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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
In the Court of Common Pleas

Brooks Goldsmith, Circuit Court Judge

Appellate Case No.: 2023-000132

Jill Maliszewski,

Appellant,

v.

Margaret Yeager,

Respondent.

RECORD ON APPEAL

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¹ An additional color copy of the parties’ vehicles has been included as the trial exhibits were scanned in black and white. The color copies were presented to the jury.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CASE NO.: 2020-CP-15-00358
	)	
Jill Maliszewski,	)	
	)	
Plaintiff,	)	
vs.	)	ORDER DENYING PLAINTIFF'S
	)	MOTION FOR NEW TRIAL
Margaret Yeager,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

This matter was tried before me on December 5th through December 6th. After deliberations, the jury returned a verdict of \$0 for Plaintiff Jill Maliszewski ("Plaintiff"). On December 14, 2022, Plaintiff filed a Motion For New Trial *Nisi Additur* or, in the alternative, New Trial pursuant to the Thirteenth Juror Doctrine (the "Motion").

LEGAL STANDARD

A post-trial Motion such as Plaintiff's may be granted only if no reasonable jury could have reached the challenged verdict. *Boddie-Noell Properties, Inc. v. 42 Magnolia Partnership*, 344 S.C. 474, 544 S.E.2d 279 (Ct. App. 2000), cert. granted, (Aug. 8, 2001). Moreover, the evidence and the reasonable inferences that can be drawn therefrom must be viewed in the light most favorable to the non-moving party. *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 78, 439 S.E.2d 266, 269 (1993); *Evans v. Taylor Made Sandwich Co.*, 337 S.C. 95, 99, 522 S.E.2d 350, 352 (Ct. App. 1999). Thus, such a Motion should not be granted where the evidence yields more than one inference or its inference is in doubt." *Evans*, 337 S.C. at 99, 522 S.E.2d at 352.

FINDINGS

As a basis for a new trial or *additur*, Plaintiff contends she presented uncontroverted evidence proving the car accident between Plaintiff and Defendant was the proximate cause of her purported back pain. However, Defendant presented evidence which refuted this assertion including, but not limited to, Plaintiff's own admissions regarding her pain and treatment following the accident as well as Defendant's expert radiologist who testified Plaintiff's MRI following the accident did not show a herniated disc. Regardless, even if there was uncontradicted testimony of pain, the jury is not required to accept that testimony. Instead, the jury was instructed to weigh the credibility of the witnesses and evidence related thereto. As such, I find the jury properly weighed the evidence presented and evidently found Plaintiff's evidence unconvincing or uncredible.

Plaintiff also contends she is entitled to a new trial absolute. The trial court can grant a new trial absolute only if the amount of the verdict is grossly inadequate or excessive to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. However, the jury's determination of damages is entitled to substantial deference. *See Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993); *Elders v. Parker*, 286 S.C. 228, 230, 332 S.E.2d 563, 565 (Ct. App. 1985).

Here, the verdict does not evince the jury was motivated by anything other than the evidence presented at trial. The jury deliberated for an hour and came to a reasonable decision based on the evidence presented.

Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED

Plaintiff's Motion For New Trial *Nisi Additur* or, in the alternative, New Trial pursuant to the Thirteenth Juror Doctrine is hereby **denied**.

IT IS SO ORDERED.

The Honorable Brooks Goldsmith

This ____ day of _____, 2022.

_____, South Carolina



Colleton Common Pleas

Case Caption: Jill Maliszewski VS Margaret Yeager

Case Number: 2020CP1500358

Type: Order/Other

It is so Ordered

Brooks P. Goldsmith, Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jill Maliszewski,

Plaintiff,

vs.

Margaret Yeager,

Defendant.

IN THE COURT OF COMMON PLEAS

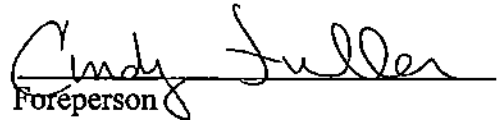
CASE NUMBER: 2020-CP-15-00358

VERDICT FORM

2022 DEC -6 AM 11: 58

COLLETON COUNTY
COMMON PLEAS COURT

We, the Jury, find for the Plaintiff against the Defendant in the amount of-

0.00 actual damages.
Foreperson

December 5, 2022

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Jill Maliszewski,

Plaintiff,

vs.

Margaret Yeager,

Defendant.

IN THE COURT OF COMMON PLEAS
14th JUDICIAL CIRCUIT

CASE NUMBER: 2020-CP-15-00358

**PLAINTIFF'S
MOTION FOR NEW TRIAL *NISI*
ADDITUR, or, in the alternative, NEW
TRIAL pursuant to the THIRTEENTH
JUROR DOCTRINE**

Plaintiff, through undersigned counsel, pursuant to Rule 59, SCRPC, and the applicable case law, herewith moves the Court for a new trial *nisi additur*, or, in the alternative, a new trial pursuant to the Thirteenth Juror Doctrine.

This case was tried on December 5 and December 6, 2022. At the end of the trial, the jury brought back a verdict for Plaintiff in the amount of \$0.

Facts

This case involves a motor vehicle collision when Defendant's vehicle struck the rear of the motor vehicle Plaintiff was a passenger in October, 2018. As a result of the wreck, Plaintiff sustained back pain and treated with Injury Care Centers from October 2018 – January 2019. Plaintiff took time off from the doctor after January 2019 and has continued care with Amy Bernstein, D.C., ever since June 2019.

Dr. Bernstein testified to a reasonable degree of chiropractic certainty that Plaintiff sustained back pain as a result of this wreck. Dr. Bernstein based this on the objective tests she performed on Plaintiff along with the underlying care performed by Injury Care Centers. Dr. Bernstein also testified that Plaintiff's pain was permanent. Plaintiff testified that she continues to have back pain. Plaintiff's husband also testified that she has had back pain since the subject

wreck. Both Plaintiff and her husband testified how the pain impacts her. While Plaintiff had two visits for back pain in 2004, fourteen years before the wreck, the testimony was that she was not experiencing any back pain before this wreck and there were no medical reports evidencing any treatment for back pain from 2004 up until the wreck of 2018. Defendant hired a radiologist to look at two MRI images of Plaintiff's back following the wreck. The defendant's contention with their radiologist was that a subsequent MRI four years after the wreck showed a herniation whereas there was no herniation on the MRI taken shortly after the wreck. The defendant's radiologist testified one could have a clean MRI and have pain and have an MRI showing a herniation and not have pain. Defendant's radiologist also testified that having a wreck is not helpful to one's back. Defendant's radiologist was unable to testify whether Plaintiff did or did not have pain just by looking at the images. Thus, the only medical testimony in the record was that Plaintiff's pain was as a result of the wreck.

The wreck occurred in October, 2018. At the time of the wreck, Plaintiff was 42 years old giving her 4 years of past losses and 36 years of future losses per the life expectancy table. Thus, counsel asked for compensation for approximately 40 years of non-economic damages for Plaintiff, along with her past and future economic damages. Plaintiff's past medical expenses totaled \$32,546.48 and her past lost wages were in the range of \$3,000 - \$4,000. In closing, defense counsel did not dispute the economic damages from Injury Care Centers that totaled \$11,056.16 and said Plaintiff should be compensated for those.¹ Undersigned counsel is not 100%² on this but believes defense counsel also did not dispute the lost wages during that three-month time that were in the range of \$3,000 - \$4,000. Despite testimony that Plaintiff had

¹ The parties to a suit are bound by admissions, made by their attorneys of record, in open Court, or elsewhere, touching matters looking to the progress of the trial. *Hall v. Benefit Ass'n of R. Emps.*, 164 S.C. 80, 83, 161 S.E. 867, 868 (1932).

² The trial transcript would be the best source.

sustained an injury and photographs of the vehicles showing moderate to substantial vehicle damage, the jury returned a verdict for Plaintiff in the sum of \$0.

Argument/Law

a. New Trial

A trial judge has the authority to grant a new trial based solely upon a consideration of the evidence and a conclusion by the trial judge contrary to that of the jury. *Taylor v. Devore*, 253 S.C. 393, 171 S.E.2d 158 (1969). In *Taylor*, an action commenced for both personal injury and property damages arising out of a motor vehicle wreck. The jury returned a verdict in the amount of \$1,500.00 for the Plaintiff, which was subsequently appealed as the Plaintiff moved for a new trial on the grounds that the rendered verdict was inadequate. The court in *Taylor* granted the Plaintiff's motion as the sitting trial judge concluded, "In view of the extent of the damages to person and property proven by the greater weight of the evidence, I am of the opinion that the verdict is inadequate." *Id.* Thereafter, the grant of a new trial was appealed. The *Taylor* court denied the appeal, founded on the well settled principle that, "...in this state that the trial judge has the authority and responsibility to grant a new trial when, in his judgment, the verdict of the jury is contrary to the fair preponderance of the evidence and that an order granting a new trial on such ground is not appealable." *Taylor v. Devore*, 253 S.C. 393, 395, 171 S.E.2d 158, 159 (1969) (citations omitted).

b. Nisi Additur

The trial judge alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive. *McCourt by and through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995); *O'Neal v. Bowles*, 310 S.C. 483, 431 S.E.2d 555 (1993). Compelling reasons, however, must be given to justify invading the jury's province

in this manner. *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995); *Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993).

While the trial judge may not impose his will on a party by substituting his judgment for that of the jury, he may give the party an option in the way of *additur* or *remittitur*, or in the alternative, a new trial. *Jones v. Ingles Supermarkets, Inc.*, 293 S.C. 490, 361 S.E.2d 775 (Ct. App. 1987). The consideration of a motion for a new trial *nisi additur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995). [W]hen liability is admitted, a plaintiff is entitled to an award unless proof completely fails. *See Page v. Crisp*, 303 S.C. 117, 399 S.E.2d 161 (Ct. App. 1990).

The trial judge has authority to grant a new trial to the plaintiff unless the defendant agrees to the payment of an additional amount. *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984). In *Graham*, the Defendant appealed a trial court order which granted a new trial *nisi* on damages unless the appellant agreed to an *additur* of \$67,500 in actual damages. The order followed the returned jury verdict for \$10,000 actual damages and \$10,000 punitive damages. On appeal, the court in *Graham* affirmed the trial judge's order; finding the order was well-reasoned as stated by the trial court: "The court said it cannot be seriously argued that plaintiff herein was adequately compensated or even nearly so, for the injuries she sustained." *Id.*

Based upon the evidence presented at the trial of this matter by way of witnesses and exhibits, the amount of the verdict in the instant case is inadequate. Even defense counsel argued in closing argument that Plaintiff should be compensated for her injuries for the October 2018 – January 2019 time period. Based on defense counsel's argument, counsel suggests an *additur* in the range of \$40,000 - \$50,000.

c. Thirteenth Juror Doctrine

The seminal case stating the “thirteenth juror” doctrine is *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 195 S.E. 638 (1938). *Worrell* states:

Nor does it follow that because under the law the trial Judge is compelled to submit the issues to the jury, he cannot grant a new trial absolute. As has often been said, the trial Judge is the thirteenth juror, possessing the veto power to the nth degree, and, it must be presumed, recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality.

Worrell, 186 S.C. at 313-14, 195 S.E. at 641.

A review of the “thirteenth juror” doctrine was undertaken by the appellate entity in *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990):

This Court has had an opportunity to reconsider the thirteenth juror doctrine on several occasions. Each time we have refused to abolish the doctrine. We have also refused to require trial judges to explain the reasons for the ruling. The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. *S.C. Highway Dept. v. Townsend*, 265 S.C. 253, 217 S.E. (2d) 778 (1975). The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror “hangs” the jury. 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 juror” 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.

A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *South Carolina State Highway Department v. Clarkson*, 267 S.C. 121, 226 S.E. (2d) 696 (1976).

Folkens, 300 S.C. at 254-55, 387 S.E.2d at 267.

A trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated by the facts of the case. *Graham v. Whitaker*, 282 S.C. 393, 321 S.E. (2d) 40 (1984). Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed. *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct. App. 1993). In ruling on a new trial motion, a trial judge has the discretionary power to grant a new trial absolute or *nisi* in a law case upon his disapproval of the verdict on factual grounds, and in this role he has been recognized and designated as the "thirteenth juror." *South Carolina State Hwy. Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975). Such discretion is "founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them" *Faion v. Rucks*, 217 S.C. 180, 189, 60 S.E.2d 88, 92.

The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. See *Cock-n-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996); *Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct. App. 1996).

In *Krepps*, the Plaintiff, Patsy C. Krepps as Guardian *ad Litem* for Shohn E. Krepps, brought two separate causes of action; the one under appeal concerning an action to recover damages for personal injuries arising out of an automobile wreck in which the jury returned a verdict in the amount of zero dollars. *Krepps by Krepps v. Ausen*, 324 S.C. 597, 479 S.E.2d 290 (Ct. App. 1996). Plaintiff appealed the trial court's denial of the motion for a new trial absolute, and ultimately, the court in *Krepps* reversed and remanded the denial, and noted, "The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and

on appeal this Court will grant a new trial absolute.” *Krepps by Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996) (citations omitted).

Justice did not prevail in this case. The verdict in this case, \$0, is grossly inadequate so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. Further, the verdict of the jury is contrary to the fair preponderance of the evidence and a new trial must be granted to Plaintiff.

Conclusion

Based upon the foregoing, Plaintiff respectfully request that this Court grant a new trial *nisi additur*, or, alternatively, a new trial pursuant to the thirteenth juror doctrine as justice did not prevail.

URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK & KEITH, P.A.

s/ Jeff Buncher, Jr.

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ATTORNEYS FOR PLAINTIFF

December 14, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CASE NO.: 2020-CP-15-00358
	)	
Jill Maliszewski,	)	
	)	
Plaintiff,	)	
vs.	)	DEFENDANT’S RESPONSE TO
	)	PLAINTIFF’S RULE 59 MOTION
Margaret Yeager,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

Defendant Margaret Yeager (“Defendant”) asks the Court to deny the post-trial motion of Plaintiff Jill Maliszewski. Plaintiff is not entitled to the relief she seeks and the Jury’s verdict should stand.

LEGAL STANDARD

Plaintiff essentially moves for a judgment notwithstanding the verdict (JNOV) or a new trial absolute. A JNOV may be granted only **if no reasonable jury could have reached the challenged verdict**. *Boddie-Noell Properties, Inc. v. 42 Magnolia Partnership*, 344 S.C. 474, 544 S.E.2d 279 (Ct. App. 2000), cert. granted, (Aug. 8, 2001). “Reviewing the denial of motions for directed verdict and JNOV, the evidence and the reasonable inferences that can be drawn therefrom must be viewed in the light most favorable to the non-moving party.” *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 78, 439 S.E.2d 266, 269 (1993); *Evans v. Taylor Made Sandwich Co.*, 337 S.C. 95, 99, 522 S.E.2d 350, 352 (Ct.App. 1999). The motion should not be granted where the evidence yields more than one inference or its inference is in doubt.” *Evans*, 337 S.C. at 99, 522 S.E.2d at 352.

A. Judgment notwithstanding the verdict

Plaintiff contends she presented uncontroverted evidence at trial by her chiropractor which gives rise to only one inference. Namely, Defendant was the proximate cause of her “pain.” As such, Plaintiff argues a reasonable jury could not have reached its verdict based on the evidence presented and therefore its verdict must be unreasonable.

However, the jury need not believe any evidence it hears. As the Court properly instructed the jury at the close of evidence:

“Even if there is uncontradicted testimony the Plaintiff was injured, that does not render that testimony undisputed. There remain the questions of the inherent probability of the testimony and the credibility of the witness or the interest of the witness in the result of the litigation. Thus, even if there is uncontradicted testimony of injury, you as a jury are not required to accept that testimony. You have a right to determine it in the light of all the circumstances and give it such weight you think it deserves.”

Thus, the jury was free to make its own determination as to whether it believed Plaintiff was in pain regardless of the *amount* of evidence since the jury must weigh the credibility of that evidence.

Much of the jury’s decision likely hinged on credibility. In her Motion, Plaintiff dismisses her “two visits for back pain in 2004” as a distant outlier, but the testimony showed and implied far more. At a bare minimum, Plaintiff was untruthful about her prior treatment and back pain as she testified at least *4 times* she **never** experienced prior back pain or underwent treatment. This entire assertion was demonstrably false. On cross examination she admitted to prior back pain *and* treatment which was evidently only punctuated by an MRI she would not acknowledge until shown; a bone scan she also would not acknowledge until shown; and a breast reduction surgery specifically for neck and back pain which was “disrupting her daily activities”

several years later. Thus, her treatment pattern suggests far more extensive treatment than two visits in 2004. As such, a jury could easily deduce, and likely did, that Plaintiff's untruthful testimony of prior back pain impacted her credibility and likely suggested a pre-existing condition. Each of these inferences are reasonable.

That being said, the suggestion the evidence was uncontroverted as to Plaintiff's constant pain is far from uncontroverted. First, the jury heard evidence Plaintiff was *not* in pain at the scene of the accident. Second, Plaintiff admitted she sought no treatment whatsoever for 8 days following the accident suggesting she was not injured. Moreover, Plaintiff admitted she worked a "physically demanding" job during the 8-day gap in her initial treatment which could easily have accounted for her later pain. Finally, the jury heard evidence of gaps in her treatment as long as 13 months. Plaintiff argued these gaps did not signify a lack of pain, but a jury could easily have concluded the opposite. Such a conclusion is reasonable and would also impact Plaintiff's credibility.

Plaintiff also seems to suggest Defendant's expert provided no evidence to support this verdict. To the contrary, Dr. Rosenthal testified Plaintiff's MRI was flawless following the accident. Moreover, he walked the jury through a later MRI showed degenerative conditions that he testified likely would cause pain. A reasonable jury could, and evidently did, choose to accept that testimony. On the other hand, Plaintiff's chiropractor testified she was trained to read MRIs and that multiple radiologists simply missed earlier herniations or the MRI machine was broken. The jury likely concluded her testimony was less than credible. In fact, during closing, while discussing her testimony, jurors were openly laughing at claims.

Therefore, the motion for judgment notwithstanding the verdict should not be granted because Defendant is the non-moving party and any reasonable jury could have reached the same verdict as this reasonable jury.

B. New trial absolute

The trial court can grant a new trial absolute only if the amount of the verdict is grossly inadequate or excessive to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. Indeed, this is precisely what Plaintiff baldly alleges in her Motion. However, Courts have consistently held:

When the verdict indicates that the jury was unduly liberal or conservative in its view of the damages, the trial judge alone has the power to reduce the verdict by the granting of a new trial nisi. **However... the jury's determination of damages is entitled to substantial deference.**

Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993). *See also Duncan v. Hampton County School Dist. No. 2*, 335 S.C. 535, 517 S.E.2d 449, 136 Ed. Law Rep. 1076 (Ct. App. 1999). The Court should give substantial deference to the jury's determination of damages. *See Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). For example, in *Elders v. Parker*, the Court found when a jury verdict is evaluated, the evidence, and **all** inferences from it must be viewed in the light most favorable to the party that prevailed before the jury. *See Elders v. Parker*, 286 S.C. 228, 230, 332 S.E.2d 563, 565 (Ct. App. 1985).

Plaintiff suggests Defendant conceded to Plaintiff's alleged lost wages and some amount of damages, but this is inaccurate. Defendant argued Plaintiff's lost wages were not viable because she owned her own business; made her own schedule and was salaried. Thus, she had no

lost wages. Additionally, Defendant's counsel argued the **most** the jury should award was roughly \$11,000. However, the evidence showed Plaintiff suffered no objective injury at all.

Here, the verdict does not evince the Jury was motivated by anything other than the evidence. The Jury deliberated for an hour and came to a reasonable decision based on the evidence presented. Rather than viewing the verdict in a light most favorable to Defendant, Plaintiff asks the Court to construe the verdict in the opposite – in a light most favorable to her. Such a request does not meet the standard for Plaintiff's request and impermissibly asks the Court to invade the province of the jury.

CONCLUSION

In short, the jury did not believe Plaintiff was injured. They could reasonably base this conclusion on her denied (but present) prior back problems; initial gap in care; continued physically demanding work during that gap; a clean MRI 2 weeks later; and continued physically demanding work with numerous gaps as long as 13 months in subsequent treatment. From this treatment pattern and evidence, the jury concluded Plaintiff was not injured and, at this stage, the Court should accept the jury's reasonable interpretation of the evidence.

For the foregoing reasons, Defendant respectfully requests this Court to deny the Plaintiff's post-trial motions discussed herein.

This 14th day of December, 2022.

Respectively Submitted,

CLARKSON, WALSH, & COULTER, P.A.,

s/ Jeffrey Crudup

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Counsel for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 th JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
	)	CASE NO.: 2020-CP-15-
Jill Maliszewski,	)	
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
Margaret Yeager,	)	
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE-NAMED:

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the South Carolina Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney at the address shown below. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK & KEITH, P.A.

s/ Jeff Buncher, Jr.
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Attorneys for Plaintiff

June 9, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 14 th JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
	)	CASE NO.: 2020-CP-15-
Jill Maliszewski,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
vs.	)	Jury Trial Requested
	)	
Margaret Yeager,	)	
	)	
Defendant.	)	
	)	

Plaintiff, complaining of Defendant, alleges and says:

PARTIES

1. Jill Maliszewski is and was at all times mentioned herein a citizen and resident of the State of Florida.

2. Upon information and belief, Defendant Margaret Yeager is and was at all times mentioned herein a citizen and resident of the State of South Carolina.

JURISDICTION

3. The Court has subject-matter jurisdiction over the claims in this lawsuit under article V, § 11, of the South Carolina Constitution and South Carolina Code § 14-5-350.

4. The Court has personal jurisdiction over Defendant.

VENUE

5. Venue is proper in this circuit under South Carolina Code § 15-7-30 as the acts or omissions occurred in Colleton County, South Carolina.

FACTS

6. On or about October 14, 2018, at approximately 2:59 p.m., Defendant was the owner and operator of a Lexus that was traveling along or about I-95, behind Plaintiff's motor vehicle.

7. At the time and place aforementioned, Jill Maliszewski was the passenger in a motor vehicle that was traveling along or about I95.

8. At the time and place aforementioned, Defendant, suddenly and without warning, struck the rear of the motor vehicle Jill Maliszewski was a passenger in, thereby causing a collision and injuring her.

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence)

9. Jill Maliszewski incorporates all allegations of paragraphs above into this cause of action as if set forth verbatim.

10. That the injuries and damages complained of herein were directly and proximately caused by the following negligent, careless, reckless, willful, and grossly negligent acts of Defendant all in violation of the statutes and common laws of the State of South Carolina, combining and concurring:

- (a) In following too closely;
- (b) In failing to keep a proper lookout;
- (c) In failing to properly observe the road and traffic conditions;
- (d) In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there prevailing;
- (e) In otherwise being negligent, reckless, and careless; and
- (f) For such other acts and omissions that may become more apparent through the discovery and/or trial of this matter.

11. That as a result of the aforesaid negligent, grossly negligent, careless, willful, and reckless acts, Jill Maliszewski has been injured and damaged. Jill Maliszewski has, is and will in

the future continue to suffer from the following, including but not limited to: pain and suffering; medical expenses; trauma; loss of enjoyment of life; lost wages; permanent impairment; annoyance, inconvenience, travel and other damages - all to her injury and damage in an amount of actual and punitive damages to be determined at the trial of this action.

WHEREFORE, Jill Maliszewski requests that judgment be entered against Defendant on all causes of action and that Jill Maliszewski be awarded: actual damages; punitive damages; a trial by jury as to all causes of action properly triable; the costs of this action; and such other and further relief as the Court may deem just and proper.

URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK & KEITH, P.A.

s/ Jeff Buncher, Jr.

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Attorneys for Plaintiff

June 9, 2020

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CASE NO.: 2020-CP-15-00358
	)	
Jill Maliszewski,	)	
	)	
Plaintiff,	)	
vs.	)	ANSWER TO THE COMPLAINT
	)	(JURY TRIAL DEMANDED)
Margaret Yeager,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

COMES NOW, Defendant Margaret Yeager (“Defendant”), hereby files this, her Answer to the Plaintiff’s Complaint, as follows:

1. Defendant denies all allegations not specifically admitted in this Answer.
2. Defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6 and 7.
3. In response to the allegations contained in Paragraph 8, Defendant admits only that she collided with the rear of the vehicle in which Plaintiff was a passenger. Defendant denies the remaining allegations contained in Paragraph 8.
4. In response to the allegations contained in Paragraph 9, Defendant reiterates her responses to Paragraph 1 through 8 as if restated verbatim herein.
5. Defendant denies the allegations contained in Paragraphs 10 and 11 including all subparts.
6. Defendant hereby denies all Request for Admissions served on Defendant pursuant to Rule 36 of the South Carolina Rules of Civil Procedure which are inconsistent with Defendant’s Answer.

7. Defendant denies the prayer for relief constituting the remainder of the Complaint.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Improper Service)

8. Plaintiff has failed to properly serve Defendant

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

9. The Complaint fails to state grounds upon which relief can be granted pursuant to SCRCP 12(b)(6).

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Adherence to Standard of Care)

10. To the extent the evidence shows, Defendant exercised that degree of skill and care required of her by law at all times relevant to the matters complained of in the Complaint.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Sudden Emergency Doctrine)

11. The sudden emergency doctrine precludes the Plaintiff's claims because Defendant made every reasonable effort under the circumstances to avoid the accident, which took place under emergent conditions.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Act of God)

12. To the extent the evidence shows, the accident occurred due to an unforeseeable act of God.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages Unconstitutional)

13. The claims for punitive damages are barred as a matter of law under the facts of this matter, and the statutes of the State of South Carolina purporting to authorize those claims violate Defendant's rights as guaranteed by the Constitutions of the State of South Carolina and the United States of America.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(South Carolina Statutory Cap)

14. To the extent Plaintiff alleges punitive damages, which Defendant specifically denies are applicable, Defendant shows any award of punitive damages is subject to South Carolina Code Section 15-32-530.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(No Proximate Cause)

15. To the extent the evidence shows, no causal connection exists between any alleged act or omission of Defendant and the damages Plaintiff alleges.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

16. To the extent the evidence shows, Plaintiff has failed to take action to reasonably avoid or reduce the alleged damages and injuries, and are therefore not entitled to recover said damages that should have been avoided or reduced.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Third Party/Comparative Negligence)

17. To the extent the evidence shows, any injuries suffered by Plaintiff were caused by parties other than Defendant, including, but not limited to, Plaintiff's driver.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Reservation/Non-waiver)

18. Defendant reserves any additional and further defenses as may be revealed by additional information obtained during the course of discovery and investigation and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully responded to the Complaint, Defendant demands a trial by a jury of 12 persons and judgment in her favor.

This 8th day of July, 2020.

Respectively Submitted,

CLARKSON, WALSH, & COULTER, P.A.,

s/Jeffrey Crudup

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Counsel for Defendant

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF COLLETON

4 2020-CP-15-00358

5 Jill Maliszewski

6 Vs.

7 Margaret Yeager

8

9 Walterboro, South Carolina

10 December 5-6, 2022

11 Before the Honorable Brooks P. Goldsmith

12 APPEARANCES

13 For the Plaintiff: Jeff Buncher, Jr.

14 For the Defendant: Jeffrey M. Crudup

15

16 Reported by: Michael C. Watkins

17 Official Court Reporter

18

19

20

21

22

23

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1 THE COURT: We're about to begin the selection of a
2 jury in the case entitled Jill Maliszewski versus Margaret
3 Yeager. Is that the case?

4 MR. BUNCHER: Maliszewski, close.

5 THE COURT: Maliszewski, I apologize. In just a few
6 moments I'm going to ask you some questions concerning your
7 relationship with any of these individuals, but first I'm
8 going to ask that the attorneys involved in the case, if
9 they will stand, identify themselves to you, identify their
10 clients, and give you the names of any potential witnesses
11 that may be called in this trial. Once that's done I will
12 ask you questions about your relationship with the attorneys
13 with the parties, any potential witnesses, and we'll begin
14 with the State -- excuse me, with the plaintiff. Excuse me.

15 MR. BUNCHER: Thank you, Judge. Good morning. My name
16 is Jeff Buncher, I work at Uricchio, Howe, Krell, Jacobson,
17 Toporek, and Keith, in Charleston. I have with me Jill
18 Maliszewski, she was lives down in Jacksonville, Florida,
19 her husband, Casimir, is going to testify in this case via
20 video, he's at home watching the children. A doctor down in
21 Jacksonville, a chiropractor named Amy Bernstein will be
22 played by video. A nurse named Karen Shelton, who will also
23 testify in this matter. And there is -- we have the
24 defendant, Ms. Margaret Yeager.

25 THE COURT: Thank you, sir. And Mr. Crudup.

1 MR. CRUDUP: Good morning, everybody. My name is Jeff
2 Crudup, I work at a firm called Clarkson, Walsh and Coulter
3 in Charleston. This is my client, Maggie Yeager. We will
4 have a doctor, Dr. Aron Rosenthal, who will testify in
5 addition to Ms. Yeager.

6 THE COURT: All right. Thank you. The first question
7 I have for you ladies and gentlemen is this: Has any member
8 of the jury panel ever been related by blood, or related by
9 marriage to any of the attorneys involved in the case, or to
10 either of the parties, or to any of the witnesses that have
11 been identified to you? If you've ever been related to any
12 of those individuals, if so, please stand. Has any member
13 of the jury panel ever had a close, personal, or social
14 relationship with either of the attorneys, either of the
15 parties, or any of the witnesses that have been identified
16 to you? If so, please stand. Has any member of the jury
17 panel, or a member of your immediate family, ever been
18 represented by any of the attorneys involved in this case?
19 If so, please stand. Is any member of jury panel familiar
20 with any of the allegations or facts in this case? If so,
21 please stand. Is any member of the jury panel aware of any
22 bias or prejudice that you might have to the plaintiff or to
23 the defendant? If so, please stand. Does any member of
24 jury panel know of any reason whatsoever why he or she
25 should not serve as a juror in this case? If so, please

1 stand.

2 THE JUROR: I'm Briana Green, juror number 89.

3 THE COURT: I'm sorry, your number again was what?

4 THE JUROR: 89.

5 THE COURT: 89. All right. And I probably need to
6 speak with you down front a little bit.

7 THE JUROR: We can do it now if it's okay.

8 THE COURT: I'm sorry?

9 THE JUROR: Is it okay if we do it now?

10 THE CLERK: She wants to do it now in front of
11 everybody.

12 THE COURT: Okay. All right.

13 THE JUROR: My step-dad is also a juror. Is that
14 something that can be --

15 THE CLERK: Her stepfather is also a juror.

16 THE COURT: Oh, I see. Okay. Well, thank you for
17 disclosing that. Any additional questions from the
18 plaintiff? From the defendant?

19 MR. CRUDUP: Your Honor, may we approach?

20 THE COURT: Sure.

21 (A bench conference was held with the Judge and the
22 Attorneys off the record.)

23 THE COURT: I had a request for a short restroom break,
24 ladies and gentlemen, so as soon as we get back then we will
25 select the jury in this case, and the remainder of you not

1 selected will be dismissed for the week. So let's take a
2 short ten minute recess, ladies and gentlemen.

3 (A break was taken.)

4 THE COURT: Ladies and gentlemen, I have one, maybe two
5 more questions. I'm getting ready to ask you two questions.
6 The first is going to deal with have you ever been treated
7 by a physician for back trouble, and the next one is going
8 to be have you ever been treated by a chiropractor for back
9 problems, so here it goes. The first question, ladies and
10 gentlemen, has any member of the jury panel been treated by
11 a physician for back problems, or back pain? If so, please
12 stand. I'm going to start to my right over here, and let me
13 get your name and number, please, ma'am.

14 THE JUROR: 204, Jill Stevens.

15 THE COURT: 404.

16 THE JUROR: 204.

17 THE COURT: 204, I'm sorry. And was it -- were you
18 treated by a physician locally, meaning --

19 THE JUROR: Yes. I was referred to a spine institute.

20 THE COURT: And how long were you treated?

21 THE JUROR: I still have back problems so it's ongoing.
22 I still have back problems, it's ongoing.

23 THE COURT: Are you seeing a physician for that?

24 THE JUROR: Yes.

25 THE COURT: Okay.

1 THE JUROR: Dr. Smith is the one that treated me in
2 Charleston Spine Institute.

3 THE COURT: Okay. All right. Thank you, ma'am. I'm
4 going to start and probably point at people. The gentleman
5 closest to me with the dark jacket on, yes, sir, your name
6 and number?

