

STATE OF MAINE

YORK SS

SUPERIOR COURT

CIVIL ACTION

Docket No.

RE-09-111

YOR-12-599

ROBERT F. ALMEDER, and
VIRGINIA S. ALMEDER, et al.

Plaintiffs,

-vs-

TOWN OF KENNEBUNKPORT et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
Non-Jury Trial

Before: Honorable G. Arthur Brennan,
Active Retired Justice Of The Superior Court

Cumberland County Courthouse
Portland, Maine

August 30, 2012

Kimberly McCulloch
Official Court Reporter

APPEARANCES

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For Defendant Richard J. Driver:

Richard J. Driver, pro se

For Defendants TMF Group De Bene Esse:

Gregg R. Frame, Esq.
Andre G. Duchette, Esq.

For Intervenor State of Maine:

Paul D. Stern, Esq.

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TRANSCRIPT OF PROCEEDINGS

(This matter came on before the Honorable G. Arthur Brennan, Active Retired Justice, at Portland, Maine, in the Superior Court, Cumberland County Courthouse, on August 30, 2012 for trial commencing at 9:05 a.m.)

THE COURT: Good morning everyone. Mr. Lachiatto is back with us. Good, that's a good thing.

Good morning, Robert. Good morning, Kimberly. Everyone be seated, please.

At the conclusion of business we had completed Mr. Ed Smith's testimony.

Mr. Duchette, I see you are on your feet -- no, I see Mr. Frame is on his feet. So you may proceed, Gregg.

MR. FRAME: Thank you, your Honor. Good morning. Maureen Pearce Somers, your Honor.

THE CLERK: Please state your name for the Court.

THE WITNESS: Maureen Pearce Somers. My last names is S-O-M-E-R-S.

1 Thereupon,

2 MAUREEN SOMERS

3 was called as a witness and, after having been duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FRAME:

7 Q. Good morning, Maureen.

8 A. Hi.

9 Q. Just for the court reporter do you hyphenate your
10 last name or is it two separate names?

11 A. I actually don't. I just did that for the
12 purpose of the people having the relationship that I am
13 Bob's daughter who will be testifying next.

14 Q. So you go by Maureen Somers?

15 A. Uh-huh.

16 Q. Can I call you Maureen?

17 A. You can.

18 Q. Maureen, can you state your legal residence for
19 the Court?

20 A. 11 Meadow Avenue, Monmouth Beach, New Jersey.

21 Q. Have you -- has New Jersey always been your legal
22 residence?

23 A. Yes.

24 Q. Do you own a residence at Goose Rocks Beach?

25 A. No.

1 Q. Does anyone in your family own a residence at
2 Goose Rocks Beach?

3 A. Yes.

4 Q. Who is that?

5 A. My father, and I have several cousins that own
6 property.

7 Q. Great.

8 Starting with your father, where is his residence
9 at Goose Rocks Beach?

10 A. 11 -- I am sorry, 15 Wildwood.

11 Q. 15 Wildwood, great.

12 Has that residence been in your family for your
13 entire life?

14 A. Yes.

15 Q. Great.

16 We will get to your history of coming to
17 Goose Rocks but when you have come to Goose Rocks
18 starting as a kid through today have you stayed at
19 11 Wildwood?

20 A. It's 15 Wildwood.

21 Q. Excuse me.

22 A. Prior to my father building the house at
23 15 Wildwood we would stay at the home that -- one of the
24 homes that was owned by my grandfather, which was on
25 Belleglade Avenue.

1 Q. When did your father build the house at
2 15 Wildwood?

3 A. In the early 1970s.

4 Q. So what year were you born, Maureen?

5 A. 1967.

6 Q. So is it fair to say that your memories of
7 Goose Rocks Beach though are mostly focussed around
8 staying in the Wildwood place?

9 A. Yes, but I do have many memories prior to that.

10 Q. You do, okay.

11 A. I do.

12 Q. Great.

13 Can you go up on the map and with the orange pen,
14 Maureen, identify 15 Wildwood for us?

15 A. (Witness complies.)

16 Do you want me to put our name?

17 Q. No, that's okay. You can sit down. I will have
18 you go up there in a little bit for another reason.

19 A. (Witness complies.)

20 Q. The home at 15 Wildwood, Maureen, is that a
21 year-round home or is that a summer residence?

22 A. It is winterized and we do occasionally use it
23 during the winter, especially around Christmas prelude,
24 and my father stays in the fall and the early spring,
25 but it is heated and winterized but, no, we don't stay

1 there all year.

2 Q. Great.

3 Starting as a kid, Maureen, when you first
4 started coming to Wildwood, how often would you come up
5 for the summer?

6 A. We would usually come up -- my father did rent
7 the house out but we did come up for the majority of
8 July and then when I was 16 I somehow persuaded my
9 parents to let me stay and spend the entire summer, I
10 had a job at The Tides washing dishes and I stayed at
11 the west end when the house was rented and I rented a
12 room right at the west end from a friend --

13 Q. So you --

14 A. -- on the beach.

15 Q. So you were 16 and had essentially free rein at
16 Goose Rocks?

17 A. Yes.

18 Q. How long did -- I have to believe that that only
19 lasted one summer?

20 A. One summer, but rather my grandfather and my
21 cousins and my aunts and my uncles and all the other
22 neighbors had a pretty good eye on me.

23 Q. Great.

24 After that summer of renting another place, your
25 16th summer, did you continue to stay at Wildwood?

1 A. Yes, I always stayed at Wildwood, but through my
2 later teens and college years I would work in the port
3 and I would have to stay in different places, so I
4 rented different places in town, you know, throughout my
5 stay while I was working.

6 Q. Would that have been because the house at
7 Wildwood was rented for part of that time?

8 A. Yes.

9 Q. If the house at Wildwood wasn't rented were you
10 staying there when it was open?

11 A. Absolutely, save money, you know.

12 Q. Great.

13 And you said your college years you did that as
14 well?

15 A. Yes.

16 Q. After college did you end up working?

17 A. I was a teacher, so yes, I had the summers off.

18 Q. Are you still a teacher?

19 A. Yes.

20 Q. Great.

21 Did you get married, start a family?

22 A. Yes.

23 Q. How many kids do you have?

24 A. Three.

25 Q. What are their ages?

1 A. You have to ask me. My oldest just turned 15, my
2 son is almost 14 and my daughter is 12.

3 Q. After you got married, Maureen, did you continue
4 to spend part of your summer at Goose Rocks?

5 A. Yes, the majority of my summer.

6 Q. The majority of your summer.

7 Did that change at all when you had kids?

8 A. No, in fact I spent the majority now more because
9 my children begging me, they want to stay the whole
10 summer.

11 Q. When you -- since you have had kids when you have
12 come up have you stayed at -- is Wildwood where you
13 stay?

14 A. I stay there as long -- until it is time for me
15 to leave, and my father usually gives me a good
16 indication it is time for you to go home now.

17 Q. And that's when you head back to New Jersey?

18 A. Yes.

19 Q. Estimate, how many weeks are you there in the
20 summer?

21 A. This week -- this year I have been here seven
22 weeks, last summer was probably six or eight, so I do
23 spend a very good amount of time.

24 Q. Is that pretty typical of your time there?

25 A. Yes.

1 Q. Has there ever been a summer where you haven't
2 been at Goose Rocks Beach?

3 A. No.

4 Q. Great.

5 Let's go back a little bit. I want to get a
6 little bit of your history on the beach and we have got
7 some photos that we will look to.

8 First of all, though, are you involved at all in
9 the renting of the property?

10 A. No.

11 Q. Do you know any of the renters?

12 A. That would rent my father's house?

13 Q. Yes.

14 A. No, but my father does not currently rent the
15 home anymore.

16 Q. Great.

17 Did you know any of the former renters when they
18 were renting?

19 A. Just the Malonsons that rented one winter.

20 Q. When you were renting, Maureen, you said you
21 rented places kind of up and down the beach --

22 A. When I was younger and also I did forget to add
23 that I have rented the Larrabee home and the Kember home
24 on Bartlett Avenue a couple of summers, and my brother
25 also rented the Kember property as well as another one

1 on Wildwood, I don't know who the property owner at that
2 time was, but the house was too small at one point,
3 so --

4 Q. And those are back lots --

5 A. Those are back lots, yes.

6 Q. -- as we call in this case?

7 So you were -- in your 16th summer, your 17th
8 summer, that time frame when you were renting various
9 places up and down the beach were you -- were some of
10 those beach front, were some of those back --

11 A. Yes.

12 Q. -- lot?

13 A. Beach front.

14 Q. All beach front or some of each?

15 A. No.

16 Q. Did you ever make -- were you ever told by any of
17 the landlords what you could and couldn't do on the
18 beach?

19 A. Never.

20 Q. I assume you accessed the beach frequently when
21 you were there?

22 A. Yes.

23 Q. Great.

24 Let's go back to your time before your 16th
25 summer when you were working at The Tides and renting a

1 house. What kind of activities did you -- you have
2 brothers, right?

3 A. Three.

4 Q. Three brothers. What kind of activities did you
5 and your three brothers engage in on the beach?

6 A. We would use the row boat, we would go out on the
7 motor boat, we would sun bathe, read, build sand
8 castles, play in the tidal pools. Whiffle Ball was
9 very, very big. We would play Frisbee, we would collect
10 shells, we would go out to Timber Island, we would swim
11 in the rivers, we would waterski, we would go for sand
12 dollars, diving for sand dollars, swimming for sand
13 dollars, we would read and we would just talk, play
14 together.

15 Q. Would those activities be localized around the
16 Wildwood Avenue area?

17 A. Prior to given a little of independence it was
18 always localized between the Bartlett Avenue and the
19 four properties.

20 Q. What do you mean by the four properties?

21 A. The four properties, when you come down the
22 Bartlett Avenue extension the two properties to the
23 left, which would be Mr. Archer and Miss Lewis' house,
24 and the two properties to the right which would be the
25 Julian and the Forrest properties.

1 Q. So when you were younger you were fairly
2 localized to that and then when you got independent,
3 certainly you were independent at the age of 16 and were
4 staying up here on your own but you were -- you became
5 less localized to that area?

6 A. Well, I always had to come back and check in with
7 my parents so, yes, my parents were always sitting in
8 that area.

9 Q. Did you always -- when you accessed the beach
10 from 15 Wildwood was there a common general route that
11 you took to get to the beach or did it change?

12 A. To access the Bartlett Avenue?

13 Q. To access the beach from the house on Wildwood.

14 A. Well, it's a very unique location where we are
15 located because we are close to both the Bartlett Avenue
16 as well as the Bel-Air entrance, so we utilize -- you
17 know, I will utilize both depending on who I was hanging
18 out with that day.

19 Q. Sure.

20 Can you take the red pen and draw from the home
21 on 15 Wildwood the two routes you said you used to take
22 to the beach?

23 A. Sure.

24 Q. Thanks.

25 A. (Witness complies.)

1 Q. Thank you. You can sit down.

2 A. (Witness complies.)

3 Q. Starting when you began to get more independent
4 did you make friends all over the beach?

5 A. I always had friends all over the beach.

6 Q. Were those friends beach-front owners?

7 A. Sure.

8 Q. All of them?

9 A. No.

10 Q. Back-lot owners?

11 A. Yes.

12 Q. Were you involved at all in the Goose Rocks Beach
13 Association activities?

14 A. Absolutely.

15 Q. Great.

16 When you -- starting about that 16th summer when
17 you started becoming more independent, what kind of
18 activities would you engage in on the beach from there
19 through your college years?

20 A. Well, we always had sun bathing and Frisbee and
21 still playing Whiffle Ball, we would always have -- in
22 the evening times we would have fires, always had fires
23 when I was younger too, I did forget to mention that,
24 hanging out with my friends, we would go out to Timber
25 Island, we would waterski, we would go out on the boats.

1 Really my use was the same when I was a kid except maybe
2 not building sand castles.

3 Q. Was that focussed around the Wildwood -- you
4 know, where you access the beach?

5 A. From 16 to college years, is that exactly where
6 you are asking me?

7 Q. Sure, yep.

8 A. From 16 to college years my parents were still
9 always in that vicinity so I would again check in with
10 them, but one of my closest friends -- my two closest
11 friends lived between Bartlett Avenue and Edgewood so we
12 would spend time there but it would depend on exactly
13 who I was hanging out with whether -- and what peer
14 group I was hanging out with depending on where we would
15 hang out for the day, but I would always go back and see
16 my parents and check in.

17 Q. Did you ever hang out at The Tides at night?

18 A. Sure.

19 Q. Do you recall the 9 o'clock curfew?

20 A. I recall that very well because the curfew was at
21 9 o'clock if you were under 16, and I was always trying
22 to hang out with the older kids, so I was -- often had
23 to go home at 9:00 to check in.

24 Q. Did you ever get busted by a young Joe Bruni for
25 being out after 9:00?

1 A. We got to know each other very well, he was a
2 very young -- he was probably in his first few years of
3 being a police officer and he would come by and say, Mo,
4 get in the car, I am taking you home. So he would drop
5 me off at 9 o'clock and I would check in with my parents
6 and -- yes.

7 Q. Stay in at that point?

8 A. Possibly.

9 Q. Ever sneak out the back door?

10 A. I would never sneak out the back door, I was a
11 good kid.

12 Q. Fair enough.

13 When you were engaging in these activities,
14 Maureen, up and down the beach did you see other people
15 engaging in similar activities?

16 A. Yes.

17 Q. Would those have been beach-front owners,
18 back-lot owners, members of the general public?

19 A. Yes.

20 Q. And you have been coming to the beach every
21 summer of your life, correct?

22 A. Yes.

23 Q. Is the beach more crowded now than it was, you
24 know, 20, 25 years ago when you were in your teens?

25 A. I don't believe so.

1 Q. When you were engaging -- you said you had some
2 friends who were beach-front owners?

3 A. Yes.

4 Q. You would often I assume engage in activities in
5 front of their home?

6 A. Yes.

7 Q. Did you often go beyond being in front of one of
8 your friend's house?

9 A. Absolutely.

10 Q. Were -- did you sometimes go beyond being in
11 front of your friend's house not with your friends,
12 meaning did you go -- you had beach-front owners who
13 were friends -- that was a really poor question so I
14 know you are confused so I will restate it.

15 You had beach-front owners who were friends?

16 A. Yes.

17 Q. Did you have friends who you worked with at
18 The Tides who weren't beach-front owners?

19 A. I had friends that did not work at The Tides that
20 were -- did not own houses on the beach.

21 Q. Great.

22 When you were -- did there ever come a point in
23 time, Maureen, when you were engaging in activity on the
24 beach and concerned about whether you were with a
25 beach-front owner and in front of their house or whose

1 house you were in front of?

2 A. No, it would never occur to me.

3 Q. Why not?

4 A. Because the beach in my opinion has always been
5 for everyone, it is a public beach, you go wherever you
6 want to go as a kid, you put your towel down wherever
7 and enjoy whatever activity you are doing.

8 Q. Great.

9 You now -- you have three kids?

10 A. Yes.

11 Q. They want to come to Goose Rocks Beach for as
12 much as they can every summer?

13 A. Absolutely.

14 Q. Are they -- besides the advent of, you know,
15 hand-held games are they engaging in similar activities
16 to what you engaged in on the beach when you were a kid?

17 A. Absolutely, in fact up here they are not allowed
18 to have hand-held games.

19 Q. You are a better parent than I am.

20 But they are engaging in the same activities you
21 engage in?

22 A. Absolutely, sunup to sundown.

23 Q. How old are the kids? I asked that before.

24 A. 15, almost 14 and 12.

25 Q. And so their -- are you going to let your 16 year

1 old come up alone and stay in an apartment?

2 A. Absolutely not.

3 Q. Okay. They are at an age where they are starting
4 to get some independence from you, correct?

5 A. Yes.

6 Q. What kind of instructions have you given to them
7 about life at Goose Rocks Beach and being on the beach?

8 A. Basically the same -- believe it or not the same
9 rules that my parents had given to me which was to stay
10 inside of Route 9, never cross Route 9 and swimming in
11 the river is only -- you are only allowed to swim in the
12 river with an adult.

13 Q. Other than that you haven't given them
14 instructions on what parts of the beach they are
15 permitted to go on?

16 A. No. I have given them instructions -- we live in
17 a beach town, in a beach community as well so we have
18 given them instruction, again same as my parents on
19 being a good neighbor and, you know, if you dig a hole
20 fill it in and be respectful of people, same way you are
21 respectful to everyone out in public.

22 Q. Right, in fact part of that respect you guys --
23 your family generally has a July 4th get-together,
24 right?

25 A. Huge get-together, yes.

1 Q. And you -- we will see some pictures of that but
2 you talked to Susan Lewis or someone in your family
3 always talks to Susan Lewis about that, correct?

4 A. We speak to Susan Lewis, yes, she is a neighbor.

5 Q. Do you speak to her to get permission or just as
6 a courtesy that this is what we are doing?

7 A. Just as a courtesy, never permission. I would
8 never seek to ask permission, I have always used it that
9 way prior to her even owning the property.

10 Q. And this may seem like a silly question but when
11 you have been on the beach and now when your kids have
12 been on the beach have you distinguished for yourself or
13 asked them to distinguish between the wet and dry sand?

14 A. No.

15 Q. Let's take a look, Maureen -- there is a number
16 of pictures in 335, your Honor.

17 Before you get to those pictures, Maureen, I
18 think may have asked the form of this question but I
19 just want to be clear, at any point in time have you
20 ever asked a beach-front owner for permission to use the
21 beach in front of their property?

22 A. No, it would never occur to me to do so.

23 Q. Great.

24 A. Okay, I am here.

25 Q. Let's take a look -- go in about four, five

1 pages. That first picture it looks like your family
2 cookout in front of the Lewis -- the house with the
3 green roof it looks like?

4 MR. THAXTER: What Exhibit?

5 THE COURT: 336.

6 Q. 336, I am sorry -- no, 335, your Honor. 336 is
7 Mr. Pearce's --

8 A. This is my dad.

9 Q. That is your dad.

10 You are right, your Honor, I apologize, 336.
11 Silly me.

12 THE COURT: A million here, a million here,
13 pretty soon --

14 MR. FRAME: Real money, right?

15 Q. 330 -- well, that third photo, can you identify
16 that house in the background, Maureen?

17 A. The one directly in front is the property of
18 Susan Lewis and to the right of that is Chuck Archer.

19 Q. Great.

20 Is that a fairly typical scene for your July 4th
21 get together?

22 A. Yes, the one celebrated on the beach, yes.

23 Q. Great.

24 A couple more pictures in, Maureen, I think there
25 is a picture of your dad and your brother on the beach.

1 Now we will go to 335, your Honor.

2 A. Yes.

3 Q. May I stand here, your Honor?

4 THE COURT: Of course.

5 A. This one?

6 Q. Yes. Is that the first picture in 335, Maureen?

7 A. No.

8 Q. Several pictures in there's a picture of you and
9 your father?

10 A. That's my brother.

11 Q. Who's in that picture, Maureen?

12 A. This is of my father and my brother, Bill.

13 Q. Okay, and what time of year is that photo?

14 A. I would say based upon what they are wearing it
15 would be in the fall or early -- well, I would say the
16 fall.

17 Q. Was it fairly -- was it common for your family to
18 utilize the beach in the fall?

19 A. Yes.

20 Q. Back to the beginning. About the eighth photo
21 in, Maureen, there's a photo with two cute little kids
22 with a red bucket. Let's wait for everyone to get to
23 that one.

24 A. Yes, I see the photo.

25 Q. Are you there, your Honor?

1 THE COURT: The one with the parkas and all
2 the gear? Everyone is wearing parkas?

3 Q. Yes, and there's a red bucket.

4 Can you identify who's in that photo, Maureen?

5 A. That one in the white coat is me and the boy on
6 my left is my brother Mike.

7 Q. And judging by your age there how long ago was
8 this photo taken?

9 A. I actually know because I think it is a really
10 cute picture and I have it in my room here and my
11 mother's handwriting is on the back and it is October of
12 1971.

13 Q. Where is that photo taken?

14 A. That is taken right by Dyke Road and to the right
15 of Dyke Road.

16 Q. So that would be looking at the map directionally
17 the west of kind of Dyke Road going down to the west end
18 of the beach?

19 A. Yes, it is the west.

20 Q. Is that near -- that's the Zagoren's property?
21 Do you know?

22 A. I do not know her but I know that it is by the
23 Sotir property.

24 Q. This was taken in October.

25 A. Yes.

1 Q. Did you as kids play down in that area during the
2 summer as well?

3 A. Sure.

4 Q. Why?

5 A. Oh, because that was -- do I have to tell? It is
6 the secret place of the sand dollars.

7 Q. Just the people in this room will know.

8 A. Don't tell anyone.

9 Q. When you would go down as a kid to the secret
10 place to find sand dollars I assume at this age you
11 weren't unaccompanied, right?

12 A. No, I was not.

13 Q. Your mom or your dad would come down?

14 A. Sure.

15 Q. Would they be in the wet sand with you or would
16 they ever set up a beach chair or a towel on the dry
17 sand?

18 A. A beach towel on the dry sand depending on, you
19 know, the time of day. If anyone with kids knows, as I
20 have experienced now with my own, that what starts off
21 for a small walk sometimes can tend to be two or three
22 hours because you tend to stop where your kids find
23 something in the sand or in the water or something that
24 peaks their interest and you stop for a while so you
25 always learn to bring a towel with you and lay it out.

1 Q. So you are doing that now with your kids as well,
2 30 plus years later?

3 A. Absolutely.

4 MR. FRAME: Your Honor, I would like to
5 offer 336.

6 MR. THAXTER: No objection.

7 THE COURT: Admitted.

8 MR. FRAME: Nothing further, your Honor.

9 THE COURT: Mr. Stern?

10 MR. FRAME: I am going to admit 335 -- I
11 will ask to admit 335 but I will have Mr. Pearce up as
12 well so we can do that then or now?

13 THE COURT: It will be admitted then without
14 objection I am hearing.

15 MR. FRAME: Great.

16 CROSS EXAMINATION

17 BY MR. STERN:

18 Q. Good morning, Miss Somers.

19 A. Good morning.

20 Q. I am Paul Stern with the Attorney General's
21 Office.

22 It sounds like you have done a lot of waterskiing
23 down at Goose Rocks Beach?

24 A. When I was younger, yes.

25 Q. And when you were younger and waterskied did you

1 use the beach occasionally to take off to waterski?

2 A. Precisely, both rivers. As a matter of fact, we
3 would sit and wait our turn.

4 Q. Wait your turn?

5 A. To waterski.

6 MR. STERN: Thank you.

7 THE COURT: Mr. Driver?

8 MR. DRIVER: Nothing, your Honor.

9 THE COURT: Miss Tchao?

10 MS. TCHAO: Thank you, your Honor.

11 CROSS EXAMINATION

12 BY MS. TCHAO:

13 Q. Good morning.

14 A. Good morning.

15 Q. Just a few questions.

16 Do you mind if I call you Maureen?

17 A. Not at all.

18 Q. Maureen, I think you testified earlier about
19 working I think as a teen in the port?

20 A. I did.

21 Q. And at some time you rented in the port?

22 A. I rented in the port, I have rented in Goose
23 Rocks.

24 Q. When you rented in the port where did you stay?

25 A. I rented a room in the port, I don't remember the

1 people's name at this point.

2 Q. A number of summers or just one summer?

3 A. A few summers.

4 Q. A few summers, and you used Goose Rocks Beach at
5 that time?

6 A. Absolutely. I would drive over.

7 Q. Did you have friends at that time from the port
8 who you would go over and use the beach with?

9 A. Sure, I had friends from Kennebunk -- I always
10 had friends from Kennebunk anyway but -- and
11 Kennebunkport, so, yes, we would go over.

12 Q. As a teen I think you mentioned that you hung out
13 at The Tides sometimes at night?

14 A. Yes.

15 Q. Did you know it as The Rock back then?

16 A. Yeah, I was one of The Rock people.

17 Q. You were one of The Rock people.

18 Did you also have friends who were from outside
19 the Goose Rocks Beach neighborhood who hung out there
20 with you?

21 A. Absolutely.

22 Q. And what about today? As a teen you knew people
23 and had friends who used the beach who were not from the
24 Goose Rocks Beach neighborhood. Is that still true
25 today, do you know others who --

1 A. Yes.

2 Q. -- who use the beach?

3 A. Absolutely.

4 Q. Who are not residents of Goose Rocks?

5 A. Correct.

6 Q. I would like to show you a photo from TMF Defense
7 Exhibit 335, it is this one.

8 A. Yes.

9 Q. So it is four in. What does that picture show,
10 Maureen?

11 A. That is a picture of Lauren Gravlin Carrier.

12 Q. Who is Lauren Gravlin Carrier, do you know?

13 A. She is the God daughter of my father. I refer to
14 her as my cousin but she is really not.

15 Q. She is on the beach in that photo?

16 A. Oh, yes.

17 Q. Where did she live at the time, do you know?

18 A. At the time she lived in New Hampshire.

19 Q. Where does she live now?

20 A. In Gorham, Maine.

21 Q. Have you had the opportunity to use the beach
22 with her as either growing up from the '70s onward to
23 the present day?

24 A. Always, including just within the last couple of
25 weeks.

1 Q. And has she -- have you seen her use the beach
2 every year since --

3 A. Every year.

4 Q. -- since you have grown up?

5 A. Every single year as much as I can remember.

6 Q. You mentioned a row boat and a motor boat that
7 you used as part of your activities.

8 A. Yes.

9 Q. Did you store that row boat on the beach?

10 A. Oh, yes.

11 Q. Where did you store it?

12 A. We stored the boat at the -- the row boat when I
13 was younger and currently my family has kayaks, so as
14 times have changed and we have changed our boat sizes up
15 and down, we have changed to the kayaks, but we have
16 always stored them on the beach in the dry sand, either
17 in front of the Lewis or Archer properties or in front
18 of the Julian and Forrest properties.

19 Q. What about your motor boat, was that moored in --

20 A. It is always moored directly out in front of
21 Susan Lewis and Archer properties.

22 Q. You also mentioned that you thought -- you have
23 always thought of Goose Rocks Beach as a public beach
24 and that the beach has always been for everyone, I think
25 that's what you quoted, and that it never occurred to

1 you as a kid that it wasn't a public beach?

2 A. Correct.

3 Q. Is that still true -- do you still believe that
4 as an adult?

5 A. Yes.

6 MS. TCHAO: Thank you. I have no further
7 questions.

8 THE COURT: Mr. Thaxter?

9 CROSS EXAMINATION

10 BY MR. THAXTER:

11 Q. Good morning, Maureen. May I call you Maureen?

12 A. Sure.

13 Q. My name is Pete Thaxter and I represent the
14 plaintiffs.

15 A. Hi.

16 Q. A couple of things. You live in a beach town in
17 New Jersey?

18 A. Yes.

19 Q. And those beaches in New Jersey are public in
20 your town, are they not?

21 A. Yes.

22 Q. And do I understand that they are very crowded
23 down there?

24 A. Yes.

25 Q. And that one of the reasons you like to come up

1 here is because the beach isn't crowded?

2 A. Correct, but I mostly love to come here because
3 of the sense of community.

4 Q. And have you -- have you ever been questioned by
5 the people in New Jersey as to why you drive all the way
6 to Maine to go to a beach?

7 A. Yes.

8 Q. And you tell them it is because the beach in
9 Maine is empty, right?

10 A. I tell them because I love the beach in Maine and
11 I grew up coming to the beach in Maine and it is the
12 sense of community and the fact that it is also not as
13 crowded, and I believe it is not any more crowded today
14 than when I came as a child.

15 Q. Okay, so those pictures of you in your younger
16 years, the beach would be the same today -- it would be
17 the same in the '70s, '80s and '90s?

