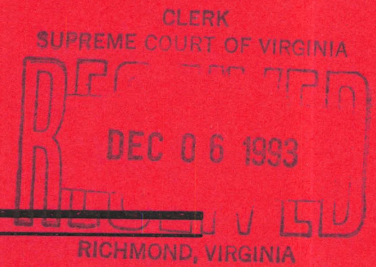
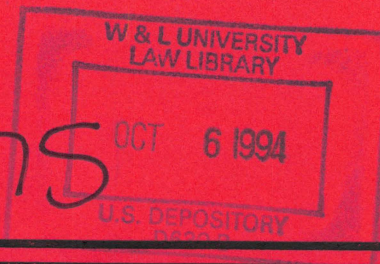


248 VA 175



IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

RECORD NO. 931100

**CAROL SIBERT BREGEL,**

*Appellant,*

**v.**

**BUSH ENTERTAINMENT CORPORATION,**

*Appellee.*

**JOINT APPENDIX**

**Robert L. Mills**  
**RUTTER & MONTAGNA**  
700 New Atlantic Bank Bldg.  
415 St. Paul's Boulevard  
Suite 720  
Norfolk, Virginia 23510  
(804) 622-5000

**Lisa A. Bertini**  
**McGUIRE, WOODS, BATTLE,**  
**& BOOTHE**  
World Trade Center  
Suite 9000  
101 West Main Street  
Norfolk, Virginia 23510  
(804) 640-3700

*Counsel for Appellant*

*Counsel for Appellee*

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

CAROL SIBERT BREGEL,

Plaintiff,

v.

AT LAW NO. L90-2261

BUSCH ENTERTAINMENT CORP.  
t/a BUSCH GARDENS,  
a Delaware Corporation,

and

ANHEUSER-BUSCH, INC.  
a Missouri Corporation,

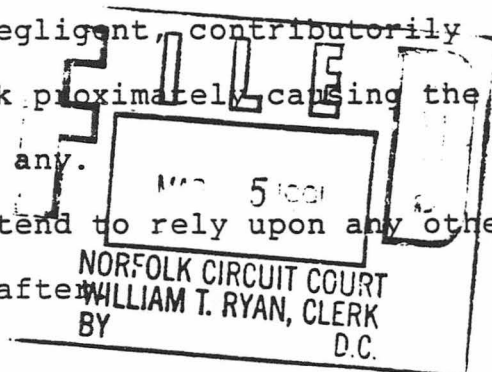
Defendants.

ANSWER AND GROUNDS OF DEFENSE

The defendants say that for Answers and Grounds of Defense that they will rely upon the following:

1. That the allegations contained in paragraph one of the Motion for Judgment are unknown to your defendants.
2. That the allegations contained in paragraph two of the Motion for Judgment are denied insofar as Anheuser-Busch, Inc. is concerned.
3. That the allegations contained in paragraphs three, four, five, six, and seven of the Motion for Judgment are denied.
4. That the plaintiff was negligent, contributorily negligent and/or assumed the risk proximately causing the alleged damages and injuries, if any.
5. That these defendants intend to rely upon any other defenses made known to them hereafter.

LAW OFFICES  
RRIS, FEARS, DAVIS,  
YNCH & MCDANIEL  
5 POPLAR HALL DRIVE  
FOLK, VIRGINIA 23502



WHEREFORE, these defendants move this Honorable Court to dismiss the Motion for Judgment and to enter judgment for the defendants with costs.

BUSCH ENTERTAINMENT CORP.  
t/a BUSCH GARDENS  
a Delaware Corporation

and

ANHEUSER-BUSCH, INC.  
a Missouri Corporation

By

Terry H. Davis, Jr.  
Of Counsel

Terry H. Davis, Jr.  
HARRIS, FEARS, DAVIS, LYNCH & MCDANIEL  
5735 Poplar Hall Drive  
P. O. Box 12756  
Norfolk, VA 23502

CERTIFICATION

I hereby certify that on this 4th day of March, 1991,  
a true copy of the foregoing was mailed to all known counsel  
of record.

Terry H. Davis, Jr.  
Terry H. Davis, Jr.

LAW OFFICES  
HARRIS, FEARS, DAVIS,  
LYNCH & MCDANIEL  
35 POPLAR HALL DRIVE  
NORFOLK, VIRGINIA 23502



FOURTH JUDICIAL CIRCUIT  
CIRCUIT COURT OF THE CITY OF NORFOLK

WILLIAM T. RYAN, CLERK

May 17, 1991

CIRCUIT COURT BUILDING  
100 ST. PAUL'S BOULEVARD  
NORFOLK, VIRGINIA 23510-2773

Clerk  
Williamsburg Circuit Court  
Williamsburg, VA

Re: BREGEL v. BUSCH ENTERTAINMENT  
AND ANHEUSER-BUSCH INC

L 5894

Dear Sir or Madam,

The above referenced case file is forwarded as a matter under  
your cognizance. Please see court order entered in the Norfolk  
Circuit Court on MAY 07 1991. (last page)

Sincerely,

A. E. Parra  
Deputy Clerk

MAY 23 1991

CLERK

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

CAROL SIBERT BREGEL,

Plaintiff,

v.

AT LAW NO. L90-2261

BUSCH ENTERTAINMENT CORP.  
t/a BUSCH GARDENS,  
a Delaware Corporation  
c/o Edward R. Parker, R/A  
5511 Staples Mill Road  
Richmond, Virginia

PLAINTIFF DEMANDS  
TRIAL BY JURY

and

ANHEUSER-BUSCH, INC.  
a Missouri Corporation  
c/o Edward R. Parker, R/A  
5511 Staples Mill Road  
Richmond, Virginia

Defendant.

MOTION FOR JUDGMENT

TAKE NOTICE that the undersigned hereby moves the Norfolk Circuit Court, at the courthouse thereof, for a judgment and award against you for the sum of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) with interest and costs for the following, to-wit:

1. That on the 10th day of July, 1988, your plaintiff was properly and lawfully on the premises of the defendant known as "BUSCH GARDENS" in Williamsburg, Virginia, as a paying patron.

2. That at the said time and place your defendant through its agents and employees operated, maintained and controlled the said premises.

3. That by reason of the negligence of the defendant in the operation, design, control and maintenance of the premises, and equipment, including but not limited to the "Skyride", the plaintiff was caused to receive serious and permanent injuries.

4. That the Defendants were negligent and careless in their operation of the premises and equipment in the following particulars:

(A) Defendant failed to inspect and properly operate the said device;

(B) Defendant negligently failed to instruct and assist its guests and invitees in the use of the equipment;

(C) Defendant negligently failed to warn of the dangers and hazards posed by the equipment;

(D) Defendant knew or in the exercise of reasonable care should have known that the said device was negligently designed and was an inherently dangerous instrumentality and liable to injure plaintiffs and other persons.

5. That these injuries to the plaintiff and the shock resulting from the accident have caused past, present and future pain and suffering, both mental and physical, and these injuries have required the plaintiff to expend large sums of money for past, present, and future medical care.

6. The said injuries will continue to disable her from other activities formerly associated with her person and station in life.

7. The plaintiff has also been caused to lose time from work and engaging in any productive occupation and has suffered and will continue to suffer loss of earnings and wages.

WHEREFORE, plaintiff moves the Court for a judgment and award against you for the sum of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) with interest and costs aforesaid.

CAROL SIBERT BREGEL

By 

Of Counsel

Robert L. Mills  
RUTTER AND MONTAGNA  
720 Atlantic Nat'l Bank Bldg.  
415 St. Paul's Boulevard  
Norfolk, Virginia 23510  
(804) 622-5000

Filed in the Clerk's Office the 19th day of June, 1990  
Writ Tax \$25.00  
Fee \$50.00  
Law Libr. Tax 2.00  
Total Paid 77.00

Teste:

WILLIAM T. RYAN, CLERK

Kim Stevenson D.C.

**RUTTER & MONTAGNA**  
COUNSELLORS AT LAW AND PROCTORS IN ADMIRALTY  
720 ATLANTIC NATIONAL BANK BUILDING  
415 ST. PAUL'S BOULEVARD  
NORFOLK, VIRGINIA 23510

C. ARTHUR RUTTER, JR.  
CHARLES S. MONTAGNA  
JOHN H. KLEIN  
ROBERT L. MILLS  
ROBERT E. WALSH  
LEE E. WILDER  
DANA ADLER ROSEN  
ROBERT J. MACBETH, JR.  
JESSE M. SUIT, III  
BRIAN K. MILLER  
BETTY M. THARRINGTON

TELEPHONE 622-5000  
AREA CODE 804  
FAX NO. 623-9189  
PENINSULA (804) 874-5000

February 7, 1991

•ADMITTED TO VIRGINIA AND LOUISIANA BAR

William T. Ryan, Clerk  
Norfolk Circuit Court  
100 St. Paul's Boulevard  
Norfolk, Virginia 23510

Re: Carol Sibert Bregel v. Busch Entertainment Corp.,  
and Anheuser-Busch, Inc.  
At Law No.: L90-2261  
Our File No.: 89-791

Dear Mr. Ryan:

I enclose two copies of the original Motion for Judgment, which was filed in your Court on or about June 18, 1990. Please prepare the enclosed copies for service on the defendants listed herein.

Further enclosed are original Interrogatories and Request for Production of Documents propounded to defendant Busch Entertainment Corp., which I would appreciate your filing and also preparing for service in the above-styled matter. Please have the Sheriff of Richmond effect service as soon as possible.

I have enclosed our firm check in the amount of \$20.00, representing the service fees in this matter.

Thank you for your kind assistance in this matter.

Very truly yours,

  
Robert L. Mills

RLM/krs  
Enclosures

FEB 12 1991

# COMMONWEALTH OF VIRGINIA



FEB 19 1991

602000

NORFOLK CIRCUIT COURT  
100 ST. PAUL'S BOULEVARD  
NORFOLK VIRGINIA 23510  
(804) 441-2476

## PROOF OF SERVICE

VIRGINIA

HENRICO COUNTY

IN THE NORFOLK CIRCUIT COURT

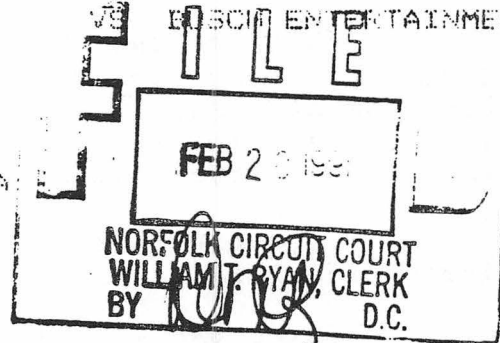
CASE NO. 710CL90002261-CO  
SERVICE NO. 01  
SERVICE FILED 06/19/90

CAROL SIBERT BRUEL

VS. BUSCH ENTERTAINMENT CORP.

SERVICE ON: ANHEUSER-BUSCH, INC.

SERVE: EDWARD R PARKER, P/A  
3311 STAPLES MILL RD  
RICHMOND, VA



RETURN TO: [blank] SHALL BE MADE HEREON, SHOWING SERVICE OF NOTICE ISSUED FEBRUARY 12, 1991 WITH A COPY OF MOTION FOR JUDGMENT WITH INTERROGATORIES, AND PRODUCTION OF DOCUMENTS FILED JUNE 19, 1990 ATTACHED.

Edward R Parker

NOT SHERIFF USE ONLY

5 Feb 91

602000

Bank

thereof and giving

D. C. [blank]

Clerk of Court

[signature]

8


6.

AUTHORIZATION

Edward R. Parker is the registered agent for various corporations. Edward R. Parker, as registered agent, does hereby designate Leslie M. Chappell, Barbara G. Sabin and Gail Timbers-Banks as the persons in the office of Parker, Pollard & Brown, P.C., the law firm of Edward R. Parker, upon whom service of process, notice or demand can be served in lieu of service on Edward R. Parker as the registered agent.

Date

11-20-96

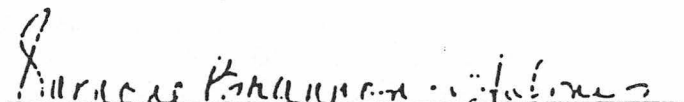
  
EDWARD R. PARKER

STATE OF VIRGINIA

COUNTY OF HENRICO, to-wit:

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 1986, by Edward R. Parker.

My commission expires: August 25, 1989

  
Notary Public

# COMMONWEALTH OF VIRGINIA



FEB 14 1991

NORFOLK CIRCUIT-LAW  
100 ST. PAUL'S BOULEVARD  
NORFOLK VIRGINIA 23510  
(804) 441-2476

## PROOF OF SERVICE

VIRGINIA:

HENRICO COUNTY

IN THE NORFOLK CIRCUIT-LAW

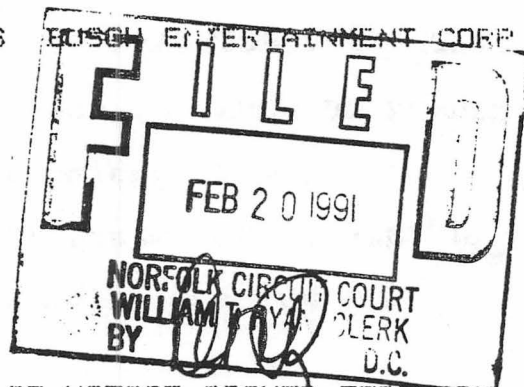
CASE NO. 710CL90002261-00  
SERVICE NO. 01  
SERVICE FILED: 06/19/90

CAROL SIBERT BREGEL

VS BUSCH ENTERTAINMENT CORP

SERVICE ON: BUSCH ENTERTAINMENT CORP

T/A BUSCH GARDENS  
SERVE: EDWARD R PARKER; R/A  
5511 STAPLES MILL RD  
RICHMOND, VA



RETURNS SHALL BE MADE HEREON, SHOWING SERVICE OF NOTICE ISSUED FEBRUARY 12, 1991 WITH A COPY OF MOTION FOR JUDGMENT WITH INTERROGATORIES, AND PRODUCTION OF DOCUMENTS FILED JUNE 19, 1990 ATTACHED:

Served at Edward R Parker FOR SHERIFF USE ONLY

(County of Henrico, Va., City of Richmond, Va.)

on the 15 day of Feb, 1991

at Richmond, Va.

business hours of 6:00

by Bank

thereof and giving

RECEIPT FOR FEES COLLECTED

0

County of Henrico Virginia 2/11  
Received of Rutter 5866 \$ 20.00  
Twenty dollars 01.00 Dollars  
For 4 see On \_\_\_\_\_ 19 \_\_\_\_  
Type of Service or Process Date of Service  
In matter of Bregu vs. Busch Entertainment  
11 Ado  
Deputy—Sheriff—Sergeant

ORIGINAL — TO PAYER

AUTHORIZATION

Edward R. Parker is the registered agent for various corporations. Edward R. Parker, as registered agent, does hereby designate Leslie M. Chappell, Barbara G. Sabin and Gail Timbers-Banks as the persons in the office of Parker, Pollard & Brown, P.C., the law firm of Edward R. Parker, upon whom service of process, notice or demand can be served in lieu of service on Edward R. Parker as the registered agent.

11-20-96  
Date

Edward R. Parker  
EDWARD R. PARKER

STATE OF VIRGINIA

COUNTY OF HENRICO, to-wit:

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 1986, by Edward R. Parker.

My commission expires: August 25, 1989

Barbara G. Sabin  
Notary Public

COMMONWEALTH OF VIRGINIA



NORFOLK CIRCUIT-COURT  
100 ST. PAUL'S BOULEVARD  
NORFOLK VIRGINIA 23510  
(804) 441-2476

TO: ANHEUSER-BUSCH, INC

CASE NO. 710CL90002261-00

SERVE: EDWARD R PARKER; R/A  
5511 STAPLEY MILL RD  
RICHMOND, VA

NOTICE OF MOTION FOR JUDGMENT

YOU ARE HEREBY NOTIFIED THAT UNLESS WITHIN TWENTY-ONE (21) DAYS AFTER SERVICE OF THIS NOTICE OF MOTION FOR JUDGMENT ON YOU, RESPONSE IS MADE BY FILING IN THE CLERK'S OFFICE OF THE COURT A PLEADING IN WRITING, IN PROPER LEGAL FORM, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

DONE IN THE NAME OF THE COMMONWEALTH OF VIRGINIA ON FEBRUARY 12, 1991

CLERK: WILLIAM T. RYAN

BY:

*Connie Parkman*  
CLERK/DEPUTY CLERK

ATTORNEY NAME: ROBERT L. MILLS 622-5000  
415 ST PAUL'S BLVD  
NORFOLK, VA 23510

**FILE COPY**

COMMONWEALTH OF VIRGINIA



NORFOLK CIRCUIT-LAW  
100 ST. PAUL'S BOULEVARD  
NORFOLK VIRGINIA 23510  
(804) 441-2476

TO: BUSCH ENTERTAINMENT CORP

CASE NO. 710CL90002261-00

T/A BUSCH GARDENS  
SERVE: EDUARD R PARKER; R/A  
5511 STAPLES MILL RD  
RICHMOND, VA

NOTICE OF MOTION FOR JUDGMENT

YOU ARE HEREBY NOTIFIED THAT UNLESS WITHIN TWENTY-ONE (21) DAYS AFTER SERVICE OF THIS NOTICE OF MOTION FOR JUDGMENT ON YOU, RESPONSE IS MADE BY FILING IN THE CLERK'S OFFICE OF THE COURT A PLEADING IN WRITING, IN PROPER LEGAL FORM, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

DONE IN THE NAME OF THE COMMONWEALTH OF VIRGINIA ON FEBRUARY 12, 1991

CLERK WILLIAM T. RYAN

BY:

*Connie Parkeman*  
CLERK/DEPUTY CLERK

ATTORNEY NAME: ROBERT L. MILLS 422-5000  
415 ST PAUL'S BLVD  
NORFOLK, VA 23510

**FILE COPY**

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

CAROL SIBERT BREGEL,

Plaintiff,

v.

AT LAW NO. L90-2261

BUSCH ENTERTAINMENT CORP.  
t/a BUSCH GARDENS,  
a Delaware Corporation,

and

ANHEUSER-BUSCH, INC.  
a Missouri Corporation,

Defendants.

MOTION TO DISMISS

The defendants hereby move this Honorable Court to DISMISS Anheuser-Busch, Inc. as a party-defendant by reason of the fact that the allegations do not set forth a cause of action against Anheuser-Busch, Inc. in that Anheuser-Busch has no association whatsoever with Busch Gardens aside from the fact that it owns all of the stock of Busch Entertainment Corp. which maintains and controls the activities at Busch Gardens. Anheuser-Busch, Inc. does not maintain, own or control a facility known as Busch Gardens located in Williamsburg, Virginia. (affidavits attached)

MOTION TO TRANSFER

The defendant, Busch Entertainment Corporation, by counsel, pursuant to 8.01-261 of the Code of Virginia as amended moves that this case be TRANSFERRED to the Circuit

LAW OFFICES  
HARRIS, FEARS, DAVIS,  
LYNCH & McDANIEL  
735 POPLAR HALL DRIVE  
NORFOLK, VIRGINIA 23502

FILED  
MAY 5 1991  
NORFOLK CIRCUIT COURT  
WILLIAM T. RYAN, CLERK

Court of the City of Williamsburg and James City County and in support of its Motion, respectfully states:

1. Venue of this action as established by sections 8.01-261 and 8.01-262 of the Code of Virginia exists in the County of James City County where the defendants' corporation of business is located but not in the City of Norfolk which has no contact whatever with Busch Entertainment Corp. in that none of the aforesaid corporation's agents, officers, or employees conduct any activities whatever;

WHEREFORE, the defendants move this Honorable Court to TRANSFER the case as set forth herein above.

BUSCH ENTERTAINMENT CORP.  
t/a BUSCH GARDENS  
a Delaware Corporation

and

ANHEUSER-BUSCH, INC.  
a Missouri Corporation

By Terry H. Davis, Jr.  
Of Counsel

Terry H. Davis, Jr.  
HARRIS, FEARS, DAVIS, LYNCH & MCDANIEL  
5735 Poplar Hall Drive  
P. O. Box 12756  
Norfolk, VA 23502

CERTIFICATION

I hereby certify that on this 4th day of March, 1991, a true copy of the foregoing was mailed to all known counsel of record.

Terry H. Davis, Jr.  
Terry H. Davis, Jr.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
RUBY BELL AND NERO BELL,

Plaintiffs,

- AFFIDAVIT

-against-

BUSCH ENTERPRISES, INC., BUSCH MEDIA GROUP,  
INC., BUSCH ENTERTAINMENT CORP., ANHEUSER-  
BUSCH COMPANIES, AND BUSCH GARDENS,

Defendants.

-----X  
STATE OF MISSOURI     )  
                          ) ss.:  
COUNTY OF ST. LOUIS   )

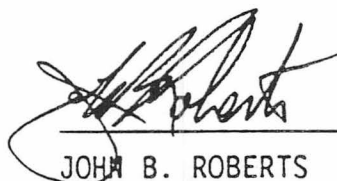
JOHN B. ROBERTS, being duly sworn, says:

1. I am Vice President of the defendant, BUSCH ENTERTAINMENT CORPORATION, hereinafter called "BEC", and I have personal knowledge of all facts alleged in this Affidavit which I offer in support of the instant application.
2. BEC is a Delaware corporation with its principle place of business in St. Louis, Missouri.
3. BEC is a wholly owned subsidiary of ANHEUSER-BUSCH COMPANIES, INC.
4. BEC operates as a completely independent corporate entity separate and apart from ANHEUSER-BUSCH COMPANIES, Inc.
5. BEC has its own employees who are employed and discharged by BEC's management.
6. There is no direct intervention by ANHEUSER-BUSCH COMPANIES, INC. in BEC's day-to-day operations.
7. ANHEUSER-BUSCH COMPANIES, INC. does not own, operate or maintain the facility commonly known as Busch Gardens, located in Williamsburg, Virginia.

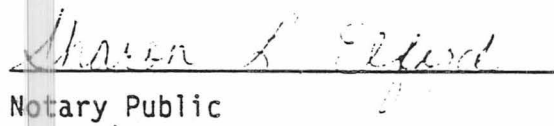
8. BEC d/b/a BUSCH GARDENS OF WILLIAMSBURG, VIRGINIA, owns and operates the premises commonly known as Busch Gardens located in Williamsburg, Virginia.

9. Further, there is no written agreement between ANHEUSER-BUSCH COMPANIES, INC. and BEC d/b/a/ BUSCH GARDENS, to maintain, repair, service or inspect the place of amusement commonly known as Busch Gardens.

WHEREFORE, your deponent prays for an Order as requested.

  
JOHN B. ROBERTS

Sworn to before me this day of May 11, 1989.

  
Notary Public

**SHARON L. ELFORD, Notary Public**  
**STATE OF MISSOURI, ST. LOUIS COUNTY**  
**MY COMMISSION EXPIRES 6-23-90**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
RUBY BELL AND NERO BELL,

Plaintiffs,

AFFIDAVIT

-against-

BUSCH ENTERTAINMENT CORPORATION d/b/a  
BUSCH GARDENS OF WILLIAMSBURG, VIRGINIA,  
AND ANHEUSER-BUSCH COMPANIES,

Defendants.

-----x  
STATE OF MISSOURI    )  
                          ) ss.:  
COUNTY OF ST. LOUIS)

KNUT C. HEISE, being duly sworn, says:

1. I am Associate General Counsel and Assistant Secretary for the defendant, ANHEUSER-BUSCH COMPANIES, INC., and I have personal knowledge of all facts alleged in this Affidavit which I offer in support of ANHEUSER-BUSCH COMPANIES, INC.'s instant application.

2. ANHEUSER-BUSCH COMPANIES, INC. is a Delaware corporation with its principal place of business in St. Louis, Missouri.

3. ANHEUSER-BUSCH COMPANIES, INC. is the parent corporation of the various Anheuser-Busch entities, including BUSCH ENTERTAINMENT CORPORATION.

4. BUSCH ENTERTAINMENT CORPORATION is a wholly-owned subsidiary of ANHEUSER-BUSCH COMPANIES, INC.

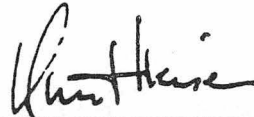
5. The Complaint in this action, attached as Exhibit A, sets forth in paragraph 13, that ANHEUSER-BUSCH COMPANIES, INC. owned and operated a place of amusement commonly known as BUSCH GARDENS, located in Williamsburg, Virginia.

6. The Complaint goes on to allege that each of the other defendants owned and operated BUSCH GARDENS.

7. ANHEUSER-BUSCH COMPANIES, INC. does not own, operate, or maintain the facility commonly known as BUSCH GARDENS, located in Williamsburg, Virginia.

8. Further, there is no written agreement between ANHEUSER-BUSCH COMPANIES, INC. and BUSCH ENTERTAINMENT CORPORATION d/b/a BUSCH GARDENS, to maintain, repair, service or inspect the place of amusement commonly known as BUSCH GARDENS.

9. Defendant, BUSCH ENTERTAINMENT CORPORATION d/b/a BUSCH GARDENS of Williamsburg, Virginia, owned and operated the premises commonly known as BUSCH GARDENS, located in Williamsburg, Virginia.



KNUT C. HEISE

Sworn to and Subscribed  
before me this 21<sup>st</sup> day  
of February, 1989.

  
Notary Public

SALLY A. PHILLIPS, Notary Public  
STATE OF MISSOURI, H. CO. 15-100, NY  
MY COMMISSION EXPIRES APRIL 2, 1992

749

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

CAROL SIBERT BREGEL,

Plaintiff,

v.

AT LAW NO. L90-2261

BUSCH ENTERTAINMENT CORP., et al

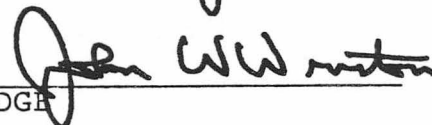
Defendants.

L1323-91

ORDER

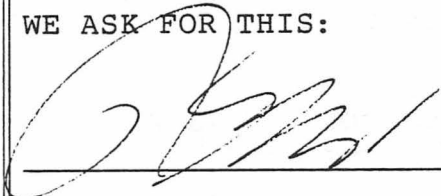
On motion of counsel for the defendants that venue in this cause lies within the jurisdiction of the Circuit Court of the City of Williamsburg and James City County and with the concurrence of the plaintiff, it is the ORDER, JUDGMENT, and DECREE of this Court that this cause be transferred to the Circuit Court for the City of Williamsburg and James City County and the Clerk is directed to forward this file to the Clerk of the aforesaid Court for further proceedings therein.

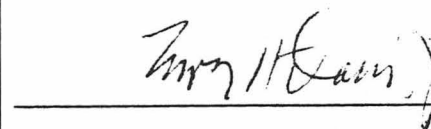
Entered: May 7, 1991

  
JUDGE

John W. Winston, Judge

WE ASK FOR THIS:

 p.q.

 p.d.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY  
OF WILLIAMSBURG AND JAMES CITY COUNTY

- - - - -  
CAROL SIBERT BREGEL, :  
Plaintiff, :

vs. :

AT LAW NO. 5894

BUSCH ENTERTAINMENT CORPORATION, :  
Defendant. :

- - - - -  
Deposition of JOSEPH S. TOSCANO, taken  
pursuant to notice, before Lis Downes, Shorthand  
Reporter and Notary Public, held at the law offices of  
Heckler & Cattie, 200 West 9th Street, Wilmington,  
Delaware, on Thursday, October 1, 1992, beginning at  
5:30 p.m., there being present:

APPEARANCES:

RUTTER & MONTAGNA  
BY: ROBERT L. MILLS, ESQUIRE  
Attorney for the Plaintiff

HECKLER & CATTIE  
BY: ROGER D. LANDON, ESQUIRE  
Attorney for the Defendant

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CORBETT & ASSOCIATES  
Registered Professional Reporters  
1400 French Street  
Wilmington, Delaware 19801  
(302) 571-0510

1 JOSEPH S. TOSCANO, having first been duly  
2 sworn according to law, was examined and testified as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. MILLS:

6 Q. Mr. Toscano, my name is Robert Mills. I  
7 represent Carol Bregel here today. I'm going to ask you  
8 some questions that you will answer under oath about the  
9 incident that occurred back in July of 1988, and when  
10 this case is heard in the Circuit Court of Williamsburg,  
11 your testimony will be read to the Jury.

12 I would like to start by having you  
13 introduce yourself to the Jury. Tell us your full name  
14 and where you live.

15 A. My full name is Joseph S. Toscano, as in  
16 Stephen, and I live at 34 Red Mill Road, Newark,  
17 Delaware. I work for Boulden Bus Company outside of  
18 Stanton.

19 Q. That's good. How old are you, Mr. Toscano?

20 A. Presently I'm 40 years old.

21 Q. Do you know Carol Bregel, the plaintiff in  
22 this case?

23 A. Yes, I do. Ms. Bregel is my ex-wife. We  
24 have been divorced going on 11 years, and we were on a

1 trip down to Busch Gardens at the time of the incident.

2 Q. Were you divorced at the time of the  
3 incident in July of 1988?

4 A. We were divorced. We had been divorced for  
5 11 years. We were there just for conversation, to talk  
6 about the kids and so forth.

7 Q. After you arrived in Williamsburg, did you  
8 visit an amusement park?

9 A. Yes, I did.

10 Q. What was the name of that park?

11 A. It was Busch Gardens.

12 Q. Can you tell us what happened shortly after  
13 you entered the park?

14 A. After we entered the park, we went to the  
15 sky lift. I'm not sure of the name. Two gentlemen were  
16 there. We entered the lift. The gentleman that allowed  
17 us into the lift pulled the lift backward, startled me  
18 as well as Carol. I threw myself forward and grabbed  
19 the bar, and I believe she threw her arms up, and she  
20 grabbed on to the lift.

21 At that point I felt a big impact into the  
22 back of the lift. She screamed. It was a scream, a  
23 shrill -- okay? Then the lift was sent off, and there  
24 wasn't too much we could do, but as you turned around

1 and looked back, I saw the young man in the back, the  
2 two boys that were operating the lift, the young man was  
3 smiling, but it was just like a smirk, okay? There was  
4 nothing I could do about it.

5 Q. Can you tell us what transpired as you were  
6 on the way to the next stop?

7 A. With her in tears, extreme pain, okay, I  
8 told her we would have to wait until we hit the next  
9 stop to see what we could do to take care of her arm.  
10 As we arrived at the next station, when we were let off,  
11 I asked the gentleman where could we go to first aid,  
12 and the gentleman directed us to the first aid station,  
13 and that's when we proceeded from the lift to there,  
14 okay, noting to him what did happen when we first got  
15 there.

16 Q. What happened after you arrived at the  
17 first aid station?

18 A. After we arrived at the first aid station,  
19 they took Carol in, okay. She was still very upset.  
20 They took her in. I'm not too sure what all they did.  
21 I only got it afterwards, that they were having it  
22 x-rayed at the hospital and so forth. When she came  
23 out, they had her wrapped in a bandage.

24 Q. Her arm?

1       A.       Her right arm in a bandage with ice, and it  
2       was like a sling. They told me then that they would  
3       drive both of us back to my vehicle and for me to take  
4       her to the hospital.

5       Q.       When you say they, you are talking about  
6       the Busch Gardens employees?

7       A.       Busch Gardens employees at the first aid  
8       station, okay. They said that when we arrived over at  
9       the hospital, everything would be handled through Busch  
10      Gardens.

11      We arrived over there. I think she  
12      complained about the pain. You could see it in her  
13      face. We were there. They proceeded to take the  
14      x-rays.

15      Q.       When you say there, you mean --

16      A.       At the hospital, okay, at the hospital, at  
17      the emergency, actually the emergency. They took  
18      x-rays, and then they told her to -- when she arrived  
19      home, to go to her family doctor and have it seen to by  
20      him and tended to by him. Other than that, it was just  
21      a grueling four and a half hour drive back, listening to  
22      her crying in pain all the way.

23      Q.       After you arrived back in Delaware, did  
24      Carol seek medical attention?

1 A. Yes, she did.

2 Q. Where were you and Carol working at the  
3 time?

4 A. It was Royal Limousine and Coach.

5 Q. Did you have contact with Carol over the  
6 months after that?

7 A. Yes, I did.

8 Q. What can you tell us about her physical  
9 condition, specifically her right arm and shoulder and  
10 neck?

11 A. Extreme pain, discomfort, constantly  
12 rubbing or having to fondle the arm in order to, I  
13 guess, to relieve pain of any sort. As far as that  
14 goes, I don't know, other than work.

15 Q. Could you tell us whether or not she worked  
16 any reduced hours?

17 A. Well, I can tell you that for a fact, she  
18 had reduced hours, being in the same shop. She could  
19 not do runs that involved lifting and so forth like  
20 that, driving long periods of time. I mean there is  
21 other things involved with it but driving.

22 Q. In all the years that you had known Carol,  
23 had you ever known her to complain of any right arm or  
24 shoulder pain?

1 A. No.

2 Q. Had she ever had any difficulty doing her  
3 job prior to this incident in July 1988?

4 A. No, she didn't, not at all.

5 Q. Since the accident and her injury have you  
6 kept in touch with Carol?

7 A. Yes, I have.

8 Q. What can you tell us about her arm and how  
9 she has done with her arm since the time of the  
10 accident?

11 A. Okay, she still has a great deal of pain.  
12 She still doesn't drive as she would have back then.  
13 She has had the surgery done, and all I can say is that  
14 she still complains about that arm. That's all I can  
15 say.

16 Q. Were you able from your vantage point to  
17 tell any reason why the Busch Gardens employee had to  
18 pull down on the back of the car you were riding in?

19 A. Could you say that again?

20 Q. Were you able to tell from where you were  
21 seated in the car any reason why the employee that you  
22 mentioned had to pull down on the back of the gondola?

23 A. I didn't understand any reason why the back  
24 of the car went down, okay. It's like I said, when you

1 hop in, when you hopped into the cart, it happened so  
2 quick, it was more or less -- it startled me, it  
3 startled both of us. All I know is you felt like you  
4 were falling when it was pulled down from behind. I  
5 just -- my reaction was to lunge forward and grab a hold  
6 of that pole. It's not humorous, okay, but I couldn't  
7 understand why the cart was brought down and why the  
8 other cars had to be slammed into the back of the first  
9 car.

10 MR. MILLS: Thank you. Those are all the  
11 questions I have for you. Please answer anything that  
12 Mr. Landon may have.

13 CROSS-EXAMINATION

14 BY MR. LANDON:

15 Q. I have a couple of questions for you, and  
16 some of my questions may seem a little strange to you,  
17 but I have never been to Busch Gardens, and I have never  
18 been on this particular ride and don't have a clear  
19 understanding sitting here as to what the ride looks  
20 like. Could you describe in as great detail as possible  
21 what the actual carts or gondolas look like?

22 A. Not knowing for sure, but it's --

23 MR. MILLS: Would you like to see a  
24 picture, or would you like him to describe it?

1 MR. LANDON: Off the record.

2 (Discussion off the record.)

3 (Photograph was marked Exhibit Toscano-1  
4 for identification.)

5 BY MR. LANDON:

6 Q. Mr. Toscano, while we were off the record,  
7 Mr. Mills gave me a photograph, which we have marked  
8 Toscano Exhibit 1, which appears to be a photograph of  
9 the gondola cars on the sky ride that you were on with  
10 your ex-wife. I'm giving you the photograph to look at.

11 First of all, does that photograph appear  
12 to be as I have described it?

13 A. Yes, very much so.

14 Q. Do you recognize that particular area  
15 depicted in the photograph?

16 A. Well, it's from the one we went in on, yes.

17 Q. In that photograph there is an orange car  
18 and a blue car behind it. Those were the types of cars  
19 you were in at the time of this incident?

20 A. Yes.

21 Q. These cars hold how many people generally?

22 A. I would probably say four people.

23 Q. So there are seats on each side of the car?

24 A. On each side of the car.

1 Q. And the car goes up on a steel wire, and  
2 you take an elevated ride across the amusement park?

3 A. Yes.

4 Q. As you are standing there, waiting in line,  
5 watching the cars come through and people getting in the  
6 cars, can you describe what happens and what the  
7 attendants generally do?

8 A. Can I describe it? I don't know. We were  
9 talking. I would say at a brief glance it was to look  
10 at the cars coming around and look how many people were  
11 in front of you, and if you were to chitchat, that was  
12 it.

13 Q. Had you been on this particular ride before  
14 this incident occurred?

15 A. Before the incident?

16 Q. Yes, on prior visits or anything like that?

17 A. I would say yes. I don't like heights, no  
18 matter where it is, but yes, I have been on this ride  
19 before.

20 Q. How many times had you been on this ride  
21 before?

22 A. Maybe once or twice. Like I said, I don't  
23 like rides.

24 Q. Have those trips on this ride been on prior

1 trips to Busch Gardens?

2 A. Years, yeah, years.

3 Q. On those prior trips did you go with your  
4 ex-wife or with someone else?

5 A. Oh, I would say with my ex-wife and maybe  
6 with someone else.

7 Q. So you had been on this particular ride at  
8 Busch Gardens at least one prior time?

9 A. One prior time, yes.

10 Q. Do the attendants shut the door behind you  
11 after the customer or the person gets on the cart, or  
12 does the customer shut the door?

13 A. The attendant closes the door I believe.

14 Q. Is there any kind of a lock on the inside  
15 of the door? This photograph just shows a handle on the  
16 outside of the door. Does the door automatically latch,  
17 when it is shut?

18 A. I didn't pay attention to that. I don't  
19 know.

20 Q. The attendant you say pushed down on the  
21 back of the cart. Was he pushing down on the handle  
22 that's on the door or pushing down on some other portion  
23 of the cart?

24 A. He was pushing down on a different portion

1 of the cart, more toward the back of us.

2 Q. Had you and your ex-wife actually sat down  
3 on the cart, before he started the cart?

4 A. We were sitting.

5 Q. You were both sitting, one on one side of  
6 the cart and one on the other?

7 A. Right.

8 Q. And the attendant started for some  
9 unexplained reason to push down on the back of the cart?

10 A. Yes.

11 Q. And that caused the cart to actually, the  
12 whole cart to actually go down; is that right?

13 A. The car went down in motion. It was like  
14 the only way I could describe it would be like falling  
15 in a recliner, going backwards.

16 Q. Which side of the cart were you on, as you  
17 got on the cart, the right side or the left side?

18 A. I was on -- she went in before me, so I was  
19 looking at it being my left, the left of it, looking at  
20 it, looking at the front of the --

21 Q. You would be on the left of this red cart,  
22 so as the cart went up the wire, you would be looking at  
23 the direction it would be moving?

24 A. Yes.

1 Q. And your wife would have been on the right  
2 side of this cart?

3 A. Ex-wife.

4 Q. I'm sorry. She would have been on the  
5 right-hand side of this red cart, as it is shown in this  
6 picture?

7 A. Looking at the front of the cart, I would  
8 say it would be on the back side, the left of the door  
9 handle, because we were facing out.

10 Q. You were sitting side by side?

11 A. Yes, side by side.

12 Q. That's what I misunderstood. When you and  
13 the plaintiff in this case were sitting on the left side  
14 of the cart, when you initially sat down, was there any  
15 movement of the cart itself at that point in time,  
16 before the attendant pushed on it?

17 A. There is a slight movement, okay. After  
18 hopping in, you could feel it sort of like a sway.

19 Q. A little bit of a sway?

20 A. Right.

21 Q. Was the cart moving forward?

22 A. Actually, no. The cart wasn't moving  
23 forward at that time.

24 Q. This photograph that is Exhibit 1 shows

1 what looks like one or two blue carts lined up behind  
2 this orange cart. When you got into the cart with the  
3 plaintiff, were there any carts lined up behind your  
4 cart at that point in time, or were they some distance  
5 behind your cart?

6 A. They were -- they were behind. That's all.  
7 We waited until the cart come out, and when the man  
8 signaled us to the cart, the cart was behind us, there  
9 was just another car behind us.

10 Q. Do you have any recollection as to how far  
11 behind your cart the next cart was?

12 A. How far behind?

13 Q. Yes, 4 feet, 10 feet, more than that or  
14 less than that?

15 A. I would say less than that.

16 Q. Less than 4 feet behind?

17 A. Yes, about.

18 Q. Do you know whether that cart was moving on  
19 a track at the time that you got in your cart?

20 A. I would say the cart was probably moving  
21 until the second man stopped the cart. I'm trying to  
22 picture it all now. I mean I haven't been down to Busch  
23 Gardens since.

24 Q. As the carts come through on that overhead

1 track, does the attendant have to stop one of the carts  
2 so that the customer can get on the cart?

3 A. I would say so, yes.

4 Q. So the attendant stopped the cart that you  
5 and your ex-wife were about to get on, held on to the  
6 cart and opened the door, so that you and your ex-wife  
7 could get in. She got in first, you got in, you sat  
8 down, and almost as soon as you sat down, the attendant  
9 started to push down on the back of the cart?

10 A. Yes.

11 Q. You don't have any idea why he would be  
12 pushing down on the back of the cart?

13 A. Not really, no.

14 Q. And as soon as that attendant started to  
15 push down on the cart, your reflex was to grab the pole  
16 which is shown in the middle of the photograph?

17 A. Right.

18 Q. And your ex-wife's reflex was to grab what?  
19 What did she grab?

20 A. She reached up, and she was -- she went to  
21 the top of that.

22 Q. The top of the rail?

23 A. Top of the rail.

24 Q. So she reached sort of up and back with her

1 right hand and grabbed the top of that rail; is that  
2 right?

3 A. Let me see this picture. The top part of  
4 that rail, yes.

5 Q. Do you have any idea what part of the next  
6 cart actually struck her?

7 A. No, not -- all I felt was the impact of  
8 that car from behind, smacking in the back of that cart.  
9 She screamed at the same time the impact occurred, okay.  
10 That's when I was looking at her, and if you could see  
11 it, you would see the tears coming out of her eyes as  
12 soon as it occurred.

13 When I felt the back of the impact, I  
14 looked at her. I looked back at the second young man in  
15 the back, and that's when he had a grin on his face, and  
16 her scream was enough to know that something happened  
17 right then and there. I just assumed that the young man  
18 in the back part -- I don't know if he did it  
19 deliberately or not.