7 THE JUROR: My name is Harvey Nicols, my number is 162.
8 And I'm waiting on a call from the specialist from Bon
9 Secours St. Francis from Dr. Steiner. I have got three
10 herniated discs in my back, and I would love to serve on a
11 jury but I don't know whether it's going to --

12 THE COURT: All right. And you have seen then, I take
13 it, more than one physician?

14 THE JUROR: Yes.

15 THE COURT: Over a period of approximately how long?

16 THE JUROR: About a month and a half.

17 THE COURT: A month and a half.

18 THE JUROR: Yeah. I've had three CT Scans.

19 THE COURT: Was that as a result of some kind of
20 trauma?

21 THE JUROR: No. Like -- I'm 80 years old, I put up two
22 carts of woods about a month a half ago and really screwed
23 my back up.

24 THE COURT: I've got you. Okay. All right. Thank
25 you, sir. And the lady -- again, I'm going to point.

1 THE JUROR: 137 Pamela Lyons.

2 THE COURT: 137.

3 THE JUROR: And I had a bulging disk in my back in my
4 cervical area, and they injected it, and that was about
5 three years ago, but I'm not under any physician care.

6 THE COURT: All right. Thank you, ma'am. Let's
7 move -- the gentleman I'm trying to point to standing up
8 with the beard.

9 THE JUROR: Randy Fender, juror number 70.

10 THE COURT: Yes, sir.

11 THE JUROR: I got two disks taken out of my neck, a
12 titanium plate put in there about 20 years ago, it still
13 gives me problems.

14 THE COURT: All right. Thank you, sir. And directly
15 behind the --

16 THE JUROR: Cindy Fuller, 75. I have degenerative disk
17 disease, and a bulge. They gave me Gabapentin for nerve
18 damage (inaudible.)

19 THE COURT: Okay. Thank you, ma'am. Next to you.

20 THE JUROR: Patricia Ahl, juror number 2. I was
21 injured in a car accident and I see Southern Coast Pain
22 Management in Summerville, and I'm currently under treatment
23 as of now.

24 THE COURT: And how long has this been going on?

25 THE JUROR: Since 2009.

1 THE COURT: Okay. All right. Thank you, ma'am. And
2 yes, ma'am?

3 THE JUROR: Yes. I'm Belinda Bailey, juror number 8.
4 I have degenerative disk disease in my lower back. I have
5 had injections but it's been probably about two years since
6 I've had one. I'm not under care right now.

7 THE COURT: Okay. Thank you, ma'am. And the lady in
8 the red.

9 THE JUROR: Angela Vaga. I used to work with the
10 government ten years and I've had blunt force trauma from
11 (inaudible) Florida. I've also been rear-ended several
12 times. All of this has been in California. I still get
13 chiropractic care just for regular maintenance. I exercise
14 to strengthen my back muscles, and do deep tissue massage
15 for my therapy, and acupuncture. No surgeries, no drugs.

16 THE COURT: All right. Thank you, ma'am. And directly
17 behind you would be the lady in the blue.

18 THE JUROR: Yes. Benita Washington, juror number 225.
19 Two herniated disks in my lower back, treated by the doctor
20 about 15 years ago. No treatment as of right now.

21 THE COURT: Thank you, ma'am. I'm trying to look at
22 the lady on the end of the row there.

23 THE JUROR: Christine Rodkey, juror 181. I have
24 degenerative disk disease, and also I've had a spill where I
25 took a fall and I had received chiropractic treatment. That

1 was about two years ago.

2 THE COURT: All right. Thank you. And at the back of
3 the room?

4 THE JUROR: Lucy Perry, juror 166. I have a cracked
5 disk and sciatica. I have been seeing Dr. Keith Taylor and
6 a chiropractor on James Island.

7 THE COURT: All right. Thank you, ma'am. And the
8 follow-up question, has anyone been treated by just a
9 chiropractor for back trouble or back pain? If so, please
10 stand. Let me speak with the gentleman in the blue
11 checkered shirt.

12 THE JUROR: Robert Langdale, 129. I have been to a
13 chiropractor before for lower back pain.

14 THE COURT: How long ago?

15 THE JUROR: Most recently three years, ten years, 15
16 years. Periodically over the past 35 years.

17 THE COURT: Okay. All right. Thank you, sir. And the
18 gentleman behind you.

19 THE JUROR: James McDowell, juror number 148. I just
20 went to the chiropractor for lower back pain, that's been
21 for the past two months at chiropractor USA in Mount
22 Pleasant.

23 THE COURT: All right. Thank you, sir. Any other
24 questions?

25 MR. BUNCHER: No, sir.

1 THE COURT: Any other questions from the defense?

2 MR. CRUDUP: No, Your Honor.

3 THE COURT: Okay. Madam Clerk, would you please give
4 us a jury?

5 (Break in proceedings.)

6 THE COURT: Okay. Ladies and gentlemen, I believe that
7 the attorneys have had sufficient time to review the list of
8 the final -- the 20 finalists, and I believe we are ready to
9 begin the selection process. Madam Clerk?

10 THE CLERK: Thank you, Judge. To begin with, for the
11 plaintiff.

12 MR. BUNCHER: Plaintiff strikes number 17.

13 THE CLERK: Number 17. And for the defendant, first
14 strike?

15 MR. CRUDUP: Number 18.

16 THE CLERK: You said 18?

17 MR. CRUDUP: Correct.

18 THE CLERK: Plaintiff second?

19 MR. BUNCHER: Number 9.

20 THE CLERK: For the defense?

21 MR. CRUDUP: Number 3.

22 THE CLERK: Number 3. For the plaintiff?

23 MR. BUNCHER: Number 11.

24 THE CLERK: Number 11. And for the defense?

25 MR. CRUDUP: Number 5.

1 THE CLERK: Number 5. And for the plaintiff?

2 MR. BUNCHER: Number 2.

3 THE CLERK: Number 2. And for the defense, strike
4 number four?

5 MR. CRUDUP: Number 12.

6 THE CLERK: And for the plaintiff?

7 THE COURT: That was it.

8 THE CLERK: Oh, that was four. I'm going to repeat
9 that back for both of you and you let me know if this is
10 correct. So the plaintiff strikes number 17, number 9,
11 Number 11, and number 2.

12 MR. BUNCHER: Correct.

13 THE CLERK: For the defense, the defense strikes number
14 18, number 3, number 12. And I think I need the fourth one.
15 Number 5. Okay. So number 5. Thank you. So when I call
16 your number out of the jury gallery, if you will bring
17 everything that you have with you and come down the front
18 aisle, and our jury bailiff will direct you on where to sit
19 in the gallery here. Juror 137, Pamela Lyons. Juror 57,
20 Timothy Crosby. Juror 20, Hunter Benton. Juror 75, Cindy
21 Fowler. Juror 71, Damontre Ferguson. Juror 226, Sha'von
22 Way. Juror 120, Richie Johnson. Juror 133, Latoya Lisbon.
23 Juror 8, Belinda Bailey. Juror 10 -- I'm sorry, juror 225,
24 Benita Washington. Juror 172, Charles Pruett. And juror
25 35, which would be our 12th juror, Janice Brown. And Judge,

1 this is your jury.

2 THE COURT: Any matters of law that the Court needs to
3 take up concerning the selection of the jury?

4 MR. BUNCHER: No, sir.

5 MR. CRUDUP: No, Your Honor.

6 (The remaining panel was excused.)

7 (Break in proceedings.)

8 THE COURT: I don't want you to sit around while
9 they're trying to just work on technology, so let's go ahead
10 and take a lunch break until 12:30, or 12:45 if you need to,
11 see you back then. Then the attorneys will make their
12 openings statements to you and tell you what they think the
13 case is going to be about. Okay? So you're excused, ladies
14 and gentlemen, until 12:45.

15 (The jury left the courtroom.)

16 THE COURT: This note apparently means juror number
17 120, Richie Johnson, has a CT scan tomorrow afternoon,
18 January 6th, at 1:30.

19 THE CLERK: January?

20 MR. BUNCHER: January 6th or December 6th?

21 THE COURT: Did I say January? I'm sorry, December.

22 MR. BUNCHER: Tomorrow at 1:30? Okay.

23 MR. CRUDUP: I think we should be done.

24 THE COURT: You can tell him we think he will be okay
25 by then, if not if he needs to go then he goes. At any rate

1 all of the jurors are present. Are y'all ready?

2 MR. BUNCHER: Sure.

3 MR. CRUDUP: Yes, sir.

4 (The jury returned to the courtroom.)

5 THE COURT: Welcome back, ladies and gentlemen. Before
6 we begin, the first thing I'm going to ask the clerk to do
7 is administer to you your oath as jurors.

8 (At this time the trial jury was sworn.)

9 THE COURT: Before we actually begin, ladies and
10 gentlemen, I wanted to say a few things to you. In just a
11 few minutes the attorneys will make their opening statements
12 to you where they try to tell you what they believe the
13 evidence is going to show or not show. After that,
14 typically you have witnesses take the witness stand.
15 Evidence may be introduced by way of documents. Once all of
16 that is done the attorneys will make to you their closing
17 arguments where they try to convince you to see the case the
18 way they see it. Then I will tell you about the law that
19 applies in this case, and then you can begin your
20 deliberations. You, ladies and gentlemen, are the sole
21 judges of the facts in this case. What I think about the
22 facts in this case is totally irrelevant, you decide the
23 facts. I decide the law. And you must take the law as I
24 tell you it is, even if you disagree with it, and then apply
25 the law to the facts as you find them to be, and then make a

1 decision based on all of that. From time to time you may
2 see the attorneys ask to see me at a side bar when they come
3 over and whisper things designed for you not to hear it, but
4 the reason is not to really keep secrets from you, it's
5 because I may be required to discuss with the attorneys a
6 matter of law, and in discussing that I may have to discuss
7 the facts of the case. The law does not permit me to
8 discuss the facts of the case in your presence once again,
9 because you, ladies and gentlemen, decide what the facts
10 are. Having said all of that, ladies and gentlemen, we will
11 begin the trial of the case beginning with the plaintiff.
12 Opening statements.

13 MR. BUNCHE: Thank, Your Honor. May it please the
14 Court? Good afternoon, y'all.

15 (All jurors respond good afternoon.)

16 MR. BUNCHE: Thank you all for coming down here. I
17 know you got the letter in the mail that you had jury duty
18 and I'm sure you were upset about that, and you got picked,
19 and now you're here. But this is Jill's only day in court,
20 and you are the 12 people that get to decide this chapter of
21 her life, which will be the rest of her life, so thank you
22 all again for coming up here. To put y'all at ease, this is
23 a very simple case. It's a car wreck case, and under the
24 law what we call car wreck cases are negligence cases. What
25 that means is if a driver didn't follow the rules of the

1 road and they injure somebody, the person gets compensated
2 for their damages. In this case the defendant, Ms. Yeager,
3 they do not dispute that she ran into the back of the car
4 Jill was a passenger in. The real dispute in this case,
5 which you all have to decide, is the extent of the damages
6 Jill sustained as a result of the wreck, and that's your
7 job. You're going to be the assessors, the appraisers of
8 the pain, the suffering, and the loss of enjoyment of life.
9 The person, Ms. Yeager here, she's the defendant and we have
10 no ill-will towards her, she was just negligent. That's all
11 she was, she was negligent under the law, and the law says
12 you have to be compensated when someone negligently injures
13 you. So just so y'all know where I'm going with this
14 opening, we're going to talk about Jill first, then we'll
15 talk about the wreck, and then we'll talk about the alibies
16 or the defenses in this case. So Jill, do you mind standing
17 up? This is my client, Jill. She's a mother of two lovely
18 daughters. She and her husband, Cas, take care of him. Her
19 husband is back home taking care of the daughters right now
20 down in Jacksonville so she can be up here at trial. Thank
21 you, Jill. On top of being a mother, which I know is an
22 extremely hard job in the first place, she's a hardworking
23 mom. In addition to her two children she also takes care of
24 her parents. She's lived all over this world growing up as
25 her father was in the military, and now she's helping take

1 care of him at this day and age. So on top of the being a
2 mom, on top of taking care of her parents, which are two
3 extremely tough jobs to do, she's also self-employed and as
4 her own job as a speech language pathologist. She tells me
5 she's one of the -- the only person in Florida that has the
6 qualifications she has to take care of these children, and I
7 think she's specializes in non-verbal autism. So we've got
8 some videos that we'll show you of what her job entails as a
9 speech language pathologist. I thought talking to her
10 originally just meant, you know, that she helped the kids
11 speak, but she's dealing with children that has some
12 disabilities that she's helping them out with, and she's
13 doing a good job with those kids down in Florida. So what
14 happened. We had a car wreck back in October of 2018 over
15 on I-95. Jill was coming home from North Carolina heading
16 back home to Florida. The defendant testified that it was
17 touch and go traffic, stop and go. She sped up to 35,
18 didn't have enough room to stop, ran into the back of the
19 car that Jill was in. The defendant described the wreck as
20 an earthquake, those were her words that she used at the
21 deposition. So as a result of the wreck Jill suffered back
22 pain. She didn't have immediate pain when the wreck
23 happened, but on the way home to Florida in that two to
24 three hour time span, her back started feeling bad, it
25 started bothering her, so she was hoping the pain would go

1 away, as would most people. The pain didn't go away. So
2 about a week after the wreck she went to a doctor down in
3 Florida, and she treated in that clinic from October of 2018
4 all the way through January of 2019. At that point in time
5 she was tired of going to the doctor, she wanted to get back
6 to what she was doing with her life and with her kids.
7 She's got kids she's got to raise, she's got work to do.
8 She decided she would try to work it out on her own, do the
9 exercises they gave her and try to get on with life. Well,
10 from January until June she does that and the pain doesn't
11 go away, so she goes and sees another doctor named Dr. Amy
12 Bernstein, who's a chiropractor down in Florida, and
13 Dr. Bernstein has been treating Jill ever since 2019,
14 treating her up until this date. And you're going to hear
15 from Dr. Bernstein. We took her deposition back in May, I
16 think, and we'll play her on video. So you'll hear
17 everything that Dr. Bernstein says about the injuries Jill
18 sustained to her back, and she will also tell you that the
19 injury Jill sustained with her back is going to be with her
20 for the rest of her life. At the end of the trial the Judge
21 will tell you Jill's got a total, I think, of 36 years to
22 live, and she's had four years in the past, so this is an
23 injury that's going to be with her for 40 years of her life
24 because of negligence that was inflicted upon her. So what
25 are the alibies? What are the defenses? They talk about --

1 the defense will be she doesn't go to the doctor all the
2 time. You know, there's periods of time where she won't go
3 for five months, she'll go in, she'll go back, and that's
4 the defense. Because she doesn't go to the doctor she must
5 not be in pain. That's the defense -- one of the defenses
6 in this case. So we ask Dr. Bernstein: Well, she doesn't
7 see you all the time, does that mean she's not in pain
8 during those times? And she said: No, absolutely not.
9 It's just that Jill needs to -- she's doing the home
10 exercises, trying to take care of herself and trying to take
11 care of her family. You know, she goes to the doctor, signs
12 in, waits in the waiting room, gets a magazine, gets taken
13 back into the doctor's room, and then gets treated and goes
14 home, and that's a process to do, you know, once a week or
15 once a month. So she does what she has to do at home, and
16 she goes when she needs to go. So one of the defenses is
17 she doesn't go all of the time. But the only thing that
18 hasn't changed is that the pain in her back that's been
19 there since 2018 has been that same pain ever since.
20 Nothing else has caused it, that same pain. One thing I
21 forgot to bring up is the back pain. Jill has never been to
22 the doctor for back pain before this wreck. No mention of
23 it anywhere in any medical records whatsoever that I can
24 see. Before we come to trial I give Mr. Crudup, the other
25 attorney, records, he subpoenas records, and we gather all

1 the stuff to look at it. I didn't see anything in there
2 about any prior history of back pain until this wreck, and
3 he'll tell me if I'm wrong, but this is the first time she
4 ever had back pain when she got rear-ended by the defendant.
5 Another one is she had an MRI about two weeks after the
6 wreck. The MRI didn't show too much to the back, and then
7 she had an MRI back in May of this year, and it showed she
8 had some changes going on in her back. So the defense is,
9 well, she's got changes in her back now, we didn't cause
10 those. But what you've got to remember is you treat the
11 patient, not the scan, and the patient, being Jill, has had
12 that same pain, whether there's changes on the MRI or not,
13 had that same pain in her back going down to her hip these
14 past four years. So whether or not there's changes on the
15 MRI, the pain has been the same ever since, and that's what
16 Dr. Bernstein is going to tell you all. She's had the same
17 exact pain symptoms since this wreck of 2018. So at the end
18 of this case really what you're doing is what I told you at
19 the beginning, you're assessing damages. You are appraisers
20 of the value of life for 40 years of pain. And your job,
21 the Judge will tell you, is to bring back a verdict that's
22 fair and reasonable under the circumstances. And we're
23 going to ask you all for a fair and reasonable verdict in
24 this case to compensate her for the pain that was
25 negligently inflicted upon her. And it's going to be a

1 substantial number. We'll see how the evidence comes out,
2 and I'll explain it to you at the end how we come to that
3 number, but it's going to be a substantial number. But it's
4 going to be a number that's fair and reasonable in light of
5 40 years of pain and suffering, and just having a life
6 interrupted. It doesn't interrupt her actual doing. If you
7 look at her she looks like she's doing fine, but, you know,
8 back in that back it's squirming, she's feeling it, and it
9 doesn't impact her doing, but it impacts the doing if that
10 makes sense. You know, she goes and helps these kids, takes
11 care of her children, at the end of day she pays for it, she
12 pays for it everyday. So, again, thank you all for coming.
13 Thank you for being on this jury. Thank you for doing your
14 duty under the law of jury service. This is Jill's one day
15 in court. I'll try to be as fast as I can with these
16 witnesses because I know you want to get home, and I'll try
17 to get to you all of the evidence you need to make the
18 decision. Thank y'all so much.

19 THE COURT: All right. Thank you, sir. And for the
20 defense?

21 MR. CRUDUP: Thank you. Good afternoon, everyone. My
22 name is Jeff Crudup and this is my client, Maggie Yeager.
23 It's an honor to represent her. Something you just heard --
24 and if you cant' hear me, by the way, please just let me
25 know, sometimes I talk a little low. But something you just

1 heard was that this is Ms. Maliszewski's only day in court.
2 Well, it's also Ms. Yeager's only day in court. So what I
3 want to do now is I want to be as respectful of our time as
4 we can, and I want to try and give you a general sense of
5 what you're going to hear, because I think you kind of heard
6 the story generally. But I want to get -- I think I'm going
7 to get a little more in-depth, but I'm going to be concise
8 now, because at the end of the trial, tomorrow -- I mean,
9 we're gonna -- we'll be done by tomorrow, don't worry about
10 that, but at the end of the trial I want to have a little
11 more time to talk to you, so I want to try and be quick now
12 if I can. Because the first thing, the very first slide
13 that you saw, it said simple, it was that simple button from
14 like Target for Staples or whatever. And on the surface
15 this does seem simple, right? My client ran into the back
16 of someone and now she's hurt, it's as simple as you can
17 get. But it's not easy, it's not that straight forward, and
18 a lot of the details is what makes it not straight forward,
19 and that's what I want to talk to you about it, but you
20 haven't heard any of that stuff yet. So what I want to do
21 is let you hear that stuff and then I'm going to talk about
22 it. So what is the evidence going to show you? It's really
23 going to show you three things, right? The first is that
24 there was a car accident. And the nice part is really
25 there's three questions that have to be answered here, and

1 the first one is whether or not there was an accident or
2 not. And there was, right? No one is doubting that, no one
3 is saying anything. You're going to hear Maggie say she's
4 very sorry this happened. She's in stop and go traffic, and
5 it's one of those things where you feel like everyone is --
6 probably happened where it feels like it's time to go and
7 then it's not, that's what happens. And she says: Look,
8 I'm really sorry, I was a little too close. There's no
9 question about that, no one is going to fight about that.
10 The other thing no one is going to fight about is whether or
11 not after this Ms. Maliszewski was sore, right? She was
12 sore and her back hurt, that's totally reasonable. No one
13 has never -- we're not claiming that is not the case, no one
14 has ever questioned it. This isn't one of those little tap
15 accidents where no one could possibly get hurt, it's not.
16 So Maggie has never said anything of it, right? The
17 question is really about the third thing, and you start to
18 hear this already, the question is whether or not Ms.
19 Maliszewski was seriously injured in this accident. So the
20 question before you is not whether she was hurt, it's
21 whether she got better, that's the question that we need to
22 ask. That's the question we want to ask you, and that's why
23 you're here to help us do that. So what is the evidence
24 going to show you about that? Well, first of all, and this
25 is -- you already started to hear it because that's how

1 important it is, Ms. Maliszewski after this accident, we
2 know, we know that her back, her lower back was absolutely
3 anatomically perfect after this accident. We know that
4 because two weeks after the accident she goes and gets an
5 MRI, which takes a picture of your back, and it's perfect.
6 It's unusually perfect actually. Now, is that to say she
7 wasn't hurt? No, absolutely not, right? That can happen.
8 But what it means to say is that she's not seriously hurt.
9 And if you think about it, that kind of makes sense, right?
10 In the world we live in today we have tools to look at this
11 stuff. We can see if you have a broken bone or a herniated
12 disk, or a torn ligament, or a torn ACL, we know this. When
13 someone gets seriously injured no one goes, gee, we can't
14 figure it out, no one has any idea. We know that stuff.
15 And the gold standard for figuring out if someone has a
16 herniated disk problem, and I heard you guys stand up and
17 some of you talked about having back pain and I had a
18 herniated disk or something like that, that's the gold
19 standard is an MRI. And sometimes people confuse CT scans
20 with MRI's. CT scans look at your bone, MRI's look at
21 ligaments and disks and stuff like that, and when she goes
22 she gets the gold standard, and fortunately there's nothing
23 wrong. And she'll tell you that she was relieved when they
24 tell her you don't have a disk problem. This is two weeks
25 after the accident. Again, not to say she's not sore from

1 it, but you don't have a disk problem. You don't have a
2 permanent injury, right? So what the other part of the
3 evidence is going to show you, or this portion, is that
4 afterwards we -- what we know is that Ms. Maliszewski at
5 some point does seem to have an injury, right? Or one of
6 two things, either her back just starts to naturally
7 degenerate over time, which happens to all of us. I mean,
8 if you took an MRI of my back you would see it -- but you
9 see what's disk desiccation, which is just natural when the
10 water in your disks starts to dry out a little bit, but we
11 also see a small herniation. We know that that herniation
12 didn't happen in this accident. And how do we know that?
13 Because she goes and gets another MRI, it's four years
14 later. So the accident happens, she gets an MRI and it's
15 clear, then four years down the line she gets another MRI,
16 and when she gets that MRI there is a small herniation, and
17 there is this desiccation that wasn't there before. So we
18 know that the injury couldn't have been there before because
19 we took a picture, right? And really -- you know, they say
20 a picture should -- tells a thousands words. Well, with
21 what we are going to do is we found a radiologist, an expert
22 radiologist. You've heard a lot about her going to doctors,
23 she's went to chiropractors, not doctors, right? Not
24 medical doctors, she went to chiropractors. We went and got
25 an expert radiologist, because we thought, well, how could

1 this be, right? Well, Dr. Aron Rosenthal, who is a doctor
2 up in MUSC and he also comes down and he rotates down in
3 Colleton, he'll tell you about all of this, he's going to
4 walk you through these pictures, because we wanted to make
5 sure we didn't feel like we were pulling a fast one or
6 something. He's going to walk you through this, and he's
7 going to say here is how we know this herniation couldn't
8 have happened in the car accident because I'm looking at
9 that first MRI, not what the other radiologist said, I'm
10 looking at it. He's going to walk you through the actual
11 pictures. I'm going to put it up on the screen and he'll
12 show you how her back has changed over time, and he'll
13 explain to you that that is a normal thing that happens. So
14 the question isn't really, like we said, it's not whether
15 she got injured, it's whether she got better and why. So
16 how is she -- how are they going to prove, or to prove to
17 you that there's some other injury, there's some injury that
18 modern medicine just missed, right? What she's going to
19 tell you is, and she's already kind of said it, her lawyer
20 already kind of said this: Before this accident I never had
21 any back pain and now I do. Before and after, it's as
22 simple as that. That's what she tells her chiropractor, her
23 chiropractor is going to parrot that back to you, but that's
24 about it. What they want to do is have you kind of put
25 aside that objective evidence, the MRI, and the way she

1 treats, because you're going to hear about her treatment.
2 You already got to hear about -- when you said -- when he
3 said, well, there are these alibies. Well, you've got to
4 think about that. You're going to talk -- we're going to
5 talk about when she goes to treat, and when she doesn't go
6 to treat, and when she stops treating for months, and
7 months, and months on end. So they want you to ignore that
8 objective evidence, because ultimately we're here for one
9 thing, money, right? That's why we're here. This is civil
10 court, and at the end of this they're going to ask you
11 for -- they're going to ask you to have Mrs. Yeager -- Ms.
12 Yeager pay Ms. Maliszewski a lot of money, they know that.
13 And that's why they have to get you to believe that she's
14 permanently injured and never going to get better at for
15 least 40 years. If they don't do that then the numbers
16 they're going to ask for, those numbers are going to sound
17 ridiculous, right? Because at some point they're going to
18 ask -- they haven't done it yet but I guarantee you it's
19 going to happen. So, like I said, I don't want to talk too
20 much to you about this stuff right now because I want you to
21 see it, I want you to see it with your own eyes, and then we
22 can talk about it. So all I ask of you right now is just to
23 look at the objective evidence, and as you hear it think to
24 yourself, what does it mean? What do those MRI's mean? And
25 ask yourself when her chiropractor says she's been in pain

1 consistently, ask if that matches up with the evidence that
2 you're seeing? Because at the end of the trial I'm going to
3 ask you to do another very simple thing, which is just apply
4 some common sense to it. Just look at it, apply a little
5 bit of common sense, and we're confident you're going to
6 come out to the same conclusion that Ms. Yeager had, which
7 is she absolutely is responsible for any injury, any damage,
8 anything like that that she caused to Ms. Maliszewski, but
9 she shouldn't be responsible for the rest of her life for
10 Ms. Maliszewski. Thank you.

11 THE COURT: Thank you, Mr. Crudup. You may call your
12 first witness.

13 MR. BUNCHER: We're going to call her husband on the
14 computer.

15 (Break in proceedings.)

16 MR. BUNCHER: We call Casimir Maliszewski.

17 The witness, CASIMIR MALISZEWSKI (video), was first
18 Duly sworn And testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BUNCHER:

21 Q How are you?

22 A I'm well.

23 Q We can't see you but we can hear you. Okay?

24 A Okay.

25 Q Could you tell the ladies and gentlemen of the jury

1 your name, please?

2 A Casimir Maliszewski.

3 Q And how do you know Jill?

4 A She is my wife.

5 Q How long have y'all known each other?

6 A I'm going to get in trouble. 25 to 30 years.

7 Q Where all did y'all meet?

8 A We met in Jacksonville. She was my younger sister's

9 best friend.

10 Q Do y'all have any children together?

11 A We do.

12 Q How many?

13 A I have a 12 year old stepdaughter, and we have a six

14 year old.

15 Q How is Jill as a mother?

16 A She's great. She's a doting, loving mother.

17 Q How is she as a wife?

18 A She's great as a wife, too, a great partner. She's

19 great.

20 Q Is your wife the type of person that puts herself

21 first, or does she put others before her?

22 A My wife puts everyone else in front of herself.

23 Q Why do you say that?

24 A It's -- I want to say it's part of her personality, but

25 certainly between work and children and everything, Jill

1 comes last in everything.

2 Q The wreck in October of 2018, I want to talk about
3 that. Okay?

4 A Okay.

5 Q Do you recall the wreck?

6 A I do.

7 Q Can you briefly describe it for the jury?

8 A We were traveling 95 heading south back to Jacksonville
9 from Charlotte. Traffic on 95 was always crazy right around
10 in that area for some reason. We were in the left of the
11 two lanes, we were going 70 miles an hour, but much like
12 traffic in that area, it goes from 70 to 20 in no time, and
13 sometimes people slam on the brakes and stop, and it was a
14 lot of that for ten or 20 miles. And right before the
15 accident happened we were trucking along at 70, everybody
16 slammed on brakes, I slam on brakes, and I look in the rear
17 view mirror and the person behind us was not stopping nearly
18 as fast as we were. And I yelled out something and steered
19 a little bit to the left, and we got hit and went about
20 another 20 feet or so and finally stopped.

21 Q How was Jill doing -- or where was she sitting? I
22 should ask you that.

23 A She was in the front passenger seat. And I can't
24 remember if she was already asleep or if she was about to be
25 asleep. I mean, I was listening to football as I recall, so

1 I'm sure she was sleeping.

2 Q How was your wife doing right there at the scene?

3 A Well, I think she was a little amped up from getting
4 hit. Certainly she was worried about us picking up the
5 kids. When we -- when I first got out of the car the back
6 end of the car was kind of into the tire, and we're
7 stressing about having to get home, and it's 4:45 on a
8 Sunday, can't get a rental car, all of that stuff, so it was
9 more dealing with all of that. And, of course, we had to
10 wait on the police to come and all that jazz.

11 Q Got you. When did you observe your wife having pain
12 following this wreck?

13 A I don't recall if it was when we were driving home or
14 when we got home, but she was starting to feel sore. I
15 mean, honestly we were both starting to feel sore. I am a
16 little bit older than her, you know, so mine resolved. But,
17 you know, I wasn't sleeping either so I kind of saw it
18 coming and braced for it. But she started feeling sore.
19 And like anything else, it's like worrying about the kids,
20 getting the kids to school, I don't have time for the
21 doctor, bla, bla, bla.

22 Q And where did you see that she was in pain?

23 A It was her back, and her hip, and I want to say it
24 started with the neck, too, all of the various things. You
25 know, I remember more of myself up front than her.

1 Q Have you ever seen your wife with the back pain in the
2 25 to 30 years that you've known her before this wreck?

3 A Did you have a follow-up to that or --

4 Q I'm sorry. Have you ever seen her -- have you ever
5 seen her with back pain before this wreck happened in
6 October of 2018?

7 A No. No, no, no.

8 Q What did you notice following this wreck in your wife?
9 What did you personally see?

10 A I mean, it got to the point where she had to go and
11 seek some treatment. She was having problems with her back,
12 and certainly the treatment that she does for work, it
13 seemed to interfere with her being able to do her job. So
14 we had to fit time in the schedule and she had to go see
15 somebody.

16 Q Any changes around the house?

17 A Over time, oh, yeah, we made all kinds of changes. I
18 left my career. I started working for myself, started my
19 own company, started working from home so I could be around
20 the kids even more and taking care of them. We had to cut
21 back on activities for some of the kids while we were both
22 working parents, so it made things difficult. But she's
23 just not in the same light as she was before.

24 Q Why do you say that?

25 A Well, you know, she had seen some doctors, she hasn't

1 found the relief that she should find, I mean, in my thought
2 process. And certainly while she made some changes in her
3 career to cut back on how much she's working and the type of
4 working that she's doing, she's not changing her career
5 entirely, and those things affect how she lives. She comes
6 home at night, does things with the kids for a little bit,
7 but by 7:30 she's on the couch and she's laying flat with
8 her legs up, and she's that way until 9:00 when she's
9 already asleep and I have to get her up and to bed, the next
10 day starts a new day, and that's just not who she was
11 before. She was up moving around. We had a kid playing
12 basketball, and karate, and, you know, all kinds of things,
13 and a lot of those activities have been curtailed. And
14 certainly even in my new capacity, my job does take up some
15 time, and while I can help out with some things I can't help
16 out with the level that she does.

17 Q Now, are you aware that there's periods of time where
18 you wife hasn't been going to the doctor?

19 A Yes. Yes.

20 Q Those periods of time that your wife is not going to
21 the doctor, is she walking around your house pain free?

22 A No. I mean, the time she hasn't been to the doctor
23 worked out with Covid, and life, and dealing with to kids,
24 and her parents. Her parents are elderly and was moving
25 them out of their house, they're in assisted living. We're

1 closer to them now so we can help out with her parents, too.
2 There's just been all kinds of issues there that happened in
3 the last three and a half years. I mean, some of it, too,
4 was taking care of me, I've had a hip replacement since
5 then.

6 Q Did you ever notice any issues with your wife's sleep
7 at all following this wreck?

8 A Yes. Her sleep patterns were interrupted, her ability
9 to sleep and finding comfort. I mean, we bought a couch
10 that is this sectional thing, but I mean, it's really in
11 such a way that it gave her some comfort during the day, the
12 way that she sat. And we frankly -- I mean, we've tried
13 everything. We bought acupuncture like things that you lay
14 on the floor and lay on. We've got massagers. We bought a
15 hot tub. I bought a new mattress. Just the other day --
16 well, not the other day, probably three months ago, two
17 months ago, we bought another mattress, and that has really
18 helped, a mattress and different type of pillows, one of
19 these purple grid things. Went and did one of those
20 mattress consultations trying to fight the right relief,
21 whatever. That frankly has really helped, it really has.

