

STATE OF TENNESSEE  
ELEVATOR AND AMUSEMENT DEVICE SAFETY BOARD

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QUARTERLY MEETING OF THE  
STATE OF TENNESSEE  
ELEVATOR AND AMUSEMENT DEVICE SAFETY BOARD

September 6, 2023

ORIGINAL

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CASSANDRA M. BEILING, LCR# 371  
STONE & GEORGE COURT REPORTING  
2020 Fieldstone Parkway  
Suite 900 - PMB 234  
Franklin, Tennessee 37069  
615.268.1244

1 APPEARANCES:  
Robbie Fox, Chairman  
2 Fixed Amusement Device Representative

3 David Hale, Board Member  
Tennessee Fair Association Representative

4  
5 James Roy Pope, Board Member  
Traveling Amusement Device Representative

6 Larry R. Moore, II, Board Member  
Owner and Lessees Representative

7  
8 Kelly O'Connor, Board Member  
Public-at-Large Representative

9 Mitch Rader, Board Member  
Insurance Company Representative

10  
11 Victor LaPorte, Board Member  
Manufacturer Representative

12 Deneice Thomas, Commissioner (not present)  
Tennessee Department of Labor

13  
14 Dewayne Scott, Deputy Commissioner  
Tennessee Department of Labor

15 Tom Herrod, Assistant Commissioner  
Tennessee Department of Labor

16  
17 Kenneth Nealy, Assistant Administrator  
Tennessee Department of Labor

18 Dan Bailey, Legal Counsel  
Tennessee Department of Labor

19  
20 Melissa Owens, Deputy General Counsel  
Tennessee Department of Labor

21 James "Otis" Steele, Chief Elevator Inspector  
Tennessee Department of Labor

22  
23 Mike H. Hardy, Amusement Device Manager  
Tennessee Department of Labor

24 Lance Scott, Assistant Chief Elevator Inspector  
Tennessee Department of Labor

25

1 Appearances continued:

2 Jennifer Murphy, Board Secretary  
Tennessee Department of Labor

3  
4 Jamie Diefenbach, Executive Admin Assistant  
Tennessee Department of Labor

5 Michele Irion, Workplace Regulations & Compliance  
Tennessee Department of Labor

6  
7 Chance Deason, General Counsel  
Tennessee Department of Labor

8 Stone & George Court Reporting  
Cassandra Beiling, Court Reporter

9

10 Also Present:

11 CHURCH STREET UNITED METHODIST CHURCH:

12 Don Freeman  
Steve Richardson  
13 Mary Ellis Richardson  
Suzanne Freeman

14

15 Michaela Hayward  
Liftup North America

16 Rich Eller  
HomeLift

17

18 Jeff Tarkington  
Tarkington Elevator

19 Rachel Hurt, Esq.  
Arnett, Baker, Draper & Hagood, LLP

20

21 Matthew Grove, legislative liaison  
Tennessee Department of Labor

22

23

24

25 \*Reporter's Note: All names are phonetically  
spelled unless otherwise provided to the Reporter.

## A G E N D A

- 1
- 2 I. Call Meeting to Order
- 3 II. Pledge of Allegiance
- 4 III. Introductions and Announcements
- 5 IV. Adoption of Agenda
- 6 V. Approval of the March 28, 2023 Minutes
- 7 VI. Elevator Unit's Report
- 8 VII. Amusement Device Unit's Report
- 9 VIII. Old Business  
\*None
- 10
- 11 IX. New Business  
\*Statewide Contract 182 - Elevator Maintenance  
Seth Lake -State Procurement employee  
12 \*Eastman - 2002 Variance - Clarification on  
New Installations and Remodels  
13 \*Church Street United Methodist Church,  
Knoxville, TN - Lift Installation - Mr. Don  
14 Freeman and Michaela Hayward  
\*J&J Global Investments dba Smoky Mountain  
15 Alpine Coaster - Appeal
- 16 X. Open Discussion Items:  
\*None
- 17
- 18 XI. Calendar-Scheduled Board Meetings 2023 and  
2024  
December 5, 2023 9:00 a.m. CST (if needed)  
19 March 5, 2024 9:00 a.m. CST  
June 4, 2024 9:00 a.m. CDT (if needed)  
20 September 4, 2024 9:00 a.m. CDT  
December 3, 2024 9:00 a.m. CST (if needed)
- 21
- 22 XII. Adjournment
- 23
- 24
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New Business:	
*Church Street United Methodist Church	16
	*Vote 66
*J&J Global Investments d/b/a Smokey Mountains	66
Apline Coaster - Appeal	
	*Vote 114

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2 CHAIRMAN FOX: We will call  
3 the September 6, 2023 meeting of the Elevator and  
4 Amusement Device Safety Board to order.

5 Mr. Steele, would you lead us in the  
6 Pledge, please?

7 (Whereupon, the Pledge of Allegiance  
8 was recited.)

9 CHAIRMAN FOX: Mr. Herrod, I  
10 think you have an introduction you'd like to make?

11 MR. HERROD: Yes. I would  
12 like to introduce two of the newest members to the  
13 senior staff of the Elevator Unit, James Steele,  
14 who is now our Chief Elevator Inspector. He's  
15 been with us for five years and done exceptional  
16 work as both an inspector and assistant chief, so  
17 we're very fortunate to have him.

18 And right behind him is Lance Scott,  
19 who is our newest Assistant Chief. He's been with  
20 us two and a half years, so both of them bring a  
21 lot of experience prior to their work with the  
22 State, and we're just very fortunate to have them  
23 here with us. So I want to introduce them to you  
24 and to the rest of the people here today.

25 CHAIRMAN FOX: Good deal.

1 Thank you.

2                   Congratulations.

3                   Mr. Hale, if you would, if you would  
4 start us off, we'll just go around the room and  
5 then come back that way on the introduction.

6                   MR. HALE: David Hale, board  
7 member.

8                   MR. POPE: James Roy Pope,  
9 board member.

10                  MR. MOORE: Larry Moore, board  
11 member.

12                  MR. LaPORTE: Vic LaPorte,  
13 board member.

14                  CHAIRMAN FOX: Robbie Fox,  
15 board member.

16                  MR. RADER: Mitch Rader, board  
17 member.

18                  THE REPORTER: Cassandra  
19 Beiling, Stone & George Court Reporting.

20                  MS. MURPHY: Jennifer Murphy,  
21 board secretary.

22                  MR. HARDY: Mike Hardy,  
23 Amusement Device Unit Manager.

24                  MR. STEELE: Otis Steele,  
25 Chief Elevator Inspector.

1                   MR. NEALY:   Kenneth Nealy,  
2 Assistant Administrator.

3                   MR. HERROD:   Tom Herrod,  
4 Assistant Commissioner.

5                   MR. BAILEY:   Dan Bailey, legal  
6 counsel.

7                   MS. OWENS:    Melissa Owens,  
8 Deputy General Counsel.

9                   MR. D. SCOTT:  Dewayne Scott,  
10 Deputy Commissioner.

11                  CHAIRMAN FOX:  The lady  
12 behind?

13                  MS. IRION:   Michele Irion,  
14 WRC.

15                  MR. L. SCOTT:  Lance Scott,  
16 Assistant Chief Elevator Inspector.

17                  MR. DEASON:  Chance Deason,  
18 general counsel.

19                  MR. FREEMAN:  Don Freeman,  
20 Church Street United Methodist Church.

21                  MR. RICHARDSON:  Steve  
22 Richardson with Church Street United Methodist.

23                  MS. RICHARDSON:  Mary Ellis  
24 Richardson with Church Street United Methodist  
25 Church.



1 MS. FREEMAN: Suzanne Freeman  
2 with Church Street United Methodist.

3 MS. HAYWARD: Michaela  
4 Hayward, Liftup North America.

5 MR. ELLER: Rich Eller,  
6 HomeLift.

7 MR. TARKINGTON: Jeff  
8 Tarkington, Tarkington Elevator.

9 MS. HURT: Rachel Hurt, Arnett  
10 Baker.

11 MR. GROVE: Matthew Grove,  
12 legislative liaison, Tennessee Department of Labor  
13 & Workforce Development.

14 CHAIRMAN FOX: Thank everyone  
15 for being here this morning. I do appreciate it.

16 MR. HERROD: We have one more,  
17 Mr. Chairman.

18 CHAIRMAN FOX: I'm sorry?

19 MR. HERROD: We have one more.

20 CHAIRMAN FOX: I'm sorry,  
21 ma'am. I forgot. I'm sorry. That's my fault.

22 MS. DIEFENBACH: Jamie  
23 Diefenbach, Executive Admin Assistant, WRC.

24 CHAIRMAN FOX: Okay. And  
25 again, I apologize, ma'am.

1           The first item on the agenda would be  
2 to adopt the agenda. Do I have a motion to adopt  
3 the agenda as it's presented today?

4           MR. POPE: I make a motion,  
5 Chairman.

6           MR. RADER: I'll second the  
7 motion.

8           CHAIRMAN FOX: There's been a  
9 motion and a second. Any Discussion?

10           (No verbal response.)

11           CHAIRMAN FOX: Hearing none,  
12 all in favor of the motion, let it be known by  
13 saying, "aye."

14           (Affirmative response.)

15           CHAIRMAN FOX: And all  
16 opposed, like sign.

17           (No verbal response.)

18           CHAIRMAN FOX: You have the  
19 minutes, or you should have the minutes, either  
20 mailed to you or in the packet. I would entertain  
21 a motion to approve the minutes as presented.

22           MR. RADER: I'll make a motion  
23 to approve the minutes as presented.

24           MR. MOORE: I'll second.

25           CHAIRMAN FOX: We have a

1 motion and a second. Any discussion?

2 (No verbal response.)

3 CHAIRMAN FOX: Hearing none,  
4 all in favor of the motion, let it be known by  
5 saying, "aye."

6 (Affirmative response.)

7 CHAIRMAN FOX: All opposed,  
8 like sign.

9 (No verbal response.)

10 CHAIRMAN FOX: Next item would  
11 be the Elevator Unit report.

12 Mr. Steele, I believe you're up.

13 MR. STEELE: So we have a  
14 total of 27 inspectors at the moment, 3 in West  
15 Tennessee, 13 in Middle, and 11 in East Tennessee.  
16 We have 4 vacant positions. One of those, we have  
17 hired an inspector for the East Tennessee  
18 position. He'll start in October.

19 As soon as we get the posting for the  
20 Middle Tennessee, I think we've got a couple of  
21 good candidates to fill that one as well.

22 We've had 347 new constructions over  
23 the last -- I believe that's 12 months; is that  
24 correct? With over half of them in Davidson  
25 County, Knox being second, and a few notable there

1 in Rutherford and Williamson.

2 We've had an increase since 2019 of  
3 1,478 conveyances across the state, consistently  
4 increasing; no sign of it slowing down. Our  
5 delinquency rate as of yesterday morning was  
6 0.83 percent. We've got 9 in West Tennessee, 84  
7 in Middle Tennessee, and 44 in East Tennessee.

8 And our delinquency rate has dropped  
9 from approximately 5.6 percent to 0.83 percent, I  
10 believe it was, over the last 52 weeks.

11 CHAIRMAN FOX: There is not a  
12 competitive bone in my body, but I do want to  
13 bring out the obvious here, that Sevier has ten  
14 elevators going in versus Shelby County, which  
15 only has seven. And obviously, they're a lot  
16 larger population. Not that I'm competitive, you  
17 see.

18 MR. STEELE: We don't inspect  
19 everything in Shelby County either.

20 CHAIRMAN FOX: Oh, okay.  
21 Well, that may be.

22 MR. RADER: Boy, he busted our  
23 bubble.

24 CHAIRMAN FOX: He did, didn't  
25 he? Here we were growing and going. No; he had

1 to tell us.

2 We did have more than Hamilton  
3 County.

4 MR. STEELE: Yes, sir.

5 CHAIRMAN FOX: You inspect  
6 those, right?

7 MR. STEELE: We do, yes, sir.

8 CHAIRMAN FOX: Okay. That's a  
9 victory. You've got to take them where you can  
10 get them.

11 Anything else, sir?

12 MR. STEELE: No.

13 CHAIRMAN FOX: All right.

14 Moving right along to the Amusement Device Unit  
15 report.

16 Mr. Hardy.

17 MR. HARDY: Thank you,  
18 Chairman.

19 We had a record number of permits,  
20 operating permits, to end the fiscal year of '23.  
21 We issued 493 operating permits. The green bar  
22 represents our projection for Fiscal Year '24.  
23 And we went with the same number, 493 operating  
24 permits projected. So far, in Fiscal Year '24, we  
25 are at 74 operating permits issued through Week 8

1 of the new fiscal year.

2           New companies, again, I think we've  
3 mentioned before that we have no way of really  
4 knowing how many new companies that we'll permit  
5 between now and the end of the fiscal year, but  
6 we're going with our projection of meeting or  
7 exceeding last year's number of 92 new companies.  
8 We have issued 18 operating permits to new  
9 companies this year.

10           And this chart will eventually bell  
11 curve. You know, it will meet new companies  
12 permitted. As you can see, COVID had something to  
13 say with our bell curve, so it may be askew, but  
14 we're hoping that we'll eventually peak out on new  
15 companies permitted and that will eventually fall  
16 off.

17           This next slide is something new  
18 Mr. Herrod had us implement. It's a number of  
19 active companies at any point in time. So as of  
20 August 27, we currently have 502 active companies  
21 with operating permits. I think our last number  
22 was 506, but we had reached that 500 company mark.

23           Amusement devices inspected, we  
24 inspected -- we received inspections and  
25 registered 4,563 devices for Fiscal Year '23. We

1 have received 867 thus far in Fiscal Year '24.  
2 And again, the green bar represents our goal for  
3 the Fiscal Year '24. And I'll point out, the same  
4 as operating permits issued as a direct  
5 correlation between that and the devices that we  
6 receive inspections and register.

7 And this chart and graph should  
8 plateau eventually over time. But again, COVID  
9 had something to say about that in '20, '21, and  
10 '22. But our numbers are strong now as they've  
11 ever been, so...

12 Accidents, reportable accidents. We  
13 finished the fiscal year of '23 with three  
14 reportable accidents. And currently, we have not  
15 logged a reportable accident for Fiscal Year '24.

16 And finally there, there's a little  
17 graph with an explanation of what those three  
18 reportable accidents were. We had a mountain  
19 coaster -- we had a collision coming into the exit  
20 on a mountain coaster, and we had two zip line  
21 accidents where there was a lack of  
22 communications, and patrons collided on the line  
23 there. So we went through our procedure of  
24 requiring third-party post-accident inspection  
25 before we submitted business resumption letters on

1 those.