18 A. Yes.

19 Q. Okay, and your father is Bob Pearce?

20 A. Yes.

21 Q. And you testified that you actually -- that you
22 used -- you're kind of between two rights or two roads
23 that you can get to the beach or rights-of-way, one is
24 Bartlett Avenue and the other is Edgewood, right?

25 A. No.

1 Q. What was the other one?

2 A. Bartlett Avenue and Bel-Air Avenue.

3 Q. Okay, and when you go down Bel-Air how do you get
4 to the beach?

5 A. What do you mean, how do I get to the beach?

6 Q. Is there a pathway right at the end of Bel-Air?

7 A. Yes.

8 Q. Do you know the Dicesare family?

9 A. Very well.

10 Q. Okay, and did they used to have a pathway through
11 their property?

12 A. They still do, yes.

13 Q. There's a gate there now that says private,
14 right?

15 A. Yes.

16 Q. When did that go in?

17 A. I can't recall.

18 Q. Do you use that pathway?

19 A. Do I use it?

20 Q. Yes.

21 A. I do not currently use it.

22 Q. I am going to hand you what's Plaintiff's Exhibit
23 113, it's in the books but I am just going to hand you
24 it.

25 Now, go to the second page because it is a little

1 easier to see some of the people. There are two girls
2 on the second page there. Do you recognize them?

3 A. Yes.

4 Q. Who are they?

5 A. One is a neighbor and that is Kathy Downing's
6 child, and the other one is -- I believe that is a very
7 bad photo of my daughter Molly.

8 Q. And is that your father back there sitting in the
9 chair?

10 A. I do not see him sitting in the chair.

11 Q. Can you look at the other -- the first photo. Do
12 you recognize anybody in there?

13 A. Well, it is very dark.

14 Q. Okay. If I told you that the person sitting in
15 the back of that photo is Susan Lewis and this was your
16 family -- Susan Lewis testified that this was your
17 family cookout --

18 A. Yes.

19 Q. And you don't have -- I noticed you got a big
20 grill there, right, or a big metal cookout?

21 A. Yes.

22 Q. And you are not required to get a permit for
23 that, are you?

24 A. No, you are not required.

25 Q. And you are aware that Susan Lewis -- used to

1 keep your kayaks right in front of her house?

2 A. Still do.

3 Q. You testified that you don't keep them more over
4 on the right-of-way?

5 A. Sometimes they are there, sometimes they are
6 between those four properties because when I go out on
7 the kayak or my family goes out on the kayak, when we
8 come back people may be sitting in the area from where
9 we had the kayak, so you look for a space to put the
10 kayaks so as not to interfere where people are sitting.

11 Q. Do you know if Susan Lewis has talked to your
12 family about saying one kayak per family?

13 A. I would know nothing about that. I have not had
14 any conversation with her and I can only testify with --
15 about my conversations with Susan Lewis.

16 Q. You have had conversations with Susan Lewis,
17 right?

18 A. Not really.

19 Q. She testified that she was invited to come sit
20 with your family and that's why she is sitting there in
21 the back.

22 A. Yes, Susan was returning from a trip out on her
23 sailboat, so my father invited her. I did not invite
24 her.

25 Q. It was just a neighborly thing to do, right?

1 A. Always a good neighbor.

2 Q. You rented some beach-front properties?

3 A. Have I rented some beach-front properties? Yes.

4 Q. Which ones?

5 A. The Latell property.

6 Q. Where is that located?

7 A. Down at the end of the west end of the beach, the
8 third house in from the back.

9 Q. Is it quieter down there at the west end?

10 A. It is quiet at the west end.

11 Q. What other properties are you -- beach front have
12 you --

13 A. That would be the only one.

14 Q. Okay. How long did you rent that?

15 A. My 16th summer.

16 Q. Okay, just that whole summer?

17 A. No, when the house was not rented on Wildwood.

18 Q. Okay, so was that a week or two weeks or three
19 weeks?

20 A. Several weeks. I was friends with the Latell's
21 daughter.

22 Q. Are you friends with Jennifer Eaton too?

23 A. I am not friends with Jennifer Eaton.

24 Q. You are not?

25 A. In no way, shape or form am I friends with her.

1 Q. Did you -- do you recall having complained to
2 folks about the Hidden Pond dropping people off in the
3 access ways?

4 A. I do not recall that.

5 Q. Did it bother you that they were unloading their
6 people with the SUV's in the access ways?

7 A. What access ways are you describing?

8 Q. Bartlett or Dyke Road.

9 A. I think you are incorrect, they are not dropping
10 people off at Dyke Road nor are they dropping them off
11 over there.

12 Q. Can you go to the picture exhibits, 335 first?
13 Go to the first page of 335 and it shows a little girl
14 standing there, correct?

15 A. No, it is incorrect.

16 Q. It is a boy?

17 A. Correct.

18 Q. Who is it?

19 A. My father.

20 Q. Okay. What -- you don't know what year that is?

21 A. I do not.

22 Q. But a long time ago?

23 A. Yes. He is 80 now so I would think --

24 Q. Can you identify where that is on the beach?

25 A. I could if it were a clearer photograph.

1 Q. Would you look at the next page with the child
2 and the bucket?

3 A. Yes.

4 Q. Who is that?

5 A. That would be my father.

6 Q. And is not that the Dyke -- the house right on
7 the edge of Dyke Road which we call the Zagoren house in
8 the background?

9 A. It possibly could be. Again, it is not a clear
10 photograph. You would really have to ask my father.

11 Q. And you testified about your cousin. Can you go
12 to that picture? That is a few pictures back.

13 A. The little girl?

14 Q. Yes.

15 A. Yes.

16 Q. With the white bathing suit or whatever on,
17 right?

18 A. Yes.

19 Q. And can you put a time frame on that? How old is
20 your cousin now?

21 A. I don't know. She's several years younger than
22 me so I would say that was probably in the '70s.

23 Q. Okay, and so that was a typical day in that area
24 in the '70s?

25 A. It is hard to say. It was probably during the

1 week and I don't know what time of day that would be, if
2 whether it's lunchtime or -- based on that it might be
3 early morning based on the shadow. I am not really
4 sure.

5 Q. See that house up in the background, the white
6 one?

7 A. Yes.

8 Q. Is that the Dicesare's house?

9 A. Yes.

10 Q. Now go back, there's -- it looks like a picture.
11 Flip back behind the picture where your brother and your
12 father were walking on the foggy day and the next
13 picture. Is that you in the picture? There is three
14 people?

15 A. Yes.

16 Q. Is that your brother?

17 A. Yes, one of my brothers.

18 Q. And your father?

19 A. Yes.

20 Q. And again this is in what year?

21 A. I have on a Florida State sweatshirt so I would
22 think it would be in the late '80s or early '90s.

23 Q. Okay, and it looks like it is a bright summer
24 day?

25 A. It may be. I do have a sweatshirt on and it

1 looks like my brother may have a long-sleeve shirt so it
2 may be late September.

3 Q. It could be August on a cooler day?

4 A. Possibly.

5 Q. You see people sitting down, you see the beach
6 chairs down on the left?

7 A. I see two on the left, yes.

8 People do enjoy it in the fall season as well, so
9 it is hard to tell.

10 Q. And flip a couple more pages back and there's a
11 picture of a group of people sitting in chairs.

12 A. From the beginning or did you want me back the
13 other way? I am confused.

14 Q. No, back from that picture that you were just
15 testifying about, it is only one, two pictures back.

16 A. Yes.

17 Q. Do you recognize those people?

18 A. Yes.

19 Q. Who are they?

20 A. Cousins.

21 Q. Okay, and, again, can you recognize up on the far
22 left the Dicesare house?

23 A. Yes. The reason we were there was because my one
24 cousin, that's where they sit, so we went to visit them
25 that day and that's why we were sitting there, but most

1 of our activities are on the other four properties, but
2 we do go to visit family on other parts of the beach.

3 Q. Would your father be going to the same properties
4 that you go to to visit --

5 A. It depends, we have a large family as I said and
6 they have other homes so he always sits in front of one
7 of those four properties and have as far back as I can
8 remember, and as he takes his walk every day he may, you
9 know, stop to visit and people may give him a chair
10 because he is an older guy, so sometimes you might have
11 photos of my dad sitting there but that's not really
12 representative of how he spends his day.

13 Q. Would you just flip back two more photos then to
14 -- there's a white boat?

15 A. Yes.

16 Q. Do you recognize those people at the boat?

17 A. I think that is a picture of my father.

18 Q. Do you know where that picture is taken?

19 A. I don't.

20 Q. Is it down near the conservation trust property?

21 A. It looks like the house on -- yes, it looks like
22 it's prior to Proctor, yes.

23 Q. Have you ever seen a lifeguard down in front of
24 the Lewis property?

25 A. A lifeguard in front of the Lewis property?

1 Q. Yes.

2 A. No.

3 Q. Have you ever seen garbage cans in front of the
4 Lewis property?

5 A. Yes.

6 Q. You have?

7 A. Yes.

8 Q. Is it in the right-of-way or right on her
9 property?

10 A. Her home is in the right-of-way so I would say
11 that it would be in the right-of-way, yes, I have seen
12 it on her property which is located on the right-of-way.

13 Q. But not down on the beach?

14 A. On the beach on the right-of-way.

15 Q. Okay. Have you ever seen any garbage cans over
16 on the Julian and Forrest property --

17 A. Yes.

18 Q. -- in front of their house?

19 A. Same thing, yes.

20 Q. On the right-of-way?

21 A. In the street which would not be on the
22 right-of-way.

23 Q. Okay, up by the street?

24 A. On their side?

25 Q. Yes.

1 A. Yes, but on the other one I see it on
2 Susan Lewis' property which is in the right-of-way, and
3 sometimes depending on if it gets moved sometimes it is
4 actually in the access way, yes.

5 Q. Have you ever seen a lifeguard stand in front of
6 any of those houses?

7 A. Which house?

8 Q. The Julian, Forrest, Lewis.

9 A. No.

10 THE COURT: Mr. Frame.

11 MR. FRAME: Briefly, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. FRAME:

14 Q. Hello again, Maureen.

15 A. Hi.

16 Q. You have got a pretty fairly good size extended
17 family, right?

18 A. Yes.

19 Q. I imagine your family is a lot like my family
20 with playing sports and activities and doing this all
21 over the place, correct?

22 A. Yes.

23 Q. If your family is anything like my family they
24 sometimes move in packs with kids, parents, cousins,
25 grand kids. Is that accurate?

1 A. Yes.

2 Q. And you're friends or at least neighborly with
3 Susan Lewis, right?

4 A. Neighborly, yes.

5 Q. So you sometimes recreate those packs, you
6 sometimes recreate in front of Susan Lewis' house,
7 correct?

8 A. Yes.

9 Q. But you sometimes also I would imagine those
10 packs, am I correct, that they would recreate in front
11 of houses of people you don't know; is that correct?

12 A. Yes.

13 Q. And is it fair to say that you don't really care
14 whose house you are recreating in front of, just that
15 you are having fun?

16 A. Correct, and that we are together.

17 Q. The one time you rented that beach-front
18 property -- I think I asked this but I just want to be
19 clear -- did your activities on the beach ever change
20 because you were on beach-front property?

21 A. No.

22 MR. FRAME: Nothing further, your Honor.

23 THE COURT: Mr. Stern.

24

25

1 RE CROSS EXAMINATION

2 BY MR. STERN:

3 Q. In looking at the very last picture in
4 Exhibit 335, which Mr. Thaxter just discussed with
5 you --

6 A. Yes.

7 Q. -- it has a picture of -- depicted on it as a
8 white boat --

9 A. Yes.

10 Q. -- in the front and if you look behind that are
11 there two children playing?

12 A. Yes.

13 Q. And what sort of small watercraft are they
14 utilizing?

15 A. Raft and a Boogie board.

16 Q. Is that sort of activity by children typical of
17 what you see all along Goose Rocks Beach?18 A. Yes, and in the day we used to have a big raft by
19 the Goose Rocks Beach Association where we used to take
20 swimming lessons and that was out in front of where the
21 Rencurrel property is, and even as a teenager we would
22 go on there and sun bathe and jump in the water and --
23 you know, it was used a lot, by a lot of people, that
24 float.

25 MR. STERN: Thank you.

1 THE WITNESS: You are welcome.

2 THE COURT: Anything else?

3 Miss Somers, you are free to step down.

4 Thank you kindly.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE COURT: Gregg.

8 MR. FRAME: Bob Pearce, your Honor.

9 THE COURT: Mr. Pearce, if you would come
10 forward, please.

11 THE CLERK: Please state and spell your
12 name.

13 THE WITNESS: Robert Pearce, spelled
14 P-E-A-R-C-E.

15 Thereupon,

16 ROBERT PEARCE

17 was called as a witness and, after having been duly
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FRAME:

21 Q. Good morning, Bob.

22 A. Hi, Gregg.

23 Q. Since Maureen brought up your age we are going to
24 get right to it. How old are you, Bob?

25 A. I was 80 last month, July.

1 Q. Of those 80 years, Bob, how many of those years
2 have you spent summering at Goose Rocks Beach?

3 A. Since 1936 or '37.

4 Q. So about 75 of those?

5 A. Yes.

6 Q. Bob, Maureen identified I think but I want to
7 make sure it is accurate your home on the map. Did you
8 get a chance to see that earlier?

9 A. Yes, I did.

10 Q. Is that an accurate depiction of your home on the
11 map there?

12 A. Yes, it is.

13 Q. Great.

14 Is that now your year-round home, Bob?

15 A. At the moment the answer is yes.

16 Q. Maureen identified two ways that she and her
17 family generally access the beach. Do you utilize both
18 of those or at least one of those two access ways?

19 A. Yes, both.

20 Q. Is one more common than the other or it just
21 depends?

22 A. I think it depends. It is reasonably close,
23 probably a little in favor of the Bartlett Avenue.

24 Q. Great.

25 What first -- certainly you didn't make the

1 decision yourself to come to Goose Rocks Beach 75 years
2 ago. What first brought your family to Goose Rocks
3 Beach?

4 A. I would say two reasons, one was my grandmother,
5 my father's mother, lived at Old Orchard Beach and we
6 were from Boston so he would like to see his grandmother
7 when -- his mother when he had the opportunity, and the
8 second reason my mother's best friend had a home at
9 Goose Rocks Beach.

10 Q. So did you -- did you go up -- when you went up
11 the first time you came to Maine was it to go to
12 Old Orchard?

13 A. No -- yes, the first couple of years we actually
14 stayed at Pine Point and Bay View, before coming to
15 Goose Rocks when I was very little, two or three years
16 old.

17 Q. Okay, and then sometime maybe 1935 or 1936 --

18 A. '36 to '37 is when we started at Goose Rocks
19 Beach.

20 Q. I am sorry, '36, '37 you started coming to Goose
21 Rocks Beach.

22 Did your family buy a home at that point?

23 A. No, we rented.

24 Q. How long -- from 1936, how long did your family
25 rent for?

1 A. Well, let's see. From '36 to '41 we were in the
2 Fleming's cottage -- which is now the Fleming's
3 property. That particular house burned in 1941.

4 Q. The Fleming's beach front or the back lot that
5 they rent?

6 A. The Fleming's beach front. It was owned by the
7 Whittemores at that point in time.

8 Q. Okay. After that?

9 A. After the fire, which was in early July, we had
10 to relocate obviously since the houses burned, we were
11 renters so we moved then to a house on Sea Road, a
12 little known street. That is close to Proctor Avenue.

13 Q. Sea Road is still, Bob, in the Goose Rocks Beach
14 zone?

15 A. Yes, it is.

16 Q. And just so we are clear I think -- do you
17 understand what I mean when I say the term Goose Rocks
18 Beach zone?

19 A. Yes. I think it is -- it would be fair to say it
20 is between Route 9 and the ocean and river to river on
21 the east and west.

22 Q. Great.

23 So how long, and again we are talking 60, 70
24 years ago when you first started coming, how long were
25 you at Sea Road for?

1 A. We were there for two years.

2 Q. And still renting?

3 A. Still renting, yes.

4 Q. Okay.

5 What happened after Sea Road?

6 A. Then the following year -- so we rented say for
7 the balance of 1941 and 1942 and then in '43 we moved to
8 the front cottage, these were owned by the same person,
9 Lawrence Island at the time, he was the fire chief among
10 other things on the beach, and that home is next to the
11 Fessenden's home -- the Fessenden's oceanfront home.
12 Fessenden is on the corner of Proctor, the house is one
13 house to the west --

14 Q. After that --

15 A. -- as that's an oceanfront home.

16 Q. Okay.

17 A. And we stayed there until about probably '47, and
18 that house was sold to a family member, I believe, so we
19 had to relocate.

20 Q. In all this time, Bob -- you keep going from '47
21 on but how long was your family -- you say you are from
22 Boston?

23 A. Yes.

24 Q. Were you coming up for a weekend, were you coming
25 up for a week, the whole summer, what was the --

1 A. Always the entire summer, from the day after
2 school was out until Labor Day, until school started, we
3 always rented the entire summer.

4 Q. Do you have siblings, Bob?

5 A. Yes, I had a sister.

6 Q. You had a sister, so you and your sister would
7 come up with your mom?

8 A. Yes.

9 Q. And your dad would come up on the weekends, work
10 in Boston during the week?

11 A. Exactly.

12 Q. So in 1947 what happens?

13 A. That's when we had to relocate and we rented -- I
14 think what is now the Kember's house on the corner of
15 Bartlett and Wildwood for I think a year and then --

16 Q. That was a back lot?

17 A. Yes, it was.

18 Q. Yep.

19 A. Then we moved to Crescent Avenue on the corner,
20 it is now called 20 Crescent --

21 Q. Okay.

22 A. -- and that house had just been built and we
23 moved into that -- a couple of years prior to that my
24 father had bought the lot which still remains empty on
25 the corner of Crescent Avenue and Bel-Air Avenue.

1 Q. Do you own that lot now?

2 A. My nephew does.

3 Q. So --

4 A. So rather than build on that I guess my father
5 thought he would buy the house or rent the house next to
6 it, which we did for several years, and then he bought
7 that house in the early '50s, so he owned then -- that
8 house and still retained the --

9 Q. The lot next to it?

10 A. The empty lot, yes.

11 Q. At some point did you and your family purchase
12 another home, the Wildwood --

13 A. In 1962 with my sister and myself both wanting to
14 come to the beach my father bought a second home on
15 Belleglade with a deal that my -- he would buy the house
16 if my sister and I would share the expenses, the
17 electric bill or whatever needed to be paid, taxes.

18 Q. Sure. That is a back lot, right?

19 A. Yes, it is.

20 Q. How long did you do that deal for?

21 A. We stayed there typically as much as four weeks
22 in the summer. The deal was that since I am from
23 New Jersey at the time we -- my sister and I should
24 share the property, we picked July, my sister picked
25 August, that worked great.

1 Q. How long did you share that property -- is that
2 Belleglade property still in your family?

3 A. Yes, it is. That belongs to my niece.

4 Q. To your niece. Is that Kathy?

5 A. Yes, it is.

6 Q. Great.

7 A. And we stayed there until 1973 when I built the
8 house on -- at 15 Wildwood.

9 Q. So your rental history is pretty rich prior to
10 buying, you were in a bunch of different homes all over
11 the beach?

12 A. Yes, I was.

13 Q. Some were beach front, right?

14 A. Yes. The Island cottage was beach front, which
15 is now the Roberts' cottage.

16 Q. Did your activities, and we will get into what
17 those activities were, but did your activities change at
18 all on the beach from when you were a back-lot renter to
19 when you were a beach-front renter?

20 A. No, they stayed the same. Activities might
21 change with age but basically the same.

22 Q. Great.

23 When you were a kid, Bob, before you got married
24 and had kids, what kind of activities did you engage in
25 on the beach?

1 A. Well, we would at the time might play horseshoes,
2 certainly a lot of softball games, particularly weekends
3 we would certainly swim in the beach, learn to swim, had
4 swimming lessons which was by the lifeguard in those
5 days, and the sand dollars were popular.

6 There was a period of time where there was like a
7 sea moss operation up at the west end of the beach and
8 you would get paid for bringing the sea moss up there,
9 collecting it off the beach and did that for a while,
10 you would earn --

11 Q. All the way down to the west end?

12 A. All the way down to the west end. They laid it
13 out to dry, they needed to get the seaweed there, so any
14 kid could fill up a potato sack and drag it up the beach
15 and decide if you wanted -- they weighed it dry or wet.

16 Q. I am trying to get my timing right but the Goose
17 Rocks Beach Association started after the fire, right?
18 Is that correct?

19 A. Yes, to my knowledge. Prior to that the
20 off-beach activity was the bowling alley, casino, that
21 was --

22 Q. So by the time that started you were probably --
23 were you too old to engage in kind of the association
24 activities for kids?

25 A. Yes. Yes, of course. That was in the order of

1 1950 I believe that started.

2 Q. Sure.

3 But your kids, when you ultimately had kids, they
4 were involved in --

5 A. Very much so. That became the central activity.

6 Q. Great.

7 Did the activities that you talked about when you
8 were a kid, have they -- were they consistent with when
9 you had kids and what you observed your kids doing on
10 the beach?

11 A. Yes, I would say so. There's more things like
12 Boogie boards and stuff like that that we didn't have in
13 those days.

14 Q. Did those activities change in relation to where
15 you were renting or where -- before we get up to the
16 time of ownership did those activities change in terms
17 of where you were renting?

18 A. No, no.

19 Q. When you built -- sorry.

20 A. I didn't say anything, I don't think.

21 Q. When -- you built the house in '73, correct, on
22 Wildwood?

23 A. Yes.

24 Q. Did your activities change at all at that point?

25 A. Well, of course I had the kids so -- and I was an

1 adult so, you know, I was more sitting watching the kids
2 or walking with them or helping them build a sand castle
3 or whatever.

4 Q. Sure.

5 If the kids were building a sand castle or going
6 for sand dollars or playing in the tidal pool would you
7 sit down while they were engaged in that to watch them?

8 A. Certainly, yes.

9 Q. Would you sit down in the wet sand or would you
10 sit down in the dry sand?

11 A. It might be both, probably the dry sand primarily
12 because, you know, kids like to lay their blankets out
13 on the dry sand, not the wet sand.

14 Q. Smart kids.

15 A. Yeah.

16 Q. Did you always know whose house you were sitting
17 in front of?

18 A. Well, I wouldn't necessarily know the name, I
19 would be oriented --

20 Q. You wouldn't know this is so-and-so's house, we
21 can stay here?

22 A. No, I wouldn't care what house, it wouldn't
23 matter.

24 Q. And now Maureen says you still take walks on the
25 beach, right?

1 A. I have been an avid walker since I had a heart
2 attack 30 years ago when I was 50 years old and four
3 miles a day is what I still do today -- try to anyway.

4 Q. So she kind of threw you under the bus because
5 she said you stop every once in a while and sit down and
6 chat. Is that accurate?

7 A. Yes, of course if you meet somebody that you
8 haven't seen in a while.

9 Q. Beach-front owner, back lot owner?

10 A. It could be anybody.

11 Q. Do you care now at the age of 80 whose house you
12 are in front of when you are sitting down and talking?

13 A. No, it wouldn't matter. Why would you care about
14 a house? The scenery is the other way.

15 Q. I assume you don't sit down in the wet sand when
16 you do that?

17 A. No, no. The only time I get wet probably is
18 jumping out of the boat.

19 Q. We will get to your boat.

20 Fair to say, Bob, that your 75 years of your
21 family, the Pearce family with the Somers family and --
22 I am going to butcher the name -- the Mary Pappas family
23 which is your niece's family --

24 A. Yes.

25 Q. -- when you have engaged in those activities with

1 them that you have seen other people engaging in similar
2 activities around you?

3 A. Yes, I have.

4 Q. Great.

5 You have never cared or -- strike that.

6 Have you ever cared whether you were on the wet
7 or the dry sand other than to make sure that your towel
8 stays dry?

9 A. No, I haven't cared, no.

10 Q. You have been a back-lot renter, an ocean-front
11 renter, a back-lot owner, you have done this for 75
12 years. Have you ever asked anyone permission to use the
13 beach?

14 A. No, never.

15 Q. Have you ever been told that you can't use the
16 beach?

17 A. No.

18 Q. Have you ever been told that you can use the
19 beach but you need to go to the public section of the
20 beach?

21 A. No, no.

22 Q. Or the so-called public section of the beach?

23 A. I might say in recent years -- we mentioned --
24 when you were talking to my daughter about Susan Lewis,
25 when the lawsuit started she did say by the way, you can

1 use my beach, but I told her I didn't think I needed her
2 permission to do that.

3 Q. Great.

4 You heard Maureen's testimony about how she's
5 raised her kids around the beach, correct?

6 A. Yes.

7 Q. When you first started coming up your mother
8 or -- was it your mother -- you were coming to visit
9 your grandmother?

10 A. My father's mother, my grandmother, lived at
11 Old Orchard, so --

12 Q. You were visiting her?

13 A. Yes, we would visit here typically on a Sunday
14 after church for an hour or two.

15 Q. Then you came to visit her friends at Goose Rocks
16 and that's when you first started coming to Goose Rocks?

17 A. Yes.

18 Q. So you have been coming up, you came up with your
19 family, your parents, your generation, you have Maureen,
20 you have -- and she has kids. Those four generations
21 has there been a consistent message to the generation
22 below it about what you are allowed to do and not
23 allowed to do on the beach?

24 A. Yes, I think so, you know, the common sense
25 things is to be the good neighbor and, you know, clean

1 up, bring your stuff back at the end of the day and, you
2 know, bring your garbage, whatever.

3 Q. Take in, take out?

4 A. Exactly.

5 Q. Anything about where you are allowed to go on the
6 beach?

7 A. No, not at all. I mean --

8 Q. Except for safety?

9 A. Safety and of course when they were younger you
10 would go with them, you tell them safety issues like one
11 I always remember was no floatables when there is a
12 west wind.

13 When I was a little kid I had a beach ball and I
14 remember that blew away in the water and I tried to go
15 after it and that was not a good thing to do.

16 Q. We have got some pictures of a cute little kid
17 and I think that's you and we will get to those in a
18 minute.

19 Have you ever had boats, Bob?

20 A. Yes.

21 Q. Do you have a boat now?

22 A. Yes, I do.

23 Q. What activities really quickly do you do in the
24 boat at Goose Rocks Beach?

25 A. Well, now it's not much but if you want an answer

1 a few years ago --

2 Q. A quick historical perspective?

3 A. From a historical perspective we bought a boat
4 the best year, '74, after I built the house and it was a
5 12-foot Runabout and we quickly acquired a dinghy so we
6 could -- like a 12-foot aluminum dinghy that we could
7 keep on the dry sand and row out to the moored boat,
8 along with many, many other boats that are moored
9 obviously off the beach.

10 Q. Can you just point, Bob -- I hate to ask you to
11 get up, but can you point to the map kind of where --
12 and I can orient -- can I approach, your Honor?

13 THE COURT: Yes.

14 Q. Just so you know, this is Bel-Air, this is
15 Bartlett.

16 Can you point to the map where you stored the
17 dinghy and where you moored the boat?

18 A. Yes. This would be Bartlett Avenue here and the
19 boat would be moored in this area here, in other words
20 let's say plus or minus two lots from Bartlett Avenue.

21 Q. Great.

22 A. The boats moored off Dinghy Point would be here.
23 In this area there's quite a number of boats.

24 Q. Thank you, Bob.

25 And have you -- I cut you off when you started

1 talking about mooring and dinghies. Keep going. You
2 had the Runabout for how long?

3 A. I had the -- I have the second boat now still
4 moored in the same place, so since '73 I have had two
5 boats there, I think the title just went to my
6 son-in-law last year but tentatively it was still my
7 boat --

8 Q. So --

9 A. -- and the --

10 Q. Sorry.

11 A. I was going to say the dinghy has gone to kayaks,
12 so that's the only change there, but the activities
13 obviously might be running around -- it could be rowing
14 in the dinghy that I might do, the kids might do when
15 they were younger, we had the boat for fishing or going
16 just taking excursions to look at the seals or go to
17 Cape Porpoise to get gas or go to the port.