20 Q. When your wife screamed, is it fair to say  
21 that at an amusement park on rides people tend to scream  
22 from time to time, whether they are hurt or not?

23 A. Not that particular type of scream.

24 Q. So in your mind you knew she was hurt

1 immediately?

2 A. It was a scream of -- like a shrill, not a  
3 scream of excitement. You could pick out the pain that  
4 was involved. That's why.

5 Q. Did either of the attendants say anything  
6 that you recall after your ex-wife screamed?

7 A. No. After that impact we were pushed off,  
8 okay, so we were already in motion. You couldn't say  
9 nothing until you actually arrived at the next  
10 destination, at the next stop.

11 Q. On your prior trips to Busch Gardens, when  
12 you went on this particular ride, did you ever notice  
13 any of the signs that were posted near this ride that  
14 said to keep hands and arms inside the carts at all  
15 times?

16 A. I might have seen signs, yeah.

17 Q. You might have or you did?

18 A. I say myself. I mean after, when you hop  
19 in the car, like I said, I don't like heights. My main  
20 concern is not looking anywhere, but keeping myself  
21 entertained, but I would say there is a sign, and I  
22 believe it's to the left side or after you hop in.

23 Q. In the cart itself?

24 A. Inside the cart itself.

1 Q. What does that sign say to the best of your  
2 recollection?

3 A. I'm not sure what it says. I just remember  
4 there was a sign inside that cart.

5 Q. Do you remember ever reading that sign?

6 A. Offhand, no. I mean from the time you hop  
7 into the cart until you are pushed off, I mean I'm  
8 holding on, that's all I know, I'm holding on.

9 Q. My question is really --

10 A. Heights bother me.

11 Q. My question is really you have been there  
12 before, and you have been on the ride before, and  
13 presumably the ride takes several minutes, does it not?

14 A. Yes.

15 Q. You are sitting on the cart, and hopefully  
16 there are a lot of things to look at outside the cart,  
17 that's the purpose of the ride, but there is a sign  
18 there, do you know if on prior occasions you ever read  
19 the sign?

20 A. I don't think I read the sign. I can only  
21 tell you my viewpoint, that's I'm looking straight ahead  
22 and wondering when it is going to stop, and that's how  
23 it goes.

24 Q. After you got to the next stop and got off

1 the ride and asked for first aid, did you find that the  
2 Busch Gardens people were attentive to the problem and  
3 treated you like you expected from that point forward?

4 A. Well, I would say pretty much, you know, it  
5 seemed like there was a genuine concern from the first  
6 aid, yes, I would have to say that.

7 Q. You testified that your ex-wife still  
8 complains a great deal or still has a great deal of  
9 pain?

10 A. Right.

11 Q. And she is currently now living in Las  
12 Vegas; is that correct?

13 A. Yes.

14 Q. She has been living in Las Vegas since  
15 October 1990; is that correct?

16 A. Yes.

17 Q. That's about two years?

18 A. Right.

19 Q. You two have children together, and  
20 presumably that's one reason why you still keep in  
21 touch?

22 A. Yes. We still have good rapport.

23 Q. How often have you talked to her in the  
24 past two years?

1           A.       In the past two years? Oh, quite a bit,  
2 actually.

3           Q.       Once a week, more than that, less than  
4 that?

5           A.       I would say it could be as many as maybe  
6 five or six times a month.

7           Q.       You generally talk on the phone?

8           A.       Yes.

9           Q.       Have you seen her at all in the past two  
10 years?

11          A.       Oh, yes, I have seen her.

12          Q.       How many times have you seen her?

13          A.       Twice.

14          Q.       Does she tell you about the pain in her  
15 arm, whenever you talk to her?

16          A.       Yes, she does.

17          Q.       So that's a topic of conversation you  
18 always have?

19          A.       It has always been there, and it just goes  
20 on today for driving the kids, okay, I do hear it, yes.

21          Q.       You were working at Royal Limousine with  
22 the plaintiff at the time this incident occurred?

23          A.       That's correct.

24          Q.       How long had you continued to work? Did

1 you continue to work at Royal after the incident?

2 A. After the incident? Probably, maybe about  
3 a year.

4 Q. So you worked for about a year after the  
5 incident, and then your ex-wife continued to work for a  
6 year beyond that?

7 A. Are you talking about from the time of the  
8 accident?

9 Q. Yes. The accident happened in July of  
10 1988.

11 A. Oh, no, no. I was with Royal until 1990,  
12 middle of '90.

13 Q. Did you leave Royal at about the same time  
14 as your ex-wife left Royal?

15 A. I probably left -- I left -- left in June  
16 of '90.

17 Q. My information is that your ex-wife left in  
18 June of 1990.

19 A. She left in June of '90?

20 Q. Yes.

21 A. Yes. Yes, actually leaving Royal, yes, I  
22 guess about then. I thought it was more in -- did I  
23 leave in June? June of '90, yeah, I left in June '90.

24 Q. Why did you leave?

1           A.       Disagreement with the owner.

2           Q.       What was your disagreement?

3           A.       He wanted me to do a run in a coach with no  
4 brakes. I refused to do the run, and it started out as  
5 a suspension for not doing the run, and then he wanted  
6 a dismissal on it.

7                   MR. MILLS: I object to the relevancy of  
8 this whole line of questions.

9                   MR. LANDON: That's all I have.

10                  MR. MILLS: You have the right to read and  
11 sign the transcript of the deposition after it has been  
12 transcribed by the court reporter. I am obligated to  
13 advise you of your right. However, with that advice,  
14 most people choose to waive it.

15                  THE WITNESS: I'll waive.

16                   (The deposition was then concluded at  
17 approximately 6:00 p.m.)

18                   (Presentation, reading and signing of the  
19 deposition were waived.)

20                               - - - - -

21

22

23

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Deposition of:

JOSEPH S. TOSCANODIRECTCROSS

Examination by:

Mr. Mills

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Mr. Landon

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## C E R T I F I C A T E

STATE OF DELAWARE:

NEW CASTLE COUNTY:

I, Lis Downes, a Notary Public within and for the county and state aforesaid, do hereby certify that the foregoing deposition of JOSEPH S. TOSCANO was taken by me pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth; that the testimony was recorded by me in machine shorthand and thereafter transcribed under my supervision; that the transcript is a true record of the testimony given, and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Witness my hand this 9th day of October,  
1992.



LIS DOWNES  
Notary Public-Reporter

INSTRUCTION NO. 9

The defendant is a common carrier. A common carrier has a duty to use the highest degree of practical care and foresight for the safety of its passengers, but it is not an insurer of its passengers' safety.

If a common carrier fails to perform this duty, then it is negligent.

*refine*  
~

INSTRUCTION NO. 10

The passenger-carrier relationship begins when a person presents herself to the carrier for transportation under such circumstances of time, place, manner, and condition that the carrier must be deemed to have accepted her as a passenger.

*refers*

INSTRUCTION NO. 11

If you believe from the evidence that the defendant was a common carrier of passengers and that the plaintiff was the defendant's passenger, the Court instructs you that the defendant was not an insurer of the plaintiff's safety but owed her the utmost care, diligence and foresight in the operation and management of its transportation facility. If you believe that the defendant was guilty of the slightest negligence whereby the plaintiff was injured without negligence on her part, you shall find for the plaintiff, Carol Bregel.

*refuse*

INSTRUCTION NO. 14

You shall find your verdict for the plaintiff, Carol Bregel, if she has proved by the greater weight of the evidence that:

- (1) The defendant was negligent; and that
- (2) The defendant's negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the defendant if the plaintiff failed to prove either or both of the two elements above.

*State refused  
K claim not  
certain C/W*

INSTRUCTION NO. A

The Court instructs the jury that you are the sole judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any has been shown, their prior inconsistent statements.

While you have no right to disregard arbitrarily the believable testimony of any witness, you may discard or accept, in whole or in part, the testimony of any witness when you consider it in connection with the other evidence in the case. You are entitled to use your common sense in judging any testimony.

From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

*W/Chair*

INSTRUCTION NO. 6

The Court instructs the jury that the burden is upon the plaintiff to prove by a preponderance of the evidence that the plaintiff sustained an injury as a result of the negligence of the defendant.

And if you are uncertain as to whether or not the plaintiff sustained an injury or if you believe it is just as likely that she did not sustain an injury as she did, then you shall find your verdict in favor of the defendant.

*refuse*

INSTRUCTION NO. I

The Court instructs the jury that in considering the weight to be given to the testimony of an expert witness, you should consider the basis for his opinion and the manner by which he arrived at it.

*W/cha*

INSTRUCTION NO. M

The Court instructs the jury that the fact that the defendant is a corporation should not influence you in your deliberations either in regard to liability or in regard to the amount of damages, if any. A corporation is entitled to the same fair and just consideration as any other defendant.

*u/cha*

INSTRUCTION NO. 1

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. -You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

*Given*  
*h*

INSTRUCTION NO. 2 -

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issues in this case are:

(1) Was the defendant negligent?

(2) If it was negligent, was its negligence a proximate cause of the accident?

On these issues the plaintiff has the burden of proof.

---

(3) Was the plaintiff negligent?

(4) If she was negligent, was her negligence a proximate cause of the accident?

On these issues the defendant has the burden of proof.

---

(5) If the plaintiff is entitled to recover, what is the amount of her damages?

On this issue the plaintiff has the burden of proof.

---

Your decision on these issues must be governed by the instructions that follow.

INSTRUCTION NO. 3

In considering the weight to be given to the testimony of an expert witness, you should consider the basis for his opinion and the manner by which he arrived at it and the underlying facts and data upon which he relied.

*Shaw  
Purd.*

INSTRUCTION NO. 4

The greater weight of all the evidence is sometimes call the preponderance of the evidence. It is that evidence which you find more persuasive. The testimony of one witness whom you believe can be the greater weight of the evidence.

*Shue*  
*~*

INSTRUCTION NO. 5

Negligence is the failure to use ordinary care. Ordinary care is the care a reasonable person would have used under the circumstances of this case.

*Speci*  
*~*

INSTRUCTION NO. 6

The plaintiff has a right to assume that the defendant will use ordinary care until she realizes, or in the exercise of ordinary care should realize, that the defendant is not going to do so.

*Smeli*  
*h*

INSTRUCTION NO. 7

An employer is liable for all damages proximately caused by the negligence of its employee while acting within the scope of his employment.

*glue*  
*~*

INSTRUCTION NO. 8

If you believe by the greater weight of the evidence:

- (1) that the defendant is liable for the plaintiff's injuries;
- (2) that the plaintiff used reasonable care in selecting a physician to treat her injuries; and
- (3) that the treating physician made the injuries worse;

then the plaintiff is entitled to damages from the defendant for the increase in her injuries caused by the physician.

*True.*  
*m*

INSTRUCTION NO. 12

The owner or proprietor of a place of amusement or entertainment is not an insurer of the safety of its invitees, but has the duty to exercise reasonable care for their safety and protection.

Reasonable care is the care that would be exercised by an ordinarily careful and prudent person or business in the same position. If the owner or proprietor fails to perform this duty, then it is negligent.

*Shun*  
*h*

INSTRUCTION NO. 13

If you find your verdict for the plaintiff, Carol Bregel, then in determining the damages to which she is entitled, you may consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendant:

- (1) any bodily injuries she sustained and their effect on her health, according to their degree and probable duration;
- (2) any physical pain and mental anguish she suffered in the past and any that she may be reasonably expected to suffer in the future;
- (3) any disfigurement or deformity and any associated humiliation or embarrassment;
- (4) any inconvenience caused in the past and any that probably will be caused in the future;
- (5) any medical expenses incurred in the past and any that may be reasonably expected to occur in the future;
- (6) any earnings she lost because she was unable to work at her calling;
- (7) any loss of earnings and lessening of earning capacity, or either, that she may reasonably be expected to sustain in the future.

Your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages sustained as a result of the defendant's negligence.

*Shaw*

INSTRUCTION NO. 14

You shall find your verdict for the plaintiff, Carol Bregel, if she has proved by the greater weight of the evidence that:

- (1) The defendant was negligent; and that
- (2) The defendant's negligence was a proximate cause of the plaintiff's accident and damages.

You shall find your verdict for the defendant if:

- (1) The plaintiff failed to prove either or both of the two elements above; or if
- (2) The defendant has proved by the greater weight of the evidence that the plaintiff was contributorily negligent and that her contributory negligence was a proximate cause of the accident.

*gwen*

INSTRUCTION NO. 6

The Court instructs the jury that you must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and the instructions of the court.

*gwe  
~*

INSTRUCTION NO. C

The Court instructs the jury that the defendant was not an insurer of the safety of the plaintiff and in order for the plaintiff to recover, the burden is upon her to prove by a preponderance of the evidence that the defendant failed to exercise ordinary care in the conduct of its business. Unless you believe that the plaintiff has proven by a preponderance of the evidence that the defendant failed to exercise such care, then your verdict shall be for the defendant.

*Shue*  
*h*

INSTRUCTION NO. D

[REDACTED]

The Court instructs the jury that a proximate cause of an accident, injury or damage is the cause which in natural and continuous sequence produces the accident, injury or damage. It is a cause without which the accident, injury or damage would not have occurred.

INSTRUCTION NO E

The Court instructs the jury that the fact that there was an accident and that the plaintiff may have been injured does not, of itself, entitle the plaintiff to recover.

The plaintiff has the burden of proving by the greater weight of the evidence that the defendant was negligent and that its negligence caused the plaintiff's injuries.

*Sum  
m*

INSTRUCTION NO. F

The Court instructs the jury that-if you find from the evidence that the plaintiff was negligent and that her negligence proximately contributed to the accident, you may not compare the negligence of the parties. Any negligence of the plaintiff which was a proximate cause of the accident will bar the plaintiff from recovering.

*Sum.*  
*~*

INSTRUCTION NO. H

The Court instructs the jury that-to the extent that a doctor has testified that his opinion stating the accident caused the injuries is based upon what the plaintiff told him concerning the history of the accident and her symptoms, the opinion stated by the doctor is dependent upon the truthfulness of the matters which were related to the doctor by the plaintiff.

*Given  
now*

INSTRUCTION NO. 3

The Court instructs the jury that damages are not presumed nor may they be based upon speculation, but must be proven and the burden is upon the plaintiff to prove by a preponderance of the evidence or with reasonable certainty any item or element of damage claimed and that it is properly attributable to the accident; and unless such item or element of damage is thus proven by a preponderance of the evidence, then the plaintiff cannot recover for such item or element.

*Same*

INSTRUCTION NO. K

The Court instructs the jury that the statement of counsel for the plaintiff referring to the amount sued for is not evidence in this case; you should not consider it in arriving at the amount of your verdict, if any, except that the jury may not award more than the amount sued for.

*Sum.*  
*~*

INSTRUCTION NO.   L   -

The Court instructs the jury that if you find in favor of the plaintiff and make an award of any loss of earnings or expense in the future, you must take into account the fact that the money awarded by you is being received all at one time instead of over a period of time extending into the future and that the plaintiff will have the use of this money in a lump sum. You must, therefore, determine the present value or the present worth of the money which you award for such future loss.

*gme*

VERDICT SHEET

VERDICT FOR THE PLAINTIFF

We, the jury, on the issues joined find in favor of the plaintiff and assess her damages at \$\_\_\_\_\_.

\_\_\_\_\_  
Foreperson

VERDICT FOR THE DEFENDANT

We, the jury, on the issues joined find in favor of the defendant.

Carol R Flanz  
Foreperson

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND  
THE COUNTY OF JAMES CITY

CAROL SIBERT BREGEL, Plaintiff

v.

LAW #5894

BUSCH ENTERTAINMENT CORPORATION, Defendant

FINAL ORDER

Came on the 3rd day of May, 1993, the parties in person and by counsel, and the defendant having heretofore filed its grounds of defense herein, issue is joined.

Whereupon came a jury, to-wit: Carol R. Flango, Foreperson, Louise L. Hill, Patricia R. Russo, Bonita Schley, Rosetta J. Roberts, Catherine R. Bush, and Elizabeth E. Conklin who were sworn to well and truly try the issues joined and a true verdict give according to the evidence and the law.

The evidence of the plaintiff was presented and at the conclusion thereof the defendant by counsel moved to strike the evidence of the plaintiff on grounds stated in the record, which motion was overruled and to which ruling of the Court counsel for the defendant excepted.

Thereupon, the evidence of the defendant was presented and at the conclusion of all of the evidence, the defendant by counsel renewed his motion to strike the plaintiff's evidence, on the same grounds, which motion was overruled and to which ruling of the Court counsel for the defendant excepted.

After receiving instructions from the Court and hearing arguments of counsel, the jury retired to their room to consult of their verdict and after some time returned into Court with the following verdict:

"We, the jury, on the issue joined, find for the defendant."  
Carol R. Flango, Foreperson

The plaintiff by counsel, moved to set aside the verdict as being contrary to the law and evidence and to order a new trial, which motion was overruled and to which ruling of the Court, counsel for the plaintiff excepts.

It is therefore ADJUDGED and ORDERED that the plaintiff take nothing and that judgment be entered in favor of the defendant.

DATE:

5/6/93

ENTER:

*W. L. Plango*

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG  
AND JAMES CITY COUNTY

CAROL SIBERT BREGEL,

Plaintiff,

v.

AT LAW NO. 5894

BUSCH ENTERTAINMENT CORPORATION,

Defendant.

**PLAINTIFF'S MOTION TO SET ASIDE THE VERDICT  
AND TO ORDER A NEW TRIAL AND/OR TO VACATE  
THE JUDGMENT ORDER ENTERED ON MAY 6, 1993  
AND ORDER A NEW TRIAL**

**FACTS**

On July 10, 1988, the plaintiff, Carol Bregel, was visiting Busch Gardens in Williamsburg, Virginia, and presented herself as a passenger, along with her companion, Joe Toscano, at the Sky Ride Station to be transported from England to the next "country". Immediately upon entering the Sky Ride cabin, she placed her arm on the rear of the seat, inside the cabin. Joe Toscano entered and sat next to her and when the attendant closed the door, tilted the cabin backwards causing Joe Toscano to lean forward and grab the center rail and Carol Bregel to grab the rear of the cabin seat. The cabin that they occupied was struck immediately by the next Sky Ride cabin, pinning Carol Bregel's elbow in between the two metal cabins.

Carol Bregel cried out, had an immediate onset of pain and immediately upon disembarking proceeded to the First Aid Station where she was noted to have swelling and pain, ice and a bandage was applied and she was sent to the emergency

room of Williamsburg Community Hospital where she was treated and released, to be followed by various other physicians for the damage done to her ulnar nerve in the collision.

None of these facts were contradicted at trial, nevertheless the defendant's claimed that Carol Bregel was negligent in placing her arm outside the cabin and that the plaintiff had failed to show that it was Busch Garden employees who caused the Sky Ride cabins to collide thus causing the injury. The case was submitted to the jury on the issue of primary and contributory negligence. Instructions stating the duty of a common carrier were refused. After twice announcing that they were unable to reach a verdict the jury found for the defendant.

#### ASSIGNMENTS OF ERROR

##### Contributory Negligence

In the case of Eiss v. Lillis, 233 Va. 545 (1987), the defendant doctor claimed that malpractice was excused by the plaintiff's contributory negligence in taking aspirin along with the anti-coagulant drug Coumadin. The court pointed out that since the aspirin administration was a matter of which the defendant doctor should have been aware, it was not a basis for a claim of contributory negligence nor a proximate cause of the decedent's injury or death. In the present case, the evidence was clear that Carol Bregel's cabin and the position of her arm would have been in full

view of the attendants who were operating the Sky Ride cabins. Even if it could be said that grasping the back of the seat once the cabin was tilted was negligence on the part of Carol Bregel, it was still a fact that was apparent to the Busch Gardens employees operating the ride. Under the state of the evidence in this case, there is simply no basis for claiming that Carol Bregel did anything outside the exercise of ordinary care for her own safety and it was error to instruct the jury on this issue.

The one and only basis on which the defendant could claim that Carol Bregel was negligent was in not having all of her extremities inside the cabin at the time it was struck by the following cabin. Negligence is the failure to use ordinary care. Nothing in the evidence show that Carol Bregel did anything that was not consistent with ordinary care. Indeed, if a person feels that they are falling, it would be negligent not to grab the closest hand-hold. It is axiomatic that all instructions given in a civil case must be supported by evidence.

Common Carrier

In closing argument, counsel for the defendant made repeated references to the fact that the plaintiff had somehow failed to show that Busch Gardens had failed to use reasonable care in the operation of their Sky Ride. Despite the fact that the plaintiff had established through various witnesses and the defendant's own experts and personnel,

that it was an improper and negligent practice to cause Sky Ride cabins to collide with one another in a loading area. Plaintiff respectfully submits that the jury was instructed on the wrong standard as plaintiff had established through uncontradicted evidence and the introduction of uncontroverted documents that Busch Gardens was a common carrier in its operation of the Sky Ride. Instructions advising the jury that the defendant was a common carrier and owed the plaintiff the "highest degree of practical care" were refused by the court.

Under the evidence presented the Busch Gardens Sky Ride met every definition of a common carrier. The Sky Ride was defined by Busch Gardens' expert as being an aerial passenger tramway. The standard operating procedures provided that the Busch Gardens Sky Ride is a three station monocable system and that each station has loading and unloading facilities for the guests. The Sky Ride "provides a major means of transportation across the three countries". There was further testimony that the Sky Ride accepted as passengers, all paying customers, to the Busch Gardens facilities, including the handicapped.

Black's Law Dictionary defines common carriers as "those that undertake to carry all persons indifferently who may apply for passage so long as there is room, and there is no legal excuse for refusal. See also Carlton v. Boudar, 88 S.E. 174 (1916).

As the court is aware, Busch Gardens is a large facility divided into districts or "countries" and the Sky Ride is a means of transportation between those countries. Busch Gardens is a facility open to the public and all people who enter Busch Gardens are eligible to ride the Sky Ride without exception. Indeed, the testimony was that the ride was accessible to even the handicapped and very young children who were accompanied by adults. As the court may readily affirm from looking in the Virginia Model Instructions, the courts have held that taxi cabs, buses, railroads, ferries and elevators are common carriers. The common carrier, unlike an ordinary defendant, "owes the highest degree of practical care and foresight for the safety of its passengers". See Virginia Model Jury Instructions, No. 22.000, and notes contained therein. In the case of Murphy's Hotel, Inc. v. Cuddy's Adm'r, 97 S.E. 794 (1919), Murphy's Hotel was held to be a common carrier in operating an elevator at its place of business. There can be no practical or apparent distinction between the operation of an elevator in a hotel and the operation of an aerial passenger tramway at an amusement park.

Similarly, a number of cases from other jurisdictions have held that facilities operating aerial passenger tramways and amusement rides such as this one are common carriers. See Allen v. State, 260 A.2d 454 (1969) (ski lift); Pajak v. Mamsch, 87 N.E.2d 147 (1949) (ferris wheel);

Squaw Valley Ski Corp. v. Superior Court, 3 Cal.Rptr.2d 897 (1992) (ski lift); Summit County Development Corp. v. Bagnoli, 441 P.2d 658 (1968) (ski lift); Shoemaker v. Rush-Presbyterian-St. Luke's Medical Center, 543 N.E.2d 1014 (1989) (elevator).

Motion for Mistrial

The court may recall that the jury, after deliberating for an hour, returned and stated their confusion by asking if they could render a smaller amount of damages if they failed to find a preponderance of the evidence in favor of either party. they were instructed to follow the instructions that had been given them and return to deliberate. Approximately two hours later the jury again returned and indicated that they were deadlocked and plaintiff moved for a mistrial. This motion was denied and the jury was read the Allen charge and returned approximately 30 minutes later with a defendant's verdict. Once the jury had manifested their confusion over their instruction on the law of the case, as well as their inability to reach a verdict, a mistrial should have been granted. The plaintiff contends that it was the absence of a common carrier instruction compounded by the granting of a contributory negligence instruction unsupported by the evidence that caused the jury's confusion and resulted in a serious miscarriage of justice.

For all of the reasons stated in the foregoing, the plaintiff urges the court to vacate the Judgment Order and set aside the jury's verdict and to grant a new trial on all issues. In addition, the plaintiff desires to argue orally once the defendant has had an opportunity to respond to the foregoing motion.

CAROL SIBERT BREGEL

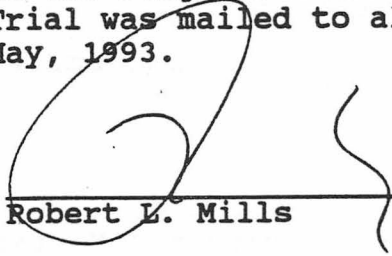
By 

Of Counsel

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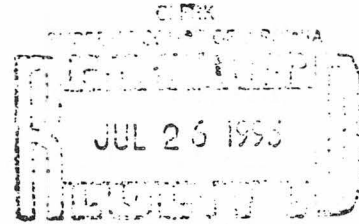
CERTIFICATE

I hereby certify that a true copy of the foregoing Plaintiff's Motion to Set Aside the Verdict and To Order a New Trial and/or To Vacate The Judgment Order Entered on May 6, 1993 and Order a New Trial was mailed to all counsel of record this 27th day of May, 1993.

  
Robert L. Mills

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG  
AND JAMES CITY COUNTY

CAROL SIBERT BREGEL,  
Plaintiff,



vs.

At Law No. 5894

VOLUME I

BUSCH ENTERTAINMENT CORPORATION,  
Defendant.

Taken before: The Honorable W. L.  
Person, Jr., Judge and Jury.

May 3, 1993 - 9:00 A.M.

Williamsburg, Virginia

APPEARANCES: Ruttter & Montagna, by Robert L. Mills,  
Esquire, and Lance A. Jackson, Esquire,  
counsel for the Plaintiff.

Harris, Fears, Davis, Lynch & McPhee, by  
Terry Hunter Davis, Jr., Esquire, counsel  
for the Defendant.

FILED  
HELENE S. WARD  
CLERK, CIRCUIT COURT  
1993 JUN 29 AM 10:54  
CITY OF WILLIAMSBURG  
& COUNTY OF JAMES CITY

FILED  
CITY CLERK

I N D E X

Witness	Direct	Cross	Redirect	Recross
Carol Bregel	68	99	112	--
Dr. James T. Barton	116	121	123	--
Joseph Toscano by deposition transcript	(page 125)			
Dr. LeRoy by videotape and deposition transcript	(page 126)			
Dr. Boulos by videotape and deposition transcript	(page 129)			
Randi Tyrone Barkers	129	147	151	--
Michael F. Tannen by deposition transcript	(page 153)			

E X H I B I T S

Description	Page
PLaintiff's Exhibit Number 1 not used.	--
Plaintiff's Exhibit Number 2, various medical bills	96
Plaintiff's Exhibit Number 3, photograph of gondola car	99
Plaintiff's Exhibit Number 4, videotape deposition transcript of Dr. LeRoy	126
Plaintiff's Exhibit Number 5, videotape deposition transcript of Dr. Boulos	129

1 She first went to see her family doctor, Dr. James Baker,  
2 who tried to treat her conservatively with medications and  
3 ice, the same regimen that will be applied all along, and it  
4 didn't do any good. He referred her to an orthopedic  
5 surgeon, Dr. Kamali, and Dr. Kamali treated her with pretty  
6 much the same regimen but tried her on different medication,  
7 also hoping that the inflammation in her elbow which was  
8 causing the pain and the numbness -- the inflammation and  
9 the tingling feeling that she had throughout her lower  
10 forearm would go away, would hopefully treat it  
11 conservatively. We all know what that means. Do as little  
12 as possible and hope that the situation would get better.  
13 It did not.

14                   Ultimately Dr. Kamali scheduled her for  
15 surgery in May of 1989. She was injured in July and treated  
16 by Dr. Kamali from October there right on through July and  
17 said, "Nothing else worked and we have to schedule the  
18 surgery and try this," and the surgery he did -- I'd like to  
19 use the illustration and show the jury what we are talking  
20 about, if I may.

21                   THE COURT: All right.

22                   MR. MILLS: Can I use this easel, Your  
23 Honor?

24                   The area of Carol's elbow that was injured  
25 by being trapped between the two cars is called the ulnar

1 nerve, and that is the ulnar nerve that you talk about when  
2 you hit your funny bone. That is the one that you feel. It  
3 runs -- you can see it on this illustration. It is this  
4 line and it comes down here and it becomes a dotted line.  
5 Well, as it gets down here at the elbow it crosses over the  
6 joint that makes the elbow. It is just beneath the skin.  
7 That is one of the big nerves that you can actually hit  
8 because it is not covered by a muscle. It is enclosed in a  
9 capsule. When the capsule is bruised, and the doctor will  
10 use the word contusion, which means bruise, when it is  
11 bruised and hurt it will start to form adhesions in the  
12 capsule. Scar tissue in essence puts pressure on the nerve  
13 and makes the symptoms stay, and instead of the funny bone  
14 pain going away it aches, and the symptoms go all the way  
15 down the arm and have an effect on the nerves in the fingers  
16 that that nerve serves.

17                   What he did, what the doctor did was go into  
18 the elbow and cut, make an incision in her elbow, find that  
19 nerve, and he can see the adhesions that were around it. So  
20 what he did was called a decompression, which means he  
21 didn't move the nerve, left it the way it was, but cut the  
22 adhesions away from it, cut it away from its natural anchor,  
23 left it in place hoping that that would fix the problem, but  
24 it didn't.

25                   Carol continued to have exactly the same

1 symptoms that she had and didn't improve. They tried her on  
2 yet more medication, anti-inflammatory agents of many  
3 different types and muscle relaxers, everything to try and  
4 get her arm better. Ultimately she was seen by Dr. Kamali  
5 in February of 1991 on the last occasion and he said,  
6 "Carol, there is nothing else I can do for you. What I have  
7 done for you is all that an orthopedic surgeon can do for  
8 you. I'm sorry."

9 Carol got the name of a Dr. LeRoy from a  
10 co-worker at work who said that he had a nerve block from a  
11 nerve injury and Dr. LeRoy did nerve blocks and perhaps that  
12 would help, so she went to see Dr. LeRoy who examined her  
13 and treated her with a regimen of different types of therapy  
14 and other medications to try and get her arm better.

15 When it didn't work he ordered some -- well,  
16 he did the nerve block. He did the nerve block and the  
17 nerve block was unsuccessful, which really didn't have any  
18 effect on her condition. You will hear Dr. LeRoy testify,  
19 and that is why I assume the TV is back here. These are  
20 Delaware doctors. Their depositions were taken. We asked  
21 them questions on tape and both lawyers for both sides were  
22 there, and we asked the doctors everything that we would ask  
23 them if they were sitting right here. Rather than sitting  
24 right here they'll be on the television set and we'll watch  
25 them as they testify.

1 Dr. LeRoy sent Carol for a test called an  
2 EMG, and there was an EMG performed earlier in connection  
3 with her earlier surgery, and what that is is they stick  
4 needles with electrodes into the skin and into the nerves at  
5 various places, then send electronic signals, and they can  
6 measure the speed that these signals go through the nerve,  
7 because a nerve is an electrical device that transmits  
8 electrical impulses from our brain down to the various parts  
9 of our body.

10 All the nerves start right at the base of  
11 the brain and then they go down into our spine and from your  
12 neck they branch out into your arms. From our lower back  
13 they branch out into our legs just like a tree. The  
14 impulses that go along those nerves do many, many different  
15 things. They have sympathetic functions and active  
16 functions and have passive functions. They control  
17 movement. They make you able to move things and able to  
18 move the muscles that grasp and do things like that. They  
19 make you feel -- when you feel things, you feel your hands  
20 rubbing together and feel hot and cold, that is sensation,  
21 another thing that the nerve does. So you have sensation  
22 and you have motor functions, and when the nerve is injured  
23 or damaged or hurt or bruised you have pain. So that is  
24 just another form of sensation, pain is, and these are some  
25 things that our nerves do by the transmission of these

1 impulses.

2 In Carol's case they could tell that these  
3 impulses weren't flowing properly across her elbow. They  
4 were slowed down by the bruising and adhesions she was  
5 having at that location. Dr. LeRoy referred her on to a  
6 neurosurgeon, nerve doctor or neurological surgeon, and his  
7 name was Dr. Boulos. He looked at her tests, had some more  
8 tests performed, and then said, "I think that the procedure  
9 that'll help you will be a decompression and transposition  
10 of your nerve."

11 What transposition means, they are now going  
12 to take the nerve and move it. They are going to take it  
13 away from its original site and cut a little -- by making  
14 another incision more or less the same place, find the  
15 nerve, cut it away from its little attachments to the  
16 muscles, and then move it so that instead of being right  
17 here inside the elbow it is now going to be up here in the  
18 crook of the arm. Then it doesn't have to be pulled across  
19 the elbow the way that it is for a normal person.

20 Well, it normally lies right here and  
21 stretches and moves just as the arm stretches and moves. It  
22 no longer has to do that. Now it will be inside your arm  
23 and not have as much stress on it and hope that will allow  
24 the nerve to heal and get better. That was the procedure  
25 that Dr. Boulos performed in August of 1991. Unfortunately

1 that procedure really didn't give her very much improvement.  
2 Unfortunately the nerve conduction tests and all her signs  
3 and symptoms remained about the same.

4 Now, ultimately we had her see one of the  
5 leading specialists in the country on hand surgery. His  
6 name is Dr. Pat Aulicino, and he is probably the leading  
7 authority on failed ulnar nerve transposition, the operations  
8 that don't work or don't correct the problem that they are  
9 intended to do. This illustration shows the kind of problem  
10 that area was having.

11 She had weakness and loss of sensation in  
12 her little finger and this finger and also in her grip,  
13 because that is an area that that nerve serves, this finger.  
14 You can see it branching out here and also branches across  
15 and serves the thumb, so that her overall grip strength, her  
16 ability to grab and her pinch strength, her ability to pinch  
17 have all been severely diminished, and her arm continued to  
18 ache at the elbow and the hot stabbing pains continued to go  
19 down her arm. It never stopped. It continues to go on.

20 What Dr. Aulicino says is that he tested her  
21 and looked at her EMG study and tested her grip strength  
22 compared to the right and left arm and measured grip  
23 strength. He measured two-point sensation, the ability to  
24 tell the difference between percussion on her arm, and said  
25 that what he can do is go back into her arm, operate on it

1 yet a third time, because there is some evidence on the EMG  
2 that the nerve may have slipped back into a position that it  
3 is not outside the bone. He'll move it again, put it deeper  
4 into a bed of muscle and also decompress it above and below,  
5 and he believes because he has written on the topic and  
6 pioneered this procedure, that this will relieve her pain,  
7 but only that. No one can ever restore and she will never  
8 be able to recover her strength in that arm. She'll never  
9 be able to pinch like she did, she will never be able to  
10 grasp like she did.

11 That is the state of the medical evidence,  
12 and a lot of what you will hear will be medical evidence.  
13 Probably more medical evidence than how the accident  
14 happened, because we don't think there is really going to be  
15 a substantial dispute about that.

16 The thing that you are going to be asked to  
17 determine after you have heard all of this medical evidence  
18 and all of this other stuff about how the accident happened,  
19 after you have heard Carol tell you what happened, is the  
20 effect that it has had on her life, how it has affected her.  
21 What it is that she has had to go through for the past five  
22 years, what it is that she will have to go through in the  
23 future.

24 Now, certain things are going to be easy to  
25 tell. We can show you her scars on her elbow. Those will

1 be apparent. They'll jump right out for you. We'll present  
2 evidence in mathematical form to show you the money that has  
3 been paid for medical bills for the doctors to do the two  
4 surgeries that have been performed. We can show you what  
5 the next surgery is going to cost. We can show you with a  
6 fair amount of precision the amount of time that she has  
7 been out of her work and not able to work in her job as  
8 chauffeur because she was recovering from surgery and unable  
9 to work. We can show you all of those things.

10 Then there are other things that can't be  
11 calculated with true mathematical precision, although you  
12 will hear evidence about them. She will tell you what it  
13 feels like to have her arm in that kind of condition and the  
14 way that it affects her life.

15 Carol worked at the time she had the  
16 accident as a chauffeur for Royal Limousine Service. She  
17 was a driver and she drove people to the airport and around  
18 various industrial sites. She drove limousines for people  
19 who were visiting the area. She drove minivans to do that  
20 type of pick up and delivery work, and you will hear  
21 testimony from the man who employed her to do that, and  
22 he'll tell you and Carol will tell you that after she had  
23 this injury she was never able to do that job in the same  
24 way, and her earnings were affected by this because now she  
25 is just simply unable to handle luggage and handle heavy

1 parcels, and all of her doctors agree on this, and it has  
2 affected her ability to earn a living.

3           Since this accident she has moved to Las  
4 Vegas, and now she works still as a driver, but she works in  
5 Las Vegas driving a shuttle bus that picks people up at  
6 their home, then takes them to various casinos and drives  
7 them back. That is a bus with an electric door that she  
8 does not have to operate. She can no longer operate the  
9 manual kind of bus doors that you are familiar with on  
10 school buses where they push and pull a lever to open and  
11 close doors. But she no longer is able to do the kind of  
12 work that earns her gratuities. People don't tip drivers  
13 unless the drivers do something for them like handle  
14 luggage.

15           So you will hear testimony that she has  
16 suffered not only lost earnings and not only will she suffer  
17 more lost earnings, but she had a loss of what you will her  
18 as wage earning capacity, her ability to earn, and you will  
19 hear testimony on that subject from her doctor and from the  
20 vocational rehabilitation specialist whose name is Charles  
21 DeMark, and he is a person who tested her and looked at the  
22 labor markets in various places and talked with her doctor  
23 and to her former employer and will be able to give you an  
24 idea of what it is that she'll not be able to earn in the  
25 future.

1                   Once we have done that we'll hear from an  
2                   economist, Mr. Fremon Jones, who will take the figures that  
3                   the rehabilitation expert provided and the other data  
4                   available to him and then reduce that future earnings to  
5                   what we call present value calculations.

6                   Now, the defense will have their side of the  
7                   case, too. If they didn't have a side of this case we  
8                   wouldn't be here in this dispute. We expect that they'll  
9                   show you and attempt to introduce evidence that there was a  
10                  sign on the interior of this Skyride that said, "No  
11                  standing, no putting your arms and legs outside, no rocking  
12                  the cabin, no smoking," and other information about all of  
13                  this stuff. They say that Carol is at fault for her own  
14                  injury. If she had taken the time to read the instructions  
15                  of the sign then this wouldn't have happened, and that is  
16                  their version of the case. That judgment will be up to you.

17                  You will see videotape evidence of exactly  
18                  how this Skyride is operated, and it will be up to you to  
19                  determine whether or not it is safe for people to bang cars  
20                  with people in cars, with passengers in them. You will see  
21                  whether or not it was foreseeable with Busch Gardens, if it  
22                  is something that they know about, that many, many of the  
23                  people who ride that ride do exactly what Carol did or  
24                  another form of it, and you will see videotape evidence of  
25                  that, and when you look at that I invite you to count along

1 with me the number of cars you see and the number of people  
2 you see resting their hands inside as Carol was and outside  
3 the car as they are loaded into the station. I would like  
4 you to make that count. I have my count; I can tell you  
5 what it is, and you will see that a large percentage, nearly  
6 half the people that ride the Skyride, do.

7 They also retained their own physician who  
8 looked at Carol for a total of 20 minutes, Dr. Curtis Spear,  
9 a doctor that Mr. Davis' firm uses quite a bit. The  
10 defendant in a case has a right to see any medical records  
11 to find out everything there is about the plaintiff's case,  
12 and they have never taken the opportunity to do that.

13 What they also have the ability to do is  
14 have her seen by any doctor they choose. Dr. Curtis Spear  
15 was a doctor that they chose. His testimony will not be in  
16 conflict too substantively with the other doctors. He will  
17 agree that she was injured in this case and that she  
18 suffered her injury, that she had this pain and these  
19 problems, and he knows about the background of her surgery.

20 He'll have a disagreement. The first time  
21 we asked him he said she had a five percent permanent  
22 impairment. Then he said ten percent. Our doctors will say  
23 thirty-seven percent permanent impairment of the right upper  
24 extremity, which the doctors call the right arm.

25 At the end it is just going to be up to you

1 to determine whether or not Carol Bregel is a careless  
2 person who wasn't doing what she was supposed to do on that  
3 day and caused her own injury, or whether it was Busch  
4 Gardens and the way they operated the Skyride that day, what  
5 those employees did that day that caused her injuries.

6 My job and Mr. Jackson's job -- Lance  
7 Jackson will be assisting me in the trial of this case. He  
8 won't be here all day tomorrow. He has to be up in  
9 Richmond. He will be here today, and our job and Mr.  
10 Davis's job will be to bring you all the information you  
11 need to make that decision, and I am going to do my very  
12 best to do that and I know that you will do your best.  
13 Thank you, Your Honor.

14 THE COURT: Mr. Davis?

15 MR. DAVIS: Thank you. Ladies and  
16 gentlemen of the jury, I represent Busch Gardens. My name  
17 is Terry Davis. I have been introduced to you a few times.  
18 Of course, we are always sorry to hear that anyone is  
19 claiming injury at Busch Gardens. The amusement park was  
20 built for amusements and it wasn't designed for anything  
21 else aside from that. We feel that there is something there  
22 for everyone. You can go there and you can see shows, you  
23 can see shows that are produced there and some which we  
24 think are very, very fine, or if you so desire you can ride  
25 these thrill rides, the roller coasters and then all of the

1 gamut in between.

2 We don't think we hold second place to any  
3 park, really, in the United States, including Disney World.  
4 We are prettier than Disney World. Disney World is plain  
5 and flat and we have got nice hills and streams and trees,  
6 and we like the park very much and we are really concerned  
7 when anybody is claiming injury there.

8 Really we don't have to do this, but we have  
9 a first aid station on the park and there is a registered  
10 nurse there on constant duty full-time. Mrs. Lenz was on  
11 duty this particular day, and they treat a gamut of things  
12 that come through there; upset stomach and bruises and  
13 headaches, various and sundry things, bee stings. It is  
14 amazing what does come through the first aid station there.  
15 There are a couple of EMTs on duty there, too, that work  
16 full-time.

