

16 MS. ANTHONY: No, Your Honor.

17 THE COURT: And I know you want that status, I
18 assume, because we have been talking about it the
19 whole time?

20 MR. CLAY HOPKINS: Yes, sir, Judge.

21 MS. ANTHONY: No objection.

22 THE COURT: I was thinking about that last night.
23 Can't do it in a criminal case, but can in a civil
24 case. We spent a lot of time talking about it.

25 (The jury enters at 9:44 a.m, and the

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1 following is heard in the presence of the jury.)

2 THE COURT: Thank you, ladies and gentlemen. I
3 hope you had a good evening. We're ready to continue.
4 As you recall yesterday when we recessed, the
5 defendant had rested its case -- excuse me, the
6 plaintiff had rested his case -- or their case, and
7 the defendant also now confirmed they do not wish to
8 present any testimony.

9 Normally, we would have had gone through a
10 process of does the defense have additional witnesses?
11 No, we rest. And then I would have excused you and
12 had to deal with a matter of law, but we've taken care
13 of all of that so we don't have to send you back out.

14 So now we move into the two final portions, and
15 as you recall, when we started this matter, the
16 evidentiary portion is obviously what you will analyze
17 very shortly in deciding what you believe to be the
18 true facts, and that is a very critical part of this
19 process. But there is also a part where the attorneys
20 have a second opportunity to speak to you. They will
21 now discuss evidence and reasonable inferences that
22 you may draw from that evidence. I'm very confident
23 that you will find their remarks to be extremely
24 beneficial when you begin the process of analyzing the
25 evidence in this case and deciding what you find to be

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1 believable and credible.

2 After they completed theirs, I'll give you the
3 charge of the law. Again, that is something you have
4 to accept, and we'll talk about that more, to apply it
5 to the facts that you determine, and that is how we'll
6 resolve this case together.

7 Please understand and remember something:
8 Nothing that I say, nothing that they say in their
9 remarks should ever be considered as evidence, because
10 the evidence came through the testimony of the
11 witnesses that you heard during the trial.

12 Thank you for your attention. Please give your
13 attention now to the plaintiff as he begins his
14 closing. Thank you.

15 Mr. Hopkins.

16 MR. HOPKINS: Thank you, Your Honor. May it
17 please the Court?

18 THE COURT: Sorry for the darkness, folks.
19 Apparently, that is the way it is set up, so we'll
20 work through it.

21 The court reporter and I used to do this, and
22 they don't have an option in criminal cases, but in a
23 civil case, closing arguments are taken down by the
24 microphones. Do you want her to take your argument
25 down for the record?

JURY CHARGE

1 MR. HOPKINS: No, sir.

2 THE COURT: Ms. Anthony, do you?

3 MS. ANTHONY: No, Your Honor.

4 THE COURT: You may do so or not do so, it's your
5 option.

6 Excuse me for interrupting.

7 MR. HOPKINS: No, that's fine.

8 (Whereupon, closing arguments were give by
9 Mr. Hopkins and Ms. Anthony.)

10 THE COURT: Thank you.

11 Ladies and gentlemen, it now becomes my
12 responsibility to give you the law which you, of
13 course, have promised to accept and apply fairly and
14 impartially to the facts that you will determine very
15 shortly when you begin your deliberations.

16 Both the parties here, the Byerlys and
17 Mr. Wesley, have a right to expect that you will
18 carefully apply your commonsense, your sense of logic
19 and reason, analyzing the evidence and decide what you
20 find to be credible and believable, and then apply the
21 law. Once you have done that, then both sides will
22 have determined a fair and impartial verdict in this
23 process.

24 Under our constitution and law, only you can make
25 a determination or the factual finding in any case.

JURY CHARGE

1 To determine the facts of the case, you have to
2 evaluate the creditability and believability of each
3 witness. Because the fact that testimony in a case is
4 not contradicted directly, does not necessarily render
5 it undisputed. There will always remain the inherent
6 creditability or believability of what someone says,
7 and you have to apply that sense of logic and
8 commonsense factors that you have done in making those
9 determinations.

10 The -- what we use -- what factors we consider in
11 assisting us, there are many. I'll discuss some of
12 them with you now, but if I don't mention a method or
13 fact that you have used to assist you in evaluating
14 creditability or believability, please use it when you
15 begin your deliberations in this case.

16 Some of the factors would be the appearance of
17 the witness. How did they appear to you,
18 straightforward or hesitant in answering any
19 questions? Was the testimony of the witness
20 consistent, or was it inconsistent? Was it
21 strengthened or weakened by other evidence in the
22 case? How did the witness come to know the facts that
23 he or she testified to, and what was the ability of
24 that witness to know those particular facts or
25 circumstances? Is there a reason in the record of

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1 this case for a witness to give testimony which may be
2 helpful or detrimental to one side or the other? In
3 other words, was the witness biased or prejudiced in
4 any fashion?

5 In deciding the creditability or believability of
6 the witnesses, you are given very broad discretions.
7 You have the right to believe all of the witness'
8 testimony, parts of a witness' testimony or none of a
9 witness' testimony. You have the right to believe one
10 witness against many, or many witnesses against one.
11 Now, you have these rights and you have this
12 discretion because that is what you have promised to
13 do, but you don't make these decisions arbitrarily.
14 If there is a reason in the record for taking that
15 position of disregarding or disbelieving any portion,
16 you have that right because your objective since you
17 took your oath is to determine the truth or the source
18 of the evidence -- and the source of the evidence
19 means nothing.

20 As I mentioned to you, this is a case that is
21 based on the principle of negligence, and I'll discuss
22 the two common principles that apply to both the
23 plaintiffs' case and the defendant's claim -- excuse
24 my voice. I have contracted a Conway cold apparently,
25 and I apologize for the squeakiness of it. I

JURY CHARGE

1 apologize to you for that.

2 These two elements are present both in the
3 negligence case of the plaintiff, and the comparative
4 negligence of the defendant, and would apply the same.

5 First, I want to talk about what is negligence.

6 Negligence means that a person did not use the same
7 amount of care that a person of ordinary reason and
8 prudence would exercise under the same circumstance.

9 The party claiming an injury as a result of the
10 negligence of another must establish first a duty, and
11 then a breach of that duty. Thirdly, that there was
12 some damage or injury that was caused by that breach.

13 Negligence, as I've said throughout the common
14 reference, would be carelessness. When we say someone
15 is careless, that means they are negligent, or you
16 know they are synonymous as you are looking at this
17 evidence. It can be said that a negligent or careless
18 person has done something that a reasonable person
19 would not have done if faced with that same situation,
20 or, on the other hand, that person failed to do
21 something that a reasonable and prudent person would
22 have done, or it could be both. To determine whether
23 a particular act is negligent, you should compare that
24 act in the manner which a person of ordinary reason
25 and prudence, how would they have acted in this

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1 situation.

2 I would also instruct you that the mere fact that
3 an injury has been sustained, or that some accident or
4 some occurrence occurred, doesn't necessarily mean
5 negligence. It has to be -- you have to establish
6 that there was a failure or departure from an -- what
7 an ordinary reasonable and prudent person would have
8 done or not have done in that situation. There also
9 has to be -- in order for the plaintiff to prevail and
10 the defendant to prevail in the defense of comparative
11 negligence, there has to be evidence of proximate
12 cause. Proximate cause -- because even if you should
13 find the plaintiff or the defendant has proven
14 negligence on the part of the other, it still would
15 not be effective unless you find that the negligence
16 was a proximate cause of the plaintiff's injury. A
17 negligent act or omission need not be the sole cause
18 of an injury in order to be a proximate cause because
19 a given injury may result from multiple causes, and it
20 is enough if the negligent act complained of is at
21 least one of the causes without which the injury or
22 damage would not have occurred.

23 The law defines "proximate cause" of an injury to
24 be something that produced a natural chain of events
25 which, in the end, brings about the injury. In other

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1 words, proximate cause is the direct cause without
2 which the injury or damage would not have occurred but
3 for the negligence of that particular party, and that
4 the consequence, that is the occurrence, was
5 foreseeable.

6 Foreseeability is determined by looking into the
7 natural and the probable consequences of an act of
8 which someone is complaining. I charge you that
9 foreseeability of some injury from a negligent act is
10 a prerequisite to it being a proximate cause of the
11 injury, and the law requires in this respect only
12 reasonable foresight. That means simply this: When
13 the injury or damages are not reasonably foreseeable
14 and in the exercise of due care, there is no
15 liability. One is not charged with foreseeing that
16 which is unpredictable or which would not be expected
17 to have happened as a natural consequence of the
18 negligent act.

19 Foreseeability is also to be judged from the
20 perspective of the person at the time of the negligent
21 act, not after the injury or damage has occurred.
22 That is hindsight, and we know that hindsight is
23 always 20/20. You use it at the time of that
24 particular injury or damage. However, in order to
25 establish liability, it is not necessary that the

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1 party charged with negligence should have contemplated
2 the particular event that did occur. It would be
3 sufficient that the party should have foreseen that
4 the negligence would probably result in an injury or
5 damage of some kind to someone.

6 Now, let's look at where these two principles
7 apply in the cause of action. Basically, this is a
8 premises liability case. It deals with the owner, and
9 in this case the owner is synonymous with the
10 landlord. The occupier, which synonymous would be the
11 tenant. In this case, the tenant is deemed under our
12 law to be an invitee, meaning they came on with
13 permission, it was for mutual benefit and it could be
14 for the sole benefit of the owner, but it doesn't
15 matter because they occupy that position, and that
16 raises certain responsibilities on the part of the
17 owner, and we'll discuss those with you now.

18 A person owes an invitee the duty of
19 exercising -- the owner or occupier owes a duty to
20 exercise a reasonable or ordinary care for the safety
21 and care of the invitee, and it is liable for any
22 injury resulting for the breach of that duty. This
23 degree of care must be commensurate with particular
24 circumstances involved, including the age and capacity
25 of the invitee and other circumstances which you find

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1 important. This duty is active or affirmative duty.
2 It includes refraining from any act which may make the
3 invitee's use of the premises dangerous or result in
4 injury. The occupier of the premises further owes the
5 invitee the affirmative duty to use reasonable care to
6 discover any unreasonable dangerous conditions on the
7 premises, and then to either put the premises in a
8 reasonable safe condition for use in a manner
9 consistent with the invitation, or to warn the invitee
10 of the danger.

