

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

IMAD MANSOUR and
GAIL MANSOUR, his wife,

CASE NO.: 2017-CA-000203

Plaintiffs,

v.
CAPTAIN'S BAIT, TACKLE & BBQ, LLC,
and COUNTY OF FLAGLER, a political
subdivision of the State of Florida,

Defendants.

JOINT PRE-TRIAL STATEMENT¹

Plaintiffs Imad and Gail Mansour, and Defendants Captain's Bait, Tackle & BBQ, LLC and County of Flagler, pursuant to the Court's *Order Scheduling Jury Trial and Directing Pretrial Procedure*, serve the following Joint-Pre-Trial Statement:

1. Statement of the Case

Plaintiffs, Imad and Gail Mansour, contend that on August 4, 2016, Imad Mansour was walking down wooden steps as he exited Captain's Bait, Tackle & BBQ, and slipped and fell due to mildew and water accumulation. Plaintiffs contend Captain's and Flagler County were each negligent in maintaining the steps in a reasonably safe condition, and to warn of such a condition.

Captain's and Flagler County deny they were negligent and contend Imad Mansour was himself negligent and was the cause of his alleged fall and alleged injuries.

¹ At the time of filing, Plaintiffs and Defendant Captain's Bait, Tackle & BBQ, have tentatively reached a settlement. The settlement has not been finalized, therefore Captain's is included herein, with the exception of its annotated witness list and objections to exhibits.

2. Statement of Admitted Facts
 - a. Flagler County owns the property located at 5862 North Oceanshore Blvd., Palm Coast, Florida.
 - b. Captain's leases the property located at 5862 North Oceanshore Blvd., Palm Coast, Florida.
 - c. Plaintiffs Imad and Gail Mansour were invitees on the property.
3. Issues to be Raised by the Pleadings that are Abandoned – Not applicable
4. Issues of Fact to be Tried
 - a. Was there negligence on the part of Captain's which was the legal cause of loss, injury, or damage to Imad Mansour?
 - b. Was there negligence on the part of Flagler County which was the legal cause of loss, injury, or damage to Imad Mansour?
 - c. Was there negligence on the part of Captain's which was the legal cause of loss, injury, or damage to Gail Mansour?
 - d. Was there negligence on the part of Flagler County which was the legal cause of loss, injury, or damage to Gail Mansour?
 - e. Was there negligence on the part of Imad Mansour which was the legal cause of his loss, injury, or damage?
 - f. The loss, injuries, or damages of Imad Mansour, if any.
 - g. The loss, injuries, or damages of Gail Mansour, if any.
5. Undisposed issues of law, procedure, or evidence
 - a. Flagler County's Motion in Limine filed April 16, 2019
 - b. Captain's Motion in Limine to Limit/Exclude Evidence of Plaintiff's Past Medical Charges filed May 15, 2019
 - c. Captain's Motion in Limine filed May 16, 2019
 - d. Plaintiffs' Motion in Limine filed May 17, 2019

6. Special damages claimed by each party
 - a. Plaintiff – \$39,016.10 past medical expenses²
 - b. Captain’s – None
 - c. Flagler County – None
7. Annotated copy of each party’s exhibit list showing objections –
 - a. Plaintiff’s objections are attached as Exhibit A.
 - b. Flagler County’s objections are attached as Exhibit B.
8. Annotated copy of each party’s witness list –
 - a. Plaintiff’s witness list is attached as Exhibit C.
 - b. Flagler County’s witness list is attached as Exhibit D.
9. Number of peremptory challenges agreed upon or requested, if no agreement is reached, if a jury trial.³
 - a. Plaintiff – 6, +2 for alternate
 - b. Captain’s – 3, +1 for alternate
 - c. Flagler County – 3, +1 for alternate
10. Estimated of number of days for trial – Four (4) days
11. Any other agreed matters
 - a. Medical records custodians are waived; all other objections to any records intended to be offered are reserved.
 - b. Witnesses may be taken out of turn.
 - c. Copies in lieu of originals, if legible, true, and accurate.