18 Q. And that's been consistent for 39 years now with
19 the boat?

20 A. Yes.

21 Q. Just as your activities have been consistent on
22 the beach for 75 years?

23 A. Correct.

24 MR. FRAME: Your Honor, I think I have the
25 number right, if we can go to 335 if I can remember

1 correctly, which I believe has already been --

2 A. Is this 335 or is this group?

3 Q. Yes, right there.

4 MR. FRAME: I believe this has been offered
5 and admitted without objection.

6 THE COURT: It's been admitted.

7 Q. Bob, the top right photo, who is that?

8 A. Well, that looks like me.

9 Q. How old do you think you were there?

10 A. Well, it looks like we were sitting on the
11 seawall rocks in front of what is now the Fleming's
12 property. You can see Timber Island in the background,
13 so I would be I guess somewhere around five, six.

14 Q. Great.

15 How about the great photo to the left down low,
16 who is that?

17 A. Well, that looks like it is still me.

18 Q. Probably a couple of years younger than the one
19 before does it look like?

20 A. Yeah, it looks like a little bit younger, fair to
21 say.

22 Q. Where is that photo taken, Bob?

23 A. It kind of looks like that's at Goose Rocks. I
24 would say that's probably further east than the cottage
25 that we were renting, so --

1 Q. You don't recognize the house in the background?

2 A. No, I think that's two or three houses I said
3 east.

4 Q. Okay.

5 A. It is just a piece of it there. I am not really
6 sure.

7 Q. And the last photo which I hope is over the
8 mantle somewhere at 15 Wildwood Lane, who is that?

9 A. Is this the next page?

10 Q. Yes. Who's in that photo, Bob?

11 A. It looks like that is probably me also.

12 Q. Any idea of your age in that photo, two, three
13 maybe?

14 A. Probably two, three.

15 Q. So this would have been sometime in the early
16 '30s, mid '30s?

17 A. Yeah. That doesn't look like Goose Rocks Beach.
18 That might have been either Pine Point or Bay View where
19 we stayed when I was --

20 Q. That was before --

21 A. -- two or three years old, yes.

22 Q. Sure.

23 Going back to the previous page, Bob, the picture
24 on the bottom left, is it fair to say that if you had a
25 camera every time you went down to the beach that you

1 would have pictures of three other generations or two
2 other generations of Pearces doing the same thing?

3 A. Yes.

4 Q. Did you ever think, Bob, that you would need to
5 take photos to document what you have done at
6 Goose Rocks Beach over the 75 years you have been there?

7 A. No, never.

8 Q. Has this case taken a toll on you, Bob?

9 A. Yes, it has because there's -- there's a lot of
10 discussion how it's I think divided the beach.

11 Q. Why did you want to bring your family to
12 Goose Rocks Beach, Bob, why did you continue? You don't
13 have a choice when your parents tell you at the age of
14 five we are going to Maine. Why did you choose to
15 continue that tradition with your family?

16 A. Well, I just grew to love the beach as a kid and
17 after college graduation I moved to New Jersey 350 miles
18 away and that's -- during my working career and I lived
19 right at the Jersey Shore, same as my daughter still
20 does, but it's just such a nice place to be.

21 I am sorry.

22 MR. FRAME: Nothing further.

23 THE COURT: Are you all set, Mr. Pearce? Do
24 you want to take a break?

25 A. I think I am all right. Thank you.

1 THE COURT: Mr. Stern?

2 MR. STERN: No questions.

3 THE COURT: Mr. Driver?

4 MR. DRIVER: No question.

5 THE COURT: Mr. Lachiatto?

6 MR. LACHIATTO: None, your Honor.

7 THE COURT: Miss Hewey?

8 MS. HEWEY: Just a couple if that's all
9 right.

10 CROSS EXAMINATION

11 BY MS. HEWEY:

12 Q. I just want to ask you a couple of questions
13 about your pictures, if that's all right.

14 A. Yes, sure.

15 Q. Okay. First I will ask you to look at the last
16 picture on Exhibit 335. Can you just tell me
17 approximately where that is on the beach, do you know?

18 A. Yeah, I would say that's around the Bel-Air,
19 Edgewood part of the beach.

20 Q. And you can see if you look behind the people
21 playing on the boat some people on the beach. Is that
22 sort of a fairly regular view of how many people would
23 be on the beach during this time period?

24 A. Yes, I would say so.

25 Q. Now I just want to ask you to move up -- it's

1 probably easier if I do it for you.

2 There's a picture of some dinghies also in this
3 Exhibit. Is that picture something like the dinghies
4 that you testified that you had?

5 A. Yes, at the time. This picture looks a little
6 bit dated, before kayaks became popular.

7 Q. So when was it approximately when you used the
8 dinghy as opposed to kayaks?

9 A. I would say up till, oh, 10 years ago probably
10 when it switched over to the kayaks.

11 Q. And when was it that you said you started owning
12 a dinghy?

13 A. 1974.

14 Q. And you said -- did you say that you stored that
15 right on Dinghy Point?

16 A. No, never did, no.

17 Q. Never did?

18 A. No, never did. Typically I have said we would
19 moor the -- always moored the boat actually off of
20 Bartlett Avenue, that's where we typically more often
21 than not at the time because I had as I said used my
22 father's property on Belleglade for 10 years, '62 to
23 '72, so we got used to going down Bartlett Avenue and
24 when we built the house at 15 Wildwood, which is really
25 equally between the two, we were still used to going

1 down Bartlett Avenue and that's where the boat --

2 Q. So you would want your dinghy to be close to
3 where you got on the beach?

4 A. Yes, yes.

5 Q. But when I refer to Dinghy Point which I
6 understand it is also sometimes called Walkers Point,
7 are you familiar with where that --

8 A. It was Gardiner Point, excuse me.

9 Q. Gardiner, you know, whatever.

10 THE COURT: It's another, Walker, another
11 point. Mr. Bruni and Mr. Prescott could tell you about
12 that.

13 Q. I knew there was a Walkers Point somewhere in the
14 area.

15 Okay, so anyway you are familiar with where
16 Dinghy Point was?

17 A. Yes, I am.

18 Q. And do you recall during the time you were going
19 to Goose Rocks Beach that a number of people stored
20 their dinghies out on the point?

21 A. Oh, yes, a large number.

22 Q. Okay. Now just a couple of quick questions. You
23 talked about selling sea moss. When was that?

24 A. That would be in the early '40s, I guess when --
25 if I was born in '32 let's say I was 10 years old -- at

1 '42, I would say it was around that time.

2 Q. So kids from the beach would collect sea moss all
3 over the beach and then drag it to which end of the
4 beach?

5 A. The west end -- well, most of it was in the west
6 end anyway, so it wasn't necessarily -- you didn't drag
7 it from the east end to the west end, no, because the
8 sea moss tends to be nearer the west end, from the
9 Dyke Road west anyway.

10 Q. Would you go out on the west end, collect
11 sea moss, drag it up to somebody --

12 A. Exactly.

13 Q. -- and sell?

14 A. And get a few pennies, right, exactly.

15 Q. And you didn't get anybody's permission to do
16 that; is that right?

17 A. No.

18 MS. HEWEY: Thank you.

19 THE COURT: Mr. Thaxter, questions for
20 Mr. Pearce.

21 CROSS EXAMINATION

22 BY MR. THAXTER:

23 Q. Mr. Pearce, good morning. My name is Pete
24 Thaxter.

25 A. Good morning.

1 Q. Can I call you Bob?

2 A. Yes, you may.

3 Q. Okay. I am going to hand you some
4 interrogatories and ask you to look at them and then I
5 am just going to ask you one quick question about number
6 2.

7 I will open it to number 2 but your signature --
8 notarized signature is on the back page. Just take a
9 look at it.

10 A. Yes, that is my signature.

11 Q. Would you look at the second page and the top of
12 the third page? Would you look at your answer on the
13 top of the third page or it starts on the second page,
14 the answer to question number 2.

15 A. Well, shall I look quickly after -- do I read 2
16 and then answer --

17 Q. Yes.

18 A. -- is that what you want me to do?

19 Q. Yes. I kind of highlighted it for you so it
20 would be easier.

21 A. Yes.

22 Q. Do you see that?

23 A. Yes.

24 Q. The question was really asking you about your use
25 of the beach and where, and you actually say in -- you

1 say in the top of page 3 that your activities -- your
2 beach use activities occurred regularly across all areas
3 of Goose Rocks. You say, that being said the lots we
4 primarily used were 3411 and you list the lots.

5 By my take, I am just trying to confirm where it
6 was you were saying that you were using primarily, but
7 from looking at the tax map that takes you from the
8 Lewis property probably down to The Tides Inn. Is that
9 where you were using primarily?

10 A. Yes, I would say from Bel-Air Avenue where you
11 would enter the beach, which is next to Vincens and
12 Henricksen down to Bartlett Avenue, plus or minus a
13 couple of lots, so basically between Bartlett and
14 Bel-Air.

15 Q. Do you know who Barbara Rencurrel is?

16 A. Yes, I don't know her personally, I know where
17 her home is.

18 Q. Okay. Did you ever use that lot?

19 A. Didn't frequently because that is just about
20 midway between those two entry points to the beach and
21 nobody generally walks any further than they have to,
22 but the swimming lessons were there, off her -- the
23 more -- more or less in front of her house, so I would
24 watch my kids when they were having swimming lessons so
25 I would be in front of that particular property.

1 Q. Did you ever see her private property signs?

2 A. No, I didn't notice any in -- any in particular.

3 Q. I am just going to get a map, I want to show you
4 something and ask you a question. Just take a look
5 right where it says intertidal area, riparian rights.

6 Do you know who the Dicesares are?

7 A. Oh, yes.

8 Q. Okay, and is that their pie-shaped -- their lot
9 is kind of different, it kind of fans out like a pie,
10 right?

11 A. Yes, it does.

12 Q. Okay, you can have a seat, thank you.

13 A. (Witness complies.)

14 Q. If you extended those lines to the water they
15 would have a good deal of the Sand Point, wouldn't they,
16 if you drew their lines in that --

17 A. Yes.

18 Q. -- pie shape?

19 Okay --

20 A. Yes, that's correct.

21 Q. -- and that's primarily where you see the
22 dinghies stored?

23 A. There are a large number there. There are
24 also -- I think a significant number in the order of a
25 dozen in the Bartlett Avenue part of the beach.

1 Q. Now, you do -- use Susan Lewis' property a fair
2 amount, right?

3 A. Yes.

4 Q. And you store your kayaks there sometimes?

5 A. Yes.

6 Q. And are you aware that she's asked your grandsons
7 to move the kayaks over to the right-of-way or the side?

8 A. I have heard that in recent years but of course
9 again we used that long before she was ever an owner of
10 the property.

11 You are talking about recent, recent times, yes,
12 there has been an incident in recent times I have been
13 told. She's never told me that but the ones that use
14 the kayaks I believe she has told them that.

15 Q. Do you remember a conversation with Susan
16 Lewis -- do you remember sitting with her -- I am going
17 to show you Exhibit Number 113 and there are two pages
18 and ask you if you are in either of those? Is that you
19 sitting in the chair with your jeans on there?

20 A. Sitting in the chair with the -- I know I was
21 sitting in a chair. I know I had my camera -- so is it
22 a picture of myself? I don't know.

23 Q. Well, the question is do you remember when you
24 had that cookout --

25 A. Yes, I do.

1 Q. -- and you invited -- and Susan Lewis was with
2 you there?

3 A. Yes, Susan -- we were in front of her house, she
4 came out of her house and wanted to go sailing, it was a
5 beautiful evening and I invited her to join us, she said
6 she wanted to use her sailboat, so she did and later in
7 the evening she came back from her sailing and she did
8 join us.

9 Q. And would you look at the Exhibit 335 now? You
10 were asked about a couple of pictures there.

11 A. 335 is a bunch of pictures here?

12 Q. Yes. Do you have 335, go back to the front page
13 where those pictures of you as a little boy --

14 A. Yes.

15 Q. Now, do you know the Palmer sisters? Do you know
16 the Palmers?

17 A. The Palmers, yes, I do.

18 Q. And they own the property down near Dyke Road?

19 A. Yes, they do.

20 Q. And you knew the Gilpatricks, right?

21 A. Yes.

22 Q. Mr. Gilpatrick was your dentist, wasn't he?

23 A. No, he was not.

24 Q. He wasn't?

25 A. No, he was not.

1 Q. But you knew him?

2 A. Well, I knew the house.

3 Q. And if you look in the picture on the lower left
4 and the picture on the right, is that the Gilpatrick,
5 Zagoren house right behind there?

6 A. Yes, it probably is now that you mention it, yes.

7 Q. And that would be Dyke Road entrance right there,
8 right?

9 A. Yes, it would.

10 Q. And so on the right-hand side of that where --
11 you are kind of in front of the Palmer house, right?

12 A. Yes, that would be the case.

13 Q. And let's go through the pictures down to the one
14 where you launch -- you got the white boat and somebody
15 is launching, I think it's you --

16 A. That's the boat in the water there?

17 Q. Yes.

18 A. Yeah, we had that before. Yes.

19 Q. Is that you in the picture?

20 A. Yes, it is.

21 Q. Okay.

22 I think you testified about where it was located
23 but I just want to ask you, can you see The Tides Inn
24 there anyplace?

25 A. I think The Tides Inn would be to the left, with

1 the angle of that picture.

2 Q. And you are looking down the beach to the east,
3 right?

4 A. Yes.

5 Q. So those would be the area you are like looking
6 at there is probably in the area that is the
7 conservation trust property today?

8 A. That would be in that area, yes, it would be.

9 Q. Thank you.

10 You testified you know -- Susan Lewis rents her
11 house, right?

12 A. Yes, she does.

13 Q. So she is not there a good time during the
14 summer, right?

15 A. I see her a lot, I think she stays close by and
16 is on the beach quite frequently.

17 Q. Now, when you teach your kids to be -- you teach
18 them to be neighborly, you have them -- you know, you
19 like to be neighborly on the beach and you pick up what
20 you bring in and you take out your garbage, right?

21 A. Yes, we do.

22 Q. And fill your holes?

23 A. Yes.

24 Q. And try not to interfere with the other people
25 that are around you?

1 A. That's right.

2 Q. And try to be generally neighborly, right?

3 A. Yes, we do.

4 MR. THAXTER: Okay, thank you.

5 THE COURT: Okay, Mr. Pearce, you are all
6 set.

7 (Witness excused.)

8 THE COURT: Thanks very much.

9 Why don't we take the morning recess. We
10 will be back at maybe about 10 of or so.

11 (Thereupon, a recess was taken, and then the
12 proceedings continued as follows:)

13 THE COURT: Welcome back.

14 Andre.

15 MR. DUCHETTE: We would like to call Barbara
16 Mazeika.

17 THE CLERK: Please state and spell your name
18 for the Court.

19 THE WITNESS: My name is Barbara Mazeika,
20 M-A-Z-E-I-K-A.

21

22

23

24

25

1 Thereupon,

2 BARBARA MAZEIKA

3 was called as a witness and, after having been duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DUCHETTE:

7 Q. Good morning, Barbara.

8 A. Good morning.

9 Q. Could you please state where your current
10 principal residence is?

11 A. Our current principal residence is in Florida
12 actually.

13 Q. Where in Florida?

14 A. St. Petersburg, Madeira Beach.

15 Q. Excellent.

16 Do you also own a piece of property at
17 Goose Rocks Beach?

18 A. Yes, we do.

19 Q. What is that address?

20 A. 162 Kings Highway.

21 Q. 162 Kings Highway.

22 Roughly on Goose Rocks Beach where is 162 Kings
23 Highway, on the east end, middle, west end?

24 A. It is sort of halfway down the west end.

25 Q. When you say halfway down you mean halfway down

1 from Dyke Road?

2 A. Yes.

3 Q. Is that a year-round home or just a summer home?

4 A. It is a year-round home.

5 Q. So when you come to visit Goose Rocks Beach from
6 your residence in Florida do you come just in the summer
7 or come sometimes in other seasons as well?

8 A. We usually come in May and we stay through the
9 summer months and we return to Florida for a couple of
10 months and then we come back home for the holidays and
11 then we go back down again in January.

12 Q. So you are sometimes at Goose Rocks Beach for
13 Christmas and New Year's?

14 A. Yes, and Thanksgiving.

15 Q. Excellent.

16 How long have you -- have you owned that home at
17 Goose Rocks?

18 A. I inherited the home in 2000 when my mother
19 passed away.

20 Q. How long did your mother own that home?

21 A. Well, my mother sort of owned the home through my
22 grand -- my grandfather purchased the house in I think
23 it was like about '60 -- I would say in '66 or so, '64,
24 around that area, he purchased the home for her to --
25 and our family to live in. At the time we were only

1 coming in the summer.

2 Q. Okay.

3 Do you have -- and did your grandfather, did he
4 purchase that home in 19 -- you said 1964 --

5 A. Around there.

6 Q. -- or '66?

7 A. Yes.

8 Q. Did your grandfather own any other pieces of
9 property at Goose Rocks Beach?

10 A. Yes, he did.

11 Q. Where did he own?

12 A. He owned 251 Kings Highway and then he owned
13 another cottage at the east end right across from the
14 creek that was -- he had purchased from Walter Wiewel,
15 Senior.

16 Q. And when you say the creek, is that the Little
17 River?

18 A. Uh-huh.

19 Q. So let's first -- the 251 Kings Highway, where is
20 that located?

21 A. 251 Kings Highway is presently The Rose. My
22 cousin Leslie Rose owns the property.

23 Q. Okay, and is that a beach-front home?

24 A. Yes, it is.

25 Q. And Leslie Rose, she is a plaintiff in this case?

1 A. Yes.

2 Q. And her mother is Barbara Rencurrel?

3 A. Yes.

4 Q. And when -- do you know about when your
5 grandfather purchased -- acquired that piece of
6 property, 251?

7 A. Oh, that had to be in the 40's, I would say in
8 the 40's.

9 Q. And the property on the east end of the beach,
10 when did your grandfather purchase that property, if you
11 know?

12 A. He purchased that property after both of his
13 daughters were married and we started -- they had
14 children and started coming to the beach, so I would
15 have to say in the '50s.

16 Q. Okay, and was that when your grandfather had
17 purchased the property on the east end and the west end,
18 was that his intention is to provide other locations for
19 his family to stay at Goose Rocks Beach?

20 A. Yes. Originally -- my mother, our family we came
21 to the beach the entire summer, similar to before
22 someone else had stated the day school got out to the
23 day before school started we came to Goose Rocks Beach,
24 but my mother's sister, Barbara, you know, also had
25 family and they lived further away than we did, we only

1 lived in Massachusetts, so they would come up for two
2 weeks in the summertime, so when they came up and stayed
3 at the house by the Little River my grandfather provided
4 another place, rented another place for us to stay so
5 that we didn't have to go back home so the whole -- all
6 the families could be up there together.

7 Q. And so when -- and that was -- that would have
8 been in the 1950s, leading up to '64, '66 that you would
9 rent that home?

10 A. Yes.

11 Q. Where was that house that your grandfather
12 rented?

13 A. Well, sometimes we -- he rented cottages up on
14 the New Biddeford Road, across from like -- well,
15 beside -- down from the Doe cottage where the river
16 actually winds in again, there are cottages there, and
17 then he also rented the cottage directly across the
18 street from him at the 251, there was a yellow house
19 there, I think it was called The Beachnut.

20 Q. And so -- and have you been -- and when did you
21 start coming to Goose Rocks Beach?

22 A. Well, I would say from the time I was born.

23 Q. Which was when?

24 A. 1950.

25 Q. 1950.

1 During the times -- let's start when you were
2 staying with your family up on the property that was
3 rented up on New Biddeford Road. Would you only --
4 would you use the beach on the east end of Goose Rocks
5 Beach or would you always come to -- or would you always
6 be in front of your grandfather's house at 251?

7 A. We use both places, we would use the Jefferys Way
8 to access the beach from the east end.

9 Q. Would you ever stay on the beach there or would
10 you -- or would you always play and recreate in front of
11 your grandfather's house at 251?

12 A. Both places, we would go back and forth.

13 Q. The house that your grandfather purchased over on
14 the east end, was that a beach-front home or a back lot?

15 A. It was a back lot.

16 Q. Okay, and how would you access the beach from
17 that particular property?

18 A. We would use Jefferys Way or we had -- we would
19 go by the Junker's house and the Lavimodierre's house,
20 we would walk along the side of their grass to get to
21 the beach.

22 Q. Is that called Pegs Way by any chance?

23 A. I don't know that for sure.

24 Q. I don't know either, I heard it earlier, I was
25 curious.

1 A. Okay.

2 Q. And so again when you would -- so when you would
3 access the east end of the beach either via Jefferys Way
4 or over by the Junkers, again, would you recreate on the
5 beach in that area?

6 A. Yes.

7 Q. Would you stay right in Jefferys Way or would you
8 go left or right on the beach?

9 A. No, we would spread out because all the mothers
10 brought their children there pretty much for the day and
11 all the mom's spread out and we would have, again, those
12 Wiffle Ball games that take up -- we are all home-run
13 hitters, let's just put it that way.

14 Q. And when you were doing those activities, again,
15 did any beach-front owner at that time ever come down
16 and ask you to leave or ask you to move or say this is
17 private property and you are not allowed to be here?

18 A. No.

19 Q. And did you ever seek permission from any of the
20 beach-front owners again focusing on the east end of the
21 beach to recreate on the beach there?

22 A. No.

23 Q. When your grandfather purchased the property on
24 the west end in 1964, 1966, around that time, and
25 actually what I am going to do -- and that's the

1 property you currently own now, correct?

2 A. Yes.

3 Q. Okay. I am going to have you actually take the
4 orange pen and, if you can, if you can circle that
5 property on our map?

6 A. This is this property marked 93.

7 Q. Okay.

8 A. (Witness complies.)

9 Q. While you are up there can you take the red pen
10 and draw a line as to how you would access the beach
11 from that property?

12 A. We have a right-of-way right here between the
13 Callahans and the O'Donnells, it is actually the
14 Callahan's right-of-way.

15 Q. Okay.

16 A. (Indicating.)

17 Q. And you can sit.

18 A. (Witness complies.)

19 Q. And I think you were -- so you mentioned that
20 you -- sort of the property on the west end, you have
21 a -- there's a right-of-way?

22 A. Yes.

23 Q. And is that a right-of-way that is referenced in
24 your deed?

25 A. Yes.

1 Q. If you could take a look at Exhibit Number 183?

2 A. Yes.

3 Q. Have you seen this exhibit before?

4 A. Yes.

5 Q. What is it?

6 A. It's just a listing of the properties that are
7 part of the Ivory Emmons who used to own that property
8 and then she -- in turn we had the right-of-way
9 through -- it is referred to in the deed as the Emmons
10 right-of-way.

11 Q. Okay, and do you see the right-of-way on this
12 exhibit?

13 A. Yes.

14 Q. Do you also see a notation on this exhibit
15 indicating beach?

16 A. Yes.

17 MR. DUCHETTE: Your Honor, I would like to
18 offer Exhibit Number 183.

19 MR. LEONI: No objection.

20 THE COURT: Admitted.

21 BY MR. DUCHETTE:

22 Q. Now, what was your understanding with respect to
23 once you accessed the beach via that right-of-way as to
24 where you could go, what you could do?

25 A. My understanding was that we could go wherever we

1 wanted to on the beach.

2 Q. Were you restricted to just that right-of-way?

3 A. No.

4 Q. In going back to -- and whether or not you can
5 remember, but when your family was renting or when your
6 grandfather had rented a house on your family's behalf
7 up near the New Biddeford Road do you recall any
8 instructions at all from the owners of that house as to
9 where you could go or what you could do on Goose Rocks
10 Beach?

11 A. No.

12 Q. Has anybody ever given you instructions whether
13 it was your grandfather, your parents, aunts and uncles,
14 has anyone ever given you any instructions as to where
15 you could go or what you could do on Goose Rocks Beach?

16 A. Not as far as where we could go but there were
17 instructions when we were growing up about to keep off
18 the rocks and it pretty much was painted by many of the
19 owners, keep off rocks, and that was -- we were taught
20 that that was dangerous, the rocks could move, they were
21 not settled and so keeping off the rocks was a major no
22 no.

23 Q. But anything else with respect to the beach being
24 private property and you can't go in front of certain
25 homes?

1 A. No.

2 Q. With respect to the property on the west end --
3 and you have been coming there first with your parents
4 and then with your family since 1964, 1966, and would
5 you recreate on the beach in that area as well?

6 A. Yes.

7 Q. And would you always stay right near the
8 right-of-way that you indicated you come down or would
9 you go left or right?

10 A. We would spread out. As a teenager I had friends
11 that lived in that area of the beach also so we would go
12 back and forth to different areas on the beach there
13 between like Norwood Avenue down to where the Sotirs
14 are, because we had friends, so we would be -- if we
15 were playing ball or doing different things, depending
16 on whose day we were at somebody's house would be where
17 we would go on the beach.

18 Q. And when you were visiting with friends and you
19 were recreating on the beach in front of that area did
20 you make it a point to stay only in front of a
21 beach-front owners home that you knew?

22 A. No.

23 Q. Did that ever even come into your mind?

24 A. No, it did not.

25 Q. Your grandfather who owned 251 Kings Highway,

1 which was the Rencurrel and Rose property, do you ever
2 recall your grandfather ever mentioning or indicating
3 that that was private property and people weren't
4 allowed to use the beach in front of that property?

5 A. No, I do not.

6 Q. Did you -- growing up did you and your family
7 hang out at 251 Kings Highway?

8 A. Yes, we did.

9 Q. Would you see people who were not either your
10 family, friends or guests using the beach in front of
11 that property?

12 A. At times, yes.

13 Q. And that goes back at least as far as you can
14 remember, I mean not quite 1950 but --

15 A. No, not quite 1950, but yes.

16 Q. Do you have other family members who own property
17 at Goose Rocks Beach?

18 A. Yes, I do.

19 Q. Who is that?

20 A. My sister and her husband, Charles and Lynda
21 Parrott, they own at 5 Kings Lane.

22 Q. Where is that?

23 A. That is on the east end in the Kings, Grant area
24 there.

25 Q. Sometimes referred, and correct me if I am wrong,

1 Sand Point area?

2 A. They are not on Sand Point, they are on the
3 opposite side of Sand Point.

4 Q. And by the Little River?

5 A. Yes -- well, yes.

6 Q. And how would they -- typically how would they
7 access the beach?

8 A. They actually usually come down to our place and
9 go to the beach with us or they go on -- because they
10 have an animal they walk the beach with their dog and
11 they go through Jefferys Way.

12 Q. Jefferys Way.

13 Do you have any other family that owns property
14 at Goose Rocks Beach?

15 A. Well, my aunt, my cousin.

16 Q. That's the 251 Kings Highway?

17 A. Yes, and then also Leslie also owns one up on
18 Prescott.

19 Q. Okay.

20 Who lives -- who typically stays at the Prescott
21 property?

22 A. Leslie Rose and her family.

23 Q. And your aunt typically is at 251 Kings Highway?

24 A. Yes.

25 Q. Growing up what types of -- what types of

1 activities would you and your family engage in on the
2 beach?

3 A. Sun bathe, build castles, play in the sand, play
4 Whiffle Ball, we play -- my children were avid soccer
5 players as was my sister so we would have soccer games,
6 Bocce Ball, rowing, kayaking, boating, waterskiing,
7 tubing, just walking the beach, collecting shells.

8 Q. With respect to your use between I think you said
9 between Norwood and to the west towards the Sotir
10 property since 1964, 1966, again, has any beach-front
11 owner ever come out and said I am sorry, you can't be
12 here, you need to move, this is private property?