11 The precise manner in which the injuries might
12 have occurred does not have to be foreseeable. It is
13 sufficient that there is a greater than ordinary
14 danger of injury of which the owner knew or should
15 have had discovered by the use of ordinary care. The
16 degree of care exercised by the owner must be
17 commensurate with the particular circumstances
18 involved, including, of course, the age, capacity of
19 the invitee.

20 The duty is an active and affirmative duty and it
21 includes, as I stated, refraining from those
22 situations. The owner/occupier, however, is not an
23 insurer of the safety of his invitees. The duty is
24 only one to exercise reasonable care. An occupier is
25 not required to maintain -- the owner is not required

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1 to maintain the premises in such condition that no
2 accident could happen to an invitee using the
3 premises. Therefore, if a reasonable person would not
4 have been aware of the risk, or if the risk was not --
5 if the risk was not unreasonable, there is no
6 liability. An owner of the land is not liable to his
7 invitees for physical harm caused to them by any
8 activity or condition on the land whose danger is
9 known or obvious to them, unless the owner should
10 anticipate the harm despite such knowledge or
11 obviousness.

12 An invitee is expected to use reasonable care for
13 his or her own safety and to avoid obvious dangers,
14 but the owner may be liable for injuries to an invitee
15 despite an open and obvious defect if the owner should
16 have anticipated that the invitee would nevertheless
17 encounter the condition, or that the invitee was
18 likely to be distracted.

19 Now, I want to discuss with you this defense of
20 comparative negligence. At this point, both the
21 negligence of the owner, landlord and the proximate
22 cause, you are looking to the plaintiff, because the
23 plaintiff has the sole burden of proof on those
24 particular issues as it pertains to his and her cause
25 of action. Now we look for comparative negligence,

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1 and now that shifts to the defendant. That is his
2 responsibility to prove what I'm about to discuss with
3 you now.

4 In comparative negligence, as the name would
5 imply, would mean that you already determined by
6 considering the evidence that the plaintiff has met
7 his or her burden of proof as to the defendant's acts
8 or failure to act. Now we go to the comparative,
9 because, obviously, if you haven't found that, there
10 is nothing to compare. So we go to the same situation
11 now, and the negligence or comparative negligence
12 means exactly what I just defined negligence for you
13 and proximate cause. Basically, it is a principle of
14 law that says simply this: This accident or injury
15 occurred because of the combination of both of our
16 negligence. Of course the defendant starts out with
17 the premise I wasn't, but assuming for the purpose of
18 discussion that you are convinced, then the plaintiff
19 was also negligent. The combination of negligence
20 combined and concurred to cause the injury or damage.
21 This will be explained to you more and you'll get a
22 clearer view when I go over the verdict form with you.
23 It can be a complete defense if you find that the
24 plaintiff's negligence exceeded that of the defendant.
25 You will be having to assess and evaluate and assign,

JURY CHARGE

1 basically, a portion of the negligence, if you get to
2 this point, of each party. You are -- there are a
3 number of factors that you will consider in allocating
4 fault, and I'll discuss some of them with you now.

5 One would be whether the conduct was mere
6 inadvertence, or whether the party was aware of the
7 danger involved or reasonably should have been aware
8 of the danger involved.

9 Two, the seriousness of the risk created by this
10 conduct, including the number of persons in danger and
11 the potential seriousness of the injury.

12 Three, the nature or the goal that the party was
13 seeking to obtain by his or her conduct, and the need
14 to achieve that goal in that particular manner.

15 Four, a party's superior or inferior aptitude or
16 capacity, and his or her ability to realize and
17 eliminate the risk involved.

18 Five, the particular circumstances confronting
19 the party at the time of the conduct to have occurred.

20 Six, the relative closeness of the causal
21 relationship of the negligent conduct of the defendant
22 as it relates to the harm caused to the plaintiff and
23 any conscious failure to observe due care or conscious
24 indifference with respect to the rights and safeties
25 of others.

JURY CHARGE

1 Then, any other fact or circumstances which you
2 would deem appropriate in assessing in determining the
3 fault of each side.

4 As I said to you, this will be explained in the
5 verdict form. This can be a complete defense, or it
6 can affect the amount of the recovery on the part of
7 the plaintiff, which we'll discuss when I go over the
8 verdict form with you.

9 Now, looking at the last element, and this
10 element, of course, is applicable only if you have
11 found that the plaintiff has met the burden of proof;
12 that is, established that the defendant was negligent
13 or careless, and that that negligence or carelessness
14 proximately caused some injury or damage. If you
15 reached this determination, then you would consider
16 the element of damages. The damages that we're
17 dealing with here are known as "actual damages," and
18 they are also known as "compensatory damages," which
19 means to compensate the injured party, to put them in
20 the same position they were in prior to those damages
21 being sustained or received, insofar as that is
22 possible.

23 In determining the amount of compensation for the
24 damages as a result of the carelessness of the
25 defendant, it would be proper to consider any and all

JURY CHARGE

1 of the following: The expenses incurred for all
2 reasonable and necessary medical treatment. The
3 character of the injury with regard to how the injury
4 has impaired one's health or physical condition, and
5 the amount that would be necessary to make that
6 injured person whole. Pain and suffering, mental
7 distress, emotional distress, those are recognized by
8 our law as a material element of damage for which a
9 recovery may be had.

10 I would tell you that there is no market price,
11 there is no precise way of determining that. Our law
12 says that you are the sole judge of the facts. You
13 have to apply your commonsense and decide as to what
14 amount would be reasonable to compensate the plaintiff
15 for the pain and suffering that they've experienced
16 and sustained and established by a preponderance of
17 the evidence. That amount would be an amount you
18 would find to be fair, just and reasonable.

19 Also, the loss of enjoyment of life is also a
20 recognized element of damages for which compensation
21 may be obtained. Just as pain and suffering, there is
22 no market price. There is no precise way of
23 determining that. It is left to your judgment as to
24 what amount is fair, just and reasonable, assuming
25 that you find that the plaintiff has established that

JURY CHARGE

1 by a preponderance of the evidence.

2 Basically, loss of enjoyment of life is anything
3 that -- how does it impair and interfere with one's
4 daily activities and routines; in that, you can
5 consider their hobbies, family activities, social
6 life, et cetera.

7 Also, there is a cause of action which will be
8 separate. There will be a separate verdict form. It
9 is entitled "loss of consortium." The plaintiff,
10 Mr. Byerly, claims a loss of consortium because of the
11 injuries received by his spouse. The companionship
12 and society of a spouse are not articles of commerce
13 which can be weighed or measured, or bought and sold.
14 There is no expert testimony that is competent to
15 value that type of loss, but the plaintiff is entitled
16 to compensation for that loss. The amount of the
17 compensation is determined by you from the evidence
18 not -- not from evidence of value, but from your own
19 observation, experience, knowledge consciously applied
20 to the facts and circumstances of this case to
21 determine what amount is fair, just and reasonable to
22 compensate him for the loss of society, for the loss
23 of companionship and for how it has affected the
24 relationship.

25 If you find he's entitled to a verdict -- of

JURY CHARGE

1 course, in order to recover, you must first determine
2 that the plaintiff, Ms. Byerly -- the name is still
3 Ms. Byerly. Obviously, the action was filed at the
4 time she was living, but the fact that Mr. Byerly is
5 now the personal representative is not a factor for
6 your consideration. It is proper for the estate to
7 continue this action until it is concluded by your
8 vision. So, please, understand that you would have
9 found that Ms. Byerly was entitled to a verdict to
10 award him any loss of consortium. Because if you
11 don't find a verdict for him (sic), then he's not
12 entitled to any recovery because it is a derivative
13 action. It derives from the fact that she suffered an
14 injury, which was, in fact, determined to be
15 compensable by a jury in these cases.

16 Now, please remember something, you are the sole
17 judges of the facts in this dispute. You and I have
18 been working together. You are going to determine
19 that -- and you have very broad discretions as we've
20 discussed in what you find to be credible and
21 believable. But, please, remember that when it comes
22 to the law, you don't enjoy that kind of flexibility.
23 You have promised that you will accept the law as I
24 gave it to you, and apply that law fairly and
25 impartially to the facts that you are going to

JURY CHARGE

1 determine. You consider my charge as a whole. Don't
2 consider any one aspect of the charge, put any one
3 aspect of the charge, put any greater weight on any
4 other. The order in which we talked about things, I
5 had to put it in some order. Please, again, I
6 reiterate, nothing that I have said or done in this
7 case should be considered by you as a suggestion of
8 how you would resolve a factual dispute or factual
9 issue, because that is your job, and yours alone.

10 I'm going to leave you, but I'm going to go
11 through that room in a second. I want to explain the
12 verdict form.

13 (A brief pause in the proceedings.)

14 THE COURT: You, as the presiding juror, in just
15 a moment you all will be excused to begin your
16 deliberations. To assist you in recording your
17 verdict, I prepared verdict forms that I'll be sending
18 back to you. They are captioned -- and the caption
19 means nothing, it is just to facilitate the filing.
20 You are not to put any weight or emphasis on that.
21 One of them is basically questions. That is the one
22 that is for Ms. Susan Byerly. The other one says
23 "loss of consortium," and as I told you, that is
24 Mr. Byerly's cause of action, so it is separate and
25 apart.

JURY CHARGE

1 On Ms. Byerly's, you'll see the questions. They
2 are fairly consistent with what I just told you, but
3 let's go through them.