² Defendants object to Plaintiff Imad Mansour presenting his full medical bills at trial as he is a Medicare beneficiary, as asserted in their respective Motions in Limine.

³ The parties request a venire of at least 35 jurors if Captain’s remains a defendant in the case at the time of trial. To the extent the settlement between Plaintiffs and Captain’s is finalized, the peremptory challenges should change to three (3) per side, plus one (1) alternate each.

Dated: 05/24/2019

Dated: 05/24/2019

/s/ Michael D. Sechrest
Michael D. Sechrest, Esquire
Florida Bar No.: 527661
Warner, Sechrest & Butts, P.A.
5200 South West 91st Terrace, Suite 101
Gainesville, FL 32608
Telephone: (352) 373-5922
E-mail: sechrest@fbswlaw.com
Attorney for Plaintiffs

/s/ Anna E. Engelman
Anna E. Engelman, Esquire
Florida Bar No.: 016517
Bell & Roper, P.A.
2707 E. Jefferson Street
Orlando, Florida 32803
Telephone: 407-897-5150
E-mail: aengelman@bellroperlaw.com
Attorney for Defendant

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PLAINTIFF'S PRELIMINARY OBJECTIONS TO FLAGLER COUNTY'S EXHIBIT LIST

1. Plaintiff's medical and radiological records from all providers and/or Records Custodians listed in the County's Witness List above. OBJECT TO RELEVANCE OF RECORDS PRIOR TO DOI. RESERVE TO OBJECT ON PRIVACY ISSUES SUCH AS SOCIAL SECURITY NUMBER.

2. Plaintiff's pharmacy records from all providers and/or Records Custodians listed in the County's Witness List above. OBJECT TO RELEVANCE OF RECORDS PRIOR TO DOI. RESERVE TO OBJECT ON PRIVACY ISSUES SUCH AS SOCIAL SECURITY NUMBER.

3. Any diagnostic test or pathology slides. OBJECT TO RELEVANCE OF RECORDS PRIOR TO DOI. RESERVE TO OBJECT ON PRIVACY ISSUES SUCH AS SOCIAL SECURITY NUMBER.

4. Plaintiff's records from Social Security Administration. OBJECT TO RELEVANCE OF RECORDS PRIOR TO DOI. RESERVE TO OBJECT ON PRIVACY ISSUES SUCH AS SOCIAL SECURITY NUMBER.

5. Plaintiff's records from Medicare. OBJECT TO RELEVANCE OF RECORDS PRIOR TO DOI. RESERVE TO OBJECT ON PRIVACY ISSUES SUCH AS SOCIAL SECURITY NUMBER.

6. Records of Expert Dr. Kenneth Hawthorne. OBJECTION HEARSAY AND PREDICATE.

7. Documents, medical literature, illustrations, films, computer recreations, and other material used by experts in rendering their opinions and testimony. OBJECTION HEARSAY AND IMPROPER BOLSTERING.

8. All deposition transcripts and exhibits in this matter. OBJECT TO USE BEYOND THOSE ALLOWED BY RULES OF CIVIL PROCEDURE AND PROPER IMPEACHMENT TECHNIQUES.

9. Any and all witness statements taken in this matter written or oral. OBJECT TO HEARSAY STATEMENTS AND IMPROPER IMPEACHMENT.

10. All pleadings and discovery in this matter, including Plaintiffs' Answers to all Interrogatories and Responses to Requests to Produce. NO OBJECTION.

11. Photographs of Plaintiff Imad Mansour's sandals worn on alleged incident date. NO OBJECTION WITH PROPER PREDICATE.

12. Lease agreement and all amendments between Flagler County and Captain's Bait, Tackle & BBQ, LLC. NO OBJECTION.

13. Screen enclosure plans – Captain's Construction. NO OBJECTION.

14. Deck expansion plans – Captain's Construction. NO OBJECTION.

15. County Permit History. NO OBJECTION.

16. Permit History – Captain's Construction. NO OBJECTION.

17. Certificate of Occupancy - Captain's Construction. NO OBJECTION.

18. Photographs of subject steps. NO OBJECTION.

19. Anatomical charts, diagrams or models used as demonstrative aids. RESERVE OBJECTIONS

20. Any and all x-rays, MRI's or other photographic materials of the Plaintiff. OBJECT TO RELEVANCE OF RECORDS PRIOR TO DOI. RESERVE TO OBJECT ON PRIVACY ISSUES SUCH AS SOCIAL SECURITY NUMBER.