17 Of course, we expect that at the conclusion  
18 of the case the Court will instruct us on the law, and the  
19 Court will tell us that it is not -- Busch Gardens is not  
20 automatically responsible because someone claims an injury  
21 there that occurred at Busch Gardens. It is up to the  
22 individuals to show liability, in this instance that Busch  
23 Gardens was negligent, and, of course, negligence will be  
24 defined for us by the Court as basically the failure to act  
25 reasonably under the circumstances. Of course, the Court

1 will give us that in more detail, but that is the issue.

2 Now, we have an opportunity before we try  
3 these cases to take what is called discovery depositions,  
4 and we have asked Mrs. Bregel, the plaintiff here, certain  
5 questions, and they have done the same with Mr. Carlson who  
6 sits at counsel table with me. Bill Carlson is the safety  
7 director there. He lives up at Grafton. He has been safety  
8 director there for about fifteen years. He lived in Grafton  
9 about the same length. But, anyhow, his deposition was also  
10 held.

11 Now, Mrs. Bregel will tell you that she  
12 entered the cabin there at the England station or the  
13 Banbury Cross Station, which is the first station that you  
14 come in as you enter the park, and that she got on the ride  
15 and her -- well, I think it is her ex-husband anyway, got on  
16 with her and they both sat on the same side of the cabin,  
17 and after she got in she indicates that she knew that she  
18 wasn't supposed to put her arms outside the cabin. She had  
19 been to Busch Gardens several times before and ridden the  
20 Skyride several times, read the signs there, but what she  
21 says occurred was that one of the attendants tipped the  
22 cabin somehow and she braced herself, and in bracing herself  
23 she put her arm outside the cabin and then another cabin  
24 behind her came in contact with her.

25 I think that is basically what she will tell

1 you. She had been to Busch Gardens a number of times and  
2 read -- I think the suit was filed about two years after the  
3 accident. We tried to find the employees on duty at that  
4 particular time and have been unable to do so. That is any-  
5 one who knows anything about it. I don't think it will be  
6 too unusual that nobody would remember this actually because  
7 Mrs. Bregel states that she only indicated to the attendant  
8 at the England station that she had hurt her arm as she was  
9 leaving. In other words, as the ride was moving on. So I  
10 don't know that anyone necessarily on a crowded day like  
11 July 10th, 1988, would remember that.

12 In any event, we haven't found anyone who  
13 remembers. We do, though, have a record of her going to the  
14 first aid station that particular day, and the individual  
15 who was on duty, Mrs. Lenz, the registered nurse. She  
16 doesn't remember her. She has a record there that she kept,  
17 and the record indicates that after I think they put ice on  
18 her elbow that she was asked to go over to Williamsburg  
19 Community Hospital at Busch Gardens' expense, to go over  
20 there and be checked out, and she was seen over at the  
21 Williamsburg Community Hospital. Of course, that is the  
22 last record we have of the situation until suit was filed.  
23 She was seen at the emergency room and I believe she went on  
24 back home.

25 Of course, it will be up to you to decide,

1 well, was Busch Gardens negligent in having these two cars  
2 come in contact with each other on that particular occasion.  
3 Based upon what Mrs. Bregel says, she and her husband or  
4 ex-husband, whichever it may be who was with her, those are  
5 the only two individuals who will be testifying as to  
6 exactly what occurred under those circumstances.

7 Now, there are two experts that'll also  
8 testify in regards to the normal operating procedure, and,  
9 of course, you will have an opportunity to view their  
10 testimony, also. I must say that I think that both experts  
11 will indicate to you that there was nothing dangerous about  
12 the ride, there was nothing unreasonable about the ride,  
13 nothing unreasonable about the loading or unloading  
14 procedure in this particular instance.

15 Now, of course, if you-all decide that Busch  
16 Gardens is not responsible, then there is no occasion to go  
17 into the injury. We had a duty -- most of you have ridden  
18 the Skyride. I think all of you have, if I am not mistaken,  
19 and you probably know as much about it as anyone else,  
20 really, but we did have a video made to show in case someone  
21 wasn't familiar with the Skyride. We had that made. That  
22 will show you what it is all about and how the people get on  
23 and how people -- how the ride is conducted. We'll have  
24 testimony along that line.

25 We understand from the plaintiff's testimony

1 that she struck her funny bone, which is called the ulnar  
2 nerve, and that she had two operations on that and she still  
3 complains that these operations are not successful. In  
4 fact, the physician that the plaintiff's attorney referred  
5 her to last seems to indicate that one of the other two  
6 physicians may have cut the nerve. We are not sure. His  
7 video has been taken and I have viewed it, and I am not  
8 entirely sure what he is saying. But, in any event, he is  
9 the gentleman that says that he can repair it and eliminate  
10 any pain that she may be having. So you will hear the  
11 videotape of these doctors.

12 Our doctor said that the nerve hadn't been  
13 cut and her doctor will say the same thing. That is the  
14 doctor who operated on it. They'll also have an economic  
15 expert who will put on the board what I call a boxcar  
16 figure, which is -- well, her earning capacity is diminished  
17 by a figure of \$10,000 a year because she can't do thus and  
18 such, and that is multiplied out by her work life. She is  
19 46, and multiply that out it comes to -- you get quite a  
20 figure. Of course, they admit they have got to reduce that  
21 for present value, but you will hear from him and you will  
22 hear from the economist and you will hear from people  
23 perhaps who knew her before and after.

24 The procedure here is that the plaintiff's  
25 attorney goes first and he puts on any evidence that he

1 wants to, and after he gets through with all of his  
2 evidence, then if there is anybody that is left why we put  
3 on our evidence, and after that, of course, the Court  
4 instructs us on the law and we have an opportunity to talk  
5 to you again and then you go out and decide your case.

6 You decide the issue. We, of course, are  
7 requesting a verdict of non-negligent action, and that is a  
8 verdict in favor of Busch Gardens in this case.

9 Thank you for listening to me.

10 THE COURT: We'll take a ten-minute recess.  
11 I will ask you all to go back into the jury room.

12 MR. DAVIS: Your Honor please, the  
13 witnesses, could we release our witnesses and come back  
14 Wednesday? I think it is going to take about two days to  
15 put his case on.

16 MR. MILLS: I don't suspect so. I have  
17 subpoenaed several of their witnesses myself and I know I  
18 will get to them today.

19 THE COURT: You-all can be excused to go to  
20 the jury room.

21 (Proceedings in the courtroom out of the  
22 presence of the jury:)

23 MR. DAVIS: I am not totally sure of who is  
24 here who --

25 THE COURT: Can you get through by

1 do to make you more comfortable we'll try to. Just ask,  
2 okay? If you need to take a break at any time, if we go too  
3 long, just indicate and we'll take a break. All right.

4 Call your first witness.

5 MR. MILLS: The plaintiff, Carol Bregel,  
6 Your Honor.

7 CAROL BREGEL, the Plaintiff, called as a witness  
8 on her own behalf, having been first duly sworn, was  
9 examined and testified as follows:

10  
11 DIRECT EXAMINATION

12  
13 BY MR. MILLS:

14 Q. Carol, good morning.

15 A. Good morning.

16 Q. Nervous?

17 A. Yes.

18 Q. A little bit?

19 A. A little bit.

20 Q. Would you tell the jury your full name,  
21 please?

22 A. My name is Carol Bregel.

23 Q. And where do you live and how old are you?

24 A. I am 46 years old and I live in Las Vegas,  
25 Nevada.

1 Q. Can you tell the jury a little bit about  
2 your background, where you grew up and where you are from  
3 and how many children you have?

4 A. I was born and raised in Ruffin, North  
5 Carolina. We didn't stay in one spot too long. My father  
6 was a sharecropper. We moved to a little bit of every place  
7 over, I guess, a seven-year period. Then at the age of  
8 seven I went to live with an aunt and went to live in  
9 Lawrenceville and Wilmington and settled down a little bit.

10 Q. Where did you settle down at?

11 A. In Wilmington, Delaware.

12 Q. Did you go on to high school, that sort of  
13 thing?

14 A. Yes, I did. I went to high school. I left  
15 school at the age of 16 and got married. Later I did go  
16 back to school and got my GED and raised four children.

17 Q. Now, in July of 1988 were you working?

18 A. Yeah, I was.

19 Q. Where did you work?

20 A. I worked for Royal Coach in Wilmington,  
21 Delaware.

22 Q. Would you tell us a little bit about what  
23 kind of work you did for them?

24 A. I drove stretch limousines. I also drove  
25 the mini-buses. Our largest one was a 25-passenger. The

1 limousines we would get a lot of corporate work, a lot of  
2 party work, like birthday parties, someone wants to surprise  
3 someone in the family with a birthday party with a limo. We  
4 did some bachelor parties. I didn't do a lot of those. We  
5 had lots of weekend work where we'd go away on weekend trips  
6 and take people and wait with them. You have a room and  
7 then bring them back. I had to deal with luggage, deal with  
8 whatever it happened to be. You knew that was part of the  
9 job when you got the job. You had to take the good with the  
10 bad.

11 Q. How much were you paid by Royal Limousine to  
12 be a driver?

13 A. To drive limousines I was paid six dollars  
14 an hour and to drive the bus I was paid eight dollars an  
15 hour. We got gratuities based on what the job consisted of.  
16 Generally Mike, my boss, would bill in 17 to 20 percent  
17 gratuity, and I'd say if I drive eight times you get double  
18 dippers we call it. You would get a gratuity maybe put in  
19 an envelope with \$25 or \$30.

20 Q. Now, in July of 1988 you visited Busch  
21 Gardens?

22 A. Yes.

23 Q. Can you tell us who you visited Busch  
24 Gardens with?

25 A. With my ex-husband, Joe Toscano, and we have

1 joint custody of our children, two small children at the  
2 time. They were small. We generally get to go about once  
3 every six months, every three or four months, and there are  
4 just things that you need to discuss about your children, as  
5 they lived with me, especially now we live in Las Vegas and  
6 he is still in Delaware. They live with me and get to go  
7 and discuss what is going to happen with them, what one  
8 wants to be, is it feasible, can he help me pay it, can I  
9 help pay it, and that is what we started out to do that day.

10 Q. Now, you have four children. The oldest two  
11 are pretty much grown?

12 A. Yes.

13 Q. And they are married and living away?

14 A. Yes.

15 Q. How old are the two younger ones?

16 A. The two youngest at this present time are 13  
17 and 15.

18 Q. Now, back to July of 1988 --

19 A. Yes.

20 Q. -- can you tell us how you and Joe happened  
21 to be at Busch Gardens?

22 A. Well, we just started driving down the road  
23 just talking and thought we'd go somewhere and grab  
24 something to eat, and the further we got to talking he  
25 stated he wanted to go to a museum, and he said, "Well,

1 let's go and see Williamsburg." He could get in because he  
2 had a pass, he could get in free.

3 Well, on the way there I was telling him about a  
4 show that they had at Busch Gardens which was something  
5 called the Shadow Room. I had taken a bus group there the  
6 previous month before, a couple months before, and there was  
7 -- it was a lot of seniors and they were all laughing and  
8 giggling because they were in this Shadow Room, and they'd  
9 make a shadow, a crazy shadow any way at all, and some kind  
10 of lighting would freeze that shadow on the wall and you  
11 could go ahead and move, your shadow was there, and we were  
12 laughing about it and decided we'd go see that, and we  
13 decided to go to Busch Gardens instead of Williamsburg.

14 Q. What time did you get to Busch Gardens and  
15 go inside?

16 A. Around 4:00 or 4:30 in the afternoon.

17 Q. Where was the first place that you went to?

18 A. We went to -- we went straight in the gate  
19 and we stopped and I was trying to remember where the ride  
20 was, all the places that I was talking about, and I said,  
21 "Well, the tram that goes over we'll go through each one,"  
22 and that was it.

23 Q. So you went to the tram almost immediately  
24 going into the park?

25 A. Yes, uh-huh.

1 Q. Tell us what happened when you got to the  
2 tram? Did you have to stand in line?

3 A. When we got to the tram we stood in line for  
4 a while and we were talking. Slowly it started, it was  
5 moving, and it was our turn to get on. One kid had the car  
6 and motioned us over, and we went in and I got in first and  
7 sat on the left side and Joe got in following me and sat on  
8 my right.

9 Well, I sat -- as I was talking to him I sat with  
10 my side to the seat and rested my arm up on the back of the  
11 seat. Well, then the kid sent the car on, and the next kid  
12 stopped the car to lock the door and some reason he tilted  
13 it backwards and -- well, being in the air I felt like I was  
14 falling, and it caught me off guard and I grabbed the back  
15 seat like that and extended my elbow out. The other kid  
16 sent the car and it slammed on my elbow, pinning it between  
17 the two cars, and I let out a yell and then they sent the  
18 car on. They sent my car on then.

19 Q. How did your arm feel when it was struck?

20 A. It felt like fire going through it, and it  
21 was really bad pain inside the elbow itself and then fire  
22 going down in here and into the fingers and up in here.

23 Q. How did you feel as you were traveling that  
24 distance to the next station?

25 A. Like I was going to be sick and I was

1 crying.

2 Q. Tell us what happened when you arrived at  
3 the next station? What did you do?

4 A. When we got to the next station Joe told the  
5 attendants there what had happened. The kid sent the next  
6 car and he said, "It happened back there?" And he said,  
7 "Yes." "Well, he should take you to the first aid," and  
8 glanced at the arm and said, "You had better take her to the  
9 first aid."

10 So we went ahead to the first aid and went in  
11 there and a lady talked to me, and then the gentleman named  
12 Ron talked with me and he examined me, and they thought it  
13 was broken because it had swollen up so fast and was red and  
14 from fluid. They thought that -- like I said, it was  
15 broken, that I needed to go to the emergency room and have  
16 x-rays done. So I went and had the x-rays done.

17 Q. Stop just a second, Carol. Apart from  
18 looking at your arm and talking to you in the first aid  
19 station, what else did they do for your arm?

20 A. They wrapped the bandage around it and put  
21 ice on it and put it in a sling and told me that I needed to  
22 go and have it x-rayed.

23 Q. Okay. And where did you go to do that and  
24 how did you get there?

25 A. One of the young men there took us. He said

1 he would take us. He said, "Do you want me to take you?"  
2 And Joe said, "No, I have my car. If you can take us to my  
3 car I can take her." He said, "That is fine," and we got in  
4 like a Bronco-type vehicle and took us to Joe's car and gave  
5 us directions and we went to the emergency room in Joe's  
6 car.

7 Q. Now, when you arrived at the emergency room  
8 were you seen by a doctor there?

9 A. Yes.

10 Q. Can you tell us about that, what they did  
11 for you?

12 A. They took me in and they did the usual  
13 things, took my temperature, my blood pressure, took x-rays  
14 of my arm, wrapped it back up, put ice on it and told me to  
15 keep ice on it, that it was muscle and contusions and see my  
16 doctor in a couple of days.

17 Q. Now, how did your arm feel on the way back  
18 to Delaware? Tell us about that?

19 A. Still the same. Still the burning, shooting  
20 pains down my arm and into my fingers.

21 Q. All right.

22 A. And the back of my arm.

23 Q. When you got back to Delaware did you see a  
24 doctor for that?

25 A. Yes. I went and saw Dr. Baker and he

1 treated me for a while with Ibuprofin and Aspirin and he  
2 said, "Keep it in the sling another week and keep the Ace  
3 bandage on it and then come back to see us if it doesn't get  
4 any better."

5 Q. Were you able to work as a driver with your  
6 arm in a sling?

7 A. No. It is against the law to have your arm  
8 in a sling and to drive.

9 Q. Did Dr. Baker send you to anyone else?

10 A. Yes. He sent me to Dr. Kamali, who was an  
11 orthopedic surgeon, and he tried various medications,  
12 Ibuprofin, Motrin, a lot of them that made me sick. A lot  
13 of them made me sleepy and tired, and you can't drive when  
14 you are sleepy and tired.

15 After a while when that wasn't working he said  
16 there was only one other thing he could do, which was to  
17 decompress the ulnar nerve. But before he did that, he sent  
18 me for an EMG, which is a nerve test where they stick  
19 needles in your nerve and make it move with -- Dr. Sooner  
20 was the one that did the EMG. He sent the results back to  
21 Dr. Kamali and said, "There is nerve damage," and Dr. Kamali  
22 proceeded from there to go ahead and set up for the surgery.

23 Q. Now, tell us about that, Carol? Tell us  
24 about what the surgery was like and where you had it?

25 A. I was admitted as an outpatient to have it

1 done. When I came to from having it done still there was a  
2 lot of pain, but you try -- a lot to the fact that I was  
3 cut, but weeks went by and I had to keep the bandage on, and  
4 then two weeks -- within two weeks I went to my doctor and I  
5 said, "I have to be able to go back to work because people  
6 at work, the other drivers are feeling like, 'she is getting  
7 babied,'" and I said, "I really need to go back to work." I  
8 was a single mother at the time and having no man helping me  
9 with the kids, so I went back to work and he gave me a slip  
10 to go back to work.

11 I went back to work the first day and the only  
12 thing that I did, Michael said that I could go back to light  
13 duty. The only thing that Mike thought I could do which was  
14 light duty which we had like -- it is a shuttle bus downtown  
15 in Wilmington. It is called The Downtowner. It goes around  
16 about an eight-block radius and makes a lot of turns  
17 downtown.

18 So I decided to do that four hours a day. By the  
19 time I got back to the shop I felt a weeping on my arm, and  
20 I took the bandage off and it was bleeding where some  
21 stitches had come out, and I had to go back to my doctor and  
22 it was another two weeks off from work and still having the  
23 same constant pain. So from there, you know, I tried a  
24 couple more medications and he said there was nothing else  
25 he could do.

1 Q. Did you continue to go back to Dr. Kamali  
2 through February of 1991? In fact, February of 199 -- no --  
3 February of '91, yes.

4 A. '91 I didn't live in Delaware.

5 Q. After -- well, after Dr. Kamali told you  
6 that --

7 A. Yes.

8 Q. -- what did you do then? What did you do  
9 about medical treatment?

10 A. Well, then I was talking to one of the  
11 fellow workers at work and he was talking about a problem  
12 that he was having with his back, he had hurt his back, and  
13 it was a nerve problem and he said, "You should get a nerve  
14 block," and I said, "What is a nerve block?" He said,  
15 "Well, it is with medication like Cortisone or something and  
16 it will block the nerve and it won't hurt so bad." I said,  
17 "Well, where do you get those?" He said, "Well, the pain  
18 clinic. You can go to the pain clinic. They have them."

19 So I made an appointment and went to the pain  
20 clinic and I had the nerve block, but I also had a little  
21 different kind of medication. When you go to the pain  
22 clinic they really do a thorough going over on you. They  
23 want to know what makes you tick. They do all kinds of  
24 tests. IMGs or EMGs, they do various tests that show the  
25 inside parts of your body where you complain to hurt, if

1 there is heat coming from it, different things.

2 Well, we tried different medications before he  
3 would go into the nerve block, then decided yes. He did go  
4 ahead and do the nerve block. To have the nerve block you  
5 had to go to the hospital and have it done, then you have to  
6 go right home and lay down all day. You can't move your  
7 head or anything, but just stay lying down.

8 Well, the nerve block, all it did was make me  
9 sick, but it never did relieve the pain. I continued to go  
10 back to them, go back to Dr. LeRoy, and he suggested Dr.  
11 Boulos do a second and have the ulnar nerve translocated,  
12 which means move it from here up top, not just decompress  
13 itself.

14 So I asked him will this help the pain. He said,  
15 "It might, it might. I can't guarantee it. It might." So  
16 I set up the appointment with Dr. Boulos and went and had  
17 the second surgery and came out of the hospital from that  
18 and it's been the same ever since. No relief from the pain.

19 Q. Now, can you tell us -- you told us about  
20 the time that you were off from work after the surgery. Did  
21 the condition of your arm or the surgery itself affect your  
22 ability to work?

23 A. Yes, it did. I am right-handed  
24 predominantly, so I am automatically reaching out with my  
25 right hand. I shy away from getting it banged or having

1 somebody bump me in the arm. I don't even like to touch it.  
2 I don't like the scar touched. I don't like somebody  
3 coming up and grab me by the elbow.

4 Lifting has affected it because I can't lift.  
5 For a while I'd do it with my left arm because I had to. I  
6 had kids. I felt like I have to keep working. So I had to  
7 do it with my left arm for a long while, but then I'd find  
8 myself pulling my right arm, too, and I am right-handed. It  
9 affected the fact of driving long periods of time. I am  
10 right-handed again and I drive right-handed.

11 We had one bus that was a manual bus. The door  
12 was manual like a school bus. You have to open it and shut  
13 it that way. A couple of times I'd smash my fingers because  
14 I couldn't -- they'd slam against the thing and pinch them.  
15 It affected the ability of a lot of writing that I had to  
16 do. We had to keep -- especially if you went away on a  
17 weekend tour, and I ran a lot of tour businesses in  
18 Virginia, and we had to keep a lot of records, the gas,  
19 mileage, you know, how many passengers you had. It affected  
20 that after a while, the writing part of it.

21 Q. Were you taking medication during this  
22 period?

23 A. Yes. I missed a lot of work taking  
24 medication. Certain -- in fact, almost -- you shouldn't  
25 drive. Ibuprofen will make you tired. Motrin is one

1 that'll make you tired. I found I wanted to sleep a lot,  
2 but a lot of that was just from depression, just feeling  
3 like before I started -- before I had this accident and  
4 before I ever started work. I didn't work. I was a  
5 homemaker. If I worked -- I stayed at home, but there came  
6 a time I had to go to work and I wanted a job that I would  
7 like. Anybody wants a job they would like. I like to  
8 drive. I love to drive. It is my favorite thing, and I  
9 love people. That is another one of my favorite things.

10 It bothered me that I had a good job, I had a  
11 real good job when I first started working driving. The  
12 people liked me. I was getting many requests over and over.  
13 Bachelor parties, whatever, banquets back in July, I was  
14 doing them and I was getting many requests to do them  
15 because they felt it was fun.

16 It affected my feelings. All of a sudden I  
17 am turning down runs. The other drivers are mad at me  
18 because I am not doing the runs that I should be doing or  
19 the amount and they were having to work extra hours. So  
20 emotionally I felt like I was letting somebody down, that I  
21 wasn't doing my part of the job, and it bothered me a lot  
22 emotionally, even to the point of my children.

23 My children and I have always been very loving,  
24 always hugging and wrestling around, and now that is even  
25 stopped. I mean, they are hugging me, but they are cautious

1 when they come up to me because they see me go like that and  
2 turn away.

3 Q. Now, did there come a time that you stopped  
4 working for Royal Limousine?

5 A. Yes, there did. June 11th of 1990. I had  
6 been out of work for a couple of weeks. My arm was  
7 bothering me and stuff. I knew I had to go back in for the  
8 other surgery. I had done a couple of small ones, and I had  
9 a pager, you know. I bought my own pager. So I decided I'd  
10 -- well, I hadn't gotten any phone calls. I guess I won't  
11 go up for the day and go up to the library and look up some  
12 things for my mom.

13 While I was there the pager went off and I went  
14 over and answered it. I never figured I'd turn down a run,  
15 and it was Victor, the dispatcher at the time. He said,  
16 "You have a 2:30 pick-up." I said, "Where?" He told me,  
17 "Downtown." He said, "2:30 pick up." I said, "Victor, it  
18 is after 2:00 now and I don't have my uniform, I am not home  
19 where my uniform is." He said, "You had better get someone  
20 else to do it."

21 I wasn't very nasty with him. I just talked  
22 logically. "I will never make it there. By the time I get  
23 there -- it is 20 minutes from here to work." And he said,  
24 "Yeah, I guess you are right. I will try to call Paul."

25 So then I went back in and was looking at the

1 book that I was looking at and my pager went off again. So  
2 I went and I called again. I thought, "What does he want  
3 now?" And I called again and it was Michael, my boss. He  
4 is the owner. He got real snappish and he said, "Where are  
5 you?" I said, "I am at the library." He said, "Do you  
6 still work here or not? You are turning down too many runs.  
7 Are you still working here or not?" I said, "Yeah, you are  
8 right, I don't," because I just lost it.

9 It was true, I was turning down a lot of runs,  
10 but it wasn't normally like that, that is turning them down.  
11 That was the circumstances. That was logical. I couldn't  
12 be somewhere in 20 minutes for a pick-up and I lost my cool  
13 and I said, "You are right, I don't work here any more."

14 Q. Now, at that time were you planning to move?  
15 Did you have any plans to move?

16 A. Yes, I did. I had plans to move to Las  
17 Vegas, but our plans to move to Las Vegas had nothing to do  
18 with my job and quitting it, because we couldn't move to Las  
19 Vegas until my mom's house sold. She had to put it on the  
20 market. Mom's house was just a little run-down house. We  
21 didn't really figure it would sell any time soon, but it  
22 turned around and we sold it October 15th. So when I quit  
23 in June I still could have worked a couple more months. We  
24 just didn't know the house would sell. We didn't think that  
25 it would sell for a year or so.

1 Q. Did your mother plan to go with you to Las  
2 Vegas --

3 A. Yes, she did.

4 Q. -- when you moved to Las Vegas?

5 A. Yes.

6 Q. Did you look for work there?

7 A. Not right at first. At first it was a thing  
8 -- I was getting the kids seated in school and we had went  
9 and school had already started in Delaware, so the first  
10 thing that you do is get a house, get the kids in school,  
11 and then I applied for the job. I guess I applied for the  
12 job at the end of November.

13 Q. All right. And did you apply for a driving  
14 type job?

15 A. Yes. Then I got one at the Gold Coast  
16 driving employees, a shuttle bus where I knew there would be  
17 no, you know, luggage to deal with, so I wouldn't have any  
18 problem. However, it did have the manual door, the school  
19 bus doors, but I went ahead and drove that for four months.  
20 I got hired January 3rd and drove it until April 28th. I  
21 went and started then at Sante Fe, the hotel and casino,  
22 driving strictly bingo people.

23 Q. Did you have any trouble applying for a  
24 driver's job? Were there ones that you were ineligible for  
25 in Las Vegas?

1           A.    Yes.  When you apply for a job, and I didn't  
2 do this at the Gold Coast because I knew it was just an  
3 employees' shuttle bus, but if you have any kind of  
4 disability you have to state it on there.  When I applied  
5 for Gold Coast I knew it was an employees' shuttle.  You are  
6 not going to be lifting anything and just driving them to  
7 the parking lot.

8           However, when I applied at Sante Fe that was a  
9 different type of bus, a bus that you drive senior citizens  
10 around, so you never know what you are going to have to do.

11           So on the application I had to put, "Do you have  
12 any limitations that you can't do?"  And I had to put on  
13 there, "Yes, lifting, I can't do any lifting or pushing or  
14 pulling," and consequently I almost didn't get the job  
15 because of it.

16           Q.    Now, tell us about the job that you do now?

17           A.    The job I do now is still at the Sante Fe.  
18 I drive.  I go to their apartment complexes, senior  
19 citizens.  I go to their apartment complexes.  The majority  
20 of them can get on it.  We have a bus now with a lift should  
21 they not be able to get on the bus on their own, but I take  
22 them to the hotel and they go in and play bingo and/or craps  
23 or whatever and play blackjack or whatever.

24           Q.    Does that bus have electric doors?

25           A.    Yes, they have electric doors.  Bus 3 has

1 manual doors. The only time I have to drive bus 3 is if bus  
2 2 is down, then I have to drive it.

3 Q. Is your boss an understanding person? Does  
4 he work with you?

5 A. Kenny is very understanding. He knows  
6 because of my file that I can't do lifting, so if an  
7 airplane comes in or something, he doesn't give it to me.

8 Q. Do you make gratuities in your current job  
9 the way that the other drivers at Sante Fe do?

10 A. No, you make -- seniors give me fifty cents,  
11 you know. We kind of laugh about it, a quarter or fifty  
12 cents, you know, but, yeah, you don't make anything like you  
13 do with luggage or stuff or take a long trip, in that order.

14 Q. Carol, prior to this accident what was your  
15 career goal? What kind of planning was it that you wanted  
16 to do?

17 A. Well, all my life I had someone living over  
18 me as far as -- I had a father, seven brothers and a mother.  
19 Then at 15 I got married. I got married again at 22, I  
20 believe it was, or 23, and then I got married again at 35,  
21 but always somebody taking care of me. I felt like I can  
22 take care of me, so I decided I wanted to drive.

23 First I decided I wanted to drive big trucks. I  
24 said, "No, that is not very feminine." Then I decided I'd  
25 drive a tour bus because I liked the freedom of the road. I

1 like nobody being over me telling me what to do, so I tried  
2 to get somebody to teach me how to drive tour buses. If you  
3 have never done it, no one wants to help you, so I got a  
4 smart idea. I will learn how to drive a school bus,  
5 thinking that that would give me the type of license that I  
6 needed to drive a tour bus, but unfortunately in Delaware it  
7 doesn't. They give you a school bus endorsement, so I went  
8 to Las Vegas in '93 and moved to Las Vegas. When I went to  
9 turn in my license to get a Nevada license, because I had a  
10 school bus endorsement you automatically get a B license,  
11 which was what I needed for tour buses.

12 So then I was happy because even though at the  
13 time my children were too small for me to drive a tour bus,  
14 I thought given time, another six or seven or eight years I  
15 can do it, I can drive a tour bus, I can make enough maybe I  
16 can take care of the kids and me and I can support them  
17 without any problem.

18 Unfortunately, I can't do that now. Driving a  
19 tour bus you have to be able to do luggage. You have to  
20 throw the luggage under in the bin and pull it out.  
21 Whatever is under there you have to be able to do it. You  
22 are expected to do it.

23 Q. Carol, how does your arm feel?

24 A. It hurts a lot. There is a lot of pain  
25 right through the elbow area and pain shooting up where the

1 ulnar nerve is, and these fingers in here, it is numb.

2 Q. Do you have any problems gripping or holding  
3 things?

4 A. Yes, I do. I can't even -- to run the  
5 vacuum cleaner is a lot of stress on me. If I try to do it  
6 left-handed it just becomes a hassle. I just get frustrated  
7 and somebody else -- scrubbing a pot. If a pot was to burn  
8 I don't have the pressure push to clean the black off a pot.  
9 Just stupid little homemaking things that I can't do them.

10 Q. How does that make you feel?

11 A. It makes my feel very inadequate. I always  
12 kept a clean home. I have always been funny about my  
13 clothes being ironed. I can't even iron properly now  
14 because of the weight of an iron. I don't bowl any more. I  
15 used to bowl. I don't do needlepoint any more for fun.  
16 There is so much that it does cut out when you are a person  
17 that has hurt a hand, a dominant hand that you are dealing  
18 with.

19 Q. Have you been back to any other doctors?  
20 Have you seen other doctors about your condition?

21 A. I have gone to see Dr. Aulicino and was  
22 under the hope that another surgery would help, and he said  
23 the only thing that he can do is maybe eliminate the pain,  
24 but it wouldn't give me back the use of my hand.

25 Q. Well, is that surgery that you want to have?

1           A.    I'd like to have it very much. In fact, I  
2 came back to have it but I can't afford it.

3           Q.    Has Dr. Aulicino referred you to anyone in  
4 Las Vegas?

5           A.    He gave me the name of a doctor out there  
6 and told me if I ever decided that I could have it I could  
7 have it through him. I wanted to have it here, but I  
8 couldn't stay in the area for the time that I would have to  
9 stay.

10          Q.    Carol, have you incurred medical expenses as  
11 a result of --

12          A.    Yes, I have.

13          Q.    -- this accident?

14          A.    Yes.

15               MR. MILLS: This is Plaintiff's Exhibit  
16 Number 1, Your Honor.

17               MR. DAVIS: If Your Honor please, we object  
18 to the summary and we would object on the grounds  
19 that it is based upon the plaintiff's recitation  
20 of the causation in regards to this accident.  
21 And for that reason -- and aside from that we  
22 have no objection.

23               THE COURT: I will excuse the jury. You-all  
24 go into the jury room for a minute, please.  
25 (The jury left the courtroom.)

1 THE COURT: You object, but you do agree it  
2 goes to the weight of the evidence and can be  
3 admitted?

4 MR. DAVIS: If Your Honor please, I don't  
5 feel like I can agree that these medical bills  
6 are as a result of this accident when it is all,  
7 of course, at this point based upon what the  
8 plaintiff says that her injuries were and what  
9 occurred as a result of the accident.

10 MR. MILLS: Your Honor please, we have a  
11 little bit of an unusual position here in that  
12 all of the physicians have testified. We have  
13 them testifying by videotape. The defendant's  
14 own expert has conceded causation in this case in  
15 his videotaped deposition, and it is very clear,  
16 and also Interrogatories sometime ago, and I  
17 think it is obvious, and Mr. Davis concedes that  
18 they have no evidence to rebut causation or  
19 reasonableness of any of the bills. No testimony  
20 like that has ever been tendered or refuted by  
21 their own experts, and we think that based on the  
22 testimony that she has given, which is detailed,  
23 that the exhibit should be introduced at this  
24 time in full unless Mr. Davis can represent that  
25 he does have something by which to contradict the

1 contents of this exhibit.

2 MR. DAVIS: Purely based upon her  
3 credibility, if Your Honor please. We take note  
4 it is a jury issue and not to exceed the  
5 truthfulness.

6 THE COURT: All right. Well, I will admit  
7 it, but the summary is something different. I  
8 don't think that you are entitled to the summary.

9 MR. MILLS: I included the summary because  
10 these bills are not the best copies.

11 THE COURT: Are they --

12 MR. MILLS: Sort of voluminous. The jury  
13 can make the comparison or the Court can do  
14 it, but all it does is recite a --

15 THE COURT: I will let you go over each and  
16 every item if you want, but I won't introduce the  
17 summary if he objects.

18 MR. MILLS: Is there any possibility to  
19 stipulate to the total amount? I think it is  
20 very difficult for the jury to go over.

21 MR. DAVIS: I think we can --

22 THE COURT: You can tell them in closing  
23 argument that is what they are. It seems like  
24 to me that is good news and bad news. That is  
25 the last thing they are going to hear.

1 MR. MILLS: I don't think that it is  
2 prejudicial.

3 THE COURT: I don't, either, but he objects.  
4 I am going to keep them out, but the bills will  
5 go in. Add them up and you can tell them what  
6 they add up to.

7 MR. MILLS: May I have her testify as to the  
8 total amount of the bill, and then we can --

9 THE COURT: She can add them up; she can add  
10 them up and then we can --

11 MR. MILLS: With or without the summary?

12 THE COURT: Well, I think she can testify  
13 on her own recollection and her own knowledge.  
14 Take a pencil and add it up and she can do that.  
15 Whether he'll allow her just to --

16 MR. DAVIS: I'm sure that she has been told  
17 what they are, and she probably totaled them up  
18 and she probably knows and it is not too  
19 difficult to remember.

20 MR. MILLS: Ten thousand three hundred.

21 MR. DAVIS: Ten three?

22 MR. MILLS: That is right.

23 THE COURT: Is it all right if she --

24 MR. DAVIS: If she says that, sure.

25 THE COURT: Well, she can testify that they

1 were ten three.

2 MR. DAVIS: I am not agreeing --

3 THE COURT: I know you don't agree with --

4 MR. MILLS: We have one more exhibit. There  
5 is a photograph of one of the gondola cars. This  
6 has been previously marked as Toscano Exhibit  
7 1. He is appearing by deposition. I'd like to  
8 introduce it as our next exhibit, exhibit number  
9 2.

10 THE COURT: Why don't you put the last  
11 number on that? How many numbers do you have  
12 before that?

13 MR. MILLS: Only one.

14 THE COURT: You have one exhibit?

15 MR. MILLS: Well, no.

16 MR. DAVIS: That would be 2, if Your Honor  
17 please.

18 MR. MILLS: No, the medical bills are 2, and  
19 these other exhibits aren't in evidence yet. I  
20 don't know how the Court wants to do this. I  
21 included things in our exhibit book that may or  
22 may not be admitted, depending on the state of  
23 the evidence.

24 THE COURT: That is all right. Give them --

25 MR. MILLS: I just included all photographs

1 as number 3. I will mark it that way, Number 3.

2 THE COURT:. All right. Have you-all  
3 gotten together and talked about that on the  
4 pre-trial? I'm sure you got together and agreed.

5 MR. DAVIS: 3 is all right with me.

6 THE COURT: Show him the other photographs.

7 MR. MILLS: I don't have any other  
8 photographs that I plan to introduce.

9 THE COURT: I thought you said there was a  
10 group of photographs.

11 MR. MILLS: A group of photographs that I --  
12 but this is the only one I will introduce.

13 THE COURT: What are we going to do, call it  
14 3?

15 MR. MILLS: Yes.

16 THE COURT: All right. So give her -- put  
17 her initials on it and she will make it 3.

18 MR. MILLS: That'll be fine and then mark  
19 the bills as 2, and we are ready to go. I'm just  
20 about finished. I thought we'd go to about  
21 12:30.

22 (The jury returned to the courtroom.)

23 THE COURT: You-all can hear all right?  
24 Okay.

25 A JUROR: Speak up a little bit.

1 THE COURT: All right. Let him speak up.

2 Can you hear her pretty well?

3 A JUROR: No. The other gentlemen speak up  
4 a little bit.

5 THE COURT: All right. But how about this  
6 lady?

7 A JUROR: Oh, yes.

8 THE COURT: Okay. If you can't hear  
9 somebody, sometimes including myself, sometimes  
10 we mumble and talk away and the acoustics in here  
11 are absolutely a problem, but we do the best we  
12 can. If you can't hear, say you can't. Raise  
13 your hand if you can't hear it. All right, go  
14 ahead.

15

16 BY MR. MILLS:

17 Q. Carol, have you incurred medical bills as a  
18 result of this accident?

19 A. Yes, I have.

20 MR. MILLS: May I approach, Your Honor?

21 THE COURT: Yes.

22

23 BY MR. MILLS:

24 Q. I am handing you a multi-phase exhibit that  
25 we have marked as a plaintiff's exhibit. Look through that

1 and tell us what that is and tell us what those are?

2 A. These are starting with x-rays that I have  
3 had to have, a Tens unit that I had to have, and surgery,  
4 the EMG, different medical things that they have done to me,  
5 testing through the years.

6 MR. MILLS: We offer this into evidence as  
7 Plaintiff's Exhibit Number 2.

8 THE COURT: It will be admitted.

9 (Various medical bills were received in  
10 evidence and marked as Plaintiff's Exhibit Number  
11 2.)  
12

13 BY MR. MILLS:

14 Q. Carol, you mentioned the Tens unit. Would  
15 you tell the jury what that is?

16 A. A Tens unit is a small little compartment  
17 thing that has two sets of lead wires -- there are four lead  
18 wires, but two sets, and you plug them in and they come with  
19 little square patches. You can get them that already have a  
20 gel base. You just wet them and they stick on, or you can  
21 buy the black rubber ones and you have to use a gel.

22 But the purpose is you put it in strategic  
23 places, whether it be your arms or back or legs or wherever  
24 you are having a problem, and it shoots little electrical  
25 shocks to your arm or to your back or to your leg and it is

1 supposed to help relieve pain, especially muscle pain.

2 They bought one for me. My husband got it. The  
3 doctor ordered it and figured that maybe that will help. It  
4 doesn't help. More or less it is a comforting thing,  
5 though, because you don't turn -- you can set it up inside  
6 your arm. That is what I got it for, but they thought it  
7 would help the pain.

8 MR. MILLS: Your Honor, I'd like to have  
9 Carol show the jury the scar on her elbow, if she  
10 may step down for that purpose.

11 THE COURT: All right.

12

13 BY MR. MILLS:

14 Q. All right.

15 A. Two scars. One really doesn't show.

16 Q. Thank you very much, Carol, go ahead and  
17 have a seat. Is the scar itself painful?

18 A. Yes, that is very painful. I don't like my  
19 scar touched at all. It is a sickening feeling when  
20 somebody touches it.

21 Q. Does the scar hurt all the time or just when  
22 you touch it?

23 A. It has a burning sensation. Dr. Aulicino  
24 explained that to me, but I couldn't tell you what he said  
25 and why it is that in certain areas of a scar like that it

1 burns all the time. The scar will burn. The annoyance I  
2 feel when someone touches it, it is just me, I guess, you  
3 know. I am afraid they are going to hurt me, but the  
4 burning is at this end here, and right up in here there is a  
5 burning sensation.

6 Q. Carol, finally I am going to turn you over  
7 to Mr. Davis and let you answer his questions, but before I  
8 do that I want to show you this photograph.

9 MR. MILLS: If I may approach, Your Honor.

10  
11 BY MR. MILLS:

12 Q. Is that one of the gondola cars of the type  
13 that you were riding in?

14 A. Yes, this is.

15 Q. A final question.

16 THE COURT: Plaintiff's Exhibit Number 3.

17 (Photograph of gondola car was received  
18 in evidence and marked as Plaintiff's Exhibit  
19 Number 3.)

20  
21 BY MR. MILLS:

22 Q. Had you had anything to drink on this day?

23 A. No, I don't drink alcohol.

24 MR. MILLS: Your Honor, that is all the  
25 questions I have, although I would like to show a

1 couple of the photographs of the Skyride cars to  
2 the jury because I think it might be helpful.

3 THE COURT: Give that to the jury. Thank  
4 you. Please answer anything that Mr. Davis may  
5 have.

6  
7 CROSS-EXAMINATION

8  
9 BY MR. DAVIS:

10 Q. As I said in the deposition in your  
11 attorney's office back on November 11th, 1991, we, of  
12 course, gave our expression of sympathy, the fact that you  
13 were injured there at Busch Gardens. How many times have  
14 you been to Busch Gardens?

15 A. Several times. I took the children down a  
16 couple of times.

17 Q. And was this the first ride that you had had  
18 on the particular Skyride that day?

19 A. That day, right.

20 Q. The day that you were injured?

21 A. Yes, that day.

22 Q. It was just you and Mr. Toscano, is it, that  
23 were riding that day, is that correct?

24 A. That is correct.

25 Q. And your children were not with you on this

1 trip?

2 A. No, they were not.

3 Q. And I think you said that you arrived at the  
4 park around 4:30?

5 A. Yes.

6 Q. You waited in line there at the Skyride and  
7 you were going to ride that to what is called France, I  
8 think, is the next stop, is that correct, from England to  
9 France?