2                   And that's really all I have. I will  
3 be glad to answer any questions that any of you  
4 may have regarding the Amusement Device Unit.

5                   CHAIRMAN FOX: Any questions  
6 for Mr. Hardy?

7                   MR. RADER: Good report.

8                   CHAIRMAN FOX: Yes, sir.

9                   MR. HARDY: Thank you.

10                  CHAIRMAN FOX: Okay. Nothing  
11 under Old Business at this point.

12                  Heading into New Business, the first  
13 item on the agenda would be Church Street United  
14 Methodist Church out of Knoxville, lift  
15 installation. Mr. Freeman and Ms. Hayward.

16                  If you would, please come to the  
17 chair there. Or the chairs, I should say.

18                  MR. FREEMAN: What we would  
19 like to do initially is, we have sent you two  
20 previous documents, which I hope have been  
21 distributed to the Board, but we've got additional  
22 copies and I want to make sure that we get these  
23 in your hands.

24                  Plus, we've got a letter from our  
25 senior pastor, and we've got a front page fax



1 sheet that Michaela with Liftup has put in to give  
2 some documentation of the specific vertical  
3 platform lift that we have installed. So let's  
4 get those out.

5                   Again, I'm Don Freeman. I'm a member  
6 of Church Street United Methodist Church and we're  
7 located in downtown Knoxville, Tennessee, and I  
8 serve as Chair of our Properties Committee.

9                   With me today are two other members,  
10 Mary Ellis Richardson and Steve Richardson, who  
11 have been very active for a number of years in  
12 trying to improve accessibility issues at our  
13 church.

14                   And then we have Michaela Hayward,  
15 who is with Liftup USA. And Liftup of Denmark is  
16 the manufacturer of our vertical platform lift,  
17 which also serves as a stair and a platform lift.  
18 And we generally refer to it, and you'll hear me  
19 refer to it today, as a stair/lift. So she will  
20 describe a little bit more about her equipment.

21                   First, I want to thank the Board,  
22 because you added us to your September agenda.  
23 And we very, very much appreciate this. We got  
24 ourselves in a mess and we're trying to work  
25 ourselves out of this mess, and allowing us to get

1 on this agenda is a big help for us.

2 We would also like to thank your new  
3 Chief Inspector, Mr. Steele, who has been very  
4 helpful to us as we have been working through this  
5 process. He was very straightforward to us in the  
6 beginning. He told us that his group only  
7 enforces the code. It's only this Board that's  
8 allowed to grant a variance to the code.

9 But he has been very active with us,  
10 as we have submitted modifications to try to bring  
11 us into compliance with the code. He's come up to  
12 Knoxville twice and spent time reviewing, watching  
13 the operation, making comments to our suggestion,  
14 and his feedback has been invaluable to us and  
15 been very, very helpful. So thank you. I don't  
16 know if he's on board with what we're doing, but  
17 he's been hand in glove with us, as we are trying  
18 to get fully compliant with the code.

19 Now, before we get started, we emailed  
20 to you, a member of the church did, the video that  
21 we prepared. It's a 7 1/2-minute video. I don't  
22 know whether all of you had a chance to see it or  
23 not. It's really -- it's a video we made and  
24 Steve narrated. And if -- we're trying to be very  
25 respectful of your time, but we would like to show

1 you this video to have it fresh in your mind as we  
2 talk about this. Does time allow for us to do  
3 that?

4 CHAIRMAN FOX: Yes, sir.

5 MR. FREEMAN: Okay. And I  
6 think she's got -- Steve may do a pause or two  
7 when we're showing it to point out some things to  
8 you.

9 But, Steve, I'll turn it over to you  
10 and let you present this.

11 MR. RICHARDSON: Thank you.

12 And, Jamie, I'll just let you --

13 MS. DIEFENBACH: You ready?

14 MR. RICHARDSON: Let it start.

15 And we will jump in from time to time  
16 so I can explain a little further a couple of  
17 points. And if you-all have questions as we go,  
18 please let us know.

19 MS. DIEFENBACH: We're getting  
20 no audio.

21 MR. RICHARDSON: We're waiting  
22 for sound here.

23 MS. DIEFENBACH: I've got my  
24 laptop turned up. Do they have speakers in here?

25 MR. HERROD: There's speakers

1 behind. Do you need them? You'll have to move  
2 all that.

3 MR. RICHARDSON: As we're  
4 doing that, let me add to Don's comments, that  
5 despite our best intentions of adhering to all the  
6 regulations, no one in our research and  
7 preparation and purchase decisions realized we  
8 needed a permit from you-all for this.

9 Now, we know ignorance is not an  
10 excuse. But we had a leading construction firm, a  
11 leading architectural firm -- we had a lot of  
12 well-meaning people involved in this whole  
13 project, but nevertheless, that slipped by us, and  
14 for that we apologize.

15 But now we come seeking a variance,  
16 and we think after we share with you what we  
17 propose to do, that what we propose will be  
18 substantially equivalent to meeting the code and,  
19 in some cases, actually exceeding the safety  
20 requirements of the code.

21 And we will have this going in just a  
22 minute.

23 MS. DIEFENBACH: Those  
24 speakers are not plugged into the...

25 MR. HERROD: Can you narrate

1 as you go?

2 MR. RICHARDSON: I can explain  
3 things as we go, if you like.

4 MR. HERROD: Yes, let's do  
5 that.

6 MR. RICHARDSON: Let's do  
7 that, because I don't want to delay things.

8 MR. HERROD: Go ahead. Start  
9 it. And then if we get it, you -- we can get it.

10 MR. RICHARDSON: If we can  
11 just go back to the beginning. This is our church  
12 in downtown Knoxville, next to the University of  
13 Tennessee. And this is our nave, our sanctuary.

14 You'll see there, there's a set of  
15 steps that prohibited people in wheelchairs, or  
16 who are unable to ascend or descend steps, to be  
17 able to go up and down those steps, yet the main  
18 altar is where people prefer -- if we can pause it  
19 right here. It's where people prefer to have  
20 communion. The main altar is used in religious  
21 events, from weddings to various other things.

22 There are musicians in our choir,  
23 some who, as they age or because of an accident or  
24 because of having had surgery, have trouble going  
25 up and down steps, and there is no other means to

1 access to that chancel area.

2           Now, this little area is near that  
3 altar. And I don't know the history, but it was  
4 called the rabbit hole. That's what we refer to  
5 it. It's kind of behind the choir loft, means of  
6 getting in and out. And there was a set of steps  
7 there, but it was very narrow. We did not have  
8 much room to work. You can't see it in this  
9 picture, but on this side of the rabbit hole and  
10 behind that wall, there's a set of steps. So we  
11 cannot make it any wider going this way.

12           We actually had to widen the rabbit  
13 hole a little bit for this device and took away  
14 some of the choir seating. But the choir seating  
15 is already -- the available seating is already  
16 less than the number of people in the choir. So  
17 we couldn't take more seats and make that space  
18 wider. I mean, one option would have been to  
19 retain the steps and put in a conventional  
20 platform lift, but there simply would not be space  
21 for that without detriment to the choir area.

22           There's also -- you can't see in this  
23 image but you'll, perhaps, see later on. There's  
24 a set of pipes above here, and that proposed an  
25 architectural barrier too.

1           So we were left with this very tight  
2 space with this rabbit hole. And you can see the  
3 lift, looking down, and it's in the stair mode at  
4 this point, which is what it is 99 percent of the  
5 time.

6           We'll just let this continue. I'm  
7 saying something at this point, but I don't  
8 exactly remember what I was saying.

9           That's another view of that choir  
10 seating area and the pipes that I mentioned that  
11 are there that posed a bit of a barrier to make  
12 that rabbit hole wider.

13           Now, I'm getting ready to demonstrate  
14 how the lift works.

15           And if you'll pause it here, Jamie.  
16 I'm sorry.

17           You can see here, pressure-mounted  
18 switches which adhere to the code requirements.  
19 And as we demonstrate, I'm going to start showing  
20 the lift in operation. You have to have pressure  
21 on that switch for it to operate. Anytime you  
22 take your hand or finger off of that, it  
23 automatically stops. And I think that adheres to  
24 the code requirement.

25           Oh, the key operation. I'm sorry.

1 Stop.

2 We propose -- and we'll show you on  
3 this side, there's an on/off switch. We're  
4 proposing that this lift only be operated by a  
5 trained attendant who will stand where I'm  
6 standing the entire time of its operation.

7 The first thing that attendant will  
8 do, of course, is inspect the area and then insert  
9 the key and turn the lift on. Otherwise, the  
10 complete device is locked. That key is kept in a  
11 secure area. Only the trained attendants will  
12 have access to that key. In fact, we'll keep a  
13 log of whoever checks the keys in and out. So  
14 that will be the only way that the operation of  
15 the lift can begin. So that's what this little  
16 discussion is about right now.

17 We're inspecting to make sure there's  
18 not anything there that shouldn't be there.

19 And there's the on/off switch.

20 Another point here is -- we can't  
21 show it because the camera needs to be able to see  
22 in to what you're looking at -- there's a doorway  
23 here. When the trained attendant goes in, and  
24 before the attendant puts the key into the on  
25 position, that door will be closed. So there's no



1 other possibility that someone could come in  
2 there. The trained attendant will be sure that  
3 that area is secure.

4           Okay. Now you can see the lift start  
5 its operation. And you see the steps now starting  
6 to collapse. I take my finger off the pressure  
7 switch and it stops.

8           This hybrid device now has gone from  
9 a set of steps to a platform lift, as you can see.

10           The weight capacity allows for more  
11 than one person. Such as with our son. Our son  
12 is a wheelchair user, our adult son. The chair  
13 and his weight together are approximately 230,  
14 240 pounds, plus either my weight or my wife's  
15 weight. But the capacity for the lift far exceeds  
16 that total weight.

17           Right now, the lift is being operated  
18 by a switch on the left. That is going to be  
19 taken off. That was one of Mr. Steele's  
20 suggestions. The only operation pressure switch  
21 will be where the attendant is standing. There  
22 may be an emergency off switch added, however, so  
23 that the user of the lift can stop it in case of  
24 any emergency.

25           Now, another thing that we're going

1 to plan to do -- and it's in our proposed  
2 changes -- will be, on each side, two seamless  
3 vertical walls that will basically serve as  
4 enclosures on each side. You've already seen the  
5 enclosure that comes up on the upper level. And  
6 then the doorway here where the attendant will be  
7 will serve as the enclosure on the porch side.  
8 Those switches will also be removed, but they're  
9 there for now.

10                   And then basically, the operation  
11 just goes in -- it follows an opposite procedure  
12 to go down. Again, the attendant will be there to  
13 ensure that -- first of all, nothing is going to  
14 get in there because the door has been shut and  
15 you have the two side panels. But even in the  
16 event something does happen, the attendant will be  
17 able to get in there and see that.

18                   There's also, underneath -- we'll  
19 demonstrate in a minute, as you'll see -- pressure  
20 switches on the underside of this. They're  
21 floating pressure switches. Any minute amount of  
22 pressure -- you'll see me stick my foot under it  
23 in a minute -- will cause the lift to stop and  
24 actually go back up two inches.

25                   This is hard to see because of the

1 lighting. There's a little -- I'm going call it a  
2 ramp, that's right here. When the platform is on  
3 the ground level, that ramp folds down and serves  
4 as a ramp for a wheelchair. But as the lift goes  
5 up, that folds up and provides a bit of an added  
6 barrier, so a wheelchair can't slide off.

7 Right now, it's four inches. We're  
8 going to change that to eight inches. So it will  
9 be more than curb height to prevent any sort of  
10 accident of a wheelchair rolling off of it while  
11 the lift is off the ground.

12 We're also going to have rotating  
13 bars, that once the lift is in operation, these  
14 bars swing up and provide added security on the  
15 entrance side of the lift.

16 MR. MOORE: Can I ask a  
17 question?

18 MR. RICHARDSON: Yes, please.

19 MR. MOORE: What was -- when  
20 you stuck your foot in, what was -- in that video  
21 just a moment ago, was that a safety --

22 MR. RICHARDSON: That was a  
23 demonstration that there are sensors that if a  
24 foot is, like, into a pinch point of a step, it  
25 will stop automatically, or if anything touches

1 the underside, it will stop automatically.

2 MR. RADER: What's the height  
3 from the floor to the --

4 MR. RICHARDSON: It's about  
5 40 inches.

6 CHAIRMAN FOX: How much, sir?  
7 I'm sorry.

8 MR. RICHARDSON: 40, four  
9 zero.

10 CHAIRMAN FOX: 40 inches?

11 MR. RICHARDSON: Yes, sir.

12 And, of course, once we're finished  
13 and no one else needs to use the lift, we'll turn  
14 the key back to off and return the key to its  
15 location.

16 So thank you for allowing this kind  
17 of improvisation of the video, but I think it  
18 gives you some idea of how this hybrid lift  
19 operates. And I've mentioned some of the safety  
20 things, and I know Don and Michaela can elaborate  
21 further on the safety things.

22 Are there any other questions at this  
23 point?

24 MR. HALE: When the device is  
25 going back down, is there anything that prevents,

1 like, a child from sticking their hand between  
2 that protective rail, a guardrail, and the device?

3 MR. RICHARDSON: That's one  
4 purpose for those walls that I mentioned that will  
5 be on the side. Those will be solid walls. And  
6 they will adhere to code requirements for how  
7 they're positioned. They will exceed 42 inches  
8 above the upper level of the lift, according to  
9 the code. So they essentially provide two sides  
10 of the box. Therefore, that would not be able to  
11 happen.

12 Nevertheless, you've got the  
13 attendant watching things at all times, at any  
14 point in time can take his hand or finger off the  
15 pressure switch and it will stop.

16 MR. MOORE: I have a question  
17 for Mr. Steele.

18 Would, like, an inspection station  
19 make that a safer operation where you have to have  
20 two hands only instead of one hand preventing  
21 pinch points?

22 MR. STEELE: That operation is  
23 going to take place from that bottom landing.  
24 There's not going to be any control at the top.  
25 So whoever is at the bottom landing is going to be

1 the only one that can operate it. They're going  
2 to be free from the lift. They're going to be  
3 clear from it.

4 MR. MOORE: Okay. So that  
5 makes them clear. They can't get -- okay.

6 MR. STEELE: Right. There's a  
7 small area between the door and the actual ramp  
8 where they can be.

9 MR. LaPORTE: So, Mr. Steele,  
10 let me ask. So it's kind of a unique piece of  
11 equipment.

12 MR. STEELE: It's a very  
13 unique piece of equipment.

14 MR. LaPORTE: Does it -- I  
15 don't have it in front of me. I have to do some  
16 research. In your opinion, does it even meet  
17 A18.1?