21. Any and all applicable statutes and ordinances. RESERVE OBJECTION TO RELEVANCE

22. Any and all models and charts, diagrams, visual aids, or other renderings, including but not limited to: RESERVE AS TO ALL

a. Enlargement of photographs of alleged incident scene;

b. Enlargement of plaintiff's pre-accident medical records;

c. Enlargement of plaintiff's post-accident medical records;

d. Enlargement of excerpts of plaintiff's deposition testimony.

e. Power Point presentation(s).

23. Any and all impeachment or rebuttal exhibits. RESERVE

24. All exhibits disclosed by any of the parties. RESERVE

25. All exhibits disclosed after the date of service of this list upon proper notice to all parties.
NA

26. All exhibits, reports to be prepared and/or used by any of the parties' expert witnesses.
RESERVE

27. The County reserves the right to amend its Exhibit List at a later time upon notice to
Plaintiffs and Co-Defendant. RESERVE

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Defendants.

**DEFENDANT FLAGLER COUNTY'S OBJECTIONS
TO PLAINTIFFS' TRIAL EXHIBITS**

Defendant, Flagler County, objects to plaintiffs' trial exhibits as follows:

<u>Plaintiff's Exhibit</u>	<u>County's Objection</u>
Lease between Defendants signed August 2011	None
6 Photos of Captain's BBQ north steps taken by Mr. Elton 8/5/2016	Objection to the extent the photographs do not depict the alleged condition as it was on the alleged incident date
Photos of steps taken by Mr. Elton on 9/20/2017	Relevance; the photographs were taken over a year after alleged incident, and do not depict the alleged condition of the steps on the incident date; and objection to the extent the photographs depict subsequent remedial measures.
Photos of steps taken by Roman Yurkiewicz on 9/1/2016	Relevance; the photographs were taken almost a month after the alleged incident, and do not depict the alleged condition of the steps on the incident date.
Captains' BBQ website photo of building	Relevance to the extent the website photograph does not depict the building and surrounding areas as they were on the alleged incident date.
Photo of steps Exhibit 1 to Mansour's depo	Objection to extent photograph does not

	depict the steps as they were on the alleged incident date, or includes evidence of subsequent remedial measures
Photo of ramp and front door, Exhibit 2 to Mansour's depo	None
9 Photos of Mansour lifting and playing with grandsons 2015-2016 before injured	Cumulative
2 Photos of Mansour holding large fish	None
2 Photos of Mansour at pyramids	None
Photo of Mansour's disabled parking permit	None to the extent Plaintiffs establish the necessary foundation
Photo of Mansour's shoes	None, to the extent the photographs are of shoes Mr. Mansour was wearing on the alleged incident date. The County otherwise preserves any available objections.
Mansour's shoes	None, to the extent the shoes are those Mr. Mansour was wearing on the alleged incident date, and depict the condition they were in on that date. The County otherwise preserves any available objections.
Photo of Mansour's shorts	None, to the extent the photographs are of the shorts Mr. Mansour was wearing on the alleged incident date, and depict the condition they were in on that date. The County otherwise preserves any available objections.
Architect's plans for Captain's BBQ building renovation dated 8/1/2011	None
Dickson's drawing of Captain's BBQ showing north steps, Dickson depo Exhibit 3	None
Defendants' Answers to Interrogatories	Objection to the extent any answers reference inadmissible material, including but not limited to subsequent remedial measures and insurance available to Defendants.
Florida Building Code, Section 1009.9	None to the extent Plaintiffs establish the necessary foundation and it is the section in effect on the alleged incident date. The County otherwise preserves any available objections.
Roman Yurkiewicz C.V.	Hearsay; cumulative
Roman Yurkiewicz project list	Not yet produced. The County preserves any available objections.