22 Q Is your wife trying to get better?

23 A Yes. Yes. When she's -- she's trying get better but
24 still do what it is that she does, which is take care of
25 both children and certainly with her career. Her career and

1 how she practices her career is not helpful to her injuries.
2 We've had lots of conversations between us -- not to air our
3 dirty laundry, but we've had lots of conversations between
4 us that the type of work she does doesn't aggravate her
5 condition. And, again, she's younger than me, but perhaps
6 becoming a professor, teaching other people to do this,
7 getting away from the direct therapies that she provides,
8 you know, less aggressive children, that might help. But
9 she's just not willing to give that up, you know, and I
10 can't blame her. You want to have that, but at the same
11 time, might that find you relief? In all honesty it might.

12 Q Does your wife try to do the home exercises she's been
13 taught while she's at home?

14 A Yes. Yes.

15 Q Does she take any medication now that she didn't take
16 before the wreck?

17 A I'm not sure what medication she actually takes. You
18 know, she's pretty -- she's one of these people that doesn't
19 like to take medication. Again, not to air our dirty
20 laundry, but her ex-husband had a problem with addiction.
21 She has seen other people involved with addictions, you
22 know. My niece had an addiction issue. She does her best
23 to stay away from medication as best as she can. Her family
24 does have an issue with Guillian-Barre, so, you know,
25 certain medications she tries to stay away from. I'm not a

1 medical professional, she knows more about that kind of
2 stuff. I think a lot of these questions are better for her,
3 but --

4 Q Well, Cas, let me wrap up with this: This wreck that
5 happened in 2018, has it been to make your wife a better
6 life, or has it been for worse with her?

7 A No, it's been for worse for her. It's been worse for
8 her, it has been worse for the kids. I mean, there was a
9 stretch -- this was four years ago, our littlest one is six
10 years old, I've spent more time with the littlest one than
11 she did, and I know that that eats her alive, and it's
12 because she couldn't pick her up. It's because she couldn't
13 do the things that she did as a parent with her first child,
14 and with the second one it was more me and I know that eats
15 her up.

16 Q Are you still seeing these problems with her back to
17 this day?

18 A Oh, yeah. Oh, yeah.

19 Q I'm going to pass you over to Mr. Crudup. Okay?

20 A Okay.

21 MR. BUNCHER: Thank you.

22 MR. CRUDUP: Mr. Maliszewski, I don't have any
23 questions for you. Thank you for your time today.

24 MR. BUNCHER: You can hang up. Thank you.

25 THE COURT: Mr. Buncher, you may call your next

1 witness.

2 MR. BUNCHER: Yes, sir, Judge. I'm going play
3 Dr. Bernstein's trial deposition.

4 (At this time the video deposition of Dr. Amy
5 Bernstein, a Chiropractor, was played.)

6 THE COURT: This probably would be a good time for us
7 to take a short recess, ladies and gentlemen, ten minutes.

8 (The jury left the courtroom.)

9 THE COURT: Welcome back, ladies and gentlemen. The
10 attorneys have asked me to advise you that they have reached
11 an agreement among themselves to call witnesses out of the
12 normal progression, or normal order, to accommodate the
13 schedule of certain witnesses. Who is calling the next
14 witness?

15 MR. BUNCHER: I call Ms. Yeager.

16 The witness, MARGARET YEAGER, was first duly sworn and
17 Testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BUNCHER:

20 Q Good afternoon.

21 A Good afternoon.

22 Q How are you?

23 A I'm good. How are you?

24 Q I'm good.

25 A Good.

1 Q Could you tell us your name, please?

2 A My name is Margaret Yeager, but you can call me Maggie.

3 Q All right. Maggie, I'll be very brief with you. Okay?

4 A Okay.

5 Q I met you awhile ago when I took your deposition, do
6 you remember?

7 A I really don't honestly. Don't feel bad, I didn't
8 remember Jeff's name either.

9 Q This wreck that we're here for that happened back in
10 October of 2018, it was your fault, right?

11 A Yes, sir.

12 Q And you recall describing this wreck the impact as an
13 earthquake?

14 A Did I say it was an earthquake?

15 Q Yes.

16 A No. I remember just being surprised.

17 Q Do you remember me taking your deposition?

18 A No, not to my recollection.

19 Q Okay. Do you want me to show it to you?

20 A Sure, please. I could use a refresher.

21 Q So right down here, right here.

22 A I said that?

23 Q Yeah. You have to answer.

24 A All right. All right.

25 Q So the question to you at your deposition: The wreck

1 happens, what does it feel like? And what do you say?

2 A It's an earthquake.

3 Q Okay.

4 A Okay. Thank you.

5 Q Sure. And before this wreck happened you were
6 accelerating to about 35 miles an hour, and then you braked?

7 A Yes, sir.

8 Q And then you hit the rear of the vehicle that Jill was
9 a passenger in?

10 A Yes, sir.

11 Q Your car was totaled?

12 A Yes, sir.

13 Q I've got some photos of your car just to show you.

14 Okay?

15 A Okay. No problem.

16 Q Was it a white Lexus?

17 A Yes, sir.

18 Q I'm going to show you what's been marked as
19 Exhibit 2 -- and it's 2A through 2D. Okay?

20 A Okay. All right. Yep.

21 Q And 2A through 2D, does this show your vehicle
22 following the wreck with Jill?

23 A Yes, sir, that is correct.

24 Q And it's an accurate representation?

25 A Yes, sir, that is.

1 MR. BUNCHER: Your Honor, I would move 2A through 2D
2 into evidence.

3 MR. CRUDUP: No objection.

4 THE COURT: Motion is granted without objection.

5 (PHOTOS MARKED AS PLAINTIFF'S EXHIBIT NUMBERS 2A-2D
6 WERE RECEIVED INTO EVIDENCE.)

7 Q Do you mind if I pass them all over here to the jury?

8 A No, of course. Here you go.

9 Q Thank you. Thank you for your time.

10 A No problems, thank you.

11 CROSS EXAMINATION

12 BY MR. CRUDUP:

13 Q All right, Maggie.

14 A All right.

15 Q Are you still a little bit nervous?

16 A A little bit. Sorry, guys.

17 Q It's okay. Let's talk a little bit about you, all
18 right? Where did you grow up?

19 A I grew up in Beaufort, South Carolina, I'm a local.

20 Q And have you ever lived outside of Beaufort?

21 A Only when I went to college, and then I lived in
22 Raleigh for a bit after that, but I missed home so I came
23 back.

24 Q And at the time of this accident, what were you doing
25 for a living?

1 A I working for McDonald, Myers Edge McDonald's. I was
2 Office Manager/HR Manager.

3 Q Got you. So let's just talk about the accident a
4 little bit, I know you already talked about it some. Where
5 were you that day?

6 A I was coming back from Charlotte, I was heading home.

7 Q Okay. Were you in any rush to get home?

8 A No. I was -- no. I was coming home, I wasn't like
9 heading toward my destination.

10 Q So in your own words, describe for the jury what
11 happened.

12 A It was -- so, again, this has been a couple years, so
13 to my best recollection from what I remember it was touch
14 and go traffic, touch and go, and it finally seemed like we
15 were accelerating, and then again everyone just stepped on
16 the brakes and I just did not stop in time unfortunately and
17 I hit the car.

18 Q And after you hit the car what's the first thing you
19 did?

20 A I called my dad, so -- and then I -- because I believed
21 they were calling 911.

22 Q Gotcha.

23 A Yes.

24 Q Did you talk to Mrs. Maliszewski?

25 A No. She was a little standoffish, not receptive, and I

1 understand that, so I apologized to her husband, who seemed
2 more personable. And he was very nice, you know, and he
3 said accidents happen.

4 Q Are you sorry this happened?

5 A I'm very sorry this happened, yes, of course.

6 Q Those are all of the questions I have. Thank you.

7 A Okay.

8 MR. BUNCHER: No questions.

9 THE COURT: Thank you, you may step down.

10 THE WITNESS: All right. Thank you.

11 MR. BUNCHER: Ms. Maliszewski.

12 The witness, JILL MALISZEWSKI, was first duly sworn

13 And testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BUNCHER:

16 Q Hello.

17 A Hello.

18 Q Can you state your full name for the record, please?

19 A Jill Moxette (phonetically) Maliszewski.

20 Q All right, Jill. What is your date of birth?

21 A 3/5/76.

22 Q That makes you how old here today?

23 A Forty-six.

24 Q Growing up where all did you live?

25 A I was born in Peoria, Illinois. Then we moved to

1 Mexico City. We then moved to Vancouver, British Columbia,
2 back to Illinois, and then to Jacksonville, Florida.

3 Q Why were you moving all over the place growing up?

4 A Initially because my dad was in the service, and then
5 he worked international sales for Caterpillar.

6 Q And what service was your father in?

7 A Army.

8 Q You ended up in Jacksonville. When did you meet your
9 husband?

10 A I was 21, so 1997.

11 Q Y'all have been together ever since?

12 A No.

13 Q Okay. What happened?

14 A I was in college and he was married, so I then got
15 married. And then we re -- he's always been around, but we
16 reconnected 11 years ago.

17 Q Y'all have children?

18 A Yes.

19 Q How many children?

20 A Together we have one, and he has since adopted my 12
21 year old from a previous marriage.

22 Q How is he as a father?

23 A Amazing.

24 Q What are your children's names?

25 A My 11 year old Anniston Elizabeth, and my six year old

1 is Molly Burke.

2 Q What's it like being a mom?

3 A I love being a mom. I pride myself on being a mom. I
4 pride myself on making sure they have everything they need.
5 I worked to keep them in a private education. We worked to
6 keep them in extracurricular activities. That's what I
7 thought I would do is be a mom.

8 Q Okay. Do you also have a job outside of being a mom?

9 A I do.

10 Q What's that job?

11 A I'm a Pediatric Speech Language Pathologist.

12 Q Can explain to the jury what that is that you do?

13 A Yes. I specialize working with nonverbal or behavioral
14 children. The majority of my case load are children on the
15 autism spectrum. I do three different types of specialized
16 therapy that I have gone for additional training. One is
17 called oral placement therapy for speech and feeding. One
18 is called prompt, and another is called myofunctional
19 therapy. So I do hands on manipulations of the muscles to
20 encourage the synapse between the brain and the muscles of
21 the mouth for speech, as well as for feeding.

22 Q And I think we've got some videos to show what your job
23 entails.

24 (At this time a video was shown.)

25 Q So what are you doing with that young man?

1 A That little guy, his mom is recording us, and he has a
2 very rare chromosomal disorder called Gand, and so you can
3 see that -- his body movement but he's nonverbal, but we've
4 come a far way. I'm using what's called an oral placement
5 apraxia shape, each one is different colors. So I'm placing
6 it between his lips and trying to get the ba sound. And
7 then when you see me go behind his head, that's when I'm
8 doing prompt therapy, and that's where I'm physically
9 manipulating the lips to get the ba sound in isolation. In
10 order to do both of those types of therapy the child, or the
11 patient, has to be at 90 degrees, and on his ankles -- their
12 knees, their knees and their hips. So that's why I'm on the
13 floor because he's not safe to sit, he's -- well, he's
14 three, and so that's the safest place for him to be.

15 Q Okay. We've got a couple more to show the jury. Who's
16 this person?

17 A This is Abigail, Abby.

18 (A video was played.)

19 A So Abby's parents are actually bloggers, they have a
20 blog called Fathering Autism to educate the world about
21 autism. Abby, as you can hear, she has vocal sounds, that
22 um, but that's all she has. She uses a device to
23 communicate. And I do the Whorl Placement Therapy as well
24 as the prompt. We're working on just recently controlling
25 her voice to turn it on. So -- she's 17 now so she can sit

1 in a big chair and have her feet flat on the floor. But
2 she's difficult, she's very -- she moves a lot, so -- she
3 can also be aggressive. More than once she's had two fists
4 of my hair and then brought down to -- brought to her
5 because this is hard therapy. If she could talk she'd talk,
6 so --

7 Q What did you do right there with her mouth?

8 A I am stimulating what we call the buccals, which is
9 your cheeks. We do this to prepare for therapy, she then
10 knows what's coming. A lot of it is routine for the
11 muscles. You have to have movement of your cheeks for
12 sounds as well as for feeding and drinking. So you have to
13 be able to isolate your cheek muscles from your jaw and our
14 lips.

15 Q We've got one more patient I guess also on YouTube?

16 A Yes. This is Cadow (phonetically.) You'll see in his
17 movements he's very -- he moves a lot. He gets agitated,
18 he's self chins when he's agitated. Right there I'm doing
19 the same thing I was doing with Abby, and getting him ready
20 for the session that's coming. His mom at that moment was
21 asking me about Pica, which is when you eat nonedible food,
22 or nonedible items, and he was going through a moment of
23 intense Pica.

24 Q And what's the goal of these exercises that you're
25 performing with these kids?

1 A For them to feel the movement that's necessary for
2 speech and feeding. So I'm manipulating the movement in
3 hopes that their muscles will then take -- carry through.
4 And you see, Cadow (phonetically) is in a lower chair
5 because he's not as tall or as old as Abby and he doesn't
6 need to be on the floor, so we're able to sit in what I
7 would say is like a preschool chair.

8 MR. BUNCHER: You can put the lights back on.

9 Q And how long have you been doing this type of work down
10 in Florida?

11 A I've been a Speech Language Pathologist for 22 years.

12 Q Have you been doing this type of work with -- the same
13 type of work we just saw you doing for those 22 years?

14 A No, my speciality changed. I started the training
15 seven/eight years ago, and now have changed -- my focus is
16 completely on those type of clients.

17 Q How many people can do what you do down in Florida?

18 A Nobody has the three levels of training that I have.

19 Q What are those levels and how did you get them?

20 A A lot of continuing ed classes. The Oral Placement
21 Therapy, I'm a level three advanced training, which
22 obviously that -- I had to go one, two, three. Prompt, I am
23 bridge trained, which means I'm one and two, and that's --
24 unless I was to teach that's as high as I need to go. And
25 then Myofunctional Therapy was my most recent, just this

1 past February I did, and that's more manipulation of the
2 muscles.

3 Q Did you ever have any issues with your back doing this
4 type of work before the wreck?

5 A No.

6 Q How about today?

7 A I'm hurting right now.

8 Q Did you ever treat for back pain before this wreck?

9 A No.

10 Q I guess tell the jury a little bit about the wreck.
11 Okay?

12 A Okay. From -- we were -- like Maggie, we were leaving
13 Charlotte headed home, and I was closing my eyes to rest,
14 and very used to traveling on 95 in South Carolina with the
15 two lanes and used to that stop and go that happens a lot.
16 At some point my husband yelled out something and I could
17 feel the car like swerve, and then we got hit. I stayed in
18 the car to call my parents to let them know that we were
19 going to be delayed to get the girls, because they had my
20 two girls. I got out, looked at the damage, and my husband
21 was like: Just get back in the car, we're on the side of
22 95.

23 Q I'm going to show you a couple of photographs. Okay?

24 A Yes.

25 Q 1A through 1C. Does that show your vehicle following

1 the collision?

2 A Yes, that's my husband's vehicle.

3 Q And is that an accurate representation of what it
4 looked like after the wreck occurred?

5 A He had to rip something off when we were on the side of
6 the highway so we could continue driving and that was put in
7 the trunk, so something was missing, but I don't know.

8 Q Other than that thing missing, does that look like the
9 vehicle after the wreck?

10 A Yes, correct.

11 Q Okay.

12 MR. BUNCHER: And, Your Honor, I would move those in as
13 1A through 1C.

14 MR. CRUDUP: No objection.

15 THE COURT: Motion granted without objection.

16 (PHOTOS MARKED AS PLAINTIFF'S EXHIBIT NUMBERS 1A-1C
17 WERE RECEIVED INTO EVIDENCE.)

18 MR. BUNCHER: May we publish them to the jury, Your
19 Honor?

20 THE COURT: Certainly.

21 Q Were you in any pain at the scene of the wreck?

22 A No.

23 Q When did you start experiencing pain?

24 A On our continuous ride home.

25 Q What -- explain to the jury what you felt.

1 A I felt like jammed, jostled. I didn't have the hip
2 pain at the time, it was just lower back.

3 Q Did you go to the ER that day?

4 A No.

5 Q Did you go the next day?

6 A No.

7 Q Why didn't you go to the doctor right away?

8 A I thought it would pass.

9 Q Did it pass?

10 A No.

11 Q So what did you do?

12 A I looked up care centers, and I went to Injury Care
13 Center. I just googled them.

14 Q Is that down in Jacksonville?

15 A Yes.

16 Q Do you know when you went to go see them for the first
17 time following this wreck?

18 A The date? Within a two week window.

19 Q Why did you go there?

20 A I felt like I needed to be looked at. I wasn't getting
21 any relief.

22 Q And tell the jury what they did for you.

23 A My first visit was a physical exam with x-rays. And
24 then I would go in, I believe it was two to three times a
25 week, where they would do massage. They would do the

1 stimulation with the electrodes. They would ice. They
2 would stretch. I would walk on a treadmill. And then when
3 all of that was through I would see the chiropractor.

4 Q And how were you feeling during this timeframe with
5 these visits?

6 A In the morning they were always at 8:30, that was the
7 first appointment of the day, I would be okay. But as the
8 day goes on the pain returns.

9 Q And how did the pain -- let me ask it this way, how did
10 the pain affect you during the day?

11 A When I'm working is when I feel the pain most because
12 of the way I'm sitting, or the way I'm having to move my
13 body to keep my patients safe. How does it affect me? I
14 take two Aleve and keep going until I can get home. And
15 once household things are done, responsibilities with two
16 young children, as my husband said, then I'm on the couch
17 and typically asleep.

18 Q How long did you take the Aleve for?

19 A Oh, I'm still taking it. I just took it at lunch.

20 Q Did you ever take Aleve for back pain before this
21 wreck?

22 A No.

23 Q And you talked about being in pain while you were
24 working, so is it the work that's causing you this pain or
25 was it the wreck?

1 A I didn't have pain before the wreck, so I would say the
2 wreck.

3 Q January 2019 came around. Did you stop seeing the
4 doctor then?

5 A I did.

6 Q Why did you stop seeing the doctor?

7 A I wasn't getting consistent relief and I needed to
8 resume life. I was missing my -- I make my schedule in
9 August because I provide services at Jacksonville School for
10 Autism, as well as other locations, as well as my own
11 clinic. And so the children that were those morning
12 sessions, they weren't getting their therapy, and I just
13 thought: Let's give it some time and see what happens.

14 Q What happened?

15 A I didn't get better.

16 Q That period of January to June before you go see Dr.
17 Bernstein, what are you doing at home to try to make
18 yourself better, if anything?

19 A I was definitely doing the stretches that were taught
20 to me. We bought the acupuncture mat to lay on. We -- I
21 would take the Aleve. We have a like a massage gun that I
22 can use. I would say once I was home it was light work so
23 that I could then rest.

24 Q Why did you go see Dr. Bernstein in June of 2019?

25 A It was time for me to get a second opinion.

1 Q How has Dr. Bernstein been to you over the years?

2 A She's great. She will send me messages to see how I'm
3 feeling if she hasn't seen me in awhile. I wouldn't say I
4 enjoy going, the chiropractor is not what I like to do, but
5 I did it, so --

6 Q Do you enjoy going and sitting at the office for those
7 visits?

8 A No.

9 Q Why do you go then?

10 A I will have some immediate relief but it doesn't last.

11 Q Well, if it doesn't last, why do you keep going?

12 A Because it's what is recommended.

13 Q There's been other times throughout your medical care
14 where you don't go for a period of time up to like five
15 months or so, can you tell the jury why you're doing that?

16 A Yes. So I started with Dr. Bernstein consistently in
17 November, and I saw her one to three times a month until
18 March of 2020 when the world shut down. When she was -- she
19 was able to reopen on May 18th, and then I saw her in June,
20 and that's when we made the decision that I needed to make
21 myself a priority. So when I made my schedule for that
22 following school year I worked around a 3:30 appointment.
23 So I would pick my children up from school and we would go
24 to her office and I would see her -- I believe I was doing
25 two to four times a month at that point. I did that through

1 June of 2020 -- that was from that whole school year, so
2 from June of -- I'm sorry, June of 2020 through June of
3 2021, and then I got Covid myself. Do you want me to
4 continue?

5 Q Sure.

6 A I had Covid and was hospitalized, and then I was
7 discharged on oxygen for two months. So I was out of work
8 for three months, and when I returned to work picking the
9 clients that I could see safely, then I went and saw Dr.
10 Bernstein again in November.

11 Q All right. The exercises she has taught you, do you do
12 those at home as well?

13 A I do.

14 Q What kind of exercises are you doing?

15 A A lot of stretching, a lot of lying down manipulating
16 my leg, doing like this type of stuff with my hip. Sitting
17 for too long is hurting, so every so often I'm standing up
18 and I'm kind of doing this pull that the -- so I can stretch
19 lower back into the right hip, cross my legs, bend over,
20 cross it the other way, bend over.

21 Q Does this back injury prevent you from doing things?

22 A It should prevent me from doing things, but I don't
23 allow it to prevent me from doing things. I pay for it
24 after, but I'm also bull-headed, so --

25 Q We heard your husband talk about your child, I guess

1 your youngest child, did it impact your ability to raise
2 your youngest child?

3 A Yes. She was two at the time, so getting her out of
4 the tub was tough. My husband was traveling, that was
5 before he switched his career. Picking her up to put her on
6 the counter to put her shoes on, put her on the stool to do
7 teeth and hair, those type of activities were difficult. I
8 could feel it.

9 Q So what happens when you get up on the couch at 7:30 or
10 so at night? What's going on?

11 A Typically it's low back pain, and then sometimes my
12 left hamstring tightens up. Typically at that point I'm
13 laying with my legs either like under with a pillow
14 underneath me and that's how I sleep also, or with my leg
15 kind of tossed over the couch.

16 Q Your parents. What's going on with your parents today?

17 A When -- my father had a stroke the summer before the
18 accident, and then he contracted Guillian-Barre from his flu
19 vaccine, which put him in a wheelchair. My mom has always
20 been the person to take care of everybody, and when the
21 world shut down she presented with an extreme case of
22 anxiety and depression, and so my younger brother and I had
23 to step in. They were actually both hospitalized at the
24 same time. My mom attempted suicide. There's many times
25 that I have to leave work because she calls and I need to

1 get to her because she just needs me to come sit with her.
2 The children agitate her, so there's often times that I'm
3 pulled between visiting with my parents and being a mom --
4 sorry.

5 Q Take your time.

6 A We had to move them out of the home that they've lived
7 in since 1984, and they were 72 and 73 years old. Just not
8 what I pictured would happen with them. And my dad now has
9 had three more relapses and he's just gotten back out of the
10 wheelchair.

11 Q Let's back up in time. Okay? Do you need a minute?

12 A Yeah, I'm okay.

13 Q Did you miss any time from work because of this wreck?

14 A Yes.

15 Q And when was that in relation to the wreck, what
16 timeframe?

17 A When I was under the care of Injury Care Center.
18 Because I already had my schedule set and then I was doing
19 treatments, I was missing those clients that would have been
20 scheduled for those time periods.

21 Q And how much time did you miss from work at that
22 beginning timeframe after the wreck?

23 A It was 41 hours from my documentation that I took.

24 Q And how much do you make an hour, or charge an hour?

25 A We charge -- I charge \$85 for 30 minutes for private.

1 We bill insurance \$100 for 30 minutes. We don't -- the
2 company doesn't receive \$100. We bill private pay,
3 commercial insurance, and Medicaid as well, and Medicaid is
4 a set reimbursement of \$71.44 an hour.

5 Q And are you the only person that works over there?

6 A No.

7 Q How many employees or staff do you have?

8 A It ranges anywhere between typically 12 to 14 at a
9 time.

10 Q Fast forward to this day. How is your work load
11 compared to 2018?

12 A I had been consistently treating 25 treatment hours a
13 week, and this school year I have stayed at 21 just to
14 lessen my load of contact with the clients.

15 Q Why are you lessening your load at this point?

16 A Because I hurt.

17 Q Are you going to keep going to the doctor in the
18 future?

19 A I think I'm going to have to.

20 Q Did you do anything else to cause pain to your back
21 other than this wreck?

22 A No.

23 Q I'm going to show you one thing. I've handed you what
24 has been marked as Exhibit 3, which is a summary of the
25 medical expenses to date. Is that true and accurate?

1 A Yes.

2 MR. BUNCHER: Your Honor, I move that in as Exhibit 3.

3 MR. CRUDUP: No objection.

4 THE COURT: The motion is granted without objection.

5 (MEDICAL EXPENSES MARKED AS PLAINTIFF'S EXHIBIT

6 NUMBER 3 WAS RECEIVED INTO EVIDENCE.)

7 MR. BUNCHER: Publish it?

8 Q Do you know how many times you've seen a
9 chiropractor/healthcare provider since this wreck in 2018?

10 A Well, it was 41 visits plus -- 41 -- when I was with
11 Injury Care Center I missed 41 client hours, but there was
12 days that I didn't have clients scheduled, so maybe 50 plus
13 when I was with them. And then as I stated earlier, when I
14 went to Dr. Bernstein on a regular for that school year I
15 had scheduled my clients around it so I wasn't missing
16 anybody.

17 Q If your summary from your medicals shows over 70
18 doctors visits since 2018. Would that surprise you or not
19 surprise you?

20 A Not surprise me.

21 Q Do you want to be here?

22 A No.

23 Q Mr. Crudup in opening said the question is whether --
24 the question is whether she got better and she's not injured
25 now. Are you not injured now?

1 A I'm injured still.

2 Q Have you ever gotten better whatsoever since 2018?

3 A When I was out of work on oxygen and laying in bed for
4 three months, yes, I had no pain.

5 Q Is that how you want to be free of pain?

6 A No. I love my job.

7 Q Are you going to leave your job as a speech
8 pathologist?

9 A No. Although my husband would like me to.

10 Q Why don't you want to leave it?

11 A Because I'm a treating therapist. I've studied. I
12 have -- I love my job. When I was out of work with Covid I
13 just couldn't wait to get back to it. It was -- you know,
14 it's not typical for you to want to go to work and possibly
15 have your hair pulled. I was bit, had a dinosaur thrown at
16 my, but I love my job.

17 Q Give me one second. Okay?

18 (Break in proceedings.)

19 Q Just sum up for us how this wreck has impacted you as a
20 person.

21 A I would say that my pain causes me to be short with my
22 family. I'm not someone to take a lot of medicine, I'm not
23 someone to go to invasive care. When you have a father
24 who's sitting in a wheelchair because of a vaccine who has
25 chronic pain, has a pain simulator, that scares me. I don't

1 want anything foreign in my body. I take Aleve. I don't --
2 I have -- the nurse practitioner originally at Injury Care
3 Center had prescribed muscles spasm medicine, and when I
4 moved in May I still had the bottle because I didn't take
5 them. I just -- I don't like to take medicine. I'd rather
6 just keep pushing through, get through my day, and then
7 reset and start over the next day.

8 Q Mr. Crudup is going to ask you some questions. Okay?

9 A Yes.

10 Q Thank you.

11 CROSS EXAMINATION

12 BY MR. CRUDUP:

13 Q Good afternoon, Ms. Maliszewski. All right. You told
14 me once before that you had never had back pain before,
15 correct?

16 A Correct.

17 Q And you also just told the Court that as well, right?

18 A Correct.

19 Q You also told me you never sought medical treatment for
20 low back before, right?

21 A Correct.

22 Q But do you recall going to the Jacksonville Orthopaedic
23 Institute?

24 A For back pain?

25 Q For lower back pain.

1 A I don't.

2 Q Okay.

3 A I've been to them for my knee.

4 Q I'm going to hand you what we'll mark as Defendant's
5 Exhibit Number 1.

6 (Break in proceedings.)

7 Q So, Ms. Maliszewski, you mentioned that you had treated
8 there for some you said knee pain before?

9 A Am I okay to look at this?

10 Q Yes, sure. Go ahead.

11 A Yes. I had broken my foot twice also with them.

12 Q All right. Now, you agree that at that point what I'm
13 showing you there, you were there for complaints about your
14 back, right?

15 A In 2004?

16 Q Yeah.

17 A I recall from the deposition that I said that I had
18 gotten care, but I couldn't recall what the pain -- what the
19 injury was.

20 Q So you agree with me now that in 2004 when you went to
21 see them you were treated for lower back pain, right?

22 A That's what this states, yes, sir.

23 Q And also pain radiating into your legs like you talked
24 about earlier, right?

25 A Yes, sir.

1 Q All right. And as a result of that pain you went and
2 got an MRI of your lower back way back then. Do you
3 remember that?

4 A I don't.

5 Q All right. I'm going to hand you what we'll mark as
6 Defendant's Number 2.

7 (Break in proceedings.)

8 Q So in looking at that, do you agree then that you had
9 an MRI of your lumbar spine in February of 2004?

10 A I do see that.

11 Q And that would have been for pain in your lumbar spine,
12 right?

13 A I don't recall this.

14 Q Okay. We can agree, though, that you did have an
15 MRI --

16 A Oh, most definitely, yes, sir.

17 Q And that was normal, correct?

18 A Yes.

19 Q All right. And because they were trying to figure out
20 what was going on with your back, you also had a bone scan
21 of your entire body. Do you remember that?

22 A I don't.

23 Q I'll hand you what we'll mark as Defendant's Exhibit
24 Number 3.

25 (Break in proceedings.)

1 Q So you agree with me that that's a record from the
2 Baptist Medical Center?

3 A Yes.

4 Q And it looks like you got a bone scan of your total
5 body, correct?

6 A Yes.

7 Q And under history it says that you were complaining of
8 lower back pain, right?

9 A Yes.

10 Q So it looks like you went and got a bone scan of your
11 lower back at some time in the past, right?

12 A It does seem that way, yes, sir.

13 Q Okay. So in looking back at it when you said that
14 you've never had lower back or treated for it, it looks like
15 you did have this treatment, correct?

16 A It does.

17 Q Okay. And after this treatment, and I apologize, you
18 ended up having surgery for -- to reduce your breast size
19 for --

20 A I did.

21 Q Because it was also causing lower back pain, right?

22 A My breast size was more here. But, again, this was 20
23 years ago, I don't know.

24 Q Sure. Do you remember telling doctors that you -- that
25 the pain you were having in your back was interfering with

1 your daily activities?

2 A Prior to the breast reduction?

3 Q Yes.

4 A I don't recall that.

5 Q Okay. I'll hand you what we'll mark as Defendant's
6 Exhibit Number 4.

7 A Uh-huh.

8 (Break in proceedings.)

9 MR. BUNCHER: Your Honor, can I approach? May I
10 approach?

11 THE COURT: Do y'all want to stand up and stretch while
12 I talk to the lawyers?

13 (A bench conference was held with the Judge and the
14 Attorneys off the record.)

15 Q All right. Ms. Maliszewski, so let's talk a little
16 bit -- you can put that down, that's fine.

17 A I did want to ask something, though.

18 Q You can really ask it.

19 A Okay. I'm sorry.

20 Q It's fine. So let's talk about the accident. Okay?
21 Your husband was not injured in the accident, correct?

22 A No, he was not.

23 Q And after the accident you were asked if you needed
24 medical attention there, right?

25 A Correct.

1 Q And you decided you didn't, fair?

2 A Correct.

3 Q And you told us earlier at the scene of the accident
4 you weren't in pain, and eventually drove that car back to
5 Jacksonville.

6 A We did.

7 Q And then the first time you sought any treatment for
8 your back would have been, you said, within a two week
9 window afterwards, correct?

10 A Correct.

11 Q And during that period of time you went to work,
12 correct?

13 A I did.

14 Q And when you went to the chiropractor afterwards you
15 said that there was a return of symptoms or increase of
16 complaints since your last visit. Do you remember telling
17 them that?

18 A No.

19 Q I'm going to hand you what we'll mark as Defendant's
20 Exhibit Number 5.

21 (Break in proceedings.)

22 Q So it looks like that record is from that eight days
23 after the accident, right?

24 A Yes.

25 Q So would that have been about the first time you went

1 to see them?

2 A Yes.

3 Q And it says -- or let me back up. So you told me you
4 don't recall telling them that there's been an increase in
5 your symptoms, right?

6 A From the initial day of the accident?

7 Q It looks like you told them there was an increase in
8 symptoms but you hadn't lost any time at work; is that fair?

9 A Correct.

10 Q And then you go to that Care Injury Center, or I'm
11 sorry, Injury Care Centers, and -- for about three months;
12 is that fair?