18 MR. STEELE: No.

19 MR. LaPORTE: It doesn't.

20 MR. STEELE: First of all, we  
21 don't allow the unenclosed runway. They have  
22 proposed to enclose the two sides of it to  
23 protect, somewhat, the public from outside. The  
24 door requirements for A18.1, there would have to  
25 be a door on the platform at the bottom side. The

1 arms don't meet that. The enclosure for the  
2 platform is supposed to be solid construction,  
3 reject a half-inch ball. That railing that's on  
4 there currently, you can stick your hand through.  
5 There's a lot of deficiencies as far as meeting  
6 the entirety of the code.

7 MR. LaPORTE: Right. I'll  
8 jump around here a little bit.

9 As far as the operation, what would  
10 your opinion be on constant pressure key switch?  
11 Get rid of the buttons completely. The operator  
12 has to have the key in his hand, releases it, the  
13 key comes out. That's a pretty simple and  
14 inexpensive change.

15 MR. STEELE: I see where  
16 you're at with it. I mean, that would be an added  
17 level of that within an operation, yeah.

18 MR. LaPORTE: Okay. And just  
19 so I understand it, there's not just a pan switch  
20 underneath the entire platform, but each step has?

21 MR. STEELE: Every step has  
22 its own, and there is a small gap between each  
23 panel under there. It's not fully guarded like  
24 it's required to be. Most of these have one pan  
25 that hangs out under the whole thing. This has

1 individual pans for each step. There is a small  
2 gap in between each one. I would say --

3 What would you guess it to be?

4 MS. HAYWARD: About an inch.

5 MR. STEELE: Inch. An inch  
6 gap between each step.

7 MR. LaPORTE: Okay. So my  
8 concern, obviously, during the transition, would  
9 be a pinch point. Somebody's foot or something.  
10 Even though nobody is supposed to be standing on  
11 it, we can't control human beings sometimes, so --

12 MS. HAYWARD: It must be  
13 larger than an inch.

14 MR. LaPORTE: I'm sorry?

15 MS. HAYWARD: Be larger than  
16 an inch.

17 MR. STEELE: One other issue  
18 was, the vertical safety barrier is not  
19 necessarily of solid construction, as required by  
20 code. It's three collapsible panels, and you can  
21 actually grab that bottom panel and lift it up and  
22 access that runway without any trouble. There's  
23 nothing that holds it down. It just drops down.  
24 So there's not a real positive protection up there  
25 at that landing.



1                   MR. LaPORTE:   Okay.   And the  
2 ramp they're talking about, going from  
3 approximately a four-inch to an eight-inch, is  
4 there --

5                   MR. STEELE:   The code requires  
6 it to have six inches of vertical for -- not for  
7 these but for, say, a private residence.   If you  
8 go to a private residence, which is what most of  
9 this is -- it meets part of -- it requires a  
10 six-inch vertical ramp, which they don't have  
11 currently.   The eight-inch make it closer to that,  
12 and the arms may add to that, but it still doesn't  
13 meet the requirements for the vertical platform.

14                   MR. LaPORTE:   So room to put a  
15 taller ramp with an interlock on the ramp that it  
16 won't operate in the down position.

17                   MR. STEELE:   I think they  
18 proposed to put an eight-inch ramp.

19                                 Is that correct?

20                   MS. HAYWARD:   It's an  
21 eight-inch ramp, and it does lock into position  
22 and resist the pressure, as required by code.   It  
23 will not -- you can stand on it.

24                   MR. LaPORTE:   Will it  
25 electrically lock?

1 MS. HAYWARD: Yes.

2 MR. LaPORTE: When it's not  
3 folded up, it will not run the unit.

4 MS. HAYWARD: When that ramp  
5 is up, it's locked into a roller protection unit.  
6 The FlexStep will not move from the lower position  
7 until that ramp is up and locked and electrically  
8 locked.

9 MR. LaPORTE: So it's an  
10 electric, mechanical lock.

11 MS. HAYWARD: Electric and  
12 mechanical.

13 MR. RADER: How often will  
14 this be used for the lift and then how often is  
15 the rabbit hole used in terms of when it's stair  
16 steps?

17 MR. RICHARDSON: The rabbit  
18 hole is used as stair steps on a -- as stair steps  
19 on a daily basis, on a regular, daily basis. It's  
20 used by choir members, musicians, people attending  
21 to decor and accessories in the altar and the  
22 chancel area, so it is regularly used as steps.

23 The lift device itself, we really  
24 estimate probably 20 times a year. Communion in  
25 our church is held on a monthly basis. There are

1 sometimes special services, such as a Monday  
2 service, a Monday/Thursday service or a Christmas  
3 Eve service in addition to those communion  
4 Sundays. That is the time the lift is going to be  
5 used the most.

6 Most of our members, not all of our  
7 members -- most of our members are able to use the  
8 steps. Those who can't use the steps may  
9 choose -- it's their choice -- to receive  
10 communion by other means other than at the main  
11 altar. But those who want to choose to use the  
12 main altar, it's our belief they should be able to  
13 make that choice and have access to that altar. I  
14 mean, that's an important holy sacrament in our  
15 church.

16 We think there's probably about 20  
17 times a year someone will be using that platform  
18 lift.

19 MR. LaPORTE: Do you know what  
20 the actual capacity is?

21 MR. FREEMAN: 880 pounds.

22 MR. LaPORTE: 880. Okay.

23 MR. MOORE: Mr. Steele, have  
24 you seen this?

25 MR. STEELE: I have.

1 MR. MOORE: And there's only  
2 enough room, basically, for one person in there to  
3 operate?

4 MR. STEELE: Correct. As long  
5 as the door is closed and it's protected there,  
6 there's only room for one.

7 MR. MOORE: Could there be a  
8 door switch interlock to where the guy closes the  
9 door behind him, too?

10 MR. STEELE: We mentioned  
11 that, and Mr. Freeman was supposed to be checking  
12 into that to see if we could put some sort of  
13 interlock on that door.

14 MS. HAYWARD: We've got more  
15 to tell you, if you would like to listen.

16 MR. FREEMAN: Yes. And let us  
17 move on because, again, I don't want to take your  
18 whole morning. But we're happy to stay to the  
19 afternoon, if that's what it takes.

20 Thank you, Steve. And helpful.

21 It took a little bit longer by having  
22 to do it this way. I apologize for that.

23 CHAIRMAN FOX: But he did a  
24 great job.

25 MR. FREEMAN: He did do a

1 great job.

2           Anyway, let me respond a little bit  
3 to what Mr. Steele has said. He is right. We  
4 acknowledge that we don't meet every paragraph of  
5 Section 2 of ASME A18.1, 2014, adopted Tennessee  
6 state code for vertical platform lifts. We can't  
7 meet it. And the reason we can't meet it is --  
8 you know, we looked. For years this went on,  
9 where we were trying to find something that would  
10 fit, after we explored all kind of other  
11 alternatives. And Steve said, the only place in  
12 this 90-year-old historic building that we could  
13 put this lift was in this little rabbit hole.

14                   MR. RADER: Beautiful church,  
15 by the way.

16                   MR. FREEMAN: Thank you. It  
17 is. It's amazing. I can't imagine, during the  
18 Depression, that somebody built a church like  
19 this. It just confounds me.

20                   But anyway, it is what it is, and  
21 that's what we've tried to work with. And it took  
22 a lot of money -- I'm not going to tell you what  
23 kind of money -- for a very little project,  
24 because we had to still expand that rabbit hole to  
25 fit this device -- for this device to fit in it.

1           We had looked at using -- you know,  
2 could we put a standard platform lift in, a boxed  
3 platform lift that this code is written around.  
4 Okay? Or we tried to use an inclined platform  
5 lift. But there simply -- we couldn't make the  
6 rabbit hole big enough for an inclined platform  
7 lift. So, I mean, we were at a standstill. And  
8 we finally found the FlexStep, manufactured in  
9 Denmark, and she's going to tell you in a minute a  
10 little bit more about the FlexStep.

11           But the reason -- difficulty in  
12 meeting the code is -- you know, Section 2 of the  
13 code is written around a -- not necessarily a  
14 square. It could be rectangular. But an enclosed  
15 box with its runway. And that's what it's based  
16 on. This, because it goes from an inclined  
17 position to a flat position -- there's nothing  
18 wrong with the lift. There's some variances, and  
19 I'm not going to argue with Mr. Steele on that.  
20 He knows the code better than we do.

21           But it -- you know, all the load  
22 capacity and the speed and the height and all that  
23 stuff that's covered, and all the safety switches  
24 and so forth, and more than what the code requires  
25 is involved in this unit.

1                   But the footprint of this, when it  
2 changes, it grows, because when it goes from  
3 inclined -- and you're supposed to have solid side  
4 panels, according to code. But they can't do  
5 that, because if you can visualize this, when it's  
6 in an inclined position, that solid side panel  
7 would have to be a parallelogram. If you  
8 understand -- remember your geometry, what a  
9 parallelogram looks like. When it collapses to  
10 the floor, it has to be a rectangle. Well, a  
11 solid flat panel that's required by code can't do  
12 that.

13                   These balustrades that they've got  
14 are very substantial, meet all the load  
15 requirements, but they're not solid. So -- and  
16 the door, you know, the door is the same  
17 principle. It's because this thing gets bigger as  
18 it turns into the platform lift, because these  
19 angled rails go to the floor and then come  
20 straight. So it's kind of like the old hypotenuse  
21 formula for a right triangle. It comes out. So  
22 the doors can't go in and put the tolerances that  
23 are required.

24                   So we have done everything we've  
25 done, and I'll outline that in just a minute with

1 these modifications.

2           But the code does allow, subject to  
3 the jurisdiction allowing -- the advisory group  
4 allowing it, to use attendant operation. And we  
5 think this is very, very important because we're  
6 going to put that -- and we've written a manual  
7 that we've given you, on how we're going to train  
8 the attendants and specifically, step by step,  
9 what they have to do to safely operate this unit.

10           They're going to be in this space.  
11 They're going to have it locked out. It's going  
12 to be interlocked. So the lift won't work if that  
13 door is not locked.

14           And they will control this. They'll  
15 look at all the spaces. They'll make sure, once  
16 they get -- the wheelchair person, they get him on  
17 there, that the brakes are locked on it. To make  
18 sure that anything they've brought on board are  
19 within the footprint of that platform.

20           They'll make sure there's nothing in  
21 the runways. You know, when we're adding the  
22 code-compliant -- which we would have done. We  
23 could have done that all along. We just didn't  
24 realize the code required that. That was our  
25 fault, but we'll make that modification.



1                   And then he'll watch this, and he's  
2 in the only position where you can see everything,  
3 at that lower level vestibule. So he will control  
4 it, up and down, and then he'll lock it out, and  
5 then he'll go and record with somebody where he  
6 has to check that key back in for secure purposes.  
7 And we'll document every time -- the limited  
8 number of times we'll use it.

9                   So what we're saying is, and I think  
10 what is allowed under the code, not for Mr. Steele  
11 but for this group, is to say, you have given us a  
12 substantially equivalent operation that meets the  
13 safety of the code. And we think we can do that,  
14 combining the modifications with the trained  
15 attendant operation. So that's really what we've  
16 got to do with this hybrid piece of equipment that  
17 doesn't quite fit that box, you know.

18                   Yes, sir?

19                   MR. LaPORTE: Actually, I have  
20 another question for Mr. Steele.

21                   I've got to put you on the spot  
22 because I have my ideas here. And understand,  
23 this will never meet A18.1, but we are looking for  
24 a safe alternative.

25                   Do you have any suggestions for this

1 unit, even though not meeting A18.1 would be  
2 acceptable? What are your major or main concerns  
3 with it, and do you have ideas to address that?

4 MR. STEELE: I've shared a lot  
5 of ideas with them in my business up there. And I  
6 think they're headed in the right direction to try  
7 to make it as safe as they can, but there's still  
8 some reservations there of, you know, just like  
9 the top door not being a solid panel, being  
10 collapsible, that a kid could access that while it  
11 was moving, you know. And you cannot see that  
12 from the attendant operating portion of it because  
13 it's above it. And the lift, whoever is occupying  
14 that lift is going to be between you and that --

15 MR. RADER: Why can't they put  
16 somebody on the other side of the door on the  
17 stage?

18 MR. LaPORTE: That's my one --  
19 if we had two attendants...

20 MR. FREEMAN: We can certainly  
21 do that. See, this is only being operated during  
22 the services. We've got ushers. We've got plenty  
23 of people that can be stationed --

24 MR. LaPORTE: Yeah, because  
25 someone is going to need to assist loading a

1 wheelchair person from the top to come back down.  
2 My concern is almost more lowering somebody than  
3 raising them. But if we have an attendant  
4 operating -- and I would go with the  
5 constant-pressure key switch; have one person at  
6 the bottom of that and one person at the top. I  
7 think that would be a huge step toward making it  
8 safe. And that's an easy thing.

9 MR. FREEMAN: We can do that.  
10 That's absolutely no problem.

11 MR. RADER: That's a great  
12 suggestion.

13 MR. FREEMAN: In fact, we  
14 already have the people up there while we're doing  
15 communion that are stationed there.

16 MR. RADER: You're already in  
17 service.

18 MR. FREEMAN: They're there.  
19 And it will be primarily ushers that we will train  
20 as the attendants.

21 MR. LaPORTE: So the vertical  
22 uprights on the side, I understand where that's a  
23 problem, not an easy fix. But it's not just about  
24 strength. It's about -- is it a two- or  
25 three-inch ball?

1 MR. STEELE: Half-inch.

2 MR. LaPORTE: Half-inch ball.

3 Okay.

4 Is there a way to add additional  
5 uprights per each step to kind of close that off,  
6 or can you just put a solid panel on it, to those  
7 uprights so that they are solid?

8 MS. HAYWARD: You could. In  
9 platform mode, the uprights would be up against  
10 the handrail, and as soon as you go back into step  
11 mode, there's that part that's going to -- you're  
12 still going to have that greater than half inch at  
13 that point.

14 MR. LaPORTE: At the top.

15 MS. HAYWARD: Yes.

16 MR. LaPORTE: And, in fact, we  
17 can create a worse pinch point than if we tried to  
18 put something solid in there.

19 MS. HAYWARD: Exactly.

20 MR. LaPORTE: Okay. So  
21 that's --

22 MS. HAYWARD: So from the top  
23 of the balustrades to the handrail, there's enough  
24 space allowed by the manufacturer that when it is  
25 turned, you can have an arm not get pinched if

1 somebody decides they're going to lean through it,  
2 it does not get pinched. I've got photos from the  
3 manufacturer where they've done that.