13 A. No.

14 Q. Has any beach-front owner ever given you explicit
15 permission to use the beach in front of their property?

16 A. No.

17 Q. And have you ever asked permission from any
18 beach-front owner to use their property?

19 A. No.

20 Q. In going as far back as you can remember, it
21 sounds like you have been on the east end, in the middle
22 of the beach when you are visiting your grandfather and
23 certainly on the west end since your mother owned the
24 property there, have you seen people engaging in
25 recreational activities up and down Goose Rocks Beach

1 from the Little River to the Batson River?

2 A. Yes, I have.

3 Q. Are there any parts of Goose Rocks Beach which
4 are never utilized?

5 A. Not that I know of -- well, there are some areas,
6 I am sorry, that when the Plovers are nesting you can't
7 go near the Plovers, they block it all off in the grass
8 at the west end or anyplace where there happens to be a
9 nest, they cordon it off, the marine wildlife people
10 come down and it is sort of a protected area.

11 Q. And that is typically in the dune grass?

12 A. Yes.

13 Q. Would you say going as far back as you can
14 remember have the activities that you described earlier,
15 have those pretty much remained constant over the years?

16 A. Yes.

17 Q. Do you have children?

18 A. Yes, I do.

19 Q. How many?

20 A. Two.

21 Q. Two.

22 How old are they now?

23 A. My son is 37 and my daughter is 34.

24 Q. When they were growing up did you give them any
25 instructions as to where they could go or what they

1 could do on Goose Rocks Beach?

2 A. The only instructions that we pretty much gave
3 the children were if you dig a hole you have to replace
4 it -- when -- I have to say when -- we had a list of
5 like ways of being respectful to your neighbors and to
6 the beach, which Beverly Sotir when she owned the
7 general store, she used to have them right on the
8 counter there and would give them out to people coming
9 so owners, renters and the like as they used the beach,
10 there were some common sense --

11 Q. On that list was there ever -- was there an
12 instruction that you should ask beach-front owners
13 permission to use the beach in front of their property?

14 A. No.

15 Q. On that list was there any indication that there
16 were certain parts of Goose Rocks Beach which were
17 private?

18 A. No.

19 Q. Was there any indication on that list that there
20 were certain parts of Goose Rocks Beach that were
21 public?

22 A. No.

23 Q. When -- do you know about when that list started
24 to get handed out?

25 A. Well, I remember my son worked there when he was

1 -- like at the general store when he was like 13 and so
2 I recall that the list was there at that time because I
3 remember that Beverly had hired him and she owned the
4 store then.

5 Q. So a little over 20 years ago?

6 A. Uh-huh.

7 Q. Would your -- do you think your grandfather would
8 have rented property up on New Biddeford Road if you
9 wouldn't be able to access or use Goose Rocks Beach?

10 MR. LEONI: Objection.

11 THE COURT: Sustained.

12 Again, you have to give the judge a little
13 credit, not a whole lot but a little. There is a reason
14 why property costs more when it is near the water.

15 BY MR. DUCHETTE:

16 Q. I am going to have you look at Exhibit Number
17 330, I am just going to ask you a few questions about
18 that. If you want to turn to the fifth photo --
19 permission to approach?

20 A. Uh-huh.

21 Q. I apologize, I think it is more than the fifth
22 photo.

23 If you look at the top picture do you recognize
24 anyone in that photo?

25 A. Yes, I do, that is my brother-in-law, Charles

1 Parrott, and his daughter Stacy.

2 Q. Do you know how -- about judging on his daughter
3 Stacy's age in that photo about how long ago that was?

4 A. Let's see, she is in her 30's so I would say it's
5 probably 27 years ago.

6 Q. Do you know where that is?

7 A. Yes, that's at the west end in front of the
8 Flynns and the Callahan's house.

9 Q. If you look on the picture below, where on the
10 beach is that?

11 A. That's at my grandfather's house, 251.

12 Q. Do you recognize any of the people in that photo?

13 A. No, I do not.

14 Q. Are they family members, guests of your
15 grandfather?

16 A. Not that I recognize, no.

17 Q. If you flip two photos forward, if you are
18 looking at the top photo do you recognize anyone in that
19 photo?

20 A. Yes, that's a number of the members of the
21 Parrott family and my -- that's my sister in the center
22 and that's her daughter Stacy sort of kneeling there,
23 and then to the left in the front there is Budd Parrott,
24 that would be my sister's father-in-law.

25 Q. Judging by your sister or her children do you

1 know roughly how long ago this was?

2 A. I would say about in the same time frame, 27
3 years ago.

4 Q. Where on the beach is that?

5 A. They are in front of the Gardiner's house and the
6 Dicesare's house there.

7 Q. If you flip to the next photo of the bottom
8 picture --

9 A. Yes.

10 Q. -- who is in that photo?

11 A. My father, my nephew Matthew and my niece Stacy.

12 Q. Where is that on the beach?

13 A. That is in front of the Flynn's house.

14 Q. Again that's over on the west end of the beach?

15 A. Yes, yes.

16 Q. And the Flynns are a plaintiff in this case,
17 correct?

18 A. Yes.

19 Q. Do you know about how long ago this picture was
20 taken?

21 A. I would say that would be possibly like 22 years
22 ago.

23 Q. If you flip three photos forward, again I am
24 looking at the bottom picture, do you recognize any of
25 the people in that photo?

1 A. Yes, that is my brother-in-law Charles Parrott,
2 his daughter Stacy and his daughter Sarah.

3 Q. Do you recognize any of the beach chairs or
4 towels in this picture?

5 A. Yes, I do. They are ours.

6 Q. Are some of them yours?

7 A. Our setup.

8 Q. Where is that?

9 A. That is in front of the Flynn's house.

10 Q. And the stairs, there looks to be some stairs to
11 the left of the Flynns?

12 A. Yes.

13 Q. Is that how you would access the beach?

14 A. No.

15 Q. Okay. Your right-of-way was further west of
16 there?

17 A. Yes. Those stairs actually are no longer there.

18 Q. And again looking at that photo, about how far
19 back was that?

20 A. Probably about 25 years ago.

21 Q. If you flip to the very next photo, another
22 question regarding photos, there appears to be a man on
23 a raft. Do you know where at Goose Rocks Beach that
24 was?

25 A. Yes, that was out in front in the -- off the

1 point there.

2 Q. Off --

3 A. Off Gardener Point.

4 Q. Great.

5 Was that a popular spot for people to ski off the
6 dock and things of that nature?

7 A. Yes, and they had swimming -- some of the classes
8 of swimming lessons, I assisted with teaching with
9 swimming, we used that dock for teaching the children
10 diving, being -- seeing if they could jump off and get
11 into the water, to the intermediates in the swimmers we
12 used that dock with them.

13 Q. Great.

14 MR. DUCHETTE: Your Honor, I would like to
15 offer Exhibit 330 into evidence.

16 THE COURT: Objection?

17 MR. LEONI: Does Exhibit 330 consist of 15
18 photos? I think we would just like the ones in that she
19 just testified.

20 MR. DUCHETTE: I am happy to go through all
21 of them.

22 THE COURT: Ben, you look at them, you tell
23 me which ones you object to. We are not going to go
24 through 50 photos.

25 MR. LEONI: I am trying to do this as

1 quickly as possible.

2 THE COURT: That will be fine.

3 MR. DUCHETTE: We will take care of that on
4 another day.

5 Great.

6 No further questions, your Honor.

7 THE COURT: Mr. Stern.

8 CROSS EXAMINATION

9 BY MR. STERN:

10 Q. Still morning, good morning. I am Paul Stern
11 with the Attorney General's Office.

12 A. Good morning.

13 Q. You mentioned tubing. What is tubing?

14 A. Well, you sit inside a tube and you pull it
15 behind the boat and you swing -- the people sit in and
16 you swing around and you try to get them off the tube.

17 Q. Where do you get on the tube usually?

18 A. Well, we have to get on the tube on -- right in
19 the water there like maybe you swing the boat in and
20 then you get in it like in maybe knee-deep water.

21 Q. Could you go to page I think it is 17 of those
22 photos?

23 Is it okay if I approach the witness --

24 A. That one?

25 Q. Yes. Do you know the children in that

1 photograph?

2 A. Yes, I do.

3 Q. Who are they?

4 A. They are my nephew Matthew and my two nieces,
5 Sarah and Stacy.

6 Q. And they are playing with two inflated things, I
7 guess watercraft.

8 A. Yes, they are.

9 Q. And one of them is a big dolphin?

10 A. It looks more like an Orca to me. I think it is
11 a whale.

12 Q. A what?

13 A. An Orca whale.

14 Q. An Orca whale, that shows you I don't know much
15 about the water.

16 Walking up and down Goose Rocks Beach the entire
17 time you were there do you see similar activities by
18 other children with flotation devices like that?

19 A. Yes.

20 MR. STERN: Nothing further.

21 THE COURT: Mr. Driver?

22 MR. DRIVER: Nothing further.

23 THE COURT: Mr. Lachiatto?

24 MR. LACHIATTO: No, your Honor.

25 THE COURT: Miss Tchao?

1 MS. TCHAO: Thank you, your Honor.

2 CROSS EXAMINATION

3 BY MS. TCHAO:

4 Q. Good morning.

5 A. Good morning.

6 Q. I wanted to ask you a couple of questions about
7 teaching swimming lessons. When was that?

8 A. I helped with swimming lessons from about the age
9 of 14, so that would be like in 1956 or so -- no, I
10 would be 16 -- I am sorry, 1960, let me get up there,
11 '64 through '68.

12 Q. '64 through '68.

13 A. Uh-huh.

14 Q. Can you tell us where were the swimming lessons
15 given and did that change?

16 A. They did. Originally the swimming lessons were
17 usually out in front of The Tides Inn and when we added
18 the raft to the lessons and we also realized that the
19 water was a bit warmer when you went around the corner
20 so those little beginners sort of liked the warmer
21 water, so we moved it around the corner.

22 Q. You said you moved it around the corner. Was
23 that in the vicinity of 251 Kings Highway?

24 A. Yes, that whole Gardiner area, yes.

25 Q. When you gave swimming lessons to the little

1 tykes were there times when parents sat and watched the
2 lessons going on?

3 A. Often.

4 Q. Where did they sit, in the wet sand or dry sand
5 or both?

6 A. No, they would sit in the dry sand.

7 Q. Was that sometimes in front of 251 Kings Highway?

8 A. I really can't say. I would say because we were
9 more towards the Gardiner area, I mean but some people
10 might have sat down there, I really -- I can't answer
11 that.

12 Q. Okay, and as -- in the '50s, '60s, '70s when you
13 were on the beach do you recall seeing any lifeguards on
14 the beach?

15 A. Yes.

16 Q. Where did you see that?

17 A. Well, the lifeguard station was out from
18 The Tides Inn area and the -- that area there, but I do
19 remember at a time that there were two lifeguards and
20 one -- if it was a busy, busy day at the open end of the
21 beach a lifeguard would stay there, but there was -- a
22 lifeguard would walk the beach, and on days when it
23 wasn't really busy the lifeguard would walk the beach
24 from river to river.

25 Q. So you saw a lifeguard walking the beach from

1 river to river?

2 A. Yes.

3 Q. Did you know specific lifeguards?

4 A. I knew Larry Willie and I knew -- well, Butchy
5 Archer, I am trying to think of his real name but that's
6 what we called him. Arthur, I think it is -- Arthur was
7 his real name, and I remember Stu Flavin as a lifeguard.

8 Q. Miss Mazeika, on -- as long as you have been
9 using the beach -- and you've testified that you own
10 property in the middle of the west end now, right?

11 A. Yes.

12 Q. And you have also -- you also had an opportunity
13 to use the property in front of 251 Kings Highway?

14 A. Yes.

15 Q. And on the east end as well access through
16 Jefferys Way?

17 A. Yes.

18 Q. And all in between?

19 A. Yes.

20 Q. Can you comment on the numbers of people using
21 the beach over the years since as long as you have been
22 coming to the beach?

23 A. I would say that the population of the numbers of
24 people coming to the beach has increased and there are a
25 number of reasons why. Originally we did not have that

1 much parking on the beach, the town actually increased
2 the number of parking spaces along the beach area over
3 the years, they increased the parking going out the
4 Dyke Road where you can park off the shoulder now, I
5 think those kinds of things, plus building, there's been
6 cottages built there in the time, so the property now
7 has pretty much -- I would say Goose Rocks Beach has
8 maybe a lot left on it that could possibly be built on.

9 Q. Would you say that the increase is more gradual
10 in nature or has there been a dramatic change?

11 A. I would say it's just been gradual over the years
12 because originally there never was signage out there
13 even marking Goose Rocks Beach and if there was it was
14 usually taken down within a day so it was a very secret
15 -- it was a secret place we were hoping.

16 Q. Not anymore, right?

17 A. No.

18 Q. And you had friends growing up as a teenager on
19 the beach?

20 A. Yes.

21 Q. Some of them were beach-front people?

22 A. Yes.

23 Q. Some of them back-lot people as well?

24 A. Yes.

25 Q. Did you have some friends who were not from the

1 immediate Goose Rocks Beach neighborhood?

2 A. Yes.

3 Q. You saw them using the beach?

4 A. Yes.

5 Q. From river to river?

6 A. The people that I use -- we used mostly the east
7 end or the west end.

8 Q. Okay, and when your friends were with you did --
9 or with your family did you observe them asking you or
10 your family members permission to use any portion of the
11 beach?

12 A. No.

13 MS. TCHAO: Thank you. No further
14 questions.

15 THE COURT: Mr. Leoni.

16 CROSS EXAMINATION

17 BY MR. LEONI:

18 Q. Good morning, Barbara. My name is Ben Leoni and
19 I represent the plaintiffs.

20 A. Good morning.

21 Q. Do you mind if I call you Barbara?

22 A. That's fine.

23 Q. You have a right-of-way on the west end of the
24 beach down by your current property?

25 A. Yes.

1 Q. And I was just standing behind Andre when you
2 just wrote it so I am going to go to the map and just
3 try to figure out where that was.

4 A. Okay.

5 Q. Is this your property, 93 --

6 A. Yes.

7 Q. -- on this map?

8 So this is the right-of-way right here that you
9 drew?

10 A. Yes.

11 Q. Okay.

12 That right-of-way is in your deed, correct?

13 A. Yes, it is.

14 Q. And your family actually posts a private
15 right-of-way sign at the end of that right-of-way, don't
16 they?

17 A. Yes.

18 Q. You have tried to restrict the public access down
19 that right-of-way, correct?

20 A. Public access, yes.

21 Q. And you believe that you have the right to
22 determine because it is in your deed who gets to use
23 your right-of-way?

24 A. No.

25 Q. No?

1 A. No, it is not my right-of-way. I have the use of
2 that right-of-way, the person who gets to decide that
3 would be the Callahans, they own the right-of-way. The
4 right-of-way is through their property, I simply have a
5 right-of-way to go through their property.

6 Q. Okay, so why do you think that you have the right
7 to restrict the public's use to that right-of-way?

8 A. I don't, the Callahans do.

9 Q. Okay, but you just do it anyways?

10 A. Do what?

11 Q. Restrict public access to that area?

12 A. No, I don't.

13 THE COURT: One question back. Did the
14 Callahans post the sign or did your family post the
15 sign?

16 A. No, my family did not post the sign, the sign was
17 posted by the Callahans.

18 Q. Okay. A minute ago I asked you whether your
19 family restricted public access on the right-of-way and
20 you said yes.

21 A. I misunderstood your question so I would say no,
22 I have no right to restrict anyone's access there; the
23 Callahans do.

24 Q. You have never tried to restrict public access to
25 that right-of-way?

1 A. No.

2 Q. Down near that right-of-way where you access the
3 beach, have you ever seen garbage cans on the beach?

4 A. No.

5 Q. You have never seen a lifeguard stand down there,
6 have you?

7 A. No.

8 Q. You testified about your family's use of the
9 right-of-way and use of the beach down on the east end
10 near the Lavimodierre's house --

11 A. Uh-huh.

12 Q. And how old were you when you accessed that area?

13 A. I would say from the time I was maybe five years
14 old until we moved to the other end, and I think I was
15 maybe 14 when we moved down to the other end.

16 Q. And if your mother asked the Lavimodierres for
17 permission for her children to be down there, you
18 wouldn't know about that, would you?

19 A. No, I would not.

20 Q. So you are not saying that nobody from your
21 family got permission, you are saying when you were a
22 child from 5 to 14 nobody directly gave you permission?

23 A. That's true.

24 Q. Okay.

25 Your aunt is Barbara Rencurrel?

1 A. Yes.

2 Q. And you have spent a bunch of time down in front
3 of 251 which is where Barbara Rencurrel currently lives?

4 A. Yes.

5 Q. You stated earlier when you were younger and used
6 that area you would see other people using 251 Kings
7 Highway, in quotes, at times?

8 A. Yes.

9 Q. Did you also see your aunt's no trespassing signs
10 on her property?

11 A. No, I did not.

12 Q. Have you ever seen your aunt's no trespassing
13 signs on her property?

14 A. No, I have not.

15 Q. Okay.

16 A few minutes ago you stated that no beach-front
17 owner has ever asked you to leave their property.

18 A. True.

19 Q. Is that still your testimony?

20 A. Yes, it is.

21 Q. In fact just a few years ago isn't it true that
22 Susan Flynn's brother asked you and your family to leave
23 their property?

24 A. No, he did not.

25 Q. Okay. You are testifying that The Flynn's never

1 called the police on your family for drinking in front
2 of their property?

3 A. Never.

4 Q. Okay.

5 I am going to go to the pictures really quick,
6 Barbara, and that's back on Exhibit 330.

7 A. Which one?

8 Q. I will help you out in just a minute.

9 Do you mind if I approach the witness, your
10 Honor?

11 THE COURT: Go right ahead.

12 Q. I think we are going to start with the photo of a
13 couple of folks on the beach.

14 A. Okay.

15 Q. Now, the top photo, you testified that that was
16 in front of the Flynn's house, correct?

17 A. I said it was in front of the Callahans and the
18 Flynn's house. I can see both of them in the picture.

19 Q. The Flynn's house is the one with the flagpole to
20 the right, correct?

21 A. Correct.

22 Q. Is it still your testimony that you are in front
23 of the Flynn's house at that point?

24 A. If I am looking at the picture I am looking and I
25 am seeing that these people are sitting in between the

1 Flynn's house and the Callahan's house, so I would say
2 that they might be half on the Callahans and half on the
3 Flynns, I am not really sure.

4 Q. Okay. The next photo down you testified that you
5 could see Barbara Rencurrel's house and I think you
6 testified that the people in the photo you couldn't tell
7 who they were?

8 A. I do not know who the people are.

9 Q. Barbara Rencurrel's house is the first house in
10 from the left, the first white house that you see from
11 the left, correct, that's 251?

12 A. No, that is the second house in from --

13 Q. Right.

14 A. The second one.

15 Q. The second white one or the second one in?

16 A. Well, if you go from the right it's the second
17 one in from the right. If you are going from the left
18 it would be like the third house in from the left.

19 Q. Right, if we are going from the right to left do
20 you see the brown house, that's the furthest on the
21 right of the picture?

22 A. That's the Gardiners, yes.

23 Q. And then the next house over, is that Barbara's
24 house?

25 A. Yes.

1 Q. So from there you actually don't see anybody in
2 front of Barbara's beach, do you?

3 A. No.

4 Q. Okay.

5 The next house over, which you call the Gardiner
6 house, that is now currently owned by the Sandifers,
7 correct?

8 A. I would have no idea.

9 Q. All right.

10 You don't see any dinghies in front of the
11 Sandifer's house, do you?

12 A. No, I do not.

13 Q. In fact these people on the foreground that you
14 can see just the tops of their heads in the photo, those
15 would actually be in front of the property that has no
16 house on it, correct?

17 A. The Dicesares.

18 Q. Right.

19 A. Yes.

20 Q. Thank you.

21 Next, the top photo we will take a look at. So
22 you can see a little more clearly of the distinction
23 between the Dicesares and Sandifer's house, correct?

24 A. Yes.

25 Q. We will just go with the Gardiner's house because

1 that's how you know of it.

2 You don't see any dinghies in front of the
3 Gardiner's house, do you?

4 A. No, I do not.

5 Q. Next page.

6 The bottom photo that you testified to being in
7 front of the Flynn's house, that's the Flynn's house
8 that you can barely see the corner of over to the right;
9 isn't that true?

10 A. That is true.

11 Q. So the one that you are actually in front of
12 right behind you, that's their neighbor's house if you
13 are looking at the beach to the left?

14 A. Again, my father and my niece and nephew aren't
15 in front of -- clearly in front of any house but you
16 have to understand that the Callahans have very little
17 land to the right of their house. The Flynns have much
18 more land to the left of their house and that's why I
19 have been saying that they are between.

20 Q. Okay, you have seen their deeds?

21 A. I have not seen their deeds but currently there
22 is a fence that is their property marker.

23 Q. Okay.

24 You don't see the fence from this picture, do
25 you?

1 A. No.

2 Q. We are going to go three more pages, there's a
3 photo -- the top photo is a little boy sitting in a
4 chair with a bear on his shirt.

5 A. Yes, that is my nephew.

6 Q. And this bottom photo there you are in front of
7 the Flynn's house, right?

8 A. Definitely.

9 Q. So you don't see anybody else in front of the
10 Flynn's house, correct?

11 A. No, I do not.

12 Q. Of the photos that we went through, this one is
13 the only photo that clearly depicts your family in front
14 of the Flynn's house?

15 A. Where you can see their house I would say that,
16 yes, that is the only photo.

17 Q. Okay.

18 A. Well, if you look at one, there's one in there,
19 there's an umbrella and the people are sitting in front
20 of the Flynn's house. The one on top where you see two
21 people sitting here, this one here --

22 Q. How far -- we didn't look at these photos
23 earlier.

24 A. No, I just was going through.

25 Q. Okay.

1 Would your right-of-way come out here that you
2 use --

3 A. Yes.

4 Q. -- could you just give me a perspective so that I
5 know when I am looking at the photos which property here
6 is the Flynn's property, do you know?

7 A. Yes, it would be -- from the arrow it is the
8 second one to the right, from your -- to your left.

9 Q. Right here, that is the Flynns?

10 A. Yes.

11 Q. So those photos where you could see the house to
12 the left of the Flynns is this property here and the
13 Flynns is over there?

14 A. Correct.

15 Q. So those photos that we looked at depict you
16 sitting in this area near the end of your right-of-way?

17 A. No, over more towards the left.

18 Q. Like right here? Less than a property away from
19 your right-of-way?

20 A. No, I would say it is -- clearly the pictures
21 were in between the Callahans and the Flynn's property,
22 probably right between them.

23 Q. Okay, so your testimony is all those photos that
24 we just looked at you are sitting in between those two
25 properties?

1 A. I am not sitting there but the people that were
2 sitting there, except for one of them, the one was more
3 to the left. The first one that you -- of Skip and
4 Stacy --

5 Q. I think we have covered them enough.

6 MR. LEONI: I have no further questions,
7 your Honor.

8 THE COURT: Redirect?

9 MR. DUCHETTE: Nothing further.

10 THE COURT: All set?

11 Thank you. You may step down.

12 (Witness excused.)

13 THE COURT: Quarter of. Do you want to get
14 started with somebody or break early?

15 MR. FRAME: Your Honor, we are going to call
16 Richard Driver. I think I will at least be able to get
17 through direct before --

18 THE COURT: Let's do it.

19 MR. FRAME: Richard Driver, your Honor.

20 THE CLERK: Please state and spell your name
21 for the Court.

22 THE WITNESS: Richard Driver, R-I-C-H-A-R-D
23 D-R-I-V-E-R.

24

25

1 Thereupon,

2 RICHARD DRIVER

3 was called as a witness and, after having been duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FRAME:

7 Q. Good morning, Richard.

8 Can you describe briefly for the Court where you
9 grew up?

10 A. I grew up I guess the first 13 years or so in
11 Brooklyn, New York, a couple of years in Yonkers, a year
12 in Monterrey, Mexico.

13 Q. Did you go to college after all that?

14 A. Well, I went -- I was in the service for six
15 years after high school and went to Rutgers University.

16 Q. Did you get your degree from Rutgers?

17 A. I have four degrees from Rutgers.

18 Q. One of those a law degree?

19 A. One of those is a law degree.

20 Q. Did you practice law in New Jersey?

21 A. I did.

22 Q. For how many years, Richard?

23 A. 26 years.

24 Q. Great.

25 During that time did you raise a family?

1 A. I did.

2 Q. How many kids, Richard?

3 A. Three.

4 Q. How old are they?

5 A. I have a daughter that is over 50, I have a
6 daughter that is 40 and one that is 33.

7 Q. Great.

8 When did you first come to Goose Rocks Beach,
9 Richard?

10 A. We were vacationing in Ogunquit for a number of
11 years. Our minister's wife invited my wife to come to
12 Goose Rocks, their daughter owned what -- their daughter
13 was Dykstra, Pat Dykstra, and my wife came up, saw the
14 beach, said that's where we are going next year.

15 Q. And the next year did you come back to
16 Goose Rocks Beach?

17 A. I did.

18 Q. Was that your first, for you, personally your
19 first concentrated period of time on Goose Rocks Beach
20 that next summer?

21 A. Yes, 1970.

22 Q. How long did you come up for that summer?

23 A. I believe it was two weeks.

24 Q. Did you rent the place?

25 A. Yes.

1 Q. And for how many years did you rent the place at
2 Goose Rocks Beach?

3 A. We rented through 1980, I believe we missed one
4 year, something like 1976.

5 Q. Okay, and in 1980 did you end up purchasing?

6 A. In 1980 we purchased a cottage on Belvidere which
7 is probably 200 yards from the beach.

8 Q. And is that where you currently live?

9 A. No, it is not.

10 Q. Where do you currently live?

11 A. 6 Marshview Circle.

12 Q. Can you with the orange marker, Richard, identify
13 6 Marshview on there?

14 A. I put my initials, RJD, on the lot.

15 Q. What year did you purchase 6 Marshview?

16 A. We purchased the lot in 1971 from Bill Prescott.

17 Q. What year did you put a house on 6 Marshview?

18 A. We sold the house on Belvidere in 2003 and
19 started construction of the house at 6 Marshview Circle
20 the same year.

21 Q. Great.

22 What drew you back to Goose Rocks Beach after
23 that first summer, Richard?

24 A. Just the beauty of it and the people -- I mean,
25 our first real experience with a Mainer was Bill

1 Prescott, and we bought the lot on a handshake, no
2 deposit. You couldn't possibly do that in New Jersey.

3 Q. There are people behind me laughing about Bill
4 Prescott. Tell me about him.

5 A. Well, the area where our house is was a farm and
6 he had bought that and subdivided it and started
7 subdividing it before we bought, this was the second
8 section.

9 I believe he had been a chef in Florida or
10 something, came here, had a big pickup truck or a big
11 dump truck, you could always see him hauling dirt or
12 firewood, and everybody at the beach knew Bill Prescott.
13 I mean, he was just a great guy.

14 Q. So in 1980 you stopped renting and purchased,
15 correct?

16 A. Correct.

17 Q. And did your use of the beach -- not your use of
18 the beach, excuse me. Did your time being up in Maine
19 and Kennebunkport at Goose Rocks Beach increase at that
20 point or was it still relatively consistent?

21 A. No, it changed. In the previous years when we
22 rented it was a minimum of two weeks, and then the first
23 summer that we owned the house, which would have been
24 '81, my wife was up for the whole summer and I believe
25 she was in '82.

1 I would leave the office at 5 o'clock on Friday
2 and drive up and head back to the office at 3 o'clock in
3 the morning on Monday morning.

4 Our use was different from the rental in the
5 sense that we had a house that was winterized or a
6 cottage that was winterized so we were here the summer.

7 We did rent on occasion but we would be here
8 parts of the summer. We were always here for Memorial
9 Day, Columbus Day, sometimes Thanksgiving, sometimes
10 Christmas and New Year's, sometimes Easter.