4 Question One: Do you find the defendant was
5 negligent? There are two options. The order in which
6 they appear means nothing. If yes, then you go to
7 Question Two; if no, stop and deliberate no further.
8 Why is that? Because the plaintiff has to prove each
9 element. If he failed to prove negligence, that is
10 it. That is as far as it goes. Assuming that the
11 answers is yes, Question Two says: Do you find the
12 defendant's negligence proximately caused the
13 plaintiff's injury? That is that second element that
14 they have to establish. Was it a direct cause, a
15 cause without which the injuries and the damage would
16 not have occurred? If the answer is yes, go to
17 Question Three; if no, stop and deliberate no further.
18 Why? Because she has to prove both of them, that the
19 injury or damage that she's complaining of was caused
20 by the carelessness.

21 Three says: Do you find the plaintiff was
22 negligent? That is shifting now. That is that
23 comparative negligence we talked about. In that case,
24 you would be looking to the defendant to establish
25 these next two. If the answer is yes, go to Question

JURY CHARGE

1 Four; if no, go to Question Six. Question Six is one
2 that we'll talk about in a minute. It is the damages
3 matter. Before you get to that, you have to deal with
4 these questions.

5 Question Four says: Do you find the plaintiff's
6 negligence proximately caused the injury? If it is
7 yes, go to Question Five; if no, go to Question Six,
8 again, to damages.

9 Question Five is that portion I said you will
10 have to make an allocation of fault, because at that
11 point, you now have determined that both sides are
12 careless, and their carelessness was combined to cause
13 the injury or damage.

14 Question Five is like back to grammar school
15 math. It says: Plaintiff's negligence, blank,
16 percent. Defendant's negligence, blank, percent.
17 Total: 100 percent.

18 So you'll assess it in using those factors we
19 talked about and any other factors you find are
20 important, if you get to this point. You write in
21 what percentage you believe to be attributable to each
22 party.

23 If the negligence of the plaintiff is greater
24 than the defendant, then this says stop and deliberate
25 no further; if it is not greater, then you go onto

JURY CHARGE

1 Question Six.

2 Question Six says: Please state the total amount
3 of damages, if any, sustained by the plaintiff.

4 What does that mean? You are now looking at the
5 damage elements we talked about, and what are you
6 convinced that the plaintiff most probably has
7 established by the evidence that she suffered, and
8 then you write in a figure. You see there is a line
9 and then parentheses and a dollar. On the line, you
10 write it in words. Between the parentheses, you put
11 numbers, whatever that is. Then, once you have done
12 that, date it, sign it and you would have completed
13 that form.

14 The next form is loss of consortium. That is the
15 action that Mr. Byerly, alone, has. You won't even
16 touch this one until you have completed this one and
17 you have awarded the plaintiff damages. Let me also
18 mention something to you. If you put any negligence
19 attributed to her, do not make any deduction on the
20 damages. I want the whole amount of damages. As a
21 matter of law, it's for me to take that percentage and
22 reduce the damages by that percentage, but I don't
23 want you to reduce it. I reduce it. I need -- if you
24 determine that she's entitled to a damage figure, I
25 need the full amount of damage. I'll make the

JURY CHARGE

1 mathematical computation based on your decision.

2 This has nothing to do with this one (indicates),
3 other than the fact you can't get to his unless you
4 find she's entitled to damages in the first place.
5 Simply put, there is two choices: Find for the
6 plaintiff in the amount of blank dollars, and the same
7 way, you write first in words and then in numbers.
8 Or, you find for the defendant. What will you be
9 saying on that? You're saying that he didn't
10 establish that he sustained any damage of loss of
11 consortium by the preponderance or greater weight of
12 the evidence. That would be the basic reason that you
13 would ever put defendant. Otherwise, you put in the
14 amount, sign it and place the date. Once you filled
15 out both of them, we'll return you back.

16 What does it mean to put any number or check any
17 box? It means that all 12 of you agree. You have to
18 agree 100 percent. Eleven to one won't work. So I
19 know you are anxious to get started, and we're almost
20 there. I need to talk about my charge with the
21 attorneys. It may be necessary that I will have to
22 excuse you to accomplish that, but if there are not
23 any additions or corrections that need to be made,
24 we'll gather the exhibits and the verdict form and
25 deliver them to you. When you receive the verdict

JURY QUESTION

1 forms and the exhibits, then you may commence your
2 deliberations.

3 The only restriction that I place on the
4 deliberations is this: If at any point any juror has
5 to leave the table for any reason, you must stop
6 deliberating until all 12 of you are together. Other
7 than that, folks, you proceed as you deem fair and
8 proper.

9 Thank you for your attention. Please retire to
10 your jury room and wait for the exhibits before
11 commencing your deliberations.

12 (The jury exits at 11:09 a.m., and the
13 following is heard out of the presence of the jury.)

14 THE COURT: Any exceptions or additions from the
15 plaintiff other than the charge we've already marked
16 as a Court's exhibit?

17 MR. HOPKINS: None other than that one, Your
18 Honor, thank you.

19 THE COURT: Any --

20 MS. ANTHONY: No, Your Honor.

21 THE COURT: Thank you. It's been a pleasure to
22 work with you. Sorry for my voice today.

23 (Jury deliberations start at 11:12 a.m.)

24 (Court's Exhibit 3 marked.)

25 THE COURT: Houston, we have a problem.

JURY QUESTION

1 Questions: Did the daughter leave the house at
2 any time on 10/12/16?

3 Question Two: Did daughter leave the house at
4 any time in her car on 10/12/16?

5 Was that car shown in the video?

6 Three: What was the time of sunrise on 10/13?

7 And Four: What time did Mr. Tom leave the
8 property on 10/12?

9 My response to all of these questions will be
10 that that is a matter for you to determine from the
11 evidence. I don't know what the answers are. I can't
12 suggest the answer. All I can suggest -- I don't know
13 the importance of any of those, but you have to weigh
14 and assess and determine what you find to be credible
15 and believable in determining whether or not either
16 party has met the burden of proof required of them; as
17 to the plaintiff to his and her main cause of action,
18 defendant as to his affirmative defense. That is
19 generally what I would tell them. Any objection or
20 suggestion?

21 MR. HOPKINS: None from the plaintiff.

22 THE COURT: Bring them in. At least you didn't
23 have the one I had about six or seven months ago:

24 Question: What do we do now? (Laughing)

25 (The jury enters at 12:25 p.m., and the

JURY QUESTION

1 following is heard in the presence of the jury.)

2 THE COURT: Thank you very much, ladies and
3 gentlemen. I have what is now Court's Exhibit 3. It
4 contains four questions. I don't need to read them;
5 you all wrote them down. I have shared them with the
6 parties and their clients. Those are good questions
7 that you would be asking each other. I can't help
8 you, because if I do, then I'm participating in that
9 process. That is what you have to determine. The
10 answers to these questions, you have to determine
11 based on the evidence that you have to consider.

12 I don't know the significance of those questions
13 insofar as anyone's mind. I'm not suggesting anything
14 as to whether they are significant or insignificant.
15 The weight to be given to the answers are yours, and
16 yours alone. I will tell you this. I would remind
17 you that each party -- as you know, the plaintiff has
18 brought this claim of action -- they have to prove
19 three critical elements: Negligence, damage and
20 proximate cause to recover. I don't know what these
21 have to do with any of those, if at all, but you have
22 to assess whether or not the plaintiff met the burden
23 of proof on his and her case.

24 Same with respect to the defendant. He pled and
25 said comparative negligence. He bears the burden of

JURY QUESTION

1 proof as to each of those -- the elements that the
2 plaintiff was also negligent and proximately caused
3 their own injury.

4 If these questions have anything to do with that,
5 you have to determine the weight and the creditability
6 and assess all of that with the understanding that he
7 has the burden of proving it. If either party fails,
8 then they fail to meet the burden of proof. But that
9 is for you to determine based on the evidence you have
10 and the reasonable inferences you may draw from that
11 evidence as has been discussed by both sides in their
12 openings and closings.

13 With that additional instruction, retire to the
14 jury room and resume your deliberations.

15 (The jury exits at 12:28 p.m., and the
16 following is heard out of the presence of the jury.)

17 THE COURT: Any exceptions or additions from the
18 plaintiff?

19 MR. HOPKINS: No, sir.

20 THE COURT: From the defendant?

21 MS. ANTHONY: No, Your Honor.

22 THE COURT: I'm a country boy, and I ain't the
23 brightest kid on the block, I assure you, but from the
24 testimony, if they said it was dark, then the sun
25 didn't rise. If it was 11 o'clock, as you have

VERDICT

1 alleged, the sun generally is, I think, have risen.
2 But maybe I am not able to deduce too much. Thank
3 you. We'll be at ease.

4 (Jury deliberations continue.)

5 THE COURT: We've got a verdict. You can bring
6 them in.

7 (The jury enters at 1:12 p.m., and the
8 following is heard in the presence of the jury.)

9 THE COURT: Thank you very much, ladies and
10 gentlemen. As I understand it, the jury has reached a
11 verdict, sir?

12 FOREPERSON: Yes.

13 THE COURT: If you would, pass it to Mr. Ropp,
14 please.

15 The verdict form has been completed. If you
16 will, publish it for me.

17 THE CLERK: Mr. Foreman, have you reached a
18 verdict?

19 FOREPERSON: Yes.

20 THE CLERK: State of South Carolina, County of
21 Horry, Susan B. Byerly and John Byerly versus Thomas
22 Wesley, in the Court of Common Pleas, Case No.:
23 2017-CP-26-2880.

24 Do find the defendant was negligent? No.

25 Ladies and gentlemen of the jury, if this is your

VERDICT

1 verdict, please signify by raising your right hand.

2 THE COURT: Let the record reflect each juror
3 raised his or her right hand in response to the
4 clerk's question.

5 Anything further from the plaintiff for the jury?

6 MR. HOPKINS: No, sir, Your Honor.

7 THE COURT: Anything from the defendant?

8 MS. ANTHONY: No, Your Honor.

9 THE COURT: Thank you so much for your
10 assistance. I apologize for my raspy voice. I hope
11 you have a wonderful day. I understand you have a meal
12 waiting for you, please enjoy. You have finished your
13 service this week, and you have earned an exemption
14 for the next three years. If you -- if I happen to be
15 holding court in the next three years and you get
16 picked, you can say, look here, you remember I worked
17 with you and your terrible voice I had to put up with?
18 I want to be excused. I'll be happy to excuse you.
19 If you choose to work, I'll look forward to working
20 with you again. Have a great day. You are free to
21 leave. You may talk about this case if you want to,
22 but you don't have to.

