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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry County
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2021-000535
Case No. 2017-CP-26-6643

Logan Wood and Sarah Wood, ... Respondents,

v.

Horry County School District, ... Appellant.

RECORD ON APPEAL

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INDEX

Consent Order to Amend Case Caption, filed April 12, 2021	1
Order Granting in Part and Denying in Part Post-Trial Motions, filed May 13, 2021	4
Form 4 Order and Judgment filed May 13, 2021	13
Form 4 Order Jury Verdict.....	19
Verdict Form	22
Order filed August 17, 2021	24
Form 4 Order denying Defendant's Motion to Reconsider, filed September 10, 2021	27
Complaint, filed October 11, 2017	30
Answer, filed December 19, 2017	35
Defendant's Motion for JNOV or, in the Alternative, for a New Trial Absolute or, in the Alternative, for Remittitur of Verdicts, filed April 26, 2021	39
Memorandum of Law in Support of Defendant's Motion for JNOV or, in the Alternative, for a New Trial Absolute or, in the Alternative, for Remittitur of Verdicts, with attached Exhibits 1-12, filed April 26, 2021	41
Exhibits to Defendant's Motion for JNOV or, in the Alternative, for a New Trial Absolute	58
Exhibit 1: Photograph.....	59
Exhibit 2: Photograph.....	60
Exhibit 3: Photograph.....	61

Exhibit 4: Photograph.....	62
Exhibit 5: Photograph.....	63
Exhibit 6: Photograph.....	64
Exhibit 7: Photograph.....	65
Exhibit 8: Photograph.....	66
Exhibit 9: Photograph.....	67
Exhibit 10: Photograph.....	68
Exhibit 11: Photograph.....	69
Exhibit 12: Photograph.....	70
Plaintiffs' Amended Response in Opposition to Defendant's Motion for JNOV/Motion for New Trial Absolute/Motion for Remittitur, with attached exhibits, filed May 5, 2021.....	71
Notice of Motion and Motion for Leave of Court to Deposit Funds Into Court, filed May 26, 2021	83
Plaintiffs' Response in Opposition to Defendant's Motion for Leave to Deposit Funds Into Court, with attached Exhibit A, filed May 27, 2021	86
Exhibit A: <i>Davis v. Agape Nursing Rehabilitation Center, Inc.</i> , 2018 WL 6582084 (2018)	90
Notice of Motion and Motion to Alter or Amend Order and/or Motion to Reconsider, filed August 27, 2021	94
Trial Transcript, April 12-15, 2021.....	99
Opening Statement of Plaintiffs by Mr. Evans.....	106
Opening Statement of Defendant by Mr. McLean	124

Dr. Marshall White

Direct Examination by Mr. Evans.....	125
Cross Examination by Mr. Evans.....	135

Jessica Louiza

Direct Examination by Mr. Evans.....	137
Cross Examination by Mr. McLean	145

Kary Anne Cyr

Direct Examination by Mr. Moore.....	146

Roderick White

Direct Examination by Mr. Evans.....	162
Cross Examination by Mr. McLean	165
Redirect Examination by Mr. Evans	168

William Keeter Hayes

Direct Examination by Mr. Evans.....	170
Cross Examination by Mr. McLean	185
Redirect Examination by Mr. Evans	186

Rodwell Walters

Direct Examination by Mr. Evans.....	189
Cross Examination by Mr. McLean	212
Redirect Examination by Mr. Evans	217

Sarah Wood

Direct Examination by Mr. Moore 218

Cross Examination by Mr. McLean 240

Randolph Waid, Ph.D.

Direct Examination by Mr. Evans..... 245

Cross Examination by Mr. McLean 255

Anslee Wood

Direct Examination by Mr. Evans..... 257

Logan Wood

Direct Examination by Mr. Evans..... 262

Defendant's Directed Verdict Motion by Mr. McLean 266

Discussion on Verdict Form 273

Keith Waggoner

Direct Examination by Mr. McLean 277

Cross Examination by Mr. Moore..... 279

Joseph Quigley

Direct Examination by Mr. McLean 284

Cross Examination by Mr. Evans..... 289

Defendant's Renewed Directed Verdict Motion by Mr. McLean 292

Charge Conference 293

Plaintiffs' Closing by Mr. Moore.....	297
Defendant's Closing by Mr. McLean.....	327
Plaintiffs' Rebuttal by Mr. Moore.....	338
Charging of the Jury	343
Jury Question	358
Verdict	359
Plaintiffs' Trial Exhibit #6, Athletic Training Today Article	363
Plaintiffs' Trial Exhibit #7, <i>Sun News</i> Article.....	369
Motion Hearing Transcript, August 10, 2021.....	375
Plaintiffs' Pretrial Brief, dated April 6, 2021	387
Exhibit 1: Order in <i>Knox</i>	395
Exhibit 2: Verdict Form in <i>W.S. v. DSS</i>	407
Exhibit 3: <i>Doe 2 v. The Citadel</i> , 2014 WL 8727884 (2014).....	421
Exhibit 4: Jury Verdict Form in <i>Baby Girl Smith v. SCDSS</i>	454
Exhibit 5: Verdict Form in <i>Johnson v. SCDC</i>	456
Proposed Order Denying Post-Trial Motions (as submitted by Plaintiffs' counsel on May 12, 2021).....	459
Amended Notice of Appeal, filed September 15, 2021	467
Certificate of Counsel	
Certificate of Compliance	

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION 2017-CP-26-06643

SARAH WOOD, Individually, and As
Parent and Natural Guardian of L.W., A
Minor,

Plaintiff,

v.

HORRY COUNTY SCHOOL DISTRICT,

Defendant.

CONSENT ORDER TO AMEND CASE
CAPTION

This matter is before the Court for consideration of the Plaintiff's motion to amend the caption of the case to include the full name of the Plaintiff, Logan Wood, who turned 18 during the pendency of this action. Defendant Horry County consents to this amendment.

Based upon a review of the submission, the Court hereby **GRANTS** the Plaintiffs' motion. The caption in this action is hereby amended to: **Logan Wood and Sarah Wood, Plaintiffs, v. Horry County School District, Defendant.**

IT IS SO ORDERED.

William H. Seals, Jr.
South Carolina Circuit Judge

Conway, South Carolina
April ____, 2021

We So Move:

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Attorney for Defendant

April 9, 2021



Horry Common Pleas

Case Caption: Sarah Wood , plaintiff, et al VS Horry County School District

Case Number: 2017CP2606643

Type: Order/Amend

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-04-12 14:18:30 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION 2017-CP-26-6643

LOGAN WOOD and SARAH WOOD,)

Plaintiffs,)

v.)

HORRY COUNTY SCHOOL DISTRICT,)

Defendant.)

ORDER

This matter is before the Court for consideration of the post-trial motions for judgment notwithstanding the verdict; for new trial absolute; or for remittitur filed by the Horry County School District. After careful and deliberate consideration, this Court finds as follows:

1. The Jury's Verdict Was Supported by Evidence of Gross Negligence

“[A] motion for JNOV under Rule 50(b), SCRCP, is a renewal of a directed verdict motion.” Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006). In ruling on a motion for JNOV, the trial Court must view the evidence and its inferences in the light most favorable to the nonmoving party. This motion must be denied if either the evidence yields more than one reasonable inference or its inferences are in doubt. The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002).

In its motion, Defendant Horry County School District contends that there was not sufficient evidence of gross negligence to support the jury's finding. “Gross negligence is the intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” Faile v. S.C. Dep't of Juvenile Justice, 350 S.C.

315, 331, 566 S.E.2d 536, 544 (2002) (internal quotation marks omitted). Gross negligence is “also defined [] as a relative term that means the absence of care that is necessary under the circumstances.” *Id.* at 332, 566 S.E.2d at 544 (internal quotation marks omitted).

Plaintiffs provided the expert testimony of Rod Walters, a certified athletic trainer who testified about numerous violations of the standards for acceptable and safe operations in high school and middle school sports. Further, current and former employees and volunteers of the Horry County School District testified in both the Plaintiffs’ case-in-chief and in the Defendant’s case-in-chief, and several of these current and former employees and volunteers of the Defendant provided testimony regarding specific deficiencies in the District’s operations and management of sports related concussions which support the jury’s finding. “In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury.” *Id.* at 332, 566 S.E.2d at 545 (internal quotation marks omitted). As such, this Court finds that the verdict of the jury should not be disturbed and the District’s motion for JNOV must be denied.

2. The Jury Found Two Separate Occurrences of Gross Negligence

The South Carolina Supreme Court has held that state entities can be subject to multiple caps under the South Carolina Tort Claims Act in situations in which independent acts of negligence result in a single injury. *Boiter v. S.C. Dept. of Transp.*, 393 S.C. 123, 132, 712 S.E.2d 401, 405(2011). In *Boiter*, the Supreme Court reviewed a case involving allegations of independent acts of negligence by the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a stoplight. The South Carolina Supreme Court rejected the state defendants’ argument that each allegedly separate act of negligence claimed by the Plaintiffs “was a part of the *same unfolding sequence of events* that resulted in the Boiter’s damages.” *Id.* at 133, 406. Instead,

the Court held that “[w]e are persuaded that two independent and separate acts of negligence occurred here.” Id. at 134, 406. In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained. Id. at 134, 406. As the Honorable R. Markley Dennis, Jr. further explained in 2014:

[t]he courts that have held that a single entity is NOT limited to a single occurrence where more than one state employee has committed separate acts of negligence supports the TCA's protection of employees from individual liability. For the state entity bears responsibility for the negligence of its employees, and since multiple employees cannot be sued for separate and distinct acts of negligence, it makes sense that the state entity can be held liable for each of the separate and distinct acts of negligence by each of its employees. Case law supports such a position.

(Doe 2 v. The Citadel, 2014 WL 8727884, at *31 (S.C.Com.Pl. Dec. 09, 2014)(citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010))(emphasis in original).

While Boiter involved allegations against two separate governmental entities, the prior South Carolina cases addressing the issue of “occurrences” as it is defined by the Tort Claims Act which were referenced by the South Carolina Supreme Court in Boiter both involved allegations of multiple, independent acts of negligence against single entities that pursuant to the Tort Claims Act (in one case as applicable against a private, charitable medical facility pursuant to the South Carolina Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-180(A) which incorporates the Tort Claims Act damages caps and “occurrence” definition for non-governmental, charitable medical facilities). The South Carolina Supreme Court’s decision in Chastain v. AnMed Health Foundation, discussed in more detail below, has been widely cited over the last 11 years as the basis for requiring that the jury be properly instructed on the law regarding occurrences and required to make a finding of fact in cases in which evidence of multiple, distinct acts of negligence comes before the jury. 694 S.E.2d 541 (S.C. 2010). Although the plaintiffs in that case had filed separate claims against individual nurses, the jury found against the plaintiffs on their claims

against individual employees, and the Supreme Court's discussion regarding occurrences was related solely to the claim of multiple occurrences caused by the multiple, distinct acts of negligence by representatives of Defendant AnMed Health Foundation, a *single* medical provider subject to the tort claims act pursuant to S.C. Code Ann. §§ 33-56-180(A). The South Carolina Supreme Court referenced that evidence indicating multiple occurrences can create a factual issue to be addressed in the jury charge and on the verdict form.

The second case referenced by the South Carolina Supreme Court in Boiter is Williamson v. South Carolina Ins. Rsrv. Fund, a case in which the plaintiffs alleged that two independent acts of negligence by two physicians employed by a single governmental entity (the Spartanburg County Services District, Inc., a political subdivision of South Carolina which operated the Spartanburg Regional Hospital) resulted in a single, catastrophic injury to the plaintiffs' minor child. 355 S.C. 420, 586 S.E.2d 115 (2003). The Circuit Court made a specific finding that by establishing that the minor child's injury was caused by two independent acts of negligence by two separate physicians employed by a single governmental defendant, the plaintiffs "had established two separate 'occurrences' for purposes of the TCA." Williamson v. S.C. Ins. Rsrv. Fund, 355 S.C. 420, 423, 586 S.E.2d 115, 116 (2003). The South Carolina Supreme Court declined to address the Circuit Court's finding on appeal.

In the instant case, the Plaintiff presented expert testimony and concessions from the Defendant's employees at trial which created a factual issue regarding the number of occurrences. The evidence supported a finding that Logan Wood's injury resulted from the independent, gross negligence of different sets of employees; taking place on different dates; and taking place at different locations.

The South Carolina Supreme Court has further indicated the issue of occurrences is to be addressed in the Judge's charge and on the verdict form. See, Chastain v. AnMed Health Foundation, 694 S.E.2d 541 (S.C. 2010). During argument on motions made during trial, the Defendant argued that the question regarding the number of occurrences should not go to the jury for determination. This Court held otherwise based upon the testimony and evidence which had come before the jury. After this Court announced its ruling, the Defendant thereafter requested that the jury not be provided with a separate line on the verdict form on which to write in a numeral assigning the number of occurrences. Rather, it was determined that the jury was to make a separate finding as to each occurrence as detailed in separate interrogatories and based on the jury charges. After much argument between the parties on the record regarding the number of occurrences which were supported by the evidence and the wording of the interrogatories, and after concessions by each party, this Court prepared a verdict form which was disseminated to the parties for review and given to the jury.

In completing the verdict form, the jury found for the Plaintiff that the first and second independent occurrences were supported by the evidence, and rejected the Plaintiffs' allegations as to the third occurrence. As such, there was a finding of fact by the jury of two occurrences in accordance with the South Carolina Supreme Court's guidance in Chastain.

Every South Carolina Circuit Court and United States District Court to apply Boiter and Chastain in situations in which the evidence in the trial record indicates a dispute regarding the number of occurrences of negligence or gross negligence that resulted in an injury has determined that it is proper to submit the question to the jury for determination. See Knox v. United States of America et al., D.S.C. C/A No. 0:17-cv-36-CMC, July 3, 2018 Order at Pages 10-11; Verdict Form in W.S. v. South Carolina Department of Social Services, et al., D.S.C. C/A 16-cv-01032-DCC;

Doe 2 v. The Citadel, 2014 WL 8727884, at *30 (S.C.Com.Pl. Dec. 09, 2014) (citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010)); Baby Girl Smith v. South Carolina Department of Social Services, Case No.: 2015-CP-42-3147; George Johnson as P.R. of the Estate of Oliver Johnson v. SCDC, Case No.: 2018-CP-34-00019.

This Court finds that the evidence presented at trial raised a question of fact as to the number of occurrences of gross negligence which caused Logan Wood's brain injury. After an accurate charge on the law, the jury found that there were two separate and distinct occurrences of gross negligence which caused Logan Wood's brain injury, and this Court finds no basis to overturn the jury's factual finding that two separate and distinct occurrences resulted in the permanent injury of Logan Wood.

3. No New Trial is Warranted

Finally, the Horry County School District has asserted that a new trial is necessary pursuant to the "thirteenth juror" doctrine. The thirteenth juror doctrine "is a vehicle by which the trial court may grant a new trial absolute when [the Court] finds that the evidence does not justify the verdict." Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). As set forth in Section 1 above, the jury's verdict in this matter was supported by evidence from which it was justified in making a finding of two separate occurrences of gross negligence. As such, the Horry County School District's motion for a new trial is denied.

4. A Partial Reduction of Logan Wood's Damages Award is Warranted

The jury's finding of two separate, independent occurrences of gross negligence which caused the brain injury of Logan Wood requires the application of two caps of \$300,000.00 each pursuant to the South Carolina Tort Claims Act. As such, this Court finds that Logan Wood's

damages award is hereby reduced from eight hundred twenty-five thousand dollars (\$825,000.00) to six hundred thousand dollars (\$600,000.00).

The damages award for Sarah Wood warrants no reduction. Sarah Wood presented evidence of specific out-of-pocket expenses in the amount of \$10,907.00, but further testified that these were only a portion of the total expenses incurred prior to Logan's eighteenth birthday. Sarah Wood further testified that she had substantial additional expenses related to Logan's medical care associated with his brain injury prior to his eighteenth birthday, including significant time taken from work and thousands of unreimbursed miles for travel throughout the state associated with Logan's medical care. A parent may recover for loss of a child's services and earning capacity, as well as "other pecuniary losses, including medical expenses incurred as a result of the injury." Doe v. Greenville County Sch. Dist., 375 S.C. 63, 68, 651 S.E.2d 305, 308 (2007). That the Supreme Court listed medical expenses as included within the category of "pecuniary losses" necessarily means that a parent's recovery is not limited to medical expenses. Even if it were, the evidence presented at trial supports a finding of total expenses related to Logan's medical expenses as a minor of \$25,000.00. As such, the jury was justified in awarding \$25,000.00 to Sarah Wood in connection with her claim for loss of parental services.

CONCLUSION

For the reasons set forth herein, this Court finds that the Defendant's motion should be denied in part and granted in part as set forth herein, and directs that Judgment be entered against the Horry County School District in favor of Logan Wood in the amount of six hundred thousand dollars (\$600,000.00) and that Judgment be entered against the Horry County School District in favor of Sarah Wood in the amount of twenty-five thousand dollars (\$25,000.00).

IT IS SO ORDERED.

William H. Seals, Jr.
South Carolina Circuit Judge

May __, 2021
Conway, South Carolina



Horry Common Pleas

Case Caption: Sarah Wood , plaintiff, et al VS Horry County School District

Case Number: 2017CP2606643

Type: Order/JNOV

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-05-13 08:22:20 page 9 of 9

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-26-06643

LOGAN WOOD and SARAH WOOD

HORRY COUNTY SCHOOL DISTRICT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Scott C. Evans

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Logan Wood	Horry County School District	\$ 600,000.00
Sarah Wood	Horry County School District	\$ 25,000.00
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCp.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Horry Common Pleas

Case Caption: Sarah Wood , plaintiff, et al VS Horry County School District

Case Number: 2017CP2606643

Type: Order/Judgment and Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-05-13 08:21:40 page 6 of 6

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2606643

Sarah Wood Logan Wood	L W	Horry County School District	

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk of Clerk	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

We the jury, unanimously find in favor of the Plaintiff Logan Wood in the amount of \$825,000.00 and Sarah Wood in the amount of \$25,000.00 against the Defendant Horry County School District.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Logan Wood	Horry County School District	\$825,000.00
Sarah Wood	Horry County School District	\$25,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2157

4/16/2021

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Scott Christopher Evans 121 Screven Street Georgetown,
SC 29440

Justin Michael Lovely 1053 London St. Myrtle Beach, SC
29577

Amy Suzanne Lawrence 1053 London Street Myrtle Beach,
SC 29577

James Bernice Moore III 121 Screven Street Georgetown,
SC 29440

Joseph P. McLean PO Box 1865 Florence, SC 29503-1865

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Sallie Beth Todd

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Horry Common Pleas

Case Caption: Sarah Wood , plaintiff, et al VS Horry County School District

Case Number: 2017CP2606643

Type: Order/Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-05-13 08:21:13 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	Civil Action No. # 2017-CP-26-06643
LOGAN WOOD AND SARAH WOOD,	)	
	)	
Plaintiffs,	)	Verdict Form
	)	
v.	)	
	)	
HORRY COUNTY SCHOOL DISTRICT,	)	
	)	
Defendant.	)	
_____	)	

You are instructed to answer the following questions regarding Logan Wood and Sarah Wood's claims against Defendant Horry County School District. You must all agree on your answer to each question and the foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

1. That the Defendant Horry County School District acted with gross negligence when it allowed Logan Wood to play without an athletic trainer present for his team?

Answer:

☒ Yes (Go to Question 2)

☐ No (Go to Question 2)

2. That the Defendant Horry County School District acted with gross negligence when it failed to assess Logan Wood for signs and symptoms associated with a concussion?

Answer:

☒ Yes (Go to Question 3)

☐ No (Go to Question 3)

3. That the Defendant Horry County School District acted with gross negligence in failing to train the coaching staff regarding post-concussive syndrome and second impact syndrome?

Answer:

☐ Yes (Go to Question 4)

✓ No (If you answered yes for any of the above go to Question 4, if you did not answer yes for any of the above **stop.**)

4. We find the amount of actual damages to be:

i. Logan Wood \$ \$825,000

ii. Sarah Wood \$ \$25,000

The foreperson, acting on behalf of the unanimous jury, must sign and date this verdict form:

April 15, 2021
DATE

[Signature]
FOREPERSON

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) CIVIL ACTION 2017-CP-26-6643

LOGAN WOOD and SARAH WOOD,

Plaintiffs,

V.

HORRY COUNTY SCHOOL DISTRICT.

Defendant.

ORDER

This matter is before the Court for consideration of the Defendant's motion to deposit funds with this Court pending an appeal of the jury's verdict. The Plaintiffs oppose this motion, asserting that the deposit of funds would be prejudicial to them. A hearing was held on this matter on August 10, 2021, during which time this Court heard from counsel for each party.

The South Carolina Supreme Court has held that “[t]he granting of leave to deposit money with the court pursuant to Rule 67, SCRPC is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006). Multiple South Carolina Circuit Courts have held that South Carolina Rule of Civil Procedure 67 does not provide an appealing party with an automatic right to deposit judgment funds with the court to avoid the accrual of post-judgment interest. See Davis v. Agape Nursing Rehabilitation Center, Inc., No. 2016-CP-32-00950, 2018 WL 6582084, at *2 (S.C.Com.Pl. Nov. 30, 2018); Hanna v. Boone, 2010-CP-21-1044 (S.C.Com.Pl. Mar. 6, 2013). Instead, the ability of an appealing party to deposit funds with the Court and stop the accrual of interest is a matter within

the discretion of the Court, and factors specific to an individual case may be considered by the Court.

The Plaintiffs in this case had the heightened burden of proving gross negligence. A jury in Horry County determined that the Plaintiffs met this burden. The jury also found that the injuries were very serious and life altering, as shown by an award well in excess of a single cap as established by the South Carolina Tort Claims Act. Under these circumstances, this Court finds that it would be unconscionable and/or fundamentally unfair to allow the Defendant to avoid interest during the pendency of an appeal. For these reasons, the Defendant's motion is **DENIED**.

IT IS SO ORDERED.

William H. Seals, Jr.
South Carolina Circuit Judge

August __, 2021
Conway, South Carolina



Horry Common Pleas

Case Caption: Sarah Wood , plaintiff, et al VS Horry County School District

Case Number: 2017CP2606643

Type: Order/Deposit Money

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-08-16 11:14:54 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2606643

Sarah Wood et al
PLAINTIFF(S)

Horry County School District
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Defendant's Motion to Reconsider is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/10/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Sarah Wood , plaintiff, et al VS Horry County School District

Case Number: 2017CP2606643

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2021-09-10 13:16:43 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION 2017-CP-26-_____

SARAH WOOD, Individually and As
Parent and Natural of L.W., A Minor,

Plaintiff,

v.

HORRY COUNTY SCHOOL DISTRICT,

Defendant.

COMPLAINT
(Jury Trial Requested)

The Plaintiff, Sarah Wood, Individually and As Parent and Natural Guardian of L.W., a Minor, by and through her undersigned attorneys, complaining of the above-named Defendant would allege and show unto the Court the following:

JURISDICTION AND VENUE

1. The Plaintiff, Sarah Wood, is a resident of Aiken County, South Carolina and the mother and legal guardian of L.W., a minor (hereinafter "Minor Plaintiff").
2. Defendant Horry County School District is a subdivision of the State of South Carolina, located in Horry County, South Carolina.
3. Venue in this Court is proper, as the most substantial acts and omissions giving rise to the causes of action occurred in Horry County, South Carolina.

FACTS

4. In October 2016, Minor Plaintiff was a student at North Myrtle Beach Middle School.
5. Minor Plaintiff was a football player for North Myrtle Beach Junior High B-team.
6. On October 20, 2016, Minor Plaintiff played in a football game. After the buzzer sounded ending the second quarter, Minor Plaintiff was hit by multiple players. Minor Plaintiff

voiced to his teammates and to coaching staff that he was having difficulty with his balance/equilibrium following this hit. Further, the Minor Plaintiff exhibited outward signs of confusion, loss of balance, and visual impairment. These symptoms and Minor Plaintiff's complaints regarding the same continued during the halftime break.

7. Despite his open and obvious signs of head trauma, Minor Plaintiff was put back into the game to play during the third quarter. During the third quarter, Minor Plaintiff was hit on multiple occasions, thereby seriously exacerbating his head trauma. Minor Plaintiff could be seen staggering down the sidelines during the third quarter and attempting to continue plays after the whistle, but was at no point removed from the game.

8. Immediately following the October 20, 2016 game, Minor Plaintiff was diagnosed with a serious brain injury. Minor Plaintiff was unable to attend classes due to the loss of short-term and long-term memory associated with his severe head injury and traumatic brain injury.

9. As a result of the grossly negligent failure to adhere to general safety practices as well as concussion and head trauma protocols, Minor Plaintiff has suffered serious physical and emotional injuries.

FIRST CAUSE OF ACTION

By Plaintiff As Parent and Natural Guardian of Minor Plaintiff (Negligence/Gross Negligence/Recklessness)

10. The previous paragraphs are incorporated as if fully stated herein.

11. Defendant owed a duty of care to Minor Plaintiff to maintain a reasonable, safe environment for the children participating in football for the North Myrtle Beach Junior High B-team.

12. Defendant breached this duty and was therefore negligent, reckless, and grossly negligent in the following particulars:

- a. Failing to exercise slight care to maintain a safe environment;

- b. Failing to exercise slight care enforce school policies and procedures regarding concussion and head trauma protocols;
 - c. Failing to exercise slight care to recognize that the Minor Plaintiff was exhibiting signs of a severe head injury;
 - d. Failing to exercise slight care to remove Minor Plaintiff from the game;
 - e. Failing to exercise slight care to procure immediate medical attention for Minor Plaintiff;
 - f. Failing to exercise slight care in the supervision of players;
 - g. Failing to exercise slight care in the hiring, retention, and supervision of coaching staff;
 - h. Failing to exercise slight care to provide a competent replacement trainer to stand in for the team trainer who was attending a work conference in another state during the October 20, 2016 game in which the Plaintiff was injured; and
 - i. Failing to use the degree of care and caution that a reasonable, prudent person would have used under the same or similar circumstance.
13. These breaches of the duty of care directly and proximately caused Plaintiff substantial physical, mental and emotional damage.

FOR A SECOND CAUSE OF ACTION
By Plaintiff Individually
(Loss of Services and Medical Expenses)

- 14. The previous paragraphs are incorporated as if fully stated herein.
- 15. Plaintiff is the parent and natural guardian of Minor Plaintiff.
- 16. As a direct and proximate result of the aforementioned acts and omissions by the Defendant, Plaintiff has been injured and damaged in Actual and Consequential Damages as follows:

- i. pre-trial medical expenses of Minor Plaintiff; and
- ii. post-trial and future medical expenses of Minor Plaintiff.

17. Based on the foregoing allegations, the Plaintiff is entitled to an award of ACTUAL and CONSEQUENTIAL DAMAGES.

WHEREFORE, Plaintiff prays for judgment against the Defendant for ACTUAL and CONSEQUENTIAL DAMAGES, together with costs of this action, and for such other and further relief as this Court may deem fit, just, and proper, including but not limited to:

- a. for the costs and disbursements of this action;
- b. for prejudgment interest at the rate authorized by the South Carolina Supreme Court and S.C. Code Ann. § 34-31-20 (B); and
- c. for such other and further relief as the Court may deem just and proper.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

EVANS MOORE, LLC

s/Scott C. Evans
 Scott C. Evans, SC Bar #77684
 James B. Moore III, SC Bar #74268
 121 Screven Street
 Georgetown, SC 29440
 Office: (843) 995-5000
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 Justin Lovely, SC Bar #79073
 The Lovely Law Firm
 804 N Oak St, Myrtle Beach, SC 29577
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 amy@justiceislovely.com
 justin@justiceislovely.com

Attorneys for the Plaintiff

October 11, 2017
Georgetown, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) C/A NO. 2017-CP-26-06643

Sarah Wood, individually and as parent)
and natural guardian of L.W., a minor,)

Plaintiff,)

ANSWER

vs.)

Horry County School District,)

Defendant.)

Defendant, Horry County School District, by and through undersigned counsel,
hereby answers the Complaint of plaintiff as follows:

AS TO JURISDICTION AND VENUE

1. Lacks knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and, therefore, denies the same.
2. Admits the allegations contained in Paragraph 2.
3. Admits the allegations contained in Paragraph 3.

AS TO FACTS

4. Admits the allegations contained in Paragraph 4.
5. Admits the allegations contained in Paragraph 5.
6. Admits only so much of Paragraph 6 as alleges that on October 20, 2016, the minor plaintiff played in a football game; except as so admitted, however, the remaining allegations of Paragraph 6 are denied.

7. Denies the allegations contained in Paragraph 7.
8. Lacks knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and, therefore, denies the same.
9. Denies the allegations contained in Paragraph 9.

AS TO THE FIRST CAUSE OF ACTION
By Plaintiff as Parent and Natural Guardian of Minor Plaintiff
(Negligence/Gross Negligence/Recklessness)

10. In response to paragraph 10, defendant reiterates the allegations contained above as if repeated herein verbatim.
11. Denies the allegations contained in Paragraph 11.
12. Denies the allegations contained in Paragraph 12.
13. Denies the allegations contained in Paragraph 13.

AS TO THE SECOND CAUSE OF ACTION
By Plaintiff Individually
(Loss of Services and Medical Expenses)

14. In response to paragraph 14, defendant reiterates the allegations contained above as if repeated herein verbatim.
15. Admits, upon information and belief, the allegations contained in Paragraph 15.
16. Denies the allegations contained in Paragraph 16.
17. Denies the allegations contained in Paragraph 17.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF ADDITIONAL
DEFENSES THERETO**

FOR A FIRST DEFENSE
(TORT CLAIMS ACT)

18. The liability of defendant is governed by the South Carolina Torts Claims Act, and the defendant pleads the applicable immunities, provisions, and limitations on recovery therein as affirmative defenses, including but not limited to:

- a. Defendant is not liable for responsibility or duty including but not limited to supervision, protection, or control of any student except when the responsibility or duty is exercised in a grossly negligent manner. *See*, S.C. Code of Laws §15-78-60(25) (2017 Cum. Supp.).
- b. Discretionary immunity. *See*, S.C. Code of Laws §15-78-60(25) (2017 Cum. Supp.).
- c. Other and further defenses under the Tort Claims Act as discovery and investigation may reveal.

FOR A SECOND DEFENSE
(WAIVER)

19. Defendant pleads the defense of waiver.

FOR A THIRD DEFENSE
(ASSUMPTION OF THE RISK)

20. Defendant pleads the defense of assumption of the risk.

FOR A FOURTH DEFENSE
(S.C. CODE ANN. §59-63-75)

21. Defendant pleads the defenses under S.C. Code Ann §59-63-75 (2017 Cum. Supp.).

WHEREFORE, having fully answered the Complaint, Defendant prays that it be dismissed with prejudice and with an award of costs.

CLARKE, JOHNSON, PETERSON & MCLEAN, PA

s/ Joseph P. McLean

JOSEPH P. MCLEAN
Post Office Box 1865
Florence, South Carolina 29503
Tel: (843) 669-2401
Fax: (843) 662-1779
Email: jmclean@cjpmlaw.com
SC Bar # 0011839

Attorney for Defendant Horry County School District

Florence, South Carolina

December 19, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry	)	C/A NO. 2017-CP-26-06643
 Sarah Wood and Logan Wood	)	
	)	DEFENDANT’S MOTION FOR JNOV
Plaintiffs,	)	OR, IN THE ALTERNATIVE, FOR A
	)	NEW TRIAL ABSOLUTE OR, IN THE
vs.	)	ALTERNATIVE, FOR REMITTITUR
	)	OF VERDICTS
Horry County School District,	)	[HEARING REQUESTED]
	)	
Defendant.	)	
_____	)	

TO: PLAINTIFFS ABOVE-NAMED AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that defendant Horry County School District (hereinafter “defendant”), by and through undersigned counsel, hereby moves this court for a judgment notwithstanding the verdict (JNOV) pursuant to Rule 50(b) of the South Carolina Rules of Civil Procedure on the grounds that when considering all the evidence construed in favor of plaintiffs and giving the plaintiff the benefit of all reasonable inferences therefrom defendant was not grossly negligent as a matter of law, but if it was grossly negligent the facts present only one “occurrence” as a matter of law. Alternatively, defendant move for a new trial absolute pursuant to Rule 59 of the South Carolina Rules of Civil Procedure under the 13th juror doctrine. If the motions for JNOV and new trial are denied, defendant moves that the verdict as to Logan Wood be reduced to the applicable statutory caps under the Tort Claims Act and that the verdict for Sarah Wood be reduced to the amount of medical bills she is legally responsible to pay before her son Logan turned 18 years of age.

The grounds for this motion are more fully stated in the attached Memorandum of Law.

Defendant respectfully requests to be heard by the court in oral argument on this motion.

CLARKE, JOHNSON, PETERSON & MCLEAN, PA

s/ Joseph P. McLean

JOSEPH P. MCLEAN, SC Bar #11839
Post Office Box 1865
Florence, South Carolina 29503
Tel: (843) 669-2401
Fax: (843) 662-1779
Email: jmclean@cjpmlaw.com

Attorney for Defendant Horry County School District

Florence, South Carolina

April 26 , 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NO. 2017-CP-26-06643
 Sarah Wood and Logan Wood	)	 MEMORANDUM OF LAW IN
	)	SUPPORT OF DEFENDANT'S
Plaintiffs,	)	MOTION FOR JNOV OR, IN THE
	)	ALTERNATIVE, FOR A NEW TRIAL
vs.	)	ABSOLUTE OR, IN THE
	)	ALTERNATIVE, FOR REMITTITUR
Horry County School District,	)	OF VERDICTS
	)	
Defendant.	)	
_____	)	

THE GAME FILM AND JURY DELIBERATIONS

During deliberations, the jury asked to review the game film in evidence. The jury was brought into the courtroom to view it there using the projector and screen used during trial. One of plaintiffs' attorneys asked the court if the lawyers should step out. The court said the lawyers could stay, likely not anticipating that one or two of the jurors would be vocal about what they saw on the film. Thus, the court and counsel were privy to part of the jury deliberations.

The game film had a timer superimposed on it. When the timer reached 05:01:19:23 Logan Wood can be seen clasping his helmet with both hands for one to two seconds. At that moment, one juror shouted out "there it is!" Another juror vocalized his or her agreement. A still image of that point on the film is attached as Exhibit 1. Shortly after that, a juror announced, "we don't need to see anymore," the film was stopped, and the jury left the courtroom.

What evidence the jury chooses to consider or not to consider is within its prerogative. The court was asked to view the game film video at the directed verdict stage. In considering this motion, the court is implored to review the game film in its entirety.

FACTS / ALLEGATIONS

On October 20, 2016, Logan Wood, then age 14 and now age 18, received a concussion while playing in a football game for the B team at North Myrtle Beach Middle School. The game was an away game for the North Myrtle Beach B team against Ocean Bay Middle School and was hosted by Carolina Forest High School at its stadium. As the host school, Carolina Forest provided the athletic trainer for the game consistent with defendant's staffing model for coverage of athletic events by athletic trainers. Specifically, there was one Carolina Forest athletic trainer present in the stadium, and she had responsibility for monitoring the game and assessing and treating injuries to players on both teams. She did not know Logan and he did not know her. It is alleged that during the game Logan exhibited signs and symptoms of a concussion, should have been removed from the game by defendant and assessed for a concussion, was not, continued to play, received additional blows to the head, and now suffers from second impact syndrome. It is the second impact syndrome that is plaintiff's sole basis for recovery.

TRIAL AND VERDICT

This matter was tried before a jury from April 12 - 15, 2021. At the close of plaintiffs' case, defendant moved for a directed verdict asserting that there was no gross negligence as a matter of law and that there was only one "occurrence" as a matter of law. The same directed verdict motion was renewed at the close of all evidence. The judge submitted the case to the jury which returned a jury verdict finding two acts of gross negligence, specifically that defendant:

1. Acted with gross negligence when it allowed Logan Wood to play without an athletic trainer present for his team;
2. Acted with gross negligence when it failed to assess Logan Wood for signs and symptoms associated with a concussion.

Damages were awarded in the amount of \$825,000.00 for Logan Wood. Damages were awarded to Sarah Wood for \$25,000.00. The court allowed 10 days for filing post-trial motions.

JNOV

Under Rule 50(b), SCRCivP, a party who moved for a directed verdict may move for judgment notwithstanding the verdict (JNOV) in order to have the verdict set aside. The verdict in this case should be set aside because there was no gross negligence as a matter of law and only one “occurrence” under the Tort Claims Act.

1. There was no gross negligence as a matter of law.

(a) The risk

Plaintiffs presented evidence that younger athletes like Logan are at a higher risk of getting a concussion and/or suffering long-term effects from a concussion than older athletes. Based on this known risk, plaintiffs contend that defendant’s athletic trainer staffing model was grossly negligent. Specifically, they asserted there should have been one athletic trainer present for each team, and preferably the athletic trainer present for Logan’s team would have been a trainer normally assigned to Logan’s team, North Myrtle Beach, who presumably would know Logan and be familiar with his usual behavior on the field and thus be better able to determine if he was acting abnormally. Two trainers are better than one, a proposition that the defendant does not disagree with.

If the staffing model was not grossly negligent, plaintiffs contend the athletic trainer who was there and Logan’s coaches were grossly negligent. They contend the trainer was grossly inattentive and should have been more engaged with the players, communicating with them up

close and personal, not from a stationary position on the sidelines. They also contend the coaches were grossly inattentive, failed to recognize the signs and symptoms of a concussion Logan exhibited, and did not and not remove him from play and have him assessed for a concussion.

(b) Evidence of slight care

The court properly instructed the jury that gross negligence is the failure to exercise slight care. *Clyburn v. Sumter County School District 17*, 317 S.C. 50, 451 S.E.2d 885 (1994); *Etheridge v. Richland County School District Two*, 341 S.C. 307, 534 S.E.2d 275 (2000).

In *Clyburn*, the Supreme Court upheld summary judgment for a school district in its handling of the dispute between a student and a non-student where the non-student attacked the student on a school bus with a knife. In finding that school district not grossly negligent as a matter of law, the court noted that after hearing of the initial altercation on the bus, the school bus administrator called the student and the non-student's sister into the office to discuss the situation, warned the sister that the non-student would face criminal charges if she boarded the bus again, and attempted to contact the parents. The bus driver watched for the non-student and stated she would not stop the bus if she saw the non-student. The court found that the school district exercised at the very least "slight care." *Clyburn* 451 S.E.2d at 888.

In *Etheridge*, the Supreme Court reversed the Court of Appeals and reinstated summary judgment in favor of a school district in a case in which one student shot and killed another at a school. The facts showed the students were high school age, and the school district had no direct knowledge or notice of the animosity between them. "The only reasonable inference that can be drawn is that the school district, at the very least, exercised 'slight care' to ensure the safety of its students." *Etheridge* 534 S.E.2d at 278. The principal, assistant principal, and the two security

monitors constantly monitored the hallways and were in constant contact with each other by walkie-talkies. The teachers stood in their doorways to watch students during the change of class. Some of the doors were locked to limit the flow of traffic. A list of suspended students was circulated daily. There was an intervention system set up to help resolve conflicts between students. At the very least, “slight care” was taken. Further, the fact that the school district might have done more does not negate the fact that it exercised “slight care.”

The undisputed evidence in this case shows that the athletic trainer staffing model demonstrates at least slight care:

1. Certified Athletic Trainer Present. The athletic trainer staffing model assured that a certified athletic trainer was present for the game. Had there been no certified athletic trainer present the district may have been grossly negligent. Having an athletic trainer present from North Myrtle Beach would not have made any difference. They did not Logan and his usual behavior on the field, and Logan did not know them.
2. Coverage for Other Sports. The athletic trainer staffing model permitted at least one certified athletic trainer to cover all other North Myrtle Beach athletic events and all Carolina Forest athletic events taking place in different places at the same time Logan’s team was playing. The defendant had a duty to all its student-athletes, not just football players, and a duty to protect against all injuries, not just concussions. By following the staffing model, defendant assured that no student-athlete for either school played or practiced that day without a certified athletic trainer present.

The undisputed evidence in the case shows the athletic trainer and the coaches exercised at least slight care in their observations of and interactions with Logan:

1. Observations of trainer and coaches. The game film shows the certified athletic trainer was present on the sidelines, located in or next to her Gator ATV in a position that gave her a good view of the field and the game. The game film also shows the coaches observing the play on the field and interacting and communicating directly with Logan and “coaching him up” when he was off the field.
2. Training of coaches. All coaches were trained annually to recognize signs and symptoms of a concussion and what to do when a player exhibited those signs and symptoms with a theme of “when in doubt, sit them out.” Had there been no such training the district may have been grossly negligent.
3. Testimony of coaches. The testimony of coaches White, Jolly, and Waggoner is that they observed Logan on the field during the game and none observed Logan exhibiting any signs of a concussion. Waggoner was Logan’s position coach, and he testified that when Logan was not on the field during timeouts, special teams, and breaks in the action, he was talking to Logan face to face, coaching him, interacting with him, and communicating with him. He knew Logan and would have recognized if he was exhibiting symptoms of a concussion and would have removed him from play if he did.
4. Response to other injuries. Two other injured players were removed from the game by the coaching staff and not allowed to return to play. One of those other players

had a suspected concussion.

The undisputed evidence shows the school board and district athletic exercised at least slight care:

1. Hiring additional athletic trainers. In May 2016, before October 2016 when this game was played, the school board approved additional funds to hire additional athletic trainers to staff sporting events for the district in response to a perceived shortage of athletic trainers.
2. Compliance with S.C. concussion statute. Defendant complied with all duties under the S.C. Concussion Act. S.C. Code Ann. §59-63-75 (2020 Cum. Supp.). There was ample evidence of guidelines and procedures regarding identification and management of suspected concussions in student-athletes, there was evidence of coaches, student-athletes, and parents being informed on the risks of concussion and continuing to play after a concussion, and there was uncontradicted evidence of removal of another player from the game after a suspected concussion.

2. **There was only one occurrence**

The Tort Claims Act must be liberally construed to limit the liability of the state and its political subdivisions. S.C. Code Ann. § 15-78-20(f) (2020 Cum. Supp.). The term “occurrence” means “an unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code Ann. § 15-78-30(g) (2020 Cum. Supp.).

- (a) The number of occurrences is a matter of law for the court to decide.

The statutory definition of “occurrence” is complex and nuanced and frankly not one that can be easily understood or applied by a jury, particularly without jury instructions that dissect and fully

explain how the definition is to be applied. Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. *See, Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011); *Chastain v. Anmed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010). Accordingly, the statutory definition of “occurrence” presents an issue of statutory construction, and that is an issue of law for the court, not a determination for the jury. In essence, the “occurrence” issue presents a mixed question of law and fact. *See, Charleston County Parks & Recreation Comm’n v Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory construction are a matter of law).

In the case at bar, the Court was correct in not instructing the jury on how to apply the statutory definition of "occurrence" to determine the number of "occurrences." The Court was also correct in not having the jury determine the number of "occurrences" on the verdict form. Those present legal issues for the Court's determination. Instead, as the Court instructed and the verdict form allowed, the jury made a factual determination as to the number of acts of gross negligence were committed by the defendant. The jury concluded that there were two acts of gross negligence, one related to the number of athletic trainers available for the football game and the other for the failure to assess Logan Wood for the signs and symptoms associated with a concussion. *See, Verdict Form*. There was no determination made by the jury as to the number of "occurrences."

Taking that factual determination, the Court must now apply the statutory definition of “occurrence,” and determine whether those acts of gross negligence give rise to or proximately caused the same “sequence of events” that is “unfolding” (or “evolving” or progressing” to apply useful synonyms). However, if those acts of gross negligence each give rise to a new “sequence of events” so as not to be “unfolding” or “evolving” from past events, then there is a new “occurrence.” As

discussed in greater detail below, the number of "occurrences" is not determined by the number of negligent acts. See *Boiter*, 712 S.E.2d at 406 ("we do not adopt a bright-line test based on the existence of multiple acts of negligence"). Rather an "occurrence" is an "unfolding sequence of events." If the same "unfolding sequence of events" proximately flows from multiple acts of negligence, there is but a single occurrence.

(b) One occurrence.

In this case, there was a single event that proximately flowed from multiple acts of gross negligence (not a "single act of negligence"). The event (or occurrence) was the failure to remove Logan Wood from the game and have him assessed for a concussion. The multiple acts of alleged gross negligence, as found by the jury, flow into that singular event, i.e., they combined and concurred to proximately cause that single occurrence.

The leading case on the application of the term "occurrence" under the Tort Claims Act is the Supreme Court's decision in *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011). In that case, the Supreme Court concluded that there were separate "occurrences" by two state agencies that resulted in a motor vehicle accident. By way of factual background, the Boiters' vehicle and another vehicle collided when both vehicles entered an intersection at the same time. At the time of the accident, the red signal light bulbs in the traffic signal for other vehicle's direction of travel had burned out. The Boiters brought suit against the South Carolina Department of Transportation (SCDOT) alleging negligence in failing to have a relamping policy in place. The Boiters also brought suit against the South Carolina Department of Public Safety (SCDPS) alleging negligence in failing to send a trooper to direct traffic at the intersection after being notified that the red lights were out. In a 4-1 decision, the Supreme Court

found that the negligence committed by SCDOT constituted one "occurrence" and the negligence by SCDPS constituted a separate "occurrence." In other words, the Supreme Court concluded that there were "independent and separate acts of negligence" by the two state agencies. Importantly, the Supreme Court expressly decided the issue "based solely on the peculiar facts of this case" and further states that no "bright-line test" was being adopted by the Court. 712 S.E.2d at 406. The Supreme Court did, in fact, acknowledge that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. But, based on what it described as "peculiar facts," the Supreme Court found that "there were two separate entities which committed two separate and independent acts of negligence, and we do not believe the General Assembly's intent was to limit recovery in such situations based on there being only one occurrence." *Id.*

The present case is readily distinguishable from *Boiter* in that this case involves a single governmental entity that committed multiple acts of negligence. The Supreme Court in *Boiter* forecasts how a case with those characteristics should be adjudicated. The Court points out that "[c]ases from other jurisdictions are similarly inapposite because they involve a single governmental entity which committed multiple acts of negligence, a completely different situation than the one before us." *Boiter*, 712 S.E.2d at 406. The Supreme Court then cites favorably to two cases from other jurisdictions that are instructive in the present case. Those cases are factually similar to the present case where, unlike in *Boiter*, there is a single governmental entity that committed multiple acts of negligence.

The most comparable of those cases is *Folz v. State*, 110 N.M. 457, 797 P.2d 246 (1990), which our Supreme Court described as holding that the "negligence by [the] highway department

which resulted in a truck striking five separate vehicles in [a] collision was only one occurrence under [the applicable] statute." *Id.* In *Folz*, a personal injury suit was brought against the state highway department after a runaway truck successively struck five vehicles in a mountainous construction site. The plaintiffs alleged that the highway department committed two negligent acts described as "negligen[ce] in failing to design and implement an appropriate traffic-control plan for the project." 797 P.2d at 249. The court concluded that "[t]he Department committed at least two negligent acts or omissions (planning and implementation) that, although committed successively, combined concurrently with the negligence of the other tortfeasors to proximately cause indivisible harm to each of multiple person facing the singular risk of a runaway truck. 797 P.2d at 252. The court further explained "while a 'series' of acts or omissions on the part of the Department created an undue risk of injury, these acts contributed to a unitary risk, and only one triggering event occurred giving rise to liability." 797 P.2d at 254. The New Mexico court this found that there was a "single occurrence" under that state's Tort Claims Act.

Importantly, in *Boiter*, the South Carolina Supreme Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. This would likewise be true where there are multiple acts of negligence *committed by the same entity*, particularly where those acts are the same or similar and result a continuous "unfolding sequence of events." To reiterate, in *Boiter*, the Supreme Court found two occurrences when the facts revealed that two governmental defendants each committed a separate and distinct wrongful act that did not combine or "unfold" to cause the plaintiff's injury. Here, the facts viewed in the light most favorable to Plaintiffs reveal that one governmental defendant committed two related wrongful acts that combined or "unfolded" to result in Logan's concussion not being

recognized and Logan not being removed from play. As in *Folz*, the jury found gross negligence in both planning and implementation, but those acts or omissions combine to create a unitary risk to Logan triggered by a single event.

It is well settled that there can be more than one proximate cause of an injury. See, *Player v Thompson*, 259 S.C. 600, 193 S.E.2d 531 (1972). The possible proximate causes of Logan's injury, be they an improper athletic trainer staffing model or inattentiveness of the trainer and the coaches, resulted in only a single occurrence. The jury verdict itself shows that the jury found two acts of gross negligence: (1) Logan playing with only one trainer present (improper staffing) and (2) the failure of the coaches and trainer to assess Logan for signs and symptoms of a concussion (inattentiveness). Critically, the number of "occurrences" is not determined by the number of negligent acts. *Boiter*, 712 S.E.2d at 406 ("we do not adopt a bright-line test based on the existence of multiple acts of negligence"). Rather an "occurrence" is an "unfolding sequence of events." If the same "unfolding sequence of events" proximately flows from multiple acts of negligence, there is still but a single occurrence. That is the scenario in the case at bar, and accordingly, the verdict for Logan Wood should be reduced to the statutory cap of \$300,000 under the caps mandated by S.C. Code Ann. § 15-78-120(a).

MOTION FOR NEW TRIAL

Defendant has also moved in the alternative for a new trial under Rule 59, SCRCivP, and specifically the thirteenth juror doctrine. South Carolina's thirteenth juror doctrine is well established as the standard for granting a new trial in state law actions. See *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990); *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819 (Ct. App. 1996); *Norton v. Norfolk Southern Railway Co.*, 350 S.C. 473, 567 S.E.2d

851 (2002). South Carolina’s thirteenth juror doctrine is so named because it entitles the judge to sit, in essence, as the thirteenth juror when he finds “the evidence does not justify the verdict,” and then to grant a new trial... ” *Folkens*, 387, S.E.2d at 267. As the “thirteenth juror,” the trial judge can hang the jury by refusing to agree to the jury’s otherwise unanimous verdict. *Id.*

As the court explained in *Folkens*:

The effect is the same as if the jury failed to reach a verdict ... when a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the ‘thirteenth’ vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings. *Id.*

In this case, the evidence of gross negligence is “shortchanging” B-team football players in favor of JV and varsity football players when it comes to the assignment of athletic trainers for games, several still images from the game film showing the trainer who was present sitting on her ATV Gator and not walking the sidelines assessing the players for concussions, and testimony from Logan’s mother and sister that they saw him take more than fifty hits to the head, saw him line up on the wrong side of the ball on one play, and saw him crawl to get off the ground after one play. The court and counsel, however, know what evidence the jury heavily relied upon – testimony from plaintiffs’ expert Rod Walters that claspings of the head can be a sign of a concussion and then looking for that in the game film, looking for that in the game film and seeing it at timer mark 05:01:19:23 (Exhibit 1), and announcing it did not need to see anymore. The interests of justice demand that the court review the game film in its entirety as the thirteenth juror and decide for itself if the evidence justifies the finding of gross negligence.

The film will show Logan competing on the field and being coached on the sidelines throughout the entire game up until the final play. Unfortunately, the jury declared they did not

need to see that. A fair, objective and complete review of the film will show that there was nothing to miss and no reason to remove Logan from the game and assess him for a concussion. If Logan clasping his helmet at 05:01:19:23 **for one to two seconds** is a sign of a concussion as the jury concluded, the court should review the film to look for other players similarly clasping their helmets and then continuing play normally at the following points:

1. 04:06:48;01(still image at Exhibit 2)
2. 04:12:50;11(still image at Exhibit 3)
3. 04:13:59;22 (still image at Exhibit 4)
4. 04:14:20;21 (still image at Exhibit 5)
5. 04:23:53;11(still image at Exhibit 6) (players clasps helmet with both hands for **9 to 10 seconds**)
6. 04:50:50;24 (still image at Exhibit 7)
7. 04:51:26;00 (still image at Exhibit 8)
8. 05:00:02;14 (still image at Exhibit 9)
9. 05:07:14;01 (still image at Exhibit 10)
10. 05:13:15;06 (still image at Exhibit 11)
11. 05:19:21;14 (still image at Exhibit 12)

The game of football and interscholastic athletics as a whole will be fundamentally altered if a coach or athletic trainer can be found grossly negligent solely for not removing a player who clasps his helmet with both hands from play to be assessed for a concussion. Participation and competition would be stifled. Each of the other players seen clasping their helmets in the game film would have the ingredients for a lawsuit. Athletics serve an educational purpose. See, e.g.,

Brentwood Academy v Tenn. Secondary School Athletic Ass’n, 531 U.S. 288, 299, 121 S. Ct. 924, 148 L.Ed.2d 807 (2001) (holding that “[i]nterscholastic [high school] athletics obviously play an integral part in public education). Participation in sports provides lessons in teamwork and leadership that are valuable throughout life. *See, e.g. Sandison v Mich. High School Athletic Ass’n, Inc.* 863 F.Supp. 483, 489 E.D. Mich 1994 rev’d in part 64 F.3d 1026 (6th Cir 1995) (holding that plaintiffs’ participation in high school cross-country and track is an integral part of their education). *See, e.g. S.C. Code Ann.* §59-29-80 (2020 Cum. Supp.) (mandating physical education as part of school curriculum). **All such benefits may be lost forever if Logan clasp[ing] his helmet with both hands for 1 to 2 seconds, with no other indicators, as shown on the game film is the sign of a concussion and the defendant was grossly negligent by not recognizing it and removing him from the game to be assessed.** Viewing the game film as a whole from beginning to end as the thirteenth juror will reveal there is no credible evidence of signs or symptoms of a concussion, justice has not been done, and a new trial should be ordered.

REDUCTION OF AWARDS.

If this Court finds there is sufficient evidence of gross negligence and if it finds there was more than one occurrence and if it refuses to order a new trial based upon the thirteenth juror doctrine, then the award for Logan Wood should be reduced to \$600,000.00 for two occurrences each with a statutory cap of \$300,000.00. Further, the verdict for Sarah Wood should be reduced to \$10,907.00, the amount of medical bills she is responsible for prior to Logan reaching the age of 18. *See*, plaintiff’s exhibit 11. *See, Hughey v Ausborn*, 249 S.C. 470, 154 S.E.2d 839 (1967) (the parent has a cause of action for the recovery of the medical expenses which he has incurred for the care and treatment of such minor). Our common law only allowed a parent to maintain an

action for the loss of the child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society have traditionally defined loss of consortium claims. Accordingly, in the absence of some action from the legislature, the court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium. *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007) (refusing to recognize a cause of action for loss of consortium of a child or for filial consortium).

CONCLUSION

There is ample uncontradicted evidence of at least slight care by defendant in response to the known risk of a concussion. The fact that the defendant might have done more does not negate the fact that it exercised "slight care." Therefore, defendant was not grossly negligent.

However, if the defendant was grossly negligent there was only one occurrence - failure to recognize signs and symptoms of a concussion and to remove Logan from play and assess him for a concussion. The jury has never said there were two occurrences- only 2 acts of gross negligence.

Alternatively, the court should act as the thirteenth juror, review all the evidence and in particular the game film, and grant a new trial because there is no credible evidence of Logan exhibiting signs or symptoms of a concussion during the game.

Finally, if the motion for JNOV and motion for new trial are denied, the verdict for Logan should be reduced to the statutory caps and the award for his mother should be reduced to \$10,907.00, the amount of medical bills she is responsible for and therefore the only correct measure of her damage.

As stated in the motion, the defendant respectfully requests an opportunity to

present oral argument to the court on these issues.

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April 26, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry	)	C/A NO. 2017-CP-26-06643
Sarah Wood and Logan Wood	)	
	)	
Plaintiffs,	)	EXHIBITS TO DEFENDANT'S
	)	MOTION FOR JNOV OR, IN THE
vs.	)	ALTERNATIVE, FOR A NEW TRIAL
	)	ABSOLUTE
Horry County School District,	)	
	)	
Defendant.	)	
	)	

Exhibits 1-12 follow.

CLARKE, JOHNSON, PETERSON & MCLEAN, PA

s/ Joseph P. McLean

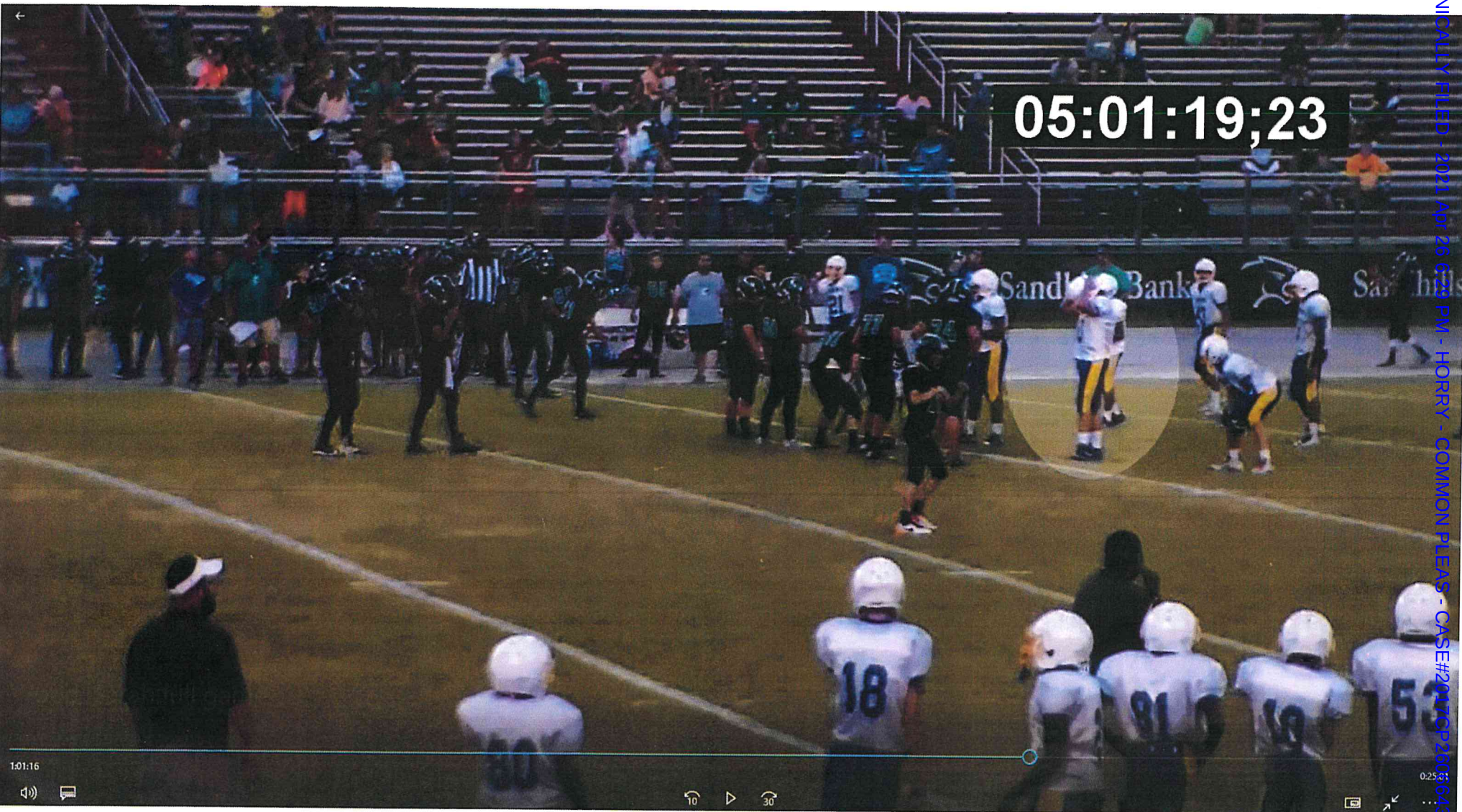
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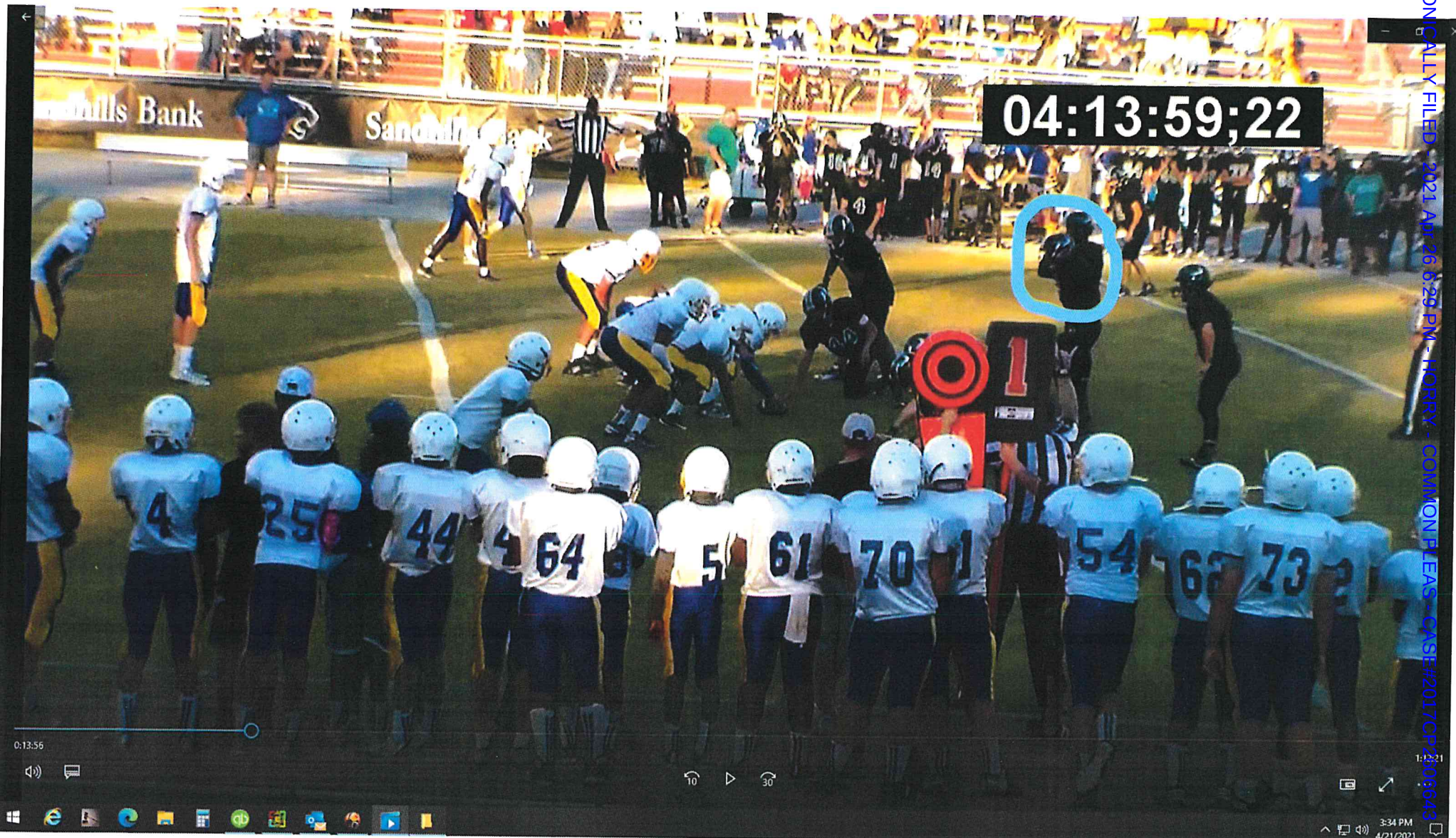
April 26, 2021

05:01:19;23



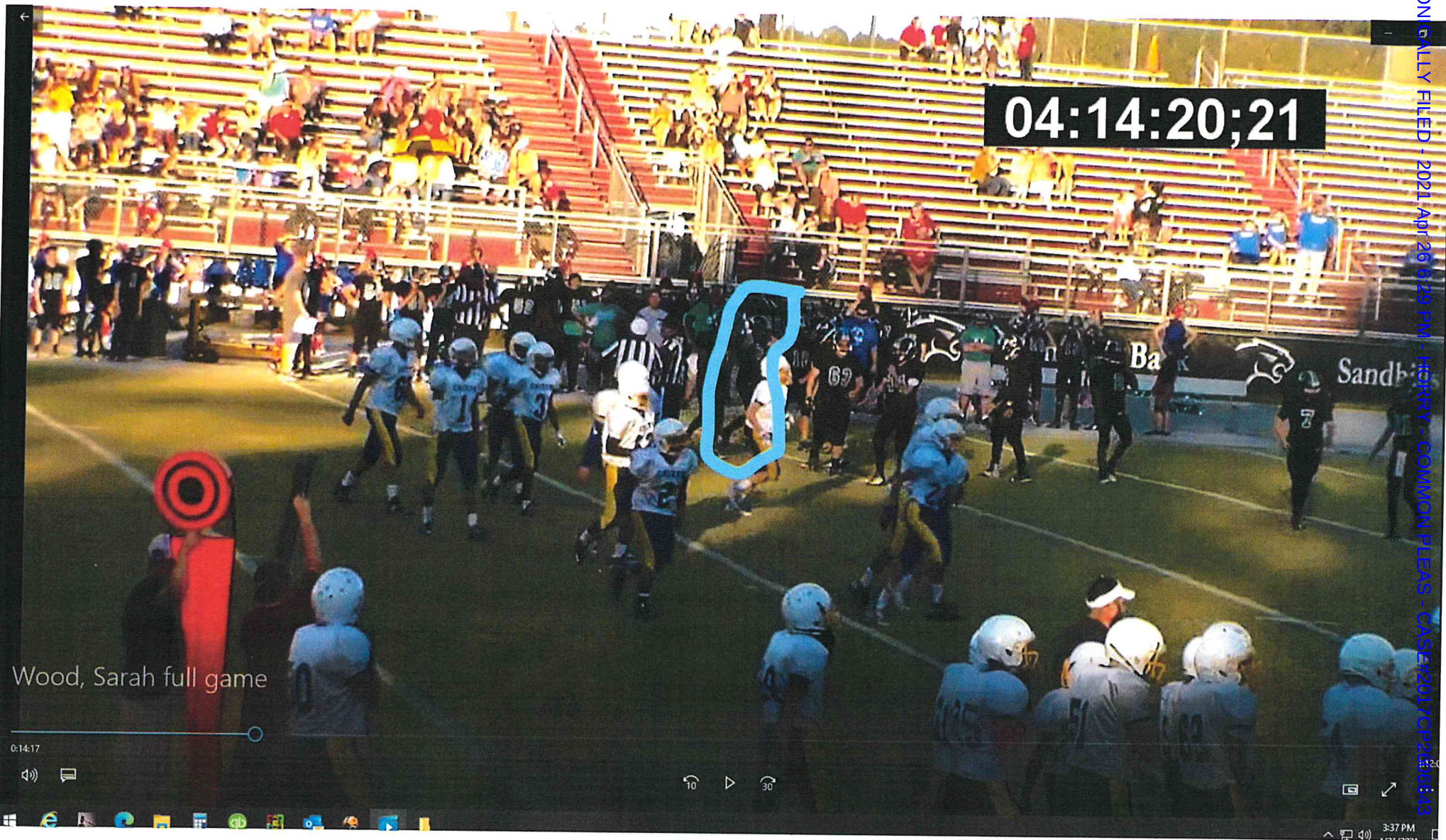






EXHIBIT

4



9-10 seconds



04:50:50;24

Wood, Sarah full game

EXHIBIT

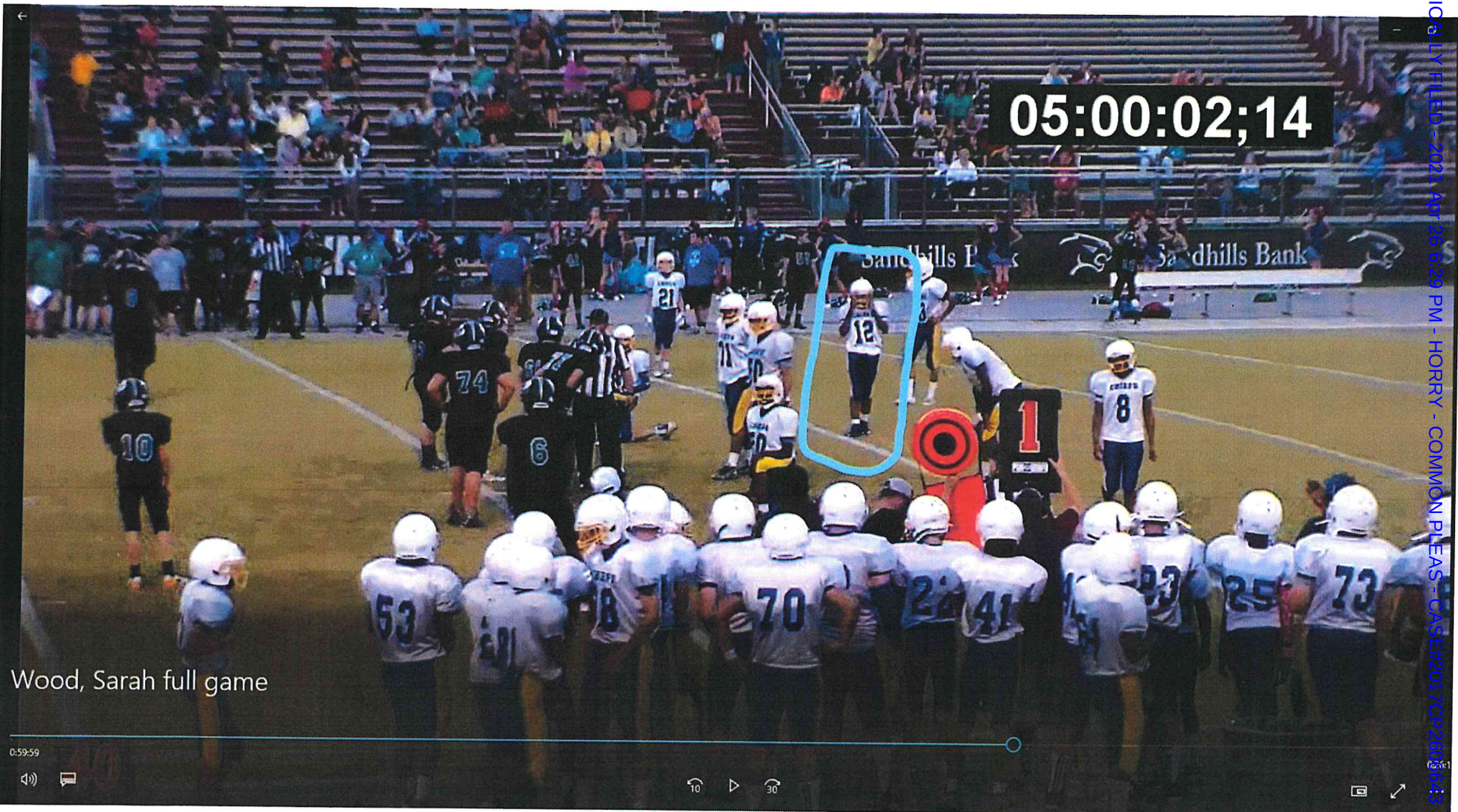
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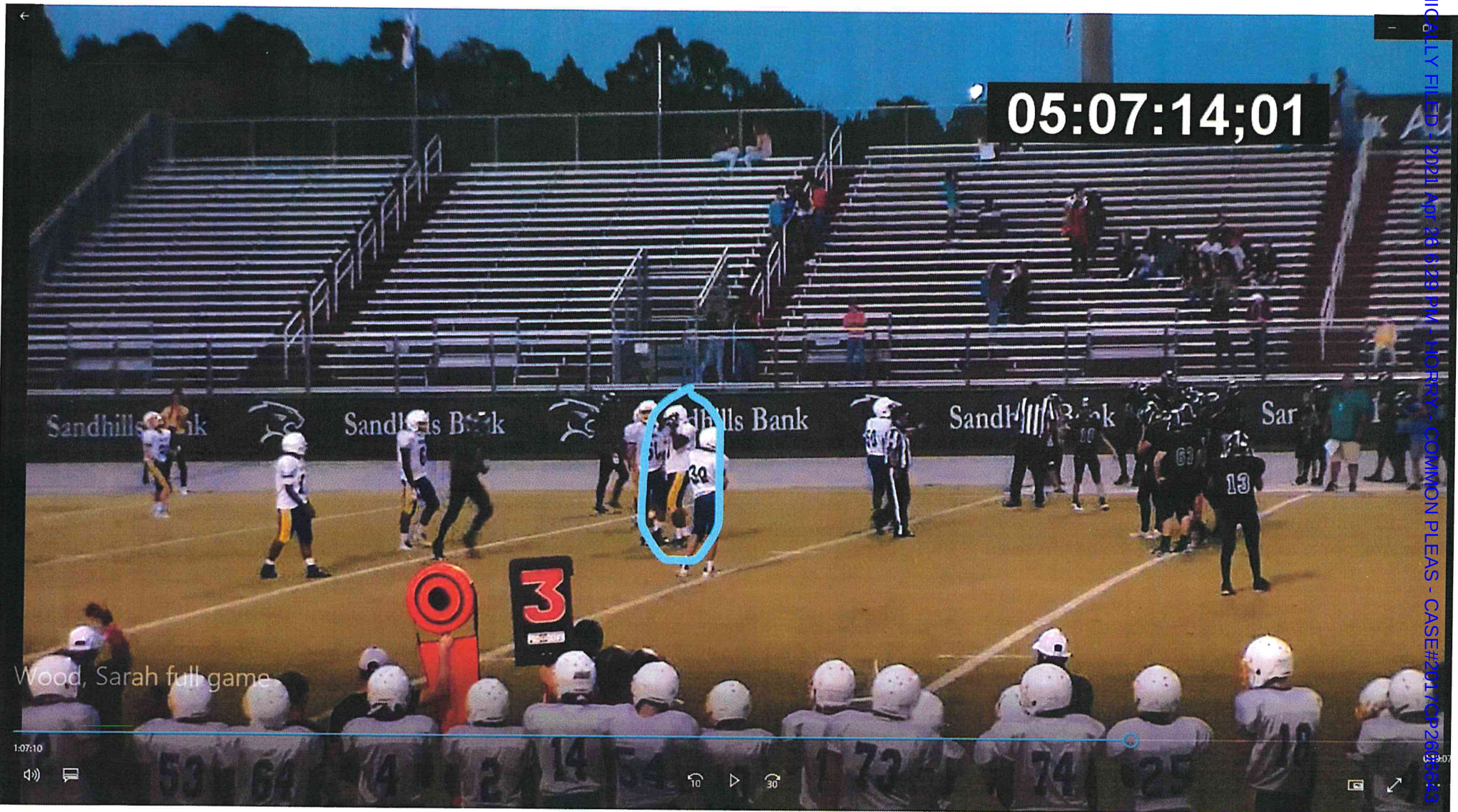
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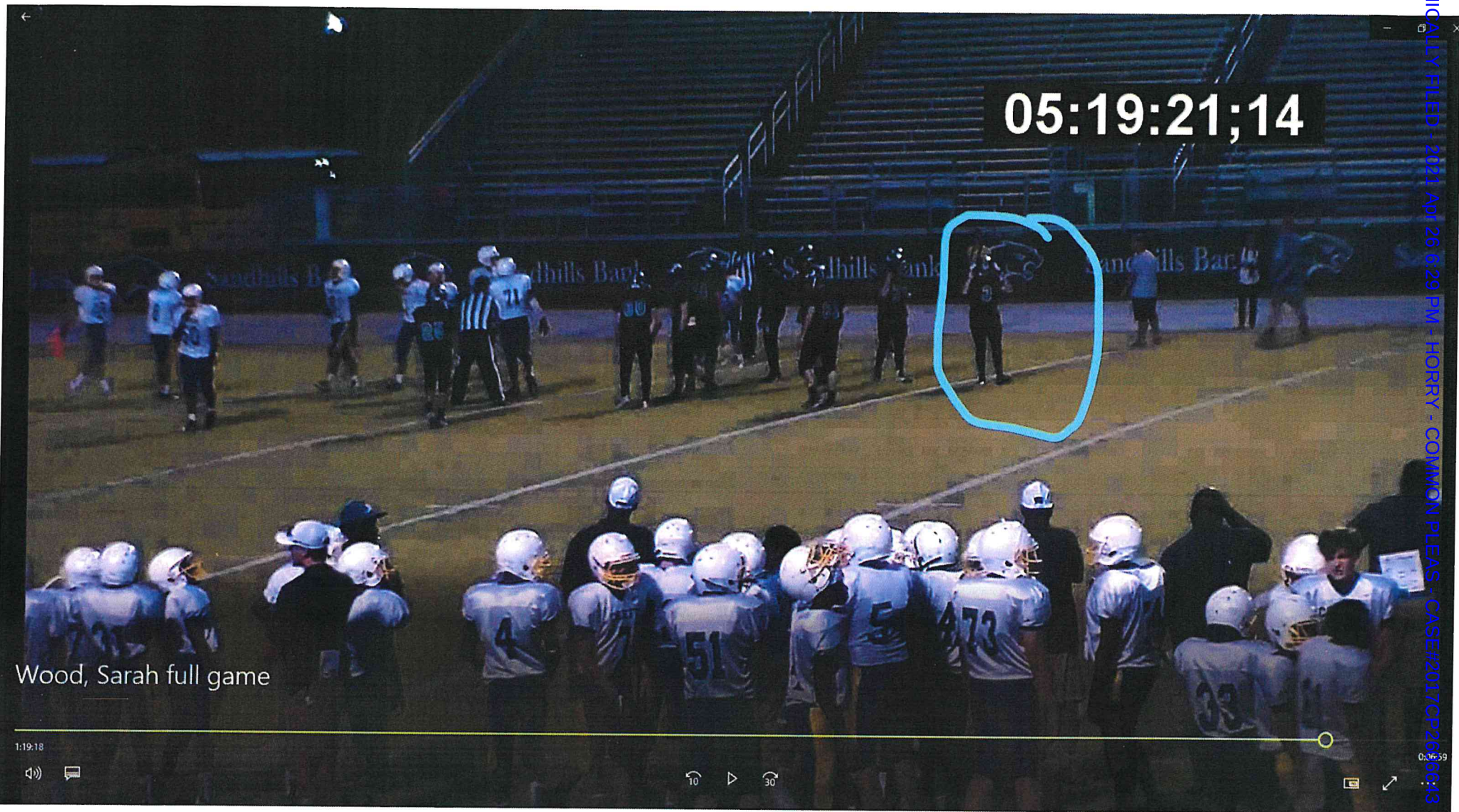
Wood, Sarah full game



Wood, Sarah full game







Wood, Sarah full game

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION 2017-CP-26-6643

LOGAN WOOD and SARAH WOOD,)
)
Plaintiffs,)
)
v.) PLAINTIFFS' AMENDED RESPONSE
) IN OPPOSITION TO DEFENDANT'S
) MOTION FOR JNOV/MOTION FOR
HORRY COUNTY SCHOOL DISTRICT,) NEW TRIAL ABSOLUTE/MOTION
) FOR REMITTITUR
Defendant.)
)
)
)
_____)

Come now the Plaintiffs, and hereby respond in opposition to the motion for judgment notwithstanding the verdict; for new trial absolute; or for remittitur filed by the Horry County School District. The Plaintiffs oppose the Defendant's motion and have addressed each point raised in the memorandum in turn below.