Florida Hospital Oceanside records and CT of 8/4/2016	None
Florida Hospital Oceanside discharge instructions given to Plaintiff on 8/4/2016	None
Orthopaedic Institute x-rays taken 8/5/2016	None
Orthopaedic Institute Qswestry Low Back Questionnaire filled out by Mansour on 12/21/2016	None
Orthopaedic Institute therapist's progress notes from 11/15/2016 to 12/21/2016	None
E-mail of 12/28/2017 from Herrera to Dickson regarding storage room and kitchen floor maintenance	Relevance; the e-mail is dated over a year and five months after the alleged incident and is unrelated to the subject steps.
E-mail of 8/27/2017 from Herrera to Dickson regarding water spigot leak	Relevance; the e-mail is dated over a year after the alleged incident and is unrelated to the subject steps.
Dr. Kinard's C.V.	Hearsay; cumulative
Dr. Berk's C.V.	Hearsay; cumulative
Florida Hospital Memorial bill of 8/4/2016	Mr. Mansour is a Medicare beneficiary, and therefore can only present the amount Medicare paid in past medical expenses at trial.
The Orthopaedic Institute current bill	Mr. Mansour is a Medicare beneficiary, and therefore can only present the amount Medicare paid in past medical expenses at trial.
The Orthopaedic Institute records of co-pays and mileage	None
Quest Diagnostics bill of 8/8/2016	Mr. Mansour is a Medicare beneficiary, and therefore can only present the amount Medicare paid in past medical expenses at trial.
Publix receipts for brace and prescriptions	Mr. Mansour is a Medicare beneficiary, and therefore can only present the amount Medicare paid in past medical expenses at trial. If these items were paid through Medicare, only the amount paid should be admitted. Notwithstanding, objection to the extent the current bill or lien includes unrelated medical treatment.
Thoracic spine model	Not yet produced. The County preserves any available objections.
The Orthopaedic Institute records	None other than the objections noted above.
Two photographs of Plaintiff using a walker	Not yet produced. The County

	preserves any available objections.
Summary of medical bills	Mr. Mansour is a Medicare beneficiary, and therefore can only present the amount Medicare paid in past medical expenses at trial.
Wes Hoy C.V.	Hearsay; cumulative
Composite of medical records	Not yet produced. The County preserves any available objections.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Florida Courts E-Filing Portal on this 24th day of May, 2019, to Michael D. Sechrest, Esq., Warner Sechrest & Butts, P.A., 5200 S.W. 91st Terrace, Suite 101, Gainesville, FL 32608 at sechrest@fbswlaw.com and ltraino@fbswlaw.com.

/s/ Anna E. Engelman

Michael J. Roper, Esquire
Florida Bar No.: 0473227
Anna E. Engelman, Esquire
Florida Bar No.: 016517
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2707 E. Jefferson Street
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Attorneys for Defendant, *Flagler County*

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Defendants.

PLAINTIFF'S ANNOTATED WITNESS LIST

Pursuant to the order for pretrial conference, Plaintiff notifies all parties that they may call the following non-expert witnesses:

1. Plaintiff Imad Mansour. WILL CALL.
2. Plaintiff Gail Mansour WILL CALL.
3. Dennis & Lynn Tull. WILL CALL.
4. Dr. Kinnard, Orthopedic Institute. WILL CALL
5. Dr. Berk, Orthopedic Institute. MAY CALL
6. Wes Hoy, Expert c/o counsel. WILL CALL
7. Michael Dickson, c/o Anna Engelman, Bell & Roper, P.A., 2707 E. Jefferson St., Orlando, FL 32803. MAY CALL
8. Flagler County Records Custodian of architect's plans and lease c/o Anna Engelman. MAY CALL UNLESS INCLUDED IN WAIVED CUSTODIANS.
9. Matthew Morgan, EMT, Flagler Fire Rescue, c/o Anna Engleman. MAY CALL
10. Michael Goodman, c/o Sarah Swartz, Conroy Simberg, Two South Orange Ave., Suite 300, Orlando, FL 32801. MAY CALL.
11. Grace Goodman, c/o Sarah Swartz. MAY CALL
12. Chris Herrera, c/o Sarah Swartz. MAY CALL
13. Brandon DeOlivera c/o Sarah Swartz. MAY CALL