13 A Yes.

14 Q And then you choose to stop going, correct?

15 A I do.

16 Q And it was because you said you were tired of missing
17 work and that sort of stuff, right?

18 A Yes.

19 Q But when they discharged you they told you -- they
20 discharged you as prn, right?

21 A Uh-huh.

22 Q And that means you can go back if you need care, fair?

23 A Correct.

24 Q And when you were discharged you didn't seek anymore
25 treatment, you told us, until June 3rd of that year; is that

1 correct?

2 A Correct.

3 Q And when you went back on June 3rd and you saw Dr.
4 Bernstein, you didn't seek anymore treatment after that
5 until November, correct?

6 A Correct.

7 Q So from January to June, that's about a five month
8 period, right?

9 A Uh-huh.

10 Q Is that yes?

11 A I'm sorry, yes.

12 Q And then you went that one time in June, right?

13 A Yes.

14 Q And then you didn't go again until November of that
15 year, right?

16 A That's right.

17 Q Okay. And during that time you said there were days
18 you were okay and then there were days you weren't, right?

19 A Correct.

20 Q So you eventually do go to see Dr. Bernstein, right?

21 A Yes.

22 Q And once you go back in November it looks like you go
23 twice in December.

24 A Yes.

25 Q And then once each month kind of after that, right?

1 A In -- now we're into 2020, correct? Yes. Until the --
2 it was two to three times a month between that November and
3 that March.

4 Q And then in March of 2021 that's when you stopped going
5 entirely for awhile, right?

6 A No. March of 2020 I went -- didn't go for three months
7 because it was shut down, and then I went from June of
8 '21 -- no, I'm sorry, June of 2020 to -- gosh, I need a
9 calendar --

10 Q I getting you confused.

11 A Until I got Covid myself.

12 Q Tell me if this sounds about right. So in March of
13 2021 --

14 A Okay.

15 Q -- you kind of stopped going, and then you don't go
16 back until May of '22.

17 A Yes.

18 Q Okay. So that would have been about a calendar year, a
19 little more, that you didn't see anyone, correct?

20 A Yes.

21 Q You didn't see any orthopedist, right?

22 A Nuh-uh.

23 Q No neurologist, no pain management doctors, no
24 chiropractors.

25 A No.

1 Q And during that time, right, from 2018 up until right
2 now, what you do is a physically demanding job, isn't it?

3 A It is very demanding.

4 Q And I know that because my wife does what you do and
5 she comes home and she's dead tired, and you're tired,
6 right?

7 A Yes.

8 Q Because you're on the ground with these kids and
9 they're throwing dinosaurs at your face, right?

10 A Right.

11 Q And you've got to hold them and kind of control them
12 sometimes?

13 A Yeah.

14 Q And I commend you for doing that, by the way. And you
15 told us a little bit about this, but you kind of specialize
16 in autistic kids, correct?

17 A Non-verbal, so many children with autism are
18 non-verbal, yes.

19 Q There's a kind of big overlap?

20 A Correct.

21 Q And a lot those kids, they tend to be bigger kids. I
22 mean, you have to actually get down and kind of put them
23 where you need to put them.

24 A Yes.

25 Q Okay. And I think you talked about this, but Dr.

1 Bernstein, or I think you told us, that she thinks that what
2 you're doing does aggravate your back, right?

3 A Yes.

4 Q And you told us when you aggravate it you take Aleve,
5 right?

6 A Yes.

7 Q Now, back in 2021 when I deposed you, you told us that
8 you take Aleve sometimes but not all the time; is that fair?

9 A Depends on the day.

10 Q Right. So sometimes during the week you do but other
11 times you don't.

12 A Correct.

13 Q And you're obviously not on any pain prescription
14 medications right now, right?

15 A No.

16 Q And no doctor has told you that you have a permanent
17 injury, right?

18 A No.

19 Q Now, you told us a little bit about your business. You
20 own your own business, right?

21 A I do.

22 Q And you've owned it since 2001?

23 A Correct.

24 Q And you told us a little bit about your employees, but
25 you have said I think at the time maybe 14 or so?

1 A Yes.

2 Q And you're salaried, correct?

3 A I am.

4 Q And so you told us a little bit about how you -- you
5 control your own schedule. There are blocks where you have
6 to create it, but you control that schedule, correct?

7 A Correct.

8 Q And you told us also that up until pretty recently you
9 treated 25 contact hours, is that the right term?

10 A That's correct, yes.

11 Q So from -- at least from before 2018 you had about 25
12 contact hours until very recently, correct?

13 A Yes.

14 Q And now you said you've gotten down to 21, correct?

15 A That's what -- my current schedule is 21.

16 Q And lastly when I asked you about your first MRI back
17 in 2018 --

18 A Yes.

19 Q -- you told me that they said there was no disk issues,
20 right?

21 A Uh-huh.

22 Q And you told me you were relieved by that, right?

23 A Very much so.

24 Q Those are all of questions I have. Thank you for
25 bearing with me.

1 A Thank you.

2 THE COURT: Any redirect?

3 MR. BUNCHER: Sure.

4 REDIRECT EXAMINATION

5 BY MR. BUNCHER:

6 Q Jill, you talked about your job and what have you.

7 That's your job before this wreck happened doing what you

8 were doing on the video, did you go home with pain or did

9 you go home without pain?

10 A Without pain.

11 Q And it wasn't until this wreck?

12 A Correct.

13 MR. BUNCHER: Thank you.

14 MR. CRUDUP: That's all.

15 THE COURT: Thank you, ma'am, you may step down. Next

16 witness.

17 MR. CRUDUP: Your Honor, this is when we're going to

18 call a witness out of order, so the defense calls Dr. Aron

19 Rosenthal.

20 The witness, DR. ARON ROSENTHAL, was first duly sworn

21 And testified as follows:

22 DIRECT EXAMINATION

23 BY MR. CRUDUP:

24 Q Good afternoon, Dr. Rosenthal.

25 A Hello.

1 Q Give me just one second, I'm going set you up here.
2 I'll try.

3 (Break in proceedings.)

4 Q Dr. Rosenthal, can you give the jury the benefit of
5 your educational background?

6 A Yes. So I went to Vanderbilt University for undergrad
7 for college. I did a Master's in Public Health at Emory
8 University after that. I did another four years back at
9 Vanderbilt for medical school, did my medical degree there.
10 Followed that by a one year internship in Delaware. Four
11 years of residency specializing in radiology, and then
12 another one year fellowship specializing in MRI's.

13 Q All right. And could you give them the benefit of your
14 professional background?

15 A So after completing my fellowship I joined a practice
16 in Charleston, I've been here for 15 years now. And I work
17 at -- we have an imaging center in Mount Pleasant. I also
18 contract out with hospitals, Trident Hospital Summerville,
19 Colleton Medical Center here in Walterboro, do some work
20 here. So yeah, I've been doing that for 15 years. I'm also
21 on the Trauma Committee at Trident Hospital, so I do a lot
22 of trauma work.

23 Q So when Chiropractor Bernstein said she wanted someone
24 with a degree in Radiology, you have that degree, don't you?

25 A Yes.

1 Q How many MRI's would you say you interpret in a given
2 week, month, whatever?

3 A Depends on the day, but I average sometimes 20 or 30 a
4 day, which would be maybe 100 a week, and thousands and
5 thousands a year.

6 Q How many lumbar MRI's do you look at in a given period?

7 A I would say that's a majority of the MRI work I do is
8 spine work. So cervical spines, thoracic spines, and lumbar
9 spines.

10 MR. CRUDUP: At this time we move to admit Dr.
11 Rosenthal as an expert in Radiology.

12 MR. BUNCHER: No objection.

13 THE COURT: Motion is granted. Let me just briefly
14 tell the jury what we've done here. Ladies and gentlemen,
15 this witness has been qualified as an expert area -- expert
16 in the area of Radiology. I tell you that because normally
17 witnesses are not permitted to give their opinions about
18 things but are restricted to testifying about what they've
19 seen, heard, and smelled. And exception, though, is an
20 expert. They are permitted within the area of their
21 expertise to offer their opinion. And you take this
22 testimony of a witness as you would the testimony of any
23 witness.

24 MR. CRUDUP: Thank you, Your Honor.

25 Q So real quickly so the jury understands this, we hear a

1 lot about this, what is an MRI?

2 A So an MRI is an imaging technique used to visualize
3 parts of the body. As you know, x-rays are great for
4 looking at bones, a CT can look at a lot of the organs, MRI
5 is most often used to look at spines and joints and those
6 sort of things, and get information from that.

7 Q So if you're looking for an injury that has to do with
8 the soft tissue of your back, is an MRI the way you would
9 go?

10 A Absolutely.

11 Q So in this instance when you looked at Mrs.
12 Maliszewski's MRI's, do you read them in the absence of any
13 sort of detailed history about it?

14 A Yes. I always try to interpret the images without
15 history to form an unbiased opinion.

16 Q And is that something you typically do in your
17 practice?

18 A For the most part. I mean, you know, if they're
19 ordering a spine it's -- a lot of times it's back pain, but
20 the specifics of where their injury is is often not provided
21 for us.

22 Q So when you looked at these MRI's, do you even realize
23 when she had had a car accident?

24 A No.

25 Q And when you read these MRI's, do you ever compare them

1 to one another?

2 A Yes. We always -- radiologists, we always love prior
3 imaging. Having access to imaging before and after is
4 always helpful for us.

5 Q Why is that helpful to you?

6 A Well, you can look for an interval change, you get a
7 sense of the timing of when things happened.

8 Q Now, I paid you to interpret two MRI's taken of Ms.
9 Maliszewski, correct?

10 A That is correct.

11 Q And that's what you get paid to do everyday, right?

12 A Yes.

13 Q Does paying you in any way affect your opinion or what
14 you see?

15 A Absolutely not.

16 Q So what did I actually ask you to do?

17 A You asked me to look at the images, and I looked at the
18 images and rendered my own opinion without seeing any of the
19 prior reports.

20 Q All right. So let's talk about those opinions. First
21 of all, are they all to a reasonable degree of certainty?

22 A Yes.

23 Q I want to first talk about the MRI that was taken in
24 2018. And I really want to pull it up.

25 (Break in proceedings.)

1 Q All right. So, Doctor, overall what did you see in Ms.
2 Maliszewski's 2018 MRI?

3 A When I read the images I saw no evidence of acute
4 trauma, no evidence of disk bulging, normal bones, normal
5 soft issues. I believed it was a normal exam.

6 Q Okay. And I'm going to pull up for you -- actually
7 hang on a second. Doctor, did you rely on these images to
8 form your opinions?

9 A Yes. I had to look at the images to have an opinion of
10 the images, yes.

11 Q So I'm going to show you one of those images. Is that
12 the image that you looked at of Ms. Maliszewski's lumbar
13 spine?

14 A Yes.

15 Q All right. Do you see any sign of any herniations
16 there?

17 A No.

18 Q Any bulging disks?

19 A No.

20 Q Any signs of an acute injury?

21 A No.

22 Q Is there any sign of any trauma in the MRI?

23 A No.

24 Q And for the jury, can you distinguish between trauma
25 and a herniation? Does that make sense?

1 A Well, when you're looking -- there are certain signs of
2 trauma that you can see on an MRI, changes in what we call
3 signal, fluid in certain areas. There were none of those
4 signs of any trauma.

5 Q All right. I'm going to actually hand you my computer
6 so you can kind of scroll through your own report here. So
7 what portion -- well, first of all, what exactly are we
8 looking at? Can you kind of walk the jury through what
9 we're looking at?

10 A Sure. So this is looking at the spine from the side.
11 So it's similar to a lateral view on x-rays, you're looking
12 at the spine from the side, and it's one slice going down
13 the middle of the spine. And you can see alternating bones
14 and disks, and that white column down the middle is the
15 spinal canal.

16 Q When you say disk, which one is with which?

17 A Is there an arrow here?

18 Q What's that?

19 A I don't know the arrow is showing up on your main
20 screen.

21 (Break in proceedings.)

22 A Okay. These boxy structures here are bones. This
23 ovoid right thing in between the bones are the disks, and
24 then this is the spinal canal. Sorry, hand is shaking a
25 little bit.

1 Q All right. Go to that next line.

2 A Okay. So this arrow is pointing to a representative
3 disk. We talked about that bright ovoid thing in between
4 the bones, that is a disk that that arrow is referring to.
5 So we look at these in the sagittal image as we do there,
6 and then we do slices through the disk, which is called an
7 axial image. So now we're getting a cross section.

8 Q And let me back -- let me just stop you here for a
9 second. Which disk is that?

10 A That's 5-1.

11 Q Okay.

12 A We call it L5-S1, which means lumbar five, sacral --
13 sacrum one. All right. And this is that axial slice
14 through the disk, and the -- what I'm outlining here is the
15 back of the disk, and you can see it's very smooth.

16 Q Okay. In reading this MRI you heard some testimony
17 from Dr. Bernstein where she thought maybe the MRI machine
18 was malfunctioning, or there was a magnet problem. In
19 reading this MRI, did you see any of that?

20 A No. This is a diagnostic MRI.

21 Q And when you say diagnostic, what is that?

22 A Diagnostic means it's an adequate study to interpret it
23 accurately.

24 Q And in reading this MRI, did you see anything that the
25 radiologist did not see?

1 A No. When I subsequently was given the report any
2 interpretation and their interpretation was the same, that
3 it was normal.

4 Q All right. And so let's go ahead, let's compare 2018
5 to 2022.

6 A So, again, that arrow, again, is just pointing to the
7 back of the disk margin, which is smooth and normal. This
8 is the follow-up MRI from 2022.

9 Q Okay. So this would have been four years after --
10 three and a half or four years afterwards, correct?

11 A Yes, sir.

12 Q All right. So in looking at that MRI, what do -- tell
13 the jury what you see.

14 A So, again, we're back to that same sagittal view. This
15 is the similar image on the current MRI that is just like
16 the image that was on the one from four years ago. And,
17 again, you've got the bones, and then these right ovoid
18 things in the middle are the disks. And on this case when
19 you're following the back of the margin here you suddenly
20 have a little bump right here at 5-1, and that's where I had
21 the arrow on it on the first one. But I want to call your
22 attention to this area, because unlike the last one this is
23 not perfectly smooth, there's a bump there at 5-1. That
24 arrow is indicating the disk budge.

25 Q Okay.

1 A Again, we're going to do a slice, right through the
2 disk. And now what you see here, and remember, we did
3 that -- there was a smooth one before it, now there's this
4 called focal protrusion or a budge in the posterior aspect
5 of the disk right there.

6 Q Got it. So in interpreting this MRI, what findings did
7 you see -- well, let me back up. Did you see any changes
8 from this MRI to that MRI?

9 A I did. I saw mild desiccation at 4-5, and then a disk
10 budge at 5-1. These were new findings compared to 2018.

11 Q And explain to the jury what disk desiccation is.

12 A Disk desiccation is as we get older the disks start to
13 lose a lot of their fluid, the fluid is what keeps the disk
14 squishy and allows your spine to get some compression. When
15 you lose that fluid it gets rigid, and it starts to budge,
16 and that's when we get some height loss of the disk.

17 Q And you said the budge. What is that?

18 A The bulge is where you start to lose height of the disk
19 that we -- Dr. Bernstein measured that -- mentioned that
20 annular fissure, that annulus starts to weaken right there
21 and the disk starts to bulge.

22 Q I've got you. And so were those findings present in
23 2018?

24 A No.

25 Q In your expert opinion, did it develop some time

1 between the 2018 MRI and this 2022 one?

2 A Absolutely.

3 Q And what makes you think that?

4 A Well, it wasn't present in 2018, and then it was
5 present in 2022.

6 Q So if Mrs. Maliszewski was complaining of pain in 2018
7 when that 2018 MRI was taken, was it a disk bulge that was
8 causing that pain?

9 A It can't be because there was no bulge present.

10 Q And what typically causes -- the disk bulge that you're
11 seeing here, what typically causes that sort of thing?

12 A In my practice most of the disk bulging is most often
13 due to chronic degenerative change over time. As I
14 mentioned, when you get older you lose some of that fluid in
15 the disk, and so as you get older the disk start to lose
16 their height and that's when you get the bulging. It's more
17 of a chronic issue.

18 Q So for a woman who has a physically demanding job that
19 you just heard about in her mid-40's, are the findings on
20 that 2022 MRI at all surprising to you?

21 A No.

22 Q And in your opinion, are the changes seen in the 2022
23 MRI the result of a 2018 car accident?

24 A In my opinion, no.

25 Q Fair. Doctor, those are all of the questions that I

1 have for you. I believe Mr. Buncher may have a couple.

2 THE WITNESS: Okay.

3 THE COURT: Cross-examination?

4 MR. BUNCHER: Thank you, Judge.

5 CROSS EXAMINATION

6 BY MR. BUNCHER:

7 Q Doctor, how are you?

8 A I'm good, thank you.

9 Q As an expert witness you should be fair and impartial;
10 is that true?

11 A Yes.

12 Q Do you remember I sent you a subpoena in this case?

13 A Yes.

14 Q All right. And instead of responding to the documents
15 you had Mr. Crudup file a motion.

16 MR. CRUDUP: Your Honor, may we approach?

17 (A bench conference was held with the Judge and the
18 Attorneys off the record.)

19 Q All right. So instead of responding to the document
20 you had Mr. Crudup file a motion on your behalf; is that
21 right?

22 A When I received the document I immediately notified
23 Mr. Crudup and he told me to standby, yeah.

24 Q So, you know, if my client is looking for a fair and
25 impartial expert witness she wouldn't want one that's also

1 represented by the same lawyer who represents the defendant,
2 right?

3 A I don't understand.

4 Q Sure. He's representing you and the defendant.

5 MR. CRUDUP: Objection, Your Honor. I don't represent
6 him.

7 THE COURT: I think we can take his word that he
8 doesn't represent the doctor.

9 Q As a radiologist you don't diagnose patients.

10 A I diagnose patients everyday.

11 Q Well, you don't talk to patients and render --

12 A I talk to patients everyday.

13 Q You don't prescribe them treatment plans.

14 A No.

15 Q You don't treat them.

16 A Yes, I do treat some patients. I do a lot of breast
17 imaging, so I do breast biopsies and a lot of that, so yes,
18 I do.

19 Q How about as far as the back? Do you treat back
20 patients?

21 A I do not.

22 Q You've never spoken to Jill.

23 A No.

24 Q You've never spoken to her loved ones.

25 A No.

1 Q Imaging does not always show pain, or it doesn't show
2 pain.

3 A I'm sorry, was that a question?

4 Q You can't look at an image and say whether or not a
5 person is experiencing pain or not; is that fair?

6 A That is correct.

7 Q There could be nothing on an image and the person could
8 be in pain.

9 A It's possible.

10 Q The image could show a lot of stuff going on with a
11 person and they would be in no pain.

12 A That is also true.

13 Q You've got to treat the patient, not the scan, right?

14 A That is true.

15 Q And I don't know what all you looked at in this case.
16 Did you only look at the MRI's?

17 A I looked at the MRI's. I believe I also saw a lumbar
18 spine series, a couple of x-rays of the lumbar spine.

19 Q Okay. And you saw that Jill had those because she was
20 having pain?

21 A I assume that's why they ordered them because, yeah,
22 she was having pain.

23 Q And she could have that pain even with a normal MRI.

24 A That's true.

25 Q And she was having that pain in the same area she's

1 having pain to this day; is that right?

2 A I don't know, I haven't clinically evaluated her.

3 Q And there's something called micro tears; is that
4 right?

5 A Yes. It's sort a lay term, but yes.

6 Q And micro tears don't show up on MRI's?

7 A They can.

8 Q Not as always.

9 A Not always.

10 Q Are you aware of dermatomes?

11 A Oh, yes.

12 Q And dermatomes basically are -- you've got your L5,
13 your L4 and it shows basically where the pain would shoot
14 to?

15 A That is correct.

16 Q And in this case you heard Dr. Bernstein testify about
17 her dermatomes and the L5 shooting down to her glutes and
18 her buttocks.

19 A Yes.

20 Q And that's consistent with her having pain back here in
21 her lower back?

22 A No. That's not consistent with pain necessarily. It's
23 a distribution of nerves, so it's more of what's called a
24 radiculopathy.

25 Q But that's the area where you expect to see that pain

1 in those dermatomes in the back shooting to your glutes and
2 your buttocks.

3 A If there was a disk at that level, yes.

4 Q Well, before the regular MRI she was having that same
5 pain, was she not?

6 A Yes.

7 Q And can you testify to a reasonable degree of medical
8 probability that she was not experiencing pain as a result
9 of this wreck?

10 A I can't count on pain, just the imaging.

11 Q So you can't say whether or not she had pain or did not
12 have pain.

13 A That is correct.

14 Q This wreck certainly did not help her back, did it?

15 A I can't comment on that.

16 Q Do traumas or collisions help a person's back or do
17 they hurt a person's back?

18 A I mean, yeah. A theoretical thing, yes. Trauma can
19 cause back pain, yes.

20 MR. BUNCHER: Thank you, sir.

21 MR. CRUDUP: Very briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. CRUDUP:

24 Q Dr. Rosenthal, is talking to Ms. Maliszewski in any way
25 relevant to you looking at those images?

1 A I wouldn't think so. I wouldn't change my opinion.

2 Q And I forgot mention, you had seen some x-rays as well?

3 A I think so, yeah. I think it was like three views of
4 the lumbar spine, I believe.

5 Q Did they show any sort of trauma or injury to the lower
6 spine?

7 A No.

8 Q And to be clear, in looking at the 2018 images, did you
9 see any trauma to her lower spine?

10 A No.

11 Q Thank you.

12 MR. CRUDUP: No further questions.

13 RECROSS EXAMINATION

14 BY MR. BUNCHER:

15 Q X-rays are mainly for broken bones, are they not?

16 A Broken bones and soft tissues, but more for broken
17 bones, correct.

18 Q And you understand this is her only day in court?

19 A I'm sorry?

20 Q You understand this is her only day in court?

21 A I know now. Okay.

22 Q And you didn't think it was important to talk to her
23 about what's going on with her before you came in here with
24 these opinions?

25 A Yeah. I mean, I was asked to interpret images, I

1 wasn't asked to talk to Ms. Maliszewski.

2 MR. BUNCHER: Thank you, sir.

3 THE COURT: You may step down. May the Doctor be
4 excused from his subpoena?

5 MR. CRUDUP: Yes, sir.

6 (A bench conference was held with the Judge and the
7 Lawyers off the record.)

8 THE COURT: We're going to close it up for the day.
9 We've got, as I understand it, the lawyers believe there's
10 one more witness in the case that's scheduled to be here at
11 9:30 in the morning. Once we have that witness then the
12 lawyers will make -- once we hear from that witness it's
13 more likely than not that the attorneys will make their
14 closing arguments to you, I'll tell you about the law, and
15 you'll begin your deliberations tomorrow morning. So, juror
16 120, Mr. Johnson?

17 THE JUROR: Yes, sir.

18 THE COURT: How far have you got to go for your medical
19 appointment?

20 THE JUROR: Colleton Regional.

21 THE COURT: Where?

22 THE JUROR: Colleton Regional.

23 THE COURT: Can you stay with us tomorrow morning? And
24 if you have to leave you just leave. I mean, you tell
25 somebody, but if you've to go -- is that going to be all

1 right?

2 THE JUROR: Yes, sir. I just need to be there by 1:00.

3 THE COURT: Okay. Well, you're the one who decides --

4 THE JUROR: Okay.

5 THE COURT: -- when you leave. If you decide you leave
6 at 11, you leave at 11. We're hoping to have 12 jurors make
7 a decision in the case, if we can't the lawyers have agreed
8 that they will accept the verdict of 11 instead of 12. But
9 since we had 12 they would like to keep 12, they don't want
10 to mess with your medical appointment. So you're totally in
11 control, and you can walk out of that jury room and tell the
12 bailiff: I'm gone.

13 THE JUROR: Thank you for that.

14 THE COURT: I would like for y'all to do one more thing
15 for me when you come in in the morning, see if you can
16 select a foreperson to represent the jury. Other than that,
17 any questions? Any problems?

18 THE JUROR: What time do we need to be here tomorrow?

19 THE COURT: 9:30. 9:25. But they say they'll be ready
20 to go. We've got some things we've got to do before we
21 leave, but 9:30 in the morning. Ladies and gentlemen, see
22 you tomorrow morning.

23 (The jury left the courtroom.)

24 (Break in proceedings.)

25 MR. CRUDUP: I mean, Your Honor, I'm going to move for

1 a directed verdict to preserve that for me, but he hasn't
2 rested. We can do it now or later, it doesn't matter.

3 MR. BUNCHER: You want to hear it now?

4 THE COURT: Well, y'all tell me what -- for the record
5 what are we getting ready to do tomorrow morning?

6 MR. CRUDUP: So for the record, Your Honor, the defense
7 intends to rest but we can't because the plaintiff hasn't
8 rested yet.

9 THE COURT: Until you have your witness testify.

10 MR. CRUDUP: Correct. So when they rest I will also
11 rest, and at that point I would make a motion for a directed
12 verdict, which the Court would hear, I imagine you'll
13 probably deny, and we'll move on to closing. I can either
14 do that now or I can do it tomorrow morning after that one
15 witness.

16 THE COURT: Let me ask this question, how long is this
17 witness going to be examined and cross examined? I don't
18 know anything about the witness.

19 MR. BUNCHER: It's just the nurse care planner, I think
20 I'm usually done within 15 or 25 minutes.

21 MR. CRUDUP: I'll be very brief with her, half an hour
22 total.

23 THE COURT: Total? Let's hear the motion for directed
24 verdict now, the one that you would make and may still
25 technically make at the conclusion of the plaintiff's case.

1 MR. CRUDUP: So, Your Honor, I would move for a
2 directed verdict on the issue of damages. We've now had
3 expert testimony, the only expert testimony, as to any
4 physical damage done to Ms. Maliszewski's lower back, that
5 came from Doctor Rosenthal. I don't think Doctor --
6 Chiropractor Bernstein has been qualified to read an MRI,
7 much less render an opinion as to that. So on that issue,
8 Your Honor, I think plaintiff has failed to meet the burden
9 as to causation of Ms. Maliszewski's pain, therefore we
10 would move for a directed verdict.

11 THE COURT: All right.

12 MR. BUNCHER: Well, I guess in the light most favorable
13 to the non-moving party, Dr. Bernstein was qualified as a
14 chiropractic expert on the video. She testified Ms.
15 Maliszewski had pain from this wreck. She testified to a
16 reasonable degree of chiropractic certainty that she had
17 pain from this wreck. Jill testified that she had pain from
18 this wreck. Her husband testified she had pain from this
19 wreck. There's plenty of evidence in the record that she
20 has had pain from this wreck and will continue to have pain
21 from this wreck, Your Honor.

22 THE COURT: See if I've missed something. We don't
23 have any actual medical bills?

24 MR. BUNCHER: We do.

25 THE COURT: You brought a summary of them.

1 MR. BUNCHER: Yes, sir. The summary was Exhibit 3
2 maybe?

3 THE COURT: Sometimes judges get -- if they don't see
4 things they sometimes forget things. Okay. I understand
5 your motion, I understand the grounds for the motion, and
6 the Court agrees with plaintiff and denies the motion.

7 MR. CRUDUP: Okay. Thank you.

8 THE COURT: 9:15 in the morning.

9 (Court recessed for the day and resumed at 9:26 a.m.,
10 On Tuesday, December 6, 2022.)

11 MR. CRUDUP: Your Honor, he says the only issues he has
12 is two and four, he says he thinks they're redundant.

13 THE COURT: Which ones?

14 MR. CRUDUP: Two and four. I want a separate charge as
15 to plaintiff's burden, and also as to damage causation, and
16 that's the only --

17 (Break in proceedings.)

18 THE COURT: Mr. Crudup, do you have any objection to
19 plaintiff's proposal?

20 MR. CRUDUP: I don't have those. You have my copy
21 there, Your Honor. But I don't have any, I think they were
22 all just kind of --

23 THE COURT: Tell me again, you just said the objection
24 to plaintiff's is that two and four are redundant?

25 MR. CRUDUP: Plaintiff has the objection, Your Honor,

1 it's to my -- to defendant's two and four.

2 THE COURT: I'm sorry, it's the reversal of that. All
3 right.

4 (Break in proceedings.)

5 THE COURT: So let me make sure I understand it, the
6 defendant denies any negligence?

7 MR. CRUDUP: No, Your Honor, the defendant is
8 negligent.

9 THE COURT: And that's -- isn't that what number two
10 says?

11 MR. CRUDUP: No. It talks about them shouldering the
12 burden to prove they were injured in fact.

13 THE COURT: There's no inference of negligence for the
14 mere fact of injury.

15 MR. CRUDUP: That's part of it, Your Honor. We can --
16 you really could take that out, that's really not the gist
17 of it, it's more that plaintiff has a burden to produce
18 credible evidence showing some breach of duty. It's really
19 the cause of the injury that we're looking at.

20 THE COURT: Are you ready?

21 MR. BUNCHER: Sure. The only thing from yesterday, you
22 know, I did qualify Dr. Bernstein over the video of the
23 deposition as an expert. I know you talked to them about
24 Dr. Rosenthal being an expert, I just don't know if it needs
25 to be known that she was also an expert in her field or not,

1 that's all I need to bring up.

2 THE COURT: Say that again.

3 MR. BUNCHER: Sure. So when we played Dr. Bernstein's
4 video, you know, I qualified her as an expert in the field
5 of chiropractor medicine.

6 THE COURT: Right.

7 MR. BUNCHER: I know when Mr. Dr. Rosenthal got up
8 there you said he's an expert so he can talk about certain
9 things. I just don't know if they need to know that
10 specifically she was an expert as well and can talk about,
11 you know, certain things within her field. That's it.

12 THE COURT: I'm trying -- I understand what you're
13 saying, I'm trying to figure out what you are --

14 MR. BUNCHER: Asking?

15 THE COURT: Yeah, what you want me to do.

16 MR. BUNCHER: I just don't know if we needed to tell
17 the jury she was also an expert from yesterday or not,
18 that's it.

19 MR. CRUDUP: Your Honor, I think -- I think you
20 actually talked to them about -- because you did talk about
21 Dr. Rosenthal, I think you just said -- you explained what
22 an expert was, which now they know. They heard him qualify
23 her and I didn't object, so.

24 THE COURT: Well, yeah, I'm going to give them, again,
25 an additional charge on expert witnesses anyhow.

1 MR. BUNCHER: Okay.

2 MR. CRUDUP: Your Honor, I just wanted to for the
3 record, yesterday while I was cross examining the plaintiff
4 there was some issue as to whether or not plaintiff received
5 some of the documents that we have. I went back and looked
6 and we did disclose them on November 4th in a share file
7 link, those were the documents. I remember Your Honor
8 stating -- I think the term you used was suppress them, and
9 I don't -- it didn't really affect the testimony
10 necessarily, and none of those exhibits were moved into
11 evidence per se, but honestly I'm not even sure it was on
12 the record. I just wanted to make sure that that testimony
13 wasn't -- that testimony wasn't suppressed from the record
14 because they did, in fact -- the reason you said you were
15 going to suppress it is he said he hadn't gotten them, but
16 it looks like he did. So -- and again, I don't think it
17 really -- it didn't really change the testimony, but I just
18 wanted to make sure the record was clear about it.

19 THE COURT: Okay. That's my recollection of what we --
20 of what happened at the side bar, also. Apparently Mr.
21 Crudup is not asking the Court to do anything.

22 MR. BUNCHER: Okay. All right.

23 THE COURT: Are we ready to bring the jury in?

24 MR. BUNCHER: Yes, sir.

25 MR. CRUDUP: Actually, Your Honor, I did have one other

1 point that we have to address outside of the jury. In
2 looking at Nurse Shelton's preliminary life care plan it
3 doesn't -- I don't believe this was reduced to present day
4 value. She's going to -- my understanding Nurse Shelton is
5 going to testify to this life care plan and it says that
6 it's not reduced to present day value. Every time I've had
7 a trial that involves a life care plan it needs to be
8 reduced to present day value, because these numbers are not
9 going to be accurate going forward. And I'm not sure how
10 these particular numbers can come in because of that. Does
11 that make sense?

12 THE COURT: I know what you're talking about. But you
13 face the same dilemma if the doctor said, for example, she's
14 going to be required to take this medication for the rest of
15 her life, so the jury can just add up the numbers based on
16 her life expectancy.

17 MR. CRUDUP: Correct, Your Honor. But they
18 shouldn't -- that is not actually accurate, because --

19 THE COURT: Well, I know.

20 MR. CRUDUP: So if you have -- if they have an expert
21 coming in I think they're required to do that.

22 THE COURT: But I am unaware of a case that says if the
23 plaintiff, for instance -- that might be a hypothetical --
24 that the plaintiff, for instance, cannot testify that her
25 expenses will be this for the rest of her life unless she

1 brings it back to present value, unless she hires an expert
2 to come in and reduce it to present value.