1. There Was Significant Evidence of Gross Negligence Before the Jury

The Defendant goes into great detail in pages 3-4 of its memorandum of law about what the Plaintiffs "contend" in this case, while ignoring what the jurors actually determined at trial. "[A] motion for JNOV under Rule 50(b), SCRPC, is a renewal of a directed verdict motion." Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006). In ruling on a motion for JNOV, the trial Court must view the evidence and its inferences in the light most favorable to the nonmoving party. This motion must be denied if either the evidence yields more than one reasonable inference or its inferences are in doubt. The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002).

The Defendant's contention that there was no evidence of gross negligence provided to the jury is simply inaccurate. The Plaintiffs provided the expert testimony of Rod Walters, a certified athletic trainer who testified about numerous, knowing violations of the standards for acceptable and safe operations in high school and middle school sports without objection by the Defendant. Not only did the Horry County School District fail to provide its own retained expert to counter the testimony of Rod Walters, the District also failed to move to qualify any of its own employees as experts although several employees were qualified by education, training, and experience to render expert opinions as non-retained experts. This was likely a conscious decision, as many of the District's employees including Kary-Anne Cyr, Joseph Quigley, Roderick White, and William "Keeter" Hayes provided testimony that was highly critical of the Defendant and its operations; was in many instances completely consistent with the testimony provided by the Plaintiff's liability expert; and which could potentially have led to judgment as a matter of law for the Plaintiff on liability had this testimony been provided by a witness qualified as an expert for the District. Indeed, the District's own employees were its harshest critics, in many instances providing testimony regarding specific deficiencies in the District's operations and management of sports related concussions that was more critical than the testimony provided by the Plaintiffs' own retained liability expert. Because the verdict was supported by substantial evidence of gross negligence that came into evidence through both a retained expert and through the testimony of several of the Defendant's *own* current and former employees and volunteer coaches, the finding of the jury should not be disturbed and the District's motion for JNOV must be denied.

2. After Receiving Considerable Evidence of Multiple, Separate Occurrences and Being Properly Charged on the Law Regarding Occurrences, the Jury Properly Found Two Occurrences

From outset, the jury heard testimony and was shown documents that were admitted into evidence which confirmed that Logan Wood's injury was the result of separate and distinct occurrences of gross negligence by the Defendant in this case. As detailed in the Plaintiff's pre-trial brief and cited in the Defendant's pre-trial brief, the South Carolina Supreme Court has held that state entities can be subject to *multiple* caps under the South Carolina Tort Claims Act in situations in which independent acts of negligence result in even a *single injury*. Boiter v. S.C. Dept. of Transp., 393 S.C. 123, 132, 712 S.E.2d 401, 405(2011). In Boiter, the Supreme Court reviewed a case involving allegations of independent acts of negligence by the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a stoplight. The South Carolina Supreme Court rejected the state defendants' argument that each allegedly separate act of negligence claimed by the Plaintiffs "was a part of the *same unfolding sequence of events* that resulted in the Boiter's damages." Id. at 133, 406. Instead, the Court held that "[w]e are persuaded that two independent and separate acts of negligence occurred here." Id. at 134, 406. In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained. Id. at 134, 406. As the Honorable R. Markley Dennis, Jr. further explained in 2014:

[t]he courts that have held that a single entity is NOT limited to a single occurrence where more than one state employee has committed separate acts of negligence supports the TCA's protection of employees from individual liability. For the state entity bears responsibility for the negligence of its employees, and since multiple employees cannot be sued for separate and distinct acts of negligence, it makes sense that the state entity can be held liable for each of the separate and distinct acts of negligence by each of its employees. Case law supports such a position.

(Doe 2 v. The Citadel, 2014 WL 8727884, at *31 (S.C.Com.Pl. Dec. 09, 2014)(citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010))(emphasis in original).

While Boiter involved allegations against two separate governmental entities, the prior South Carolina cases addressing the issue of “occurrences” as it is defined by the Tort Claims Act that were cited by the South Carolina Supreme Court in reaching its decision in Boiter both involved allegations of multiple, independent acts of negligence against *single* entities pursuant to the Tort Claims Act (in one case as applicable against a private, charitable medical facility pursuant to the South Carolina Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-180(A) which incorporates the Tort Claims Act damages caps and “occurrence” definition for non-governmental, charitable medical facilities). The South Carolina Supreme Court’s decision in Chastain v. AnMed Health Foundation, discussed in more detail below, has been widely cited over the last 11 years as the basis for requiring that the jury be properly instructed on the law regarding occurrences and required to make a finding of fact in cases in which evidence of multiple, distinct acts of negligence comes before the jury. 694 S.E.2d 541 (S.C. 2010). Although the plaintiffs in that case had filed separate claims against individual nurses, the jury found against the plaintiffs on their claims against individual employees, and the Supreme Court’s discussion regarding occurrences was related solely to the claim of multiple occurrences caused by the multiple, distinct acts of negligence by representatives of Defendant AnMed Health Foundation, a *single* medical provider subject to the tort claims act pursuant to S.C. Code Ann. §§ 33-56-180(A). As discussed in detail below, the Supreme Court held that the evidence suggesting multiple occurrences is an issue to be addressed in the jury charge and on the verdict form.

The second case referenced by the South Carolina Supreme Court in Boiter is Williamson v. South Carolina Ins. Rsrv. Fund, a case in which the plaintiffs alleged that two independent acts of negligence by two physicians employed by a single governmental entity (the Spartanburg County Services District, Inc., a political subdivision of South Carolina which operated the

Spartanburg Regional Hospital) resulted in a single, catastrophic injury to the plaintiffs' minor child. 355 S.C. 420, 586 S.E.2d 115 (2003). The Circuit Court made a specific finding that by establishing that the minor child's injury was caused by two independent acts of negligence by two separate physicians employed by a *single* governmental defendant, the plaintiffs "had established two separate 'occurrences' for purposes of the TCA." Williamson v. S.C. Ins. Rsrv. Fund, 355 S.C. 420, 423, 586 S.E.2d 115, 116 (2003). The South Carolina Supreme Court declined to address the Circuit Court's finding on appeal.

In the instant case, the Plaintiff presented expert testimony – as well as key concessions from the Defendant's own employees – during the trial in this matter. The evidence illustrated that Logan's permanent injury resulted from the independent, gross negligence of different sets of employees; taking place on different dates; and taking place at different locations. As an example, the evidence of separate occurrences of gross negligence included evidence that the executive personnel from the Horry County School District (located at District Headquarters on Four Mile Road in Conway) failed to act with slight care by implementing an inadequate and dangerous coverage model that left B-Team football players (who the District admitted were the most susceptible to permanent injury) without a trainer assessing its athletes during away games; that the lead trainer of Carolina Forrest High School (Kary-Anne Cyr), the officials officiating the October 20, 2016 game, and the coaching staff of North Myrtle Beach High School working the game at Carolina Forrest High School off of Highway 501 in Myrtle Beach on October 20, 2016 acted with gross negligence by failing to properly assess or secure a medical assessment for the Plaintiff nor the other two members of his team who suffered from severe injuries after it became apparent that each had sustained a severe injury; and that the athletic staff working at North Myrtle Beach High School in the town of Little River failed to train Logan's head coach and multiple

assistant coaches on the concept of post-concussive syndrome and second impact syndrome as required by the South Carolina concussion statute.

Contrary to Defendant's assertion that the number of occurrences presents a clear issue of law for determination by the Court, the South Carolina Supreme Court has further indicated the issue of occurrences is to be addressed in the Judge's charge and on the verdict form. See, Chastain v. AnMed Health Foundation, 694 S.E.2d 541 (S.C. 2010). To the extent that the Defendant suggests that there is any ambiguity in the jury's finding – which there is not – that ambiguity was created by the Defendant. During argument on motions made during trial, the Defendant argued that the question regarding the number of occurrences should not go to the jury for determination. This Court held otherwise. After this Court ruled against the Defendant regarding the jury making a finding as to the number of occurrences, the Defendant requested that *if the jury was going to make a finding on the number of occurrences as this Court had ruled*, then the jury should not be provided with a separate line on the verdict form on which to write in a numeral assigning the number of occurrences. Rather, it was determined that the jury was to make a separate finding as to each occurrence as detailed in separate interrogatories. After much discussion over the number of occurrences that were supported by the evidence and the wording of the interrogatories, as well as after concessions by each party, this Court prepared a verdict form to which neither party objected.

In completing the verdict form, the jury found for the Plaintiff that the first and second independent occurrences were supported by the evidence, and rejected the Plaintiff's allegations as to the third occurrence. As such, there was a finding of fact by the jury of two occurrences in accordance with the South Carolina Supreme Court's guidance in Chastain after a proper charge

on the law. Further, this finding was properly delivered by the jury on a verdict form to which the Defendant failed to lodge an objection to and which was based largely on the Defendant's input.

Every State and Federal Court to interpret Boiter and Chastain has ruled in accordance with this Court's decision to submit a dispute that is properly supported by the evidence regarding the number of occurrences to the jury for resolution. United States District Judge Cameron McGowan Currie noted in a recent trial court order:

[t]he South Carolina Supreme Court has held in Chastain that a plaintiff who alleges multiple occurrences, that is, there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, bears the burden of proving each occurrence. 694 S.E.2d at 543-44. This court is unable to find as a matter of law there was a single act of negligence here. If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence.

(Exhibit 1, Order in Knox v. United States of America et al., at Pages 10-11).

United States District Court Judge David C. Norton agreed, submitting the question regarding the number of occurrences arising under the South Carolina Tort Claims Act to the jury in 2019. (Exhibit 2, Verdict Form in W.S. v. South Carolina Department of Social Services, et al.). As referenced above, the Honorable R. Markley Dennis, Jr. held in 2014 that "[o]ur Supreme Court has determined that the burden to prove more than one occurrence rests on the plaintiff to be submitted to the jury through appropriate jury charges and the verdict form, and, accordingly, whether Plaintiff's claims involve a single occurrence or multiple occurrences is a question for the jury and not an appropriate determination to be made at summary judgment." (Doe 2 v. The Citadel, 2014 WL 8727884, at *30 (S.C.Com.Pl. Dec. 09, 2014)(citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010)).

In 2017, the Honorable J. Mark Hayes, II determined that the number of occurrences under the South Carolina Tort Claims Act was a factual issue to be submitted to the jury in the case of

Baby Girl Smith v. South Carolina Department of Social Services. (Exhibit 4, Verdict Form in Baby Girl Smith v. South Carolina Department of Social Services). Finally, in late 2019 the Honorable Roger E. Henderson determined that the number of occurrences under the South Carolina Tort Claims Act was a factual issue to be submitted to the jury in a case against a single state agency in which there was expert testimony of multiple occurrences of gross negligence which culminated in a single injury. See (Exhibit 5 and Exhibit 6 to the Plaintiff's pre-trial brief).

Finally, though telling but obviously not binding, even newly appearing defense counsel's long-time law partner who serves as lead outside counsel for a single South Carolina state entity recently conceded in open Court that it was a foregone conclusion that the jury is to determine the number of occurrences during a recent hearing in November 2020. During the hearing, the lawyer representing the singular state agency, who claims to have been involved in more trials involving one particular state agency than any other defense lawyer in the state, conceded on the record that there is a question of fact for determination by the jury as to the number of occurrences in several actions against the same agency he represents, noting:

I have tried more SCDC cases probably than anybody in the state. I'm not scared to try this case. I'm not scared to raise the occurrence issue. **I know it's a question of fact.**

See (Exhibit 7 to the Plaintiffs' pre-trial brief)(emphasis added).

As noted above, every South Carolina Court to apply Boiter and Chastain has held that a factual issue exists for submission to the jury when there is substantial evidence that multiple, independent occurrences of negligence or gross negligence resulted in a single injury. This Court properly held that the evidence presented at trial required that the issue of occurrences be submitted to the jury, and the submission was made by way of a verdict form to which the Defendant had no

specific objection. As such, there is no basis for this Court to overturn the jury's factual finding that two separate and distinct occurrences resulted in the permanent injury of Logan Wood.

3. No New Trial is Warranted

The Plaintiff further opposes the Defendant's assertion that a new trial is necessary pursuant to the "thirteenth juror" doctrine. The thirteenth juror doctrine "is a vehicle by which the trial court may grant a new trial absolute when [the Court] finds that the evidence does not justify the verdict." Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). As grounds for this request, the Defendant speculates wildly that the jurors ignored three full days of testimony detailing the gross negligence of its employees and instead relied solely on "**one to two seconds**" of videotape from the roughly one hour of video viewed by the jury. (Memorandum of Horry County School District at 14)(emphasis in original). Such an assertion defies both logic and reality, as the jury's review of videotape as lay people (rather than as athletic trainers or coaches with training in concussion spotting) followed detailed testimony from an expert in concussion protocols who described specific portions of the video as they were being played from his perspective as a state-certified medical professional and an expert in the field of athletic training. While the District criticizes the jury for failing to watch the remaining portions of the video, the District made no attempt to show **any** portion of the video during its case in chief. Further, it was stipulated that 20% of the plays from the second half of the game (the portion in which three major injuries to players on the North Myrtle Beach team occurred and the portion the District criticizes the jurors for failing to watch) was not included on the District's footage, and the jury did have the opportunity to view approximately one hour of footage which reveals that instead of walking the sidelines and assessing players as she was supposed to be doing, the only certified trainer present at the game instead spent her time shooting the breeze with friends and colleagues; eating ice

cream; and sending text messages. This speculation about what the jury relied on also fails to mention that the jury heard repeated admissions by current and former employees as to the shortcomings and extreme risks present in the District's operations which formed the basis of the jury's finding of two separate occurrences of gross negligence. For these reasons, the finding by the jury should not be disturbed and Defendant's motion must be denied.

4. Only One, Partial Reduction of the Award is Warranted Under South Carolina Law

Finally, the Plaintiff concedes that the finding of two occurrences by the jury instead of three occurrences warrants a partial reduction of the damages awarded to Logan Wood from eight hundred twenty-five thousand dollars (\$825,000.00) to the total of six hundred thousand dollars (\$600,000.00), but contends that a reduction to three hundred thousand dollars (\$300,000.00) as suggested by the District would be contrary to the law of South Carolina and the specific factual finding of the jury. Further, the Plaintiff contends that no reduction to the damages awarded to Sarah Wood is appropriate. Specifically, the jury's finding of two separate, independent occurrences results in two applicable caps of \$300,000.00 pursuant to the South Carolina Tort Claims Act. As such, the Plaintiff contends that Logan Wood's damages award should properly be reduced from eight hundred twenty-five thousand dollars (\$825,000.00) to six hundred thousand dollars (\$600,000.00).

The damages award for Sarah Wood warrants no reduction. Although Sarah Wood presented evidence of specific out-of-pocket expenses in the amount of \$10,907.00, she also testified that these were only partial invoices for the total expenses incurred prior to Logan's eighteenth birthday. Ms. Wood testified that her actual expenses for medical costs incurred by Logan prior to his eighteenth birthday for treatment related to his head injury were *at least* double those for which she provided specific payment records or invoices. She further testified that she

also had substantial additional expenses related to Logan’s medical care associated with his head injury prior to his eighteenth birthday, including significant time taken from work (as the sole working member of a single-parent household) as well as thousands of unreimbursed miles for travel throughout the state associated with Logan’s medical care. A parent may recover for loss of a child’s services and earning capacity, as well as “**other** pecuniary losses, **including** medical expenses incurred as a result of the injury.” Doe v. Greenville County Sch. Dist., 375 S.C. 63, 68, 651 S.E.2d 305, 308 (2007)(emphasis added). That the Supreme Court listed medical expenses as included within the category of “pecuniary losses” necessarily means that a parent’s recovery is not limited to medical expenses. Even if it were, the evidence presented at trial supports a finding of total expenses related to Logan’s medical expenses as a minor of \$25,000.00. As such, the jury was justified in awarding \$25,000.00 to Sarah Wood in connection with her claim for loss of parental services.

CONCLUSION

For the reasons set forth herein, the Plaintiff respectfully requests that the Defendant’s motion be denied, and that Judgment be entered for Logan Wood in the amount of six hundred thousand dollars (\$600,000.00) and for Sarah Wood in the amount of twenty-five thousand dollars (\$25,000.00).

Respectfully Submitted,

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Attorneys for the Plaintiff

May 5, 2021
Georgetown, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
 Logan Wood and Sarah Wood,	)	
	)	Civil Action No. 2017-CP-26-6643
Plaintiffs,	)	
	)	
v.	)	NOTICE OF MOTION AND
	)	MOTION FOR LEAVE OF COURT
Horry County School District,	)	TO DEPOSIT FUNDS INTO COURT
	)	
Defendant.	)	
_____	)	

TO: JAMES B. MOORE, III, SCOTT C. EVANS, JUSTIN LOVELY, AND AMY LAWRENCE, COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant Horry County School District will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Judicial Center, Conway, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 67, SCRCP, granting leave of court for the Defendant to deposit a sum equal to the judgments entered, plus accrued interest, with the Court during the pendency of the appeal which have been filed by the Defendant with the South Carolina Court of Appeals.

The Defendant's motion is based on the following:

1. On May 13, 2021, the Court entered a judgment in favor of the Plaintiff Logan Wood in the amount of \$600,000.00. On the same date, the Court entered a judgment in favor of the Plaintiff Sarah Wood in the amount of \$25,000.00. The Defendant filed post-trial motions which have been granted in part and denied in part by Circuit Court Judge William H. Seals, Jr.

The Defendant has now filed a Notice of Appeal with the South Carolina Court of Appeals. The Defendant seeks to deposit the sum of \$625,000.00, plus accrued interest, with the Court in accordance with Rule 67, SCRCP, during the pendency of that appeal.

2. Rule 67, SCRCP, authorizes a party to deposit the sum of a judgment into the Court upon notice to the other parties and with leave of court. The Supreme Court has held that "a judgment debtor may stop the running of interest by paying the amount of the judgment into court during the pendency of an appeal." *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895, 896 (1995). The South Carolina appellate courts have also concluded that Rule 67 serves a beneficial purpose. See, *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995); *Small v. Pioneer Machinery, Inc.*, 330 S.C. 62, 496 S.E.2d 884 (Ct. App. 1998).

The Defendant's motion is based upon the judgments entered on May 13, 2021; rules of court; and such other matters as may be properly presented to the Court at or prior to the time of the hearing.

Counsel for the Defendant has consulted with the Plaintiffs' counsel prior to the filing of this motion. The Plaintiffs' counsel indicated his clients' opposition to this motion and the relief requested.

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*Counsel for Defendant
Horry County School District*

May 26, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION 2017-CP-26-6643

LOGAN WOOD and SARAH WOOD,)
)
Plaintiffs,)
)
v.) PLAINTIFFS' RESPONSE IN
) OPPOSITION TO DEFENDANT'S
) MOTION FOR LEAVE TO DEPOSIT
HORRY COUNTY SCHOOL DISTRICT,) FUNDS INTO COURT
)
Defendant.)
)
)

Come now the Plaintiffs, and hereby respond in opposition to the Defendant's motion for leave to deposit funds into Court pending an appeal of the jury's verdict in this case.

The South Carolina Supreme Court has held that "[t]he granting of leave to deposit money with the court pursuant to Rule 67, SCRPC is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006). In a recent Order, South Carolina Circuit Court Judge Walton J. McLeod, IV further explained:

[b]ased on the plain reading of Rule 67, SCRPC, the court determines that a **defendant is not entitled to an automatic right** to deposit judgment funds with the court to avoid the accrual of the post-judgment interest as mandated in S.C. Code Ann. § 34-31-20 (2017). The notes to Rule 67, SCRPC indicate that the rule is "substantially" similar to the federal equivalent of the same rule. A federal district court determined that Rule 67, FRCP "is a matter committed to the sound discretion of the district court." *Cajun Elec. Power Cooperative v. Riley Stoker Corp.*, 901, F.2d 441, 445 (5th Cir. 1990); see also Roberts v. Peterson, 292 S.C. 149, 151-52, 355 S.E.2d 280, 281 (Ct. App. 1987) (noting that where a state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive to state courts interpreting the state rule) (internal citation omitted). Based on this

persuasive authority, the court finds that Rule 67, SCRCP leaves to the discretion of the trial court to determine whether to permit the deposit of the funds and stay the accrual of interest.

(Exhibit A), Davis v. Agape Nursing Rehabilitation Center, Inc., No. 2016-CP-32-00950, 2018 WL 6582084, at *2 (S.C.Com.Pl. Nov. 30, 2018)(emphasis added).

Plaintiff opposes Defendant's request to stay the accrual of interest, as it incentivizes Defendant to further delay this matter and to pursue a meritless appeal. As alluded to in the pre-trial brief, the Insurance Reserve Fund failed to negotiate in good faith during the mandatory pre-trial mediation in this case despite the young Plaintiff's desire to reach a compromise settlement. Following the verdict, the Plaintiff again invited the Defendant to participate in a new mediation following the verdict. Although this was recommended by trial counsel for the Defendant, the Insurance Reserve Fund disregarded the advice of counsel and shot down the Plaintiff's offer to mediate indicating that it preferred to pursue an appeal, thereby further delaying justice to a high school senior who has been waiting for five years for a resolution of this matter. With statutory interest in place and accruing, it may stimulate resolution of the appeal by preventing Defendant from continued delay and stonewalling.

South Carolina law mandates a judgment must draw interest according to statute. S.C. Code Ann. 34-31-20(B). "[W]hen a money judgment is affirmed upon an appeal taken by a judgment debtor, interest is generally allowed at the statutory rate from the date of the entry of judgment, notwithstanding the appeal, with the imposition of interest being viewed as a penalty for the improper retention by the debtor of the creditor's funds during the pendency of the appeal." 11 A.L.R.4th 1099 (1982). In other words, post-judgment interest serves to "compensate the judgment creditor for damages sustained by nonpayment of the judgment." Southeastern Freight Lines v. Michelin Corp., 279 S.C. 174, 176, 303 S.E.2d 860, 862 (1983).

Although Rule 67, SCRCF, provides an avenue for Defendants to ensure funds are available at the conclusion of a lengthy appellate process, the Court has discretion as to whether or not to permit the deposit of funds and stop the accrual of post-judgment interest. See notes to Rule 67, CRCP; Rule 67, FRCP¹. In reviewing whether to permit or deny Defendant's deposit request, Courts in other jurisdictions have considered a number of factors including: (1) whether the judgment debtor would be able to satisfy the judgment at a later date (See Qwest Corp. v. City of Portland, 204 F.R.D. 468 (D.Or. 2001)); (2) whether the depositor is likely to succeed on the merits when the motion to deposit is filed (See Precision Shooting Equipment Co. v. Allen, 646 F.2d 313 (7th Cir. 1981)); and (3) whether judgment debtor denies liability to the judgment (See Tarpey v. Crescent Ridge Dairy, Inc., 47 Mass. App. Ct. 380, 393, 713 N.E.2d 975, 984 (1999)).

All three factors weigh in the Plaintiff's favor. With regard to the first factor, the Defendant is both solvent and insured. As such, its ability to satisfy the judgment at a later date is not an issue. In situations where there is some question as to this factor, Rule 67 allows a litigant the discretion to consent to a motion to deposit funds. However, the Rule also provides a prevailing litigant with the flexibility to oppose such a motion in situations, as in the instant case, where the prevailing litigant will be prejudiced by the deposit of funds. With regard to the second factor, it is unlikely that the Defendant will succeed with its appeal on the merits. Few – if any – issues at trial were preserved for appeal, and those few issues that may have been preserved through contemporaneous objection involved issues on which there were clear questions of fact that were resolved by the jury, and thus are unlikely to be disturbed on appeal. With regard to the third factor, like the judgment debtor in Tarpey, the Defendant in this case not only contests the amount

¹ [I]n the absence of prior state law on a specific issue in question, federal cases interpreting the rule are persuasive.” Unisun Ins. v. Hawkins, 342 S.C. 537, 542, 537 S.E.2d 559, 561 (Ct. App. 2000).

of the verdict but also challenges liability. By discontinuing post-judgment interest, Defendant is incentivized to file and pursue an appeal, even if frivolous, because it avoids all risk associated with prolonged delay. Moreover, Defense and Appellate counsel are free to continue billing the Insurance Reserve Fund on an hourly basis as the case drags on over several years, while Plaintiff (who graduates from high school next month and has plans to work his way through trade school beginning in the fall) continues to incur litigation costs with no end in sight. Because Plaintiffs would be highly prejudiced by further delay and because the Plaintiffs are the only parties who have ever approached resolution in good faith, the Plaintiffs would respectfully request that Defendant's motion be denied.

Respectfully Submitted,

s/Scott C. Evans

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Attorneys for the Plaintiff

May 27, 2021
Georgetown, South Carolina

Exhibit A

2018 WL 6582084 (S.C.Com.Pl.) (Trial Order)
Court of Common Pleas of South Carolina.
Eleventh Judicial Circuit
Lexington County

Amy S. DAVIS as Personal Representative of the Estate of Utricia Shealy, deceased, Plaintiff,
v.
AGAPE NURSING REHABILITATION CENTER, INC., Agape Management Services, Inc.,
John Doe, Richard Roe Corporation, Jane Doe, and Mary Doe Corporation, Defendants.

No. 2016-CP-32-00950.
November 30, 2018.

Order Denying Leave to Deposit and Stay Accrual of Interest and Execution

*1 This matter came before this court on Defendants' Motion for Leave to Deposit and Stay the Accrual of Interest and Execution Pending a Ruling on Post-Trial Motions and any Appeal (the "Motions"). In their Motions, Defendants seek leave to deposit the amount of the sum of the judgment and accrued interest with the court and an order recognizing the stay of the accrual of interest and any execution upon the judgment pending the court's ruling on Defendants' contemporaneously filed post-trial motions to alter or amend the judgment and for new trial and the final resolution of any appeal that may be initiated in this action by either party.

PROCEDURAL HISTORY

Plaintiff commenced this personal injury action on March 16, 2016, following the purported negligent care and treatment of Utricia Shealy at Defendants' skilled nursing facility located in West Columbia, South Carolina. In accordance with [Rule 68, SCRCP](#) and [S.C. Code Ann. § 15-35-400 \(2017\)](#), Plaintiff filed and served her Amended Offer of Judgment on Defendants on February 1, 2017. Plaintiff's Offer of Judgment agreed to resolve all claims of the pending action against Defendants for the stated sum. Plaintiff's Offer of Judgment further advised she would move the court to award 8% interest computed on the amount of the verdict from the date of the offer if Plaintiff ultimately obtains a verdict at least as favorable as the rejected offer. Defendants did not accept the offer within twenty (20) days and, therefore, rejected the Offer of Judgment¹.

Beginning on October 22, 2018, this matter was tried before a jury in Lexington County, and after five (5) days, the jury rendered a verdict in favor of Plaintiff in the amount of Two Hundred Ninety-Seven Thousand Five Hundred Dollars (\$297,500.00) on October 26, 2018. The court executed the judgment via Form 4 Order on October 26, 2018, which was entered by the Clerk of Court on October 29, 2018.

In addition to the Motions at hand, Defendants filed a Motion for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial Absolute, or in the alternative, for a New Trial *Nisi Remittitur* on November 5, 2018. The court has ruled against the Defendants on these post-trial motions, which will facilitate Defendants' ability to perfect an appeal should Defendants so desire.

The issue before this court is whether the court may deny a defendant's request to deposit funds with the court and stop the interest on the judgment from accruing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendants argue that [Rule 67, SCRCP](#) grants Defendants the right to deposit the amount of the judgment obtained by Plaintiff into the account of the Lexington County Clerk of Court, which purportedly stays the accrual of interest. Defendants assert that because they wish to deposit the entire amount of the judgment, plus all accrued interest as discussed below, then there is no basis under [Rules 62 or 67, SCRCP](#) for the court to deny Defendants' request to deposit these sums. Defendants correctly identify that the pre-judgment interest rate under [S.C. Code Ann. § 15-35-400 \(2017\)](#) is a simple interest rate of eight (8) percent per annum. Therefore, the amount of pre-judgment interest accrued, from February 1, 2017, to October 26, 2018 (a period of 1.73 years), equals \$41,174.00. Additionally, [S.C. Code Ann. § 34-31-20\(B\) \(2017\)](#) and South Carolina Supreme Court Order 2018-01-04-02 provide that the post-judgment interest rate in the period of January 15, 2018, through January 14, 2019, is eight and one-half (8.5) percent. As a result, the current per diem interest rate on the judgment, beginning on October 27, 2018, equals \$69.28.

*2 The South Carolina Supreme Court has held that “[t]he granting of leave to deposit money with the court pursuant to [Rule 67, SCRCP](#) is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” [South Carolina Dept. of Transp. v. First Carolina Corp. of South Carolina](#), 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006) (internal citations omitted). However, the specific issue as to whether the court may refuse to allow a debtor to deposit money with the court and to stay the accrual of interest via [Rule 67, SCRCP](#) has yet to be addressed in the appellate courts of South Carolina. [Rule 67, SCRCP](#), in whole, provides:

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, **and by leave of court**, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. Money paid into the court under this rule shall be deposited as directed by the court in any bank or institution upon the check of the clerk of court in favor of the party to whom the order of the court directs.

(emphasis added).

Based on the plain reading of [Rule 67, SCRCP](#), the court determines that a defendant is not entitled to an automatic right to deposit judgment funds with the court to avoid the accrual of the post-judgment interest as mandated in [S.C. Code Ann. § 34-31-20 \(2017\)](#). The notes to [Rule 67, SCRCP](#) indicate that the rule is “substantially” similar to the federal equivalent of the same rule. A federal district court determined that [Rule 67, FRCP](#) “is a matter committed to the sound discretion of the district court.” [Cajun Elec. Power Cooperative v. Riley Stoker Corp.](#), 901, F.2d 441, 445 (5th Cir. 1990); *see also* [Roberts v. Peterson](#), 292 S.C. 149, 151-52, 355 S.E.2d 280, 281 (Ct. App. 1987) (noting that where a state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive to state courts interpreting the state rule) (internal citation omitted). Based on this persuasive authority, the court finds that [Rule 67, SCRCP](#) leaves to the discretion of the trial court to determine whether to permit the deposit of the funds and stay the accrual of interest.

The next issue is to determine the factors to be taken into consideration when deciding whether to allow the deposit. Again, South Carolina case law gives little guidance to the court as to the factors to specifically consider in this determination. However, courts in other jurisdictions have considered a number of factors including: (1) whether the judgment debtor would be able to satisfy the judgment at a later date (*see Qwest Corp. v. City of Portland*, 204 F.R.D. 468 470 (D.Or. 2001)); (2) whether the depositor is likely to succeed on the merits when the motion to deposit is filed (*see Precision Shooting Equip. Co. v. Allen*, 646 F.2d 313, 320 (7th Cir. 1981)); and (3) whether judgment debtor denies liability to the judgment (*see Tarpey v. Crescent Ridge Dairy, Inc.*, 47 Mass. App. Ct. 380, 393, 713 N.E.2d 975, 984 (1991)). The court finds these factors persuasive and applicable here.

The court also notes that the intent behind [Rule 67, SCRCP](#) is to benefit the judgment creditor in ensuring the funds will be available at the conclusion of a lengthy appellate process. [Russo v. Sutton](#), 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995).

The court in *Russo* further provided that “[t]he rationale for the rule is that a judgment creditor's appeal delays his [or her] right to the judgment, and the debtor, therefore, should not be required to pay interest.” *Id.*, at 443, 454 S.E.3d at 896 (internal citation omitted).

*3 In analyzing the first factor, the court has heard no allegation that Defendants would be unable to satisfy the judgment at a later date. Based on Plaintiff's insistence that the judgment not be deposited, it is clear that Plaintiff is not concerned about Defendants' ability to pay the judgment, with interest, upon the conclusion of the post-trial and appellate process. In analyzing the second factor, the court determines that the jury verdict and the court's denial of Defendants' post-trial motions speak directly to the merits of the case. In analyzing the third factor, it is clear that Defendants not only contest the amount of the jury verdict but also challenged liability itself for the judgment in their post-trial motions. Further, in contrast to the *Russo* case, Plaintiff did not ask the court for a judgment notwithstanding the verdict, for a new trial, for a new trial *nisi remittitur*, or appeal the judgment or award amount.

Therefore, denying post-judgment interest by depositing the funds with the Clerk of Court and staying the accrual of the funds would be prejudicial to Plaintiff. Plaintiff will not be penalized and denied post-judgment interest while the appellate court considers Defendants' case on appeal.

CONCLUSION

THEREFORE, based upon the foregoing, Defendants' Motions are **DENIED**. As a result, Defendants may not deposit the judgment, and the accrual of interest on the judgment shall continue pursuant to South Carolina law.

IT IS SO ORDERED.

Footnotes

- 1 The court acknowledges that Plaintiff filed a Notice and Motion for Costs and Interest Pursuant to Offer of Judgment. Although a ruling on the aforementioned motion would affect the total award amount at issue, the court will rule on the motion by way of subsequent order due to the differing analysis required.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
Logan Wood and Sarah Wood,	)	
	)	Civil Action No. 2017-CP-26-6643
Plaintiffs,	)	
	)	
v.	)	NOTICE OF MOTION AND
	)	MOTION TO ALTER OR AMEND ORDER
Horry County School District,	)	AND/OR MOTION TO RECONSIDER
	)	
Defendant.	)	
_____	)	

TO: THE HONORABLE WILLIAM H. SEALS, JR.

JAMES B. MOORE, II, SCOTT C. EVANS, JUSTIN LOVELY, AND
AMY LAWRENCE, COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Horry County School District will move before the Honorable William H. Seals, Jr. at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCPP, altering, amending, and reconsidering the Order filed on August 17, 2021. The Defendant's counsel received written notice of entry of the Order on that same date.

The Defendant's motion is based on the following grounds:

1. In its Order filed August 17, 2021, denying the Defendant's Motion to Deposit Funds, the Court did not consider or cite controlling South Carolina precedent. Specifically, in *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995), the Supreme Court held that "a judgment debtor may stop the running of interest by paying the amount of the judgment into court during the pendency of an appeal." 454 S.E.2d at 896. In reaching that ruling, which remains precedent, the Supreme Court looked at the law that pre-dated the adoption of the South Carolina Rules of Civil

Procedure, and explained as follows: "[I]n *Manning v. Brandon Corporation*, 163 S.C. 178, 161 S.E. 405 (1931), we recognized that a judgment debtor may prevent accrual of interest pending a creditor's appeal by paying the judgment into court, under an order of the court." 454 S.E.2d at 896. The Court in *Russo* then acknowledged the adoption of Rule 67, SCRCP, but concluded that "this rule is consistent with our holding in *Manning* that a debtor may prevent accrual of interest by depositing the funds under an order of the court." 454 S.E.2d at 897. In short, the Supreme Court recognized that the rule from *Manning* is longstanding and remains the law after the adoption of Rule 67.

In later opinions, the South Carolina Court of Appeals applied the rule from *Manning* and *Russo*. At no time has either appellate court waived from the rule in *Manning* and *Russo*, except where the post-judgment interest is required by contract or by statute. Neither exception is applicable here. The appellate courts have not recognized any other exceptions to the *Manning/Russo* rule. In fact, in *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000), the Court of Appeals described the rule from *Russo* as being "unmistakably clear." 529 S.E.2d at 569. The Court in *Duval* explained that "[t]he court of appeals is bound by the decisions of the supreme court. Where the law is unmistakably clear, this court has no authority to change it." *Id.* The same is true in the present case. The *Manning/Russo* rule is "unmistakably clear," and absent being overruled by the Supreme Court, the rule remains binding precedent that this Court, with all due respect, is required to apply.

On reconsideration, the Court is respectfully asked to consider and apply the *Manning/Russo* rule. The Defendant has complied with the requirements as set out in *Russo* and the "plain language of Rule 67 by giving notice to the other party and obtaining leave of the circuit court before depositing the funds with the clerk of court." *Small v. Pioneer Machinery, Inc.*, 330 S.C. 62, 496 S.E.2d 884, 885-886 (Ct. App. 1998).

2. Instead of relying on binding precedent from the South Carolina Supreme Court and the South Carolina Court of Appeals, the Court cites to two Circuit Court decision as controlling authority, namely *Davis v. Agape Nursing Rehabilitation Center, Inc.*, Civil Action No. 2016-CP-32-00950 (S.C. Com. Pl. Nov. 30, 2018), and *Hanna v. Boone*, Civil Action No.2010-CP-21-1044 (S.C. Com. Pl. Mar. 6, 2013). The decisions of another Circuit Court judge are not controlling precedent in any instance. It was clear error to rely on and cite to Circuit Court orders.

3. As its basis for denying the Defendant's Motion to Deposit Fund, this Court wrote: "The Plaintiffs in this case had the heightened burden of proving gross negligence. A jury in Horry County determined that the Plaintiffs met this burden. The jury also found that the injuries were very serious and life altering, as shown by an award well in excess of a single cap as established by the South Carolina Tort Claims Act. Under these circumstances, this Court finds that it would be unconscionable and/or fundamentally unfair to allow the Defendant to avoid interest during the pendency of an appeal." The Court therefore applied an unconscionability and due process (i.e., fundamental fairness) rationale for denying the motion, neither of which are grounds that were actually asserted by the Plaintiffs in defense of the motion. The Court, therefore, denied the motion on grounds it raised *sua sponte* after the hearing was completed and on which the Court did not allow for notice and an opportunity to heard by the Defendant as the moving party. The Court's ruling in this respect not only denies procedural due process to the Defendant but is also in contravention of the rule of law under our adversarial system which holds that "[i]t is an error of law for a court to decide a case on a ground not before it." *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462, 464 (Ct. App. 2004).

4. On the merits, the Court erred in considering the results of the case in assessing whether the judgment debtor is entitled or not to deposit funds with the Court under Rule 67. In practically every case where the judgment debtor seeks to pay the judgment into court, that party will be the losing party in the litigation – otherwise they would not be a judgment debtor. It should not be a valid consideration that the party objecting to the payment of the judgment into court was the prevailing party because that will almost always be the case. More importantly, it is inappropriate to use the type of case, the applicable burden of proof (negligence versus gross negligence), and substantive aspects of the case itself in deciding whether a judgment debtor is or is not entitled to pay the judgment into court. Those are factors that are subject to subjectivity. These are not factors that may be objectively applied so as to ensure that equal protection guarantees are not violated from one judgment debtor to another. The Court has essentially adopted an unconstitutional test – which has not been the basis in any reported decision in South Carolina – that actually violates due process and equal protection.

The Defendant's motion is based upon the pleadings filed in this case; the Order filed August 17, 2021; the rules of court; and such other matters as may be properly presented to the Court at or before the time of the hearing.

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Horry County School District*

August 27, 2021

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2017-CP-26-06643

SARAH WOOD,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	APRIL 12 - 15, 2021
HORRY COUNTY SCHOOL DISTRICT,	)	
	)	
Defendant.	)	
	)	

B E F O R E:

Honorable William Seals
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

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James B. Moore, III, Esquire
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Circuit Court Reporter

1	<u>I N D E X</u>				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	DR. MARSHALL WHITE				
4	By S. Evans	70			
5	By J. McLean		90		
6					
7	DR. OLIVER G. WOOD, JR.				
8	By J. Moore	100			
9	By J. McLean		109		
10					
11	JESSICA LOUIZA (By Deposition)				
12	By J. Moore	111		125	
13	By J. McLean		124		
14					
15	KARY ANNE CYR				
16	By J. Moore	129		160	
17	By J. McLean		150		
18					
19	RODERICK WHITE				
20	By S. Evans	163			
21	By J. McLean		169		
22					
23	WILLIAM KEETER HAYES				
24	By S. Evans	195		221	
25	By J. McLean		209		

1	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
2	RODWELL WALTERS				
3	By S. Evans	224		271	
4	By J. McLean		251		
5					
6	SARAH WOOD				
7	By J. Moore	274		338	
8	By J. McLean		320		
9					
10	RANDOLPH WAID				
11	By S. Evans	341			
12	By J. McLean		360		
13					
14	ANSLEE WOOD				
15	By S. Evans	363		380	
16	By J. McLean		379		
17					
18	LOGAN WOOD				
19	By J. Moore	381		407	
20	By J. McLean		397		
21					
22	KEITH WAGGONER				
23	By J. McLean	425			
24	By J. Moore		435		
25					

	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
1					
2	MATTHEW JOLLY				
3	By J. McLean	445			
4	By J. Moore		454		
5					
6	JOSEPH QUIGLEY				
7	By J. McLean	464			
8	By S. Evans		478		
9					
10	CLIFTON SHANE MCMAHAN				
11	By J. McLean	485			
12					
13	DR. JEREMY HERTZA (By video deposition)				
14		494			
15					
16					
17					
18					
19	-----				
20	Certificate of Court Reporter.....				581
21					
22					
23					
24					
25					

1	<u>E X H I B I T S</u>				
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
3	P1	McLeod Seacoast Records		X	76
4	P2	MUSC Records		X	76
5	P3	Dr. Daniels Pediatric Records		X	77
6	P4	Dr. Wood's Report		X	108
7	P5	Twitter Printout		X	204
8	P6	AT Today Article		X	206
9	P7	Sun News Article		X	207
10	P8	L. Wood's Physical Form		X	341
11	P9	L. Wood's School Records		X	280
12	P10	NMB Football Rules	X		289
13	P11	Medical Bill Summary		X	309
14	P12	504 Plan		X	314
15	P13	2020 504 Plan		X	314
16	P14	Picture of L. Wood		X	365
17	P15	USB - original game video		X	411
18	P16	USB - Edited game video		X	411
19	P17	TBI Pamphlet		X	496
20	P18	Mild TBI Pamphlet		X	496
21					
22					
23					
24					
25					

1	NO.	DESCRIPTION	ID	EV	PAGE
2	D1	Certificate of Completion		X	162
3	D2	Text messages		X	191
4	D3	Text messages		X	216
5	D4	Athletic Schedules		X	468
6	D5	USB of Dr. Hertza's video deposition		X	506
7					
8	CRT1	Jury Question	X		
9	CRT2	Jury Question	X		
10	CRT3	Jury Question	X		
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1 **THE COURT:** All right. Members of the jury, up to this
2 point in time you have been qualified to serve as jurors this
3 week. Now I need to ask you one more series of questions to
4 make sure that you're qualified to serve on a particular case.
5 In that regard I need for you to remember that you're under
6 oath and if any of these questions apply to you, I need you to
7 stand and please respond. You can respond out there or up
8 here, either way is fine with me, but I need for you to
9 respond.

10 The first case that we're going to try this week is the
11 case of Logan Wood and Sarah Wood versus Horry County School
12 District. In this regard, on October 14, 2016, fourteen-year-
13 old Logan Wood was an eighth grade student at North Myrtle
14 Beach Middle School and was on the B-team football team.
15 During an away game Logan allegedly suffered a brain injury.
16 In this regard Logan alleges that the Horry County School
17 District acted grossly negligent on several occasions and
18 seeks damages for his injuries. Horry County School District
19 denies these allegations.

20 Has any member of the jury panel talked to anybody about
21 this case, know anything about this case, read anything about
22 this case, heard anything about this? If you have any
23 knowledge at all about this case, please stand.

24 All right. And Mr. Logan Wood and Sarah Wood, if you
25 would both stand and turn and face the jury panel. All right.

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

45

2017-CP-26-06643

1 to be, you have to abandon those preconceptions and accept the
2 law as I give it to you. Then only when I tell you to begin
3 your deliberations will you take your findings of fact, couple
4 it with the law, and make a decision therefrom. There's a lot
5 of common sense in that process.

6 Furthermore, I want you to understand at no point in time
7 if we take a break, or you leave for lunch, or you go home
8 tonight and we're not done, do not research the case. Do not
9 discuss the case. The reason I tell you that is because it's
10 important that you have everything you need before you start
11 making a decision in this case. You need to hear from
12 everything the plaintiff has to tell you, everything the
13 defense has to tell you, and everything I have to tell you.
14 Once you have all of the ingredients and you're ready to begin
15 the deliberations I'll specifically tell you to being.

16 Furthermore, at any point in time if you need a break, if
17 you're hungry, if you're thirsty, you're hot, cold, what have
18 you, if you'll just kind of waive your hand and bring it to my
19 attention I'll make sure you're taken care of.

20 All right. With that being said, I'll recognize the
21 plaintiff for their opening statement.

22 **MR. EVANS:** May it please the Court?

23 **THE COURT:** Yes, sir.

24 **MR. EVANS:** Thank you, ladies and gentlemen, for being
25 here. What we're doing here today is something that is very,

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

46

2017-CP-26-06643

1 very rare. As Madam Clerk of Court indicated yesterday during
2 jury selection, there's very few cases that make it to this
3 stage. There's over 12,000 lawyers in this state and
4 thousands and thousands of cases that are filed in courthouses
5 across the state. This is the first jury trial to be tried in
6 all of 2021. The first jury trial to have been tried since
7 very early in 2020. And it's likely one of the very few cases
8 out of the tens of thousands that are filed every year that is
9 going to make it to this stage and be placed into the hands of
10 you ladies and gentlemen to render a verdict.

11 A civil case is something very different than what most
12 of us are accustomed to hearing about. Criminal trials are
13 all over the news every day. As we know in a criminal case
14 the burden of proof is proof beyond a reasonable doubt. It's
15 odd that we're here in a football case because any time I've
16 ever sat through and watched a civil trial the first thing
17 that the lawyers do is they talk about football because in a
18 civil case the burden is not beyond a reasonable doubt, it's
19 more likely than not. The analogy that's always used
20 regardless of what the case is about is that the plaintiff's
21 burden is not to get a touchdown, it's to break the 50-yard
22 line. More likely than not, just past the 50-yard line.

23 Now, my partner James Moore, Amy Lawrence, and I
24 represent 18-year-old Logan Wood. Logan, please stand real
25 quick. Logan is a senior at South Aiken High School, he

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

47

2017-CP-26-06643

1 graduates in May. We also represent his mother, Ms. Sarah
2 Wood, who is a teacher in the Aiken County School District.
3 Sarah has a very limited claim. You'll hear about that claim
4 later. Sarah's claim is limited to any medical expenses she
5 occurred before Logan's 18th birthday which happened last
6 April. He'll actually be turning 19 on Friday of this week.

7 We are here today because Logan suffered a mild but
8 permanent brain injury almost five years ago when he was
9 playing for the North Myrtle Beach B-team. Let me make it
10 clear right out of the gate, this is not an anti-football
11 case. As you may have guessed I played more than my fair
12 share of football. I'm from Summerville, South Carolina home
13 of Coach McKissick. Logan loves football, was built for
14 football. He was this size, just a few inches shorter but
15 this same weight when he was in the eighth grade. He was a
16 natural. His great uncle played in the NFL and broke several
17 records at Kentucky. You'll hear in just a few minutes from
18 one of my expert witnesses in the case, Mr. Rod Walters, who
19 is the former athletic trainer for the South Carolina
20 Gamecocks, who now works advising universities and school
21 districts in safe athletic training programs. We are not
22 anti-football here. However, if the very basic safety rules
23 of the game are not followed, there will be no more football.

24 We have heard more and more about concussions and the
25 rule is simple, one concussion happens. It happens all the

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

48

2017-CP-26-06643

1 time. There was another player on Logan's team who got a
2 concussion the very night that Logan got his multiple
3 concussions. But the rule is crystal clear, once you get a
4 concussion you stop playing because a second concussion after
5 you've already had on is catastrophic. Now, in fact our
6 state passes laws that say every school district is to go to
7 DHEC and use their guidelines to come up with their own safe
8 plan to prevent concussions. The state doesn't say the same
9 thing for neck injuries or knee injuries or wrist injuries,
10 but there's specific guidelines that each district is to
11 follow to prevent, identify, and to manage concussions.

12 A little bit of background about football -- if you can
13 go ahead and drop -- in South Carolina each high school
14 generally has three teams and they go in order. You start
15 with the B-team. The B-team is generally made up of eighth
16 and ninth graders. Here in Horry County it's exclusively
17 eighth graders. But they play for this high school team, it's
18 the entry level team. The next team is the JV team which is
19 generally made up of ninth and tenth graders. Finally you
20 have the varsity team which everybody strives to get on made
21 primarily of juniors and seniors.

22 Out on the field at every game there is a series of
23 coaches, assistant coaches, volunteer coaches. There's also
24 employed by every school in this district one or two athletic
25 trainers. An athletic trainer is different than a coach. An

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

49

2017-CP-26-06643

1 athletic trainer, like a certified nurses assistant for a
2 nurse is a medical professional licensed by DHEC. Unless
3 there happens to be a paramedic in the sidelines which
4 sometimes happens, particularly at the varsity games. The
5 athletic trainer is the only person out there on the sidelines
6 who's licensed by DHEC. As a medical professional they have
7 training on something called a differential diagnosis, which
8 is the same thing that happens when you walk into an emergency
9 room or to your doctor's office and tell somebody what's going
10 on. A medical professional does what's called a differential
11 diagnosis which means we look at the symptoms and we look at
12 the possible causes, which are the most riskiest and we make a
13 decision as to the course of action. It sounds simple but it
14 is very, very complex. People argue about proper diagnosis
15 all over the state in medical malpractice cases. It's a
16 complex concept but only a medical professional has training
17 on making a differential diagnosis.

18 We know that the district in Horry County has three
19 athletic trainers on each teams sidelines for every varsity
20 game. This team is going to be on these sidelines with one,
21 two, three athletic trainers. This team is going to be on
22 this sideline with one, two, three athletic trainers. Coming
23 down the list, at the JV games each team is going to have one
24 or two athletic trainers on each of their sidelines walking up
25 and down assessing the players. You'll hear that concussions

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

50

2017-CP-26-06643

1 is not something that's diagnosed from the stands with a
2 camera or with binoculars. A concussion is diagnosed by
3 walking through and interacting with players because most of
4 the signs of a concussion are not things you can pick up
5 unless you interact with and assess the player. You don't
6 know if a player is confused unless you ask that player some
7 questions. You don't know if a player is dazed or stunned
8 unless you talk with that player. So you can't just sit up in
9 the bleachers and spot a concussion.

10 Now, when we get to the B-team this district has made a
11 decision that for an away game our away team is going travel
12 without a trainer. So at an away game North Myrtle Beach,
13 Logan's school, is down here lined up on these sidelines
14 without a trainer. The home team, Carolina Forest/Ocean Bay,
15 Ocean Bay's Middle School's team coached by Carolina Forest's
16 coaches and trainers posted at Carolina Forest. They had a
17 trainer on their sidelines up in the corner. There was no
18 athletic trainer present for Logan's team.

19 What happened in this game? We know that this happened
20 to be a particularly brutal game. Looking at Logan's team,
21 the star quarterback broke his wrist, the star wide receiver
22 got a concussion, Logan chipped two teeth and had a separated
23 shoulder. Those are the type of injuries that happen in
24 football. You sign up for that. These things can't be
25 completely prevented. You've heard the old saying a dog just

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

51

2017-CP-26-06643

1 won a free bite. There's some things that you can't
2 completely guard against such as a concussion, a broken wrist,
3 some broken teeth. The problem is that Logan also received
4 additional head injuries after having a major concussion. We
5 know that the first and second quarter went fairly routine.
6 We know that shortly before halftime the video tape shows
7 Logan receiving a particularly hard hit known as a high-low.
8 It's an illegal hit but it's not something that looks like it
9 was intentional. A high-low or a tabletop is kind of like
10 something you see played out on the Three Stooges. It's where
11 somebody accidentally ends up or intentionally ends up on their
12 knees behind the player and somebody tackles them from the
13 front so their feet come out from under them as though they're
14 being knocked over a tabletop.

15 A little word on the video tape, there's some video tape
16 but not all. That's not the district's fault because the
17 district has the wife of an assistant coach taking some game
18 tape in the stands with an old-fashioned camcorder. The
19 purpose of that is not to create a permanent record, it's to
20 allow the coaches to have something to talk about at the very
21 next practice. This was a good tackle; this was a bad tackle.
22 It's grainy, it's from the top of the stands, and it's
23 incomplete. At least 20 percent -- there's time stamps on it
24 so we know when the video was taken and we know that the
25 assistant coach's wife missed about 20 percent of the plays

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

52

2017-CP-26-06643

1 for the second quarter. Most of the first quarter is there,
2 but a lot of the plays for the second quarter are missing, 20
3 percent. And it's not like you would see if you see something
4 on television. It's a camcorder with limited audio. And
5 unfortunately, it's not complete. What we do see, however, is
6 despite the fact that there was not a trainer on the sideline
7 assessing Logan, there's some signs on that limited tape that
8 are such that a trained athletic trainer had they been there,
9 even far up in the stands, should have seen.

10 Shortly after the game Logan jumped on the bus, made it
11 back to his locker room where he mentions to someone that his
12 ears are ringing, that he is sensitive to light. They start
13 talking to him and he doesn't know who he is or where he's at.
14 He's taken to the McLeod Seacoast Emergency Room in Little
15 River. He's diagnosed with a concussion. He's taken to see a
16 pediatrician the next day, Dr. Daniels, who at that time had
17 been practicing here in Horry County for 25 years. Dr. Fred
18 Daniels who was Logan's pediatrician. He recently retired and
19 has left the county; once he hit his 30th year he retired.
20 Dr. Daniels in his records indicates, in a record that I
21 anticipate you will see, that Logan had the most severe Post-
22 Concussive Syndrome symptoms that he had seen in his 25 years
23 treating children here in Horry County. He recommends that
24 Logan go down to the Medical University of South Carolina,
25 MUSC in Charleston, where he is under the care of a

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

53

2017-CP-26-06643

1 neurologist down there, Dr. Jessica Kline, for the next
2 roughly year and a half. Dr. Kline is also no longer in the
3 area. She is now working at Johns Hopkins where she teaches
4 medicine, the number one medical school in the country.

5 We're going to do our best to try and streamline this
6 case. We can't summon her from Baltimore to come down, or Dr.
7 Daniels to come up from south of Charleston County where he is
8 now retired. So we've got some other doctors that treated
9 Logan later in the process who will talk to you about their
10 treatment. There's no need to waste our time -- waste you
11 ladies and gentlemen's time talking about something that's
12 already in the medical records.

13 The district has their own expert. The district's expert
14 in this case, you'll be hearing from by video, and he does a
15 lot of teaching on brain injury. He talks about the fact that
16 the frontal lobe of the brain is something that is very
17 sensitive to concussion. If somebody gets a concussion
18 they're going to have damage to the frontal lobe of the brain,
19 this portion here. The reason for that is that, again this is
20 a slide that the district's expert uses when he's teaching
21 courses. This part of the skull is particularly sharp, so
22 when you end up with a concussion injury where your brain is
23 rattling against your skull this part of the skull is likely
24 to cause the damage. Dr. Hertza teaches that frontal lobe
25 injuries result in significant differences in neurobehavioral

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

54

2017-CP-26-06643

1 presentation. That depression is often associated with
2 frontal lobe injuries. Your I.Q. often remains the same but
3 when you have a frontal lobe injury Dr. Hertza, the district's
4 expert, says frontal lobes have more to do with how a person
5 uses intelligence than with intelligence itself. It's a
6 concept that's called executive function. It's your ability
7 to manage time, manage projects, stay on task. He teaches
8 that disinhibition, inappropriate affect, distractibility are
9 all common with frontal lobe injuries. Executive deficits,
10 problem with perseverance, poor word lists, repeating
11 statements, these are all things that happen when you get a
12 frontal lobe injury.

13 Dr. Hertza teaches that in reality patients with mild
14 traumatic brain injuries experience deficits significant
15 enough that they have difficulty completing instrumental or
16 even simple activities and functions. He said that a mild
17 traumatic brain injury is often referred to as Post-Concussive
18 Syndrome. Again, this is the district's expert. This is a
19 term you're going to hear again and again this week. He
20 teaches again in ** for frontal lobe damage, shares evidence
21 about what frontal lobe damage can look like in extreme
22 situations, and talks about some of the symptoms that you see.
23 Again, apathy, lack of spontaneity, impersistence. He also
24 goes on to share which we'll get to later in the case some
25 very scary statistics about certain risk factors that develop

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

55

2017-CP-26-06643

1 after a TBI, traumatic brain injury, such as a 530 percent
2 greater than normal risk of having bi-polar disorder, 130
3 percent greater risk of developing substance abuse, 580
4 percent greater chance of developing panic disorder.
5 Depression happens in 25 to 50 percent of TBI case, post TBI.
6 Psychostimulants are often needed post TBI. Verbal outbursts,
7 profanity, violence, aggression, personality changes, residual
8 deficits. In student athletes who have a traumatic brain
9 injury there's a higher mortality rate for children that are
10 adolescence. There's persistent neurocognitive deficits after
11 a pediatric TBI, impaired tactility or the ability of the
12 brain to change and develop is common with post traumatic,
13 excuse me, with traumatic brain injury. Again, this comes
14 from Mr. Hertza, the expert that the district has hired in
15 this case. We'll let him teach you ladies and gentlemen about
16 brain injuries and share his slides with you in more detail.

17 A couple words about how Logan, Logan's sister, and Sarah
18 fit into the district and why they were here. Logan was born
19 and raised outside of Lexington, Kentucky. His father is a
20 financial planner who is still in Lexington. His father is
21 unfortunately a problematic individual. In 2012 and 2013
22 Sarah and Greg Wood, Logan and Anslee's father, went through a
23 divorce. It was so taxing that a restraining order had to be
24 filed against Greg and the children and Sarah's whereabouts
25 were required by court order to be kept separate. The family

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

56

2017-CP-26-06643

1 stayed in Kentucky for one year after that was final and then
2 decided they wanted a fresh start. Sarah, who is a public
3 school teacher, had gone to the University of Kentucky for
4 undergraduate, however, she spent several years at Clemson
5 University. She got her masters there. She did some student
6 teaching while she was getting her masters, and she even
7 taught some courses at Clemson. Logan grew up a Clemson fan
8 rather than a Kentucky fan. And Sarah had friends that were
9 teaching here in the Horry County School District. So she
10 accepted a position in the spring of 2014 to move her
11 daughter, who was in high school, and her son, who was
12 starting the eight grade, down here to Horry County where she
13 got a job teaching in the public schools here in Horry County.

14 You might expect that when a member of the Horry County
15 Public Schools whose mother is also a teacher on good terms
16 with the Horry County Public Schools experiences an injury
17 like that that the district would rally to support one of
18 their own. What you'll hear is that even though we are right
19 here in the preeminent medical community in the State of South
20 Carolina, with Grand Strand Hospital, McLeod Seacoast, Conway,
21 and Tidelines all within the boarders of this county, the
22 district went 945 miles down the coast to Shreveport,
23 Louisiana to bring in an expert who said Logan's faking it.

24 They later hired an expert in Georgia to do some testing
25 of Logan. His testing was consistent with all of the testing

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

57

2017-CP-26-06643

1 that had been done by Logan's experts, but he said even though
2 Logan has signs of a frontal lobe injury that come from
3 objective tests that were performed over eight hours, I think
4 maybe his frontal lobe symptoms are caused by all of the
5 trauma with his dad. He said that after turning in a rough
6 draft of a report saying the opposite, which you'll hear about
7 in the video testimony.

8 You're going to hear from some folks from the district in
9 our case in chief. You're going to hear from a trainer over
10 at Carolina Forest, Jessica Foxworth. Jessica recently gave
11 birth to twins so she's going to be testifying vis deposition
12 which is where somebody testifies in front of a court reporter
13 before the trial takes place. That's one of the reasons we
14 are here on a case five years later. It's not like the old
15 days where parties took the stand and you hear what they had
16 to say for the first time. Generally almost every witness
17 who's going to come in here has been deposed, their statement
18 has been taken under oath in front of a court reporter. And
19 in some cases when they are no longer available to testify at
20 trial that's used in their place. So we know what Jessica's
21 going to state, it's going to be read it. She's going to say
22 I was the one who happened to treat the quarterback's broken
23 wrist and the start wide receiver's concussion. Not because I
24 was the Carolina Forest trainer on the sidelines, but because
25 they happened to run into me in the parking lot as they were

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

58

2017-CP-26-06643

1 walking to their bus and I was flagged down. You'll hear that
2 the quarterback with his broken wrist and the wide receiver
3 with his concussion had to spend the whole time waiting on the
4 sidelines because no trainer was in sight even though one was
5 supposed to be monitoring the game for the home team.

6 You're going to hear from Coach White who was the head
7 coach. Coach White is not teaching at his alma matter Andrews
8 High School in Georgetown County. At the time Coach White was
9 the head coach. You're going to hear from Coach White about
10 the fact that that night, October 20th of 2016, he was the
11 offensive lineman coach, responsible for all of the offensive
12 lineman. He was the quarterback coach responsible for
13 monitoring the quarterbacks, and he was also the head coach
14 who is responsible for monitoring all 65 players on the team.
15 And his job is to coach. He's not a medical professional, and
16 his job is not primarily to spot injuries, it's to coach the
17 team. And he said very honestly that as the head coach, the
18 offensive line coach, and the quarterback coach I've got zero
19 time to walk down this line and talk to my players during the
20 game and find out do you know what two plus two is, do you
21 know where you are, how are you feeling, are you dizzy.
22 That's not his job and he can't do that. He's going to
23 indicate that although he's taken some courses, the district
24 never gave him any training on some of the signs of concussion
25 such as holding your head or clutching your helmet during game

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

59

2017-CP-26-06643

1 play. He's going to testify that he didn't know and never
2 received any training about Second Impact Syndrome, the reason
3 it's so deadly and can cause permanent damage or death when
4 you get a second concussion after receiving your first. And
5 he's going to testify that we anticipate that he doesn't know
6 what Post-Concussive Syndrome is and the district didn't train
7 him on that.

8 You're going to hear from Ms. Kary-Anne Cry. She was the
9 trainer that was on the field for Carolina Forest. She's
10 going to say that she does know what clutching is or holding
11 the helmet. She does know what Second Impact Syndrome is, and
12 she does know what Post-Concussive Syndrome is and how serious
13 they are. But she has no recollection of the game, no
14 recollection of walking the sidelines with her own team to
15 assess her own players, and no recollection of ever walking
16 across the sidelines for Logan's team.

17 You're going to hear from a very respected individual in
18 this community name Keeter Hayes. Keeter is the athletic
19 trainer for Logan's team. He's a very dedicated man who
20 retired after 21 years recently serving as the athletic
21 trainer. He's going to tell you ladies and gentlemen we
22 anticipate based on his other testimony that he knows what a
23 differential diagnosis is. He knows what Post-Concussive
24 Syndrome is and Second Impact Syndrome and that they're
25 serious. And that he's concerned that two of his players were

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

60

2017-CP-26-06643

1 pulled out of that game, one for a broken wrist, one for a
2 concussion and couldn't get any treatment until they happened
3 to spot somebody in the parking lot. He's going to talk about
4 the fact that six months prior to Logan's permanent brain
5 injury he was on Twitter and he was on the local news saying
6 we need more help. We need more trainers. We are putting a
7 value on our student's lives and a value on our student's
8 health by not having enough coverage.

9 In response to that you'll hear that a couple changes
10 were made. That his assistant got a much needed raise,
11 however, she did not get any additional -- no additional
12 trainers came and nothing changed in terms of her job
13 responsibilities or her job duties. That in response to him
14 jumping on the local news giving a video taped interview,
15 posting his interview on Twitter that we need some help, he
16 still didn't get any additional coverage. And that he would
17 love to have him or an assistant there because it's the safer
18 thing to do.

19 You will hear from some experts for us in this case.
20 You'll hear from some of the assistant coaches we anticipate
21 who -- quite frankly we're not sure what they're going to say
22 because we didn't depose them. They'll be testifying for the
23 first time here on the witness stand. We don't know what
24 they're going to say but we do know as an assistant coach or a
25 volunteer coach it wasn't their job to spot and identify

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

61

2017-CP-26-06643

1 injuries. Their job was to coach the game or volunteer
2 coaching the game.

3 What are some of the defenses in this case we anticipate
4 you'll hear? That Logan knew the risk. Sure, Logan knew the
5 risk that he might get a concussion, but he did not know the
6 risk that he would get a permanent brain injury that he's
7 still traveling with to this day that you'll hear is not
8 likely to improve any further. The district says well the
9 other players came out. Rex Roupe, the quarterback, came out.
10 Anderson Boyers, the star wide receiver, came out which is
11 true. They came out only to wonder around the sidelines
12 without any treatment because the trainer couldn't be found.
13 They didn't get any treatment until they found a trainer
14 incidentally in the parking lot. Again, you'll hear well we
15 had a trainer present for the home team. However, that home
16 team trainer never made her way down to the away team
17 sidelines. You'll hear we know there's a concussion model and
18 we try to follow it, however, the first step according to our
19 state statute from DHEC is to identify a concussion which we
20 know was not done. And they will say that even if we were
21 reckless or negligent, which again they content that they were
22 not in all fairness. They contend that they complied with the
23 standard of care. But they would say that even if we were
24 negligent or reckless, we were only negligent or reckless on
25 one occasion and in one occurrence.

Opening Statement of Plaintiffs by Mr. Evans

Wood vs HCSD

62

2017-CP-26-06643

1 You'll hear from us that there were at least three
2 separate occurrences of gross negligence. Why is that? One
3 act of negligence happened over on Four Mile Road at the
4 district headquarters when the decision was made by the
5 executives for the district that that's okay, that we're all
6 right with having a trainer up here in the corner and no
7 trainer down here. That was a decision made at the district
8 level. There were some decisions made at Carolina Forest High
9 School that night. There was a made by the home team trainer
10 not to walk on down to this side and talk to some of these
11 players. There were individuals present, officials who work
12 for the district, coaches for other schools who work for the
13 district that didn't pick up on some of these signs, such as
14 the clutching of the head. That decision was made at Carolina
15 Forest High School. And finally, there was a decision that
16 was made at North Myrtle Beach not to make sure that Coach
17 White was not given full training on what is clutching, what
18 is Second Impact Syndrome, what is Post-Concussive Syndrome.

19 All in all you're going to be presented with two models
20 of coverage in this case, our model and the district's model.
21 Our model is this, at least one trainer on each side. The
22 district's model is one on one side is enough. The verdict in
23 this case will set the standard moving forward. So ultimately
24 you ladies and gentlemen will pick a model. You can pick our
25 model, one, two; or the district's current model, one. And

Opening Statement of Defendant by Mr. McLean

Wood vs HCSD

63

2017-CP-26-06643

1 ask yourself this question as you hear the evidence: Which
2 would you prefer? We'll try to keep this as brief as possible
3 and move as quickly as possible. And we thank you ladies and
4 gentlemen for your time.

5 **THE COURT:** All right. The defense is recognized.

6 **MR. MCLEAN:** Thank you, Your Honor. May it please the
7 Court? Thank you for the lights.

8 Good morning. I introduced myself to you yesterday. My
9 name is Joe McLean and I represent the Horry County School
10 District in this case. I want to thank you for your service
11 on this jury. I know this is not something that you
12 volunteered to do, but I hope that when it's over that you'll
13 look back on this experience and you'll say I'm glad it's over
14 but I'm glad I did it.

15 This is about a football game. You've heard from Mr.
16 Evans that this case is about a football game. Before I talk
17 about the football game, let me make a few introductions
18 please. Seated with me at counsel table is Roger Dixon. He
19 is the athletic assistant to the chief officer for support
20 services for Horry County Schools. That's a long title, he
21 serves as the athletic director for the school district. The
22 gentlemen on the end there with the blue blazer is William
23 Keeter Hayes. You heard his name mentioned by Mr. Evans.
24 Keeter is the retired head trainer from North Myrtle Beach
25 High School. The gentleman -- I should have done ladies

Dr. Marshall White - Direct Examination

Wood vs HCSD

70

2017-CP-26-06643

1 instructions on the law. Your roll is to hear -- to listen to
2 the evidence, listen to the testimony, look at the exhibits
3 and determine the facts.

4 Thank you for listening to me. Thank you for serving.
5 And again, when this is over I hope you look back, and this is
6 okay, I'm glad it's over but I'm glad I did it. Thank you.

7 **THE COURT:** All right. Thank you. If you'll call your
8 first witness.

9 **MR. EVANS:** Your Honor, the plaintiff calls Dr. Marshall
10 White.

11 **DR. MARSHALL WHITE, HAVING BEEN**
12 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 **THE CLERK:** If you'll state and spell your first and last
14 name, please.

15 **DR. WHITE:** Ma'am?

16 **THE CLERK:** If you'll state and spell your first and last
17 name for the court reporter.

18 **DR. WHITE:** Marhsall Allyn White. M-A-R-S-H-A-L-L A-L-L-
19 Y-N White W-H-I-T-E.

20 **DIRECT EXAMINATION OF DR. WHITE BY MR. EVANS:**

21 Q: Good morning, sir. Where is it that live and work?

22 A: I live in Mount Pleasant, South Carolina. I have three
23 offices in South Carolina. I have one in Charleston County,
24 one in Columbia, and one in Greenville.

25 Q: What is your profession?

1 A: I'm a neurologist.

2 Q: And how long have you been practicing medicine?

3 A: Thirty-five years plus.

4 Q: What is it that a neurologist does?

5 A: I'm a specialist in the treatment and evaluation of
6 patients with disease or injury to the brain, spinal cord,
7 peripheral nervous system and muscles.

8 Q: Okay. And where did you grow up and go to high school?

9 A: I went to Dreher High School in Columbia, South Carolina.

10 Q: Okay. And where'd you go to college?

11 A: I went to the Citadel.

12 Q: How about medical school?

13 A: I went to the University of South Carolina School of
14 Medicine.

15 Q: What is an internship?

16 A: And internship is the year after your -- after your
17 graduation from medical school. And that follows -- a
18 residency follows that where you specialize. An internship is
19 sort of a general process where you start out in one
20 direction.

21 Q: Where did you do both of those?

22 A: I did two internships. I did one in psychiatry at the
23 William S. Hall Psychiatric Institute in Columbia affiliated
24 with the University of South Carolina School of Medicine.
25 Then I transferred to the Medical University of South Carolina

1 to do neurology. They required me to do a second internship
2 in internal medicine before starting my neurology residency
3 which was another three years.

4 Q: Okay. Have you ever done any work practicing medicine
5 here in Horry County?

6 A: Yes. When I was a resident I moonlit at the Loris
7 Community Hospital. I also worked in Surfside Beach at an
8 Urgent Care and in the 1990's I worked with an orthopedic
9 group in Conway, Dr. Haskins, Yates, Pressler, and Mills. I
10 did electrophysiology at their practice to evaluate their
11 patients with nerve injuries or potential nerve injuries.

12 Q: Are you board certified?

13 A: Yes.

14 Q: What does that mean?

15 A: I've taken an examination and retaken examinations to
16 certify my base of knowledge in my field of specialty.

17 Q: And again, what field are you board certified in?

18 A: General neurology.

19 Q: Okay. And what is the Brain Injury Association of
20 America?

21 A: That's an organization that certifies practitioners who
22 work with brain injured patients. I'm also certified by the
23 Brain Injury Association of America.

24 Q: How many other physicians in South Carolina are certified
25 by the Brain Injury Association of America?

1 A: The last time I checked none other than myself.

2 Q: Okay. Have you reviewed all of the neurology and
3 pediatrician records for Logan Wood?

4 A: I have.

5 Q: Have you also examined and treated Logan Wood?

6 A: I have.

7 Q: Has your review and treatment allowed you to form certain
8 opinions about the care and treatment Logan Wood received?

9 A: Yes.

10 **MR. EVANS:** At this time, Your Honor, we would tender Dr.
11 White as the preeminent South Carolina expert in neurology.

12 **THE COURT:** Any objections?

13 **MR. MCLEAN:** No objection, Your Honor.

14 **THE COURT:** The motion is granted.

15 **BY MR. EVANS:**

16 Q: Dr. White, have you reviewed the testing, the neuropsych
17 testing done by Dr. Randy Waid in 2016 and 2017?

18 A: I have.

19 Q: What is that type of testing?

20 A: Neuropsych testing is administered to patients who may
21 have psychiatric or cognitive problems related to various
22 disorders. In this particular case, related to his traumatic
23 brain injury or concussion. It involves tests that evaluate
24 intelligence, visuospatial skills, one's emotional state,
25 language skills, things of that nature, so it's an extensive

1 battery of tests. Neuropsychologists may use different tests
2 based on their preferences, but it typically takes hours to
3 complete the testing and then a matter of weeks before the
4 psychologists does all of the tabulation and analysis of the
5 testing.

6 Q: Have you seen and reviewed and is it a part of your file
7 the McLeod Loris records, I'm sorry the McLeod Seacoast
8 records from the emergency department on October 20th of 2016?

9 A: Yes, sir.

10 Q: Now I've handed you a copy of those records. If you can
11 just skim this and let me know is this roughly the same
12 package that you received?

13 A: I would -- it looks like it without being a speed reader.

14 Q: Sure.

15 **MR. EVANS:** I'd like to mark this just for identification
16 as plaintiff's one.

17 **(PLAINTIFF'S EXHIBIT NUMBER ONE IS**
18 **MARKED FOR IDENTIFICATION ONLY.)**

19 **BY MR. EVANS:**

20 Q: Can you give us a thumbnail sketch as to what was found
21 by the emergency department?

22 A: They diagnosed him as having a concussion.

23 Q: Have you also had a chance to review the MUSC records
24 done by Dr. Kline?

25 A: I have.

1 Q: And I'm going to give you another copy. If you could
2 just take a look and see if this is roughly the same set.

3 A: It's probably easier to measure them. That looks to be
4 of an identical thickness.

5 **MR. EVANS:** I'd like to mark this as plaintiff's two for
6 identification.

7 **(PLAINTIFF'S EXHIBIT NUMBER TWO IS**
8 **MARKED FOR IDENTIFICATION ONLY.)**

9 **BY MR. EVANS:**

10 Q: Have you relied on Dr. Kline's records in later -- in
11 evaluating and then later treating Logan Wood?

12 A: Yes.

13 **MR. EVANS:** At this time, Your Honor, we would move the
14 MUSC records into evidence.