23 (The jury exits at 1:14 p.m., and the
24 following is heard out of the presence of the jury.)

25 THE COURT: Anything further from the plaintiff?

VERDICT

1 MR. HOPKINS: Yes, sir, Your Honor. Plaintiff
2 would make two motions, one for JNOV and one under the
3 13th Juror Doctrine, Your Honor. We believe that
4 the evidence supports -- or does not support the jury
5 verdict.

6 THE COURT: Mr. Hopkins, I appreciate it. I have
7 granted one in -- 13th juror once. I don't think
8 I've ever done a JNOV, but I did do a 13th juror. I
9 think the real question was that part that I read, and
10 you argued it correctly. He can't create a dangerous
11 condition. And then the part that says an open and
12 obvious danger. It is a matter of what they found a
13 reasonable person would do. So I respect your motion,
14 but respectfully deny it, sir. Thank you very much.
15 I have nothing to reassess or apportion now, so this
16 matter is concluded. Thank you. Good luck to
17 everyone, I appreciate it.

18 (Whereupon, the case concluded in the matter of
19 Susan and John Byerly versus Thomas Wesley.)
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23
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PATIENT NO: 1036304912 GRAND STRAND REG MED CTR BILLING DATE PAGE 1 00104
 MED REC NO: 684228 809 82ND PARKWAY 10/17/16
 GUARANTOR NO:
 PATIENT: MYRTLE BCH SC 295724607 ADMITTED DISCHARG
 BYERLY SUSAN B 10/13/16 10/13/1

PAY TO ADDRESS: GRAND STRAND REG MED CTR
 PO BOX 402724
 ATLANTA
 GA 303842724

BILL TO:
 BYERLY SUSAN B EMERGENCY FC=08
 6211A BLYNN DR ADMIT THRU DISCHARGE CLAIM
 MYRTLE BEACH SC
 29572

DATE OF SERVICE	BATCH REF	F DEPT S	PROC	NDC/CPT-4/ HCPCS	QTY	SERVICE DESCRIPTION	CHARGES	
259-PHARMACY - OTHER								
101316	13B969	0712	900789		1	ACET & COD-#3 TAB	18.00	
							SUBTOTAL:	18.00
320-RADIOLOGY DIAGNOSTIC								
101316	13B971	0728	413811	73610LT	1	XR ANKLE 3 + V LT	445.00	
101316	13B971	0728	413792	73562LT	1	XR KNEE 3 V LT	238.00	
							SUBTOTAL:	683.00
324-XRAY								
101316	13B971	0728	413675	71020	1	XR CHEST 2 V	352.00	
							SUBTOTAL:	352.00
450-EMERGENCY ROOM								
101316	14WA15	0780	423144		1	PROCEDURE CATEGORY 1	331.00	
101316	14WAIS	0780	418661	99283	1	EMER DEPT LEVEL 3	1656.00	
							SUBTOTAL:	1987.00
TOTAL ANCILLARY CHARGES							3040.00	
TOTAL CHARGES							3040.00	
PAYMENTS							.00	
ADJUSTMENTS							.00	
BALANCE							3040.00	

INSURANCE BENEFITS ASSIGNED TO GRAND STRAND MEDICAL CT



PLAINTIFF_00001

PATIENT NO:	1036304912	GRAND STRAND REG MED CTR	BILLING DATE	PAGE	2	00104
MED REC NO:	684228	809 82ND PARKWAY	10/17/16			
GUARANTOR NO:						
PATIENT:		MYRTLE BCH	SC 295724607	ADMITTED		DISCHARG
BYERLY SUSAN B				10/13/16		10/13/1

DEPARTMENTAL CHARGE SUMMARY

DEPT	DESCRIPTION	AMOUNT
0712	PHARMACY	18.00
0728	RADIOLOGY DIAGN	1,035.00
0780	EMERGENCY ROOM	1,987.00

TOTAL CHARGES:	3,040.00
TOTAL PAYMENTS:	.00
TOTAL ADJUST:	.00

PLAINTIFF_00002

Grand Strand Regional Medical Center
809 82nd Parkway, Myrtle Beach, South Carolina 29572 (843) 692-1000

ACCOUNT#: F01036304912 ADM DATE: 10/13/16 UNIT RCRD #: F000684228 ARRIVAL: WI
ROOM/BED: ADM TIME: 1250 MARKET URN: F572938 CONF: VIP:
PT. TYPE: DEP ER ADMIT PRI/SRC: EM / PR LOCATION(S): F.EDCM PC: 08
NAME: BYERLY, SUSAN B OTHER NAME:
STREET: 6211A BLYNN DR DOB: 03/12/1963 SS#: XXX XX-6230
STREET: AGE: 53 RACE: WHITE/CAUC
C/S/ZP: MYRTLE BEACH, SC 29572 SEX: F MAR STATUS: M
PHONE#: (843) 945-4507 CNTY/RES: 026 REL: CHRISTIAN LANG: ENGLISH
PHONE2: (843) 582-2339
EMAIL:
S.P.O.U. STEW/ENOK/K/K/CO M P A N I O N P I E R S O N N O T O T E L E Y
BYERLY, JOHN BYERLY, JOHN
6211A BLYNN DR 6211A BLYNN DR
MYRTLE BEACH, SC 29572 MYRTLE BEACH, SC 29572
(843) 945-4507 RELTN: SPOUSE (843) 945-4507 RELTN: SPOUSE
WORK PH: (843) 283-0280 WORK PH: (843) 283-0280
G.U.A.R.A.N.T.O.R. R.E.M.P.L.O.Y.E.R. G.U.A.R.A.N.T.O.R.
COASTAL CAROLINA UNIVERSITY BYERLY, SUSAN B
HWY 501 6211A BLYNN DR
MYRTLE BEACH, SC 29572
(843) 421-9711 OCC: CUSTODIAN (843) 945-4507 RELTN: SELF
G.U.A.R.A.N.T.O.R. R.E.M.P.L.O.Y.E.R. OCCURRENCE CODES : CONDITION CODES
COASTAL CAROLINA UNIVERSITY 05 10/13/16
HWY 501
CONWAY, SC 29526
(843) 421-9711
G.U.A.R.A.N.T.O.R. R.E.M.P.L.O.Y.E.R.
COASTAL CAROLINA UNIVERSITY
HWY 501
CONWAY, SC 29526
(843) 421-9711
PRIMARY: [REDACTED] SECONDARY: TERTIARY:
POLICY #: POLICY #:
COVERAGE #: COVERAGE #:
INS PHONE #: INS PHONE #:
GRP#: GRP#:
AUTH #: AUTH #:
AUTH DT: VER DT: AUTH DT: VER DT:
SUB: SUB:
RELAT: DOB: RELAT: DOB:
ADM: PCP: LINJE Lindaberry, Jeffrey S DO
HCS: 2131 (843) 903-9993
ATT: REF: SELF SELF REFERRED
HCS: 9715
ER: FALJA Falkowitz, Jamie S DO, 6782
REASON FOR VISIT/CHIEF COMPL: FELL DAZED

COMMENTS: SEE NOTES
PRT BY: R.HIM.RXP ON: 10/13/16 2246

ADVANCE DIRECTIVE: No: Info Offered/Accepted
DISCH DATE: 10/13/16 TIME: 1436 DISPO: HOM



Grand Strand Regional Medical Center
809 82nd Parkway, Myrtle Beach, South Carolina 29572 (843)692-1000

ACCOUNT#: F01036304912 ADM DATE: 10/13/16 UNIT RCRD #: F000684228 ARRIVAL: WI
ROOM/BED: ADM TIME: 1250 MARKET URN: F572938 CONF: VIP:
PT. TYPE: DEP ER ADMIT PRI/SRC: EM / PR LOCATION(S): F, EDCM FC.08

NAME: BYERLY, SUSAN B
STREET: 6211A BLYNN DR
STREET:
C/S/ZP: MYRTLE BEACH, SC 29572
PHONE#: (843)945-4507 CNTY/RES: 026
PHONE2: (843)582-2339

OTHER NAME:
DOB: 03/12/1963 SSN: XXX-XX-6230
AGE: 53 RACE: WHITE/CAUC
SEX: F MAR STATUS: M
REL: CHRISTIAN LANG: ENGLISH

EMAIL:
BYERLY, JOHN
6211A BLYNN DR
MYRTLE BEACH, SC 29572
(843)945-4507 RELTN: SPOUSE
WORK PH: (843)283 0280
COASTAL CAROLINA UNIVERSITY
HWY 501

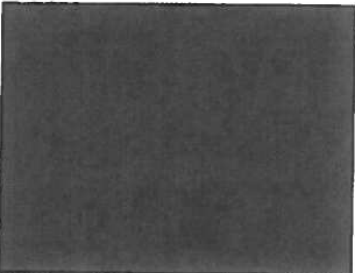
BYERLY, JOHN
6211A BLYNN DR
MYRTLE BEACH, SC 29572
(843)945 4507 RELTN: SPOUSE
WORK PH: (843)283 0280
BYERLY, SUSAN B
6211A BLYNN DR

CONWAY, SC 29526
(843)421 9711 OCC. CUSTODIAN
COASTAL CAROLINA UNIVERSITY
HWY 501

MYRTLE BEACH, SC 29572
(843)945-4507 RELTN: SELF
"OCCURRENCE CODES"
C5 10/13/16

CONWAY, SC 29526
(843)421 9711

INSURANCE INFORMATION
PRIMARY: [REDACTED] SECONDARY: TERTIARY:



POLICY #:		POLICY #:	
COVERAGE #:		COVERAGE #:	
INS PHONE #:		INS PHONE #:	
GRP#:		GRP#:	
AUTH #:		AUTH #:	
AUTH DT:	VER DT:	AUTH DT:	VER DT:
SUB:		SUB:	
RELAT:	DOB:	RELAT:	DOB:

ADMISSION INFORMATION / DISCHARGE INFORMATION
ADM: PCP: LINJE Lindaberry, Jeffrey S DO
HCS: HCS: 2131 (843)901-9991
ATT: REF: SELF SELF REFERRED
HCS: HCS: 9715
ER: FALJA Falkowitz, Jamie S DO, 6782
REASON FOR VISIT/CHIEF COMPL: FELL-DAZED

COMMENTS: SEE NOTES
PRT BY: R.QV.KHL CN: 10/13/16 2306

ADVANCE DIRECTIVE No Info Offered/Accepted
DISCH DATE: 10/13/16 TIME: 1436 DISPO: HOM



GRAND STRAND REGIONAL MEDICAL CENTER (COCQV)
EMERGENCY PROVIDER REPORT
REPORT#:1013-0537 REPORT STATUS: Signed
DATE:10/13/16 TIME: 1255

PATIENT: BYERLY, SUSAN B
ACCOUNT#: F01036304912
AGE: 53 SEX: F
S DO

UNIT #: F000684228
ROOM/BED: F.EDCM
PCP PHYS: Lindaberry, Jeffrey

SERVICE DT: 10/13/16
Joseph NP

AUTHOR: Griggs, Brian

REP SRV DT: 10/13/16

REP SRV TM:1255

* ALL edits or amendments must be made on the electronic/computer document *

GRIGGS, BRIAN 10/13/16 1255:
HPI-Extremity Prob Lower

Presentation

Chief Complaint Knee problem L, Ankle problem L

Hx Obtained From Patient

Caused by Accidental, Fall on ground

Timing of Trauma

Date of Trauma 10/13/16

Time of Trauma 1100

Context: Occurred at Home injury

Location Knee L, Ankle L

Quality Aching, Dull

Severity: Onset Mild

Severity: Current Mild

Exacerbated by Range of motion

Relieved by Nothing

Free Text HPI Notes

Free Text HPI Notes

pt states she tripped over some yard debris at her house

Review of Systems

ROS Statements

All systems rev & neg except as marked.

Focused Review of Systems

Musculoskeletal

Reports: Extremity pain, Extremity swelling.

Past Medical History - Adult

Stated Complaint FELL-DAZED

Allergies

Patient: BYERLY, SUSAN B
Unit#: F000684228
Date: 10/13/16
Acct#: F01036304912

Coded Allergies:

2013/14 - HAD SEASONAL FLU VACCINE (. 01/08/14)
2014 - Had Pneumococcal vaccine (. 01/08/14)
No Known Allergies (NONE 01/06/14)

Home Medications

Active Scripts

MAG HYDROX/AL HYDROX/SIMETH 400-400-40 MG/5ML (MAALOX MAX) 30 ML PO
Q4H PRN PRN FLATUS

#1000 ML

Prov: 09/04/14

PANTOPRAZOLE (PROTONIX) 40 MG PO DAILY

#30

Prov: 09/04/14

CALCIUM CARBONATE (TUMS) 1 TAB PO Q6H PRN PRN indigestion

#60 TAB

Prov: 09/04/14

Reported Medications

QUetiapine XR (SEROquel XR) 300 MG PO DAILY

QUetiapine (SEROquel) 200 MG PO DAILY

ZOLPIDEM (AMBIEN) 10 MG PO BEDTIME

PARoxetine (PAXIL) 40 MG PO DAILY

clonazepam (Klonopin WAFER) 1 MG PO BID

Discontinued Reported Medications

QUetiapine (SEROquel) 300 MG PO DAILY

X Review of Nursing Notes Rev avail, and agree

Additional Medical History

COPD, hypoglycemia

Patient History

MOTHER

FATHER

FATHER

MOTHER

Relation not specified for:

Family History: Cancer

Family History: Heart disease

Alcohol Use Occasional

Patient: BYERLY, SUSAN B
Unit#: F000684228
Date: 10/13/16
Acct#: F01036304912

Smoking status for patients 13 years old or older: Current some day smoker

Physical Exam

Initial Vital Signs

Vital Signs

First Documented:

	Result	Date	Time
Pulse Ox	98	10/13	1252
B/P	151/68	10/13	1252
Temp	97.6	10/13	1252
Pulse	95	10/13	1252
Resp	16	10/13	1252

Last Documented:

	Result	Date	Time
Pulse Ox	98	10/13	1252
B/P	151/68	10/13	1252
Temp	97.6	10/13	1252
Pulse	95	10/13	1252
Resp	16	10/13	1252

Initial VS Reviewed

Focused PE

General/Const

General/Const Awake, Alert, Well appearing

Resp/Chest

Respiratory/Chest Breath sounds NL, Breath sounds = bilat, No respiratory distress, No rales, No rhonchi, No wheezing, No retractions, No stridor, No chest wall deformity, No crepitus

Chest Wall/Ribs

Chest tender lower L.

Cardiovascular

Cardiovascular Heart rate NL, Regular rhythm, Heart sounds NL, Peripheral circulation NL

Lower Extremities**

Lower Ext/Pelvis/MS Inspection NL, Full range of motion, No swelling, No erythema, No deformity, Neurologic intact, Vascular intact, No ligamentous injury, Tendon function NL, No compartment syndrome, No circumferential injury, No edema, Gait NL, Pelvis stable, Pelvis non-tender

Patient: BYERLY, SUSAN B
Unit#: F000684228
Date: 10/13/16
Acct#: F01036304912

Left Knee

Tenderness present (achy). Negative: Swelling present, Ecchymosis present, Erythema present, Warmth present, ROM reduced, ROM painful, Joint effusion present, Pre-patellar effusion, Patella tender, Patella dislocated, Anterior drawer test pos, Lachman's test positive, Lateral collat lig tender, Medial collat lig tender, Deformity present, Open fracture present, Pulse popliteal absent, Pulse popliteal decreased, Pulses distal absent, Pulses distal decreased, Neuro deficit present.

Ankle/Foot **

Ankle/Foot No erythema, No deformity, Neurologic intact, Vascular intact, No ligamentous injury, Tendon function NL, No compartment syndrome, No circumferential injury, No edema, Gait NL

Left Ankle

Swelling present, Tenderness present, Tender lateral malleolus, ROM reduced.

Skin

Skin Color NL, Warm, Dry, Intact, Turgor NL, No swelling

Neurologic

Neurologic Oriented X3, Speech NL, No motor deficits, No sensory deficits

Additional PE

Head/Eyes

Head/Eyes Atraumatic, Normocephalic, PERRL, EOMI, No nystagmus, No periorbital redness, No periorbital swelling, No photophobia, No scleral icterus, Conjunctiva NL, Cornea clear, No corneal abrasion, Seidel test negative, Eyelids NL, Fundi NL, Temporal arteries NL, Visual acuity NL

Neck

Neck Atraumatic, Supple, No meningismus, Full range of motion, No adenopathy, No swelling, Non-tender, No midline vertebral tend, No masses, No crepitus, No JVD, No carotid bruit, Thyroid NL, No tracheal deviation

Abdomen/GI

Abdomen/GI Atraumatic, Soft, Non-tender, McBurney's non-tender, No guarding, No rebound, BS normoactive, No distention, No hernia, No palpable mass, No pulsatile mass

Back

Back Atraumatic, Inspection NL, Full range of motion, Painless range of motion, Non-tender, No midline vertebral tend, No paraspinal tenderness, No muscle spasm, Straight leg raise neg, No CVA tenderness

Interpretation & Diagnostics

Lab Results Interpretation

Results

Recent Impressions:

Patient: BYERLY, SUSAN B
Unit#: F000684228
Date: 10/13/16
Acct#: F01036304912

RADIOLOGY - CHEST PA & LAT 10/13 1315

*** Report Impression - Status: SIGNED Entered: 10/13/2016 1344

Impression: No acute intrathoracic injury is detected.

Impression By: PHY.DALJO - JOHN J. DALY, MD

RADIOLOGY - KNEE COMPLETE 3 VIEWS, LEFT 10/13 1315

*** Report Impression - Status: SIGNED Entered: 10/13/2016 1345

Impression: There does appear to be inferior nonarticular patellar osseous fragmentation present without acute left knee osseous lesion.

Impression By: PHY.DALJO - JOHN J. DALY, MD

RADIOLOGY - ANKLE 3V LEFT 10/13 1315

*** Report Impression - Status: SIGNED Entered: 10/13/2016 1347

IMPRESSION:

Potential tiny avulsion from the lateral malleolus. Ankle mortise appears intact.

Impression By: PHY.DALJO - JOHN J. DALY, MD

Procedures

Splint Applic - Fx Mgmt #1

Time 1421

Procedure Performed by Nurse

Precise Anatomic Location

Patient: BYERLY, SUSAN B
Unit#: F000684228
Date: 10/13/16
Acct#: F01036304912

left ankle

Type of Immobilization Ortho-glass, Posterior short leg

Definitive Fracture Care Pain control, Buddy tape, Splint

Post-Procedure/Complications Cap refill normal, Post splint vascular nl, Post splint neuro nl, Condition improved, Tolerated procedure well, Patient stable

Splint Post-Applic Eval #1

Time 1421

Procedure Performed by Nurse

Extremity Condition Cap refill < 2 sec, Distal sensation intact, Distal motor Intact, No compartment syndrome

Re-Evaluation & MDM

ED Course

Medication(s) Ordered

Medication(s) Ordered:

Central Nervous System Agents

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Acetaminophen/ Codeine Phosphate	1 TAB	X1ED ONE PO	10/13 1300 10/13 1301	DC	10/13 1305

Patient Discharge & Departure

Vital Signs/Condition

Vital Signs

First Documented:

	Result	Date	Time
Pulse Ox	98	10/13	1252
B/P	151/68	10/13	1252
Temp	97.6	10/13	1252
Pulse	95	10/13	1252
Resp	16	10/13	1252

Last Documented:

	Result	Date	Time
Pulse Ox	98	10/13	1252

Patient: BYERLY, SUSAN B
Unit#: F000684228
Date: 10/13/16
Acct#: F01036304912

B/P	151/68	10/13	1252
Temp	97.6	10/13	1252
Pulse	95	10/13	1252
Resp	16	10/13	1252

All vital signs available at the time of this entry have been reviewed.