EXHIBIT C

14. Robert W. Elton, to testify only that he took photos of subject steps on 8/5/16, pursuant to Fla Bar Rule 4 – 3.7 “Lawyer as Witness.” MAY CALL
15. Dr. Kenneth Hawthorne c/o Anna Engelman. MAY CALL
15. All medical providers/treaters. MAY CALL PRIMARY CARE and other providers as necessary to present evidence of past and future treatment and reasonableness/necessity of bills.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed through the ePortal Filing System this ____ day of May 2019 and provided to all parties of record.

WARNER, SECHREST & BUTTS, P.A.

/s/ Michael D. Sechrest

Michael D. Sechrest, Esq.

Florida Bar No.: 0150710

5200 S.W. 91st Terrace, Suite 101

Gainesville, FL 32608

(352) 373-5922

(352) 373-5921 FAX

Attorneys for Plaintiff

Designated E-mail Addresses:

Sechrest@fbswlaw.com

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DEFENDANT COUNTY OF FLAGLER'S WITNESS LIST AND EXHIBIT LIST

(Annotated: Highlighted names reflect witnesses who will or may be called.)

Defendant, COUNTY OF FLAGLER ("County"), pursuant to this Court's Order Setting
Jury Trial, Requiring Mediation and Directing Pre-Trial Procedure, serves its Witness and Exhibit
List in the above-styled case as follows:

WITNESS LIST

1. **Imad Mansour**
c/o Robert W. Elton, Esquire
1951 W. Granada Blvd.
Ormond Beach, FL 32174-4834
2. **Gail Mansour**
c/o Robert W. Elton, Esquire
1951 W. Granada Blvd.
Ormond Beach, FL 32174-4834
3. Mr. Dennis Tull
5 Julip Lane
Flagler Beach, FL 32136
4. Mrs. Lynn Tull
5 Julip Lane
Flagler Beach, FL 32136

5. Mrs. Marlene Hawkins
Ormond Beach, FL
6. Mr. Rod Hawkins
Ormond Beach, FL
7. Mr. Ken Celli
Alachua, FL
8. **Mike Goodman**
c/o John L. Morrow, Esquire and Sarah May Swartz, Esquire
Conroy Simberg
Two S. Orange Avenue, Suite 300
Orlando, FL 32801
9. **Chris Herrera**
c/o John L. Morrow, Esquire and Sarah May Swartz, Esquire
Conroy Simberg
Two S. Orange Avenue, Suite 300
Orlando, FL 32801
10. **Brandin Deolivera**
c/o John L. Morrow, Esquire and Sarah May Swartz, Esquire
Conroy Simberg
Two S. Orange Avenue, Suite 300
Orlando, FL 32801
11. **Michael Dickson, Sr., Assistant Director**
General Services Department
Flagler County
c/o Bell & Roper, P.A.
2707 E. Jefferson Street
Orlando, Florida 32803
12. Matthew Morgan, EMT
John Krall, EMT
Jason Forte, EMT
Flagler County Fire Rescue
1769 E. Moody Blvd., #3
Bunnell, Florida 32110

13. Dr. Lana Elder
Dr. James Hsiao
Florida Hospital Oceanside
c/o Fla. Hosp. Memorial Medical Center
301 Memorial Medical Parkway
Daytona Beach, FL 32117
14. **Richard Kinard, M.D.**
James Berk, M.D.
Chris Follanius, PT
Lauren Tomlinson, PTA
The Orthopaedic Institute
4500 W. Newberry Road
Gainesville, FL 32607
15. Bruce K. Branin, D.O.
Alliance Family Physicians
4611 N.W. 53rd Avenue
Gainesville, FL 32653
16. Prathima Reddy, M.D.
Robert Valentine, M.D.
Interventional Medical Associates, LLC
6821 N.W. 11TH Place
Gainesville, FL 32605
17. Ronald Lee, M.D.
Digestive Disease Associates
6400 Newberry Road, Suite 302
Gainesville, FL 32605
18. Bret N. Wiechmann, M.D.
Doctor's Imaging Group
6716 N.W. 11th Place
Gainesville, FL 32605
19. Kenneth B. Hawthorne Jr., M.D.
Office of Kenneth B. Hawthorne Jr., M.D., P.A.
106 N. Old Kings Road, Suite E
Ormond Beach, FL 32174
(County's Expert Witness)
20. Representative and/or Records Custodian
Dr. Manuel F. Regalado
4343 W. Newberry Road, Suite 15
Gainesville, FL 32607