11 Q. Great.

12 Did your -- while you were still working did
13 your -- for how long did your wife come up for the great
14 portion of the summer and you make that commute?

15 A. Well, the first couple of years that we owned the
16 house in Belvidere I believe she was up for the whole
17 summer and then after that it was probably two, three
18 weeks. She was a professor so sometimes she would teach
19 summer school at Rutgers and so she was not up for the
20 whole summer.

21 Q. I think you said that there was maybe one summer
22 I believe you said somewhere around 1976 where you
23 didn't come up but other than that from '76 on fair to
24 say that you and your family were at Goose Rocks Beach
25 for at least two to three weeks every summer?

1 A. Yes.

2 Q. And now you live there year-round, correct?

3 A. We do.

4 Q. When did that happen, Richard?

5 A. 2005, July of 2005. We both retired in June of
6 2005 and moved up here.

7 Q. Great.

8 A. And we are year-round.

9 Q. When you came -- I am trying to do the math in my
10 head. When you came in 1970 you would -- what, had an
11 eight-year-old child at that point?

12 A. Let's see --

13 Q. Somewhere around there, one or two kids?

14 A. We had one child in 1970 and she would have been
15 12 years old.

16 Q. Great.

17 As you -- then you had two more children after
18 that. What kind of activities when the kids were
19 younger were you engaging in on the beach? I mean, you
20 have heard all the activities that everyone has talked
21 about -- I will try to streamline.

22 Was it very similar to what everyone else talked
23 about?

24 A. Absolutely. And for us, you know, it differed
25 because our kids -- there's a large age difference

1 between the oldest and the youngest --

2 Q. So you had one in diapers and one hanging out at
3 The Tides at 9 o'clock at night.

4 A. Right, yes.

5 Q. Okay.

6 Did -- you have heard the testimony before,
7 everyone talking about how the -- they saw folks all
8 around them engaging in similar activities to what you
9 were engaging in. Is that consistent with your view of
10 the beach?

11 A. Absolutely and especially on Belvidere. I mean,
12 the people on Belvidere would all head down to the end
13 of the street, and there's an access point there, and
14 would use the beach essentially from The Beachwood,
15 Marie Henricksen's house, The Tides, Lencki, the Emmons'
16 property, we used that for more than 20 years when we
17 had Belvidere, and our neighbors, most of them were
18 there before we got there so -- that whole area -- and
19 -- if I might add, I never heard it referred to as
20 that's the public beach and all the rest is private.

21 Q. Great.

22 You heard a lot of testimony about -- I have
23 asked folks about, you know, what did you learn from
24 your parents, what did you tell your kids, what did you
25 observe your kids telling their kids about what to do on

1 the beach. Is your experience similar to everyone else
2 who has testified in that regard?

3 A. It is. I mean, the major issue was safety, and
4 of course when they were younger don't wander off, stay
5 within eyesight.

6 Q. Is your experience consistent with others that
7 while you would maybe go down and set up camp at one
8 part of the beach you were apt depending upon the age of
9 your children and their activity level and their friends
10 and where they were roaming, you would be all over the
11 beach as well?

12 A. That's true, but I was all over the beach from
13 the time we got here. For years I was a jogger so from
14 the Batson to the Little River many times. When I had
15 to slow down in terms of jogging I walk it.

16 Q. Great.

17 From 1970 to today besides that your pace maybe
18 has slowed a little bit on the beach, have your
19 activities or -- you have grand kids now, right,
20 Richard?

21 A. Two.

22 Q. Have your activities remained consistent when you
23 go to the beach from the activities you engaged in in
24 1970?

25 A. Well, I probably spend more time walking the

1 beach than sitting and sun bathing, but my daughter,
2 son-in-law and two grand kids when they are here, they
3 do what we did when my daughter was a kid.

4 Q. Are you friends with all the beach-front owners?

5 A. No.

6 Q. Do you know all of them?

7 A. No. You know, keep in mind I was here 20 years
8 before some of them even bought. We were here 30 years
9 before Fleming bought a beach front, 25 years before
10 Mr. Gallant bought his beach-front property.

11 Q. You have heard some questions before about being
12 able to identify where you are sitting on the beach and,
13 you know, the three feet of sand that you are sitting
14 on, is that on this property or that property. When you
15 went down to the beach over the 40 years did you ever
16 make it a point to sit in front of one particular
17 property or another particular property?

18 A. No.

19 Q. Did you ever distinguish between I am on the wet
20 sand or I am on the dry sand and where I am permitted to
21 go?

22 A. Only as the tide moved.

23 Q. Good answer.

24 Are you -- did you ever -- in the 40 years did
25 you ever ask permission to use any part of the beach?

1 A. I never asked permission, was never given
2 permission, never thought there was any necessity to ask
3 for permission.

4 Q. You said at the beginning of your testimony that
5 you came to the beach because of the beauty, because of
6 the people and because of the welcoming nature --

7 THE COURT: Because his wife told him to
8 come which is probably the first reason.

9 Q. I am going to start over.

10 You essentially came to the beach because if
11 mother is not happy, nobody is happy, but also because
12 of the welcoming nature, the beauty of the beach and the
13 people, correct?

14 A. That's correct.

15 Q. Why did you join this litigation, Richard?

16 A. Well, you are going to do the same to me that you
17 did to Bob Pearce. Look, we owned Belvidere for 23
18 years, put a fair amount of effort and money into it
19 while we were there, a little house, loved it, and we
20 held onto this lot that we bought in 1971, decided when
21 we retired that we were going to come up here, and we
22 didn't expect the community to change. The lawsuit
23 started and I thought, you know, I don't need to get
24 involved in it, and then there was a letter to the
25 editor In the Press Herald from Mr. Fleming, Mr. Almeder

1 and they went through a bunch of demands, some of them
2 weren't unreasonable, asking the town to do A, B and C.
3 They ended the letter by saying if the town agrees to
4 all of this then we will consider, seriously consider
5 allowing the public to walk on the beach, and I said who
6 the hell do they think they are. I mean, I have
7 invested and my neighbors have invested tremendous
8 amounts of money and effort into this community.

9 We live here, we love this place and these
10 selfish people come along and -- I mean, they saw all
11 the development, they saw all the back-lot owners
12 putting money into their houses, cleaning them, when we
13 first came here a lot of the cottages were old
14 fisherman's cottages, some looked as if they were going
15 to fall down, so there's time, effort and money that's
16 been put in, and the beach-front property owners knew
17 all of this and all of a sudden a few of them decide,
18 well, we want to restrict the beach.

19 Now, I have heard the testimony and I understand
20 they say they are not going to, but that letter from
21 Fleming and Almeder says if we want to we have the right
22 to tell you you may not come on the beach, that I may
23 not even be able to walk on the beach, and at that point
24 I had met Alex and I knew he was in and I said I have
25 got to get in the case.

1 MR. FRAME: All set, your Honor.

2 THE COURT: Mr. Stern?

3 MR. STERN: Nothing, your Honor.

4 THE COURT: Mr. Lachiatto?

5 MR. LACHIATTO: No.

6 THE COURT: Miss Hewey?

7 MS. HEWEY: Nothing.

8 CROSS EXAMINATION

9 BY MR. LEONI:

10 Q. Good afternoon, Mr. Driver.

11 A. Good afternoon, Mr. Leoni.

12 Q. 2005, that was the first year you were up here
13 year-round?

14 A. That's correct, for -- if you are talking about
15 12 months of a year, yes.

16 Q. Just a minute ago Gregg came up here and said so
17 because you didn't make it a point -- he talked about
18 not making a point to distinguish what property you were
19 on when you used the property and then I think you just
20 agreed to that, yes, that was true, that you didn't when
21 you sat on property and make it a point to distinguish
22 where you were sitting?

23 A. No, I did not and, you know, candidly --

24 Q. That's fine.

25 A. -- there were no fences.

1 Q. Right, there's no fence. You can't put fences
2 up, can you?

3 A. No, you can put fences up and there are no
4 boundary markers.

5 Q. Right, they would just get washed away?

6 A. Well, if you put them in right they wouldn't.

7 Q. That's a whole other question if you can do that
8 but all right.

9 So is it your testimony that because you didn't
10 make it a point to distinguish what property you are on
11 that you can't distinguish what property you are on?

12 A. Well, as this lawsuit progressed and we looked at
13 the maps and in particular the plaintiffs map of the
14 beach, pretty clear where we spent most of our time in
15 terms of if we were sitting, sun bathing, swimming, and
16 it was Henricksen, Tides Inn, Lencki and Emmons, and of
17 course the KCT property beyond that, but that was the
18 area that was right within Belvidere.

19 Q. Right, so the Henricksen, Tides, Lencki, Emmons
20 and the conservation trust property?

21 A. When we owned Belvidere. When we rented, we
22 rented at Sand Point --

23 Q. So that was before 1980?

24 A. It was before 1980, yes.

25 Q. Just a minute.

1 Do you recall receiving interrogatories from the
2 plaintiffs?

3 A. I do.

4 Q. That was after the lawsuit started, correct?

5 A. That would be the normal procedure.

6 Q. Right.

7 I am just going to hand you a copy of your
8 interrogatories, I have highlighted your answer, and
9 these are a little bit different from the
10 interrogatories that we sent to the rest of the
11 TMF Defendants so I am just going to read the question
12 and then have you read the answer.

13 A. Uh-huh, sure.

14 Q. May I approach, your Honor?

15 THE COURT: You may.

16 Q. With reference to Count 2 of your counterclaim in
17 which you allege a claim of a prescriptive easement,
18 both for the general public and for each of you
19 individually, describe each fact that supports your
20 claim to said prescriptivee's prescriptive rights,
21 include in your responses a description in detail as to
22 each plaintiffs property and the number of times, dates
23 and description of all such uses that you claim gave
24 rise to your individual rights and, two, differentiate
25 these facts from those that you claim support a claim of

1 public prescriptive rights.

2 I won't read the very end of it, the question,
3 but could you read the answer?

4 A. Sure.

5 The defendants have used Goose Rocks Beach from
6 the Batson River to the Little River for recreation for
7 more than 40 years and thus the use has included the
8 properties of all the beach-front owners whether they
9 are active parties to this litigation or not.

10 The use has included walking, jogging, sun
11 bathing and swimming. The use has been continuous with
12 the possible exception of 1976.

13 Q. Okay.

14 A moment ago you testified that you stayed in
15 front of the Henricksen, Tides, Lencki and Emmons'
16 property, but you didn't describe a single property that
17 you were in front of in your answers to interrogatories,
18 did you?

19 A. What I said was all of the properties --

20 Q. Right.

21 A. -- from the Batson River to the Little River.
22 That includes --

23 Q. For all recreational purposes?

24 A. No, not for all recreational purposes.

25 Q. Okay.

1 Would you agree that the question asked you to
2 distinguish which activities, which properties?

3 A. It does.

4 Q. Okay.

5 When you bought your property in 1980 -- well, it
6 was actually the second property you purchased, correct?

7 A. Uh-huh.

8 Q. Because you purchased the property in '71 that
9 was unbuilt?

10 A. Yes.

11 Q. So we will stick with the 1980 property which is
12 closer to the beach, correct?

13 A. Correct.

14 Q. When you bought that property did you research
15 what rights the public has to use the beach?

16 A. No. The couple we bought it from, the Miles,
17 were avid swimmers, they were both in -- she was
18 probably in her late 60's, he was probably 80. They
19 were on the beach every day.

20 Q. You didn't -- but you didn't inquire as to what
21 rights -- my specific question is you didn't inquire
22 into what rights everybody has to use beach-front
23 property?

24 A. I didn't believe I had to --

25 Q. Your belief is not based on --

1 A. Can I finish the answer, please?

2 THE COURT: Hold it a second, folks.

3 He didn't do any specific research, is that
4 fair, Richard? You didn't go to the registry of deeds,
5 you didn't look at deeds?

6 A. No, I did not.

7 THE COURT: You were operating on custom
8 that you observed.

9 Next question.

10 A. I was operating on having rented for 10 or 11
11 years prior to purchasing the house in 1980.

12 MR. LEONI: Okay.

13 I apologize for speaking over you a minute
14 ago.

15 That's all I have. Thank you, Richard.

16 MR. FRAME: All set, your Honor.

17 THE COURT: Thank you, Mr. Driver. You may
18 step down. Thanks.

19 (Witness excused.)

20 THE COURT: We will break for lunch, folks.

21 John, you are back with us now I see.

22 THE JUDICIAL MARSHAL: Yes, your Honor.

23 THE COURT: We will be back for 1:15.

24 MR. FRAME: Can we try to cut it closer? We
25 have four witnesses that we want to get through. We can

1 do 1:15 but --

2 THE COURT: Let's shoot for 1:00, let's see
3 if we can get it done.

4 Okay, 1 o'clock.

5 (Thereupon, the luncheon recess was taken,
6 and then the proceedings continued as follows:)

7 THE COURT: Good afternoon.

8 We are here in the Almeder matter and,
9 Mr. Duchette, are you going to be calling the next
10 witness?

11 MR. DUCHETTE: Yes. Joan Hartz.

12 THE COURT: Miss Hartz, if you come
13 forward, please.

14 THE CLERK: Please state your name and spell
15 your name for the record.

16 THE WITNESS: My name is Joan Hartz,
17 J-O-A-N H-E-A-R-T-Z.

18 Thereupon,

19 JOAN HEARTZ

20 was called as a witness and, after having been duly
21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. DUCHETTE:

24 Q. Good afternoon, Joan. How are you?

25 A. Fine thank you, George.

1 Q. What is your principal residence?

2 A. My principal -- about seven months a year is
3 Concord, New Hampshire.

4 Q. The other five months, where do you live?

5 A. Wildwood Avenue in Goose Rocks Beach.

6 Q. Is that 12 Wildwood Avenue?

7 A. 12 Wildwood.

8 Q. How long have -- actually before that where is
9 that in Goose Rocks Beach, is that on the west end,
10 center?

11 A. It's in the middle.

12 Q. In the middle.

13 How long have you owned 12 Wildwood Avenue?

14 A. I think 27 years.

15 Q. Before you owned it did anybody else in your
16 family own that property?

17 A. Yes, my uncle bought it in 1962.

18 Q. 1962.

19 How long -- well, when were you first -- what
20 first brought you to Goose Rocks Beach?

21 A. I had been here just practically a drive through
22 back in the middle '30s --

23 Q. Middle '30s --

24 A. -- and knew where it was.

25 Q. Okay.

1 When did you start visiting Goose Rocks Beach on
2 a regular --

3 A. In '62.

4 Q. In 1962 when your uncle --

5 A. When my uncle bought it.

6 Q. Okay.

7 So when you first started coming in 1962 how old
8 were you?

9 A. I was in my late 30's.

10 Q. And did you have a family at that point in time?

11 A. No.

12 Q. When you started visiting in 1962 did you come
13 every year thereafter?

14 A. Oh, yes. I was working of course then but I came
15 as often as I could weekends, and my uncle was here
16 from -- generally from March until October or later.

17 Q. Then you ultimately acquired the property in --
18 was it 1985?

19 A. '85.

20 Q. Okay, and when you were -- actually I think I
21 will have you go ahead. Can you take the orange pen and
22 circle where 12 Wildwood Avenue is?

23 A. (Witness complies.)

24 Q. Great.

25 While you are up there I will have you take the

1 red pen and why don't you draw a line where -- how you
2 accessed the beach.

3 A. (Witness complies.)

4 Q. I noticed you drew a line right down Bartlett
5 Avenue.

6 A. Yes, and then we have -- and then I go down
7 Wildwood to Belleglade and go down by Flemings.

8 Q. Okay.

9 So the other route you take besides Bartlett is
10 -- just to make sure we are clear -- you go down, what
11 did you say, Bellewood?

12 A. Bellewood, yes.

13 Q. And then a little ways on Kings Highway and then
14 down --

15 A. Yes, one lot more or less.

16 Q. And down past the Fleming house?

17 A. Yes.

18 Q. And Fleming you understand is a plaintiff in this
19 case, correct?

20 A. Yes.

21 Q. How long have you been using that right-of-way by
22 the Fleming property?

23 A. Well, probably since '85 -- not every time I go
24 to the beach.

25 Q. Do you have any understanding of when that

1 right-of-way came into existence?

2 A. No, but it's been probably prior to '85.

3 Q. Okay, and do you have -- and do you know who
4 built that right-of-way?

5 A. I don't remember what it was like before but my
6 uncle told me that he and Cliff Prescott --

7 MR. THAXTER: Objection.

8 THE COURT: The objection will be sustained.
9 Next question.

10 A. Cliff Prescott died --

11 THE COURT: You don't need to answer that
12 question.

13 BY MR. DUCHETTE:

14 Q. It's been objected to --

15 A. Oh, okay.

16 Q. So when you have gone down that particular
17 right-of-way have you used the beach down in that area?

18 A. Yes.

19 Q. Have you stayed right within that right-of-way?

20 A. No.

21 Q. Have you gone left or right?

22 A. Left or right, yes.

23 Q. What types of activities have you been doing on
24 Goose Rocks Beach since 1962?

25 A. Walking, sitting, sun bathing, I go in the water

1 every time I go to the beach and -- or onto the beach,
2 ball playing, Bocce, we sometimes sit and play Cribbage,
3 minor small card games, read. I read a lot.

4 Q. I think the other access way you have indicated
5 you come down is the Bartlett Avenue access way?

6 A. Yes.

7 Q. And same thing, when you get down to the beach
8 via Bartlett Avenue do you stay right in the
9 right-of-way or do you go left or right?

10 A. No, the right-of-way my understanding is the
11 width of Bartlett Avenue and, no, I usually sit either
12 to the left which is Susan Lewis and the Archers or I
13 sit where Bill Forrest and his wife own property, down
14 to the Fleming place usually. It depends on who is
15 sitting where, it's flexible.

16 Q. And have you used other portions of Goose Rocks
17 Beach?

18 A. I walk a lot, I do walk a lot.

19 Q. Have you walked all the way to the Batson River?

20 A. Yes, river to river.

21 Q. And the other river being the Little River on the
22 east?

23 A. That's correct.

24 Q. When you go on these walks do you ever stop too
25 or are you always walking?

1 A. Oh, yes, if I see somebody we stop, we talk, we
2 can -- we sit down in the sand usually.

3 Q. Is this -- when you see someone are they a
4 beach-front owner?

5 A. I have no way of knowing.

6 Q. Well, if you see somebody you know you would know
7 if they were a beach-front owner or not, correct?

8 A. Not necessarily, not necessarily, you know people
9 by sight. Sometimes you just visit and talk.

10 Q. So they could be a beach-front owner, back-lot
11 owner or someone from the general public?

12 A. I have no idea.

13 Q. And so then your are not -- when you stop to talk
14 to these people you are not concerned about whose
15 property you may or may not be on, correct?

16 A. Not in the least.

17 Q. And are you aware of where beach-front owners
18 property boundaries are on Goose Rocks Beach?

19 A. This are no property lines drawn in the sand.

20 Q. You indicated earlier that you -- depending on
21 which right-of-way you come down but you have been in
22 front of Miss Lewis' property, you have been in front of
23 Bill Forrest's property and you have been in front of
24 Mr. Fleming's property. Have any of those individuals I
25 have just named, have they ever come down and indicated

1 that that was private property and you needed to move?

2 A. Never, never.

3 Q. And have they ever given you permission to be on
4 their property?

5 A. No.

6 Q. And have you ever asked their permission to be on
7 their property?

8 A. It wasn't even a consideration.

9 Q. Why is that?

10 A. Well, we just use the beach as we have used it
11 for years, for generations now. It was never even a
12 thought that we needed to ask permission.

13 Q. Have you -- when you go down to the beach do you
14 take any items with you?

15 A. Oh, yes. In fact, we quite -- not as much
16 recently but we used to fix breakfast and take the
17 coffee and a tray and eat our breakfast on the beach, I
18 take chairs. It is close so very often we just bring
19 ice water or something because it is close to go back to
20 the cottage when we need something but the usual
21 implements, binoculars, camera.

22 Q. When you have gone down to the beach and you have
23 brought your chairs down on the beach do you always
24 bring them back to your house or have you left them down
25 on the beach at times?

1 A. We bring them back.

2 Q. When you have engaged in and I think you were
3 talking about playing cards, reading, things of that
4 nature, have those activities occurred on both the dry
5 and the wet sand?

6 A. Generally it is on the dry but when -- it can get
7 very hot sometimes on the dry we move down to the wet
8 part. The breeze is a little bit better down there,
9 it's a little bit cooler and sometimes down all the way
10 sit with our feet in the water.

11 Q. So when these activities are occurring on the dry
12 or wet sand depending on where you sit it doesn't have
13 any -- you are making that decision based on the type of
14 day or the weather, not because certain activities can
15 only be conducted in the wet sand or the dry sand, is
16 that fair to say?

17 A. General -- it can depend on who comes with me.
18 If I have my cousin with children we are apt to be on
19 the wet -- more in the wet sand for digging, making sand
20 castles and burying people, that's a right of passage.

21 Q. And have you been buried before?

22 A. Oh, yes, they have buried me.

23 THE COURT: From what I can see I don't
24 think you are ready to be buried, Miss Hartz.

25 A. Thank you.

1 THE COURT: You say every time you go to the
2 beach you go in the water?

3 A. Yes, that's almost a given for me, if I have my
4 bathing suit on.

5 THE COURT: That is usually Mr. Stern's
6 question.

7 MR. DUCHETTE: He won't have to ask it.

8 Q. When you have been on, and you have indicated
9 that you have walked the entirety of the beach,
10 recreational activities both near the Bartlett Avenue
11 extension and near Jack Fleming's house near Bellewood,
12 have you seen other people on the beach engaging in
13 similar activities?

14 A. Yes.

15 Q. Okay.

16 Since 1962 when you started visiting Goose Rocks
17 Beach has the use of the beach in terms of the number of
18 people using the beach, has that increased over time or
19 been about the same?

20 A. About the same. Of course it is very seasonal,
21 it is very related to holidays, the only difference I
22 notice, everybody has more toys, inflatables, tubes,
23 kayaks, paddle boards. I think everybody has more play
24 toys.

25 Q. Got ya.

1 When you walked up and down Goose Rocks Beach,
2 again, no one has ever come out and said I am sorry, you
3 are on private property, you can't be here?

4 A. Never.

5 Q. When you were visiting your uncle in 1962 did he
6 ever give you any instruction as to where you could go
7 or what you could do on Goose Rocks Beach?

8 A. Never.

9 Q. Have you ever either prior to your owning 12
10 Wildwood or after you owned 12 Wildwood Avenue in 1985,
11 have you ever stored any items on Goose Rocks Beach
12 either for the day or overnight?

13 A. Not -- no, I would say no.

14 MR. DUCHETTE: No further questions, your
15 Honor.

16 THE COURT: Mr. Stern?

17 MR. STERN: No questions, your Honor.

18 THE COURT: Mr. Driver?

19 MR. DRIVER: No questions, your Honor.

20 THE COURT: Mr. Lachiatto?

21 MR. LACHIATTO: No questions, your Honor.

22 THE COURT: Miss Hewey?

23 MS. HEWEY: Just very quickly.

24

25

1 CROSS EXAMINATION

2 BY MS. HEWEY:

3 Q. Ma'am, when you have been on the beach have you
4 seen members of the Kennebunkport Police Department
5 patrolling the beach?

6 A. This year or in the past?

7 Q. Yes.

8 A. Yes, I have.

9 Q. Do you remember when that was?

10 A. I -- there is some -- there are -- there's
11 someone that has a semi-uniform and he has a
12 walkie-talkie attached and I really don't know who he
13 is, but there were beach patrols a number of years ago
14 regularly during the summer.

15 MS. HEWEY: Thank you.

16 THE COURT: Mr. Thaxter?

17 CROSS EXAMINATION

18 BY MR. THAXTER:

19 Q. Miss Hartz, my name is Sydney Thaxter. Can I
20 call you Joan?

21 A. You certainly may.

22 Q. Thank you.

23 You answered some interrogatories and one of the
24 things you said in your answers was in addition to
25 swimming, picnicking, breakfast in the morning, you

1 socialize and meet with neighbors, right?

2 A. Yes.

3 Q. And that's a part of why you like to go down to
4 the beach?

5 A. It is one of them, yes.

6 Q. Now, do I understand that in 1962 you were coming
7 up not all summer, you are not living up here since '62?

8 A. No, I was working in New Hampshire.

9 Q. Okay, and how often were you up at the beach?

10 A. Oh, I tried to make it during the best of the
11 summer, every other weekend.

12 Q. Okay, so how long during this period, '62 to say
13 2000, were you always just coming up a weekend here or
14 there?

15 A. Until I retired.

16 Q. When was that?

17 A. In '89.

18 Q. Okay, and what did you do when you retired, did
19 you come up full time or just part time?

20 A. I came up -- I retired on the 31st of August and
21 I immediately came down here and stayed three weeks and
22 then I had responsibilities back in New Hampshire.

23 Q. During the '90s did you come up periodically or
24 were you living there during the '90s?

25 A. No, I didn't -- I didn't start spending the

1 entire summer until 2010.

2 Q. Okay. Now, did you see an increase in parking --
3 a lot more parking spaces and cars?

4 A. I will be honest, I don't notice that because --
5 in particular because back on Wildwood we have no
6 parking, period, so I don't see the parking.

7 Q. Do you know Bill Forrest?

8 A. Know him? Yes, I know him to say hello and that
9 is about the extent of it.

10 Q. When you are in your property you say hello to
11 him in a nice neighborly way I assume?

12 A. Oh, yes.

13 Q. Yeah, and his wife, Nancy Julian, you know her to
14 say hello to too?

15 A. Just to say hello, yes.

16 Q. What about Susan Lewis?

17 A. Oh, I have known her I think a little longer
18 and -- but, there again, just to say hi, how are you
19 doing.

20 Q. When you are on her property you say hi and how
21 are you doing, you chat with her at all?

22 A. Sometimes she comes -- she has come down and she
23 sits with us and visits a little bit, yes.

24 Q. Good.

25 Do you know Janice Fleming? Do you know the

1 Flemings at all?

2 A. No, I do not.

3 Q. When you go down to the beach and you leave do
4 you take -- I assume you said you took with you chairs.
5 I assume you take your chairs and are respectful?

6 A. Carry in, carry out.

7 Q. When you have been down and somebody is buried do
8 you fill in the hole?

9 A. Oh, yes, in fact there was somebody digging a
10 huge hole just in front of Fleming -- not in front of
11 Flemings, Forrest and I think he was from away and I
12 said to him you are going to fill that in and he looked
13 at me and he said yes.

14 MR. THAXTER: Thank you.

15 THE COURT: All set, Andre?

16 MR. DUCHETTE: Nothing further.

17 THE COURT: Miss Hartz, thank you for
18 coming. You may step down.

19 (Witness excused.)

20 THE COURT: Gregg.

21 MR. FRAME: Your Honor, I would like to call
22 Judge Robert Gordon.

23 THE CLERK: Please state your name and spell
24 your name for the record.

25 THE WITNESS: Robert, R-O-B-E-R-T, middle

1 initial A, last name Gordon, G-O-R-D-O-N.

2 Thereupon,

3 ROBERT GORDON

4 was called as a witness and, after having been duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FRAME:

8 Q. Good afternoon, Judge. Do you mind if I call you
9 Bob?

10 A. Yes, you may.

11 Q. Thanks.

12 Bob, where is your legal residence?

13 A. Agawam, Massachusetts, that's A-G-A-W-A-M.

14 Q. What do you do for work, Bob?

15 A. I have two positions, I'm employed by the
16 Commonwealth of Massachusetts, the Trial Court
17 Department, I am Associate Justice of the Springfield
18 District Court. I have been in that position for 11
19 years.

20 I am also employed as an adjunct faculty member
21 at Bay Path College in Longmeadow, Massachusetts. My
22 title is Professor of Law, Legal Studies Department. I
23 have been there for 10 years.