Condition Stable

Clinical Impression

Clinical Impression

Primary Impression: Fracture of left ankle, lateral malleolus

Secondary Impressions: Multiple contusions

Disposition Decision

Discharge

- (Discharged to Home Yes
- (Time 1410
- (Date 10/13/16

Discharge/Care Plan

Counseled Regarding Diagnosis, Imaging studies, Prescriptions, Need for follow-up, When to return to ED

Prescriptions

tylenol #3

Prescriptions Reviewed Risks, Benefits, Alternative treatment

Discharge Note

I have spoken with the patient and/or caregivers. I have explained the patient's condition, diagnoses and treatment plan based on the information available to me at this time. I have answered the patient's and/or caregiver's questions and addressed any concerns. The patient and/or caregivers have as good an understanding of the patient's diagnosis, condition and treatment plan as can be expected at this point. The vital signs have been stable. The patient's condition is stable and appropriate for discharge from the emergency department.

The patient will pursue further outpatient evaluation with the primary care physician or other designated or consulting physician as outlined in the discharge instructions. The patient and/or caregivers are agreeable to this plan of care and follow-up instructions have been explained in detail. The patient and/or caregivers have received these instructions in written format and have expressed an understanding of the discharge instructions. The patient and/or caregivers are aware that any significant change in condition or worsening of symptoms should prompt an immediate return to this or the closest emergency department or a call to 911.

Patient: BYERLY, SUSAN B
Unit#: F000684228
Date: 10/13/16
Acct#: F01036304912

Extremity Inj Discharge Note

The patient is discharged home with supportive care, a plan for pain control, and follow-up instructions that detail what to expect over the next 48 hours and what symptoms should prompt immediate return to the ED, including the symptoms of compartment syndrome. Follow-up instructions have been explained in detail to the patient, and the instructions have been provided in written format. The patient is comfortable with the plan of care and has expressed an understanding of the discharge instructions. The patient is aware that any significant change in condition or worsening of symptoms should prompt an immediate call to the primary or designated physician. If that is not successful the patient should call or return to this or the closest emergency department or call 911.

**FALKOWITZ, JAMIE S 10/15/16 0943:
HPI-Extremity Prob Lower**

General

Initial Greet Date/Time 10/13/16 1255

Physical Exam

Initial Vital Signs

Vital Signs

Interpretation & Diagnostics

**Lab Results Interpretation
Results**

Patient Discharge & Departure

Vital Signs/Condition

Vital Signs

Supervising Physician Note

MidLv Saw Pt Alone

Page 8 of 9

Patient: BYERLY, SUSAN B
Unit#: F000684228
Date: 10/13/16
Acct#: F01036304912

I was available for consultation as needed at all times during the patient's visit in the emergency department.

Electronically Signed by Griggs, Brian Joseph NP on 10/13/16 at 1426
Electronically Signed by Falkowitz, Jamie S DO on 10/15/16 at 0943

RPT #: 1013 0537
END OF REPORT

Page 9 of 9

Patient: BYERLY, SUSAN B MRN: F000684228 Encounter: F01036304912

Page 11 of 23
PLAINTIFF_00013

RECORD ON APPEAL 197

PAGE 1

GSRC EDH - LIVE
 PERSIBCY PATIENT RECORD

Acc# No: F0106304912
 Unit No: F0006821

Age: Sex: 53: F

Patient: BYERLY, SUSAN B
 ID: Provider: Falkowitz, Jamie S MD, Zhechak, Lina

ED Physician: Falkowitz, Jamie S MD, Zhechak, Lina
 Practitioner: BRIGGS, BRIAN, Zhechak, Lina
 Nurse:

Stated Complaint: FELL-DRENZED
 Chief Complaint: Abdominal General Dis
 Status Event History:
 10/13/16
 -250 kcal on
 -255 with Phys chian/Prac- troner
 -226 Triage
 1301 room
 -208 1 soup t on - repair
 -400 Opano
 -436 Off Tracker

MODE OF ARRIVAL
 WALK IN

2013/14 - H4D SEASONAL FLU VACCINE, 2014 - Had (nonvaccoc) vaccines (No Known Allergies

Arrival Date/Time	1250
Triage Date/Time	10/13/16 - 1252
Date of Birth	03/12/1961
Priority: 4	
1st Point of Contact:	
Occurred Date	10/13/16 1250 KIRK, MARCARET ROSE
Time User	1250 KIRK, MARCARET ROSE
Recorded Date	10/13/16 1251 KIRK, MARCARET ROSE
Time User	1251 KIRK, MARCARET ROSE

Is patient present and able to complete the screening for infections: Yes
 Have you or a close contact traveled outside the US in the last 3 weeks: No
 Risk factors for CDiff: No in last 3-6 months
 Have you ever had TB or a positive TB skin test: No
 Recent close contact with a person who has TB or influenza like illness: No
 Fever greater than 100.4 F or 38.0 C: Not in the last 7 days
 Cough not related to allergy or COPD: Not in the last 7 days
 Sore throat: Not in the last 7 days
 Night sweats: Not in the last 7 days
 Unexplained weight loss: No in last 7 days
 Fatigue: Not in the last 7 days
 Rash: Not in the last 7 days
 Nasal congestion unrelated to allergies/sinus infections: Not in the last 7 days
 Recent oncology history: Not stated
 History of entry screening status:
 Positive C difficile Risk
 Negative TB Risk
 Negative Respiratory Risk
 Negative Oncology Risk
 Haptid Assessment

Occurred Date
 10/13/16 1252 FRAZIER, THOMAS, RI || Time User | 1252 FRAZIER, THOMAS, RI |
| Recorded Date | 10/13/16 1256 FRAZIER, THOMAS, RI |
| Time User | 1256 FRAZIER, THOMAS, RI |

First Point of Contact: No
 Entered/Edited Allergies? Yes
 Arrived By: V
 Subjective Assessment:
 I TRIPPED OVER A RAILROAD TIE AND TELL FACE DOWN IN THE DIRT
 AND HIT MY ANKLE AND SHOULDER
 PT WITH L/O PAIN IN HER KNEES AND ANKLE
 PT IN ACUTE PAIN AND X 4. PT WITH SMALL APOXOSTOM TO TIF
 LLE AND SLIGHT SWELLING TO THE R TAILCLE. VSS. AND X 4
 See next page
 Neuro WBP? Yes
 Cardiovascular WBP? Yes
 Respiratory WBP? Yes
 Pain scale utilized: Verbal numeric
 Pain intensity: 10
 See next page
 Hx/6/M History: (if noted be on)
 See next page
 Snak reg Status for last 12 years 3 d or older: Fainter Snaker
 Onset of Symptoms (date): 10/13/16
 See next page

RUN DATE: 10/15/16 RUN TIME: 0513 RUN USER: HPF.FEFD		GSRIC COM ***LIVE*** EMERGENCY PATIENT RECORD		PAGE 2	
Patient: BYERLY, SUSAN B CM Provider: Tallon, James S MD, Throat, Larynx		Acc No: F01036304912 Ident No: 0000000000			
Flow Sheet: Yes Chief Complaint: Non-Urgent General Focus Priority: ESI 4/SEMI-URGENT ESP: Y Facility ESP status: ESP Enabled Last page Numeric pain scale: Severe/worst possible-10 Temperature: 97.6 Pulse: 95 Respirations: 16 Blood Pressure: 151/85 ABP M (mmHg): 95 BP location: Left arm SpO2: 98 Height - Feet: 5 Inches: 5 On: 105.10 Weight: Lb: 225 Kg: 102.038 Source: Patient stated Body Mass Index (BMI): 37.5 : High :==SEVERE Sepsis SCREENING== Temperature: No WBC/Bands: No : : No Result Heart rate: Yes : : No Result Respirations: No If yes in 7 or more of above, marked in next section: 1 ==DIETICION== ==NEW ORGAN DYSFUNCTION within past 48 hours==		Occurred Date: 10/13/16 1259 FRAZIER, THOMAS, RN Time User: 1259 FRAZIER, THOMAS, RN Recorded Date: 10/13/16 1259 FRAZIER, THOMAS, RN Time User: 1259 FRAZIER, THOMAS, RN			
Medication History Takes Daily Medications, vitamins, Herbal or OTC Medications Y Attention Required: Y Pain Assessment/Reassessment Occurred Date: 10/13/16 1259 FRAZIER, THOMAS, RN Time User: 1259 FRAZIER, THOMAS, RN Recorded Date: 10/13/16 1259 FRAZIER, THOMAS, RN Time User: 1259 FRAZIER, THOMAS, RN : - PAIN ASSESSMENT - - Pain scale utilized: Verbal numeric Pain intensity: 10 Pain location: Ankle left Numeric pain scale: Severe/worst possible-10 Severe Sepsis Screening		Disposition: Discharge Question below will only be answered if patient is UMSE: In plan of care Chief Complaint: Non-Urgent General Focus Expected outcome of chief complaint: Stabilized/Maintained Actual outcome of chief complaint: Stabilized/Maintained Sec next page MID-Level Practitioner: GRIBB For lookup by name, enter NName then press <Lookup> Arrival Date: 10/13/16 Arrival Time: 1250 ESP: Y Triage Date: 10/13/16 ESP Status: ESP SCREENED & TREATED Triage Time: 1252 Placed in Bed Date: 10/13/16 Triage Level: IS14/Semi-Urgent Placed in Bed Time: 1251 MD/DO/PN/APP Initials Contact/Greets Patient Date: 10/13/16 MD/DO/PN/APP Initials Contact/Greets Patient Time: 1245 MD/DO/PN/APP Makes Decision to Disposition Date: 10/13/16 MD/DO/PN/APP Makes Decision to Disposition Time: 1410 Date Patient Physically Leaves ED: 10/13/16 Time Patient Physically Leaves ED: 1436 Elapsed Time from Disposition to Depart: 0:26 See next page Patient Left Discharge information provided: Instructions/Prescription Discharge instructions given to and verbalized understanding by: patient Patient discharged from ED by Provider and not seen by RN: No Patient Discharged:			