15 **THE COURT:** Any objection?

16 **MR. MCLEAN:** No objection provided that the record of
17 October 25, 2016 is included.

18 **THE COURT:** Do you want to check?

19 **MR. MCLEAN:** Very good. No objection with that
20 understanding. Thank you.

21 **THE COURT:** Thank you.

22 **MR. EVANS:** And if it's all right I'd like to go ahead
23 and move the McLeod records in as well.

24 **MR. MCLEAN:** No objection to the McLeod records.

25 **THE COURT:** So is that one, two, and three?

1 **MR. EVANS:** Just one and two, sir.

2 **THE COURT:** One and two are in evidence without
3 objection.

4 **(PLAINTIFF'S EXHIBIT NUMBERS ONE AND TWO**
5 **ARE ADMITTED INTO EVIDENCE.)**

6 **BY MR. EVANS:**

7 Q: If you can, Dr. White, if you can turn to the record that
8 starts at page 140.

9 A: I'm sorry, which record is that in?

10 Q: Oh, I'm sorry. The MUSC chart.

11 A: Okay.

12 Q: And I'll give you the copy that's actually marked.

13 A: They're bates stamped.

14 Q: Okay.

15 A: One four zero, all right, sir, I'm there.

16 Q: And then if you turn -- the record starts at page 140 and
17 then if you can turn to page 143.

18 A: All right, sir. I'm there.

19 Q: What was Dr. Kline's assessment of Logan?

20 A: Logan is a 14-year-old football player who sustained
21 multiple head injuries without loss of consciousness during a
22 game five days ago and has symptoms consistent with concussion
23 without loss of consciousness.

24 Q: Do you have any reason to disagree with that diagnosis by
25 Dr. Kline down at MUSC?

1 A: No, sir.

2 Q: Have you seen and have you reviewed the records of Dr.
3 Frederick Daniels, Logan's pediatrician here in in Horry
4 County?

5 A: I have.

6 **MR. EVANS:** I mark those for I.D. as plaintiff's three,
7 please.

8 **(PLAINTIFF'S EXHIBIT NUMBER THREE IS**
9 **MARKED FOR IDENTIFICATION ONLY.)**

10 **BY MR. EVANS:**

11 Q: And, Dr. White, does this look like it's roughly the same
12 set?

13 A: Yes, sir, based on the same thickness.

14 Q: And did you rely on these records in assessing and later
15 treating Logan?

16 A: Yes. Yes, sir.

17 **MR. EVANS:** At this time, Your Honor, we would move the -
18 - Dr. Daniels' pediatric records into evidence.

19 **THE COURT:** Any objections?

20 **MR. MCLEAN:** No objection.

21 **THE COURT:** All right.

22 **(PLAINTIFF'S EXHIBIT NUMBER THREE**
23 **IS ADMITTED INTO EVIDENCE.)**

24 **BY MR. EVANS:**

25 Q: Can you take a look at the first page of that chart? You

1 can just use this copy.

2 A: I've got it organized.

3 Q: What did Dr. Daniels say about Logan's symptoms, starting
4 down here.

5 A: In my 25 years of practice I've never encountered a
6 patient with such severe post-concussion symptoms.

7 Q: Do you have any reason, based on your independent review,
8 to discount or to discredit Dr. Daniels' opinion in treating
9 his patient?

10 A: No, sir.

11 Q: What's your general understanding of the course of
12 treatment that Logan went through down at the Medical
13 University?

14 A: It was a period of observation and basically making sure
15 that he didn't come to any additional harm. I think they
16 tried several medications to treat him.

17 Q: In your review of all of the records that are in your
18 file, did you find any physician or licensed professional that
19 disagreed at any point with Dr. Daniels' opinion or Dr.
20 Kline's opinion?

21 A: No, sir.

22 Q: Do you concur with the diagnosis of Dr. Kline?

23 A: Yes, sir.

24 Q: Have you had the opportunity to review Logan's school
25 records?

1 A: It's probably less.

2 Q: And do you still have an active practice where you
3 currently treat patients?

4 A: Yes.

5 Q: And when you came here this morning from Mount Pleasant
6 you don't get to treat those patients, right?

7 A: No, sir.

8 Q: Now as part of your initial evaluation, or as you said
9 IME, independent medical evaluation ---

10 A: Yes, sir.

11 Q: --- did you generate a report?

12 A: I did.

13 Q: Do you have that here with you today?

14 A: I do.

15 Q: And I'm not going to move that into evidence, but if you
16 could share with the ladies and gentlemen of the jury what
17 were the findings when you performed that IME?

18 A: I found that Logan's condition was consistent with a
19 traumatic brain injury.

20 Q: I brought a little model that I borrowed from a friend
21 here today. Dr. White, can you share with the ladies and
22 gentlemen of the jury what happens to the brain when you have
23 a brain injury.

24 A: May I stand?

25 **THE COURT:** Sure.

1 **BY MR. EVANS:**

2 A: The brain -- the brain sits inside the skull. It's
3 basically a jello-like organ. It does not have firm structure
4 at all. It does not have any structural support to speak of
5 within it, it's quite soft. The skull encases the entire
6 brain which is its protection. And then between the brain
7 itself and the skull there's cerebrospinal fluid and several
8 fibrous coverings that protect the brain, so there's basically
9 a hydraulic cushion of fluid around the brain which is the
10 cerebrospinal fluid. When one experiences concussion as has
11 already been discussed to some degree, the brain basically
12 bounces off of the skull. If you're moving in a certain
13 direction and you hit the forehead, you can see the brain
14 jiggles in the skull, and it can bounce or concuss off of the
15 skull which is hard, and it can bruise the brain. The brain
16 has about 85 billion neurons which are the thinking, working
17 brain cells, and then has another 85 billion or so support
18 cells. And those thinking cells are all over the cortex, or
19 the covering of the brain, and then they're connected to the
20 lower parts of the brain by what we call axons which are
21 basically little fine wires. And what happens when you get
22 this type of concussion is you get a microscopic shearing of
23 those connections and that's what can cause damage. The
24 frontal lobes as mentioned are particularly sensitive to this
25 type of injury because the front -- a lot of times impacts

1 Q: Okay. Do the records document where he was when he was
2 confused?

3 A: I don't think so, no.

4 Q: Do the records ---

5 A: Physical? You're referring to physical location?

6 Q: Where was Logan? Do the record reflect where Logan was
7 physically located when he was confused after the game?

8 A: Not that I can recall.

9 Q: Do the records reflect how long it was after the game
10 that Logan was confused?

11 A: I don't think anybody knows. If you don't check -- if
12 you don't check, you don't know. For example, it may have
13 been the first time that he was checked in the locker room
14 when he got back to school and went under the bright lights.
15 I would suspect that it just didn't start because he walked
16 into a bright room. He must have been concussed prior to that
17 and had somebody been evaluating him they would have known
18 that. So I think it's -- I think it's ridiculous to state
19 that he didn't develop any symptoms until he got back to
20 school. It doesn't happen that way, I'm sorry to say.

21 Q: Do you agree that symptoms of a concussion may not always
22 be immediately apparent and may not show up for hours or even
23 days after the injury causing event?

24 A: Yeah. I stated that in my deposition, yes. But in this
25 particular case I don't think that's plausible.

1 other attorney step in as the witness just to read it, so
2 you'll get a good feel for it.

3 **MR. EVANS:** And, Your Honor, the next witness we would
4 call is Jessica Foxworth Loaiza and we call her by way of
5 deposition.

6 **THE COURT:** Thank you.

7 **REPORTER'S NOTE:** (Deposition transcript of Jessica
8 Loaiza as read into the record by Mr. Evans and Mr. McLean as
9 questioning attorneys and Mr. Moore for Ms. Loaiza.)

10 **JAMES B. MOORE III, HAVING BEEN**
11 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **DIRECT EXAMINATION OF MS. LOAIZA AS READ BY MR. MOORE BY**

13 **MR. EVANS:**

14 Q: Good morning.

15 A: Good morning.

16 Q: My name is Scott Evans. I represent Logan Wood in
17 this case. A couple of ground rules as we get started.
18 As Joe mentioned, everything is going to be taken down by
19 Madam Court Reporter and is going to be taking down the
20 question and then the answer, which is not how English
21 speakers talk. And if at any point I say, well let me
22 finish my question or is that a yes or a no, I will have
23 known exactly what you mean, but it's just the format is
24 a little strange. So to make sure we keep it question and
25 answer, we'll try to build in a little pause.

1 A: Okay.

2 Q: If you don't understand one of my questions,
3 particularly since we're all wearing masks this morning,
4 please let me know. I will be happy to rephrase it. We
5 can take any breaks that you'd like. This won't take long
6 this morning. If you need anything during the course of
7 the deposition, please let me know.

8 A: Okay.

9 Q: You mentioned that -- some of the documents that we
10 have has you listed as Jessica Foxworth and you've since
11 gotten married?

12 A: Uh-huh. (Affirmative response.)

13 Q: Can you tell the court reporter your new last name
14 and spell that, please?

15 A: It is Loaiza. L-O-A-I-Z-A.

16 Q: And you mentioned that at school you're normally
17 just known as "Jess"?

18 A: Uh-huh. (Affirmative response.)

19 Q: Would you mind if I call you Jess this morning?

20 A: No, that's fine.

21 Q: Jess, where are you from?

22 A: Latta, South Carolina.

23 Q: And where did you go to college?

24 A: Winthrop University.

25 Q: And what did you study?

1 A: Athletic training.

2 Q: Is that a bachelor's degree? I'm sorry. Is that a
3 Bachelor of Science degree?

4 A: Yes.

5 Q: In athletic training?

6 A: Yes.

7 Q: When did you finish at Winthrop?

8 A: In 2014.

9 Q: What was your first job once you got out of Winthrop
10 in your field?

11 A: At Carolina Forest High School.

12 Q: What position were you hired as?

13 A: The first year I was the assistant, but as a
14 stipend. And then after my first year, I was the full-
15 time assistant.

16 Q: Now, when you say assistant with a stipend, that
17 meant you also had teaching responsibilities?

18 A: No. It was just a stipend only.

19 Q: So was that a part-time position?

20 A: Uh-huh. Yes, sir.

21 Q: And then when did that change?

22 A: The first year was the 2015-2016 school year. So
23 that was the stipend, and then the 2016-2017 school year
24 I was a full time.

25 Q: Did you also have any teaching responsibilities?

1 A: No, sir.

2 Q: Now, were you hired as athletic trainer or assistant
3 athletic trainer?

4 A: Assistant athletic trainer. It's a technical term.

5 Q: Are you licensed by DHEC as a certified athletic
6 trainer?

7 A: Yes.

8 Q: With whom were you working when you started?

9 A: Directly Kary-Anne Chiarizio. Now Cyr is her last
10 name.

11 Q: She would be the head trainer?

12 A: Yes.

13 Q: Is she also a certified athletic trainer?

14 A: Yes.

15 Q: To become certified, what do you have to do?

16 A: You have to sit for a national exam. It's called
17 the Board of Certification exam. You have to pass it and
18 then to become licensed in your state you have to submit
19 those records to the state and become licensed. And then
20 every two years you have to resubmit continuing education
21 units to maintain your certification.

22 Q: When did you take that board exam?

23 A: The summer of - the summer after 2014.

24 Q: And is it a nationwide exam? It's not state
25 specific?

1 A: Yeah, it's nation.

2 Q: Do you also have to have a degree in a certain - do
3 you also have to have a degree in a certain field to be
4 able to sit for that exam?

5 A: Athletic training specifically.

6 Q: And being licensed by DHEC, are you actually
7 considered a health care professional?

8 A: Yes.

9 Q: Is there anyone other than the head trainer employed
10 with Carolina Forest that's a health care professional?

11 A: The nurses. That's really all I know of.

12 Q: And do the nurses have any role with athletics other
13 than, say, treating on campus after the fact?

14 A: No. They usually won't even do that. They will
15 refer them to us.

16 Q: So nurses don't come to the games or anything like
17 that?

18 A: No.

19 Q: And the nurses don't have any responsibility for
20 assessing the players during a game?

21 A: No.

22 Q: Is that the responsibility solely of the athletic
23 trainer and assistant athletic trainer?

24 A: Assessing, yes. The coaches and the officials are
25 usually looking out for an injury or possible injury, but

1 actually assessing the individuals are the athletic
2 trainers.

3 Q: Do you assist with any of the training programs or
4 individual exercise programs for the players?

5 A: What do you mean? I'm not sure what you mean.

6 Q: Coming up with special workouts for a player that's
7 been injured or something like that.

8 A: Oh, yes. We do the rehabilitation programs for the
9 kids that have been injured.

10 Q: Do you have any role in setting the practice drills
11 or anything like that?

12 A: No.

13 Q: So it would only be for somebody that's previously
14 been assessed and sort of needs a rehab program?

15 A: Yes.

16 Q: Specifically in football, how do you assess the
17 players during a game?

18 A: We are on the sidelines for all of the football
19 games. So we are directly right there with the kids if
20 there's an injury that either one of the kids or the
21 coaches come and let us know, and then we go from there
22 as far as assessing. We usually pull them over to our
23 gator, which we leave parked right there as well, and
24 then go through a full assessment with them.

25 Q: A gator, would that be like a John Deere sort of ATV

1 vehicle?

2 A: Yes.

3 Q: Now, the game that Logan was involved in happened on
4 October 20, 2016, and it was a B team game between
5 Carolina Forest and North Myrtle Beach. Now, I know it's
6 been almost four years. Do you have any specific
7 recollection of that evening?

8 A: Not specifically, no. Other than what my texts said
9 indicating to Keeter Hayes after the game. But no.

10 Q: Do you know Keeter Hayes personally?

11 A: Yes.

12 Q: Did you actually remember sending those texts to him
13 until you saw them?

14 A: Not until I saw them, no.

15 Q: And do you remember anything about what happened in
16 that game?

17 A: I wasn't actually at the game. I was on campus for
18 the JV students that were about to take the field and the
19 varsity practice. Kary-Anne was covering the actual
20 game.

21 Q: Did you ever actually come to the sidelines during
22 that B team game?

23 A: Not that I remember.

24 Q: So you were covering varsity practice and the JV
25 game?

1 occasions have you assessed a player for a concussion?

2 A: Over 100 at least.

3 Q: And out of those 100, you can only think of one that
4 had treatment for post-concussive syndrome?

5 A: Yes, sir. Most of them resolved within a couple of
6 weeks.

7 Q: Walk me through the concussion protocol if you
8 suspect a player has received a head injury during play.

9 A: During play, they're pulled automatically. They are
10 not going back in the game the rest of the evening. If
11 they have severe symptoms as in loss of consciousness,
12 they are vomiting, they are very unaware where they are
13 at, one of the more extreme symptoms that would indicate
14 a brain bleed, then we're automatically referring them to
15 the hospital that night.

16 If they have one of the minor symptoms, sensitivity
17 to light, something along those lines, they are pulled
18 from the rest of the game. We talk to the parent. We do
19 an on-site evaluation. Send them home. We have a
20 printout of the things that are more severe to look out
21 for. If any of those things arise throughout the night,
22 they need to take them to the emergency room right then.
23 The things that are kind of normal to expect, and that we
24 follow up with them the next day.

25 We always tell them if they don't feel like coming

1 to school, let us know. And then we'll make arrangements
2 as far as attendance and that kind of thing goes. And
3 then we always refer them to usually Dr. Feathers. He is
4 the doctor that we use through the county for
5 concussions. If the parents would rather see their
6 pediatrician, then we go the same route, but we always
7 make sure they see a physician.

8 Q: Do you know what type of doctor Dr. Feathers is?

9 A: He is an orthopedic, but he specializes in
10 concussions as well.

11 Q: Why is it important that the students be taken from
12 play?

13 A: Because repetitive blows to the head can cause
14 further damage, as well as Second Impact Syndrome.

15 Q: And Second Impact Syndrome can be very serious, can
16 it not?

17 A: Correct.

18 **CROSS EXAMINATION OF MS. LOAIZA AS READ BY MR. MOORE BY**

19 **MR. MCLEAN:**

20 Q: Jessica, I have just a couple. I think Scott has
21 covered everything. But I do want to ask you, in
22 addition to athletic trainers, are there other athletic
23 staff or personnel that are charged with the
24 responsibility of looking out for injuries to student
25 athletes?

Kary Anne Cyr - Direct Examination

Wood vs HCSD

129

2017-CP-26-06643

1 I'll do it.

2 **THE COURT:** All right.

3 **REPORTER'S NOTE:** (End of bench conference.)

4 **THE COURT:** If you'll call your next witness.

5 **MR. MOORE:** Thank you, Your Honor. The plaintiff calls
6 Ms. Kary-Anne Cyr as our next witness.

7 **KARY-ANNE CYR, HAVING BEEN**
8 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

9 **THE CLERK:** Please state your first and last name.

10 **DIRECT EXAMINATION OF MS. CYR BY MR. MOORE:**

11 Q: Good afternoon, Ms. Cyr. My name is James Moore. We've
12 never met before. I am one of the attorneys that represents
13 Logan Wood. Thank you for being here this afternoon.

14 A: Sure.

15 Q: Can you please state your name and identify yourself to
16 the ladies and gentlemen of the jury?

17 A: My name is Kary-Anne Cyr K-A-R-Y - A-N-N-E. My last name
18 is Cyr C-Y-R. I am the head athletic trainer at Carolina
19 Forest High School.

20 Q: I understand that you're a certified athletic trainer; is
21 that correct?

22 A: Yes, sir.

23 Q: And you're employed by the Horry County School District?

24 A: Yes, sir.

25 Q: And you were an athletic trainer for Carolina Forest High

1 School in October of 2016?

2 A: Yes, sir.

3 Q: And the jury just heard testimony from Jessica Foxworth.
4 I understand that she was your assistant during that time
5 period?

6 A: Yes, sir.

7 Q: Would it be fair to say as a trainer, Ms. Cyr, that your
8 primary roll is injury recognition, injury prevention, and
9 injury rehabilitation?

10 A: That's correct.

11 Q: And we're here today because Logan suffered a brain
12 injury in October of 2016, the game that you served as a
13 trainer. Are you familiar with Second Impact Syndrome?

14 A: Yes.

15 Q: Can you please describe to the ladies and gentlemen of
16 the jury what Second Impact Syndrome is?

17 A: Essentially it's getting a second concussive blow to the
18 head after sustaining a first one and not completely healing
19 from it.

20 Q: And should all concussions be treated seriously?

21 A: Yes.

22 Q: And based on the serious nature of concussions, is it
23 critically important to pull a player immediately from a game
24 if it is suspected that that player may have suffered a
25 concussion?

1 A: Absolutely.

2 **MR. MCLEAN:** Object to speculation. Object to the use of
3 the word suspected. I think that's an improper question for
4 this witness.

5 **THE COURT:** Why don't you rephrase your question?

6 **MR. MOORE:** Sure, Your Honor.

7 **BY MR. MOORE:**

8 Q: Is it critically important to pull a player from the game
9 if you believe he or she may have suffered from a concussion?

10 A: Yes.

11 Q: And if a player isn't pulled from the game immediately
12 can a second hit or a second impact cause Second Impact
13 Syndrome?

14 **MR. MCLEAN:** Objection. Immediately, I think everything
15 is relative here, it's an unfolding of events.

16 **THE COURT:** Why don't you rephrase the question?

17 **BY MR. MOORE:**

18 Q: If a player is not pulled from a game after suffering
19 from what could be a concussion, can that cause Second Impact
20 Syndrome?

21 A: To my belief, yes.

22 Q: And is Second Impact Syndrome dangerous?

23 A: Yes.

24 Q: Can it cause permanent injury?

25 A: To my knowledge, yes.

Kary Anne Cyr - Direct Examination

Wood vs HCSD

132

2017-CP-26-06643

1 Q: Can it cause permanent disability?

2 A: To my knowledge, yes.

3 Q: Can it lead to death?

4 A: Yes, to my knowledge.

5 Q: And would it be fair to say as an athletic trainer that
6 you were the only medical professional on the field?

7 A: Yes, to my knowledge.

8 Q: And as a trainer would you be the only person on the
9 field with the credentials to medically assess a player?

10 A: Yes.

11 Q: And referees aren't medical professionals; are they?

12 A: Not that I'm aware of.

13 Q: And coaches aren't medical professionals; are they?

14 A: Also not that I'm aware of.

15 Q: And the primary roll of a coach is to coach the athletes,
16 correct?

17 A: I believe that to be true.

18 Q: And do you know any of the coaches at the time that were
19 present during Logan's game?

20 A: I do not.

21 Q: And do you have any idea what training they may or may
22 not have?

23 A: As far as I know all of our Horry County School coaches
24 have to go through courses called NFHS learn and CPR and AED
25 certification.

1 district from the person who is the most knowledgeable about
2 that particular question. What I would like to do is to read
3 the district's official response to a series of questions
4 involving the coaches' obligations during these games.

5 **REPORTER'S NOTE:** (Whereby answers to request to admit
6 are published to the jury.)

7 **MR. MOORE:** As you can see this response that came from
8 the school district's attorney is dated March 23rd of 2021, so
9 this was less than a month ago.

10 The question was: Admit that the head coach from the
11 North Myrtle Beach B-team on October 20th, 2016 had not
12 received training from the Horry County School District on
13 Post Concussive Syndrome. And the official response was
14 objection. This request assumes a duty of care that did not
15 exist and was beyond the scope of responsibility of coaching
16 staff. Without waiving these objections, this matter is
17 admitted.

18 The second question that was asked to the district was:
19 Admit that the head coach for the North Myrtle Beach B-team on
20 October 20th, 2016 had not received training from Horry County
21 School District on Second Impact Syndrome. And the official
22 response from the school district was objection. This request
23 assumes a duty of care that did not exist and was beyond the
24 scope of responsibility of coaching staff. Without waiving
25 these objections, this matter is admitted.

1 Your Honor, I would like to resume my questioning of Ms.
2 Cyr.

3 **THE COURT:** Sure.

4 **BY MR. MOORE:**

5 Q: Ms. Cyr, is that the first that you learned that it is
6 not the coach's responsibility to not have training on Post-
7 Concussive Syndrome or Second Impact Syndrome?

8 A: Say that again.

9 Q: Is it the first that you've ever learned or ever been
10 told about the coaches didn't have the duty or the
11 responsibility to know what Second Impact Syndrome is?

12 **MR. MCLEAN:** Object to the question. The question -- the
13 admission was that they are not trained, not that they don't
14 know about it. They received no training, not that they're
15 not aware of it. The question is ---

16 **THE COURT:** What's the question again?

17 **BY MR. MOORE:**

18 Q: Ms. Cyr, is it your understanding that the coaches
19 receive training through the National Federation of School
20 Sports?

21 A: Yes.

22 Q: And if you receive training on the concussion protocols
23 would you know what Second Impact Syndrome is?

24 A: I'm not sure the answer to that question.

25 Q: What is the most dangerous thing about concussions, you

1 know in football?

2 A: It's a brain injury.

3 Q: Is it that a student athlete can suffer from Second
4 Impact Syndrome and cause a brain injury?

5 A: That's correct.

6 Q: And would you expect that someone who has some training
7 on concussions would know the rudimentaries such as Second
8 Impact Syndrome or Post Concussive Syndrome?

9 A: Are you talking about myself?

10 Q: Anybody?

11 A: I don't understand the question.

12 Q: If a coach had received training on concussion protocols
13 would you expect for there to be some training on Post
14 Concussive Syndrome?

15 A: Yes.

16 Q: And would there be some training on Second Impact
17 Syndrome?

18 **MR. MCLEAN:** Your Honor, this -- I object. This is
19 beyond the witness's knowledge. She's an athletic trainer,
20 she's not a coach. She's not here to testify as to the
21 standard of care of a coach. She can talk about athletic
22 trainers.

23 **MR. MOORE:** Your Honor, she testified today and in her
24 deposition that these coaches receive training through the
25 National Federation and that she relies on the coaches to also

1 spot for concussions.

2 **THE COURT:** All right. I'm going to overrule the
3 objection.

4 **BY MR. MOORE:**

5 Q: And that is your understanding, correct, Ms. Cyr, that
6 you believe they have some training?

7 A: Yes.

8 Q: Is the first that you ever learned that the coaches --
9 today when I read that admission from the school district that
10 the coaches don't have training on Post-Concussive Syndrome?

11 A: I don't understand what you're saying.

12 Q: When you testified earlier today under oath were you
13 being truthful that you understood that they received
14 training?

15 A: Yes.

16 Q: And now I just read an admission from them that they
17 don't receive training, is that the first you've ever learned
18 of that?

19 A: Yes.

20 Q: Okay. Thank you. So we've established that the
21 officials are not medical professionals, the coaches are not
22 medical professionals. Would you agree that the students
23 aren't medical professionals?

24 A: Correct.

25 Q: And they don't have any specific training on concussion

1 protocols, the students?

2 A: Correct.

3 Q: And we talked earlier that one of your main
4 responsibilities, Ms. Cyr, is to prevent injury including
5 identifying students who may have suffered from a concussion?

6 A: Yes.

7 Q: And you're trained to do that?

8 A: Yes.

9 Q: How can you spot a student who has suffered from a
10 concussion in a game?

11 A: Spotting it -- they could be tackled and lay on the
12 ground a little bit longer than normal to get up. They could
13 lose consciousness. They could be on the sidelines and they
14 could be you know sitting on the bench holding their head.
15 Another athlete or player could come up to us saying hey my
16 friend's acting funny, this player sustained a possible
17 concussion. Many times they come up to us saying I don't feel
18 right, or I have a headache, or I'm dizzy, or I'm nauseous, or
19 I'm feeling confused. A coach can -- is able to say to us
20 that they have noticed those things. A referee is able to say
21 that they've noticed those things. An athlete might not know
22 where they're supposed to be in the play or something like
23 that, or they look like they're stumbling on the field, that's
24 something that would be noticeable.

25 Q: Thank you, Ms. Cyr. So I think the first thing you said

1 is you can witness a big hit and the student maybe take a
2 moment to get off -- to get off the ground; is that right?

3 A: More than a moment, but yes.

4 Q: And would you agree that particularly with teenagers and
5 adolescents who are playing full contact sports that it
6 doesn't take a big hit to suffer from a concussion?

7 A: Can you repeat that?

8 Q: Would you agree that particularly with younger athletes,
9 teenagers, adolescents that it doesn't take a big hit like a
10 bell ringer to cause a concussion?

11 A: We treat everything that has a mechanism of injury, any
12 one symptom as a concussion.

13 Q: Okay. And you testified earlier that if there is a loss
14 of consciousness, that of course would lead you to do a
15 concussion assessment; is that right?

16 A: Correct.

17 Q: And would you agree that less than five percent of the
18 cases involving concussions in young students involves loss of
19 consciousness?

20 A: I don't know the percentage.

21 Q: Would you disagree with that being the percentage?

22 A: I don't know that percentage.

23 Q: Have you been trained that it is a very small percentage
24 of concussions actually lead to loss of consciousness?

25 A: I'm unsure.

1 Q: Would watching the child and if you understand and know
2 the child, if he appears to be confused, would that be
3 something that would lead you to believe that the student at
4 least needs a concussion assessment, confusion?

5 **MR. MCLEAN:** Object. Confusion is a -- is a mental state
6 of a person. There's no way for a trainer or a coach to
7 observe from the sideline confusion.

8 **BY MR. MOORE:**

9 Q: Is confusion a sign or symptom that you watch for as an
10 athletic trainer?

11 **MR. MCLEAN:** Same objection.

12 **THE COURT:** Overruled.

13 **BY MR. MOORE:**

14 Q: You can answer.

15 A: Can you ask it again?

16 Q: Is confusion a sign or symptom of concussions that you as
17 an athletic trainer watch for?

18 A: Yes.

19 Q: Is staggering something from the sidelines that you can
20 watch for?

21 A: Yes.

22 Q: Now I think you mentioned earlier, Ms. Cyr, touching the
23 helmet. Have you been trained that clutching the helmet or
24 clutching the head is something you need to watch for with
25 respect to potential concussions in young athletes?

1 A: That goes around with other body language as well. If an
2 athlete just touches their helmet, then I'm not necessarily
3 suspecting a concussion.

4 Q: Are you familiar with the pocket guide for concussion
5 recognitions that's put out by our state's Department of
6 Health and Environmental Control?

7 A: Yes.

8 Q: And as part of the DHEC regulations for concussion
9 recognition, the first one is visible clues for suspecting
10 concussions and including in that is grabbing or clutching the
11 head. Is that something that you've been trained to recognize
12 as an athletic trainer for the Horry County School District?

13 A: To notice somebody grabbing their head?

14 Q: Grabbing or clutching of the head being one or more
15 visual clues indicating a possible concussion.

16 A: You're asking me if I know how to tell if someone is
17 holding their head?

18 Q: I'm asking you if you see a player who has taken a hit
19 who is touching their head or clutching their helmet, is that
20 a possible clue that this young student may be suffering from
21 a concussion and needs to be assessed?

22 A: Yes.

23 Q: Okay. Some of the other signs and symptoms include
24 things like a difficult remembering, feeling slowed down,
25 dazed look, confused, not aware of plays or events. Are these

1 all things that you're trained as a athletic trainer to
2 recognize or trained to at least understand as being potential
3 signs of a concussion?

4 A: To understand as well, yes.

5 Q: Now I take it that some of these signs that I just
6 discussed, confusion, not remembering plays, things of that
7 nature actually require some type of interaction or
8 involvement with the student; is that right?

9 A: Yes.

10 Q: All right. Because you can't -- you don't know if a
11 student is having problems remembering plays or is confused
12 unless you talk to the student; is that right?

13 A: Myself, yes.

14 Q: The game where Logan was injured, that took place on
15 October 20th of 2016. I understand that you were the athletic
16 trainer present for that game; is that right?

17 A: Yes.

18 Q: And in 2016 you would provide coverage, or when you would
19 provide coverage for the B-team there would only be one
20 trainer there, right?

21 A: Can you elaborate on there?

22 Q: There present at the game on the field?

23 A: Yes.

24 Q: Okay. And so because this was an away game for Logan's
25 team, you were there as the home team trainer for Ocean Bay at

1 Carolina Forest High School; is that right?

2 A: Correct.

3 Q: And I understand based on your testimony that when you're
4 covering a B game, meaning the seventh and eighth grades, the
5 12-, 13-, and 14-year old's that this often occurs on campus
6 when there are other things going on; is that right?

7 A: I believe so.

8 Q: And even when you're assigned to a game as the only
9 trainer you might be called away from that game at any time
10 for any purpose; is that right?

11 A: That's correct.

12 Q: All right. So if you were called away from that game at
13 any time for any purpose that leaves no athletic trainer
14 present at the game; is that right?

15 A: That's correct.

16 Q: Is it fair to say that when you would cover the B-team
17 games, the seventh and eighth graders playing contact
18 football, that your head would be on a swivel?

19 A: Yes. That's like for any athletics.

20 Q: And the JV games that happen at night, you don't
21 necessarily have your head on a swivel; do you?

22 A: Excuse me?

23 Q: Well as the athletic trainer you're not going to be
24 called away at any point in time because that's the only game
25 that's going on?

1 that.

2 Q: Sure. And I understand from some of the other testimony
3 in the case that at least for Logan's game and for his team
4 there would be 65 players for his team and then you know 50 to
5 65 players on the other team; is that right?

6 A: Sure. I mean roster isn't really in my duties as an
7 athletic trainer.

8 Q: Sure. And you wouldn't know any of the players on
9 Logan's team, would you?

10 A: No.

11 Q: Okay. And you didn't know Logan, did you?

12 A: I did not.

13 Q: And I understand that you don't have any memory from that
14 game; is that correct?

15 A: Correct.

16 Q: And you don't know how much time you spent on the
17 sidelines?

18 A: Generally the only time that I would leave a game is to
19 go to the bathroom, maybe heat up some food, that's about it.
20 But I don't remember that -- I don't remember that game.

21 Q: And you don't know where you were stationed during that
22 game?

23 A: On the field somewhere. Either by the gator, on the
24 bench, on the sidelines, somewhere where I can see the field.

25 Q: Do you know if you assessed any players during that game?

1 A: I don't recall.

2 Q: And if you want to prevent Second Impact Syndrome is it
3 important not only to watch the game but to interact with the
4 students?

5 A: I can agree with that.

6 Q: And it would be fair to -- would it be fair to say that
7 you can't interact with the students if you're sitting in the
8 gator or standing on the sidelines the entire game?

9 A: I agree. This is where the coaches come in as well
10 though.

11 Q: And again, coaches who you would expect to have some
12 knowledge of what Post-Concussive Syndrome is?

13 A: No. Coaches that would know their players.

14 Q: Okay. Have you watched the video?

15 A: No.

16 Q: Would it surprise you if a majority of the game, if not
17 the entire game, you were sitting on the Ocean Bay side
18 sitting on the gator?

19 A: No, as long as my view was there.

20 Q: Would it surprise you ---

21 A: Generally I stay on the home side.

22 Q: Would it surprise you if the game tape showed -- revealed
23 that you did not interact with anybody from Logan's team, the
24 away team, at all during the entire game?

25 A: No, not unless there was an injury.

Roderick White - Direct Examination

Wood vs HCSD

163

2017-CP-26-06643

1 **THE COURT:** All right. If you'll call your next witness.

2 **MR. EVANS:** Your Honor, the plaintiff would call Coach
3 Roderick White.

4 **RODERICK WHITE, HAVING BEEN**
5 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

6 **THE CLERK:** State your first and last name for the court
7 reporter, please.

8 **MR. WHITE:** Roderick White.

9 **DIRECT EXAMINATION OF MR. WHITE BY MR. EVANS:**

10 Q: Good afternoon, sir. Where did you go to college?

11 A: Coastal Carolina University.

12 Q: And as I understand it, you recently left the Horry
13 County School District to go back home; is that right?

14 A: Yes, sir. That's correct.

15 Q: And are you now coaching, head coach, at your alma mater?

16 A: That's right. I'm the head coach for basketball, the
17 assistant coach for JV football, and the head JV baseball
18 coach.

19 Q: And tell the ladies and gentlemen, sir, where your alma
20 mater is? Where are you now coaching?

21 A: Andrews, South Carolina.

22 Q: Okay.

23 **THE COURT:** You got any barbeque there?

24 **MR. WHITE:** No, sir. That's in Hemingway.

25 **THE COURT:** That's in Hemingway.

Roderick White - Direct Examination

Wood vs HCSD

164

2017-CP-26-06643

1 **MR. WHITE:** Scott's Barbeque is pretty good.

2 **THE COURT:** Yeah, Scott's Barbeque.

3 **BY MR. EVANS:**

4 Q: And what year did you start working with the Horry County
5 School District?

6 A: 2012.

7 Q: And what position did you hold when you were first hired?

8 A: I started off as a substitute teacher.

9 Q: Okay. And then walk me through the ranks, starting in
10 2012 up through 2016.

11 Q: 2012 I started as a substitute teacher, then I believe
12 before that school year ended I actually became a
13 paraprofessional, special ed aide. I was assistant coach for
14 football, assistant coach for JV basketball, and I was helping
15 with girls track then. About two -- two or three years past
16 and I became the head coach for the North Myrtle Beach Middle
17 School Football Team.

18 Q: Okay.

19 A: I still coached basketball as well, and I coached track
20 as well.

21 Q: Okay. So the 2016-2017 school year would have been your
22 first year as head coach?

23 A: I want to believe it might have been my second year. I
24 want to -- I have to go back and look, sometimes I go back and
25 look at the pictures to be certain, but I know I told you it

Roderick White - Direct Examination

Wood vs HCSD

168

2017-CP-26-06643

1 far as offensive coordinator in my situation the most time we
2 talk is during time outs or at halftime. Occasionally the
3 quarterback -- of course when we go on defense the
4 quarterbacks come off the field and they stand by me and we
5 kind of talk about what they seen and things like that.

6 Q: Now in your deposition you were asked do you have time
7 during the game to walk the sidelines and talk to the players?

8 A: Correct. I said no, as in during the game, but
9 halftimes, time out, those are different.

10 Q: Okay. Fair enough.

11 A: Yes, sir.

12 Q: During the game itself while a play is happening you
13 don't have the time to do that, do you?

14 A: No, sir.

15 Q: And you rely on other people to do that?

16 A: My assistant coaches. Yes, sir.

17 Q: How about the trainer? Do you rely on the trainer?

18 A: Yes. When we have a trainer on our sideline. Yes, sir,
19 I do.

20 Q: Okay. Now flashing back to your deposition in 2020.

21 A: Okay.

22 Q: At that point in time in 2020 when we had a chance to
23 speak you didn't know that a player holding their head was a
24 sign of concussion, correct?

25 A: Yeah, cause that's not the only sign is just holding your

Roderick White - Cross Examination

Wood vs HCSD

169

2017-CP-26-06643

1 head for a concussion. When I stated you know them telling me
2 they have a headache, lightheadedness, nausea -- yes, sir.

3 Q: But at that point in time, you told me that you didn't
4 know that that was a sign, holding the head, correct?

5 A: Yes, sir, that's what I said.

6 Q: Okay. And at that point in time back in 2020 it was your
7 testimony, was it not, that you did not know what Second
8 Impact Syndrome was, correct?

9 A: Correct.

10 Q: And back at that time in 2020 it was your testimony that
11 you were not familiar with Post-Concussive Syndrome, correct?

12 A: Correct.

13 Q: Thank you, Coach. That's all of the questions that I
14 have.

15 **THE COURT:** Cross.

16 **CROSS EXAMINATION OF MR. WHITE BY MR. MCLEAN:**

17 Q: Coach White, how old are you?

18 A: Thirty-two.

19 Q: Did you play football at Coastal Carolina?

20 A: I don't know if you would call it playing. I was on the
21 team for a year, I walked on.

22 Q: And you have worked for Horry County School District, you
23 began when, in 2012?

24 A: Yes, sir.

25 Q: And when did you leave to return home to Andrews?

Roderick White - Cross Examination

Wood vs HCSD

178

2017-CP-26-06643

1 Q: Did any of your other assistant coaches ride on the bus?

2 A: I'm not sure if another coach rode, but I know Coach
3 Matthew Jolly he -- that's the year he drove the bus for us.

4 Q: Okay. But you rode on the bus?

5 A: Yes, sir.

6 Q: During the post-game assembly and talking to the team and
7 getting them on the bus did you notice or did you become aware
8 of any injury to Logan?

9 A: No, sir.

10 Q: During the bus ride back to North Myrtle Beach did you
11 become aware or were you -- did you notice or otherwise become
12 aware of an injury to Logan?

13 A: Not during the bus ride. No, sir.

14 Q: Okay. It was only after you got back to North Myrtle
15 Beach?

16 A: Yes, sir.

17 Q: What time did you get back to North Myrtle Beach?

18 A: A little bit before 8 or after 8 maybe.

19 Q: Okay. Tell us what you remember about how Logan was
20 behaving when you realized or became aware that he had
21 received an injury? What -- were was Logan? How was he
22 behaving?

23 A: When he was getting off the bus and he said his back and
24 his head was hurting. We were walking to the locker room; he
25 was kind of wobbly. Then we go to the locker room, and he

Roderick White - Cross Examination

Wood vs HCSD

179

2017-CP-26-06643

1 actually sat down. When we first walked into the locker room,
2 he said the lights bother his -- bother his head real bad.
3 Once I got that we texted Coach Hayes to let him know what was
4 going on and then we went from there.

5 Q: Was the bus ride -- was the bus dark or light when you
6 were riding on the bus? Was the inside of the bus dark?

7 A: Dark. Yes, sir. It was dark. The lights were off.

8 Q: Was it dark when you got back to North Myrtle Beach?

9 A: Yes, sir.

10 Q: And when did Logan -- and when did Logan start saying the
11 lights hurt his eyes?

12 A: When we got to the locker room.

13 Q: Were the lights on in the locker room?

14 A: Yes, sir. Yes, they were on.

15 Q: What did you do when you realized that Logan was having
16 trouble dealing with the lights and was exhibiting these
17 symptoms. Tell the jury what you did.

18 A: I had Coach Matt text Coach Hayes for me to figure out
19 what we needed to do.

20 Q: Okay. Keeter Hayes?

21 A: Yes, sir, Coach Keeter Hayes.

22 Q: And he's the head trainer for North Myrtle Beach?

23 A: Yes, sir.

24 Q: And he was not at the game that evening, was he?

25 A: No, sir, he wasn't.

1 Q: Same question with regard to your players.

2 A: Yes, sir.

3 Q: When you were watching that tape did you see Athletic
4 Trainer Cyr interact with any of your players?

5 A: No, sir, I didn't.

6 **REPORTER'S NOTE:** (Whereby video tape of football game is
7 shown.)

8 **BY MR. EVANS:**

9 Q: Is this Trainer Cyr right here on her gator?

10 A: I can't tell you who that is on that, sir. I can't see
11 to tell you who that is.

12 Q: Does it look like to you that this person is sitting
13 there eating ice cream?

14 A: I can't see what they're doing from here.

15 Q: What's it look like they're doing?

16 A: It looks like they're talking.

17 Q: Okay. I'll back it up a little bit. Can you tell what
18 that person is doing right there?

19 A: They look like they're sitting there talking to somebody.
20 I honestly can't see from here.

21 Q: You can't tell that that person seems to be sitting there
22 eating ice cream?

23 A: I can't tell. I know they've got something in their
24 hand, they're talking, that's all I can tell from here.

25 Q: How about there? Talking with some other employee, or

Roderick White - Redirect Examination

Wood vs HCSD

193

2017-CP-26-06643

1 parent, or somebody?

2 A: It looks like it could be one of the coaches from
3 Carolina Forest, I'm not sure, but talking. Yes, sir.

4 Q: How about now? Facing the opposite way doing something?

5 A: Which one are you looking at?

6 Q: In the red shorts?

7 A: The red shorts? Yes, sir.

8 Q: And how about now? Interacting with somebody, hanging
9 out?

10 A: Red shorts is what we're looking for?

11 Q: Yeah, yeah.

12 A: Can you roll that back, please?

13 Q: Yeah, I can roll that back.

14 A: I appreciate that. Standing there talking.

15 Q: At any point in time when you reviewed the tape, did you
16 see this person doing anything other than hanging out by this
17 gator?

18 A: Honestly, you showing me this is the first time I've
19 actually paid attention to the what the trainer was doing
20 during the game.

21 Q: Now as the head coach would you be surprised that the
22 athletic trainer for the away team never came over to your
23 sidelines?

24 A: Be surprised? No, sir.

25 Q: Would it be safer if she had?

William Keeter Hayes - Direct Examination

Wood vs HCSD

194

2017-CP-26-06643

1 A: I don't know if it'd be safer. When we would go to away
2 games we didn't also have a trainer on our sideline. Our
3 trainer didn't always go with us, so to say would it be safer
4 I can't answer that. I'm not sure.

5 Q: Now you did ultimately get some symptoms, some signs and
6 symptoms from Logan that you recognized, correct?

7 A: Yes, sir.

8 Q: Is it fair to say that in order to do that and to send
9 these text messages you had to actually interact with him?

10 A: Yes, sir.

11 Q: That's all of the questions that I have, Coach. Thank
12 you.

13 A: Yes, sir. Thank you.

14 **MR. MCLEAN:** Nothing further.

15 **THE COURT:** All right. You may step down. Thank you.

16 **MR. WHITE:** Yes, sir.

17 **MR. MCLEAN:** I ask that this witness be excused subject
18 to the right to recall on rebuttal.

19 **THE COURT:** Sure.

20 All right. Call your next witness.

21 **MR. EVANS:** Your Honor, we would call Mr. William Keeter
22 Hayes.

23 **WILLIAM KEETER HAYES, HAVING BEEN**
24 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

25 **THE CLERK:** If you will state your name and spell it for

William Keeter Hayes - Direct Examination

Wood vs HCSD

195

2017-CP-26-06643

1 the court reporter, please.

2 **MR. HAYES:** William Lloyd Hayes, Jr., but I go by Keeter.
3 That's Hayes, H-A-Y-E-S, and Keeter is K-E-E-T-E-R.

4 **DIRECT EXAMINATION OF MR. HAYES BY MR. EVANS:**

5 Q: Good afternoon, Mr. Hayes.

6 A: Hi.

7 Q: As I understand it, you're recently retired, sir.

8 A: About three years, yes.

9 Q: Okay. And tell the jury about your profession leading up
10 to your retirement three years back?

11 A: I started out as a physical education teacher and an
12 athletic -- volunteer athletic trainer in 1977 at West
13 Columbus High School. I got involved in an athletic trainer
14 in service program sponsored by the State of North Carolina
15 that -- that gave me training and education to become an
16 athletic trainer. And I was certified in 1981 while I was
17 working at Smithfield-Selma High School in Smithfield, North
18 Carolina. I came back and worked at West Columbus High School
19 again from 1987 through the school year of '90. In 1990 I
20 came to Socastee High School. I was there for seven years.
21 In 1997 I came to North Myrtle Beach High as the head athletic
22 trainer and stayed there until I retired in 2017.

23 Q: And as an athletic trainer you are certified by the State
24 of South Carolina, correct, sir?

25 A: I'm certified by South Carolina NATA and I'm also

1 licensed in North Carolina.

2 Q: Okay. And to obtain your license or your certification
3 here in South Carolina you have to go through DHEC; is that
4 correct?

5 A: Correct.

6 Q: And DHEC is the same agency that licenses nurses and
7 medical assistants, correct?

8 A: That's correct.

9 Q: And do you consider yourself a medical professional, sir?

10 A: Yes, sir.

11 Q: And in fact the State of South Carolina recognizes you as
12 a medical professional?

13 A: That's true.

14 Q: And North Carolina?

15 A: Yes.

16 Q: Can -- you previously told me that you do know about the
17 concept of a differential diagnosis, correct?

18 A: That's correct.

19 Q: Can you explain just briefly what that is for the ladies
20 and gentlemen of the jury?

21 A: A differential diagnosis would be when there's an injury
22 or an illness presented that there's several different
23 conclusions you could draw. For example, an injury to the
24 hand could be a contusion, it could be a fracture, it could be
25 a laceration. So differential diagnosis it what it possibly

1 could be.

2 Q: And that's a medical concept, correct?

3 A: Correct.

4 Q: And you wouldn't expect anyone else on the field during a
5 game to be licensed by DHEC, correct?

6 A: No, sir.

7 Q: And you wouldn't consider anyone other than the trainer
8 to be a medical professional, correct?

9 A: That's correct. Unless there's a physician present,
10 obviously, and sometimes we did have those at varsity games.
11 But the athletic trainer would be the healthcare professional
12 for that event, yes.

13 Q: Now as I understand it, back in 2016 you worked with Shea
14 Rasmussen?

15 A: Yes, sir.

16 Q: And Shea had been with you the prior year, correct?

17 A: Shea was there in the '14-'15 school year. She left and
18 went back to Colorado where her home was, but she came back
19 and was employed, and she started in I guess August of 2016.

20 Q: Okay. And you told me that between the time that she was
21 there in '15 and '14 and when she came back in '16, she did
22 get a raise, correct? She went from a stipend to a full-time
23 employee?

24 A: Actually it was two different -- it was the same job, but
25 it was paid differently.

1 Q: Right.

2 A: Her first year there '14-'15, she worked for simply the
3 stipend for athletic training and that stipend was somewhere
4 in the neighborhood of probably \$6,500 maybe something like
5 that. But she also student -- not student, she substitute
6 taught so she was paid as a substitute teacher. When she
7 returned in 2016, that was for the same job, athletic
8 training, but it was paid on a different pay scale. She was
9 actually then a full-time employee with a 220 contract.

10 Q: And you explained for me previously that even though she
11 now had this 220 contract, her duties and her work did not
12 change; is that correct?

13 A: They were basically the same. Yes, sir.

14 Q: And you also had somebody that would fill in sort of part
15 time, a Ms. Rodman?

16 A: Sarah Rodman was there. Sarah was there the '15-'16
17 school year and she also worked for just the stipend.

18 Q: Okay.

19 A: So it was -- for her it was more of a part-time job
20 because she couldn't live on that little bit of money. She
21 worked for her family. Her family owned a restaurant I think
22 and she worked there. But her duties were still the duties of
23 an athletic trainer.

24 Q: And you told me that during the varsity games you would
25 generally have all three of you present, correct? You, Shea,

William Keeter Hayes - Direct Examination

Wood vs HCSD

199

2017-CP-26-06643

1 and Sarah?

2 A: If it was a home varsity game, we were all there. Yes,
3 sir.

4 Q: Okay. And during the varsity game the opposing team
5 would have their own trainers?

6 A: Generally, yes.

7 Q: And during the JV games, you would at least be there or
8 one of your two assistants would be there for every JV game?

9 A: If it was a home JV game I was there. Depending on the
10 school we were playing they may not have someone there if
11 there school did not have an athletic trainer. But I was -- I
12 was -- put it like this, I can't remember a JV home game that
13 I did not attend.

14 Q: Okay. How about the JV away games? Did you at least
15 have some person there?

16 A: Generally that was me.

17 Q: Okay. And now for the B-team games you would allow the
18 other team's school to cover it; is that correct?

19 A: That's correct.

20 Q: All right. Now do you recall telling me that in terms of
21 brain injuries, the older you are the better off you are?

22 A: I don't know that I said it exactly that way, but
23 maturity wise the more mature brain I'm sure is healthier and
24 would withstand a concussion better than an immature brain,
25 yes.

William Keeter Hayes - Direct Examination

Wood vs HCSD

200

2017-CP-26-06643

1 Q: Well what's the age group for the varsity football
2 players?

3 A: It can -- generally it's 11th and 12th graders. If
4 they're very talented they can be sophomores or if they're
5 very talented they can be a freshman. So it could be --
6 varsity players could be from 9th to 12th grade.

7 Q: How about the JV, what's that age group?

8 A: That's 9th and 10th graders.

9 Q: Okay. And the B-team?

10 A: Would be 7th and 8th graders.

11 Q: Okay. Now if I use what you told me about brain
12 injuries, would it be true that the B-team players being the
13 youngest are at the greatest risk for concussion?

14 A: I don't know if they're at the greatest risk for
15 concussion. I think they could be -- the results could be
16 more damaging, but risk wise I'm not sure that simply because
17 they're in middle school that they have a greater risk. I
18 think it is determined by what they are doing.

19 Q: Okay. But results wise, the older you are the better off
20 you are?

21 A: In general, yes.

22 Q: But the district policy actually works reverse to that,
23 correct? In terms of coverage, the older players get more
24 trainers, the younger less?

25 A: The older trainers -- the older players have more

William Keeter Hayes - Direct Examination

Wood vs HCSD

201

2017-CP-26-06643

1 trainers than the younger players, yes.

2 Q: And that's in indirect correlation to the risk of
3 permanent injury, correct?

4 A: I think that could be argued, but I'll say correct.
5 Yeah.

6 Q: Okay. So in terms of risk, that's the backwards way of
7 doing it, right?

8 A: In terms of risk of injury or risk of severe injury?

9 Q: Risk of severe injury, risk of permanency?

10 A: You know I -- I'm not sure that that's accurate, but I'll
11 just say that if a younger kid was -- had a severe brain
12 injury that it could be more severe than an older kid having
13 an injury.

14 Q: And as I understand it, sir, you were not able to be
15 present for the game in which Logan was injured?

16 A: I was not there.

17 Q: Okay. And as I understand it, Logan is the only player
18 in your 21 years to develop significant Post-Concussive
19 Syndrome, correct?

20 A: That I can remember. Yes, sir.

21 Q: Okay. And you can't call any other of your players that
22 as a result of a head injury had to have a 504 plan, correct?

23 A: That's correct.

24 Q: What's a 504 plan for the jury?

25 A: I think a 504 plan is an accommodations plan for

William Keeter Hayes - Direct Examination

Wood vs HCSD

202

2017-CP-26-06643

1 education to where depending on the disability that they would
2 have certain accommodations given to them in the classroom.

3 Q: Okay. And as you've heard the testimony there were two
4 other injuries, a broken wrist or a broken scaphoid; is that
5 correct, scaphoid?

6 A: Yes, sir.

7 Q: And a concussion?

8 A: Correct.

9 Q: And those two injuries were not treated until after the
10 game, correct?

11 A: That is my understanding, yes.

12 Q: And you did tell me in your deposition, did you not, that
13 that was abnormal. That treatment wasn't during the game, it
14 was abnormal?

15 A: I don't remember saying that, but I don't know if it's
16 abnormal. I mean if the other athletic trainer didn't witness
17 it, or it was not called to their attention then they would
18 not have gone over there to do something without being
19 summonsed or seen. I think that's it, unless she saw
20 something happen or she was summonsed by one of our coaches,
21 she probably would not randomly just go over a check on a kid
22 I don't think.

23 Q: Would you have preferred that that treatment occurred
24 during the game rather than in the parking lot after the game
25 for Anderson Boyers and Rex Roupe?

William Keeter Hayes - Direct Examination

Wood vs HCSD

203

2017-CP-26-06643

1 A: It would have been better for them. Sure.

2 Q: Would it have been safer for them?

3 A: Probably, but they were -- yes, it would be safer for
4 them.

5 Q: Is it safe to say that back in the spring of 2016, the
6 spring before Logan's injury ---

7 A: Gotcha.

8 Q: --- you had been very outspoken in the need for more
9 coverage in the athletic training program?

10 A: That's correct.

11 Q: And I'll show you if I can -- do you recognize this, Mr.
12 Hayes?

13 A: Yes, sir. That's me.

14 Q: Okay. And is this something that is actually still
15 posted on your Twitter account to this day?

16 A: Actually, I don't -- I'm not sure that that's on my
17 Twitter, but it's findable. I mean you can Google Keeter
18 Hayes and it will pop up on the internet. But I don't think
19 that I -- I may be wrong, but I guess I did post it. It's got
20 my handle on it. But it's an AT Today post. Then the comment
21 down below is me making a comment, that's on the same day, of
22 the baseball game score. But I don't think that I posted
23 that. I may have. I don't remember doing that. But this
24 appears to be a Twitter from AT Today which is Athletic
25 Training Today and it's dated 4/25/16.

William Keeter Hayes - Direct Examination

Wood vs HCSD

204

2017-CP-26-06643

1 Q: And this is in fact your Twitter pages, Keeter Hayes,
2 correct?

3 A: Keeter Hayes, @KeeterATC, yes.

4 Q: And your Twitter page is not closed to the public; is
5 that correct?

6 A: That's correct.

7 **MR. EVANS:** We would move this -- seek to mark this and
8 move this into evidence, Your Honor.

9 **THE COURT:** Any objections?

10 **MR. EVANS:** No objection.

11 **THE COURT:** All right. That'll be number five; is that
12 right?

13 **MR. EVANS:** I believe so.

14 **THE COURT:** Plaintiff's five into evidence without
15 objection.

16 **(PLAINTIFF'S EXHIBIT NUMBER FIVE**
17 **IS ADMITTED INTO EVIDENCE.)**

18 **BY MR. EVANS:**

19 Q: And the link that is posted there, sir, that's a link to
20 an article in Athletic Training Today; is that right?

21 A: Yes, sir.

22 Q: And if I can I'm going to pass it up to you.

23 A: Okay. Thank you.

24 Q: And in fact you were featured in this article, correct?

25 A: Yes, sir. I was.

William Keeter Hayes - Direct Examination

Wood vs HCSD

205

2017-CP-26-06643

1 Q: Now do you recognize this article?

2 A: I recognize this article from being from The Sun News. I
3 don't -- I don't recognize it from being from Athletic
4 Training Today. Honestly, I never knew it was. I knew it was
5 in The Sun News and I knew that there was a video of it, but I
6 -- I honestly am not aware that Athletic Training Today had
7 that on there.

8 Q: Double check the link that you posted in your Twitter.

9 A: Well I see that, but ---

10 Q: What's the link that you connected to?

11 A: The link is connected to Athletic Training Today, but --
12 but I did not -- I did not post -- I retweeted it. I
13 retweeted Athletic Trainer Today. Okay. So apparently I did,
14 I retweeted it.

15 Q: Okay. And take a look at the article in Athletic
16 Training Today.

17 A: Okay.

18 Q: Is that an article in which you're actually featured,
19 sir?

20 A: Yes, sir.

21 Q: All right.

22 **MR. EVANS:** We seek to move this into evidence as
23 plaintiff's exhibit six.

24 **THE COURT:** Any objection? Let him look at it if you
25 would.

William Keeter Hayes - Direct Examination

Wood vs HCSD

206

2017-CP-26-06643

1 **MR. MCLEAN:** Is it the same?

2 **MR. EVANS:** Yeah.

3 **MR. MCLEAN:** Okay. If it's the same one. I have seen
4 that, Your Honor. No objection.

5 **THE COURT:** All right. Plaintiff's six into evidence
6 without objection.

7 **(PLAINTIFF'S EXHIBIT NUMBER SIX**
8 **IS ADMITTED INTO EVIDENCE.)**

9 **BY MR. EVANS:**

10 Q: And the reason I marked that one is because that's the
11 one that you posted. And I'll hand up to you what I'll mark
12 as plaintiff's exhibit seven which is The Sun News version.

13 A: Okay. This is pretty much the same thing.

14 Q: And are you featured in that article as well?

15 A: Yes, sir.

16 **MR. EVANS:** And I'll move that into evidence as exhibit
17 number seven.

18 **THE COURT:** Any objections?

19 **MR. MCLEAN:** I'm sorry. What is number seven?

20 **THE COURT:** The Sun News article.

21 **MR. MCLEAN:** Oh, I thought that was six?

22 **MR. EVANS:** It's the same article, Joe, it was in two
23 places.

24 **MR. MCLEAN:** Okay. I have no objections.

25 **THE COURT:** All right.

1 (PLAINTIFF'S EXHIBIT NUMBER SEVEN
2 IS ADMITTED INTO EVIDENCE.)

3 **BY MR. EVANS:**

4 Q: Mr. Hayes, if you don't mind for the jury, read the
5 highlighted portion of this article from Athletic Trainer
6 Today.

7 A: Okay.

8 Currently -- just the highlighted?

9 Q: Just the highlighted part.

10 A: Currently so many students are not supervised during
11 athletic practices and games.

12 Q: Do you recall actually giving an interview?

13 A: I do recall the interview.

14 **MR. EVANS:** I beg your indulgence for one second, Ladies
15 and gentlemen.

16 **BY MR. EVANS:**

17 Q: Do you recall giving this interview?

18 A: Yes, sir.

19 Q: Have you had a chance to go back and review this
20 interview?

21 A: Yeah, not long ago, yes.

22 **REPORTER'S NOTE:** (Whereby video of the interview is
23 played.)

24 **BY MR. EVANS:**

25 Q: Were you here, sir, for the testimony of Kary-Anne Cyr?

William Keeter Hayes - Direct Examination

Wood vs HCSD

208

2017-CP-26-06643

1 A: Yes, sir.

2 Q: Were you surprised to hear that she never once walked
3 down the line for your team?

4 A: Not necessarily, no. It -- it could be where in a game
5 you would not have to go anywhere and do anything, so the fac
6 that she did not visit our sideline was not necessarily a
7 surprise.

8 Q: Would it have been safer for her to do so?

9 A: Not necessarily safer for her, it would have been maybe
10 safer for our kids, nut not necessarily -- it wouldn't be
11 safer for her, no.

12 Q: If you could have been at two places at one time, would
13 you have done that?

14 A: Would I have done ---

15 Q: Let me ask it a different way. Would you have preferred
16 to have been on that sideline yourself?

17 A: Me personally, not really. But I would -- I would like
18 to have had someone there if possible whether it be me or not.
19 But I was also comfortable with that fact that one athletic
20 trainer there covering that game was sufficient.

21 Q: Okay. Would you agree with me that not having somebody
22 on your sideline put a value on the kids' health?

23 A: I'm not sure that it's a value. I'm not exactly sure
24 what you mean by putting a value on it. Is that a monetary
25 value or importance value? I don't think that because we did

William Keeter Hayes - Cross Examination

Wood vs HCSD

209

2017-CP-26-06643

1 not have an athletic trainer on that sideline that we devalued
2 anyone.

3 Q: Uh-huh. (Affirmative response.) You talked about
4 putting a value on a kid's life in that video.

5 A: I did, yes.

6 Q: Not having somebody there, one of your assistants or
7 yourself, and I understand that's not your decision, but does
8 that not put a value on those players lives?

9 A: I don't think value is the proper word for that.

10 Q: Okay. What would the proper word be?

11 A: Importance maybe. I think that value -- when I was in
12 this video I did use the word value because that was trying to
13 be rhetorical in the fact that I was trying to get us some
14 more athletic trainers employed and I used value as a verb for
15 that.

16 Q: How about this?

17 A: Okay.

18 Q: How about risk? Does not having another trainer on that
19 sideline put a risk on these kids lives?

20 A: It puts a higher risk than if there was one there, yes.

21 Q: Thank you, Mr. Hayes. And thank you for your 21 years of
22 service to this county.

23 A: Thank you.

24 **THE COURT:** All right.

25 **CROSS EXAMINATION OF MR. HAYES BY MR. MCLEAN:**

William Keeter Hayes - Redirect Examination

Wood vs HCSD

221

2017-CP-26-06643

1 maybe your efforts had some positive influence on the Board?

2 A: I would hope it did. That was the purpose for the
3 article. That was the purpose for the interview was to try to
4 get some publicity, for lack of a better word, that we had a
5 need for more athletic trainers.

6 Q: And the Board responded.

7 A: That's correct.

8 Q: And they funded additional positions for athletic
9 trainers, correct?

10 A: Yes, sir.

11 Q: And that was in May of 2016?

12 A: Right.

13 Q: And those trainer positions were in place and filled by
14 the following October, at least as far as North Myrtle Beach
15 is concerned?

16 A: Yes.

17 Q: You had filled that additional spot with the additional
18 funds that the Board authorized?

19 A: Yes.

20 Q: That -- I believe that's all I have. Thank you, Mr.
21 Hayes.

22 A: Thank you.

23 **REDIRECT EXAMINATION OF MR. HAYES BY MR. EVANS:**

24 Q: Just a couple of questions, Mr. Hayes.

25 As I understand your testimony, after your plea Shea went

William Keeter Hayes - Redirect Examination

Wood vs HCSD

222

2017-CP-26-06643

1 from a stipend employee to a contract employee, correct?

2 A: Yes, sir. She was -- essentially she was rehired. It
3 was -- it was the same job, but it was with a different -- it
4 was a different paid position. So she went from being a part-
5 time stipend employee to a full-time salaried employee.

6 Q: So her pay changed, correct?

7 A: Yes.

8 Q: But nothing in regards to her job description or job
9 duties changed, correct?

10 A: That's correct.

11 Q: Did you actually get a brand new member on your team in
12 2016?

13 A: We did get a brand new member in the year prior in the
14 2015-'16 school year, Sarah Rodman was there. So she was in
15 that stipend position. When Shae was hired -- I guess, yes.
16 To answer what I think you're trying to say is we had an
17 additional person. We went from two to three because Sarah
18 then got the stipend position. So we went from having two
19 athletic trainers to having three athletic trainers after
20 everything was done. So at the beginning of the fall season
21 we had three athletic trainers.

22 Q: Okay. Where was Sarah that night, October 20th?

23 A: Sarah was at North Myrtle Beach High covering varsity
24 football practice and all of the other teams that were
25 practicing on our campus.

1 Q: Which has a higher risk of permanent injury, varsity
2 practice or B-team game?

3 A: Higher risk? Probably varsity practice.

4 Q: Varsity practice would have a higher risk?

5 A: Well they're bigger, faster, stronger people moving at a
6 higher speed and their incident and change of injury would be
7 greater at a varsity practice than at a B-team game.

8 Q: Okay. Now how about injury? If an injury occurs, where
9 is there a higher risk of permanence, at JV practice or B-team
10 game?

11 A: Well it would depend on the injury.

12 Q: Head injury?

13 A: That's a hypothetical that I can't really answer. It
14 depends on the severity of injury. It could be a mild, for
15 lack of a better word, or less severe concussion versus a
16 compound fracture of a leg. So as far as severity of the
17 injury, it would depend on the injury.

18 Q: Well you did testify earlier that the younger the player
19 the more risk they have of a permanent brain injury.

20 A: Yes, that's true.

21 Q: Now in terms of the cross country meet where Shea was,
22 where's there a higher risk of injury? At a cross country
23 meet or at a B-team game?

24 A: Probably the B-team game.

25 Q: Thank you, Mr. Hayes.

Rodwell Walters - Direct Examination

Wood vs HCSD

224

2017-CP-26-06643

1 **THE COURT:** All right. Anything further?

2 **MR. MCLEAN:** Nothing further, Your Honor.

3 **THE COURT:** All right. Call your next witness.

4 **MR. EVANS:** Your Honor, we would call Rodwell Walters.

5 **RODWELL WALTERS, HAVING BEEN**

6 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

7 **THE CLERK:** State your name for the court reporter,
8 please.

9 **MR. WALTERS:** Rod Walters. David Rodwell Walters, II
10 actually.

11 **DIRECT EXAMINATION OF MR. WALTERS BY MR. EVANS:**

12 Q: Mr. Walters, what is your current position?

13 A: Athletic trainer. I have a consulting group now that
14 does consulting work in athletic training sports medicine.

15 Q: Walk me through your education background, sir.

16 A: I did my undergraduate work at Appalachian State back in
17 '75 to '79. I got my masters there. In 1988 while I was
18 working at Lenior-Rhyne College I started working on my
19 doctorate and got that from Middle Tennessee in 1988.

20 Q: Do you hold any professional licenses and certifications?

21 A: I'm a certified athletic trainer. I'm a board certified
22 -- Board of Certificate certified athletic trainer. I have
23 license in the State of Georgia. I'm certified in the State
24 of South Carolina.

25 Q: Have you worked as an athletic trainer?

1 A: I have. Upon graduation in 1980 I was the athletic
2 trainer at a small liberal arts school Lenior-Rhyne College in
3 Hickory, North Carolina. I was there until '85 and went back
4 to my alma mater Appalachian State and was head athletic
5 trainer there from 1985 to '90. In 1990 I came to the
6 University of South Carolina as the head athletic trainer and
7 assistant athletic director for sports medicine.

8 Q: And how long did you remain at the University of South
9 Carolina?

10 A: Until 2007.

11 Q: And in addition to your consulting group, do you hold any
12 part-time employment?

13 A: No. I mean I -- I have different contracts. Yes, I mean
14 I have different contracts that I work with as far as groups
15 that I work with. Currently I have a contract with the Big 12
16 coordinating their concussion work for the Big 12 Athletic
17 Conference. I work for the NFL as a concussion spotter.

18 Q: What does that mean, that's what I meant?

19 A: Basically the NFL has identified two athletic trainers
20 that work at each game to observe signs, symptoms that may not
21 be seen by the team. So I work the games in Atlanta and just
22 observe from afar and review video and that kind of stuff in
23 case there's a presentation that the people -- the clinical
24 staff on the sideline may not see. So I work there kind of on
25 behalf of that just to kind of -- to review injuries.

1 Q: Is your certification as an athletic trainer with the
2 State of South Carolina current?

3 A: Yes.

4 Q: Under what circumstances have you performed evaluations
5 of athletic training programs?

6 A: You know, a lot of my work now is collegiate
7 institutions, or high schools, or professional sports will ask
8 me to review certain policies. I look at my work a lot of
9 times, Mr. Evans, as a reactive versus proactive. So a lot of
10 people will say we want to review our current standards, where
11 we are, policies, procedures, our coverage model, emergency
12 action plans, those kind of things. Then at the same time
13 I'll be called on when there's an incident whether it be a
14 death or a catastrophic event to review what happened; and
15 many times the charge there is do we have good policies, do we
16 have good procedures, do we have a good plan and were the
17 plans followed. So that's kind of what my work is, you know I
18 work around that a lot.

19 Q: And what is the National Athletic Trainers Association?

20 A: The National Athletic Trainers Association is a
21 membership group of probably over 40,000 athletic trainers
22 from across the country and internationally now. But it is a
23 membership organization looking at policies and best practices
24 for athletic trainers.

25 Q: Do you have any involvement with that group?

Rodwell Walters - Direct Examination

Wood vs HCSD

227

2017-CP-26-06643

1 A: I do. I've been a member of that for a long time. I was
2 actually on their board from '97 until 2003. So there are ten
3 regions in the country, quickly changing to 11 regions. But
4 basically the states of South Carolina, North Carolina,
5 Virginia, West Virginia, DC and Maryland are in our district
6 here and I was the board representing the members of this
7 area.

8 Q: Have you received any honors and distinctions throughout
9 the course of your professional career?

10 A: I've been very fortunate. I was -- received Most
11 Distinguished Alumni Award from Middle Tennessee back in, I
12 think it was 2013 maybe; and then the same award at the
13 University of South Carolina 2017. In 2005 I was inducted
14 into the National Athletic Trainers Hall of Fame which was a
15 tremendous honor. I'm not sure I deserved it, but I
16 appreciate it.

17 Q: Have you had the opportunity to review the depositions in
18 this case?

19 A: I have.

20 Q: Have you had the opportunity to listen to the courtroom -
21 - listen to the testimony in this courtroom here today?

22 A: I have.

23 Q: Has your review leading up today allowed you to form
24 certain opinions in this matter?

25 A: It has.

1 **MR. EVANS:** Your Honor, we would tender Mr. Walters as
2 an expert in athletic training.

3 **THE COURT:** Any objections?

4 **MR. MCLEAN:** No objections.

5 **THE COURT:** All right. Motion is granted.

6 **BY MR. EVANS:**

7 Q: Mr. Walters, what's the point of having an athletic
8 trainer?

9 A: You know as we've discussed, several people have said
10 this today that there is three words that really sum it up:
11 prevention, care, and rehabilitation of athletic injuries.

12 Q: Okay.

13 A: So I think that person they are there to see what is
14 happening, to you know just prevent. I've always been a
15 strong prevention person. When I look at cases today that I'm
16 involved in or I'm called in to as an expert witness, it
17 amazes me how many times there's failure of emergency action
18 plan or the coverage model. And I think we can do more for
19 children and make sports safer if we do that. You know we
20 have certifications to protect the public. We have a
21 concussion law in every state in the union now to protect the
22 children. And I think even in the Horry County documents,
23 even in the state documents it talks about protecting these
24 children. And I think that when you look at the problem with
25 concussions and the negative publicity concussion have gotten,

1 we've got to be sensitive to the pediatric, the younger people
2 because they're so vulnerable and I think that's a concern.

3 So that's a long answer for a short question.

4 Q: What's the difference in the roll between an athletic
5 trainer, a ref, assistant coach, and a coach?

6 A: I think that with our concussion laws today we have
7 certain training which has been discussed that coaches go
8 through. Coaches must identify if they see signs or symptoms,
9 if they see people acting abnormally. The only healthcare
10 provider on these high school and these college teams are
11 going to be the athletic trainer. They are truly the licensed
12 healthcare providers outside of the physicians that are there.
13 So these people must see these injuries and take those
14 referrals when they're brought out of that game and make sure
15 that the appropriate care is involved or is applied to these
16 people.

17 Q: Would you expect there to be any other medical
18 professionals on the sidelines other than the athletic
19 trainer?

20 A: I would agree with the other people, if paramedics are
21 there, but they are there in more of a response manner. But
22 the people that are interacting with these athletes would be
23 the athletic trainer. And I think part of the challenge that
24 we have, and there's some evolving ideas that we have on this,
25 I mentioned the emergency action plan. I look at the coverage

1 model. I want to look at the risk of injury and I believe in
2 allocating resources according to the risk of injury. If it's
3 a higher risk injury I want to allocate resources there. So
4 when I was at the University of South Carolina, just because
5 we had an athletic trainer with men's basketball or men's
6 soccer didn't mean we didn't have to have one with women's
7 soccer. It's according to the risk of injury. So I do think
8 it's important to look at the risk and then with that medical
9 time out we have to communicate; one of the greatest words
10 today is communication so that whoever is covering that event
11 -- it's impossible as Mr. Hayes illuded, it's impossible to be
12 everywhere at one time. I understand and I respect that. At
13 the same time, that coach has a responsibility when that
14 athletic trainer is not there to be looking for those things
15 and that's what they're trained for, and that's what the state
16 law is set up to do. So we have responsibilities, we have to
17 communicate, we have to make sure those people understand
18 that. An athletic trainer on the sidelines, on the other
19 team's sidelines not on my sidelines, is not interacting with
20 my athletes. When you get in that athlete's face, when you
21 talk to that athlete, when you ask him those questions you can
22 see that things are not normal. So we'll see some video here
23 in a second I believe and as you look at this video you'll see
24 a player who goes from acting normal to starting to act
25 abnormal and doing some alternate behavior. So if I talk to

1 that athlete, if I interact with that athlete, then I can do
2 it. So I do think it's important to have that conversation.

3 Q: Okay. Now from the perspective of an athletic trainer,
4 not as a physician obviously, but as a licensed or certified
5 athletic trainer -- I guess it's license in Georgia and
6 certification through South Carolina.

7 A: That's correct.

8 Q: What is a concussion?

9 A: You know I think there's 42 definitions of concussions
10 today, but by and large a concussion is a metabolic condition
11 affecting the brain and it can be caused by direct or indirect
12 force. We always think about the big hits, it's not the big
13 hits, it's three small hits sometimes that can affect a
14 person. But that -- when the brain is concussed like that,
15 that can produce signs and symptoms and we have to look at
16 that. Sometimes it may be short lived, it may go on for days.
17 Sometimes it may show up the next day, so it can present
18 different ways. But it can be by direct or indirect forces.

19 Q: When you look at the age groups involved in junior high
20 and high school sports as you progress through B, JV, and
21 varsity, who is the most at risk for developing a permanent
22 injury if they have a concussion?

23 A: When I do seminars, workshops on concussions I call it
24 the fragility of the pediatric brain. I'm always concerned
25 about the pediatric brain. You know there's 3.8 million

1 people per year according to the CDC playing sports and having
2 concussions in sports, 3.8 million. We know that well north
3 of 2 million of those are going to be pediatrics because of
4 sheer numbers. Your children, my grandchildren, these people
5 are going to be out there playing sports. The pediatric brain
6 is susceptible because they're not as strong. The head is
7 larger, they're not as coordinated, the brain as you showed
8 this morning that the doctor showed how that can shake in
9 there, that can happen. So sometimes with the pediatric brain
10 and the lack of strength, that can lead to significant
11 problems, and we see that in the sheer numbers as far as the
12 number of people having concussions.

13 We encourage people to report concussions. Studies show
14 that people have gone from 2002 of 47 percent of people
15 reporting concussions to over 70 percent now. So self-
16 reporting is a good plan, but it's also wrought with 28
17 percent failure. So you can't just depend on people just to
18 tell you these things. We've got to make sure we ask the
19 questions, we look for the signs, we look for the symptoms, so
20 that we prevent these concussions from being catastrophic --
21 catastrophic events, excuse me.

22 Q: You mentioned a concept called a coverage model. Can you
23 explain that concept, please, sir?

24 A: Coverage model is basically what I look at, and I tell
25 people it's a text or a verbiage form of how we're going to

1 cover things. So when we're at this activity who's providing
2 care? When we're at this activity who's providing care? So
3 you know as I go through the day of a high school I may be at
4 practice and I can have a lot of people there that we're
5 overseeing. However, if there's an individual workout in the
6 gymnasium the coach has got to be providing that care. So I
7 just want to know who is providing care at what times. Again
8 it's impossible for the athletic trainer to be everywhere on
9 that school, we want to have a three minute response time with
10 our AED. We want to make sure written emergency action plan
11 and we know what we're going to do in the event that something
12 happens.

13 The coverage model incorporates a medical time out to me.
14 The medical time out is something that started in 2012 out of
15 West Virginia, Dr. Jim Kyle. He talks about getting the
16 people together before the game. In this particular incident
17 here, I would think it would have been ideal if the athletic
18 trainer had met with the coaches and said I'm going to be on
19 this sideline, this is what our plan is tonight as far as how
20 we're going to -- again, that communication as far as where
21 we're going to be, what we're going to do. I encourage
22 schools today to have a medical time out before the practice
23 so they review what their plan is. When I did the
24 investigation at the University of Maryland several years ago
25 one of the major problems there was there was construction on

1 the campus. Nobody knew about this construction, so the
2 traffic pattern changed. All of these things need to be taken
3 into account before the incident so that we don't have to
4 deal with that at the time.