10 A. I don't know what the next stop was, but,  
11 yes.

12 Q. Now, you waited there. You saw people get  
13 on, and how many couples were in front of you as you --

14 A. I don't know. Probably about five or six.

15 Q. And, of course, you were aware of the sign  
16 inside the gondola or inside the cabin that said "Keep hands  
17 and arms inside the cabin"?

18 A. Yeah, I saw it. I don't know what it said,  
19 but I saw it.

20 Q. You had seen it, I suppose, on other  
21 occasions?

22 A. Yes.

23 Q. You knew it said "Keep your arms inside the  
24 cabin", didn't you?

25 A. Uh-huh.

1 Q. Now, as I understand it, though, as you got  
2 into the cabin you sat -- you and your husband sat on the  
3 same side, is that correct?

4 A. Correct.

5 Q. And no one else was in the cabin except you?

6 A. Right.

7 Q. All right. You said that the attendant --  
8 and you didn't put your hands outside at that point when you  
9 first sat down, did you?

10 A. No.

11 Q. Now, you, as I understand it, said that as  
12 the attendant locked the door, then you -- then he tilted  
13 the cabin up. Is that what happened? Excuse me.

14 A. He tilted it down like that, and I felt like  
15 I was falling backwards.

16 Q. All right. And then you grasped the back of  
17 the seat with your elbow, is that correct?

18 A. No.

19 Q. With your hands, hand, arm? Excuse me.

20 A. When I got on the seat -- when I sat down I  
21 rested my arm on the back of the seat, which is not  
22 protruding from the car. When the young man locked the door  
23 he tilted the car backwards for some reason, and being up in  
24 the air I felt like I was falling and I grabbed hold, and  
25 the other kid in back sent the car on that slammed into mine

1 and pinned my elbow.

2 Q. Did you see the other car before it hit you?

3 A. No.

4 Q. You didn't see the kid behind you send the  
5 car on?

6 A. No. Joe did.

7 Q. The first thing you knew about an accident  
8 might occur was when it occurred?

9 A. Yes.

10 Q. Now, was Mr. Toscano seated at the time --

11 A. Yes.

12 Q. -- that this occurred? He had already sat  
13 down?

14 A. Yes.

15 Q. Now, when both of you got on the same side  
16 and he sat down, was there any rocking of the cabin at that  
17 point?

18 A. Not at that point, not anything major. The  
19 movements of him sitting down as the kid locked the door,  
20 and when he locked the door the young kid that locked the  
21 door had his hand on the back rail, because he was sitting  
22 facing, and that is why I had mine up on the seat. He had  
23 ahold of the rail and he locked the door, and for some  
24 reason he went down like that and tilted it down like that  
25 real fast.

1 Q. You mean he pushed?

2 A. Pushed down on the back of it.

3 Q. Oh, on the back of the cabin, the same side  
4 that you were on?

5 A. Yes.

6 Q. And as he locked the cabin and then he  
7 pushed, what did he use, his left hand, or do you know?

8 A. Yeah, his left hand was on the back rail and  
9 he locked the door with his right hand.

10 Q. Then he pushed down on it?

11 A. Uh-huh, he pushed down real hard just like  
12 that, and when he did that it startled me and I grabbed  
13 ahold of the back, and Joe grabbed the middle bar there and  
14 I tightened my hand on the back. When I tightened my hand  
15 it bent my elbow like that. I was trying to grasp, and that  
16 is when it was out of the car.

17 Q. May I see -- now, could you come down?

18 MR. DAVIS: May I ask the witness to come  
19 down?

20 THE COURT: Yes.

21

22 BY MR. DAVIS:

23 Q. Looking at plaintiff's -- looking at your  
24 Exhibit Number 3, for the jury here could you tell the jury  
25 how you got onto the car?

1 A. Right through this door.

2 Q. Excuse me.

3 A. I sat over on this far side over here.

4 THE COURT: People over here can't see that.

5 MR. DAVIS: Sorry.

6

7 BY MR. DAVIS:

8 Q. You sat over on the far side?

9 A. Joe sat here.

10 Q. All right.

11 A. The attendant grabbed hold this rail here

12 and locked the door and yanked down on that rail.

13 Q. How did your elbow get out of the car?

14 A. When I had my arm resting on the back of the

15 seat, and when he tilted it I tightened up on my arm, and

16 doing that it bent the elbow and went out of the rail.

17 Q. Now, can you put a circle there where your

18 elbow was at the time, or does that show it? Does that show

19 where your elbow was when it was hit?

20 A. My elbow would have been -- it would have

21 still been in the back of it. It would have been about back

22 here.

23 Q. Put an X there. All right. Now, at the

24 time of the impact what part of your elbow was hit?

25 A. Right across here. Just the elbow itself.

1 Enough that I couldn't pull it out.

2 Q. And was the car tilted down at that point or  
3 was it level or what?

4 A. It was tilted backwards. This one tilted  
5 backwards and this one was level, because I guess it slammed  
6 into it.

7 Q. Which one was level, the one behind it?

8 A. Behind, yes.

9 Q. All right. Now -- all right, thank you,  
10 resume your seat. Was your elbow on this rubber bumper  
11 guard?

12 A. When it hit --

13 Q. Was it that far down, or do you know?

14 A. I don't know.

15 Q. You don't recall whether it was on the  
16 bumper guard or not?

17 A. I don't recall. Once it got hit all I knew  
18 it got hit and I wanted it out.

19 Q. Now, at the time that you were hit was your  
20 car in motion leaving the station or what?

21 A. No.

22 Q. Hum?

23 A. No, no, he still had ahold of it.

24 Q. Did you indicate at that time --

25 A. Yes. I yelled.

1 Q. Well, did you indicate to stop the car or  
2 something? "I want to get out," or what happened?

3 A. Yes. When he hit it and I yelled out and  
4 Joe yelled, "What is wrong?" And then the kid sent the car  
5 on. So after it got out a little ways Joe yelled and said,  
6 "She is hurt," and he said the kid just grinned like it was  
7 funny. Well, we went onto the next place and got off there.

8 Q. Well, the next place was the France station.  
9 That is fairly near the first aid station?

10 A. Yes.

11 Q. All right.

12 A. And we did tell them there.

13 Q. Now, how long were you in the first aid  
14 station?

15 A. I really couldn't say.

16 Q. Excuse me?

17 A. I really couldn't tell you how long we were  
18 there.

19 Q. Okay. Now, they then asked you to go to the  
20 emergency room at Williamsburg Community Hospital, correct?

21 A. Correct.

22 Q. And you went there and from there did you go  
23 -- they released you -- saw you and released you?

24 A. Yes.

25 Q. You went on to Delaware that night, is that

1 right?

2 A. Yeah, I went home.

3 Q. What time did you get back to Delaware?

4 A. I don't know what time it was.

5 Q. How long a trip was it?

6 A. It is generally about five hours.

7 Q. Five hours each way?

8 A. Yes, about five hours. It could be four.

9 It depends on where you live.

10 Q. All right. And then it was about three days  
11 before you saw your family physician?

12 A. Uh-huh.

13 Q. Okay. And subsequently, you testified here  
14 that you had an operation back in -- I think that was in May  
15 of 1989, correct?

16 A. Yes.

17 Q. And that would have been -- this accident  
18 happened during July of 1988?

19 A. Yes.

20 Q. So this would have been about ten months  
21 after the accident?

22 A. Yes.

23 Q. Now, you worked up until the time you had  
24 your operation, that nine months?

25 A. No, I worked some. Some things that didn't

1 have lifting involved I would do or something that wasn't  
2 strenuous driving, like there were times I could go out and  
3 pull sixteen hours a day, or there were times I could go out  
4 and pull a wedding for three hours a day. So it was what I  
5 felt like I could do and how long I felt I could drive. No  
6 lifting.

7 Q. Do you recall me asking you that question  
8 during your deposition on November 11th, 1991, in your  
9 attorney's office? Do you recall that deposition?

10 A. Yes.

11 Q. And on page 25 I asked you at line 20,  
12 "Question, did you drive for them up until your operation?"  
13 And at line 22 your answer was, "Yes."

14 And question at line 23, "And you had to, of  
15 course, be off work during the operation? How long was  
16 that?"

17 "Answer, two weeks. Then I went back to work and  
18 my incision had gotten infected and I lost another week."

19 Do you recall making that statement?

20 A. Yes.

21 Q. And does that refresh your recollection as  
22 to your working? You did work up until the operation?

23 A. Yes.

24 Q. You are saying here today that -- you are  
25 saying that you didn't work as often, is that what it is?

1 A. Right, I worked. I just didn't -- I didn't  
2 work as often as I did before I got hurt.

3 Q. Now, you indicated that you quit Royal  
4 Limousine June 21st, 1990

5 A. Yes.

6 Q. And that would have been two years after the  
7 accident?

8 A. Yes.

9 Q. And about six months before you went to Las  
10 Vegas? I think you went to Las Vegas during January, didn't  
11 you?

12 A. No, I went to Las Vegas in October.

13 Q. October?

14 A. October 11th.

15 Q. Oh, I beg your pardon, October. So that  
16 would have been -- that would have been four months before  
17 you went to Las Vegas?

18 A. Uh-huh.

19 Q. Now, why did you say that you quit?  
20 Something to do with being off work because of an operation?  
21 Wasn't your operation in May of '88 -- I mean, in '89?

22 A. I had a second operation.

23 Q. But that was after -- that was October of  
24 1990 after you had quit, wasn't it?

25 A. Yes, but I quit because of the problem at

1 work.

2 Q. Well, that wasn't, though, anything to do  
3 with the operation --

4 A. No.

5 Q. -- because that had been a year before?

6 A. Yes.

7 Q. And the second operation?

8 A. It has to do with work, because I was  
9 missing a lot of work and the other drivers were getting  
10 upset and angry because they felt like I was getting the  
11 choice runs where I didn't have to lift or I didn't have to  
12 drive for long periods or long hauls to New York or wherever  
13 they were going. They thought I was getting choice jobs  
14 because there was a lot of argument, arguing going on at  
15 work.

16 Q. But in any event, your second operation was  
17 after you quit work and before you moved to Las Vegas?

18 A. Yes.

19 Q. Apparently just before you moved, correct?

20 A. Yes.

21 Q. And the first operation was about a year  
22 before you quit work, I believe? Approximately -- my notes  
23 indicate May 9th of '89 was when you had your first  
24 operation, is that correct?

25 A. It was about that time.

1 Q. Excuse me?

2 A. About that time, May. I am not sure.

3 Q. And then you stopped work in June of '90,  
4 which would have been about thirteen months later?

5 A. Uh-huh.

6 Q. Okay. Now, you haven't seen anybody in Las  
7 Vegas about this particular problem, have you?

8 A. No, I haven't.

9 Q. So you actually haven't had any treatment  
10 for this particular problem since October of 1990, for the  
11 last three years, two and a half years?

12 A. Just for what I do at home, exercise and the  
13 Tens unit and Tylenol.

14 Q. And, of course, you are presently married,  
15 are you?

16 A. Yes.

17 Q. And, of course, you are not under any  
18 prescription medication now, are you?

19 A. No, not right now.

20 MR. DAVIS: Thank you, that is all I have.

21 THE COURT: Any redirect?

22 MR. MILLS: A few questions, Your Honor.

23

24

REDIRECT EXAMINATION

25

1 BY MR. JACKSON:

2 Q. Mr. Barkers, good afternoon.

3 A. Good afternoon.

4 Q. I'm sorry about the confusion earlier.

5 A. That's okay.

6 Q. Tell us your full name?

7 A. Randi Tyrone Barkers.

8 Q. Where are do you live?

9 A. 127 Gordon Lane.

10 Q. Are you still a student at Norfolk State  
11 University?

12 A. No, I am not.

13 Q. How are you employed currently?

14 A. Right now I am working for McDonald's.

15 Q. You worked for Busch Entertainment  
16 Corporation or Busch Gardens in the past?

17 A. Yes, I have.

18 Q. What was the first year you worked there?

19 A. I think back in '85. I am not sure.

20 Q. Back in '85, and you worked several years  
21 thereafter?

22 A. Yes, I have.

23 Q. How many years, approximately?

24 A. I'd say about eight.

25 Q. About eight years? And do any of those

1 years of work out at Busch Gardens include working a  
2 facility known as the Skyride?

3 A. Yes.

4 Q. Did you receive any training in the  
5 operation of the Skyride by the company?

6 A. Yes, I have.

7 Q. Would you tell the jury what training you  
8 received at the Skyride?

9 A. As a Skyride operator I received training  
10 in the beginning of the season. When we first start about  
11 two, two and a half weeks we just do basically training all  
12 day from about 9:00 in the morning until 4:00 in the  
13 afternoon prior to the park opening. Then we just work it  
14 directly during the year.

15 Q. Are there three stations out there --

16 A. Yes, there is.

17 Q. -- on the Skyride? One for each country?

18 A. Yes.

19 Q. They have got England, Germany and New  
20 France?

21 A. Right.

22 Q. And the station for England is called  
23 Banbury Cross Station, is that right?

24 A. Yes.

25 Q. What station did you spend most of your time

1 working in?

2 A. Germany.

3 Q. How did the procedure at Germany compare to  
4 England?

5 A. Basically all of them are the same. At  
6 England the switch is the main one. That is where they  
7 start the ride at.

8 Q. Would you explain to the jury what the jobs  
9 are for the people working at the Skyride stations? What  
10 are the employees doing out there to run the operation?

11 A. Basically either three or four people  
12 working the Skyride. Each one has -- not a specific job,  
13 but a job they have to do in order to run the ride.

14 Q. When a cabin with passengers comes in from  
15 another station, you have incoming passengers --

16 A. Right.

17 Q. -- who is the first employee that meets  
18 those passengers when they come in?

19 A. The first one is called the catcher.

20 Q. What does the catcher do?

21 A. That is as the cabin comes in he receives  
22 the cabin and with a key unlocks the door and helps the  
23 guests get off the ride.

24 Q. Do you know what moves the cabin from  
25 station to station?

1           A.   Once it comes into the station it comes off  
2 the cables and comes onto a rail.

3           Q.   Comes onto a rail?

4           A.   Uh-huh.

5           Q.   How does it run on the rail?

6           A.   With the wheels. It actually comes off the  
7 thing at the end of the station. There is a clamp that  
8 holds it onto the cable as it is going from station to  
9 station, but once it gets in the station it hits the rail  
10 and releases the clamp and the cabin -- it brings it in, it  
11 rolls on its wheels.

12          Q.   Once it is brought inside the station the  
13 cabin is moved by people power and not machine power?

14          A.   Right.

15          Q.   And who does the -- once the catcher gets  
16 the cabin what does he do with the cabin?

17          A.   He pushes it or the person that is helping  
18 him, which is sometimes the loader, will help him after the  
19 people are off, and the next person will move the cabin  
20 around, will walk the cabin around to the next station or  
21 the next person.

22          Q.   He walks it around to the next person or  
23 pushes it around?

24          A.   Pushes it around, yes.

25          Q.   Let's say you are the catcher and I am the

1 next person. What am I called?

2 A. If I am the catcher and you are the next  
3 person?

4 Q. Yes

5 A. You would be the loader.

6 Q. Or the unloader?

7 A. Right.

8 Q. Would be the unloader?

9 A. It depends on if you -- you have two or  
10 three people.

11 Q. Let's say I am an unloader, would you  
12 explain to the jury what an unloader does?

13 A. Basically all he does is help the person  
14 that catches the cabin, helps him unload the people, or if  
15 anybody has got any questions, like usually you have guests  
16 around beside the station. As we are walking they usually  
17 have questions; sometimes that person will answer people's  
18 questions and bring the cabin --

19 Q. Does the unloader help the passengers out of  
20 the cabin?

21 A. If they need help, yes.

22 Q. And if you were the catcher working at a  
23 station --

24 A. Uh-huh.

25 Q. -- how far would the unloader stand away

1 from you? As far as you and I are from each other or  
2 closer?

3 A. It depends on when -- it depends on what the  
4 unloader is doing at that time.

5 Q. All right.

6 A. He could be right beside you or he could be  
7 from me to you.

8 Q. From me to you?

9 A. Yes.

10 Q. And I take it that the catcher can push the  
11 cabin from --

12 A. Yes.

13 Q. -- from you to me?

14 A. Yes.

15 Q. And when the unloader gets the cabin, what  
16 does he do with the cabin next?

17 A. Pushes it around to the next person or he  
18 walks it over to the next person.

19 Q. It works either way in your experience?

20 A. What do you mean, pushing it around or  
21 walking --

22 Q. Walking it around by the employees out  
23 there?

24 A. Right.

25 Q. Who is that next person as the unloader

1 pushes or walks the cabin over? What would his job be?

2 A. To load the people on.

3 Q. He is called the loader, right?

4 A. Right.

5 Q. And let's say now you are the loader --

6 A. Okay.

7 Q. -- how far does the loader stand from you in  
8 the station?

9 A. It depends on what station you are in  
10 because some of the stations have a greater distance between  
11 the people.

12 Q. What about the England station? Let's say  
13 you are working at the England station and you are working  
14 as an unloader. How far would the loader stand from you?

15 A. I'd say approximately about maybe between  
16 five and ten feet.

17 Q. Five to ten feet? And again that unloader  
18 person can either push the cabin over there or he can walk  
19 it over?

20 A. Right, as he prefers.

21 Q. Have you pushed the cabins out there before?

22 A. Yes, I have.

23 Q. Is it hard to push the cabins when they are  
24 running on the rail?

25 A. No.

1 Q. Do you know how heavy the cabins are?

2 A. I'd say -- I guess if you weighed them,  
3 about 1700 pounds, maybe. They are pretty heavy.

4 Q. When the cabins aren't running on the rails,  
5 when they derail, are they pretty heavy, hard to get back in  
6 place?

7 A. Yes. You need at least four people to lift  
8 them.

9 Q. But when they are on the rail and running in  
10 the station, when they are up on the rail and they are  
11 inside the station one person can push them?

12 A. Right.

13 Q. Do they have female employees working the  
14 Skyride?

15 A. At one point we had -- at one -- I mean,  
16 it's been awhile since we had any. I don't know if they  
17 have got any recently or not. But I know when I worked we  
18 had females working, too.

19 Q. Were they able to push the cabins, too?

20 A. Yes, they were.

21 Q. Let me ask you a little bit about the  
22 loader. The loader, I take it, gets the cabin from the  
23 unloader, and then what is his job out there?

24 A. To assist the tripper. Unhook the door and  
25 brings the next guests, next two or three people into the

1 cabin.

2 Q. Into the cabin?

3 A. Well, he brings --

4 Q. Do you use that word more often or use the  
5 word gondola --

6 A. Didn't make any difference.

7 Q. Now, does the loader always help the people  
8 in or does the tripper do that sometimes, also?

9 A. Basically probably the tripper.

10 Q. It is the tripper that helps the people?

11 A. And if the tripper is busy with another  
12 guest and the loader is in the middle, he'll bring the next  
13 cabin around. Say, for instance, you have a family with a  
14 stroller. The tripper may help him or help the people with  
15 that, and the next person, the loader will help bring the  
16 next guest and load them in.

17 Q. Now, let me ask you this: the loader, how  
18 far does he stand away from the tripper at the Banbury Cross  
19 station in England?

20 A. The tripper to get people in -- right beside  
21 them.

22 Q. Right beside them?

23 A. At least two to three feet apart.

24 Q. Is there anything between the loader and the  
25 tripper so they can't see each other?

1           A.    In England?   In England, no, because it is  
2 basically clear space all the way between.

3           Q.    Okay.   And for the loader, he can push the  
4 car up to the tripper or --

5           A.    (Witness nodding head affirmatively.)

6           Q.    Or walk it?

7           A.    Yes.

8           Q.    Either way in your experience?

9           A.    (Witness nodding head affirmatively.)

10          Q.    Doesn't the pushing occur more often when  
11 they are busy out there?   Isn't it quicker to push it rather  
12 than walk all the way over and come back and walk another  
13 cabin over?

14          A.    Not really.

15          Q.    Both ways are just about as fast?

16          A.    Yes.

17          Q.    When you received your training out at Busch  
18 Gardens to be a Skyride operator, were you trained in how to  
19 do all four jobs out there, catcher, unloader, loader and  
20 tripper?

21          A.    When you got trained basically they were all  
22 -- you had to learn the same positions, yeah, but after a  
23 while you just got on one as --

24          Q.    When you were a trainee somebody supervised  
25 you?

1 A. For a period of time the person sits there  
2 and watches you to make sure you are doing it right. Then  
3 after a couple of hours you are on your own. Do one and  
4 then the --

5 Q. Is there some kind of certification process  
6 out there for Skyride operators?

7 A. Basically all the rides, after a certain  
8 many times you did it or how many hours, you got certified.

9 Q. You became certified as a Skyride operator  
10 in a couple or three days, didn't you?

11 A. Yes, I did. Because I started in the middle  
12 of the summer working the Skyride.

13 MR. JACKSON: Your Honor, may I approach the  
14 witness?

15 THE COURT: Yes, you may.

16

17 BY MR. JACKSON:

18 Q. Mr. Barkers, I am going to show you this  
19 document. Can you tell the jury what that is?

20 A. This is the standard operating procedure.

21 Q. Did you look at that before you --

22 A. Yes, I did.

23 Q. -- became certified as a Skyride operator?

24 A. We are supposed to do that, yes.

25 Q. And what does that standard procedure relate

1 to?

2 A. Basically the standard operating procedures  
3 go over the ride, how long it's been there and the way that  
4 -- how you run it.

5 Q. Could you look on the last page of the  
6 standard operating procedures there, at the very bottom on  
7 the right corner. Is there a date there?

8 A. January, 1987.

9 Q. Does that look like the same -- I want you  
10 to take just a minute and look through that because I am  
11 going to ask you if that is the same manual that you trained  
12 on and used?

13 A. Basically, yes.

14 Q. Let me ask you a couple of questions that  
15 don't deal directly with that manual there. Does Busch  
16 Gardens have a rule or a policy out there regarding when two  
17 people get onto one of these cabins, where they are supposed  
18 to sit?

19 A. No. Once they get -- two people, they can  
20 sit on one side or the other. It doesn't make any  
21 difference.

22 Q. What happens when two people sit on one side  
23 of the cabin?

24 A. Sometimes the cabin will tilt upwards.

25 Q. Now, the tripper, in order to -- well, let

1 me ask you this: I am not exactly sure I understand what the  
2 tripper does. It doesn't mean he is a clumsy person, right?

3 A. No.

4 Q. What does the tripper do?

5 A. Once you help people into their cabin he  
6 would close the door and lock it and pushes the cabin into  
7 the trip, which is the thing that receives the train -- I  
8 mean, the cabin, and releases it out of the station.

9 Q. There is a tripping device?

10 A. Right.

11 Q. That gets the cabin back onto the moving  
12 cable?

13 A. Right.

14 Q. So it can move out of the station?

15 A. (Witness nodding head affirmatively.) And  
16 set it on a certain time, 17 seconds.

17 Q. Where does the tripper push the cabin to  
18 move it up to the tripper?

19 A. If he is standing there, usually beside him,  
20 as he pushes it backward.

21 Q. Does he push on the side of the cabin to  
22 make it go forward, or does he push on the back of the cabin  
23 to make it go forward?

24 A. Pushes on the back or he can grab hold of  
25 the side and pull it past him.

1 Q. When you push on the back of the cabin, does  
2 it make the cabin tilt or sway a little bit sometimes when  
3 you are pushing it forward?

4 A. It depends on who is in it and depends on  
5 how they are sitting. If you have got four people it won't  
6 make a difference.

7 Q. What if you have got two people sitting on  
8 the back --

9 A. It is already --

10 Q. -- and nobody up front?

11 A. It is already at a tilt upwards. When you  
12 push it it would go -- it may go up a little bit more than  
13 normal.

14 Q. Mr. Barkers, in your experience as a Skyride  
15 operator of this type of facility, is it normal operating  
16 procedure to bump a cabin between --

17 A. It is --

18 Q. Let me finish my question -- between the  
19 loader and the tripper?

20 A. It is not normal, but you do have occasions  
21 where you do accidentally bump them.

22 Q. Is it something that an employee tries to  
23 do?

24 A. No, he shouldn't. On occasions you do have  
25 that bump. Some people don't mean it, but other people, if

1 they are in a bad mood they'll do it or just to irritate  
2 somebody and just playing around.

3 Q. Excuse me.

4 A. Uh-huh.

5 Q. I am going to put on a tape and ask you a  
6 couple of questions about that.

7 A. Okay.

8 Q. Okay.

9 (Videotape of Skyride operation is being  
10 played for the jury simultaneous with the  
11 testimony of Mr. Barkers.)  
12

13 BY MR. JACKSON:

14 Q. Do you recognize the man in that film there?

15 A. Yes, I do.

16 Q. Who is he?

17 A. A guy by the name of Campbell.

18 Q. Who?

19 A. A think, if I remember correctly, his name  
20 is Campbell.

21 Q. Can you tell by looking at what we have seen  
22 so far where we are?

23 A. He is at the position they call the tripper.  
24 The cabin is coming right there, and ten or twelve seconds  
25 the cabin is released out of the station. That is where you

1 get most of the bumps at, right there.

2 Q. Why is he sending it out -- if you know --  
3 why is he sending out an empty cabin?

4 A. Because they are starting back up, starting  
5 the ride up and sending empty cabins out, or a problem  
6 there. Something may have happened and they are just  
7 testing the ride.

8 Q. When you were working at Busch Gardens were  
9 you instructed to tell people, instructed to tell passengers  
10 getting into the cabins to keep their arms completely inside  
11 the cabin?

12 A. There is a sign -- as you enter the cabin  
13 there is a sign sitting right there on the left-hand side or  
14 right-hand, depending on which way you are sitting, and it  
15 has all the instructions on it of what not to do. It says,  
16 "Skyride instructions," something else, and, "Do not put  
17 your hands outside of the cabin, stay seated," and it gives  
18 you a little -- other details about the ride.

19 Q. All right.

20 A. As you can see right there on the side --

21 Q. I guess my question was, besides that sign  
22 is there anything that the employees also tell the  
23 passengers about --

24 A. I would say, "Watch your head," and at the  
25 end of the cabin exiting the cabin --

Q. What is that man doing there?

A. Which man?

Q. The man in the pink shirt, can you see his arm?

A. He has on that --

Q. Is that all right for passengers to do that?

A. No. They do it all the time. Just keep their hands off, but a lot of passengers will do that.

Q. Do you know if --

THE COURT: This is during the --

THE WITNESS: Yes.

THE COURT: And the loader is the person behind?

THE WITNESS: The person that is walking up with the cabin.

THE COURT: Who is that, the catcher?

THE WITNESS: Yes.

BY MR. JACKSON:

Q. When it goes to the trip does it tilt back a little bit?

A. I don't quite remember.

Q. Well, let's look at this one as it goes out.

A. It doesn't really tilt. It just like sways back and forth.

1 Q. When someone gets on the car, do they  
2 usually sit on the opposite sides of the car or do they sit  
3 together?

4 A. It depends. Some do and some don't.

5 MR. JACKSON: Mr. Barkers, I don't have any  
6 more questions for you, but we'll let the tape  
7 run and then Mr. Davis may have some questions.

8 THE WITNESS: Okay.

9

10 BY MR. JACKSON:

11 Q. In your experience does the loader always  
12 push or guide the cabin that gently to the tripper?

13 A. It depends on who it is. (Witness nodding  
14 head affirmatively.)

15 MR. JACKSON: Thank you.

16 THE WITNESS: You are welcome.

17

18 CROSS-EXAMINATION

19

20 BY MR. DAVIS:

21 Q. Mr. Carlson can't stay out of the movies.  
22 See, he has to get in all of our movies. How long has it  
23 been since you have worked there?

24 A. At Busch or --

25 Q. At Busch Gardens.

1 A. About a year.

2 Q. One year? And was your last employment  
3 there in the Skyride?

4 A. No.

5 Q. No, it wasn't?

6 A. Uh-uh.

7 Q. How long has it been since you have worked  
8 in the Skyride?

9 A. It's been about two years since I -- I did  
10 go back when they needed somebody to go to work the Skyride.  
11 I volunteered or they were asking me to work the Skyride.

12 Q. All right. Now, you were working on July --  
13 you worked during July of '88, I believe, correct?

14 A. Yeah, I worked there that year.

15 Q. Was it the 11th -- the 10th you were  
16 employed there?

17 A. During that time, yes.

18 Q. July 10th, '88?

19 A. Yes.

20 Q. And do you recall where you were employed  
21 that particular day?

22 A. No, I don't.

23 Q. And do you recall Mrs. Bregel at all, this  
24 lady seated here?

25 A. No, I don't.

1 Q. Do you recall any injury that day or during  
2 that period of time?

3 A. No, not during that period. We do hear  
4 about incidences when they get hurt -- when people do get  
5 hurt, people or the workers will tell each other. You hear  
6 stuff coming around, but not that day or during that time,  
7 no.

8 Q. How do they get hurt? Basically what do you  
9 hear about them getting hurt on the Skyride?

10 A. The Skyride is the only thing you -- you  
11 always hear about people bumping their head.

12 Q. Bumping their head? That is when they get  
13 on or off?

14 A. That is true, some people always scuff up  
15 their heads.

16 Q. [REDACTED] the tilting, [REDACTED]  
17 the rocking of the [REDACTED] it leaves the  
18 tripper [REDACTED] being picked up by the cable or the  
19 wire rope. Is that where you see in the videotape that  
20 rocking? Was that when that occurred?

21 A. Yes. Sometimes it does and sometimes it  
22 tilts when people are getting in.

23 Q. When people get in?

24 A. Yes.

25 Q. Of course, when it attaches to that cable

1 that is beyond the tripper, he has sent it on?

2 A. Right. (Witness nodding head  
3 affirmatively.)

4 Q. Now, I presume that there are times when the  
5 two cabins touch each other or come in contact with each  
6 other because of unusual situations. There might be a  
7 handicapped person or a person ill or something like that,  
8 is that right?

9 A. Yes. We try to -- usually with a  
10 handicapped procedure if they are in a wheelchair we usually  
11 take one of the cabins off and side rail it, which is  
12 another part of the station, and we let them get on there  
13 and that way it won't cause a slowing down just to get them  
14 in.

15 Q. But there are little children and packages  
16 and things like that --

17 A. Right.

18 Q. -- that require extra attention?

19 A. (Witness nodding head affirmatively.)

20 Q. All right. Now, was a lot of your job as  
21 tripper -- that is the individual who sent it off last --  
22 was your job tripping, basically you did a lot of that?

23 A. Yes. We rotated every thirty minutes so you  
24 never stayed in that one position all day. You rotate from  
25 each position.

1 Q. Now, if I understand you correctly, on  
2 direct examination you said when there are only two people  
3 in the cabin and both of them are seated in back, that is,  
4 facing out --

5 A. Right.

6 Q. The cabin is going to be tilted somewhat, is  
7 that right, from --

8 A. Yes.

9 Q. And in that instance, the employee touching  
10 the cabin is likely to tilt it even more, is that what you  
11 said?

12 A. Well, that is also what the video said,  
13 also, because it isn't -- it is already at a tilt, and they  
14 went up an inch more, but that was it.

15 Q. I hope your experience at Busch Gardens was  
16 a good one. Was it?

17 A. It was, yes.

18 MR. DAVIS: Thank you.

19 THE COURT: Any redirect?

20 MR. JACKSON: Your Honor, very briefly.

21

22 REDIRECT EXAMINATION

23

24 BY MR. JACKSON:

25 Q. Mr. Barkers -- I'm sorry, it is Mr. Barkers?

1 A. Yes.

2 Q. Do you know Mrs. Bregel here?

3 A. No, I do not.

4 Q. Have you been offered any inducement to come  
5 here and testify today?

6 A. The only thing I have received is a subpoena  
7 that I got to appear in court to be a witness.

8 MR. JACKSON: Thank you.

9 THE WITNESS: (Nodding head affirmatively.)

10 THE COURT: May he be excused?

11 MR. JACKSON: Yes.

12 THE COURT: You are excused to leave. Thank  
13 you very much.

14 (Witness was excused.)

15

16

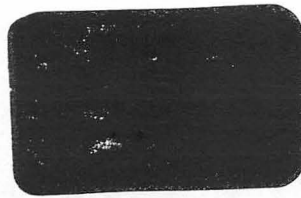
17 MR. MILLS: All right. Have you got  
18 something?

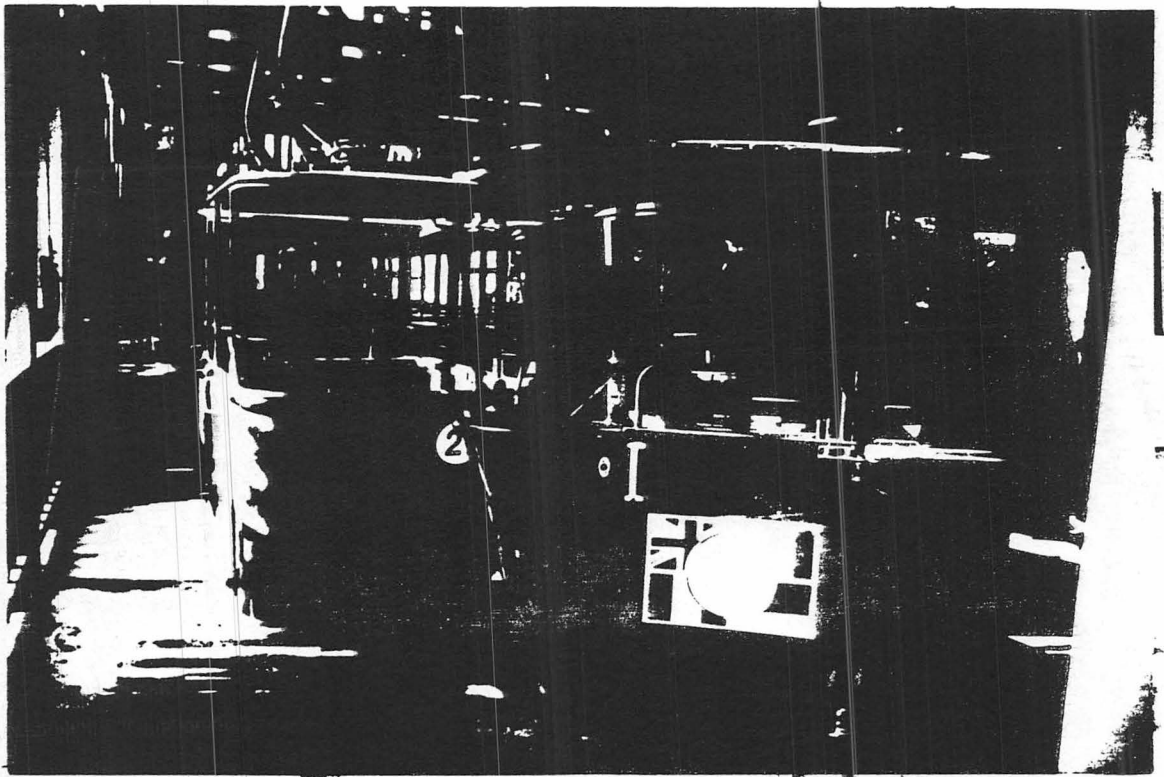
19 MR. JACKSON: I want to remove that.

20 MR. MILLS: Your Honor, I am waiting for you  
21 to ask me to call my next witness.

22 THE COURT: Do you have something that can  
23 be done in 20 minutes?

24 MR. MILLS: Yes, I do. I hate to do another  
25 deposition, but this is short and brief and I

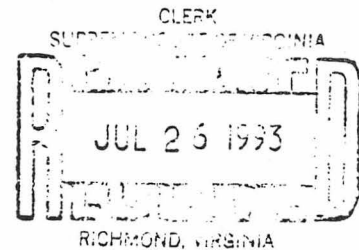




931100

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG  
AND JAMES CITY COUNTY

CAROL SIBERT BREGEL,  
Plaintiff,



vs.

AT LAW NO.: 5894  
VOLUME II

BUSCH ENTERTAINMENT CORPORATION,  
Defendant.

Taken before: The Honorable W. L. Person, Jr.,  
Judge and Jury

May 4, 1993

8:30 A.M.

Williamsburg, Virginia

APPEARANCES:

Rutter & Montagna,  
by Robert L. Mills, Esquire,  
and Lance A. Jackson, Esquire,  
counsels for the Plaintiff.

Harris, Davis, Fears, Lynch & McDaniel,  
by Terry H. Davis, Jr., Esquire,  
counsel for the Defendant.

McCraw & Associates  
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FILED  
HELENE S. WARD  
CLERK, CIRCUIT COURT  
1993 JUN 29 AM 10:54  
CITY OF WILLIAMSBURG  
& COUNTY OF JAMES CITY

BY: \_\_\_\_\_ DEPUTY CLERK

**ORIGINAL**

I N D E X

<u>WITNESS</u>	<u>VIDEO</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Pat Aulicino, M.D.	3	--	--	--	--
Charles DeMark, Jr.,	--	4	35	37	--
Fremon Jones, Ph.D.	--	39	55	58	--
Curtis Spear, M.D.	64	--	--	--	--
William Carlson	--	65	76	98	--
Patrick Hoffman	--	100	110	123	126
Diane Lenz	--	127	131	--	--

INDEX OF EXHIBITS

<u>Description</u>	<u>Page</u>
The transcript of Dr. Pat Aulicino's deposition was marked and entered as Plaintiff's Exhibit Number 6.	4
The transcript of Dr. Curtis Spear's deposition was marked and entered as Defendant's Exhibit 1.	65
A first-aid report was marked and entered as Defendant's Exhibit Number 2.	70
A photograph of a warning sign was marked and entered as Defendant's Exhibit Number 3.	73
A book titled Standard Operating Procedures was marked and entered as Plaintiff's Exhibit Number 7.	98

1 don't we go to lunch and report back to the jury room at  
2 1:30. Don't go to Busch Gardens, don't talk among yourselves  
3 or with anybody or let anyone talk about the case with you.  
4 Thank you.

5 (The jury exited the courtroom.)

6 (A lunch break was taken, after which the  
7 following proceedings continued:)

8 MR. DAVIS: I did want to introduce the  
9 deposition as Plaintiff's Exhibit 1, I mean, Defendant's  
10 Exhibit 1.

11 MR. MILLS: Is that the doctor's testimony?

12 MR. DAVIS: Yes.

13 (The transcript of Dr. Curtis Spear's  
14 deposition was marked and entered as Defendant's  
15 Exhibit 1.)

16  
17 WILLIAM CARLSON, called as a witness on behalf of  
18 the Defendant, having been first duly sworn, was examined and  
19 testified as follows:

20  
21 DIRECT EXAMINATION

22 BY MR. DAVIS:

23 Q. Mr. Carlson, would you state your name for the  
24 jury, please, sir.

25 A. William Carlson.

1 Q. And your address, sir?

2 A. 599 Allens Mill Road, Grafton, Virginia.

3 Q. How long have you lived there?

4 A. Nearly 15 years.

5 Q. And are you married?

6 A. Yes, I am.

7 Q. Do you have children?

8 A. I have three children.

9 Q. What's your job, sir?

10 A. Safety manager at Busch Gardens.

11 Q. How long have you had that job?

12 A. Nearly 15 years.

13 Q. And what is a safety manager at Busch Gardens?

14 A. I have the responsibility of coordinating  
15 safety and loss prevention programs as it pertains to our  
16 guests in the park, employees and property damage, fire  
17 safety, things of that sort.

18 Q. Do you have persons working under you?

19 A. Yes.

20 Q. How many do you have in your group?

21 A. The first-aid department reports to me,  
22 registered nurses, paramedics, total approximately 20 or 25.

23 Q. And what was your first contact with the Bregel  
24 accident?

25 A. It was when I received the report from the

1 first-aid station of her injury.

2 Q. And how is it that you happened to receive that  
3 first-aid report?

4 A. All reports that are generated by first-aid,  
5 which is all injuries that occur in the park that are  
6 reported to first-aid, come to me.

7 Q. I see. And then what was your next contact  
8 with the Bregel accident?

9 A. The next contact was as I recall when I  
10 received a letter of representation from an attorney in  
11 behalf of Mrs. Bregel.

12 Q. All right. What did you do with that? Did you  
13 refer that to counsel?

14 A. Yes, at that time it was referred to Busch  
15 Gardens' legal counsel.

16 Q. And was any effort made to locate the employees  
17 who were on duty that day which was July 10th, 1988?

18 A. Yes, we did. We went back to the payroll  
19 records to find out what employees were working the Skyride  
20 on that particular day. That information was provided to our  
21 legal counsel.

22 Q. All right. I think that information was also  
23 provided to the plaintiff's attorney, was it not?

24 A. Yes, it was.

25 Q. And how many persons were there?

1           A.    I don't recall specifically. I believe it was  
2 in excess of 20 people.

3           Q.    And how were they broken down?

4           A.    I'm sorry?

5           Q.    How -- were these all the people working that  
6 day on all the Skyride entrances?

7           A.    Yes, it was. Our payroll records don't  
8 differentiate the hours of the day they were working. Being  
9 the time of year that the accident occurred, it was quite  
10 possible there would have been two shifts involved, so we had  
11 to take time with all the people that were working at all the  
12 Skyride stations.

13          Q.    Were you ever able to locate anyone who knew  
14 anything about this?

15          A.    No, we were not.

16          Q.    Of course, you did receive a first-aid report?

17          A.    That's correct.

18          Q.    And what does that show?

19          A.    The first-aid report shows in general the  
20 person who was injured, their name, address, phone number,  
21 social security number, what happened that they relate it to,  
22 nurses' MT is the cause of the injury, what the findings  
23 where by the paramedic, the MT of the nurse is where they  
24 were initially examined, what treatment was given to them at  
25 that time.

1 Q. All right. And looking at Defendant's Exhibit  
2 H for identification I'll ask you if you can identify that?

3 A. Yes, this is the first-aid report on Carol  
4 Sibert.

5 Q. Carol Sibert?

6 A. Correct.

7 Q. All right. And subsequently Mrs. Sibert  
8 married and she is the plaintiff Mrs. Bregel; is that  
9 correct?

10 A. That's correct.

11 Q. All right. Now, who is named as the Busch  
12 Gardens official employee, who are on there that have  
13 knowledge of the first-aid report?