3 MR. CRUDUP: Well, I would say two things, Your Honor.
4 One, I think it's a little bit different when a lay witness
5 is saying that. Nurse Shelton is a life care planner. She
6 is an expert called to tell the jury this is how much it's
7 going to cost her for the rest of her life, and that's just
8 not right. We know that because if she gets X number of
9 dollars it's going to go so far. So I think they need to do
10 that for that. But, yes, I don't think that in theory
11 someone can say: Well, I'm going to need to take this for
12 the rest of my life and it's \$5 a day, so how many days do I
13 have left? I think if my client is being asked to pay a
14 lump sum of money that's going to go forward it needs to be
15 reduced by --

16 THE COURT: Mr. Buncher?

17 MR. BUNCHER: Your Honor, I'm with you. There is no
18 case that I'm aware of that says you have to bring an expert
19 in to testify. We have a case from the 1930's that talks
20 about as long as you charge the jury they need to consider
21 all of the damages, that's good enough. Judge Norton had a
22 district order a few years ago, there was no economist or
23 reducing something to present day value, he said he is aware
24 of no case law that requires it in South Carolina.

25 THE COURT: I'm not either. And it could be argued,

1 but it's not the plaintiff's responsibility to have that
2 done. In other words, it's something that -- I guess it's
3 been disclosed in discovery.

4 MR. BUNCHER: Correct.

5 MR. CRUDUP: Correct, Your Honor. But I don't -- if
6 someone discloses that in discovery they need to be -- I
7 think they have to be honest about what -- the number that
8 they're asking for has to be a real number. She is an
9 expert asking the question.

10 THE COURT: I don't know anything about this expert,
11 but I'm just guessing this expert does not have the
12 expertise to reduce it to present value.

13 MR. BUNCHER: Correct.

14 THE COURT: Well, as Mr. Buncher said, I'm unaware of
15 any law, or statute, or case which says that you must reduce
16 it to present value. If someone is available to reduce it
17 to present value and can be qualified to do so then that
18 could come in as evidence, but I don't think that prohibits
19 someone else from just saying this is the way it goes. For
20 those reasons I'm going to deny your motion.

21 MR. CRUDUP: Thank you.

22 THE COURT: I hate to admit I don't remember this, but
23 has there been an establishment of plaintiff's age?

24 MR. BUNCHER: Yeah, I asked her. One of the first
25 questions I asked her was her date of birth, Your Honor, on

1 the stand, and she is 46.

2 THE COURT: What was it?

3 MR. BUNCHER: 46.

4 THE COURT: Currently 46.

5 MR. BUNCHER: Yes, Judge.

6 THE COURT: Anything else before we bring the jury in?

7 MR. BUNCHER: No, Judge.

8 MR. CRUDUP: No, Your Honor.

9 (The jury returned to the courtroom.)

10 THE COURT: Good morning, and welcome back, ladies and
11 gentlemen.

12 (The jury responds good morning.)

13 THE COURT: I have a note that causes me to believe
14 that Cindy Fuller, juror number 75, has been selected to be
15 the foreperson of the jury. Would that be correct?

16 THE JUROR: Yes, sir.

17 THE COURT: And Cindy Fuller juror 75 is sitting in the
18 correct spot. Thank you. That's a wise decision the jury
19 made to select you, thank you for serving. I believe we are
20 ready to resume with testimony in the plaintiff's case.

21 MR. BUNCHER: Yes, Your Honor. Karen Shelton.

22 The witness, KAREN SHELTON, was first duly sworn and
23 Testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. BUNCHER:

2 Q Good morning.

3 A Good morning.

4 Q Would you introduce yourself to the jury, please?

5 A Hi. I'm Karen Shelton, Nurse Life Care Planner.

6 Q And what do you do as a Nurse Life Care Planner?

7 A I work with clients who've been injured, and also work
8 with their physicians and other providers in preparing a
9 report that outlines future medical care, and then the costs
10 of that care.

11 Q And are you prepared to talk about the future medical
12 care for Jill?

13 A I am.

14 Q Before you do that, we've got to go over your
15 qualifications and then we'll get to your report and
16 findings. Okay?

17 A Okay.

18 Q How are you so qualified to be a Nurse Life Care
19 Planner?

20 A Well, I have maintained registration, nursing
21 registration, since 1966, and currently registered in South
22 Carolina, and other states. I've also maintained
23 certification as a Nurse Life Care Planner for about 15 or
24 20 years now, which is still a current certification.

25 Q And before -- well, let me ask you this: What are you

1 specifically exclusively doing these days?

2 A Doing life care planning.

3 Q Before that, were you working as a nurse in the field?

4 A Well, for the first 20 years of my career, and I should
5 say I graduated school in 1966, so quite a long time ago,
6 the first 20 years I worked as an active nurse in
7 traditional nursing roles. In the last 30 plus I've worked
8 in medical case management, rehab nursing, and life care
9 planning.

10 Q When you do these life care plans, are they for the
11 plaintiff or are they for the defendant?

12 A They could be either. I'm usually hired by the
13 plaintiff because that's who brings forth damages in a case
14 like this. But it's what I call a neutral report, it could
15 be -- I could be hired by either party.

16 Q Have you been qualified in court, state court or
17 federal court, as a Certified Nurse Life Care Planner
18 before?

19 A Yes, I have.

20 Q Do you know about how many times?

21 A Twenty plus times, that's an estimate.

22 MR. BUNCHER: Your Honor, I would just move Ms. Shelton
23 in as an expert in the field of Certified Nurse Life Care
24 Planning.

25 MR. CRUDUP: No objection.

1 THE COURT: That motion is granted, and the witness is
2 so qualified.

3 THE WITNESS: Thank you.

4 Q All right. Can you tell the jury what it is you relied
5 on in this case to form your opinions?

6 A I had medical records from Dr. Bernstein, which I
7 reviewed. I also had a conversation with Dr. Bernstein, and
8 I had a conversation with Jill.

9 Q Did you review any deposition testimony?

10 A I did have Dr. Bernstein's deposition, and I reviewed
11 that, yes. I also had billing information from Dr.
12 Bernstein.

13 Q Okay. What's the purpose of having all of that
14 information to put together your life care plan?

15 A It gives me some understanding of the treatment that
16 Jill received during the course of her treatment and her
17 recovery, as well as her current information. And then also
18 what Dr. Bernstein, her treating physician, chiropractic
19 physician, has recommended for her future.

20 Q Based on that information what do you then do?

21 A I then put it together in the report I think that you
22 all have reviewed, or will review, and research costs either
23 based on actual billing, or as quoted by Dr. Bernstein, or
24 researched for the Florida area.

25 Q Okay. And did you do all of that in this case?

1 A I did. Along with that I also determined Jill's
2 current age and life expectancy based on -- I use the South
3 Carolina State Code of Law for that.

4 Q Can we go over your life care plan that you put
5 together in this case?

6 A Yes.

7 Q And speaking specifically as to the chiropractic care.

8 A Yes. Excuse me, I've got to be able to read and see
9 you all. It's a very short report. I prepared this report
10 in May of 2022. And you can see that I did outline my
11 discussion with Dr. Bernstein, which starts on page two, and
12 then put -- another part that I did on this was after I
13 talked with Dr. Bernstein I sent her a letter outlining her
14 recommendations that she verbally gave to me and asked her
15 to confirm and/or clarify if I had made any mistakes, and
16 she had returned that physician confirmation letter back to
17 me. Her recommendations I have listed in my report on page
18 two.

19 Q Okay.

20 A And using those recommendations, I then researched
21 costs for her chiropractic care, as well as I broke it down
22 into pain management and surgical care. But I focused on
23 the care that she recommended and would be providing.

24 Q Let's go through the future medical costs just for the
25 chiropractic care. Okay?

1 A Okay.

2 Q I don't know what's easiest. Is it easiest to go line
3 by line with you and just talk about them?

4 A Is it going to be on the board?

5 Q Well, I'm going to write down whatever you say.

6 A Her -- based on chiropractic care only, Dr. Bernstein
7 recommended an MRI diagnostic study every two years during
8 Jill's lifetime.

9 Q MRI?

10 A MRI.

11 Q Okay.

12 A And research cost for that for the Jacksonville area is
13 \$4,019 per study.

14 Q Okay.

15 A The next item that Dr. Bernstein recommended was
16 laboratory studies to check liver and kidney functions based
17 on Jill's use of daily NSAIDS, which in this case is
18 Ibuprofen. NSAID is a nonsteroidal antiinflammatory. Jill
19 uses an over the counter type, but the lab work is used to
20 determine if there's been any damage, or any chronic wear
21 and tear on the liver and kidney. That's called the CBC
22 CMP. And then, of course, the venipuncture to draw the
23 blood, and that's done annually one time a year at a cost of
24 \$505 for the three pieces.

25 Q Let me back up a second if that's okay. Are we then

1 multiplying these numbers out over what period of time?

2 A Jill's life expectancy based on her age is 36.36 years
3 by law.

4 Q Okay. So what would be the total amount for the MRI
5 over that 36 year timeframe?

6 A Total amount for the diagnostic MRI 73,065 and some
7 cents.

8 Q 42?

9 A 42 cents.

10 Q All right. How about for the lab studies?

11 A Lab work is 18,361.80.

12 Q All right. Let's go to the next line item you have for
13 the chiropractor.

14 A Dr. Bernstein recommended 36 sessions of chiropractic
15 treatment over the next three years. So I've cost out 36
16 only, Dr. Bernstein quoted that she charges \$365 per
17 treatment.

18 Q Okay.

19 A And the total would be \$13,140.

20 Q Did you read Dr. Bernstein's trial transcript?

21 A I did.

22 Q And was there any difference between the transcript and
23 what she gave you for this information?

24 A There's a significant difference between her deposition
25 and what she told me verbally that Jill would need. The

1 deposition stated that Jill would need at least monthly
2 sessions for the rest of her life, which comes out to a
3 significant amount of more money and more treatment. And
4 actually that comes out to -- visits would be 432 visits
5 when you calculate that out at a cost of 365, comes up to
6 almost \$158,000. So a significant difference.

7 Q Okay. All right. Going forward with just the
8 chiropractic recommendations, what else do you have for
9 Jill?

10 A Doctor also recommended that Jill go through some
11 cognitive behavior counseling based on the chronic pain, and
12 also some life-style changes. And I gave her -- Dr.
13 Bernstein didn't give me an exact number of times, but I
14 gave her a typical allowance, a lifetime allowance of
15 \$7,500. It comes out to about 20 sessions or so during her
16 lifetime.

17 Q The next one you have medications. Is that the same as
18 what we talked about before, or is this something different?

19 A This is the over the counter Ibuprofen which is the
20 NSAID that Jill currently takes. I gave her a month supply
21 at \$12.79, for a lifetime total of \$5,580.53.

22 Q Therapy?

23 A Therapy. Doctor recommended that Jill have 30 sessions
24 of either physical therapy, chiropractic type treatment, or
25 massage, and I gave her an allowance for that 30, which

1 would be a lifetime total \$7,710. I do want to point out,
2 though, that in the deposition Dr. Bernstein kind of
3 combined the therapy with her evaluation for that higher
4 total, that 158,000. So --

5 Q So should we take it out?

6 A No. I'm going to leave it in here, because I've
7 itemized it as opposed to the deposition.

8 Q Okay. What do we have left for just chiropractic care
9 going forward?

10 A The housekeeping assistance that doctor recommended for
11 Jill to help with some of the heavier type -- either yard or
12 housework type situations that cause increased pain. Twice
13 a month is what Dr. B recommended, and I gave her a typical
14 \$150 allowance twice monthly for that assistance, and that
15 total is \$65,448.

16 Q And does that cover all of the future care relative to
17 chiropractic care?

18 A Yes.

19 Q And all those opinions you gave regarding those costs
20 and the treatment, were those given to a reasonable degree
21 of nurse care, life care planning certainty?

22 A It does, yes.

23 Q Did you go out and find the biggest numbers you could
24 possible for Jill?

25 A No, I used an average. Some prices are higher, some

1 are lower, but I used an average price for the Jacksonville,
2 Florida area.

3 Q Now, some of this care she hasn't gotten yet, so how
4 do -- I mean, why do we put this up for you to do?

5 A Whether she's had it or not it's been recommended
6 medically. Chiropractic -- her chiropractic physician has
7 said she needs this, or will need it, or eventually will
8 need these things.

9 Q Have I asked you to do this for me in the past for
10 other clients, other patients?

11 A Yes, you have.

12 Q Do you do anything different from me than you would for
13 anybody else?

14 A No.

15 Q Would you do the same thing for Mr. Crudup if he'd
16 asked?

17 A Absolutely.

18 Q I appreciate your time. Answer any questions Mr.
19 Crudup may have. Okay?

20 A Thank you.

21 CROSS EXAMINATION

22 BY MR. CRUDUP:

23 Q Good morning, Ms. Shelton.

24 A Good morning.

25 Q I really don't have many questions for you. So you did

1 this for plaintiff, correct?

2 A I did.

3 Q All right. And how much have you been paid so far?

4 A I think \$2,500.

5 Q All right. You're being paid to be here today,
6 correct?

7 A I am, yes.

8 Q And how much are you being paid?

9 A It'll depend on how long I'm here and the travel time.
10 About \$1,500, in that range.

11 Q Okay. So is it fair to say that for the life care --
12 the neutral life care plan you just talked about you've been
13 paid about \$4,000 by the plaintiff for that life care plan?

14 A That's correct.

15 Q And the entirety of your plan was based upon the
16 recommendations of Dr. Bernstein, correct?

17 A That's correct.

18 Q And basically the treatment that you were talking about
19 is related to a herniated disk in Ms. Maliszewski's back,
20 correct?

21 A That's correct.

22 Q The MRI's that were recommended by Dr. Bernstein, is
23 she a radiologist?

24 A No. I don't believe so, no.

25 Q Can she read MRI's to your knowledge?

1 A I think in her training that would come that part -- as
2 part her training, yes.

3 Q Would -- so you believe that chiropractors are capable
4 of reading raw images of MRI's?

5 A Yes.

6 Q And the \$65,000 in housekeeping, were you -- you were
7 not here when Ms. Maliszewski testified, correct?

8 A I was not, no.

9 Q Are you aware that neither her nor her husband talked
10 about needing housekeeping services at this point?

11 A I have no awareness of that.

12 Q And were you aware that when she testified, she
13 testified that despite her injuries she still works a
14 physically demanding job five days a week?

15 A When I talked with Jill she indicated and stated to me
16 that she had continued working. I don't know the hours that
17 she puts in or the days.

18 Q And have you seen any of the videos of her stooping
19 down with her kids to do things?

20 A No.

21 MR. CRUDUP: Those are all of questions I have. Thank
22 you.

23 THE WITNESS: Thank you.

24 MR. BUNCHER: I don't have anything else, that's it.

25 THE COURT: Thank you, you may step down. You may call

1 your next witness.

2 MR. BUNCHER: Plaintiff rests, Your Honor.

3 THE COURT: Plaintiff rests.

4 MR. CRUDUP: Your Honor, we also rest, but I renew my
5 motions from yesterday.

6 THE COURT: As we discussed yesterday.

7 MR. CRUDUP: Correct.

8 THE COURT: Are the attorneys prepared to make their
9 final argument to the jury?

10 MR. BUNCHER: Can I have five minutes to go to the
11 restroom?

12 THE COURT: Okay. All right. Let's take a five minute
13 recess, ladies and gentlemen, and then the attorneys will
14 make their closing arguments to you, and I'll then tell you
15 about the law. Please retire to the jury room.

16 (A break was taken.)

17 MR. BUNCHER: The only thing I have is yesterday in
18 opening he said we're going to have Ms. Yeager pay you a
19 lot. I mean, between the lawyers we know that she's not
20 actually paying it. I would ask that he not be able to say
21 she's pay this verdict in closing.

22 MR. CRUDUP: I disagree with that, Your Honor. Unless
23 they're -- they've never bounded their demand by anything.

24 MR. BUNCHER: Well, she's not paying.

25 MR. CRUDUP: If they give her more than what her

1 coverage is she's absolutely on the hook for whatever it is
2 the jury decides. I mean, he gets to say these are her
3 medical bills, and we know insurance has paid those.

4 THE COURT: I've never had anybody make that defense.

5 MR. CRUDUP: They're not saying we not pay Ms.
6 Maliszewski any more than X, whatever her coverage is. The
7 jury could award her anything, could award her any amount
8 and we are on the hook for whatever that may be beyond her
9 coverage, so of course they're asking her to y.

10 (Break in proceedings.)

11 THE COURT: Could the plaintiff not argue in response
12 that the defendant is not going to have to pay anything?

13 MR. CRUDUP: Are you saying can the plaintiff not argue
14 that? No. Because -- I don't even know what they're going
15 to -- say she has \$25,000 in coverage, I'm not saying she
16 does but let's say that's her coverage, and they give her
17 \$26,000.01, she's on the hook for one cent, that's the way
18 this works. So they can't say: Oh no, she doesn't have to
19 pay, and they certainly can't talk about insurance any more
20 than I can. We have to just ignore it, we have to pretend
21 that insurance does not exist. It would be unfair to force
22 me to act as if I do have insurance when they do not. If
23 they want to say that her bills were whatever her copays
24 were, okay, that's a different story, but we're not doing
25 that. My client happens to have insurance, that's her --

1 the one has nothing to do with the other. Her name is on
2 this, there will be a judgment against her period.

3 MR. BUNCHER: We have the collateral source rule for a
4 purpose, but if he's going to argue she has to pay that
5 rises to something, that this young lady, who is a nice
6 girl, we can't make her pay a big amount of money, and it's
7 not fair to my client because there is, you know, insurance
8 sitting out there. I don't get to argue oh, well, she's got
9 insurance. I would like to argue that.

10 MR. CRUDUP: And I would like to argue that she doesn't
11 have any medical bills but I can't. I think that he is
12 right, Your Honor, I can't talk about her ability to pay,
13 but she is the defendant in the lawsuit.

14 THE COURT: I'm going to sustain the objection. And I
15 say that because most of the charges that are used to
16 explain to the jury damages state that the jury must
17 determine the amount of money that the defendant should be
18 required to pay. I sustain the objection.

19 MR. CRUDUP: So does that mean I can't say that?

20 THE COURT: I'm sorry, I overrule the objection.

21 MR. CRUDUP: Thank you.

22 THE COURT: Now are we ready for the jury?

23 MR. BUNCHER: Yes, sir.

24 MR. CRUDUP: Yes, sir.

25 (The jury returned to the courtroom.)

1 THE COURT: Welcome back, ladies and gentlemen. In
2 just a few moments the attorneys are going to make their
3 final arguments to you where they'll try to convince you to
4 see the case the way they see it. The statements made by
5 the attorneys to you at this time, I remind you, are not
6 evidence in the case, it's what the attorneys think or
7 believe evidence has shown or has not shown. Sometimes I
8 tell jurors this, for example, if one of attorneys in the
9 closing arguments says: Well, you remember that day it was
10 raining, and y'all get back there you start deliberating and
11 say: Wait a minute, there wasn't any evidence about any
12 rain. Well, your collective memory decides what the facts
13 were in this case, not what the -- if it conflicts with what
14 the attorneys say during their argument. At this stage
15 you've received all of the evidence that you're going to
16 receive, there are no more facts that you're going to be
17 given, I'm just going to tell you about the law that applies
18 in the case, that's all you have. You'll have to make a
19 decision after you hear from the attorneys and I tell you
20 about the law.

21 MR. BUNCHER: Thank you, Your Honor. May it please the
22 Court? Good morning, again.

23 (The jury responds good morning.)

24 MR. BUNCHER: Thank you for coming back and showing up
25 again today. I'm glad we're going to get you out of here in

1 two days as this was a quick trial, but it was an important
2 trial for Jill. While y'all were out there I asked her: Is
3 there's anything you wanted me to tell you the jury? And
4 she just wanted me to tell you all thank you for listening
5 to her case. It's been four years that she's gone through
6 this, and there's finally some closure of this chapter in
7 her life, so thank you all for being here during this. I
8 told y'all yesterday this was a simple case, and I really
9 think this is a simple case. We have a lady that has
10 virtually no treatment to her back, has a wreck and has been
11 going to a doctor ever since. You know, it's a defense
12 tactic to try to complicate these things and make them more
13 complicated than they are, but it's a simple case. No
14 treatment, wreck, lots of treatment going forward, going to
15 the doctor all of the time. It's a negligence case, and you
16 know what that means? Your job is going to be to assess the
17 amount of damages that Jill has sustained that were
18 negligently inflicted upon her by the defendant. The
19 defendant is a nice person, we have no ill-will towards her.
20 Your job is just to determine compensation for the injury,
21 that's all you can do, and you have the power to do that.
22 So we told you yesterday about Jill: Mother of two kids,
23 hardworking mom, and she's self-employed as a speech
24 language pathologist. And you saw the videos of what she
25 does. She's got a difficult job, she's got a hard job, and

1 she's not going to stop doing that job. And I know we've
2 heard a lot of talk about she does this job and her back
3 hurts, and that's true, because she's got a hard job, but
4 before this wreck there was no testimony that she ever had
5 any issue with her back working. It was because of this
6 wreck that she's got this pain that happens to her
7 throughout her day throughout her life. If we didn't have
8 this wreck there is no pain there at all when she's working.
9 Just because she has this hard job I don't think they should
10 be able to use that against her. What happened. We told
11 you about the wreck. She got rear-ended, you have the --
12 well, you will have the photographs back in the jury room to
13 look at. This isn't a, you know, a no damage case. It's
14 not a case where the cars were crushed in half. But the
15 cars got hit pretty good, and if they got hit pretty good
16 you've got to imagine what happened to Jill in that vehicle
17 with her back. We've talked about the back pain that she
18 sustained and has treated with ever since. They have two
19 visits from 2004 where they treated for her back, 14 years
20 before this wreck, and nothing up until 2018. You heard
21 from Dr. Bernstein, who has treated her since 2019, and she
22 said Jill has sustained a lifetime injury, or a permanent
23 injury. We'll get to that in a little bit. You heard about
24 the defenses, the gaps in pain -- or the gaps in treatment,
25 there is no gap in pain. Going to the doctor, it takes time

1 out of your life. And just because there's a doctor note,
2 or not a doctor note doesn't mean you're not in pain. I
3 mean, I walk around with these stupid shoes on, I don't know
4 if you noticed them, but that's because they've got a lot of
5 cushion in them, and everyday I wake up I've got pain in my
6 heel. I haven't gone to a doctor for that, but I asked the
7 doctor what should I do for my foot so I could walk in the
8 morning so I don't hobble around all over the place, and he
9 said to buy these shoes. There's no doctor's note saying
10 I've got pain, but I guarantee you every morning I walk --
11 wake up and I walk across the room hobbling, I've got some
12 pain until I put these things on and I can walk all day with
13 these shoes on. So just because there's no doctor's
14 treatment for periods of time, five months at a time,
15 doesn't mean that Jill is not in pain because of this wreck.
16 You heard from Dr. Rosenthal, the Radiologist. I asked him
17 this exact question: You've got to treat the patient, not
18 the scan, and he said: Absolutely. He also said you can
19 have a clean MRI and have back pain, which is what happened
20 to Jill. He also said you can have a bad MRI and have no
21 pain whatsoever. He also said he couldn't testify whether
22 or not Jill had pain in this case at all, because he doesn't
23 treat people, or he doesn't do treatment plans for people is
24 what he said. And I told you at the end of opening
25 yesterday I was going to ask you all for a fair and

1 reasonable verdict for her pain, her suffering, her loss of
2 enjoyment of life, and her non-economic damages for the 40
3 years of pain that her doctor said she's going to have as a
4 result of this wreck. So I want to talk about the law for a
5 little bit. We've got the preponderance of the evidence,
6 which means that -- simply means, and the Judge is going to
7 read this to you -- preponderance of the evidence. It
8 simply means the greater weight of the evidence, what is
9 more likely true than not true. So we have to prove our
10 case with 51 percent, that's our burden of proof. We've got
11 to prove our case more likely than not by 51 percent. So if
12 someone goes back in the jury room and says I have some
13 doubt, that's okay, you can have doubt, you can actually
14 have up to 49 percent doubt and still rule in Jill's favor.
15 I think we've proved it by a whole lot more than 51 percent,
16 but remember, that's your burden when you go back to the
17 jury room, 51-49, more likely true than not true. The real
18 dispute in this case is the proximate cause, meaning did the
19 wreck cause the injury to Jill's back that she still has to
20 this day, and they say it's going to go forward. Down here
21 it says: Proximate cause is something that produces a
22 natural chain of events which in the end brings about the
23 injury. So if you think about it like a set of dominoes, if
24 we take this wreck out of the equation, let's say there's a
25 stack of dominoes right here on this wall, if we take this

1 wreck out of the equation, just pull it up, does any of this
2 treatment happen? Does any of that treatment happen from
3 2018 forward if we take the wreck out of the equation? I
4 was putting together while he was asking Jill questions
5 yesterday, her timeline of her life. Born in 1976. And in
6 those 42 years of her life there's two notes about back pain
7 and in 2004, fourteen years before this wreck. No other
8 treatment until we get to October of 2018, the day of the
9 wreck. And since that time in those four years she's been
10 to the doctor, chiropractor, MRI, et cetera, 72 times in
11 these four years. If we take out the wreck, do least 72
12 doctor visits happen? And that's what proximate cause is,
13 did this wreck set forth in motion this chain of events that
14 has sent her to the doctor ever since. And we've got to
15 think about it in the new future the next 30 years of her
16 life, how many more times is she going to go to the doctor
17 for treatment because of this wreck? So damages. You've
18 got to balance the scales. Well, up top it says justice is
19 the balance, and I guess it didn't make it on there. It
20 talks about being fair and reasonable. Civil cases. All I
21 can do is ask you for money. I can't ask us to go back in
22 time and stop this wreck from happening, I wish we could but
23 we can't, all I can do is ask you for money. And you've got
24 to put the injury and balance it out on the scale with a
25 dollar figure to make it even. That's all you can do,

1 that's all I can ask you for. And when you do that you've
2 got to make sure you do an equal trade dollar value, equal
3 trade for the pain to balance out with a money verdict in
4 this case. Forty years is a long time, 2018 to 2058, per
5 our government says she will leave that long. I wasn't
6 alive 40 years ago, a lot has changed in 40 years. 1982. I
7 don't know, gas was probably a quarter or something. We
8 didn't have cellphones like we do now. 40 years is a
9 really, really, really long time to live with something that
10 was negligently inflicted upon you being in the pain. And
11 you heard the testimony from her husband about the pain, you
12 heard it from Jill, she got emotional. She did not mean to
13 get emotional on the stand, but you've heard what it's done
14 to her, to her husband, and you heard about the doctor, what
15 Dr. Bernstein said, who's been treating her ever since 2019.
16 And I asked a really important question yesterday about Jill
17 and when she met her husband and it's been bugging me, they
18 didn't get together until both of them were legally able to
19 get together. I asked a really poor question when she was
20 on the witness stand, hopefully -- I just apologize for
21 asking a bad question. But they've known each other for a
22 very long time because they've had mutual friends, and they
23 finally decided to move things forward at some point later
24 in their life when they were both available to do so. So
25 one way I like to think of it is, husband wakes up one

1 morning next to his wife and says: Darn, there's something
2 wrong with my neck. The wife says: Well, what's wrong,
3 honey? I've got a crick in my neck. And he gets up, you
4 know, walks around like this all day with a crick. He goes
5 downstairs to eat his food, gets in the car, can't really
6 turn his neck, goes to work, does what he needs to do, it
7 bothers him all day. Gets home, wakes up the next morning,
8 same thing, crick is still in the neck. Wife says: Honey,
9 I think you need to get this checked out if this thing
10 doesn't go away anytime soon. He goes through the whole
11 day, same rigmarole, and he's not complaining to everybody
12 around him, he's just talking to his wife, because it's not
13 the type of thing where you go around whining to people,
14 complaining to people. He comes home, has dinner and he's
15 still got the crick in the neck, and he has a little bit of
16 an attitude because it's bothering him, it's pain. Pain is
17 not fun, and you heard Jill talk about, you know, sometimes
18 she stresses out or gets upset with the family because of
19 the pain that's going on with her. Next morning the husband
20 wakes up and says: Hallelujah. Wife says: What? The pain
21 is gone. In this case Jill does not get that hallelujah
22 moment. That pain that's there that's like a crick in the
23 neck is not going away. And I don't know how many of y'all
24 have furnaces or stove tops with the pilot light, but it's
25 like a pilot light, it's always flickering in the

1 background, you know, it's always there, that pain is always
2 going to be back there. Sometimes it's going to shoot up,
3 sometimes it's going to fizzle down, but it's always going
4 to be there with her for the rest of her life. So I've got
5 to ask you for numbers to compensate her for her injuries.
6 You have the medical expenses, the summary for her past
7 bills are in evidence. They're roughly I rounded down
8 32,000. You heard from Karen Shelton, the Nurse Life Care
9 Planner, the future care that she put together was about
10 \$190,000. If you do the weekly chiropractor treatment every
11 month that Dr. Bernstein said in her deposition, that puts
12 the number up to about \$335,000. And those are the economic
13 numbers, the numbers for medical expenses. And you heard
14 Jill testify she had about 40 hours out at about \$80 an
15 hour, so that's \$3,000 to \$4,000 right there. So those are
16 the hard numbers that we can look at. But what we've got to
17 consider in this case is the non-economic number, the value
18 of pain for 40 years, and how do you do that? There's no
19 set standard in South Carolina, or anywhere. If there was a
20 formula I would be glad to give it to you and say: Hey,
21 here is the formula, please take this back to the jury room
22 and calculate it up, but we don't have the formula. You all
23 have the authority to determine the amount to be allowed for
24 the pain and suffering for damages that are just and
25 reasonable. It ultimately comes down to your life

1 experience, and what sort of price you put on the freedom of
2 not having pain. That's what it comes down to, what's the
3 freedom of not having pain? So one way to look at it, and
4 Mr. Crudup said yesterday my numbers are going to be
5 ridiculous, I hope they're not ridiculous. You're allowed
6 to take my numbers for what you think. You can reduce my
7 numbers all you like. You can put them up as high as you
8 want, it's ultimately your call, but I've got to give you
9 some suggestions to think about how to calculate numbers and
10 that's my job as a lawyer. If Jill was told before this
11 wreck happened on I95: Hey, Jill, we've got a job
12 opportunity for you. For the next 40 years you're going to
13 have back pain that's going to interfere with your life,
14 interfere with your wreck, interfere with your children,
15 make you upset at times. You're going to come home at 7:30,
16 sit on the couch and clunk out, you're not going to be able
17 to deal with your daughter -- I shouldn't say deal with your
18 daughter, I have a daughter, I have to deal with her -- but
19 be with your child like you want to be. I mean, your kids
20 are precious, you can't put anything past the kid. But, you
21 know, not be able to be with your daughter and engage with
22 your children like you want to. For 40 years you have that
23 job, and we're going to pay you minimum wage at 40 hours a
24 week. We're not even going to pay you for the whole 168
25 hours of the week, we're just going to pay you 40 hours of

1 that week. But if you do the math on that that comes out to
2 \$600,000 for 40 years, which comes out to only \$15,000 per
3 year, that's \$7.25 an hour for 40 hours a week, and you
4 leave 128 hours unaccounted for. Now, you're certainly
5 allowed to go back to that jury room and say: Jeff, that
6 number is way too much, we think it's ridiculous, and bring
7 it down. Or you can say maybe 7.25 an hour is not enough,
8 that is your call, and that is just one way I suggest to you
9 all to go back there and calculate a number for pain,
10 suffering, loss of enjoyment of life for 40 years of her
11 life. I did another number if you wanted to do 5,000 a
12 year, which comes up to five bucks an hour, that's only
13 \$200,000 per year -- or 200,000 for the 40 years. One thing
14 I need to prove to you is whether the expenses caused by the
15 injury -- were necessary and reasonable. I've got to prove
16 expenses caused by the injury were necessary and reasonable.
17 We asked Dr. Bernstein: Was the medical care you provided
18 to Jill reasonable and necessary and related to the October
19 of 2018 wreck? And she said: Yes. So more likely true
20 than not true. You've got the evidence in this case that
21 the injuries were necessary -- or the treatment was
22 necessary and reasonable. Another thing is the future --
23 her future. As the Judge is going to charge you, Jill is 46
24 years old, she was 42 at the time of the wreck, giving her
25 another 36 years to live per our government. We asked Dr.