4 MS. FREEMAN: The code  
5 requires that that solid side runway panel be a  
6 minimum of two inches away so that you've got room  
7 to put your hands on the handrail and you're not  
8 going to get pinched and so forth. And so, you  
9 know, we'll meet that code requirement.

10 MR. LaPORTE: Right. We're  
11 not going to meet the half-inch requirement.

12 MR. FREEMAN: No.

13 MR. STEELE: They can't meet  
14 the requirement in platform mode.

15 MR. LaPORTE: So that's --  
16 have to be okay with that.

17 And then can you explain again about  
18 being able to pull the steps? You said, with the  
19 one-inch gap between the steps when you're in  
20 platform mode, you can still pull them up to  
21 access --

22 MR. STEELE: No, no. Not pull  
23 up, no.

24 MR. LaPORTE: I misunderstood,  
25 then.

1                   MR. STEELE: The pans -- the  
2 pressure switches, the pans underneath that  
3 protect it, they're individual to each step and  
4 there's a one-inch gap between, pan to pan. So  
5 the entire underneath of it does not technically  
6 have protection.

7                   MR. LaPORTE: Okay.

8                   MR. STEELE: There could be an  
9 instance where something hit that between them.

10                  MR. LaPORTE: But each pan is  
11 switched individually.

12                  MR. STEELE: Each pan is  
13 switched, yes.

14                  MR. LaPORTE: Okay.

15                  MR. STEELE: The majority of  
16 it is covered, and the side as well.

17                  MS. HAYWARD: Can I clarify?  
18 So each pan has two micro switches. They're  
19 floating micro switches. If someone is standing  
20 on the top, it's not going to make any difference.  
21 They're only activated if there's pressure  
22 underneath.

23                  MR. LaPORTE: Right.

24                  MS. HAYWARD: That's under  
25 each step. And they have to be separated so the

1 lift can change.

2           But the side rails -- and there was a  
3 section in that video where Steve actually showed  
4 you. The entire side rail extends beyond that  
5 step, and there's a floating pressure plate  
6 underneath that. So if you've got yourself  
7 underneath the step to the point where you're  
8 between pans, you're still going to activate that  
9 side rail.

10           From the top of the platform, there  
11 are two sets of infrared sensors between the  
12 steps, so nothing can get caught during  
13 transformation mode. If somebody decides they're  
14 going to burst past the attendant, leap over the  
15 eight-inch barrier, and fling themselves onto the  
16 ramp, they cannot be caught. There's an infrared  
17 sensor. It will sense the pan, let alone hands,  
18 feet, whatever.

19           In addition, there's a platform set  
20 of infrared sensors that run the full length for  
21 each step. If somebody is on the platform, it  
22 will see them and will not transform the steps.

23           MR. LaPORTE: Yeah. I think  
24 the only concern is the one-inch gap. But I  
25 understand. Okay.

1 MS. HAYWARD: A piece of dog  
2 kibble could get in there and, like --

3 THE REPORTER: I'm sorry?

4 MS. HAYWARD: A piece of dog  
5 food or, you know, something small, one inch,  
6 would be able to actually bypass all those and get  
7 between there. But that's the only thing.

8 MS. O'CONNOR: Can I ask  
9 how -- clearly, this has already been installed  
10 and been in use. How long has it been going on or  
11 how long -- when did you install that?

12 MR. FREEMAN: We got  
13 Certificate of Occupancy from the City, I think,  
14 right before Advent season, which is right before  
15 Christmas of 2022.

16 We used it three or four communion  
17 Sundays. And in March -- I don't remember the  
18 exact date -- one of the inspectors happened to be  
19 coming in our church, doing his twice-a-year  
20 inspection of the elevators in the church and he  
21 saw this and said, "Hey, this is supposed to have  
22 been permitted. Did you get this permitted?"

23 And we said, "What permit?"

24 And so immediately, we shut it down  
25 and locked it out, and it hasn't been used to



1 transport any mobility-impaired people since that  
2 day. So we used it three or four communion  
3 Sundays.

4 MS. O'CONNOR: Three or four  
5 times with people with disabilities.

6 MR. RICHARDSON: Yes.  
7 Correct.

8 MR. FREEMAN: Yes. And it's  
9 been shut down ever since. We don't have any  
10 plans to start it back up until we're properly  
11 permitted for it.

12 CHAIRMAN FOX: So have you  
13 consulted with your architects --

14 MS. HAYWARD: We did.

15 CHAIRMAN FOX: -- and folks to  
16 see if there's another alternative or another  
17 option here?

18 MR. FREEMAN: We did. I mean,  
19 when we heard about this, of course, we were  
20 pretty much devastated. But we -- I mean, our  
21 pledge is, we're going to try to make this work.  
22 We've got a lot of invested financial capital but  
23 even more invested emotional capital in this  
24 situation.

25 We're not trying to make a bad thing

1 good. We're making a good thing better. I mean,  
2 we're trying to meet or exceed the code. Not by  
3 every paragraph. We can't do that. But by the  
4 way that we're modifying it and the improvements  
5 and the operation procedures.

6           So yes, we immediately called -- I  
7 mean, we got Liftup involved. We got the  
8 architect, and the architect is the biggest local  
9 architectural firm in Knoxville. And the  
10 contractor was the -- is probably the oldest  
11 commercial contractor in Knoxville that we got  
12 involved in this, because it was a pretty  
13 sophisticated structural and mechanical and  
14 architectural to make this small -- it's amazing  
15 what's -- or in. And this has got two occupiable  
16 levels down below, what we were doing. So we were  
17 working with structural concrete and all sorts of  
18 things.

19           But yes, we've looked and, frankly,  
20 this is the only piece of equipment that will do  
21 what we have to do. And Liftup. For example,  
22 these -- when we first saw this thing, they didn't  
23 have these top bars, you know, that we're adding  
24 on the entrance side to prevent anybody from  
25 coming off. But that's something that R and D

1 group has been able to do, and they can now  
2 retrofit our unit to put those bars. And same  
3 thing with this eight-inch.

4           And they're looking -- I mean, in  
5 R and D, they're trying to figure out this solid  
6 side panel. They're trying to figure out some way  
7 that they can do that. But frankly, they haven't  
8 got there yet.

9           So, you know, it is what it is. We  
10 made a mistake. We should have been here  
11 18 months ago. Okay? We should have been before  
12 you 18 months ago, saying, we understand the code;  
13 here is what we need; here is the changes we're  
14 going to make. And we didn't know to do that.  
15 And we said we're sorry, and we're sorry, and it's  
16 been very painful that we screwed up. So yes, we  
17 have spent a lot of time looking at that.

18           MR. HALE: Mr. Chairman.

19           Just so I'm -- make sure I'm clear,  
20 the top door, door if you will, the device won't  
21 operate until that door fully extends; is that  
22 correct?

23           MS. HAYWARD: Correct.  
24 There's an electrical switch within the wall  
25 profiles, the postings there.

1                   MR. HALE:   And same thing when  
2 it's descending.  You have to get on the device,  
3 the door has to fully activate, and then the  
4 device will go down, correct?

5                   MS. HAYWARD:  So you saw in  
6 the video, when he was changing that from stairs  
7 to platform, that door comes up first.  There's no  
8 chance of falling off the top level at any point  
9 during it unless that platform is at the top  
10 level.  It has to be at the top level.  Then the  
11 device will come down, the door.

12                   I think one of the handouts that you  
13 were given, and also the third slide on this, the  
14 FlexStep is FDA listed as a Class 2 generally  
15 mounted wheelchair platform lift, and so needs to  
16 comply with all FDA requirements for recording.  
17 In over 3,500 installations worldwide, there have  
18 been no incidents.  No serious injuries.  No  
19 deaths.  No nothing.  The entire world.  We have  
20 had no safety incidents with this at all.

21                   MS. O'CONNOR:  Can I ask when  
22 this model first came out?

23                   MS. HAYWARD:  The first  
24 FlexStep was designed by engineers in Denmark in  
25 2003, and it had half the capacity load that this

1 one does. This has been around since 2015, and  
2 it's been -- we've been in the U.S. since 2017.  
3 So it's been around for a while.

4 MS. O'CONNOR: And in all that  
5 time, there have been no safety --

6 MS. HAYWARD: None. Not a  
7 single incident worldwide.

8 MS. RICHARDSON: If --

9 CHAIRMAN FOX: Is there -- I'm  
10 sorry.

11 MS. RICHARDSON: I'm sorry.  
12 If I can also address the safety.

13 Before we knew that this was - came  
14 under the subject of the code, I had the thrilling  
15 opportunity to accompany my son, who suffered a  
16 catastrophic stroke at birth. And even though he  
17 has some cognitive deficits, just like the rest of  
18 us, he wants to be included as a full participant.  
19 And communion -- holy communion is served at the  
20 altar.

21 And so I accompanied him on this  
22 lift. And I wish you could have seen the moment  
23 that the lift started, because as it rose -- and  
24 you saw it rise in the video -- he became more  
25 excited. And then when we were at the top and I

1 wheeled him over to the altar for communion, he  
2 was laughing. He was excited. And it was just --  
3 tears were streaming down my face as it happened.  
4 But he's nonverbal. He's not able to talk like  
5 the rest of us. But he has the same feelings and  
6 the same excitement that the rest of us would  
7 have.

8                   And as I accompanied him on this  
9 lift, I felt very safe. And it's sturdy. It's --  
10 you know, here is a wheelchair. And he has a  
11 special type of wheelchair that adds to the  
12 weight, as well as my weight, as well as his  
13 weight. And it felt extremely sturdy. And  
14 certainly, I wouldn't have him on any kind of a  
15 lift that I didn't feel -- that was jeopardizing  
16 his safety.

17                   MS. O'CONNOR: Mr. Chair, in  
18 the interest of full transparency, I don't think  
19 the Board is aware of the fact that I do work for  
20 an agency that supports people with disabilities.  
21 So I do want to be very clear about that.

22                   CHAIRMAN FOX: Okay.

23                   Anything else, sir, that we need  
24 to --

25                   MR. FREEMAN: Well, I want to

1 make sure that you have -- this has been passed  
2 out to you. This was the -- starts off,  
3 information narrative. And inside this, it  
4 outlines the -- what I listed there were four  
5 steps that we're taking, and we've talked about  
6 those things that we can do.

7           In addition to that -- and this was  
8 written and first put out from me before  
9 Mr. Steele made his last visit up to the church.  
10 And we did discover in that last visit, he pointed  
11 out to us -- and he's exactly correct -- that if  
12 you go to attendant operation, there is an  
13 emergency stop switch that does stay on the  
14 platform. By code, it has to stay. The other  
15 operating features come off. But when you do  
16 attendant operation, you have to add an emergency  
17 stop switch down next to the operating buttons in  
18 that vestibule. So we can do that.

19           The other thing, the way this is  
20 written, when we are using the corridor door as  
21 the locked access to prevent people from coming in  
22 and out, we were planning to manually lock that  
23 door. And Mr. Steele, last week, said he would  
24 feel more comfortable if we had that  
25 interconnected such that the lift could not

1 operate unless that door were locked.

2           So I haven't written that in there,  
3 but we have been talking with consultants and so  
4 forth. Not sure yet whether we would do that with  
5 a mag lock or whatever, but it can be  
6 interconnected to that switch so when that switch  
7 is turned on, that mag lock activates. So it does  
8 have to be locked.

9           And I think one of you mentioned  
10 about the keyed switch. You'd feel better if all  
11 the controls were at the keyed switch. I think --

12                   MS. HAYWARD: There is a  
13 version.

14                   MR. FREEMAN: They do make  
15 that capability. So if that were something that  
16 everybody felt better, that having the key and  
17 everything right there at one location, that could  
18 happen as well.

19                   MS. HAYWARD: I have full  
20 support from the manufacturer. We can make any  
21 alterations or programming requirements. I have  
22 full support from senior management, from the CEO,  
23 from the R and D management. Whatever we need  
24 here for this particular installation, they are  
25 willing to do for us.



1                   MR. FREEMAN:   So just in  
2 summary, we are making all the physical  
3 modifications that we can make, and we feel like  
4 we've got the enclosure now in good shape. We do  
5 have some deficiencies in the platform walls which  
6 we, at this time, can't overcome.

7                   But the code does allow this  
8 attendant operation, and with the instruction and  
9 so forth, which we'll modify based on if you  
10 approve our variance, anything else that goes in  
11 that, to make sure that we follow those  
12 guidelines.

13                   But I'm sincere in this. Church  
14 Street is all about accessibility but only safe  
15 accessibility. Okay? We want this to be safe,  
16 and we don't want to operate any other way. And  
17 we think we've achieved that by what we've done  
18 and hope you agree with us.

19                   So that's what we're requesting  
20 today, that you grant us a variance, which would  
21 allow us to start the process of going through and  
22 applying for an official permit of installation.  
23 And then, you know, once that's granted, we'd have  
24 to make all those modifications, do it, and then  
25 get them to come, inspect it, and approve it

1 before they can issue an operating permit. And at  
2 that point, we can, again, start transporting the  
3 mobility-impaired individuals.

4 MR. MOORE: The upper switches  
5 will be removed and on a control?

6 MR. FREEMAN: Oh, yes.

7 MR. MOORE: Okay.

8 MS. FREEMAN: The only  
9 controls will be what the attendant can do at the  
10 lower level. And we can put people -- I mean, we  
11 already have people at the upper level to assist.

12 CHAIRMAN FOX: All right.  
13 Thank you.

14 MR. FREEMAN: Thank you.

15 MS. HAYWARD: Sorry. One last  
16 thing of interest.

17 He is actually working with Intertek  
18 to get a semi-certification for the FlexStep.

19 And as far as nonconformances, at  
20 this stage in the process, the only one that we  
21 have is the open sides on the platform.

22 CHAIRMAN FOX: Okay. Thank  
23 you.

24 Mr. Steele, you've heard the  
25 conversation. Do you have a recommendation?

1                   MR. STEELE: This is a  
2 beautiful historic church, and I feel like the  
3 church has got the short end of this deal. From  
4 their contractor, from the architect, from  
5 everybody else, I think they're trying to bring it  
6 as close to code as possible. But there's a lot  
7 of human error there in that protection of  
8 attendant operation, in my mind, and that worries  
9 me going forward 15 years from now.

10                   Are these people still going to be  
11 trained the same way? Is everybody going to be on  
12 the same page 15 years from now, operating this in  
13 that same manner? How do you guarantee that?