14 A. There is the MT, Ron Beaman, Diane Lenz, who  
15 was a registered nurse at that time, Monica Smith, who was a  
16 registered nurse and the supervisor of first-aid and my  
17 initials.

18 Q. All right. And you reviewed that?

19 A. Correct.

20 MR. DAVIS: All right. If Your Honor please,  
21 we would move to introduce that as Defendant's  
22 Number --

23 THE COURT: Any objection?

24 MR. MILLS: No objection.

25 THE COURT: This will be Defendant's Exhibit 2.

1 (A first-aid report was marked and entered as  
2 Defendant's Exhibit 2.)  
3

4 BY MR. DAVIS:

5 Q. Now, insofar as the -- what information on the  
6 first-aid report was provided in reference to Mrs. Bregel's  
7 complaint as to how the accident occurred, what she stated?

8 A. It's recorded under subjective data on the  
9 first-aid report, "Guest stated that as she was sitting in a  
10 Skyride car, her right arm was resting on a rail, with her  
11 right arm resting on the rail when another Skyride banged up  
12 against her catching her arm, parenthesis, RT for right,  
13 between the two Skyride cars."

14 Q. All right. Now, does that report indicate how  
15 Mrs. Bregel entered the first-aid station?

16 A. Yes, it does. It's checked ambulatory which  
17 means she walked into the first-aid station.

18 Q. All right. Now, the Skyride, can you just in  
19 general terms tell the jury what type of ride it is, when it  
20 was put up and constructed?

21 A. The Skyride was installed at Busch Gardens for  
22 the opening of Busch Gardens for the 1975 season. It was  
23 manufactured by a Swiss company by the name Von Role  
24 (phonetic). It is a single cable Skyride with three stations  
25 in a triangle shape. It's total cable link between stations

1 is about 3,000 feet. There are I believe I'm correct a  
2 maximum of 48 cabins that can go on this cable, that varies  
3 from one to 48 between the three sections of the Skyride  
4 itself. The cabins are the detachable grip-type of cabins,  
5 which means in a station they're not attached to the cable  
6 itself.

7 Q. How is the organization of loading and  
8 unloading the patrons conducted?

9 A. A guest in the park can approach any one of the  
10 three Skyride stations, come through a queuing area, which is  
11 nothing more than a walkway back and forward that queues up  
12 the people as they approach the entrance to the Skyride  
13 itself. At that point they're stopped generally by a  
14 turnstile. They will once an empty cabin is in the area  
15 directly in front of where they are standing, an employee  
16 will beckon them to load the Skyride cabin usually in a group  
17 of up to four people. It could be a single person riding.  
18 It could be a group up to four. Although if there is a group  
19 which exceeds four, four adults should ride in one cabin and  
20 any additional people should ride in another cabin.

21 Q. I see. And before an employee begins work at  
22 the Skyride what type of training does he have?

23 A. Initially an employee who is assigned to the  
24 Skyride will receive the Standard Operating Procedures which  
25 gives them all the information they need to know in a written

1 format about the operation of the Skyride, what their duties  
2 are and responsibilities are. Each employee is given a copy  
3 of the Standard Operating Procedures and it's theirs to keep.

4           Once they have read that, then they begin  
5 training on the ride itself with a trainer, another employee  
6 who has demonstrated through experience and longevity on the  
7 ride that they understand and can completely operate the  
8 Skyride and are a competent trainer of the employees. They  
9 will begin going through the actual operations of the  
10 Skyride.

11           The trainer will set up certain situations that  
12 the employee could be expected to encounter during the  
13 operation of the Skyride and they have to demonstrate their  
14 competency to handle the different situations. That time  
15 period depends upon the employee's ability to grasp the  
16 information. With returning employees, these well-seasoned  
17 employees, if it's a returning employee, it may be a very  
18 fast process. It may be as little as four or five days if  
19 they have worked at the ride before. It could be as long as  
20 several weeks with an employee who had not worked on this  
21 specific ride before.

22           Q. I see. Do they have actual written tests on  
23 this or do you recall?

24           A. Yes, they do have a written test that shows  
25 competency as well as demonstrating competency in the actual

1 operation of the ride itself.

2 Q. Now, have you ever seen two cars bump each  
3 other?

4 A. Occasionally, yes.

5 Q. And are there any warning signs on these, any  
6 signage?

7 A. There is a sign inside the cabin as you  
8 approach the cabin through the door on the far wall of the  
9 cabin, yes.

10 Q. All right. Let me ask you if this is a copy of  
11 the sign, photograph of the sign? This is Defendant's  
12 Exhibit A for identification. Can you identify that?

13 A. Yes, this is one of the signs that is located  
14 in the Skyride cabin itself.

15 Q. All right.

16 MR. DAVIS: And we would move to introduce this  
17 as --

18 THE COURT: Any objection?

19 MR. MILLS: No objection, Your Honor.

20 THE COURT: Defendant's 3.

21 (A photograph of a warning sign was marked and  
22 entered as Defendant's Exhibit Number 3.)

23

24 BY MR. DAVIS:

25 Q. What does the sign say?

1           A.    The sign says, "Busch Gardens' Skyride, remain  
2   seated, keep hands and arms inside cabin, no smoking.  
3   Swaying or rocking cabin is cause for dismissal from the park  
4   without refund." And there's some additional statement. It  
5   says, "For your information the Busch Gardens' Skyride  
6   consists of three loading and unloading stations and travels  
7   a distance of over half a mile. On occasion the Skyride  
8   motion will stop for a short period. Should the Skyride stop  
9   moving, please, remain seated. This ride will restart to  
10  transport you to the next station."

11           Q.    All right. Have you ever been aware or seen  
12  any cabins bump each with sufficient velocity or severity to  
13  injury anyone?

14           A.    No, I have not.

15           Q.    And why is it unlikely that that might occur,  
16  that the cars might not be propelled faster?

17           MR. MILLS: If Your Honor please, I think we  
18   first have to establish that that is unlikely to  
19   occur. I just object to that question.

20           THE COURT: What's the question?

21           MR. DAVIS: The question is, why is it that the  
22   cars would not be likely to get up to a velocity as  
23   to injury anyone?

24           THE COURT: I think he can describe the  
25   velocity. I sustain the objection to the question.

1 He can describe the velocity that they get up to.

2  
3 BY MR. DAVIS:

4 Q. Can you answer that?

5 A. Yes. The cars when they are in the station  
6 itself are not attached to the cable. They are on a rail  
7 system and there are wheels on top of the clamping device  
8 that clamps it to the cable itself. That rail is basically  
9 level.

10 If the car is not pushed, then it will glide  
11 until it loses its momentum. Due to the way the track is  
12 itself, the rail is basically level. There has been  
13 experiences where a car on this rail is moved too fast and it  
14 will derail from this rail where the wheels are in contact  
15 with the rail.

16 Q. I see. And have you ever aside from Mrs.  
17 Bregel received -- I think you said she's been the only one  
18 that has had an injury like this that you know of?

19 A. That's correct.

20 Q. All right. Now, have you had any contact with  
21 Mrs. Bregel at all?

22 A. No, I have not.

23 Q. All right. Would you answer counsel's  
24 questions.

CROSS-EXAMINATION

BY MR. MILLS:

Q. Mr. Carlson, how are you?

A. Fine.

Q. Now, I think you told us that you're the safety manager out at Busch Gardens?

A. Correct.

Q. And you've been in that capacity for some 15 years, did you say?

A. Nearly 15 years, yes, sir.

Q. Tell us a little bit about your job, a little bit about what you do out there?

A. As I said before, I have responsibility for coordinating safety and loss prevention functions that pertain to the guests and the employees primarily.

Q. And are you interested in identifying safety hazards in the park?

A. Yes.

Q. See that employees comply with the procedures?

A. Correct.

Q. Seeing that the patrons are safe in their use of the park?

A. Yes.

Q. Identifying and correcting any safety hazards that may exist, this is part of your function?

1 A. Correct, yes.

2 Q. Okay. Now, you say that you have seen cars  
3 bump together on this Skyride before?

4 A. Yes, I have.

5 Q. Have you see them bang together before?

6 A. I guess I don't know the difference between  
7 bump and bang.

8 Q. Well, my thinking about that difference is a  
9 bump is sort of a light bump, an incidental tap, and a bang  
10 is a hard bang.

11 A. Okay.

12 Q. A bang being a bump that might cause some  
13 damage to the cabin or might cause some damage to someone.  
14 Would you sort of agree with that or would you characterize  
15 it that way?

16 A. I can answer the question based on your  
17 definition of those terms, yes.

18 Q. Have you seen cabins bang together?

19 A. No, I have not.

20 Q. Okay. Do you have a policy at Busch Gardens  
21 about how the cabins are suggested to be loaded and unloaded?

22 A. Yes, the policy is in the Standard Operating  
23 Procedures.

24 Q. And does that tell the operator how they are  
25 suppose to operate the ride?

1 A. Correct.

2 Q. And it also gives them some instructions about  
3 how they're not suppose to operate the ride?

4 A. There are some items in the SOP that say do not  
5 type of thing, yes.

6 Q. Right. And that's just to provide for safe  
7 operation of the ride and safety of your patrons?

8 A. Yes.

9 Q. Now, are you familiar with the SOP?

10 A. Yes, I am.

11 Q. You have a working knowledge of that document?

12 A. Not independently, no.

13 Q. Well, don't you review it periodically?

14 A. Periodically, yes, as I do all the other  
15 Standard Operating Procedures.

16 Q. And for what reason do you review that?

17 A. General knowledge to see if there's something  
18 in there that I recommend be changed from a safety and loss  
19 prevention perspective.

20 Q. Make sure everything is running okay and that  
21 you've got the right operating procedure?

22 A. Correct. From my viewpoint, yes.

23 MR. MILLS: Your Honor, may I approach the  
24 witness.

25 THE COURT: Yes.

1 Q. I want to hand you something that's, it's in an  
2 exhibit book marked as Exhibit 4. We'll mark it for  
3 identification a little later but I just want to have you  
4 refer to it now in answering my questions. Is that the  
5 Standard Operating Procedures that we've been talking about?

6 A. Yes, it is.

7 Q. And is this the Standard Operating Procedures  
8 that was in use in 1988 when this accident happened?

9 A. Yes, it was.

10 Q. Okay. Now, what is your understanding of the  
11 proper way to load passengers at the Skyride and begin  
12 telling us how many employees you use to do that at the  
13 England station?

14 A. Just strictly the loading of the passengers?

15 Q. Just the loading?

16 A. The loading function generally is two people.

17 Q. Okay. Those people have names, don't they?

18 A. I'm sorry?

19 Q. Those people have designations, you call them  
20 something?

21 A. Loader and tripper.

22 Q. Loader and tripper. Now, would you tell the  
23 jury what it is the loader is suppose to do?

24 A. In general terms I can. I would have to refer  
25 to the SOP to tell you precisely. The loader in most cases

1 is the one that brings the cabin up to the tripper in  
2 preparation for it to be loaded and in some incidents the  
3 loader and tripper could both load individual cabins.

4 Q. Your testimony is a loader doesn't actual load  
5 things?

6 A. Loader can, yes. In most instances, they would  
7 be bringing the cabin around to the tripper.

8 Q. Huh-huh.

9 A. Load the people in and then give the cabin to  
10 the tripper. It depends upon the number of people who are  
11 waiting to ride the Skyride as well as the number of cabins  
12 as I understand.

13 Q. Now, let's look at what the SOP says for the  
14 unloader and the tripper. Now, there you have functions set  
15 out for the loader.

16 A. Correct, on Page 3.

17 Q. Look at Page 3, down there it says loader?

18 A. Correct.

19 Q. See that?

20 A. Yes.

21 Q. If you look at the next page it says tripper.

22 A. Yes.

23 Q. Okay. Now, under tripper, what is the  
24 tripper's job?

25 A. "Closes and double locks doors, places the

1 cabin gently into trip, visually checks locks before the  
2 cabin leaves the station, monitors guest actions."

3 Q. Now, it says, places the cabin gently into the  
4 trip. It looks like to me that's underlined.

5 A. Yes.

6 Q. Is that important that to do that gently?

7 A. Yes.

8 Q. Okay. Why is that, sir?

9 A. Two reasons. One, the trip is a positive stop.  
10 It's a physical device in the area where the cable will clamp  
11 onto the Skyride cabin itself and if it is not gently placed  
12 it will come to a sudden stop.

13 Q. That could cause some concern for the safety of  
14 folks, couldn't it?

15 A. The safety of folks as well as the operation of  
16 the Skyride.

17 Q. Does it say anything under tripper about  
18 loading people into the cabin?

19 A. No, it does not.

20 Q. Now, what about loader? Loader, it looks like  
21 to me says, "Groups and assists in loading"?

22 A. Correct.

23 Q. Okay. I guess that's why they call him the  
24 loader?

25 A. Yes.

1 Q. Now, going on it says, "Cautioning guests to,  
2 'Watch your head and step, please.'" that's another  
3 instruction for the loader to do?

4 A. Yes, it is.

5 Q. Okay. Are they instructed to give any other  
6 warnings?

7 A. Not to my knowledge.

8 Q. Just watch your head and step?

9 A. Please.

10 Q. Now, the videotape that we saw, you assisted in  
11 the preparation of that, didn't you?

12 A. I was there, yes.

13 Q. You were there. In fact, we saw you in the  
14 videotape there at one point?

15 A. Yes.

16 Q. What was your purpose for preparing that  
17 videotape?

18 A. It was prepared at the suggestion of our legal  
19 counsel.

20 Q. Okay. What was it suppose to show?

21 A. Suppose to show to the jury the actual  
22 operation of the Skyride.

23 Q. Were the people that were there, the employees,  
24 did you tell them you were going to make a tape?

25 A. No, we did not tell them. We arrived there

1 just prior to the Skyride opening and began filming and just  
2 told them we were making a videotape.

3 Q. But they know who you are?

4 A. Yes.

5 Q. And they know that you were out there with a  
6 camera?

7 A. I was there with the cameraman, yes.

8 Q. And would you say everything in the tape is  
9 going along pretty normally?

10 A. I would say so, yes.

11 Q. In the tape I never saw the loader loading  
12 anybody, did you?

13 A. I don't recall. It's possible.

14 Q. What I saw the loader doing was taking the  
15 cabin and walking it gently down to the area where the  
16 tripper was and then I saw the tripper open the door and put  
17 the passengers in.

18 A. I believe you're correct, yes.

19 Q. Okay. But that's not the way it says to do it  
20 here?

21 A. No.

22 Q. Okay. Now, we also talked about moving this  
23 gondola along the rail that it rolls on.

24 A. Yes.

25 Q. Didn't we?

1 A. Yes.

2 Q. They roll pretty easy, don't they?

3 A. Yes, sir.

4 Q. It doesn't take a lot of force to roll that  
5 thing along?

6 A. No, it does not.

7 Q. In fact, if you stand right here and pushed  
8 that cabin it would roll by itself, wouldn't it?

9 A. It would for a certain distance because, like I  
10 said, the rail is basically level.

11 Q. And if you stood say right here where I am and  
12 that cabin is loaded or unloaded and you pushed it, it would  
13 just roll up to the tripper, wouldn't it?

14 A. I don't know how far it would roll by itself.

15 Q. Have you ever measured to see how fast you can  
16 roll these along pulling or pushing them?

17 A. No, I haven't.

18 Q. One second. Now, turn to Page 6 of the SOP.

19 A. Okay.

20 Q. Are you there?

21 A. Yes, sir.

22 Q. At the bottom we have that same sort of  
23 situation where it says, "Gently roll the cabin into the  
24 trip."

25 A. Yes, it does.

1 Q. Underlined again?

2 A. Yes.

3 Q. Then it says something else. What does it say  
4 after that that is underlined too?

5 A. "Do not allow the cabin to be thrown into the  
6 trip."

7 Q. What does that mean?

8 A. Just pushed I would assume.

9 Q. Thrown, why is that important?

10 A. Again, I assume because it's going to come to a  
11 sudden stop at the trip itself and for the comfort of the  
12 passengers as well as the fact that it would come to a sudden  
13 stop at the trip mechanism prior to it being latched onto the  
14 cable.

15 Q. Now, if we go up here to F. See F there?

16 Well, not F. Excuse me. Look at G. See G there?

17 A. Correct.

18 Q. Read G to the jury if would.

19 A. "Be careful not to derail cabin or bump them  
20 together."

21 Q. Why is it important not to bump these cabins  
22 together?

23 A. For the comfort of the guests.

24 Q. So it's improper according to the SOP to bump  
25 cabins together?

1 A. Yes.

2 Q. Okay. And I take it if it's improper to bump  
3 them together, it's improper to bang them together?

4 A. Yes.

5 Q. Okay. If you became aware of employees in your  
6 facility that were banging cabins together, you as the safety  
7 director what action would you take?

8 A. If I saw employees banging cabins together I  
9 would immediately call their supervisor and have them removed  
10 and I would have an investigation as to why it was occurring.  
11 Banging cabins together would not be acceptable in my  
12 definition, in the definition you gave of banging. It would  
13 just not be something that was acceptable.

14 Q. So you would discipline that employee? First  
15 you would investigate?

16 A. Yes.

17 Q. To see what happened, what actually happened?

18 A. Correct.

19 Q. And if it turns out these employees are either  
20 carelessly banging cabins or doing it deliberately, banging  
21 cabins, you would take some action?

22 A. Yes, I would.

23 Q. Now, you said if you saw that. Would you have  
24 to see that in order to take action? Suppose it was reported  
25 to you?

1           A.    If it was reported to me -- as I said, I've  
2 never known that to happen. If it was reported to me, I  
3 would immediately go to the supervisor with that information  
4 and ask them to begin an investigation.

5           Q.    Okay. And would that be true regardless of how  
6 it came to you or who reported it to you?

7           A.    Oh, yes.

8           Q.    Whether it was one of your supervisors or a  
9 patron in the park, someone at first-aid, if they reported to  
10 you banging cabins together you would make some investigation  
11 and find out what happened?

12          A.    If it was not that same day, the situation  
13 would change. It would depend I guess on the period of time  
14 that elapsed and crowds, certain situations. I'm not sure.  
15 Positively if they banged them together, there would  
16 automatically be an investigation. Because of the people  
17 that go through there and the number of cabins that go  
18 through there, the time of year, how busy it was, generally  
19 speaking, yes, I would but I can envision maybe a time that I  
20 would not.

21          Q.    Okay. What if it was you that found out about  
22 it several days afterwards, just somebody, a patron told you  
23 yesterday attendants were banging the cars together. Would  
24 you investigate it then?

25          A.    May or may not. If it was several days later?

1 Q. Huh-huh.

2 A. What I most likely would do is observe the  
3 Skyride, make it more of a point when I'm out and around the  
4 park to observe the Skyride to see if that is going on or if  
5 it was something that happened normally or something that  
6 occurred on an isolated basis?

7 Q. Well, what if somebody injured someone? What  
8 if somebody came to you and said I was hurt when an attendant  
9 banged a Skyride together, banging cars together out there  
10 and I was hurt and that happened, would you investigate?

11 A. Possibly not. It depends upon the seriousness  
12 of the injury.

13 Q. Well, would you mind explaining to us, possibly  
14 not. You are the safety director and you become aware of the  
15 problem that this patron has reported.

16 A. If it was not a serious injury, if it was not  
17 something that had ever happened before, depending upon what  
18 I was doing at the time and what was going on in the park, I  
19 may not initiate an investigation at that time.

20 Q. This would be true despite the fact it's a  
21 clear prohibition of your own operating procedures?

22 A. Possibly, yes.

23 Q. And that would be true despite the fact that  
24 you are the safety director and you want to identify and  
25 eliminate safety risks?

1 A. Yes.

2 Q. Okay. Now, you review all the safety reports  
3 that are filled out in the first-aid department, do you not?

4 A. First-aid records?

5 Q. First-aid records.

6 A. Correct.

7 Q. That's part of your job function?

8 A. That's correct.

9 Q. Why do you do that?

10 A. To make myself aware of accidents that are  
11 going on in the park.

12 Q. For the same reasons we just talked about?

13 A. Yes.

14 Q. All right. I want you to turn to that  
15 first-aid record that's been introduced into evidence as  
16 Plaintiff's Exhibit Number 2. Now, you have seen this  
17 first-aid record before?

18 A. Yes.

19 Q. When did you first see it?

20 A. It was, it would have been at the earliest the  
21 day following the injury.

22 Q. Day following the injury?

23 A. Yes.

24 Q. Now, you've been nice enough to read to us  
25 earlier about what was down there as subjective data, how the

1 accident happened, correct?

2 A. Correct.

3 Q. All right. What does the second page of this  
4 say?

5 A. Want me to just read from the second page?

6 Q. Yes, just read the second page.

7 A. "Another Skyride banged up against her catching  
8 her arm, right, between the two Skyride cars."

9 Q. Banged up against it?

10 A. That's correct.

11 Q. Okay. Now, what does it list here -- you read  
12 this whole report when you got it, didn't you?

13 A. Yes, I did.

14 Q. Okay. Now, what does it say down here under  
15 physical findings? Can you read that for us? See there it  
16 says objective data?

17 A. Subjective and objective?

18 Q. See where it says physical findings?

19 A. Oh, I'm sorry. "Noticeable swelling to medial  
20 side of right elbow, point tenderness and painful movement."  
21 I don't know what the initials are, CNS I believe. The next  
22 word I can't read right now.

23 Q. All right. How about assessment, can you read  
24 that?

25 A. Assessment? 201

1 Q. Yes.

2 A. R circled elbow which indicates a right elbow  
3 contusion then an arrow R slash O which means rule out FX,  
4 which is a fracture.

5 Q. Rule out fracture, that was the evaluation made  
6 by your first-aid people?

7 A. Correct.

8 Q. Okay. Then down here it says plan of  
9 implementation, do you see that?

10 A. "Ice pack, soft cast, transported to her POV,"  
11 personal automobile, "and went to WCHER," which is  
12 Williamsburg Community Hospital Emergency.

13 Q. Now, when you read this record the first time  
14 could you tell from reading the report that a woman had been  
15 injured when her arm was banged between two cars on the  
16 Skyride and that she had immediate onset of swelling and  
17 tenderness to the area and that she been administered with a  
18 soft cast and ice packs and transferred to Williamsburg  
19 Community Hospital for further treatment to rule out possible  
20 fracture?

21 A. Did I read that?

22 Q. Yes.

23 A. Yes.

24 Q. You knew all those things?

25 A. Yes.

1 Q. Tell us what investigation you made following  
2 that?

3 A. I don't recall that I made any investigation  
4 following that.

5 Q. You didn't talk to anyone?

6 A. I don't recall talking to anyone, no.

7 Q. You're familiar with the American Standards  
8 Institute?

9 A. Yes.

10 Q. What is that?

11 A. It's a consensus standards body that writes  
12 standards for various, in the case of the Skyride they have  
13 standards for the Skyride.

14 Q. And that would apply to your facility, the  
15 Skyride standards?

16 A. Correct.

17 Q. Do those standards require that you keep a log  
18 book at each location?

19 A. I'm not sure if they do or not.

20 Q. Okay. I'll show you the provision. Do you  
21 keep a log book?

22 A. A log book is kept by maintenance. There is a  
23 form that is kept by operations on the operation of the ride.

24 Q. The day after the accident you could have gone  
25 and looked in the log book and told who was working at a

1 given location at a given time, couldn't you?

2 A. I am not sure if the log book or the  
3 information that's kept at the ride does list the names.

4 Q. Well, these people are required to sign in and  
5 sign out at each location. Are you familiar with that  
6 provision?

7 A. Yes.

8 Q. So they do sign in and sign out?

9 A. Yes, they do.

10 Q. On a document?

11 A. Yes.

12 Q. So you could look at those names and see who  
13 signed in and signed out and what time they signed in and  
14 signed out?

15 A. Correct.

16 Q. And you could have done that the day after the  
17 accident?

18 A. Yes, I could have.

19 Q. But you did not do that?

20 A. No, I did not.

21 Q. Now, can you tell from looking at this document  
22 what time the accident occurred?

23 A. It was reported to first-aid at 5:25.

24 Q. So you knew that?

25 A. Yes.

1 Q. Okay. Now, there's also a phone number listed  
2 down there, isn't there, the name of the lady who was  
3 injured?

4 A. On the first-aid report?

5 Q. Yes.

6 A. Yes.

7 Q. It has her number there?

8 A. Correct.

9 Q. Did you ever contact her?

10 A. No, I did not.

11 Q. Did you ever attempt to?

12 A. No, I did not.

13 Q. Did you ever want to know what it is she said  
14 about how her arm got banged between two Skyrides and she had  
15 to go to the hospital?

16 A. The information that was given to me on this  
17 report as to what occurred as far as her injury, I did not  
18 feel the necessity to contact her again.

19 Q. Okay. I see. You did not look at the log  
20 book, correct?

21 A. That's correct.

22 Q. You did not perform any investigation?

23 A. Correct.

24 Q. You did not speak to the supervisor or any of  
25 the supervisors that were involved at the particular location

1 where this accident occurred?

2 A. That's correct.

3 Q. You did not speak to the person who is in  
4 charge of operations, Mark Pauls, who oversees all the  
5 operations of the Skyride, did you?

6 A. No, I did not.

7 Q. And you did not contact Carol Bregel yourself,  
8 did you?

9 A. No.

10 Q. Now, have you at my request gone back to findi  
11 these log books and look and see who was working there on  
12 that day?

13 A. Yes, we have.

14 Q. What did you find?

15 A. We could not find the sign-in and sign-out  
16 sheets. That's when we went to the payroll records  
17 themselves.

18 Q. Could you find other sign-in and sign-out  
19 sheets?

20 A. Yes, there were numerous other sign-in and  
21 sign-out sheets.

22 Q. You keep these, don't you, in the regular  
23 course of business?

24 A. Yes.

25 Q. But these are gone and you can't find them?

1 A. Correct.

2 Q. How long are the shifts that, you know, that  
3 they generally work at the Skyride?

4 A. It varies. At that time of year when the  
5 accident occurred, there were two shifts. Approximately I  
6 believe the Skyride opened at that time in the area of 10:00  
7 in the morning until 10:00 or 11:00 o'clock at night, two  
8 shifts. Generally speaking they would work six or eight  
9 hours.

10 Q. Six or eight hours moving cars and loading  
11 passengers?

12 A. Correct.

13 Q. Now, the sign you mentioned, there's a sign  
14 inside the cabin and we read all the things that the sign  
15 says.

16 A. Yes.

17 Q. Okay. How long did it take you to read that?  
18 You read it out in court, what would you say?

19 A. I don't know. I didn't time myself. Probably  
20 a couple seconds.

21 Q. The person who is entering the Skyride you  
22 expect them to read that immediately upon entering?

23 A. Yes.

24 Q. How long would you expect it to take?

25 A. Same amount of time I guess.

1 Q. Now, I think you told us earlier that that is  
2 the only warning you give them about all these things,  
3 smoking, standing, rocking the cabin, arms and limbs outside,  
4 what to do if the Skyride stops and all that stuff; is that  
5 correct?

6 A. Yes.

7 Q. Now, if it's against the park procedure for a  
8 patron or somebody riding in a cabin to rock or sway the  
9 Skyride, would there be a similar prohibition for employees  
10 working on the Skyride?

11 A. Those are two different circumstances. To  
12 admonish the guests from rocking or swaying the cabins --  
13 once it's on the cable itself, if you rock or sway it to a  
14 certain point, it will shut down the Skyride because the grip  
15 that actually grips the cable comes in contact with the  
16 sensors on the cable that are on the tower. The employees do  
17 not have that capability in the station. There are two  
18 different reasons why admonitions are made.

19 Q. Well, it doesn't say anything about when you  
20 can't sway the Skyride, just don't sway it?

21 A. Right.

22 Q. Okay. Now, I know from watching the videotape  
23 and from my experience with a Skyride, that the cabin does  
24 sway even though it's on a rail. It can be swayed, can't it?

25 A. Yes, it can.

1 Q. If an employee were doing that deliberately in  
2 a way to jeopardize the safety and comfort of passengers,  
3 would that be proper in your view?

4 A. No, it would not.

5 Q. Thank you. Those are all the questions I have.  
6 Wait a minute. One moment. Let me check with counsel.  
7 That's all I have, Mr. Carlson. Thank you.

8 MR. MILLS: Your Honor, we would like to  
9 introduce the SOP which Mr. Carlson has been  
10 testifying from.

11 THE COURT: Any objection?

12 MR. DAVIS: No.

13 THE COURT: Then that will be Plaintiff's  
14 Exhibit 7.

15 (A book titled Standard Operating Procedures  
16 was marked and entered as Plaintiff's Exhibit Number  
17 7.)

18

19 REDIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. Can an employee bang two cars together?

22 A. I feel it would be very difficult to do that.

23 Q. When you see the term bang on a report, does  
24 that have any particular significance to you aside from  
25 touching together, does that have any particular significance

1 for you?

2 A. Not particularly, no.

3 Q. Now, what did the first-aid report say about  
4 Ms. Bregel as to her -- do you have it there?

5 A. No, I don't.

6 MR. MILLS: The first-aid record is in  
7 evidence. I think the witness has already been  
8 asked about that. I think he's going over the same  
9 thing.

10 MR. DAVIS: I want to ask him more about it.

11  
12 BY MR. DAVIS:

13 Q. Did you get a report back from the Williamsburg  
14 Community Hospital as to what their findings were?

15 A. Yes, there is a notation that the hospital had  
16 called back or that somebody in first-aid had talked to the  
17 hospital on the following day of the accident.

18 Q. When was that?

19 A. It was on 7-11-88. "Contusion and sprain of  
20 right elbow per WCH," which is Williamsburg Community  
21 Hospital.

22 Q. Thank you. That's all we have.

23 THE COURT: Thank you, Mr. Carlson. You may  
24 step down.

25 MR. DAVIS: Mr. Hoffman.

1           PATRICK HOFFMAN, called as a witness on behalf of  
2 the Defendant, having been first duly sworn, was examined and  
3 testified as follows:

4  
5                           DIRECT EXAMINATION

6 BY MR. DAVIS:

7           Q.   Mr. Hoffman, would you state your name, please.

8           A.   Patrick Hoffman.

9           Q.   All right, sir. And your address?

10          A.   6113 Shadow Ridge Road, Portland, Indiana.

11          Q.   What is your occupation, sir?

12          A.   Primary occupation is senior vice-president of  
13 loss control for K and K Insurance Group in Fort Wayne,  
14 Indiana. And then I also have a company called Patrick L.  
15 Hoffman and Associates, which I do some consulting work  
16 through.

17          Q.   All right. And what type of business is K and  
18 K?

19          A.   K and K is an insurer of sport, leisure,  
20 entertainment type of businesses. They insure anything from  
21 the NFL to the NBA to motor cross to bungee jumping, those  
22 kinds of things.

23          Q.   What's your association with it specifically?

24          A.   In loss control, that's a division that goes  
25 out and does actual inspections of these various facilities,

1 amusement rides and all the various things that we do to  
2 insure it in hopes of minimizing the risks that we have.

3 Q. Of course Busch Gardens is not a customer of  
4 yours?

5 A. Absolutely not.

6 Q. Now, your business though that you have on your  
7 own, what is that in?

8 A. Patrick L. Hoffman and Associates is a  
9 carry-over from a past business that I had before I went with  
10 K and K Insurance. Prior to K and K Insurance I did a lot of  
11 inspections in the amusement industry and I've continued to  
12 do some work under Patrick L. Hoffman and Associates mainly  
13 in the area of expert witness work and also some seminar  
14 work.

15 Q. What is your experience in the entertainment,  
16 amusement park field?

17 A. Full-time it dates back to March of 1969 when I  
18 started with a large amusement park up in Northern Ohio  
19 called Cedar Point Amusement Park, one of the largest  
20 amusement facilities in the world with ten roller coasters  
21 and a host of other rides that total about 70 rides all  
22 together including two Skyrides. I worked there until about  
23 1985 in various positions in maintenance and the construction  
24 division over that facility and in January of 1985 I left  
25 Cedar Point and started the consulting business.

1 Q. How long have you been with K and K?

2 A. For four years. It will be four years this  
3 coming month.

4 Q. Have you published in the safety of amusement  
5 park field?

6 A. Yes, there are several journals that are put  
7 out by various entities within the amusement park field and  
8 I've got articles that have been published in about 12  
9 publications so far.

10 Q. I see. Are you a member of any associations in  
11 your field?

12 A. Yes, sir, I think on my CV I've got 13 listed  
13 out of about 16 different associations.

14 Q. All right. And have you given lectures  
15 throughout the country?

16 A. Yes, four associations on a voluntary basis and  
17 also again under Patrick L. Hoffman and Associates up in  
18 Ohio. I've been hired to do not only things in this country  
19 but out of the country.

20 For the past two years I've taught seminars in  
21 Australia and I'm going a week from tomorrow again to  
22 Australia to teach seminars to the amusement industry over  
23 there.

24 Q. What are these subjects, these lectures?

25 A. We get into the safety, maintenance and

1 operations of amusement rides and devices.

2 Q. All right. Have you done any lecturing in  
3 Virginia?

4 A. Yes, sir. In fact, dating back to 1985 I  
5 believe is the only time I did that. We did training  
6 sessions and seminars for the State of Virginia in one case  
7 using Busch Gardens as a training facility for all the state  
8 inspectors located in the eastern part of the state, and then  
9 we used another park in Roanoke, Virginia, as another  
10 training facility for the inspectors that were located in the  
11 western part of the state.

12 Q. These were State of Virginia inspectors?

13 A. Yes, sir.

14 Q. And you were training them in what?

15 A. Basic inspection involving a number of rides.  
16 Again, we used the rides that were located at the Busch  
17 Gardens park along with some classroom training, everything  
18 from fasteners to welding to all the aspects of things that  
19 they needed to look for during an inspection.

20 Q. And this inspection would be for safety  
21 purposes I would assume?

22 A. Absolutely.

23 Q. And what was your association with Busch  
24 Gardens here in Williamsburg?

25 A. In 1985 when I started the consulting business

1 Bill Carlson from Busch Gardens had employed our services to  
2 come in and do a thorough safety inspection of the entire  
3 park, not only the amusement park but the grounds and that  
4 relationship continued up through 1989 when I left the  
5 consulting field on a full-time basis and went to work for K  
6 and K.

7 Q. I see. Specifically did you check the Skyride  
8 during these procedures?

9 A. Absolutely.

10 Q. And what did you check when you checked the  
11 Skyride?

12 A. Oh, everything on the ride. When I say  
13 everything, I'm talking about everything mechanical, all the  
14 fasteners to all the actual moving parts of the ride. One of  
15 the most extensive inspections on the ride, of course, is the  
16 wire rope or the cable. Under a code called the B-77, a  
17 number of measurements have to be taken on the wire rope or  
18 the cable.

19 So that would take up a great deal of our time  
20 and then we inspect every other aspect of the ride including  
21 each one of the cabins, the planks, the poles, the clamps,  
22 the steel door. Along with that we would do some testing of  
23 the ride as far as breaking the circuit to the power to make  
24 sure that if a rope were to derail on one of the towers, that  
25 the system in fact did work.

1 Q. And did you also check the operation of the  
2 ride by the employees?

3 A. Yes, sir.

4 Q. And what does that consist of?

5 A. Basically we did an overall view of all the  
6 ride operations within the park to make sure that things were  
7 up to industry standards. Along with that -- in the early  
8 days there was a lot of procedural changes going on in the  
9 park. Bill, that's Bill Carlson, asks us also to take a look  
10 at some of those procedures from time to time.

11 Q. All right. Did you also have occasion to look  
12 at the training of the employees?

13 A. As far as the training guidelines that we used?

14 Q. Yes, sir.

15 A. Yes, sir.

16 Q. Now, have you inspected other Skyrides in other  
17 parks?

18 A. Detachable gondola rides like this one, yes,  
19 sir. There's been probably about 22 or 23 altogether.

20 Q. That you have seen and inspected?

21 A. Yes, sir.

22 Q. What would be some of the parks that you were  
23 in?

24 A. Oh, the Carowinds in South Carolina. Of  
25 course, Cedar Point which they had two Skyrides there. The

1 sister park to this one in Tampa, Florida, Busch Gardens.  
2 They've got a Skyride. The C and E, which is a Canadian  
3 National Expo in Toronto, Canada. They've got a double  
4 Skyride there.

5 There's essentially two Skyrides in Vale,  
6 Colorado, at Vale Ski Resort. They've got a detachable  
7 gondola lift there that I've inspected. Some of the Six  
8 Flags Parks around the country. The Minnesota State Fair,  
9 they've got a Skyride that's only used during the fair but  
10 it's left up all year around. I used to inspect that on a  
11 regular basis. There are some others but without looking at  
12 the list that I've got, I couldn't tell you all of them.

13 Q. Who manufactures these rides basically, this  
14 one?

15 A. Most of the detachable gondola rides, in fact,  
16 all of them I would be looking at in this country were  
17 manufactured by Von Role which is company out of Switzerland.

18 Q. Now, in your inspection of the Busch Gardens'  
19 Skyride what conclusions did you reach?

20 A. On a year-to-year bases, is that what you're  
21 looking for?

22 Q. Yes.

23 A. Of course our conclusions would entail all of  
24 our findings as far as mechanical things that would have to  
25 be collected, that sort of thing. We found very few things

1 wrong. They have a very good inspection program but the  
2 final conclusion is that the overall operation and also the  
3 maintenance of that ride certainly was safe in our industry  
4 standards.

5 Q. All right. Now, are there national testing  
6 standards for detachable gondolas?

7 A. Yes, there is a standard called the B-77  
8 Standard. That's from the American National Standard  
9 Institute and that is a standard that focuses on aerial  
10 passenger tramways including ski lifts, rope tows, surface  
11 lifts along with detachable rides like this one.

12 Q. All right. Do you -- have you been described  
13 by me or perhaps Mr. Carlson Mrs. Bregel's injuries, the type  
14 injury that she received in this particular lawsuit?

15 A. Yes, sir, briefly.

16 Q. And what does that consist of?

17 A. My understanding is that the elbow was extended  
18 out the side of the cabin below the guardrails on the car and  
19 another car bumped her elbow.

20 Q. Now, are you familiar with any bumping of  
21 elbows prior to this one aside from this one?

22 A. Absolutely not.

23 Q. And what would a gondola -- well, let me ask  
24 you this, does it occur that the cabins touch each other on  
25 occasion?

1 A. Yes, sir.

2 Q. And what would preclude a violent banging or a  
3 serious touching if anything?

4 A. I'm sorry, sir. I don't understand.

5 Q. What would preclude a violent touching of the  
6 cabins or a serious velocity impact?

7 A. Well, it would be pretty difficult to sustain  
8 because of the design of the ride and the configuration of  
9 the station track that the car rides on.

10 See, when the car comes from the station, it  
11 detaches from the wire rope itself and the car is rolled  
12 along a track and the wheels are on the carriage up above on  
13 this unit that detaches to the cable. The wheels are very  
14 much like small railroad car wheels with a flange on the side  
15 of them. They are steel wheels riding on a steel track which  
16 is also greased.

17 If they are pushed too fast, the actual  
18 carriage will derail on that track causing the car of course  
19 to stop. Now, that doesn't mean the entire carriage is going  
20 to fall off the track but it will derail and it's quite  
21 possible that you may need maintenance people to lift it back  
22 up in place but it causes the ride to shut down.

23 Q. Okay. Now, the particular SOP involved here  
24 that's been introduced into evidence by Busch Gardens  
25 indicates that the employees are to avoid bumping, are you

1 familiar with Busch Gardens' SOP?

2 A. Yes, sir.

3 Q. Is that in accordance with industry standards?

4 A. Actually that goes above and beyond industry  
5 standards. There's nothing within the B-77 National Standard  
6 that addresses bumping cars. When you look at SOPs from  
7 parks around the country, I don't believe that I've ever read  
8 that. That maybe a verbal instruction in some cases but,  
9 again, the standard says, you know, I believe for the  
10 attendant to avoid bumping of the cars.

11 Q. You say that the American National Standards  
12 don't preclude bumping?

13 A. That's correct.

14 Q. And how about the warning signs, does the  
15 American National Standards address that issue?

16 A. There is -- within the Standards there's a  
17 section that talks about signage and you're given directions  
18 on the rides to the point where there's supposed to be  
19 signage posted at the entrance of the ride if the ride is in  
20 fact closed. Beyond that there's signage that's supposed to  
21 be posted in the inside of each cabin. The only thing that  
22 they prescribe should go on that signage I believe is the  
23 actual capacity of the cabin in a weight value judgment.

24 Q. All right. Does Busch Gardens have that  
25 signage or do you know?

1           A.    Yes, sir, that particular sign that I'm  
2 describing is a sign that's placed in the cabin by the  
3 manufacturer and you will find that on the cabins produced by  
4 Von Role CWA.

5           Q.    Would you answer counsel.  
6

7                           CROSS-EXAMINATION

8 BY MR. MILLS:

9           Q.    Good afternoon, Mr. Hoffman.

10          A.    Good afternoon.

11          Q.    Did you have a good trip in?

12          A.    Well, actually it started out at about 5:30  
13 this morning when Delta Air got us fogged in in Philadelphia.  
14 I was later this morning getting in here than I wanted to be.

15          Q.    You started out from Buffalo?

16          A.    Yes, sir.

17          Q.    But is that where your business is located?

18          A.    No, I was in Buffalo on some other business.

19          Q.    You're located where?

20          A.    Fort Wayne, Indiana.

21          Q.    Now, we were talking just a minute ago about  
22 the gondola cars and the operation of the ride and you know a  
23 lot about this because you have so much experience with  
24 gondolas.

25          A.    That's correct.

1 Q. And aerial tramways and that's what this was,  
2 wasn't it?

3 A. An aerial passenger tramway.

4 Q. And this is a way of transporting passengers  
5 from one place to another --

6 A. Correct.

7 Q. -- in an amusement park or a ski resort or  
8 wherever it maybe. It's a method of transportation?

9 A. That's correct.

10 Q. It's not a thrill ride like the Loch Ness  
11 Monster or something?

12 A. No, sir.

13 Q. And it's used to transport people usually with  
14 regard to without condition. I mean, Busch Gardens, they  
15 transport little children and handicapped people and all  
16 sorts of patrons, anybody that wants to ride essentially,  
17 don't they?