1 Bernstein: Is this injury something that will go away at
2 some point, or is it something that will be with her for the
3 rest of her life? It will be with her for the rest of her
4 life. And there's no testimony otherwise. The radiologist
5 couldn't testify about pain yesterday. He said: I can't
6 testify one way or the other if she has pain or doesn't have
7 pain, does or does not have pain. The only testimony in
8 this case, the only person that put hands on Jill, her
9 chiropractor who said she did all of these objective tests
10 that produced a positive response to these objective,
11 orthopaedic tests, and that's the only evidence you have in
12 this case regarding Jill and her pain from a doctor.
13 Obviously we have her and her husband, and you heard from
14 them, about what she goes through on a daily basis. Well,
15 the last item just says thank you. Thank you all for being
16 here. Thank you, again, for your jury service. Mr. Crudup
17 will get up and speak after me, and then after he's done I
18 will get up and I can speak for the last time, you won't
19 hear from me again. At that point we will turn it over to
20 the Judge to give you all the instructions, and then go back
21 in the jury room. Thank you all, again, for your time.

22 THE COURT: Mr. Crudup.

23 MR. CRUDUP: Thank you, Your Honor. I just need a
24 minute to set all of this up.

25 (Break in proceedings.)

1 MR. CRUDUP: I'm going to try and turn it where you
2 guys can see it, if anybody can't, please just let me know.
3 Okay?

4 (Break in proceedings.)

5 MR. CRUDUP: Can you guys see that okay? So I want to
6 thank you guys as well. I said in the beginning of this
7 trial that details mattered. And some things you've already
8 heard from plaintiff's counsel is that they don't, this is
9 simple, it's very, very simple. What I told you was that
10 there were details that support the kind of conclusions
11 you're going to come up with. The big conclusions are
12 simple, I mean, they're basic stuff, right? But the details
13 aren't so much. What I didn't tell you was that some of the
14 details are probably pretty boring, so thank you for bearing
15 with us. You also heard, again, that this is Jill's day in
16 court. Well, it's also Maggie's day in court, right? So I
17 want to go through -- what I told you earlier was I wanted
18 to go through those details with you, I wanted to see how we
19 get there. Because I think something that's going on here
20 is something called confirmation bias. And when I was in
21 high school I think my science teacher told me this, and it
22 didn't mean much but I ended up being a Psychology major,
23 and I thought it was really interesting, it's a kind of
24 human nature, right? It happens all the time around us.
25 What confirmation bias is, is it's when we get new

1 information but we have an assumption about something, and
2 then we try to fit that information into our assumptions.
3 It's almost like being kind of stubborn, right? I don't
4 want to do that here. I want to go through this evidence
5 and see where it leads us, rather than assuming something
6 and then try to find evidence to fit into whatever that
7 assumption is. And I think there was a good example, I
8 mean, I think, this case is a classic example of that, and
9 the two people you can think about that as is Dr. Bernstein
10 and Dr. Rosenthal. Dr. Bernstein seems like a nice
11 chiropractor, she obviously knows Ms. Maliszewski, and she
12 got up there and she said: Yes. I think she has a
13 herniated disk from this car accident. And then I showed
14 her an MRI where there was no herniated disk after this car
15 accident, and I'll talk about that in a little bit, and when
16 she looked at it, instead of saying: Oh, well I guess it
17 wasn't from the accident, doesn't mean she's not in pain but
18 there must be some other reason. She said first that at
19 least one, maybe two radiologists misread it, that it was
20 there but they didn't see it. And then she said: Well,
21 maybe the machine is broken. That was her solution to here
22 is something that doesn't fit with your assumption. Rather
23 than saying: Well, wait a minute, this might not be right.
24 Now, compare that to Dr. Rosenthal. Dr. Rosenthal said: I
25 read these things -- and I specifically asked him: Did you

1 know anything about this when you looked at these? And he
2 said: No. I don't even know when she had a car accident.
3 Ironically enough I would imagine a lot of times when he
4 reads these things the car accident happens between the two
5 of them, when she gets an MRI it's clear, she has another
6 after an accident and then, oh look, there's a herniated
7 disk. So he has no idea what's going. And one of the
8 questions that was asked was, well, did you talk to Ms.
9 Maliszewski about this? And he said: No. Why would I need
10 to do that? I'm here to read MRI's, that's my job. I don't
11 have a confirmation bias because there's no bias to begin
12 with. So all of that is to say, what I want to do now is
13 talk about the big question, right? And I said in the
14 beginning the big question really was whether or not Ms.
15 Maliszewski was seriously permanently injured, which is what
16 you've been hearing about, or if this was something else if
17 this was not a serious, serious long term injury. You've
18 already heard -- or you've already heard Mr. Buncher talk
19 about this, but something that the Judge is going to talk to
20 you about is the scales of justice, it's a preponderance of
21 the evidence. So they have a burden. I don't know if you
22 were clear about this, but they have a burden where they
23 have to prove something beyond a preponderance of the
24 evidence, and that's not -- you know, in criminal court your
25 burden is beyond a reasonable doubt, that's not what this

1 is. It's their burden. And if you put all of the evidence
2 on the scales and you see which way it tips, whichever way
3 it tips that's the proof -- that's the proven fact, right?
4 And if it doesn't tip and they're trying to prove it then
5 you have to find for the defendant. Tie goes to the runner
6 so to speak. So I found that that's a very helpful way to
7 look at things, and I think I want to look at these
8 questions that way. So what I want to do is I want to put
9 the evidence on scales and see where it takes us. And I'm
10 going to try to be as even handed as I can about that
11 because I want you to actually see the evidence and weigh
12 it, because that's what I want you to end up doing. So
13 there seems to be two arguments here, right? And I'm kind
14 of unclear about them but I'm going to address both of them.
15 First, you have Dr. Bernstein's argument, which is there was
16 a herniation there the whole time, and this first MRI just
17 missed it, and no one knows why, and all of these -- you saw
18 it, but it was missing for whatever reason. The second
19 argument seems to be, and I think it's probably -- and this
20 is more plaintiff's counsel, he's kind of saying it doesn't
21 matter. Who cares if there's a herniation or not a
22 herniation, she's in pain and that's what matters. And I'm
23 going to explain to you why I think that matters a lot. But
24 I want to address both of those questions, and I think what
25 we're going to find is the herniation is very, very

1 important, and I'll explain why it's so important, why it
2 has something to do with whether or not she's in pain or
3 not. So let's look at the question. So the first question,
4 did this accident cause a herniated disk? So the question
5 is did this cause a herniated disk? And I'm going to put
6 something on one side of the scale, and I'm going to put
7 something on the other side of the scale. In my opinion,
8 and the evidence showed me, is that the only thing on this
9 side of this scale is what Dr. Bernstein says, she just says
10 that. Now, I'm not even really sure where to start with Dr.
11 Bernstein, but I guess I will start here. One of the things
12 that Judge Goldsmith is going to tell you is that you are
13 the arbiters of credibility. You determine everything you
14 hear. You decide whether or not you want to believe it, how
15 much you want to believe it, all of those things. And you
16 can believe whatever you want from Dr. Bernstein, but I will
17 tell you this, and I rarely say this, some of the things
18 that Dr. Bernstein said really frustrated me, because some
19 of the things she said they just didn't make any sense with
20 me. Separate and apart from when she talked about the MRI,
21 and I'll talk about that, but some of the things she said I
22 think impede her credibility, and I wrote a couple of them
23 down. One of the first ones was I asked her right at the
24 front, are you a medical doctor? Are you a medical doctor?
25 Because she's giving you opinions about medical things,

1 about orthopedic things and whether she needs surgery, are
2 you a medical doctor? And what was her answer? I actually
3 wrote this down. Okay. Just to be clear, you said you went
4 to undergrad and chiropractic school, you never went to
5 medical school; is that correct? I am a licensed
6 chiropractic physician in the state of Florida. I'm a
7 physician in Florida. So you consider yourself a doctor.
8 Absolutely. Do you consider yourself a medical doctor? I'm
9 a chiropractic physician. She can't just say, no, I'm a
10 chiropractor. She has to continuously say: No. And, in
11 fact, what she said was, the only difference between her and
12 a doctor was that they can prescribe medications. She's
13 comparing herself to neurologists, to orthopaedists, and
14 Dr. Rosenthal, a Radiologist. Even a primary care
15 physician. And her only difference, oh, I just can't
16 prescribe medication. Really? That's her explanation of
17 what it is she does? She is a chiropractor and she can do
18 acupuncture, that's her specialty, and that's it. Now, does
19 that mean that what she did for Ms. Maliszewski is wrong?
20 No. But what I'm saying is, doesn't that -- when you think
21 about that, why can't she just say: No, I'm a chiropractor,
22 that's what I do. Two. She said she's trained to read
23 MRI's, and I think this really pissed off Dr. Rosenthal, she
24 does not know how to read MRI's. He spent his entire life
25 reading MRI's, and she says: Oh yeah, I can read them.

1 Well, why didn't she read them? Why didn't she explain to
2 you: Oh, that's why this is missing. She can't read MRI's.
3 And the third thing she said, she said the plaintiff's
4 workload has been increased by 50 percent, I don't know if
5 you caught that. I don't know where that came from because
6 she told you that's not true. She works -- and commendable
7 to her, she works the same 25 hours of contact until very
8 recently where she cut back by four. So that's the
9 credibility -- that's the credibility issue you're going to
10 have to work with. But ultimately what she said, and again,
11 I just -- it boggled my mind, was what happened? I said --
12 all of this stuff she said was related to the accident,
13 herniation and disk specifications, which is clearly
14 degenerative, it's all related to the accident. Okay.
15 Well, what about this MRI that says it's not? And her
16 answer was, the radiologist got it wrong and the
17 machinery -- I wrote this quote gown because -- so you're
18 telling me that Mark J. Timpken, M.D., misread the MRI
19 completely? He missed all of that stuff, is that what
20 you're telling me? Or the machine -- she says: Or the
21 machine. Okay. So either the machine or the radiologist
22 completely misread this MRI. It's plausible, I've seen it
23 before. Is it likely or plausible? It's likely. So she
24 thinks it's more likely that everybody missed it than maybe
25 it just wasn't there. So that's all I have on that side of

1 this line was what she happened to say. What about the
2 other side? Well, you can kind of compare her, and we did a
3 little bit, to Dr. Rosenthal. So do you remember when she
4 said during her testimony: I really wish that we could have
5 this reread by a radiologist with a diploma? That's what
6 Dr. Rosenthal is, he's a Radiologist, and he came in and he
7 looked at it, and I think he did a pretty good job of
8 actually explaining it. He said unequivocally in 2018 she
9 did not have this herniation, and because of that I know she
10 didn't get a herniation from a car accident. It's actually
11 pretty basic. But one of the more important things he said,
12 and I wanted to make sure you guys heard this, was I asked
13 him: Did you see any trauma? And there's a difference,
14 right? There's a difference between getting in an accident
15 and having a herniation, and having trauma to your back.
16 And he said, the signal lights up, you can see, you can see
17 a difference. And I asked him: Did you see that trauma?
18 And he said: No. I don't see any trauma of her back in
19 2018. Of course, that's important. So he said
20 unequivocally no trauma, no herniation. But again, take him
21 for what -- take him at his word, he's a radiologist. The
22 second thing I said was pictures tell a thousand words, I
23 said that in the beginning and you got to actually see them.
24 I thought that was actually pretty cool. He put it up on
25 the screen. I mean, it's funny, when somebody pointed to it

1 you say: Yeah, there it is. I mean, you can see it right
2 away. I couldn't do it, I'm sure most of you couldn't, but
3 I think he did a good job saying: Look, here is a
4 herniation, and here is not a herniation. They're four
5 years apart, and the accident happened before that. I mean,
6 it seems pretty obvious to me. However, I was talking to
7 some people about this, and someone said: Well -- my mother
8 said: I don't understand the MRI -- I don't understand that
9 the two MRI's, what are you talking about? So I wanted to
10 do this. Here is what I wanted to do. All right. I want
11 you all to understand how this MRI thing works. Imagine, I
12 am the accident. Afterwards, two weeks later, this is the
13 MRI, and this says everything is fine, demonstrated nothing.
14 Unremarkable MRI of the lumbar spine. So accident this,
15 four years down the line we get that one. That one is the
16 one that has a central disk herniation with an annular
17 fissure. Accident, clean MRI, another one. That's the
18 timing that I'm talking about. The two were not -- first
19 the accident, then it's clear, then it's not. This gap is
20 when she's working, and I want to talk about that in a
21 second, but that's the gap we're talking about. I think
22 another way you can think of it, I was driving over it,
23 imagine you get in a car accident and you take a picture of
24 the bumper of your car. All right? There's no damage
25 there. Four years later you take another picture and the

1 bumper is messed up. We know the accident didn't cause the
2 bumper damage because it wasn't there in the first place.
3 So I think that's pretty clear. But the third -- or the
4 fourth thing is a demanding job. And I mentioned this
5 earlier, this is what my wife does as well. It is
6 physically demanding, and I'm impressed with Ms. Maliszewski
7 for the things she does, she does a very important service
8 for autism, but she's been working this physically for
9 years, this is what she's doing. She is 46 years old and
10 that's fine, but she's in her mid-40's, she's working a
11 difficult job, and here her back is perfect, here it's not,
12 and I think that matters. I think that tells you clearly
13 there was not a herniation there. Everyone agrees what
14 she's doing aggravates her back. Here chiropractor said it
15 aggravates her back, right? Actually she said how she
16 pursues her career aggravates her back. Her husband says
17 her profession doesn't help. And I hope you picked up on
18 this, but plaintiff's counsel asked her, you know: Does
19 your back ever not hurt? Because he talked about the pilot
20 light and it's always on, and she actually said: Yeah. For
21 about three months it didn't bother me, when she got Covid
22 and she couldn't work. When she wasn't working her back was
23 fine, there was no pain, she said it was good. What could
24 possibly be causing that pain other than that? So I think
25 that that's pretty -- if you're looking at the scales, was

1 there a herniation or was there not a herniation here or
2 not? I think it leans pretty heavily towards not a
3 herniation, right? The question is is it more likely that
4 the MRI machine broke, Mark Timpken missed it, I guess Dr.
5 Rosenthal either missed it or was making it up, or did she
6 not get a herniated disk in the accident and later on down
7 the line she developed one in her 40's? Is that not the
8 simplest, the most logical explanation? Remember, I said I
9 want you to just apply some simple logic to this stuff?
10 Would that not be that? We think it tips the scales pretty
11 heavily. Now, I mentioned earlier that plaintiff's counsel
12 is going to say: Well, it doesn't matter, herniation, no
13 herniation, she's still in that pain. Here is why that's so
14 critically important to what we're doing here. If you
15 believe that this accident did not cause a herniation, then
16 we know -- what we know is she does have a herniation.
17 Right now as she sits here today she does have that
18 herniation, and what we know is that's what's causing her
19 ongoing pain. I really only asked the Nurse Life Care
20 Planner one question, too, I asked her how much she got
21 paid, which is \$4,000. But the other thing I said was all
22 this care is about the herniation, right? And she said:
23 Yeah. We're treating her for her herniated disk. Well, if
24 all of that care is for the herniated disk that didn't
25 happen in the car accident, all of that stuff about years --

1 40 years of her life, that's not related to the car
2 accident, it's related to the herniation, but the herniation
3 is not related to the car accident. And if that's what you
4 believe, if you believe she has a herniation but it's not
5 related to the car accident then you can basically skip
6 ahead, because I'm going to talk about something else. But
7 what we're talking about, that's what I was saying, she was
8 injured in the car accident but it wasn't a permanent
9 injury. What we're dealing with here now is a herniated
10 disk, and that's not from the car accident. So like I said,
11 I think that if you do that, you skip ahead, and I've got a
12 whole other board for you, but I'm going to cover it,
13 because say you're unsure about it or what have you. But
14 the other argument they're making is that she now is in
15 pain, and why that is they don't know. And I think they
16 probably are supposed to explain that to you, but they said,
17 look, before the accident there was no pain and now there
18 is. So what evidence is there? What evidence are you going
19 to see that she was in pain all of the time? Well, if you
20 really boil it down, really it's what she says, right? We
21 all agree about that. No one can tell you if someone is in
22 pain or not, either you are or you are not, and that's
23 something that only she knows. What she told you and what
24 you just heard was she has never had back pain before.
25 Actually what you heard in the beginning was she never, ever

1 had back pain. That's changed a little bit, right? So
2 remember when I asked her had she ever had back pain, she
3 told you four times: I've never had back pain in my life.
4 Her husband said it twice, her lawyer said it at least once.
5 They kept doubling down on it and doubling down on it.
6 Well, it turns out every time they said that they were
7 wrong, that's not the case. She did have back pain. She
8 got treatment for back pain. I asked her: Have you ever
9 even had treatment for back pain? She said: No, I haven't.
10 She had an MRI of her back, she had a pain scan of her back,
11 and she ultimately had breast reduction surgery to deal with
12 daily living issues with her. Now, I know what people are
13 going to say: Well, she was lying. And I'm going to tell
14 you something, I don't think she was lying, I really don't.
15 I think what you're seeing is that same confirmation bias
16 that I just talked about, because in her mind before this
17 accident she was perfect and now she's not, and she's trying
18 to fit that stuff in. That's why she doesn't really
19 remember: Actually I did have some back problems before,
20 right? I don't blame her. I really don't think she's
21 lying. I think in her mind that's the way it is. But it's
22 the same thing she's doing with: Oh, now I'm always in
23 pain. I don't think she's remembering how that pain really
24 worked, just the way she didn't before. So what is on the
25 other side of that? Whether or not she had consistent pain.

1 We have that she said she did. Well, speaking of that prior
2 pain, did you listen to kind of what happened? She
3 apparently gets hurt, she gets an MRI that is clear, just
4 like this, and she ended up getting some more treatment even
5 though her MRI is clear. It's eerily similar to what
6 happened here. It looks like a pattern. She has back pain
7 flareups, she has back pain flareups be it a few years or
8 more, and then it gets better and then it doesn't, and we're
9 going to talk about that in a second. Now, the second thing
10 I have on that is the treatment course. And you heard she's
11 been in continuous pain, and plaintiff's counsel talked a
12 lot about: Well, just because she's not going to the doctor
13 doesn't mean she's in pain. And I agree with that, of
14 course not. I mean, my back hurts right now and I'm not
15 going to the doctor. But a little gap here, a little gap
16 there. I wrote this down, and I tried to get a long
17 timeline for you but it didn't happen, from January 2019,
18 that's three months after this car accident, this isn't a
19 long ways down the road, three months after the car
20 accident, until June of 2019, that's five months, she sought
21 no treatment whatsoever, none. Then she goes back one time,
22 actually goes to Dr. Bernstein one time, Dr. Bernstein says:
23 Come in every week for weeks, and she doesn't. She waits
24 another five months. So in the course of ten months, in the
25 13 months after this car -- basically a year after this car

1 accident there is a ten month period where she goes one time
2 to one chiropractor once. After that in March of 2021 she
3 goes 13 months, no treatment, none whatsoever. So in the
4 course of four years from this accident there were 23 months
5 where she goes one time to one doctor once. Now, am I
6 saying she's not in pain at all ever? No. But does that
7 sound like somebody who is constantly in pain? Think about
8 ten months, think about how long ten months really is,
9 because we kind of throw these numbers out there. Ten
10 months. Say you hurt your back right now and you go to the
11 doctor, right? Ten months from now, we're talking about
12 next Halloween, that's how long you would go with no
13 treatment, nothing whatsoever. Ten months until you get to
14 Halloween before we even get to the another point of another
15 doctor. Does that sound like somebody who's in constant,
16 constant pain? And I put this separately, which is January
17 prn. Prn just means you can come back when you want to.
18 And in January of 2019, three months after the accident, her
19 chiropractor says: You are released. If you need to come
20 back you can come back whenever you want, but we don't need
21 to schedule anymore appointments, and that's the first gap.
22 She doesn't go anywhere for five months. What that tells me
23 at that point, right, three months after the accident, no
24 one is saying she can't get treatment for her back after
25 this accident, but after that point she's out. She can go

1 back anytime she wants and she doesn't. And she told you
2 she wants to go back to work, and I understand that, but if
3 you're truly, truly in that kind of pain you make the time,
4 you make the time so you can go and get your back checked
5 out. So there's that. I said no work change. She actually
6 told you -- and look, Jill is honest, she said: The week
7 after the accident I worked the whole week. She's never not
8 worked a whole week. The only time she missed any time was
9 when she was literally at the chiropractor, otherwise her
10 hours stayed exactly the same. Does that sound like
11 somebody who is in constant pain? And I put physically
12 demanding job up there but actually put physically demanding
13 life, because you heard a lot about it. She takes care of
14 her parents, which is also noble. She takes care of two
15 kids, which I can't imagine, but she does that, too. She
16 has a physically demanding life. Is it so crazy to think
17 that somewhere between a clean MRI and this point that she
18 doesn't have some issue somewhere? Doesn't that make more
19 sense than the MRI getting missed? I also said that she
20 tried everything. Someone told me if you're really hurt you
21 look, you try to find the answer, you try to find what
22 happened, how you fix it. What she's done, she goes to the
23 chiropractor about once a month maybe. She's never seen an
24 orthopedist. She's never seen a neurologist. She's never
25 seen a pain management doctor. Other than going to Dr.

1 Bernstein that's all she's ever done. She even has
2 medication that she says she doesn't want to take, she has
3 it, she doesn't want to do that either. If you're truly in
4 pain, is that what you do? All right. No permanency. I
5 asked her on the stand: Has any doctor ever told you you
6 have a permanent injury? And she said no, no one has ever
7 told me that. And the last thing, life care plan. So the
8 life care plan, and I put this over here. I think that's a
9 good example of what we're talking about here. The life
10 care plan is \$63,000 in housekeeping costs, and \$73,000 in
11 MRI's. Now, I mentioned before what the nurse said was
12 that's for her herniated disk, so if the herniated disk
13 wasn't related all of that stuff, but does that make any --
14 does that really make sense? She's never mentioned that she
15 needs housekeeping help, but apparently Nurse Shelton
16 decided, or Dr. Bernstein decided that was what they were
17 going to do. MRI's every two years? For what? For her
18 herniated disk that we know didn't happen in this accident?
19 So I'm going to ask the same question here that I asked
20 before, is it more likely she has been in serious pain for
21 years but just chooses to very rarely and infrequently
22 treat, or she had problems going back away and sometimes
23 her pain flares up and sometimes it doesn't, and when she
24 needs it she gets treatment, which is reasonable. If you
25 think that is more likely, if you think the scales -- you

1 end up in the same place as if you don't think that the
2 herniated disk was related, because ultimately -- and Maggie
3 is not going to like this part -- ultimately she is entitled
4 to something, no one is questioning that. She did -- we all
5 agree she got hurt. When you look at that jury form it's
6 going to say what are her actual damages? And we want you
7 to put a number there, there has to be one. The question is
8 what? So you heard a little bit about lost wages and that
9 sort of fell off the map, and I'm not going to really get
10 into it. Ms. Maliszewski owns her own company, she's
11 salaried, so I'm not even sure how much she lost, but be
12 that as it way may, the medical bills. And we talked about
13 this a little bit, her actual medical bills and then this
14 life care plan. I told you at the beginning that I thought
15 that the -- we're here for one thing, right? We're here for
16 money. So I told you that I thought that number would be
17 crazy. I added it up, roughly a million dollars, \$935,000
18 is the high number that they gave. That's what they think,
19 \$935,000. Seems like a lot of money, right? I told you.
20 And it reminds me of a quote, a guy named Vincent Peel,
21 Vincent Normal Peel, who was a -- he was a public speaker
22 and a motivational speaker in America, and he had this
23 famous quote that you've probably heard, it said: Aim for
24 the moon and you may land -- and you'll land among the
25 stars. Aim high. And I think that's what happened here,

1 and I want you to understand that that's what happened here.
2 They're saying: Here is a huge number, if you give us less
3 it's okay. They want that number to be so high that
4 whatever you come back with is still high. So her actual
5 medical bills in my mind were about 11 thousand -- that
6 initial treatment was about \$11,000 going by their math. It
7 was about \$9,000 to the Injury Care Center, and then the MRI
8 that was clear was about \$1,500, a little bit more than
9 that, so it was about \$11,000. Is that fair? That's all of
10 her care until she is released to come back whenever she
11 wants, and she doesn't for months. So I would say that's
12 fair, but so be it. Ultimately I asked in the beginning,
13 yesterday, please just look at the evidence, look at the
14 objective evidence, look at all of the evidence, and then
15 just apply some simple logic to it. Look at the MRI's, or
16 think about the MRI's, and think about what they mean, and
17 think about what their care means. Don't press the simple
18 button. You saw the simple button, don't press the simple
19 button, really think about this stuff, because it does
20 matter. It matters to Jill and it matters to Maggie. So
21 thank you for your time on behalf of Maggie. I hope I
22 didn't ramble on too much and get too lost in the weeds, I
23 get into details and I apologize for that. Thank you for
24 your time, and whatever decision you come to I'm sure it
25 will be the right one. Thank you.

1 THE COURT: Thank you, Mr. Crudup.

2 MR. BUNCHER: All right. Last time for me. Jill said
3 my slide wasn't up when I talked about damages, so if I just
4 put it up so you could see the math that I was doing. He
5 wanted to talk about the herniation. Well, what we've
6 talked about this whole case is the pain. And who testified
7 that the pain was from the wreck? You've got Jill, husband,
8 then Dr. Bernstein. Who testified she had no pain from the
9 wreck? No one testified to that effect. So he wants to
10 talk about herniation, but we're talking about pain, and the
11 pain that she's had ever since the day she got treated with
12 Dr. Bernstein said the continuity of care since the day of
13 the wreck up until her deposition of May of 2022, the same
14 exact pain symptoms since the wreck. It's right here.
15 What's going on with Jill this day? Continuation of the
16 same symptoms she had since the accident, which is that low
17 back pain, into her butt, into her leg. The same pain
18 symptoms since day one that she has had from this wreck. He
19 talked about the three months she was bedridden with Covid
20 and she had no pain. I don't know what that means other
21 than I guess he suggests she should give up her job and be
22 bedridden for the rest of her life so that she doesn't have
23 pain, but that's not her choice. That's not what she wants
24 to do. I guess she could have the choice to be bedridden
25 but she's not going to give up her job. She likes taking

1 care of the kids. She loves taking care of the kids. At no
2 time prior to doing her job did she have any pain in her
3 back, it was not until this wreck in October of 2018 that
4 caused the back pain. She goes to work, she does her job,
5 and, yeah, sure it hurts her back but she's got a demanding
6 job and it didn't hurt before. So if someone says that she
7 had pain before the wreck doing this job, there's no
8 testimony, no evidence whatsoever to that effect. He wants
9 to talk about the two visits from 2004. If I had known
10 about those I would have told you, but 14 years before the
11 wreck and no follow-up care, I don't know how that has any
12 relevance to something that happened in 2018, when there's
13 no treatment over that 42 year life span other than those
14 two times, and then you have 70 plus times from 2018 up
15 until today. You know, if she did have a herniation causing
16 her all of this pain, why was she not in pain during those
17 three months she was bed ridden from Covid with this
18 herniation that apparently was causing all the pain? Their
19 theory is she went to bed one night with the pain. She's
20 had the same pain since the beginning, back pain radiating
21 down. That's what she told all the doctors that all the
22 doctors have told you, and somehow one night she woke up
23 with the same exact pain, but somehow it's not related to
24 the wreck, that's their theory. She went to bed one night
25 with the with same exact pain, woke up the next day with the

1 same exact pain. But you know what? It's not because of
2 the wreck, that is their theory in this case. What makes
3 more sense, she went to bed one night with the same pain
4 that was from the wreck and woke up the next day with the
5 same pain, or it just came from somewhere out of the blue
6 sky while she was sleeping. That's their defense. It's
7 been a long road for Jill, 2018 up until today. This is her
8 one day in court, she really appreciates your time, thank
9 you all for coming. It's the holiday season so I'm glad we
10 get some time off soon, and I thank you all for being here.

11 THE COURT: Thank you, Mr. Buncher. Well, are y'all
12 okay? Do you need to stand up and stretch a minute? This
13 will take a few minutes. Okay. Everybody is good? Ladies
14 and gentlemen, as I told you at the beginning of the trial
15 you are the sole and exclusive judges of the facts of the
16 case. My job is then to preside over the trial and it is to
17 now tell you about the law that applies in the case. If I
18 have done anything during trial to think -- to cause you to
19 believe that I have an opinion about the facts of the case,
20 please disregard that, because as I told you, I am not
21 permitted to have an opinion about the case, at least not an
22 expressed one to you. You are the sole judges of the facts
23 of this case. You must except the law as I give it to you,
24 even if you disagree with it. You must take the law as I
25 tell you the law is. As the attorneys have mentioned to

1 you, the burden of proof in this case is by a preponderance
2 of the evidence, this simply means the greater weight of the
3 evidence. It is evidence which as a whole shows that a fact
4 sought to be proved is more likely true than not true. And
5 this can be illustrated by imagining a set of scales, and
6 when the case begins the scales are even. After all of the
7 evidence has been presented if the case remains even, or
8 tips slightly in favor of the defendant, then the plaintiff
9 would fail to have meet -- have met the plaintiff's burden
10 of proof and would not be entitled to recover in this case.
11 If, on the other hand, the scales had even tipped slightly
12 in favor of the plaintiff, the plaintiff would have met the
13 burden of proof and you could return a verdict for the
14 plaintiff. The preponderance of the evidence is not
15 determined by the greater weight of the evidence, instead it
16 must be determined by the greater weight of all of the
17 evidence. There are two types of evidence generally present
18 during a trial: Direct evidence and circumstantial
19 evidence. Direct evidence is testimony by a person who
20 claims to have actual knowledge of a fact such as an eye
21 witness. It is evidence which immediately establishes the
22 main fact to be proved. Circumstantial evidence is proof of
23 a chain of facts and circumstances indicating the existence
24 of a fact. It is collateral -- it is evidence from which
25 immediately establishes collateral facts from which the main

1 fact may be inferred. Circumstantial evidence is not based
2 on inference -- it is based on inference, not on personal
3 knowledge and observation. It is proof that does not
4 actually establish the fact in question, but asserts or
5 describes something else from which you may either
6 reasonably infer the truth of the fact, or at least
7 reasonably infer an increase in the probability that the
8 fact is true. For circumstantial evidence to be sufficient
9 to warrant a finding of the facts, circumstances must lead
10 to that fact with reasonable certainty. The fact and
11 circumstances should be considered in the light of ordinary
12 experience and common sense. The existence of a fact cannot
13 be based on speculation, surmise, or conjecture. The
14 plaintiff claims that the defendant was negligent and should
15 compensate the plaintiff for the injuries that the plaintiff
16 suffered as a result of the defendant's negligence. In
17 order to prove this the plaintiff must prove by a
18 preponderance or greater weight of the evidence several
19 things. First, they must prove that the defendant owed a
20 duty of care to the plaintiff. The plaintiff must also
21 prove by a preponderance or greater weight of the evidence
22 that the defendant breached that duty of care by a negligent
23 act or omission. Negligence means that a person has done
24 something that a reasonable person would not have done, or
25 has failed to do something that a reasonable person would

1 have done in the same situation. Plaintiff must also prove
2 by a preponderance or greater weight of the evidence that
3 the plaintiff suffered damages as a result of the
4 defendant's breach of duty. Finally, the plaintiff must
5 prove by a preponderance or greater weight of the evidence
6 that the damages were proximately caused by the defendant's
7 breach of duty. To prove that a defendant's negligence
8 proximately caused a plaintiff's injury, the plaintiff must
9 prove causation and fact, and this is proved by showing that
10 the injury would not have occurred but for the defendant's
11 negligence. Necessarily, ladies and gentlemen, you must
12 determine the credibility of the witnesses who have
13 testified in this case, and this simply means the
14 believability. It becomes your duty as jurors to evaluate
15 the evidence, and determine which evidence convinces you
16 that it's true. In determining the believability of the
17 witnesses who have testified, you may believe one witness
18 over several witnesses, or several witnesses over one
19 witness. You may believe part of the testimony of a witness
20 and reject the remaining part of the testimony of that very
21 same witness. You may believe the testimony of a witness in
22 its entirety, or reject the testimony of a witness in its
23 entirety. And you may consider whether the witness had an
24 interest in the result of the trial. Whether the witness is
25 prejudiced towards either the plaintiff or the defendant.