14                   MR. FREEMAN: Can I respond to  
15 that?

16                   MR. RADER: I would like to  
17 make a motion to give them a variance and work  
18 with you.

19                   MR. STEELE: I would be glad  
20 to work with them in any way. Like I said, I've  
21 been up there twice. The church has my sympathy.  
22 I don't feel like the church is in the wrong here.  
23 I feel like, you know, not being permitted and all  
24 that stuff, that's not on the church.

25                   MR. RADER: I feel the same

1 way. I feel they've been forthright and open.

2 MR. HALE: Mr. Chairman, I'm  
3 going to second his motion.

4 MR. BAILEY: Mr. Chairman, may  
5 I say something here before any voting?

6 First of all, I assume there's no  
7 conflicts of interest, but you act like you might  
8 have one. But I don't think -- unless you're a  
9 member of that church, I don't think you have one.

10 MS. O'CONNOR: I'm not.  
11 That's what I was going to ask you, Mr. Bailey.

12 MR. BAILEY: Okay. The other  
13 part is, you know, there were several things  
14 talked about that they planned to do, taking  
15 switches off, changing the ramp from four inches.  
16 There are several things that they said they were  
17 going to do to make it safer. But those things  
18 haven't been done yet. So I think if you're going  
19 to approve a variance, it needs to be approved  
20 contingent upon certain things taking place.

21 And, Otis, I don't know if you have a  
22 list of things that you want them to do.

23 MR. STEELE: Mr. Freeman  
24 has --

25 Is it in some of this?

1                   MR. FREEMAN: Well, yeah. The  
2 four key items are physical. And then I talked  
3 about two things that are not in there, which is,  
4 the emergency stop button has to be put in the  
5 lower level vestibule, and then the interconnect  
6 between the operation and the locked door, those  
7 are the other two. And we can modify this and,  
8 certainly, the variance based upon the  
9 modifications of what we discussed.

10                   And you've got to understand that  
11 when we get the variance, then we have to go back  
12 and complete our design and resubmit an  
13 application to the Elevator Unit office, and they  
14 have to approve it before we can start anything.  
15 And so they'll grant us the approval once they  
16 feel like we've met the requirements. And then  
17 they have to come back, once we've done it, and  
18 make sure we did it before they'll grant us a  
19 permit. So we're -- you know, we're still months  
20 away before we'll be operating the unit. But  
21 that's the process.

22                   MR. BAILEY: If there is a  
23 specific list -- there may not be. But I think a  
24 motion to approve a variance should be contingent  
25 upon them completing the things they said they

1 were going to complete or that maybe Otis has  
2 asked them to do, and then subject to passing an  
3 inspection by the Elevator Unit.

4 MS. HAYWARD: Absolutely  
5 agree.

6 MR. FREEMAN: And all that  
7 is --

8 MR. BAILEY: I'm sorry.  
9 There's a guy back there with a hand up. He has  
10 his hand up.

11 MR. ELLER: I just have a  
12 question. Rich from HomeLift.

13 We install anywhere from 10 to 30  
14 wheelchair lifts in schools and churches every  
15 year. And we're actively engaged in negotiations,  
16 contracting, trying to figure it out. I  
17 understand the variance. I understand the  
18 situation you're in.

19 I just have to know what I'm supposed  
20 to do, to go back to my customers and say, hey, we  
21 can do this now because it's being allowed in this  
22 church, because everybody wants to get away from  
23 the standard wheelchair lift. They don't like the  
24 looks of it. They don't -- you know, this is  
25 obviously a more appealing lift. But I've got to

1 know the rules I'm going to follow. And I can't  
2 start giving guidance, saying, do this because we  
3 allowed this in Knoxville, and I can't do it in  
4 Memphis or I can't do it here in Nashville.

5 No offense. I get it. I love it.  
6 It looks beautiful. It's an old church. But  
7 doing business every day in the state, I've got to  
8 know the rules I'm playing by.

9 I'm actively negotiating 10 to 30  
10 contracts right now, for putting wheelchair lifts  
11 in. And I've told them, you've got to have this  
12 width. I've told them it's got to be an  
13 enclosure. I've told them all the safety things.  
14 I'm trying to follow the code. So I'm not trying  
15 to -- I get it. I'm all for accessibility. I've  
16 just got to know the rules I'm playing by.

17 MS. HAYWARD: So the reason  
18 that we don't fully comply with the code in  
19 Tennessee is because you have deleted 2.1.3 from  
20 ASME. If you were to reconsider allowing that,  
21 given the new safety options that are available  
22 for platform lifts, it might make it easier going  
23 forward.

24 MR. LaPORTE: Could you repeat  
25 that? I didn't hear.

1 MS. HAYWARD: The reason we're  
2 not compliant with the code is because Tennessee  
3 state requirements have deleted 2.1.3 of ASME  
4 A18.1. The FlexStep is --

5 CHAIRMAN FOX: ASTM -- I'm  
6 sorry, ma'am. ASTM what?

7 MS. HAYWARD: ASME A18.1  
8 Section 2.1.3, which allows for an unenclosed  
9 runway.

10 All our safety requirements for the  
11 FlexStep meet the requirements of 2.1.3, but  
12 because the Tennessee Elevator Code doesn't allow  
13 that, this is why we're in this situation. If  
14 there was to be a revision of the code in the  
15 future, then I think we could have -- that's up to  
16 you guys. I'm not telling you what to do. I'm  
17 just pointing out that that's where we're at.

18 MR. FREEMAN: And that's some  
19 things that are already included in our  
20 installation that don't impact the code relevance,  
21 but they're already included.

22 MR. LaPORTE: I would disagree  
23 that it's only the exclusion of 2.1.3 that would  
24 make this not code compliant. The solid platform  
25 is not part of 2.1.3.



1 MS. RICHARDSON: And if I  
2 could ask a question.

3 The lift that you're talking about  
4 and you're trying to make sure that it complies  
5 with the code, is that a hybrid type of device?

6 MR. ELLER: No. No.

7 MS. RICHARDSON: Okay.

8 MR. ELLER: I'm getting asked  
9 by churches, architectural builders --

10 MS. RICHARDSON: Whereas,  
11 ours -- and I understand that.

12 MR. ELLER: -- when we put a  
13 wheelchair lift in, how we do it, what's the code.

14 MS. RICHARDSON: Understood.

15 MR. ELLER: We talk about it  
16 all the time.

17 MS. RICHARDSON: Understood.  
18 Thank you, sir.

19 Again, ours is unique. Ours is  
20 innovative. Ours is a hybrid lift that looks like  
21 a case-by-case basis before a Board such as this.

22 MR. FREEMAN: It basically  
23 only came about because of this historic building.  
24 You know, if we started from scratch, we wouldn't  
25 have gone this direction.

1                   MR. RADER: Well, I'll revise  
2 my motion that it be contingent on them working  
3 with Chief Inspector Steele and making the  
4 modifications that were discussed, plus having the  
5 attendants.

6                   MR. FREEMAN: We're amenable  
7 to that.

8                   MR. HALE: I accept that.

9                   CHAIRMAN FOX: Any additional  
10 discussion?

11                   (No verbal response.)

12                   CHAIRMAN FOX: Hearing none,  
13 all in favor of the motion, let it be known by  
14 saying, "aye."

15                   (Affirmative response.)

16                   CHAIRMAN FOX: All opposed,  
17 like sign.

18                   (No verbal response.)

19                   CHAIRMAN FOX: Motion carries.  
20 Thank you.

21                   MR. FREEMAN: Thank you very  
22 much. We appreciate your time and sorry it took  
23 so long. Sorry.

24                   CHAIRMAN FOX: Okay. Moving  
25 on to the next item would be J&J Global

1 Investments d/b/a Smoky Mountain Alpine Coaster.

2 You have an appeal. And who is going  
3 to be speaking? You?

4 MS. HURT: Yes, sir.

5 CHAIRMAN FOX: Okay. Would  
6 you -- for the record, would you give us your  
7 name, address, and phone number?

8 MS. HURT: Yes, sir, I will.  
9 My name is Rachel Hurt. I'm an attorney in  
10 Knoxville. My business address is First Horizon  
11 Plaza, Suite 2300, P.O. Box 300, Knoxville,  
12 Tennessee 37901. I don't have a house phone. My  
13 cell phone is 865-323-3550.

14 CHAIRMAN FOX: Thank you.

15 MS. HURT: Good morning. I'm  
16 a Church Street member, in fact. So I'll just say  
17 thank you for that. It was very -- they made a  
18 very compelling argument, and I'm a lawyer and I  
19 seem way more nervous than they were.

20 I'm here on behalf of Smoky Mountain  
21 Alpine Coaster. We are a tubular track sled, cart  
22 attraction in Sevierville, Tennessee. We have  
23 been in operation for about 10 years.

24 And last year, in -- May 14 of 2022,  
25 there was an incident where a young man pinched

1 his finger between the tubular track and a wheel  
2 that rests on the tubular track as the cart was  
3 going up an Alpine lift on a conveyor belt to the  
4 crest of the ride.

5           Like that was stated earlier, first,  
6 I will say that my folks, the owners of Smoky  
7 Mountain Alpine Coaster, Jessica Seitz and Josef  
8 Gombert, wanted to be here today. Mr. Gombert's  
9 mother unexpectedly passed away. She was living  
10 in Germany, and they are currently there dealing  
11 with that death. So they wanted me, first, to  
12 sincerely apologize for being unable to be here.

13           Secondly, they wanted me to be very  
14 specific in saying how much they appreciate  
15 Mr. Hardy. They have always felt that he has been  
16 so willing to go above and beyond to help them.  
17 There is a little bit of, I think, a loss in  
18 translation. Although they speak very fluent  
19 English, I always feel that there's a little bit  
20 of a loss in translation. And they appreciate  
21 your patience, and they wanted me to express that.

22           I also don't want to waste the  
23 Board's time. I have an argument and a request  
24 and ask with regard to the assessment of the  
25 penalty of just over \$72,000 -- and, of course,

1 I'll take any guidance that Mr. Chairman or the  
2 Board members want to give me. But the request of  
3 Smoky Mountain Alpine Coaster is that they ask  
4 for, at a minimum, a remittitur of the assessment.  
5 But it's also in my character to swing for the  
6 fences. They would like for the penalty to be  
7 completely removed. And I want to articulate why  
8 they're asking for that.

9 My husband often tells me, don't  
10 overengineer a problem or don't overengineer a  
11 solution, and I'm apt to do that frequently. And  
12 this is a case where there was an injury. There  
13 is no doubt. My client was aware that an injury  
14 occurred on the coaster but instead of thinking of  
15 it as injury, call the State, they overanalyzed  
16 the statutory code to reach, unfortunately, the  
17 wrong conclusion. They can read the code, and we  
18 have had numerous conversations over the years  
19 about reporting.

20 But clearly, in the section in  
21 118(c), there is a section within that provision  
22 that says, in the reporting requirements, unless a  
23 qualified inspector has determined that the  
24 primary cause of the injury was the patron's  
25 failure to comply with the stated written or oral

1 rules. That's what subsection (c) says. My folks  
2 are very aware of that.

3           On this particular coaster -- and I  
4 have photographs and I won't belabor and my vision  
5 is very poor. I couldn't see that. But on this  
6 ride, before this particular patron ever got on  
7 the ride, when he went to the ticket booth, which  
8 you have to pass to purchase your tickets to get  
9 in the queue to get on the ride, he was faced with  
10 boards that are about 8 1/2 feet tall that state  
11 the posted rules. And he saw those. Or he should  
12 have. They were open and obvious.

13           When he got on the sled -- before he  
14 got on the sled, there is a 3 1/2-minute video  
15 that runs in loop, that has two women, employees  
16 of the coaster, instructing the patrons on how to  
17 use the sled from the moment you get on until the  
18 moment you get off, and it goes through the entire  
19 ride. And three times in that video, it says you  
20 must keep your hands and feet inside the sled at  
21 all times. Again, that was on continuous loop.

22           When the patron got on the sled --  
23 it's an orange sled because we love orange in East  
24 Tennessee. It says in a sticker, right where you  
25 place your hands, in fact, when you're getting on

1 the ride, keep your hands and feet inside the sled  
2 at all times. It clearly states it.

3 As the patron is sitting on the cart,  
4 waiting to go up the Alpine coaster, there's now  
5 yet another sign that's about 4 feet by 3 feet  
6 that, again, is right at your eye level in the  
7 seated position that, once again, states, please  
8 keep -- you know, you must keep both hands inside  
9 the sled at all times.

10 And then once you get ready to ascend  
11 up the hill, it says both hands must always be on  
12 the control handles. And that's important because  
13 the cart is actually operated by -- much like the  
14 sides of a chair, you operate the system by  
15 pushing forward to go, pulling up to slow. And  
16 there's an audio recorder, as you go up the ride,  
17 that says that to again remind you. This is now  
18 the seventh time that you're told, hands on the  
19 brake systems, push to go, pull to slow.

20 As soon as you start your movement  
21 off of the launch area to get up to the ascending  
22 area, there is, again, a sign that's 2 feet by  
23 3 feet that says keep hands and feet inside the  
24 cart at all times. The eighth time is, now we're  
25 into the ascent before you get to the top of the

1 coaster, is one without a bear. It's the original  
2 signage. And it, again, says keep hands and feet  
3 inside the coaster cart at all times.

4 And then finally, about two-thirds of  
5 the way up, again, a posted sign, easily visible,  
6 2 feet by 3 feet, keep hands and feet inside the  
7 cart at all times.

8 Those are eight posted signs, a video  
9 recorder and a front attendant and an audio  
10 recorder while you're ascending up, that tell a  
11 patron repeatedly, you have to keep your hands and  
12 feet inside the cart for your safety. That is  
13 unequivocal. That is undisputed.

14 The statute also requires that if a  
15 patron is injured, they have to report, it says,  
16 in writing prior to leaving the facility,  
17 identifying themselves, their names, and the cause  
18 that Subsection -- I believe it's (c) or (e)  
19 subsection, talks about the cause of the injury.

20 And here we have a written report  
21 that was filled out by an employee that says the  
22 cause of the injury was the patron getting their  
23 fingers stuck between the tube on the rail system.

24 And I kind of have examples of the  
25 rail system. It's a tubular track. There's two



1 sides. And importantly, the wheels sit on the  
2 inside portion of the tubes, and that's kind of  
3 the top pressure pushing down.

4 And then on the inside of the track,  
5 which is not accessible by any patron or any  
6 person, are two inside rails that are just more --  
7 they're not round. They're more -- they're flat.

8 And there's levers underneath the  
9 sled that now provide force from the bottom. So  
10 the sled is strapped into this tubular track with  
11 wheels on the top and -- under force to keep the  
12 cart on the sled.