5 Q: What was Horry County Schools coverage model when Logan
6 sustained his concussion?

7 A: I don't know what -- I haven't seen a coverage model.

8 Q: In terms of the coverage by the trainers?

9 A: The athletic trainers -- so when he was there, there was
10 nobody there from North Myrtle Beach. There was just the
11 Horry County had the home team athletic trainer who was
12 reported today as being at the sidelines.

13 Q: And what was that individual's name?

14 A: Oh goodness, Ms. Cyr, I think it is.

15 Q: Do you have any opinion as to whether Ms. Cyr's coverage
16 was appropriate?

17 A: I think there could have been more interaction. I could
18 hope that they would introduce that person to the coaches and
19 tell them, Coach White, and say hey if we have something we
20 know who to call. It is -- it is interesting that you had
21 three injuries that night, two that were reported at the game
22 and the person that was on the game to cover that didn't see
23 those. Thank goodness the other person who was in the -- in
24 the endzone talking to the EMS people before the next game was
25 called over to look at that.

Rodwell Walters - Direct Examination

Wood vs HCSD

235

2017-CP-26-06643

1 Q: Have you had any indication to review the tape and look
2 specifically where Ms. Cyr was stationed?

3 A: I did see that on the video, as I recall she was on the
4 sidelines. I didn't see her interacting with players, but she
5 walked down behind the bench one time whether it was to get
6 water or to see someone, I didn't see any evaluation. But
7 again that was not the most ideal video, as you will verify in
8 just a second, but you could see the location.

9 Q: Did you ever see her speak with or assess any of the
10 players on her team?

11 A: I did not notice anything.

12 Q: Did you ever see her speak with or assess any players on
13 the away side?

14 A: I did not see anything.

15 Q: Are you critical of that?

16 A: I question that. I mean I think there's a better --
17 again I think it's very important to have athletic trainers
18 that are involved. The plan may not have been a bad plan,
19 just poorly implemented. I do think that if we're going to
20 have that person there as an on call athletic trainer there
21 needs to be some interaction with the teams to make sure they
22 know what's going to happen. I realize it's impossible to be
23 everywhere, but we have to have a plan.

24 Q: Does the Horry County School District's practice in
25 prioritizing the JV players to the detriment of the B-team

1 players put the B-team players at needless risk?

2 A: You know I think that there's definitely -- there's
3 definite risk. If you look at the CDC, the CDC is pretty well
4 represented, and they talk about there number one risk is high
5 school football and the second is going to be soccer. I
6 didn't see cross country on that list. So I understand
7 covering all of those other athletes at the school, and there
8 are concepts of care versus coverage. Coverage is where we're
9 simply supervising, care is where we're having one on one
10 evaluations. But I do think it's important to look at that to
11 make sure that the highest priority sports are taken care of.
12 And I've already spoken to the sensitivity to the pediatric --
13 the young kid's brain. I mean I think that's got to be
14 protected and if there is an injury there, that we see that
15 person so we can hopefully evaluate that.

16 Q: Do you think there's an inherent risk associated with
17 dispatching a trainer to a cross country meet and leaving
18 these sidelines empty?

19 A: You know I think a better (inaudible) would have been to
20 staff that whether it would have been with PRN people. A lot
21 of people today are challenged with staffing and they're using
22 you know what PRN employees. So they'll hire a person, a
23 contract employee, to come over here and help staff those
24 areas to look at that and address risks. So I think there are
25 strategies that we could use to do that.

1 Q: Where is the higher risk of injury, at a cross country
2 meet or at a B-team game?

3 A: I think it's definitely football. I mean that's listed
4 as the number one sport, second would be soccer.

5 Q: Now where is there a higher risk of injury, at a JV --
6 I'm sorry at a varsity practice or at a B-team game?

7 A: I would -- I don't know what their practices are. I know
8 when Lou Holtz was at South Carolina we may have scrimmages on
9 Friday before a game on Saturday. That was very A-typical. I
10 don't know what their contact is at the high school game, but
11 I would doubt the contact would be as great as it would be at
12 a B-team football game.

13 Q: As an athletic trainer, what are some of the signs of a
14 concussion that you are trained to monitor?

15 A: You know one of the hallmark signs to me is going to be
16 confusion, dizziness, you look at the person's balance, you
17 know they may have -- I've heard today about photophobia or
18 light sensitivity, ringing in the ears. You know I think
19 there's 32 signs and symptoms that we actually see. You know
20 confusion, how they present, and all of those things that we
21 can look at as we interact with that patient and see that.

22 Q: In any of the depositions that you read or in any of the
23 testimony that you've heard here today, were any of the staff
24 members familiar with the concept of clutching?

25 A: Not as much as I thought it would be. There were a

1 couple of the athletic trainers and one of the coaches as I
2 recall that did talk about that they were aware of clutching
3 of the head.

4 Q: Now you're not suggesting that the school districts in
5 this state do like the NFL does and have a spotter in the
6 stands, right?

7 A: Absolutely not.

8 Q: Are you able to monitor an athlete for the signs and
9 symptoms of a concussion without walking the sidelines and
10 speaking with them?

11 A: No. I think that the interaction when you get in that
12 person's face, when you see their eyes, when you see how
13 they're responding, how they're reacting I think there's much
14 more value to that. What I do with the NFL is simply as a
15 backup and I'm looking for things that they've missed. You
16 know we have high -- what do you call it? High tech, not high
17 tech, digital televisions of video that we can review and you
18 can see these plays very, very clearly. We don't need that in
19 high school. Just simply asking questions, looking at those
20 people. You know clutching of the helmet is not -- we call it
21 a discretionary sign. So that's not something that I'm going
22 to -- just because he is -- it was alluded to earlier about
23 adjusting his helmet, I'm not talking about that. But when he
24 grabs his helmet and he just got blindsided or he got high
25 lowed like Logan did and then he grabs his helmet, that's a

1 modifier. I'm concerned about that as I look at those things.

2 Q: Some of the documents from the National Federation of
3 State High School Associations they talk about some things
4 like confusion about assignment or position.

5 A: Uh-huh. (Affirmative response.)

6 Q: Getting an instruction, is unsure of a game score or an
7 opponent; is that something that you can assess from up in the
8 stands or is that something that you ---

9 A: The coach would see that because when the player busts a
10 play I mean when they call a play to the right and he goes to
11 the left I mean obviously he knows something is wrong so
12 hopefully they would address that. You know players sometimes
13 their teammates are going to see that, but the coaches will
14 notice that if they see that and they're watching those
15 situations.

16 Q: You mentioned that you've had a chance to go back and
17 watch the tape a few times.

18 A: Uh-huh. (Affirmative response.)

19 Q: Did you notice anything about the first and second
20 quarters of the game?

21 A: I thought the first and second quarter were pretty
22 benign. As you watch the game Logan's a big boy and he seemed
23 to be giving commands, what appeared to me he was leading his
24 team and normal play.

25 Q: You mentioned a high low. Do you know exactly where on

1 the tape that can be seen?

2 A: I have a note here. I think it was at 4:25:02.

3 Q: And I'm going to go ahead and ---

4 A: And that's basically where he's blocked and somebody else
5 comes in and he just falls over that. You know ten percent of
6 the concussions we see are caused by the head contacting the
7 ground, not contacting an opponent but contacting the ground.
8 I question on this play here if that didn't maybe happen with
9 him.

10 **MR. EVANS:** And, Your Honor, before we play the tape,
11 Mr. McLean and I have stipulated so as not to confuse the jury
12 that we inform the jury that there's a timer on this video
13 tape that's the timer taken from the camera that was used so
14 it's not the actual time of day. It says 4 o'clock, we know
15 the game started at 5:30. Just so there is no confusion, the
16 camera that the district used wasn't set to the date.

17 **REPORTER'S NOTE:** (Whereby video of football game is
18 played.)

19 **BY MR. EVANS:**

20 Q: Can you call that time out for me again, sir, for the
21 high low?

22 A: 4:25:02.

23 Q: Do you know what number Logan was?

24 A: I believe he's number 60.

25 Q: Okay. This is number 60, right?

1 A: Yes. Do you see how he got toppled over there? He got
2 engaged and they kind of knocked him down.

3 Q: I'll play that again, but that's sort of the three
4 stooges play where somebody pops up behind you, it looks like
5 by accident, and you sort of get knocked over the tabletop?

6 A: Exactly.

7 Q: What's significant about a tabletop play?

8 A: Well I think any time that you're blindsided and you fall
9 you can't -- you know you stabilize yourself and you get hit.
10 That can be problematic in itself.

11 Q: Now you've mentioned this concept of clutching.

12 A: Yes, sir.

13 Q: Did you see any evidence of this in the video tape?

14 A: Go to 5:00:56, please.

15 **BY MR. EVANS:**

16 Q: Now is this Logan right here?

17 A: Yes. Yes.

18 Go to 5:15:34. I thought this was a pretty -- 5:15:34.
19 Logan the whole first half has kind of been directing
20 everything and he's playing pretty aggressively and now all of
21 a sudden he's reaching over to his -- the guy beside him to
22 either ask him what the play is -- I don't know what he was
23 asking -- or what the count was. Back it up just a little
24 bit. That's good. I think is the one here where he
25 questioned his teammate.

1 what a concussion is, correct?

2 A: That's correct.

3 Q: And it's certainly important to inform the athletes what
4 a concussion is, correct?

5 A: Absolutely.

6 Q: Are you able to rely exclusively on the athletes to self-
7 report a concussion?

8 A: I don't think so, no.

9 Q: Why not?

10 A: Well underreporting -- I just gave the statistic, about
11 72 percent of the people said they would report.

12 Underreporting is a concern, in fact there's many athletes
13 today that don't want to come out of the game. They don't
14 want to let you know they're hurt. They don't want to be
15 involved with that. So I think underreporting is a concern.

16 Q: Would being dazed, confused, or forgetful impact a
17 player's ability to self-report?

18 A: Say that again now?

19 Q: Would being dazed, confused, or forgetful ---

20 A: Yes, definitely. Definitely.

21 Q: Do you believe that the deficiencies that you've noted in
22 the coaches training, in the coverage model, and in the
23 emergency action plan are part of the same unfolding problem?

24 A: Say that again? Do I believe that the emergency action
25 plan, the coverage model ---

1 Q: And the deficiencies in training are part of the same
2 unfolding problem?

3 A: No. I think that -- I think as I look at that there's
4 three areas of concern there.

5 Q: Okay. And what are they?

6 A: I think number one would be the coverage model, the
7 actual plan, what are we doing here as far as staffing that
8 area. Number two, is that are we reporting the injuries, are
9 we seeing those injuries, are we identifying those injuries.
10 And number three is just, you know, the training of the
11 coaches. We've got to make sure that our staff understands
12 that we have this policy from the county on concussion
13 management, but we've got to make sure that people understand
14 that. It doesn't do any good for central administration to
15 write a beautiful document if we don't get it to the masses.
16 We've got to make sure that our coaches and our teachers
17 understand these things and they implement that care.

18 Q: Is it your opinion that the Horry County School District
19 was reckless regarding its coverage model?

20 **MR. MCLEAN:** Object. Legal opinion.

21 **THE COURT:** Sustained.

22 **MR. EVANS:** Your Honor, that's not -- may we approach?

23 **THE COURT:** Rephrase it.

24 **MR. EVANS:** Okay.

25 **BY MR. EVANS:**

1 Q: Do you believe that the Horry County School District was
2 very, very careless with regards to their coverage models?

3 MR. MCLEAN: Same objection.

4 REPORTER'S NOTE: (Bench conference is held on the record
5 in the presence of but outside the hearing of the jury.)

6 THE COURT: You're calling for a legal conclusion.

7 MR. EVANS: Well the testimony -- the cases are clear,
8 Your Honor, that the rule is that just because he testifies
9 about something that's the ultimate question for the jury, we
10 still have the burden of showing gross negligence. He's an
11 expert that's qualified to give that opinion. He evaluates
12 these policies. They're going to turn around and say he
13 didn't give a reckless opinion if he doesn't.

14 MR. MCLEAN: Very, very -- I mean how many verys does you
15 know he want to put on there? It's a legal conclusion.

16 MR. EVANS: Gross negligence is a legal conclusion, not
17 reckless.

18 How about highly deficient?

19 MR. MCLEAN: No. Objection.

20 MR. EVANS: That's not a legal conclusion, Joe.

21 MR. MCLEAN: I think it is.

22 MR. EVANS: That's not a legal conclusion. Show that to
23 me in a rule or statute.

24 MR. MCLEAN: Scott, I believe it is and I object.

25 MR. EVANS: He's got to allowed to give a standard of

1 care opinion.

2 **THE COURT:** Did you find many things that indicated the -
3 -- not just one, not just two?

4 **MR. EVANS:** How about outside of the standard of care,
5 an expert in a medical malpractice case is required to give
6 that opinion. That is required.

7 **MR. MCLEAN:** And there are special rules for medical
8 malpractice cases that don't apply here.

9 **MR. EVANS:** There are not.

10 **MR. MCLEAN:** I believe there are for the burden of proof.

11 **MR. EVANS:** There not.

12 **MR. MCLEAN:** I don't try medical malpractice cases, so
13 I'll take your word.

14 **THE COURT:** All right. I still think you can do it
15 another way without drawing a legal conclusion that could have
16 been seen or that could have been done?

17 **MR. EVANS:** Okay.

18 **THE COURT:** Then you can argue gross negligence.

19 **MR. EVANS:** Okay. (inaudible) How about highly
20 critical? Are you highly critical?

21 **THE COURT:** Yeah.

22 **MR. EVANS:** Okay.

23 **REPORTER'S NOTE:** (End of bench conference.)

24 **BY MR. EVANS:**

25 Q: Mr. Walters, are you highly critical of the Horry County

1 School Districts coverage model?

2 A: I'm very critical of the implementation of that model.

3 Q: Okay. And, Mr. Walters, are you highly critical of the
4 Horry County School Districts failure to pull Logan from that
5 game?

6 A: I'm not sure I understand that. He didn't report
7 anything. At the same time, they did not observe any of the
8 behaviors that we just discussed right here.

9 Q: Are you highly critical of their decision not to have a
10 trainer?

11 A: I think -- I think the coverage model you know is a
12 concern. I think the fact that the athletic trainer that was
13 there, if they had been engaged with the athletes I think
14 perhaps they would have seen something there. Again, I'm -- I
15 can't really say that I mean I can't guarantee that, but they
16 had a much greater chance if you're on that sideline engaging
17 with those athletes and identifying that behavior or the signs
18 and symptoms of a concussion.

19 Q: And finally, are you highly critical of the districts
20 training of this coaching staff?

21 /A: Yeah, I think it needs to be reviewed. I think they need
22 to look at that policy. What they -- the concern I would have
23 and I think this is in my report, was the fact that you have
24 two documents, the consensus statement and then the NATA's
25 concussion article, that was what was used and those are

Rodwell Walters - Cross Examination

Wood vs HCSD

252

2017-CP-26-06643

1 I'm saying.

2 Q: Can the coach provide that engagement?

3 A: If the coach saw a sign or a symptom which has been
4 presented several times today on those cards, if they see that
5 they're going to sit them out and get them into care.

6 Q: Okay. First of all, you have no evidence that a coach
7 observed those signs and symptoms, correct?

8 A: I don't -- I'm not sure what you're saying.

9 Q: Well you just said that Logan didn't exhibit any of the
10 symptoms that you talked about. You can't say that ---

11 A: I didn't not say -- that is not what I said.

12 Q: Can you say that he was confused?

13 A: I didn't say that.

14 Q: Let's go back. Can an assistant coach provide that
15 communication with a player to fill that void where you say an
16 athletic trainer can be ---

17 A: If he sees the signs -- if he sees a presentation whether
18 he's busting a play, whether he doesn't remember something, or
19 he has you know an altered behavior there. He's not a health
20 care provider but at the same time if you're in doubt sit them
21 out.

22 Q: Is that -- and that is a policy of the school district,
23 correct? If in doubt, sit them out.

24 A: That is correct.

25 Q: And as far as you know they followed that policy?

Rodwell Walters - Cross Examination

Wood vs HCSD

253

2017-CP-26-06643

1 A: Well they didn't that day.

2 Q: Because -- are you testifying that the video that you've
3 shown is Logan exhibiting signs of a concussion?

4 A: I would have said that if I'm watching that right there
5 and I'm on the sidelines and I've talked to that athlete, I
6 would probably pick up on something that might trigger a
7 concussion. Now that's -- that's purely my opinion, but I'm
8 saying if I see something, if I see a behavior and he comes to
9 the sideline and I talk to him and I see something there I
10 start to ask those questions. I may find out that he's having
11 some memory loss. I may find out that he doesn't -- he's
12 dizzy. I may find out that he's presenting with signs of a
13 concussion.

14 Q: But could a coach, his position coach, perform that
15 function? Could his position coach who talks to him during
16 time outs and half time, talks to him when he's not on the
17 field, could he perform that function of interviewing, of
18 talking with Logan, of communicating with Logan and seeing if
19 Logan is behaving in his normal ---

20 A: I think his position coach is not going to do a medical
21 test there, but he would be able to -- he should be able to if
22 he's looking at those thing to present -- to identify those
23 things that the coach would see.

24 Q: Right. So a properly trained position coach should be
25 able to recognize if Logan is exhibiting signs or symptoms of

Rodwell Walters - Cross Examination

Wood vs HCSD

259

2017-CP-26-06643

1 A: But that's -- I mean that's totally unrelated to this. I
2 mean that's a secondary thing. I'm not the primary defense
3 from the -- from the press box.

4 Q: Who's the primary defense on the B-team, coaches? They
5 know Logan; Logan knows them. Who's the primary defense?

6 A: I don't think you had one, I mean in that case that day.
7 The coaches would have to be because there's not an athletic
8 trainer there on that sidelines.

9 Q: Is it your testimony that nobody was looking out for
10 Logan's wellbeing?

11 A: My testimony would be that there was not a health care
12 provider that was able to interact with him.

13 Q: Was there a coach that was able to interact with him?

14 A: Yes.

15 Q: Was that coach trained to recognize the signs and
16 symptoms of a concussion?

17 A: He had taken the NFHS course.

18 Q: You pointed to a number of points on the video and
19 described different things that you observed. I don't want to
20 go back and play them because the jury is going to be able to
21 review that when they retire to their jury room for
22 deliberations.

23 A: Yes, sir.

24 Q: But you can't look at that video and testify that Logan
25 was confused, can you?

Rodwell Walters - Cross Examination

Wood vs HCSD

269

2017-CP-26-06643

1 **REPORTER'S NOTE:** (End of bench conference.)

2 **BY MR. MCLEAN:**

3 Q: Dr. Walters, you were critical of Horry County Schools
4 for failing to pull Logan out of that game, aren't you?

5 A: I was critical of the lack of evaluation of that injury,
6 yes.

7 Q: You were critical of the lack of evaluation of that
8 injury.

9 A: Of his incident. In other words, I'm simply saying that
10 if there had been -- if a healthcare provider had been there,
11 a licensed athletic trainer, a certified athletic trainer had
12 been there and could have interacted with him then perhaps
13 they would have seen that.

14 Q: They would have seen what?

15 A: His injury.

16 Q: What injury?

17 A: The symptoms that he's presenting. If they'd have seen
18 those things happening there, that he'd gotten hit and he'd
19 have been on the sidelines, that person could then engage with
20 that athlete and Logan may have come to him because he knew
21 who he was and seek care.

22 Q: Logan didn't know the North Myrtle Beach trainer, did he?

23 A: If he'd have seen -- it would have been an athletic
24 trainer from his school I believe that kid would seek him out.

25 Q: What should the athletic trainer have seen? Was it on

Rodwell Walters - Cross Examination

Wood vs HCSD

270

2017-CP-26-06643

1 the video?

2 A: I don't know how many times that I have to say this. The
3 fact that the kid, that he got hit and then I interact with
4 him, I don't just wait for an injury to happen. I walk up and
5 down that sideline and look in those kids eyes and find out
6 what's going on. I may not have seen -- I may not have seen
7 an injury. I may -- he may not have had a concussion, but we
8 would have talked and if he had something happen, now I can
9 engage and say hey are you okay? Where are we playing?
10 What's the score? And ask some questions to see is something
11 going on. If I do, I would peel the layers of that onion back
12 and evaluate that person, but I don't do that from the
13 sidelines. I don't do that from afar. I don't do that from
14 the press box. I get on the sidelines with him and ask those
15 questions.

16 Q: There were several ifs in that, if you see an injury.
17 Did you see an injury to Logan that would have prompted you to
18 do that?

19 A: Okay.

20 Q: Did you see an injury to Logan that would have ---

21 A: Did I see an injury?

22 Q: Yes.

23 A: If I saw that kid get high lowed like that and he came
24 out of the game and then I saw maybe him clutching his head, I
25 would have that conversation. I would do that.

1 Q: Did you see him clutching his head?

2 A: What I thought was clutching his head after a high low.
3 That's what I'm saying. It's not any one of these things, but
4 when you put them all together now I think -- and it may be
5 nothing there, but you know what? There was something there.
6 And if I'd have asked those questions, I could have found that
7 out.

8 Q: And the high low -- well we've talked about that. The
9 jury will get to see that. I believe that's all I have.
10 Thank you, sir.

11 A: Thank you.

12 **THE COURT:** All right. Any redirect?

13 **MR. EVANS:** Just a couple, Your Honor.

14 **REDIRECT EXAMINATION OF MR. WALTERS BY MR. EVANS:**

15 Q: Mr. McLean has asked you about one hit that we've looked
16 at. To be clear, there's a number of hits after that high
17 low, correct?

18 A: That's correct.

19 Q: And is it your understanding that at least 20 percent of
20 the plays are missing from that second quarter?

21 A: That's what I was told, yes.

22 Q: Now after that high low can you estimate how many hits
23 are on the tape? Would it be more than 20?

24 A: I would say he probably had -- to answer your question,
25 the position that has the most contact in a game is the

Sarah Wood - Direct Examination

Wood vs HCSD

274

2017-CP-26-06643

1 Wood.

2 **SARAH WOOD, HAVING BEEN**
3 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

4 **THE CLERK:** Please state your name for the court
5 reporter, please.

6 **MS. WOOD:** My name is Sarah Wood.

7 **DIRECT EXAMINATION OF MS. WOOD BY MR. MOORE:**

8 Q: Thank you, Ms. Wood. Good evening. It's been a long
9 day, but I appreciate your willingness to testify today. I
10 understand that you're Logan's mother.

11 A: Yes, I am.

12 Q: Okay. And if you wouldn't mind sharing with the jury
13 just a little bit about yourself, where you're from, things of
14 that nature.

15 A: I'm originally from Kentucky. I've been in South
16 Carolina for about five years. I'm a schoolteacher. I've
17 taught everything from first grade to Clemson. I currently
18 teach ESL students, students that don't speak English. I
19 teach them to speak English and read and write. I'm a single
20 mother. I have a daughter who is at the University of South
21 Carolina; and I have my son Logan who is a senior this year at
22 South Aiken High School.

23 Q: Thank you, Ms. Wood. Did you grow up in Kentucky?

24 A: Yes, sir. I did.

25 Q: And did you grow up with any siblings?

1 **MARKED FOR IDENTIFICATION ONLY.)**

2 **BY MR. MOORE:**

3 Q: Ms. Wood, what I've marked as plaintiff's exhibit number
4 ten is the North Myrtle Beach Middle School B football team
5 team rules. Is this a form that you're familiar with?

6 A: Yes. I attended this meeting.

7 Q: You attended this meeting with the coaches. And was it
8 during this -- during this meeting with the coaches, was this
9 preseason?

10 A: Yes. This was after the summer conditioning and before
11 the actual football season began.

12 Q: Were there any representations made to you at that
13 meeting as to how your son and the other young athletes were
14 going to be treated during these games?

15 A: Yes.

16 Q: And what was that?

17 A: That they were expected to meet all the expectations,
18 academics, they gave expectations about attendance, they gave
19 expectations about 110 percent at practices, they introduces
20 the trainer, Coach Hayes at that time. They said he is the
21 medical person and contact. They talked about the trainers
22 that would be watching our students. The coaches would be
23 paying attention to all of our children that were there. But
24 they also indicated too that they didn't want to hear from
25 mamas and daddies. They didn't want me to give my input on

1 when my child should play and how their child should play,
2 that was their job as a coach.

3 Q: Did they also represent to you that the staff would take
4 care of your son?

5 A: Yes.

6 Q: And did you feel comfortable with Logan playing football
7 for the North Myrtle Beach Middle School?

8 A: Yes.

9 Q: When the season started, what position or positions was
10 Logan playing?

11 A: He was playing the line; he was a lineman.

12 Q: Okay. Was he playing both offense and defense?

13 A: Yeah. He never came out of the game unless they were
14 punting or I don't know all of the terms of football, but
15 unless they were doing the kickoff or punt returns, he was in
16 the game the whole entire game.

17 Q: And was that every game leading up to his injury?

18 A: Yes.

19 Q: So he would stay in the game from the beginning to the
20 end every game?

21 A: Yes.

22 Q: Did he appear to be a leader on the team?

23 A: Yes.

24 Q: Was he somebody who was calling plays to the other
25 teammates?

1 A: Yeah. I thought that was interesting. Like I said I had
2 four brothers and two of my brothers were quarterback and I
3 thought the quarterback called the plays, but I noticed Logan
4 would be the one calling plays and looking to the sideline.
5 They had these little like a claw and beating on their chest
6 and these little hand signals and stuff and Logan was
7 communicating to the line.

8 Q: And let's just go ahead and jump forward to October 20th,
9 2016 when Logan participated in an away game at Carolina
10 Forest against Ocean Bay Middle School. Were you present at
11 that game?

12 A: Yes.

13 Q: And who were you with?

14 A: I was with my daughter Anslee, it was her 16th birthday.

15 Q: And as you've heard the testimony today, we've got some
16 of the video. We're missing about 20 percent. Have you had a
17 chance to look at that video?

18 A: Yes.

19 Q: But you also were there. You were present there watching
20 the game; is that right?

21 A: Yes.

22 Q: And would you typically go to Logan's games?

23 A: Yes, I would.

24 Q: And out of the -- just really in the interest of time we
25 have shown some clips to the jury, but we certainly didn't

1 have the intention or the desire to show the beginning until
2 the end at least of what we have on video, but you've seen the
3 video?

4 A: Yes.

5 Q: And you were there watching the game. As a -- as a
6 person watching the game from the stands, Ms. Wood, did you
7 have any concerns about Logan during that game?

8 A: I did. As I said Logan was the biggest lineman, or one
9 of the larger linemens out there and he takes a lot of hits.
10 Every play he was taking a hit. But this particular game it
11 seemed as though he was taking more hits than normal by more
12 people than normal. In the games before that I didn't
13 necessarily notice two and three people on Logan at one time,
14 but this game I felt like they came to hurt my child. I
15 thought they came to stop him. I felt like they came to take
16 him out of the game. And he was receiving a lot of really
17 hard hits that day.

18 Q: And you know when I watch football it's on a big screen
19 TV and there's cameras above the field and it's close, it's
20 right there, you can hear the hits. The video that we have is
21 from a distance, from the bleachers, correct?

22 A: Right.

23 Q: And you were right there in front of the bleachers?

24 A: Yes.

25 Q: Watching the game?

Sarah Wood - Direct Examination

Wood vs HCSD

293

2017-CP-26-06643

1 A: Yes.

2 Q: Did you witness any helmet-to-helmet hits?

3 A: Yes. There were several of those.

4 Q: Beyond the number of hits that you were seeing, was it
5 about every play?

6 A: Yeah. At some point if it wasn't head-to-head, he was
7 head to ground.

8 Q: Right. And besides him taking hits about every play,
9 what else did you witness, as someone who knows Logan, that
10 caused you concern from the stands?

11 A: In the beginning he was, like I said, calling plays, he
12 seemed to be very engaged in the game, he was strong. And
13 then as -- I guess towards the end of the first half I noticed
14 he kept grabbing his back and holding his back, and I remember
15 saying to my daughter something is wrong with Logan. And then
16 there were -- there was a time after the whistle blew that
17 Logan was still chasing one of the opponents on the field.
18 And Logan being the product of an educator is very much a rule
19 follower. When the whistle blew he knew it was over and he
20 was still chasing this child around. As we moved to the
21 second half, Logan was lining up behind the line, the rest of
22 the linemen. He was looking to his teammates for, I assume,
23 plays because he didn't seem to know what he was doing. There
24 were several times that the down had been over and Logan was
25 just kind of wandering around on the field like he doesn't

1 even know where he is. At that point I was really concerned,
2 and I went to the fence and wanted to go down to the field. I
3 didn't know what to do. I was new to the area, didn't know
4 the protocol and the SRO or police office, whatever he is, he
5 told me to get back up in the stands. And you know I just
6 watched my son just being hit and hit and wandering and I
7 didn't know what to do.

8 Q: So after the school resource officer informed you to go
9 back in the stands, you went back in the stands? You did as
10 you were told?

11 A: Right.

12 Q: And the game came to an end?

13 A: Yes.

14 Q: And then -- and then what happened?

15 A: Then my daughter and I got in the car because one of the
16 other things that we were instructed as parents is your child
17 may not ride home with you, they have to ride back on that
18 team bus. So Anslee and I raced back to North Myrtle Beach as
19 fast as we could, and about ten minutes before we got there I
20 received a phone call off of Logan's phone. When I answered
21 it was Coach White and he said Ms. Wood I think Logan's hurt
22 and I said I think you're right. He said we have him in the
23 locker room, you need to come find him.

24 Q: And what did you see when you went in the locker room?

25 A: When I went in the locker room my son was sitting on the

Sarah Wood - Direct Examination

Wood vs HCSD

295

2017-CP-26-06643

1 first row of benches. He had on his neon girdle. He didn't
2 have his pants on, he didn't have any shoes on, and he had his
3 t-shirt, and he has his pink bandana on his head. He was
4 sitting there screaming my head, my head and he was crying and
5 sobbing. A couple of his friends are standing there and he
6 said I'm going to be sick, I'm going to be sick. And Coach
7 Vereen came over and said here are his shoes. And then he
8 said are you going to take Logan, and I said yes I'm going to
9 take Logan. And Logan had no idea who I was and I leaned over
10 and I said Logan, it's mom. He was just screaming my head, my
11 head. I said Logan it's going to be okay, it's going to be
12 okay. So I get him up and get him wrapped around me as best I
13 could and we're shuffling out to the car. And Coach Vereen is
14 carrying his shoes and said I've talked to the trainer and
15 he's in Maryland at a golf tournament. He said maybe just
16 wait 24 hours and see how Logan is. And I said I don't think
17 I can wait 24 hours and see how my son is. Logan was
18 shuffling like a 90-year-old man. He's screaming and holding
19 his head. Then as we get him into the car, my daughter meets
20 me at that point and helps me get him into the car, he said
21 I'm going to be sick. And for whatever reason we had a trash
22 bag in the back of the car and I just laid it across his lap.
23 He was just holding his head and just rocking back and forth.
24 And Seacoast, I knew where it was because I passed it on the
25 way to my elementary school and that's where we took him. And

Sarah Wood - Direct Examination

Wood vs HCSD

296

2017-CP-26-06643

1 they didn't even have us register because he was crying and
2 seemed to be in a lot of pain, so they said let's take him on
3 in now and we'll do the paperwork later.

4 Q: So you were rushed to the emergency room. Was Logan
5 evaluated by a physician?

6 A: Yes.

7 Q: And was he diagnosed with any conditions at McLeod
8 Seacoast?

9 A: Yes. They said that he had a concussion.

10 Q: Okay.

11 A: And the recommendation was to follow up in the morning
12 with our doctor.

13 Q: Okay. And did you do that?

14 A: Yes.

15 Q: And who was that doctor?

16 A: It was doctor ---

17 Q: Doctor Daniels?

18 A: --- sorry. I had Doctor Collins, that's who our doctor
19 is now. Doctor Daniels.

20 Q: Okay. And how did you learn about Doctor Daniels?

21 A: My friend that I came here for, her daughter had one
22 there and she spoke very highly of him. Then someone on the
23 staff of people at the hospital made mention that he'd be
24 good.

25 Q: And you took Logan to Doctor Daniels the next day. What

1 did Doctor Daniels say?

2 A: A lot of it is what he didn't say, but he said your son
3 definitely has a very severe concussion. He said I have
4 concerns for ---

5 **MR. MCLEAN:** Your Honor, I believe this is hearsay. I
6 object.

7 **THE COURT:** Sustained.

8 **MR. MOORE:** Your Honor, our position is it's an
9 exception, it's under Rule 804 -- 803(4), it's the statement
10 of a diagnosis and treatment.

11 **MR. MCLEAN:** I believe that's a statement made by a
12 patient to the physician.

13 **THE COURT:** That's the way I see it as well.

14 **BY MR. MOORE:**

15 Q: After the game and after meeting with Doctor Daniels,
16 were there any other injuries that came to fruition or at
17 least that Logan was able to verbalize the next day or the
18 days after the football game?

19 A: He had a separated shoulder and two broken teeth.

20 Q: Okay. And where were the broken teeth?

21 A: The bottom teeth.

22 Q: So the two front bottom teeth?

23 A: Uh-huh. (Affirmative response.)

24 Q: Those were broken?

25 A: Uh-huh. (Affirmative response.)

1 Q: And then the separated shoulder?

2 A: Yes.

3 Q: And when did y'all learn that he had suffered those
4 injuries as well -- or did you learn that?

5 A: You know honestly probably not for several days after
6 that. At that particular moment the pain threshold with Logan
7 and the unknowns, the concerns for brain bleeds, the concerns
8 for swelling of the brain, those really all took priority.
9 And Logan really didn't, at that point, know pain I don't
10 think. I think his whole body just hurt, so I don't really
11 think he could isolate it's my shoulder or my neck or my back,
12 it was just pain.

13 Q: In the first few days after he was discharged from
14 McLeod, what was Logan's demeanor? I mean if you can just
15 tell us a little bit about what was going on beyond the pain
16 that you just testified to.

17 A: Right. When we got home from the hospital that night, he
18 just went straight to bed. The next morning he was very
19 confused. He didn't know where he was. He didn't know who I
20 was. For quite some time he called me Ms. Mommy. He didn't
21 know his sister. He didn't know pets. He didn't know how to
22 take a shower. He didn't know he wore contact lens. He
23 didn't even know how to brush his teeth. And Saturday, after
24 the injury on Thursday night we went to Waffle House to eat
25 breakfast just to kind of sit together, and that's when I

1 guess everything broke wide open. We were sitting there and
 2 he's looking at the menu and he has no idea what any of this
 3 is. He doesn't know what eggs are, he doesn't know what bacon
 4 is. He doesn't know what the little bottles on the table are
 5 that have salt and pepper. There was a little tray of lemons,
 6 he didn't know what any of that was. And I said well honey
 7 are you hungry? And he said I don't know. And I said well
 8 what do you want to eat? And he said what do I like? And so
 9 that's when the flood gates opened and we really started
 10 figuring out what Logan really didn't remember and how severe
 11 memory loss he really did have. It was -- it was almost out
 12 of control because you couldn't stop the bleeding so to speak
 13 because it's like well okay you don't know this but then you
 14 didn't know this or this and you didn't know where to start.
 15 And that's when Doctor Daniels and I, we had to get Logan to a
 16 neurologist. We had to have more information than what we had
 17 because this was becoming really big really fast.

18 Q: And there was -- was it Doctor Daniels that referred
 19 Logan to a neurologist?

20 A: Yes. He told us we needed to go to MUSC or go to Duke.
 21 MUSC was closer so that's where we went, and we went in
 22 through the emergency. They didn't have any appointments
 23 available and we just felt like it was too serious to wait.

24 Q: And I understand that the pediatric neurologist that
 25 Logan treated with was Doctor Kline.

Sarah Wood - Direct Examination

Wood vs HCSD

300

2017-CP-26-06643

1 A: Yes.

2 Q: We heard that testimony today. How soon after Logan's
3 injury was he evaluated by the pediatric neurologist at MUSC,
4 Doctor Kline?

5 A: He was hurt on Thursday and we went to Doctor Kline on
6 the following Tuesday.

7 Q: Okay. And how was he doing at that point, half a week
8 later?

9 A: Still shuffling, still very dazed, very confused, light
10 still hurt his eyes, noise really bothered him a lot. When we
11 got there, there wasn't any examination rooms available. We
12 had to sit on a gurney in the hallway and that's where she
13 conducted her examination. And the buzzing of the iridescent
14 lights drove him crazy. He kept holding his head and just
15 rocking back and forth. He was very nauseated. Foods, even
16 though he didn't know what they were things would make him
17 sick to his stomach and he didn't eat a whole lot for a while.

18 Q: And after being evaluated at MUSC Children's Hospital in
19 the Neurology Clinic, what was your understanding of Logan's
20 diagnosis at that point in time?

21 A: Doctor Kline said he had probably five to seven
22 concussions he had sustained. She said this is pretty
23 monumental injury and it was just going to be one of those
24 things that we were just going to have to discern over time
25 you know what was going to happen and what we needed to do.

Sarah Wood - Direct Examination

Wood vs HCSD

301

2017-CP-26-06643

1 So every visit was a different, different plan.

2 Q: Do you know if Doctor Kline had an opinion of whether or
3 not he had suffered from a traumatic brain injury?

4 A: Yes, she did say.

5 Q: That's what she told you?

6 A: Yes.

7 **MR. MCLEAN:** Objection to hearsay.

8 **THE COURT:** Sustained.

9 **BY MR. MOORE:**

10 Q: And did you continue to treat, excuse me, did Logan
11 continue to treat with Doctor Kline?

12 A: Yes.

13 Q: And for how long?

14 A: We stayed with her about a year and a half until she got
15 pregnant, and then I think at that point too she was also
16 going to move to John Hopkins.

17 Q: And so you would drive Logan from North Myrtle Beach to
18 downtown Charleston for these appointments?

19 A: Yes.

20 Q: Okay. And was Logan in school at that point in time?

21 A: No.

22 Q: Okay.

23 A: We tried to go back to school maybe three, four
24 weeks after his injury. She wanted him to try to get some
25 normal routine in and we tried an hour a day. We did that for

1 **MR. MCLEAN:** Object to hearsay.

2 **THE COURT:** Sustained.

3 **BY MR. MOORE:**

4 Q: After -- during this time period I understand you
5 testified earlier, Ms. Wood, that going back to school was too
6 much of a challenge for Logan at that point in time. Was he
7 homeschooled the rest of his eighth-grade year?

8 A: Yes.

9 Q: And as a teacher I guess he had the benefit of having an
10 excellent homeschool teacher. Could you describe how he was
11 academically for the remainder of that year?

12 A: Well we started after the brain injury. He probably was
13 working on a kindergarten, first grade level. We tried
14 writing journals. One of the things I would do is the I feel
15 and then I'd draw a blank and he'd write a word. If he didn't
16 know how to spell the word, he'd draw a smiley face or a sad
17 face and that's sort of where we started. Reading, we didn't
18 even attempt to do reading. He could do basic math skills if
19 he could use his fingers, adding, subtracting. We didn't do
20 multiplication; he didn't do division. It was really
21 reintroducing some letters, some sounds. We had to introduce
22 some basic sight words: I, see, man, can, have. And that's
23 sort of where we began. And again it was just trying to find
24 where the holes were and moving forward from there.

25 Q: And you talked a little bit earlier about the Tourette's,

1 how was -- how were the Tourette symptoms at this point in
2 time?

3 A: After the brain injury the Tourette's really manifested
4 themselves greatly. We had lots of eye blinking. He started
5 some new ones like opening his mouth very wide. He started
6 this blowing sound. He started flapping his arm a little bit.
7 There were some different things that we hadn't seen. He had
8 this motor movement where his arm would just like hit his leg.
9 But they seemed to come on with a fury.

10 Q: And I understand, Ms. Wood, this is -- this leads up to
11 about a year after the accident and now we're into July,
12 October of 2017 when this lawsuit was filed.

13 A: Uh-huh. (Affirmative response.)

14 Q: So this was filed roughly a year after the game. Because
15 Logan was a minor at that point in time, he was 15, you were
16 initially the plaintiff in that lawsuit; is that correct?

17 A: Yes.

18 Q: And you mentioned earlier, I think you said you had sued
19 for custody or something to that affect which I represent to
20 you that's not a civil action, that's a ---

21 A: Right. Yeah.

22 Q: Have you ever been, prior to this action here, a
23 plaintiff or a defendant in any type of civil lawsuit?

24 A: No, sir. I have not.

25 Q: Have you ever filed any type of claim as a result of a

Sarah Wood - Direct Examination

Wood vs HCSD

310

2017-CP-26-06643

1 Q: What is the total bill that you have there, Ms. Wood?

2 A: This is \$10,907.

3 Q: And does that represent the total amount of treatment
4 that Logan's gotten for his brain injury?

5 A: No. I have so much debt. I ended up having to sell my
6 house because I can't afford my home payment anymore because
7 of my medical bills.

8 Q: Okay. And this doesn't include -- we don't have the
9 benefit of the prescription bills.

10 A: Right.

11 Q: Doctor Waid's bills.

12 A: Right.

13 Q: The last two years that he's been treating in Aiken, we
14 don't have those bills.

15 A: Right.

16 Q: And we also intentionally did not include in those bills
17 all of the treatment that Logan received for his shoulder.

18 A: Right.

19 Q: And why is that, Ms. Wood?

20 A: I only produced the bills I had the receipts for.

21 Q: And do you understand a shoulder injury is something that
22 happens in football?

23 A: Yes.

24 Q: And it's something that can't always be prevented.

25 A: Right.

Sarah Wood - Direct Examination

Wood vs HCSD

311

2017-CP-26-06643

1 Q: And that's a little different than Second Impact
2 Syndrome; would you agree with that?

3 A: Absolutely.

4 Q: Okay. And so you were comfortable not including the
5 bills for all of his shoulder in this claim for damages?

6 A: Yes.

7 Q: And also we're not making any type of claim for lost
8 wages, correct?

9 A: Right.

10 Q: We've talked about there's no prescription bills in
11 there. We're not including the MRI's, things of that nature.

12 Moving forward, did you end up leaving Myrtle Beach and
13 moving to Aiken?

14 A: I did.

15 Q: And when was that?

16 A: I moved in June of 2017.

17 Q: Okay. And I'm assuming that your daughter and Logan came
18 with you?

19 A: Yes, sir.

20 Q: And why'd you leave here?

21 A: Because at that time I was going to file a lawsuit
22 against Horry County Schools for my son's medical and it would
23 make things very uncomfortable for me and for my children.

24 Q: And when you moved to Aiken did you have a job there?

25 A: I did.

1 Q: And how did you get that?

2 A: They had a job fair, and I was hired that day.

3 Q: And where were you hired to work?

4 A: I was hired to work at East Aiken Elementary School for
5 the Arts.

6 Q: Okay. And did Logan -- was he able to, for the first
7 time, go back to school full time?

8 A: He did.

9 Q: Okay. And where did he go to school?

10 A: He went to South Aiken High School.

11 Q: And would he have been a freshman at that point in time?

12 A: Yes, he was.

13 Q: And how did Logan adapt during his freshman year back at
14 school at South Aiken?

15 A: It was a horrific year. He struggled to keep up
16 academically. He struggled to create friends. He struggled
17 to go to school. It was probably the most traumatic part of
18 this, equivalent to the head injury. Never had I had trouble
19 with my child attending school, going to school, but this was
20 awful. So we moved forward to get a 504. It's for students
21 that have disabilities, and it took about two months to get it
22 put into place, but there are things that Logan processes very
23 slowly now as part of that front lobe injury. So to read, it
24 takes him a long time to read. And unfortunately he only
25 remembers about the last 25 percent of anything he reads, so

1 long passages are very challenging for him. So he has extra
 2 time, he has accommodations for chunking his assignment,
 3 breaking them up into pieces rather than one lengthy passage
 4 to read. It takes him a while to organize his thoughts and
 5 ideas, getting things from brain to pencil is a real struggle
 6 for him. Projects, organizing just the idea to get projects
 7 started he gets extra time for those. He has to have small
 8 group testing because noises, watching other people moving
 9 about is very distracting to him and it also eliminates his
 10 ability to process. We have to video tape our classes because
 11 he can't keep up with the pace of the rigor of the
 12 instruction. He takes pictures of the notes that the teachers
 13 put on the board. He gets two days advance notice with a
 14 study guide when there's a test coming up to prepare for that.
 15 And then on top of all of that we take medication for our ADD
 16 that he's now been diagnosed with, and he also has to take
 17 another medication for impulsivity and anger, frustration,
 18 anxiety.

19 Q: Ms. Wood, what I've marked as plaintiff's exhibit number
 20 twelve is a copy of the 504 Plan that you just testified to.
 21 Are you familiar with his 504 Plan?

22 A: Yes, sir.

23 Q: And is that an accurate copy of the 504 Plan that he had
 24 in place in 2017?

25 A: Yes. This is in 2017. We've added to since this.

1 Q: Okay. And I'll go ahead and mark as exhibit number
2 thirteen, excuse me fourteen, thirteen, a copy of Logan's 2020
3 504 Plan. That's the most current?

4 A: Yes, it is.

5 Q: Okay.

6 **MR. MOORE:** Your Honor, at this point in time we'd like
7 to move exhibits twelve and thirteen, the 504 Plans into
8 evidence.

9 **THE COURT:** Any objection?

10 **MR. MCLEAN:** No objection.

11 **(PLAINTIFF'S EXHIBIT NUMBERS TWELVE AND THIRTEEN ARE**
12 **ADMITTED INTO EVIDENCE.)**

13 **BY MR. MOORE:**

14 Q: And with these 504 Plans, these special education plans
15 that are implemented now for Logan in the Aiken County School
16 District, after a really bad year his freshman year has he
17 been able to raise his grades back up?

18 A: He has. He works harder than he needs to. He gets some
19 extra tutoring. His freshman year he actually went to school
20 from 8 in the morning until 5:30 in the afternoon every day.
21 He went to Saturday school. He just about flunked out his
22 freshman year. And his sophomore year was a little better --
23 but after school tutoring. We work a lot at home. Logan and
24 I are very cozy and chummy and have all kinds of crazy
25 learning devices that we use to help him. It's just -- it

Sarah Wood - Direct Examination

Wood vs HCSD

315

2017-CP-26-06643

1 takes a long time for him. It's a real challenge.

2 Q: You testified earlier that he's on multiple medications,
3 Lamictal and Adderall, correct?

4 A: Yes.

5 Q: Then he's got the 504 Plan in place which at least for
6 some years was pushing his typical school day from 3 to 5:30;
7 is that right?

8 A: Yes.

9 Q: What -- now that he doesn't have sports, which you
10 testified earlier was such a huge part of his life growing up.

11 A: Uh-huh. (Affirmative response.)

12 Q: What has Logan -- where does Logan spend his time outside
13 of school?

14 A: Logan has started working -- a friend of mine that I used
15 to teach school with, her son has a horse farm and horses are
16 very therapeutic for kids that have autism, have physical
17 impairments, that have a lot of neurological issues. I
18 thought maybe Logan would enjoy that. Logan also enjoys being
19 outside. He loves to hunt and fish. So Kelsey hired Logan
20 to come out and muck his stalls, to brush his horses, to feed
21 them. And it has -- it's been tremendous. I watched my kid
22 go from feeling like he didn't matter, that he was just taking
23 up space, to now feeling like I really matter in this world.
24 I've valued and I can do this. And his attitude has improved,
25 his self-worth has improved, his grades have improved, and

Sarah Wood - Cross Examination

Wood vs HCSD

320

2017-CP-26-06643

1 if he starts signs and symptoms of Parkinson's Disease or
2 Alzheimer's or I don't know what? And there are no guarantees
3 that Logan is going to be able to keep a job forever. You
4 know so those are grave concerns that I have and like I said,
5 I won't be here for his whole life and I worry for him every
6 day.

7 Q: Ms. Wood, thank you for your time this evening. Please
8 answer any questions that the attorney for the district may
9 have.

10 A: Thank you.

11 **CROSS EXAMINATION OF MS. WOOD BY MR. MCLEAN:**

12 Q: Ms. Wood, I have just a very few questions for you,
13 please. You were at the game?

14 A: Yes, sir.

15 Q: And you knew Logan was injured?

16 A: I knew his back hurt.

17 Q: I beg your pardon?

18 A: I knew his back was hurt.

19 Q: Okay. You observed him taking helmet to helmet hits; was
20 that your testimony?

21 A: Yes, sir.

22 Q: And you observed his head hit the ground?

23 A: Yes, sir.

24 Q: And you tried to get the attention of the coaches, didn't
25 you?

Sarah Wood - Cross Examination

Wood vs HCSD

321

2017-CP-26-06643

1 A: No, sir. I said I tried to get to the field. I went
2 down and the SRO officer sent me back to my seat.

3 Q: You tried to get to the field. Why did you try to get to
4 the field, because you thought Logan was injured?

5 A: Yes.

6 Q: Okay. And you were told to return to your seat?

7 A: Yes, sir.

8 Q: And you accepted that?

9 A: Yes, sir.

10 Q: You are a very caring and loving mother, quite obviously.
11 And you allowed an SRO to tell you to return to your seat when
12 you knew your son was injured on the field?

13 A: Yes, sir.

14 Q: Why didn't you explain to the SRO or try to get someone's
15 attention and say I need to get to my son, he's hurt?

16 A: Because he wouldn't listen to me.

17 Q: Who wouldn't listen to you?

18 A: The SRO officer.

19 Q: And you accepted that?

20 A: Yes, sir, because I also believed too that the trainers
21 would do their part, the coaches would do their part, and I
22 was entrusting the system.

23 Q: But as a mother you knew your son was injured and you
24 wanted to get to your son?

25 A: Yes.

Sarah Wood - Cross Examination

Wood vs HCSD

322

2017-CP-26-06643

1 Q: And you allow a security guard, an SRO to turn you back
2 and turn you away and you return to your seat and watched the
3 rest of the game?

4 A: I did.

5 Q: Knowing Logan was injured?

6 A: Yes, sir.

7 Q: Knowing he was still in the game?

8 A: Yes, sir.

9 Q: Knowing he could be reinjured?

10 A: Yes, sir.

11 Q: Did you see Logan's -- well we've established that you
12 thought he was hurt. Did you think he was exhibiting signs of
13 a concussion?

14 A: I didn't know exactly what it was. All I know is my son
15 was holding his back several different times. I know my son
16 was wandering around the field when the rest of the team was
17 lining up. I also know, and it wasn't on the clip that we
18 were sent, but I also know my son lined up on the wrong side
19 of the field. I also know that the referee put his arm around
20 Logan and talked to Logan at one point during the game. So I
21 knew something was amiss, but I didn't know at that particular
22 time that it was a concussion. I didn't know what it was.

23 Q: And you saw all of these things from your seat and you
24 tried to get to Logan and they sent you back to your seat and
25 you accepted that?

Sarah Wood - Cross Examination

Wood vs HCSD

323

2017-CP-26-06643

1 A: Well I will tell you this, I am a female and if I had
2 gone down on that football field I would have been scolded, I
3 would have been mocked, I would have been chastised and so
4 would my son. My son would have been mortified. So it was
5 also that thing of during that preseason meeting that we had,
6 we were directed as parents to not come onto that field, do
7 not come to the practice, do not speak to them unless we made
8 an arrangement to do so.

9 Q: And you accepted that even though you knew your son was
10 hurt?

11 A: Yes, sir, I did.

12 Q: Who would have ridiculed you? Who would have chastised
13 you for coming onto the field?

14 A: Well the coaches, the other parents, the players. I mean
15 Logan would have been just tormented about that. Your mommy
16 came out onto the field to save you. I can hear it all now.

17 Q: They would have chastised you and tormented you for
18 coming out on the field for coming to the assistance of your
19 son?

20 A: I do believe that if a mother had walked out on the
21 field, I really do.

22 Q: Yeah. And so as a mother you just accepted the
23 instructions of the SRO to go back. Did he say anything or
24 did he just point back and say go back to your seat?

25 A: He pointed and said to your seat.

Sarah Wood - Cross Examination

Wood vs HCSD

324

2017-CP-26-06643

1 Q: To your seat.
2 A: Uh-huh. (Affirmative response.)
3 Q: That's what he said?
4 A: Uh-huh. (Affirmative response.)
5 Q: And you returned to your seat?
6 A: Yes, sir. I'm a law-abiding citizen. I don't typically
7 defy when an officer of the law tells me to do something.
8 Q: Do you think he would have arrested you if you would have
9 disobeyed him?
10 A: You know I don't know. I don't know what he would have
11 done.
12 Q: Did Logan ever crawl off of the field; did you see that?
13 A: I saw Logan crawl to get up.
14 Q: Crawl to get up.
15 A: Uh-huh. (Affirmative response.)
16 Q: Did you ever tell anyone that Logan crawled off the
17 field?
18 A: I do not recall that.
19 Q: Did you ever tell Doctor Kline that Logan crawled off the
20 field?
21 A: No, sir. I don't remember telling her that.
22 Q: If that's contained in her records do you know of any
23 reason why it would be in there?
24 A: I can't speak for why she would put what she did in her
25 records.

Randolph Waid - Direct Examination

Wood vs HCSD

341

2017-CP-26-06643

1 **MR. MCLEAN:** No objection.

2 **THE COURT:** All right. Number eight is into evidence.

3 **(PLAINTIFF'S EXHIBIT NUMBER EIGHT IS**

4 **ADMITTED INTO EVIDENCE.)**

5 **(COURT IS IN RECESS)**

6 **REPORTER'S NOTE:** (Jury enters courtroom at 9:38a.m.)

7 **THE COURT:** All right. If you'll call your next witness.

8 **MR. EVANS:** May it please the Court? We call Doctor

9 Randolph Waid.

10 **DR. RANDOLPH WAID, HAVING BEEN**

11 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **THE CLERK:** You may have a seat. If you'll state your
13 name for the court reporter, please.

14 **DR. WAID:** My name is Lewis Randolph Waid. Waid is
15 spelled W-A-I-D.

16 **DIRECT EXAMINATION OF DR. WAID BY MR. EVANS:**

17 Q: Good morning, sir.

18 A: Good morning.

19 Q: What's your current profession?

20 A: I'm currently a licensed clinical psychologist in the
21 State of South Carolina. I have an independent practice in
22 Mount Pleasant that is about 90 percent into retirement.

23 Q: Good luck with that. Can you tell the jury a little bit
24 about your educational background, sir?

25 A: Sure. I got my initial degree, bachelor's degree in

1 had already engaged in a neurological examination and
2 certainly wanted the evaluation as well as being referred by
3 the Seashore Pediatric doctor.

4 Q: And without letting us know yet about the contents of
5 that evaluation, did you in fact perform that neurological
6 evaluation of Logan Wood?

7 A: Yes. We saw him on November 28th understanding that the
8 accident or injury took place on October 20th. This would be
9 considered the initial evaluation to assess the acute sequela
10 of a head injury, cognitive, emotional, and somatic
11 difficulties and to provide a baseline. And generally you
12 want to do that again approaching one year out to kind of see
13 the status of the recovery process and whether or not any
14 impairments are going to persist versus a full recovery. And
15 the timing for that was to do it, we did it a little but late
16 summer because obviously there were some questions that needed
17 to be answered before the school year started. So we saw him
18 at a re-eval too.

19 **MR. EVANS:** At this time we would tender Dr. Waid as an
20 expert in the field of neuropsychology.

21 **THE COURT:** Any objection?

22 **MR. MCLEAN:** No objection.

23 **THE COURT:** All right. Motion's granted.

24 **BY MR. EVANS:**

25 Q: Dr. Waid, tell us a little bit about that initial

Randolph Waid - Direct Examination

Wood vs HCSD

345

2017-CP-26-06643

1 evaluation that you performed in 2016.

2 A: Well you know November 28th 2016 we certainly had an

3 understanding from the records that we had reviewed and those

4 included the emergency room at McLeod Seacoast Hospital, and

5 also being seen at the Medical University by Dr. Kline the

6 pediatric neurologist, as well as records from Seashore

7 Pediatrics. Those are the records that have been involved

8 with his care acutely and ultimately we reviewed that and

9 certainly had an understanding of the incident that took place

10 in terms of significant blows to his head. Obviously the

11 young man manifested some acute problems following that which

12 were certainly alarming to the mother, as you can image, and

13 people involved with him. But we're aware of the acute

14 affects and concern of confusion. He had photophobia, which

15 is sensitivity to light; phonophobia sensitivity to noise. He

16 remained amnesic or without any recall for the game itself

17 which is not atypical following a concussive head injury of

18 this type or a mild traumatic brain injury as we'd refer to

19 it. So those were acute symptoms, he also had some things

20 related with back pain and the shoulder separation and some of

21 those pains were still there. So we also -- they were

22 complaining particular in attention concentration problems

23 from a cognitive point of view which rendered him forgetful.

24 I'll explain that later, but ultimately I think the mother

25 said it well, he had difficulty processing information. You

1 can't remember what you can't process. So if you don't get it
 2 in, and you can imagine not only the brain injury itself
 3 acutely the brain is not working right, but it's the frontal
 4 lobes that we're most concerned about in all of these football
 5 concussions and sports concussions because that's the area
 6 that you take the bang most likely as you do in a car
 7 accident. And the frontal lobes are the most advanced part of
 8 your brain. You have to understand too in adolescence your
 9 frontal lobes are still developing. This is why all of us in
 10 the room are a little bit more risk takers or impulsive or
 11 things in adolescence versus we would never do that at age 24,
 12 you know you just take chances. So basically we are aware
 13 that he was having continued difficulties in being angry,
 14 being impulsive, not being able to manage his emotions. Again
 15 I always tell people the frontal lobes is the part of the
 16 brain that tells you not to say what you're thinking when the
 17 Mount Pleasant policeman stops you, you know inhibit yourself,
 18 it's not going to get you anywhere.

19 He was also having somatic symptoms. The number one
 20 symptom after a concussion is a headache, it's called a Post
 21 Traumatic Headache. It's really a very hard headache to
 22 manage. You don't want to overdue it with medicines and
 23 stuff. The other common thing is fatigue and sleep
 24 disturbance because acutely the biochemicals in your brain
 25 have all been thrusted about, so you have that acute affect

1 and you've got to educate people to be calm, give it time,
2 give it time. So we certainly saw that.

3 He also still had some disequilibrium, not being able to
4 manage his balance. The certain tests that we give prove
5 that. One is the Romburg where we just ask you to stand still
6 and close your eyes and you don't appreciate what your brain
7 can do. But if you have a brain injury you easily can fall
8 because you just can't maintain that sense of balance that the
9 brain feeds for you. So these were all disconcerting and the
10 things he was complaining about and we knew that the incident
11 was a pretty significant concussion particularly since he
12 remained amnesic.

13 So the job here is to give them a battery of test, what
14 we call a neuropsychological evaluation where you measure
15 intellect, but also very specialized measures that assess for
16 attention, processing, speed, sequencing, and being able to
17 encode the information from repetitive trails get stored in
18 your memory center back here in the temporal so you can retain
19 it later. So this is a comprehensive battery of testing
20 allows us to have an understanding in terms of where the
21 components are most weak or inconsistent with other measures
22 that are going to unaffected by brain injury. If I go out and
23 have a mild traumatic brain injury today on the way home, I
24 will still know that Abraham Lincoln was the president during
25 the civil war. I'm not losing that information. So we have

1 also measures that allow us to know where you should be versus
2 where you're at in certain functional areas.

3 Highlighted in his testing, particularly the initial time
4 but in re-eval and continuing more recent, is this frontal
5 lobe intentional executive processing area of the brain which
6 is the area impacted by a concussion. Sometimes in a car it
7 just has to with the speed and things flying forward. So when
8 you look at chronic traumatic encephalopathy the thing that
9 affects football players, that's all the area that they
10 contusions from their sports days. So our testing was done
11 and essentially it was very much consistent with these
12 findings of frontal lobe, attention, executive, sequencing,
13 and encoding. The important thing is yeah, that renders you
14 to be forgetful, but the forgetfulness is due to not encoding
15 the information. So when we give him a repetitive learning
16 test for example his first trial is just awful. It's like did
17 you even hear this, but as we keep saying it to him, he does
18 profit. And then by multiple trials he's able to retain
19 information pretty good. He's not really forgetting in the
20 sense of the memory center; he's just not processing getting
21 the information in. So he will be forgetful because most of
22 us aren't going to be told six times by our wife what it is
23 she wants you to remember. You're just going to be forgetful
24 in your world and that's the memory problem he had. But his
25 intelligence was still in the average range, and IQ of 100 on

Randolph Waid - Direct Examination

Wood vs HCSD

356

2017-CP-26-06643

1 well when you have a headache. So my point to you is he's got
2 that damage at the brain level that won't reverse and that's
3 why we have him now on Adderall and psychostimulant
4 medications. They're the number one things we use after these
5 type injuries because they help the frontal lobes in
6 everybody. But he didn't have medicine for ADHD beforehand.
7 And it's wrong to say he really has ADHD. He has an acquired
8 attention deficit because of the injury to the brain. It's
9 acquired. Yeah, does it mimic ADHD? Yes. ADHD is a frontal
10 lobe problem also. So ultimately Hertz basically found the
11 same thing.

12 My major issue that I don't believe Dr. Hertz pointed out
13 that I'm concerned about is intelligence and ones IQ does not
14 change once you get to eight, nine, and ten. Your IQ at
15 eight, nine, and ten predicts your IQ in adulthood unless
16 there's an intervening factor that interferes with that, it's
17 very consistent. You know you're not going to have an IQ of
18 90 at age nine and 120 in your adulthood. It's never
19 happened, it's not going to happen. So it's very solid once
20 you get to that age group. My problem was the IQ that Logan
21 got with Dr. Hertz's training -- I mean evaluation was 89.
22 Well wait a second, this was some years out after. I got 108
23 at the newest addition of the Wechsler Intelligence Scale for
24 Children and yes that's his consistent. And generally the
25 adult scale is a little bit easier because they haven't been

Randolph Waid - Direct Examination

Wood vs HCSD

357

2017-CP-26-06643

1 standardized. So it was very disconcerting to see that, but
2 it was clear where it was coming from. And where it was
3 coming from was some of the subtests that you have to gain on
4 as you get older because your vocabulary should get better,
5 your fund of information and knowing facts and stuff like that
6 should get better. That's different from just a speed task
7 and those were incredibly lower compared to my measurement.

8 The other finding in there that's very clear is that
9 academic achievement testing had been done even when he was
10 living in Kentucky. And ultimately Dr. Hertz's academic
11 achievement testing had him considerably lower in terms of
12 skills of reading and reading composite. Well reading
13 involves being able to sustain your focus and attention. So
14 what's disconcerting about this, particularly because Logan
15 was in good shape emotionally when Dr. Hertz tested him, is
16 that he's not gained like he should have. I'm up there in
17 years, I can actually lose and do less well on IQ tests and
18 get the same score that I got at got at age 50 because you're
19 allowed to be slower when you get older and your brain
20 processes slower. So these are all relevant. Having a head
21 injury during the time of programing your brain is always
22 going to be an event that's going to change that person. So
23 you've got -- you're in eighth, ninth, tenth, eleventh grade
24 you need to get -- knowledge get better, content get better.
25 And ultimately what we're seeing is he just didn't profit as

Randolph Waid - Direct Examination

Wood vs HCSD

358

2017-CP-26-06643

1 well from that type of educational pursuits. Now don't get me
2 wrong, not only the head injury and the residual impairments
3 at the brain level, but obviously he had a tough first year
4 after it was discovered he couldn't play football anymore and
5 changed school. He definitely had some emotional issues, his
6 grades when down. To his credit he kind of got himself back
7 together and did better in the following year and the
8 following year. So you have this thing of not gaining as well
9 which changes a person's considerations and opportunities for
10 the future. His educational skills were not as good. Those
11 lack of gaining and educational skills and certain parts of
12 the IQ test brought the IQ down and that was disconcerting
13 because that was a 20-point different in IQ. And that doesn't
14 happen unless you have an explanatory causal reason for it.

15 And in this case we can really consider the impact of
16 this brain injury, the frontal lobe impairments he was going
17 to have to suffer from even though we've got him on
18 medication. Dr. White even put him on a medication to help
19 his emotional reactivity with that mood stabilizer that he's
20 now on. That's very common also is a medication a person has
21 to use after a brain injury with frontal lobe impairments.
22 And you know ultimately even deciding his future, you know
23 we're taking away certain things about his future in terms of
24 like going to college versus a tech school or maybe developing
25 a skill. These are thing we often direct people to because

Randolph Waid - Direct Examination

Wood vs HCSD

359

2017-CP-26-06643

1 they're not going to succeed at college, etcetera. So
2 ultimately that's my major concern with Dr. Hertza not
3 catching that phenomena because the 108 happened after the
4 brain injury, even the 100 occurred after the brain injury so
5 that lower IQ measure and where it came from was clearly an
6 indication along with academic achievement that Logan just
7 wasn't able to profit as well from his education and obviously
8 had to work harder to get it back in shape.

9 Q: And is it your opinion that these frontal lobe deficits
10 were caused by his brain injury versus any family trauma that
11 he experiences as an adolescent?

12 A: Yes, it is because the permanency of it. Emotional
13 issues can interfere with your brain function, but they're
14 reversable. You know if you're massively depressed and you
15 get out of your depression by measure you're going to show
16 impairments, but they reverse meaning we fix your depression,
17 it's better. Brain injury is permanent. He's going to have
18 this weakness in the frontal lobe intentional executive
19 abilities. He's probably going to be on a psychostimulant
20 throughout his adulthood, no doubt. And many people are after
21 a TBI. And he may need something to help him with his
22 emotional reactivity. And those are not just related to the
23 stress associated with the family dysfunction growing up or
24 anything else or even being bullied or some of those things.
25 You know obviously some emotional stuff with him that first

Randolph Waid - Cross Examination

Wood vs HCSD

360

2017-CP-26-06643

1 year at South Aiken, you know the high school up in Aiken, I
2 think there was an emotional component, but he has resolved
3 that emotional component and got back. But he still has the
4 executive and intentional impairments. And unfortunately as
5 I've indicated and I think other people have indicated, and I
6 think he's aware now, the military just doesn't take these
7 kind of people anymore. They consider liability. They're
8 also much more likely not to take you anymore if you even have
9 a psychiatric background of being depressed and so forth. So
10 I don't think his desire to be in the military is going to
11 happen.

12 Q: Are your opinions today to a reasonable degree of
13 neuropsychological certainty?

14 A: Yes, they are.

15 Q: Thank you, Dr. Waid.

16 **THE COURT:** All right. Cross.

17 **CROSS EXAMINATION OF DR. WAID BY MR. MCLEAN:**

18 Q: Very briefly, Dr. Waid. Do you agree that the symptoms
19 of a concussions are not always immediately apparent at the
20 time of the injury causing event?

21 A: Well not immediate impairment. I think some of that has
22 to do with what happens immediate in the sense of are you
23 going back to school, going back to work, or does the accident
24 give you some time away. Sometimes people go back to work
25 after a month and realize oh this ain't working the same way

Randolph Waid - Cross Examination

Wood vs HCSD

361

2017-CP-26-06643

1 and so forth. So my point to you is generally acutely you
2 will have the kind of acute confusion and things like that and
3 a headache and those things are generally there right away.

4 Q: Can those symptoms be delayed by a few hours after the
5 injury causing event?

6 A: Oh, yes, they can because it's all about -- the aspect is
7 swelling of the brain. You know if you're in a car accident
8 on 95, if we can get you in a helicopter and get you to MU
9 quick enough we'll save your life because the swelling is what
10 actually kills you. Then ultimately once we get the swelling
11 taken care of and all of that you're left with what's injured,
12 what impairments are associated with the injury. That's why
13 everybody gets better if they don't die.

14 Q: So you do agree that symptoms of a concussion can be
15 delayed and are not always immediately apparent at the time of
16 the injury causing event. Do you agree with that?

17 A: Yeah, I would agree with some of the cognitive stuff. I
18 think the somatic stuff is almost always there present pretty
19 quickly, the nausea, the vomiting, the fatigue, not sleeping
20 well, headache. Those are almost always there acutely and
21 defining of a concussion.

22 Q: So those are always there immediately?

23 A: They are much more likely to be there immediate. Other
24 things can be delayed, again because of what's going on in the
25 swelling process. You know I've had people end up in the

Anslee Wood - Direct Examination

Wood vs HCSD

363

2017-CP-26-06643

1 **THE COURT:** Any objections?

2 **MR. MCLEAN:** No objection.

3 **THE COURT:** All right. You have a good day, Doctor.
4 If you'll call your next witness.

5 **MR. EVANS:** Your Honor, we call Anslee Wood.

6 **ANSLEE WOOD, HAVING BEEN**

7 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

8 **THE CLERK:** State your name for the court reporter,
9 please.

10 **MS. ANSLEE WOOD:** My name is Anslee Wood. That's A-N-S-
11 L-E-E.

12 **DIRECT EXAMINATION OF MS. ANSLEE WOOD BY MR. EVANS:**

13 Q: Ms. Wood, where do you reside?

14 A: Columbia, South Carolina.

15 Q: And what are you doing up there?

16 A: I'm going to school at USC.

17 Q: And what are you studying?

18 A: I'm a major in public health and a minor in psychology.

19 Q: And how far along in your studies are you?

20 A: I am a junior technically. I'm graduating a year and a
21 half early, so I'll be graduating in December.

22 Q: And when did you start at USC?

23 A: August of 2019.

24 Q: What's your plans moving forward after you graduate?

25 A: So I plan to go to Clemson to finish my MBA where I'll go

Anslee Wood - Direct Examination

Wood vs HCSD

366

2017-CP-26-06643

1 Q: Tell me about what you remember from that night when you
2 were actually there in the stands.

3 A: So like any normal newly 16 year old I was mainly
4 responding to text messages throughout the first half of the
5 game, like happy birthday text messages and stuff like that.
6 About the second half is whenever I really started getting
7 engaged with the game and realizing that something wasn't
8 right. I vividly remember him lining up on the wrong side of
9 the field which was really concerning. And also at the end of
10 the game chasing another one of the members of the team after
11 the whistle had been blown so that kind of raised some red
12 flags there.

13 Q: Who was there with you and your mom in the stands?

14 A: My assistant -- the assistant basketball coach for the
15 high school who I played for. She had a son on the team who
16 was the same age as Logan. We were sitting with her and then
17 another member of the football team's parents.

18 Q: Do you remember that young man's name?

19 A: I believe it was Chase.

20 Q: Do you know his parent's names?

21 A: Not off the top of my head.

22 Q: And did you know them personally before that night?

23 A: Not really. Logan and him were sort of friends so it was
24 kind of more of that aspect.

25 Q: Were you a part of any conversations with your mom about

Anslee Wood - Direct Examination

Wood vs HCSD

367

2017-CP-26-06643

1 what was going on in the game or with anybody else that you
2 were with?

3 A: Yeah. So we were mainly talking about how Logan just
4 wasn't playing right, like there's just some stuff that was
5 going on that were just kind of raising some concern like what
6 is he doing, why is he doing that, he knows better than to do
7 that. You know stuff like -- stuff like that.

8 Q: Where you personally concerned?

9 A: Yes, I was.

10 Q: At any point did your mom go down and attempt to talk
11 with anybody on the field?

12 A: She did.

13 Q: What happened when she did that?

14 A: She got turned away immediately and came back up to the
15 stands very discouraged. I, you know as her daughter I've
16 seen her concerned as a concerned parent before and she had
17 that same look on her face that there was something wrong and
18 she needed to get down there. But it was more discouragement
19 in her face after that.

20 Q: What happened after the game?

21 A: After the game they wouldn't, you know, let any parents
22 down on the field. That's usually how it goes if you lose a
23 high school or middle school game. From personal experience,
24 if you lost the game you were not allowed to go home with a
25 parent, you had to ride the bus home. So that's exactly what

Anslee Wood - Direct Examination

Wood vs HCSD

368

2017-CP-26-06643

1 happened, regardless of the fact if you were hurt. We
2 actually met them at the high school where we got a phone call
3 from Logan's phone when we got back to high school to come
4 around to the back side of the locker room where we ended up
5 having to pick him up from there.

6 Q: And where were you actually located when you saw him for
7 the first time back at the school after the game?

8 A: So I was sitting in the front seat whenever I saw my mom
9 literally carrying this child on her shoulder. He could
10 barely walk. She was pretty much carrying him. And I met her
11 about halfway between the locker and the car and helped her
12 carry him to the actual vehicle. He was holding -- it was a
13 breast cancer awareness game so he had like a pink bandana he
14 was carrying over the top of his face and I met her halfway
15 and helped carry him to the car and got him in the car from
16 there.

17 Q: Did you go with your mom and your brother to the
18 emergency room?

19 A: I did.

20 Q: What did you observe about how he was acting in the
21 emergency room?

22 A: He was very, very out of it more or less. He didn't know
23 who I was, he didn't know who he was, he didn't know who my
24 mom was. Whenever I actually got to the hospital they were
25 just trying to get him to remember how much he weighed and he

Anslee Wood - Direct Examination

Wood vs HCSD

369

2017-CP-26-06643

1 was just not processing how much he was weighing. And
2 actually sitting in the hospital bed he thought the heartrate
3 monitor was a dinosaur eating his finger so he kept taking in
4 off and putting it back on and he would just do that and it
5 set off the alarms. He was just -- kept asking if I could go
6 get him candy and then when my mom would come back in after
7 she had to fill out paperwork and stuff, he didn't recognize
8 her as being his mom so he would ask me if she could go get
9 him candy. For whatever reason all he wanted was candy.

10 Q: What happened when you guys got home that night?

11 A: That night he was just really tired. You know all he
12 wanted to do was go to sleep so we got him in bed, you know
13 changed his clothes. He was still in his football gear, so he
14 had all of his pads and stuff like that. Got him out of that
15 and took him to bed that night.

16 Q: So this was a Thursday, did you go to school that
17 following Friday morning?

18 A: I did actually. Every Friday morning we actually had
19 like a mini church group from my youth group that I went to at
20 First Baptist, we all would meet at Chick-fil-a on Friday
21 mornings and we would give little devotionals and stuff. That
22 Friday just so happened to be my devotional day, so I actually
23 woke up the next day, rode there, was there at like 7a.m.,
24 gave my devotional and asked everybody could you please -- a
25 lot of people knew about the brain injury that had happened

Logan Wood - Direct Examination

Wood vs HCSD

381

2017-CP-26-06643

1 Q: A school resource officer at your school?

2 A: Yes, we did.

3 Q: Were those school recess -- school resource officers
4 actually cops with guns?

5 A: That's a good question.

6 Q: You're not sure?

7 A: Yeah. I'm not sure off the top of my head.

8 Q: Regardless, did you make it a regular practice to disobey
9 the commands of your school resource officer?

10 A: Absolutely not.

11 Q: Thank you, Anslee.

12 **THE COURT:** All right. You may step down. Thank you.
13 You may call your next witness.

14 **MR. EVANS:** Thank you, Your Honor. We call Logan Wood.

15 **LOGAN WOOD, HAVING BEEN**

16 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **DIRECT EXAMINATION OF MR. WOOD BY MR. EVANS:**

18 Q: Good morning, Logan.

19 A: Good morning.

20 Q: Can you introduce yourself to the ladies and gentlemen of
21 the jury?

22 A: My name is Logan Wood.

23 Q: And I understand you're 18?

24 A: Yes, sir.

25 Q: And when are you turning 19, Logan?

Logan Wood - Direct Examination

Wood vs HCSD

385

2017-CP-26-06643

1 friends and having fun. I loved it here.

2 Q: And you were excited to play football?

3 A: Yes, sir.

4 Q: And did you like the coaches on the team?

5 A: Yeah. I was mainly around Coach Edge a lot. He was the
6 lineman coach and that's what I played was the line. And me
7 and him, we got really close the more into the season we got.
8 Coach White he's a really good coach too. He was excited for
9 me to play with him.

10 Q: How about Coach Waggoner? Did you spend any time with
11 Coach Waggoner?

12 A: No.

13 Q: Do you know who I'm referring to?

14 A: Yeah. I know Coach Waggoner, but I think I've said ten
15 words to him before.

16 Q: What about Coach Jolly? Was her your coach?

17 A: He was a coach but he was more with baseball, I believe
18 than he was with football.

19 Q: Did you ever have any interactions with Coach Jolly?

20 A: I don't think I've ever even spoken to him.

21 Q: What position were you playing for North Myrtle Beach?

22 A: I was playing offensive and defensive tackle.

23 Q: Okay. And when the season started, Logan, were you
24 generally playing the entire game?

25 A: Yes, sir. I only came out on special teams which is

Logan Wood - Direct Examination

Wood vs HCSD

386

2017-CP-26-06643

1 kickoff and kickoff return.

