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IN THE CIRCUIT COURT OF THE 7TH JUDICIAL  
CIRCUIT IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO. 2017 CA 000203

IMAD MANSOUR and GAIL MANSOUR,

Plaintiffs,

vs.

CAPTAIN'S BAIT, TACKLE & BBQ, LLC and  
COUNTY OF FLAGLER,

Defendants.

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**DEFENDANT CAPTAIN'S BAIT, TACKLE & BBQ'S MOTION IN LIMINE**

Defendant, CAPTAIN'S BAIT, TACKLE & BBQ, by and through its undersigned counsel, moves this Honorable Court for the entry of an Order for a ruling in limine before the selection of the jury on the following evidence:

1. To exclude Plaintiff Gail Mansour from testifying about a statement made by an EMS worker that he was surprised no one had not slipped before. Plaintiff, Gail Mansour Deposition taken on August 29, 2017, Pg. 35:6-12. Exhibit A. This statement is hearsay under Fla. Evidence Code 801(1)(c) and should be excluded under Florida Evidence Code Section 802.

2. To exclude Michael Dickson, employee of Co-defendant Flagler County, from testifying as to the contents of a text message he believed he received from Chris Herrera, co-owner of Captain's Bait, Tackle & BBQ. Mr. Dickson testified in his deposition that he believed he received a text message "that he *believed* stated they [Captain's] were applying this non-skid tape to the steps." Depo. Michael Dickson, taken on March

8, 2018, Pg. 27:8-22. See Exhibit B. When Mr. Dickson testified, he said he could not know with accuracy the full contents of this text message. See Depo. Of Michael Dickson, Pg. 45 – 46. Mr. Dickson's testimony about this text message should be excluded from testimony at trial. First, this text message is hearsay under Fla. Evidence Code 801(1)(c) and should be excluded under Florida Evidence Code Section 802. Second, the testimony about the contents of the testimony should be excluded under the Best Evidence Rule. McKeehan v. State, 838 So. 2d 1257, 1260–1261 (Fla. 5th DCA 2003) (Error to permit detective to testify to contents of a surveillance tape, when tape was not introduced. "In short, unless otherwise excused by the evidence code, the original must be produced unless it is shown to be unavailable for a reason other than the serious fault of the proponent. This rule is predicated on the principle that if the original evidence is available, that evidence should be presented to ensure accurate transmittal of the critical facts contained within it.").

3. Exclude Plaintiff counsel from soliciting testimony that Plaintiff is not malingering. Parker v. Hoppock, 695 So. 2d 424, 427 (Fla. 4th DCA 1997).

4. Exclude Plaintiff counsel from eliciting testimony that improperly bolsters Plaintiff's credibility. This Court has long recognized that "[i]t is improper to bolster a witness' testimony by vouching for his or her credibility." Gorby v. State, 630 So.2d 544, 547 (Fla.1993); Williamson v. State, 994 So. 2d 1000, 1013 (Fla. 2008).

5. Exclude all evidence of the application of non-skid tape on the steps where Plaintiff fell. The non-skid tape was applied at some point after Plaintiff's accident. To date, there is no evidence of who applied the non-skid tape to the steps. The application of non-skid tape is a subsequent remedial measure and should be excluded under Florida

Evidence Code Section 90.407. In the negligence count, the rule of exclusion clearly prohibits use of subsequent changes as a tacit admission of prior negligence. Voynar v. Butler Mfg. Co., 463 So. 2d 409, 412 (Fla. 4th DCA 1985)

6. To admit into evidence, testimony there have been no prior slip and fall accidents on the subject steps. It is well recognized that a no-accident history of the location of a premises liability case may be admitted into evidence for a variety of purposes including the central one of showing that the area was not in fact dangerous or defective. Lewis v. Sun Time Corp., 47 So. 3d 872, 873 (Fla. 3d DCA 2010) (citing Springtree Props., Inc. v. Hammond, 692 So.2d 164, 165 (Fla.1997) (considering absence of similar accidents in determining whether fact issues remained)).

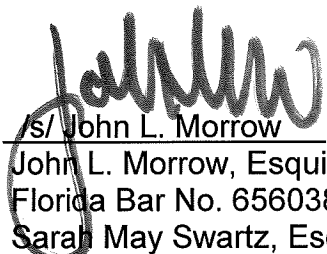
WHEREFORE Defendant, CAPTAIN'S BAIT, TACKLE & BBQ, moves this Court for an Order granting this Motion in Limine and any further relief as deemed necessary and proper by the Court.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been furnished by service through the eportal to Anna E. Engelman, Esquire, Bell & Roper, P.A., 2816 East Robinson Street, Orlando, Florida 32803, Attorneys for Flagler County, aengelman@bellroperlaw.com,

siddle@bellroperlaw.com; Michael D. Sechrest, Esq., Warner, Sechrest & Butts, P.A.,  
5200 S.W. 91st Terrace, Suite 101, Gainesville, FL 32608, Attorney for Plaintiffs on  
this 16 day of May, 2019.