13 What's important about getting your  
14 finger trapped is, the patron sitting on a sled,  
15 the finger cannot get trapped on the outside of  
16 the tube because the tire sits -- the tires sit on  
17 the inside portion of the track.

18 And so I have pictures, and it's  
19 nearly impossible to see. But from the exterior  
20 of the sled, to get to the inside tube to have  
21 your finger pinched, you must go over the side of  
22 the orange sled itself, and there are side bars  
23 and handlebars that you must go around. You must  
24 then pass through -- because this is where the  
25 wheel is. You must pass through this kind of firm

1 brush mechanism. And then you must go underneath,  
2 up and over the tube, the rail, to get your  
3 finger -- and I have an example here.

4 This is where, if you just put your  
5 hands out, sitting in the sled, you can reach the  
6 tube. But to pinch your finger, as this  
7 gentleman -- he was the same height as the patron.  
8 He had to stick his fingers in all the way to the  
9 crease line to get to -- to even reach the tire.

10 I say all that -- I know ignorance is  
11 not an excuse in the law. I repeat that all the  
12 time. I'm a defense attorney. But when they were  
13 faced with a reported injury of fingers on the  
14 track and that that was the cause of injury, the  
15 engineers who -- the operations manager of this  
16 facility actually was part of the design team for  
17 this coaster. He immediately went to the  
18 proposition that the only way that can occur is if  
19 the patron violates the stated rules and not only  
20 sticks their fingers under the cart, but then cups  
21 around to get it trapped.

22 So they, in that decision, felt this  
23 was not in the operation of the ride because it  
24 was not a mechanical failure. It could not be a  
25 mechanical failure. It was a patron who did not

1 violate -- who violated the stated rules.

2 I have talked to them. I said,  
3 "Listen, you should have reported this. There's  
4 no doubt about it. That was a mistake." And they  
5 are devastated by this. Not because of the  
6 penalty. They are devastated, and I told -- not  
7 Mr. Hardy, but he directed me to somebody, who I  
8 spoke with.

9 MR. HERROD: (Indicating.)

10 MS. HURT: Yes, sir. I'm so  
11 sorry. Thank you. Mr. Herrod -- that they were  
12 devastated, that they felt like they disappointed  
13 the Amusement Device Unit and that they weren't  
14 honest and forthcoming. Because that means  
15 something to them. It really does.

16 In fact, when Mr. Hardy called and  
17 reported this, within 24 hours, they had  
18 everything to you because they were really -- a  
19 good cultural tradition. They were embarrassed  
20 that they should have reported this and didn't.

21 But it's significant that when  
22 Mr. Hardy called -- I think it's significant that  
23 within 24 hours, they had the incident reports  
24 supplied; they had the video of this incident;  
25 they had the signs and postage and the affidavit

1 of Jessica Seitz, the owner. They gave everything  
2 to Mr. Hardy to demonstrate compliance. And  
3 compliance was demonstrated.

4 I read the code and I think it's very  
5 obvious -- in fact, in Section 116, it talks about  
6 the stated purpose of the Amusement Device Board,  
7 and that is for the safety of the public. The  
8 safety of the public was not at risk here. This  
9 ride has been in operation for 10 years. They  
10 have never had an incident where a patron has put  
11 their fingers outside of the cart and had it  
12 pinched.

13 In fact, I went to Wiegand -- or they  
14 went to Wiegand, through me, to ask, has this ever  
15 occurred. And they couldn't find a reported  
16 incident. They didn't tell us of a reported  
17 incident. Now, Wiegand sometimes is, maybe,  
18 difficult to get the full truth, but they could  
19 not give us a reported incident of a patron having  
20 their finger pinched for any reason other than  
21 violating the stated rules.

22 And so if you look at the purpose of  
23 the statute, it is fourfold. It is to establish  
24 regulations of the duty of the owner to provide  
25 reasonable care. And that has not been questioned

1 throughout this penalty assessment phase. There  
2 was no finding that the coaster was in violation  
3 of their duty of care to the patrons. And so  
4 that's first stated reason of this section.

5           And the Amusement Device Unit was not  
6 in violation. Yes, I understand the need. And  
7 frankly, I was surprised by Mr. Hardy's report  
8 that there were only three reported incidents.  
9 That's incredible. I would have thought there  
10 would be three a week. And so obviously, there is  
11 an effective enforcement and compliance program in  
12 place. But the failure to report here did not  
13 affect or compromise that compliance and  
14 enforcement program.

15           The reporting procedures, we've  
16 talked about. Yes, I believe they should have  
17 reported but for their misunderstanding.

18           And then the fourth stated purpose of  
19 the statute is the safety provisions governing  
20 riders. And there's no doubt that the rider here  
21 violated the safety rules. That's unquestioned, I  
22 think, at this point. I think that was a  
23 conclusion that was made in the review.

24           And so when I asked my clients --  
25 this is my last point and I'll take any questions.

1 I went back to that subsection 118(c), where it  
2 says, a reasonable determination by a qualified  
3 inspector that the principal cause of the injury  
4 was -- it says victim's. As a defense attorney,  
5 I'm really hesitant to use that word. But  
6 the rider's failure to comply with the posted  
7 safety rules or verbal instructions.

8           And I said, well, that's why you  
9 report, to have a qualified inspector come out.  
10 And as a defense attorney who defends them, I want  
11 that report.

12           And they said to me, well, Rachel, we  
13 have this ride inspected every year annually for  
14 annual permit, and the ride has been approved in  
15 this configuration for 10 years. It is found to  
16 meet all ASTM standards and guidelines, all rules  
17 and regulations of the State of Tennessee. And so  
18 it has been inspected by a qualified inspector,  
19 and the operation of the ride has been found to be  
20 appropriate.

21           And therefore, again,  
22 overengineering, the simple language, they felt  
23 that they had complied because a qualified  
24 inspector had approved the mechanisms of the ride  
25 and the mechanisms did not cause the injury. That

1 was their thinking. They were coming from a good  
2 place.

3           And so I understand why Mr. Hardy  
4 sent his letter and why he assessed the penalty,  
5 because that's what the law plainly states. But  
6 I'm hoping that the Board recognizes, also,  
7 discretion in this penalty, to have it, I'll say,  
8 fit the crime. There was not an intentionality to  
9 deny the Amusement Device Unit of the opportunity  
10 to inspect. In fact, they willfully invited it  
11 once they knew that it should have been.

12           I was recently -- I got a call from  
13 my client in the last 60 days, where a patron had  
14 had a medical event as soon as they boarded the  
15 ride but before the ride ever took off. They  
16 called me and they said, "Okay. We're going to  
17 report this because it happened on the ride."

18           I said, "Well, I don't think that's  
19 what they mean, because it wasn't in the  
20 operation."

21           They said, "No, no, no. We're going  
22 to call and make sure."

23           And I said, "You know what? Then  
24 you're doing exactly -- I want you to call no  
25 matter what."

1           So the message has been received.  
2 They're going to call. And in making that call,  
3 they said, "I hate to bother Mike. I hate to  
4 bother Mike." They didn't want to bother Mike.

5           I said, "No, Mike -- Mr. Hardy will  
6 understand. Go ahead and let's get them to state  
7 that has nothing to do with the operation of the  
8 ride." And it didn't.

9           And so I conclude by saying the  
10 assessment was \$72,600. Of the four purposes of  
11 the statute, only one was arguably violated, and  
12 that was the failure to report. There was never a  
13 question of safety or intentionality to comply  
14 with the regulations. And certainly, the rules of  
15 the rider were not violated here.

16           And so I don't have any other -- I  
17 have other photos. I can talk about the operation  
18 of the ride. But I have no intent to belabor the  
19 point if there's any questions.

20                       MR. RADER: Mike, what does  
21 the law state as far as the amount of time they  
22 have to report an accident? Is that immediate or  
23 within 36 hours?

24                       MR. HARDY: In writing within  
25 24 hours.



1                   And I would like to make a  
2 clarification. I believe I heard you say, quote,  
3 code, this 118(a), is saying a patron shall report  
4 any accident. But the code, in fact, says an  
5 owner shall report any accident.

6                   MS. HURT: The patron's  
7 obligations are under, I think, 121, if I  
8 misquoted that. To say that they just -- before  
9 they leave. The failure to report doesn't deny  
10 them the right to bring a civil action. So I was  
11 just focusing -- not that that was violated by the  
12 rider, because we accept that they did report it.

13                   But the stated reason was, again,  
14 fingers under this cart pinched on the rail.  
15 That's what I was trying to say. Yes, sir. No, I  
16 know -- understand they had an obligation, Smoky  
17 Mountain.

18                   MR. HALE: Mr. Hardy, so  
19 really, the issue is reporting, not whether  
20 there's a mechanical problem with the ride.

21                   MR. HARDY: That's correct.  
22 It's failure to report.

23                   MR. HALE: While I appreciate  
24 her information about the device, really, the only  
25 issue is reporting, not whether the -- the

1 third-party inspector obviously didn't find  
2 anything wrong with the device or it wouldn't  
3 be -- have returned to service. So the issue is  
4 strictly the reporting aspect of it.

5 MR. HARDY: Well, by failure  
6 to report the accident, we didn't have the  
7 opportunity to have a post-accident inspection.  
8 So basically, from the time the accident occurred,  
9 which was May the 14 of '22, until Smoky Mountain  
10 Alpine Coaster had their annual inspections done,  
11 I believe, on August 17 of that year, of the same  
12 year. So not knowing there was an accident, we  
13 had no post-accident report.

14 And I'll go on to say that we  
15 reviewed the videos that were sent to us, and we  
16 could not determine, you know, at what point in  
17 time, from the videos that were sent to us, where  
18 the incident occurred, exactly where. I mean, it  
19 wasn't clear enough for us to determine whenever  
20 the patron put his hands underneath or entered his  
21 finger.

22 MS. HURT: I know that because  
23 there is an underlying lawsuit and the patron  
24 admitted -- or has stated that he put his hands  
25 under the cart.

1 MR. POPE: Chairman Fox, if I  
2 could ask a question.

3 CHAIRMAN FOX: Yes, sir.

4 MR. POPE: So was the patron  
5 transported to the hospital?

6 MS. HURT: No. He left with  
7 his mother in a private vehicle.

8 CHAIRMAN FOX: Did anyone  
9 provide first aid to that individual prior to  
10 leaving?

11 MS. HURT: It was offered. I  
12 mean, they got their first aid kit ready, but the  
13 patron never stopped. He went right from the exit  
14 through the -- not concessions but store and then  
15 out the door.

16 The thing was never observed, I guess  
17 I'll say, if that's what the question is.

18 MR. POPE: So under our law,  
19 it's not reportable without transport, right?

20 MR. HARDY: The Unit  
21 determines the transport on an accident to be a  
22 transport by any means. The law just mentions  
23 transport to a licensed off-site medical care  
24 facility. That's under serious incident. And you  
25 have the same verbiage under serious physical

1 injury, injury that requires immediate inpatient  
2 admission --

3 MR. POPE: I thought it had to  
4 be by ambulance.

5 MR. HARDY: -- a 24-hour  
6 hospitalization.

7 MR. POPE: I thought it had to  
8 be by ambulance.

9 MR. RADER: I thought so, too.

10 MR. POPE: The transport -- I  
11 mean, if you're just going to say transport --

12 MR. HARDY: The law doesn't  
13 specify any --

14 MR. BAILEY: Hey, it's being  
15 transcribed. Everybody can't talk at once. Okay?

16 MS. HURT: I will say, if I  
17 may, we've actually had this issue. In 2016, we  
18 had a patron, again, who left via private vehicle.  
19 We didn't report that right away. We did it  
20 within, I think, a day or two, once we became  
21 aware.

22 I had also -- again, my legal counsel  
23 had said that no, transport means EMS. Mr. Hardy  
24 explained that that's not how it's been  
25 interpreted by the Unit. So, therefore, we've

1 adjusted that modification. But I certainly read  
2 it the same way.

3 MR. POPE: Chairman Fox?

4 CHAIRMAN FOX: Yes, sir.

5 MR. POPE: I mean, I hate to  
6 dispute, but we went over that and talked about  
7 that and talked about that, and it was to be  
8 transported by an ambulance, medical personnel. I  
9 mean, if you're just going to say transport, they  
10 can put them in a car.

11 That don't -- as an operator, as an  
12 owner, you don't know if somebody puts somebody  
13 and takes them somewhere. I mean, we get false  
14 reports every day. Every day. So you have to  
15 determine somewhere whether they are or not. And  
16 I'm certainly not against the Unit at all, but  
17 that's not how we discussed it at this Board, to  
18 my recollection. I mean, I'd have to have that --

19 MR. RADER: Mr. Chairman, I  
20 remember the same discussion.

21 MR. POPE: And it was to be,  
22 we clearly said -- because there was some dispute  
23 over it before. In the past, there has been some  
24 dispute. And we clearly said that it had to be  
25 transported by a medical technician or ambulance

1 or whatever, of that means.

2 And we get people from carnivals, and  
3 speaking from the carnival industry, we get people  
4 that leave all the time. And then all of a  
5 sudden, they had an accident. We don't know. So  
6 how do you report something like that?

7 And then my next question would be is  
8 how do we determine a \$72,000 fine?

9 CHAIRMAN FOX: That's the \$300  
10 per day.

11 MR. POPE: Just by the day.  
12 So that's the three months?

13 I mean, I see. But, I mean, again,  
14 I've had people come to us the next week and tell  
15 us, well, we had an accident. And, you know,  
16 we're county by county, close enough, you know.

17 "We got hurt last week."

18 "Did you report it to anybody?"

19 "Well, no, we didn't."

20 Obviously, this patron did. I mean,  
21 obviously, you've got a report on it, that it was  
22 reported, because you've got an operator that says  
23 that they hurt their hand.

24 MS. HURT: Reported that they  
25 were hurt and then asked where the closest

1 hospital was.

2 MR. POPE: But we don't -- I  
3 mean, we don't -- I don't report it if somebody  
4 falls on a wire or anything like that because  
5 that's not what's in our law, to my knowledge.

6 CHAIRMAN FOX: I think that  
7 the overriding factor here is that this was a  
8 pretty serious incident.

9 MR. POPE: Then you would  
10 think there would be some kind of medical  
11 attention.

12 CHAIRMAN FOX: Well, you'd  
13 guess. Yes. I think that the weight of the  
14 coaster and the weight of the person on top of it,  
15 fingers underneath --

16 MR. POPE: Absolutely.

17 CHAIRMAN FOX: -- they rolled  
18 over it. And I'm going to make an assumption that  
19 there was very serious damage to the fingers.