21. Representative and/or Records Custodian
Florida Hospital Oceanside
c/o Fla. Hosp. Memorial Medical Center
301 Memorial Medical Parkway
Daytona Beach, FL 32117
22. Representative and/or Records Custodian
Mammography & Ultrasound Imaging Center
7550 W. University Avenue, Suite A
Gainesville, FL 32607
23. Representative and/or Records Custodian
Digestive Disease Associates
6400 Newberry Road, Suite 302
Gainesville, FL 32605
24. Representative and/or Records Custodian
Surgical Group of Gainesville
1143 N.W. 64th Terrace
Gainesville, FL 32605
25. Representative and/or Records Custodian
Dr. Cristoforo Cama
1179 N.W. 64th Terrace
Gainesville, FL 32605
26. Representative and/or Records Custodian
CVS Pharmacy
c/o Legal Department
One CVS Drive
Woonsocket, RI 02895
27. Representative and/or Records Custodian
Publix Pharmacy
3300 Publix Corporate Parkway
Lakeland, FL 33811
28. Representative and/or Records Custodian
Wal-Mart Pharmacy
702 S.W. 8th Street, MS #0215
Bentonville, AR 72716-0215
29. Representative and/or Records Custodian
United Healthcare of Florida, Inc.
3803 N. Elm St., Suite 400
Greensboro, NC 27455

30. Representative and/or Records Custodian
Optum Subrogation Services
MN102-0300
11000 Optum Circle
Eden Prairie, MN 55344
31. Representative and/or Records Custodian
NGHP Recovery
Coordination of Benefits & Recovery
P.O. Box 138832
Oklahoma City, OK 73113
32. Representative and/or Records Custodian
GEICO/Florida Claims
3535 W. Pipkin Road
Lakeland, FL 33811
33. Representative and/or Records Custodian
Quest Diagnostics
500 Plaza Drive
Secaucus, NJ 07094
34. Representative and/or Records Custodian
North Florida Regional Medical Center
6500 W. Newberry Road
Gainesville, FL 32605
35. Representative and/or Records Custodian
North Florida Endoscopy
6400 W. Newberry Road, Suite 201
Gainesville, FL 32605
36. Representative and/or Records Custodian
Flagler County Fire Rescue
1769 E. Moody Blvd., #3
Bunnell, Florida 32110
37. Representative and/or Records Custodian
Alliance Family Physicians
4611 N.W. 53rd Avenue
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Gainesville, FL 32605
40. Representative and/or Records Custodian
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6716 N.W. 11th Place
Gainesville, FL 32605
41. Representative and/or Records Custodian
Invision N. Florida Outpatient Imaging
6605 N.W. 9th Blvd.
Gainesville, FL 32605
42. Representative and/or Records Custodian
Bogdanovski Family Practice
909 Sterthaus Drive
Ormond Beach, FL 32174
43. Representative and/or Records Custodian
Medicare/First Coast Service Options
44. Representative and/or Records Custodian
Social Security Administration
45. Any and all Records Custodians.
46. Without waiving any objections thereto, all witnesses disclosed by any of the parties.
47. Without waiving any objections thereto, all expert witnesses disclosed by any of the parties.
48. Any future CME Physician(s).
49. **All rebuttal witnesses.**
50. All witnesses disclosed after the date of service of this list upon proper notice to all parties.

51. The County reserves the right to amend its Witness List at a later time upon notice to Plaintiffs and Co-Defendant.

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 - e. Power Point presentation(s).
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/s/ Anna E. Engelman

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Anna E. Engelman, Esquire
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Flagler County