24 Q. Great.

25 Do you own a residence at Goose Rocks Beach, Bob?

1 A. Yes, I do.

2 Q. Where is that residence?

3 A. It is at 8 Cottage Avenue.

4 Q. No surprise I am going to ask you to take the
5 orange pen, Bob, and go up to the map marked
6 TMF Defendants and circle 8 Cottage Avenue for the
7 Court.

8 A. (Witness complies.)

9 Q. Bob, before you sit down, to make it easier can
10 you take the red pen and identify the route or routes
11 you would generally take to access Goose Rocks Beach?

12 A. All right. It is down Cottage Avenue and take a
13 left on Norwood Lane and go the Norwood Lane entrance to
14 the beach.

15 Q. Great. Thank you.

16 Bob, when did you first start coming to
17 Goose Rocks Beach?

18 A. 65 years ago.

19 Q. How old were you at that point?

20 A. 65 -- I was two months old.

21 Q. Two months old, okay.

22 I assume your parents brought you there?

23 A. My parents did, yes.

24 Q. Did they own a home at Goose Rocks Beach?

25 A. My grandparents owned the home on Crescent

1 Avenue, which is now called Bellevue, B-E-L-L-E-V-U-E.
2 My grandparents owned it from 1936 until my grandmother
3 passed away in 1990.

4 Q. Great.

5 Bellevue, where on the beach or where in relation
6 to the beach is Bellevue, is that more central?

7 A. It is around the corner from The Tides hotel.

8 Q. Okay, so more in the central part of the beach.

9 So in -- 65 years ago when you were two you would
10 come up --

11 A. Two months.

12 Q. Two months, I am sorry.

13 A. Yes.

14 Q. Save those two years.

15 Would you come up and stay at your grandparents'
16 house?

17 A. What we would do, my grandmother would stay here
18 all summer and my family would stay for one month,
19 either June -- or either July or August and my uncle
20 would stay for the other month and if I was fortunate I
21 could stay the second month.

22 Q. Great.

23 How long did you do that for?

24 A. Until approximately 1963 when I would have been
25 about 16 years old.

1 Q. '63, about the time you got your license?

2 A. That's correct, because I had to work during the
3 summer. I worked with my grandfather in his business
4 during the summertimes.

5 Q. Up here in Kennebunkport?

6 A. No, back in Springfield, Massachusetts.

7 Q. Okay, so for -- when you were 16 did you stop
8 coming up for a month or two months?

9 A. Well, I wouldn't come up one month at a time I
10 would -- because I had a car I would come up on weekends
11 or for a week at a time and spend time at the house or
12 the cottage.

13 Q. Still staying with your grandparents?

14 A. That's correct.

15 Q. Was your mom and dad still coming up or your mom
16 at least?

17 A. Not -- no, no, they weren't coming up. My
18 grandmother would be there and I would stay with her and
19 I had a brother and sister --

20 Q. Great.

21 A. -- who would be there.

22 Q. You said with your brother and sister?

23 A. Yes.

24 Q. And you were -- I don't want to belabor the
25 testimony -- you were here earlier and heard kind of the

1 activities that people talked about engaging in on the
2 beach. Were those similar to the activities that you
3 and your brothers and sisters -- your brother and sister
4 engaged in on the beach?

5 A. Well, not really because I was a kid. We
6 would -- no, our activities were a little bit different
7 than I just heard.

8 Q. What were they?

9 A. Well, we would go down the beach -- not when I
10 was two years old but when I was 7 to let's say 15 I
11 would go down the beach in the morning, stay there most
12 of the day unsupervised, from the Batson River to the
13 Little River, from the grass to the low watermark, we
14 would hang around and roam the beach as well and sit
15 where we want and do what we want, we would throw stones
16 in the ocean, play ball on the beach, dig, go for clams
17 and razor clams, any sort of activities that we could
18 find.

19 Q. Do you recall someone once mentioned a noontime
20 bell to send everyone home for lunch. Do you recall
21 that?

22 A. Now that you mention I do recall, I think it was
23 the fire station actually. You brought back a memory.
24 I think the fire station, which was on Wildwood at the
25 time, used to ring a bell, I might be wrong on that, at

1 12:00 noon.

2 Q. Run home, grab a bite to eat and get back to the
3 beach?

4 A. Back to the beach as soon as possible.

5 Q. Great.

6 When you were 16 you said you stopped coming at
7 least for concentrated stretches of time?

8 A. Right.

9 Q. Was there ever a summer where you didn't come to
10 Goose Rocks Beach?

11 A. Absolutely not.

12 Q. Why not?

13 A. Well, because I loved being here and any chance I
14 had when I was a kid up through the present every
15 opportunity I have I would come to Goose Rocks Beach,
16 it's the place I wanted to be, it's a place that I still
17 want to be.

18 Q. Describe -- you said when you were 7 to when you
19 were 15 you would get on the beach and you would roam
20 Batson to Little River, low watermark to the sea grass.
21 Were you alone in those activities or did you see other
22 people engaging in similar activities?

23 A. Well, for most of the years I had friends, some
24 other guys that I hung around with and we would do
25 things, and there would always be somebody new you would

1 meet on the beach, but I had -- there were two or three
2 consistent friends that for many years I hung around
3 with who were up here.

4 Q. Were those friends back-lot owners, beach-front
5 owners, a combination?

6 A. Back-lot owners.

7 Q. Great.

8 When you and your friends were on the beach, Bob,
9 did you make it a point to identify certain beach-front
10 houses that you knew was okay to pal around in front of?

11 A. I never gave it a second of a thought where we
12 would sit, where we would find clams, where we would
13 throw rocks in the ocean, where we would dig, where we
14 would sit, where we would play ball, I never thought of
15 the boundaries of someone's property.

16 To me it was an open beach and I had nobody --
17 nobody ever stopped me or told me not to use it and I
18 felt I could sit and do whatever I wanted at the beach
19 within the law of course not to be destructive but --

20 Q. And you -- I assume you knew over the years, knew
21 some beach-front owners, right?

22 A. I knew who they were, I knew the homes, I knew
23 who they were.

24 Q. You didn't limit your use -- I think you have
25 already testified you didn't limit your use to the beach

1 in front of the house of people you knew.

2 A. Absolutely not, I would use the beach from one
3 end to the other.

4 Q. Did you -- when you were on the beach did you
5 ever distinguish between the wet and dry sand?

6 A. Not really. I would -- sometimes I would sit in
7 the -- the dry sand is your soft sand -- or sometimes it
8 would be the hard sand. The hard sand was better for
9 playing ball because I like sports so at low tide you of
10 course would use the soft sand and play ball and hang
11 around, but I would certainly sit in the soft sand. I
12 never gave a consideration, one or the other.

13 Q. Great.

14 At some point did you get married and start a
15 family, Bob?

16 A. I was married in '69, 1969.

17 Q. You said your grandparents still owned the place
18 to '90?

19 A. Till about 1990, my grandmother was alive until
20 about 1990.

21 Q. And you and your wife, did you come up to
22 Goose Rocks Beach after you got married in 1969?

23 A. Absolutely, we would come up here and go to the
24 beach, we wouldn't play ball but we would walk the beach
25 and collect shells and sit from one end to the other,

1 swim in the channels, go out to the islands and collect
2 shells in front of people's homes.

3 Q. Did you stay with your grandparents at that
4 point?

5 A. In '82, 1982, my grandmother still had her
6 cottage but in '82 my wife and I bought the land, which
7 is now known as 8 Cottage Avenue. In 1984 we built a
8 house there.

9 Q. Thank you.

10 So from '69 to '84 when you and your wife were
11 coming up were you staying with your -- until your house
12 was built on 8 Cottage -- were you staying with your
13 grandmother at that place?

14 A. Absolutely.

15 Q. How long were you coming up for at that point in
16 time?

17 A. In what year?

18 Q. '69 to '84, give me the --

19 A. Oh, I would come up on weekends, long weekends,
20 come up during the week, just drive -- I had a car so I
21 could just drive up here when we were married, and we --
22 both my wife and I were working. If we were out of work
23 we would come up and stay as long as we could. Any time
24 we would have any time off from work we would be at
25 Goose Rocks Beach.

1 Q. Great.

2 1982, Bob, you built the house at Cottage Avenue?

3 A. I had it built.

4 Q. You had it built?

5 A. In '84 it was finished.

6 Q. It was finished in '84, it began in '82.

7 At some point in that time period you had kids?

8 A. I have a daughter who was born in 1986.

9 Q. You have a daughter, okay.

10 Let's go through what you observed when you have
11 been to the beach with your daughter. Have you observed
12 her engaging in activities that were similar to the
13 activities you engaged in at the same age?

14 A. Yeah, probably but she was a girl. I was a boy
15 and I played ball and I would be a little more
16 aggressive in my activities, but some of the things that
17 I did when I was a kid are not what my daughter would
18 engage in. I mean, I did things like we take a
19 parachute and sit in the parachute and have the wind
20 take us down the beach from like 253 Kings Highway all
21 the way down to Sand Point, and SCUBA diving as a kid
22 and things like that.

23 But my daughter didn't engage in those types of
24 activities. What she would do is go to the beach and
25 dig like most kids and play in the -- play down on the

1 water. We would take her down to -- because I know the
2 house numbers -- I would take her down to 113, 115 Kings
3 Highway, they had -- at low tide there was these pools
4 of water down there that were deep for kids and they
5 were warm so my wife and I would take my daughter there
6 with the little boats, and she would go down there year
7 after year and play in the water.

8 We would go for long walks and collect shells and
9 do just what most little kids do on the beach.

10 Q. And did -- have you observed your daughter having
11 the same kind of disregard for property lines and lines
12 in the sand so to speak as you did?

13 A. Probably -- I mean, she had no concern for
14 property lines, she just wanted to go to the beach and
15 play.

16 Q. You never told her what was and was not allowed
17 on the beach?

18 A. Well, I mean, I told her -- you know, she knew
19 enough not to engage in inappropriate conduct but not --
20 I never told her where to sit and where to go, where to
21 swim or where to dig, anything like that.

22 Q. Your property has a right-of-way, correct, a
23 deeded right-of-way?

24 A. Correct, I have a deeded right-of-way at Norwood
25 Lane to the beach.

1 Q. You had an opportunity to take a look at your
2 deed in the year past?

3 A. Well, I was not a real estate lawyer but I could
4 read deeds and I did read -- I reread the deeds and I do
5 have a deeded right-of-way and the deed goes back to
6 like 1890 or something like that.

7 Q. Does that deed tell you to your knowledge where
8 you can go on the beach?

9 A. No, absolutely not, it just says I have a
10 right-of-way to the beach at Norwood Lane.

11 Q. Does that deed to your knowledge tell you what
12 you can do on the beach?

13 A. Absolutely not.

14 Q. And when you have been down on the beach in the
15 65 years you have been down there have you ever asked
16 anyone for permission to use the beach in front of their
17 house?

18 A. In 65 years I never asked one person permission
19 to use the beach and never thought it was necessary.

20 Q. Your use of the beach now is primarily in the off
21 season, right?

22 A. Correct, we rented our house from the beginning
23 of 1984 to the present, we have rented our house during
24 the summer at the beginning we rented it for as much as
25 we could rent to pay the expenses.

1 Now we rent for six, seven weeks and we come up
2 the other like three weeks. My wife has been retired
3 for 10 years and she comes up and stays herself with
4 another car or without a car for a number of days, so
5 she's here probably more than I am, so we still come up
6 off season --

7 Q. But there is some chunk of the summer that you
8 are actually -- we consider the summer, June, July and
9 August -- three weeks or so in there that your family is
10 utilizing the cottage?

11 A. In recent years we are here the end of August.

12 Q. I am sorry to cut you off. You said off season
13 you were going to talk about that?

14 A. Off season back from '84 we would rent the house
15 in the summer and as soon as the tenants were out the
16 door we were right behind them to come in, and we would
17 be here probably about every other two weeks in
18 September, October, November, be here for Thanksgiving
19 because my sister and brother live in the area, and I
20 have nephews -- I have two nieces that live in Maine, so
21 we would have Thanksgiving, and then even until the
22 beginning of December I would be here every other
23 weekend, then I would come back -- close the house, come
24 back in April and start that routine over again. We did
25 that for 28 years.

1 Q. Have you had -- have the renters changed every
2 year or have there been some consistent renters over the
3 years?

4 A. I have never met the people renting. My broker
5 Maria Junker handles it. All I can tell you is the same
6 -- I believe the same people that have been renting for
7 six years are still the same people renting but I don't
8 know their names.

9 Q. Great.

10 Do you ever instruct Maria to let you know if
11 there's any issue with the rental?

12 A. Well, if there's a problem I am sure she would
13 let me know but I never -- except mechanical problems,
14 but other than that I have never heard any complaints in
15 28 years or there been any problems that I know of.

16 Q. So you have never heard that one of the tenants
17 has had an issue with the right to use the beach or what
18 they were doing on the beach?

19 A. Absolutely not.

20 Q. Do you -- I don't think I asked you this, sorry,
21 Bob. Do you know personally all the beach-front owners?

22 A. I don't know them all, I know some of them.

23 Q. Are you friends with some of them?

24 A. Well, I don't know what the word friend means. I
25 have been friendly with one of them.

1 Q. So those -- that one that you are friends with,
2 do you tend to gravitate to the beach in front of their
3 property because you are friends with them?

4 A. No, no, absolutely not.

5 MR. FRAME: Nothing further.

6 THE COURT: Mr. Stern?

7 CROSS EXAMINATION

8 BY MR. STERN:

9 Q. Good afternoon. My name is Paul Stern, I'm with
10 the Office of the Attorney General.

11 A. Good afternoon.

12 Q. Did I hear you say that you SCUBA dove?

13 A. That I what?

14 Q. That you SCUBA dive?

15 A. Yes.

16 Q. Off of Goose Rocks Beach?

17 A. Yes.

18 Q. When did you do that?

19 A. I was probably 12 years old.

20 Q. When you SCUBA dove off of Goose Rocks Beach did
21 you wear a weight belt?

22 A. A what?

23 Q. A weight belt.

24 A. I don't believe so.

25 Q. Okay.

1 Did you -- when you SCUBA dove did you try to
2 reach the bottom of the --

3 A. Probably did, I would be looking for lobsters and
4 things like that.

5 Q. How far out did you go?

6 THE COURT: That's illegal, Judge.

7 A. Oh. Will you grant me immunity?

8 THE COURT: The statute has run so you are
9 okay.

10 A. All right.

11 THE COURT: It is called taking by
12 unconventional means.

13 Q. How far out did you go when you SCUBA dove?

14 A. Maybe toward where the lobster buoys -- they are
15 not there anymore, but there were lobster -- I mean up
16 to the lobster buoys, but I never took a lobster, we
17 would go look at them.

18 Q. Okay.

19 A. I wouldn't take them because I don't particularly
20 like lobster.

21 Q. You petted the lobsters --

22 A. No, you just look at them. Maybe my friend took
23 them. I don't eat lobster so I wouldn't -- I didn't do
24 that.

25 Q. How far from the low watermark did you SCUBA dive

1 out?

2 A. How far out?

3 Q. Yes.

4 A. 30 feet.

5 MR. STERN: Thanks.

6 THE COURT: Mr. Driver?

7 MR. DRIVER: Nothing further.

8 THE COURT: Mr. Lachiatto?

9 MR. LACHIATTO: No.

10 THE COURT: Miss Hewey?

11 MS. HEWEY: No, your Honor.

12 THE COURT: Mr. Thaxter?

13 CROSS EXAMINATION

14 BY MR. THAXTER:

15 Q. Good afternoon, Judge. Can I call you Robert?

16 A. Yes, you may.

17 Q. It will get confusing if I have Judge, Judge
18 here.

19 A. All right.

20 MR. THAXTER: Did you have an Exhibit with
21 his pictures?

22 MR. FRAME: 302, Pete?

23 Q. Can you look for Exhibit 302?

24 A. Okay, I see. Yes, I have it.

25 Q. Before we get to those now that you found them I

1 just want to ask you a couple of questions. I mean,
2 when did you graduate from law school?

3 A. 1976.

4 Q. Where did you go to school?

5 A. Western New England College.

6 Q. And you got admitted to the Mass. Bar when?

7 A. In '80 -- in '77. I am also admitted to the
8 State of Maine in 1982.

9 Q. Okay.

10 So I assume you understood in your years at
11 Goose Rocks that in Maine and Massachusetts people can
12 actually own to low water?

13 A. I understand that, I have heard that.

14 Q. So let's go to those -- let's go to the pictures.
15 Have you got those --

16 A. 302?

17 Q. Yes.

18 A. Right here.

19 Q. Can I just approach, your Honor, to make sure we
20 are on the same one?

21 THE COURT: Of course.

22 A. 302.

23 Q. The first picture on 302 is a child sitting on a
24 chair. It says 171 to 173 Kings Highway. Who is the
25 child?

1 A. That's my daughter.

2 Q. Did you or your wife put these little markings
3 on?

4 A. I did that.

5 Q. Okay, and you figured the dates based on the
6 child's age?

7 A. Correct.

8 Q. Okay, and you are figuring those properties
9 because you are coming down Norwood Lane and those are
10 the properties to the east of Norwood Lane generally,
11 right?

12 A. Yes.

13 Q. I think you got the Kellys and then Mrs. Gerrish.
14 Do you know Mrs. Gerrish?

15 A. The first time I saw her was last Friday. I have
16 never seen her before.

17 Q. You were here in the courtroom --

18 A. Yes, I was.

19 Q. Okay, and so that's your child in 1989, right?

20 A. Correct.

21 Q. And the next one is your wife in 19 --

22 A. And daughter.

23 Q. And child, right?

24 A. Correct.

25 Q. And the next one I don't see the Gerrish house.

1 A. That's 303, is that -- oh, the next one -- no,
2 you do not.

3 Q. I think if you go down to the very -- the next to
4 the last photo that I have there's a picture of you with
5 two girls.

6 A. There's a photograph, is that the one with myself
7 and two children?

8 Q. Yeah.

9 A. Yes.

10 Q. And that's the Gerrish house up behind you there?

11 A. That's correct.

12 Q. Now, do you know -- did you hear Mrs. Gerrish say
13 she doesn't mind if people use her beach?

14 A. I believe she said that.

15 Q. Yeah, and do you know on this day if she was home
16 or if she was away?

17 A. I never met her so I couldn't tell whether you
18 she was home or not home, I don't even know who she was.

19 Q. And you have been on Norwood Lane since '89?

20 A. No, I bought the property in '82, our house was
21 built in '84.

22 Q. Okay, and you have a right -- you have a
23 right-of-way across -- down Norwood Lane to the beach,
24 right?

25 A. Correct.

1 Q. And I couldn't find it in your deed but I am
2 assuming it is there someplace but whatever the deed
3 says, it says in terms of the language of the
4 right-of-way, right? Does it say it has a right-of-way
5 to the Atlantic Ocean?

6 A. No, it does not.

7 Q. Do you know who it was that created that
8 right-of-way?

9 A. I did not do a title search to determine who was
10 the grantee or grantor. All I was concerned with is it
11 is in my deed.

12 Q. Do you know Matt Sotir?

13 A. I know who he is, I know who his family is.

14 Q. Do you? Would you know them if you saw them on
15 the beach?

16 A. Probably, not all of them. I know some of them
17 from the general store over the years.

18 Q. Let's go back to the beginning of the pictures
19 just so we can confirm. So then the next one is 1987,
20 right, and that's --

21 A. That's my daughter.

22 Q. And your wife in the chair?

23 A. That's correct.

24 Q. And the next one is again '87?

25 A. Correct.

1 Q. And that one you are looking out towards the west
2 end of the beach, right?

3 A. Correct.

4 Q. I will skip the next one because it is kind of
5 dark but then there's one more that says August 1987 and
6 that's you and your children I assume?

7 A. No, the boy is a young boy who is my daughter's
8 age whose parents rented a house for two weeks from
9 New Jersey -- not our house but we would see them over
10 the years.

11 Q. And that's a picture looking eastward down the
12 beach, right?

13 A. You are correct.

14 Q. Then there's the picture with Jule Gerrish's
15 house in the background?

16 A. Correct.

17 Q. Then there's one other picture and that one says
18 1999?

19 A. '91.

20 Q. '91, pardon me.

21 Again, that's looking eastward down the beach,
22 right?

23 A. Correct.

24 Q. All right.

25 Now, I understand that you bought the land in '82

1 and built in '84 and you were up here visiting with your
2 grandmother mostly before that time, right?

3 A. Correct, back to '47, that's correct.

4 Q. And those visits with your grandmother were a
5 week, two weeks and then back home?

6 A. It depends upon what year you are referring to.

7 Q. Why, as she got older did she have less
8 tolerance?

9 A. No, because I was working when I was 16 so you
10 have to tell me what year so I can answer the question.

11 Q. Okay, let's say in the '70s were you staying with
12 your grandmother?

13 A. Well, I always -- when I would be at Goose Rocks
14 Beach I would always stay with my grandmother except
15 when her house was rented.

16 Q. And she was then behind The Tides Inn you said?

17 A. Correct.

18 Q. Okay, and after '84 -- I am trying to determine
19 how often you were here. After '84 are you here a
20 couple of weeks a summer?

21 A. Well, starting in '84 we would rent our house for
22 the full-summer season and then we would also try to
23 rent it for a week before, the last week in June, maybe
24 a week in September if we were able to.

25 Q. And you rented from '84 like that to when? When

1 did you start coming back to the beach and being there
2 in the summer?

3 A. Well, the first probably about two years ago we
4 kept the last two weeks of August for ourself. Now we
5 keep three weeks.

6 MR. THAXTER: Thank you.

7 THE WITNESS: Yes, sir.

8 THE COURT: Mr. Frame?

9 MR. FRAME: Other than to offer 302 into
10 evidence.

11 THE COURT: Okay, 302, Diane, is admitted.
12 May we excuse the Judge?

13 MR. FRAME: Yes.

14 THE WITNESS: Thank you, your Honor.

15 THE COURT: You are welcome.

16 (Witness excused.)

17 THE COURT: Gregg.

18 MR. THAXTER: Your Honor, before the next
19 witness may I be excused? I have to go back and Ben is
20 going to take the next few.

21 THE COURT: Of course.

22 Andre?

23 MR. DUCHETTE: I would like to call Carl
24 Schmalz.

25 THE COURT: Mr. Schmalz.

1 THE CLERK: Please state your name and --
2 please raise your right hand and spell your name for the
3 record.

4 THE WITNESS: Carl Nelson Schmalz, Junior,
5 S-C-H-M-A-L-Z.

6 Thereupon,

7 CARL SCHMALZ, JR.

8 was called as a witness and, after having been duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DUCHETTE:

12 Q. Hi, Carl. How are you?

13 A. Okay.

14 Q. Carl, can you please state where your legal
15 residence is currently?

16 A. Kennebunk, Maine.

17 Q. Kennebunk, Maine.

18 Do you own a piece of property at Goose Rocks
19 Beach?

20 A. Yes, sir.

21 Q. What is the address of that property?

22 A. What?

23 Q. What is the address?

24 A. The address is 230 Kings Highway.

25 Q. 230 Kings Highway, and approximately on Goose

1 Rocks Beach where is that, is that on the west --

2 A. Middle.

3 Q. In the middle?

4 A. (Motions head up and down.)

5 Q. Is that near any rights-of-ways?

6 A. We use the right-of-way at the end of -- is it

7 Bartlett I guess.

8 Q. Bartlett Avenue?

9 A. Yeah.

10 Q. And when did you -- is that a year-round home or
11 is it a summer cottage?

12 A. We have been there year-round but it is a summer
13 cottage.

14 Q. So you go there in the summer, fall, winter,
15 spring?

16 A. In the past we have come up at the end of the
17 college year or the school year and returned at the
18 beginning of the school year in the fall.

19 Q. How long have you owned that property?

20 A. We bought it in 1975.

21 Q. Prior to owning that property on Kings Highway
22 had you come to Goose Rocks Beach before?

23 A. I first came in 1943 and came the following
24 summer until the destruction in '47.

25 Q. So you used to come to Goose Rocks Beach between

1 1943 and 1947?

2 A. That's correct.

3 Q. And 1947 being the year of the fire?

4 A. Correct.

5 Q. When you came to Goose Rocks Beach where were you
6 staying?

7 A. I stayed in and around the beach, I stayed the
8 Summer of '45 I think it was -- I stayed in the house
9 that is now Judge Kelly's and I stayed at various
10 places, there was a hotel you may remember back -- no,
11 you won't remember, back in '43, there was a hotel out
12 behind -- gosh, I don't know exactly where -- how to
13 describe where it was but it was at the west end of the
14 beach but way off, way in the woods. At that time there
15 was a big pine forest and --

16 Q. So down on the west end of the beach?

17 A. Yes.

18 Q. And what brought you to Goose Rocks Beach in
19 1943?

20 A. There was a watercolor school here run by a man
21 named Eliot O'Hara and I had come to study watercolor
22 painting with him, and subsequently I became an
23 assistant teacher for him, so that was what I was doing
24 in '46 and '47.

25 Q. Okay, and where was the O'Hara Watercolor School?

1 A. It was -- on the land this side of the creek
2 that -- at the west end of the beach that goes under the
3 bridge, lower Kings Highway, crosses it -- it went in --
4 the road in there went in approximately -- approximately
5 to the left of the Junker property, and he owned that
6 whole section back there with the exception of one house
7 that survived the fire, and then he owned the whole Sand
8 Point.

9 Q. Okay, so he owned all of Sand Point?

10 A. (Motions head up and down.)

11 Q. And again that's -- if you are facing the water
12 to the left of Bill and Joan Junker --

13 A. Yes.

14 Q. -- out towards the Little River?

15 A. Yeah.

16 Q. Were there a lot of -- about how many people came
17 to the O'Hara Watercolor School during the --

18 A. Well, very few, which is why I was able to come,
19 because I was only 16 -- and -- objected to my coming
20 because he told my father he didn't want to baby-sit all
21 summer. So much for war time.

22 After the conclusion of World War II with the
23 GI Bill there were lots of students, so there were --
24 you have to look it as two lumps, one would be about --
25 between 30 and 40 and then 70 to 80.

1 Q. Okay.

2 So after 1947 when was the next time you came to
3 visit Goose Rocks Beach?

4 A. 1969.

5 Q. I am just going to ask you to speak a little
6 closer to the microphone.

7 A. Oh, okay.

8 Q. So in 1969 you didn't own your home yet, correct?

9 A. That's right.

10 Q. So where were you staying at Goose Rocks Beach in
11 1969?

12 A. We rented all over the beach, we -- well, that's
13 too inclusive. We rented a house behind The Tides, we
14 rented the house on Wildwood, we rented the house now
15 owned by some people named Vandervoorn on the beach and
16 we rented on the marsh much farther to the west. What
17 was it -- what's the name of that street down there?

18 I can't remember the name of it, but anyway --
19 but it was in back. We were there a couple of years.

20 Then we rented on Cottage, a place -- the place
21 that sits in the marsh at high tide. The judge would
22 know that one.

23 Q. That was between the period of 1969 and 1975 that
24 you rented all these various places?

25 A. Yes.

1 Q. And did you have a family at that point?

2 A. Yes -- not in -- yeah, in '69 we did.

3 Q. How many children do you have?

4 A. Two.

5 Q. How old are they today?

6 A. 47 and 45.

7 Q. 47 and 45?

8 I think you indicated one of the homes you rented
9 was a beach-front home; is that correct?

10 A. That's correct.

11 Q. And that's the Vandervoorns?

12 A. Yes.

13 Q. And when you rented that property did the
14 Vandervoorns give you any instructions?

15 A. They didn't own it then.

16 Q. They didn't own it then?

17 A. I don't know who we rented it from because we
18 rented it through an agent.

19 Q. With respect to any of the properties that you
20 rented at Goose Rocks Beach were you ever given any
21 instructions about where you could go, what you could do
22 on Goose Rocks Beach?