Patient: BYERLY, SUSAN B MRN: F000684228 Encounter: F01036304912

RUN DATE: 10/15/16 RUN TIME: 0613 RUN USER: HPE.FEFD		GSRMC EDI *LIVC* EMERGENCY PATIENT RECORD		PAGE 3	
Patient: BYERLY, SUSAN B PIM Printout: Falkow, Jamie S DO, Phoenix, AZ		Age/Sex: 53/F		Acct No: F010664228 Ref No: F010664228	
To: Home With: Spouse/significant other Mode: Ambulatory Via: Private Vehicle Driver: Spouse/significant other See next page See next page Last page		Date: 10/13/16 1435 Time User: PRICE, JENNIFER, RN Recorded Date: 10/13/16 1435 Time User: PRICE, JENNIFER, RN		Date: 10/13/16 1435 Time User: PRICE, JENNIFER, RN Recorded Date: 10/13/16 1435 Time User: PRICE, JENNIFER, RN	
Health Behavior Tool		Occurred Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN		Occurred Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN	
History of alcohol: N How many drinks containing alcohol on you now: How often during the last year have you found that you How often during the past year have you failed How often during the past year have you needed a drink first thing in the How often during the past year have you had How often during the past year have you been unable to remember Has a relative, friend, doctor, or other health care worker		Recorded Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN		Recorded Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN	
History of drug use: N (memory loss, hepatitis, convulsions, bleeding, etc.) Have you ever		Recorded Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN		Recorded Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN	
Teaching Education		Occurred Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN		Occurred Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN	
Learner: Patient Readiness to learn: Unresponsive Barriers to learning: None Patient's Rating of Current Knowledge Level: Good Teaching Method: Verbal See next page Patient/Family education subject: Items: Medications, Disease process, Safety, Community resources, Discharge planning, Procedures, Pain management, ED after care/follow up Learner(s) verbalized understanding and/or return demonstration of items: Yes Patient/Family encouraged verbalize anxieties and reassurance given: Yes Patient/Family/significant other informed of condition and treatment plan: Yes Patient/Family/significant other encouraged give input and participate in tx: Yes Last page		Recorded Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN		Recorded Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN	
Special Custom (OCL)		Occurred Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN		Occurred Date: 10/13/16 1259 Time User: FRAZIER, THOMAS, RN	
Medication		Sch Date Time: 10/13/16 1300 Doc Date-Time: 10/13/16 1300 Admin: Admin Disc Given - Reason Override Comment COBAMINE PHOSPHATE/AMP 1 TAB TAB (ACETAMINOPHEN/COD 30 TABLET) PO/ALIE/ONE 1 TAB 10/13/16 1300 1 TAB Administering for pain: Yes Admin: MIMPY, JIM D User: (End)		Pain scale utilized: Verbal numeric Numeric pain scale: Severe/worst possible=10 Pain location: Back Left Pain intensity: 10 Pain description: Throbbing Aching Comfort considerations/Allerating factors: Medication Most common side effects reviewed with patient?: Yes : : Dizziness, Blurred vision, Nausea, Vomiting, Constipation	
Primary Impression: Fracture of lateral malleolus of left tibia Disposition: ROUTINE HOME/SELF CARE Condition: STABLE		Primary Impression: Fracture of lateral malleolus of left tibia Disposition: ROUTINE HOME/SELF CARE Condition: STABLE		Primary Impression: Fracture of lateral malleolus of left tibia Disposition: ROUTINE HOME/SELF CARE Condition: STABLE	
Referrals:		Referrals:		Referrals:	
PT Instructions:		PT Instructions:		PT Instructions:	
Discharge Forms:		Discharge Forms:		Discharge Forms:	
These are the definitions of Withing Defined Parameters by Body System		These are the definitions of Withing Defined Parameters by Body System		These are the definitions of Withing Defined Parameters by Body System	
NEUROLOGICAL		NEUROLOGICAL		NEUROLOGICAL	

DIAGNOSTIC IMAGING REPORT
GRAND STRAND REGIONAL - 809 82ND PARKWAY - MYRTLE BEACH, SC 2957
PHONE #: 8436921560 FAX #: 8436921555

Name: BYERLY, SUSAN B Loc: F.EDCM Radiology No:
DOB: 03/12/1963 Age: 53 Sex: F Status: PRE ER Unit No: F000684228
Phys: FALJA - Falkowitz, Jamie S DO Acct: F01036304912
Reason For Exam: ? Exam Date: 10/13/2016

EXAMS: Reason for Exam: :
002685254 ANKLE 3V LEFT PAIN - Pain

HISTORY:

Fall today, diffuse ankle pain.

EXAM: Left ankle, 10/13/2016.

COMPARISON: None.

FINDINGS: AP, lateral, and oblique views of the left ankle demonstrate intact ankle mortise without evidence of significant acute fracture. A tiny avulsion from the lateral malleolus may be chronic.. Plantar posterior calcaneal spurring is present.

IMPRESSION:

Potential tiny avulsion from the lateral malleolus. Ankle mortise appears intact.

** Electronically Signed by JOHN J. DALY MD on 10/13/2016 at 1343 **
Reported and signed by: JOHN J. DALY, MD

CC: Jamie S Falkowitz DO

Dictated Date/Time: 10/13/2016 (1343)

Technologist: FARRAH L REYNOLDS RT (R)

Transcribed Date/Time: 10/13/2016 (1343)

Transcriptionist: RAD.VR

Electronic Signature Date/Time: 10/13/2016 (1343)

Printed Date/Time: 10/13/2016 (1347)

PAGE 1

Signed Report

Patient: BYERLY, SUSAN B MRN: F000684228 Encounter: F01036304912

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PLAINTIFF_00018

DIAGNOSTIC IMAGING REPORT

GRAND STRAND REGIONAL - 809 82ND PARKWAY - MYRTLE BEACH, SC 2957
PHONE #: 8436921560 FAX #: 8436921555

Name: BYERLY, SUSAN B Loc: F.EDCM Radiology No:
DOB: 03/12/1963 Age: 53 Sex: F Status: PRE ER Unit No: F000684228
Phys: FALJA - Falkowitz, Jamie S DO Acct: F01036304912
Reason For Exam: ? Exam Date: 10/13/2016

EXAMS: Reason for Exam:
002685257 CHEST PA LAT PAINW - Pain With Injury

HISTORY:

Fall today, left anterior rib pain, acute.

EXAM: PA and lateral chest, 10/13/2016.

COMPARISON: Chest, 09/03/2014.

FINDINGS: Frontal and lateral chest demonstrates no active cardiopulmonary, pleural or bony process.

Impression: No acute intrathoracic injury is detected.

** Electronically Signed by JOHN J. DALY MD on 10/13/2016 at 1340 **
Reported and signed by: JOHN J. DALY, MD

CC: Jamie S Falkowitz DO

Dictated Date/Time: 10/13/2016 (1340)

Technologist: FARRAH L REYNOLDS RT (R)
Transcribed Date/Time: 10/13/2016 (1340)
Transcriptionist: RAD.VR
Electronic Signature Date/Time: 10/13/2016 (1340)
Printed Date/Time: 10/13/2016 (1344)

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Signed Report

Patient: BYERLY, SUSAN B MRN: F000684228 Encounter: F01036304912

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PLAINTIFF_00019

DIAGNOSTIC IMAGING REPORT

GRAND STRAND REGIONAL - 809 82ND PARKWAY - MYRTLE BEACH, SC 2957
PHONE #: 8436921560 FAX #: 8436921555

Name: BYERLY, SUSAN B Loc: F.EDCM Radiology No:
DOB: 03/12/1963 Age: 53 Sex: F Status: PRE ER Unit No: F000684228
Phys: FALJA - Falkowitz, Jamie S DO Acct: F01036304912
Reason For Exam: ? Exam Date: 10/13/2016

EXAMS: Reason for Exam::
002685255 KNEE COMPLETE 3 VIEWS, LE PAIN - Pain

HISTORY:

Fall today, diffuse acute left knee pain.

EXAM: Four view left knee, 10/13/2016.

COMPARISON: None.

FINDINGS: AP, lateral, and both oblique views of the left knee demonstrate non articular inferior patellar osseous fragmentation. No significant acute left knee fracture or joint malalignment evident. No significant joint effusion is seen.

Impression: There does appear to be inferior nonarticular patellar osseous fragmentation present without acute left knee osseous lesion.

** Electronically Signed by JOHN J. DALY MD on 10/13/2016 at 1341 **
Reported and signed by: JOHN J. DALY, MD

CC: Jamie S Falkowitz DO

Dictated Date/Time: 10/13/2016 (1341)

Technologist: FARRAH L REYNOLDS RT (R)
Transcribed Date/Time: 10/13/2016 (1341)
Transcriptionist: RAD.VR
Electronic Signature Date/Time: 10/13/2016 (1341)
Printed Date/Time: 10/13/2016 (1345)

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Signed Report

Patient: BYERLY, SUSAN B MRN: F000684228 Encounter: F01036304912

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PLAINTIFF_00020

GRAND STRAND REGIONAL MEDICAL CENTER
MYRTLE BEACH, SC 29572

NAME: BYERLY, SUSAN B

Unit #: F000684228

Adm Date: 10/13/16

D/C Date: 10/13/16

Dictated By: Griggs, Brian Joseph NP

Report Name: PATIENT DISCHARGE INSTRUCTIONS

Acc #: F01036304912

Loc: F.EDCM

ScriptRx Emergency Room Visit Report
Grand Strand Medical Center
809 82nd Parkway, Myrtle Beach, SC 29572 (843) 692-1000
10/13/2016 1409

Patient: BYERLY, SUSAN

Attending Provider: Jamie Scott Falkowitz, DO

Discharging Provider: BRIAN GRIGGS, FNP

MRN: F000684228

Acct: F01036304912

Age: 53

-----DISCHARGE INSTRUCTIONS-----
CONTUSIONS * CRUTCH INSTRUCTIONS * FRACTURED ANKLE * NARCOTIC MEDI
CATION * SPLINT CARE - FIBERGLASS

CONTUSIONS

You have a deep bruise (contusion). Contusions are areas of tenderness and swelling in the soft tissues. They are the result of trauma and bleeding in the injured area. Minor trauma will give you a painless bruise; more severe contusions may stay painful and swollen for a few weeks. There are no broken bones. This injury takes a few days to a few weeks to heal.