20 MS. HURT: So first of all,  
21 I'll clarify. My folks never saw the finger. It  
22 was never seen. It was just a statement, "I  
23 pinched my finger," and then the mom asking, where  
24 is the local place. It was only one finger and it  
25 was the outer exterior but protruding to -- the

1 skin removed, protrude to the bone.

2 I'll also go to Mr. Pope and say, I  
3 represent the largest healthcare system in East  
4 Tennessee. And a constant frustration of my  
5 folks, much like Mr. Pope is they don't have the  
6 ability to call the hospital and say, hey, how is  
7 this person doing or did this person arrive.

8 MR. POPE: You can't get to  
9 that question.

10 MS. HURT: And so -- because  
11 they can't get it. Now, I represent the closest  
12 hospital, and so they always come to me. I go,  
13 no, no, no. I can't do that. Because they do  
14 care. My folks care. It is a frustration of,  
15 well, did they actually go get treatment?

16 I don't know. They said they were  
17 going to.

18 And so that is a little bit of a  
19 confusion, I'll say, even for my folks.

20 MR. POPE: And I'm not saying  
21 there's not a problem. It maybe should have been  
22 reported. But why was there not a transport to  
23 the hospital? Did they just leave the scene?

24 CHAIRMAN FOX: Mr. Hardy,  
25 could you -- let us look at that, please. I think



1 that might shed a little more light on it, the  
2 severity of the injury. (Reviews document.)

3 MR. MOORE: That's nasty.

4 MS. HURT: And I will say,  
5 while that's being passed around, so again, I do  
6 medical malpractice and so I know -- certainly, I  
7 know nasty. I can understand the visualization  
8 and the impact that will have.

9 But you're looking at that when that  
10 was provided to Mr. Hardy. That was months later.  
11 My folks never saw that. The gentleman had his  
12 finger like this. I'm sure he was in very much  
13 discomfort.

14 But there's not a video that shows  
15 him revealing the severity to my folks. And do I  
16 think that would have made a difference? Frankly,  
17 I don't know. I don't know. Because, again, the  
18 report from -- as he was getting off the coaster,  
19 he said, "I got my finger caught underneath the  
20 cart." And that was immediately the  
21 understanding, that he did not keep his hands and  
22 his feet inside the cart.

23 And the cart doesn't have the ability  
24 to -- even if he jostled it through, he still had  
25 to cup underneath to get that finger caught. That

1 was the intentionality.

2 MR. HALE: But again, the  
3 issue is not the severity of the injury or even  
4 the mechanism of it. The issue before us is  
5 whether there's extenuating circumstances in the  
6 failure to report.

7 MS. O'CONNOR: And my question  
8 is, wouldn't it be reasonable -- I mean, I would  
9 think a reasonable person -- if somebody is  
10 getting off your ride, saying, "I pinched my  
11 finger," wouldn't a reasonable person working say,  
12 "Hey, can I see it?" Because you do want to see  
13 the severity of it. And at that time, I would  
14 think that would have prompted action to happen.

15 MS. HURT: So we have incident  
16 reports from that day, and one of those was, "I  
17 waited inside because they have to come through.  
18 I waited inside on standby with the first aid kit.  
19 The mom asked where the closest emergency room and  
20 then left to go to the car."

21 MS. O'CONNOR: If somebody is  
22 asking for an emergency -- where the nearest  
23 emergency room is after getting off a ride, I  
24 would think that it would only be logical that  
25 anybody working at that amusement park would say,

1 "What's the injury? Let's see it," and take  
2 action.

3 CHAIRMAN FOX: It would  
4 certainly be prudent to ask what happened.

5 MR. POPE: I can see that.  
6 Like I said, that should have been reported.  
7 There's no doubt at all, with the severity of it.  
8 I just don't understand. Was there -- you know,  
9 was there a break down in communication between  
10 these folks and the park officials or -- because  
11 like I said, I've been in that situation, nothing  
12 to that severeness, you know. But, of course, the  
13 severeness is in the beholder. It can be, you  
14 know, a finger prick or it can be, you know, a  
15 finger off. I mean, it can be anything. And I'm  
16 not saying it's not.

17 But that, obviously, should have been  
18 reported. And they should have been transported  
19 or they should have been -- at least had medical  
20 attention. And then it would have been reported,  
21 which is under our statute, right?

22 CHAIRMAN FOX: Yes.

23 MR. POPE: I mean, that's the  
24 way I read it. But now, without that, there is no  
25 closure of the ride. There is no -- without --

1 there's no reporting if they don't get  
2 transported, I don't think. I think we can read  
3 that back again or go back to where we decided  
4 that, but that was all -- we had lots of  
5 discussion over that.

6 CHAIRMAN FOX: We did.

7 MR. HARDY: Dan has the  
8 definitions.

9 MR. BAILEY: Well, I mean,  
10 that's the statute, so the legislature defined it.  
11 And it says "immediately transported to a licensed  
12 off-site medical care facility." So it doesn't  
13 say transported by EMS or EMT. This says  
14 transported.

15 MR. POPE: So how do we  
16 know --

17 MR. BAILEY: Sometimes --

18 MR. POPE: That's not what --

19 MR. BAILEY: Well --

20 MR. POPE: -- we discussed  
21 here.

22 MR. BAILEY: Sometimes --

23 MR. POPE: I get the  
24 legislation part and I understand it has to be a  
25 law, but that's not what was discussed here.

1                   CHAIRMAN FOX:  Mr. Pope -- I'm  
2 sorry.  I think what happened was, we were trying  
3 to get that.  This was back in -- this was a  
4 previous administration, so to speak.  And I'll  
5 leave it at that.

6                   There was an issue with  
7 transported -- as you say, transported by an  
8 ambulance or a first aid responder, whatever.  The  
9 ASTM, I believe, that particular section states  
10 you must be transported by a licensed medical  
11 caregiver.  I believe that's the -- and seen by a  
12 licensed medical caregiver.

13                   But in this situation, I'm going to  
14 go out on a limb and say --

15                   MR. POPE:  It should have  
16 been.  There's no doubt.

17                   CHAIRMAN FOX:  -- they had to  
18 be seen by a licensed professional.

19                   MR. POPE:  And I get that,  
20 after seeing the picture.

21                   CHAIRMAN FOX:  Yes.

22                   MS. HURT:  And it was.  I'm  
23 not here to dispute the significance.  I  
24 understand the injury.  And he did --

25                   MR. POPE:  Nor are we.  But

1 obviously, the reporting is the problem. And the  
2 reporting is only required if it is significant.  
3 We determined that years ago because there was the  
4 need -- we were having to report stuff that wasn't  
5 reportable, basically.

6 MS. HURT: As an amusement  
7 device operator -- and I'll even concede to if we  
8 knew there was a bad injury, how do you ever  
9 verify that a patron goes and seeks immediate  
10 medical treatment unless they call back and say  
11 that? How can you ever verify to the definition  
12 of transported to a medical facility? I mean, EMS  
13 is going to do it. They're bound by law to do so.  
14 But absent that, transport by a medical provider,  
15 an EMS system, how can you ever verify that they  
16 seek immediate medical attention?

17 MR. D. SCOTT: Chairman Fox?

18 CHAIRMAN FOX: Yes, sir.

19 MR. D. SCOTT: I just  
20 confirmed this again with Tom. The way we were  
21 informed about this accident was, a lawsuit came  
22 to the Commissioner's office on this incident, and  
23 I took it to Tom. And that's the way we  
24 discovered it.

25 MR. POPE: Unfortunately,

1 that's how we, as an operator, an owner, find out  
2 a lot of times. Like I said, we get false claims  
3 that are nothing, that you worry about. And then  
4 all of a sudden, you get a claim that may be real,  
5 and you don't know it's real because, obviously,  
6 they went on to an emergency room or did something  
7 like that. They leave the scene.

8           So it leaves -- and the only reason  
9 I'm saying this, it leaves the operator-owner,  
10 whatever you want to call it, as the person that's  
11 responsible for the ride, it leaves us in limbo.  
12 And I think you-all can see that. Because if you  
13 don't know, you don't know. So how do you report  
14 if you don't know?

15           That's my only thing. I'm not  
16 disputing the accident. I'm not disputing if they  
17 should have been -- and, obviously, shouldn't have  
18 waited three months. But again, as an operator, I  
19 don't know to report if we don't know how bad it  
20 is. So how do you assess somebody a fine when  
21 they don't know, when it's just ignorance?

22                           MR. BAILEY: Mr. Chairman, if  
23 I may.

24           If an operator doesn't know, then  
25 that's one thing. If you don't know, you don't

1 know to report.

2 MR. POPE: That's right.

3 MR. BAILEY: In this case,  
4 they did know that there was an injury. Now, as  
5 far as verifying whether or not they went to a  
6 licensed medical care facility, I think you've got  
7 to assume that they did. And err -- if you're  
8 going to err, err on the side of reporting versus  
9 not reporting.

10 But if an operator can show, hey, we  
11 never knew they got hurt, no one ever said  
12 anything to us about that, I think the Amusement  
13 Device Unit and this Board would certainly take  
14 that into consideration as to whether or not a  
15 penalty is warranted.

16 MR. POPE: I got you and I can  
17 accept that. Like I said, I just don't want to  
18 be -- kind of like the gentleman said in the back  
19 earlier. I want to know what rules we're playing  
20 by. We want to know where we want to be. Because  
21 none of us, as operators or owners or the  
22 representatives of this business or industry, want  
23 to not do it. I think a Safety Board will tell  
24 you that we agree with them and work with them  
25 considerably.



1                   MR. HARDY: In the past, we've  
2 never held an amusement device operator  
3 accountable for a transport to a local off-site  
4 medical facility that they did not have knowledge  
5 of.

6                   MR. POPE: And I will say  
7 this, just to clarify, it's probably a little more  
8 on my end of the industry than it is a fixed part  
9 or something like that, because we do travel.  
10 You're gone. You could be gone a day after. If  
11 it happened on Saturday, we're gone on Sunday.  
12 Obviously, it would fall into our end of the  
13 industry a little bit more than it would the  
14 other. But you see my concern. You know, that's  
15 my concern of it, is the reporting also.

16                   CHAIRMAN FOX: Let me ask this  
17 question.

18                   MS. HURT: Yes.

19                   CHAIRMAN FOX: And I haven't  
20 seen the report. Did your people do an internal  
21 report that day?

22                   MS. HURT: They completed an  
23 incident report, yes, sir.

24                   CHAIRMAN FOX: Okay. So that,  
25 to me, is a red flag that something happened. And

1 again, as I stated a minute ago, I think it would  
2 have been prudent on someone's part to say,  
3 "There's been an incident. There's been an  
4 accident." Number one, I think you -- if, in  
5 fact, it would have told you who this was, and  
6 you've got a phone number and address, someone  
7 should have followed up to say, "Were you hurt?  
8 How bad?"

9 MR. POPE: Chairman Fox?

10 CHAIRMAN FOX: Yes, sir.

11 MR. POPE: Just to add to what  
12 he's saying and just to clarify for me completely,  
13 so when was the park recontacted by these folks,  
14 this patron?

15 MR. HARDY: Can I add this?  
16 It may answer your question.

17 MR. POPE: Yes, sir.

18 MR. HARDY: I'm looking at the  
19 incident report from May the 14th from Smoky  
20 Mountain Alpine Coaster. About the fourth  
21 information says name and address and phone number  
22 of injured guest. It says, unknown, left in a  
23 rush for the ER at LeConte.

24 CHAIRMAN FOX: Again, in my  
25 world.

1 MR. POPE: I stand down.  
2 That's in our law. That's in our legislation.

3 MS. HURT: I'll say this: So  
4 the name and address -- it says, Left for a rush  
5 to the ER at LeConte. Called the next day. They  
6 called Hayden Davis. And son and injured party,  
7 mother, Daniel Davis. And they have a phone  
8 number. They did that.

9 And again, I've conceded that a  
10 report should have been done. I'm conceding that  
11 issue.

12 MR. POPE: Ma'am --

13 MS. HURT: What I'm asking  
14 is --

15 MR. POPE: They're very aware.

16 MS. HURT: Yeah.

17 MR. POPE: They're very aware  
18 there was a problem.

19 MS. HURT: But what I'm also  
20 saying is -- the very next sentence is, he said he  
21 got his finger caught underneath the cart. That  
22 was a known rider violation. That was the reason.  
23 It wasn't the mechanism of the cart. The  
24 inspector is going to look at the mechanisms. The  
25 mechanisms did not fail and cannot fail.

1                   MR. POPE: But that's not what  
2 the fine is for. The fine is for the reporting.  
3 The other part is up to the lawyer and up to the  
4 insurance as to whether it was the fault of the  
5 ride or not the fault of the ride. The fault of  
6 the ride -- it was probably not. It was operator  
7 error. Not operator error but rider error, which  
8 we have laws for that. So it was rider error.  
9 And they did. You can argue that all day long.  
10 And yes, they did. They violated that. So,  
11 therefore, that is off the insurance and the  
12 lawsuit there. That is not off of the Unit and  
13 the nonreporting.

14                   MS. HURT: Again --

15                   MR. POPE: So I'm -- you know,  
16 from the information you gave to start with, I'm  
17 completely turned around, and I completely concede  
18 as to what you've got now. And if it said, we  
19 went to the ER, that requires reporting  
20 immediately.

21                   MS. HURT: And I --

22                   MR. POPE: And that's stated  
23 by our law and our legislation.

24                   MS. HURT: I'm not challenging  
25 any of that. I'm asking for --

1 MR. POPE: That's the  
2 challenge.

3 MS. HURT: There wasn't -- I  
4 think intentionality matters. I think the purpose  
5 of the penalties and the purpose of the Amusement  
6 Device Unit Board -- this Board and that unit  
7 matter or they should matter. But there wasn't  
8 intentionality to violate here.

9 And again, I understand the \$300 a  
10 day. But once there was an understanding, the  
11 reporting within 24 hours, providing everything  
12 within 24 hours. Certainly, this ride was  
13 inspected within three months. It wasn't the next  
14 day, I understand. But there was never a finding  
15 or a concern of safety, which is the whole point  
16 of the reporting, to ensure public safety.

17 MS. O'CONNOR: To my mind, you  
18 haven't proven your case on intentionality  
19 because, again, to use Chairman Fox's term, I  
20 can't imagine a prudent person, knowing that  
21 there's an injury of any kind, that somebody is  
22 being transported to an ER, regardless of the  
23 severity of it and regardless of who is  
24 transporting them, that you wouldn't call.

25 And no offense, Mr. Hardy, but it is

1 your job to take those calls.