2 Q: So you were playing both offense and defense the entire
3 game?

4 A: Yes, sir.

5 Q: When you were 13, 14 years old during this time period,
6 did you have the physical stamina to play these entire games?

7 A: Yes. I believe I did. I mean I played every game prior
8 to this one, I played the whole game. And I feel like if I
9 wasn't the coaches wouldn't have had me play every single
10 game, the whole game like that.

11 Q: And were you one of the bigger guys on the team?

12 A: Yes, sir. But I mean there was some other large kids on
13 the team. I was the tallest on our team, but I did not weigh
14 the most on our team and the opposing teams as well.

15 Q: So how big were you when you were 13, 14?

16 A: I was about six foot and about 205 pounds.

17 Q: And you said there were some guys on the team that were
18 heavier than you?

19 A: Yeah. There were some that were easily 250 plus.

20 Q: And that was on your team?

21 A: Yes, sir. And the opposite teams as well.

22 Q: Okay. Now we're here today because you suffered a brain
23 injury in October of 2016. Prior to that game, Logan, had you
24 ever suffered a concussion before?

25 A: No, sir.

Logan Wood - Direct Examination

Wood vs HCSD

387

2017-CP-26-06643

1 Q: Did you know what a concussion felt like?

2 A: No, sir.

3 Q: Okay. Now the October 20th game, can you remember
4 anything from that game?

5 A: No, sir.

6 Q: Nothing?

7 A: No.

8 Q: All right. Do you have any memories from any plays?

9 A: No, sir.

10 Q: Do you have any memories from taking any hits during that
11 game?

12 A: No, sir. I mean I've seen the video, but other than that
13 I don't have any recognition.

14 Q: Do you have any memory of talking to any of your coaches
15 or a teammate about how you were feeling during that game?

16 A: No, sir.

17 Q: So you don't know if you did or you didn't?

18 A: No, sir.

19 Q: When is your first memory after that October 20th game?

20 A: Probably the only one that I can think of is the Saturday
21 after the game, I believe, my mom and sister and I went to
22 Waffle House because I didn't want to eat anything right after
23 the injury. I would throw up whatever I ate and just food did
24 not sound good at the time, and we went to Waffle House. I
25 guess the only reason I remember this is because my sister

Defendant's Motion for Directed Verdict by Mr. McLean

Wood vs HCSD

411

2017-CP-26-06643

1 by the district with 12 fragments of video. And plaintiff's
2 16 is the game tape as used a trial which is the 12 fragments
3 pieced together with a timer superimposed. It's not the
4 accurate time of day but that's the timer setting from the
5 camera. And there's gaps in the video, for example there will
6 be a three second black screen, that means there is three
7 seconds missing. At some points there's a four minute black
8 screen, that would mean those particular four minutes of black
9 screen corresponds to the exact missing fragments. We move 15
10 and 16 into evidence at this time.

11 **MR. MCLEAN:** No objection.

12 **THE COURT:** Fifteen and sixteen into evidence without
13 objection.

14 **(PLAINTIFF'S EXHIBITS FIFTEEN AND SIXTEEN ARE**
15 **ADMITTED INTO EVIDENCE.)**

16 **MR. EVANS:** Your Honor, the plaintiff rests at this time.

17 **THE COURT:** All right. Members of the jury if you would
18 take a short break. We have to take up motions at this time.
19 Do not discuss the case. I'll be back with you shortly.

20 **REPORTER'S NOTE:** (Jury exits the courtroom at 11:11a.m.)

21 **THE COURT:** All right. Any motions?

22 **MR. MCLEAN:** Your Honor, the defendant would move for a
23 directed verdict on both the liability portion of this case as
24 well on the question of multiple occurrences which we believe
25 is an appropriate matter of law for the Court at this time.

Defendant's Motion for Directed Verdict by Mr. McLean

Wood vs HCSD

412

2017-CP-26-06643

1 As the Court is aware on the liability, this is -- a
2 standard of proof is gross negligence. The Court is very much
3 aware of that standard and what gross negligence means. As a
4 matter of law it means the failure to exercise even slight
5 care. Here there's ample evidence of the exercise of at least
6 slight care. We had a certified athletic trainer present at
7 the game. We had trained coaches trained to spot concussions
8 present at the game watching. They knew what to look for,
9 they knew what to do in the event that they observed an
10 individual player exhibiting concussion like symptoms. At a
11 very minimum those two things are evidence of slight care.
12 Had there been no trainer at all that may be gross negligence.
13 I'm just suggesting that for the Court's consideration. Or
14 had the coaches seen Logan's head hit the ground or him
15 receive -- be partially unconscious or not getting up and
16 didn't take him out, that may have been gross negligence.
17 There's simply no evidence of that. And I think the Court
18 should review the exhibits of the game footage to satisfy
19 itself. Could any reasonable juror conclude from that game
20 footage that Logan was exhibiting signs and symptoms of a
21 concussion? I believe that's an appropriate matter for the
22 Court to take up at this time.

23 On the multiple occurrences issue, we believe that is a
24 matter of law for the Court's consideration at this juncture.
25 The multiple occurrences argument by the plaintiffs as I

Defendant's Motion for Directed Verdict by Mr. McLean

Wood vs HCSD

413

2017-CP-26-06643

1 understand it relates to the model that was used for athletic
2 trainer assignment to games, specifically using the host
3 school to provide the athletic trainer for the B-team games.
4 They're saying that model was flawed, but they have to show
5 that model was grossly negligent, not just flawed. But again
6 we had an athletic trainer there. They're saying that if the
7 model was not flawed, the implementation of the model was
8 flawed and that the trainer who was seen in a very short clip
9 of a video sitting in her gator should have been doing
10 something other than sitting in her gator. She should have
11 been interacting, communicating. But again we're talking
12 about a gross negligence standard. She was there, she was
13 watching, she had full view of the game. And the coaches have
14 a unique and different roll from the athletic trainers. The
15 coaches, Your Honor, are there, are the first line of defense
16 for spotting injuries. And again I would said they were
17 trained, they were observant, they were there, and there's no
18 evidence that they missed something.

19 And so it also goes -- they have also attacked the
20 improper training of our coaches and saying that our coaches
21 should have been trained on Post-Concussion Syndrome which is
22 a medical condition, a medical diagnosis that is outside the
23 scope of what a coach needs to be trained to do. They're not
24 trained, don't need to be trained to understand the biology or
25 the chemistry of a Second Impact Syndrome. But the fact of

Defendant's Motion for Directed Verdict by Mr. McLean

Wood vs HCSD

414

2017-CP-26-06643

1 the matter is they do, if in doubt sit them out, that's the
2 policy. So by following that policy, if in doubt sit them
3 out, they achieve the objective of preventing a Second Impact
4 Syndrome. If in doubt sit them out.

5 All of this is to say that there was one occurrence and
6 that was failure to recognize that Logan was injured and not
7 removing him from the game that may have been due to a grossly
8 negligent policy which is what they have to prove. That they
9 has been grossly negligent training of the coaches. It may
10 have been due to grossly negligent inattention from the
11 athletic trainers or the coaches, but it all comes down to the
12 only occurrence here is failure to remove Logan from the game.
13 There could have been more than one proximate cause of that,
14 but it was one single occurrence. So we would ask the Judge
15 to make that the law of this case as well as to direct a
16 verdict that the proof of gross negligence is lacking.

17 **THE COURT:** All right. We've heard one side of the coin.
18 Let's flip it and hear the other side.

19 **MR. EVANS:** Your Honor, coming to the first issue of
20 gross negligence, that burden is met looking alone at the
21 testimony of Coach Keeter Hayes and the testimony of Athletic
22 Trainer Kary Anne Cyr. Coach Hayes testified yesterday and on
23 the media six months before this injury that not having
24 appropriate coverage by the trainers places a value on a
25 child's life and a value on a child's health. He added

Defendant's Motion for Directed Verdict by Mr. McLean

Wood vs HCSD

415

2017-CP-26-06643

1 yesterday in his testimony beyond what he said on the news in
2 two news articles, one in the local news, another in a trade
3 journal that inadequate coverage places a needless risk on a
4 child's life. That testimony alone is sufficient for the
5 issue of gross negligence to go to the jury.

6 Further, Athletic Trainer Cyr testified that she was
7 surprised and would expect the coaches, who the district takes
8 the position is the front line of defense, didn't know what
9 Post-Concussive Syndrome is and didn't know what Second Impact
10 Syndrome is, which is deadly. Although the coaches had heard
11 of the phrase if in doubt sit them out, Logan was never sat
12 out and has been living the after affects of that for the last
13 five years. The jury has heard ample testimony as to that.

14 With regard to occurrences, there has been testimony that
15 there was a deviation and a failure to have one athletic
16 trainer on the home team side and no athletic trainer on the
17 away team side. The testimony from the district's own
18 witnesses is that the concussion cannot be spotted or
19 diagnosed unless the employees are able to ascertain the
20 mental state of the player. They need to know if the person
21 is confused, disoriented, etcetera which are concepts that you
22 can't see with the naked eye. You can't see that without
23 interaction. One side of the field was left completely naked.

24 Further, there was testimony that the person who was
25 there and had the ability to cover both teams failed to leave

Defendant's Motion for Directed Verdict by Mr. McLean

Wood vs HCSD

416

2017-CP-26-06643

1 a ten-foot radius from her gator. Not only did she never
2 interact with my client's team, she never bothered to interact
3 with her own home team and perform the sole duty of a trainer
4 and spot a concussion which is to interact with those players,
5 which is to find out what their mental status is, find out
6 whether they are confused or not.

7 Finally, there is evidence that Coach White, although
8 he's got a certificate, didn't know in 2016 or in 2020 what
9 Second Impact Syndrome is or what Post-Concussive Syndrome is
10 despite the fact that's what he was supposed to be monitoring
11 for. We believe there's evidence of additional occurrences as
12 well. The question is not how many injuries there are, it's
13 how many approximate causes. The cases are clear in South
14 Carolina that that is an issue of fact to be determined by the
15 jury. And there is ample evidence of multiple proximate
16 causes for that. Thank you, Your Honor.

17 **MR. MCLEAN:** Most of the cases cited by plaintiff I
18 believe are in federal court. I believe state court is
19 different. The case on multiple occurrences, as Your Honor is
20 aware, is the case on DOT and public safety where the stop
21 light was burned out and there were separate and independent
22 acts of negligence by each of those agencies. One is public
23 safety knew that the bulb was burned out and didn't notify
24 anyone. And then DOT didn't have -- either did not follow
25 their relamping policy or -- I can't remember the facts, but

Defendant's Motion for Directed Verdict by Mr. McLean

Wood vs HCSD

417

2017-CP-26-06643

1 there were two separate independent acts of negligence by two
2 separate agencies and the Court allowed -- and the jury found
3 -- I believe the jury found multiple occurrences. But these
4 are completely different facts. We have one single
5 occurrence. I believe our position is clear on the record and
6 again I would remind the Court, as you are aware, that the
7 burden is gross negligence not mere simple negligence.

8 **THE COURT:** Right. I think you have plenty to argue, but
9 I think there are plenty of questions of facts to send it to
10 the jury as well.

11 **MR. MCLEAN:** Yes, sir. Thank you.

12 **THE COURT:** Let's take a short break and we'll come back
13 and continue.

14 **MR. MCLEAN:** Can we talk sort of about logistics?

15 **THE COURT:** Sure.

16 **MR. MCLEAN:** We're moving very quickly. I did not ask my
17 witnesses to be here until after lunch not realizing we'd be
18 this far along right now. I can try -- I can call them to try
19 to get them to come here, come in advance. I've not been in
20 touch with them since last night. I don't have many
21 witnesses, Your Honor. I have some assistance coaches and I
22 have the athletic director from North Myrtle Beach whose name
23 is Joe Quigley. And I have the video deposition of Dr. Hertza
24 which we have finally -- well that will be a matter that
25 there's some objection to that. We may need to take that up.

Discussion on Verdict Form

Wood vs HCSD

420

2017-CP-26-06643

1 this case that just as he assumed the risk of a separated
2 shoulder, which he's not seeking any medical bills for, or he
3 assumed the risk of broken teeth, he assumed the risk of that
4 first concussion. But the point is he didn't assume the risk
5 of the coaches enhancing that injury or the trainers enhancing
6 that injury by pulling him out. There's also a *Hurst versus*
7 *East Coast Hockey* case where a person, a spectator in the
8 Florence Civic Center was hit by a hockey puck. They said you
9 assume that risk when you attend a game. I think that's an
10 inherent risk. We've asked questions on that. I think that's
11 an appropriate charge and I think that theory of assumption of
12 a risk -- of assumption of the risk is still viable under
13 South Carolina law after the *Davenport* case. I believe that's
14 an appropriate charge and we would request it.

15 **THE COURT:** All right. I'll take a look at it. Have you
16 looked at the charge as well?

17 **MR. MCLEAN:** No, I haven't.

18 **THE COURT:** All right. Let me know if you have any
19 problems.

20 **MR. MCLEAN:** I have a couple of -- I have a couple of
21 questions about the verdict form.

22 **THE COURT:** All right. If you want to go over it with
23 them. If the two of you agree, I'm perfectly fine.

24 **MR. MOORE:** Your Honor, we intend to in closing discuss
25 more than the occurrences that are listed here. We recently

Discussion on Verdict Form

Wood vs HCSD

421

2017-CP-26-06643

1 tried a case in Bennettsville, and we used the same verdict
2 form several times and it's been approved by the Court. But
3 it's just a, you know, does the jury find for the plaintiff,
4 do they find for the defendant. And then just a single
5 general line for occurrences. Having been charged with a
6 number of occurrences, how many occurrences are there. So
7 that way -- because here we think there is an occurrence based
8 on the conduct of Kary Anne.

9 **THE COURT:** Well why don't you go ahead and scribble that
10 up like you want it. Make sure it suits him and ---

11 **MR. MCLEAN:** That does not suit me. I think the
12 definition of occurrences is very confusing. The jury is
13 going to hear it and it's going to be very, very confusing for
14 them to get back there. I don't understand exactly, I'm no
15 genius, don't get me wrong, but I don't understand. It really
16 has the potential if you just say determine the number of
17 occurrences, it has the potential to distract them from the
18 true issues in this case.

19 **THE COURT:** Why don't you list out the occurrences that
20 you intend to argue. That way we at least limit it to
21 specific events.

22 **MR. MOORE:** Okay. We can do -- we can ---

23 **THE COURT:** And that will at least cull it in a little
24 bit.

25 **MR. MOORE:** Yeah. So what we'll do is we'll list each

Discussion on Verdict Form

Wood vs HCSD

422

2017-CP-26-06643

1 occurrence that we intend to argue and that should probably
2 suffice.

3 **MR. EVANS:** Yeah. These are accurate, these three. I
4 think there's just one more, so I think we'd just like to add
5 one.

6 **THE COURT:** Sure.

7 **MR. MCLEAN:** I'd like to hear what it is. I thought that
8 covered it. Tell me what it is.

9 **MR. EVANS:** It's basically -- I don't know how to word it
10 honestly on this level of sleep. But basically that Kary Anne
11 Cyr acted with gross negligence by failing to access.

12 **MR. MCLEAN:** Is that not in there?

13 **MR. EVANS:** It's not.

14 **MR. MCLEAN:** Where's my copy?

15 **MR. EVANS:** It's sort of subsumed by number two.

16 **THE COURT:** Yeah. We went by your brief to craft it.

17 **MR. MCLEAN:** I think that's -- either the trainer allowed
18 him, or the coaches allowed him. You know I think that the
19 verdict form hits on all of the points, the training,
20 inattentiveness ---

21 **THE COURT:** Right. You listed two, they listed three,
22 and I just took it from their three.

23 **MR. EVANS:** I think maybe we can change the wording on
24 two slightly, but I think this works.

25 **THE COURT:** All right.

Discussion on Verdict Form

Wood vs HCSD

423

2017-CP-26-06643

1 **MR. MOORE:** If you wouldn't mind e-mailing me a copy and
2 we'll make some edits and talk with Mr. McLean about it.

3 **THE COURT:** All right. Be sure to go over it with him.

4 **MR. MOORE:** Yes, sir. I think we can get this very
5 close.

6 **THE COURT:** All right. Let's hear from Joe about the
7 charges.

8 **MR. MOORE:** Bradley, would you mind e-mailing us a copy
9 of the charges as well?

10 **MS. SUGGS** (Law Clerk): Sure. I don't think ---

11 **THE COURT:** We just kind of pulled them from different
12 sources.

13 **MR. MCLEAN:** Your Honor, I've reviewed the proposed
14 charges and I have no objection to those as has been presented
15 to me. I mistakenly may have marked on one of yours. I meant
16 to make a mark on mine.

17 **THE COURT:** That's fine.

18 **MR. MCLEAN:** I'm going to hand them over to plaintiff's
19 attorney.

20 **THE COURT:** That's fine. I think they've already seen
21 them but take your time.

22 **MR. MOORE:** Thank you. If we could look at the gross
23 negligence charge, we do have a copy of it, we took a picture,
24 so we'll get back to you on that.

25 **THE COURT:** All right. Thank you. Let's take a break

Keith Waggoner - Direct Examination

Wood vs HCSD

426

2017-CP-26-06643

1 Q: In October of 2016 were you an assistant football coach
2 for North Myrtle Beach Middle School?
3 A: Yes, sir.
4 Q: Were you a paid coach or were you a volunteer coach?
5 A: Volunteer.
6 Q: Do you still coach there?
7 A: No, sir. Not right now.
8 Q: When did you stop coaching there?
9 A: About three years ago.
10 Q: Why did you stop?
11 A: I had to have heart surgery.
12 Q: Do you -- do you remember Logan Wood?
13 A: Yes, sir.
14 Q: Was Logan Wood a player on the North Myrtle Beach Middle
15 School B-team football team in October of 2016?
16 A: Yes, sir.
17 Q: Okay. Do you see Logan Wood in the courtroom?
18 A: Yes, sir.
19 Q: Do you recognize Logan?
20 A: Yes, sir.
21 Q: Do you ---
22 A: A little older.
23 Q: Okay. Did -- who were some of the other assistant
24 coaches on the team?
25 A: Timmy Vereen, McMahan, Tony Edge, Warren Wilson, Gavin

Keith Waggoner - Cross Examination

Wood vs HCSD

438

2017-CP-26-06643

1 **MR. MOORE:** Thank you, Your Honor.

2 **BY MR. MOORE:**

3 Q: Did you know Kary Anne Cyr?

4 A: Who?

5 Q: Kary Anne Cyr, do you know who she is?

6 A: No, sir.

7 Q: And I understand that you're telling the jury today that
8 you have this independent recollection from four and a half
9 years ago of this game. Did you ever meet her at the game?

10 A: No, sir.

11 Q: Did she ever come and introduce herself to you as a
12 trainer for the home team?

13 A: No, sir.

14 Q: Did she ever come and provide you with a phone number in
15 case one of your players was injured and you needed to track
16 her down to get some medical attention for your teammates?

17 A: No, sir.

18 Q: Do you have any recollection whatsoever of her engaging
19 with your teammates at all during the game?

20 A: Not at this time.

21 Q: And would you expect for an athletic trainer to engage
22 with the student athletes in an effort to help minimize the
23 risk of injury?

24 A: Yes, sir.

25 Q: And since you don't remember Ms. Cyr, I'm assuming you

Keith Waggoner - Cross Examination

Wood vs HCSD

439

2017-CP-26-06643

1 don't know whether or not you ever saw her get off her gator
2 on the home side team, do you?

3 A: No, sir.

4 Q: And you don't remember any other players getting injuries
5 that night?

6 A: No, sir.

7 Q: That wasn't part of this text chain you had with the
8 other coaches?

9 A: No, sir.

10 Q: Do you remember Anderson Boyers?

11 A: Yes.

12 Q: You weren't aware that he suffered a concussion that
13 night?

14 A: I didn't realize he had a concussion that night.

15 Q: Okay. In your training for concussions that you
16 received, are you trained that concussions need prompt medical
17 attention?

18 A: Yes.

19 Q: And would it surprise you that Anderson Boyers got a
20 concussion that game but received no medical attention until
21 he stumbled upon another trainer in the parking lot heading
22 back to Ocean Bay School, or heading back to North Myrtle
23 Beach High School.

24 **MR. MCLEAN:** Objection. Argumentative.

25 **THE COURT:** Overruled. Go ahead.

Keith Waggoner - Cross Examination

Wood vs HCSD

440

2017-CP-26-06643

1 **BY MR. MOORE:**

2 Q: Would it surprise you that Anderson Boyers who had a
3 concussion never received any medical attention until he
4 stumbled upon another athletic trainer in the parking lot
5 heading back to North Myrtle Beach Middle School that night?

6 A: I did not know that.

7 Q: And you never knew that he had a concussion?

8 A: No, sir.

9 Q: Do you remember Rex Roupe?

10 A: Yes, he was our quarterback.

11 Q: He was your quarterback. Did you know that he had broken
12 his wrist during that game?

13 A: No, sir.

14 Q: You don't have any memory of that?

15 A: No, sir.

16 Q: You don't have any memory of a ref spotting the hit and
17 calling him out of the game?

18 A: No, sir.

19 Q: Do you think if a player, an athlete such as a
20 quarterback had an arm laceration and a broken wrist that he
21 would get prompt medical attention?

22 A: I'd think so.

23 Q: You would think so. Would it surprise you if Rex Roupe
24 got no medical attention until another trainer stumbled upon
25 him in the parking lot and provided him with ice and contacted

Keith Waggoner - Cross Examination

Wood vs HCSD

443

2017-CP-26-06643

1 can hear you. If they can hear you, we're good.

2 **BY MR. MOORE:**

3 Q: And would you agree that an athlete like Logan who's
4 playing both offense and defense the entire game will have a
5 greater chance of cumulative head impacts?

6 A: Yes.

7 **MR. MCLEAN:** Again, Your Honor, I think this is going
8 beyond the facts into opinions that he's not qualified to
9 express.

10 **MR. MOORE:** Your Honor, this comes straight from the
11 certification materials that he just testified that he ---

12 **THE COURT:** I'm going to overrule it.

13 **MR. MCLEAN:** Yes, sir.

14 **BY MR. MOORE:**

15 Q: So the training materials say an athlete playing on
16 offense and defense will have a greater cumulative head impact
17 exposure and will be at a higher risk for injury than an
18 athlete playing a single position. Do you agree with that?

19 A: Yes, I do, more time on the field.

20 Q: And would you agree that a lineman like Logan would be at
21 a higher risk for concussions?

22 A: Yes.

23 Q: And during these games, I understand there's about 65
24 players on your team, Coach?

25 A: Roughly, yeah.

Keith Waggoner - Cross Examination

Wood vs HCSD

444

2017-CP-26-06643

1 Q: And your focus -- your primary focus is coaching those
2 players, right?

3 A: My focus is the line.

4 Q: The line.

5 A: I have usually about ten or 12 that I pay attention to
6 the majority of the time.

7 Q: And through your volunteer work at the middle school have
8 you had an opportunity to learn about any type of action
9 response plan in the event of injuries of teammates?

10 A: We had one then, yes.

11 Q: And what was that?

12 A: I cannot remember that.

13 Q: Coach, thank you for your time this afternoon. I don't
14 have any other questions for you.

15 **MR. MCLEAN:** I have no further questions.

16 **THE COURT:** All right. You may step down.

17 **MR. MCLEAN:** May he be excused?

18 **THE COURT:** Any objections?

19 **MR. MOORE:** No objections, Your Honor.

20 **THE COURT:** All right. You have a good day.

21 All right. Members of the jury, let's take a lunch break
22 until about 1:20. Do not discuss the case. We'll come back
23 and with a little bit of luck maybe finish.

24 **REPORTER'S NOTE:** (Jury exits courtroom at 12:33p.m.)

25 **THE COURT:** All right. Let's take a lunch break until

Joseph Quigley - Direct Examination

Wood vs HCSD

463

2017-CP-26-06643

1 A: Roughly about. Yes.

2 Q: And then there's a nine question multiple choice quiz at
3 the end?

4 A: Correct.

5 Q: And if you miss one of those then you get a 30 second
6 instruction and you can go back?

7 A: Correct.

8 Q: And then you get one of these certificates at the end?

9 A: That's right.

10 Q: Do you know what type of certifications the athletic
11 trainers get through DHEC in South Carolina?

12 A: I do not.

13 Q: Coach Jolly, I appreciate your time this afternoon.

14 **MR. MCLEAN:** I have no further questions. I request that
15 the witness be excused.

16 **THE COURT:** Any objections?

17 **MR. MOORE:** No, Your Honor. Thank you.

18 **THE COURT:** You have a good day.

19 **MR. JOLLY:** Thank you.

20 **THE COURT:** If you will call your next witness.

21 **MR. MCLEAN:** I call Joe Quigley.

22 **JOSEPH QUIGLEY, HAVING BEEN**

23 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 **THE CLERK:** Please have a seat and state your first and
25 last name for the court reporter.

Joseph Quigley - Direct Examination

Wood vs HCSD

464

2017-CP-26-06643

1 **MR. QUIGLEY:** Okay. My first name is Joseph, my last
2 name is Quigley.

3 **DIRECT EXAMINATION OF MR. QUIGLEY BY MR. MCLEAN:**

4 Q: Mr. Quigley, where are you employed?

5 A: At North Myrtle Beach High School.

6 Q: What is your position there?

7 A: Athletic Director.

8 Q: How long have you been the athletic director at North
9 Myrtle Beach High School?

10 A: Fifteen years.

11 Q: So you were there in 2016?

12 A: Yes, sir.

13 Q: We're here about a football game that happened on October
14 20, 2016 at Carolina Forest High School. Were you present at
15 that game?

16 A: No, sir.

17 Q: Tell the jury what your duties and your responsibilities
18 are as athletic director.

19 A: I'm responsible for making sure that all of our games
20 have officials, the teams are prepared, they have equipment,
21 the everyday job of when athletes go on the field and have
22 what they need. I am responsible for games, setting up for
23 games, security, announcers, anything that has to do with the
24 game, chain crew for football, things like that. I'm
25 responsible for ordering equipment. I'm responsible for

Joseph Quigley - Direct Examination

Wood vs HCSD

465

2017-CP-26-06643

1 scheduling, checking schedules and making sure that they're
2 full, making sure that our coaches come in and I watch them or
3 I should say evaluate coaches and things like that. Pretty
4 much anything to do with athletics I'm responsible for.

5 Q: Is that all athletic teams at North Myrtle Beach High
6 School?

7 A: Yes, sir.

8 Q: Not just football?

9 A: No, sir.

10 Q: All?

11 A: All.

12 Q: Okay. The game we're talking about was in October 2016.
13 That would be a fall sport, correct?

14 A: Correct.

15 Q: What other fall sports teams do you have at North Myrtle
16 Beach High School?

17 A: We have swimming boys and girls, tennis girls, this is in
18 the fall. We have three levels of football, we have
19 volleyball. We have cross country boys and girls, competitive
20 cheer.

21 Q: And you're responsible for all of those?

22 A: Right. Yes, sir.

23 Q: Are you familiar with the staffing model used by Horry
24 County Schools with respect to assignment of athletic trainers
25 to sporting events?

Joseph Quigley - Direct Examination

Wood vs HCSD

466

2017-CP-26-06643

1 A: Yes, sir.

2 Q: All right. Well let's narrow this down, do all sporting
3 events require an athletic trainer?

4 A: My responsibility - it's my job as athletic director is
5 to make sure all of our home events are covered first. So if
6 we have something going on at our school that needs to be
7 covered we do.

8 Q: But do all sports require an athletic trainer?

9 A: Yes.

10 Q: Is there an athletic trainer for the golf team?

11 A: There's an athletic trainer available. We play at a golf
12 course, but our athletic trainer is on call for that.

13 Q: Okay. All right. So tell the jury what the policy is of
14 the school district with respect to assignment, not the
15 policy, but the staffing model of the school district with
16 respect to assignment of athletic trainers for football.

17 Q: Well I first have to evaluate if we're home or away.
18 Okay. For varsity for sure our trainers come to home games
19 and away games. For JV depending on the coverage that I need
20 at our home facility, then it can dictate whether we send them
21 to JV or not. If there's a trainer at the visiting school JV
22 and I need coverage at our school, then we call that school
23 and we'll say hey our trainer has to stay here to cover, are
24 you okay watching, looking out for our kids? And I've never
25 been told no. In most cases, I'd say 95 percent of the time,

Joseph Quigley - Direct Examination

Wood vs HCSD

467

2017-CP-26-06643

1 our trainers go to our JV games too. With B-team they're at
2 every home game, and depending on the athletic schedule that
3 day depends on whether they would go to another game. If I
4 had nothing going on they would go, but in the fall we have
5 something going on pretty much every day. So we rely heavily
6 on the athletic trainers at the other school.

7 Q: At the visiting -- if North Myrtle Beach Middle School B-
8 team is playing a home game, who staffs the athletic trainer?

9 A: Okay. So at North Myrtle Beach I would tell our head
10 trainer that we need a trainer at our B-team game because we
11 are responsible for the home game.

12 Q: Okay. And if North Myrtle Beach Middle is playing an
13 away game at another school, who provides the athletic
14 trainer?

15 A: The other school would provide the athletic trainer. In
16 Horry County we all have an athletic trainer, so it is the
17 model that usually at the B-team games that we use the
18 athletic trainer of the opposing team.

19 Q: And was that the case for the game that North Myrtle
20 Beach Middle School played on October 20, 2016 at Carolina
21 Forest?

22 A: It was because of our schedule at home.

23 Q: Let me show you what we're going to offer into evidence
24 as the sports schedule for the fall.

25 **MR. MCLEAN:** And we mark this, if there's no objection,

Joseph Quigley - Cross Examination

Wood vs HCSD

479

2017-CP-26-06643

1 your away B-team game; is that correct?

2 A: I did not -- we had coverage. We had Carolina Forest
3 there.

4 Q: Okay. But you didn't have your own trainer there,
5 correct?

6 A: No, sir. We did not.

7 Q: Are you aware of the staffing models that other school
8 districts in the State of South Carolina use?

9 A: Many school districts in South Carolina do not have
10 athletic trainers, period.

11 Q: Did you know that over half of the school districts in
12 South Carolina have athletic trainers present for all of their
13 away B-team games?

14 A: No.

15 Q: Did you know that York County won't let their B-team take
16 the field, home or away, without an athletic trainer present?

17 A: No. I did not, sir.

18 Q: Did you know that Lexington County won't let their B-team
19 take the field, home or away, without their athletic trainer
20 present?

21 A: No, sir.

22 Q: Do you think that that's a safer model, having a trainer
23 with your B-team at all times?

24 A: Sure.

25 Q: Now you indicated that your staffing model prioritizes

Joseph Quigley - Cross Examination

Wood vs HCSD

480

2017-CP-26-06643

1 the home games over the away games?

2 A: Correct.

3 Q: Remind me, what was going on in the fall in terms of
4 sports that were in play?

5 A: We had at home, we had practice, and we had our
6 volleyball game, and we also had the region cross country
7 meet.

8 Q: I'm sorry, not just that night, sir, but in the fall
9 season. In October what all is in session, in season?

10 A: We had swimming, competitive cheer, cross country,
11 tennis, girl's tennis, girl's golf, and three levels of
12 football.

13 Q: Okay. So according to your staffing model, home swim
14 would get priority over away B-team football?

15 A: Well to be honest with you, home swim was only on
16 Saturday's and so we wouldn't take that. If there was a B-
17 team football game (sic) and it was at my swimming pool, or
18 the one we use at North Myrtle Beach Aquatic Center, I would
19 have to go to the swim meet. Yes, sir.

20 Q: Okay. Same with volleyball, so home volleyball would get
21 priority over away B-team football?

22 A: Yes, sir.

23 Q: Home competitive cheer would get priority over away B-
24 team football?

25 A: Yes, sir.

Joseph Quigley - Cross Examination

Wood vs HCSD

481

2017-CP-26-06643

1 Q: Home cross country would get priority over away B-team
2 football?

3 A: Correct, sir.

4 Q: And home tennis would get priority over away B-team
5 football?

6 A: Correct.

7 Q: Is the risk of injury greater in volleyball or in
8 football?

9 A: Football.

10 Q: Is the risk of injury greater in cheer or in football?

11 A: Right now I want to say statistics might be pretty close.

12 Q: Okay. Is the risk of injury greater in cross country or
13 in football?

14 A: Football.

15 Q: Is the risk of injury greater in tennis or in football?

16 A: Football.

17 Q: Now if I understand it, sir, according to some of the
18 documentation, and I'll share it with you, that was provided
19 by the district it was you and Mr. Dixon that were the two
20 executive level employees that did the investigation into
21 Logan Wood's injury. Is that correct?

22 A: I did some of the initial ones.

23 Q: Okay. And isn't it true that you told me in your
24 deposition that the extent of your investigation was to secure
25 Logan's football helmet?

Defendant's Renewed Motion for Directed Verdict by Mr. McLean

Wood vs HCSD

498

2017-CP-26-06643

1 **MR. MCLEAN:** I only got three hours of sleep last night,
2 guys, give me a break.

3 **MR. MOORE:** Me too.

4 **THE COURT:** Let's start at 9:30 and everybody will be
5 fresh. That way we can move it and be done with it. I think
6 we'll be finished before lunch and then it's up to them as to
7 how long they're going to take.

8 **MR. MCLEAN:** Yes, sir. That sounds like a good plan to
9 me.

10 **THE COURT:** All right. Let me just go over a few things
11 with you and then we'll roll.

12 **REPORTER'S NOTE:** (End of bench conference.)

13 **THE COURT:** I guess at this time are there any directed
14 verdict motions?

15 **MR. MOORE:** No, Your Honor.

16 **THE COURT:** Any motions? None. All right. Anything
17 from the defense?

18 **MR. MCLEAN:** Just renew our position as previously stated
19 on the record at the conclusion of the plaintiff's case.

20 **THE COURT:** Okay. All right. I'm going to respectfully
21 deny those.

22 **MR. MCLEAN:** Yes, sir. Thank you.

23 **THE COURT:** Let's talk about the assumption of risk.
24 I've taken a look at your requested charge, and I've taken a
25 look at the standard charge. Part of me thinks the standard

Charge Conference

Wood vs HCSD

499

2017-CP-26-06643

1 charge makes more sense. It's a lot simpler. It's basic.
2 The charge you gave me, Joe, the first sentence I'm okay with.
3 The second sentence is a little confusing to me. It tends to
4 sort of shift the case a little bit from what assumption of
5 risk is to different causes of action that are not necessarily
6 even in this case, such as negligent supervision and negligent
7 instruction. But I do have a good assumption of risk charge
8 if y'all would like to look at it real quick and I think it
9 covers everything that you want to cover. So why don't y'all
10 take a look at that real quick and just see if that makes it a
11 little easier to understand.

12 **MR. MOORE:** Your Honor, the plaintiff is in agreement
13 with that.

14 **MR. MCLEAN:** Your Honor, that's fine with me as well.

15 **THE COURT:** Sounds good. All right. Let me get that
16 back from you.

17 And now let's talk about that slippery term, occurrences.
18 And it is slippery at best. So we tried to analyze it over
19 break, and I guess looking at it from this perspective we do
20 have the single act which is the concussion, the hit, and
21 that's where the occurrences stem from. So stemming from
22 that, you are making an allegation that no athletic trainer
23 was on the sidelines with the team. I think if proven by
24 gross negligence, that could be a separate occurrence.

25 Then you make the allegation by gross negligence that

Charge Conference

Wood vs HCSD

500

2017-CP-26-06643

1 they failed to assess him. That's a question of fact. I've
2 seen the tape and I've heard from you, and I've heard from
3 you. But I think that could potentially be a second
4 occurrence.

5 Then you have the third occurrence that you're alleging
6 that they failed to train the staff or the coaches in Post-
7 Concussive Syndrome and Second Impact.

8 Then you have a fourth on that they allowed him to
9 continue to play after the first big hit.

10 At first it seems to me that those two were sort of
11 intertwined as one in itself. But I guess you could look at
12 it this way, that it was a separate occurrence that they
13 failed to train their staff and they didn't recognize the
14 concussion. And therefore, let him to play because they
15 didn't know that second, third, and fourth hits would cause
16 all kind of troubles. Then you could come down to they
17 allowed him to continue to play. Well I guess they could have
18 allowed him to continue to play because they weren't trained
19 properly, or they were simply slack, just grossly negligent.
20 They didn't see it, they didn't recognize it, and they let him
21 play. So I guess with that analogy there could be four
22 occurrences, I guess.

23 **MR. EVANS:** That'd be our position, Your Honor.

24 **THE COURT:** I mean it's not simple. It's not an easy
25 concept. But -- and I'm not saying it's going to happen, but

Charge Conference

Wood vs HCSD

501

2017-CP-26-06643

1 I guess it could possibly happen. And therefore, I have this
2 verdict form if you want to look at it.

3 **MR. MCLEAN:** Yes, sir. That would be helpful. I think
4 I'm looking at an earlier one.

5 **THE COURT:** Yeah. And those are just my crazy notes. I
6 don't know if that helps try to explain what I was saying.

7 **MR. MCLEAN:** Is this the one we're looking at now?

8 **THE COURT:** And two and three are kind of slippery. They
9 are real similar to each other. All of them are slippery to
10 be honest with you.

11 **MR. MCLEAN:** Your Honor, that was my point. I think two
12 and three are the same. Failure to assess and allowing him to
13 continue to play, well that could have been because of a
14 failure to assess. I think they're saying the same thing. I
15 think we're building ---

16 **THE COURT:** It could be. If they assessed him, more than
17 likely they're going to pull him out and sit him.

18 **MR. EVANS:** Well, Mr. McLean, would you be amenable to
19 combining those two?

20 **MR. MCLEAN:** Let me read it and think about it. No,
21 because allowing him to continue to play could have been -- I
22 don't want to -- I could have been for a reason other than
23 failure to assess.

24 **MR. EVANS:** Uh-huh. (Affirmative response.) So they
25 are separate?

Charge Conference

Wood vs HCSD

502

2017-CP-26-06643

1 **MR. MCLEAN:** No. How do you want number three to read?

2 **THE COURT:** It seems to me that failure to assess is the
3 big one. They would have pulled him out otherwise. And then
4 you've got the occurrence of failure to train the coaches.
5 And then they continued to let him go, either because they
6 were grossly negligent and just didn't see it or they were not
7 trained properly.

8 **MR. MCLEAN:** No athletic trainer present.

9 **THE COURT:** Right.

10 **MR. MOORE:** Failing to assess.

11 **THE COURT:** Failure to train the coaches and continuing
12 to let him play. Three occurrences. Logically that makes the
13 most sense.

14 **MR. MOORE:** So you're saying we strike three?

15 **THE COURT:** Yeah, in a way. If they would have assessed
16 him they would not have let him play more than likely. When
17 in doubt, they would have sat him out.

18 **MR. EVANS:** Yeah, so we strike three.

19 **MR. MOORE:** So we strike three.

20 **MR. MCLEAN:** Take out three. Okay.

21 **THE COURT:** All right.

22 **MR. MOORE:** Thank you, Judge.

23 **THE COURT:** Do y'all want me to charge first or charge
24 last? I don't care. It makes no difference to me. Some
25 lawyers prefer last, but ---

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

506

2017-CP-26-06643

1 Dr. Hertza which was played to the jury yesterday and move it
2 into evidence as defendant's number 5.

3 **THE COURT:** Any objections?

4 **MR. MOORE:** No objection.

5 **THE COURT:** All right.

6 **(DEFENDANT'S EXHIBIT NUMBER FIVE**
7 **IS ADMITTED INTO EVIDENCE.)**

8 **THE COURT:** Anything else?

9 **MR. MCLEAN:** No, Your Honor.

10 **THE COURT:** All right.

11 **MR. MCLEAN:** Thank you.

12 **THE COURT:** Let's go ahead and bring in the jury.

13 **REPORTER'S NOTE:** (Jury enters courtroom at 9:35a.m.)

14 **THE COURT:** The plaintiff is recognized for your closing
15 statement.

16 **MR. MOORE:** Thank you, Your Honor.

17 **THE COURT:** Thank you.

18 **MR. MOORE:** Good morning, ladies and gentlemen. We have
19 never lost sight of the fact that y'all have spent this week
20 devoting your time to Logan's case, devoting your time to
21 Logan's case in the middle of a pandemic. And we certainly
22 have done everything that we can to provide you with the
23 information that you need as quickly, as efficiently as
24 possible, and to not waste time with irrelevant testimony.
25 That said, I know it's been a long week. I know that the days

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

507

2017-CP-26-06643

1 were long and some of this testimony could have been tedious
2 to sit through and listen to all day long. But I can assure
3 you that the last few days that we've spent in this courtroom
4 is just a split second compared to the time that Logan is
5 going to be living with a -- with a brain injury that he
6 suffered in October of 2016. And this is our only chance to
7 come here and get justice. We can't do it -- we can't come
8 back and do this over again; this is our one and only chance.
9 But shortly this journey will come to an end and you, ladies
10 and gentlemen, will return to your jury room and y'all will be
11 given the opportunity to deliberate on this case. And over
12 the next few moments what I would like to do is to provide you
13 with some information and some tools that may assist you in
14 rendering a verdict for Logan.

15 First, I'd like to remind you all why we're here.
16 Children go to school to learn. Logan was 14 years old when
17 this happened. And for the Wood family, as y'all know, sports
18 was a very, very important part of that learning experience.
19 Sports is where Logan got his confidence; it's where he made
20 his friends; it's where he got the motivation to do well in
21 school. We are pro-sports; we are pro-football. But the
22 district, the school, is an overseer of student safety, both
23 in the classroom and outside of the classroom and on the
24 field. And if we're going to permit our children to engage in
25 full contact sports, we as parents, we have the expectations

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

508

2017-CP-26-06643

1 that basic safety rules are going to be implemented and
2 they're going to be followed. And that, ladies and gentlemen,
3 is why we are here this week.

4 Why are we here? We're here because the Horry County
5 School District provided no trainer, no athletic trainer for
6 Logan's team. We discussed at length why that is so
7 important. Every witness that has testified this week has
8 acknowledged that these younger athletes, these eighth
9 graders, these seventh graders, these 12, 13, 14-year-olds are
10 at the high -- at the greatest risk of suffering serious
11 injuries. We're critical of the district because they didn't
12 have a trainer for his team. They had 130 athletes out there
13 and not one single trainer for Logan's team, and we'll talk
14 about that as we go along. We're critical, and why we're here
15 is because Logan was exhibiting signs of a concussion and
16 we've provided you with expert testimony from a certified
17 athletic trainer who has watched the video and has provided
18 opinions to you all that Logan was exhibiting signs of a
19 concussion, but he was never assessed. We have provided
20 witness testimony through Logan's mother and through his
21 sister of what they witnessed and what they saw.

22 We're here because the head athletic trainer for Carolina
23 Forest within the school district who is an employee of the
24 defendant, of the district, she knew her job responsibilities,
25 but she neglected to follow them at all, and she's

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

509

2017-CP-26-06643

1 acknowledged that.

2 And finally, we're here because the district can't
3 delegate the important responsibilities of an athletic trainer
4 to a coach without proper training.

5 Unfortunately, we're here today because the district
6 can't be honest with themselves. They have blindly focused
7 their attention on winning this case but have lost sight of
8 one of the reasons that we're here today, one of the reasons
9 that this case was filed. A verdict not only helps Logan, but
10 it helps the other schools within this district. It is
11 abundantly clear that the schools within this district they
12 need more resources. They need more trainers. They need more
13 training. Apparently, Keeter Hayes' voice wasn't loud enough.
14 He got on T.V. and he begged for it, but nothing changed for
15 these football players, nothing changed for these B-team
16 football players. Again, a verdict not only helps Logan, but
17 it helps the next generation of young students who come
18 through that program.

19 Instead of rallying around Logan, instead of lifting him
20 up, the district they turned on Logan. Throughout the course
21 of this litigation they put Logan under a microscope. They
22 subpoenaed every record since he was born. They have poured
23 over those records looking for some preexisting medical
24 condition, some excuse to avoid responsibility for the harm
25 that was caused to him. And when that wasn't enough, they

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

510

2017-CP-26-06643

1 hired their own expert out of Georgia to run tests on Logan,
2 and y'all heard from that expert yesterday. And quite frankly
3 Logan didn't have to agree to do that. The rules don't
4 require that if an out of state psychologist wants to do tests
5 on the plaintiff that we agree to it. This guy was not a
6 physician. But we did agree to it because Logan is an open
7 book; he's got nothing to hide. And that expert what he did
8 was he ran a battery of tests, and those results came back and
9 he issued a preliminary opinion. His preliminary opinion was
10 that Logan suffered from concussions, they caused a frontal
11 lobe brain injury, and that they were the cause of his brain
12 injury symptoms. But then after consulting with the district,
13 who is paying that doctor's bill, he changed his opinions and
14 comes back and says well I think it's most likely that his
15 brain injury symptoms are associated with the fact that he had
16 an abusive father as a child. Like that has anything to do
17 with this case; like that has anything to do with Logan's
18 brain injuries. But it didn't stop there. Then through the
19 course of this trial when they're shifting blame, shifting who
20 they're going to blame without accepting responsibility, they
21 resort to blaming Logan's mother for not doing more, for not
22 pulling -- for Logan's mother not pulling him out of the game
23 after they knew that Kary Anne Cyr, the athletic trainer who
24 was assigned to that game, paid no attention to the entire
25 game, did not even interact with a single student. All of

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

511

2017-CP-26-06643

1 this to avoid responsibility for a harm that was caused. And,
2 ladies and gentlemen, I've been practicing for 13 years and
3 I've seen a lot in those years, but I've never seen something
4 like this particularly coming from a school district. I want
5 to be clear that it's not the attorney in me that's offended
6 by that, it's the parent in me. I have children. I've got a
7 daughter who is in the public school system. These are the
8 things that keep me up at night. And I can tell you that the
9 last place that Logan wants to be this week is in this
10 courtroom asking for y'all's help. He wishes that this never
11 happened. If he could go back in time this would have never
12 happened. He loved his school. He loved living in this area.
13 He loved this community. He loved playing football. And all
14 of that was taken from him. All of his dreams and
15 aspirations, and this young man has reinvented himself and I'm
16 proud of him but it's been a long road. And the last thing
17 that he wants to do, the last thing that he foresaw that he
18 would have to do is to come into this courthouse and ask y'all
19 for help. But you, ladies and gentlemen, are the only way
20 that Logan can get the help that he needs.

21 In opening statements my law partner Scott talked to you
22 about the burden of proof in these cases and he gave a great
23 example that's relevant to this case which is the football
24 example. And I'll tell you the burden of proof in this case
25 is preponderance of the evidence. After the opening (sic)

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

512

2017-CP-26-06643

1 statements Judge Seals will charge you, instruct you as to
2 what that means. But this case, a civil case, is unlike a
3 criminal case. In a criminal case the burden is beyond a
4 reasonable doubt. And that makes sense because in a criminal
5 case the state is prosecuting somebody and if they're
6 convicted their rights are stripped from them; they're placed
7 in jail. In a civil case that burden is much different. All
8 we have to prove is more likely than not, more likely than
9 not. If you think about -- well the example that Scott gave
10 was a football example. All we have to do is to get to the
11 51-yard line. And if we get to the 51-yard line, if y'all
12 believe that we provided enough testimony and enough evidence
13 to get to the 51-yard line, the law says that you must return
14 a verdict in favor of the plaintiff.

15 Another example is Lady Justice. When you start the
16 trial the scales of justice are equal, but after you've heard
17 the testimony and you've heard the evidence if you believe
18 that the scales are tilted so slightly in favor of the
19 plaintiff the law says that you return a verdict, and a full
20 verdict for Logan.

21 And in determining and deliberating over whether or not
22 we have met this burden this week, ladies and gentlemen, you
23 can consider the evidence that we've submitted. This is our
24 exhibit list, ladies and gentlemen. This will go back into
25 the deliberation room with you. You are permitted to look at

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

513

2017-CP-26-06643

1 it, review it, or disregard it. You can spend your
2 deliberations on what you saw, the testimony that you heard,
3 the evidence as it was presented in trial, or you can review
4 the evidence that submitted back in the deliberation room. We
5 entered 18 exhibits into evidence. We entered medical
6 records, school records, the video, photographs, power point
7 presentations of the defendant's expert. Here's what the
8 defendant submitted in defense of this case. A completion
9 certification of one coach, which we know is a 20-minute
10 video, some text messages, and a football schedule. Those are
11 things that you can compare, contrast, and consider when
12 determining whether or not we've met our burden of proof.
13 Through the course of this trial we've entered 18 exhibits:
14 medical records, school records. We called 11 witnesses in
15 our case in chief. Some of whom were the districts own
16 employees. We've02 provided you testimony from South
17 Carolina's only neurologist that's certified in brain
18 injuries. We provided you testimony of a neuropsychologist,
19 an expert in the field of athletic training. We provided the
20 district employees testimony. We put the game tape into
21 evidence incase you all want to review that. The strict on
22 the other hand: four exhibits, no neurologist, no expert in
23 athletic training. And the Judge will charge you on what it
24 means to be an expert, it doesn't mean he's an expert. They
25 are the only witnesses that can offer opinions and you can

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

514

2017-CP-26-06643

1 disregard those opinions, or you can accept those opinions.
2 But, ladies and gentlemen, there's a reason why Keeter Hayes
3 and some of the other athletic trainers were not qualified as
4 experts, because maybe the district didn't want to hear what
5 their opinions were.

6 And finally, in opening Mr. McLean he got up in front of
7 you all, ladies and gentlemen, and he said I'm going to put
8 into evidence the Horry County District Policy that says our
9 staffing model was followed, that we don't have to have a
10 trainer for the away team when these -- when these teams
11 travel. You can look through this list. I don't see that
12 policy in there. So, ladies and gentlemen, I don't believe
13 that you can come to the conclusion that any policy was
14 followed or that there was any policy with respect to these
15 away games and the staffing of these away games.

16 The game tape, we've entered the game tape into evidence.
17 It's two exhibits and I'll tell you why. It's Exhibit 15 and
18 it's Exhibit 16. After this litigation was filed we got the
19 video in discovery from the district. The video in the way
20 that it was produced to us was in 12 different clips that were
21 compressed to the point where they were not viewable at all.
22 Exhibit 15 is how it was produced to us. There's -- there's -
23 - for me there's nothing there to see. So what we had to do
24 was we had to hire a software engineer to decompress these
25 videos and what they found was there's 12 clips, there's no

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

515

2017-CP-26-06643

1 timer on the clips. It was like a puzzle piece to put these
2 clips together, and we've done our best job. So we entered
3 into evidence a full video as it was produced to us. But I
4 will warn you ladies and gentlemen, there are missing pieces
5 of that video. We know, and it's been agreed upon, that at
6 least in the second half there's 20 percent of that video
7 that's just missing. So if you decide to watch the video you
8 can, or you can't. I mean it's totally your decision whether
9 you're going to watch it. I want you to take into
10 consideration the fact that we're missing a lot of the video.
11 And even in the first half while you watch it there will be
12 just blacks, black screens. What that shows is there is no
13 video. The second half, six-minute black outs, no video. And
14 so if you watch that video, ladies and gentlemen, you'll see
15 that in the second half when Anderson Boyers suffered a
16 concussion, in the testimony he was either removed from the
17 game or a ref pulled him out of the game, that's missing from
18 the video. When Rex Roupe, the start quarterback, breaks his
19 wrist and suffers a wrist laceration that's missing from the
20 video. But what the video does show if you watch it closely
21 from beginning to end is Logan taking repeated hits throughout
22 the video. And listen, ladies and gentlemen, you've heard the
23 testimony from every expert in this case. It does not take a
24 bellringer to cause a concussion. Particularly with a 14-
25 year-old who has a developing brain. So if you're going to be

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

516

2017-CP-26-06643

1 looking out for these giant hits, you're not going to see it.
2 But what you'll see is repetitive hits, play after play after
3 play. Logan was never taken out of that game except for field
4 goals, special teams. You'll see Logan clutching his helmet
5 after an illegal high-low play, which is a sign and symptom of
6 a concussion. You'll see Logan appearing confused.

7 You heard from Coach Waggoner yesterday, he said that
8 Logan was one of his best players. He was one of his smartest
9 players. He was the player who was calling the plays.
10 However, as the video progresses into the second half, at
11 least the portions that we see, you'll notice that Logan isn't
12 calling the plays anymore. He's going up to his teammates and
13 asking them what is the next play because he's confused. And
14 another thing that you'll see if you do decide to watch the
15 video, and again ladies and gentlemen, that is totally up to
16 you. But if you watch the video keep in mind that even though
17 you have heard a lot of testimony this week, y'all aren't
18 certified athletic trainers, y'all aren't trained in
19 concussion protocols and concussion spotting. But what you
20 can see is that the head trainer, Kary Anne Cyr, completely
21 and totally neglects her responsibilities. She's in the
22 corner of the screen talking with her friends, sitting in the
23 gator, eating ice cream, not walking the sidelines, not
24 interacting with the players.

25 Our first witness in this case was Dr. Marty White. He

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

517

2017-CP-26-06643

1 was recognized by the Court as a preeminent expert in brain
2 injuries as a neurologist. That was without objection from
3 the school district. He's board certified in neurology. He's
4 certified in brain injuries. And he, like all of the other
5 doctors in this case, diagnosed Logan with suffering from
6 multiple concussions. Not one, not two, the records indicate
7 that there was possibly seven. That's why he had post --
8 that's why he had Second Impact Syndrome. We would not be
9 here today, ladies and gentlemen, if he had one concussion.
10 He was diagnosed with multiple concussions. And Dr. White,
11 not only is he Logan's treating neurologist who follows him,
12 he's also a forensic neurologist meaning he can review the
13 records of other doctors. He can review depositions. We had
14 him review everything in this case. And Dr. White agreed with
15 all of the other physicians that have treated Logan, that have
16 placed their hands on Logan. He agreed with the good doctors
17 at Seacoast Hospital who diagnosed Logan with a concussion.
18 He agreed with Dr. Daniels who is a pediatrician who served
19 this community for 30 years before he went into retirement.
20 And you all have seen Dr. Daniels' note which is in evidence
21 that said at the time, and this was back on January 5th of
22 2017, in my 25 years of practice I have never encountered a
23 patient with such severe Post-Concussion Syndrome or symptoms.
24 He referred him to neurology. Dr. White agrees with those
25 opinions. He agrees with the opinions of the neurologist and

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

518

2017-CP-26-06643

1 the medical providers at the Children's Hospital at MUSC. He
2 agrees with the opinions of Dr. Kline, who's no longer at
3 MUSC, he's now at Johns Hopkins. He agrees with Dr. Waid, who
4 y'all heard from. He agrees with Dr. Collins, who is Logan's
5 pediatrician in Aiken. And I can tell you, ladies and
6 gentlemen, these doctors, these hospitals they're not in the
7 job of treating patients who aren't hurt. They don't provide
8 medications to patients who don't need them. That's called
9 fraud, ladies and gentlemen, and these doctors they don't do
10 that. And all of these doctors, like Dr. White, have
11 diagnosed Logan with Post-Traumatic Brain Syndrome. And
12 according to Dr. White, he will have lifelong symptoms
13 requiring medical intervention to reduce those symptoms.

14 We heard from Kary Anne Cyr. Kary Anne Cyr was the
15 athletic trainer. She was the only trainer on the field
16 working for the home team. The district placed her in a
17 position to fail, ladies and gentlemen. One hundred and
18 thirty young, high-risk athletes and one trainer. She
19 testified that her head was on a swivel. Not because she was
20 watching plays, interacting with students. Her head was on a
21 swivel because she could be called from this game as the
22 single athletic trainer at any point in time which would leave
23 the game with no trainers whatsoever. She admitted that she
24 never bothered to get off the gator, walk ten-feet away from
25 the gator which is shown on the video. She admittedly

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

519

2017-CP-26-06643

1 performed no assessments the entire game to evaluate anyone
2 including the three injured players on Logan's team: a player
3 with a fractured arm, a player with a concussion, and then of
4 course Logan. No attempts to do her job, no interactions with
5 students. And ladies and gentlemen, when she came to this
6 courthouse and testified that was the first time I'd ever met
7 her. And knowing that she's the head athletic trainer for a
8 big high school, I expected that she would get on the stand
9 and show some sympathy, some empathy for Logan. To say as a
10 trainer this is the kind of injury that keeps me up at night.
11 Instead, her testimony was I don't know, I don't care
12 essentially. I don't know, I don't care, I don't remember
13 anything.

14 The next witness was Jessica Foxworth which we read into
15 evidence. Her testimony showed that there's a flawed coverage
16 model. She was -- had prioritized JV warm-up over the higher
17 risk game involving the younger students, the B-team. She
18 testified that an ambulance comes to the JV and Varsity games,
19 two to three trainers at these games. She is the one who just
20 happens to be walking to her car and runs into two of Logan's
21 teammates who have been -- one had a concussion; one had
22 broken his wrist and had received no medical treatment.

23 You may be asking yourself why weren't any of these
24 injuries treated by Kary Anne, the athletic trainer assigned
25 to the game? We know. She wasn't doing her job, she wasn't

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

520

2017-CP-26-06643

1 engaged. And the question that y'all need to consider is did
2 the district, knowing the risk of having one trainer, put her
3 in a position to fail.

4 Coach White, nice guy, probably a great coach. Logan
5 loved him. He testified that his primary role is to coach.
6 He's not an athletic trainer; he's not a medical professional.
7 And he said trainers should be on the sidelines. You know I
8 think it's great, ladies and gentlemen, that he -- and it's in
9 evidence that he has a certification from NFHS back from 2016.
10 I think that's a good thing. But this does not replace the
11 role of a certified licensed athletic trainer, it doesn't. A
12 20-minute video does not replace that role. Coach White
13 testified that he had no training on Post-Concussive Syndrome,
14 never heard of Post-Concussive Syndrome. No training on
15 Second Impact Syndrome, never heard of Second Impact Syndrome.
16 And ladies and gentlemen, we're not asking that he diagnose
17 his students, but we do expect that if the district's going to
18 put him in the role where he's supposed to be observing for
19 injuries like this that he knows the basics. He also
20 testified that he had never even read, as the head coach for
21 this program, the concussion protocols at all. And again, our
22 point is if the district is going to delegate this task to
23 coaches, which we think is a poor model, these coaches are
24 there to coach not watch for injuries, not treat injuries, but
25 if they're going to do that they need to be trained. Coach

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

521

2017-CP-26-06643

1 White and I think a couple of other witnesses gave you a
2 little saying, when in doubt sit them out. And you know it's
3 a cute phrase, we get it, we understand what you're saying.
4 But this is not a substitute for proper and thorough training.
5 This is not a substitute for a certified athletic trainer who
6 can engage with these students and know what to look for.
7 It's a cute saying, but that's not enough, ladies and
8 gentlemen. The fact that he had no training in Post-
9 Concussive Syndrome is not in dispute. This is an admission
10 of the district from March 23rd of 2016. Their position,
11 their official position was that this assumes a duty of care
12 that did not exist. That training of Post-Concussive Syndrome
13 was outside of his scope of responsibility. That was before
14 they heard Kary Anne take the stand. Same with Second Impact
15 Syndrome, that's beyond the scope of responsibility for
16 coaching staff.

17 You heard from Rod Walters. Rod Walters was recognized
18 by this Court as an expert in athletic training. That means
19 he can provide opinions as to what he's observed and what he's
20 seen unlike any witnesses provided by the school district. He
21 testified that the coverage model for the B-team to allocate
22 trainers to the sports that have -- should be to allocate the
23 risk -- to allocate the trainers, excuse me, to the sports who
24 have the highest risk of permanent injury. We know that
25 wasn't done here. He said that Logan was exhibiting known

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

522

2017-CP-26-06643

1 signs of concussion necessitating at least an assessment. We
2 know that that was never done here. We know that Kary Anne
3 didn't assess anyone, even the player who had a known
4 concussion. He testified that you can't assess a concussion
5 without getting in a player's face. You've got to look in
6 their eyes. You've got to be trained on what to know and how
7 to spot it. He testified that a concussion is caused by
8 direct or indirect hits. We always think about the big hits,
9 but it's the three small hits that could be the most
10 dangerous. He further testified that self-reporting is a good
11 plan but is wrought with failure. You can't just depend on
12 people to tell you these things. You have to ask the
13 questions, you have to look for the signs, the symptoms to
14 prevent the concussions from being a catastrophic event like
15 it was for Logan.

16 Yesterday we heard from the athletic director of the
17 school, Joseph Quigley. Joseph Quigley testified that he had
18 never researched the coverage model of other South Carolina
19 districts, even though he had been in that position for 15
20 years. He was unaware of the coverage model for half of our
21 state, unaware of the coverage model for York County School
22 District, unaware of the coverage model for Lexington County
23 School District. Agreed that the coverage model of other
24 districts if they have a trainer traveling with them is the
25 safer model, but of course it is.

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

523

2017-CP-26-06643

1 We heard from Keeter Hayes. Again, Keeter Hayes is a
2 great trainer. Had he been at that game this probably would
3 have never happened to Logan. And we all know that Keeter was
4 very outspoken about the need for more athletic trainers for
5 North Myrtle Beach High School. He went on T.V. just months
6 prior to Logan's traumatic brain injury and said that the
7 child athletes in this district are not properly supervised
8 and that the district coverage model is placing a value on
9 student's life and on student's health. That's what he went
10 on T.V. and said. And they provided some testimony that maybe
11 there was some change after, maybe there was a part-time
12 stipend trainer became a full-time trainer. It was confusing
13 to me. And if they were paying these trainers more money,
14 that's great, I hope that they are. I hope that part-time are
15 becoming full-time. But what we do know is that the coverage
16 model for the B-team, the high-risk players, that never
17 changed. Varsity two to three away athletic trainers, JV one
18 to two away, B-team zero. B-team, highest risk of serious
19 injuries, that was his testimony, that's what he agreed to.
20 And I can tell you from Mr. Hayes, who is a nice guy, this was
21 an awkward position. This was an awkward position to come up
22 here and testify in the plaintiff's case in chief sitting
23 right in front of the school district's attorney who is
24 watching him testify. But I think you all know deep down how
25 Keeter feels about this situation. This is somebody who's

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

524

2017-CP-26-06643

1 passionate about the health and the safety of these players
2 and he knew that they need more trainers, that's why he went
3 on T.V. and begged for it. He also testified that not having
4 a trainer on the sidelines increased the risk for the B-team
5 players. And that something that he agreed with. He has to
6 agree with it because it makes sense. Finally, he testified
7 that with the current district model the greatest risk ends up
8 with the least amount of coverage.

9 You may be asking yourself what are the defenses to this
10 case? And that's a good question. At this point, I really
11 don't know. I know Mr. McLean will be up here shortly and
12 he'll tell you what he believes to be the defenses in the
13 case. For me it's just been a moving target. I haven't been
14 able to keep up with it, but this is what I think the defenses
15 will be. That Logan should have self-diagnosed his
16 concussions and removed himself from the game. This is a
17 picture of Logan about a week before the game. He was 14
18 years old. Logan knew what a concussion was, but he'd never
19 had one. We know by the time a coach came to finally assessed
20 Logan at the end of the game he didn't know his name, ladies
21 and gentlemen. He didn't know who his mother was. And for
22 him to have self-diagnosed and removed himself from the game
23 quite frankly I think is ridiculous.

24 Again, the school district pivoted to blaming Ms. Wood
25 like she should have stormed the field and stopped the game.

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

525

2017-CP-26-06643

1 You heard the district's attorney cross examining Ms. Wood
2 asking her over and over and over again why didn't you do
3 more. This is a lady who has done everything in her control
4 to protect her children from things that nobody as a parent
5 ever wishes -- would ever hope their children would go
6 through. This is somebody who loves her son unconditionally.
7 And to come up here and insinuate that Ms. Wood should have
8 done more, when they knew that their trainer wasn't even
9 paying attention to the game, that's a defense that you guys
10 can accept or decline.

11 Finally, they put up a damages expert, Dr. Hertza, from
12 Georgia. As you may have picked up in his cross examination,
13 Dr. Hertza initially agreed that Logan had a frontal lobe
14 brain injury due to multiple concussions sustained in a
15 football game. But then he consults with the district who's
16 paying him to testify, who's paying him to give opinions and
17 his opinion flip flops. In his final report he opines that,
18 well he has brain injury symptoms and maybe some of them are
19 from a concussion, but they're most likely due to family
20 conflict. And then he goes on to say, well also I think he
21 probably had a low I.Q. before the game even happened, before
22 the concussions ever happened. So quite frankly Dr. Hertza's
23 opinions are that Logan was messed up before this game ever
24 took place. Ladies and gentlemen, we disagree with that, and
25 all of our experts do as well.

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

526

2017-CP-26-06643

1 When y'all go back and deliberate you're going to be
2 provided with a verdict form and that will give you three
3 opportunities, ladies and gentlemen, to find for Logan, to
4 return a verdict for Logan. And the standard in this case is
5 gross negligence. It's a legal term and the Judge will
6 provide you charges on that, and he will describe what gross
7 negligence means. But essentially it's the conscious failure
8 to do something which one ought to do or the doing of things -
9 -- or the doing of the thing one ought not to do. It's a
10 legal term, but it basically means you knew what you were
11 supposed to do and you didn't do it. You knew the risk and
12 you did it anyway. And I anticipate that the district's
13 attorney is going to get up and going to say it wasn't
14 intentional, and nobody intended to hurt Logan, and this and
15 that. And I agree. We don't have to prove that anybody
16 intended to hurt Logan, that's not our burden. That's not our
17 burden at all, and we don't believe for that matter that
18 anybody intended to hurt Logan during that game. What we do
19 believe and we support it by the preponderance of evidence is
20 that the district acted in gross negligence and acted grossly
21 negligent in three different ways, more really and I'm going
22 to go through some of those with you. Knowing your job
23 responsibilities but consciously neglecting to do them, that's
24 Kary Anne Cyr the head athletic trainer. She knew what she
25 was supposed to do. She's well educated, she's well trained,

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

527

2017-CP-26-06643

1 she's licensed, certified by DHEC. She knew what she was
2 supposed to do but didn't do it. She didn't check on a single
3 player that game. Going on T.V. and proclaiming that the
4 district is not getting enough trainers and it's putting a
5 value on your student's life and health but then not changing
6 the coverage, that's knowing what you need to do and not doing
7 it, ladies and gentlemen. That's not in dispute. Assigning
8 one trainer to 130 high-risk athletes during a full contact
9 football game, that's gross negligence. Having the least
10 amount of coverage for the most vulnerable athletes, that's
11 gross negligence. Acknowledging that the best way to assess
12 the symptoms of the concussion is to assess the player, but
13 then admitting to having zero assessments of the home team or
14 the away game team; that, ladies and gentlemen, is gross
15 negligence. Knowing the signs of concussions, Kary Anne Cyr
16 knew the signs of concussions but never assessed Logan, that's
17 gross negligence. Trying to delegate this responsibility to
18 the coaching staff, but then the coaching staff not being
19 trained on Post-Concussive Syndrome or Second Impact Syndrome;
20 that, ladies and gentlemen, is gross negligence. So I would
21 ask that when you go through this verdict form that you review
22 questions one, two, and three. Did Horry County act grossly
23 negligent in these different ways? And I would submit to you
24 that they did and that we have proved our case beyond -- by a
25 preponderance of the evidence, more likely than not. That's

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

528

2017-CP-26-06643

1 the standard in this case.

2 If you find that the district did not act with gross
3 negligence, that means that Logan gets nothing for the
4 injuries that he suffered. That means that nothing changes at
5 the district. That means you all believe that Kary Anne Cyr
6 the afternoon of October 20th of 2016 was acting reasonable.
7 We would submit to you, ladies and gentlemen, that there was
8 more than ample evidence of gross negligence in this case on
9 at least seven different occasions.

10 And then finally that brings us to damages. In order for
11 there to be a complete verdict for Logan there must be full
12 damages for Logan. Judge Seals will tell you; he will charge
13 you on that. But the law doesn't say -- it doesn't say some
14 justice, some compensation, if you feel that the district
15 violated their duties and that hurt Logan, your obligation is
16 to return full damages for Logan. And I'll tell you that
17 Logan is not seeking anything more than what the law allows or
18 what the law provides. He is seeking and asking for full but
19 fair restitution for his injuries.

20 The first element is past medical bills. Ms. Wood
21 testified to you all, ladies and gentlemen, that you know up
22 until Logan turned 18 she was responsible for his medical
23 bills. We were able to gather as many of those bills as we
24 could, and we put them into evidence. They're one of the
25 earlier exhibits. And it's only -- it's \$10,907. Ms. Wood

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

529

2017-CP-26-06643

1 testified that that is probably a fraction of what her actual
2 medical bills are, but we didn't have the medical bills for
3 Dr. Waid, we didn't have the medical bills for the
4 prescription medications, we certainly aren't asking for
5 compensation for Ms. Wood leaving work to travel all over the
6 state to take Logan back and forth to different neurology
7 appointments and psychology appointments. We're just asking
8 for the medical bills that we've put into evidence, and that's
9 \$10,907. And when you see that you'll see that we didn't ask
10 for any of the medical bills associated with Logan's
11 dislocated clavicle, his shoulder, with his teeth and the
12 reason being is that we acknowledge and accept that that's a
13 risk of playing football. You might dislocate a shoulder; you
14 might crack a tooth; you might even suffer a concussion, but
15 what you shouldn't -- what shouldn't happen is that you suffer
16 multiple concussions. That you play throughout an entire game
17 from beginning to end with concussion symptoms. So for the
18 past medical bills, that's \$10.907 and you'll see on the
19 verdict form on the actual damages there is a paragraph that
20 says Sarah Wood and that's the only amount that we're asking
21 that you return to Ms. Wood. And that's really the only
22 amount that she's entitled to under the law. And again, we're
23 not asking for anything more than what the law provides.

24 The next element of damages is the future medical costs.
25 Dr. White was our first witness. He testified that after

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

530

2017-CP-26-06643

1 trying several different medications for Logan, it was the
2 Lamictal, which is a mood stabilizer it helps control Logan's
3 emotions, has been the best medication and that Logan needs
4 quarterly visits with neurology really to check on how he's
5 doing, but also to get a prescription refill for the Lamictal.
6 Logan's life expectancy, and this isn't just a guess, there's
7 a book that you can look in and see and it shows you how long
8 he's expected to live. There's a number for all of us. It's
9 76 years old. And so what we did, we got Dr. White's life
10 care plan that shows these neurology appointments, we show the
11 Lamictal and we asked Dr. Wood, who was the economist who came
12 to testify with the pointer like this, to reduce that number,
13 it's about \$200,000 to the present day value. So that number
14 was reduced from \$200 to \$116,774. That's the very bare
15 minimum of Logan's future medical expenses. That does not
16 include the Adderall that all of his doctors testified that he
17 needs to help control the traumatic brain injury symptoms.
18 That doesn't include his multiple visits. Doctor White
19 testified that he was going to recommend that Logan switch to
20 a medication called Vyvanse, it's longer acting. As he
21 testified that one of the many unfortunate symptoms of these
22 types of brain injuries is because of the frontal lobe injury,
23 as these patients get older a lot of them turn to drugs. And
24 in his opinion the Vyvanse is a medication that is less likely
25 to be abused. So his recommendation is to switch that

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

531

2017-CP-26-06643

1 medication which is going to cost a few hundred dollars a
2 month and require monthly visits. So when you're asked on the
3 verdict to return an award for damages for his future medical
4 expenses, we would ask that the minimum that you return for
5 Logan is \$116,774 and that's the very base. And Dr. Wood,
6 who's been testifying as an economist for 40 years, said this
7 was the most conservative life care plan he's ever seen for an
8 injured child. And we have requested that this life care plan
9 be conservative and that's as bare bones as it gets. So we
10 respectfully request that you return the verdict for his
11 future medical expenses.

12 The next item of damages are Logan's human losses, the
13 non-economic losses. In brain injury cases these are the
14 worse losses, and we'll talk about that for a minute. But in
15 a brain injury case as you all know and you've heard the
16 testimony this week, it changes how you think. It changes how
17 you feel. It changes how you process information. It changes
18 how you interact with your friends. It has changed really
19 everything for Logan and thankfully he's been able to adapt
20 and reinvent himself, but it has been a long four and a half
21 years and it's going to be a long future for Logan. And we
22 have full faith that this young man is going to be very
23 successful, but it's not going to be as easy for him as it
24 would have been had he not suffered this traumatic brain
25 injury back in October of 2016.

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

532

2017-CP-26-06643

1 So the Judge he'll charge you on these, these are all
2 elements of damages that you can return on the verdict form:
3 pain and suffering, mental anguish, the impairment of his
4 brain function, his loss of earning capacity, the
5 psychological trauma that he has endure and that he'll
6 continue to endure, the emotion distress. And these are some
7 damages that are unique to brain injury cases. Y'all have
8 heard testimony that it's a frontal lobe injury; it doesn't
9 impact how intelligent you are, but how you use your
10 intelligence and how you process things, how the brain
11 processes thoughts. I'm not going to go into detail on all of
12 the risks of future problems. The district's expert went into
13 great detail on that and here are his power point
14 presentations. We hope and pray that those risks do not
15 happen for Logan. But we do know that there's a much greater
16 risk of those types of conditions and problems now that he has
17 this diagnosed brain injury. The frontal lobe injury also
18 impacts the executive function deficits, and these are all
19 things that Logan struggles with: difficulties managing time,
20 problem solving, reading comprehension, memory,
21 distractibility, judgment, insight, controlling emotions and
22 that's why he's on Lamictal. We're asking -- you know when
23 the Judge instructs you on damages he's going to tell you,
24 ladies and gentlemen, that these types of damages, the human
25 losses, these are one hundred percent in your discretion,

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

533

2017-CP-26-06643

1 whatever y'all come up with. There's no computer system where
2 you can enter in a 14 year old, traumatic brain injury,
3 withdraws from school for a year, spends a year going to
4 neurology appointments all over the state, unable to be around
5 bright lights, uncontrollable headaches, depression,
6 agitation, forced to give up his dream of playing football,
7 forced to give up his dream of going to Clemson, forced to
8 give up his dream of joining the military, and so on and so
9 forth. There's no way to calculate that in a computer. These
10 are human things. These are the things that only you as
11 jurors can put a value on.

12 What we ask is for fair treatment. He didn't get it from
13 the district and we're asking for it from you. A fair value
14 on what he's lost, something that recognizes who he was before
15 the accident, and where he was going if it wasn't for this
16 brain injury. And if you're deliberating, ladies and
17 gentlemen, and you're thinking to yourself well how does this
18 get paid, where does this come from? That is not something
19 that you're going to be charged on. That's irrelevant to your
20 deliberations. That is not a matter -- how and where the
21 money comes from is not a matter for your consideration today.

22 After I'm finished speaking the attorney for the district
23 will speak and then we'll have an opportunity to speak again.
24 And at that point in time, Mr. Evans is going to discuss with
25 you different models, different ways that you can assign

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

534

2017-CP-26-06643

1 damages to the losses that Logan suffered. What I ask, and
2 what we ask is that when you come home from jury duty this
3 week, which will hopefully be this afternoon, and your family
4 or your friends asks you what have you been up to all week
5 because you haven't been talking about it and now you can
6 finally discuss what the case was about, what I hope and what
7 we hope we've accomplished for you is that you can go home,
8 you can look your family directly in the eye and tell them
9 that through this process I made Horry County a safer place
10 for our children to go to school. And that we as a jury, we
11 showed a young man, Logan Wood, that he is a valued member of
12 this community by returning a fair and full verdict. That's
13 all that we ask for, ladies and gentlemen. That's all that
14 we're asking for.

15 But before I sit down and before Mr. McLean comes up and
16 speaks with you all on behalf of the district, I've got some
17 questions and I think y'all have some questions too and I
18 think I know what the answer to them are, but I'd like to
19 propose a couple of questions for the district any maybe they
20 can address these questions for you in their closing. How can
21 you justify assigning the least number of trainers to the most
22 at-risk athletes? How can you justify that? Was Trainer Cyr,
23 Kary Anne Cyr, was her job performance on October 20th of
24 2016, was that acceptable? You've heard the testimony, was
25 that acceptable? Can you identify a concussion without

Plaintiffs' Closing by Mr. Moore

Wood vs HCSD

535

2017-CP-26-06643

1 performing an assessment? Is that even possible? Does the
2 district accept any responsibility for the brain injury that
3 Logan suffered? Did the district place a value on Logan's
4 health like Keeter Hayes went on T.V. and said? Does the
5 district even dispute that Logan suffered a brain injury, and
6 if they don't, do they dispute that he's going to need medical
7 treatment for the rest of his life? And finally, assuming
8 that you find liability, ladies and gentlemen, what is the
9 district's suggestion as to the value of Logan's claims? How
10 do they assign a value to a permanent brain injury, an injury
11 that he's going to be left with for the rest of his life?