18 A. That's correct.

19 Q. Okay. Now, the cabins themselves, they are  
20 made of what?

21 A. Aluminum which are hung from a steel apparatus  
22 from a track within the station that hangs from a cable.

23 Q. They are heavy metal?

24 A. Yes.

25 Q. How heavy?

1           A.    In my deposition I believe I told you the  
2 weight of a cabin itself is about 600 pounds and the J-bar  
3 and carriage unit weighed close to 300 pounds. Since, I've  
4 done a little research on that, the cabin weighs about 400  
5 pounds. The original steel cabin did weigh about 600 pounds  
6 but when they went to aluminum which was back in the mid '70s  
7 that dropped the weight down to about 400 pounds. So total  
8 you would have a weight of about 700 pounds with everything.

9           Q.    A seven hundred pound gizmo hanging from a  
10 cable?

11          A.    Yes.

12          Q.    All right. Now, the rail that it runs along,  
13 you say that rail is level?

14          A.    Correct.

15          Q.    And it's greased?

16          A.    Yes.

17          Q.    And the wheels have bearings in them?

18          A.    Correct.

19          Q.    And they have a flange which a flange is like a  
20 railroad car wheel that runs down a track?

21          A.    That's correct.

22          Q.    And if that wheel comes off the track that's  
23 called a derailment, comes off the rail?

24          A.    That's correct.

25          Q.    All right. Now, you're familiar with the Busch

1 Gardens' Skyride because you've inspected it before?

2 A. Yes, sir.

3 Q. And, in fact, when you told Mr. Davis that  
4 Busch Gardens was not a customer of yours, you didn't mean  
5 that they aren't customers of yours personally, did you?

6 A. No, I believe he said K and K Insurance.

7 Q. But you have worked with them for a long time?

8 A. Absolutely.

9 Q. And you have inspected their Skyride on a  
10 pretty regular basis?

11 A. From 1985 through 1989.

12 Q. Okay. Now, you know that in the England part  
13 or in all of the Skyride stations, that that rail is straight  
14 for a ways then it curves and then it's straight for another  
15 ways?

16 A. That's correct.

17 Q. Okay. What's the running distance of the  
18 straight part until it gets to the trip?

19 A. From where?

20 Q. From the place where it last curves?

21 A. That varies in a couple of the stations but  
22 this particular station I believe it's, oh, approximately  
23 somewhere around 12 to 15 foot if my memory serves me right.

24 Q. Twelve to fifteen feet?

25 A. I believe so if my memory serves me right, yes.

1 Q. All right. Let's say it's 15 feet. I mean,  
2 it's at least as long as would you say from the end of your  
3 bench there where you're testifying from to the other end  
4 down here, wouldn't you say?

5 A. That's pretty close.

6 Q. Now, it's not hard to push that cabin, is it?

7 A. No, sir, it's not. It's designed not to be  
8 hard to push.

9 Q. It's on bearings on a greased track, a level  
10 rail. In fact, if you wanted to you could probably take one  
11 finger and push it, couldn't you?

12 A. No, I think a little more than that to get it  
13 started.

14 Q. Two fingers?

15 A. Probably your hand to get it started.

16 Q. Oh, hand. Okay. With your hand you could push  
17 that thing?

18 A. Yes, sir.

19 Q. And you could push it and it would roll?

20 A. Yes, sir.

21 Q. And if there wasn't anything to interfere with  
22 it, it would roll along that straight section, wouldn't it?

23 A. Absolutely and stop at the trip unit.

24 Q. And according to the laws of inertia it would  
25 be able to roll until something acted on it to stop it,

1 wouldn't it?

2 A. At some point --

3 Q. Bodies in motion. I mean, that's just the way  
4 it works, isn't it?

5 A. Without energy behind it, sure it would stop.

6 Q. Do you know how fast it can be moved along a  
7 straight track, not around a curve but a straight stretch?

8 A. I have no idea. I've never tested that.

9 Q. About how fast could it be pushed?

10 A. I've never tested that.

11 Q. Can you foresee any limitations?

12 A. Yes.

13 Q. Okay. What would limit it?

14 A. What would limit it is the fact if you push it  
15 too fast it will derail.

16 Q. Okay. Why?

17 A. Because of the fact that's an actual  
18 flange-type wheel, that's a shallow flange. You've got a  
19 track that's tapered at the top that's greased. You have got  
20 steel against steel and if you push it too fast, it derails.  
21 That's the nature of the beast.

22 Q. Okay. It will derail despite the fact that  
23 there's no defect in the rail?

24 A. Correct, if you push it too fast.

25 Q. No curve in the rail?

1 A. Correct.

2 Q. No bump in the rail or defect in the wheel?

3 A. Absolutely.

4 Q. Why would that be?

5 A. I have no idea. That was the way it was  
6 designed, sir.

7 Q. Of course now freight trains run on flanged  
8 wheels on tracks?

9 A. Yes.

10 Q. They go pretty fast?

11 A. Right.

12 Q. They don't derail because they go too fast, do  
13 they?

14 A. Sometimes they do.

15 Q. Well, if they hit something or if there's a  
16 defect in the rail but if they're going too fast down a  
17 straight stretch of track, you're saying they would derail  
18 because they are going too fast?

19 A. No.

20 Q. Okay. That would be the same thing for a model  
21 train, same thing on flanged wheels?

22 A. Correct.

23 Q. You've got a stretch of track, is there any  
24 theoretical computation on how fast it could go?

25 A. No, there's no theoretical computation on its

1 limitations.

2 Q. Same thing true with the rail that runs the  
3 gondola on the Skyride?

4 A. From my experience, no, you're wrong.

5 Q. Okay. Well, your experience was I thought you  
6 never tested it?

7 A. I've never tested one pushing it to see how  
8 fast it would go, that's what I said.

9 Q. Huh-huh.

10 Q. So you don't know?

11 A. No, I don't know how fast you would have to get  
12 it to make it derail.

13 Q. Why would speed alone derail it?

14 A. I think speed along with the other given facts  
15 of the design. Keep in mind with a railroad or with a model  
16 railroad train and the other things you brought up, all the  
17 flanges are to the inside of the track.

18 With this type of lift you have got two flanged  
19 wheels that go to the inside and two that go to the outside.  
20 Given that design factor, it's one of those things that  
21 happens on this ride.

22 Q. Huh-huh. Do you often see, do cars derail on  
23 the straight part of the rail?

24 A. I've seen a number of them --

25 Q. Where do they most often derail?

1 A. On the curve.

2 Q. Okay. Now, this ride itself, it's not  
3 inherently dangerous, is it?

4 A. No.

5 Q. No built in danger to the ride?

6 A. Absolutely not.

7 Q. Nothing to alert people that ride at anytime  
8 that it's a dangerous ride?

9 A. That's correct.

10 Q. Not about any danger when they get on it?

11 A. That's correct.

12 Q. Okay. Normally it's considered a pretty safe  
13 means of transportation?

14 A. Yes, sir.

15 Q. Now, are there any dangers produced by improper  
16 operations of the ride?

17 A. There would be, sir.

18 Q. What about banging the cars together?

19 A. At what speed?

20 Q. Any speed?

21 A. Certainly there could be some damage if they  
22 were thrown together at higher speeds.

23 Q. And the greater the speed, the greater the  
24 danger, greater the potential danger to the people in the  
25 car?

1 A. I would agree with that, yes.

2 Q. Okay. In fact, you have testified that you  
3 reviewed the Busch Gardens' procedure and it's a good  
4 procedure?

5 A. That's correct.

6 Q. And you have also testified about the American  
7 Standards Institute?

8 A. American National Standards Institute.

9 Q. American National Standards Institute.

10 A. Yes, sir.

11 Q. And the requirements it places on it?

12 A. That's correct.

13 Q. Now, the American National Standards Institute  
14 also has a requirement, does it not, that the operator of  
15 such ride comply with the operation directions or procedures?

16 A. That's correct.

17 Q. So the American National Standards require this  
18 theme park, Busch Gardens, to comply with their own operating  
19 procedures?

20 A. The operating procedures set forth by the  
21 manufacturer. I believe that's the way it's stated in the  
22 Standard. Busch Gardens has elected to put together a  
23 Standard that goes above and beyond those required by the  
24 manufacturer.

25 Q. Just one second. Maybe I misunderstood you

1 when you were talking about this earlier. Okay. Does this  
2 particular Standard, this particular requirement also require  
3 the operator, in this case Busch Gardens, to enforce any  
4 Standards that they have adopted within their park?

5 A. Yes, sir, I believe that's the way it is  
6 stated.

7 Q. That's what you told me when you testified  
8 earlier?

9 A. I believe so, yes.

10 Q. Now, that Standard requires that they not bump  
11 cars together, correct?

12 A. I believe the Standard --

13 Q. I mean, Busch Gardens' SOP, Standard Operating  
14 Procedure?

15 A. Yes, the SOP put together by Busch Gardens for  
16 the ride attendants that assists the cabins it says to  
17 prevent bumping of the cabins, yes.

18 Q. Now, if the operator working the Skyride on a  
19 given day were to cause two gondola cabins to collide with  
20 such force to cause a contusion, sprain and permanent nerve  
21 damage of a person's elbow, would that be a violation of the  
22 Standard Operating Procedures?

23 A. If in fact that's what they did, yes.

24 Q. Would it also be cause for disciplinary action?

25 A. Again, if that was the action, yes.

1 Q. Now, you have had experience with injuries  
2 caused on Skyrides, haven't you?

3 A. Yes.

4 Q. In fact, you were employed in some capacity at  
5 Cedar Point Theme Park at sometime?

6 A. That's correct.

7 Q. And at Cedar Point they have a Skyride?

8 A. They have two Skyrides there.

9 Q. Then you've seen the rides?

10 A. Yes, sir.

11 Q. Okay. And you've had experience with injuries  
12 caused on those Skyrides?

13 A. Yes, sir.

14 Q. And you've had experience with injuries caused  
15 on the Skyrides in which people's extremities such as their  
16 fingers were caught between the two cars, have you not?

17 A. Fingers only.

18 Q. Fingers only. How many of those?

19 A. A dozen or so cases that I can remember, maybe  
20 more.

21 Q. Several dozen is what I think you told me the  
22 first time; is that right?

23 A. That could be so.

24 Q. So you know that it happens?

25 A. Yes.

1 Q. Now, are you a college graduate?

2 A. No, sir.

3 Q. How many years of college do you have?

4 A. Three years right now.

5 Q. Three years. Two years was listed on your  
6 resume. Have you had some since your resume was prepared?

7 A. Yes, sir, I've taken some other courses.

8 Q. But no degree?

9 A. That's correct.

10 Q. No engineering degree?

11 A. That's correct.

12 Q. No engineering training?

13 A. Some engineering courses, yes.

14 Q. Busch Gardens is paying for you to come here  
15 and testify in this case?

16 A. Absolutely.

17 Q. How much do you charge them?

18 A. Testimony is \$200.00 an hour.

19 Q. How much is your retainer to testify in this  
20 case?

21 A. Three thousand dollars.

22 Q. Up-front?

23 A. Up-front.

24 Q. And this is not the first time you have  
25 testified for Busch Gardens?

1 A. That's correct.

2 Q. You have testified for this Busch Gardens and  
3 other Busch Gardens theme parks?

4 A. That's correct.

5 Q. Again, at least a dozen or so times?

6 A. That's correct also.

7 Q. You also charge them for travel time?

8 A. Yes, sir, and expenses also.

9 Q. Portal to portal?

10 A. Yes.

11 Q. How much for that?

12 A. Half the rate of \$100.00 an hour.

13 Q. Thank you very much, Mr. Hoffman. One moment.  
14 That's all I have. Thank you.

15  
16 REDIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q. Does the manufacturer anticipate there will be  
19 touching of the cabins?

20 A. Yes, sir.

21 Q. And is it a safe assumption that many incidents  
22 occur in the operation in which it is necessary and  
23 appropriate for two cabins to touch?

24 A. That's correct.

25 Q. And what would some of those situations involve

1 for example?

2 A. Oh, a couple of examples would be if there was  
3 a problem with either loading or unloading a guest, certainly  
4 weather situations, mechanical breakdown of the ride and that  
5 could be caused by a number of things, lightening.

6 There is an extensive electrical system on the  
7 thing that detects surges in power and that could be static  
8 electricity in the air from lightening and that will cause  
9 the ride to shut down so you may have a number of cabins  
10 backed up in the station which will cause them to bump  
11 together.

12 Q. As a matter of fact, these cabins are designed,  
13 are they not, with a bumper rail?

14 A. Oh, absolutely.

15 Q. Where is that located?

16 A. It's midway around the cabin right below the  
17 guardrail, if you will. It goes all the way around the car  
18 and, of course, again allows for the cars to bump together.

19 Q. All right. Now, of course, if there had been  
20 anything wrong with the Skyride you would have noted that and  
21 had it corrected, I assume?

22 A. That's correct.

23 Q. All right. In regards to procedures, SOP,  
24 maintenance or any facet of it?

25 A. Any facet of it we would discuss these items

1 with the folks at Busch Gardens upon our findings. Those  
2 folks also accommodate us or accompany us during our  
3 inspection. Normally, any mechanical deficient that we find  
4 is corrected immediately.

5 Q. Do you recall any offhand on the Skyride?

6 A. Mechanical deficiencies?

7 Q. Huh-huh.

8 A. Right offhand some things like minor cracks in  
9 the cabins. Back in the early '80s the Consumer Product  
10 Safety Commission came out with a bulletin regarding  
11 fasteners. They had to be changed to a certain grade from a  
12 lower grade. I believe the first year, I think our report  
13 will reflect, we found some of the fasteners that needed to  
14 be corrected and we did make that recommendation and they did  
15 make those changes.

16 Q. All right. Certainly during the years 1988 and  
17 1989 any deficiencies that you noted were corrected, were  
18 they not?

19 A. Absolutely and what you've got to keep in mind  
20 is Busch Gardens is over and above their in-house maintenance  
21 procedures and daily inspection procedures. They took the  
22 extra effort to hire outside consultants to come in and do an  
23 inspection. A lot of parks don't do that. They did for a  
24 particular reason. They're focused on safety and they've  
25 made that a major commitment to the industry and to

1 themselves, and so if they pay that kind of money for us to  
2 come in and do inspections and present a final product to  
3 them, certainly they're going to follow through and correct  
4 all those things accordingly.

5 Q. All right. Thank you.

6  
7 RECROSS-EXAMINATION

8 BY MR. MILLS:

9 Q. Talking about the operation of the Skyride and  
10 safe operating speed, is it possible to get these cabins  
11 going fast enough that one hits another sufficient to cause  
12 damage to the metal skin of that other cabin?

13 A. Yes, sir.

14 Q. That's all I have.

15 THE COURT: Okay. Thank you. Can he be  
16 excused?

17 MR. DAVIS: Yes.

18 THE COURT: You're welcome to stay or to go on  
19 and leave. Thank you.

20 MR. DAVIS: Mrs. Lenz.

21  
22 DIANE LENZ, called as a witness on behalf of the  
23 Defendant, having been first duly sworn, was examined and  
24 testified as follows:

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Mrs. Lenz, would you state your name, please,  
ma'am.

A. Diane Lenz.

Q. And where do you live at?

A. 872 Lorraine Drive, Newport News, Virginia,  
23602.

Q. And you're married, are you?

A. Yes.

Q. And you have children of course?

A. Yes.

Q. How long have you lived in this area?

A. Off and on about 20 years.

Q. And back on July 10th, 1988, what was your  
business or employment?

A. I was working for Busch Gardens.

Q. And what is your profession?

A. I'm a registered nurse.

Q. Registered nurse?

A. Huh-huh.

Q. And where did you receive your training?

A. At Mercy Hospital, Altoona, Pennsylvania.

Q. And what year did you graduate?

A. I graduated in 1949.

1 Q. I see. And how long had you been employed or  
2 how long were you employed at Busch Gardens?

3 A. Around six or seven years.

4 Q. That was in the capacity as a registered nurse?

5 A. That's correct.

6 Q. And where did you work there?

7 A. In the first-aid station.

8 Q. Okay. All right. Now, directing your  
9 attention to July 10th, 1988, do you recognize the  
10 Defendant's Exhibit Number 2?

11 A. Yes.

12 Q. What is that?

13 A. It's a first-aid record.

14 Q. And when is that produced, when is that paper  
15 produced?

16 A. Every patient that comes into the first-aid  
17 facility at Busch Gardens has a similiar record.

18 Q. And whose record is that that you have there?

19 A. This is a Carol Sibert.

20 Q. And of course you don't have any knowledge  
21 today looking at that report of Ms. Sibert or Ms. Bregel, do  
22 you?

23 A. Pardon?

24 Q. You don't have any record or knowledge today of  
25 what Mrs. Bregel or Mrs. Sibert looks like?

1 A. No, I certainly don't.

2 Q. And this was the only contact you had with her,  
3 I assume?

4 A. Yes, sir.

5 Q. And does the record indicate how she arrived  
6 at -- well, let me ask this, were you in charge of the  
7 first-aid station that day?

8 A. Yes, sir.

9 Q. And how many people would you have with you?

10 A. There would be three other people.

11 Q. Three other?

12 A. Three other.

13 Q. All right. Does this report indicate how she  
14 arrived at the station?

15 A. It says ambulatory.

16 Q. And then do they give you, do you take a  
17 history of what she tells you as to how the accident  
18 occurred?

19 A. Yes.

20 Q. What was that?

21 A. According to this, the guest was sitting in a  
22 Skyride car, her right arm was resting on a rail, with her  
23 arm -- I can't quite read it. With her right arm resting on  
24 a rail, when another Skyride banged up against her catching  
25 her arm, right, between the two Skyride cars.

1 Q. Of course that's what she told the attendant  
2 there at first-aid?

3 A. The person that took down the information.

4 Q. And what injury was noted and what was the  
5 treatment?

6 A. According to this, she had noticeable swelling  
7 to the medial side of the right elbow, point tenderness and  
8 painful movement. Sensory nerves were intact and capillary  
9 refill was brisk.

10 Q. Did you make any, did you give any treatment  
11 there in the first-aid station?

12 A. I don't believe I did on this one.

13 Q. And did you make any decision relative to her  
14 further treatment?

15 A. Yes, I sent her onto Williamsburg Community  
16 Hospital.

17 Q. Did you get a report back from them?

18 A. Yes, sir.

19 Q. What does that indicate to you?

20 A. It says that, this was the next day, contusion  
21 and sprain of the right elbow per Williamsburg Community  
22 Hospital.

23 Q. Okay. And that was the only contact you had  
24 with Mrs. Bregel?

25 A. As far as I can recall.

1 Q. All right. I believe you did give her an ice  
2 pack, is that something that you could have done or your  
3 facility?

4 A. Not myself. Whomever treated her.

5 Q. Meaning an EMT?

6 A. An EMT gave her an ice pack, put her arm in a  
7 soft cast and transported her to her private vehicle.

8 Q. To her private vehicle?

9 A. Yes, sir.

10 Q. That's all I have. Answer Mr. Mills.

11  
12 CROSS-EXAMINATION

13 BY MR. MILLS:

14 Q. The report back to you from the emergency room,  
15 that was just a telephone report?

16 A. Yes.

17 Q. You didn't get any records from them?

18 A. No.

19 Q. Now, Ms. Lenz, do you still have that in front  
20 of you?

21 A. No, I don't.

22 Q. Could we have that again, please. Would you  
23 look at the bottom, please, next to remark.

24 A. Yes.

25 Q. Is that written in your handwriting there?

1 A. The line that says Number 20, Mark Pauls?

2 Q. Yes, that line.

3 A. That's mine, yes.

4 Q. That's something you wrote on this report?

5 A. Yes.

6 Q. Would you read to the jury what it says?

7 A. It says Number 20, Mark Pauls, Number 70,  
8 Sanford Steiner notified.

9 Q. Okay. Why did you write that on there?

10 A. Because whenever there is any type of an  
11 accident at Busch Gardens which involves machinery or rides  
12 or anything, the operations office on duty, which was Mark  
13 Pauls, and the engineering office, which was Sanford Steiner  
14 have to be notified.

15 Q. When do they have to be notified?

16 A. Whenever the patient comes into the emergency  
17 room.

18 Q. To first-aid?

19 A. Yes.

20 Q. How do you notify them?

21 A. Usually by radio.

22 Q. That's their number. I guess Number 20, that's  
23 Mark Pauls?

24 A. Yes.

25 Q. And Number 70 is Sanford Steiner?

1 A. Yes.

2 Q. And you did that?

3 A. Yes, sir.

4 Q. Thank you. Oh, by the way, do you happen to  
5 know -- do you still work for Busch Gardens?

6 A. No.

7 Q. You don't work with them. Do you know if Mark  
8 Pauls or Sanford Steiner still does?

9 A. I have no idea.

10 Q. Okay. Thank you.

11 MR. DAVIS: The defendant rests, Your Honor.

12 THE COURT: All right. Any rebuttal?

13 MR. MILLS: Yes, Your Honor. I have one thing,  
14 Dr. Spear in his deposition made some remarks about Dr.  
15 Aulicino's qualifications, specifically about him having  
16 written and published in the field of critical nerve surgery,  
17 I would like for that reason to offer into the evidence in  
18 rebuttal Dr. Aulicino's curriculum vitae which was introduced  
19 without objection as an exhibit offered at that time and I  
20 would like to offer it into evidence now.

21 MR. DAVIS: My objection is -- we object to --

22 THE COURT: I sustain your objection.

23 MR. MILLS: If I could just confer one minute.

24 THE COURT: I think the testimony was something  
25 to the effect he was told that, so he believed it or

1 this if that's all right with you all. I thought this would  
2 give you all an opportunity to call home and let them know  
3 where you are.

4 We'll continue to work. If you all would just  
5 report back out to the lobby there and have a seat. We might  
6 still be working and when we're ready, we'll bring you in.  
7 Okay. Don't talk about case, either with someone or among  
8 yourselves. Thank you. You're excused until quarter to  
9 4:00.

10 (The jury exited the courtroom.)

11 THE COURT: All right. Are you ready?

12 MR. JACKSON: Yes, sir.

13 MR. DAVIS: His Number 1, there's no objection.

14 THE COURT: Number 1.

15 MR. DAVIS: Number 2, we think that  
16 contributory negligence is an issue here. There were warning  
17 signs. In fact, she had her hand or arm outside the cabin.

18 THE COURT: Is there any evidence that she had  
19 her hand outside the cabin? I thought the only evidence was  
20 she had it against the rail but there was no evidence she had  
21 it outside the cabin. If she did, I agree with you but I  
22 don't think there was any.

23 MR. DAVIS: Well, I think that's where they  
24 said it was hit which was outside the cabin.

25 THE COURT: Only by her bruises.

1 MR. DAVIS: Yes, sir, I understand but still we  
2 don't think --

3 THE COURT: I would think the safe thing to do  
4 would be to instruct them on it. I don't think that's going  
5 to have a thing to do with the case. You all don't want to  
6 get a big judgment and then have to -- unless you have the  
7 money to appeal?

8 MR. MILLS: But then again, I wouldn't want to  
9 lose it so I would offer it in this form. If it's refused, I  
10 of course understand and agree with your rational.

11 THE COURT: It seems to me that you would want  
12 to follow standard procedure. It seems to me the case is  
13 whether you believe Busch Gardens or whether you believe that  
14 the cabin was pushed down resulting in her arm outside the  
15 cabin and then being hit by another force; isn't it?

16 MR. MILLS: Yes, but there isn't any evidence  
17 that there's a second possibility. There's no evidence that  
18 anything apart from that happened, so I can't concede and  
19 neither would concede that there is any evidence of that,  
20 knowledge of her peril.

21 MR. DAVIS: Well, the fact that she had her arm  
22 outside the cabin, I think the evidence from Randi Barkers  
23 was to the effect that his testimony was this happened  
24 because they sat on the same side which, in fact, pushed it  
25 down. That's my recollection.

1 THE COURT: Well, I think I'll give it but  
2 there could be some evidence that they could infer the fact  
3 that she was negligent but I'll give it. Do you have another  
4 one that -- I see you destroyed this one.

5 MR. MILLS: Well, I'm afraid in my haste I  
6 destroyed all of them. Is there anyone that we could prevail  
7 upon to retype it in the form it ought to be in?

8 THE COURT: Yes, we'll do that. Give that to  
9 me.

10 MR. MILLS: Sorry about that.

11 THE COURT: That's all right.

12 MR. MILLS: Can I keep the one you rejected?

13 MR. DAVIS: Instruction Number 3 --

14 THE COURT: We'll make a note that you object  
15 to my ruling that the jury should be instructed on  
16 contributory negligence.

17 MR. MILLS: Exactly.

18 THE COURT: Any objection to 3?

19 MR. DAVIS: No.

20 THE COURT: I mean, there was some evidence  
21 that she put her arm up on the -- but different people said  
22 she put it different places. Okay. Any objection to four?

23 MR. DAVIS: No.

24 THE COURT: Admit four. Five?

25 MR. DAVIS: No.

1 THE COURT: Admit five.

2 MR. DAVIS: Objection to six. I don't see any  
3 evidence here to support this instruction. It's confusing.

4 THE COURT: Where does that come from?

5 MR. MILLS: Took it right out of the model  
6 instructions, Your Honor.

7 THE COURT: I've got that. What number is it?

8 MR. MILLS: It's Instruction Number 6.060.

9 THE COURT: I've got it here. It's what?

10 MR. MILLS: Volume 1, 6.060. I don't have the  
11 little number that is at the bottom.

12 THE COURT: Have you seen this? It's got  
13 contributory negligence.

14 MR. DAVIS: I realize it may be a correct  
15 statement of law. It's just a question of where is the  
16 evidence that the defendant, that she saw something that  
17 caused her to realize that the defendant was not necessarily  
18 going to exercise ordinary care.

19 It's a situation in which you see somebody  
20 stopped at a stop sign, then they move out. You have a right  
21 to assume they're going to stay there until they move out.  
22 We don't see any evidence to support this instruction and  
23 it's confusing without the evidence.

24 THE COURT: Let me read this.

25 MR. MILLS: Our position, Your Honor, is in the

1 expectation of safety being in an amusement park and placing  
2 herself in the hands of the operators of the rides, it is an  
3 important issue of the case. She did have a right to assume,  
4 as all patrons have a right to assume, that the people who  
5 are running the ride would do it safely.

6 MR. DAVIS: Well, that's a matter of  
7 negligence. This is a peculiar situation of negligence. We  
8 don't have any evidence for this particular situation.

9 THE COURT: Is this a plaintiff's instruction  
10 or a defendant's instruction?

11 MR. DAVIS: Plaintiff's.

12 MR. MILLS: I usually offer it because I think  
13 it's --

14 THE COURT: It says something about defendant  
15 here.

16 MR. MILLS: Actually, I've seen both sides use  
17 it.

18 MR. DAVIS: I don't think I've ever seen a  
19 defendant use this one.

20 MR. MILLS: Sure. The driver of a vehicle has  
21 a right to assume that another driver will use ordinary care  
22 until he realizes or in the exercise of ordinary care should  
23 realize that he's not going to do so. I've seen both sides  
24 offer this instruction. Now, it's not frequently that I've  
25 seen both sides use it.

1 MR. DAVIS: The reverse, if you reverse the  
2 parties -- there isn't any evidence here that it --

3 THE COURT: In fact, their evidence is she got  
4 in and sat down and then almost momentarily or immediately  
5 the cabin was pushed down and as a result of that, her  
6 reaction was to decrease the distance between her hand and  
7 her arm and thereby her elbow went outside the cabin and was  
8 hit.

9 MR. DAVIS: We think that's negligence and  
10 covered by the negligence instruction. This is confusing.

11 THE COURT: Do you think you need it?

12 MR. MILLS: Yes, Your Honor, I think it's very  
13 necessary. I think it's important to our case. I think she  
14 had a right to assume she was going to get the same care and  
15 treatment as every other person who uses the Skyride, she had  
16 seen use the Skyride.

17 THE COURT: I'm going to give it.

18 MR. DAVIS: Note our objection.

19 THE COURT: Any objection to seven?

20 MR. DAVIS: I think that's all right, Your  
21 Honor.

22 THE COURT: Admit seven. Any objection to  
23 eight?

24 MR. DAVIS: Yes, sir. We object to that. We  
25 don't think there's evidence to support this particular

1 instruction. I know there's a case on that point but the  
2 circumstances of this particular situation step far off to be  
3 able to encompass that rule.

4 THE COURT: There's no evidence that she  
5 increased her injuries.

6 MR. MILLS: The evidence from Dr. Aulicino was  
7 that the medial antebrachial nerve was incident to the  
8 surgery and that --

9 THE COURT: By one, by one or more, by two  
10 doctors who operated on her?

11 MR. MILLS: Right, and that he would not have  
12 used the first procedure and that he feels that some of the  
13 symptoms were caused by the care and treatment she received  
14 and I could see the jury's visual reaction to that when he  
15 testified to that point.

16 I think if you don't give them this  
17 instruction, they may infer that, heck, all of these damages  
18 aren't due to Busch Gardens. Some of them were caused by the  
19 doctors who operated on her. If she hadn't went to Dr.  
20 Aulicino the first time, she wouldn't be hurting now.

21 MR. DAVIS: He didn't say that. His testimony  
22 wasn't to that effect, he wouldn't of used that procedure,  
23 but he didn't say anything about that it increased her  
24 injuries.

25 THE COURT: I don't think he did either.

1 MR. MILLS: Well, he did say --

2 THE COURT: He did say one of the doctors --

3 MR. MILLS: Cut the medial nerve.

4 THE COURT: More than one nerve, wasn't it?

5 MR. MILLS: Actually, the medial and brachial  
6 nerve which is another component of the injury to her thumb.

7 THE COURT: That goes to the thumb?

8 MR. MILLS: Exactly.

9 MR. DAVIS: He never said how that affects  
10 anything or whether --

11 MR. MILLS: But he did. He said the medial  
12 antebrachial nerve was cut, that she had a neuroma there and  
13 that when he did the other decompression surgery, that he  
14 would have to move the neuroma underneath the muscle so that  
15 it wouldn't no longer be sensitive and that it also caused an  
16 area of numbness in her right forearm.

17 MR. DAVIS: I didn't hear evidence from him as  
18 to how that was going to make her injuries worse.

19 MR. MILLS: Well, we have his deposition.

20 MR. DAVIS: He hasn't testified to that.

21 MR. MILLS: Your Honor, in fairness this was  
22 referred to by Mr. Davis in opening statement that the doctor  
23 would be testifying that her nerve was cut incident to  
24 surgery.

25 THE COURT: I think your argument is, Busch

1 Gardens is liable, you know. You're going to be insinuating  
2 that she wasn't injured like she was injured.

3 MR. DAVIS: Not necessarily.

4 THE COURT: You're not going to argue that?

5 MR. DAVIS: No.

6 THE COURT: Okay.

7 MR. MILLS: That's why I have the model  
8 instruction. I don't have another instruction to offer on  
9 this point. This is directly --

10 THE COURT: I think something should be done.

11 MR. DAVIS: I don't think it's the coverage  
12 part that is right. I just don't think it's a proper  
13 statement.

14 THE COURT: What's the number on that?

15 MR. MILLS: The number on this one is 9.040. I  
16 would say it's just basically a statement of the law. I  
17 think Mr. Davis' argument just goes to the weight of the  
18 evidence. There's no doubt about what Dr. Aulicino testified  
19 to.

20 MR. DAVIS: Well, that's what we disagree on.

21 THE COURT: All right. I'll give it.

22 MR. DAVIS: We would object.

23 THE COURT: All right. Admit eight. All  
24 right. Any objection to nine?

25 MR. DAVIS: Yes, sir. We think the law is that

1 amusement park operators' rides are not a common carrier.

2 THE COURT: I don't see that.

3 MR. MILLS: Your Honor, we have some cases that  
4 deal with passenger trams and elevators, Virginia cases  
5 dealing with elevators showing that if the test is applied to  
6 them or if they meet the legal requirement, then they are  
7 common carriers and the requirements are that they transport  
8 passengers for hire and that they transport anybody who's  
9 paid the price and presented themselves to be taken.

10 So the testimony in this case I was careful to  
11 elicit was this is a passenger tramway and that it was  
12 classified as one of the largest and most important means of  
13 transporting passengers within the park and, thirdly, that  
14 they take all passengers without regard to handicap, age,  
15 etcetera.

16 So we think it meets every single requirement  
17 that there can be for a common carrier. Busch Gardens is a  
18 facility the size of a small city and they transport these  
19 people between countries that are the size of a small town  
20 and, you know, if there ever was a facility that is a common  
21 carrier, Busch Gardens in operating the aerial passenger  
22 tramway, what they call the Skyride, would be one.

23 THE COURT: I don't think so. I might be  
24 totally wrong later on but I'm going to refuse it. Refuse  
25 ten. It seems like to me if you have a common carrier, you

1 have to contract with that particular ride. Busch Gardens,  
2 they not only ride the tram but enjoy what they're riding.  
3 That's two or three purposes for that ride out there.

4 MR. MILLS: I can see that but they had made a  
5 contract with Busch Gardens. They paid the price of  
6 admission and by doing that, gained the right to use that  
7 ride and every passenger, every person who goes through the  
8 gate at Busch Gardens can and does use that ride.

9 THE COURT: No, that's not true.

10 MR. MILLS: Oh, well, has the ability and if  
11 presented as a passenger can use the ride. Excuse me. Not  
12 every person that goes there rides it but everybody can if  
13 they want to.

14 MR. DAVIS: There is plenty of law to the  
15 effect of what an amusement park operator owes as a duty and  
16 there's no indication that a common carrier --

17 THE COURT: I'll refuse nine and ten. Refuse  
18 eleven.

19 MR. MILLS: And I would just like to note my  
20 exception to --

21 THE COURT: I'm going to go over all these  
22 things and then we'll note your exception to all the adverse  
23 rulings.

24 MR. MILLS: Okay.

25 THE COURT: Any objection to 12?

1 MR. DAVIS: If Your Honor please, we think that  
2 our instruction --

3 THE COURT: I'm going to give it. They both  
4 are the same. They're just a little bit different and I'll  
5 give it, both of them.

6 MR. DAVIS: It seems to me that mine is worded  
7 in accordance with the model jury instructions. We're  
8 talking about C of course.

9 THE COURT: Is C like we corrected it the other  
10 day or --

11 MR. DAVIS: Yes. Well, I don't know.

12 THE COURT: Did you intend to use C again?

13 MR. DAVIS: No, this is a different one.

14 THE COURT: All right.

15 MR. DAVIS: We used this one but it was not the  
16 one we corrected.

17 THE COURT: All right.

18 MR. MILLS: There's nothing wrong with using  
19 something word for word that he used the other day.

20 MR. DAVIS: Well, the other day --

21 THE COURT: He arrived at success.

22 MR. MILLS: That's what I mean.

23 THE COURT: Any objection to 12?

24 MR. DAVIS: Yes, sir, we don't think it covers  
25 a correct statement of law.

1 MR. MILLS: This is a direct quote out of  
2 Winfield against Cox case, Your Honor.

3 MR. DAVIS: Quoted out of the book but ours is  
4 from the 34.34 Virginia jury instructions.

5 MR. MILLS: Which one is yours?

6 MR. DAVIS: C.

7 THE COURT: He's referring to Instruction C.

8 MR. MILLS: How is it different?

9 THE COURT: I'm talking about the damages.

10 MR. DAVIS: I thought you were talking about  
11 12.

12 MR. MILLS: Did I mismark my 12? Twelve should  
13 be the owner or proprietor of a place of amusement --

14 THE COURT: Let's see. We refused 10, 12.  
15 Thirteen is the damage instruction.

16 MR. MILLS: Yes, sir. Twelve is the one we  
17 were looking at.

18 THE COURT: Well, that's given. That's right.  
19 I'll talk to you when -- is your 12 the same as mine?

20 MR. MILLS: Yes.

21 MR. DAVIS: Well, we objected to it --

22 THE COURT: All right.

23 MR. DAVIS: -- as an improper statement of the  
24 law.

25 THE COURT: Any objection to 13?

1 MR. DAVIS: Let's see. We object to any future  
2 inconvenience, future expense, future earnings or any loss of  
3 earnings really.

4 THE COURT: All right. I'll give 13. Any  
5 objection to 14?

6 MR. DAVIS: I think that's okay. This is the  
7 finding instruction. It leaves out the contributory  
8 negligence.

9 THE COURT: That's right it does.

10 MR. MILLS: And I would like to offer it in  
11 this form, the same principal that I used before, and I have  
12 messed up the others so make this the new 14.

13 THE COURT: That would be the new 14. I'll put  
14 refused on this one. I'll just put on it, does not contain C  
15 slash N so we know on appeal, if you appeal, that that's the  
16 one I refused and I'll give 14 as presented which contains  
17 negligence and contributory negligence.

18 Any objection to A?

19 MR. MILLS: We've already offered it as one.

20 MR. DAVIS: We'll withdraw it.

21 THE COURT: A is withdrawn. Any objection to  
22 B?

23 MR. MILLS: No, Your Honor.

24 THE COURT: I'll give B. Any objection to C?

25 MR. MILLS: Yes, Your Honor. You've already

1 granted this instruction in another form. This one is the  
2 one we would like to substitute. We think ours is clearer  
3 and a more concise statement of the law.

4 THE COURT: Let me see what the difference is.

5 MR. MILLS: This talks about the preponderance  
6 of the evidence twice and we've already got another  
7 preponderance of the evidence instruction and I think it's  
8 loading up on the non-insurer status and the preponderance of  
9 the evidence thing.

10 MR. DAVIS: This is about the only instruction  
11 I've got. It's his 12 and we submit that ours comes from the  
12 jury instructions and his comes out of a case. We don't  
13 think it recites the law.

14 MR. MILLS: It was approved by the Court in the  
15 case.

16 THE COURT: I'm going to give C and you can  
17 present it the way you want to present it. Is there an  
18 instruction here that the preponderance of the evidence is  
19 the greater of the evidence?

20 MR. MILLS: Yes, Your Honor, we have that one.

21 THE COURT: Any objection to D?

22 MR. MILLS: Yes, Your Honor, this is really  
23 combining three instructions into one. The first element of  
24 the instructions is negligence, failure to use ordinary care.  
25 We already have that instruction.

1           The next is the definition of negligence. We  
2 already have that as well.

3           The third is proximate cause and if ever there  
4 was a case in which proximate cause is not an issue, this  
5 would be the case. No one has even suggested some other  
6 indication for this woman's injury.

7           THE COURT: Well, it still has to have that  
8 element.

9           MR. MILLS: Well, I don't think giving  
10 definitions in a case like this helps anything.

11           THE COURT: Is there a definition of proximate  
12 cause here? There are definitions of the first two, right?  
13 Is there a definition of proximate cause?

14           MR. MILLS: I have not offered a proximate  
15 cause instruction.

16           THE COURT: I think we need a proximate cause  
17 instruction.

18           MR. MILLS: Okay

19           THE COURT: I'll strike -- the first two are  
20 the same. I'll strike that.

21           MR. DAVIS: Why don't you remove his and use  
22 this one.

23           THE COURT: I'll strike out the first two. See  
24 if you can use a black pen and strike that out.

25           Any objection to E?

1 MR. MILLS: Is this from the model jury  
2 instructions?

3 MR. DAVIS: Yes, 4.105.

4 MR. MILLS: I think the second part of the  
5 instruction is repetitive but --

6 THE COURT: Well --

7 MR. MILLS: -- if it's part of the model  
8 instructions --

9 THE COURT: After the first paragraph, I think  
10 it's a recitation but in Virginia you don't plead damages  
11 unless somebody is liable.

12 MR. MILLS: If it comes from the model  
13 instructions, I don't have an objection to it if we can  
14 doctor it in some way.

15 THE COURT: I'll let it in.

16 MR. DAVIS: That's my knowledge.

17 MR. MILLS: This is from the model  
18 instructions?

19 MR. DAVIS: 4.105 is what I show.

20 THE COURT: I'll give it. Any objection to F  
21 other than the contributory negligence objection?

22 MR. MILLS: I have to be consistent on it.

23 THE COURT: I say, you object to it other than  
24 giving the instruction on contributory negligence.

25 MR. MILLS: I don't see anything wrong with the

1 text of that instruction. This comes out of the model  
2 instructions, too, doesn't it?

3 MR. DAVIS: 6.050 but I also show it's been  
4 modified. I don't know exactly what that means. May have  
5 been just changes in the pronouns.

6 THE COURT: Any objection to G?

7 MR. MILLS: Yes.

8 THE COURT: Okay.

9 MR. MILLS: Now, I'm back to my original point.  
10 There can't be any doubt, there can't be any issue that this  
11 woman sustained her injury in this incident. There hasn't  
12 been any contrary medical testimony, no contrary factual  
13 testimony, no eyewitness testimony, nothing.

14 THE COURT: I'm going to refuse G. I'll note  
15 your exception.

16 MR. DAVIS: Thank you.

17 THE COURT: Any objection to H?

18 MR. MILLS: Just a minute, Your Honor. Well,  
19 certainly there hasn't been any evidence or any issue about  
20 the plaintiff's truthfulness in relating things to the doctor  
21 and even the IME said that he completely believed the woman  
22 and everything she said.

23 THE COURT: But that doesn't mean that they've  
24 still got to believe her, you know. To make certain  
25 findings, certain damages you have to believe to some extent

1 she was in pain and had pain where she was hit and all that.

2 MR. MILLS: May I ask where does this comes  
3 from?

4 MR. DAVIS: It's just general law.

5 MR. MILLS: It's not a model jury instruction?  
6 I think if there was an issue of her veracity as to whether  
7 or not she told the police or the doctor, it would be one  
8 thing but, you know, to just throw it in here as general law  
9 when there is no reason. I mean, there's hasn't been  
10 anything, any evidence to create an issue on the point.