2 So the excuse of not wanting to  
3 bother Mike just doesn't fly with me. So the  
4 intentionality, from what I'm hearing, is they  
5 didn't report it, and a prudent person should. I  
6 have no other alternative but to imagine that in  
7 the absence of doing nothing, that there was an  
8 intentionality. And I don't want to cross --

9 MR. POPE: I can't imagine  
10 they wouldn't have let their insurance company  
11 know.

12 MS. O'CONNOR: Yeah.

13 MR. POPE: I mean, that's a  
14 reportable incident and that's under our statute.  
15 It's under our law. We have legislation for that.  
16 That ride should not have even been operating,  
17 that day or the next day, until a third-party  
18 inspector came and inspected that sled. That's  
19 just the law. That's what the law is. Am I  
20 not --

21 Am I not, Mr. Hardy? That's our law.

22 I've had to close rides down just  
23 because some kid bumped their head on a ride, no  
24 fault to the ride at all. But I've had to close  
25 them down until we could get an inspector out to

1 check them, as minor as that.

2           And I'll tell you this, not because  
3 they needed to be transported, but because they  
4 rode with another friend and they didn't have  
5 their own car, so they chose to get in the  
6 ambulance and ride to the hospital.

7           MS. HURT: The one  
8 distinction -- and if I'm wrong, I concede that.  
9 In bumping your head, was there a stated rule that  
10 said you can't do that? Here, there was clearly  
11 not only a stated rule, 11 times.

12           MR. POPE: You're a defense  
13 attorney, first of all. Stop. Stop. You're a  
14 defense attorney. So let's go with this. We're  
15 in a sue-happy world, and it doesn't matter. You  
16 can post it. You can have it tattooed on. And if  
17 they still do it, it doesn't matter. The owner is  
18 still responsible. And that's just the way our  
19 law is in the United States. You know that.  
20 You're a defense attorney.

21           MS. O'CONNOR: And you're  
22 responsible for reporting it.

23           MR. POPE: I'm not. I'm just  
24 a little old guy who sells fiddlesticks and has  
25 carnival rides.

1 MS. O'CONNOR: I don't see  
2 your clients as being responsible for the accident  
3 at all. I mean, this sounds like it was somebody  
4 clearly not paying attention or deliberately  
5 ignoring the rules. That's not any question in my  
6 mind. But the reportability of it and not  
7 reporting it is a big red flag for me.

8 CHAIRMAN FOX: Mr. Hardy, is  
9 there anything we need to know other than what  
10 we've already heard?

11 MR. HARDY: Not to my  
12 knowledge. Again, the Unit considers -- and I was  
13 not here when you guys had the discussions about  
14 transport. I just know what the law says, and,  
15 you know, our interpretation is a transport is a  
16 transport. And that's what -- we go out and we  
17 educate amusement device owners regarding that's  
18 the protocol; that if you are aware that there was  
19 an accident that involves a transport by ambulance  
20 or by grandma, grandpa, mom or dad, or friend,  
21 then you need to report -- immediate transport,  
22 then you need to report that to the State and let  
23 us make any further determinations.

24 CHAIRMAN FOX: Ma'am, not only  
25 do I think those things are prudent, but it's



1 common sense that if that happened, that it should  
2 have been reported. At least that's my standing  
3 on it. And I know that common sense don't grow in  
4 everybody's garden, but I think common sense  
5 should tell you or someone to report when you have  
6 that type of accident. And if they were asking  
7 for first aid, someone should have looked.

8 MS. HURT: And I don't want to  
9 get in the weeds on that. Maybe someone did. I'm  
10 not focused on the type of injury. They focused  
11 on the rider violated the rules, and that's the  
12 end of it. They should have done that. I've had  
13 that conversation. But now it's, does the  
14 penalty -- is the penalty -- is it fair under the  
15 circumstances? And that's all they're really  
16 asking for.

17 CHAIRMAN FOX: So I would  
18 entertain a motion -- is there anything else that  
19 we need to know?

20 (No verbal response.)

21 CHAIRMAN FOX: So I would  
22 entertain a motion to either uphold the \$72,600 or  
23 a reduction. I mean, that's -- I think that's the  
24 question here, right?

25 MR. BAILEY: I would just say

1 that if the feeling is to not reduce it, then I  
2 don't think a motion is needed. It would only be  
3 needed if you are going to modify it, I think.

4 CHAIRMAN FOX: Okay.

5 MR. BAILEY: You can do it  
6 either way.

7 MR. HALE: So is there a  
8 negotiable number, or is it an all-in/all-out  
9 situation?

10 CHAIRMAN FOX: I think this  
11 Board can do what it needs to do.

12 MR. POPE: Can we ask  
13 Mr. Hardy if there's a recommendation from him?  
14 We did the same thing with the elevator.

15 MR. LaPORTE: Can I ask a  
16 clarifying question, just to make sure I  
17 understand the scope? Because, Mr. Pope, I think  
18 you said, a couple times, three months. But the  
19 way I'm reading here, this was eight months of  
20 nonreporting; is that correct?

21 MR. POPE: Yes.

22 MR. LaPORTE: Okay.

23 MR. POPE: Yes.

24 MS. HURT: I think the three  
25 months is just when the first inspector came out.

1 After that was in August. But that was January.

2 MR. LaPORTE: What we're  
3 talking about is eight months.

4 MR. RADER: That's an annual  
5 inspection. That's required anyway.

6 MS. HURT: I know. I wasn't  
7 trying to compare them. I was just saying that's  
8 the three months that came in.

9 MR. HARDY: The failure to  
10 report was from May the 15th of '22 to  
11 January 12th of '23. That's 242 days.

12 Now, you know, the opinion of the  
13 Unit is, we didn't know -- from the time of the  
14 accident to the time of the next inspections is  
15 the gray area. And we didn't know if there was a  
16 device issue or things of that nature.

17 So the annual inspections for J&J  
18 Global, Smoky Mountain Alpine Coaster, were  
19 performed on August the 17 of '22. So that's the  
20 sole reason that once we gained knowledge of the  
21 accident, that we didn't shut the device down,  
22 because they had their regular inspection -- their  
23 annual inspections in that interim.

24 So the only alternative -- and, of  
25 course, it's the Board's decision -- is to go from

1 the date of the accident to the August date, where  
2 we know that they had their annual inspection  
3 performed.

4 MS. O'CONNOR: And yet they  
5 didn't report after that, after their annual  
6 inspection.

7 MR. HARDY: No. Actually, the  
8 accident was not reported until we got the inquiry  
9 and document request from the attorney in  
10 Knoxville in January of '23.

11 MR. HERROD: Mr. Chairman?

12 CHAIRMAN FOX: Sir.

13 MR. HERROD: I think for  
14 clarification purposes, we've got two options.  
15 72,600 is for the 240 days.

16 CHAIRMAN FOX: Yes, sir.

17 MR. HERROD: If we go from  
18 May 14 to August of that annual inspection, that  
19 number ends up being what?

20 MR. HARDY: At \$300 a day and  
21 that's 94 days, that would be \$28,200.

22 MR. HERROD: So either 72,000,  
23 28,000, or some -- that's the...

24 MS. O'CONNOR: For me, it  
25 still doesn't change the issue of nonreporting.

1 You know, just because we didn't know about it.

2 MR. LaPORTE: If I can make a  
3 statement.

4 MS. O'CONNOR: I hate that  
5 something that really -- the whole incident wasn't  
6 their fault in the first place. It was user  
7 error, basically. You know, that's a steep fine.  
8 In the same respect, you know, our issue is they  
9 didn't report it. So whether it was however many  
10 days versus however many days, the issue that  
11 we're looking at is still nonreporting.

12 CHAIRMAN FOX: Yes.

13 MR. RADER: Can I ask a  
14 question? How many claims have they had since  
15 they've been in existence, that they've filed with  
16 the Unit, the Unit, that you're aware of?

17 MR. HARDY: On accidents?

18 MR. RADER: Yeah.

19 MR. HARDY: Excuse me, one  
20 second. Let's see here. I've got it somewhere.

21 Thank you, Jennifer.

22 The first accident report was on 7/30  
23 of 2016. It was submitted by Smoky Mountain  
24 Alpine Coaster. The Amusement Device Unit sent a  
25 cease and desist. Post-accident inspections were

1 performed. And we sent them a business resumption  
2 letter.

3 And the only other incident was on  
4 April the 11th of '21. The post-accident  
5 inspections were actually done prior to our  
6 sending a cease and desist. So we sent a letter  
7 in lieu of cease and desist, as a business  
8 resumption.

9 MR. RADER: So two.

10 MR. HARDY: Two occurrences.

11 MR. RADER: So when did the  
12 company begin?

13 MS. HURT: This is their  
14 10-year anniversary, in August. So August of  
15 2013.

16 MR. POPE: Chairman Fox.

17 CHAIRMAN FOX: Wait just a  
18 second. Mr. LaPorte has a question, and then I'll  
19 get you.

20 MR. LaPORTE: Not a question.  
21 I just wanted to share my opinion --

22 CHAIRMAN FOX: By all means.

23 MR. LaPORTE: -- with fellow  
24 Board members, kind of an outside view looking in  
25 because I'm not very familiar with the amusement

1 park side. But I would say, like on the elevator  
2 side, we have quite a few incidents with  
3 escalators. And there are signs all over the  
4 escalators that say, hold the handrails. And we  
5 have people, especially at the airport, impaired  
6 with alcohol, riding the escalators, that fall  
7 down the escalator, no fault of the machine. They  
8 all have to be reported.

9 I find it almost insulting that we're  
10 going to blame the rider here for not reporting.  
11 I'm not saying it was the machine's fault, at all.  
12 I'm not saying the rider didn't do anything wrong.  
13 But we all know people don't always follow  
14 instructions. That is not an excuse not to report  
15 this incident.

16 CHAIRMAN FOX: Mr. Pope.

17 MR. POPE: My only statement  
18 to that was, is the rider actually did, according  
19 to the information they got, let them know.  
20 That's different. It's different if they walk off  
21 and they don't let you know anything, and you get  
22 a phone call a week later or a month later or  
23 something like that.

24 MR. LaPORTE: Agreed.

25 MR. POPE: So, and here is my

1 thing. And I don't know that -- I don't feel  
2 like -- I'm actually probably hurting my own self  
3 in this, eventually. But I honestly don't -- I  
4 feel like \$72,000 is excessive, but I honestly  
5 feel like \$28,000 -- I would make a motion to  
6 reduce it only because we don't want to put  
7 anybody out of business.

8                   But do I think they did wrong?  
9 Absolutely. After hearing the whole thing, they  
10 did wrong. They didn't report what they should  
11 have. They knew it was wrong.

12                   We all know. When an inspector  
13 comes, we all talk about what to do, when there's  
14 reporting. We know what to do if there's an  
15 accident. Like I said, we've got a little bit of  
16 gray area and I wish we would -- maybe we need to  
17 refer to that again, because I thought we had that  
18 cut-and-dried.

19                   If it required maybe -- maybe I  
20 stated it wrong. But I think it said if it  
21 requires medical attention, it has to be reported  
22 or something. We've got it in our laws somehow,  
23 there. And that may be just a little bit of gray  
24 area.

25                   But obviously -- and I don't know the



1 folks, and I feel bad about saying it. But when  
2 you own a ride, you understand that if there's an  
3 accident, you have a certain responsibility. And  
4 somewhere they did not do what was responsible.

5 So I even feel bad reducing it. I  
6 feel bad with it being that much, but I feel bad  
7 reducing it too. So I really don't know what my  
8 motion is. I may just -- in fact, I'm gong to  
9 drop my motion and let someone else make a motion.

10 MR. RADER: Can I say  
11 something?

12 MR. POPE: She had me. I was  
13 all for her until we got all the facts.

14 MR. RADER: In my world -- and  
15 I'm in the insurance business. You know, there's  
16 a thing called legally liable, and it's  
17 negligence. And to me, if you look at their  
18 existence, was in August of 2013, and they've only  
19 had two claims. And both of them, from what  
20 you're telling me, have been reported within the  
21 24-hour timeline.

22 The other thing is, is that when  
23 you're talking about an amusement ride, that  
24 employee's 15, 16, 17, 18-year-old kids, that a  
25 lot of times just drop the ball.

1                   So with that, I would like to make a  
2 motion that we lower the fine to \$28,200.

3                   MR. HALE: I'll second that.

4                   CHAIRMAN FOX: I have a motion  
5 and a second. Any further discussion?

6                   (No verbal response.)

7                   CHAIRMAN FOX: Hearing none,  
8 all in favor of the motion, let it be known by  
9 saying, "aye."

10                   (Affirmative response.)

11                   CHAIRMAN FOX: All opposed,  
12 like sign.

13                   MR. LaPORTE: Opposed.

14                   MS. O'CONNOR: Nay.

15                   CHAIRMAN FOX: One --

16                   MR. LaPORTE: Opposed.

17                   MS. O'CONNOR: Two.

18                   CHAIRMAN FOX: Two. I'm  
19 sorry.

20                   Motion carries.

21                   MR. POPE: I thought it was  
22 going to be an easy day.

23                   MS. HURT: Do I leave now?

24                   CHAIRMAN FOX: I'm sorry?

25                   MS. HURT: I'm sweating. I

1 just want to go.

2 CHAIRMAN FOX: I figured maybe  
3 10 minutes each.

4 All right. Moving right along.

5 Open Discussion. Do we have any open  
6 discussion, Mr. Herrod? Is there anything we need  
7 to know?

8 MR. HERROD: I do not think  
9 so, Mr. Chairman, at this point in time. I  
10 certainly hope not.

11 MR. MOORE: I'd like to make a  
12 motion that we have a restroom break.

13 CHAIRMAN FOX: Well, we're  
14 down to the calendar. If you-all are good with  
15 that, we'll take a restroom break.

16 MR. RADER: We're about done,  
17 aren't we?

18 CHAIRMAN FOX: We are done, as  
19 soon as somebody says we're adjourned.

20 MR. RADER: I make a motion to  
21 adjourn.

22 CHAIRMAN FOX: We're  
23 adjourned.

24 END OF PROCEEDINGS.

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C E R T I F I C A T E

STATE OF TENNESSEE )  
COUNTY OF WILLIAMSON )

I, Cassandra M. Beiling, a Notary Public in the State of Tennessee, do hereby certify:

That the within is a true and accurate transcript of the proceedings taken before the Elevator and Amusement Device Safety Board and the Chief Inspector or the Chief Inspector's Designee, Tennessee Department of Labor and Workforce Development, Division of Workplace Regulations and Compliance, Elevator and Amusement Device Unit, on the 6th day of September, 2023.

I further certify that I am not related to any of the parties to this action, by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of September, 2023.



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Cassandra M. Beiling, LCR# 371  
Notary Public State at Large  
My commission expires: 3/10/2024