12 Ladies and gentlemen, it has been said that jurors are
13 the conscious of the community. You as jurors, you bring
14 accountability, you bring responsibility, you impose the
15 notion of truth, of justice, of fairness, of safety in our
16 society. You can make the difference, not only in Logan's
17 case, but you can make a difference in the lives of the next
18 generation of young athletes who come through this district.
19 And we trust and we hope that you will. Thank you for your
20 time.

21 **THE COURT:** All right. The defense is recognized for
22 your closing statement.

23 **MR. MCLEAN:** Thank you, Your Honor.

24 **THE COURT:** Thank you.

25 **MR. MCLEAN:** Can we bring the lights back up?

Defendant's Closing by Mr. McLean

Wood vs HCSD

536

2017-CP-26-06643

1 **THE COURT:** Sure.

2 **MR. MCLEAN:** Thank you. May it please the Court?

3 **THE COURT:** Sure.

4 **MR. MCLEAN:** Mr. Evans and Mr. Moore.

5 Thank you again for your service as jurors in this case.

6 We picked up some steam yesterday and we started moving
7 through the evidence quickly. We're now down to the end of
8 this trial.

9 This is not a complicated case, and the defense of the
10 school district is very simple. Let me try to boil it down
11 for you, I have never said that Logan was not injured; he was
12 injured. He suffered a concussion, and he suffers today from
13 a mild traumatic brain injury. I have never said that Logan
14 does not have real injuries, real damages, and real
15 consequences from that injury; he does. He did, and he does.
16 I hope that Logan and his mother and his sister find some
17 comfort and encouragement in the opinions of Dr. Hertza. He
18 testified by video tape yesterday afternoon. This is an
19 opinion they want to tear down and tear apart. His opinion is
20 based on the most recent neuropsychological evaluations.
21 Logan has existing frontal lobe injuries with mild impairment
22 that may be related to the concussion, but his future is
23 bright. He's a fine young man. He needs to start hearing
24 what he can do, not what he cannot do.

25 I did tell you that the school district is not

Defendant's Closing by Mr. McLean

Wood vs HCSD

537

2017-CP-26-06643

1 responsible for this injury, and it is not. Why not? Mr.
2 Moore has done a good job of laying out these theories of
3 liability. The staffing model for the athletic trainers was
4 flawed. It allowed Logan to play without an athletic trainer
5 from North Myrtle Beach present, and that is true. The
6 athletic trainer was from Carolina Forest High School, the
7 host school. They also say well even if the staffing model
8 was not flawed, the implementation of the model was flawed.
9 Kary Anne Cyr was not doing what she was supposed to be doing.
10 She was not watching the players. She was not attending to
11 the game in a proper manner. They go on to say the coaches
12 were not properly trained on concussions, and that they missed
13 something that they should not have missed. They should have
14 seen Logan was injured. They should have removed him from the
15 game, and they did not. They repeat over and over and over
16 again that coaches are not trained on Post-Concussion
17 Syndrome.

18 My job is to defend these claims, so here's what I think.
19 You can take it or you can leave it, but hear me out. The
20 staffing model of the Horry County School District was not
21 flawed. The game was covered by a certified athletic trainer.
22 That model allowed every athletic event taking place at both
23 North Myrtle Beach High School and Carolina Forest High School
24 on that afternoon and that evening to be covered by a
25 certified athletic trainer: varsity football practice, JV

Defendant's Closing by Mr. McLean

Wood vs HCSD

538

2017-CP-26-06643

1 football games, B-team football games, a cross country
2 regional championship, volleyball, the JV game at Carolina
3 Forest, the varsity practice at Carolina Forest. They all had
4 a certified athletic trainer present and the model allowed
5 that; the model allowed that to happen. All of these sports
6 have a risk of injury. We're not talking just about
7 concussions. The district has to look out for all sports and
8 all injuries, not just concussions, and not just football, and
9 the model permitted that.

10 Would it have made a difference if a trainer from North
11 Myrtle Beach was there? I submit not. They didn't know
12 Logan, they had never treated Logan, Logan didn't know them.
13 They were just as much of a stranger to Logan as was Kary Anne
14 Cyr, the certified trainer who was present.

15 So they say well if that model was not flawed then the
16 implementation was flawed. They say the athletic trainer, Ms.
17 Cyr, should have been walking the sidelines, checking the
18 players, communicating with the players, assessing them. But
19 those players were not left on the sidelines to fend for
20 themselves. The coaches were doing that. The coaches were
21 trained to recognize the signs and symptoms of a concussion
22 and what to do if they see them. They know their players
23 better than the trainer. They've been working with these
24 players for months at workouts, at preseason practice, at
25 games, at practices during the week. They know those players.

Defendant's Closing by Mr. McLean

Wood vs HCSD

539

2017-CP-26-06643

1 They've been talking to them; they've been coaching them;
2 they've been engaging them for months; they've been
3 interacting with them for months. They know those kids.

4 Do you remember Keith Waggoner, the soft-spoken witness
5 who was Logan's position coach that night? He testified that
6 during breaks, time outs, half time -- in Logan's case he
7 played both ways so he didn't have many breaks, but he
8 certainly had time out on special teams, when he was not on
9 the field for special team play. Coach Waggoner would gather
10 his offensive line together, he would coach them up, he'd talk
11 to them. He looked to Logan as a leader of his offensive
12 line. He communicated with Logan. They were talking
13 strategy; they were talking plays. He coached him, he talked
14 to him, he had an opportunity to observe him. He told you
15 that he never saw a sign of an injury; he never saw anything
16 wrong.

17 The coaches were properly trained. They received their
18 annual concussion training through the National Federation of
19 High Schools. That is a national curriculum that is used
20 across the country and it is mandated by the State of South
21 Carolina that that curriculum be used by the Horry County
22 School District and all school districts in this state. It
23 talks about the signs and symptoms of a concussion; it talks
24 about what to do if you recognize a concussion.

25 Roderick White completed that course in January -- excuse

Defendant's Closing by Mr. McLean

Wood vs HCSD

540

2017-CP-26-06643

1 me, July of 2016 before the 2016 football season. All
2 assistant coaches completed that training on an annual basis
3 just as Roderick White did. They were trained, and that
4 training was implemented that night. It was implemented when
5 the young man Anderson Boyers was removed from the game and
6 kept out of play. When he received -- I believe they said he
7 was tackled very hard and his head hit the ground, they pulled
8 him right out and kept him out. They implemented the training
9 they had received. It was implemented for Logan when they got
10 back to North Myrtle Beach High School, some 45 minutes to an
11 hour later after the game was over, and when his concussion
12 symptoms appeared for the first time. The coaches recognized
13 those symptoms. They went to Logan; they cared for Logan;
14 they rendered assistance; they notified Keeter Hayes by text
15 message, which is in evidence. They notified Ms. Wood by
16 phone or certainly met her at the car. They had a plan; they
17 knew the plan; they followed the plan as soon as they knew
18 Logan was hurt back at North Myrtle Beach.

19 The coaches were not trained in Post-Concussion Syndrome
20 or Second Impact Syndrome. That is true, at least not in the
21 sense that a medical professional would have been trained.
22 But they do know about Post Impact (sic) Syndrome. They do
23 know about Post-Concussion Syndrome. What is the objective?
24 Why would you train somebody in Post-Concussion Syndrome?
25 What is the objective of that? The objective of that is to

Defendant's Closing by Mr. McLean

Wood vs HCSD

541

2017-CP-26-06643

1 make sure that they know that if a kid appears to have
2 received a first concussion or a first hit that could be a
3 concussion, you pull him out so they don't get that second
4 concussion, that second impact. That's the objective of
5 training in Post-Concussion Syndrome. And when in doubt, sit
6 them out.

7 **MR. EVANS:** Your Honor, I'm sorry, but I'm going to have
8 to object to an argument that directly contradicts a request
9 to admit that's been published to the jury.

10 **THE COURT:** Come up here and let's talk.

11 **REPORTER'S NOTE:** (Bench conference was held.)

12 **MR. MCLEAN:** Ladies and gentlemen, it's been called to my
13 attention that I may have misspoken. If I said the coaches
14 were trained in Post-Concussion Syndrome, that -- I did not
15 mean to say that if I said that. They were not trained in
16 Post-Concussion Syndrome, but what is the objective? Why
17 would you train someone in Post-Concussion Syndrome? To
18 prevent the second impact. To make sure that upon that first
19 injury, on the first blow to the head, on the first sign the
20 athlete is pulled from the game and kept out of the game and
21 kept out of the play until released by a physician. The
22 district policy of when in doubt, sit them out achieves that
23 objective. They didn't have to be trained on the scientific
24 principles of Post-Concussion Syndrome. They knew that the
25 objective was to take them out and sit them out to avoid that

Defendant's Closing by Mr. McLean

Wood vs HCSD

542

2017-CP-26-06643

1 second impact, to avoid further injury. That was the policy
2 they followed that night, that was the policy they follow to
3 this day. When in doubt, sit them out.

4 So they say okay, if the coaches were properly trained
5 they missed something. Here's the key piece of evidence that
6 you've not seen yet, the video, the game video, the game
7 footage. You saw a snippet of it when they showed Ms. Cyr,
8 Kary Anne Cyr on her gator, but you've not seen the game
9 video. As I think I explained in opening, this is not an
10 official game video shot from the press box with a camera on a
11 tripod. It was shot by a volunteer assistant coach's wife who
12 was in the stands, and she just filmed it for the benefit of
13 the coaches so they would have some film to look at. So it is
14 not and has never been a complete video of the game from
15 beginning to end. It was an informal video, it's all we have,
16 it's what we gave to the plaintiffs, and it is in evidence.
17 And I would request that you watch that video. I would
18 request that you come back into this courtroom and watch it on
19 that big screen. We'll have the projector here and we'll make
20 that available to you. I would request that you view that
21 video. Look for Logan, he's number 60 in a white jersey.
22 What that video as many times as you think you need to. And
23 when you look at that video ask yourself some questions. Does
24 Logan take hits? Yes, he does. This is a game in which
25 bodies collide. Other players take hits too. Ask yourself

Defendant's Closing by Mr. McLean

Wood vs HCSD

543

2017-CP-26-06643

1 this: Does Logan take any hits to the head? Ms. Wood said 40,
2 50 hits to the head, probably more. You decide. You look at
3 the video, decide for yourselves. Does Logan's head hit the
4 ground on that -- remember the tabletop block where he was
5 illegally blocked, there was a player behind him, he got
6 blocked up front and he tumbles? Look for that, see if he hit
7 his head on that. You decide. Is there any helmet-to-helmet
8 contact between Logan and another player? Look at it. You
9 decide. Look at the video. Does it appear that the other
10 team is trying to hurt Logan? Ms. Wood testified she thought
11 that was the case, that the other team was intentionally
12 trying to take Logan out of the game. Look at the video, see
13 if you see that. Does Logan clutch his head? Can you see him
14 clutching his head in the video? Look for that. Or is he
15 just adjusting his helmet, and are other players adjusting
16 their helmets? Look for that. You decide. Does Logan look
17 disoriented? Does he look confused? Does he wonder aimlessly
18 on the field? Does he crawl on the field? Does he crawl to
19 get up? You decide. Look at the video. Does Logan
20 communicate with his teammates in an unusual way as though
21 he's confused about something? You'll see that on the tape,
22 you decide. Pay attention to how the game -- the behavior of
23 the players changes from the beginning of the game to the end.
24 Logan played both ways on offense and defensive line. Ask
25 yourself could he have been tired towards the end of the game?

Defendant's Closing by Mr. McLean

Wood vs HCSD

544

2017-CP-26-06643

1 Remember his team was losing, they took a pretty lopsided
2 defeat. Could they just be tired and worn out and I just want
3 this game to be over? We're getting beat and I'm done, I want
4 to go home. Ask yourself those questions. Does Logan
5 continue to block the opposing player after the play has been
6 whistled dead? Look for it, see if you can find it. So I
7 hope you will take the time to view that video, look for
8 Logan. To my eye he's the biggest kid on the field, but you
9 decide if he is. White jersey, number 60. And look for
10 number 18, Rex Roupe. Look for him playing quarterback in the
11 first half. Then at the very end, look for number 18 Rex
12 Roupe on the sidelines. Look to see if he's walking up and
13 down the sidelines. Look to see if he's holding anything to
14 his wrist. And while you're looking for -- after you finish
15 looking for Rex Roupe look for Kary Anne Cyr. Look for her
16 gator, you'll see it, it's in there. You've only seen a brief
17 clip but look for Kary Anne. Where was she? Did she have a
18 view of the game from where she was? Was she out of place?
19 But most importantly, ask yourself was there anything about
20 Logan's behavior, his demeanor, the way he was acting that
21 gave Kary Anne Cyr a reason to assess Logan? Before you
22 assess there must be a reason to assess. Look for that in the
23 video. Was there a reason for Logan to be assessed?

24 Remember the -- after the -- remember the events after
25 the game. The game is over, the team gathers over by the

Defendant's Closing by Mr. McLean

Wood vs HCSD

545

2017-CP-26-06643

1 buses. There's a discussion, short meeting, that's where the
2 other Carolina Forest trainer Jessica checks Roupe and Boyers.
3 Remember Coach White, he said he asked at that time does
4 anybody need to see a trainer? No. They get on the bus, the
5 dark bus, ride back to North Myrtle Beach, a 30-to-40-minute
6 ride. Two coaches on -- at least two coaches on the bus, as
7 you heard from White and Jolly, no problems on the bus. The
8 first time Logan exhibited any symptoms of a concussion that
9 night were 45 minute to an hour conservatively after the game
10 was over when he got inside that North Myrtle Beach locker
11 room under the bright lights. Think about that.

12 So that's what it comes down to, ladies and gentlemen.
13 This case comes down to failure to recognize the symptoms of a
14 concussion and failure to remove Logan from the game. As I
15 said, there've been several causes advanced for that, improper
16 training, inattentiveness, improper staffing, but it all comes
17 down to failure to remove Logan from the game, so watch the
18 tape. Look for Logan, white jersey, number 60. You've only
19 seen a small portion of it. I request that you watch it and
20 watch it from the perspective of being at that place at that
21 time. Don't want it from the perspective that Dr. Walters
22 admitted he watched it from, and that is with the benefit of
23 20/20 hindsight. And when you watch that tape, ask yourself
24 another question. Why are Ms. Wood and Anslee the only people
25 in that stadium who saw that Logan was injured?

Defendant's Closing by Mr. McLean

Wood vs HCSD

546

2017-CP-26-06643

1 Finally, could the game have been made safer? Yes, it
2 could. We can always do better. The school district is
3 always striving to protect its student athletes. Just like
4 the school board acted in May of 2016 after Keeter Hayes gave
5 that television interview or newspaper article, the board
6 listened. The board hired an additional trainer position for
7 North Myrtle Beach and for Carolina Forest and for all of the
8 other high schools in the district except Green Sea which was
9 small, and I don't know their situation. But the school board
10 took action, they allocated money for additional trainer
11 positions to make the game safer, to make the athletes in all
12 sports safer.

13 The question that you're being called to answer though is
14 not whether the game could have been safer. That's not the
15 question. The question is was Horry County Schools grossly
16 negligent? Not just negligent but grossly negligent. That's
17 the question you have to answer. Were they grossly negligent
18 in the trainer staffing model, in the training of their
19 coaches, in observing the game, in supervising and monitoring
20 the game? Were they grossly negligent? The Judge will tell
21 you what gross negligence is, but in a nutshell, it means the
22 failure to exercise even slight care. It's almost a
23 deliberate indifference. Did Horry County Schools fail to
24 exercise even slight care under all of the facts and
25 circumstances that have been presented to you, even slight

Plaintiffs' Rebuttal by Mr. Moore

Wood vs HCSD

547

2017-CP-26-06643

1 care? You decide. Watch the video.

2 A verdict means to speak the truth and that's why we're
3 here. We're here for the truth. The truth is the school
4 district hates that Logan got hurt, but it was not the school
5 district's fault. Remember when those symptoms first
6 appeared. Watch the video. Return a verdict that speaks the
7 truth. Thank you.

8 **THE COURT:** All right. Reply?

9 **MR. EVANS:** Look for it, look for it, look for it. The
10 audacity of the district, five years later to pull you ladies
11 and gentlemen away from your families, away from your jobs,
12 away from a week's worth of work to have you look for it while
13 their trainer sits on her gator, sends text messages, eats ice
14 cream, and shoots the breeze with her friends. Concussions
15 aren't diagnosed from a tape five years later while the
16 trainer sits there and eats ice cream. Concussions are
17 diagnosed in the game by speaking to the players.

18 I'd like to address a few points, and I'll go in reverse
19 order. A few points that were just made by Mr. McLean. The
20 districts says well the coaches are there and the coaches know
21 their players, and they would have been the first line of
22 defense to see it. The testimony from everybody, from Logan,
23 from all of his coaches are that the two coaches that he
24 interacted with on a regular basis were Timmy Vereen and Tony
25 Edge. We heard from a bunch of coaches that didn't remember

Plaintiffs' Rebuttal by Mr. Moore

Wood vs HCSD

548

2017-CP-26-06643

1 the game. Where the heck are Timmy Vereen and Tony Edge, the
2 people who knew him the best and didn't recognize anything?

3 Mr. McLean just said, well it's our position that even if
4 we had a trainer there it wouldn't make a difference. You
5 ladies and gentlemen got to see Keeter Hayes testify, tear up,
6 beg and plead before this happened for more coverage. Ask
7 yourselves would this have happened if that nice, dedicated
8 man who served this community for 21 years have been at that
9 game? Would this really have happened? Would it have made a
10 difference had that man or somebody personally trained by him
11 as he wishes he could have been?

12 Mr. McLean made a point that he hopes that the Wood
13 family takes some comfort in the opinions of their expert Dr.
14 Hertza. This guy who sits in his cute little office with
15 elevator music playing and talks about premorbid function.
16 Premorbid function, if you didn't catch it, is his guess on
17 how smart Logan was before he ever got injured. He said, I'm
18 able to give some tests that show me how smart Logan was
19 before he ever got five to seven concussions. My guess is
20 that he was in the 21 percentile, that 79 percent of the
21 population was smarter than him so even though he has
22 impairments he wasn't that smart to begin with. When Dr. Waid
23 tested him after the accident and said he's solidly within the
24 50th percentile. Dr. Hertza said well my testing can go back
25 and read the tea leaves and determine what his I.Q. would have

Plaintiffs' Rebuttal by Mr. Moore

Wood vs HCSD

549

2017-CP-26-06643

1 been and what his intelligence level would have been before he
2 was ever hit and 79 percent of the population was smarter than
3 him. So take some comfort in the fact that you weren't that
4 bright to begin with.

5 Mr. McLean also said, we hope that Logan hears it. We
6 hope that he hears he's got a bright future and he can just
7 move on. Oh, he hears it. He's heard it every Saturday
8 during the school year when he shows up from 8:30 to 12:30.
9 He's heard it every day when he was an underclassman when he
10 went from 3:30 to 5:30. And he's heard it everyday during his
11 senior year as a senior, where he's supposed to be today, and
12 he gets out of class at 12 o'clock and his classmates get out
13 at 12 and he stays there and works with a tutor until 3:30
14 every day. He hears it. He hears it. He's working towards a
15 brighter future, but he's on a different path than he was on
16 before this game.

17 The verdict form. There's a verdict form that's getting
18 ready to be handed to you ladies and gentlemen after Judge
19 Seals gives you the charge on the law. We challenged the
20 district to give some suggestions as to what y'all show fill
21 in for Logan's damages. We're not here to overreach. We
22 don't stand up here and ask for any more than the law allows.
23 We don't want to ask for any extra medications. We don't want
24 to ask for any extra treatment. We don't want to ask for more
25 than the law allows. We ask that you ladies and gentlemen

Plaintiffs' Rebuttal by Mr. Moore

Wood vs HCSD

550

2017-CP-26-06643

1 consider some things when you come to your decision. Of
2 course there's some future medical expenses that total roughly
3 \$116,000 times two. But what's really hard to answer is what
4 is it worth for Logan to be on that different path, to have
5 that frontal lobe injury, to be a different person than he
6 was. We would ask that you return a verdict for \$300,000 for
7 each of the three occurrences of gross negligence for a total
8 of \$900,000. Once you take out the medical expenses that will
9 leave this young man with his life expectancy about \$11,700 a
10 year for the rest of his life. It ain't that much, but that's
11 all we're asking for because that's the maximum that the law
12 allows. We ask that you go ahead and do that.

13 One more point about this verdict form before I sit down.
14 Every verdict form that's ever been rendered in Horry Couty is
15 on the first floor of this courthouse. Don't get it twisted,
16 there's not many verdict forms that are issued. This will
17 probably be the only verdict form that is signed in Horry
18 County for the next 24 months. It is very, very rare that as
19 citizens we have to pull 12 folks like yourself out of your
20 daily life and put you under this great burden of spending
21 your week with no pay, a week hanging out listening to things
22 you can't talk to your family about. It doesn't happen that
23 often and it's of monumental importance. The verdict form
24 that is signed today by the foreperson of the jury in this
25 case, by Madam Foreperson, will be on file in the first floor

Plaintiffs' Rebuttal by Mr. Moore

Wood vs HCSD

551

2017-CP-26-06643

1 of this courthouse for the rest of modern history. That
2 verdict form allows you ladies and gentlemen to choose between
3 two models. When I got up there on Tuesday morning and I said
4 there's two models at play, I said there's the districts model
5 and there's our model. A verdict for the district says keep
6 up the good work. A verdict for the Wood family says please
7 tighten up a few things, please tighten up a few things.
8 Maybe it's not good enough that your coaches don't know what
9 the heck Post-Concussive Syndrome is, that they don't know
10 what Second Impact Syndrome is. Maybe it's not good enough
11 that they get a certificate after answering nine multiple
12 choice questions. Maybe you should tighten that up. Maybe if
13 you're going to have one trainer there, she leaves the ten-
14 foot radius to do something other than grab a drink of water.
15 Maybe she walks both sidelines. Or heaven forbid, heaven
16 forbid this district go to the great and extreme length that
17 over half of the districts in South Carolina do of having two
18 trainers for every B-team. Maybe have two trainers there for
19 the B-team, maybe that's extreme, but if it's good enough for
20 the kids of Lexington County, if it's good enough for the kids
21 of York County, if it's good enough for the eighth graders in
22 over half of the districts in the State of South Carolina it
23 should be good enough for the kids here in Horry County. We
24 thank you for your time and for your service.

25 **THE COURT:** Members of the jury, it is now my duty as the

Charging of the Jury

Wood vs HCSD

552

2017-CP-26-06643

1 Trial Judge to instruct you on the law applicable to this
2 case. And it is your duty as jurors to accept and apply the
3 law as I now state it to you. Furthermore, it is your
4 exclusive duty to decide all of the issues of fact which have
5 been presented in this case and to determine the effect value
6 and weight of the evidence. Both parties have the right to
7 receive a fair and impartial trial. And to that affect, you
8 should carefully and deliberately evaluate the evidence and
9 apply the law of this case to it.

10 As I told you in the beginning, you and I have separate
11 duties to perform. As the Trial Judge it is my responsibility
12 to preside over this trial and to rule upon the admissibility
13 of the evidence offered. In that regard you may consider only
14 the evidence before you. You may consider only the testimony
15 which has been presented from this witness stand and any
16 exhibits which have been admitted into the record of this
17 case.

18 As mentioned earlier, I have the additional duty to
19 charge you on the law applicable in this case. And it is your
20 duty to accept and apply the law as I now state it to you. If
21 you have any preconceived ideas as to what the law is or what
22 you think the law ought to be and it does not agree with what
23 I tell you the law is, you have to abandon those
24 preconceptions and accept the law as I now give it to you.

25 Also as mentioned earlier in this trial, you are the sole

Charging of the Jury

Wood vs HCSD

553

2017-CP-26-06643

1 and exclusive judge of the facts. The law does not permit me
2 to have an opinion about the facts. Do not infer from
3 anything that I have said or done during the course of this
4 trial that I have any opinions about the facts of this case at
5 all. That is your job. It is also your job as jurors to
6 determine the credibility and believability of the witnesses
7 who have testified in this case. In determining the
8 believability of the witnesses who have testified in this
9 case, you may believe one witness over many, or many over one.
10 You may believe a part of the testimony of a witness and
11 reject the remaining part. You may believe the testimony of a
12 witness in its entirety or reject it in full. You may
13 consider whether the witness has an interest in the result of
14 the trial, whether the witness is prejudiced towards either
15 party, the opportunity for the witness to have seen the
16 matters and things about which the witness may testify, and
17 the way the witness acts on the witness stand. As mentioned
18 earlier, you have the exclusive duty to determine all issues
19 of fact in this case.

20 Furthermore, evidence may be direct or circumstantial.
21 Direct evidence is testimony by a witness about what that
22 witness personally saw, or heard, or did. Circumstantial
23 evidence is indirect evidence based on inferences and not what
24 someone personally saw, or heard, or did. It is proof of one
25 or more collateral facts from which you may infer another

Charging of the Jury

Wood vs HCSD

554

2017-CP-26-06643

1 fact. You are to consider both direct and circumstantial
2 evidence equally.

3 Normally a person cannot give opinion testimony, however,
4 there is an exception when somebody is qualified because of
5 their education or experience. They are permitted to give
6 their opinion in certain areas if the Court qualifies them as
7 an expert. You have heard from the expert witnesses qualified
8 in their field to give opinion testimony in their particular
9 area of expertise. That does not mean you must accept the
10 opinion, but it is evidence for you to use in any way you see
11 fit and give the weight and credibility you believe is
12 appropriate.

13 The burden of proof in this case is by a preponderance of
14 the evidence. A preponderance of the evidence simply means
15 the greater weight of the evidence. In other words, it is
16 evidence that as a whole shows that a fact sought to be proved
17 is more likely true than not true. This may be illustrated by
18 imagining a set of scales. When the scales begin, the scales
19 are even. After all of the evidence has been presented, if
20 the scales remain even or if they tip even slightly in favor
21 of the defendant, then the plaintiff has failed to meet the
22 burden of proof and would not be entitled to recover in this
23 case.

24 However, if on the other hand the scales tip even
25 slightly in favor of the plaintiff, the plaintiff will have

Charging of the Jury

Wood vs HCSD

555

2017-CP-26-06643

1 met the burden of proof and you should return a verdict for
2 the plaintiff.

3 Gross negligence is the intentional conscious failure to
4 do something which one ought to do, or the doing of something
5 which one ought not to do. A defendant is grossly negligent
6 if he is so indifferent to the consequences of his conduct as
7 not to give slight care to what he is doing. Negligence, on
8 the other hand, is the failure to exercise due care while
9 gross negligence is the failure to exercise even a slight
10 degree of care.

11 The happening of an accident or injury, or the filing of
12 a complaint, or the fact that damages have been sustained
13 raises no presumption of negligence or gross negligence. A
14 surmise or conjecture that the defendant was negligent or
15 grossly negligent is not evidence that it was. The fact that
16 the plaintiff sustained injury or damage does not place any
17 responsibility on the defendant in this case unless you find
18 that there was some act of gross negligence on the part of the
19 defendant which caused the injury or damage.

20 If you find that the plaintiff has proved that defendant
21 was grossly negligent, then your next inquiry would be whether
22 the plaintiff has proved that such gross negligence was the
23 proximate cause of the injury or damage. A plaintiff may only
24 recover for injuries proximately caused by the defendant's
25 negligence. Even if you should find that the plaintiff has

Charging of the Jury

Wood vs HCSD

556

2017-CP-26-06643

1 proved the defendant was grossly negligent but has failed to
2 prove that such gross negligence was a proximate cause of the
3 injury, the plaintiff would have failed to make out his case
4 and you would be required to find for the defendant. However,
5 if the plaintiff has proved these two propositions, then it
6 would be necessary for him to prove his damages.

7 The plaintiff has alleged multiple occurrences of gross
8 negligence. An occurrence is defined as an unfolding sequence
9 of events which proximately flow from a single act of
10 negligence. The plaintiff has the burden of proving that each
11 act of gross negligence was separate and independent in order
12 for you to find that more than one occurrence has occurred.

13 Furthermore, if you find that the plaintiff voluntarily
14 assumed the risk inherent in the activity there is no duty to
15 the plaintiff. In order to show that the plaintiff assumed
16 the risk, it must be shown that the plaintiff: one, had
17 knowledge of the facts constituting the dangerous condition;
18 two, knew the condition was dangerous; three, understood and
19 appreciated the nature and extent of the danger; and four,
20 freely and voluntarily exposed himself to the danger.

21 South Carolina has a concussion statute which provides as
22 follows: local school districts shall develop guidelines and
23 procedures regarding the identification and management of
24 suspected concussions in student athletes and the best
25 practice of these guidelines for the identification,

Charging of the Jury

Wood vs HCSD

557

2017-CP-26-06643

1 management, and return to play decisions for concussions.
2 Each year prior to participation in athletics each school
3 district shall provide to all coaches, volunteers, student
4 athletes, and their parents or legal guardian an information
5 sheet on concussions which informs of the nature and risk of
6 concussions and brain injury including the risk associated
7 with continuing to play after a concussion or brain injury.
8 The parents or legal guardian's receipt of this information
9 sheet must be documented in writing or by electronic means
10 before the student athlete is permitted to participate in
11 athletic competition or practice. If a coach or athletic
12 trainer suspects that a student athlete under the control of
13 the coach or athletic trainer has sustained a concussion or
14 brain injury in an athletic competition, the student athlete
15 shall be removed from competition at that time.

16 Should you decide that the plaintiffs are entitled to a
17 verdict, your next step would be to decide how much money the
18 plaintiffs are entitled to receive from the defendant. Such
19 an award is called damages. Actual damages are intended to
20 compensate the plaintiff for the plaintiff's injury or loss or
21 to put the plaintiff as near or possible in the same position
22 they were in before the accident occurred. In other words,
23 actual damages would be the actual losses and expenses which
24 the plaintiff has suffered because of the defendant's actions.
25 As with all of the facts in this case, the plaintiff must

Charging of the Jury

Wood vs HCSD

558

2017-CP-26-06643

1 prove their actual damages by the greater weight of the
2 evidence.

3 A plaintiff is never entitled to receive conjectural or
4 speculative damages. However, if you find that the plaintiff
5 is entitled to a verdict for actual damages, your verdict
6 should include an amount which covers any past, present, or
7 future damages which were proximately caused by the defendant.
8 The principal underlying compensation for future damages is
9 that only one action can be brought and therefore only one
10 recovery had. Any future damages must be reasonably certain
11 to occur in the future as a result of the defendant's act.
12 Future damages must be reduced to their present cash value.
13 Actual damages do not need to be proven by a mathematical
14 certainty or be based on evidence of the precise amount of
15 damages the plaintiff has suffered. Instead, considering the
16 evidence you must determine what amount of damages, if any,
17 are fair, just, and reasonable.

18 Pain and suffering compensates the plaintiff for physical
19 discomfort and emotional response to the sensation of pain
20 caused by the injury itself. There is no definite standard by
21 which to compensate the plaintiff for pain and suffering. You
22 have the authority to determine the amount, if any, to be
23 allowed for pain and suffering using calm and reasonable
24 judgment to ensure that the damages are just and reasonable in
25 light of the testimony and evidence presented in this case.

Charging of the Jury

Wood vs HCSD

559

2017-CP-26-06643

1 Mental suffering, apprehension, shock, fright, emotional
2 upset, humiliation, and anxiety either present or expected in
3 the future can be properly considered as an element of
4 damages. The amount of damages for mental suffering cannot be
5 exactly measured.

6 Loss of enjoyment of life compensates the plaintiff for
7 limitations on the plaintiff ability to participate in and
8 derive pleasure from the normal activities of daily life.

9 If you find that the plaintiff has suffered a permanent
10 disability or impairment, you must determine based on the
11 evidence, the extent and degree of the plaintiff's disability
12 and impairment that is a result of the wrongdoing by the
13 defendant. In evaluating permanent impairments and
14 disabilities you should consider the affect on all aspects of
15 the plaintiff's life. There are no set measure of damages for
16 this type of loss. The law requires that you determine what
17 amount of damages are fair just and reasonable. If you find
18 that the plaintiff was permanently injured as a result of the
19 defendant's wrongful actions, you must then decide how, if at
20 all, that injury will impact the rest of the plaintiff's life.

21 A life expectancy table which is included in the South
22 Carolina Code of Laws determines a person's life expectance.
23 The life expectancy table contains an estimate of the probable
24 average remaining length of life for all persons in our state
25 at a given age. The plaintiff is an 18-year-old male with a

Charging of the Jury

Wood vs HCSD

560

2017-CP-26-06643

1 life expectancy according to the life expectancy table of 76
2 years. This fact is to be considered by you along with any
3 other facts and circumstances in evidence bearing on the
4 plaintiff's life expectancy including occupation, habits, and
5 health at the time of the injury in deciding the amount of
6 damages awarded to the plaintiff.

7 Ladies and gentlemen, I'm now drawing near the end of my
8 charge. I want you to understand that you are not partisans
9 or advocates for the plaintiffs or the defendants. You do not
10 serve as jurors to reward your friends or punish your enemies.
11 You have been selected by the parties to be fair and impartial
12 jurors. It is your duty by your joint deliberation to decide
13 a verdict in this case. You should apply the law which has
14 been given to you by this Court to the facts which have been
15 given to you and arrive at a verdict in this case. When you
16 have accomplished these responsibilities you will have
17 satisfied your oath as jurors and you will have discharged
18 your duty to this Court.

19 Now, Ms. Clerk, if you would hand the Forelady that
20 verdict form, please.

21 Now, Ms. Forelady, I have handed you the verdict form.
22 When the jury arrives at a verdict in this case you will write
23 your verdict on the form, sign it, and date it. The verdict
24 that you render in this case must be the verdict of each and
25 every juror. It must be a unanimous verdict.

Charging of the Jury

Wood vs HCSD

561

2017-CP-26-06643

1 Ladies and gentlemen, please understand that even though
2 I have given the verdict form to the Forelady, it is not her
3 burden alone. It is the verdict of all 12 of you and I again
4 emphasize it must be unanimous. In a moment you will retire
5 to the jury room, however, I would ask that you do not begin
6 your deliberations until you are told to do so. The law
7 requires that I consult with the attorneys first. After I
8 have done so, the bailiff will bring in the items of evidence
9 and instruct you to begin specifically at that time. Should
10 you have any questions during your deliberations you must put
11 them in writing and send them to me by way of the bailiff.
12 The court bailiff will be placed immediately outside of the
13 jury room door to provide security and assistance for you
14 during your deliberations. Once you have reached your
15 verdict, please knock on the jury room door and ask the
16 bailiff to advise the Court that you have reached a verdict
17 and we will return you to the courtroom promptly thereafter.
18 Thank you, and you may retire to the jury room at this time,
19 but again do not begin your deliberations until told to do so.

20 **REPORTER'S NOTE:** (Jury exits courtroom at 11:18a.m.)

21 **THE COURT:** Any objections to the charge from the
22 plaintiff?

23 **MR. MOORE:** No, Your Honor.

24 **THE COURT:** Any objections from the defense?

25 **MR. MCLEAN:** Your Honor, I have -- I do not recall any

1 evidence coming in about what other school districts do. And
2 if that -- if my recollection is correct, I think I need some
3 sort of charge that what lawyers say is not evidence because
4 they argued that other school districts do this differently,
5 and I don't recall any evidence of that coming in.

6 **THE COURT:** All right. Let me hear from the plaintiff.

7 **MR. EVANS:** It came in on Joe Quigley's cross.

8 **MR. MCLEAN:** Did it?

9 **THE COURT:** It did.

10 **MR. MCLEAN:** Okay. Very good. As I said, I didn't
11 recall. Thank you.

12 **THE COURT:** All right. Any other objections?

13 **MR. MCLEAN:** I covered this in my argument, but there's
14 no spoliation issue in this case and I don't want the jury to
15 somehow infer based upon counsels' argument -- argument of
16 counsel that these gaps in this case are intentional. That
17 was -- you know as if we're hiding something, as if we're
18 hiding the bad hits. That was suggested, as I heard, and
19 there's not issue of spoliation. We gave them exactly what we
20 had from beginning to end as I tried to explain to the jury.

21 **THE COURT:** Yeah. I'll be glad to give a charge, but I
22 think you all explained it to the jury throughout the process
23 of the trial that this is all you had.

24 **MR. EVANS:** We did, Your Honor. And that's one of the
25 reasons why we insisted that the actual footage as given to us

1 on that thumb drive is in evidence.

2 **THE COURT:** Right. It was explained that so and so took
3 it for the purposes of showing the team at a later date, so
4 forth and so on. That's what I remember.

5 **MR. MCLEAN:** Okay. Well I just wanted to make that
6 request on the record.

7 **THE COURT:** I mean, how -- do you want me to make a short
8 charge to that effect just to make sure that the record is
9 clear?

10 **MR. EVANS:** We would object to that because we think it
11 was clear.

12 **THE COURT:** I think it was clear as well.

13 **MR. MCLEAN:** Finally, there was argument that we didn't
14 introduce something that we promised to introduce, which was
15 the athletic trainer staffing policy, the document itself. We
16 intended to introduce an excerpt from that which was from the
17 2017 policy, which was identical to the 2016 policy. I did
18 not have in my hand the 2016 policy. They objected to the
19 2017 policy or any excerpt from that coming in. You kept it
20 out, but you also said why don't we just call it -- the Court
21 also ruled why don't we just call it the staffing model and
22 that's how -- those are the phrases, that's the term I've been
23 using. Now, they want to infer or suggest again that we're
24 hiding something by not introducing a document that the Court
25 wouldn't admit. I think I need some sort of curative

1 instruction on you're only to consider what's in evidence,
2 what's not in evidence.

3 **THE COURT:** Why don't the two of you craft a short little
4 paragraph that suits the two of you?

5 **MR. EVANS:** Well if I can, Your Honor, address that? I
6 would contend that that's not necessary because it's not that
7 the policy was just missing for the purposes of the trial.

8 **THE COURT:** Right.

9 **MR. EVANS:** The policy has never been located and we've
10 been asking for it since 2017, and Mr. McLean went out on a
11 limb and said we're going to put the policy into evidence
12 knowing that the 2016 policy is no longer -- can no longer be
13 found. So we just merely called him out on something he
14 promised knowing that nobody has that 2016 policy. If it was
15 just a situation where we didn't have it here in the court or
16 something like that, but I don't think the jury is entitled to
17 a curative charge based on a bold promise that he made and
18 couldn't deliver. I think that's just a correct statement.

19 Also, I'm sorry, Your Honor. There was also evidence
20 from Joe Quigley yesterday that he didn't know where it was,
21 he's looked for it.

22 **MR. MCLEAN:** That's my problem. And we've been
23 litigating this case all of these years and at every turn I've
24 represented -- I've never represented that to be the '16
25 policy. It's always been -- I've always represented it as I

1 am told by my client that this page where it says staffing for
2 B-team football games has not changed. In fact, they contend
3 it hasn't changed through today, which is probably true. It's
4 been that way. It was that way in '16; it was that way in
5 '17. Now they have suggested well the jury may draw some
6 adverse inference by the fact that I didn't put it in when
7 they objected to it and Your Honor kept it out and I thought
8 we had an agreement on how to address that by referring to it
9 as the staffing model.

10 **MR. EVANS:** Well, Your Honor, quite frankly the jury was
11 entitled to the spoliation charge and they are to imply an
12 adverse inference from the fact. The fact that there was no
13 evidence that we knew what the 2016 policy was and this
14 matched it, and a subsequent policy is never admissible. So
15 the District knew that they were not going to be able to come
16 in here and show this policy when Mr. McLean made that
17 promise. Had he found the policy during the pendency -- I
18 assumed when you made that promise, Joe, that you knew where
19 the policy was and maybe someone was going to rush up here
20 like they rushed up here with the video. But that didn't
21 happen, it's still missing. So quite frankly, the jury is
22 entitled to a spoliation charge and we didn't go out on a limb
23 and ask for it. If anything I think the jury should be
24 instructed that they are to draw an adverse inference from
25 that. But we would request that the record stays as is and

1 that the charge -- we see no problem with the charge and that
2 the charge is consistent with the evidence as entered.

3 **MR. MCLEAN:** Your Honor, I just thought we had an
4 understanding that that one page on the assignment of B-team
5 trainers had not changed. So I will withdraw this motion so
6 we can get on with this.

7 **THE COURT:** All right. And from a practical point of
8 view sitting up here watching y'all all week, I don't think
9 it's a big deal, that part anyway. But what I think doesn't
10 matter, what they think does. All right.

11 Why don't you take a look at the evidence and see if it's
12 in order and we'll send it back?

13 **MR. MOORE:** So, Your Honor, at this point will you
14 dismiss the two ---

15 **THE COURT:** Yeah, after you get everything in order, I'll
16 have them send this in and bring them out.

17 **MR. MCLEAN:** Your Honor, on that note, is the Forelady
18 who is the one who had a church trip planned for today, is she
19 going to be with us throughout or is she going to leave?

20 **THE COURT:** I'm not sure who is the one; is it the
21 Forelady?

22 **MR. MCLEAN:** Yes, sir. She's the Forelady.

23 **THE CLERK:** Yes, she was the one that had to leave,
24 Sandra Jenkins.

25 **THE COURT:** At what time?

Question from the Jury During Deliberations

Wood vs HCSD

569

2017-CP-26-06643

1 **THE BAILIFF:** Sure will.

2 **COURT REPORTER:** There you go.

3 **REPORTER'S NOTE:** (Jury begins deliberating at 11:30a.m.)

4 **REPORTER'S NOTE:** (Alternates return to the courtroom.)

5 **THE COURT:** I want to tell y'all I appreciate you being
6 here. You were the back-up quarterbacks. If any of the
7 members of the jury got sick or something came up and we
8 couldn't have them, you have to have a back-up, you have to
9 have 12 and that's what you were. So you had to hear
10 everything, do everything, but you're free to go because we
11 have all 12. So I thank you for being here. It's a very
12 important job. You'll be paid a little bit, it's nowhere near
13 what you're worth, but we appreciate you being here.

14 **ALTERNATE JURORS:** Thank you.

15 **THE COURT:** You all have a good week.

16 **THE COURT:** We will be at ease until we get the first
17 question.

18 **(COURT IS IN RECESS)**

19 **THE COURT:** All right. We have a question. The first
20 thing it says is watch video. The deputy says they want to
21 watch it, but not right now.

22 **MR. MOORE:** Okay.

23 **THE COURT:** Then it says depth of growth negligence and
24 do we have to prove gross or just negligence altogether.

25 I'm not real clear. She said what they mean is just does

Verdict

Wood vs HCSD

578

2017-CP-26-06643

1 **MR. MCLEAN:** That's fine, Your Honor.

2 **THE COURT:** All right. Hearing no objections, I'll send
3 these back. Make sure they don't throw these away now.

4 Do you need to mark them now or later?

5 **COURT REPORTER:** I can mark them later.

6 **THE COURT:** Just make sure they don't throw them away.

7 All right. We'll be at ease until something else
8 happens.

9 **MR. MOORE:** Thank you, Judge.

10 **THE COURT:** Thank you.

11 **(COURT IS IN RECESS)**

12 **THE COURT:** You can bring the jury in.

13 **REPORTER'S NOTE:** (Jury enters courtroom at 4:59p.m.)

14 **THE COURT:** All right. Ms. Forelady, has the jury
15 reached a verdict?

16 **MADAM FORELADY:** Yes, Your Honor.

17 **THE COURT:** Would you be so kind as to hand it to the
18 bailiff right there? Thank you.

19 All right. I find the verdict form in order.

20 If you would be so kind as to publish it.

21 **THE CLERK:** The State of South Carolina, County of Horry,
22 Logan Wood and Sarah Wood versus Horry County School District.
23 We the jury unanimously find as follows: number one, that the
24 defendant Horry County School District acted with gross
25 negligence when it allowed Logan Wood to play without an

Verdict

Wood vs HCSD

579

2017-CP-26-06643

1 athletic trainer present for his team. The answer is yes.

2 Number two, the defendant Horry County School District
3 acted with gross negligence when it failed to assess Logan
4 Wood for signs and symptoms associated with a concussion. The
5 answer is yes.

6 Number three, that the defendant Horry County School
7 District acted with gross negligence in failing to train the
8 coaching staff regarding Post-Concussive Syndrome and Second
9 Impact Syndrome. The answer is no.

10 We find the amount of damages, actual damages, to be for
11 Logan Wood \$825,000. For Sarah Wood \$25,000. And it's signed
12 by Foreperson Sandra Jenkins.

13 Ladies and gentlemen of the jury, if this is your
14 verdict, please signify by raising your right hand.

15 **REPORTER'S NOTE:** (Whereby all jurors raised their right hand
16 in response.)

17 **THE CLERK:** Thank you.

18 **THE COURT:** All right. Need for further polling from the
19 plaintiff?

20 **MR. EVANS:** No, Your Honor.

21 **THE COURT:** All right. The defense?

22 **MR. MCLEAN:** No, Your Honor.

23 **THE COURT:** All right. Members of the jury, I want to
24 thank you for your hard work. It's been a complex case; it's
25 been a long week and you have done a stellar job. You've

1 earned a three-year exemption by being here. You'll be paid a
2 little bit of money for being here, nowhere worth what you've
3 done, but if you want to complain, complain to him right
4 there. I hope you all have a good rest of the week and thank
5 you. You are free to go.

6 **REPORTER'S NOTE:** (Jury is excused at 5:02p.m.)

7 **THE COURT:** All right. Any motions at this time or would
8 you like ten days?

9 **MR. MCLEAN:** I'd like ten days.

10 **THE COURT:** All right. I'll give you ten days to file
11 post-trial motions.

12 **MR. MCLEAN:** Thank you, Your Honor.

13 **THE COURT:** Thank you. I appreciate it. It was nice
14 working with you all. You all did a good job too. I hope you
15 have a good week.

16 **(COURT IS ADJOURNED)**

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete portion of the transcript of the Transcript of Record of the hearing held in the interest of Logan Wood and Sarah Wood versus Horry County School District in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on April 12 - 15, 2021.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Sallie Beth Todd, CVR

Official Reporter

September 30, 2021.

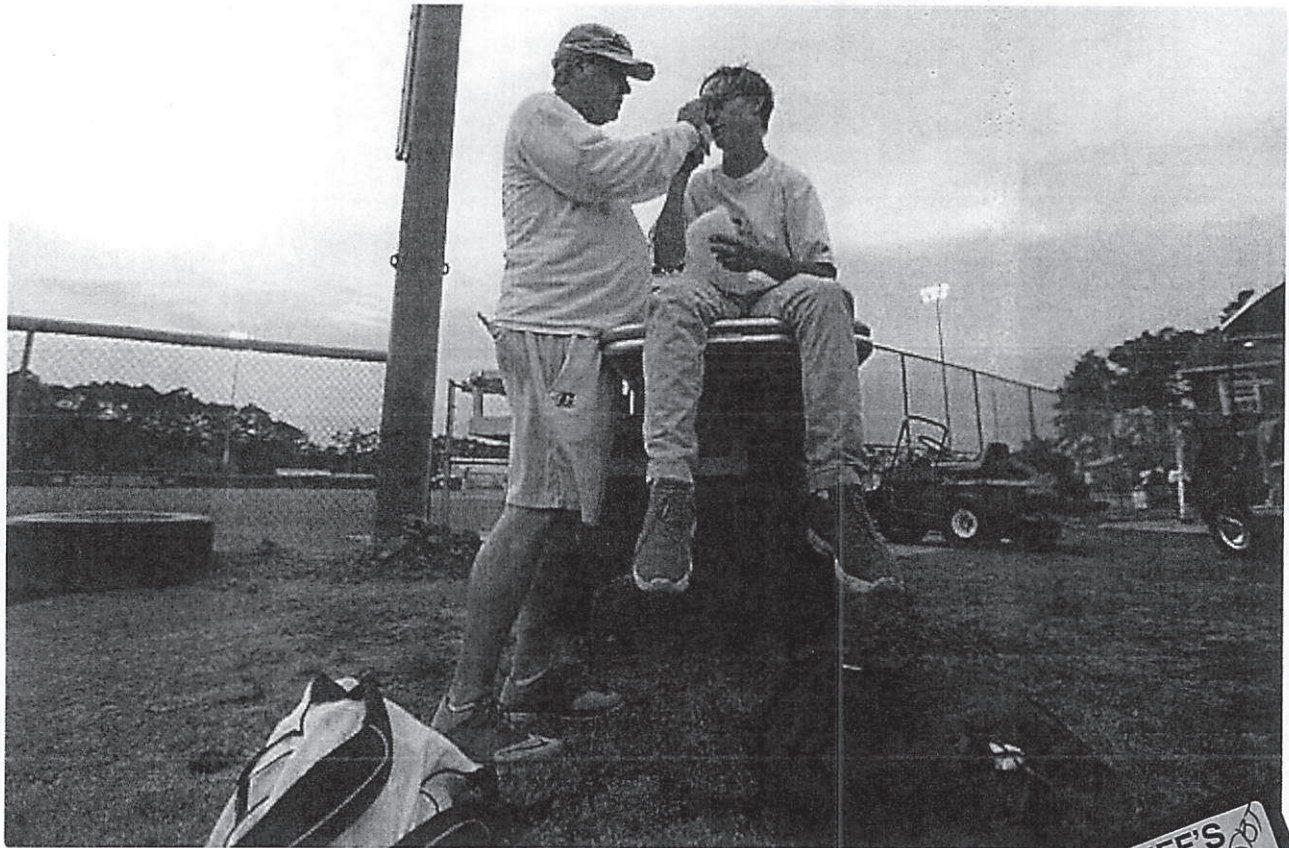
Athletic Training Today

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Posted on [April 25, 2016](#) by [ATtoday](#)

Horry County high school athletic trainers hoping for more help





Keeter Hayes spends his nights cleaning up bloody noses, scheduling physical therapy appointments and making sure high school athletes are safe on the playing fields.

Some nights, North Myrtle Beach High School's athletic trainer has to keep his eyes on 250 kids all at the same time. Some Horry County Schools staff are trying to change that.

\$493,652 Budgeted cost of six new athletic trainers

Members of the staff and the Board of Education are attempting to make practice and games safer for student athletes by adding another athletic trainer to six of the largest high schools. Currently there's only one athletic trainer per AAA and AAAA high schools, so many students are not supervised properly during athletic practices and games.

"We really need this to happen," Hayes said. "We need to be able to take care of these kids, and we need to be able to go home sometimes."

Hayes said he frequently works 10- to 16-hour days and, if he has to travel with a team, he doesn't get home until midnight or later. He's spent the last 19 years at North Myrtle Beach High teaching sports management in the morning and supervising athletes' warmups, practices and games most nights.

A little help would go a long way, Hayes said.



motioned to add another athletic trainer to six of the district's largest high schools while keeping the assistant trainer position as well.

THE SIX SCHOOLS WHO MAY GET MORE TRAINERS ARE: CONWAY HIGH; CAROLINA FOREST HIGH; MYRTLE BEACH HIGH; SOCASTEE HIGH; ST. JAMES HIGH; AND NORTH MYRTLE BEACH HIGH.

Six high schools have one athletic trainer and a stipend for an assistant trainer. The assistant at most schools is a teacher who gets paid a stipend for assisting with athletics.

That leaves one person to monitor students, stretch out athletes, treat injuries and schedule doctor visits for hundreds of students. The state also changed open season rules so student-athletes can practice with a team earlier and more frequently, which means trainers sometimes have to monitor hundreds of students at the same time.

Some students recognized the value of an on-hand trainer, especially when they were injured. Tracer Stewart, an eight-grader, was playing soccer when the ball smacked him between the eyes and his nose started to bleed. After the game he headed over to "Coach Hayes," who made sure Stewart didn't break any bones.

"It's safer to be treated here quickly rather than having to drive somewhere," Stewart said.

Students do not pay for any athletic trainer treatments.

If approved, the district will set aside \$493,652 for all six positions, but that's just if every trainer has a Master's degree and serves as a full-time trainer, John Gardner, chief financial officer, said.

I TAKE CARE OF THESE KIDS FOR FREE INSTEAD OF THEM GOING TO THE HOSPITAL FOR A \$80,000 BILL. WE SAVE THEM MONEY, AND THE VALUE IS IN HOW WE TAKE OF OUR PEOPLE.

Keeter Hayes, North Myrtle Beach High athletic trainer

Horry County Schools routinely budgets half a million dollars for certain school improvements and building projects. In 2014, the board approved \$500,000 to renovate and light Conway High's track and another \$500,000 for new "traffic loops" around St. James High, Daisy Elementary and Seaside Elementary. The district has also asked for a recurring \$525,000 per year as "signing" bonuses for critical needs teachers, though the 2016-17 budget will not be finalized until June.



The motion allows for schools to hire either a second full-time trainer or give a financial supplement to a teacher who would also serve as a second trainer. The principals at each school would decide which option fit his or her needs best, officials said.

If an assistant trainer is promoted to a full trainer, the schools must replace the assistant position with another trainer/teacher.

The six schools that may get more trainers are: Conway High; Carolina Forest High; Myrtle Beach High; Socastee High; St. James High; and North Myrtle Beach High. The board of education will discuss the motion during a meeting in May.

Read more here:

<http://www.myrtlebeachonline.com/news/local/education/article73686897.html#storylink=cpy>

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368





EDUCATION

Horry County high school athletic trainers hoping for more help

By Claire Byun

cbyun@thesunnews.com

APRIL 25, 2016 01:00 AM



Members of the staff and the Board of Education are attempting to make practice and games safer for student athletes by adding another athletic trainer to six of the largest high schools. Currently there's only



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NORTH MYRTLE BEACH

Keeter Hayes spends his nights cleaning up bloody noses, scheduling physical therapy appointments and making sure high school athletes are safe on the playing fields.

Some nights, North Myrtle Beach High School's athletic trainer has to keep his eyes on 250 kids all at the same time. Some Horry County Schools staff are trying to change that.

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“We really need this to happen,” Hayes said. “We need to be able to take care of the these kids, and we need to be able to go home sometimes.”

Hayes said he frequently works 10- to 16-hour days and, if he has to travel with a team, he doesn’t get home until midnight or later. He’s spent the last 19 years at North Myrtle Beach High teaching sports management in the morning and supervising athletes’ warmups, practices and games most nights.

A little help would go a long way, Hayes said.



Learn more

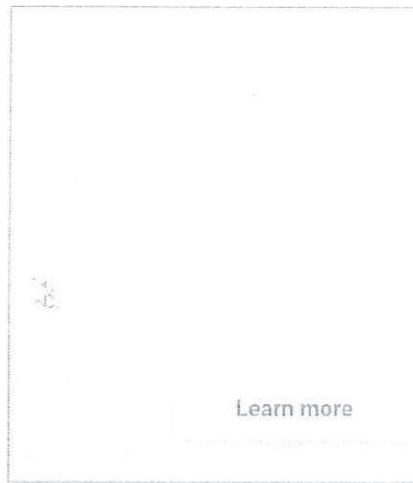
“You can’t just do it and have any life at all,” he said.

Janice Morreale, Board of Education member, initiated a change to that situation earlier this month. She motioned to add another athletic trainer to six of the district’s largest high schools while keeping the assistant trainer position as well.

Six high schools have one athletic trainer and a stipend for an assistant trainer. The assistant at most schools is a teacher who gets paid a stipend for assisting with athletics.

That leaves one person to monitor students, stretch out athletes, treat injuries and schedule doctor visits for hundreds of students. The state also changed open season rules so student-athletes can practice with a team earlier and more

frequently, which means trainers sometimes have to monitor hundreds of students at the same time.

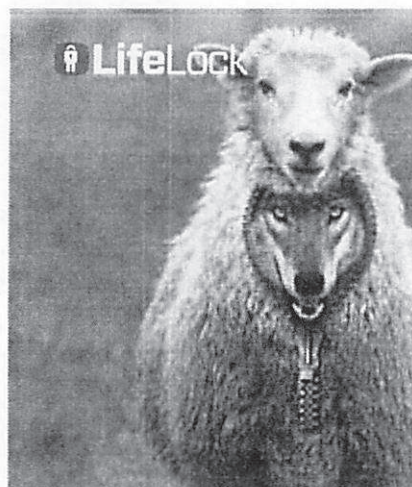


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The cost is worth it, for Hayes.

"Are you going to put a value on a kid's health? Are you going to put a value on a kid's life?" Hayes said.

The motion allows for schools to hire either a second full-time trainer or give a financial supplement to a teacher who would also serve as a second trainer. The principals at each school would decide which option fit his or her needs best, officials said.

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Myrtle Beach Sun News

If an assistant trainer is promoted to a full trainer, the schools must replace the assistant position with another trainer/teacher.

The six schools that may get more trainers are: Conway High; Carolina Forest High; Myrtle Beach High; Socastee High; St. James High; and North Myrtle Beach High. The board of education will discuss the motion during a meeting in May.

Claire Byun: 843-626-0381, @Claire_TSN

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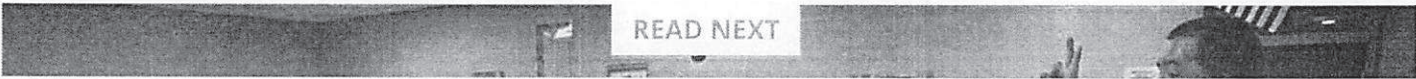
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	)	Fifteenth Judicial Circuit
County of Horry	)	Case No. 2017-CP-26-06643
	)	
Logan Wood and Sarah Wood,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	Transcript of Record
	)	
Horry County School District,	)	
	)	
Defendant.	)	
	)	

August 10, 2021
VIA WEBEX

B E F O R E:

The Honorable William H. Seals, Jr., Judge

A P P E A R A N C E S:

Scott Evans, Esquire
James Moore, Esquire
Attorneys for the Plaintiffs

Joseph McLean, Esquire
Andrew Lindemann, Esquire
Attorneys for the Defendant

Krystal J. Smith
Official Circuit Court Reporter

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion to Deposit Funds.....	4
Court Reporter Certification.....	12

1
2
3
4
5
6
7
8
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 AUGUST 10, 2021

2 (WHEREUPON, the proceedings began at 12:58 p.m.)

3 THE COURT: All right. I am ready whenever you are.

4 MR. LINDEMANN: Thank you, Your Honor. May it -- may it
5 please the Court, Your Honor. Andrew Lindemann on behalf of
6 the defendant, Horry County School District.

7 What's before the Court -- and I know Your Honor is very
8 familiar with this Wood versus Horry County School District
9 case and that you tried this case back in May. Ultimately,
10 Your Honor, what's before you is a -- is a motion for leave
11 of Court to deposit the amount of the judgment plus accrued
12 interest with the Clerk of Court pursuant to Rule 67 of the
13 Rules of Civil Procedure.

14 This -- this case is currently on appeal to the Court of
15 Appeals and under prevailing South Carolina law, specifically
16 the *Russo v. Sutton* case from the South Carolina Supreme
17 Court back in 1995, the defendant is entitled to pay the
18 money into court with a court order of the -- with a court --
19 an order issued by this Court.

20 Ultimately, Your Honor, an opposition has been filed by
21 the plaintiffs, which I'll go ahead and touch on, even though
22 I know Mr. Evans hasn't -- hasn't addressed it yet, but
23 specifically what the defendants are relying on, which is
24 hugely problematic from my viewpoint, is a Circuit Court
25 order issued by Judge McLeod and, obviously, Circuit Court

1 orders I don't need to tell Your Honor are not precedent and
2 are not binding on this Court and, in fact, should not even
3 be cited at all.

4 But ultimately, Judge McLeod in a case from 2018 ruled
5 that under Rule 67 he did not in -- in the instances of that
6 particular case in his decision -- it was attached to the
7 plaintiffs' response, and it was the *Davis v. Agape Nursing*
8 *Rehabilitation Center* case. He determined that it was not
9 appropriate in that particular case to allow for the deposit
10 of the judgment and accrued interest with the court pursuant
11 to Rule 67.

12 Ultimately, Your Honor, that case obviously is -- is not
13 binding on this Court. It shouldn't even be persuasive and,
14 frankly, it's wrong, and I'll explain why in a minute. That
15 decision too I would mention to the Court is still currently
16 on appeal to the Court of Appeals. It certainly shouldn't be
17 given any type of weight or precedent while it's on appeal to
18 the Court of Appeals.

19 So, Your Honor, the key case in all of this is the case
20 that we cited in our motion. That is *Russo v. Sutton*. In
21 1995, the South Carolina Supreme Court found and ruled
22 without equivocation that a defendant, a judgment debtor in
23 this case, has the right to pay the money into court under
24 Rule 67 -- under Rule 67 to stop the accrual of interest
25 pending an appeal. That's precisely what we're doing.

1 And what's critical in the *Russo v. Sutton* case, the
2 Supreme Court indicated that that has been the law in South
3 Carolina long before the Rules of Civil Procedure were even
4 adopted. And I don't know if Your Honor has had a chance to
5 look at that case, and I'll be happy to email you a copy, but
6 the Supreme Court cites to a case in 1931 called *Manning v.*
7 *Brandon Corporation*.

8 And the Court says in *Manning v. Brandon Corporation* we
9 recognize that a judgment debtor may prevent accrual interest
10 pending a creditor's appeal by paying the judgment into court
11 under an order of the Court. The Court then went on to cite
12 Rule 67, and the Court then said this rule, meaning Rule 67,
13 is consistent with our holding in *Manning* that a debtor may
14 prevent accrual of interest by depositing the funds under the
15 order -- under an order of the Court. Accordingly, we hold
16 that to stop accrual of interest, a debtor must comply with
17 the plain language of Rule 67.

18 I would point out that Judge McLeod doesn't address any
19 of that authority in his case. I don't know whether it was
20 raised to him or not. That's really beside the point. This
21 Court is bound by what the Supreme Court has done in *Russo*
22 and not by what Judge McLeod did in the *Davis* case.

23 Ultimately, Your Honor, I would point out too that in a
24 subsequent case to *Russo* in *Duval v. Heritage Life Insurance*
25 *Company*, which is a 2000 case from the Court of Appeals, the

1 Court of Appeals ruled as follows. It says in *Russo v.*
2 *Sutton* the Supreme Court held that a judgment debtor's
3 deposit of funds in the court pursuant to Rule 67 pending the
4 debtor's own appeal stops the accrual of interest on the
5 judgment. The rationale was that such a rule encourages the
6 debtor to pay the judgment and assures to the judgment
7 creditor the funds will be available. The Court has followed
8 that rule.

9 It goes on to say the Court of Appeals is bound by the
10 decisions of the Supreme Court. Where the law is
11 unmistakably clear, this Court has no authority to change it.

12 So I point that out to the Court because, obviously, the
13 Court of Appeals found that the decision by the Supreme Court
14 in *Russo v. Sutton* was, quote, unmistakably clear and,
15 therefore, they had no authority to change it. I would
16 submit that the Circuit Court, with all due respect to Judge
17 McLeod, had no authority to change it.

18 Now, the decision by Judge McLeod and the arguments by
19 plaintiffs' counsel rely on federal case law interpreting
20 Federal Rule 67. I would point out to the Court that our
21 appellate decisions in this state suggest that federal case
22 law interpreting a Rule of Civil Procedure may have some
23 weight or be persuasive where there is an absence -- an
24 absence of authority from the South Carolina appellate courts
25 on a question.

1 We don't have an absence of authority in this particular
2 case how Rule 67 should be applied. *Russo v. Sutton* is it
3 and has not been overturned and, therefore, there was
4 absolutely no need for Judge McLeod and I would submit
5 there's no need for Your Honor to go looking at what federal
6 case law interprets.

7 And quite frankly, Rule 67 has been interpreted
8 substantially differently in federal cases, and the various
9 problems or factors that the plaintiff has suggested this
10 Court should look at based on those federal cases have never
11 been identified by the South Carolina Supreme Court or Court
12 of Appeals as being applicable to Rule 67 of the state Rules
13 of Civil Procedure.

14 And quite frankly, I can go through those elements and
15 those elements are not even legitimate considering what *Russo*
16 *v. Sutton* says, but I will make this point. To the extent
17 that the plaintiffs are arguing, Your Honor, that a defendant
18 who is solvent and who is insured does not get the benefit of
19 Rule 67, but only -- only those defendants or those judgment
20 debtors who are potentially insolvent or going insolvent and
21 may not be insured do have the benefit of Rule 67 is an
22 absolute violation of equal protection, and there's no
23 rational basis for allowing one type of judgment debtor to
24 have the benefit of a rule which the South Carolina Supreme
25 Court has said has been in existence since 1931 and continues

1 to be in existence to this day, that any type of judgment
2 debtor has the benefit of that rule and one type does not.

3 And specifically to discriminate against a party that is
4 insured and is solvent is simply not the law and I would
5 submit should not be the law. So I point that out as well
6 that the interpretation of Rule 67 that the plaintiffs are
7 encouraging this Court to follow and that Judge McLeod did
8 follow is extremely discriminatory, violates equal
9 protection, and we submit would be unconstitutional, as well
10 as arbitrary and discriminatory.

11 So in short, Your Honor, this is not a difficult
12 question. *Russo v. Sutton* governs it. We have complied with
13 what *Russo v. Sutton* requires. We've asked for a court
14 order, and we ask the Court to grant us the relief. And as I
15 indicated, it's been the law in South Carolina since 1931,
16 according to the South Carolina Supreme Court.

17 Thank you.

18 THE COURT: All right. Joe, do you want to add anything
19 to that?

20 MR. MCLEAN: No, Your Honor. I don't have anything to
21 add.

22 THE COURT: All right. Scott? James? Whichever one or
23 both.

24 MR. EVANS: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 MR. EVANS: Judge, are you able to hear me?

2 THE COURT: I can.

3 MR. EVANS: Your Honor, *Russo v. Sutton* does not provide
4 an automatic right to pay the judgment into the court. If it
5 provided an automatic right, it wouldn't require that the
6 Court order be requested.

7 Rule 67 provides that the ability of a defendant to pay
8 the judgment into the court is solely within Your Honor's
9 discretion. As a practical matter, we've talked to our
10 colleagues who had said several circuits refuse to allow the
11 judgment debtor to pay it into court because the Clerk's
12 Office simply doesn't want to be responsible for \$625,000.

13 But I know Mr. Lindemann doesn't like it, but the law as
14 Judge McLeod set forth is the law in South Carolina. Rule 67
15 is a discretionary rule. Your Honor has the discretion to
16 allow or deny that the money be paid into the court, and
17 there are three factors that Judge McLeod looked at, all of
18 which in this case weigh in favor of the money not be paid
19 into the court.

20 The primary factor is the likelihood of success on
21 appeal. We contend, Your Honor, that Mr. McLean, Mr. Moore,
22 and Your Honor know what's appealable in this case and what's
23 not, but Mr. Lindemann hasn't even seen a transcript and
24 wasn't there for a minute of the testimony.

25 There is nothing to appeal in this case. We're in a

1 situation where the rogue insurance adjustors never
2 negotiated in good faith before trial or after trial, and we
3 have a situation where this judgment is simply tied up for
4 two and three years for a meritless appeal.

5 We contend, Your Honor, that all three factors weigh
6 heavily in favor of the motion being denied. This is highly
7 prejudicial to the plaintiff, and it is a matter solely
8 within your discretion, Your Honor. For the -- for these
9 reasons, we would ask that the motion be denied.

10 THE COURT: All right. James, any -- James, anything
11 you want to add to it?

12 MR. MOORE: I have nothing to add. Thank you, Your
13 Honor.

14 THE COURT: All right. Let me look at it and think
15 about it, and I'll let you know something this week.

16 MR. MOORE: Wonderful. Thank you.

17 MR. EVANS: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. LINDEMANN: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. MCLEAN: Thank you, Judge.

22 THE COURT: Have a good day.

23 (WHEREUPON, the proceedings ended at 1:11 p.m.)

24

25 --- END REQUESTED TRANSCRIPT ---

)

)

)

Krystal J. Smith

KRYSTAL J. SMITH, COURT REPORTER
12TH CIRCUIT AT LARGE
P.O. BOX 13563
FLORENCE SC 29504

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CIVIL ACTION 2017-CP-26-6643

SARAH WOOD, Individually and As)
Parent and Natural of L.W., A Minor,)
)
Plaintiffs,)
)
v.) PLAINTIFFS' PRETRIAL BRIEF
)
HORRY COUNTY SCHOOL DISTRICT,)
)
Defendant.)
_____)

TO: THE HONORABLE WILLIAM H. SEALS, JR.

Pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure, the Plaintiffs Logan Wood and Sarah Wood, hereby submit their pretrial brief to this Honorable Court.

1. Statement of Facts

On October 20, 2016, 14-year-old Logan Wood was and eighth grade student at North Myrtle Beach Middle School and was both an offense and defensive lineman on the B-Team football team for North Middle Beach High School. During an away game against the Ocean Bay Middle/Carolina Forrest High School B-Team, Logan suffered a traumatic brain injury resulting in a diagnosis of post-concussive syndrome, permanent memory loss, and permanent cognitive impairment. Now 18 years old and a senior at Aiken High School, Plaintiff Logan Wood alleges that the Horry County School District acted with gross negligence on multiple occurrences which include allowing him to play without an athletic trainer present for his team; allowing him to continue to play after he experienced a serious head injury; and in failing to train the non-medical staff regarding post-concussive syndrome and second impact syndrome. Logan's mother, Sarah

Wood, has an independent claim for the medical expenses associated with Logan’s treatment prior to his eighteenth birthday.

2. Facts in Controversy

Horry County School District concedes that Logan Wood suffered a concussion during the B-Team game on October 20, 2016, but contends that its employees did not act with gross negligence by failing to have a home team athletic trainer present for the North Myrtle Beach B-Team or in failing to pull Logan from the game. Additionally, the District contends that Logan assumed the risk of injury by voluntarily participating in the football program.

3. Legal Issues

This case involves allegations that the Horry County School District acted with gross negligence on multiple occurrences. The South Carolina Supreme Court has held that state entities can be subject to *multiple* caps under the South Carolina Tort Claims acts in situations in which independent acts of negligence result in even a *single injury*. Boiter v. S.C. Dept. of Transp., 393 S.C. 123, 132, 712 S.E.2d 401, 405(2011). In Boiter, the Supreme Court reviewed a case involving multiple claims against the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a single stoplight. The South Carolina Supreme Court rejected the state defendants’ arguments that each allegedly separate act of negligence claimed by the Plaintiffs “was a part of the *same unfolding sequence of events* that resulted in the Boiter’s damages.” Id. at 133, 406. In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained. Id. at 134, 406. The Plaintiff intends to present expert testimony that Defendant engaged in multiple, distinct acts/occurrences of gross negligence which resulted in a Logan Wood’s brain injury.

The South Carolina Supreme Court has further indicated the issue of occurrences is to be addressed in the Judge's charge and on the verdict form. See, Chastain v. AnMed Health Foundation, 694 S.E.2d 541 (S.C. 2010). United States District Judge Cameron McGowan Currie noted in a recent trial court order:

[t]he South Carolina Supreme Court has held in Chastain that a plaintiff who alleges multiple occurrences, that is, there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, bears the burden of proving each occurrence. 694 S.E.2d at 543-44. This court is unable to find as a matter of law there was a single act of negligence here. If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence.

(Exhibit 1, Order in Knox v. United States of America et al., at Pages 10-11).

United States District Court Judge David C. Norton agreed, submitting the question regarding the number of occurrences arising under the South Carolina Tort Claims Act to the jury in 2019. (Exhibit 2, Verdict Form in W.S. v. South Carolina Department of Social Services, et al.).

Every South Carolina Circuit Court Judge to have addressed the question has agreed. In 2014, the Honorable R. Markley Dennis, Jr. held that “[o]ur Supreme Court has determined that the burden to prove more than one occurrence rests on the plaintiff to be submitted to the jury through appropriate jury charges and the verdict form, and, accordingly, whether Plaintiff's claims involve a single occurrence or multiple occurrences is a question for the jury and not an appropriate determination to be made at summary judgment.” (Exhibit 3)(Doe 2 v. The Citadel, No. 2012CP1001858, 2014 WL 8727884, at *30 (S.C.Com.Pl. Dec. 09, 2014)(citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010)). Judge Dennis went on to further explain his holding, noting:

[t]he courts that have held that a single entity is NOT limited to a single occurrence where more than one state employee has committed separate acts of negligence supports the TCA's protection of employees from individual liability. For the state

entity bears responsibility for the negligence of its employees, and since multiple employees cannot be sued for separate and distinct acts of negligence, it makes sense that the state entity can be held liable for each of the separate and distinct acts of negligence by each of its employees. Case law supports such a position.

Id. at *31 (emphasis in original).

In 2017, the Honorable J. Mark Hayes, II determined that the number of occurrences under the South Carolina Tort Claims Act was a factual issue to be submitted to the jury in the case of Baby Girl Smith v. South Carolina Department of Social Services. (Exhibit 4, Verdict Form in Baby Girl Smith v. South Carolina Department of Social Services). In late 2019 (in what was one of the last cases involving the South Carolina Tort Claims Act to be tried before the pandemic), the Honorable Roger E. Henderson determined that the number of occurrences under the South Carolina Tort Claims Act was a factual issue to be submitted to the jury in a case involving the same insurance carrier who insures this defendant. (Exhibit 5, Verdict Form of Judge Henderson in Est. of Oliver Johnson v. SCDC¹)(Exhibit 6, Jury Charge of Judge Henderson in Est. of Oliver Johnson v. SCDC).

Finally, the issue of occurrences arose at a late 2020 hearing involving two of the cases stemming from the 2018 riot at Lee Correctional Institution. During the hearing, the lawyer representing the state agency, who claims to have been involved in more trials involving state agencies than any other defense lawyer in the state, conceded on the record that there is a question of fact for determination by the jury as to the number of occurrences in each state action, noting:

I have tried more SCDC cases probably than anybody in the state. I'm not scared to try this case. I'm not scared to raise the occurrence issue. **I know it's a question of fact.**

¹ It should be noted that as soon as the Court disseminated the final draft of the verdict form and jury charge, the South Carolina Insurance Reserve Fund elected to settle the case for a statutory cap of \$600,000.00. This settlement was accepted before the jury had the opportunity to complete the verdict form attached hereto as Exhibit 4 or receive the charge attached hereto as Exhibit 5).

(Exhibit 7)(November 10, 2020 Hearing Transcript at Page 34, Lines 1-5)(emphasis added).

As noted above, **every** South Carolina Court to address the issue has held that a factual issue exists when there is any evidence that multiple occurrences of negligence or gross negligence results in a single injury. The Plaintiff will introduce testimony that a minimum of three separate occurrences of gross negligence resulted in Logan Wood's brain injury in this matter. Under the above-cited precedent, will be up to the jury to determine the number of occurrences applicable to Logan Wood's claim for gross negligence.

4. List of Exhibits and Witnesses

a) Exhibits

a. Documents produced by the parties including but not limited to:

EXHIBIT	DESCRIPTION
1	Medical Record of Jessica Klein, MD
2	Medical Record of Frederick Daniels, MD
3	Neuroanatomy Presentation of Dr. Hertza (Defense Expert)
4	Concussion Presentation of Dr. Hertza (Defense Expert)
5	Partial Game Tape Produced by Defendant with Added Timer and Arrows
6	McLeod Seacoast Records
7	MUSC Medical Records
8	Records of Seashore Pediatrics
9	Records of Marshall White, PhD
10	HCS Bates No. 00001 – 00245 (excerpting privilege log and redacted pages)
11	Records of Randy Waid, PhD
12	Aiken County School District Records (defense subpoena response)
13	Kentucky School Records (defense subpoena response)
14	Expert file of D. Rodwell Walters
15	Photos and Video of Logan Wood
16	April 25, 2016 Interview with Sun News (William Keeter Hayes)
17	Aiken County 504 Plans
18	NFHS Guidelines

b. Additionally, the Plaintiff hereby identifies the following as potential exhibits at the trial of this case:

1. Curriculum Vitae of named experts;

2. Any deposition, previous statement, and/or transcript for purposes of impeachment or other use provided by the South Carolina Rules of Evidence;
3. Plaintiff reserves the right to use any demonstrative exhibits as are deemed admissible at the trial of the case;
4. Plaintiff reserves the right to include any exhibits listed by the Defendant;
5. Any and all records and/or discovery responses produced by any party in discovery.
6. Plaintiff reserves the right to amend this list as trial approaches.

b) Witnesses

The Plaintiff reserves the right to call any witnesses listed by the Defendant or previously listed in Defendant's Responses to Plaintiff's Interrogatories and reserves the right to call rebuttal witnesses. Plaintiff identifies the following potential individuals:

1. Sarah Wood
2. Logan Wood
3. Roderick White
4. Joseph Quigley
5. Anslee Wood
6. James Boyers
7. Matt Roupe
8. Jeremy B. Hertza, Psy.D
9. Kary-Anne Chiarizio Cyr
10. Oliver Wood, PhD
11. D. Rodwell Walters, PhD
12. Frederick Daniels, MD
13. Jessica Foxworth Loaiza
14. William "Keeter" Hayes
15. Jessica Klein, MD
16. Marshall White, MD
17. Randy Waid, PhD
18. Records Custodian – to the extent necessary, Plaintiff reserves the right to call a record custodian to authenticate records.