11 MR. DAVIS: Well, the independent doctor didn't  
12 believe her.

13 MR. MILLS: He said he did.

14 MR. DAVIS: He did?

15 MR. MILLS: He did. I can point it out in the  
16 records.

17 MR. DAVIS: He just didn't believe the other  
18 doctor.

19 MR. MILLS: He didn't like what the other  
20 doctor said. He specifically said to her -- I've got it. I  
21 can pull it right out of my notes.

22 THE COURT: All right.

23 MR. DAVIS: They all testified on history,  
24 based on the history is all they testified on.

25 MR. MILLS: I asked him, do you have any reason

1 to or do you have any contention that she was injured in any  
2 other way other than -- I can point it right out.

3 MR. DAVIS: No, he said he believed it.

4 MR. MILLS: I've got it right here. I got it.  
5 Let me find it.

6 MR. DAVIS: But that doesn't mean he believed  
7 her. He testified that the history was correct.

8 MR. MILLS: Here we go.

9 THE COURT: I'm going to give it. It still  
10 depends on her history and her symptoms and I think when you  
11 start, when you start talking about permanency and  
12 percentages and all, they do put a great deal of weight on  
13 what the person tells them.

14 MR. MILLS: Yes, Your Honor, but in this case  
15 what this instruction says is that a doctor bases his opinion  
16 on the history and that depends upon the truthfulness of the  
17 matter which is related to the doctor by the plaintiff.  
18 Well, her injury doesn't rise or fall on that. There are too  
19 many objective indications of injury by everyone who's tested  
20 her including the defendant's doctor.

21 And then he said, when I asked him, do you have  
22 any reason to dispute the nerve contusion was sustained on  
23 the date of the accident, July 1988, when she was trapped  
24 between two gondola cars?

25 No, patient dated it by history and I felt she

1 was telling the truth and I accepted that as the cause of her  
2 injury. So their own evidence is this was the cause of the  
3 injury. If that's the case, I don't think there's any issue  
4 about her truthfulness interfering with the diagnosis.

5 MR. DAVIS: What it says is, "To the extent  
6 that a doctor has testified that his opinion stating the  
7 accident that caused the injuries is based upon what the  
8 patient told him concerning the history of the accident and  
9 her symptoms." It doesn't say that everything the doctor  
10 said is based upon her history but it says to the extent that  
11 it is then it's dependent upon --

12 MR. MILLS: I understand. I just want to make  
13 this final point. There was never any testimony elicited  
14 from any of the doctors. Is your diagnosis of her dependent  
15 upon what she told you? Nobody asked the doctor that  
16 question and also --

17 MR. DAVIS: All of them said based on history.

18 THE COURT: I'm going to give it. Note your  
19 exception.

20 MR. MILLS: Yes, Your Honor.

21 THE COURT: Any objection to I?

22 MR. DAVIS: That's a duplicate, Your Honor. We  
23 would withdraw it.

24 THE COURT: Any objection to J?

25 MR. MILLS: Yes, Your Honor. This is not the,

1 this isn't what the model instruction says. The model  
2 instruction says that the plaintiff has the duty to not prove  
3 her exact amount of her damages but to provide enough  
4 evidence to make, to allow the jury to make a reasonable  
5 estimate. This says, plaintiff must prove by a preponderance  
6 of the evidence with reasonable certainty in regard to the  
7 damages claimed and that such --

8 THE COURT: Let me see where that comes from.

9 MR. DAVIS: 2309 Emrock is what it's out of and  
10 that's a Virginia model instruction. I don't have it with  
11 me.

12 THE COURT: Mine is '82 or something. Maybe  
13 it's in the supplement to Emrocks.

14 MR. DAVIS: But that's still in there. That's  
15 the one.

16 THE COURT: Let me see the model jury  
17 instructions.

18 MR. MILLS: You know, Your Honor, I withdraw my  
19 objection to this. I don't think it's going to make any  
20 difference. There are cases in which I would not but --

21 THE COURT: Any objection to K?

22 MR. MILLS: I've never seen this last part,  
23 "except that the jury may not award more than the amount sued  
24 for", where does that come from?

25 MR. DAVIS: Well, that is added to the model

1 jury instructions. We think that without that language in  
2 it, it's kind of silly.

3 THE COURT: I'm going to follow the model jury  
4 instructions. Where does the model jury instruction stop?

5 MR. DAVIS: After the word --

6 MR. MILLS: Judge, I withdraw my objection.

7 THE COURT: All right. Admit K. How much was  
8 sued for?

9 MR. MILLS: Seven hundred and fifty thousand  
10 dollars, Your Honor.

11 THE COURT: Any objection to L?

12 MR. MILLS: No, Your Honor.

13 THE COURT: Admit L.

14 MR. DAVIS: We would withdraw M. I don't think  
15 that's necessary.

16 THE COURT: All right. Now, I'm confused. You  
17 all check your notes. I'm refusing 9 and 10 and 11. They  
18 deal with common carrier and you objected to that and I  
19 refused Instruction 14 containing contributory negligence and  
20 you objected to that. And A is withdrawn, G was refused and  
21 objected to. I was withdrawn. M was withdrawn.

22 And then to go over these, if you would follow,  
23 one was given, two was given and the plaintiff objected to  
24 any, we'll just make it general, instructions on contributory  
25 negligence. So we'll give him two, three, four, five, six,

1 seven, eight and the defendant objected to eight.

2 MR. DAVIS: We objected to six. I don't know  
3 if you noted that or not.

4 THE COURT: That's right. Now, I'm giving two  
5 instructions on the duty of care and negligence. Each of you  
6 objects to the other's instruction, so I'm going to give both  
7 of them. All right.

8 MR. DAVIS: We objected to eight. I think you  
9 may have called that one.

10 THE COURT: Yes, you objected to eight. Twelve  
11 was objected to by the defendant.

12 MR. DAVIS: Yes.

13 THE COURT: Thirteen was objected to generally  
14 and I'm giving 13, 14, that has contributory negligence in  
15 it, which plaintiff objects to. I'm giving B. C is the duty  
16 of care. Plaintiff objects to C and I'm giving C. I'm  
17 giving D striking out the first two paragraphs, which the  
18 defendant objects to. Giving E. F was objected to by the  
19 plaintiff, I'm giving. H, plaintiff objects to which I'm  
20 giving. J, I'm giving. K, I'm giving and L, I'm giving.

21 MR. MILLS: J, I have as withdrawn.

22 MR. DAVIS: J was given and you withdrew your  
23 objection to it.

24 MR. MILLS: All right.

25 THE COURT: Now, how about doing me a favor,

1 Ms. Furniss has to leave at 5:00. Mr. Dutton, if you could  
2 get together with the attorneys and make sure which items  
3 specifically go back to the jury room and I'll put you in  
4 charge of that. Okay. Everybody has to agree on what goes  
5 back to the jury room, then I'll put Mr. Dutton in charge so  
6 we know the right things get back there.

7 MR. DAVIS: We object to the depositions.

8 THE COURT: Well, I grant that no deposition is  
9 to go back.

10 (A break was taken, after which the following  
11 proceedings continued:)

12 THE COURT: Are you all ready?

13 MR. MILLS: Yes.

14 MR. DAVIS: Yes.

15 (The jury entered the courtroom.)

16 THE COURT: As I told you, you have heard all  
17 the evidence in this case and now I'm going to give you the  
18 instructions of the Court, the written instructions. I'm  
19 going to read them and then you all will be able to take them  
20 back to the jury room with you and take the exhibits that  
21 have been introduced into evidence.

22 You are the judges of the facts, the  
23 credibility of witnesses, and the weight of the evidence.  
24 You may consider the appearance and manner of the witnesses  
25 on the stand, their intelligence, their opportunity for

1 knowing the truth and for having observed the things about  
2 which they testified, their interest in the outcome of the  
3 case, their bias, and, if any have been shown, their prior  
4 inconsistent statements or whether they have knowingly  
5 testified untruthfully as to any material fact in the case.

6           You may not arbitrarily disregard believable  
7 testimony of a witness. However, after you have considered  
8 all the evidence in the case, then you may accept or discard  
9 all or part of the testimony of a witness as you think  
10 proper.

11           You are entitled to use your common sense in  
12 judging any testimony. From these things and all the other  
13 circumstances of the case, you may determine which witnesses  
14 are more believable and weigh their testimony accordingly.

15           Your verdict must be based on the facts as you  
16 find them and on the law contained in all of these  
17 instructions.

18           The issues in this case are:

19           (1) Was the defendant negligent?

20           (2) If it was negligent, was its negligence a  
21 proximate cause of the accident?

22           On these issues the plaintiff has the burden of  
23 proof.

24           (3) Was the plaintiff negligent?

25           (4) If she was negligent, was her negligence a

1 proximate cause of the accident?

2 On these issues the defendant has the burden of  
3 proof.

4 (5) If the plaintiff is entitled to recover,  
5 what is the amount of her damages?

6 On this issue the plaintiff has the burden of  
7 proof.

8 Your decision on these issues must be governed  
9 by the instructions that follow.

10 In considering the weight to be given to the  
11 testimony of an expert witness, you should consider the basis  
12 for his opinion and the manner by which he arrived at it from  
13 underlying facts and data upon which he relied.

14 The greater weight of all the evidence is  
15 sometimes called the preponderance of the evidence. It is  
16 that evidence which you find more persuasive. The testimony  
17 of one witness whom you believe can be the greater weight of  
18 the evidence.

19 Negligence is the failure to use ordinary care.  
20 Ordinary care is the care a reasonable person would have used  
21 under the circumstances of the case.

22 The plaintiff has a right to assume that the  
23 defendant will use ordinary care until she realizes, or in  
24 the exercise of ordinary care should realize, that defendant  
25 is not going to do so.

1           An employer is liable for all damages  
2 proximately caused by the negligence of its employees while  
3 acting within the scope of his employment.

4           If you believe by the greater weight of the  
5 evidence:

6           (1) That the defendant is liable for the  
7 plaintiff's injuries;

8           (2) That the plaintiff used reasonable care in  
9 selecting a physician to treat her injuries; and

10           (3) That the treating physician made the  
11 injuries worse, then the plaintiff is entitled to damages  
12 from the defendant for the increase in her injuries caused by  
13 the physician.

14           The owner or proprietor of a place of amusement  
15 or entertainment is not an insurer of the safety of its  
16 invitees, but has the duty to exercise reasonable care for  
17 their safety and protection.

18           Reasonable care is the care that would be  
19 exercised by an ordinarily careful and prudent person or  
20 business in the same position. If the owner or proprietor  
21 fails to perform this duty, then it is negligent.

22           If you find your verdict for the plaintiff,  
23 Carol Bregel, then in determining the damages to which she is  
24 entitled, you may consider any of the following which you  
25 believe by the greater weight of the evidence was caused by

1 the negligence of the defendant:

2 (1) Any bodily injuries she sustained and their  
3 effect on her health, according to their degree and probable  
4 duration;

5 (2) Any physical pain and mental anguish she  
6 suffered in the past and any that she may be reasonably  
7 expected to suffer in the future;

8 (3) Any disfigurement or deformity and any  
9 associated humiliation or embarrassment;

10 (4) Any inconvenience caused in the past and  
11 any that probably will be caused in the future;

12 (5) Any medical expenses incurred in the past  
13 and any that may be reasonably expected to occur in the  
14 future;

15 (6) Any earnings she lost because she was  
16 unable to work at her calling;

17 (7) Any loss of earnings and lessening of  
18 earning capacity, or either, that she may reasonably be  
19 expected to sustain in the future.

20 Your verdict should be for such sum as will  
21 fully and fairly compensate the plaintiff for damages  
22 sustained as a result of the defendant's negligence.

23 You shall find your verdict for the plaintiff,  
24 Carol Bregel, if she has proved by the greater of the  
25 evidence that:

1 (1) The defendant was negligent; that,

2 (2) The defendant's negligence was a proximate  
3 cause of the plaintiff's accident and damages.

4 You shall find your verdict for the defendant  
5 if:

6 (1) The plaintiff failed to prove either or  
7 both of the two elements above, or if,

8 (2) The defendant has proved by the greater of  
9 the evidence that the plaintiff was contributorily negligent  
10 and that her contributory negligence was a proximate cause of  
11 the accident.

12 The Court instructs the jury that you must not  
13 base your verdict in any way upon sympathy, bias, guesswork  
14 or speculation. Your verdict must be based solely upon the  
15 evidence and instructions of the Court.

16 The Court instructs the jury that the defendant  
17 was not an insurer of the safety of the plaintiff and in  
18 order for the plaintiff to recover, the burden is upon her to  
19 prove by a preponderance of the evidence that the defendant  
20 failed to exercise ordinary care in the conduct of its  
21 business. Unless you believe that the plaintiff has proven  
22 by a preponderance of the evidence that the defendant failed  
23 to exercise such care, then your verdict shall be for the  
24 defendant.

25 The Court instructs the jury that a proximate

1 cause of an accident, injury or damage is the cause which in  
2 natural and continuous sequence produces the accident, injury  
3 or damage. It is a cause without which the accident, injury  
4 or damage would not have occurred.

5 The Court instructs the jury that the fact that  
6 there was an accident and that the plaintiff may have been  
7 injured does not, of itself, entitle the plaintiff to  
8 recover.

9 The plaintiff has the burden of proving by the  
10 greater weight of the evidence that the defendant was  
11 negligent and that its negligence caused the plaintiff's  
12 injuries.

13 The Court instructs the jury that if you find  
14 from the evidence that the plaintiff was negligent and that  
15 her negligence proximately contributed to the accident, you  
16 may not compare the negligence of the parties. Any  
17 negligence of the plaintiff which was a proximate cause of  
18 the accident will bar the plaintiff from recovering.

19 The Court instructs the jury that to the extent  
20 that a doctor has testified that his opinion stating the  
21 accident that caused the injuries is based upon what the  
22 plaintiff told him concerning the history of the accident and  
23 her symptoms, the opinion stated by the doctor is dependent  
24 upon the truthfulness of the matters which were related to  
25 the doctor by the plaintiff.

1           The Court instructs the jury that damages are  
2 not presumed nor may they be based upon speculation, but must  
3 be proven and the burden is upon the plaintiff to prove by a  
4 preponderance of the evidence or with reasonable certainty  
5 any item or damage claimed and that it is properly  
6 attributable to the accident; and unless such item or element  
7 of damage is thus proven by a preponderance of the evidence,  
8 then the plaintiff cannot recover such item or element.

9           The Court instructs the jury that the statement  
10 of counsel for the plaintiff referring to the amount sued for  
11 is not evidence in this case; you should not to consider it  
12 in arriving at the amount of your verdict, if any, except  
13 that the jury not award more than the amount sued for.

14           The Court instructs the jury that if you find  
15 in favor of the plaintiff and make an award of any loss of  
16 earnings or expense in the future, you must take into account  
17 the fact that money awarded by you is being received all at  
18 one time instead of over a period of time extending into the  
19 future and the plaintiff will have use of this money in a  
20 lump sum. You must, therefore, determine the present value  
21 or the present worth of the money which you award for such  
22 future loss.

23           Mr. Mills.

24           MR. MILLS: Members of the jury, this is the  
25 point in a case where I get very nervous. If I looked

1 nervous in my opening statement, I'm really nervous now. I  
2 don't know why this is. I think it's because I'm afraid that  
3 I will say something or not say something that's going to  
4 affect your verdict even though now you're at the point where  
5 you have heard all the evidence that you're to hear in this  
6 case.

7           We told you in the beginning that we would  
8 bring everyone we could, every piece of evidence we could  
9 gather, everything that would help you in finding out and  
10 determining what happened on this day, July 10th, 1988, at  
11 Busch Gardens to Carol Bregel and how it has affected her  
12 life.

13           Busch Gardens is a place to have fun. Terry  
14 Davis said that in his opening and he's here to defend Busch  
15 Gardens and he's right. People go there just for that  
16 reason. I do not know how many hundreds of thousands of  
17 people pass through their gates and pay the price of  
18 admission for that reason, but I know that everyone who does  
19 it, does it to have fun and secure in the knowledge that the  
20 people inside that park know how to do their jobs.

21           I think that everyone who goes through the gate  
22 believes that inside the park, inside the theme park that  
23 safety is a reality and that danger is the illusion. Now,  
24 it's an illusion that some people are willing to pay for.  
25 Some people go there to ride the Loch Ness Monster and the

1 Drachen Fire and the thrill rides that give people some  
2 feeling of danger and being able to go through it. But Carol  
3 Bregel and Joe Toscano were not thrill seekers. They are  
4 people that go to see the other attractions there, the ones  
5 that Mr. Davis talked about in his opening, and to use the  
6 Skyride the way all the patrons do, as a way to get from one  
7 place in the park to another and not have to walk and be able  
8 to see something as you go.

9           They did not expect, and I don't believe that  
10 any patron does, that they were in danger as they stood in  
11 the line queuing up, as you heard it referred to, to ride  
12 that Skyride behind the other couples who were there for that  
13 purpose.

14           In fact, the Court has told you and instructed  
15 you in the instructions that he has read to you that you will  
16 take back with you to the jury room as you start your  
17 deliberations, that the plaintiff, Carol Bregel, has a right  
18 to assume that the defendant, Busch Gardens, will use  
19 ordinary care until she realizes or in the exercise of  
20 ordinary care should realize that the defendant is not going  
21 to do so. Carol Bregel, I think the evidence has shown had  
22 no warning, no warning at all about what was going to happen  
23 to her as she entered the Skyride and sat down in the car.

24           It is for you to determine whether or not the  
25 defendants, the operators, the employees who the Court has

1 also told you Busch Gardens is responsible for, were doing  
2 their jobs on that day the way that they were told, the way  
3 they were instructed and being careful. You might ask  
4 yourselves is ordinary care what Carol Bregel got when she  
5 rode the Skyride. Did they treat her with ordinary care?

6 All of the evidence in this case shows that  
7 they did not. They did something that they weren't suppose  
8 to do. Whether as you heard from Randi Barkers that it was  
9 because someone was in a bad mood, because someone was  
10 fooling around or for whatever reason, when she sat down in  
11 the Skyride, they tipped it backwards, something she did not  
12 expect and she with her arm resting on the seat, as you know  
13 many people do, as we saw many people do, grabbed the seat.  
14 A perfectly ordinary reaction.

15 It was then that the car following her was  
16 propelled into her by the attendant because that's the only  
17 way it can move. The attendant had to do it, pushed this  
18 900-pound car into her arm trapping it between two 900-pound  
19 cars and causing this injury that you have heard about, an  
20 injury that appeared right away, an injury that she reported  
21 at that station and the next station and an injury that was  
22 attended to by first-aid and confirmed by them, confirmed by  
23 the Williamsburg Community Hospital and all the other health  
24 care providers that you have heard about. No one who has  
25 seen her ever doubted that that was the truth and since cases

1 are decided on evidence, I would submit to you there just  
2 hasn't been any evidence that any other thing happened.

3 Every piece of evidence that you have heard,  
4 Carol's testimony, it's for you to judge what kind of person  
5 she is and how truthful you think she is. Joe Toscano who  
6 was with her that day has told you what happened. All of the  
7 records have confirmed it as I just ticked down the list and  
8 even the testimony that was offered by the defense, even Dr.  
9 Curtis Spear who said that he believed the plaintiff and he  
10 believed her history and he had no doubt that this is how her  
11 injury happened.

12 Even Pat Hoffman who they paid a lot of money  
13 to to come here and tell you he conceded, hey, that's the way  
14 they ran the Skyride, that's the way her injury happened is  
15 wrong. Bill Carlson made the same accession. All of the  
16 testimony adds up in just that way. You, yourselves, with  
17 your own eyes saw the way the Skyride was supposed to be  
18 operated and I think that all of you, if not most of you,  
19 have seen that Skyride operate on prior occasions and they  
20 just aren't suppose to do it that way and they know it. And  
21 the person who injured Carol Bregel knew it.

22 Now, we don't know who that person is. I would  
23 love to ask them. There is nothing I would have loved more  
24 than to have that person sitting on the witness stand. The  
25 only person who could have brought them here was Busch

1 Gardens. They brought you no one. They brought you not one  
2 single employee who worked that day, not one single employee  
3 who even works at Busch Gardens except for the nurse, not one  
4 single employee who is in the business of running Skyrides to  
5 tell you how it works. We brought you those people and you  
6 heard what they said.

7 Now, what about Busch Gardens' contention that  
8 this is an injury that Carol Bregel caused herself because I  
9 don't think there is any other defense in this case. We have  
10 to ask ourselves, because negligence is a failure to use  
11 ordinary care, was Carol Bregel being ordinarily careful?  
12 Did she do anything that was unreasonable? Did she do  
13 anything that she could believe might cause her harm? Was it  
14 unreasonable for her to rest her arm on the back of the seat?  
15 Was it unreasonable for her to grasp it when the defendant  
16 tipped it backwards and she went backwards and Joseph Toscano  
17 grabbed the bar in front of them? She should have expected  
18 to be hit by another car even when Busch Gardens says, their  
19 employees say, we don't do things that way? Did she have  
20 time when she got in to read all the instructions on this  
21 sign to make sure that she was complying with every one? Did  
22 anybody warn her when she got in, hey, we run cars into one  
23 another, keep your arms and legs inside the car? Does  
24 putting the sign there inside with all of instructions about  
25 smoking and standing and rocking and having things inside and

1 what to do when the Skyride stops, does that excuse Busch  
2 Gardens from improper operation of the ride from what I think  
3 there is good evidence of deliberately intending to hurt  
4 people? The answer to all of that is, no, no, no, no, and  
5 no.

6 Carol Bregel was doing what any of us may have  
7 done. What we saw is the people in the videotape that Busch  
8 Gardens prepared. I mean, that is a best day case for them.  
9 You saw -- you know, they went out there for the express  
10 purpose of making a tape to show you how things were run.  
11 And you saw and you remember I mentioned to you in my opening  
12 statement, I've had the advantage of playing that tape back  
13 several times and looking at it and counting the people and  
14 counting the cars, 42 cars, 19 people with their arms resting  
15 on the side or indeed over the side of the Skyride, hands,  
16 arms, etcetera. Nineteen out of 42, 25 percent of the  
17 patrons.

18 They said they know they do it and Busch  
19 Gardens knows that it only hurts people when they push the  
20 cars into each other, when they bang them into one another  
21 and I don't think we need to talk about all this hoke that we  
22 can't bang them together because they don't move fast enough.  
23 Common sense rules in this case. You're entitled to use your  
24 common sense in judging the evidence.

25 Now, what does all that mean to Carol Bregel?

1 How has all of this effected her? Very briefly I'm going run  
2 over the things. She has as an exhibit medical bills.  
3 There's no total there. If you total the bills up, like I  
4 did, you'll find that their amount is \$10,300.00 in medical  
5 bills just so far. That's the bill for the EMG, the  
6 hospital, the doctors, the surgeries and the rehabilitation  
7 and all the things, two surgeries which she has had already  
8 had and it doesn't include the future surgery that she needs.  
9 Dr. Aulicino told you that he charges \$1,200.00 for that.  
10 The hospital is going to charge her more. She's got to be  
11 there at least overnight. She has to have an  
12 anesthesiologist. She has to take three months off from work  
13 while she has rehabilitation and physical therapy every other  
14 day for three months.

15 I don't think it's unreasonable to suggest that  
16 if the bill is \$10,000.00 already, she'll have \$5,000.00 in  
17 the future and that doesn't even count the time she's going  
18 to be off from work. You have seen the prominent scar she  
19 has on her forearm. She's been operated on twice in that  
20 very same place. She's going to be operated on a third time.  
21 You know she had to miss work.

22 You know she missed work when she came back  
23 from Busch Gardens and her arm was in a sling. She was  
24 seeing the doctor and she wanted to work but she couldn't  
25 because her arm was in a sling and they wouldn't let her

1 drive. You know that she missed two weeks from work and then  
2 another week when her arm became infected after she had the  
3 first surgery. That's five weeks. I think her earnings at  
4 that time were around \$11,000.00 a year. I think she was out  
5 over a \$1,000.00 just for that. She'll be out another three  
6 months in the future at her current rate of pay of nearly  
7 \$13,000.00 or just a little over \$13,000.00, another  
8 \$3,000.00.

9           She has loss her ability to work in the job  
10 where she could earn more money. You heard Charles DeMark  
11 talk about that and he gave you the figures and the Court has  
12 instructed you that future wage earning capacity is an item  
13 of damage. And also told you that when we submit it as an  
14 item of damage, we have a duty to reduce it to the future  
15 value and that's why we brought Fremon Jones here. So that's  
16 what Fremon Jones did and we did in an unabashed fashion even  
17 to the point of figuring with a pencil on the chart, that we  
18 had prepared, that this was what Carol Bregel will be able to  
19 earn because she cannot work in the capacity that would  
20 enable her to earn \$25,000.00 that a driver with full  
21 physical capacity has, a driver who can take luggage and we  
22 know that tips are averaged on luggage and drivers that just  
23 drive shuttles from one place to another, don't get tips.  
24 She doesn't and doesn't expect to. She told me sometimes she  
25 gets a quarter from the senior citizens that she carries.

1                   We subtracted from that figure her earnings and  
2 we're left with that amount. That is the future value or the  
3 present value of her future loss of earning capacity. And  
4 all that stuff, the medical bills, lost wages so far and the  
5 lost wages she's going to have and the medical bills she's  
6 going to have and the amount of money she's going to have to  
7 pay, that's just numbers. These numbers alone add up to I  
8 guess over \$350,000.00 but that's just the numbers.

9                   We still have to take into account five years  
10 of nearly constant pain. So much so that you're willing to  
11 go under the knife two different times, two different doctors  
12 just to get up to leave and not have it work and willing to  
13 do it again or whatever it takes. The sleepless nights, not  
14 being able to sleep, pain so bad it awakens her from sleep.  
15 How many days feeling frustrated and useless? The cost of  
16 her future care and treatment of being a tour bus operator,  
17 something she had looked forward to, trained for and wanted  
18 to be.

19                  Now, the defense brought you Dr. Curtis Spear. They  
20 suggest that he has told you this woman wasn't hurt as badly  
21 as she might have been. That's curious testimony from Dr.  
22 Curtis Spear that contradicts the leading authority in the  
23 country. His said something curious. He said, I didn't test  
24 this lady for grip strength and pinch strength, you know, two  
25 point differential because I think those tests can be

1 fabricated. But when he was asked if he believed Carol  
2 Bregel, he told us that he did, that he didn't doubt her. I  
3 marked that in the deposition that I had somewhere.

4 Well, so which way is it? He believes her but  
5 yet doesn't do tests because -- even he conceded, hey, she  
6 got hurt this way, she had numbness, she had loss of  
7 function, she had loss of elbow extension, she had loss of  
8 strength in her hand and what didn't he say, you know. We  
9 asked Dr. Spear -- you know, Dr. Spear was hired by the  
10 defense. I mean, they had him look at this lady and come up  
11 here and give you their version of the events.

12 I asked him, hey, Dr. Spear, isn't it true this  
13 lady can do anything she wants to do? But what Dr. Spear  
14 told you is she can go back to the work she was doing before,  
15 the job. Remember when I asked him what were her injuries,  
16 what do you know about that? He said nothing. He had no  
17 information about it. He had no idea what she was doing  
18 before the accident. He doesn't know what she's doing now.  
19 The other doctors know and they have told you what she can  
20 and cannot do and how it affects her.

21 Members of the jury, let me close by saying  
22 that I mandate justice is clear in this case and I ask that  
23 you take the spotlight of justice, spotlight of truth and  
24 shine it on what Busch Gardens has told you. They brought  
25 you a \$3,000.00 expert and Dr. Curtis Spear, but what have

1 they brought you in the way of evidence. Make them tell you  
2 why it is you should reject this woman's claim.

3 MR. DAVIS: Ladies and gentlemen of the jury, I  
4 have just one opportunity to talk to you and when I sit down,  
5 my opponent will stand back up and talk to you again. That  
6 is an incumbent advantage given to him by the law because he  
7 has the burden of proof in regard to this particular law  
8 action.

9 Now, if I may, Your Honor, do you have the  
10 instructions? Thank you. The Court, of course, has  
11 instructed you on the law and you will have an opportunity to  
12 take these back to the jury room and read them in there  
13 entirety. The Court has already read them to us but Number  
14 12 and Instruction Number C tells us really what is it that  
15 the plaintiff has to show here.

16 The others relate to definitions and negligence  
17 and so on but 12 says, "The owner or proprietor of a place of  
18 amusement or entertainment is not an insurer of the safety of  
19 its invitees, but has the duty to exercise reasonable care  
20 for their safety and protection. Reasonable care is the care  
21 that would be exercised by an ordinarily careful and prudent  
22 person or business in the same position."

23 And Instruction C says, "The Court instructs  
24 the jury that the defendant was not an insurer of the safety  
25 of the plaintiff and in order for the plaintiff to recover,

1 the burden is upon her to prove by a preponderance of the  
2 evidence that the defendant failed to exercise ordinary care  
3 in the conduct of its business. Unless you believe that the  
4 plaintiff has proven by a preponderance of the evidence that  
5 the defendant failed to exercise such care, then your verdict  
6 shall be for the defendant."

7           What have they actually shown here? They have  
8 shown that under their evidence that Mrs. Bregel was struck  
9 by a cabin from the rear. That is the sum and substance of  
10 all they have shown. They do not and they have not shown why  
11 that cabin struck her from the rear. As a matter of fact,  
12 both Mrs. Bregel and Mr. Toscano, her boyfriend or  
13 ex-husband, said that they didn't see the car before it was  
14 hit. They did not see the cabin so they really don't know  
15 what occurred to cause it.

16           Now, so we do have here under their testimony  
17 an incident, an accident but the Court once again instructs  
18 you that Instruction Number E says, "The Court instructs the  
19 jury that the fact that there has been an accident and that  
20 the plaintiff may have been injured does not, of itself,  
21 entitle the plaintiff to recover. The plaintiff has the  
22 burden of proving by the greater weight of the evidence that  
23 the defendant was negligent and that its negligence caused  
24 the plaintiff's injuries."

25           Where is the evidence of negligence here in

1 this particular case? All we have is two people sitting in a  
2 car, that's what they said, and they're struck from the rear.

3 Now, the mere happening, as the Court has  
4 instructed you here under E, is not enough to show  
5 negligence. But actually Busch Gardens has gone further. We  
6 have gone further and affirmatively shown that we have gone  
7 out there and done everything we can do to make this ride  
8 safe.

9 We have Mr. Hoffman. We have outside people  
10 come in and look. You heard him testify as to the mechanics  
11 of the ride down to the little nuts and bolts that go into  
12 it. You heard him testify as to the training that goes into  
13 these individuals who operate the ride. You have heard about  
14 the operation procedures, the SOP, the fact that they are in  
15 excess of the American Standards, that they go beyond what is  
16 required. And you have also heard that the operation of the  
17 ride has been approved.

18 Now, the plaintiff says that when she got on  
19 the ride that an attendant pushed the ride down behind her,  
20 causing her to put her hand out behind her, causing her to  
21 straighten her hand and put it out. Why is that so  
22 significant to the plaintiff? Well, the plaintiff had been  
23 on the ride before a number of times and she knew she was  
24 supposed to put her hand out. She knew that warning sign was  
25 up there. So she has to have some reason for putting her

1 hand out and her reason is that an attendant pushed the ride  
2 down, that's the reason for her testimony there.

3 But we submit that if you look at this thing,  
4 that Randi Barkers destroyed that case really, the  
5 plaintiff's testimony in that regard. You recall that Randi  
6 Barkers testified yesterday about 2:00 o'clock when the tape  
7 was running showing the mechanism of the ride and he said  
8 when two people get into the Skyride cabin and sit on the  
9 same, the back side, that an attendant can't tip it down  
10 anymore. It's already down. It's already been tipped down,  
11 so we submit that that deflates to a tremendous extent Mrs.  
12 Bregel's statement about the attendant tipping it down.

13 Furthermore, if you look at the first-aid  
14 report, the first-aid report of her when she went in there,  
15 Exhibit Number 2, says that she was sitting in the Skyride  
16 and resting her arm on the rail when another Skyride came up.  
17 So there's no indication there of anyone tipping the Skyride.

18 Now, Mr. Mills chastised Mr. Carlson for not  
19 doing more after the accident, that is, after the fact. That  
20 is something that occurred later and didn't have any affect  
21 on the accident as it occurred. We submit that when you go  
22 back into the jury room and take a look at this evidence, you  
23 will not find that the plaintiff has proven a case of  
24 negligence against Busch Gardens. The best they have shown  
25 is that this lady got an injury from a Skyride that came in

1 contact with her. Period. That is really the sum, substance  
2 of the evidence and that is not sufficient to show negligence  
3 on Busch Gardens.

4 The mere happening of an accident, Instruction  
5 E, is not sufficient -- "The Court instructs the jury that  
6 the fact that there has been an accident and the plaintiff  
7 was injured does not, of itself, entitled the plaintiff to  
8 recover."

9 So we submit they failed in their burden to  
10 prove and there are many reasons for these chairs to touch.  
11 They say, oh, well, somebody must have slammed them in there.  
12 What basis do they have for that, saying that this occurred  
13 at this time? Where is it evident that one of these  
14 attendants slammed the car into another one? That it can  
15 happen, that this could have occurred, that this could occur  
16 on occasion, but is that sufficient evidence to say that is  
17 what occurred in this incident at this time in this case? Is  
18 that sufficient, the fact that it could occur?

19 And we must bear in mind that the Court has  
20 told us also that we can't really speculate in Instruction  
21 Number A or B I think it is. "The Court instructs the jury  
22 that you must not base your verdict upon sympathy, bias,  
23 guesswork or speculation. "And wouldn't it be pure  
24 speculation to say, hey, one of these Busch Gardens'  
25 employees slammed this cabin into her. There are many

1 reasons the cabins might have touched her and it couldn't  
2 have hit but so hard.

3           So I think that you all will I'm sure, when we  
4 ask for your consideration in reviewing the evidence in this  
5 case, determine whether or not Busch Gardens was negligent  
6 under the evidence of this case that has been brought before  
7 you. And, of course, if they were not negligent, then your  
8 verdict would be for Busch Gardens, the defendant, which  
9 there is a verdict form here. The verdict for the defendant,  
10 "We, the jury, on the issues joined find in favor of the  
11 defendant," and your foreman would sign that and that will go  
12 back, of course, to the jury room with you.

13           Now, if you further find in favor of the  
14 defendant, of course, you do not have to go into the medical  
15 or the injury situation at all and I, frankly, don't want to  
16 get into it but I guess that I should because it's generally  
17 done. If I may have the blackboard for just a brief second.  
18 I'm going to say a few words on it and then I'll shut up.

19           The accident, of course, occurred on July 10th,  
20 1988, and Mrs. Bregel, of course, was seen in the first-aid  
21 station. She was seen in the emergency room at Williamsburg  
22 Community Hospital and she was released and then she went  
23 back to Wilmington for a period where her home was, drove  
24 back that evening.

25           I would ask, if you would, to consider the

1 Williamsburg Community Hospital Emergency Room physicians'  
2 testimony that he found no nerve problems, that he diagnosed  
3 a sprain of her elbow and he found no other complaints of  
4 Mrs. Bregel anywhere else. There transpired a period of time  
5 but then she did see her family physician, who is Dr. Baker,  
6 if I recall correctly and Dr. Baker wasn't brought down to  
7 see you, wasn't called to testify by the plaintiff's  
8 attorney.

9                   He saw her a period of time and then she was  
10 referred to an orthopedic specialist, a Dr. Kamali, and Dr.  
11 Kamali was not brought down by the plaintiff's attorney to  
12 testify either by deposition testimony or otherwise.

13                   In any event, he performed the first operation  
14 on May 9th, '89, which was, of course, approximately a year,  
15 well, ten months after the accident. That was the first  
16 operation.

17                   Then she saw Dr. LeRoy. Now, Dr. LeRoy was  
18 brought in here and he did testify but Dr. LeRoy only did  
19 nerve blocks. He had quite a testimony here of two hours but  
20 the only thing he did was nerve blocks and he only did that  
21 twice and only one of them was a needle. The other one was  
22 an electrical stimulus of some type.

23                   Now, he testified rather glowingly about what  
24 Dr. Kamali and Dr. Baker did and also what Dr. Boules did.  
25 He referred her to a Dr. Boules and Dr. Boules, he testified

1 on deposition, and he performed an operation in August of  
2 '90, the second operation.

3 Here again, we're going two years after the  
4 accident of '88 and the final visit insofar as treatment from  
5 this particular accident was during August of 1988 or perhaps  
6 it was a couple of months later. Maybe it was September.  
7 Excuse me. September or October of '90. That's the last  
8 treatment she's had and so since then we've had 1991 and  
9 we've had 1992 and we've had 1993 without any treatment on  
10 Mrs. Bregel.

11 Now, she did see two other doctors who did not  
12 treat her. She saw Dr. Aulicino. I can't pronounce his  
13 name. I don't think he's the leading man in regard to ulna  
14 nerve surgery. As a matter of fact, I don't recall having  
15 ever heard of him until this case. I think I can make that  
16 statement. The plaintiff says he's the leading man, leading  
17 doctor on the East Coast or something. Well, I'm going to  
18 say, I've never heard of him but in any event, she did see  
19 him sometime in '91.

20 Then just before this case last month in  
21 March -- she saw him one time in '91. I'm not sure exactly  
22 when and she saw Dr. Spear last April as you may recall.  
23 And, now, Dr. Spear and Dr. Aulicino have a difference on how  
24 much degree their rating is. One of them has five or ten  
25 percent. These fellows have about the same thing, 15 percent

1 I think is what he said but Dr. Aulicino goes up to 37  
2 percent, which is almost an amputation.

3                   They have a disagreement on that but Mrs.  
4 Bregel has the same symptoms that she has always had. She's  
5 always had the same symptoms and she continues to have them.  
6 But I would request that you bear in mind, if you will, that  
7 she's had no treatment in two and a half years, no  
8 prescription medication and she says she been doing home  
9 remedy.

10                   Then we go from the sibylline to whatever. I  
11 never understood exactly what that term meant but in any  
12 event, we have the wage loss issue which I want to touch on  
13 briefly. But supposedly now we have sort of an income loss  
14 here of something other than -- the economist said  
15 \$330,000.00. That's a nice round figure. If you had that  
16 much money and you multiplied it by the present interest  
17 rate, which is about five percent, what do you come up with,  
18 \$17,500.00. That's more than she's making now. Now, she  
19 makes \$13,000.00.

20                   Now, we know that there are people or we hear  
21 that there are people who have an injury who want to get  
22 taken care of the rest their life, but she going to be taken  
23 care of and a lot of people are going to be taken care of if  
24 all of the recovery here is made.

25                   So actually Mrs. Bregel really hasn't loss

1 anything in her wages. At the moment she's making two to  
2 three thousand dollars more than she ever made before the  
3 accident. She is -- insofar as working after the accident, I  
4 believe that she testified on cross-examination that she had  
5 worked up to her first operation which was about a year after  
6 the accident, about ten months after the accident and was off  
7 only briefly a couple of weeks.

8           When her employer was asked about that, he said  
9 that she had worked full-time up to the time she quit, a  
10 couple months before she went to Las Vegas, except that he  
11 thought that she didn't put in as many hours as she had  
12 previously,. But actually Mr. DeMark looked at her income  
13 tax return and it showed in 1988 she made \$11,728.00 and in  
14 1987 she made \$10,660.00 and in 1989 she made \$9,200.00, so  
15 we submit that the loss wages is speculative. They, of  
16 course, pulled a figure out of the air on that. Not so much  
17 how much she made or anything like but how much she should  
18 make.

19           I wonder how much I should make? What if I  
20 became an international lawyer or something. I'm not really  
21 sure what they would say that I should make or what I should  
22 do but I really don't intend on doing much more than I am at  
23 the moment, and I imagine most of us earn in about the same  
24 category. They've based it too much on what she should do  
25 and these are the figures that they pulled out of the air for

1 us and, again, we submit that they are horribly speculative.

2 Now, let me see if I can sit down and let you  
3 get on to better things. I think that -- I do not know what  
4 my opponent will say when he stands up to give you his last  
5 remarks. Generally speaking they save the best for last.  
6 The reason for that is, I can't come back. So please when  
7 you hear his remarks and you're hearing him say thus and  
8 such, please, think if Mr. Davis could get up again, chances  
9 are he might have some response to that. I think that maybe  
10 you all in listening to him will have some response to it.

11 Again, let me thank you for listening to our  
12 side of the case.

13 THE COURT: Mr. Mills.

14 MR. MILLS: I have some ideas about what Mr.  
15 Davis should do. I also have some ideas or I would like to  
16 have the opportunity to cross-examine him about whether or  
17 not he knows Dr. Pat Aulicino. But I'll leave it to you  
18 having heard his remarks to determine what he told you and  
19 what you think Carol Bregel did that was unreasonable in this  
20 case and I'm glad that he called attention to Instruction  
21 Number 12, because I think it's one of the instructions you  
22 ought to look at, because it says that it's Busch Gardens'  
23 duty to exercise reasonable care for the safety and  
24 protection of their patrons. I ask you to decide what it was  
25 that Busch Gardens did for Carol Bregel's safety.

1           The statute in the State of Virginia provides  
2 that you're entitled to know what amount is being called for  
3 and that amount in this case is \$750,000.00. You have been  
4 instructed by the Court that your verdict cannot exceed that  
5 amount. How much you think Carol Bregel's injury is worth  
6 and what her damages are is up to you. It is yours alone;  
7 not Judge Person nor me. No authority in this land can add  
8 one cent to it. What you say is it, it shall be. So I ask  
9 you just to consider all the testimony that you have heard.

10           It's hard to put a figure, to put a number on  
11 damages and to assign a figure to human suffering and all the  
12 things that you, the jury, heard about but I ask that you  
13 think about this as you go back to deliberate and this will  
14 be the last thing that I say to you.

15           Consider you get up tomorrow morning and you  
16 see an ad in the newspaper. You're looking through the  
17 help-wanted ads, position available, applicant to suffer  
18 severe damage to the ulna nerve and the medial antebrachial  
19 nerve and to suffer all the excruciating pain that goes along  
20 with that. No experience required. Must endure three  
21 surgeries, two of them unsuccessful, one of them only  
22 partially so. Must abandon career goals. Must never earn or  
23 work in areas that they are entitled and capable of earning.  
24 Must give up all sports and all leisure activities requiring  
25 use of the right dominant hand or any dominant hand. No hope

1 of recovery ever and, lastly, you may never, ever resign.  
2 How many people, how many reasonable people would apply for a  
3 position like that and at what cost?