1 And whether the witness had an opportunity to have seen the
2 matters or observed the matters about which the witness may
3 have testified. And the way the witness may have acted when
4 testifying. As I told you earlier, the rules of evidence do
5 not permit witnesses normally to offer their opinions or
6 conclusions, but an exception is made for witnesses who we
7 call expert witnesses, that is someone who because of their
8 education or experience has become an expert in some art,
9 science, or profession. They may give their opinion as to
10 the subject that they claim to be an expert in, and may give
11 the reasons for their opinion. You should consider an
12 expert opinion given by a witness, and like other evidence,
13 you give it the weight that you believe it deserves. If you
14 decide that an expert witness' opinion was not based on
15 sufficient education and experience, or if you decide that
16 the reasons given in support of the opinion are not sound,
17 or that the opinion is outweighed by other evidence, you may
18 disregard the opinion entirely. An expert witness'
19 testimony is to be given no greater weight than that of
20 other witnesses simply because the witness is an expert.
21 You do not have to accept an expert's opinion even though it
22 may be uncontradicted. Testimony was presented to you by
23 way of a deposition in this case, and a deposition is a
24 document containing sworn testimony -- not -- or a video
25 presentation given by a witness outside of court in the

1 presence of a lawyer for each party who asked questions of
2 the witness. The testimony is entitled the same
3 consideration and is to be judged as to the credibility and
4 weighed by you in the same way as if the witnesses --
5 witness was present and gave the same testimony from the
6 witness stand. It is then for you, the jury, to determine
7 the effect, the weight, the value, and the truth of the
8 testimony given in the deposition. In this case the
9 plaintiff claims that the defendant has failed to follow
10 certain rules or statutes of the road. Some are as follows:
11 The operator of a motor vehicle is required to use the same
12 care that would be used by a person of ordinary reason and
13 prudence if that person were driving the same vehicle at the
14 same time and place and under the same circumstances. The
15 driver of the automobile has a duty to keep the automobile
16 under proper control, so that the driver is able to slow
17 down, stop, or turn the automobile to avoid colliding with
18 other vehicles, pedestrians, and objects lawfully on the
19 road. The operator of a motor vehicle is not to follow
20 another vehicle more closely than is reasonable and prudent,
21 having due regard for the speed of such vehicles and the
22 traffic upon any condition of the highway. The failure to
23 follow the statutory rules constitutes negligence as a
24 matter of law. If you find that the defendant has failed to
25 follow the statutory rules, you must decide whether this

1 failure proximately caused the plaintiff's injuries. If you
2 decide that the plaintiff is entitled to a verdict, your
3 next step would be to decide how much money the defendant
4 should be required to pay. Actual damages are to compensate
5 a plaintiff for the plaintiff's injuries or losses, and to
6 put the plaintiff as near as possible in the same position
7 that the plaintiff was in before the incident occurred. In
8 other words, actual damages should be the actual losses and
9 expenses that a plaintiff has suffered because of the
10 defendant's negligence. I tell you that pain and suffering
11 is designed to compensate a plaintiff of physical discomfort
12 and emotional response to the sensation of pain caused by
13 the injury itself. There is no definite standard by which
14 to compensate a plaintiff for pain and suffering. You have
15 the authority, ladies and gentlemen, to determine the
16 amount, if any, to be allowed for pain and suffering causing
17 calm and reasonable judgment to ensure that the damages are
18 just and reasonable in light of the testimony and evidence
19 presented in this case. Loss of enjoyment of life
20 compensates a plaintiff for limitations on the plaintiff's
21 ability to participate in and derive pleasure from the
22 normal activities of daily life. The plaintiff must prove
23 that expenses caused by the injury were necessary and
24 reasonable. Actual damages for a plaintiff who's been
25 physically injured, as I said, include pain and suffering,

1 both past and future, as well as mental anguish, impairment
2 of health, and physical condition, and any disfigurement.
3 The plaintiff may also claim lost wages or absent from work,
4 and reduced earning for the future. In determining the
5 amount of compensation for personal injuries it is proper to
6 consider the past and present aspects of injury. This would
7 include the physical and mental, and pain and suffering,
8 expenses incurred, and when necessary, medical treatment,
9 the loss of enjoyment of life suffered as a result of the
10 injury, and any other losses which are reflected by the
11 character of the injury. The injured party may recover for
12 those future damages that are reasonably sure to result from
13 the injuries. The principle underlying compensation for
14 future damages is that only one action may be brought, and
15 therefore only one recovery had. It is proper to include in
16 the estimate of future damages compensation for future
17 medical expenses, future pain and suffering, which will,
18 with reasonable certainty, result. But a plaintiff is never
19 entitled to recover conjecture or speculative damages. But
20 if you find that a plaintiff is entitled to a verdict for
21 actual damages, your verdict should include an amount to
22 cover any past, present, or future damages which were
23 proximately caused by the defendant. Any future damages
24 must be reasonably certain to occur in the future as a
25 result of the defendant's acts. Actual damages need not be

1 proven to a mathematical certainty, or be based on evidence
2 of the precise amount of damages the plaintiff has suffered.
3 Instead, evidence must allow you to determine the amount of
4 damages as reasonable, fair -- reasonable, just, and fair.
5 If you find that the plaintiff has been permanently injured
6 as a result of the defendant's actions, you must decide
7 then, if at all, if that injury will affect the rest of the
8 plaintiff's life. The life expectancy is determined by a
9 life expectancy table, which is a part of the law of this
10 state. The life expectancy table is only an estimate of the
11 probable average remaining life of all persons in our state
12 at a given age. Plaintiff is approximately a 46 years old
13 female with a life expectancy, according to the life
14 expectancy table, of 46.36 years. This fact is to be
15 considered by you, along with other facts and circumstances
16 in evidence bearing on the plaintiff's life expectancy,
17 including the occupation, or habits, or health at the time
18 of the injury, including the amount of damages decided to be
19 awarded to the plaintiff in this case. When a plaintiff is
20 injured or damaged by the wrongful act of another person, it
21 is the duty of the plaintiff to reasonably try to avoid and
22 lessen the damages. These damages -- those damages, which
23 may be avoided by the use of reasonable efforts, care, and
24 prudence by a plaintiff cannot be the proximate result of
25 plaintiff's wrongful act, therefore, the plaintiff cannot

1 recover damages which might reasonably have been avoided.
2 The efforts required by a plaintiff must be determined by
3 the rules of common sense and fair dealing with what a
4 person of ordinary reason and prudence would do under the
5 same circumstances. The plaintiff is not required to use
6 unreasonable efforts or great expense to avoid or lessen the
7 damages. Plaintiff has the burden -- the defendant has the
8 burden of proving the failure to lessen damages on the part
9 of a plaintiff by a preponderance or greater weight of the
10 evidence. I tell you that as jurors, ladies and gentlemen,
11 you must decide the issues in this proceeding based solely
12 on the evidence which you have heard during this trial.
13 Your verdict must be without bias and without prejudice to
14 either party. You cannot allow yourselves to be governed by
15 sympathy, by prejudice, passion, public opinion, or some
16 other consideration not found in the evidence. In just a
17 few minutes, ladies and gentlemen, you will retire to the
18 jury room, and I'm going to ask you to wait before you begin
19 your deliberations until I send to the jury room the
20 exhibits, as well as the verdict form. Once you have
21 reached a verdict, and, of course, the verdict must be
22 unanimous meaning all 12 of you must agree before there can
23 be any verdict, but if you would, let the bailiff now when
24 you've reached a verdict. And I will ask our foreperson if
25 she will complete the verdict form by signing -- if the

1 clerk will hand the verdict form up to me. You'll insert a
2 dollar amount in the blank here and sign your name, and
3 that's all there is to the verdict form. Once again, your
4 verdict must be unanimous. So, ladies and gentlemen, if you
5 will please retire to the jury room, I hope to send this to
6 you in just a few minutes.

7 (The jury left the courtroom.)

8 (Break in proceedings.)

9 THE COURT: Exceptions from the plaintiff?

10 MR. BUNCHER: No, Judge.

11 THE COURT: Defense?

12 MR. CRUDUP: None, Your Honor.

13 THE COURT: Let's see if we have all of the exhibits.

14 (The jury began deliberations at 11:38 a.m.)

15 (The jury returned with a verdict.)

16 THE COURT: Welcome back, ladies and gentlemen. Ms.

17 Fuller, has the jury reached a verdict?

18 THE JUROR: Yes, sir.

19 THE COURT: Was it a unanimous verdict?

20 THE JUROR: Absolutely.

21 THE COURT: All of you agreed?

22 THE JUROR: Yes, sir.

23 THE COURT: All right. Would you please pass it
24 forward?

25 (Break in proceedings.)

1 THE COURT: You want me to publish it? "We, the jury,
2 find for the plaintiff against the defendant in the amount
3 of zero actual damages." Is that the verdict?

4 THE JUROR: Yes.

5 THE COURT: Okay. Anything before the jury is
6 discharged from the plaintiff?

7 MR. BUNCHER: No, Your Honor.

8 THE COURT: From the defense?

9 MR. CRUDUP: No Your Honor.

10 THE COURT: Well, I have something I need to say to
11 you, ladies and gentlemen. Y'all have done an outstanding
12 job of sitting here for two days listening to these
13 attorneys. I appreciate your service. I know you could
14 have probably been doing something else other than being
15 here with us. Is there anything we can do for y'all?
16 Nobody needs a lift? Nobody needs food? Nobody needs
17 anything?

18 (Break in proceedings.)

19 THE COURT: No questions? Ladies and gentlemen, you're
20 excused. Thanks again.

21 (The jury left the courtroom.)

22 THE COURT: Anything before we adjourn for the day?

23 MR. BUNCHER: Ten days, I guess. If we can have ten
24 days to talk.

25 THE COURT: Ten days to file a motion?

1 MR. BUNCHER: Yes, sir.

2 THE COURT: All right, granted. Court is adjourned.

3 (End of trial proceedings.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of Common Pleas
8 for Colleton County, South Carolina, on the 5th-6th
9 days of December, 2022.

10 I further certify that I am not of counsel, nor
11 interest to any party hereto.

12

13

July 14, 2023

14

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16


Michael C. Watkins

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Court Reporter

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In the Matter of:

JILL MALISZEWSKI

VS.

MARGARET YEAGER

Amy Bernstein, D.C.

May 20, 2022



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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
COLLETON COUNTY

VIDEOTAPED ZOOM DEPOSITION OF AMY BERNSTEIN, D.C.

JILL MALISZEWSKI,

Plaintiff,

vs.

CASE NO. 2020-CP-15-358

MARGARET YEAGER,

Defendant.

DEPONENT: AMY BERNSTEIN, D.C.

DATE: May 20, 2022

TIME: 3:12 P.M.

LOCATION: VIA ZOOM

REPORTED BY: TRISHA RARICK

I N D E X

EXAMINATION

Page

By MR. BUNCHER

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By MR. CRUDUP

20

Certificate of Reporter

45

1 VIDEOGRAPHER: Okay. I'm recording.

2 Today's date is Friday, the 20th of May, and
3 the time is 3:12 p.m. And we're on the record
4 with the video deposition of Amy Bernstein.

5 Miss Court Reporter, would you please swear in
6 the witness. I'm recording.

7 AMY BERNSTEIN, D.C.,
8 having been first duly sworn, was examined and testified as
9 follows:

10 THE WITNESS: Yes.

11 EXAMINATION

12 BY MR. BUNCHER:

13 Q Hey, good afternoon. My name is Jeff
14 Buncher. I represent Jill. How are you?

15 A I'm good. How are you?

16 Q Could you introduce yourself to the ladies
17 and gentlemen of the jury, please?

18 A My name is Dr. Amy Bernstein. I'm a
19 chiropractic physician licensed in Florida.

20 Q And are you one of Jill's treating medical
21 providers?

22 A I am.

23 Q Are you prepared to talk about the care
24 and treatment you provided to Jill?

25 A Yes.

1 Q And are you prepared to talk about any
2 opinions you may have regarding this October 2018
3 wreck and any injuries Jill may or may not have
4 sustained?

5 A **Yeah.**

6 Q All right. Where do you work in Florida,
7 Doctor?

8 A **Tri-Dimension Spinal Rehab.**

9 Q And how long have you been there?

10 A **Coming on 15 years.**

11 Q What is a daily -- what's the day-to-day
12 like at your office?

13 A **In terms of hours or patient flow?**

14 Q In terms of what do you do as a
15 chiropractor down there?

16 A **I do chiropractic adjustments, therapies,**
17 **including ultrasound, electric stim, acupuncture.**
18 **I'm licensed in acupuncture. Rehab exercises. Just**
19 **anything under my chiropractic license.**

20 Q Okay. And how did you become a
21 chiropractor?

22 A **I went to undergrad at Nova Southeastern,**
23 **and, then, I went to Palmer College of Chiropractic,**
24 **and, then, I took all my boards, and I got licensed.**

25 Q Okay. How many years does it take to

1 become a chiropractor?

2 **A In total, it's eight. Four undergrad and,**
3 **then, four grad.**

4 Q Any accomplishments at chiropractor
5 school?

6 **A I was the valedictorian.**

7 Q What's the difference between a
8 chiropractor and a medical doctor?

9 **A We do not prescribe medicine.**
10 **Chiropractors do not prescribe medicine.**

11 Q Understood. Do you have a specialty as a
12 chiropractor?

13 **A I am licensed in acupuncture. We don't**
14 **really call those specialty, but in the state of**
15 **Florida -- but I am licensed to do acupuncture.**

16 Q Okay. And as a chiropractor, what part of
17 the human body do you -- you work on your patients?

18 **A We treat the whole body.**

19 Q As a chiropractor, do you treat people
20 that have been injured in car wrecks?

21 **A Yes.**

22 Q And have you done that over the past --
23 well, let me ask you this: Did you work anywhere
24 else before Tri-Dimensional?

25 **A No.**

1 Q Okay. So all 15 years have been at
2 Tri-Dimensional?

3 A Yes.

4 Q Okay. And you're licensed to practice
5 medicine down there in Florida?

6 A Yes.

7 Q What got you into the field of medicine?

8 A When I was in high school, my boyfriend
9 was in a car accident, and he ended up at a
10 chiropractor. So, therefore, I ended at the
11 chiropractor with him, and it just kind of spiraled
12 from there. I became a personal trainer when I was
13 in undergrad and just fell in love with the human
14 body.

15 MR. BUNCHER: I would just move Dr.
16 Bernstein as an expert in the field of
17 chiropractic medicine.

18 MR. CRUDUP: No objection.

19 BY MR. BUNCHER:

20 Q All right, Dr. Bernstein. How is it
21 that -- well, let me ask you this: When is the
22 first time you saw Jill?

23 A The first time that I saw Jill for her
24 injuries from the accident were on June 3rd, 2019.

25 Q Okay. Were you aware that, prior to

1 seeing you, that she had seen another provider?

2 A Through her exam, that's -- she told me
3 everything about that, but before that, I didn't
4 know anything.

5 Q Gotcha. You talked about her exam. What
6 kind of an exam did you perform on her?

7 A Do you want me to actually go through it
8 with you the whole thing from -- I have the form
9 right here if you just want me to --

10 Q Sure. Yeah. What was your exam that you
11 performed on -- on Jill back when you first met her?

12 A So we do a chiropractic examination. We
13 do range of motion. Muscle testing. Reflexes. Our
14 main thing is motion palpation. Going through to
15 see if she has any kind of subluxations, orthopedic
16 examination, neurological examination.

17 We don't do any kind of imaging on
18 the initial visit. We refer it out for that to a
19 radiologist in an imaging facility. So I just do
20 the actual hands-on evaluation.

21 Q Did your hands-on evaluation reveal
22 anything?

23 A Yes. She had decreased sensation in her
24 L4-L5 dermatome. She had swelling inferior,
25 posterior lumbar spine into the right and left hip

1 girdles consistent with strain of her SI and lumbar
2 spine, moderate muscle spasm, cervical thoracic
3 lumbar spine. Tenderness to palpation. Cervical
4 thoracic lumbar spine right SI joints, the specific
5 muscles.

6 She had a positive Valsalva's test, a
7 positive right straight leg test, a positive right
8 Kemp's test, positive right and left Yeoman's test.

9 We went through range of motion.
10 Some of it was not even able to be done, like the
11 left, right rotation of the lumbar spine because of
12 pain and stiffness, and all the other ranges, she
13 had decreased range of motion. Right patella reflex
14 was diminished to a 1 out of the normal 2.

15 I think -- I mean, everything else
16 that would go along with that. I can read it to
17 you. Do you want more specifics?

18 Q That's okay. Let me -- let me ask you
19 some questions about what you just said.

20 A Okay.

21 Q What part of the body were you finding
22 these symptoms in?

23 A In her lumbar spine and SI joint.

24 Q And what part of the body is that for --
25 for us?

1 **A The low back into the glutes or the butt.**

2 **Q Okay. You talked about positive tests.**
3 **You talked about a number of tests that were**
4 **positive. What does that mean?**

5 **A We use orthopedic tests to determine if**
6 **there's lumbosacral nerve irritation and to see if**
7 **we need to refer the patient out immediately for red**
8 **flags or any kind of loss of function that would**
9 **warrant immediate imaging.**

10 **Q Okay.**

11 **A And also to determine if something is**
12 **coming from a joint versus a disc versus a nerve.**

13 **Q These tests that you performed, are these**
14 **hands-on tests that you're doing?**

15 **A Yes.**

16 **Q Okay. And are you -- how do you know that**
17 **she has these symptoms that you're talking about?**

18 **A It depends on the test, but they either**
19 **provoke or don't provoke, like, elicit different**
20 **things depending on the test. So like the straight**
21 **leg raise, if she has reproduction of the symptoms**
22 **down her leg or in the back, that would be**
23 **considered positive. It just depends on the test**
24 **and what we're looking for, but, typically,**
25 **reproduction of symptoms.**

1 Q So would those be objective findings?

2 A **Yes. The tests are objective findings.**

3 Q Okay. And what's the difference between
4 objective versus subjective?

5 A **Subjective is the data from the patient.**
6 **That will be something that the patient reports,**
7 **their experiences, like directly from the patient --**
8 **Sorry. There's something in my eye -- and**
9 **objector -- objective findings are the tests that we**
10 **do, the exam that we do, our assessment. Anything**
11 **that's measurable.**

12 Q Based on your examination of Jill, did you
13 recommend a course of treatment for her?

14 A **I did.**

15 Q What course of treatment did you recommend
16 for Jill?

17 A **Initially, I recommended she came in three**
18 **times a week for three to four weeks to see if there**
19 **was any kind of improvement, decreased pain,**
20 **increased range of motion.**

21 Q Okay. And what sort of treatment did you
22 perform on her?

23 A **You mean during those visits?**

24 Q Yes, ma'am.

25 A **We did -- I taught her how to do the**

1 activities of daily living. How to go through her
2 day without using certain muscles and how to
3 strengthen certain muscles. The focus -- because
4 she had already been treated for, I guess, around
5 four months by the other doctor's office, I already
6 had all their exams. I already had, basically, what
7 they had done with her so far and got her to a
8 certain point. So now, we're just trying to restore
9 function and get her out of pain and increase her
10 motion.

11 So we really focus on hands-on. I do
12 a lot of soft tissue work, and I do it all myself.
13 Soft tissue work, exercises, the ability to stand,
14 sit, get on the floor. All the things that she does
15 like for her vocation- -- for her job, vocational
16 training basically.

17 Q Okay. And how did she do from those
18 initial treatments she had with you?

19 A She continued to have pain.

20 Q Okay. Did you change up the course of
21 treatment after that?

22 A We did. As, depending on, you know, day
23 to day, if something that -- if something irritated
24 her, we would back off of it and, then, try
25 something else, and, then, we would see if we needed

1 to strengthen her core or what -- depending on the
2 day, what happens -- whatever happened.

3 So anything that was not working, we
4 did not do, and anything that was working and got
5 her out of pain, we continued to do.

6 Q Are you still treating her to this day?

7 A I am.

8 Q And what's going on with Jill to this day?

9 A She is having a continuation of the same
10 symptoms she had since the accident. There's a
11 continuity of low back pain. She describes it or
12 she feels like -- her subjective complaint is she
13 feels like it's unstable. Like, at any point,
14 everything is just going to spasm, and she's going
15 to, basically, you know, be in bed for two weeks.
16 She has instability. She has low back pain. She
17 has pain into her butt, into her leg.

18 She is a speech therapist with
19 disabled kids. So she spends a lot of her day on
20 the floor. She's not like a normal -- she's normal,
21 but she's not someone who's either standing or
22 sitting. She's actually in these weird positions
23 with different kids that are sometimes not behaving
24 properly because of whatever their disabilities are.

25 So a lot of times, she is having to

1 **reposition them, and some of the kids are bigger or**
2 **smaller. So she's having problems at work. I know**
3 **that she's told me that recently that she had**
4 **decreased her workload to almost 50 percent. She's**
5 **just still having the same -- the same pains since**
6 **the accident.**

7 Q Okay. What is her -- how frequent is she
8 seeing you to this day?

9 A **She is seeing me around one time a month.**

10 Q And have there been times where those
11 visits have had larger --

12 A **Yes.**

13 Q Okay. What does that mean to you?

14 A **That she -- well, it depends on -- it**
15 **depends on when it was. That, you know, we had**
16 **COVID, and, then, she got COVID. She was in the**
17 **hospital. So just because she wasn't coming in does**
18 **not mean that she was not in pain.**

19 **Is that what you meant?**

20 Q Yeah. Is the -- is the guy blowing leaves
21 bothering you-all at all or no?

22 A **No.**

23 Q Okay. Okay. Do you believe that she's
24 going to require future chiropractic care?

25 A **Yes.**

1 Q And what future chiropractic care do you
2 believe is reasonably certain to occur?

3 A She's going to need probably annual care
4 of at least one visit a month.

5 Q For how long? The rest of her life?

6 A Probably. Most likely.

7 Q Okay. How about any -- and that's just
8 with a chiropractor?

9 A Yes.

10 Q Okay. How about any diagnostic studies?
11 Will she need any of those going forward?

12 A Yes. I referred her for MRI, for nerve
13 conduction tests, for pain management, for a
14 neurosurgeon. So depending on what she decides to
15 do in the future. I know she's extremely hesitant,
16 but she's almost at the point of not being able to
17 tolerate any more. They would have to do different
18 imaging, maybe even EKG because of her age before
19 they decide to do anything. I would leave that up
20 to the medical doctor to decide.

21 Q Will she need any lab -- ongoing
22 laboratory work?

23 A She is taking a large number of NSAIDs.
24 So I have recommended to her that she would probably
25 check her liver enzymes and blood work at least

1 **annually.**

2 Q What are NSAIDs?

3 A **Non-steroid anti-inflammatories. She's**
4 **allergic to codeine. So she uses Advil or Bayer.**

5 Q Okay. Do you believe that she's going to
6 need NSAIDs going into the future?

7 A **Yes.**

8 Q Okay. Do you know how much?

9 A **When I had my last visit with her, she**
10 **said she was tak- -- still taking it daily. I did**
11 **tell her that she should possibly talk to a medical**
12 **doctor about switching to Duexis, which is a**
13 **anti-inflammatory that's coated with a special**
14 **coating that doesn't irritate your intestines, but**
15 **those -- that medication is extremely expensive.**

16 Q As far as future care goes, do you believe
17 that she will need counseling?

18 A **Yes.**

19 Q And what sort of counseling is that?

20 A **It might be multifaceted. She loves what**
21 **she does. She has a passion for children and**
22 **disabled kids. She has her own clinic, and she**
23 **works at a disabled school. She is very -- I won't**
24 **say she's not stable. She's very upset that the**
25 **chronic pain is not letting her do what she -- her**

1 **work of being a speech therapist, and that she has**
2 **to already cut her hours and probably cut her career**
3 **short. So I recommended for her to talk to**
4 **somebody, especially with a PTSD from the chronic**
5 **pain.**

6 Q Okay. Do you have any recommendations for
7 future care regarding physical therapy or massage?

8 A **Yes.**

9 Q What are those recommendations?

10 A **That she should do it once a month with**
11 **her chiropractic treatment.**

12 Q Okay. Any recommendations for home
13 assistance?

14 A **Yes. It was recommended that she get**
15 **somebody to help her with the activities of -- well,**
16 **the -- whatever she has to do around the house, like**
17 **light housekeeping, yard work, that she can't do**
18 **herself anymore.**

19 Q And why do you make that recommendation?

20 A **For the upkeeping and the yard work?**

21 Q Yes, ma'am.

22 A **Because of the additional stress on her**
23 **back.**

24 Q Okay.

25 A **It exacerbates her symptoms.**

1 Q Gotcha. Do you have an opinion as to a
2 reasonable degree of medical or chiropractic
3 certainty if Jill was injured in this October 14,
4 2018, car wreck?

5 A Yes.

6 Q Could you tell the jury what that opinion
7 is?

8 A That I do believe that it is plausible
9 that all of these injuries that she has is due to
10 the collision that happened in 2018.

11 Q And is -- what specific part of the body
12 is that?

13 A Her lumbar spine and her SI joint with the
14 radiating pain into her leg, the right one
15 specifically.

16 Q And did she report any other incident
17 causing her pain to you?

18 A No.

19 Q Is this injury something that will go away
20 at some point, or is it something that will be with
21 her for the rest of her life?

22 A No. It will be with her for the rest of
23 her life.

24 Q And will it have an effect on her
25 activities of daily living?

1 **A Yes.**

2 Q And why do you say that?

3 **A Because as time goes by -- sorry -- the**
4 **biomechanical stresses on her spine are going to end**
5 **up causing degeneration and a multitude of other**
6 **issues as she gets older.**

7 Q The injury to the SI joint and the lumbar
8 spine, is that something you see in your practice
9 with patients who are involved in motor vehicle
10 collisions?

11 **A Yes.**

12 Q And was the medical care you provided to
13 Jill reasonable and necessary and related to the
14 October 14, 2018, wreck?

15 **A Yes.**

16 Q Has Jill been cooperative with you in the
17 treatment that you've recommended to her?

18 **A Yes.**

19 Q I appreciate -- sorry.

20 **A Never mind. Never mind.**

21 MR. BUNCHER: I'm going to turn you over
22 to Mr. Crudup. Okay?

23 THE WITNESS: Okay. Thank you.

24

25

1 EXAMINATION

2 BY MR. CRUDUP:

3 Q Good afternoon. Thank you for being here
4 with us. I'll try to be as quick as I can. Okay?

5 A Okay.

6 Q Are you being paid to be here today over
7 Zoom?

8 A Yes.

9 Q Who's paying you?

10 A I don't know.

11 Q Would it be Mr. Buncher?

12 A I guess so.

13 Q And how much is he paying you to be here?

14 A It's \$500 per hour because I am out of
15 work, and I cannot see patients.

16 Q Okay. I just want to go over -- just to
17 be clear, you said you went to undergrad and
18 chiropractic school. You never went to medical
19 school; is that correct?

20 A I am a licensed chiropractic physician in
21 the State of Florida. So I am a physician in
22 Florida.

23 Q So you consider yourself a doctor?

24 A Absolutely.

25 Q Do you consider yourself a medical doctor?

1 **A I'm a chiropractic physician.**

2 Q Okay. You mentioned earlier -- you said
3 something about seeing her since the accident. Have
4 you ever seen plaintiff before this accident?

5 **A Yes. I have. Well, no. Not before the**
6 **accident. I'm sorry.**

7 Q Okay. So you said the first time you saw
8 her was on June 3rd, which would have been about
9 eight months after this accident; is that correct?

10 **A Yes.**

11 Q All right. And are you aware that she
12 didn't seek any medical treatment from January 2019
13 until she saw you in June to 2019?

14 **A Yes.**

15 Q Okay. And are you aware that she was told
16 she could come back PRN to her other doctor?

17 **A Yes.**

18 Q What does PRN mean?

19 **A As needed.**

20 Q Okay. So that would be about six months
21 from the last time she saw her doctor to the time
22 she first saw you, correct?

23 **A Yes.**

24 Q Okay. And when she first came to see you,
25 you testified earlier that you recommended she come

1 back to see you about three times per week?

2 A Yes.

3 Q All right. After she saw you on June 3rd,
4 though, the next time she came back to see you
5 wasn't until November 26th, 2019, correct?

6 A Yes.

7 Q Okay. So she didn't get any treatment
8 from January till she saw you, and, then, she didn't
9 see you again until January -- I'm sorry. Till
10 November, correct?

11 A Yes.

12 Q Okay. So over the course of about a year,
13 she saw -- as far as you know, she saw you in June,
14 and that's pretty much the only thing she saw -- the
15 only doctor she saw in that period. Is that fair?

16 A Yes.

17 Q Okay. So when she does come back to see
18 you -- I'm going to skip ahead now to January 2021.

19 A Okay.

20 Q You -- there was a note that she said she
21 was -- she still had bruising throughout her calves
22 and into her right leg. Do you remember that?

23 A What date? I'm sorry. Can you say that
24 again? June what?

25 Q January 12th, 2021. And I can -- I can

1 share my screen if you'd like to --

2 **A Thank you. I'm like, oh, God -- yeah.**

3 Q All right. Hang on a bit. Well, I can't
4 share my screen. Hold on.

5 COURT REPORTER: Try it now.

6 BY MR. CRUDUP:

7 Q All right. So we're going to skip ahead
8 here if I can. Here it is. Doctor, can you see
9 that on your screen?

10 **A Yes.**

11 Q All right. I'm going to zoom in for you a
12 little bit, and I'm going to focus your attention on
13 the right side there kind of just below that lower
14 extremity part. Looks like it says, bruising
15 remains throughout calves into right leg. Do you
16 see that there?

17 **A Yes.**

18 Q Okay. So would you agree with me that she
19 would have been reporting that to you in January of
20 2021?

21 **A So that actually says burning. Not**
22 **bruising. That's like my really bad handwriting. I**
23 **apologize. It's burning.**

24 Q Fair enough.

25 **A As I handwrite all my notes, I'm just --**

1 **I'm on the floor with these patients, and I write as**
2 **I go. I'm sorry.**

3 Q It's not -- it's not a big deal. Don't
4 worry about it.

5 So a few weeks after that, after that
6 note in -- on February 2nd, 2021, you referred her
7 for an MRI of her neck and her back. Do you recall
8 that?

9 A **Yes.**

10 Q All right. But she did not have an MRI in
11 February 2021, correct?

12 A **No.**

13 Q In fact, she doesn't have an MRI at all in
14 2021 as far as I -- as far as you know, correct?

15 A **That -- right after that, she was set to**
16 **have the MRI, but then, she got COVID, and she was**
17 **in the hospital for a few months.**

18 Q Okay. She never has an MRI, correct?

19 A **No.**

20 Q All right. And then, four days ago, she
21 had a lumbar MRI, correct?

22 A **Yes. Yes.**

23 Q So -- now, you're not trained to read the
24 raw MRIs, correct, the images themselves?

25 A **I mean, I am.**

1 Q Okay.

2 A I'm not a --

3 Q Are you a radiologist?

4 A Yes. I wouldn't write the report, but I
5 can -- I understand what's going on.

6 Q Okay. Are you a radiologist?

7 A No.

8 Q Okay. Are you a profession -- are you
9 professionally trained to read MRIs?

10 A We are trained in chiropractic school. I
11 don't do it myself. I refer out for everything.

12 Q Okay. So do you rely on the reports that
13 come back to you?

14 A Yes. Absolutely.

15 Q So let's talk about the new MRI that you
16 sent her out for. Okay?

17 A Okay.

18 Q I assume you've seen that?

19 A Yes. I don't have it in front of me, but
20 yes. I have seen it.

21 Q All right. I'll share my screen so you
22 can see it again. Okay?

23 A Uh-huh.

24 Q Okay. So I'm going to ask you some
25 questions about that. If you need to refer to it,

1 I'll try to make it as big as I can for you. Okay?

2 A Yes.

3 Q So would you agree with me that there are
4 some degenerative changes in Ms. Maliszewski's lower
5 spine?

6 A Yes.

7 Q And those conditions -- those degenerative
8 conditions, those are chronic. That would have
9 predated the accident. Those just happen kind of
10 normally with age. Is that fair?

11 A Not always.

12 Q In Ms. Maliszewski's case, would you agree
13 with me that there are degenerative changes in her
14 lower spine that probably predate this accident?

15 A No.

16 Q Okay. So let's talk about that. This MRI
17 shows nothing wrong in L1-L2. Is that fair?

18 A Yes.

19 Q It also shows nothing going on in L2-L3,
20 correct?

21 A Yes.

22 Q Okay. Then, at L3-4, it says, disc
23 bulging, correct?

24 A Yes.

25 Q What does that mean?

1 **A That the disc is coming out into the**
2 **canal.**

3 Q Okay. And that -- your testimony that
4 that would be an acute injury, correct?

5 **A No.**

6 Q Okay. So do you think that this accident
7 caused a disc bulge at L3-4?

8 **A Absolutely.**

9 Q Okay. So if -- is it your understanding
10 of what an acute injury -- when I say acute injury,
11 I mean something that would be caused by a trauma.
12 Does that make sense?

13 **A A recent trauma?**

14 Q Yeah. I mean whatever -- whatever is
15 causing the bulge was a trauma as opposed to a
16 chronic thing that just happens over time. Does
17 that make sense?