5. Unusual Problems Relating to Evidence to be Introduced

The Plaintiff has filed a Motion in Limine simultaneously with the submission of this Pre-Trial brief. Further, the Plaintiff anticipates calling several witnesses associated with the Defendant and would request permission to examine these witnesses pursuant to S.C. Rule Evid. 611(c).

6. Unusual Questions or Matters for the Court's Attention

This case was original filed prior to Logan Wood reaching the age of majority. The Plaintiff intends to file a motion to amend the caption to include the Plaintiff's full name as a separate party rather than a party represented by and through his mother as natural guardian. Plaintiff Sarah Wood will maintain her separate claim for loss of parental services related to the medical expenses incurred before Logan Wood's 18th birthday.

7. Settlement Negotiations

The possibility of compromise settlement has been discussed and explored with the parties at great length during and following mediation, however, significant differences exist based on evaluations of the respective parties. Negotiations broke down irreparably after it was determined that a specific representative of the South Carolina Insurance Reserve Fund was no longer negotiating in good faith. It is suggested that a representative of the South Carolina Insurance Reserved Fund be directed by the Court to attend the trial, given the Fund's track record of pausing all negotiation in serious cases until the close of evidence after which time it aggressively pursues settlement.

Respectfully Submitted,

s/Scott C. Evans

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Attorneys for the Plaintiff

April 6, 2021

Georgetown, South Carolina

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Zekiya Knox,

Plaintiff,

v.

The United States of America;
Amisub of SC, Inc., d/b/a Piedmont Medical
Center; South Carolina Emergency
Physicians; Jeffrey Warden, MD; Brian Fleet,
PA; Piedmont General Surgery Associates,
LLC; Alex Espinal, MD; Bret Garretson, MD;
and Digestive Disease Associates,

Defendants.

C/A No. 0:17-cv-36-CMC

Opinion and Order Denying
Defendant United States' Motion for
Partial Summary Judgment on Damages
(ECF No. 120)

Through this action, Zekiya Knox ("Plaintiff") seeks recovery for alleged medical malpractice by a variety of medical providers involved in her care between September 2013 and May 2014.¹ Plaintiff alleges these providers failed to properly and timely diagnose and treat her underlying condition, Crohn's disease, and that this failure led to the development of sepsis. Plaintiff further alleges various Defendants failed to properly treat her sepsis and that the collective errors led to Plaintiff's loss of three limbs. Plaintiff asserts a single claim for medical negligence

¹ Plaintiff alleges errors by each of the following Defendants: (1) her primary care provider, North Central Family Medical Clinic ("NCFMC"), for which the United States of America ("United States") is substituted as the Defendant; (2) the hospital at which she received emergency and other treatment, Amisub of S.C., Inc., d/b/a Piedmont Medical Center ("Piedmont"); (3) Piedmont emergency department medical providers Dr. Jeffrey Warden ("Dr. Warden"), Brian Fleet, PA ("Fleet"), and their employer South Carolina Emergency Physicians, LLP ("SCEP"); (4) her surgeon, Alex Espinal, MD ("Dr. Espinal"), and his employer, Piedmont General Surgery Associates, LLC; and (5) her gastroenterologist, Bret Garretson, MD ("Dr. Garretson"), and his employer Digestive Disease Associates. *See* ECF No. 88 (Second Amended Complaint).

against all Defendants, though the specifically alleged errors vary between Defendants. *See* ECF No. 88 (Second Amended Complaint).

The matter is before the court on motion of Defendant United States' for partial summary judgment on the issue of damages. ECF No. 120. The United States argues a damages limitation applies because NCFMC is a tax-exempt charitable organization providing medical care to underserved patient populations, and under South Carolina law, liability of a private charitable organization is capped at \$1.2 million when physicians are involved in the alleged tort. ECF No. 120-1. Plaintiff agrees the United States is entitled to a limitation of damages, but argues there were multiple different occurrences of negligence and therefore the United States' exposure exceeds \$1.2 million. ECF No. 132. In reply, the United States argues there were not multiple instances of negligence and the \$1.2 million damage cap applies. ECF No. 138. For reasons set forth below, the motion is denied as the court is unable to find as a matter of law there was only one occurrence of negligence.

COMPLAINT ALLEGATIONS

Plaintiff alleges injury after abdominal pain, which she alleges was never properly treated, developed into "significant damage to her intestines and caused a life threatening infection," sepsis. ECF No. 88, Sec. Am. Compl. ¶ 37. Plaintiff originally presented to the Piedmont Emergency Room ("Piedmont ER") on September 13, 2013, complaining of persistent abdominal pain. *Id.* at ¶ 9. She was seen by Defendant Dr. Warden, who performed a physical examination and ordered lab testing, ultrasound of the lower abdomen, and CT scan. *Id.* at ¶¶ 9-11. Plaintiff was discharged from the ER with narcotic pain killers and an instruction to follow up with a gastroenterologist. *Id.* at ¶ 14. On September 19, 2013, Plaintiff was seen by Defendant Dr. Garretson, a gastroenterologist, who scheduled and conducted a colonoscopy on September 25,

2013. *Id.* at ¶¶ 15-16. Dr. Garretson was unsure if his findings represented “appendicitis or IBD” (*id.* at ¶ 16), so he referred Plaintiff to a surgeon, Defendant Dr. Espinal, that same day. *Id.* at ¶ 17. Dr. Espinal ruled out acute abdominal process and ordered a CT scan, but Plaintiff alleges she was never informed of that appointment. *Id.* at ¶¶ 18, 18.1.

The next day, September 26, Plaintiff went to see April Logan, a physician’s assistant at NCFMC, a federally funded community health care center, complaining of abdominal pain. *Id.* at ¶ 19. Ms. Logan ordered an ultrasound, which was performed September 30, 2013 and showed “prominent bowel loops . . .with a somewhat thickened appearance.” *Id.* at ¶¶ 19.1, 20. Ms. Logan took no action in response to this finding. *Id.* at ¶ 20. Plaintiff was next seen by Ms. Logan on January 14, 2014, for abdominal pain. *Id.* at ¶ 24. Ms. Logan referred Plaintiff back to Dr. Espinal, who saw Plaintiff in February 2014.² Plaintiff was prescribed prednisone at that appointment and “the records reflect there was to be an appointment scheduled with Dr. Garretson, [but] this was never made known to Ms. Knox.” *Id.* at ¶ 26.

On March 21, 2014, Plaintiff returned to NCFMC complaining of abdominal pain. *Id.* at ¶ 28. The physician she saw ordered another ultrasound, which was performed on April 4, 2014, and “noted tubular structures and encouraged a CT scan.” *Id.* at ¶¶ 29, 30. Plaintiff was to follow up at NCFMC on April 14 for ultrasound results, but instead returned to the Piedmont ER by ambulance that day. *Id.* at ¶ 31. Tests and examination showed an elevated white count, lower

² The visit to Dr. Espinal in February 2014 appears to have been prompted by a series of telephone communications between NCFMC and Plaintiff’s mother. *See* ECF No. 121-6 at 16, 17 (summary of phone messages and conversations). The first contact was apparently initiated by Ms. Logan in January 2014 after she reviewed Plaintiff’s September 2013 colonoscopy results and, ultimately, led to a request by Plaintiff’s mother for a referral to a surgeon to have Plaintiff’s appendix removed. *Id.*

quadrant pain, and “what was then believed to be bacteria in her urine.” *Id.* at ¶ 32. Dr. Warden “remarked her presentation was similar to her presentation in September,” and accessed those records, but the only treatment rendered was a prescription for an antibiotic for a urinary tract infection. *Id.* at ¶¶ 33-34. Defendant Fleet, a physician’s assistant in the ER, ordered an additional antibiotic after reviewing results of a vaginal culture on April 18, 2014. *Id.* at ¶ 36.

On May 4, 2014, Plaintiff returned to the Piedmont ER. *Id.* at ¶ 37. She was diagnosed with “either an infected inflamed appendix or a flare up of IBD that was never properly discovered or treated.” *Id.* She went into septic shock and ultimately lost three limbs. *Id.* at ¶ 39.

STANDARD

Summary judgment should be granted if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). It is well established that summary judgment should be granted “only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts.” *Pulliam Inv. Co. v. Cameo Properties*, 810 F.2d 1282, 1286 (4th Cir. 1987). The party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact, and the court must view the evidence before it and the inferences to be drawn therefrom in the light most favorable to the nonmoving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

DISCUSSION

The Federal Tort Claims Act waives the sovereign immunity of the United States for civil actions in federal court for injuries “caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.” 28 U.S.C. § 1346(b)(1). “The United States shall be liable, respecting the provisions of this title

relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances . . .” 28 U.S.C. § 2674.

The South Carolina Solicitation of Charitable Funds Act (“CFA”) limits liability for injury caused by an employee of a charitable organization to “an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15.” S.C. Code § 33-56-180(A).³ The South Carolina Tort Claims Act (“SCTCA”) states

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

(3) No person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(4) The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed one million two hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

³ The CFA also states “[a] judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner.” *Id.* The United States does not allege Plaintiff must prove gross negligence, recklessness, or willfulness on the part of the NCFMC providers, likely because the providers were not sued individually and therefore a verdict against the United States would not be “against an employee” of NCFMC.

S.C. Code Ann. § 15-78-120(a)(1-4). As defined in the SCTCA, “‘occurrence’ means an unfolding sequence of events which proximately flow from *a single act of negligence*.” § 15-78-30(g) (emphasis added).

“All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language used must be construed in the light of the intended purpose of the statute.” *Eagle Container Co., LLC v. County of Newberry*, 666 S.E.2d 892, 895 (S.C. 2008). “Legislative intent is best determined by examining the language of the statute itself.” *Doe v. American Red Cross Blood Svcs.*, 377 S.E.2d 323, 437 (S.C. 1989). The legislative intent of the CFA is to “encourage the formation of charitable organizations, to promote charitable donations, and to preserve the resources of the charitable organization.” *Id.*; *see also Simmons v. Toumey Regional Medical Ctr.*, 533 S.E.2d 312, 316 (S.C. 2000) (“[A] charitable institution should devote its resources to the endeavor at hand and the greater good, not to reimbursing individuals injured by the institution’s negligent acts.”).

Defendant United States argues it should be granted partial summary judgment on the issue of damages because the CFA limits damages against it as it assumed liability for NCFMC, “a federally funded community health center that is a tax-exempt charitable organization providing medical care to underserved patient populations.” ECF No. 120-1. Plaintiff concedes the United States “is entitled to a limitation of damages and does not oppose this position,” but contends there were multiple occurrences of negligence by NCFMC providers and therefore the United States’ liability exceeds the damages cap of \$1.2 million per occurrence. ECF No. 132. In reply, the United States argues allowing recovery to the damage cap for each alleged deviation from the standard of care would “completely eviscerate the CFA and the legislative intent to limit damages applicable to charitable organizations.” ECF No. 138 at 6.

Plaintiff agrees the cap on damages in the SCTCA applies to this action through the CFA. Therefore, the only question is whether Plaintiff has alleged multiple “occurrences” of negligence so as to preclude summary judgment for the United States on this issue.

a. Multiple occurrences

Plaintiff argues different providers at NCFMC breached the “legal duty to coordinate her care” at different points in the time period between September 2013 and May 2014. ECF No. 132 at 10. She alleges negligence by April Logan, a physician’s assistant⁴, on September 26, 2013 for “failing to review pertinent medical records” from NCFMC visits and appointments with the gastroenterologist and general surgeon and on January 14, 2014, for failing to conduct an abdominal exam or review Plaintiff’s chart; by Dr. Chua for “concluding Ms. Knox needed a gastroenterology consult but failing to follow up”; and by Dr. West who “heard Ms. Knox complain of abdominal pain but did not investigate it at all either through an exam or a review of her now extensive medical records for the same complaint.” *Id.* (citing ECF No. 88, Sec. Am. Compl.). While Plaintiff does not suggest each alleged breach of the standard of care constitutes a separate occurrence, she contends the manner in which each NCFMC provider separately erred was a distinct act of negligence and thus an “occurrence” (“i.e. failure to examine v. failure to read chart v. failure to communicate with specialist”). *Id.* at 11. In support of these allegations, Plaintiff cites the expert report and deposition testimony of Dr. Carol Ann Rupe. ECF Nos. 132-7 (Rupe dep. excerpts), 132-8 (Rupe Report). Therefore, Plaintiff argues she has met her burden for purposes of defeating summary judgment. *Id.*

⁴ As Ms. Logan is a physician’s assistant, not a “licensed physician,” damages available for her alleged negligent acts are limited to \$300,000 per occurrence.

The South Carolina Supreme Court had occasion to consider the CFA's definition of "occurrence" in *Chastain v. AnMed Health Foundation*, 694 S.E.2d 541 (S.C. 2010). In *Chastain*, a plaintiff sued a charitable institution and six nurses who cared for her during her hospitalization for circulation problems. She alleged that over 2000 deviations from the standard of care led to amputation of her leg. The trial judge reduced a jury verdict to \$300,000 finding "the intent of the CFA was to limit the amount of damages recoverable from a charitable organization, and to read the term 'occurrence' to include every incident where the defendant nurses violated the applicable standard of care would clearly defeat the legislature's intent..." *Id.* at 543. Alternatively, the trial judge held it was impossible to determine the number of negligent acts or negligent nurses found by the jury based on the jury charge and verdict form, and therefore only one recovery was appropriate. *Id.*

On appeal, the Supreme Court held the plaintiff failed to meet her burden of proving multiple occurrences because the jury was not asked to determine whether there was more than one occurrence, and the general verdict form only supported a single occurrence.⁵ Therefore, the court found it unnecessary to address the trial judge's finding the term "occurrence" could not be read to include every incident where the nurses violated the applicable standard of care. *Id.* Instead, the court held "[i]f [plaintiff] alleges multiple occurrences, that is, that there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence." *Id.* at 543-44.

⁵ The court noted the jury was never instructed on the definition of occurrence, or asked to determine whether there was more than one occurrence, so the trial judge was correct in "reforming the verdict to reflect a single occurrence." *Id.* at 544.

This court agrees with the United States “occurrence” most likely could not be read to include every violation of the standard of care. However, that is not Plaintiff’s position here – Plaintiff argues she has alleged separate acts of negligence by independent actors at NCFMC, not merely multiple breaches of the standard of care.

Plaintiff cites an SCTCA case, *Boiter v. South Carolina Dept. of Transp.*, for the proposition that multiple acts of negligence constitute separate occurrences under that statute. 712 S.E.2d 401 (S.C. 2011). However, *Boiter* is distinguishable on two distinct and important points: first, it does not address the CFA and the legislative intent of that statute to limit liability; and second, it discussed liability for two acts of negligence by entirely separate entities⁶ with no causal connection between the two. *Id.* at 406 (distinguishing from *Chastain* on the facts and from cases in other jurisdictions “because they involve a single governmental entity which committed multiple acts of negligence” and deciding there were two occurrences “based solely on the peculiar facts of this case”). As the instant case is factually distinguishable from *Boiter*, that case does not compel a finding of multiple occurrences.

Additionally, Plaintiff cites a South Carolina circuit court case finding two occurrences under the SCTCA when two physicians working at the same facility examined a woman during childbirth and committed two separate acts of negligence in failing to timely deliver her baby. *Williamson v. South Carolina Ins. Reserve Fund*, No. 2000-CP-42-841, 2001 WL 35835128 (S.C. Com.Pl. May 8, 2001). However, on appeal, the South Carolina Supreme Court found the damages

⁶ The court did not make its decision solely on the basis of negligence by two separate departments, noting “[i]n many situations, negligent acts from more than one entity would still equal but one occurrence.” *Id.* at 407. However, the number of actors is not the only difference between the instant case and *Boiter*.

cap inapplicable as it was not in effect at the time the plaintiff's claim accrued. 586 S.E.2d 115, 118 (S.C. 2003). The court explicitly declined to address the issue of number of occurrences as unnecessary because the cap did not apply. *Id.*

In this case, Plaintiff has alleged instances of distinct types of negligence by providers at NCFMC. She alleges, and includes expert testimony in support, that Ms. Logan failed to review the chart *in toto* in September 2013 and failed to perform an abdominal examination in January 2014, and that Dr. West failed to review the chart, perform an examination, and to contact the gastroenterologist or surgeon in March and April 2014.⁷ She contends these separate acts of negligence took place on different dates and were unrelated to one another, and therefore Plaintiff's injury was not due to "an unfolding sequence of events which proximately flow from a single act of negligence."

The South Carolina Supreme Court has held in *Chastain* that a plaintiff who alleges multiple occurrences, that is, there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, bears the burden of proving each occurrence. 694 S.E.2d at 543-44. This court is unable to find as a matter of law there was a single act of negligence here. If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff

⁷ Plaintiff also alleges "a different NCFMC physician (Dr. Chua) [was at fault] for concluding Ms. Knox needed a gastroenterology consult but failing to follow up," in the time period after February 2014. ECF No. 132 at 10 (citing Sec. Am. Compl. ¶ 28). Dr. Rupe's report states Dr. Tafari received and signed off on Dr. Garretson's notes in September 2013, but does not discuss Dr. Chua. The report also notes "[w]hile the providers were in the chart, that [sic] again failed to check their own records to find the consults from the gastroenterologist. If they had, they would and should have followed up with the gastroenterologist to determine the diagnosis." The excerpts of Dr. Rupe's deposition filed with the briefing of this motion do not discuss Dr. Chua.

has proven more than one occurrence. If only Ms. Logan is found to be negligent, the United States' liability would be limited to \$300,000 for one occurrence or \$600,000 for two occurrences. If either Dr. West or Dr. Chua is found to be negligent, but not Ms. Logan, recovery would be capped at \$1.2 million for one occurrence, or \$2.4 million for two. It appears the maximum potential recovery by Plaintiff from the United States is \$3 million: \$1.2 million for each physician's alleged negligent actions for a total of \$2.4 million, plus \$600,000 to encompass both alleged negligent acts by Ms. Logan.

CONCLUSION

For the reasons set forth above, Defendant United States' motion for summary judgment on the issue of damages (ECF No. 120) is denied.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
July 3, 2018

Exhibit 2

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

W.S.,

C/A 16-cv-01032-DCC

Plaintiff,

**VERDICT FORM
(AS TO SCDSS)**

v.

Cassandra Daniels, Ursula Best, South
Carolina Department of Social Services,

Defendants.

W.S.,

C/A 16-cv-01280-DCC

Plaintiff,

**VERDICT FORM
(AS TO SCDSS)**

v.

Cassandra Daniels, Ursula Best, South
Carolina Department of Social Services,

Defendants.

You are instructed to answer the following questions. You must all agree on your answer to each question and the foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

I. Gross Negligence Claim(s):

Do you find by the greater weight of the evidence:

1. That Defendant South Carolina Department of Social Services was grossly negligent in protecting Plaintiff W.S. from harm?

Answer: X Yes (**Go to Question 2**)
 No (**Stop Deliberations**).

2. That Plaintiff W.S.'s injuries were the natural and probable consequence of the Defendant South Carolina Department of Social Services' failure to protect him from harm?

Answer: X Yes (Go to Question 3)
_____ No (Stop Deliberations)

3. Please state the full amount of your award of actual and compensatory damages to W.S.

Answer: \$ 400,000.00 (Go to Question 4)

4. Having been charged on the law of occurrences, state the number of occurrences, more probably than not, that are supported by the facts and evidence in this case and list the dates of the occurrences below.

Answer: 3/29/2009
6/1/2009
11/26/2010

(Stop Deliberations)

The foreperson, acting on behalf of the unanimous jury, must sign and date this verdict form:

3/22, 2019
DATE

FOREPERSON

1

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

W.S.,

Plaintiff,

v.

Cassandra Daniels, Ursula Best, South
Carolina Department of Social Services,

Defendants.

C/A 16-cv-01032-DCC

**VERDICT FORM
(AS TO URSULA BEST)**

W.S.,

Plaintiff,

v.

Cassandra Daniels, Ursula Best, South
Carolina Department of Social Services,

Defendants.

C/A 16-cv-01280-DCC

**VERDICT FORM
(AS TO URSULA BEST)**

You are instructed to answer the following questions regarding W.S.'s claims against Defendant Ursula Best. You must all agree on your answer to each question and the foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

I. Civil Rights Claim – Failure to Protect – as to Defendant Ursula Best:

Do you find by the greater weight of the evidence:

1. That Defendant Ursula Best knew on or after March 5, 2010 of a substantial risk that Plaintiff W.S. would be sexually abused at Boys Home of the South?

Answer: X Yes (Go to Question 2)

 No (Go to Part II, Question 8)

2. That after Defendant Ursula Best knew that W.S. was at risk of harm at Boys Home of the South, Plaintiff W.S. was harmed due to sexual abuse?

Answer: X Yes (**Go to Question 3**)
 No (**Go to Part II, Question 8**)

3. That Defendant Ursula Best was deliberately indifferent to Plaintiff W.S.'s federal constitutional right to personal safety and security in foster care?

Answer: X Yes (**Go to Question 4**)
 No (**Go to Part II, Question 8**)

4. That Defendant Ursula Best' acts were the proximate or legal cause of damages sustained by Plaintiff W.S.?

Answer: X Yes (**Go to Question 5**)
 No (**Go to Part II, Question 8**)

5. That Plaintiff W.S. should be compensated for his damages of physical harm, emotional pain, mental anguish or loss of enjoyment of life?

Answer: X Yes (**Enter the amount below**)

If your answer is Yes,
in what amount

 \$ 18,500.00 (**Go to Question 7**)

 No (**Go to Question 6**)

6. That Plaintiff W.S should be awarded nominal damages of \$1.00?

Answer: Yes (**Go to Question 7**)

____ No (Go to Part II, Question 8)

7. That Defendant Ursula Best acted with deliberate indifference to W.S.'s federally protected rights and that punitive damages should be assessed against the Defendant Ursula Best?

Answer: X Yes (Enter the amount below)

If your answer is Yes,
in what amount

\$ 18,500.00 (Go to Part II, Question 8)

____ No (Go to Part II, Question 8)

II. Civil Rights Claim – Failure to Treat – as to Defendant Ursula Best:

Do you find by the greater weight of the evidence:

8. That Defendant Ursula Best knew on or after March 5, 2010 of a substantial risk that Plaintiff W.S. was in need of medical treatment and/or mental health treatment?

Answer: X Yes (Go to Question 9)

____ No (Stop Deliberations)

9. That after Defendant Ursula Best knew that W.S. was in need of medical treatment and/or mental health treatment, Plaintiff W.S. did not receive adequate medical treatment and/or mental health treatment?

Answer: X Yes (Go to Question 10)

____ No (Stop Deliberations)

10. That Defendant Ursula Best was deliberately indifferent to Plaintiff W.S.'s federal constitutional right to receive adequate medical treatment and/or mental health treatment in foster care?

Answer: X Yes (Go to Question 11)
 _____ No (Stop Deliberations)

11. That Defendant Ursula Best's acts were the proximate or legal cause of damages sustained by Plaintiff W.S.?

Answer: X Yes (Go to Question 12)
 _____ No (Stop Deliberations)

12. That Plaintiff W.S. should be compensated for his damages of physical harm, emotional pain, mental anguish or loss of enjoyment of life?

Answer: X Yes (Enter the amount below)

If your answer is Yes,
 in what amount \$ 18,500.00 (Go to Question 14)
 _____ No (Go to Question 13)

13. That Plaintiff W.S. should be awarded nominal damages of \$1.00?

Answer: X Yes (Go to Question 14)
 _____ No (Stop Deliberations)

14. That Defendant Ursula Best acted with deliberate indifference to W.S.'s federally protected rights and that punitive damages should be assessed against the Defendant Ursula Best?

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

W.S.,

C/A 16-cv-01032-DCC

Plaintiff,

**VERDICT FORM
(AS TO CASSANDRA DANIELS)**

v.

Cassandra Daniels, Ursula Best, South
Carolina Department of Social Services,

Defendants.

W.S.,

C/A 16-cv-01280-DCC

Plaintiff,

**VERDICT FORM
(AS TO CASSANDRA DANIELS)**

v.

Cassandra Daniels, Ursula Best, South
Carolina Department of Social Services,

Defendants.

You are instructed to answer the following questions regarding W.S.'s claims against Defendant Cassandra Daniels. You must all agree on your answer to each question and the foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

I. Civil Rights Claim – Failure to Protect – as to Defendant Cassandra Daniels:

Do you find by the greater weight of the evidence:

1. That Defendant Cassandra Daniels knew on or after March 5, 2010 of a substantial risk that Plaintiff W.S. would be sexually abused at Boys Home of the South?

Answer: X Yes (Go to Question 2)

 No (Go to Part II, Question 8)

2. That after Defendant Cassandra Daniels knew that W.S. was at risk of harm at Boys Home of the South, Plaintiff W.S. was harmed due to sexual abuse?

Answer: X Yes (Go to Question 3)
 No (Go to Part II, Question 8)

3. That Defendant Cassandra Daniels was deliberately indifferent to Plaintiff W.S.'s federal constitutional right to personal safety and security in foster care?

Answer: X Yes (Go to Question 4)
 No (Go to Part II, Question 8)

4. That Defendant Cassandra Daniels' acts were the proximate or legal cause of damages sustained by Plaintiff W.S.?

Answer: X Yes (Go to Question 5)
 No (Go to Part II, Question 8)

5. That Plaintiff W.S. should be compensated for his damages of physical harm, emotional pain, mental anguish, loss of enjoyment of life, inconvenience, grief, and/or anxiety?

Answer: X Yes (Enter the amount below)

If your answer is Yes,
in what amount

\$ 15,000.00 (Go to Question 7)

 No (Go to Question 6)

6. That Plaintiff W.S should be awarded nominal damages of \$1.00?

Answer: Yes (Go to Question 7)

_____ No (Go to Part II, Question 8)

7. That Defendant Cassandra Daniels acted with deliberate indifference to W.S.'s federally protected rights and that punitive damages should be assessed against the Defendant Cassandra Daniels?

Answer: X Yes (Enter the amount below)

If your answer is Yes,
in what amount

\$ 15,000.00 (Go to Part II, Question 8)

_____ No (Go to Part II, Question 8)

II. Civil Rights Claim – Failure to Treat – as to Defendant Cassandra Daniels:

Do you find by the greater weight of the evidence:

8. That Defendant Cassandra Daniels knew on or after March 5, 2010 of a substantial risk that Plaintiff W.S. was in need of medical treatment and/or mental health treatment?

Answer: X Yes (Go to Question 9)

_____ No (Stop Deliberations)

9. That after Defendant Cassandra Daniels knew that W.S. was in need of medical treatment and/or mental health treatment, Plaintiff W.S. did not receive adequate medical treatment and/or mental health treatment?

Answer: X Yes (Go to Question 10)

_____ No (Stop Deliberations)

10. That Defendant Cassandra Daniels was deliberately indifferent to Plaintiff W.S.'s federal constitutional right to receive adequate medical treatment and/or mental health treatment in foster care?

Answer: X Yes (**Go to Question 11**)
 _____ No (**Stop Deliberations**)

11. That Defendant Cassandra Daniels' acts were the proximate or legal cause of damages sustained by Plaintiff W.S.?

Answer: X Yes (**Go to Question 12**)
 _____ No (**Stop Deliberations**)

12. That Plaintiff W.S. should be compensated for his damages of physical harm, emotional pain, mental anguish and loss of enjoyment of life?

Answer: X Yes (**Enter the amount below**)

If your answer is Yes,
in what amount

\$ 15,000.00 (**Go to Question 14**)

_____ No (**Go to Question 13**)

13. That Plaintiff W.S. should be awarded nominal damages of \$1.00?

Answer: _____ Yes (**Go to Question 14**)
 _____ No (**Stop Deliberations**)

14. That Defendant Cassandra Daniels acted with deliberate indifference to W.S.'s federally protected rights and that punitive damages should be assessed against the Defendant Cassandra Daniels?

Answer: X Yes (Enter the amount below)

If your answer is Yes,
in what amount \$ 15,000.00 (Stop Deliberations)

 No (Stop Deliberations)

The foreperson, acting on behalf of the unanimous jury, must sign and date this verdict form:

3/22/2019
DATE

FOREPERSON

✓

Exhibit 3

2014 WL 8727884 (S.C.Com.Pl.) (Trial Order)
Court of Common Pleas of South Carolina.
Ninth Judicial District
Charleston County

John DOE 2,
v.
THE CITADEL.

No. 2012CP1001858.
December 9, 2014.

Order Denying Defendant's Motion for Summary Judgment

R. Markley Dennis, Jr., Judge.

*1 Presently before the Court is Defendant's Motion for Summary Judgment. Plaintiff John Doe 2 has filed a Memorandum in Opposition to the Motion. On April 18, 2014, the Court heard oral arguments on the motion.

The Court considered the Defendant's Motion for Summary Judgment and the Plaintiff's Opposition Memorandum. After reviewing the various pleadings, exhibits, pertinent case law, and the arguments of counsel, the Court now DENIES Defendant's Motion for the reasons hereinafter stated.

STANDARD OF REVIEW

Summary judgment is appropriate only where there is no genuine dispute as to any material fact such that the moving party is entitled to judgment as a matter of law. [Rule 56\(c\), SCRPC](#). “Summary judgment should not be granted except where it is perfectly clear that no genuine issue of material fact exists and an inquiry into the facts is not desirable to clarify application of the law.” [Grooms v. Marlboro County School Dist.](#), 414 S.E.2d 802, 803 (S.C. Ct. App. 1992). In evaluation of whether a genuine dispute as to material facts exists, the court must liberally construe all evidence, including all reasonable inferences flowing from that evidence, in the light most favorable to the non-moving party. *See, e.g., David v. McLeod Regional Medical Center*, 626 S.E.2d 1, 3 (S.C. 2006); *Fleming v. Rose*, 567 S.E.2d 857, 860 (S.C. 2002); *Grooms*, 414 S.E.2d at 803.

On a motion for summary judgment, the trial judge must take into consideration all documents and evidence contained within the case's record, to include pleadings and discovery documents such as depositions, answers to interrogatories, and admissions, as well as any affidavits submitted by the parties in conjunction with the motion. *See Higgins v. Medical Univ. of South Carolina*, 486 S.E.2d 269, 272 (S.C. Ct. App. 1997). Summary judgment is not appropriate where the parties disagree as to the conclusion to be drawn from facts pertinent to the case, and it “is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues.” *Madison ex rel Bryant v. Babcock Center, Inc.: S.C. Dep't of Disabilities and Special Needs: and Batchelor*, 638 S.E.2d 650, 655 (S.C. 2006); *Moriarty v. Garden Sanctuary Church of God*, 534 S.E.2d 672, 675 (S.C. 2000).

PROCEDURAL BACKGROUND AND STATEMENT OF RELEVANT FACTS

On March 19, 2012, Plaintiff filed negligence/gross negligence and outrage causes of action against Defendant for its conduct in concealing a 2007 report of child sexual abuse by Louis “Skip” ReVille and allowing ReVille to leave Citadel employment as a decorated alumnus and former employee, instead of as a known child molester, where he was able to continue contact with children and sexually abuse Plaintiff. Defendant Answered on June 20, 2012. To date, the evidence in this complaint consists of deposition testimony, interrogatory and request for production responses, and voluminous documentation.

In reviewing the evidence in the light most favorable to the Plaintiff, as the Court must do, the evidence establishes the following. The Citadel had knowledge in 2001, during ReVille's first summer as a counselor at The Citadel's Summer Camp [hereinafter The Camp], that a well-respected volunteer counselor and Citadel graduate, Michael Arpaio, had sexually abused and molested a ten-year old male camper in his dorm room during the course of The Camp's first session. The Citadel was later informed that additional minor campers were sexually abused by Arpaio while attending The Camp between 1995 and 2000.

*2 Thereafter, on August 6, 2001, The Citadel received a letter from Sergeant Middleton of the Charleston Police Department that highlighted several concerning practices occurring at The Camp, including that “[s]ome of the counselors are allowing certain campers to leave their rooms ... to go into camp counselor's room[s], watch movies, and fall asleep in the same bed with counselors until the following morning.” (*Middleton Letter*, August 6, 2001). The letter noted that “[s]ome of the counselors engage in sexual conversation in the presence of the campers.” Notably, upon receipt of this letter, The Citadel took no action despite knowing that multiple counselors were engaging in such concerning practices. (*Garrott Deposition*, Vol III, p. 205-207). Indeed, ReVille has admitted to abusing nearly eight campers during the 2001 Summer Camp. To do so, he lured campers into his room at night with food and movies—the very practice highlighted in Middleton's letter. (*ReVille Affidavit*, Sept. 20, 2013). The Citadel did not interview counselors and campers or implement various safety practices such as random and frequent room checks. (*Id.*).

ReVille abused a camper, who notified The Citadel of the abuse in April 2007 [hereinafter identified as Camper Doe], at least five times the following summer in 2002 in ReVille's barracks room at night. Camper Doe has testified not only to his own abuse by ReVille but to the abuse of others at The Citadel camp in 2002:

A. It wasn't just {John Doe BK} and I. Skip ReVille molested and abused multiple children at that camp. It wasn't just {John Doe BK} and I.

Q. How do you know that?

A. Because I was there.

Q. Did any of those other kids - campers tell you that they were abused by Skip ReVille?

A. They didn't have to tell me. I was sitting right next to them masturbating.

Q. But now you're telling me, in 2014, that there were more occasions than that one; is that correct?

A. Yes.

Q. Tell me who was present when those other incidents took place.

A. I knew {John Doe BK}; he was my friend. The other—I remember there were— there was one other kid from my section that I didn't know that well, but Skip knew him somehow. And there were other kids from different sections that would come in at different times.

A. We ended up staying in Skip's room after lights out - it had to have been more than five times.

Q. And during those five times, what happened?

A. It was always the same deal; it was the pattern. You know, we'd watch movies and do whatever during the day. But after lights out, the kids that didn't know about what was going on and the kids that who hadn't been introduced to it yet, they were allowed to leave the room.

Q. They were allowed to leave the room?

A. Yes.

Q. Could you have left the room?

A. I didn't feel that I could have, no.

(*Camper Doe Deposition*. March 25, 2014, p. 145:4-12; 146:18-25; 147:5-19).

During the summer of 2002, The Citadel operated The Camp as it had in the years leading up to Arpaio's abuse—turning a blind eye to inappropriate conduct, policy violations, and Citadel procedures requiring termination and reporting of sexual assault, sexual abuse, sexual harassment, sexual misconduct, and immoral and illegal conduct. Camp Director Major Bill Bates, Deputy Director Jennifer Garrott, Colonel John Lackey, Commandant General Emory Mace, and others were aware of ReVille's policy and code of conduct violations and knew, or should have known, that ReVille was sexually harassing, molesting and abusing The Camp's minor campers on The Citadel campus. These individuals, as well as other Citadel officials and staff, were aware of ReVille's deviant, pedophilic tendencies as early as 2001, wherein it was noted that ReVille was “senior counselor material if learns to distance himself from campers ...” (2001 Employee Evaluation).

As well during the summer of 2002, The Camp's Deputy Director, Jennifer Garrott, caught ReVille alone with a minor camper in his dorm room. Both Garrott and Camp Director Major Bates had heard that ReVille had campers in his room after Taps and discussed the issue with ReVille, but they specifically declined to reprimand or terminate his employment despite established Citadel policies and procedures requiring immediate termination for such a violation. (*ReVille Affidavit*. Sept. 20, 2013). They also took no action against ReVille despite specifically emphasizing to counselors the year prior in 2001 that campers and counselors were not to be in the same barracks room alone. The Citadel completely disregarded the rule. (*Id.*).

*3 Specifically, as early as 2001, The Citadel required the counselors to abide by a Counselor Code of Conduct that included the provision: “[s]exual activity, in any form, with any person, is prohibited while on campus. “Sexual activity” includes kissing, hand-holding, lying together, groping, fondling, and sexual intercourse.” “*Violation of any of the above policies will result in immediate dismissal.*” (*Counselor Code of Conduct*). Furthermore, the summer camp “Official Camp Policies Regarding Sexual Misconduct Issues,” in part, bestowed the following requirements on counselors and imposed specific responses to violations on The Citadel:

- Any sexual relationship between any camp employee and a camper is prohibited. Any person not adhering to this rule will be immediately dismissed from his/her employment with the citadel and will be prosecuted to the fullest extent of the law.

- Camp employees will keep an open door when visiting camper rooms alone. When a camper visits a counselor's room alone, it is the responsibility of that camp employee to ensure that the door is fully open and that it stays open until another alert person is present in the room.
- Regardless of validity of the violation, any sexually inappropriate conduct reports concerning any camper or employee of the camp will be turned over to the Citadel Public Safety Department and a thorough investigation will be conducted.

Camp Director, Jennifer Garrott, terminated another counselor for being alone in his barracks room with a male camper in violation of the policy. (*Garrott Deposition*, Vol II, p. 39-40). However, when she caught ReVille with a camper alone in his room in 2002, she refused to terminate ReVille. (*ReVille Affidavit*, Sept. 20, 2013). Ms. Garrott took no action in response to ReVille's policy violation, neglecting to even document the offense in ReVille's employment file.

Then in 2003, Director Garrott again walked in on ReVille alone with a minor, Camper Doe 6, where ReVille was rubbing “Icy-Hot” on Doe 6's leg. Again, Garrott took no action on this terminable offense. Also in 2003, Garrott's assistant spoke to ReVille four to five times about having minors alone in his room; however, no further action was taken. Colonel Lackey similarly received a report from a counselor that ReVille was having minors in his room. Despite ReVille's repeated violations of the camp policy, The Citadel did not terminate him or document the infractions in ReVille's file. (*ReVille Affidavit*, Sept. 20, 2013). Instead, The Citadel permitted ReVille to continue serving as The Camp's Senior Counselor entrusted with the responsibility of the safety and well-being of the very boys he was abusing.

Ms. Garrott now admits she should have fired ReVille for his violations of the camp rule forbidding counselors from being alone in barrack's rooms with campers. (*Garrott Deposition*, Vol. II, p. 55-56). Defendant's expert witness, Ann Franke, states that policies regarding the safety of children should be strictly enforced, absent some exigent circumstance for the policy violation, and serious consequences imposed for violations in order to rightly protect children. (*Franke Deposition*, March 17, 2014, p. 49:13 through p. 51:19).

Additional Citadel policies controlling its camp counselors is found in the *Barracks Guard Duties, Memorandum of Instruction*, April 2001, where such duties included that “[d]uring evening hours, guards conduct walk-through checks of the barracks. A walking check is conducted on a random basis every hour between 0200 and 0600. Results of checks are to be logged.” However, neither the camp directors, the Tactical Officer, nor the CCQ visited ReVille's room after taps, despite the frequency of campers coming to ReVille's room at night. (*ReVille Affidavit*, Sept. 20, 2013).

CAMPER DOE'S 2007 DISCLOSURE TO THE CITADEL

*4 On April 23, 2007, Camper Doe's father called President Rosa in his office at the Citadel, because the father had just learned that his son had been sexually abused by an adult male counselor at the Citadel camp. (*Affidavit of Father Doe*, May 24, 2013, p. 1). The father had two priorities—taking care of his son and making sure that the counselor, Skip, did not abuse any other children—and he, his wife, and the victim decided “the most effective way to stop or prevent future abuse was to report [their] son's abuse to Lt. Gen. John W. Rosa.” (*Id.*). President Rosa gave the complaint to the Citadel's General Counsel, Mark Brandenburg, who returned the father's call. (*Brandenburg Deposition*, June 2013, p. 50, 104-105). The father asked Mr. Brandenburg whether he was calling on behalf of President Rosa, because the family “did not want anything to fall through the cracks” and believed President Rosa would see the evil in the sex abuse and take appropriate care of the complaint. (*Affidavit of Father Doe*, p. 2 and *Camper Doe Deposition*, March 26, 2014, p. 226, 228). The father reported that his son had been sexually abused by camp counselor Skip while his son was a camper in the summer of 2002—that Skip showed pornography and masturbated with his son, showered with the campers, and had done this to another named camper. (*Brandenburg Deposition*, p. 109).

On that same day, Mr. Brandenburg had a telephone conversation with Camper Doe, where Camper Doe told him the counselor who abused him was Skip; that Skip had campers watch pornography and masturbate and Skip would join in; that Skip did this

with other campers for more than one year; and other counselors were never involved. (*Brandenburg Deposition*, p. 75, 107, 111-112). On April 23, 2007, The Citadel had the name of a Citadel employee accused of child sexual abuse and the names of multiple victims. (*Brandenburg Deposition*, p. 112).

On April 24, 2007, Mr. Brandenburg called ReVille at the Citadel's writing center where he was working and asked ReVille to come meet him in Bond Hall. (*ReVille Affidavit*, May 21, 2013). Col. Trez, Executive Assistant to President Rosa, attended this meeting with Mr. Brandenburg, and rather than take any immediate and effective corrective action, they told ReVille of the child sexual abuse complaint and made it known that their main concern was to protect the Citadel. ReVille asked them what he needed to do, and "their reply was that, while they conduct their own investigation, I should lay low and stay off campus." (*Id.*). Mr. Brandenburg confirms that the meeting occurred on April 24, 2007; however, by June 2013, he states he cannot recall whether he told ReVille to "lay low" and to stay off campus. (*Brandenburg Deposition*, p. 98-99, 130-131). Defendant's expert agrees that allowing a sexual molester to leave campus means that he is a threat to minors wherever he goes off campus. (*Margolis Deposition*, Vol. I, p. 20:6-11).

Defendant's expert, Gary Margolis, opined to the foreseeability that a child sexual abuser will continue to abuse children where he works and spends his time:

Q. Do you agree with me, Dr. Margolis, that child sexual predators create risk of harm to children in their communities?

A. Yes, sir. I do.

Q. And why?

A. They pose a risk to the health and safety of children.

Q. If a child sexual predator is accused of abusing 11-to-15-year-old boys in the past, in your opinion, is it foreseeable that he will abuse 11-to-15-year-old boys near where he lives and works in the future?

A. Again, based on my law enforcement experience, not any psychological experience as such, I would agree with that, more likely than not, it would.

Q. Would you agree, based on your law enforcement experience and your academic background and education, that if you became aware in 2007 that a man has sexually abused children in 2002 and 2003 at a summer camp where he worked, would you agree that it would be foreseeable that any victims he was to have from 2004 through 2007 and 2007 through 2011 would occur where he worked and spent his time?

A. I would agree that it would predispose me to believe that he would be offending again and would have offended again.

Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?

*5 A. I would agree with you, yes.

Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?

A. I would agree that that's a reasonable assumption.

(*Margolis Deposition*, Vol. I, p. 18-20).

Defendant claims that it conducted an “investigation” into the 2007 complaint of child sexual abuse by ReVille and that there is no evidence of a cover up. However, the evidence establishes otherwise. During the time period at issue in the cover up, Jennifer Shiel worked within the President's Office, and more particularly as an assistant to General Counsel, Mark Brandenburg. Ms. Shiel testified as follows:

Q. And during the time period from when the report was made until the time that you left the Citadel, having lived through it, do you believe there was a conscious effort to cover up or conceal this report of sexual abuse?

Mr. Kovach: Objection.

A. Yes.

Q. And was President Rosa in charge ultimately of making sure that this report was concealed and covered up?

Mr. Kovach: Objection.

A. In my opinion, yes.

(*Jennifer Shiel Deposition*, January 21, 2014, p. 36:9-20).

Q. Having worked in the President's office during this time period, was there ever any doubt in your mind that President Rosa wanted this report of sexual abuse to be kept under wraps?

Mr. Kovach: Objection.

A. No. It was very clear that—the term that was used about it was “close hold.” I mean only people that needed to know about it were supposed to know about it. That was it.

(*Shiel Deposition*, p. 46:12-20).

Defendant's expert, Mr. Margolis, hired by the Citadel to presumably conduct an independent and thorough investigation into the Citadel and its employees' actions in regards to the 2007 ReVille complaint,¹ admits that another investigator looking at the facts presented could conclude that there was a cover up of ReVille's child sexual abuse, as well as admits that his investigation did not uncover any evidence that Defendant and others at the Citadel did not engage in a cover up:

Q. can you point me to any evidence that The Citadel did not engage in a cover-up to make sure that Skip ReVille's name appeared nowhere with regard to any allegations that Doe had made?

A. In terms of the civil defense sheets that were created?

Q. In terms of anything.

A. I cannot.

(*Margolis Deposition*, p. 109:7-13, 278:17-25, 279:2-3). Mr. Margolis did not interview Jennifer Shiel.

In order for Mr. Margolis's firm to have found a cover up, “[w]e would need to have found evidence that implied intent, intent to collusion, you know, intent to hide in some way, shape, or form was deliberate in that regard.” (*Margolis Deposition*, p. 109:17-20). Defendant's expert ignored the articulation of Defendant's intent to cover up the child sexual abuse memorialized by Defendant's General Counsel: “I am hopeful that by conducting an investigation on behalf of the school, no “formal” investigation—criminal or civil—will occur.” (*Brandenburg Email*, May 8, 2007). Yet, since 2011 when ReVille was arrested

and The Citadel had to acknowledge that it knew of ReVille's child sexual abuse in 2007, The Citadel continues to cover up what it specifically knew, under the guise of an expressed opinion by the President that if university officials conceal a report of sexual abuse- "it would be a huge lack of integrity and lack of character ... it would be unconscionable." (*Rosa Deposition*, January 2014, p. 187:7-16).

*6 Prior to ultimately hiring Margolis Healy Associates, the Citadel hired and fired two other investigative firms to investigate the Citadel's knowledge and actions taken as to the 2007 sex abuse complaint. One was Guideposts Solutions, who the Citadel terminated due to a conflict of interest, and the other was Manuel, Daniels, Burke International, LLC (MDBI), which is headquartered in Alexandria, Virginia and comprised of former agents of the Federal Bureau of Investigations. Anthony Daniels, who enjoyed a 27 year career in the FBI that included positions as the Assistant Director of the FBI Academy and Deputy Assistant Director of the Criminal Division at FBI Headquarters, runs MDBI. See www.mdbinternational.com/anthony_daniels.php. MDBI wanted to conduct an "extensive" investigation and made it apparent from the get go that it would not ignore evidence of concealment in its review of the Citadel's actions in 2007. (*Douglas Snyder Deposition*. October 18, 2013, p. 44-45) (*MDBI Preliminary Assessment of Issues- Issue Outline*, September 8, 2012). MDBI stated in an email:

If you look at the things the bishops promised to put in place, to include the accountability piece, you will see that both Penn State and The Citadel behaved in precisely the same fashion as the pre-Charter Catholic Church when allegations began to roll in. They did not aggressively investigate, they did not report to civil authorities, they made no attempt to reach out to victims...

(*MDBI Email*. August 17, 2012).

The Citadel was not forthright with MDBI, failing to disclose to MDBI that President Rosa had not only charged an Institutional Program Assessment Committee (IPAC) to evaluate all aspects of the Citadel's procedures and operations, define the most serious risks, and recommend corrective actions to eliminate these risks, but had recently received the final IPAC report. (*Letter from John Palms to Defendant*. August 23, 2012). This report concluded:

Based on the results of the study, the case of Skip ReVille is but one of too many instances in which the institution's realities are at odds with its ideals and values. The report further concludes that the continuation of the status quo in these areas of the college's operations poses serious risks to The Citadel.

(*IPAC Final Report*. September 7, 2012, p. 21). The IPAC found that "[t]he Citadel is at high immediate risk for inappropriate sexual behavior to occur between its representatives and minors. The risk is ongoing through the year." The Panel "see[s] a need for change in order to prevent harm coming to children who are involved with The Citadel, as well as to mitigate and minimize risk. ACTION IN THIS AREA SHOULD BE CONSIDERED TO BE A HIGH PRIORITY." (*IPAC Report, Appendix 6*. p. 70).

Yet, The Citadel withheld the existence of the IPAC and its report from MDBI. (*Email chain between Tony Daniels and Ann Franke*,² October 15, 2012). As MDBI member, John Harley, concluded "I don't think The Citadel has dealt with MDBI, or Ann forthrightly....The last thing they want is a truly clean, comprehensive and independent investigation that may make Citadel and its leaders look worse than they already look." (*Id.*). Thereafter, the Citadel terminated MDBI's services and engaged Margolis Healy and Associates.

Untrue that Information Not Shared With The Citadel's President

At issue are President Rosa's knowledge and actions taken, or not taken, in regards to the 2007 complaint of child sexual abuse by ReVille. (*Rosa's Press Release*). Despite currently acknowledging that all matters of sexual abuse should be handled the same, regardless of whether there is a civil lawsuit or criminal prosecution (*Rosa Deposition*. January 2014, p. 148), President Rosa previously ensured that the 2007 complaint was characterized as some sort of settlement case against the school rather than as the disclosure of unlawful child sexual abuse that it was. (*Rosa Deposition*. July 2013, p. 194).

*7 The General Counsel files did not indicate in any way the receipt of a child sexual abuse claim against ReVille. In October 2007, the General Counsel file list did not contain Camper Doe's sexual abuse claim against ReVille anywhere, despite listing other "possible litigation" files. (*File List and File System attached to Email from Jennifer Shiel* October 24, 2007). However, in 2010, Camper Doe's name appears on the File List annotated with code 113, signifying that it is litigation involving the Citadel, and with the description- "alleged sexual abuse at summer camp." (*File List attached to Email from Susan Danko*, June 15, 2010, p.1- camper's name redacted). Furthermore, instead of annotating that the complaint was against ReVille, the entry's keyword is "Arpaio". (Id.). The lack of including the camper's complaint in October 2007 but then including it three years later disguised as an Arpaio complaint is evidence of The Citadel's cover up of its knowledge of sex abuse by ReVille. If The Citadel had included the ReVille complaint in the General Counsel files for any year, the information would have been available to the South Carolina Budget and Control Board, notifying the board of potential liability that extended beyond the Arpaio sex abuse complaints.

The Citadel's expert witness agrees that it "raises questions and suspicions" that Mr. Margolis evidently overlooked in his review. (*Margolis Deposition*, p. 208-209). Mr. Margolis also agrees that a reasonable conclusion from Citadel administrators telling ReVille to lay low on April 24, 2007 and the suspicious annotation (and lack of annotation) of the ReVille complaint on the General Counsel file lists is that The Citadel was covering up the sex abuse report. (*Margolis Deposition*. 236-237). Plaintiff's experts agree. (*Mary Jo McGrath Expert Witness Report*. June 17, 2013; *Initial Expert's Report of James D. Ginger*. Ph.D.; and *McGrath Deposition*. February 3, 2014).

President Rosa knew of the April 2007 child sexual abuse complaint against Skip ReVille no later than graduation that year, May 6, 2007. (*Brandenburg Deposition*, p. 76:15-25, 212-213). Thereafter, on May 16, 2007, Mr. Brandenburg memorialized the information known by The Citadel at that time in a letter to the Insurance Reserve Fund, copying President Rosa, even though President Rosa already knew all of the information contained in the letter. (*May 16, 2007 letter*; and *Brandenburg Deposition*, p. 39:6-17). Defendant's expert Ann Franke notes that President Rosa knew all of the details of the General Counsel's investigation: "5/16/07- MB [Mark Brandenburg] wrote to IRF about potential claim, but no litigation hold in place. Jennifer cc'd Gen. Rosa, which perplexed MB, but he now appreciates it...because Gen'l already knew info." (*Franke Notes*, Bates Stamped 6702). Mr. Margolis's investigation likewise revealed that President Rosa knew what Mr. Brandenburg knew:

Q: And do you see down towards the last part of the page in your notes, again, it states: "If president stands up and fires attorney," question, "makes him a scapegoat." And then in bold letters, it says: "Should I go? I knew what he knew." Those notes indicate President Rosa's response to your question or your firm's question regarding the extent of his knowledge as compared with Mr. Brandenburg; isn't that correct?

A: I do recall him making that statement. I actually remember that quite clearly.

(*Margolis Deposition*. 195-196).

The May 16, 2007 letter specifies that The Citadel knew that the camper and another camper were "coerced into the counselor's room, where the counselor showed them pornographic movies and convinced them to masturbate;" "the counselor watched the movies and masturbated as well;" and "the counselor engaged in this activity frequently, though, and with many other campers." The Citadel also knew by May 1, 2007 that the other camper who was coerced to masturbate by ReVille along with Camper Doe currently was a cadet at the Citadel. (*Brandenburg Deposition*, p. 135-136 and *Brandenburg Email* May 1, 2007).

Jennifer Shiel has testified with personal knowledge of the April 23, 2007 phone call that, at the direction of President Rosa, from the beginning there was a concerted effort to keep the report of sex abuse within the President's office so that no other Citadel departments would know. (*Shiel Deposition*, p. 35-36). Ms. Shiel understood that President Rosa's and other administrators' priority was to protect The Citadel's interests in dealing with the sex abuse complaint and that President Rosa wanted the complaint kept "close hold" so that no one outside of the President's Office would know about it. (*Shiel Deposition*, p. 41; 46).

*8 Ms. Shiel further testified that President Rosa and Mr. Brandenburg socialized outside of work, but that at work, Mr. Brandenburg absolutely was deferential to President Rosa and nervous about pleasing him. (*Shiel Deposition*, p. 31). She testified it was not possible that President Rosa would have left his subordinates to inquire into the 2007 ReVille sex abuse without being updated and consulted, further supported by Mr. Margolis's notes that Defendant and Mr. Brandenburg talked three times a week. (*Shiel Deposition*, p. 30; and *MHA Interview Notes*. 0078). In addition, on January 30, 2006, President Rosa previously provided his guidance for the “planning, preparation, and conduct of the 2006 Citadel Summer Camp session,” showing his participation and leadership in such matters. (*Course of Action/Decision Brief*. 30 January 2006, Citadel 00278). In keeping with President Rosa's conduct of maintaining information close hold is his remark of “Amen” to Col. Trez's suggestion to keep another matter “off the net” in 2009. (*Rosa and Trez Email chain*, July 2009).

President Rosa and other Citadel employees kept the 2007 report of sexual abuse by ReVille “close hold” despite knowing that a child molester is a threat to the community at large:

Q: Is a child sexual predator an ongoing threat to the community at large?

A: It could—yes.

(*Col Trez deposition*, p. 54).

Q: ...Skip ReVille is on campus, the next day when he tries to find ReVille, he's on The Citadel Campus, wouldn't you agree that if that person who has been accused of being a pedophile is on The Citadel campus, that that's a current threat to not only The Citadel, but the public at large?

A: Possibly...

(*Rosa Deposition*. JULY 29, 2013, p. 168).

Untrue that ReVille's Record Revealed No Other Complaints

The Citadel has perpetuated that it looked into ReVille's record and no other complaints existed. (*Press Release*). However, Mr. Brandenburg's “investigation” unveiled information that ReVille had been fired from another school and had been caught in violation of a camp rule forbidding counselors to be alone in a room with a camper. Specifically, the day after the complaint came in, Mr. Brandenburg met with the former director of the camp, Jennifer Garrott, where she disclosed that ReVille had been asked to leave his prior job at Pinewood Prep and said this with a “knowing look,” which Mr. Brandenburg testified means, “she looked at me like, Oh goodness, could this be another Arpaio case? Which, of course, is exactly what we were worried about.” (*Brandenburg Deposition*, p. 114-115). Mr. Brandenburg had prior experience litigating child sexual abuse claims that had been filed against another former camp counselor and Citadel cadet, Michael Arpaio. (*Brandenburg Deposition*, p. 100). ReVille had worked at Pinewood Prep prior to his employment with the Citadel that started in August 2006. Any effort by the Citadel to screen ReVille prior to hiring him in 2006 would have revealed his termination from Pinewood Prep. (*MDBI Preliminary Assessment of Issues- Open Questions*. September 8, 20112). Apparently, no effort was made to check ReVille's employment history.

On April 24, 2007, Ms. Garrott also disclosed to Mr. Brandenburg that in the summer of 2003, she caught ReVille in his barracks room alone with a camper rubbing Icy Hot on the camper's leg, even though the camp had a policy forbidding counselors from being alone in a room with campers and making it a terminable offence. (*Garrott Deposition*, Aug 28, 2013, p. 56-57, 93). Ms. Garrott did not fire ReVille when she caught him in direct violation of the policy and has admitted that she should have. (*Garrott Deposition*, Vol. II, p. 55-56). Defendant's expert witness, Ann Franke, states that policies regarding the safety of children should be strictly enforced, absent some exigent circumstance for the policy violation, and serious consequences imposed for violations in order to rightly protect children. (*Franke Deposition*, March 17, 2014, p. 49:13 through P. 51:19). Ms. Franke opines that Ms. Garrott should have fired ReVille when he violated the policy against being alone with campers, because a sore muscle would not be the type of emergent situation that justifies departure from strict enforcement of the policy. (*Frank Deposition*, p. 50-51).

*9 Moreover, ReVille's file contained his counselor performance evaluation stating, "senior counselor material if learns to distance himself, works well with younger kids," and his counselor application where he listed his qualifications as "5' 11"; brown hair; brown eyes; athletic; can cook, recite poetry, dance; enjoys walks on the beach." (*Counselor Reviews*, p. 4; and *Summer Camp Application*). ReVille's record contained other complaints and red flags.

Untrue that ReVille No longer Affiliated With Citadel at Time of Complaint

The Citadel contends that ReVille was no longer affiliated with the school and had ended his employment on April 20, 2007. However, the evidence establishes otherwise. ReVille was working in The Citadel's writing lab on April 24, 2007 when Mr. Brandenburg tracked him down to meet with him, admitted to by Mr. Brandenburg. (*Brandenburg Deposition*, p. 131:10-12, 132:4-8). Furthermore, The Citadel's expert witness, Ann Franke documented in her investigation that on April 24, 2007, "Skip was employed by C[itadel] at that point w/o contact w/ kids." (*Franke Notes*, Bates No. 6698). ReVille had a Citadel email address at that time as well. (*Brandenburg Deposition*, p. 45). Additional evidence of ReVille's employment at the Citadel includes ReVille's statements in his application to the South Carolina Employment Security Commission, Unemployment Insurance Division, where he notes his "last day worked for the school was 04/30/07." (*ReVille Unemployment File*, dated 6/7/07, p. 19). A year later, in April 2008, ReVille applied for a job at Velocity Sports in Mount Pleasant, noting that his prior employment with the Citadel lasted from August 2006 to May 2007. (*Velocity Sports Application*, p. 2).

The Citadel also has a policy that clearly states: (1) that there are no time period restrictions regarding sexual misconduct investigations; (2) that individuals currently or formerly with the camp will be investigated; and (3) that ReVille was subject to The Citadel's Standards of Review. (*Summer Camp Official Camp Policies Regarding Sexual Misconduct Issues*). When confronted with the policy, President Rosa attempts to explain it away by citing the fact that the camp was closed in April 2007, as if this policy is an artifact of some sort. The Citadel Summer Camp closed in December 2006, only four months before the report of sexual abuse was made to The Citadel. President Rosa also knew that Citadel Public Safety had "complete police authority to apprehend and arrest anyone involved in illegal acts on campus." (*Message from President Rosa*).

The Citadel's Excuse that Conduct Occurred 5 Years Earlier and Involved No Touching is Inexcusable

In defense of The Citadel's actions, President Rosa offered that the child sexual abuse complaint was from five years prior. (*Press Release*). He now contends that this fact "was not significant to me." (*Rosa Deposition*, January 2014, p. 142:3-9). He also now agrees that the report from a nineteen year-old of abuse that occurred when he was fourteen years-old did not have any impact on whether the sexual abuse occurred or not. (*Rosa Deposition*, January 2014, p. 141:21-25). As stated, the Citadel's own policy places no time restriction on the investigation of sexual misconduct arising out of the camp and that the allegations, regardless of validity, will be turned over to the Public Safety Department. (*Official Camp Policies Regarding Sexual Misconduct Issues*).

*10 By July 1, 2007, The Citadel acknowledged that ReVille was a pedophile when its General Counsel interviewed Camper Doe in person about his complaint. (*Camper Doe Interview Transcript*, July 1, 2007, p. 114; and *Camper Doe Deposition*, p. 233). On August 8, 2007, The Citadel's General Counsel memorialized that he found Camper Doe's complaint of child sexual abuse by ReVille "believable." (*Brandenburg Email*, August 8, 2007). Contrary to The Citadel's expressed goal of preventing any formal civil or criminal investigation into the ReVille allegations³, Mr. Brandenburg led Camper Doe to believe that his transcribed interview meant that The Citadel would ensure that ReVille would not abuse any more children. (*Camper Doe Deposition*, p. 228-230).

Likewise, President Rosa defended The Citadel's actions by emphasizing that the April 2007 child sex abuse report did not involve touching. (*Press Release*). What the 2007 report of child sex abuse did reveal was a detailed account made by the camper on July 1, 2007, transcribed by a court reporter and explained to Mr. Brandenburg:

A. And he at that time pulled out his penis and started masturbating and asked us to join him, and I got up, said I was tired, went to the bed and just said I was going to fall asleep and—

Q. Okay.

A. -just go to sleep.

Q. This was in his room?

A. That's right.

Q. Okay.

A. He—he kind of got a little aggressive and was asking me to come back to the computer and join them—

Q. All right.

A. -which I ended up doing.

Q. Was [other camper] over there with him?

A. That's right.

Q. Okay. And had he joined?

A. That's right.

Q. Okay.

A. And I did it. Immediately after, I felt completely violated.

(*Camper Doe Interview Transcript*, p. 74) (*Brandenburg Deposition*, p. 217-218).

Camper Doe also relayed that ReVille did the same to “about 5 other” boys multiple times and acknowledged to Mr. Brandenburg that ReVille may have *touched* other boys at the camp. (*Camper Doe Interview Transcript*, p. 75, 89). On July 30, 2007, President Rosa was briefed on the July 1, 2007 interview. (*Brandenburg Deposition*, p. 79-80). The May 16, 2007 letter from Mr. Brandenburg to the IRF emphasized that the camper had been “coerced” by ReVille, but Mr. Brandenburg described the camper's complaint as not having any “substance” despite the detailed in-person interview. (*Brandenburg Deposition*, p. 220, 240:22).

President Rosa acknowledges that in 2007, he understood that an adult masturbating and ejaculating in front of children was a form of abuse, was a criminal act, and violated the Citadel's policies and procedures regarding sexual harassment. (*Rosa Deposition*. January 2014, p. 54:1-16). He also understood in 2007 that an adult forcing a child to masturbate was sexual abuse. (*Rosa Deposition*. Jan. 2014, 53:20-25). However, The Citadel's actual response to the disclosure of child sexual abuse at the Citadel was “to put this file back in the cabinet” in August 2007. (*Brandenburg Email*. August 8, 2007).

Untrue that Victim Did Not Want to Report to Law Enforcement

The Citadel has falsely perpetuated that Camper Doe did not want to report the sexual abuse by ReVille to law enforcement as an excuse for its failure to disclose the abuse. (*Press Release*). From the beginning, The Citadel falsely proclaimed that the

camper and his family did not want to go to the police with the complaint, even reiterating this falsity to the Citadel's expert, Ann Franke, during her investigation. (*Shiel Deposition*, p. 52); (*Franke Deposition*, p. 104:18 through p. 108:21). However, nowhere in the 157 page transcript of the July 1, 2007 interview with the camper do the camper or his parents state that they do not want to report the crime to the police. (*Camper Doe Interview Transcript*). In actuality, when asked whether he has reported the complaint to law enforcement, Camper Doe replied, "Well, I mean, I've talked to you," and emphasized "[m]ost of all, the thing I want the most is just to make sure that Skip doesn't have a chance to do this to anyone else." (*Camper Interview Transcript*, p. 109-110) (*Affidavit Father Doe*, May 24, 2013). Camper Doe testified, "I would have absolutely reported it to police had I known that the Citadel didn't." (*Camper Doe Deposition*, p. 241).

*11 President Rosa, when asked "did you ever make a determination whether or not law enforcement should be called," responded "No. It was not really discussed." (*Rosa Deposition*, January 2014, p. 93). Ms. Shiel testified that she never heard considerations of going to law enforcement mentioned in her presence. (*Shiel Deposition*, p. 48- 49). Furthermore, after July 1, 2007, The Citadel did nothing else in regards to the camper's sexual abuse allegations except put the file away. (*Brandenburg Deposition*, p. 183 and *Brandenburg Email* August 8, 2007). President Rosa did not discuss turning the complaint over to law enforcement, because he did not want law enforcement involved period.

Excuse of No Mandatory Reporting Requirement Inexcusable

Despite The Citadel's own policies and procedures requiring disclosure of the complaint to Public Safety, discussed in detail hereinafter, The Citadel propounds that it was under no mandatory requirement to report the 2007 report of child sexual abuse. (*Press Release*). However, regardless of whether The Citadel and its administrators by definition were mandatory reporters under [S.C. Code § 63-7-310\(A\)](#), police and law enforcement unequivocally are mandatory reporters. Therefore, if The Citadel had reported the sexual abuse to any law enforcement, including the Citadel's Public Safety, those individuals in law enforcement would have been required by state law to report and would have been subject to criminal prosecution for the failure to do so. *See S.C. Code § 63-7-410*. The evidence leads to the reasonable inference that The Citadel deliberately chose not to turn over to law enforcement in order to prevent inevitable disclosure by law enforcement of child sex abuse by a Citadel employee on the Citadel campus.

The Citadel also failed to include the April 2007 complaint of child sexual abuse in The Citadel's report of crime statistics for the 2007 timeframe, pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, [20 U.S.C. § 1092 \(f\)](#). The General Counsel's own documents show that he was responsible for The Citadel's reporting obligations under the Clery Act and, accordingly, knew, or should have known, the law. (*Email from Jennifer Shiel*, October 24, 2007, including list of Mr. Brandenburg's files to include Clery Act Report-2007, p. 11). The regulations implementing the Clery Act require an annual security report that contains crime statistics "for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property" of a list of crimes "that are reported to local police agencies or to a campus security authority." [34 C.F.R. § 668.46](#). Sex offenses, forcible and non-forcible are included. *Id* Also, [34 C.F.R. § 668.46\(c\)\(2\)](#) requires that "an institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to campus security" - rather than the year the crime occurred.

However, The Citadel did not include the child sex abuse complaint in the 2007 report. Nor did it report the 2007 child sex abuse complaint to any law enforcement entity, thereby also preventing the trigger of any duty to report pursuant to the Clery Act. However, Mr. Brandenburg has since opined that the school would get fined for the omission by the Department of Education. (*Brandenburg Deposition*, p. 387-388).

Information Withheld from Board of Visitors

President Rosa further attempts to excuse The Citadel's actions by contending that the Board of Visitors did not have all of the relevant information regarding the 2007 sex abuse complaint. (*Press Release*). The only reason the Board did not have all of

the information was because President Rosa directed that the complaint be kept close hold and covered up. Specifically, Mr. Brandenburg, made two presentations to the Board of Visitors on the ReVille sexual abuse allegations, one in June and one in September 2007, where he concealed the details to the Board to such an extent that the Board members did not even understand that Mr. Brandenburg was briefing them on a child sexual abuse claim. (*Deposition of Leonard Fulghum, Jr.*, November 20, 2013, p. 62; *Deposition of Glenn Addison*, July 26, 2013, p. 29; 34). President Rosa attended these Board of Visitor meetings and sat idly by while Mr. Brandenburg failed to inform the Board of the details of the child sex abuse, acquiescing in Mr. Brandenburg's concealment of the true allegations. (*Addison Deposition*, p. 34-35; *Fulghum Deposition*, p. 19).

*12 The Margolis Healy Report concludes that the Board of Visitors “assumed, based on what they were told, that it was an insurance defense and civil claim matter, and believed from what they were told that this was the case of a father displeased with his son's unsuccessful application for admission to the College.” (*Investigation Into The Citadel's Handling of Allegations Involving Louis N. “Skip” ReVille Findings*, p. 45). The Board of Visitor's uniform recollection that the complaint was not a sex based complaint contrasts with Mr. Brandenburg's testimony that he “gave them [Board] all that information.” (*Brandenburg Deposition*, p. 303-304).

The Citadel's intentional actions to cover up the sex abuse created the risk that ReVille would continue to sexually abuse boys in the Charleston area, Plaintiff included. The Citadel's own expert testified to the foreseeable consequence of ReVille continuing to sexually abuse boys in the Charleston area;

Q. So it's pretty clear to you that Mr. ReVille had a propensity to abuse victims within a discrete class within our society; is that right?

A. Yes. I believe they're called preferential child molesters or preferential molesters.

(*Margolis Deposition*, p. 188).

DISCUSSION

I. Summary Judgment Not Appropriate as Evidence Supports That The Citadel Failed To Exercise Due Care That A Person Of Ordinary Prudence And Reason Would Have Under The Same Circumstances By Intentionally Concealing The 2007 Report Of Child Sexual Abuse.

To establish a claim of negligence, a plaintiff must show: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; (3) damage actually and proximately resulting from that breach; and (4) injury or damages suffered by Plaintiff. *See, e.g., Madison ex rel Bryant*. 638 S.E.2d at 660; *Steinke v. S.C. Dep't of Labor: Licensing and Regulation*, 520 S.E.2d 142, 149 (S.C. 1999); and *Rayfield v. S.C. Dep't of Corrections*. 374 S.E.2d 910, 913 (S.C. Ct. App. 1988).

“[R]ecklessness or willfulness may be inferred from conduct so grossly negligent that a person of ordinary reason and prudence would then have been conscious of the probability of resulting injury.” *Yaun v. Baldridge*. 134 S.E.2d 248, 251 (1964). “[R]ecklessness implies the doing of a negligent act knowingly... [or] the conscious failure to exercise due care.” *Id.* (quoting *State v. Rachels*. 61 S.E.2d 249, 252 (1950)). “Due care” is defined as “that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances.” *Berberich v. Jack*. 709 S.E.2d 607, 612 (2011) (quoting *Hart v. Doe*. 261 S.C. 116, 122, 198 S.E.2d 526, 529 (1973)).

The evidence establishes that The Citadel consciously failed to exercise due care when it received the report of child sexual abuse in 2007. Instead of exercising due care, The Citadel intentionally concealed its knowledge of ReVille's abuse, as well as assisted ReVille in remaining in the community undetected and able to continue molesting children. A person of ordinary reason and prudence would have known that the intentional concealment of a child molester leads to the reasonable foreseeability that children will continue to be sexually abused. Defendant's own expert, Mr. Margolis, testified that he is not aware of any

child sexual predator who stopped molesting children without being arrested or dying, and he is not aware of any peer-review studies that suggest a child molester will stop or decrease acts of molestation before being caught. (*Gary Margolis Deposition*, February 2014, p. 14:13-p. 15:4).

***13** As such, The Citadel's intentional and reckless conduct, or gross negligence, may be inferred from the facts established in this case that show that The Citadel failed to exercise due care that a person of ordinary prudence and reason would have in light of the probability of further child sexual abuse by ReVille. See *Yaun*, 134 S.E.2d at 251.

A. The Citadel's Own Policies And Procedures Establish That It Violated The Standard Of Care Owed.

The existence of a duty is not to be confused with the standards of care establishing the extent and nature of the duty in a particular case. See *Madison ex rel Bryant*, 638 S.E.2d at 656. The standards of care are grounded in common law, statutes, regulations, or a defendant's own policies and guidelines, which allow a fact finder to judge whether a duty was breached or not. *Id.* “The precise extent and nature of that duty, which is grounded in relevant standards of care, and whether the duty was breached must be determined by a jury.” *Id.*, 638 S.E.2d at 659.

To establish liability, it is sufficient to establish that a defendant “should have foreseen his negligence would probably cause injury to someone,” and “[h]e may be held liable for anything which appears to have been a natural and probable consequence of his negligence.” *Greenville Memorial Auditorium*, 391 S.E.2d at 548 (citing *Childers v. Gas Lines, Inc.*, 149 S.E.2d 761 (S.C. 1966)). Stated another way: “[f]oreseeability is determined by looking to the natural and probable consequences of the complained of act, although it is not necessary to prove that a particular event or injury was foreseeable.” *Madison ex rel Bryant*, 638 S.E.2d at 662 (internal citations omitted). In addition, “the plaintiff must prove the defendant's negligence was at least one of the proximate causes of the injury.” *Id.* (citing *Hughes v. Children's Clinic, P.A.*, 237 S.E.2d 753, 757 (S.C. 1977)). Proximate causation usually is one of fact for the jury, which may be resolved by either direct or circumstantial evidence. *Id.* (citing *Childers*, 149 S.E.2d at 765; *McNair v. Rainsford*, 499 S.E.2d 488, 497 (S.C. Ct. App. 1998)).

When The Citadel received the 2007 report of child sexual abuse, it failed to follow its own policies and procedures. The Citadel's deviation from its own policies and procedures demonstrates its lack of due care under the relevant circumstances. See *Peterson v. National Railroad Passenger Corporation, CSX, and Southco Sweeping and Maintenance, Co.*, 618 S.E.2d 903, 906 (S.C. 2005) (holding company's deviation from internal maintenance policies admissible to show breach of duty owed).

“In negligence cases, internal policies or self-imposed rules are often admissible as relevant on the issue of failure to exercise due care.” *Caldwell v. K-Mart Corp.*, 410 S.E.2d 21, 24 (S.C. Ct. App. 1992) (citing *Eastern Brick and Tile Co. V. U.S.*, 281 F. Supp. 216 (D.S.C. 1986)); see also *Madison ex rel Bryant*, 638 S.E.2d at 659 (citing with favor the following in holding that a defendant's own policies establish standards of care: *Elledge v. Richland/Lexington School Dist. Five*, 573 S.E.2d 789, 793 (S.C. 2002) (holding evidence of industry safety standards relevant to establishing standard of care in negligence case); *Tidwell v. Columbia Ry., Gas & Elec. Co.*, 95 S.E. 109 (S.C. 1918) (holding relevant rules of defendant admissible in personal injury suit regardless of whether rules were intended for employee guidance, public safety, or both because violation of rules may constitute breach of duty of care and proximate cause of injury); *Restatement (Second) of Torts § 285 (1965)* (standards of conduct of reasonable man may be established by statute, regulation, court's interpretation of statute or regulation, judicial decision, or as determined by trial judge or jury under facts of case)).

***14** The Citadel's own policies created the standard of care upon which to judge its actions of concealing the report of child sexual abuse in 2007. First, if The Citadel had conducted an investigation and not a deliberate concealment of the 2007 sex abuse report, it would have taken action in accordance, rather than in contradiction of, its own policies and procedures and federal law. The school's “Serious Incidents, Memorandum No. 39,” dated April 2000, directed that “[s]erious incidents are unexpected occurrences directly or indirectly involving The Citadel, which require a response or action from the college administration; or which have the potential to generate positive or negative publicity regarding the college.” (*Serious Incidents Memo*, p. 1). Among the non-exclusive list of examples of serious incidents is “criminal activity.” (*Id.*). The policy directs that when criminal

activity involving someone affiliated with the Citadel as a suspect or victim occurs, the “first member of the Citadel community learning of the occurrence” **will report it to the Public Safety Department.** (*Id.*, p. 9-10) (emphasis added).

The Citadel's General Counsel has testified that if the Serious Incident Policy was in effect—and evidence establishes it was—it applied to him. (*Brandenburg Deposition*, p. 261:5-11). He also agrees that the Serious Incident Policy required the executive assistant, Col. Trez, to be notified of the 2007 report of child sexual abuse and that Col. Trez actually did have knowledge of the 2007 report. Mr. Brandenburg also stated that the policy required the President to be notified, which also occurred. (*Brandenburg Deposition*, p. 263). Furthermore, Mr. Brandenburg acknowledges that per the policy, Col. Trez was to report allegations of illegal or immoral activities to the Department of Public safety. (*Brandenburg Deposition*, p. 264:5-17). No report to the Department of Public Safety was ever made.