23 A. (Motions head sideways.)

24 Q. Is that a no?

25 A. No.

1 Q. Since 1975 since you have owned your property --
2 have you ever rented your property?

3 A. No.

4 Q. When you were -- before you owned your home you
5 testified you have rented properties on the west end of
6 Goose Rocks Beach?

7 A. (Motions head up and down.)

8 Q. In the middle of Goose Rocks Beach?

9 A. (Motions head up and down.)

10 Q. And then also on the east end of Goose Rocks
11 Beach?

12 A. We did not rent anything as I recall on the east
13 end of the beach but I had lived there on the east end
14 earlier in the '40s.

15 Q. And when you -- did you go down on Goose Rocks
16 Beach and do normal beach activities?

17 A. I would say so, yes.

18 Q. Trying to speed things along I will not make you
19 list all those activities, but when you were doing those
20 activities did any beach-front owner ever ask you to
21 stop?

22 A. My nephew was asked to stop flying kites with his
23 children in front of one of the properties.

24 Q. Do you know which property that was?

25 A. Yes.

1 Q. Whose property was that?

2 A. It was Barbara Rencurrel.

3 Q. Barbara Rencurrel.

4 So between -- you were at Goose Rocks Beach
5 between 1943 and 1947, correct?

6 A. (Motions head up and down.)

7 Q. Then you started renting at Goose Rocks Beach
8 since 1969?

9 A. (Motions head up and down.)

10 Q. And have you -- since 1969 have you and your
11 family come to Goose Rocks Beach every year thereafter?

12 A. Yes.

13 Q. How long ago was it that I think you said it was
14 your nephews who were asked to stop flying kites in
15 front of Barbara Rencurrel's property, how long ago was
16 that?

17 A. Four years maybe.

18 Q. Four years ago?

19 A. Three, maybe three.

20 Q. So in all the years is that the only time that
21 someone has objected to you or your family's use of
22 Goose Rocks Beach?

23 A. No. One fall about three years ago, one October
24 we were at the cottage and as you may know I am a
25 painter and I had gone down to the west end of the beach

1 to paint because it is colorful and pretty and someone
2 was very, very hostile to me and made me so angry I
3 didn't say listen here, I am a rate payer on this beach,
4 so I didn't say anything but I beat feet. I was
5 distressed.

6 Q. That was three years ago?

7 A. I think it was three or four years ago, yeah.

8 Q. Do you know if that was before or after this
9 lawsuit started?

10 A. Before.

11 Q. Do you know who that was?

12 A. No.

13 Q. But other than that instance and the instance
14 with Barbara Rencurrel no one has ever -- has anybody
15 ever objected to you or your family's use of Goose Rocks
16 Beach?

17 A. I don't believe so.

18 Q. Have you ever asked anyone permission to be on
19 Goose Rocks Beach?

20 A. We were very friendly with the people that lived
21 across the street from us at 237 Kings Highway and I
22 think there was a time when for one reason or another we
23 had said in a friendly way do you mind people on the
24 beach and they said no, they didn't mind people on the
25 beach.

1 Q. Do you -- do you feel you need permission to be
2 on Goose Rocks Beach?

3 A. No.

4 Q. Why is that?

5 A. We have -- the beach has been open and available
6 for all kinds of activities. As far as I am concerned
7 there was never any question of obtaining permission.
8 It is like getting permission to breathe.

9 Q. Is it fair to say that over, you know, at least
10 since 1969 when you started renting and 1975 when you
11 purchased your home, is it fair to say that over the
12 many years the beach has been the focal point of you and
13 your family's recreational activities?

14 A. When we were here of course but we had other
15 activities.

16 Q. When you were at Goose Rocks Beach.

17 A. Well, not from me because I was teaching, I had a
18 watercolor school, I was teaching every day, I was out
19 of the -- off the beach for most of the day five days a
20 week for six weeks every summer.

21 Q. That was in the -- that was in the '40s, correct?

22 A. No, this was in the -- from 1970 to 1980.

23 Q. Okay --

24 A. No, 1990, sorry.

25 Q. But your family, they would continue to use

1 Goose Rocks Beach?

2 A. Yeah, they -- and, you know, the kids use the
3 tennis courts and all that stuff.

4 Q. Those of -- those would be the tennis courts at
5 the Goose Rocks Beach Association?

6 A. Yes.

7 Q. With respect to your children's use when they
8 were growing up did you give them -- ever give them any
9 instruction as to where they could go, what they could
10 do on the beach?

11 A. We told them not to climb on the rocks and we
12 indicated that where the sand became grass, where there
13 were no rocks that that was somebody's front yard and
14 you didn't go in there without asking or permission of
15 some sort.

16 Q. So you did distinguish then that where somebody's
17 lawn started that that was private property and they
18 needed to have permission to be there?

19 A. Yeah.

20 Q. But you didn't say that they needed permission
21 when they were on the beach, correct?

22 A. Correct.

23 Q. I think I have already opened it up for you but
24 if you can take a look at the photos at Exhibit Number
25 342.

1 A. Yeah.

2 Q. In the first photo there do you recognize that
3 person?

4 A. No.

5 Q. No? What about the second photo, do you
6 recognize --

7 A. No. I mean, they look like a couple of nice
8 little girls playing on the beach.

9 MR. DUCHETTE: No further questions, your
10 Honor.

11 THE COURT: Mr. Stern?

12 CROSS EXAMINATION

13 BY MR. STERN:

14 Q. Can you look at the first picture in Exhibit 342
15 again, the first picture?

16 A. Yeah.

17 Q. Do you know what that little girl is doing in
18 that picture?

19 A. She's pulling a surf board sort of thing.

20 Q. Okay. Have you seen that down at Goose Rocks
21 Beach in your --

22 A. Have I seen that action?

23 Q. Yes.

24 A. Yeah.

25 Q. Often?

1 A. Yeah.

2 Q. All over the beach?

3 A. Not all over because I am not -- yes, essentially
4 all over.

5 Q. Okay.

6 A. Yes, essentially all over. I am forgetting I
7 walk a lot, I jog and all along the beach you see this
8 kind of activity.

9 Now, obviously where the concentration of people
10 is greater there is more of this sort of activity, all
11 right?

12 Q. When you jog and walk it is primarily in the
13 intertidal area?

14 A. Yes.

15 MR. STERN: I don't know whether the first
16 page of Exhibit 342 is admitted into evidence but I
17 guess I would move it be admitted.

18 MR. LEONI: No objection.

19 THE COURT: Admitted.

20 Mr. Driver?

21 MR. DRIVER: No questions.

22 THE COURT: Mr. Lachiatto?

23 MR. LACHIATTO: No questions.

24 THE COURT: Miss Hewey?

25 MS. HEWEY: No questions.

1 THE COURT: Mr. Leoni?

2 CROSS EXAMINATION

3 BY MR. LEONI:

4 Q. Mr. Schmalz, my name is Ben Leoni and I represent
5 the plaintiffs.

6 May I call you Carl?

7 A. You may.

8 Q. You were testifying as to the first time you came
9 to Goose Rocks Beach that was for a watercolor school in
10 the 1940s?

11 A. 1943.

12 Q. You came for two summers?

13 A. I came actually for every summer or at least part
14 of '45, but I came early in '45 and late in '45. The
15 other years up to and including '47 I was there the
16 whole summer.

17 Q. Carl, if you could, could you just try to move
18 the microphone a little closer?

19 A. (Witness complies.)

20 Q. Thanks.

21 A. Is that better?

22 Q. Yes, it is. Thank you.

23 You stated that not a lot of people were going to
24 the school at the time?

25 A. During the war there were very -- it was a very

1 slim attendance.

2 Q. You said that those classes occurred in the
3 studio?

4 A. I didn't say anything about a studio.

5 Q. Okay or it was the O'Hara property?

6 A. On the O'Hara property, yes, and most -- very
7 often the classes took place in the open air on location
8 as we say.

9 Q. Okay.

10 A. But because there was no gas and consequently
11 very little travel our subjects were -- the class
12 subjects were right around the beach.

13 Q. At that time is it true to say that there weren't
14 that many people on the beach when you were out there
15 painting?

16 A. There were -- it was a whole different scene.
17 There weren't as many people, that's true, and the
18 behavior was different, people were more into reading,
19 there were umbrellas all over the place, it was before
20 the tan rage took place, so people were keeping out of
21 the sun and stuff, it was much more 19th Century looking
22 to tell you the truth.

23 Q. People weren't into tans back then?

24 A. They didn't get -- if -- you had a tan if you
25 worked outdoors, you had a legitimate tan.

1 THE COURT: I think it is called a farmer's
2 tan.

3 A. Right.

4 Q. That is the best I can do --

5 A. Or fisherman's tan.

6 Q. When you came to the beach, and this is sort of
7 post watercolor period I think from the 1960s on, when
8 you came to the beach did you ever come down Dyke Road?

9 A. Did I ever come down it?

10 Q. Yes.

11 A. We drove in Dyke Road daily.

12 Q. And in the '60s you didn't see cars parked up and
13 down Dyke Road like you do today, did you?

14 A. No, we did not. There were only some cars there.

15 Q. Near the general store?

16 A. Near the general store but also on the other side
17 of the bridge at holiday times, 4th of July, Labor Day,
18 even Memorial Day sometimes.

19 Q. So on big holidays occasionally you would see
20 some cars on Dyke Road but normally you would not see
21 cars on Dyke Road?

22 A. Yeah. We are talking now --

23 Q. '60s and '70s?

24 A. '60s and '70s, yeah, because --

25 Q. Okay.

1 You have used the right-of-way down Bartlett
2 Avenue?

3 A. Yes.

4 Q. You know who Susan Lewis is, correct?

5 A. Yeah.

6 Q. Are you friendly with Susan Lewis?

7 A. She is a neighbor. Well, we don't take tea
8 together on a daily basis but yeah. She's been in our
9 house, you know.

10 Q. She's been to your house?

11 A. Yeah, and we have done -- we have seen each other
12 at parties and so forth.

13 Q. And you have spent some time on the beach in
14 front of her house?

15 A. Yeah.

16 Q. Do you see her there sometimes?

17 A. Not usually because I am not there when the
18 people are there getting sun on them.

19 Q. Okay. You know Deb Kinney, correct?

20 A. Yep.

21 Q. Are you friends with her?

22 A. We have tried to be friends but it is not -- I
23 see her occasionally at the gym.

24 Q. At the gym.

25 Have you ever visited her at her house?

1 A. No.

2 Q. Would you say that the Goose Rocks Beach
3 neighborhood has been generally a friendly place?

4 A. Yes.

5 Q. I think you used the term neighbors with Susan
6 Lewis?

7 A. Yeah.

8 Q. When you go down to the beach you try to be
9 neighborly when you are down there?

10 A. Of course.

11 Q. You try not to leave things out on the beach
12 overnight?

13 A. I don't think we -- maybe accidentally but --
14 actually we don't take much to the beach, a couple of
15 towels.

16 Q. Try not to interfere with other people's use of
17 the beach?

18 A. Yeah, and we also try to give our washing machine
19 a break.

20 Q. Okay. In your interrogatories you said that you
21 had bonfires on the beach regularly?

22 A. More or less, but that was in the '40s. We had
23 -- you have to understand especially in the early '40s
24 we could only have bonfires during the day because there
25 were U-boats out there in Goosefare Bay.

1 Q. There was a blackout at that point?

2 A. It was a complete blackout --

3 Q. Right?

4 A. -- so we couldn't -- so we did have fires in the
5 daytime but most of us were busy painting so --

6 Q. Besides the '40s have you had any bonfires?

7 A. I honestly don't remember. I think -- we may
8 have. They wouldn't have been bonfires anyway, they
9 would have been cooking fires.

10 Q. Cooking fires?

11 A. Yeah.

12 Q. You mentioned earlier -- Paul Stern asked you a
13 question about the photo with the little girl in the
14 small Boogie board.

15 A. Yeah.

16 Q. He asked you if you would regularly see that
17 activity and you stated that you would see it more where
18 a concentration of people is greater.

19 Can I ask you -- if this is Gardiner Point, do
20 you know what I mean by Gardiner Point or some people
21 refer to as Dinghy Point?

22 A. Yeah.

23 Q. There is an area that you see a concentration of
24 more people down at this end of the beach east of
25 Gardiner Point?

1 A. What is I believe generally called the public
2 beach.

3 Q. Generally called the public beach?

4 A. Yeah.

5 MR. LEONI: Okay. Thank you. That's all I
6 have. Thank you very much.

7 THE COURT: Mr. Duchette?

8 MR. DUCHETTE: No.

9 THE COURT: Mr. Schmalz, thank you very much
10 for coming. You may step down.

11 (Witness excused.)

12 THE COURT: Do you want to break now, Gregg,
13 or --

14 MR. FRAME: Your Honor, if we could have a
15 five-minute break? We have one more witness and we are
16 going to try to plow through as quick as we can.

17 THE COURT: Okay. We will be back at half
18 past, 2:30.

19 (Thereupon, a recess was taken, and then the
20 proceedings continued as follows:)

21 THE COURT: Again, good afternoon, folks.
22 Mr. Frame.

23 MR. FRAME: Rick MacDonald, your Honor.

24 THE CLERK: Please state your name for the
25 record.

1 THE WITNESS: Roderick Macdonald,
2 R-O-D-E-R-I-C-K M-A-C-D-O-N-A-L-D. Small D, all one
3 word.

4 Thereupon,

5 Roderick Macdonald
6 was called as a witness and, after having been duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FRAME:

10 Q. Good afternoon, Rick.

11 A. Good afternoon.

12 Q. Do you own a residence, Rick, at Goose Rocks
13 Beach?

14 A. I do.

15 Q. Does your family own more than one residence at
16 Goose Rocks Beach?

17 A. Yes.

18 Q. How many residences does your family own?

19 A. It's two places but there's three houses.

20 Q. Okay. Do you own one yourself?

21 A. Right.

22 Q. And then one owned by?

23 A. My sister and I own the -- two houses on a single
24 lot.

25 Q. Great.

1 You know the drill here, Rick. Can you take the
2 orange marker and go up to that map marked
3 TMF Defendants and identify the two parcels, the three
4 homes that your family owns?

5 A. (Witness complies.)

6 Q. Great.

7 Can you just identify the address for each of
8 those for the Court?

9 A. 86 is 20 Prescott Drive and 78 is 3 New Biddeford
10 Road.

11 Q. So you have 20 Prescott Drive and 3 New Biddeford
12 Road.

13 While you are up, Rick, can you identify from --
14 first of all, is Prescott Drive, is that where you live?

15 A. That's where I live year-round.

16 Q. Year-round, okay.

17 Can you identify, Rick, with the red marker the
18 route you take to the beach from 20 Prescott Drive?

19 A. The route has already been marked here.

20 Q. It takes you down. How do you enter the beach,
21 Rick?

22 A. Broadway, right across from Broadway.

23 Q. Great.

24 What about -- have you spent time at New
25 Biddeford, the 3 New Biddeford house?

1 A. Yes.

2 Q. Are you there frequently with your sister?

3 A. I am, and I have spent probably the first 25
4 years at Goose Rocks Beach --

5 Q. In that house?

6 A. Yes.

7 Q. What is the route that you use to and continue to
8 take to get down to the beach from that 3 New Biddeford
9 Road house?

10 A. New Biddeford to Jefferys Way.

11 Q. Is it identified on the map or can you draw it in
12 from your house?

13 A. (Witness complies.)

14 Q. Great. Thank you.

15 I will do my best to understand the history and
16 make it quick. You said the 3 New Biddeford Road house,
17 that was the house you were in for the first 25 years of
18 your time at Goose Rocks Beach?

19 A. Yeah.

20 Q. Are you a Kennebunkport -- did you grow up in
21 Kennebunkport?

22 A. No, I am sorry to say I am from Massachusetts.

23 Q. We won't hold that against you.

24 When did you start coming to Goose Rocks Beach?

25 A. My father bought the New Biddeford Road residence

1 in 1959.

2 Q. Were you alive then, Rick?

3 A. Yes, yes. I was about 12 years old.

4 Q. 12 years old, okay.

5 Was that for you folks a summer home?

6 A. Right.

7 Q. Just to get it out of the way, the 20 Prescott
8 Drive house that you are in now, when did that come into
9 the family?

10 A. I bought the land in probably early '70s and I
11 think around 1976 I built the house.

12 Q. Great.

13 From 1959 -- well, strike that.

14 How did your family come to know about
15 Goose Rocks Beach, Rick?

16 A. I had been a playmate of some people that owned
17 the cottage on Fortunes Rocks.

18 Q. A playmate of Massachusetts?

19 A. Yeah, they were in our neighborhood in
20 Massachusetts and they used to -- their son was my age
21 and wanted a playmate on weekends and stuff so they
22 would bring me up to Fortunes Rocks and my parents would
23 pick me up or whatever, drop me off, so they knew
24 Fortunes Rocks.

25 Then some real good friends of ours who were

1 actually from Texas rented the house that we bought, and
2 they eventually bought a house on Goose Rocks Beach
3 also, but they called us and told my parents that the
4 house was for sale, and we had visited them probably in
5 '58 or '57 -- '58 when they rented that house.

6 Q. You visited --

7 A. The people that --

8 Q. -- your friends from Texas?

9 A. Right.

10 Q. Okay.

11 A. And then they said it was for sale and my parents
12 bought it. I wasn't really involved.

13 Q. Starting in 1959 how often would your family come
14 up for the summer?

15 A. My mother and I spent all summer at the cottage,
16 I don't know where my sister was.

17 Q. Is she older or younger?

18 A. She is older. She might have been in college
19 around then, and my father worked so he would come up
20 weekends and his vacation and stuff.

21 Q. Great.

22 Your sister, just the two of you, you and your
23 sister?

24 A. Right.

25 Q. She owns now with you the 3 New Biddeford Road

1 house?

2 A. Right.

3 Q. Great.

4 So you -- starting in 1959 you would come up for
5 the entire summer?

6 A. Right.

7 Q. How long did that last?

8 A. I spent all my summers there until probably '72 I
9 went into the service --

10 Q. Okay.

11 A. -- and I spent my vacation there. There is only
12 one year that I know of that I wasn't at Goose Rocks,
13 1969, I was overseas.

14 Q. You were in the service?

15 A. Right.

16 Q. Okay.

17 Have you -- since 1959 and 1969 you summered at
18 Goose Rocks Beach, 1969 you were in the service, since
19 1970 have you spent some portion of the summer at
20 Goose Rocks Beach?

21 A. All of it.

22 Q. All of it?

23 A. Yeah. I don't know of many summers that I didn't
24 spend the whole --

25 Q. Great.

1 Did you become a permanent resident of
2 Kennebunkport after you got out of the service?

3 A. Well, there was that transient period where I
4 really didn't live anywhere, and eventually --

5 THE COURT: I feel like I am experiencing
6 the late '60s.

7 MR. FRAME: Are you taking judicial notice
8 of that, your Honor?

9 THE COURT: Amen, brother.

10 A. I moved to Goose Rocks when I built the house and
11 decided I would live at Goose Rocks Beach because I
12 loved Goose Rocks Beach.

13 Q. Great.

14 A. And I would get a job after I moved there.

15 Q. Find a place and bloom where you planted, right?

16 A. Right.

17 Q. Great.

18 A. It took a while but I did.

19 Q. You have heard before all the folks talking about
20 the various activities that they did as kids on the
21 beach, that they observed as kids on the beach and we
22 are going to get into the slew of pictures that you
23 provided. Are those activities consistent with your
24 memories of Goose Rocks Beach?

25 A. Yeah, everything, you know, I was nodding my head

1 to many of those things, although, there's many, many
2 more type ball games and volleyball games, just all
3 kinds of stuff that people would do.

4 Q. Is your memory consistent with what people said
5 which is when the Macdonald family went down there they
6 saw other people engaging in similar activities, east of
7 them, west of them?

8 A. True.

9 Q. Could have been other beach-front owners, it
10 could have been back-lot owners, it could have been
11 members of the general public?

12 A. Yes.

13 Q. At some point, Rick, did you start a family?

14 A. I knew you were going to ask me this. I think I
15 got married in '86.

16 Q. The judge always says you should know that before
17 you go home.

18 A. Yeah.

19 Q. You got married in '86?

20 A. Yeah.

21 Q. And do you have children?

22 A. I have three girls, yeah.

23 Q. Three girls, and how old are the girls?

24 A. They are now 16, 18, 24.

25 Q. Great.

1 So they are -- the 20 Prescott Drive house is the
2 only home they have really known at Goose Rocks Beach,
3 correct?

4 A. Right.

5 Q. I am sure they spend time, thought, at 3 New
6 Biddeford Road with cousins. Does your sister have kids
7 too?

8 A. Yes, she has three mid 40's kids with their kids
9 being 20 years old so there's several generations.

10 Q. Are your kids friends with -- with their cousins
11 kids basically?

12 A. I kind of missed a generation. I hang out more
13 with my nieces and nephews than my sister because my
14 kids are more their kids age but --

15 Q. Great, and have your kids, your three kids,
16 your -- you said you have three nieces and nephews --

17 A. I have --

18 Q. -- with your sister?

19 A. Yeah.

20 Q. Okay.

21 Of your kids, your three kids and your three
22 nieces and nephews on your sister's side, have you
23 observed them having similar experiences growing up on
24 Goose Rocks Beach to what you experienced?

25 A. Absolutely.

1 Q. Great.

2 Save one summer you have been coming to
3 Goose Rocks Beach now for 53 years, correct?

4 A. Correct.

5 Q. Have you ever asked anyone for permission to use
6 Goose Rocks Beach?

7 A. No.

8 Q. Have you ever been denied the opportunity to do
9 anything you wanted to do on Goose Rocks Beach?

10 A. No.

11 Q. When you identified your two different ways you
12 generally get down to the beach, one is down Broadway
13 and one is down Jefferys Way, correct?

14 A. Correct.

15 Q. Have those access points been relatively
16 consistent throughout your 53 year history at
17 Goose Rocks Beach?

18 A. Yes.

19 Q. You also have a boat, correct, Rick?

20 A. Yes.

21 Q. Do you store a dinghy on the beach?

22 A. There was an era when I did, when I was a kid
23 into my probably -- probably until I got my driver's
24 license I kept my dinghy at Dinghy Point or down near
25 The Tides.

1 Q. Do you have a boat now?

2 A. Yes.

3 Q. Where -- do you have a dinghy to go to that boat?

4 A. No. I keep it in the river which is tidal so I
5 have to go out when the high tide --

6 Q. So you keep it in the river, kind of north of
7 Temerlin and kind of -- is that where you store it?

8 A. Right, right.

9 Q. And then you will bring that out. What kind of
10 activities do you do with the boat because that's been
11 different than what a lot of people have talked about
12 today?

13 A. I would say 99 percent of my boating is
14 waterskiing with -- when I was a kid I waterskied and
15 then my nieces and nephews waterskied with me and then
16 their kids waterskied with me so I have been waterskiing
17 for at least 51 years.

18 Q. Great.

19 I am going to steal a little bit of Mr. Stern's
20 thunder. When you waterski do you take off and leave
21 from the shore?

22 A. Yes.

23 Q. Depending upon the tide or are you kind of
24 preparing to waterski on the dry sand or if it is low,
25 maybe a little bit lower tide you are prepared to

1 waterski from the wet sand?

2 A. We almost always waterski from the same place,
3 which is right at that point of Little River and it is
4 always at high tide because the river isn't very deep,
5 you can't waterski at half tide even, it has to be high
6 tide.

7 Q. I am sorry, did I interrupt?

8 A. No.

9 Q. So when you are down at the Little River, is that
10 down where -- I just want to make sure, is that down by
11 where Mr. Temerlin's home if we had to point right here?

12 A. Right, right in front of his house.

13 Q. Great.

14 When you are down there waterskiing you said you
15 waterski generally at high tide, correct?

16 A. Right, so there isn't any wet sand -- well, you
17 know --

18 Q. You are prepared to waterski on the dry sand?

19 A. Right.

20 Q. I am a water skier, you have to get the skis
21 fitted for whoever is skiing, make sure they are ready
22 to go, life jacket, everything?

23 A. There is also a lot of non-skiers that are just
24 with us watching or --

25 Q. They are not standing in the water, are they, all

1 the time?

2 A. No, they -- it's like lay out their blanket and
3 do whatever you would do at the beach.

4 Q. Presumably laying out their blanket on dry sand?

5 A. Right.

6 Q. Great.

7 Do you utilize -- we have heard a lot about all
8 the activities that happen in the summer. Do you and
9 have you observed your family and your sister's family
10 -- do you utilize the beach in the winter?

11 A. My sister's family doesn't because they just come
12 up for the summer.

13 Q. They are just summer folk?

14 A. Right. I do and my kids do, significantly less
15 than in the summer.

16 Q. Stands to reason, right?

17 A. Right, but we walk the beach and --

18 Q. Do you ever cross-country ski down there?

19 A. I have not.

20 Q. Have you seen people cross-country ski?

21 A. Yes, I have.

22 Q. Have they always been beach-front owners?

23 A. I have no idea.

24 Q. When you have -- my guess is that over the years,
25 Rick, you have accumulated a number of friends at

1 Goose Rocks Beach?

2 A. Some. I am petty antisocial so not as many as
3 you would think.

4 Q. Do you know all the beach-front owners
5 particularly down at that eastern end of the beach?

6 A. No, I know very -- some of them I didn't even
7 know were beach-front owners.

8 Q. So when you are on the beach with your daughters,
9 your nieces and nephews, are you looking to identify a
10 spot on the beach where you can go that's in front of
11 someone's house you know?

12 A. No, the choice of spot always had to do with what
13 activity you were -- if I were a teenager and wanted to
14 play touch football you would pick an area that nobody
15 is in. If you are with your family you pick a spot
16 where, you know, the kids have some room to play and you
17 are not bothering other people, so you just move to
18 wherever is a good location.

19 Q. Your Honor, I will get right to it. Let's take a
20 look at 318, your Honor. I think I identified that for
21 you, Rick. Can I approach, your Honor?

22 Your Honor, do you mind if I stand near the
23 witness?

24 Rick, starting on that first page of 318 I am not
25 going to ask you to identify everyone in there but who

1 are these generally pictures of?

2 A. This is my sister and her kids and they are, like
3 I said, 45-ish years old, so this must be --

4 Q. 40 years old?

5 A. Yeah, 40 years, maybe a little less.

6 Q. Can you identify in any of these pictures kind of
7 where the picture is taken --

8 A. I am --

9 Q. -- on this first page?

10 A. I am pretty sure from the scenery behind that
11 it's at the end of Jefferys Way, and that makes sense
12 with where we lived.

13 Q. Can you identify the type of sand that everyone
14 is sitting on here? Does it look like wet sand or dry
15 sand?

16 A. It looks like dry sand.

17 Q. Great.

18 Go to the next page, Rick. I want to
19 particularly identify or take a look at that top middle
20 photo. That one right there, sorry, the right middle
21 photo. Who is that?

22 A. That is my niece.

23 Q. You said she is about 45?

24 A. Right.

25 Q. So how long ago do you think that was?

1 A. Well, she's seven or eight, so 38 years ago.

2 Q. Great.

3 Going down to the next page, the top photo, who
4 is that holding the baby?

5 A. That's my father.

6 Q. Whose the baby?

7 A. My niece, so she's maybe three or four there, so
8 that's 41 years ago.

9 Q. Maybe 41 years ago.

10 Do you know, can you tell by the --

11 A. That is definitely directly in front of Jefferys
12 Way.

13 Q. Directly in front of Jefferys Way.

14 Can you see there kids playing in the water?

15 A. Yes.

16 Q. Can you also see, I know it is a little grainy,
17 but some lawn chairs or beach chairs in the back?

18 A. Yes.

19 Q. Great.

20 How about that photo below it, do you know who
21 the person is, it looks like three kids?

22 A. That's another niece and a nephew and that looks
23 like it's in front of Jefferys Way also.

24 Q. I love the next couple of photos.

25 A. This is before the bike parade there was our

1 parade.