Follow These Instructions Carefully:

1. Keep the injured part elevated to reduce pain and swelling. This is especially important during the first 48 hours.
2. Make an ice pack by placing some ice cubes in a plastic bag and wrapping the bag in a towel. Apply this ice pack for 20 minutes every 1 to 2 hours the first day. Continue doing this 3 to 4 times a day until the swelling goes down.
3. You may take acetaminophen (Tylenol) or ibuprofen (Advil, Motrin) for pain, unless another pain medicine was prescribed.

Follow up with your doctor or this facility if you are not improving within the next 3 days.

[NOTE: If X-rays were taken, a radiologist will review them. You will be notified of any new findings that may affect your care.]

Return to this facility immediately or contact your doctor if you begin

Patient Name: BYERLY, SUSAN B

Account #: F01036304912

to have any of the following:

- You find that the pain or swelling increases.
- The injured arm or leg becomes cold, blue, numb or tingly.
- You see redness, warmth or drainage from the skin.
- You have a fever over 99.5 (oral).
- Your condition worsens in any other way.

CRUTCH INSTRUCTIONS

You need crutches because your doctor does not want you to walk on your injured leg. Use your crutches all the time until your doctor tells you that you can bear weight on your injured limb again.

Crutch Adjustment: Make sure the crutches you use are adjusted to fit you. When you stand, there should be room to fit 2 to 3 fingers between the top of the crutch and your armpit. Your elbow should be slightly bent when holding the handgrips.

Crutch walking: Place the crutches forward 12" in front of and 6" to the side of your feet. Lean your weight forward as you push down on the handgrips. Your weight should be on your hands and your strong leg, not your armpits. Let your body swing through, landing on the strong leg. Advance the crutches forward again. The crutch and the injured leg should move together.

Going Up Steps:

- With both crutches on the same step as your feet, push down on the handgrips.
- Balancing with very light pressure on the weak leg, let your hands support your weight as you raise your strong leg onto the next higher step.
- Transfer all your weight to your strong leg (still bent) as you move the crutches up to the next step alongside the strong leg.
- With your weight evenly balanced on the two crutches and your strong leg, straighten your strong knee as you raise the weak leg up to the next step.

Going Down Steps:

- With both crutches on the same step as your feet, push down on the handgrips.
- With your weight evenly balanced on the two crutches and your strong leg, bend your strong knee as you lower the weak leg down to the next step.
- Let your strong leg support you (still bent) as you move the crutches down alongside the weak leg.
- Transfer your weight to your hands, balancing with very light pressure on the weak leg as you lower your strong leg alongside your weak leg.

FRACTURED ANKLE

Your exam shows that your ankle is broken. Fractured ankles include breaks in the fibula, tibia, or both bones. If both bones are broken, or if the joint is unstable because of a severe sprain, then surgery may be needed to fix the injury. Most of the time broken ankles will heal in 6 to 8 weeks with proper rest and the use of a cast, splint,

Patient Name: BYERLY, SUSAN B

Account #: F01036304912

or walker brace. Do not scratch the skin under your splint or cast.

Fractures and muscle contusions cause bleeding in the deep tissues, which can increase the pressure in the extremity. There is a small chance that the pressure from the bleeding and swelling will interfere with the circulation to the foot. If this happens there is increased pain, numbness, coldness, and a pale color to the foot. This is called muscle compartment syndrome, and requires immediate medical attention. If the pressure is very high, surgical treatment may even be needed.

Follow These Instructions Carefully:

1. Keep your leg elevated when sitting or lying down. This is very important during the first 48 hours.
2. Keep the cast or splint completely dry at all times. When bathing, protect the cast or splint with a large plastic bag, rubber-banded at the top end. If a fiberglass cast or splint gets wet, you can dry it with a hair-dryer.
3. Place an ice pack on the splint or cast over the injured area for 20 minutes every 2 hours during the first day. Continue this 3 to 4 times a day for the next 2 days.
4. You may take acetaminophen (Tylenol) or ibuprofen (Advil, Motrin) for pain, unless another pain medicine has been prescribed.
5. If you have a fiberglass or plaster splint:

Do not remove the splint, unless you were told to do so by your doctor.

- Use crutches or a walker and do not put weight on the splint, or it will break. (These can be rented at many pharmacies or surgical or orthopedic supply stores).

6. If you have a walking cast:
 - Do not walk on it until it has fully dried or else it will break. If the cast is made of plaster, wait 48 hours. If the cast is made of fiberglass, wait 2 hours.

Follow up with your doctor as advised. The splint or cast should be checked in 24 hours to be sure that it has not become too tight from swelling. If you were not given an appointment for this, check it yourself by looking for the warning signs listed below. [NOTE: A radiologist will review any x-rays taken. You will be notified of any new findings that may affect your care.]

Return to this facility immediately or contact your doctor if:

- The plaster cast or splint becomes wet or soft.
- The fiberglass cast or splint remains wet for more than 24 hours.
- There is increased tightness or pain under the cast or splint.
- The toes become swollen, cold, blue, numb or tingly.
- Your condition worsens in any other way.

NARCOTIC MEDICATION

Patient Name: BYERLY, SUSAN B

Account #: F01036304912

You have been prescribed narcotic. Narcotic medicines are used to relieve

pain.

This drug may cause drowsiness; therefore, be sure to take it only as directed.

How To Take This Medication:

1. If this medicine makes your stomach upset, take it with food.
2. Pain medicine should be taken only if needed at the times prescribed. If you are not having pain, do not take the medicine, unless you are advised to do so by your doctor.
3. Narcotic medicines can be habit forming; therefore, take this medicine only as directed. Do not take more of it, do not take it more often, and do not take it for a longer period of time than directed.

What You Should Watch Out For:

Possible Side Effects:

- If you experience dizziness or drowsiness, take a smaller dose by breaking a pill in half or taking it less often.
- If you develop constipation, drink lots of liquids, use small doses of a mild laxative like Milk of Magnesia as needed, and add fiber to your diet.

Possible Allergic Reactions: Rash, itching, swelling, and trouble breathing or swallowing are all signs of an allergic reaction. You should contact your doctor or return to this facility immediately if any of these occur.

Medical Conditions: Before you begin to take this medicine, be sure your doctor knows if you have any of the following conditions:

- Prostate enlargement.
- Pregnancy or breast-feeding.

Possible Drug Interactions: This drug may cause increased side effects when taken with alcohol, muscle relaxant, sedative, tricyclic antidepressants, MAO-inhibitor, or another pain medicine. Make sure your doctor knows what other medicines you are taking.

Note These Warnings:

- Do not drive, ride a bicycle, operate dangerous equipment, climb a ladder, or do any other activity where you must concentrate and might be injured for at least 12 hours after taking this medicine, until you know how it will affect you.
- Prolonged use of this medicine can be habit forming and may lead to addiction.
- Tell your doctor what other medicines you are taking.

Stop taking this medication and call your doctor or return to this facility right away if you experience any of these problems:

- Hives or itching.
- Confusion, dizziness, or lightheadedness.
- A worsening of your condition in any other way.

SPLINT CARE FIBERGLASS

Follow These Instructions Carefully:

1. It will take up to three hours for your fiberglass splint to fully harden; therefore, do not apply any pressure on it during that time.

Patient Name: BYERLY.SUSAN B

Account #: F01036304912

It may break.

2. To prevent swelling under the splint, for the FIRST 48 HOURS:

- a. If the splint is on your ARM: keep it in a sling or propped up to shoulder level when sitting or standing. Rest it on your chest or on a pillow at your side when lying down.
- b. If the splint is on your FOOT: keep it propped up above the level of your waist when sitting or lying down. Avoid crutch walking as much as possible during this time.
3. Keep the splint completely dry at all times. Bathe with your splint well out of the water, protected with a large, rubber-banded plastic bag. If your splint does become wet, use a hair dryer to warm the splint and speed up the drying process. A wet splint may cause skin problems.

Follow up with your doctor or this facility as advised. The splint should be checked in 24 HOURS to be sure it has not become too tight because of swelling. Look for any of the signs listed below.

Return to this facility immediately or contact your doctor if:

- There is a bad odor coming from the splint or wound-fluid stains on the splint.
- The splint cracks or remains wet over 24 hours.
- Signs of swelling under the splint are present and include increasing tightness or pressure under the splint, the fingers or toes become swollen, cold, blue, numb or tingly, and increased pain under the splint.
- Your condition worsens in any other way.

PRESCRIPTION MEDICATIONS:

Tylenol with Codeine #3 300 30 Milligram # 15 Tablets 1 2 tablets every 4 to 6 hours as needed for pain (0 Refills). Printed

FOLLOW-UP:

Physician: Strand Orthopedic, SOC
Follow-up when: in 2 days
Follow-up Diagnosis: Refer to Discharge Instruction List
Specialty: Orthopedic Surgery
Address: 210 Village Circle Blvd Myrtle Beach SC
Phone: (843) 236-3222
Follow-up Notes:

Patient Name: BYERLY, SUSAN B

Account #: F01036304912

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

May 18 2020

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2019-002082

JOHN BYERLY, individually, and as Personal representative of the ESTATE OF SUSAN
B. BYLERLY,

Appellant,

vs.

THOMAS WESLEY,

Respondent.

**CERTIFICATION OF COUNSEL REGARDING
RECORD ON APPEAL**

I certify that the Record on Appeal contains no matter which is irrelevant to this
appeal.



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Attorneys for Appellant

May 18, 2020