The Citadel also ignored its policy that no time limit exists to investigating sexual misconduct issues that arise out of the camp and that “[r]egardless of validity of the violation, any sexually inappropriate conduct reports concerning any camper or employee of the camp **will be turned over to the Citadel Public Safety Department** and a thorough investigation will be conducted.” (*Summer Camp Official Camp Policies Regarding Sexual Misconduct Issues*) (emphasis added). Moreover, President Rosa's public proclamation for the Citadel community to report immediately “any criminal offense, suspected criminal activity, or other emergency directly **to Citadel Public Safety,**” was completely ignored. (*A Message from the President*, p. 1) (emphasis added).

The Citadel's actions in telling ReVille to lay low and to leave Citadel employment with no record of the sex abuse report also were in direct violation of the school's policy that provided specific consequences in the event an employee is accused of sexual misconduct. (*Employee Misconduct Policy*). The consequences included not expunging molestation findings from the employee's record; not terminating any investigation in exchange for resignation by the employee; providing factual and candid responses to inquiries by potential employers; and fully cooperating with law enforcement. (*Id.*). The Citadel failed to impose any of these consequences.

Additionally in 2007, *Memorandum Number 4*, *Memorandum Number 51*, and *General Procedures for Conducting Formal Investigations of Sexual Harassment Complaints* governed The Citadel's actions in regards to the complaint of ReVille's sexual abuse. In accordance with the Citadel's own policies, it specifically should have reported the sex abuse complaint to the Citadel's Title IX Coordinator. (*Memorandum Number 51*, p. 13). The sexual assault policy also provides that “**The Citadel will punish any individual who is found to have committed a sexual assault,**” and Mr. Brandenburg admits that the 2007 complaint against ReVille constituted a sexual assault. (*Brandenburg Deposition*, p. 265-266). Mr. Brandenburg does not recall ever considering contacting The Citadel's sexual response coordinator. (*Brandenburg Deposition*, p. 267:5-8).

***15** In sum, The Citadel failed to abide by the standard of care it itself created by its own policies. Despite the clear policies and protocols available when the camper made The Citadel aware of ReVille's sexual abuse, The Citadel ensured that none were followed and that the child sexual abuse instead was covered up. By its very own policies, The Citadel failed to exercise due care.

B. Professional Standards for College And University Administrators Establish That The Citadel Violated The Standard Of Care Owed.

Furthermore, professional standards for college and university administrators establish that The Citadel did not exercise due care in its response to the report of child sexual abuse. See *Elledge v. Richland/Lexington School Dist. Five*, 638 S.E.2d at 792-794 (holding evidence of industry standards related to playground equipment relevant and admissible to establish duty owed by school district in negligence claim for student's injury on playground equipment). In that regard, the “Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to Child Sexual Abuse Committed by Gerald A. Sandusky” (2012), <http://www.thefreehreportonpsu.com> [hereinafter *Freeh Report*] is instructive to this case. As shown by the facts, The Citadel's actions taken in response to the 2007 ReVille child sexual abuse complaint mirror the “total

and consistent disregard by the most senior leaders at Penn State for the safety and welfare of Sandusky's child victims.” (*Freeh Report*, p. 14).

The Citadel concealed ReVille's sexual abuse, thereby allowing and supporting a child sexual predator to continue harming children just as the leaders of Penn State did. The Citadel's administrators, to include President Rosa, have admitted to understanding that a sexual predator has the potential for further assaulting additional victims. (*Rosa Deposition*, Jan. 2014, p. 19:9-22). Like the Penn State leaders who concealed the details of sex abuse from the Board of Trustees, President Rosa concealed the details of ReVille's child sexual abuse from the Board of Visitors. Furthermore, like President Spanier, President Rosa discouraged discussion and dissent and specifically directed concealment of the 2007 complaint. (*Freeh Report*, p. 16). Like the Penn State leaders who allowed a pedophile to retire, “not as a suspected child predator, but as a valued member of the Penn State Football legacy, with future visibility at Penn State,” The Citadel allowed ReVille to leave Citadel employment, not marked as a child predator, but rather with an unblemished record that allowed him continued employment with children in the Charleston area. (*Freeh Report*, p. 17).

ReVille had future visibility at The Citadel, returning to campus numerous times to speak to the Honor Committee, to incoming freshman, and in 2010 at the unveiling of the remodeled Honor Court. (*ReVille Affidavit*, May 21, 2013, p. 3). ReVille's ties to the Citadel included applying to be a foster parent with a photograph of himself wearing his Citadel jacket and noting his experience with children as a camp counselor. (*ReVille Foster Home Application*). The Citadel's leaders' concealment of the sexual abuse by ReVille from law enforcement, the Board of Visitors, the Citadel community, and the public at large also allowed the President and The Citadel to avoid negative publicity, very much the same as the *Freeh Report* concluded of Penn State leaders:

*16 it is more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at the University...repeatedly concealed critical facts relating to Sandusky's child abuse from authorities, the University's Board of Trustees, the Penn State Community, and the public at large...

(*Freeh Report*, p. 16).

In contrast, in investigating The Citadel's actions taken in regards to the 2007 report, Margolis Healy & Associates determined that seven factors excused The Citadel's failure to disclose the complaint of child sex abuse. (*Investigation Into The Citadel's Handling of Allegations Involving Louis N. “Skip” ReVille Findings*, p. 40). However, the evidence in this case renders the excuses inexcusable. First, the Citadel had numerous policies and protocols available that advised The Citadel leaders to report the sex abuse complaint to law enforcement; however, President Rosa ensured that none were followed and that the complaint was instead kept “close hold” in the President's Office. Second, The Citadel leaders, to include President Rosa, sufficiently understood their responsibilities for reporting pursuant to the Clery Act, had knowledge of Title IX, had hired a Title IX coordinator, and had personal experience dealing with the Arpaio litigation.

Third, if anything, when the April 2007 complaint of child sexual abuse came into the President's Office, “key individuals” had a wealth of prior experience dealing with sexual abuse that highlights the inexcusable manner in which the complaint was handled and, also, establishes the intentional manner in which it was handled. The Citadel's leaders brought significant experience and understanding of the machinations of child sex abuse to the table. Moreover, President Rosa had led the Air Force Academy in a reform of a culture permeated with sexual assault and harassment, bringing to the table himself a high level of understanding of such criminal activity. (*Rosa Deposition*, Jan. 2014, p. 9-10; 12).

Fourth, it is inconceivable how The Citadel leaders could have held the opinion that ReVille could not possibly have sexually abused children due to ReVille's superior accomplishments at the Citadel. All knew that apparent upstanding individuals can be sexual predators, directly evidenced in former counselor and cadet Arpaio. (*Trez Deposition*, June 10, 2013, p. 106-107 and *Lackey Deposition*, April 10, 2013, p. 65:23-25 to 66:1-16). Mr. Brandenburg even told ReVille, when he confronted him with the 2007 report of abuse, “we thought we knew Arpaio.” (*Brandenburg Deposition*, p. 98:20-25).

Fifth, Citadel policies and protocol made clear that all sexual misconduct allegations originating out of the camp were to be investigated by the Public Safety Department. The camper interview made clear that the victim most of all wanted to ensure that ReVille did not abuse any more children and that he came to the Citadel with the complaint so that The Citadel could take action. The current age of the camper made no difference, and the fact that the camp was closed did not negate that ReVille was a former Citadel counselor and the camper a participant in the camp and the sexual abuse had occurred in the Citadel barracks. The context of the allegation in 2007 provides no excuse for The Citadel's intentional cover up.

*17 Furthermore, the Margolis Healy investigation failed to include interviews of the former camper or his father who came forward in 2007 to The Citadel. (*Margolis Deposition*, p. 128:7-10). Mr. Margolis admits that it takes hearing from both sides “to gather the facts necessary to make a decision.” (*Id.*, p. 128-129). Nonetheless, Margolis Healy issued its conclusions despite omitting pertinent and relevant individuals from the investigation. Its investigation and conclusions do not excuse The Citadel's conduct or relieve it from liability for failing to exercise due care.

***C. The Citadel Also Owed Plaintiff A Common Law Duty To Control
The Conduct of Another And Doe v. Marion Does Not Control.***

Defendant incorrectly propounds that *Doe v. Marion*, 645 S.E.2d 245 (S.C. 2007) is the controlling law in this case, where the Supreme Court held specifically that the child reporting statute did not create a private cause of action against an individual for *negligence per se* for the failure to report child abuse and that a doctor who treated a pedophile patient had no duty to warn future victims of the patient's predilection for child sexual abuse. The Citadel's argument ignores that (1) Plaintiff does not contend that The Citadel owed him a duty created under the child reporting statute and (2) that *Doe v. Marion* did not overturn the long established law in South Carolina that provides exceptions to the rule that there is no general common law duty to control the conduct of another or to warn a third person or potential victim of danger. *Doe v. Marion*, 645 S.E.2d at 249 (citing with favor the recognized exceptions set forth in *Faile v. S.C. Dept. of Juvenile Justice*, 566 S.E.2d 536, 546 (S.C. 2002)). None of the exceptions applied in *Doe v. Marion*; however, they do in this case.

Specifically, South Carolina recognizes the following five circumstances where the duty to control the conduct of another or to warn a potential victim of danger exists: (1) where the defendant has a special relationship with the victim; (2) where the defendant has a special relationship with the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; or (5) where a statute imposes a duty on the defendant. *Madison ex rel Bryant*, 638 S.E.2d at 656; *Faile*, 566 S.E.2d at 546. The Citadel owed a common law duty to Plaintiff because it negligently or intentionally created the risk of ReVille's sexual abuse of Plaintiff; because federal statute imposed a duty on The Citadel not to conceal the sexual abuse; because it had a special relationship with ReVille; and because it voluntarily undertook the duty to investigate the 2007 report of child sexual abuse and report to law enforcement.

1. The Citadel Negligently or Intentionally Created the Risk of Sexual Abuse of Plaintiff.

The fact that ReVille, as a third party, sexually abused Plaintiff does not affect the common law duty The Citadel owed to Plaintiff to not negligently or intentionally create the risk that ReVille would sexually abuse Plaintiff. See *Madison ex rel Bryant*, 638 S.E.2d at 660 (holding facts that independent contractor directly provided services to plaintiff or that third party committed criminal act against plaintiff did not affect the government's common law duty to plaintiff to exercise reasonable care in supervising and providing appropriate care to plaintiff).

In *Greenville Memorial Auditorium v. Martin*, 391 S.E.2d 546, 547 (S.C. 1990), the plaintiff claimed that the public auditorium was negligent in adequately securing and maintaining the premises during a concert where the plaintiff was injured by a bottle thrown by an unknown person from the balcony down onto him. The Supreme Court held that the exception to the waiver of immunity for a loss resulting from the act or omission of a person other than an employee did not apply, because Martin did not allege the auditorium was liable because of the third party's actions. *Id.*; S.C. Code § 15-78-60(20). Rather, Martin's complaint

was that the auditorium was liable *for its own negligence* in creating a reasonably foreseeable risk of such third party conduct, and the Supreme Court upheld the jury verdict for the plaintiff.

*18 [The auditorium] cannot successfully defend that [plaintiffs'] injuries were caused by the wrongful criminal act of a third party, where the very basis upon which [the auditorium] is claimed to be negligent is that [it] created a reasonably foreseeable risk of such third party conduct.

Id. at 547-548; see also *Woodell v. Marion School District One*, 414 S.E.2d 794 (S.C. Ct. App. 1992) (holding school district may be liable for gross negligence in supervising plaintiff and another student where another student assaulted plaintiff; district's liability is not because of the conduct of the other student).

Likewise, The Citadel is liable for its own negligence in creating a reasonably foreseeable risk of ReVille sexually abusing Plaintiff. Specifically, The Citadel's deliberate concealment of its knowledge of ReVille as a child sexual abuser, which included directing ReVille to "lay low" and leave The Citadel with no record of the 2007 complaint and included the violation of its very own policies, created the reasonably foreseeable risk that ReVille would continue to sexually abuse boys. The evidence establishes that Citadel leaders, to include President Rosa, had a wealth of experience dealing with sexual harassment and abuse and knew that sexual predators continue to abuse. The Citadel's own expert confirms that ReVille had a propensity to abuse victims within a discrete class of society, calling him a preferential child molester, and opined to the reasonable foreseeability that ReVille would continue molesting boys once he left Citadel campus. (*Margolis Deposition*, p. 19-20; 188). Thus, The Citadel's own negligence allowed ReVille to stay in the Charleston community as a decorated Citadel alumnus and former employee and gain continued employment with children.

Furthermore, The Citadel could have stopped ReVille from further abusing children as far back as 2001, and had it done so, Plaintiff never would have been abused. The Citadel's conduct dating back to 2001 created the reasonably foreseeable risk of Plaintiff's abuse by ReVille, and The Citadel is liable for its own conduct of negligently and intentionally concealing a known child sexual predator. See *Madison ex rel Bryant*, 638 S.E.2d at 656; *Faile*, 566 S.E.2d at 546.

2. Title IX Imposed A Duty On The Citadel To Not Conceal The 2007 Report of Abuse.

In South Carolina, the test for determining when a statute creates a duty of care and supports an action for negligence is (1) whether the statute's essential purpose is to protect from the kind of harm the plaintiff has suffered and (2) whether the plaintiff is a member of the class of persons the statute is intended to protect. *Rayfield*, 374 S.E.2d at 914 (deriving test from comparison of *Clifford v. Southern Railway*, 69 S.E. 513 (S.C. 1910) and *Hutto v. Southern Railway*, 84 S.E. 719 (S.C. 1915)). Accordingly, a statute may create a duty of care, which the violation of constitutes breach in a negligence action, and thereby establishes negligence per se. *Rayfield*, 374 S.E.2d at 915.

The Citadel's conduct in response to the 2007 report of child sexual abuse by ReVille violated Title IX of the Education Amendments of 1972 [Title IX], codified at 20 U.S.C. §§ 1681 et seq. and Title 34 Code of Federal Regulations Part 106. The essential purpose of Title IX is to eliminate, with certain exceptions, discrimination on the basis of sex in any education program or activity⁴ receiving Federal financial assistance. 20 U.S.C. § 1681; 34 C.F.R. § 106.1. Title IX bestows a remedial and affirmative action requirement on institutes of undergraduate higher education to take such remedial action as necessary to overcome the effects of such discrimination. 34 C.F.R. § 106.3(a). Therefore, Title IX's essential purpose to eliminate sex discrimination by definition seeks to protect other individuals from the possibility of sex discrimination. For eliminating known sexual discrimination, whether it be in the form of harassment or abuse, prevents the future sexual harassment of other individuals. Accordingly, Plaintiff is a member of the class of persons Title IX is intended to protect.

*19 As far back as 2000, the Office of Civil Rights [OCR] provided guidance to schools on their obligations under Title IX in regards to complaints of sexual discrimination and harassment. (*Ex. 41 to Rosa Deposition*. "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties") (see also "Dear Colleague Letter," April 4, 2011, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>). OCR highlighted that the United States

Supreme Court in *Gebser v. Lago Vista Indep. School Dist.* 524 U.S. 274 (1998), expressly affirmed that the school must take remedial action to remedy the effects of the harassment on the victim. (*Ex. 41 to Rosa Deposition*, p. 66095). Schools must “disseminate a policy against sex discrimination” and “adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment.” (*Id.*).

The Citadel's own expert, Mr. Margolis, also put forth a presentation highlighting the requirements of Title IX, to include the definition of sexual harassment:

Sexual violence is a form of sexual harassment prohibited by Title IX.

- Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol
- An individual also may be unable to give consent due to an intellectual or other disability
- May include rape, sexual assault, sexual battery, and sexual coercion.

(*Notebook 3 to Margolis Deposition*. Margolis Healy PowerPoint, p. 7).

In 2007, The Citadel disseminated policies against sex discrimination and harassment that governed its actions in regards to the complaint of ReVile's sexual abuse. (*Memorandum Number 4*, *Memorandum Number 51*, and *General Procedures for Conducting Formal Investigations of Sexual Harassment Complaints*). Title IX requires schools to designate at least one employee to coordinate compliance with the regulations implementing Title IX. (*Ex 41 to Rosa Deposition*, p. 66100). Despite President Rosa himself bringing in Janet Shealy as the Citadel's Sexual Assault Response Coordinator, neither he nor any other Citadel administrator referred the ReVile sexual abuse claims to her, per the explanation that she was there “to handle current cases.” (*Rosa Deposition*. July 29, 2013, p. 29, 83).

Title IX also requires that if the school knows, or even reasonably should know, of sexual harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. (*Ex. 41 Rosa Deposition*, p. 66101). Even if the school does not learn of the sexual harassment from the victim but from some other source, the school violates Title IX if it fails to take “immediate and effective corrective action.” (*Ex. 41 Rosa Deposition*, p. 66102). Defendant's expert stresses the requirement applies whether the complaint comes from the victim, a parent, or a third party. (*Notebook 3 to Margolis Deposition*. Margolis Healy PowerPoint, p. 12). The OCR also highlights, “if harassment has occurred, doing nothing is always the wrong response.” (*Ex. 41 to Rosa Deposition*, p. 66098).

The Citadel's attempt to shift blame to the 19 year-old former camper is troubling considering that it comes from a three Star General and President of the Military College of South Carolina. Title IX makes clear:

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigation are different, police investigations or reports may not be determinative of whether harassment has occurred under Title IX and DO NOT relieve the school of ITS DUTY to respond promptly.

***20** (*Ex 41 Rosa Deposition*. January 2014, page 66106) (emphasis added). In addition, The Citadel's attempt to victim blame is baseless considering that Title IX required The Citadel to assist the victim, as emphasized by OCR—“school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy its effects on the victim.” (*Ex 41 Rosa Deposition*, page 66101 and *Margolis Healy PowerPoint*, p. 12).

The evidence supports that The Citadel did nothing to rehabilitate or assist Camper Doe, as is required by Federal law, and instead acted to conceal his complaint of sexual abuse. Such motives are self-serving, and as a former member of President Rosa's staff who lived through this ordeal testified:

Q. Looking back on the period of time when you were working within the President's office....do you believe that President Rosa was indifferent towards concerns that he should have been worried about; for example, other victims who may be abused?

Mr. Kovach: Objection.

A. Yeah, I do think he was indifferent to it.

(*Shiel Deposition*, p. 49-50).

The Citadel's failure to abide by the duty of care established by Title IX further is evident in its decision to give responsibility for investigating the 2007 complaint to the Citadel's General Counsel. Title IX specifically requires an impartial investigation, and The Citadel's own expert agrees and stipulates that college attorneys are not an impartial party to investigate such claims. (*Margolis Deposition*, p. 124-125 and *Margolis Healy PowerPoint*, p. 19). In addition, The Citadel allowed the South Carolina Insurance Reserve Fund to be part of the process of investigating the complaint of child sexual abuse by a Citadel employee. (*Brandenburg Deposition*, p. 169, 190- 191). The Citadel's decision directly violates OCR's caution against using insurance company investigations to guide the school's response to complaints of sexual abuse or harassment, because, as OCR explains, “[t]he purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different than those under Title IX.” (*Ex 41 Rosa Deposition*, p. 66106). President Rosa's direction to the General Counsel to “investigate” the child sexual abuse and allowance of the Insurance Reserve Fund to be part of the process directly contradict the duty of care owed under Title IX.

Defendant's expert, Mr. Margolis, testified to the violation of Title IX by Defendant's actions in regards to the 2007 complaint:

Q: when Doe made a third-party complaint as to eyewitness Doe and the six others who were abused the year before, The Citadel's duty under Title IX requiring it to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects applied to the many others, not just Doe, correct?

A: Correct.

(*Margolis Deposition*. Vol. I, 308:8-16).

Q: You would agree with me that the Title IX coordinator at The Citadel didn't oversee those allegations and the investigation of them by Mark Brandenburg, correct?

A: That is correct.

Q: That would be a violation of Title IX, correct?

A: It would be a violation of this, correct.

(*Margolis Deposition*. Vol. I, 309:11-20).

In light of the foregoing, The Citadel's actions in response to the 2007 report of child sex abuse violated the duty of care established by Title IX, and its breach of the duty constitutes negligence per se. See [Rayfield](#), 374 S.E.2d at 914-915.

3. Duty Established By The Citadel's Special Relationship With Injurer, ReVille.

*21 The common law duty to warn potential victims of an individual's dangerous conduct arises under the special relationship exception where, as here, the defendant “has the ability to monitor, supervise and control an individual's conduct,” and the defendant is aware of a specific threat of harm to potential victims by the individual. [Bishop v. S. C. Dept of Mental Health](#), 502

[S.E.2d 78, 81 \(S.C. 1998\)](#). A duty to warn does not require the threat to be made while under the control of or in the custody of the defendant; instead, all that is required is that the defendant was aware or should have been aware of the specific threat by the individual. [Id. at 82](#). At all times relevant herein, The Citadel was aware of a specific threat by ReVille and had the ability to monitor, supervise and control ReVille.

Turning first to the existence of a special relationship, a material fact at issue is whether The Citadel employed ReVille on April 23, 2007, when the report of sexual abuse by ReVille first came into the President's office. The evidence shows that ReVille was on campus working in the writing center the next day when Mr. Brandenburg contacted ReVille to alert him of the allegations, and the call turned into a face to face meeting between ReVille, Mr. Brandenburg, and Col. Trez in Bond Hall. ReVille has attested that The Citadel officials told him to “lay low and stay off campus” while they conducted their own investigation into the sexual abuse report. (*Brandenburg Deposition*. Vol. I, p. 98:20-99:4, 101:4-102:14; 130:24-131:12; *ReVille Affidavit*. May 21, 2013). ReVille had a Citadel email address at this time and stated on his application to the South Carolina Employment Security Commission, Unemployment Insurance Division, that his “last day worked for the school was 04/30/07.” ReVille's employment with The Citadel and his presence on the campus at the time of the 2007 report not only confirm that ReVille had unfettered access to campus but further demonstrate The Citadel's ability to “supervise, monitor and control” his conduct.

Moreover, ReVille continued to have access to the campus after May 2007 by returning to campus numerous times to speak to the Honor Committee, to incoming freshman, and in 2010 at the unveiling of the remodeled Honor Court. Given ReVille's demonstrated access to and affiliation with the institution, President Rosa and Colonel Trez further admit that ReVille had a “different relationship” with The Citadel than the ordinary graduate. (Trez Deposition, Vol. I, p. 81:2-82:6; Rosa Deposition, Vol. II, p. 230:10-14). Thus, while The Citadel contends ReVille was no longer affiliated with the college after April 20, 2007, the evidence suggests otherwise.

The imposition of a duty on The Citadel based upon a special relationship is consistent with South Carolina jurisprudence. In *Bishop*, the South Carolina Supreme Court, quoting *Tarasoff v. Regents of University of California*, 551 P.2d 334 (Cal. 1976), determined the Department of Mental Health had a special relationship with mother because the department had custody and control of mother. Thus, the court determined if the department knew or should have known a specific threat was made by mother, the department had a duty to warn the threatened third party of mother's release. Notably, the Court stated:

Although the Department's discharge summary stated mother related to the examiners she had no intention of hurting herself or her family and **mother did not make a specific threat of harm to her child while in the Department's custody**, the Department was **aware mother had made specific threats to harm victim in the past**. These threats were noted on the documents admitting mother into the custody of the Department. This knowledge was sufficient to trigger the Department's duty to warn victim of mother's release because a specific threat had been made by mother to harm a specific person.

***22** *Bishop*, 502 S.E.2d at 82 (emphasis added). Therefore, to trigger the duty to warn, the Court found it sufficient that the department had knowledge that mother had made specific threats in the past. In fact, the opinion notes that “mother did not make a specific threat of harm to her child while in the Department's custody.” *Id.* Consequently, the Court found the department breached its duty to warn of mother's release.

Likewise here, The Citadel demonstrated control over ReVille and awareness of specific acts of abuse by ReVille against multiple boys in the past. In fact, given the foreseeability of continued sexual abuse of children, as acknowledged by The Citadel's own witnesses and experts, the threat of harm was arguably even more apparent in the instant case. Here, as in *Bishop*. The Citadel's knowledge of the threat of harm posed by ReVille is sufficient to trigger The Citadel's duty to warn and/or report ReVille to law enforcement, which it breached. See *Bishop*. 502 S.E.2d at 81.

4. Duty Established By The Citadel Voluntarily Undertaking Duties.

The Citadel's own conduct of voluntarily undertaking the duty to investigate claims of child sexual abuse on its campus and/or by its employee, as well as its policies and procedures, establish its duty to warn or to control the conduct of ReVille. “[I]t

has long been the law that one who assumes to act, even though under no obligation to do so, thereby becomes obligated to act with due care.” *Madison ex rel. Bryant*, 638 S.E.2d at 656-57 (citing *Sherer v. James*, 351 S.E.2d 148, 150 (S.C. 1986); *Roundtree Villas Assn. v. 4701 Kings Corp.*, 321 S.E.2d 46, 50-51 (S.C. 1984); *Miller v. City of Camden*, 451 S.E.2d 401, 404 (S.C. Ct. App. 1994)). “One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.” *Id.* (quoting *Restatement (Second) of Torts* § 323 (1965)).

Whether such a duty arises in a given case may depend on the existence of particular facts. *Miller v. City of Camden*, 494 S.E.2d 813, 815-16 (S.C. 1997) (citing *Carson v. Adgar*, 486 S.E.2d 3 (S.C. 1997)). Prior conduct or internal memoranda may serve as evidence of a voluntary undertaking. *See, e.g., Vaughan v. Town of Lyman*, 635 S.E.2d 631, 637-38 (S.C. 2006) (finding genuine issue of material fact as to whether there was a voluntary undertaking of the maintenance of town sidewalks where there were references to sidewalk maintenance in town minutes and town ordinances regulating sidewalks; town was aware of complaints about sidewalks but did not report to any other authority; and town had previously handled complaints about sidewalks); *Fickling v. City of Charleston*, 643 S.E.2d 110, 116 (S.C. Ct. App. 2007) (fielding complaints, maintaining a log of calls, and having a policy and employees in place to repair sidewalks used by court as evidence to assess whether there was a voluntary undertaking). The existence of factual issues regarding whether the defendant voluntarily assumed the duty renders the existence of a duty a mixed question of law and fact to be resolved by the fact-finder. *Vaughan v. Town of Lyman*, 635 S.E.2d 631, 637-638 (S.C. 2006).

i. Duty Voluntarily Undertaken by Adoption of Citadel Policies.

*23 As discussed previously, *supra* part LA., The Citadel's own policies and procedures established certain steps it was to take in the face of complaints of sexual abuse. Citadel expert Ann Franke testified that an institution even can self-impose mandatory reporter duties by undertaking policies obligating certain officials to report. (*Deposition of Ann Franke*, Vol. I, p. 176:6-18). Thus, by adopting policies for the protection and well-being of prospective and foreseeable victims, the Citadel acquired a duty under state common law to provide Plaintiff with adequate protection against that danger. *See e.g. DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 202 (1989) (observing that by voluntarily undertaking to provide petitioner with protection against a danger it played no part in creating, the state may have acquired a duty under state tort law to provide petitioner with adequate protection against that danger).

Here, The Citadel acquired such a duty through its policies aimed at preventing harm and imposing reporter duties. By virtue of adopting policies and procedures, The Citadel undertook a duty to report ReVille to law enforcement and to warn plaintiffs, the community, and potential employers of ReVille's dangerous propensities and known acts of abuse. Despite its duties pursuant to the Citadel policies in effect, *see supra* part I.A., The Citadel ensured that none were followed, and that the child sexual abuse was instead concealed. In other words, by its very own policies and procedures, The Citadel failed to exercise due care. *See Madison ex rel. Bryant*, 638 S.E.2d at 659 (noting the standard of care in a given case may be established by a defendant's own policies and guidelines).

ii. Duty Voluntarily Undertaken by Investigation.

Citadel witness and expert testimony confirms there was a duty by The Citadel to protect foreseeable victims, such as the Plaintiff, by undertaking an investigation into the 2007 report of sexual abuse. Brandenburg admitted that “preventing harm to other young boys or victims” was a goal of the investigation. (*Brandenburg Deposition*, Vol. I, p. 31:4-7). He further agreed that “by undertaking the investigation... The Citadel was aiming to prevent harm to potential victims.” (*Brandenburg Deposition*, Vol. I, p. 31:8-11). Similarly, Brandenburg testified that The Citadel's core values apply to him and that the moral sense of duty and obligation of responsibility for the welfare of others would apply to his investigation of an alleged sexual offense. (Vol. II,

p. 259, lines 11-19); (*College Regulations*) (defining “Duty” as “individual accountability and moral *obligation of responsibility for the welfare of others.*”). By voluntarily undertaking an investigation guided by the “moral obligation of responsibility for the welfare of others” and with the goal of “preventing harm to other young boys or victims,” The Citadel owed a common law duty of care to Plaintiff.

Having undertaken the investigation- the *only* investigation conducted in 2007- The Citadel was obligated to act with due care, and it did not. In fact, by its own policies and procedures, The Citadel failed to exercise due care. Indeed, if The Citadel had conducted an impartial investigation, it would not have been led by its General Counsel, and it would have been in accordance with its own policies and procedures, state, and federal law. Instead, The Citadel neglected to follow these well-established policies and intentionally concealed the matter from law enforcement, the Citadel community, the Board of Visitors and the public at large. The Citadel's deviation from its own policies and procedures demonstrates its lack of due care under the relevant circumstances. See *Peterson*, 618 S.E.2d at 906.

Specifically, The Citadel undertook the duty to report ReVille to law enforcement; to report the 2007 sexual abuse complaint to the Citadel's Title IX Coordinator; to punish any individual found to have committed a sexual assault; not expunge molestation findings from the employee's record; to not terminate an investigation in exchange for resignation by the employee; to provide factual and candid responses to inquiries by potential employers; to fully cooperate with law enforcement; and to prevent harm to future victims by undertaking an investigation. See *supra* part LA. By voluntarily undertaking these duties, The Citadel owed a duty to Plaintiff to use reasonable care to protect him from the risk of harm created thereby. Whether The Citadel exercised such care is a question of fact for the jury.

II. Plaintiff's Outrage Claim Survives Summary Judgment.

*24 Plaintiff pleads a claim of outrage, or intentional infliction of emotional distress, by The Citadel for its conduct of deliberately concealing the 2007 complaint of child sexual abuse by ReVille and facilitating ReVille's continued access to children in the Charleston community where it was reasonably foreseeable that he would sexually abuse Plaintiff. The elements of the tort of outrage include: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the defendant's conduct was “so extreme and outrageous so as to exceed all possible bounds of decency” to be regarded as “atrocious, and utterly intolerable in a civilized community;” (3) the defendant's actions caused the plaintiff's emotional distress; and (4) the plaintiff's emotional distress was “severe such that no reasonable man could be expected to endure it.” *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 710 S.E.2d 67, 74 (S.C. 2011) (citing *Hansson v. Scalise Builders of S.C.* 650 S.E.2d 68, 70 (S.C. 2007)).

A. The TCA Does Not Bar A Claim Of Outrage Against The Citadel.

Defendant claims in its Motion for Summary Judgment that the TCA bars the claim of outrage against a state entity by citing to the definition of the word “loss” within the TCA:

“Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

S.C. Code § 15-78-30(f).

Thus, the definition of “loss” qualifies the “actual damages recoverable in actions for negligence” by excluding “intentional infliction of emotional harm” as a damage of such negligence. The reference to intentional infliction of harm in the “loss” definition is not an exclusion of tort liability for outrage against a state entity. Rather, state entities “are liable for their torts in the same manner and to same extent as a private individual under like circumstances,” subject to the limitations and exemptions from liability and damages contained in the code. S.C. Code § 15-78-40. The limitations and exemptions from liability and damages

are delineated as specific circumstances where the state entity will not be liable for any loss, rather than a list of torts the state entity is exempt from. See [S.C. Code § 15-78-60](#). The TCA does not grant state entities blanket immunity from outrage liability.

The South Carolina Court of Appeals recently ruled on a complaint against a state entity, the South Carolina Department of Social Services specifically, where the jury entered verdicts for the plaintiff on claims of gross negligence and outrage under the TCA. See *Bass v. S.C. Dept. of Social Services*, 742 S.C.2d 667 (S.C. Ct. App. 2013). At trial, DSS had moved for a directed verdict on the outrage claim, making the same argument as The Citadel that the TCA definition of loss excluded the claim, and renewed its motion at the close of its case. *Id.* at 670. On appeal, the Court reversed the trial court's denial of DSS's JNOV motions; however, the Court of Appeals did not base its reversal on the TCA excluding outrage claims. Rather, the Court of Appeals addressed the evidence in the case and whether the elements of outrage had been met. *Id.* at 670-672 (holding since evidence did not establish gross negligence by DSS, claim of outrage based on reckless conduct must fail because conduct cannot be reckless where it is not at least grossly negligent). If the TCA exempted outrage liability against a state entity, the Court of Appeals would not have had to go through the analysis of whether the elements of outrage were made by the plaintiff. There is no basis to bar Plaintiffs claim of outrage against The Citadel under the TCA's limitation on damages recoverable from state entity negligence.

B. Plaintiffs Outrage Claim Is Not Barred Simply Because Other Tort Pled And Evidence Supports More Than Scintilla Of Evidence That The Citadel's Conduct Was Outrageous.

*25 The Citadel also incorrectly propounds that Plaintiff may not plead the tort of outrage where another tort with applicable remedies covers the conduct at issue. South Carolina jurisprudence has never made such a rule that a party may only plead outrage in the absence, and to the exclusion, of other torts. Such a rule would not make sense. Outrage has its own elements of proof that must be established, separate and distinct from other torts, and the relevant issue is whether the evidence in a specific case establishes those elements of outrage. See [Argoe, 710 S.E.2d at 74](#) (reviewing whether material issue of fact existed to make out claims of false imprisonment, defamation, and outrage).

When South Carolina courts have reviewed whether the evidence makes out a cause of action of outrage, the courts have analyzed whether the specific elements of outrage are met and not whether another tort better captures the conduct at issue as the basis to allow a claim of outrage to proceed or not. See, e.g., [Argoe, 710 S.E.2d at 74](#); [Folkens v. J.W. Hunt, 348 S.E.2d 839 \(S.C. Ct. App. 1986\)](#); [Todd v. S.C. Farm Bureau Mutual Insurance Co., 321 S.E.2d 602, 609 \(S.C. Ct. App. 1984\)](#), *portion of opinion quashed and verdict reinstated*, 336 S.C.2d 472 (S.C. 1985). The burden remains to prove the elements of the tort of outrage, even if another tort may remedy the conduct complained of. See [Todd, 321 S.E.2d at 612-613](#) (reviewing evidence to determine if defendant's conduct may reasonably be regarded as outrageous even though another tort may cover the conduct). In this case, more than a scintilla of evidence exists to establish the elements of outrage against The Citadel, and The Citadel's conduct may “reasonably be regarded as so extreme and outrageous as to permit recovery” and submission of the issue to the jury. See [Argoe, 710 S.E.2d at 74](#) (holding summary judgment for defendant appropriate on outrage claim where defendant's conduct was reasonable).

First, the evidence establishes that The Citadel was certain or substantially certain that severe emotional distress would be inflicted on Plaintiff when it intentionally concealed the 2007 report of child sexual abuse by ReVille. The Citadel's administrators actively told ReVille to “lay low” and leave The Citadel without any record of ReVille's child sexual abuse, without any disclosure to any law enforcement, and, in essence, without any indication attached to ReVille that he was a child molester. Furthermore, The Citadel allowed ReVille to leave as an esteemed Citadel alumnus and former employee so that ReVille could continue to gain employment with children based on his Citadel credentials. The Citadel took these actions despite the reasonable foreseeability that ReVille would continue molesting children, to include Plaintiff. It was certain or substantially certain that emotional distress of Plaintiff would result from The Citadel's conduct, as The Citadel's conduct led to Plaintiff's sexual abuse by ReVille. See [Argoe, 710 S.E.2d at 74](#).

Second, concealing a child sexual predator and taking actions that allow the predator to continue to be around children and further victimize children is conduct “so extreme and outrageous so as to exceed all possible bounds of decency.” See *Argoe*, 710 S.E.2d at 74. Such conduct readily may be regarded as “atrocious, and utterly intolerable in a civilized community.” *Id.* Third, it was The Citadel's actions of concealing the sexual abuse by ReVille and supporting him in the community that directly caused Plaintiff's emotional distress by allowing ReVille access to Plaintiff. The emotional distress suffered by Plaintiff included years of suffering in silence out of fear that his parents would not love him anymore if he told them of his abuse by ReVille and would have been prevented had The Citadel not concealed its knowledge of ReVille as a sexual child abuser. Fourth, Plaintiff's emotional distress is so severe “that no reasonable man could be expected to endure it.” See *Argoe*, 710 S.E.2d at 74. Accordingly, Defendant is not entitled to summary judgment on Plaintiff's claim of outrage.

II. Plaintiff's Claims Are Governed by The Statute of Limitations in S.C. Code § 15-3-555.

*26 The governing statute of limitations for the causes of action in this complaint is S.C. Code § 15-3-555(A):

An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later. (emphasis added). Plaintiff's claims against The Citadel “to recover damages for injury to [his] person ar[ose] out of [ReVille's] act[s] of sexual abuse,” and S.C. Code § 15-3-555(A) afforded him two alternative deadlines by which he “must [have] commenced” his suit against The Citadel: (1) “within six years after [he] bec[a]me[] twenty-one years of age”; or (2) “within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse.” § 15-3-555(A) also gave him the option of choosing “whichever [deadline] occurs later.”

The statute of limitations for actions to recover damages from sexual abuse focuses on one kind of claimant only, a person like Plaintiff whose lawsuit “aris[es] out of act of sexual abuse ...,” a characterization that fits his experience and the allegations of his Complaint far more closely than any other South Carolina statute of limitation or tolling statute. Plaintiff's birthday is XX/XX/1992, and he was nineteen when he filed this complaint on March 19, 2012. The Citadel never has disputed that Plaintiff commenced his lawsuit “within six years after [he] bec[a]me twenty-one years of age ...”, and indeed, Plaintiff has not reached his twenty-seventh birthday yet. § 15-3-555(A).

What's more, Defendant has even conceded that § 15-3-555 applies to this litigation. Specifically, by email dated November 16, 2007, Mark Brandenburg, The Citadel's general counsel, applied the sexual abuse statute of limitations in construing the limitations period for Camper Doe, stating:

Fortunately, since we now have a transcript of my interview with [Doe], we have an unequivocal trigger of the statute of limitations. As you know, under S.C. Code Ann. 15-3-555, “An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.” At this point, we [k]now that [Doe] has “discover(ed)... the causal relationship” between the injuries described in the interview and the alleged abuse. Thus, at the very latest, the statute began to run on the date of the interview in June. Unfortunately, though, since the statute provides that the limitations period does not expire until three years after that discovery or six years after the person becomes twenty-one years of age, the period arguably does not expire until [Doe's 27th] birthday.

*27 (Brandenburg's 11/16/2007 Email to IRF).

The Citadel argues for the application of the statute of limitations found in S.C. Code § 15-78-110, which applies to claims brought under the state's Tort Claims Act [TCA], and S.C. Code § 15-3-40, which is more general tolling exception for all minor tort victims, one that is notably shorter in length than the tolling exception the South Carolina legislature enacted in 2001

for the benefit of a small and special class of the most vulnerable, unfortunate, and unenlightened tort victims—minors whose injuries and claims arose from sexual abuse.

Nonetheless, The Citadel contends that the discovery tolling provision set out in [S.C. Code § 15-3-40](#) should take priority over [S.C. Code § 15-3-555\(A\)](#)'s twin tolling provisions, because [S.C. Code § 15-3-40](#) is an older statute and more generally applicable than [§ 15-3-555](#).⁵ Such an argument is without merit and without precedential support. A fundamental canon of statutory construction establishes:

Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.

Denman v. City of Columbia, 691 S.E.2d 465, 468 (S.C. 2010) (quoting *Spectre, LLC v. S.C. Dept. of Health and Envtl. Control*, 688 S.E.2d 844, 851 (S.C. 2010)).

This principle is especially true when the older statute contains more general language while the newer statute—[S.C. Code § 15-3-555](#) in this case—specifically is worded to cover a narrower class of persons or a unique set of factual circumstances like sexually abused minors. Simply put, “specific laws prevail over general laws, and later legislation takes precedence over earlier legislation.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 526 S.E.2d 716, 719 (S.C. 2000). Furthermore, “according to the great weight of authority,” it is axiomatic “in [South Carolina] that where there is any doubt as to which of two statutes of limitation applies, the doubt must be resolved in favor of the longer period.” *South Carolina v. Life Ins. Co.*, 175 S.E.2d 203, 209-10 (S.C. 1970) (emphasis added) (quoting *Scovill v. Johnson*, 3 S.E.2d 543, 545 (S.C. 1939)). There is no reason the same principle should not apply in this case.

Moreover, any argument by The Citadel that because the TCA constitutes the basis for any tort claim against The Citadel and because the TCA contains its own statute of limitations under [S.C. Code § 15-78-110](#) such that Plaintiff's claims are governed by the general minority tolling statute in [S.C. Code § 15-3-40](#), must fail. The Citadel's logic fails for the same reasons discussed at length above and, most especially, because [S.C. Code § 15-78-110](#) was enacted by Act No. 463, § 1, 1986 S.C. Acts (and re-stated by Act No. 352, § 9, 1988 S.C. Acts), while [S.C. Code § 15-3-40](#) was enacted by 1962 Code (and last re-stated by Act No. 234, § 1, 1996 S.C. Acts), rendering both statutes older than [S.C. Code § 15-5-555](#)—enacted by Act No. 102, § 3, 2001 S.C. Acts. Both statutes also are indisputably broader and more “general” than [S.C. Code § 15-5-555](#).

***28** Again these facts are dispositive of The Citadel's argument, because “specific laws prevail over general laws, and later legislation takes precedence over earlier legislation.” *I’On, L.L.C.*, 526 S.E.2d at 719. Given the “basic presumption ... that the legislature has knowledge of previous legislation when later statutes are passed on a related subject,” the S.C. General Assembly could have drafted [S.C. Code § 15-5-555](#) as to exempt its application to TCA claims. *South Carolina v. Baucom*, 531 S.E.2d 922, 924 (S.C. 2000) (citation omitted). The legislature did not do so. Instead, [S.C. Code § 15-5-555](#) states it covers “an[y] action to recover damages for injury to a person arising out of an act of sexual abuse” without any limitation whatsoever. Additionally, the General Assembly could have amended [S.C. Code § 15-78-110](#) or [§ 15-3-40](#) to make clear that neither statute was affected nor restricted in any fashion by [S.C. Code § 15-3-555](#). Again, the legislature did not take such defining and limiting action.

Moreover, the legislative intent underlying [§ 15-3-555](#) compels its application to this case. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 533 S.E.2d 578, 581 (S.C. 2000). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *Id.* Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning. *Id.* “The legislature's intent should be ascertained primarily from the plain language of the statute.” *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 579 S.E.2d 334, 336 (S.C. Ct. App. 2003). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will; therefore, courts are bound to give effect to the expressed intent of the legislature. *Hodges*, 533 S.E.2d at 581. The language must also be

read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. v. Leatherman*, 420 S.E.2d 843 (S.C. 1992). “Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.” *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 382 S.E.2d 11, 14 (S.C. Ct. App. 1989).

With regard to the sexual abuse statute, there is no indication the legislature intended to limit the application of the statute simply because the defendant is a government entity. The legislative intent underlying § 15-3-555 suggests that the legislature intended the statute to apply to all claims arising out of sexual abuse. Specifically, § 15-3-555 was passed and made effective in 2001—after the TCA. In addition, the legislative history of § 15-3-555 suggests no intent to limit the applicability of the statute with regard to claims against a government entity. See South Carolina Bill Summary, 2001 Reg. Sess. H.B. 3131 (describing the purpose of the act as “to amend Chapter 3, Title 15 by adding section 15-3-555 so as to provide a statute of limitations for actions based on sexual abuse or incest of six years from the time a person becomes twenty-one or within three years of discovering the injury and the causal relationship between the injury and the abuse or incest.”). Indeed, in ratifying § 15-3-555, the legislature implicitly highlighted the importance of providing a remedy to victims of sexual abuse.

Likewise, if the plain language of § 15-3-555 and the legislative history supporting the same is not enough it bears noting that § 15-3-555 is currently pending amendment to entirely abolish the limitations period for an action based on childhood sexual abuse. Specifically, the proposed amendment revises § 15-3-555 to read as follows:

*29 [T]he provisions of this chapter which provide limitations on the commencement of civil actions do not apply to a civil action to recover damages for injury to a victim arising out of an act of sexual abuse or incest which occurred when the victim was under the age of eighteen.

2013 S.C. House Bill No. 3940, 120th Session, April 11, 2013. Certainly, such an expansive stance on broadening the rights of victims to seek remedies for childhood sexual abuse is instructive as to the legislature's intent to extend this right to victims regardless of the identity of the defendant as a government entity. Moreover, because §§ 15-3-555 and 15-3-40 are within the same chapter, the language of the new statute would modify that of § 15-3-40 so as to remove the limitations period for all child sexual abuse claims. See 2013 S.C. House Bill No. 3940.

Also instructive is *Doe v. R.D.*, 417 S.E.2d 541 (1992). There, our Supreme Court, confined by the limitations period that predated § 15-3-555, expressly recognized the unjust result of a narrow statute of limitations on victims of childhood sexual abuse. In so noting, the Court observed:

We are aware of the damage that sexual abuse can cause in the lives of the victims. We also recognize that the application of a statute of limitations can appear unjust. In Note, *Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call for Legislative Action*, 26 Wake Forest L.Rev. 1245 (1991), the author details the rationale for statute of limitations and the application of such statutes in sexual abuse cases. A number of states have amended their statute of limitations to protect the sexually abused. A few courts have allowed the plaintiff to avoid the statute of limitations because the plaintiff has successfully claimed a disability. Several other states have applied the discovery rule by allowing the plaintiff to maintain an action where, as in the case at bar, the plaintiff discovered the causal connection between the injury and abuse within the statutory period. **While the result may be appealing, we are without authority to amend our statute. An exception to the plain and unambiguous language of our statute of limitations must come from our legislature.**

Id., at 542-43 (emphasis added) (footnotes and internal citations omitted). While the court in *Doe v. R.D.* was confined by the statute of limitations existing at the time, it presented a compelling case for legislative action. *Id.* at 142, n. 4 (noting at least three state legislatures amended the statute of limitations to accommodate adult survivors of sexual abuse in the wake of decision such as *Doe v. R.D.*). Fortunately, we are not so confined today. Indeed, it was against this backdrop that § 15-3-555 was enacted to avoid the unjust result of the reluctant *R.D.* Court—the very result sought by Defendant in the instant case.

Accordingly, as expressed in the language of the statute, § 15-3-555 applies to all actions arising out of sexual abuse and is the relevant statute of limitations governing this case. As such, Plaintiff's claims, having been filed within the limitations period provided by § 15-3-555, are timely.

It is worth noting, however, that even if Plaintiff's claims were governed by the general two year statute of limitations found in the TCA, the statute of limitations would not accrue until the facts and circumstances put Plaintiff on notice that he had a claim against Defendant. Specifically, “[t]he statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party.” *Bishop*, 754 S.E.2d at 500 (quoting *Kreutner v. David*, 465 S.E.2d 88, 90 (S.C. 1995)). Moreover, “[d]eliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action toll the statute of limitations.” *Id.* (citing *Strong v. Univ. of S.C. School of Medicine*, 447 S.E.2d 850, 852 (S.C. 1994)).

*30 Thus, even if S.C. Code § 15-78-110 provided the applicable statute of limitations for this cause of action, the statute of limitations on Plaintiff's claims would not have accrued until at the very earliest November 2011, when The Citadel first acknowledged that it had prior knowledge that ReVille sexually abused children at The Citadel Summer Camp. (Press Release). It was only after November 2011 that the Citadel began revealing facts and circumstances as to its prior knowledge of ReVille's propensity as a child sexual predator. Accordingly, it was not until November 2011 that Plaintiff was even put on notice that he might have a claim against The Citadel. Plaintiff filed his complaint four months later on March 19, 2012, and his complaint is timely even if S.C. Code § 15-78-110 applies. Furthermore, The Citadel's conduct at issue in Plaintiff's claims occurred from at least 2001 up to November 2011. It was in this time period that The Citadel deliberately concealed its knowledge of ReVille's child sexual abuse from potential plaintiffs. Such “deliberate acts of deception” by The Citadel would have tolled the statute of limitations of S.C. Code § 15-78-110 if it applied. *Id.*

IV. Whether Plaintiff's Claims involve Multiple Or A Single Occurrence Is Not At Issue At Summary Judgment.

In its motion for summary judgment, The Citadel asserts that Plaintiff's claims involve a single alleged “occurrence,” and, as such, Plaintiff's potential recovery is limited to \$300,000 under the TCA, S.C. Code § 15-78-120(a)(1), providing that “no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivision involved.” The TCA defines “Occurrence” as “an unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code § 15-78-30(g). Our Supreme Court has determined that the burden to prove more than one occurrence rests on the plaintiff to be submitted to the jury through appropriate jury charges and the verdict form, and, accordingly, whether Plaintiff's claims involve a single occurrence or multiple occurrences is a question for the jury and not an appropriate determination to be made at summary judgment. See *Chastain v. AnMed Health Foundation*, 694 S.C.2d 541, 543 (S.C. 2010).

Specifically, in *Chastain*, the Court addressed an appeal from a plaintiff who had suffered injuries resulting from negligent care she received from six nurses at AnMed, a charitable organization under the South Carolina Solicitation of Charitable Funds Act [CFA], S.C. Code §§ 33-56-10 to 200. *Id.* at 542-543. The CFA provides that a plaintiff may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not to exceed the limitations on liability imposed in the TCA, which is limited to \$300,000 per occurrence. S.C. Code § 33-56-180(A); § 15-78-120(a)(1). The trial judge found only one occurrence in that case and so reduced the plaintiff's recovery to \$300,000, reasoning that the intent of the CFA was to limit the amount of damages recoverable from a charitable organization and refusing to define occurrence to include every instance of negligence by each nurse. *Chastain*, 694 S.C.2d at 543. However, the trial judge rendered an “alternative” holding as well that based on the jury charge and verdict form, it was impossible to determine how many negligent acts or negligent nurses the jury found and therefore impossible to conclude that the jury found more than one occurrence; thus, rendering only one recovery appropriate. *Id.*

On appeal, the Supreme Court declined to respond to the trial judge's ruling as to the definition of occurrence under the TCA and, instead, “[found] it necessary to uphold only one ground in order to affirm the trial judge's decision to reduce the verdict.”

Id. As such, the Supreme Court held that as a plaintiff bears the burden of proof, “[i]f she alleges multiple occurrences, that is that there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence.” *Id.* 543-544. The jury must be instructed on the definition of occurrence and asked to determine whether there were more than one occurrence, either in the jury charges or in the verdict form. *Id.* at 544. Accordingly, our Supreme Court has set forth the procedure for determining whether a cause of action involves a single or multiple occurrence, and it is a decision that rests with the jury.

*31 A year after the *Chastain* decision, the Supreme Court addressed another issue involving the definition of occurrence under S.C. Code § 15-78-120(a)(1) and acknowledged its previous holding that the burden to prove more than one occurrence rests on the plaintiff. See *Boiter v. S.C. Dept. of Transportation*, 712 S.E.2d 401, 406 (S.C. 2011). However, before the Court in *Boiter* was the specific issue of whether two separate occurrences gave rise to the plaintiffs' injuries where two separate state entities took two independent and separate acts of negligence. *Id.* In order to determine the number of “occurrences” for state liability, the Court had to decide whether to focus on the number of negligent acts by the governmental entities or to focus on the number of injuries caused by those acts. *Id.* The Supreme Court held that it was not adopting a “bright line test” but that “the circuit court erred in tying the number of occurrences to the number of injuries sustained” by plaintiffs. *Id.* Accordingly, the Supreme Court found that the two separate entities that took separate actions did not combine to form one act of negligence constituting an unfolding sequence of events (or one occurrence). Rather, the two entities' separate actions each stood alone as an occurrence, rendering the state liable for two occurrences under the TCA. *Id.* at 407. Therefore, *Boiter* held that an occurrence is defined by the negligent action and not by the resulting injury to the plaintiff. *Id.*

The Supreme Court has not addressed a cause of action, as in this case, where a single state entity has committed multiple acts of negligence by multiple state actors. However, other courts have found multiple occurrences in such circumstances. Furthermore, South Carolina's TCA specifically provides “the exclusive remedy for any tort committed by an employee of a governmental entity” and requires the naming of the governmental agency or political subdivision, where the employee was acting, as the defendant. S.C. § 15-78-70(a)-(c). The courts that have held that a single entity is NOT limited to a single occurrence where more than one state employee has committed separate acts of negligence supports the TCA's protection of employees from individual liability. For the state entity bears responsibility for the negligence of its employees, and since multiple employees cannot be sued for separate and distinct acts of negligence, it makes sense that the state entity can be held liable for each of the separate and distinct acts of negligence by each of its employees. Case law supports such a position.

In *Williamson v. S.C. Insurance Reserve Fund*, 586 S.E.2d 115, 116 (S.C. 2003), the case involved occurrences of negligence by two separate physicians who each examined the plaintiff during childbirth and failed to take necessary steps at different times during the delivery to prevent harm to the child. While the Supreme Court did not have reason to address the issue of occurrences on appeal, the circuit court had found two occurrences established for purposes of the TCA, reasoning that the negligent acts of each doctor were separate and apart from the other doctor, *Id.* at 116 (Supreme Court holding TCA recovery caps under § 15-78-120(a)(3) & (4) not applicable because claims arose/accrued before reinstatement of caps; thus unnecessary for court to address number of occurrences issue). Likewise, the Tennessee Court of Appeals found multiple occurrences by a single governmental hospital under Tennessee's applicable tort claims act where one employee negligently failed to prevent the patient from falling off a stretcher and a second employee negligently provided an overdose of medication, resulting in the patient's death. See *Brooks v. Memphis & Shelby County Hosp. Auth.*, 717 S.W.2d 292, 297 (Term. App. 1986).

In addition, the Court of Appeals decision of *Johnson v. Hunter*, 688 S.E.2d 593 (S.C. Ct. App. 2010) is instructive as to when a single governmental entity incurs liability for multiple occurrences. While in *Johnson*, the Court of Appeals had the novel question in South Carolina before it of how to determine if a single motor vehicle accident or multiple accidents occurred for purposes of insurance liability limits, the court's process of analyzing the issue is applicable to determining when multiple occurrences by a single state entity have occurred. The court looked to other jurisdictions and concluded that most courts evaluate the circumstances under the causation theory: “[c]ourts applying the ‘cause’ theory uniformly find a single accident ‘if cause and result are so simultaneous or so closely linked in time and space as to be considered by the average person as one event.’” *Id.* at 595 (quoting *Ill. Nat'l Ins. Co. v. Szczepkiewicz*, 542 N.E.2d 90, 92 (Ill. 1989)).

*32 While under the cause theory an accident means a “single, sudden, unintentional occurrence and is used to describe the event, no matter how many persons or things are involved,” the accident or occurrence is viewed from the perspective of cause and not effect, *Id.* (citing *Olsen v. Moore*, 202 N.W.2d 236, 241 (Wis. 1972)). Moreover, the cause theory requires consideration of the timing of actions, or space interval between actions, and whether or not one source of negligence set all the subsequent events in motion or not. *Id.* at 596. Thus, the particular facts of the case determine whether one or more accidents occurred and timing must be addressed in the analysis. *Id.* (holding motor vehicle collisions resulted from single act of negligence due to the extremely short time between each collision, the close distance of defendant's car to plaintiff that he could not stop, and plaintiff's assertion that he did not believe defendant could have done anything to avoid hitting him). The cause theory mirrors the Supreme Court's determination

in *Boiter* that an occurrence is defined by the negligent actions of the defendant and not by the resulting injury to the plaintiff. 712 S.E.2d at 407.

Whether multiple occurrences are at issue for purposes of determining the scope of The Citadel's liability, pursuant to S.C. Code § 15-78-120(a)(1), under the cause theory will involve consideration of the timing of The Citadel's individual actions at issue and, specifically, the space interval between the actions, as well as the multiple Citadel employees who took separate and distinct intentional and grossly negligent actions towards Plaintiff.

The evidence reveals that in 2001, 2002, 2003, 2005 and 2007, The Citadel had numerous opportunities to put an end to ReVille's abuse by reporting him to law enforcement. As early as August 6, 2001, The Citadel received a letter from Sergeant Middleton of the Charleston Police Department that highlighted several concerning practices occurring at The Camp, including that “[s]ome of the counselors are allowing certain campers to leave their rooms . . . to go into camp counselor's room[s], watch movies, and fall asleep in the same bed with counselors until the following morning.” (*Middleton Letter*, August 6, 2001). The letter noted that “[s]ome of the counselors engage in sexual conversation in the presence of the campers.” Notably, upon receipt of this letter, The Citadel took no action whatsoever. (*Garrott Deposition*, Oct. 22, 2013, p. 205-207). Indeed, ReVille has admitted to abusing nearly eight campers during the 2001 Summer Camp. To do so, he lured campers into his room at night with food and movies—the very practice highlighted in Middleton's letter. (ReVille Affidavit, Sept. 20, 2013). Had The Citadel taken action in response to Sergeant Middleton's letter, whether by interviewing counselors and campers or by implementing various safety practices such as random and frequent room checks, ReVille's sexual abuse would have been discovered or, in the alternative, ReVille would have stopped having campers in his room for fear of being caught and fired. (ReVille Affidavit, Sept. 20, 2013).

The Citadel, through Camp directors Jennifer Garrott and Bill Bates, also failed to take any action in response to ReVille's 2001 “Counselor Evaluation,” which notes that ReVille was “senior counselor material if learns to distance himself from campers.” (*2001 Counselor Evaluation*).

The following year in 2002, Camp Director Jennifer Garrott walked in on ReVille with a camper alone in his room, a violation of Camp policy that warranted termination. (ReVille Affidavit, Sept. 20, 2013). However, Garrott took no action in response to ReVille's policy violation, neglecting to even document the offense in ReVille's employment file. Then in 2003, Director Garrott again walked in on ReVille alone with a minor, Camper Doe 6, where ReVille was rubbing “Icy-Hot” on Doe 6's leg. Again, Garrott took no action on this terminable offense. Also in 2003, Garrott's assistant spoke to ReVille four to five times about having minors alone in his room; however, no further action was taken. Colonel Lackey similarly received a report from a counselor that ReVille was having minors in his room. On none of these occasions that occurred with three different Citadel employees was ReVille terminated, nor were the infractions documented in ReVille's file, despite camp policies and procedures requiring such action. (ReVille Affidavit, Sept. 20, 2013). Instead, The Citadel permitted ReVille to continue serving as The Camp's Senior Counselor entrusted with the responsibility of the safety and well-being of the very boys he was abusing.

*33 Four years later, when Camper Doe made the report of abuse on April 23, 2007, The Citadel again could have put an end to ReVille's abuse by simply adhering to its own policies and the requirements of state and federal law regarding reporting

of sexual abuse to law enforcement. This simple act would have resulted in an investigation by trained professionals and a conviction. (ReVille Guilty Plea, Scarlett Wilson Testimony). ReVille even testified he would have confessed to the multiple acts of sexual abuse if interviewed by law enforcement in 2007. (ReVille Affidavit, Sept. 20, 2013).

Thereafter, multiple Citadel employees grossly neglected their duty of care. The day after the report of sexual abuse by Camper Doe, Mr. Brandenburg and Colonel Trez met with ReVille on The Citadel campus and alerted him of the allegations. Notice of the allegations not only gave ReVille an opportunity to revise his tactics to remain undetected, it also allowed him to contact two of the victims referenced in Doe's report and urge them to pledge their silence if questioned by Brandenburg. These victims, who happened to be current cadets on The Citadel campus, were former campers abused by ReVille at the Citadel Summer Camp. Notably, Brandenburg neither spoke with nor interviewed these cadet victims. (*Brandenburg Deposition*. Vol. I, p. 139-140, 142, 144). Moreover, President Rosa intentionally acted to keep the report concealed and close hold. (*Shiel Deposition*. January 21, 2014, pp. 36:9-20; 46:12-20). President Rosa, Mark Brandenburg, and Colonel Trez each acted to effect the cover-up and failed to take the necessary action mandated by Citadel policies and by state and federal law.

Additional acts of negligence include The Citadel permitting ReVille to leave Citadel employment with no record of the sexual abuse; endorsing ReVille as an educator and coach in the Charleston community; allowing ReVille to continue trading on his reputation at the Citadel to secure continued employment with children; and allowing ReVille to remain at large preying on and sexually abusing the Plaintiff and other boys despite the foreseeability of continued child sexual abuse by ReVille.

Thus, the litany of negligent actions spanning from 2001 to 2007 by multiple Citadel employees readily constitute multiple occurrences as contemplated by [S.C. Code §§ 15-78-30\(g\)](#) and [15-78-120](#). The actions are not of such close proximity as to be construed as simultaneous, and the separate and distinct actions taken by individuals employed by The Citadel were independent acts of negligence, not dependent on each other. Furthermore, in addition to the independent acts of gross negligence above, each day The Citadel actively concealed the known allegations and other knowledge of ReVille's sexual abuse constitutes separate and distinct negligent acts and/or omissions giving rise to hundreds of occurrences as contemplated by [S.C. Code § 15-78-120](#).

Therefore, Plaintiff alleges multiple occurrences of negligence, which he bears the burden of proving and whose determination is within the responsibility of the jury. The appropriate procedure will be for the jury to be instructed on the definition of occurrence and asked to determine whether there were more than one occurrence, either in the jury charges or in the verdict form. *Chastain*. 694 S.C.2d at 544.

CONCLUSION

For the above stated reasons, IT IS SO ORDERED that Defendant's Motion for Summary Judgment is DENIED.

December 4, 2014 Charleston, SC

<<signature>>

The Honorable R. Markley Dennis, Jr.

Presiding Judge, Ninth Judicial Circuit

Footnotes

- 1 In late 2012, the Citadel Hired Margolis Healy and Associates to investigate the actions taken in regards to the 2007 disclosure of child sexual, which concluded with a written report. (*Investigation Into The Citadel's Handling of Allegations Involving Louis N. "Skip" ReVille Findings*. March 31, 2013).

- 2 In late 2012, the Citadel hired Ann Franke of Wise Results, LLC as well to conduct an independent review of the handling of a 2007 child sexual abuse report. On April 3, 2013, Ms. Franke provided the Citadel with her “Institutional Review Report to the Citadel Board of Visitors- Recommendations for Moving Forward.” See http://www.citadel.edu/root/images/Public_Documents/Franke_IRT_report.pdf.
- 3 (*Brandenburg Email*. May 8, 2007).
- 4 Under Title IX, an education program recipient of Federal financial assistance means “any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.” 34 C.F.R. § 106.2(i). “Institutions” include those of higher education as defined by 34 C.F.R. § 106.2(l), (m), (n), and (o), which includes The Citadel as an institute of undergraduate higher education.
- 5 Section 15-78-110 was enacted by Act No. 463, §1, 1986 S.C. Acts (and re-stated by Act No. 352, §9, 1988 S.C. Acts), while §15-3-40 was enacted by 1962 Code (and last re-stated by Act No. 234, §1, 1996 S.C. Acts), which makes both statutes older than §15-5-555, which was enacted by Act No. 102, §3, 2001 S.C. Acts. Both statutes also are indisputably broader and more “general” than §15-5-555.

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Exhibit 4

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Baby Girl Smith, by and through her
guardian, Jane Smith,

Plaintiff,

v.

South Carolina Department of Social Services
(SCDSS),

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-42-3147

Jury Verdict Form

You are instructed to answer the following questions. You must all agree on your answer to each question and the foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

1. Do you find that the Defendant was grossly negligent in failing to investigate the reports regarding [REDACTED]

☒ Yes. Continue answering the next question.
☐ No. Stop deliberations and inform the court.

2. Do you find that [REDACTED] injuries were the natural and probable consequence of the Defendant's failure to investigate?

☒ Yes. Continue answering the next two questions.
☐ No. Stop deliberations and inform the court.

3. If Yes, state the full amount of your award of actual and compensatory damages to [REDACTED]

3.75 MILLION w/STIPULATIONS?

4. Having been charged on the law of occurrences, state the number of occurrences, more probably than not, that are supported by the facts and evidence in this case.

1

The foreperson, acting on behalf of the unanimous jury, must sign and date this verdict form:

3-23-17

DATE

Kenneth Alley
FOREPERSON

Exhibit 5

**The State of South Carolina
Marlboro County
COURT OF COMMON PLEAS**

**GEORGE W. JOHNSON, As Personal Representative of the
Estate of OLIVER GABRIEL JOHNSON
vs.
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Docket Number: 2018-CP-34-00019

THE VERDICT

**NEGLIGENCE AS TO SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS**

1. We, the Jury, find South Carolina Department of Corrections was grossly negligent.

_____ YES *If yes, go to question 2.*

_____ NO *If no, stop deliberations.*

2. Do you find that South Carolina Department of Corrections' gross negligence proximately caused the conscious pain and suffering or death of Oliver Johnson?

_____ YES *If yes, go to "Damages" section.*

_____ NO *If no, stop deliberations.*

As to the Survival Action and Wrongful Death Action

DAMAGES

Please state the amount of actual and compensatory damages, if any, sustained by the Plaintiff.

\$ _____ ACTUAL and COMPENSATORY DAMAGES as to the
Survival Action

\$ _____ ACTUAL and COMPENSATORY DAMAGES as to the
Wrongful Death Action

Having been charged on the law of occurrences, state the number of occurrences, more probably than not, that are supported by the facts and evidence in this case.

SIGNED BY JURY FOREPERSON, WAYNE EASTERLING
DATE: SEPTEMBER _____, 2019

Please let the bailiff know when you have finished your deliberations.

315, 331, 566 S.E.2d 536, 544 (2002) (internal quotation marks omitted). Gross negligence is “also defined [] as a relative term that means the absence of care that is necessary under the circumstances.” *Id.* at 332, 566 S.E.2d at 544 (internal quotation marks omitted).

Plaintiffs provided the expert testimony of Rod Walters, a certified athletic trainer who testified about numerous violations of the standards for acceptable and safe operations in high school and middle school sports. Further, current and former employees and volunteers of the Horry County School District testified in both the Plaintiffs’ case-in-chief and in the Defendant’s case-in-chief, and several of these current and former employees and volunteers of the Defendant provided testimony regarding specific deficiencies in the District’s operations and management of sports related concussions which support the jury’s finding. “In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury.” *Id.* at 332, 566 S.E.2d at 545 (internal quotation marks omitted). As such, this Court finds that the verdict of the jury should not be disturbed and the District’s motion for JNOV must be denied.

2. The Jury Found Two Separate Occurrences of Gross Negligence

The South Carolina Supreme Court has held that state entities can be subject to multiple caps under the South Carolina Tort Claims Act in situations in which independent acts of negligence result in a single injury. *Boiter v. S.C. Dept. of Transp.*, 393 S.C. 123, 132, 712 S.E.2d 401, 405(2011). In *Boiter*, the Supreme Court reviewed a case involving allegations of independent acts of negligence by the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a stoplight. The South Carolina Supreme Court rejected the state defendants’ argument that each allegedly separate act of negligence claimed by the Plaintiffs “was a part of the *same unfolding sequence of events* that resulted in the Boiter’s damages.” *Id.* at 133, 406. Instead,

the Court held that “[w]e are persuaded that two independent and separate acts of negligence occurred here.” Id. at 134, 406. In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained. Id. at 134, 406. As the Honorable R. Markley Dennis, Jr. further explained in 2014:

[t]he courts that have held that a single entity is NOT limited to a single occurrence where more than one state employee has committed separate acts of negligence supports the TCA's protection of employees from individual liability. For the state entity bears responsibility for the negligence of its employees, and since multiple employees cannot be sued for separate and distinct acts of negligence, it makes sense that the state entity can be held liable for each of the separate and distinct acts of negligence by each of its employees. Case law supports such a position.

(Doe 2 v. The Citadel, 2014 WL 8727884, at *31 (S.C.Com.Pl. Dec. 09, 2014)(citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010))(emphasis in original).

While Boiter involved allegations against two separate governmental entities, the prior South Carolina cases addressing the issue of “occurrences” as it is defined by the Tort Claims Act which were referenced by the South Carolina Supreme Court in Boiter both involved allegations of multiple, independent acts of negligence against single entities that pursuant to the Tort Claims Act (in one case as applicable against a private, charitable medical facility pursuant to the South Carolina Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-180(A) which incorporates the Tort Claims Act damages caps and “occurrence” definition for non-governmental, charitable medical facilities). The South Carolina Supreme Court’s decision in Chastain v. AnMed Health Foundation, discussed in more detail below, has been widely cited over the last 11 years as the basis for requiring that the jury be properly instructed on the law regarding occurrences and required to make a finding of fact in cases in which evidence of multiple, distinct acts of negligence comes before the jury. 694 S.E.2d 541 (S.C. 2010). Although the plaintiffs in that case had filed separate claims against individual nurses, the jury found against the plaintiffs on their claims

against individual employees, and the Supreme Court’s discussion regarding occurrences was related solely to the claim of multiple occurrences caused by the multiple, distinct acts of negligence by representatives of Defendant AnMed Health Foundation, a *single* medical provider subject to the tort claims act pursuant to S.C. Code Ann. §§ 33-56-180(A). The South Carolina Supreme Court referenced that evidence indicating multiple occurrences can create a factual issue to be addressed in the jury charge and on the verdict form.

The second case referenced by the South Carolina Supreme Court in Boiter is Williamson v. South Carolina Ins. Rsrv. Fund, a case in which the plaintiffs alleged that two independent acts of negligence by two physicians employed by a single governmental entity (the Spartanburg County Services District, Inc., a political subdivision of South Carolina which operated the Spartanburg Regional Hospital) resulted in a single, catastrophic injury to the plaintiffs’ minor child. 355 S.C. 420, 586 S.E.2d 115 (2003). The Circuit Court made a specific finding that by establishing that the minor child’s injury was caused by two independent acts of negligence by two separate physicians employed by a single governmental defendant, the plaintiffs “had established two separate ‘occurrences’ for purposes of the TCA.” Williamson v. S.C. Ins. Rsrv. Fund, 355 S.C. 420, 423, 586 S.E.2d 115, 116 (2003). The South Carolina Supreme Court declined to address the Circuit Court’s finding on appeal.

In the instant case, the Plaintiff presented expert testimony and concessions from the Defendant’s employees at trial which created a factual issue regarding the number of occurrences. The evidence supported a finding that Logan Wood’s injury resulted from the independent, gross negligence of different sets of employees; taking place on different dates; and taking place at different locations.

The South Carolina Supreme Court has further indicated the issue of occurrences is to be addressed in the Judge's charge and on the verdict form. See, Chastain v. AnMed Health Foundation, 694 S.E.2d 541 (S.C. 2010). During argument on motions made during trial, the Defendant argued that the question regarding the number of occurrences should not go to the jury for determination. This Court held otherwise based upon the testimony and evidence which had come before the jury. After this Court announced its ruling, the Defendant thereafter requested that the jury not be provided with a separate line on the verdict form on which to write in a numeral assigning the number of occurrences. Rather, it was determined that the jury was to make a separate finding as to each occurrence as detailed in separate interrogatories and based on the jury charges. After much argument between the parties on the record regarding the number of occurrences which were supported by the evidence and the wording of the interrogatories, and after concessions by each party, this Court prepared a verdict form which was disseminated to the parties for review and given to the jury.

In completing the verdict form, the jury found for the Plaintiff that the first and second independent occurrences were supported by the evidence, and rejected the Plaintiffs' allegations as to the third occurrence. As such, there was a finding of fact by the jury of two occurrences in accordance with the South Carolina Supreme Court's guidance in Chastain.

Every South Carolina Circuit Court and United States District Court to apply Boiter and Chastain in situations in which the evidence in the trial record indicates a dispute regarding the number of occurrences of negligence or gross negligence that resulted in an injury has determined that it is proper to submit the question to the jury for determination. See Knox v. United States of America et al., D.S.C. C/A No. 0:17-cv-36-CMC, July 3, 2018 Order at Pages 10-11; Verdict Form in W.S. v. South Carolina Department of Social Services, et al., D.S.C. C/A 16-cv-01032-DCC;

Doe 2 v. The Citadel, 2014 WL 8727884, at *30 (S.C.Com.Pl. Dec. 09, 2014) (citing Chastain v. AnMed Health Foundation, 694 S.C.2d 541, 543 (S.C. 2010)); Baby Girl Smith v. South Carolina Department of Social Services, Case No.: 2015-CP-42-3147; George Johnson as P.R. of the Estate of Oliver Johnson v. SCDC, Case No.: 2018-CP-34-00019.

This Court finds that the evidence presented at trial raised a question of fact as to the number of occurrences of gross negligence which caused Logan Wood's brain injury. After an accurate charge on the law, the jury found that there were two separate and distinct occurrences of gross negligence which caused Logan Wood's brain injury, and this Court finds no basis to overturn the jury's factual finding that two separate and distinct occurrences resulted in the permanent injury of Logan Wood.

3. No New Trial is Warranted

Finally, the Horry County School District has asserted that a new trial is necessary pursuant to the "thirteenth juror" doctrine. The thirteenth juror doctrine "is a vehicle by which the trial court may grant a new trial absolute when [the Court] finds that the evidence does not justify the verdict." Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). As set forth in Section 1 above, the jury's verdict in this matter was supported by evidence from which it was justified in making a finding of two separate occurrences of gross negligence. As such, the Horry County School District's motion for a new trial is denied.

4. A Partial Reduction of Logan Wood's Damages Award is Warranted

The jury's finding of two separate, independent occurrences of gross negligence which caused the brain injury of Logan Wood requires the application of two caps of \$300,000.00 each pursuant to the South Carolina Tort Claims Act. As such, this Court finds that Logan Wood's

damages award is hereby reduced from eight hundred twenty-five thousand dollars (\$825,000.00) to six hundred thousand dollars (\$600,000.00).

The damages award for Sarah Wood warrants no reduction. Sarah Wood presented evidence of specific out-of-pocket expenses in the amount of \$10,907.00, but further testified that these were only a portion of the total expenses incurred prior to Logan's eighteenth birthday. Sarah Wood further testified that she had substantial additional expenses related to Logan's medical care associated with his brain injury prior to his eighteenth birthday, including significant time taken from work and thousands of unreimbursed miles for travel throughout the state associated with Logan's medical care. A parent may recover for loss of a child's services and earning capacity, as well as "other pecuniary losses, including medical expenses incurred as a result of the injury." Doe v. Greenville County Sch. Dist., 375 S.C. 63, 68, 651 S.E.2d 305, 308 (2007). That the Supreme Court listed medical expenses as included within the category of "pecuniary losses" necessarily means that a parent's recovery is not limited to medical expenses. Even if it were, the evidence presented at trial supports a finding of total expenses related to Logan's medical expenses as a minor of \$25,000.00. As such, the jury was justified in awarding \$25,000.00 to Sarah Wood in connection with her claim for loss of parental services.

CONCLUSION

For the reasons set forth herein, this Court finds that the Defendant's motion should be denied in part and granted in part as set forth herein, and directs that Judgment be entered against the Horry County School District in favor of Logan Wood in the amount of six hundred thousand dollars (\$600,000.00) and that Judgment be entered against the Horry County School District in favor of Sarah Wood in the amount of twenty-five thousand dollars (\$25,000.00).

IT IS SO ORDERED.

William H. Seals, Jr.
South Carolina Circuit Judge

May __, 2021
Conway, South Carolina

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Sep 15 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
William H. Seals, Jr., Circuit Court Judge

Case No. 2017-CP-26-6643

Logan Wood and Sarah Wood,..... Respondents,

v.

Horry County School District, ... Appellant.

AMENDED NOTICE OF APPEAL

The Appellant Horry County School District appeals the following Orders
issued by Circuit Court Judge William H. Seals, Jr.:

- (1) Order Granting in Part and Denying in Part Post-Trial Motions, filed May 13, 2021;
- (2) Form 4 Order and Judgment filed May 13, 2021 (including the Verdict Form);
- (3) Order filed August 17, 2021; and
- (4) Form 4 Order denying Defendant's Motion to Reconsider, filed September 10, 2021.

The Appellant also appeals from all pre-trial rulings, trial rulings and post-trial rulings issued by the Circuit Court Judge William H. Seals, Jr.

The Appellant's counsel received written notice of entry of the Form 4 Order filed September 10, 2021, on that same date.

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RECEIVED

Jun 27 2022

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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May 23, 2022

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Jun 27 2022

SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant Horry County School District certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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May 23, 2022