2 Q. What's the bike parade first?

3 A. On the 4th of July Goose Rocks Beach Association
4 has a bike parade from the store up to the association.

5 Q. Along Kings Highway or along the beach?

6 A. Along Kings Highway.

7 Q. Have you seen bikes on the beach?

8 A. Occasionally.

9 Q. Great.

10 So this is the pre-bike parade, kids' parade?

11 A. Right.

12 Q. And can you identify -- it's probably easier on
13 the bottom. Can you identify the kids in this photo,
14 any of those kids?

15 A. Three of them are my nephews and then the other
16 kids are kids -- I am pretty sure who some of them are
17 but I wouldn't like to swear to it.

18 Q. We are not going to ask you to guess.

19 Whereabouts is that photo taken?

20 A. Well, the top one here is just down from Timber
21 Island, from Little River.

22 Q. So down --

23 A. It is about halfway --

24 Q. It would have to be west of the Timber Island and
25 Little River because east would go into the water?

1 A. Half between Jefferys Way and Little River.

2 Q. So this is Jefferys Way right here, this is the
3 Little River right here. Somewhere in this area?

4 A. Right.

5 Q. Great.

6 How long -- how long of a tradition was the
7 pre-parade -- is the bike parade still go on?

8 A. Yes.

9 Q. Does the pre-parade still go on?

10 A. No, unfortunately it died out when the
11 participants outgrew it.

12 Q. The next page has -- it looks like you guys
13 incorporated a drum and bugle core in the parade?

14 A. Yeah, they were pretty into the 4th of July.

15 Q. Great.

16 It looks like there's some -- is it correct to
17 say that there's some people sitting on the dry sand,
18 there's some people sitting it looks like kind of on the
19 wet sand and some people in the water?

20 A. Right.

21 Q. And this is the 4th of July?

22 A. Probably.

23 Q. Let's skip the next page.

24 Okay, we get to the next page. Looks to be about
25 six or seven people on the beach sitting down. Do you

1 know any of those folks?

2 A. Those are my nieces.

3 Q. How long ago was that do you think judging by
4 their age in the photo?

5 A. They look to be about 16, so 30 years ago.

6 Q. Okay, and where are they --

7 A. In front of Jefferys Way.

8 Q. In front of Jefferys Way?

9 Behind there it looks to be quite a few people
10 going east from Jefferys Way up in the dry sand?

11 A. Right.

12 Q. How about let's go to the bottom of the next
13 page.

14 Is volleyball a popular game on the beach?

15 A. It had its era.

16 Q. Its era?

17 A. Yes.

18 Q. When was its era?

19 A. Oh, maybe the '80s.

20 Q. Is that Timber Island in the background, Rick?

21 A. Yes.

22 Q. Can you identify where this --

23 A. This is probably east of Jefferys Way because
24 that would be an open -- a little more open spot to take
25 up some beach and it looks to be on dry sand. I think

1 all the games were on dry sand.

2 Q. All the games were on dry sand, okay.

3 Let's go to the next page, Rick. The top photo,
4 are we looking out at the ocean from the Little River?

5 A. Yes.

6 Q. Okay, and Timber Island would be on our left
7 there?

8 A. Correct.

9 Q. Okay. It looks to be maybe three Boston Whalers?

10 A. Right.

11 Q. Canoe in the background?

12 A. Right.

13 Q. And some skis?

14 A. Right.

15 Q. Do you know any of the folks in this photo?

16 A. Yes.

17 Q. Can you give us a date of that photo?

18 A. That is probably me with the first Boston Whaler
19 and my nieces and nephews sitting on the beach.

20 Q. How long ago?

21 A. Let's see, mid '80s.

22 Q. Great.

23 A. Late '80s.

24 Q. Still have the Montauk?

25 A. I still have the same boat, I got my money's

1 worth.

2 Q. You always do with a Whaler.

3 How about the photo below it?

4 A. That is my family and my brother-in-law is the
5 guy standing up and then another -- a niece's husband,
6 nieces.

7 Q. So is this more recent than the one above it?

8 A. Probably the same, '80s, you know, give or take
9 four or five years.

10 Q. Except for the -- we're going to keep going on
11 these just for a little bit longer.

12 Except the swimsuits, I mean, are we apt to see
13 similar scenes every year from the Macdonald and --
14 Lefay is your sister's family, right?

15 A. Yes.

16 Q. Same scenes every year?

17 A. Yes.

18 Q. The next page can you identify where you are
19 there with the tube?

20 A. That's in front of Temerlin's house.

21 Q. Again same thing?

22 A. Yeah.

23 Q. Good.

24 Let's skip forward several pages. Let's go to
25 the one with there looks to be a daughter in a green

1 swimsuit with her back to.

2 Do you have that, your Honor?

3 THE COURT: I think so, yes.

4 Q. This one.

5 A. Yes.

6 Q. Can you identify any of the folks in that photo,
7 Rick?

8 A. That's my daughter in the swimsuit and my
9 brother-in-law standing next to her.

10 Q. Okay, and where is this one taken do you think?

11 A. Probably directly in front of Broadway.

12 Q. Okay. When you would walk down Broadway or when
13 you have walked down Broadway or when you have walked
14 down Jefferys Way, have you always stayed in that
15 right-of-way?

16 A. No.

17 Q. Where do you set up shop?

18 A. Right or left, whichever looks like a nice open
19 spot.

20 Q. It looks to be quite a few people in the
21 background there going east, isn't there?

22 A. Yes.

23 Q. How about the bottom of the next page, is this
24 again kind of down Broadway?

25 A. Yep.

1 Q. Sand castle making?

2 A. Right.

3 Q. Can you give us an estimate on the date of this
4 photo?

5 A. 20 -- how old is that kid? 20 years ago.

6 Q. I only have a couple more photos but is it fair
7 to say that we were going to kind of bounce ahead 5, 10
8 years at a time, the photo for the Macdonald and Lefay
9 family would be very similar except people are gonna be
10 5, 10 years old and maybe there's a new baby in the
11 picture?

12 A. Correct.

13 Q. Great.

14 A couple more. Maybe go five from the back,
15 Rick, this photo, the fifth to the last page.

16 I think that's you in a white shirt and
17 sunglasses?

18 A. Okay, got it.

19 Q. That photo there, is that you in a white shirt
20 and sunglasses, Rick?

21 A. Yes, it is.

22 Q. Who's in that photo with you?

23 A. Nieces and my kids and --

24 Q. How long ago was that?

25 A. Probably 15 years ago.

1 Q. Down Broadway again, that area?

2 A. Yeah.

3 Q. Great.

4 Almost there. Skip ahead two pages. Four girls
5 at the bottom of the page.

6 A. Yeah.

7 Q. Do you know those girls?

8 A. My girls and a neighbor.

9 Q. How long ago?

10 A. Oh, five years.

11 Q. Dry sand?

12 A. Right.

13 Q. Where are you in front of? Is that Broadway
14 there?

15 A. Yes, that's Broadway.

16 Q. And finally last page, I think you labeled this
17 way just for your purposes, 2010, Little River. Are
18 those your daughters there, Rick --

19 A. Yes.

20 Q. -- at the bottom?

21 Your daughter -- does your daughter normally wear
22 a life jacket when she is sitting on the beach?

23 A. No. We were waterskiing.

24 Q. Okay, so she is preparing to waterski?

25 A. Right.

1 Q. Is that the Temerlin house in the background?

2 A. Yes.

3 Q. And she is on the dry sand there, correct?

4 A. Correct.

5 MR. FRAME: One moment, your Honor. I think
6 I am all set.

7 THE COURT: Yep.

8 MR. FRAME: Your Honor, I would like to
9 offer 318 into evidence.

10 MR. LEONI: No objection with the exception
11 of the last two photographs which are after the lawsuit
12 started.

13 Actually, you know what, put them in.

14 MR. FRAME: You can do with that what you
15 want, your Honor.

16 THE COURT: In with that reservation I guess
17 we will say.

18 MR. FRAME: That's fine. Nothing further.

19 CROSS EXAMINATION

20 BY MR. STERN:

21 Q. Good afternoon. I am Paul Stern with the
22 Attorney General's Office.

23 Do you surf down at Goose Rocks Beach?

24 A. I have just started to surf.

25 Q. And where do you surf?

1 A. Off of Timber Island.

2 Q. Have you seen other folks surfing there?

3 A. Quite a few.

4 Q. For how long have you seen people surf down at
5 Goose Rocks Beach?

6 A. 20 years.

7 Q. Could you go back to those photographs, if you
8 can? You have to start at the beginning.

9 A. The beginning?

10 Q. Only because I have to have you go a few pages.
11 Could you go to the eighth page of photographs?

12 A. The what?

13 Q. Eighth. Go eight pages.

14 A. Eight pages in?

15 Q. Mr. Frame briefly discussed those with you. In
16 the top photograph what is being depicted there,
17 preparations for some sort of waterskiing?

18 A. Yeah, waterskiing.

19 Q. And if you look behind the waterskis there's a
20 little orange --

21 A. That's a knee board.

22 Q. What is that used for?

23 A. It's another towed-behind-the-boat activity, you
24 kneel on it and it is much wider, it doesn't take quite
25 as much skill to do it.

1 Q. It sounds like something I might be able to do.

2 Can you go to the --

3 A. Anybody can do it.

4 Q. I am not sure about that.

5 Could you go to the photograph on the bottom of
6 that page?

7 A. Yep.

8 Q. Is that preparation for towing activities as
9 well?

10 A. Yeah.

11 Q. And some of the activities in the intertidal zone
12 and some of the activities in the dry sand?

13 A. Well, the sitting around is in the dry sand. The
14 activities, in the water obviously.

15 Q. And could you -- on the next page is a big tube
16 there. Is that one of the kinds of tubes that is pulled
17 behind?

18 A. Right.

19 Q. You have to go three more pages.

20 In the upper photograph, it's the one with the
21 little orange board --

22 A. Right, that's the knee board.

23 Q. That's the knee board we were talking about. At
24 the moment it happens to be in the intertidal zone?

25 A. Right.

1 Q. You have to go four more pages if I have this
2 right.

3 It's a few children playing in the wet sand,
4 correct?

5 A. Yep.

6 Q. Do you see those -- do you recognize those
7 children?

8 A. Two of them are mine.

9 Q. Do you know what date this was taken or what year
10 approximately?

11 A. The one in the bathing suit on the right is 18
12 now, so 10, 12 years ago.

13 Q. And as long as you have been at Goose Rocks Beach
14 when you have walked up and down in the summertime, is
15 this a typical scene you see?

16 A. Very.

17 Q. Can you go two more pages?

18 A. (Witness complies.)

19 Q. There's a photograph of a young lady in a blue
20 bathing suit pulling something with a pail in it?

21 A. Yeah, one of those foam-body Boogie boards for
22 body-serving type thing.

23 Q. How long ago was this taken?

24 A. About 10 years.

25 Q. Is it typical seeing this sort of scene all along

1 Goose Rocks Beach?

2 A. Very typical.

3 Q. The lower photograph, is that a wagon?

4 A. That's a wagon.

5 Q. What is the wagon used to do?

6 A. Transport everything we own to the beach.

7 Q. That's what I thought.

8 Two more pages.

9 In the lower photograph is a young lady in a
10 colorful bathing suit standing on a blue something or
11 other. Do you see that?

12 A. Right.

13 Q. Do you recognize who that is?

14 A. That is my daughter, she's 16 now so about 10
15 years ago.

16 Q. Is she trying to surf do you think or at least
17 working it out?

18 A. It is hard to tell what she is thinking, even
19 now.

20 MR. STERN: That's it. Thanks a lot.

21 MR. DRIVER: Nothing.

22 MR. LACHIATTO: Nothing.

23 THE COURT: Miss Hewey?

24

25

1 CROSS EXAMINATION

2 BY MS. HEWEY:

3 Q. I just want to ask you a couple of follow-up
4 questions about your dinghy.

5 A. Uh-huh.

6 Q. You said that when you were -- before you got
7 your driver's license you stored your dinghy on Dinghy
8 Point.

9 A. Right.

10 Q. I am not sure I see the connection but that's
11 okay.

12 A. Well, my boat was a major form of transportation.

13 Q. Oh, okay, and then after that you went with the
14 car.15 So what years was it that you were storing your
16 boat on Dinghy Point approximately?

17 A. I would say '61 to '65.

18 Q. And during the time that you stored your boat
19 there was it up on the high, dry sand?

20 A. Yes.

21 Q. Did you get anybody's -- ask for anybody's
22 permission to do that?

23 A. No. There were tons of boats there, you just --

24 Q. Okay, so you saw tons of boats there during that
25 period that you have just told us.

1 Did you see -- continue to see boats being stored
2 on Dinghy Point after that?

3 A. Yes.

4 Q. For what period of time would you say?

5 A. I would think they are still there.

6 MS. HEWEY: Okay. Thank you.

7 THE COURT: Ben?

8 CROSS EXAMINATION

9 BY MR. LEONI:

10 Q. Hello, Mr. Macdonald.

11 A. Hello.

12 Q. My name is Ben Leoni and I represent the
13 plaintiffs.

14 Do you prefer Mr. Macdonald or Rick?

15 A. Rick is better.

16 Q. Okay. I am going to spend a little bit of time
17 with some of your photos but let me ask you a few
18 questions first. Were you ever a bartender at
19 The Tides Inn?

20 A. I was.

21 Q. What years were you a bartender at The Tides?

22 A. Maybe late '70s.

23 Q. Do you recall in the late '70s -- we have heard a
24 lot of people testify about some of the activity that
25 would occur in front of The Tides during the '70s. Do

1 you recall activity, people gathering in front of
2 The Tides during the '70s?

3 A. Gathering to do what?

4 THE COURT: Daytime or at night?

5 Q. This is in the evenings.

6 A. Well, I think The Tides and the store -- there
7 used to be a store that is no longer there -- various
8 kids would hang out in front of the store or across the
9 street from it, sit on fences and stuff or they would go
10 down to The Tides and sit on the rocks in front of
11 The Tides.

12 Q. Do you know Marie Henricksen?

13 A. Yes.

14 Q. Do you recall her calling the police on the folks
15 in front of The Tides on the beach at night?

16 A. I don't remember a specific time. I only
17 remember one specific calling of the police and that
18 was -- had really nothing to do with the beach, it had
19 to do with a patron not leaving the bar.

20 Q. There was a little rowdies back then from what I
21 understand?

22 A. Teenagers. Mostly teenagers hanging out. If you
23 don't like six teenagers out in front of your house, you
24 know --

25 Q. Call the cops.

1 A. I guess.

2 Q. So the first 25 years that you were coming to
3 Goose Rocks Beach, is it fair to say that -- I am going
4 to approach the map. Is it fair to say that when you
5 were -- when you were staying near New Biddeford Road
6 that the right-of-way that you typically used when you
7 were living down there for the first 25 years was the
8 Jefferys Way right right-of-way?

9 A. Correct.

10 Q. And then when you started living in the back lot
11 over here, 86 --

12 A. Yes.

13 Q. -- and would you come down to the Broadway Avenue
14 right-of-way here?

15 A. Correct.

16 Q. The Broadway -- comes out -- the Broadway Avenue
17 comes out if you are I guess looking at it from the
18 birds-eye view the first house to the right or to the
19 east, to your right -- well, let me put it this way, the
20 property just to the right of the right-of-way is the
21 first property where there's a house?

22 A. Uh-huh.

23 Q. On the south side of Kings Highway?

24 A. Uh-huh.

25 Q. And to the left of that or to the west there are

1 no houses until you get around Dinghy Point or Gardiner
2 Point?

3 A. Correct.

4 Q. So this, the boundary and right-of-way is the
5 boundary, if you will, of the extent of the beach
6 easterly where there are no houses south of Kings
7 Highway?

8 A. I believe so.

9 Q. If you can follow that.

10 A. Yeah, I believe so.

11 Q. Okay.

12 You have heard that area just west of where the
13 Broadway comes out referred to as the public beach area,
14 correct?

15 A. I never really knew what lots the town owned.

16 Q. But you knew the town owned some lots?

17 A. I had heard they owned a couple.

18 Q. Do you know if they now are owned by the
19 Kennebunkport Conservation Trust?

20 A. I really don't know the ownership of any of those
21 lots.

22 Q. That's fine.

23 Let's go to the photos, we are back to Exhibit
24 318, do you have those in front of you?

25 A. Yep.

1 Q. Go to the very beginning. Start on the first
2 page. You testified that these photos are taken in the
3 vicinity of the end of Jefferys Way, correct?

4 A. Correct.

5 Q. And that would depict the right-of-way that you
6 typically used when you were younger?

7 A. Correct.

8 Q. And you can see some people sitting around
9 Jefferys Way, correct?

10 A. Yes.

11 Q. You testified that you believe that those photos
12 were taken directly in front of Jefferys Way?

13 A. I believe so.

14 Q. And then if you flip -- I will skip the black and
15 whites which are page 2 and go to page 3.

16 Again, you said that this was, quote, directly in
17 front of Jefferys Way?

18 A. Yeah, that one I am positive of exactly where it
19 is.

20 Q. Those -- let's see. I think we are going to go
21 three photos, so just after the photos of the parade.

22 You testified again that this was the area in
23 front of Jefferys Way?

24 A. Right, that house up in the upper-left corner is
25 to the east of Jefferys Way.

1 Q. The upper-left corner in the top photo, and you
2 see that house again sort of in the upper left-hand
3 corner in the bottom photo?

4 A. Right.

5 Q. So is it fair to say that most of these
6 activities that you engaged in when you come down
7 Jefferys Way occurred right near the end of Jefferys
8 Way?

9 A. The sitting occurred near the end of Jefferys
10 Way.

11 Q. Okay.

12 A. Physical things like touch football and stuff
13 would go to a less-populated area of the beach.

14 Q. Great.

15 So you just -- if you wanted to sit down you
16 would have plenty of room near the end of Jefferys Way
17 but if you wanted to engage in activity that required a
18 lot more room you had to move a little ways away?

19 A. Well, I mean not everybody went down and just sat
20 at the end -- I mean, you spread out so that everybody
21 had their space.

22 Q. Right, so everyone had their space.

23 It's fair to say that you didn't have to go very
24 far away from Jefferys Way to get enough room to play
25 some flag football or touch football?

1 A. Well --

2 Q. Let me put it this way, when you would come down
3 Jefferys Way during your first five years what you would
4 see when you got down to the beach was a cluster of
5 people in the vicinity of the end of Jefferys Way,
6 correct?

7 A. Right.

8 Q. Then you didn't have to move far beyond that
9 cluster to have enough room to play football?

10 A. No, maybe one or two houses.

11 Q. Okay.

12 The photos of the little parade so that's -- we
13 are going to go back two. I think those are the first
14 photos of the little parade that you have. The two
15 photos -- are you there yet?

16 So these two photos and the next two photos on
17 the next page, those were taken the same year, correct?

18 A. I would think so, yeah.

19 Q. During the same parade? The top photo is on the
20 east end of the beach, correct?

21 A. Right.

22 Q. And there's nobody on that beach except for the
23 folks engaged in the parade, correct?

24 A. Yeah, at that --

25 Q. At that point?

1 A. -- at that location.

2 Q. And then the next photo down you are looking
3 towards the east -- I am sorry, you are looking towards
4 the west?

5 A. Correct.

6 Q. And that's towards the area of the beach where
7 there's no houses on the south side of Kings Highway,
8 correct?

9 A. Right.

10 Q. And do you see in that area where there's no
11 houses on the south side of Kings Highway some people in
12 the distance?

13 A. Correct.

14 Q. Next page.

15 In that top photo you are further towards the
16 west, correct?

17 A. Correct.

18 Q. And when you go further towards the west now you
19 are down into the area where there's no houses on the
20 south side of Kings Highway and you are starting to get
21 into where the people are that you could see in the
22 preceding photograph, correct?

23 A. I am guessing that they are very near Jefferys
24 Way in the top photo.

25 Q. The previous photo, it is on the previous page,

1 bottom photo, can you see where Jefferys Way comes out?

2 A. I would say that they are slightly west of
3 Jefferys Way in this photo.

4 Q. All right. So what makes you think the top photo
5 on the following page is near Jefferys Way?

6 A. Just the -- I have been sitting on Goose Rocks
7 looking at Timber Island for 50 years, it is kind of the
8 angle that I would look at Timber Island.

9 Q. But it is possible that this is the area down
10 where there's no houses on the south side of Kings
11 Highway?

12 A. It is possible.

13 Q. Is it possible that this is the area that on the
14 preceding photograph you can see people down using the
15 beach?

16 A. Yes.

17 Q. I just have a few more questions on photos. It
18 is a little difficult because these are not numbered.

19 Do you mind if I approach the witness, your
20 Honor?

21 THE COURT: Go right ahead.

22 Q. I will help you out in a minute, Gregg.

23 The top photo is a photo with a small child and a
24 pail, and I am just going to draw your attention to the
25 bottom photo. That brown house that's sort of central

1 left of the photo --

2 A. Yep.

3 Q. -- Jefferys Way comes out just to lookers left of
4 that as you are looking at this photo, correct?

5 A. Broadway.

6 Q. Broadway, yes, sorry. So now we are in the
7 Broadway section?

8 A. Right.

9 Q. So where you are sitting with your kids is to the
10 west of where the houses start on the south side of
11 Kings Highway?

12 A. Correct.

13 Q. And in the next page, same thing on the bottom?

14 A. Correct.

15 Q. And on the top the same area but looking to the
16 west this time, correct?

17 A. Correct.

18 Q. So this is the area where you see all these
19 people, the area where there's no houses on the south
20 side of Kings Highway?

21 A. Correct.

22 Q. I may be done with the pictures, I am just going
23 to flip through to see if I have anymore notes. We
24 appreciate all the photos.

25 A. I didn't know I was going to be punished for it.

1 Q. So just a few quick last questions.

2 You have -- there was one more. Have you ever
3 seen a lifeguard stand on Goose Rocks Beach?

4 A. I have.

5 Q. That was in the area where there's no houses on
6 the south side of Kings Highway?

7 A. Correct.

8 Q. Have you ever seen a lifeguard stand anywhere
9 else on Goose Rocks Beach?

10 A. No.

11 Q. Have you ever seen garbage cans placed on the
12 beach, on Goose Rocks Beach?

13 A. On the beach, on the sand?

14 Q. On the sand, on the beach.

15 A. Honestly I don't think so.

16 Q. You don't recall ever seeing one?

17 A. No.

18 MR. LEONI: I think I am all set. Thank you
19 very much.

20 THE COURT: Mr. Frame?

21 MR. FRAME: Very briefly, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. FRAME:

24 Q. Sometimes we have to ask silly questions, Rick.
25 I am going to ask you a couple of silly questions.

1 If you walked down the Jefferys Way right-of-way
2 and a whole bunch of people were sitting in that area
3 where you generally sit would you turn around and leave?

4 A. No.

5 Q. What would you do?

6 A. Just find another open spot.

7 Q. How about if you were walking down the Broadway
8 right-of-way and a whole bunch of people were sitting in
9 front, would you leave?

10 A. No.

11 Q. Would you find an open spot?

12 A. Find an open spot.

13 Q. Would you -- did you ever change your activities
14 depending upon whether you went west or east of the
15 Jefferys Way right-of-way?

16 A. Not -- where we set up our chairs and our
17 blankets or whatever to sit made no difference whether
18 it was right or left of either one of those or someplace
19 totally else on the beach, like to visit other people,
20 but ball games and stuff like that tended to have to
21 go --

22 Q. Have space?

23 A. -- go to where you weren't going to run over some
24 kid digging a hole or something like that.

25 Q. Sure.

1 Ben asked you, you walked down Broadway, I will
2 try to orient myself here, and you could go sit right in
3 front, you could go east or you could go west and if you
4 went west you may have been in part -- in front of the
5 part of the beach where there are no homes water side of
6 Kings Highway, correct?

7 A. Correct.

8 Q. When you went down Broadway did you change the
9 activities you did on the beach depending upon whether
10 you were on the east side of Broadway or on the west
11 side of Broadway?

12 A. No, no.

13 MR. FRAME: Nothing further.

14 MR. STERN: Nothing, your Honor.

15 THE COURT: Anything else?

16 Mr. Macdonald, thank you very much. You may
17 step down.

18 (Witness excused.)

19 THE COURT: Gregg.

20 MR. FRAME: We are done. I apologize.

21 THE COURT: I am not -- does it look like I
22 am chastising?

23 MR. FRAME: I saw the finger so I was a
24 little worried.

25 THE COURT: I've probably been the model of

1 patience.

2 MR. FRAME: You have. I just saw the finger
3 go up and it reminded me of my dad.

4 THE COURT: I just wondered if you had
5 additional testimony that you wanted to present this
6 afternoon.

7 MR. FRAME: No. We have eight tomorrow,
8 your Honor, and we will be done.

9 THE COURT: Okay.
10 Now, do we need to meet at 8:30 tomorrow
11 morning?

12 MS. HEWEY: I don't know. I know that
13 Mr. Thaxter is back in his office trying to work out --

14 THE COURT: If we don't know I will be here
15 at 8:30 --

16 MS. HEWEY: Okay.

17 THE COURT: -- and if you need to -- and I
18 will ask very politely if Kimberly will be available and
19 Diane, and we will be here if --

20 MS. HEWEY: So we'll let you know or should
21 we --

22 THE COURT: There is no need to let me know,
23 I am here.

24 MS. HEWEY: Okay.

25 MR. FRAME: Your Honor, I think I have a

1 question. Should we be having our witnesses available
2 at 8:30 or still at 9:00?

3 THE COURT: I think you are on for 9:00.

4 MR. FRAME: Okay, great.

5 THE COURT: The point here was that if we
6 have this evidentiary issue we want to resolve we would
7 like to resolve it so we can --

8 MS. HEWEY: We are working hard on that,
9 trying to resolve it.

10 THE COURT: You have been wonderful. I mean
11 that, I am serious. I go home at night and people say,
12 this must be a hard trial and I say no, it is not a hard
13 trial, it is a long trial but it is not a hard trial.
14 So, no, you have been wonderful. I couldn't ask for
15 more cooperation.

16 MR. DUCHETTE: Your Honor, we have the one
17 photo issue, the Exhibit 330. Do you want to handle
18 that at 8:30 tomorrow?

19 MR. LEONI: Sure, why don't we go through
20 them -- I can go through them right now if you would
21 like and we will have something, if there's a dispute at
22 8:30 and we will -- but I don't foresee that.

23 THE COURT: I mean, as a practical matter if
24 there hasn't been testimony about them and there hasn't
25 -- I mean, obviously we are not going to put testimony

1 in about every single photo but if there hasn't been
2 testimony they really don't have a terrible amount of
3 relevance because I don't know sort of what they -- I
4 mean, we have got lots of photos.

5 So what I am saying is I wouldn't be too
6 concerned about it. It is not going to -- this case is
7 not going to turn on whether one or two photos in
8 Exhibit 330 is admitted or not admitted.

9 MR. STERN: Your Honor?

10 THE COURT: Yes?

11 MR. STERN: I forwarded to everybody,
12 including plaintiffs counsel, a modest number of
13 discreet exhibits and when I hear back I will let the
14 Court know.

15 THE COURT: Just be here at 8:30, that's
16 all.

17 MR. STERN: I don't think there is
18 necessarily a dispute.

19 THE COURT: If they aren't, they aren't. I
20 am saying if they are I want to deal with them at 8:30
21 so that we move on at 9:00.

22 MR. STERN: Okay. Thank you.

23 THE COURT: Good.

24 We will see everybody in the morning.

(Thereupon, the foregoing proceedings

concluded at 3:33 p.m.)

* * * * *

C E R T I F I C A T I O N

I, Kimberly McCulloch, Official Court Reporter
for the State of Maine, do hereby certify the foregoing
transcript as true and accurate to the best of my
ability.

Kimberly McCulloch
Official Court Reporter