4 We're not asking you to take care of Carol  
5 Bregel but you're the only ones that can. She doesn't want  
6 your sympathy. What she wants is justice and she appeals to  
7 you for it. You are the only seven people in this world  
8 entitled to give it to her. I deliver her case in your hands  
9 now for your deliberation and the justice of your verdict. I  
10 give you gladly, although I've been proud to represent, Carol  
11 Bregel. I'm proud to know such a fine woman. Thank you.  
12 Thank you, Your Honor.

13 THE COURT: Ladies and gentlemen of the jury,  
14 as I told you, you will now retire to the jury room and the  
15 first thing you should do is select a foreperson to preside  
16 over your deliberations. You all will have the instructions  
17 of the Court and you all will have a verdict sheet and the  
18 verdict has to be unanimous. Then the only person to sign  
19 the verdict is the foreperson and there are two verdicts.

20 One verdict is for the plaintiff, we, the jury,  
21 on the issues joined find in favor of the plaintiff, and if  
22 that's your unanimous verdict then you have to assess damages  
23 and there's a spot for that and damages have to be unanimous  
24 also. That's your verdict for the plaintiff.

25 The verdict for the defendant, if you find for

1 the defendant then your verdict is for the defendant and it  
2 reads, we, the jury, on the issues joined find in favor of  
3 the defendant, and the foreperson would sign that verdict.  
4 So let's get the verdict sheet, the instructions and the  
5 exhibits and you all go on back to the jury room and begin  
6 your deliberations.

7 (The jury exited the courtroom at 5:15 p.m.)

8 (A break was taken, after which the following  
9 proceedings continued at 6:45 p.m.)

10 THE COURT: All right. Gentlemen, I guess the  
11 easiest thing would be for them to come out.

12 (The jury entered the courtroom.)

13 THE COURT: I understand you all have a  
14 question?

15 THE JURY: We have a question.

16 THE COURT: All right.

17 THE JURY: We understand the instructions that  
18 we must find by a preponderance of the evidence for either  
19 the plaintiff or the defendant. If we can't find that, can  
20 we find for the plaintiff and make a small monetary award or  
21 do we have to --

22 THE COURT: Would you all mind going back and  
23 letting us discuss it?

24 (The jury exited the courtroom.)

25 MR. DAVIS: We couldn't hear the question.

1                   THE COURT: I had a hard time but I think it's  
2 who has the burden and whether they can give an award, a  
3 small award.

4                   MR. MILLS: They want to know if they can give  
5 a compromise verdict it sounds like to me.

6                   THE COURT: What I thought I'd do, unless you  
7 all have a better suggestion, is orally tell them that the  
8 defendant's negligence which caused the plaintiff's injuries  
9 has to be proven by a preponderance of the evidence. If they  
10 do that, the next thing would be to look and see whether or  
11 not the defendant, separate, the defendant has proven  
12 contributory negligence on behalf of the plaintiff, and if  
13 they find that, they'll find in favor of the defendant. If  
14 they didn't find anything, they would find for the plaintiff.

15                  MR. DAVIS: I would just tell them they have to  
16 look at their instructions, Your Honor, and that you can't  
17 give them any further guidelines, instructions, I mean.

18                  MR. MILLS: Well, I think they set out -- I do  
19 think that they would have to be instructed that the  
20 liability verdict does not have to be considered in awarding  
21 damages.

22                  MR. DAVIS: I think the instructions speak for  
23 themselves. I don't think you can contemporaneously answer  
24 those questions and we would object to --

25                  THE COURT: I think it's pretty well -- okay.

1 All right. Bring them back in.

2 (The jury entered the courtroom.)

3 THE COURT: You can just stand right there.

4 What I have to tell you is to just look at the instructions.

5 That's all I can tell you.

6 THE JURY: All right.

7 (The jury exited the courtroom at 6:50 p.m.)

8 THE COURT: All right.

9 (A break was taken, after which the following  
10 proceedings contuned at 7:50 p.m.)

11 THE COURT: Okay.

12 (The jury entered the courtroom.)

13 THE JURY: We have not been able to reach a  
14 verdict. Do you want to know what our vote is?

15 THE COURT: You all can't agree on any verdict,  
16 is that my understanding?

17 THE JURY: Very close but we're having  
18 problems.

19 THE COURT: All right. Well, do you think it  
20 would help to go a little while longer tonight or come back  
21 tomorrow morning?

22 THE JURY: No.

23 THE COURT: All right. Well, you all have a  
24 seat back in the jury room. I need to talk to the attorneys.

25 (The jury exited the courtroom.)

1 THE COURT: Do they give the Allen charge in  
2 civil cases?

3 MR. DAVIS: Yes, sir.

4 THE COURT: Want to go ahead and do that?

5 MR. DAVIS: Sounds good to me.

6 MR. MILLS: Well, I think they've indicated  
7 that they are unable to reach a verdict. They don't seem to  
8 think anymore time would help them. Isn't that what the lady  
9 said?

10 MR. DAVIS: She said they were very close  
11 though.

12 THE COURT: At one time she said they were very  
13 close and the next time she said they didn't think so. Well,  
14 I feel this way, I think I'll give the Allen charge. I mean,  
15 I think that's the only fair thing to do to both parties.

16 MR. MILLS: The only thing is I feel it's ten  
17 minutes to 8:00 and they've been deliberating for almost  
18 three hours. I hate for them to reach a decision based on  
19 fatigue as opposed to the merits of the case.

20 THE COURT: Well, he wants me to declare a  
21 mistrial. Do you want me to declare a mistrial?

22 MR. MILLS: May I have a moment to think about  
23 that?

24 THE COURT: Yes.

25 MR. MILLS: We move for a mistrial.

1 THE COURT: Do you agree with that, Mr. Davis?

2 MR. DAVIS: No, sir, I think --

3 THE COURT: I thought that's what you just  
4 said.

5 MR. DAVIS: No, sir. I thought you were going  
6 to give them the Allen charge and bring them back tomorrow.

7 THE COURT: I thought you just said that.

8 MR. DAVIS: No, sir. I said I thought it would  
9 be a good idea to give the Allen charge and bring them back  
10 tomorrow or whatever.

11 THE COURT: I misunderstood you. You weren't  
12 the one?

13 MR. DAVIS: No, sir, I don't want a mistrial.  
14 I would like to get the jury's decision tonight or tomorrow  
15 morning if they're too fatigued. Maybe we could ask them --  
16 it is late. Maybe we could bring them back tomorrow but I  
17 would like to see the Allen charge read to them and we stay  
18 here a while longer or bring them back tomorrow.

19 THE COURT: Let me talk to them a minute.  
20 Bring them back.

21 (The jury entered the courtroom.)

22 THE COURT: Would you all mind deliberating a  
23 few more minutes or not?

24 THE JURY: I don't think it is going to help.

25 THE COURT: Don't think it's going to help?

1 THE JURY: No. Was the question would we mind?

2 THE COURT: Would you mind? You tell me.

3 THE JURY: We don't mind spending the time but  
4 we're deadlocked.

5 THE COURT: You don't see any hope in getting  
6 out of the deadlock?

7 THE JURY: No.

8 THE COURT: All right. Since we all feel --  
9 it's not going to hurt. I don't think it will hurt but --

10 THE JURY: I guess my question is, that we  
11 don't know what it is that could be provided that would  
12 change the deadlock, so there may be something else that  
13 would help but we don't know what.

14 THE COURT: You might. I don't know what to  
15 tell you really but that's fine. I don't want you to  
16 describe -- you all are telling me that you're certain that  
17 you're not going to reach a verdict. Is that a fair  
18 statement?

19 THE JURY: That's right.

20 THE COURT: Is that what each of you thinks?

21 THE JURY: Yes.

22 THE COURT: Is that a fair statement or --

23 THE JURY: Well, we came out here feeling that  
24 there was, you know, that we were deadlocked but I don't  
25 think it would hurt one more time. I'm not sure. We haven't

1 argued anything different than what we did before.

2 THE COURT: Well, let me do this, let me give  
3 you an instruction. All right. This might help. I don't  
4 know if it will or not. We'll see. Let me see if I can find  
5 it.

6 As you have been told, your verdict must be  
7 unanimous. If you can possibly reach a verdict, it is your  
8 duty to do so. You should listen to the views and opinions  
9 of your fellow jurors with fairness and candor, and you  
10 should give consideration to what they say. However, you  
11 must decide the case for yourself, and you should reach an  
12 agreement only if it can be done without sacrificing your  
13 individual judgment. During the course of your  
14 deliberations, each of you, whether in the majority or  
15 minority, should not hesitate to re-exam your own views and  
16 change your opinion if you are convinced it was wrong. No  
17 juror, however, should give up his honest opinion as to the  
18 evidence solely because of the opinion of his fellow jurors  
19 or for the mere purpose of returning a verdict.

20 If you can reach a decision without  
21 surrendering your conscientious opinion, it is your duty to  
22 do so.

23 Please return to the jury room and give the  
24 matter your further consideration. Thank you.

25 If I could get you all to do that a few

1 minutes.

2 (The jury exited the courtroom at 8:00 p.m.)

3 MR. MILLS: Your Honor, I renew my motion. I  
4 think they have clearly indicated they are deadlocked and  
5 nothing further they hear is going to change their point of  
6 view.

7 THE COURT: We'll see.

8 (A break was taken, after which the following  
9 proceedings continued:)

10 THE COURT: Okay.

11 (The jury entered the courtroom at 8:15 p.m.)

12 THE COURT: Have you all reached a verdict?

13 THE JURY: We have, Your Honor.

14 THE COURT: I'll read the verdict. Verdict for  
15 the defendant. We, the jury, on the issues joined find in  
16 favor of the defendant. Carol R. Flango, foreperson. Do you  
17 wish the jury poled?

18 MR. MILLS: Yes, Your Honor.

19 THE COURT: What I would appreciate you do,  
20 since this has to be an unanimous verdict, if you would start  
21 here and give your name and if that's your verdict, say yes,  
22 that's my verdict. Just give your name.

23 A JUROR: Cathy Bush. Yes, that's my verdict.

24 A JUROR: Carol Flango. Yes, that's my  
25 verdict.

1           A JUROR: Patricia Russo. Yes, that's my  
2 verdict.

3           A JUROR: Bonita Schley. Yes, that's my  
4 verdict.

5           A JUROR: Rosetta Roberts. Yes, that's my  
6 verdict.

7           A JUROR: Louise Hill. Yes, that's my verdict.

8           A JUROR: Elizabeth Conklin. Yes, that's my  
9 verdict.

10          THE COURT: All right. Let me first thank you  
11 for being here two days. You've been a vital service to the  
12 community and the State of Virginia and we appreciate it. We  
13 need people like you to administer the justice. And we'll  
14 just take a moment, if you wait a minute, the sheriff will  
15 walk you out to your cars just to make sure you get to your  
16 cars. It's dark outside so we'll do that and come back in.  
17 Okay. You all are excused.

18                 (The jury exited the courtroom.)

19          THE COURT: All right. Is there anything else?

20          MR. MILLS: Yes, the plaintiff has a motion to  
21 set aside the jury's verdict as contrary to the law and the  
22 evidence in the case. The evidence was very clear in this  
23 case. I don't think I've ever tried a case where it was  
24 clearer. The jury indicated they were confused by their  
25 initial question that they had and their inability to reach a

1 verdict.

2 I think that there was also an issue of common  
3 carrier that they were not instructed on, as well as the  
4 issue of contributory negligence which they should not have  
5 been instructed on. We would move the Court on that basis to  
6 grant a new trial as to all the issues.

7 THE COURT: All right. Mr. Davis.

8 MR. DAVIS: Well, if Your Honor please, we feel  
9 had the verdict been adverse, we would have certainly asked  
10 the Court to set aside the verdict and enter judgment for the  
11 defendant. We felt there was a failure on the part of the  
12 plaintiff to show negligence of Busch Gardens and that's  
13 apparently what the jury decided on, that there was no issue  
14 of negligence.

15 As to common carrier is concerned, the case law  
16 governing the liability of amusement park owners has been set  
17 aside several times. Common carriers have to come in under  
18 contributory negligence. The plaintiff admitted seeing the  
19 warning sign, admitted her hands were out or, excuse me, arm  
20 was out due to the excuse or due to the fact that the  
21 attendant tipped the car, but the witness brought forth that  
22 the tipping would have been minor if at all by them so we  
23 submit that it was a jury issue.

24 THE COURT: I overrule your motion again. I  
25 think both of you all represented your clients well and I

1 mean it when I say that. Thank you.

2

3

(Thereupon, the proceedings were concluded.)

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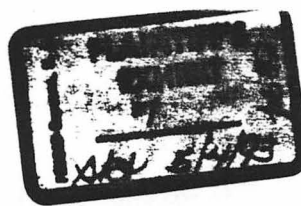
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## STANDARD OPERATING PROCEDURES

### SKYRIDE

COST CENTER 3202

The Busch Gardens Skyride, manufactured by Von Roll, Ltd. of Switzerland is a three station, monocable system. The Skyride opened in 1975 and is one of the original park attractions. The Skyride's continuously moving cable travels counter-clockwise over the Park, forming a triangle with stops located in England, France and Germany. Each station has loading and unloading facilities for the guests. While the Skyride provides a major means of transportation across the three countries, it also offers our guests a breathtaking view of Busch Gardens and especially the Loch Ness Monster.

### A. OPERATING PROCEDURES

1. Each station Lead picks up the clipboard, Daily Attraction Report, Incident Reports, Daily Activity Report, and cabin keys from the Operations Office. Pick up keys at the Security Key Window located next to Employee Services.
2. Report to your location and record your arrival time on the weekly Sign In/Out sheet. The Lead will verify your time.
3. The Lead will report any absence or tardiness to the Attractions Supervisor by calling Operations - Condition C, ext. 3330 in cases where the absence will not cause a late opening, Condition B-Call, ext. 3222 in cases where the absence may cause a late opening, and Condition B-2 Controlled, ext. 3222 when the absence will cause a late opening.
4. The Lead assigns cleaning jobs to the crew to ensure cleanliness of the area. (i.e.: sweeping, squeegeeing, cleaning seats, mulching, etc.) Ensure that all trash cans have liners and the liners are not showing below the lid.
5. The England station Lead must check for the mechanical and electrical green clearance tag located on the control panel. The Lead must also check for the Daily Ride Status sheet with the correct date, Maintenance signature, and the correct ride name. If either the green tag or the Status sheet is missing or is incomplete, notify your Attractions Supervisor immediately, Condition B-Call, ext. 3222. Do not attempt to run the ride if a green tag is not at the location. Operating the ride without a green tag will result in disciplinary action up to and including termination.
6. Take opening turnstile readings:
  - a. Check the turnstiles to be sure they are operating properly by flipping the arms at least 25 times.
  - b. If one of the turnstiles is not functioning properly, notify your Attractions Supervisor, Condition B-Call, ext. 3222.
  - c. Record opening turnstile reading on the Daily Operational Report.

7. Check fire extinguishers daily. If any are missing or are improperly charged, notify your Attractions Supervisor, Condition B-Call, ext. 3222.
8. Check signal phones and park phones.
9. Prior to opening, the Lead assigns each Host/ess to a position to be covered. You should be in your position and ready for guests prior to your location's opening. You should not leave your work location (position) unless instructed to do so by your Lead or Supervisor or you have been relieved by another employee.

**B. DEFINITION OF TERMS**

1. Cable: The moving steel "haul rope" onto which cabins clamp and unclamp to travel from one station to another.
2. Station: The loading/unloading areas of the Skyride located in England, France and Germany.
3. Bullwheel: The large, steel wheels in each station which guide the direction of the cable.
4. Counterweight: Located in Germany, a weighted platform atop one bull-wheel which maintains constant pressure on the cable to "take up slack" when cabins are added/removed from the cable. Its approximate weight is 33,500 pounds.
5. Tower: One of ten tubular steel structures located along the course of the cable to support the cable.
6. Roller: Hard rubber grooved wheels located throughout stations and on towers on which the cable runs.
7. Shreave Bank: Group of rollers joined together on towers to guide cable and cabins along the course of the ride.
8. Hat: The wheel assembly on top of the cabin which contains the clamping mechanism, and provides for movement of cabins on rails in the stations.
9. Jaws: The clamp which engages the cable when a cabin meets the cable.
10. Trip: Control device at dispatching end of station which automatically or manually spaces cabins prior to their engaging.
11. Limit Switch: Small metal bar which if touched during ride operation indicates that there is a malfunction in the ride throughout all stations, and on towers to ensure proper clamping, unclamping and cable movement.
12. Emergency Stop: Red buttons located in each station to allow operators to stop movement of the cable immediately in any emergency.
13. Cabin: Four passenger "gondola" which clamps onto the cable to transport guests from one station to another.

14. Control Panel: Located in each station to control operation of each station. Master control for all three stations is located in England.
15. Volkswagon engine: Gasoline powered auxiliary drive mechanism which can move the cable to remove cabins in the event of loss of power.
16. Safety System: The electronic circuitry which interconnects all limit switches and controls to ensure proper operation of the Skyride and prevents any type of mishap from occurring. During normal operation, a cabin will be loaded with guests in the station and then placed in the trip to be automatically dispatched onto the continuously moving cable. Prior to leaving the station, the cabin must successfully pass three clamp checks (limit switches) to ensure that the clamping process is correct or the ride will shut down automatically. Once it leaves the station, a cabin will be transported across three or four towers and into the next station. Should the cable disengage from the Shreave Bank on any tower (derail), the ride will shut down automatically. As a cabin enters the next station, it goes through a series of processes to provide for correct unclamping. Should the cabin not release from the cable correctly, the ride will shut down automatically. Should another circumstance occur, requiring the stopping of the ride, Hosts/esses can activate an emergency stop in each of the three stations.

#### C. OPERATING POSITIONS

##### 1. Catcher/Unloader

- a. Slows down and stops incoming cabins; unlocks cabin doors.
- b. Stabilizes the cabin and assists guests in unloading.
- c. Prevents cabins from bumping into each other.
- d. Unloads guests cautioning, "Watch your head and step please, and have a nice day."
- e. Assists in the addition and removal of extra cabins.
- f. Assists in loading disabled guests who are permitted to enter the Skyride at the exit to the ride.
- g. When the cabin is unloaded, moves the cabin on to the loader.

##### 2. Loader

- a. Maintains crowd control.
- b. Groups and assists guests in loading cautioning guests to "Watch your head and step, please."
- c. Moves the cabin to the Tripper.

##### 3. Grouper - when attendance reaches 10,000 or more

- a. Assists the Unloader when necessary.
- b. Answers the phones.
- c. Handles guest problems.

4. Tripper

- a. Closes and double locks doors.
- b. Places the cabin gently into the trip.
- c. Visually checks locks before the cabin leaves the station.
- d. Monitors guest actions.

D. OPERATING PROCEDURES

1. Ride Start-Up

a. England Start-Up Procedures

- 1.) If green clearance tags are present, check that Bullwheel Hand-brake has been released and that Main Drive is engaged.
- 2.) Turn main power switch to "ON" position and check main power supply. The AC Volt Meter should read 480 volts. If not, notify Lead.
- 3.) Turn key switch to "ON" position. The green light labeled "READY" will illuminate.
- 4.) If "READY" light does not come on, notify the Lead. The Lead will check lights on upper panel to resolve the problem in the indicated station.
- 5.) Check all push-to-test indicator lights on the control panel.  
NOTE: The 3 cable derailment indicators on the right hand side of the panel do not have lights on them.
- 6.) Turn on the "FORWARD REVERSE" selector. Keep the selector in the "FORWARD" position.
- 7.) Depress "START" button. The green "POWER ON" indicator light will come on and stay on.
- 8.) Use the signal phone to advise each station that England is ready to start the cable.
- 9.) Once each station has given England the "ALL CLEAR", sound the warning horns in all stations and start the cable.
  - a.) If the cable does not start by the second gear engaging (signified by a loud click), push the E-Stop and notify your Attractions Supervisor, Condition B-1 Controlled, ext. 3222.
  - b.) If the cable stops, the Lead will check the red lights on the upper panel and attempt to correct the problem. If the cable will not re-start, notify the Attractions Supervisor, Condition B-1 Controlled, ext. 3222.

- 10.) If the ride starts properly, the green light labeled "STARTING" will illuminate followed by a blue light labeled "RUN."
  - 11.) Set trip timer to pre-determined time established by the Attractions Supervisor. Set selector switch on manual.
  - 12.) Check wind alarms.
  - 13.) NOTE: Start the cable 10 minutes prior to opening.
- b. France and Germany Start-Up Procedures
- 1.) Check for signed and dated green tag.
  - 2.) Switch on panel starter power.
  - 3.) Check push-to-test buttons, or red and green light on starter panel.
  - 4.) Push reset button to establish clearance in station indicated by a steady green light.
  - 5.) Set trip timer to pre-determined time established by the Attractions Supervisor. Set selector switch on manual.
  - 6.) England will call to confirm that your station is clear and ready for cable start-up.
- c. Putting Cabins on the Mainline
- 1.) When cable is running and all stations are ready, lower the side rails and move the correct number of cabins on to the main rail.  
NOTE: Do not dispatch any cabins until instructed by the England Lead.
  - 2.) When notified by the England Lead, begin dispatching cabins by turning the trip timer to automatic.
  - 3.) Observe the cabins as they enter and leave the station. If you notice anything unusual about a cabin, notify the Lead and remove the cabin from service. Put a red tag on the cabin.
  - 4.) If a lock on a cabin is defective, notify the Lead and remove the cabin from service. Red tag the cabin.
- d. Be in position by opening time.
2. Ride Operation
- a. Slow down and stop incoming cabins at the unloading area.
  - b. Steady the cabin against the guard rail with your leg and hip.  
When unloading, be aware of the next incoming cabin. Use your free arm to prevent incoming cabins from bumping the cabin being unloaded.
  - c. Unlock the cabin by turning the key in a  $\frac{1}{4}$  clockwise turn.

- d. Assist guests out of the cabin as quickly as possible and direct them toward the exit.
  - 1.) Advise guests of slippery conditions when the station is wet.
  - 2.) Caution guests to "Please watch your head and step, and have a nice day."
  - 3.) At times, a guest may have a question to ask you. Politely ask the guest to step out of the cabin, and you will be glad to answer their questions.
- e. Visually inspect the cabins checking for articles left behind.
- f. Push the cabin to the loading position using the vertical supports only, not the black safety rails.
- g. Be careful not to derail cabins or bump them together.
- h. As guests approach the loading area, arrange them into groups.
  - 1.) Allow no more than 4 adults to ride together in one cabin.
  - 2.) One or two small children may be loaded into a cabin with four adults if each guest is able to sit properly in the seat. Overloading the cabins will result in disciplinary action up to and including termination.
  - 3.) Ask groups of one or two to ride with another group explaining that this will reduce waiting time. Do not force groups to ride together.
- i. Steady the cabin against the guard rail with your leg and hip. Hold the door open for the guests.
- j. Assist guests into the cabin cautioning them to "Please watch your head and step, thank you."
- k. No smoking, eating or drinking is allowed on the Skyride.
- l. Close the cabin door.
- m. Move the cabin to the Tripper.
- n. The Tripper should double lock the door:
  - 1.) Insert the key into the lock.
  - 2.) Shake the door to make sure it is closed.
  - 3.) Double lock the door by turning the key counterclockwise.
- o. Inform the guests to "Enjoy your ride."
- p. Gently roll the cabin into the trip. Do not allow the cabin to be thrown into the trip. When the cabin rolls into the trip, the limit switch activates and the cabin is automatically dispatched when a pre-determined time interval has elapsed.

- q. If the automatic trip fails, use the manual trip cord and notify your Attractions Supervisor, Condition B-Call, ext. 3222.
- r. Have guests unload at each station as opposed to riding through to the next station unless there is no line waiting at the next station. Be sure to count every guest riding through by flipping the turnstile arms. Explain to the guests that they are riding through your station because there is no line, and that they may be asked to exit and rejoin the line at the next station.

### 3. Adding Cabins

- a. Reset timers at all stations for the new number of cabins on the line.
- b. The England Lead notifies each station as to how many cabins to add.
- c. Lower the side rail by pulling down on the side rail lever.
- d. Either add all cabins at once, or intersperse them between incoming cabins.
- e. Gently push cabins onto the main rail to avoid derailing any cabins.
- f. Each station Lead must call the England Lead when the specified number of cabins has been added to the main rail.

### 4. Removing Cabins

- a. Coordinate removal of cabins with incoming flow.
- b. Raise and lower the side rail as previously described.
- c. Gently push the cabins onto the side rail to avoid derailing any cabins.
- d. Reset the timers at all stations for the total number of cabins actually in operation.
- e. Each station Lead must call the England Lead to inform him of the removal of the specified number of cabins.

- 5. The addition and removal of cabins, under normal operating procedures, is performed only after the approval of the Attractions Supervisor and is directed by the England Lead. The England Lead will call Operations to confirm the number of cabins in operation when addition or removal of cabins is completed.

### 6. Handicapped Guests

Since the Skyride is a major means of transportation, disabled guests find it useful to reach various areas of the Park. The following procedures were developed to allow ride hosts to better aid all disabled visitors.

- a. Watch for Handicapped Guests approaching the station. Direct them to the ride exit.

- b. When necessary, pull a cabin from the Main Line to aid guests and avoid a backup of cabins.
- c. At no time is a Host/ess allowed to lift a Handicapped Guest into the cabin from the wheelchair or similar device. Hosts/esses may only assist a guest capable of lifting himself or herself from the device or may assist a member of the Handicapped Guest's party who is capable of lifting the guest from the device.
- d. When loading a wheelchair, use a second empty cabin. To fold the chair, pull up on the footrests, and lift up on the center of the seat. Then place the chair in the cabin with the large wheels in first. Place the back and handles of the chair on the floor. Load larger chairs over the side of the cabin.
- e. Using the signal phones, advise the next station of incoming cabins with Handicapped Guests. Give them the cabin number and tell them if the guests will be riding through or unloading. Tell the station if the cabin will need to be siderailed.
- f. One operator is needed to assist in loading and unloading siderailed cabins.
- g. Remember that three members of the party are allowed to ride with the disabled guest.
- h. For larger groups or if an unusual situation should develop, notify your Attractions Supervisor, Condition B-Call, ext. 3222.

#### 7. Additional Procedures

- a. All phones are to be used for business only. Misuse of phones will result in disciplinary action up to and including termination.
- b. Signal phones use the following codes:
  - 1.) 1 ring - England picks up the phone.
  - 2.) 2 rings - France picks up the phone.
  - 3.) 3 rings - Germany picks up the phone.
  - 4.) Continuous ring - All stations pick up the signal phone.
- c. Guests are permitted in the queue lines only, regardless of weather conditions. Guests may not wait in the cabin storage area.
- d. Guests are allowed in other areas only once the ride is closed, but at no time are they permitted near the cable, controls, or parked cabins.
- e. Every cabin, including empty cabins, must be double locked prior to being dispatched from the station.
  - 1.) If a cabin door on an occupied cabin is found to be unlocked, stop the ride immediately using the EMERGENCY STOP.
  - 2.) Notify your Attractions Supervisor immediately, Condition B-Call, ext. 3222.

- 3.) Instruct the guests to try to shut the door. If the lock is double locked and the door is not shut, the guests will be unable to shut the door.
  - a.) Instruct the guests to sit back away from the door.
  - b.) Start the ride only after approval from the Attractions Supervisor.
- f. All Leads and acting Leads are required to notify the Attractions Supervisor if any cabins are improperly locked.
  - 1.) If the situation may lead to the termination of the employee involved, the Lead should notify the Attractions Supervisor immediately, Condition B-Call, ext. 3222.
  - 2.) Any other situation should be called in by the receiving station as a Condition C+, ext. 3330.
  - 3.) If a Lead or acting Lead fails to notify the Attractions Supervisor of any described situation, he risks immediate dismissal.

#### E. EMERGENCY PROCEDURES

##### 1. Inclement Weather

The Skyride operates in rain and light wind; however, the ride shuts down when lightning is present or when wind gusts exceed 20 m.p.h.

NOTE: If a wind alarm sounds, call your Attractions Supervisor, B-Call, ext. 3222. Your Supervisor will notify the Lead if the ride should shut down.

- a. Weather Code 1 - When the England Lead receives the call from the Attractions Supervisor to go Weather 1, he will immediately call France and Germany to inform them of the Weather Code. Initiate the following shutdown procedures:
  - 1.) Turn the trip mechanism to manual from automatic. Do not dispatch any more cabins from any station.
  - 2.) Inform waiting guests that the ride must be shut down, and put up the chain at the head of the queue line to prevent guests from entering the station area.
  - 3.) Unload cabins in front of side rail levers, then move the cabins onto the storage rails two at a time for efficiency.
  - 4.) Be careful not to derail cabins.
  - 5.) When all cabins are in at all stations, notify the England Lead. The England Lead will stop the cable. All stations should then shut off the power supply.
  - 6.) The England Lead will notify the Attractions Supervisor when all cabins are in the station and the Skyride is down. Call Operations, ext. 3222. Tell them that the Skyride is Weather 1.
  - 7.) Record the ride down time on the Daily Ride Status Sheet.

- 8.) The Weather Code 1 is used when it is necessary to shut down the ride immediately (i.e.: an unexpected storm hits the area). This code may also be used for a mechanical problem as a convenient method of implementing a controlled shutdown.
  - 9.) **DO NOT** call the Operations Office for a weather report. Your Attractions Supervisor will keep you informed of weather conditions.
  - b. Weather Code 2 - At times, it may be necessary to close the queue line due to an approaching storm. Your Attractions Supervisor will advise you to go Weather 2.
    - 1.) Close the queue line. Attempt to let all guests waiting ride.
    - 2.) When all stations are clear of guests, initiate a controlled ride shutdown.
    - 3.) When all cabins are in, the England Lead will Notify Operations, ext. 3222, that the Skyride is down.
    - 4.) Weather Code 2 may also be used for a minor mechanical problem which does not require immediate attention (i.e.: a sticking trip).
  - c. Weather Code 3 - The Attractions Supervisor will give instructions to reduce ride capacity by cutting back the number of cabins in operation. When operating 46 cabins, Weather Code 3 indicates reducing the number of cabins to 38. Weather Code 3 signifies an approaching storm, but the expected time of arrival is unknown. By reducing the number of operating cabins to 38, the crews in each station will have more time to unload guests and side rail cabins. The interval between incoming cabins increases from 12 to 17 seconds.
  - d. Ride Shutdown - while the ride is down:
    - 1.) Inform guests waiting in the queue line that there will be a delay in ride operation due to the weather.
    - 2.) Await instructions from your Attractions Supervisor.
    - 3.) When the ride is down, use the time to clean out cabins, sweep the station and queue lines, mulch the outside of the station, and clean the station shed.
    - 4.) Position one Host/ess at the station entrance advising guests in line of the delay and estimated re-start time, if known.
    - 5.) Apologize to guests for the inconvenience. Direct them to other attractions which are open.
2. Uncontrolled Shutdown
- a. Whenever the Skyride shuts down, your prime concern becomes the safety and comfort of the guests.
  - b. Unload all cabins in the station which are not clamped on the cable.
  - c. Inform guests waiting in the queue lines that the Skyride is temporarily shut down.

- d. The Lead stays near the telephones.
- e. One operator proceeds to each end of the station.
  - 1.) Reassure guests on the ride.
  - 2.) Maintain visual observation of all cabins on the cable.
- f. When the problem is corrected, each station Lead will receive instructions on the signal phone from the England Lead as to when to begin loading cabins.
- g. Once the cable restarts, the first one or two cabins may need to be pulled to the unloading area.
- h. Following are three examples of uncontrolled shutdowns:

- 1.) Derailement in Station on Mainline - When a wheel on the carriage assembly leaves the main rail in the station, you will be unable to move the carriage.
  - a.) Push Emergency Stop at England Station.
  - b.) The England Lead will notify Operations, Condition B-1 Uncontrolled, ext. 3222, and the other two stations.
  - c.) The Attractions Supervisor will notify maintenance who will respond and re-rail the cabin. Do not attempt to re-rail it yourself. Once a cabin has been de-railed, it is not to be dispatched from a station until inspected by maintenance. (During a derailment, the clamp mechanism may be forced closed, and if dispatched, the cabin would not properly clamp on the cable thus causing another shutdown.)
- 2.) Safety Shutdown
  - a.) If the automatic safety system shuts down the ride, call the England Lead to inform him of the problem.
  - b.) The England Lead will notify the Attractions Supervisor, Condition B-1 Uncontrolled, ext. 3222.
  - c.) Wait for assistance from Maintenance and Operations personnel.
- 3.) Cable Derailement Indicator in England Station - If a cabin derails, the needle on the derailment indicator will move to the left to read "INTERRUPTION."
  - a.) Call Operations, ext. 3222 Condition A, Interruption alarm.
  - b.) Wait for assistance from Maintenance and Operations personnel.
  - c.) Do not tamper with the derailment indicator.

### 3. Power Failure - Use of Auxiliary Drive Motor

- a. Attempt to call Operations, Condition B-1 Uncontrolled, ext. 3222. If phones are not operable, await the arrival of the Attractions Supervisor.
- b. Follow the procedures for an uncontrolled shutdown.

- c. Maintenance will operate the auxiliary drive to restart if the power will be out for an extended period of time.

4. Auxiliary Drive Motor - Volkswagon Engine

- a. The Engineering Duty Manager decides when to use the VW engine.
- b. Maintenance personnel and Operations Supervisors report to each Skyride station.
- c. The Skyride Supervisor calls the other Attractions Supervisors involved and informs them to switch their radios to Frequency 1.
- d. Keep Park phone clear for Skyride related use only.
- e. The Attractions Supervisor in each station is the only person who may give England the "READY" for that station prior to moving the cable.
- f. When all stations are ready, the Skyride Attractions Supervisor declares a 10-33 on F1 while the VW engine is moving the cable.
- g. There are two types of situations in which the VW may be used:
  - 1.) Reverse the cable in order to back up the cable and unclamp a cabin which is too close to another cabin.
    - a.) The cable is backed up usually 5 - 10" to unclamp the cabin.
    - b.) Once unclamped, hold the cabin back near the trip.
    - c.) Restart the cable on Main drive.
    - d.) Once the main cable reaches full speed, release the cabin being held.
    - e.) In the next station, side rail the cabin which slipped through the trip for maintenance inspection.
    - f.) Send through empty cabins until the cabin which slipped reaches the next station.
    - g.) Resume normal operation once the slipped cabin reaches the next station.
    - h.) At this time, the Skyride Attractions Supervisor lifts the 10-33 on F1.
  - 2.) The second situation in which the VW engine is used is to move the cable forward to remove all guests and cabins to the side rail.
    - a.) NO CABIN MAY BE DISPATCHED WHILE THE CABLE IS BEING MOVED BY THE VW ENGINE.
    - b.) As each cabin enters the station, it will need to be pulled up to the unloading area due to the slow speed of the cabin entering the station.
    - c.) Side rail each cabin after it has been unloaded.
    - d.) When all cabins are off of the cable, the Attractions Supervisor in each station will notify the Attractions Supervisor in England.

- e.) The Supervisor in England notifies the VW operator that the cable is clear. Maintenance then takes over with Operation's personnel offering assistance.
- f.) Once Maintenance turns the ride back to Operations, follow normal start-up procedures.

#### F. CLOSING PROCEDURES

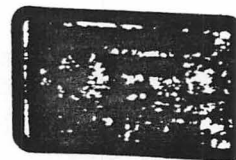
1. At pre-determined closing time, do not allow any more guests into the queue line. Allow only those guests who are already in line to ride.
2. Germany station will keep its queue line open after closing until Security Sweep arrives providing guests with a means of transportation to the front gate.
3. After all guests have exited at all three stations, begin taking cabins off the mainline. The England Lead coordinates this action with the three stations.
4. After all cabins are off the cable with an equal number in each station, each station calls England to confirm "ALL CLEAR."
5. Stop the cable and cut power.
6. Take the final turnstile count making sure the report is neat and accurate.
7. All employees sign out upon completion of their shift. Initial the Sign In/Out Sheet indicating your approval of the time recorded.
8. Each Lead turns in all keys, Daily Attraction Report, Daily Activity Report, Daily Ride Status Sheet, and Incident Reports to the Operations Office promptly after closing. Be sure to bring in accurately totalled time cards and an accurately totalled Sign In/Out Sheet on Sunday nights.



Busch Entertainment Corporation  
ONE OF THE AMUSEMENT BUSCH COMPANIES

**BUSCH GARDENS**  
THE OLD COUNTRY  
WILLIAMSBURG, VA

# First Aid Record



Mode of Admission: ☐ Treated in park  
☒ Ambulatory  
☐ B.G. vehicle  
☐ Other \_\_\_\_\_

Date: 7-10-88 Time: 5:25 PM

Name: S. Grant Carol E Phone: 703-0527 (h) Age: 41  
Address: 46 Chestnut Road Parent of Child: \_\_\_\_\_  
City: NIWAAT State: Delaware Zip: 19713 S.S.# 222-20-5805  
Local Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
Name, Address of person with injured: \_\_\_\_\_

Witnesses: \_\_\_\_\_

☐ Guest  
☐ Employee  
☐ Guest  
☐ Employee

Exact Location: 544 Rd. - Barbours Cross

Allergies: PNC Medicines: Allergy Meds

SUBJECTIVE DATA: Guest stated that as she was sitting in a Sky Ride car, her rt. arm was resting on a rail with her rt. arm resting on a rail when

OBJECTIVE DATA: T \_\_\_\_\_ P \_\_\_\_\_ R \_\_\_\_\_ BP \_\_\_\_\_

Clothes and footwear (soles, heels, etc.): \_\_\_\_\_

Sandals & Shorts

Physical Findings: Noticeable swelling to medial side of rt. elbow, joint tenderness & painful movement  
C.N.S. Intact. Cap. Refill Bright

ASSESSMENT: (R) Elbow contusion - R/D EX

Plan and Implementation: Ice Pack, Soft Cast, Transportation to her POV & went W.C.H.E.R.

Disposition: Time: 5:50  
☒ Hospital WCHER  
☒ Referred ☐ Not Referred  
☐ PVT Transportation  
☐ Ambulance  
☒ Advised of Anheuser-Busch Policy for Emergency Treatment

☐ Returned to park via \_\_\_\_\_  
☐ Home - GR Report Filed (Yes/No)  
☐ Ambulatory  
☒ Transported to vehicle  
☐ Other \_\_\_\_\_  
☐ Taxi \_\_\_\_\_  
Insurance Report Filed (Yes/No) \_\_\_\_\_

Remarks: #20 Mark Pauls & #20 Sandra Steiner not injured  
7/11/88 Contusion & sprain (R) elbow per WCH

Inspection of Site: \_\_\_\_\_  
Weather: Hot, sunny, clear

Information recorded by: Paul Berman - Colleen ENT Treated by: Frank  
Nurse: Monica Reviewed by: Monica

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DEC-6346 8/1/88

Another Sky Ride Graged up Against her  
Catching her Arm (at) between the two Sky Ride  
(on)

# BUSCH GARDENS SKYRIDE

- ★ Remain Seated
- ★ Keep hands and arms inside cabin
- ★ No Smoking
- ★ Swaying or rocking cabin is cause for dismissal from park without refund

For your information the Busch Gardens Skyride consists of 3 riding and unloading stations and travels a distance of over 1 1/2 mile. On occasion the Skyride motion will stop for a short time of time. Should the Skyride stop moving, please remain seated. The ride will resume when you to the next station.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG  
AND JAMES CITY COUNTY

CAROL SIBERT BREGEL,

Plaintiff,

v.

AT LAW NO. 5894

BUSCH ENTERTAINMENT CORPORATION,

Defendant.

NOTICE OF APPEAL

TAKE NOTICE that the plaintiff, Carol Sibert Bregel, by counsel, pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, hereby gives notice of appeal from the Final Order entered on May 6, 1993.

A transcript of testimony and other incidents of trial will hereafter be filed in the office of the Clerk pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia.

CAROL SIBERT BREGEL,

By \_\_\_\_\_  
Of Counsel

Robert L. Mills  
RUTTER & MONTAGNA  
720 New Atlantic Bank Building  
415 St. Paul's Boulevard  
Norfolk, Virginia 23510  
(804) 622-5000

CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of June, 1993, a true copy of the foregoing Notice of Appeal was mailed to all counsel of record.

\_\_\_\_\_  
Robert L. Mills

### ASSIGNMENTS OF ERROR

- I. IT WAS ERROR FOR THE COURT TO FAIL TO INSTRUCT THE JURY ON THE STANDARD OF CARE FOR A COMMON CARRIER.
- II. IT WAS ERROR FOR THE COURT TO INSTRUCT THE JURY ON THE ISSUE OF CONTRIBUTORY NEGLIGENCE.
- III. IT WAS ERROR FOR THE COURT TO DENY THE MOTION FOR MISTRIAL AFTER THE JURY HAD INDICATED ON MULTIPLE OCCASIONS THAT THEY WERE DEADLOCKED.
- IV. IT WAS ERROR FOR THE COURT TO DENY THE PLAINTIFF'S MOTION TO SET ASIDE THE JURY VERDICT AND AWARD A NEW TRIAL.

### QUESTIONS PRESENTED

- I. WAS IT ERROR FOR THE COURT TO FAIL TO INSTRUCT THE JURY ON THE STANDARD OF CARE FOR A COMMON CARRIER?
- II. WAS IT ERROR FOR THE COURT TO INSTRUCT THE JURY ON THE ISSUE OF CONTRIBUTORY NEGLIGENCE?
- III. WAS IT ERROR FOR THE COURT TO DENY THE MOTION FOR MISTRIAL AFTER THE JURY HAD INDICATED ON MULTIPLE OCCASIONS THAT THEY WERE DEADLOCKED?
- IV. WAS IT ERROR FOR THE COURT TO DENY THE PLAINTIFF'S MOTION TO SET ASIDE THE JURY VERDICT AND AWARD A NEW TRIAL?