CONROY SIMBERG  
Attorney for Defendant Captain's Bait, Tackle & BBQ,  
LLC  
Two South Orange Avenue, Suite 300  
Orlando, FL 32801  
Telephone: (407) 649-9797  
Facsimile: (407) 649-1968  
Primary Email: eserviceorl@conroysimberg.com  
Secondary Email: jmorrow@conroysimberg.com

By:   
/s/ John L. Morrow  
John L. Morrow, Esquire  
Florida Bar No. 656038  
Sarah May Swartz, Esquire  
Florida Bar No. 99654

Gail Mansour  
August 29, 2017

1 IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
2 OF FLORIDA, IN AND FOR FLAGLER COUNTY

3 Case No.: 2017-CA-000203

4 IMAD MANSOUR and GAIL MANSOUR,

5 Plaintiffs,

6 CAPTAIN'S BAIT, TACKLE & BBQ, LLC;  
7 and COUNTY OF FLAGLER,

8 Defendants.  
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13 DEPOSITION OF GAIL MANSOUR

14 Taken on Behalf of the Defendants

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16 DATE TAKEN: August 29, 2017

17 TIME: 1:50 P.M. - 3:16 P.M.

18 PLACE: U.S. Legal Support  
19 444 Seabreeze Boulevard  
20 Daytona Beach, Florida

21  
22  
23  
24 Stenographically Reported by Deborah Warren  
25 Registered Professional Reporter

U.S. LEGAL SUPPORT  
(813) 876-4722



1 before the EMTs.

2           Somebody, a young man, dark hair, when we were  
3 going over what had happened -- I said it was the EMT, I  
4 thought, because I think he was the one questioning me  
5 for questions about my husband.

6           But I was saying -- and on the steps -- and  
7 the steps, you know, they're all wet. I was upset and  
8 stuff like that. And he looked and his comment to me,  
9 whoever it was -- and like I said, the exact words I  
10 can't say. I can only say now what's in my head. It's  
11 like, oh, yes, that's -- you know, I can see that, you  
12 know, I'm surprised it hadn't happened sooner.

13           Q. Did you get the name of this person?

14           A. No. Like I said, no.

15           Q. Was he in uniform?

16           A. I really -- I can't -- that's what I said, I  
17 can't say who it was. It was somebody, though, who  
18 initiated the talking with me.

19           Q. Other than this man, did you speak with anyone  
20 else outside of your party of four --

21           A. No.

22           Q. -- at Captain's that day?

23           A. No.

24           Q. Did you speak with any employee at Captain's?

25           A. No.

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IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA  
CASE NUMBER: 2017-CA-000203

COPY

IMAD MANSOUR AND  
GAIL MANSOUR, HIS WIFE,

Plaintiffs,

vs.

CAPTAIN'S BAIT, TACKLE & BBQ, LLC,  
AND COUNTY OF FLAGLER,  
A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,

Defendants.

DEPOSITION OF MICHAEL DICKSON, SR.

Taken at the Instance of the Plaintiffs

DATE: Thursday, March 8, 2018  
TIME: 10:03 a.m. until 11:37 a.m.  
PLACE: Southern Reporting Company  
145 City Place  
Palm Coast, Florida  
REPORTED BY: G. BROOKE TOFT  
Court Reporter and Notary Public



1 yellow stripes get on there, if you know?

2 A. I believe an employee from Captain's installed  
3 them.

4 MR. ELTON: I'll mark that.

5 (Whereupon, Plaintiffs' Exhibit 5 was marked  
6 for identification.)

7 BY MR. ELTON:

8 Q. What is your basis for belief someone from  
9 Captain's BBQ installed them?

10 A. I received a text, and I don't know what date,  
11 about the slip-and-fall because they were noticed with a  
12 lawsuit at Captain's. And I believe within that text  
13 they said they were applying this nonskid tape to the  
14 steps.

15 Q. Was that text from Michael Goodman or from the  
16 manager, or do you recall who it was from?

17 A. Chris Herrera.

18 Q. And Mr. Herrera said they were going to apply  
19 the nonslip tape or that they had already?

20 MS. SWARTZ: Form.

21 THE WITNESS: I don't recall which way it was.

22 BY MR. ELTON:

23 Q. Are there any other texts, e-mails or written  
24 documents that you're aware of that exist referring to  
25 adding that nonslip tape with the yellow stripes?



1 A. No.

2 Q. Now, when you said you received a text message,  
3 did you say that you believe you received that from Chris  
4 Herrera?

5 A. That's who I believe it came from.

6 Q. So, as you sit here today, do you know with 100  
7 percent accuracy that's who you received the text message  
8 from?

9 A. No.

10 Q. And was it a text message or an e-mail?

11 A. Text message.

12 Q. And what was your phone number at the time you  
13 received this text message?

14 A. (386)585-2525.

15 Q. And is that your personal cell phone number?

16 A. It's the county cell phone.

17 Q. Do you know who the cell phone provider is?

18 A. No.

19 Q. And you just checked your phone. Is that the  
20 same number you currently have?

21 A. Correct.

22 Q. Did you take any screenshots of this message  
23 that you believe came from Chris Herrera?

24 A. No.

25 Q. Do you know approximately when you received

1 that text message?

2 A. I do not.

3 Q. Is that the same phone you currently have as at  
4 the time you received the text message?

5 A. Different phone.

6 Q. Had you ever received any other text messages  
7 from Chris Herrera regarding Captain's Bait, Tackle &  
8 BBQ?

9 A. Yes.

10 Q. About how many?

11 A. Five or six.

12 Q. And what were the nature of those text  
13 messages?

14 A. Typically air condition issues.

15 Q. What was wrong with the air conditioning?

16 A. They're leaking, if they're not cooling  
17 properly, different things like that.

18 Q. And this text message that you believe you  
19 received from Chris Herrera, is that the only text  
20 message that you received that had nothing to do with the  
21 air conditioner, or were there any other subjects that  
22 were referenced in any of the text messages you've  
23 received from Chris Herrera?

24 A. I probably received one about a boat being  
25 parked in the basin. Derelict dory being off of a