18 **A Yes. It was from trauma, but this MRI was**
19 **last week, and the trauma that caused it was in**
20 **2018. So I -- I wouldn't consider it an acute**
21 **disc -- disc herniation, but I -- but yes. I**
22 **understand what you're saying. It was due to --**

23 Q Okay. But fair enough. You believe the
24 accident caused the disc herniation?

25 **A Yes.**

1 Q Okay. And then, at L4-5, it says stenosis
2 because of disc bulging. So it looks like there's
3 another disc bulge there?

4 A Yes.

5 Q And do you believe that this accident
6 caused that disc bulge?

7 A Yes.

8 Q Then, at L5-S, it says a posterior disc
9 herniation, correct?

10 A Yes.

11 Q So do you believe that this accident
12 caused a posterior disc herniation?

13 A Yes.

14 Q What does a disc herniation mean to you?

15 A That the annulus is coming out further
16 into the canal causing --

17 Q Sorry.

18 A No, no. Sorry.

19 Q No. Please continue. Tell me what -- you
20 said annulus going into?

21 A Into the space.

22 Q Okay. And that is something that would
23 have had happened because of the accident, correct?
24 Sorry. Is that a yes?

25 A Yes.

1 Q Okay. And also, at L5-S1, there's
2 something called an annular fissure, correct?

3 A Yes.

4 Q What does that mean?

5 A **That there is a slight tear or a tear by**
6 **the oculus, which is the inside of the disc.**

7 Q Okay. And that would have been something
8 that was also caused by the accident, correct?

9 A Yes.

10 Q Okay. So the overall impression on the
11 MRI is L5-S1 central disc herniation with annular
12 fishers that are, essentially, touching around her
13 spinal cord. Is that fair?

14 A **The nerves exiting, correct.**

15 Q Okay. That's pretty bad stuff, correct?

16 A **Right.**

17 Q And you believe that those conditions,
18 that bulging and that herniation is really what's
19 causing plaintiff's problems, correct?

20 A Yes.

21 Q All right. Now, you mentioned that you
22 knew about -- you knew that she had had some prior
23 treatment, correct?

24 A Yes.

25 Q Were you aware of any other MRIs that Ms.

1 Maliszewski underwent prior to this one?

2 A Yes.

3 Q All right. So you would agree with me
4 that she had an MRI taken on October 29th, 2018,
5 correct?

6 A Yes.

7 Q And that MRI would have been about 15 days
8 after the accident, correct?

9 A Yeah.

10 Q All right. So have you ever seen that
11 MRI?

12 A Yes.

13 Q All right. So I'm going to share my
14 screen again, or continue to share my screen, and
15 I'll pull up that one as well. Can you see that
16 okay?

17 A Yes.

18 Q All right. So the MRI we just went over
19 that she had a couple of weeks ago said that there
20 was disc bulging at L3-4, correct?

21 A Yes.

22 Q On this MRI at level 3-4, it says no
23 herniated nucleus or significant spinal canal
24 stenosis, correct?

25 A Yes.

1 Q It says no neural foraminal. Appear,
2 essentially, normal, correct?

3 A Yes.

4 Q And the facets appear unremarkable, right?

5 A Yes.

6 Q He mentions nothing about a bulging disc,
7 correct?

8 A Yes.

9 Q Okay. And then, at L4-5, the MRI from
10 five days ago said there's a disc bulging and
11 stenosis and spondylosis and hypertrophy at L4-5,
12 correct?

13 A Yes.

14 Q And in this MRI that we're looking at now
15 that was two weeks after the accident, it says that
16 disc level is also normal, correct?

17 A Yes.

18 Q All right. And then, at L5-S1, the
19 disc -- the MRI from five days ago says she has a
20 disc herniation that we talked about and annular
21 fishers, correct?

22 A Yes.

23 Q And the one that was two weeks after this
24 accident, it says that that level is unremarkable as
25 well, right?

1 **A Yes.**

2 Q So overall, this MRI from two weeks after
3 the accident says her lumbar spine does not appear
4 to have any bulges whatsoever, correct?

5 **A Yes.**

6 Q And it does not appear to have any
7 herniations either, correct?

8 **A No. But I actually asked for the facility**
9 **to get the CD to have a diplomated radiology to read**
10 **that because I would -- based on her clinical**
11 **symptoms and the -- and the way they were treating**
12 **her for a disc bulge and herniation and all her**
13 **clinical notes that I -- I would like to have that**
14 **reread. So we were treating her based on her**
15 **symptoms and our objective findings, which all led**
16 **from day one to disc injury.**

17 MR. CRUDUP: Move to strike.

18 BY MR. CRUDUP:

19 Q So I want ask you one more time. The MRI
20 --

21 **A Yes.**

22 Q -- whoever read this -- whoever read this
23 MRI did not read that there was any disc bulges or
24 any herniations whatsoever, correct? I'm sorry --

25 **A No.**

1 Q Okay.

2 A But yes.

3 Q Right. So two weeks after the accident,
4 none of those disc bulges were seen in this MRI,
5 were they?

6 A No.

7 Q Okay. But you believe that all of those
8 things, all of those acute injuries, are related to
9 the car accident based on an MRI that was taken two
10 years after this one, correct?

11 A Yes. Because the previous doctor --
12 doctors, two chiropractors, a DO, nurse practitioner
13 and myself, for the last however many years, were
14 all treating her based on her symptoms, objective
15 findings and documentation pointing to the accident
16 causing the disc herniations.

17 Q Isn't it possible that she just had
18 something else happen to her that would cause these
19 problems?

20 A No. Because her -- there's been
21 continuity of objective findings from the initial
22 date of care, and, typically, as a medical provider,
23 unless there's some sort of red flag where you're
24 thinking herniation, bulge space occupied lesion,
25 cyst, you wouldn't even refer out right away for an

1 **MRI. A lot of times we would wait four to six weeks**
2 **because a lot of times -- I mean, you've read the**
3 **studies I'm sure. I don't have any in front of me,**
4 **but I -- most of the studies show that the**
5 **correlation between MRI findings is not always**
6 **accurate.**

7 **So I -- I definitely would just like**
8 **to get my hands on that actual CD and have it reread**
9 **by another radiologist because I -- I'm in**
10 **Jacksonville, and I don't even know where that MRI**
11 **company is. I've never heard of them. I don't know**
12 **what kind of magnet they have. I don't know**
13 **their -- what slices they use. I mean, you could**
14 **have different sized slices and miss herniations,**
15 **bulges, so --**

16 **Q So are you telling me that Mark J. Timken,**
17 **MD, misread this MRI completely? He missed all of**
18 **that stuff. Is that what you're telling me?**

19 **A Or the machine itself.**

20 **Q Okay. So either his machine or that**
21 **doctor complete- -- that radiologist completely**
22 **misread this MRI?**

23 **A It's plausible. I've seen it before.**

24 **Q Is it likely or is it plausible?**

25 **A It's likely.**

1 Q Okay. You also had a spinal X-ray taken
2 relatively recently too, correct?

3 A Yes.

4 Q And it said that she had mild degenerative
5 spondylosis within her lumbar spine, correct?

6 A Yes.

7 Q And that's a degenerative condition,
8 correct?

9 A Well, it's -- because of the trauma to her
10 spine in 2018. So it's degenerative from the wear
11 and tear from the trauma over the last four, five
12 years. So that --

13 Q Have you seen any MRI of Ms. -- Ms.
14 Maliszewski's spine immediately after this accident?

15 A The MRI?

16 Q I'm sorry. I mean X-rays immediately
17 after this accident.

18 A No.

19 Q I'd like to talk to you for just a minute
20 about your -- some of the comments you made about
21 what we call a life care plan. Okay?

22 A Yes.

23 Q Now, you opined that plaintiff would need
24 a lifetime of pain medications, correct?

25 A Yes. Anti-inflammatories.

1 Q Okay. And that she would also need blood
2 work for a lab to kind of monitor what's going on
3 because of those pain medications, correct?

4 A Possibly. I would let her medical doctor
5 --

6 Q Okay. So you can't make that -- you're
7 not making that opinion; is that correct?

8 A Am I what?

9 Q You're not making that opinion, correct?
10 You're not giving us that opinion to a reasonable
11 degree of chiropractic certainty, correct?

12 A No. I'll let her medical doctor decide,
13 depending on how they continue her -- her treatment.

14 Q Okay. And you also opined that she'll
15 need visits to pain management doctors for those
16 medications for the rest of her life, correct?

17 A Yeah. Well, not for the medication but
18 for probably intervention because she can just use
19 Advil. She's not taking anything prescription I
20 don't think.

21 Q Okay. So you're not recommending that she
22 have -- that she have -- ever has prescription
23 medications, correct?

24 A I did, but she has severe allergies to all
25 different things. So I would let the pain

1 management doctor decide what they were going to --
2 how they were going to go with that.

3 Q Okay. So you are not -- you cannot to a
4 reasonable degree of chiropractic certainty testify
5 that she will need pain -- prescription pain
6 medications for the rest of her life, correct?

7 A Prescription, no. Over the counter, yes.

8 Q Now, to your knowledge, she's never seen a
9 pain management physician, correct?

10 A She actually has an appointment with Dr.
11 Lee in a few weeks. He's at Baptist, but before she
12 started seeing me and throughout that, she was
13 getting -- she was getting treated at that other --
14 the -- I forgot the name of the place. The other
15 physician's office by the nurse practitioner and
16 that's who -- that's who she was following up with.

17 Q Okay. And you're aware that she wasn't on
18 any prescription pain medications really kind of
19 ever, right?

20 A Yeah. Because she has severe allergies.

21 Q Now, you also opined that you believe she
22 will need facet injections, correct? Is that a yes?

23 A Sorry. Yes.

24 Q That's okay. Now, you are not licensed --
25 you cannot give facet injections, correct?

1 **A No.**

2 **Q Okay. Are you aware of plaintiff ever**
3 **having any facet injections?**

4 **A Am I what?**

5 **Q Are you aware of her ever actually**
6 **receiving any facet injections?**

7 **A No.**

8 **Q So it would be speculative for you to say**
9 **that she's going to need a bunch of facet injections**
10 **over the course of her life considering she's never**
11 **had one, right?**

12 **A No. She's going to need them at some**
13 **point. She's -- her pain scale is already at a 4 to**
14 **5, and it's just getting progressively worse. And**
15 **she -- it's her decision to wait as long as possible**
16 **to seek out that type of treatment, but she**
17 **definitely needs it right now. And now, she's**
18 **finally to the point where she can't tolerate it**
19 **anymore, and it's affecting her every single day.**

20 **Q Can you prescribe --**

21 **A I'm sorry. What?**

22 **Q Can you prescribe injections?**

23 **A I can refer her. I mean, I guess that**
24 **means the same thing. I don't know.**

25 **Q Ultimately, you would have to defer to a**

1 doctor who would be giving those injections, though,
2 correct?

3 **A Yes, correct.**

4 Q And you also believe that she'll need
5 radiofrequency ablations?

6 **A Due to those herniations.**

7 Q Okay. And I'm assuming you cannot perform
8 radiofrequency ablations, correct?

9 **A Nope. No.**

10 Q So you would have to defer to a doctor who
11 was licensed to do that, correct?

12 **A Yes.**

13 Q And as far as you know, she's never
14 received a radiofrequency ablation, correct?

15 **A She's terrified.**

16 Q Okay. You're also not a cognitive
17 behavioral therapist, correct?

18 **A No.**

19 Q All right. So you also recommend that she
20 will need cognitive behavioral therapy over the
21 course of time, correct?

22 **A Yes.**

23 Q Which you would defer to a cognitive
24 behavioral therapist as to how much and when she
25 would need it, correct?

1 **A Yes. And we have spoke about that, me and**
2 **her.**

3 Q Now, you're also rec- -- you're also
4 opining or recommending that she will need surgery
5 at some point, correct?

6 **A Yes. Maybe --**

7 Q I'm sorry?

8 **A Nothing. Sorry.**

9 Q You are not an orthopedist, correct?

10 **A No.**

11 Q You're not a spine surgeon?

12 **A No.**

13 Q And you're not a neurologist, correct?

14 **A No.**

15 Q You cannot perform surgery?

16 **A No.**

17 Q And you cannot recommend surgery?

18 **A I could recommend the evaluation and**
19 **referral because I think, ultimately, she does need**
20 **surgery.**

21 Q So let me be clear. You can recommend she
22 go see a doctor, who would then determine whether
23 she needs to have surgery, correct?

24 **A Yeah. Yes.**

25 Q And that would be the same for

1 radiofrequency ablations. You would need to send
2 her to a doctor who then would decide whether she
3 needs them, correct?

4 **A Yes. Correct.**

5 Q And the same for facet injections. You
6 need to refer her to a doctor who then would
7 determine whether she needs to, correct?

8 **A Yes. Correct.**

9 Q Okay. Now, you agree with me that no
10 orthopedist or surgeon or neurologist has ever
11 recommended surgery for Ms. Maliszewski, correct?

12 **A Correct.**

13 Q And you agree that no medical doctor,
14 orthopedist or surgeon has ever suggested she's a
15 surgical candidate, correct?

16 **A Correct.**

17 Q All right. So as you sit here today, you
18 can't tell this jury that she will need surgery,
19 right?

20 **A Most likely, she will.**

21 Q You're planning on telling this jury that
22 you believe she will most likely need surgery, but
23 you cannot perform it, you cannot recommend it and
24 you cannot do it, right?

25 **A Correct.**

1 Q And as far as you know, she's never seen a
2 surgeon or an orthopedist or a neurologist, correct?

3 A **No.**

4 MR. CRUDUP: Chiropractor -- those are all
5 the questions I have for you. Thank you.

6 THE WITNESS: Thank you.

7 MR. BUNCHER: Jeff, can you unshare your
8 screen so I can see my screen?

9 MR. CRUDUP: Sorry.

10 RE-EXAMINATION

11 BY MR. BUNCHER:

12 Q Dr. Bernstein --

13 A **Yes.**

14 Q -- just a couple in follow-up. Assume the
15 original MRI taken two weeks or so after the wreck
16 says what it says.

17 A **Yes.**

18 Q Does that change any of your opinions
19 regarding Jill's pain complaints that she's made to
20 you?

21 A **No.**

22 Q Why do you say that?

23 A **Because based on the continuity of her**
24 **symptoms and the subjective and objective complaints**
25 **from the week after her car accident, they've been**

1 consistent with herniations, bulges, space occupying
2 lesion, all the orthopedic tests, the decrease in
3 reflex, the decrease in sensation. Without even an
4 MRI, those are all the classical -- classical things
5 for a disc injury.

6 Q Can a person have a normal MRI and still
7 have pain?

8 A Absolutely.

9 Q And why do you say that?

10 A Because there's been numerous studies that
11 show that clinical imaging is not correlated to
12 pain.

13 MR. BUNCHER: Okay. I appreciate your
14 time. Thank you.

15 THE WITNESS: You're welcome. Thank you.

16 VIDEOGRAPHER: Anything further,
17 Mr. Crudup?

18 MR. CRUDUP: Yeah. I guess, for the
19 record -- I mean, I know we typically do this
20 -- we can do it here, but I'm going to move to
21 admit the documents that I showed her, but we
22 can do that at trial. For the record, I'll say
23 it, but we may end up doing it at trial or
24 something like that. And I will -- sorry.

25 VIDEOGRAPHER: I'm sorry. No. You go

1 ahead. I was going to complete it, but you go
2 ahead.

3 MR. CRUDUP: We're off.

4 VIDEOGRAPHER: Okay. Then, just say as
5 the videographer, then, this completes the
6 video deposition of Amy Bernstein, DC, and it's
7 off the record at 3:56 p.m.

8 (Videotaped Deposition was concluded at
9 3:56 p.m.)

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF CHARLESTON)

3 I, Trisha G. Rarick, a Court Reporter and Notary
4 Public of the State of South Carolina at Large, do hereby
5 certify that the witness in the foregoing deposition was by me
6 duly sworn to testify to the truth, the whole truth and
7 nothing but the truth in the within-entitled cause; that said
8 deposition was taken at the time and location therein stated;
9 that the testimony of the witness and all objections made at
10 the time of the examination were recorded stenographically by
11 me and were thereafter transcribed by computer-aided
12 transcription; that the foregoing is a full, complete and true
13 record of the testimony of the witness and of all objections
14 made at the time of the examination; and that the witness was
15 given an opportunity to read and correct said deposition and
16 to subscribe the same.

17 Should the signature of the witness not be affixed to
18 the deposition, the witness shall not have availed himself of
19 the opportunity to sign or the signature has been waived.

20 I further certify that I am neither related to nor
21 counsel for any party to the cause pending or interested in
22 the events thereof.

23 Witness my hand, I have hereunto affixed my official
24 seal on _____, 2022, at Charleston, Charleston
25 County, South Carolina.

26

27

28 _____
29 Trisha G. Rarick
30 Court Reporter

31 My commission expires:

32 January 9, 2029

33

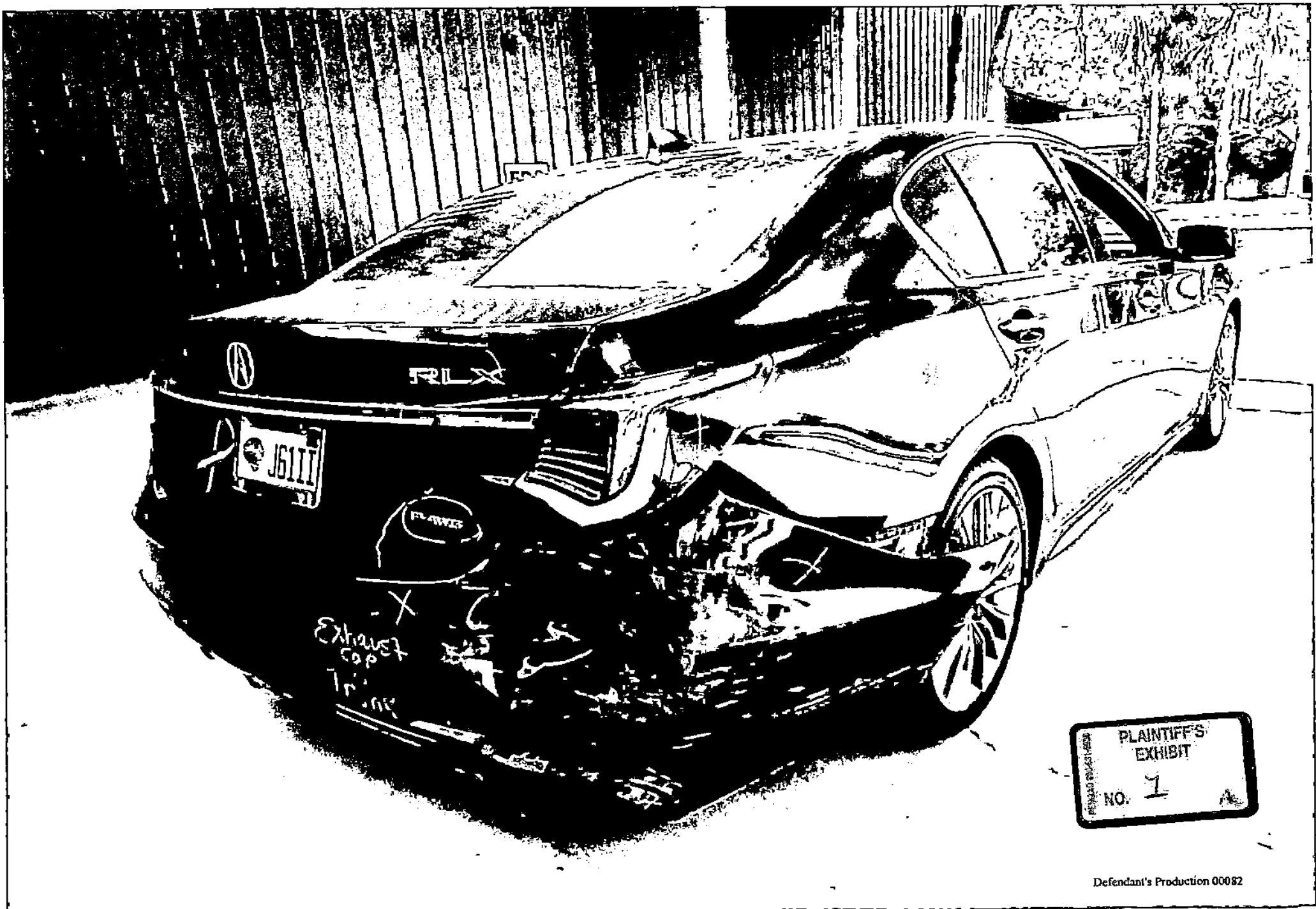
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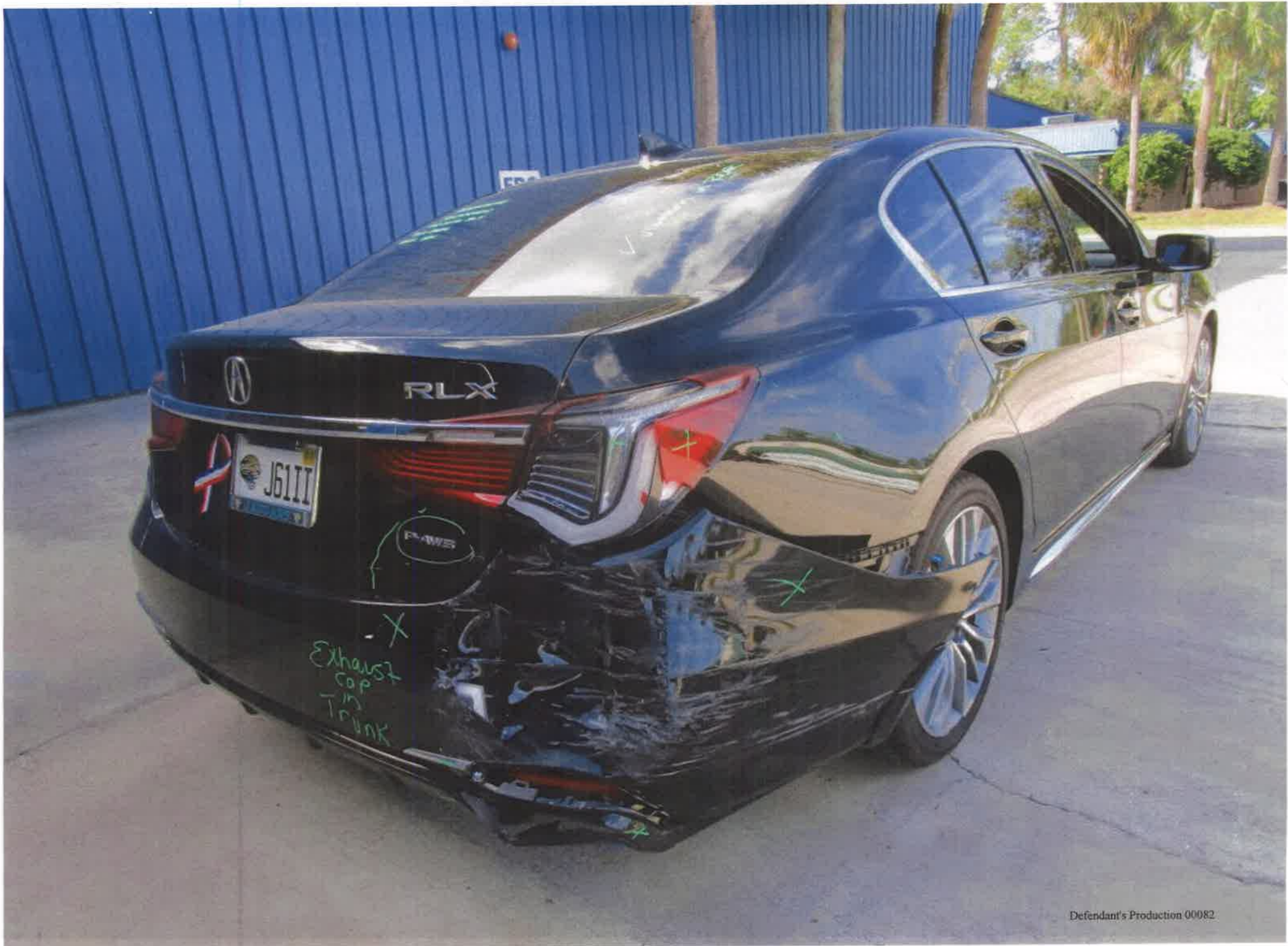
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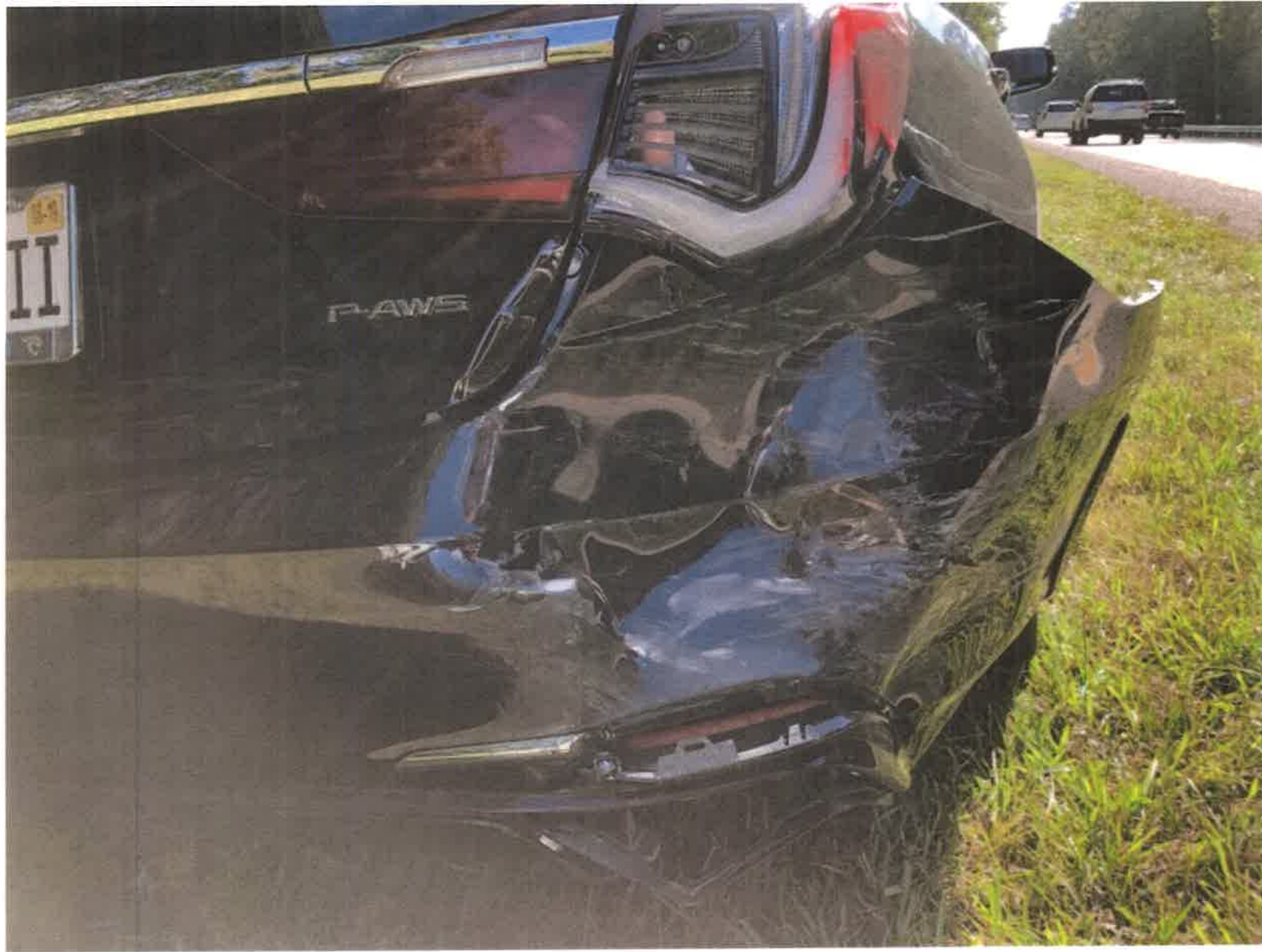
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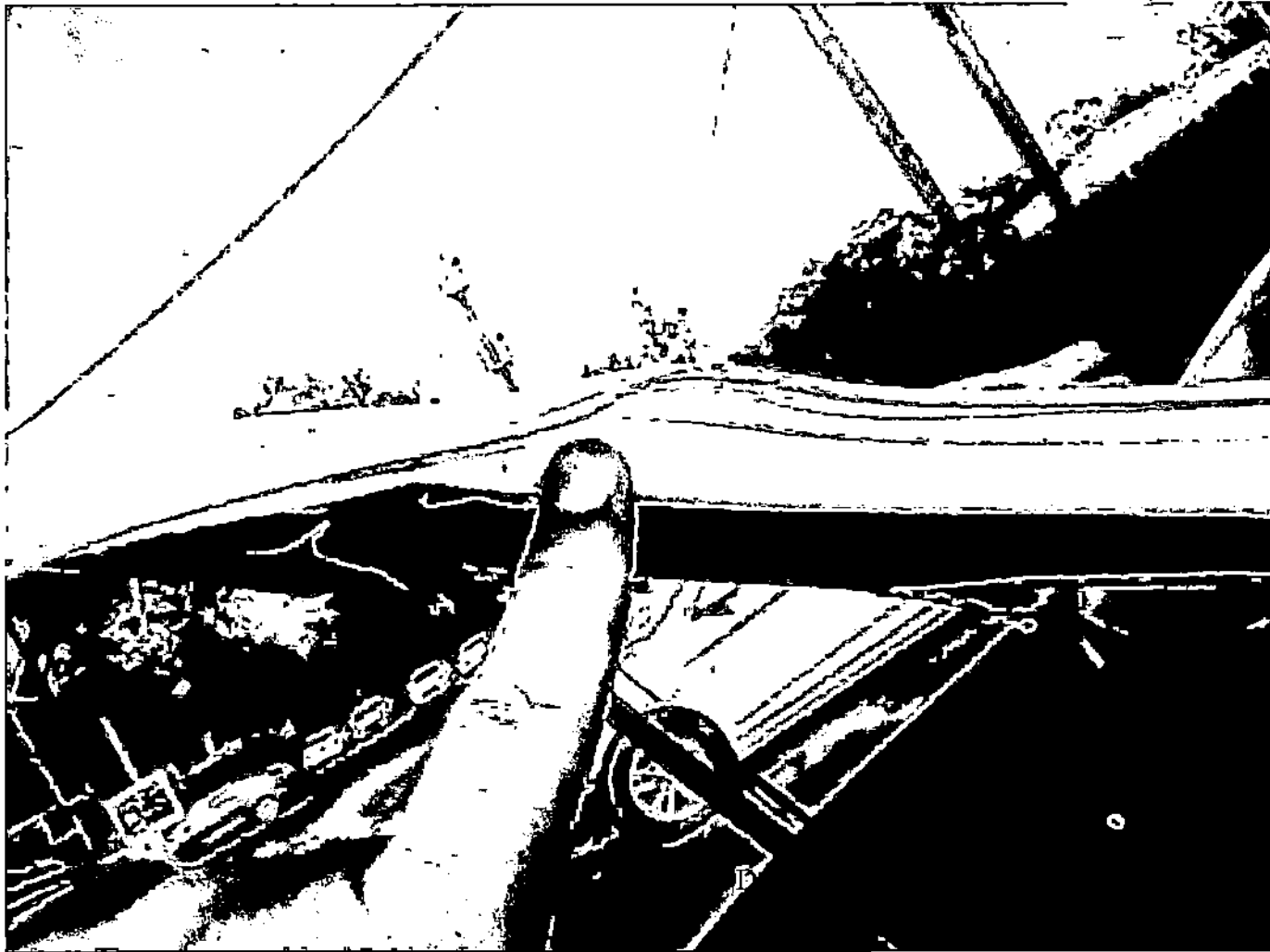
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Defendant's Production 00036











Jill Maliszewski

Injury Care Centers	10/22/18 – 1/30/19	\$9,733.31
ICC MRI	10/29/18	\$1,322.85
Amy Bernstein, D.C.	6/3/19	\$370
	11/26/19 – 7/29/22	\$19,015
Precision MRI	5/14/22	\$1,420.32
Innovative Physiatry Spine	6/14/22	\$685



RECEIVED**Nov 03 2023****SC Court of Appeals**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
In the Court of Common Pleas

Brooks Goldsmith, Circuit Court Judge

Appellate Case No.: 2023-000132

Jill Maliszewski,

Appellant,

v.

Margaret Yeager,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 31, 2023

s/ Jeff Buncher, Jr.
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